

Advancing refugee rights in non-signatory States: the role of civil society in Thailand

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A coalition of civil society actors has developed effective strategies for working alongside the Thai government to facilitate better policies for refugees.

Despite hosting refugees for decades, Thailand has never clearly granted refugees a legal right to reside in the country. Refugees arriving in Thailand in large numbers from neighbouring countries – such as Vietnamese and Cambodian refugees in the 1970s, or Burmese or Myanmar refugees since the late 1970s and 80s – have been permitted to stay on a de facto basis, provided they remain in closed camps near the borders of the country they fled. However, they have enjoyed none of the other human rights granted them under myriad other conventions (such as the International Covenant on Economic, Social and Cultural Rights and its sister covenant on Civil and Political Rights, to which Thailand

acceded in the 1990s). Refugees of dozens of other nationalities have historically had no way to regularise their status or remain in Thailand lawfully, even on such a limited de facto basis. Many obtained a short-term tourist visa upon arrival but had no further options to stay legally after the visa expired.

The government of Thailand has long resisted becoming a party to the 1951 Refugee Convention, and at times has entered reservations excluding refugees from the rights granted under other human rights instruments. Instead, the government historically responded to the presence of refugees by conducting intermittent enforcement actions to detain



Forced migrants are 'people with rights... not just needs'.

those caught residing in the country without a visa, with such efforts justified by references to national security despite little evidence to support this link.

Five years ago, however, at the September 2016 Leaders' Summit adjacent to the UN Summit for Refugees and Migrants, Thailand's Prime Minister pledged to establish a mechanism that would identify refugees and strengthen implementation of *non-refoulement* – in other words, creating an avenue to allow refugees to remain lawfully in the country on at least a temporary basis. The government also pledged to end detention of refugee children and indeed in November 2016 the Chiang Rai Juvenile and Family Court refused to punish a Somali refugee boy for illegal presence in the country, ruling – in a first for Thai courts – that refugee children have rights to protection and to judicial determinations that prioritise their best interests.

Two years later, Thailand voted to affirm the Global Compact on Refugees, and in early 2019 the Cabinet gave final approval to a new mechanism, the National Screening Mechanism (NSM), that would allow those recognised as a "person under protection" – effectively, a refugee – to remain in the country.

Status determinations under the NSM, however, have been repeatedly delayed, partly as a result of the COVID-19 pandemic. Additionally, NSM criteria for determining who qualifies for this status does not explicitly

align with internationally accepted criteria for refugee status, and includes vague language that some advocates worry may be used to evade Thailand's *non-refoulement* obligations. While this has led to some criticism, Thailand has also received approbation from Thai refugee rights organisations for inviting civil society participation in training government officials charged with carrying out status determinations under the NSM. There is no timeline for starting status determinations under the NSM but advocates hope the proceedings will begin in early 2022.

Thai civil society

Prior to 2015, most civil society organisations working with and for refugees in Thailand, particularly those in urban areas, were international NGOs staffed by foreigners. These organisations had limited direct communication with the Thai government and were ill-equipped to lead the charge for refugee rights in Thailand. In 2015, a recently expanded coalition of mostly Thai refugee-focused organisations started discussing new approaches to advancing refugees' rights and safety in Thailand. Recognising that a broader coalition would be more likely to achieve success, the group invited other organisations and individuals that did not directly work with refugees to join the coalition, now called the Coalition for the Rights of Refugees and Stateless Persons (CRSP).

CRSP focuses on engaging directly with the Thai government to achieve refugee

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protection at the policy level. As a network comprising mostly Thai NGOs, CRSP is able to engage government officials in their own language, with a nuanced understanding of context, and at times utilising social or collegial relationships unrelated to refugee issues. Alice Nah observed in 2015 that Asia Pacific Refugee Rights Network (APRRN) member organisations “appeal to [Asia Pacific] states as concerned (and outraged) citizens and residents who witness the suffering of refugees and believe that this should not happen in their own countries”;¹ CRSP – some of whose members are also members of APRRN – uses similar strategies. CRSP thus acts as what Nah and others describe as “norm entrepreneurs,” socialising shared international norms into the Thai context.

CRSP prioritises advocacy for changes that will be effective at reshaping Thailand’s treatment of refugees, in particular changes to national laws and policies. Because the Refugee Convention (unlike the core human rights conventions) lacks an enforcement mechanism, CRSP does not believe accession to the Refugee Convention alone would have sufficient impact on the Thai government’s treatment of refugees; accession also has virtually no support within the Thai government.

Unlike other networks that primarily share updates and information between members, or focus on critiquing government policies or actions, CRSP aims to work alongside the government to achieve solutions for refugees and their Thai hosts. The coalition does communicate concerns directly to the government but it also provides suggestions for solutions and offers support to design and implement those solutions. The shifts in Thai government policy from 2016 to present are in part – in addition to the role of UNHCR and foreign governments – a product of CRSP’s multifaceted strategy to engage, support and ultimately influence the Thai government.

Elements of CRSP’s success

CRSP’s success is a result of several factors. First, CRSP is led by local Thai civil society. This gives it credibility with the Thai government and legitimacy in its policy

proposals. Second, the coalition includes a broad base of actors. This demonstrates to the Thai government that a broad spectrum of actors endorse CRSP’s advocacy positions and consider policies that advance refugees’ rights and well-being as a priority; it also equips CRSP to offer expertise and technical support to the Thai government to build effective solutions to the problems that the coalition brings to government attention. Third, CRSP makes use of a multifaceted advocacy strategy such that each advocacy approach leverages and reinforces the others.

CRSP engaged directly with Thai authorities at all levels as well as with other powerful actors such as donor governments and multilateral institutions. The most important initial strategy was to build a relationship with the Thai Immigration Bureau in order to follow up on and ensure the implementation of the commitments that Thai government made on refugee protection at the regional and global level, such as the pledges at the Leaders’ Summit on Refugees, the Global Refugee Forum and the Global Compact for Migration. CRSP regularly organised closed-door meetings with the Immigration Bureau to ask about progress in developing the refugee screening mechanism, provide suggestions on certain human rights principles that should be included, and submit an NGO version of the screening mechanism.

This development of relationships has borne some fruit. The new Immigration Bureau subdivision responsible for implementing the NSM has shown willingness to work with CRSP, for example by asking CRSP to provide training on refugee law, human rights principles and case management, and to provide nominations for non-governmental members of the National Mechanism Committee and the Sub Committee tasked to review the Standard Operating Procedures for the NSM. However, regular government reshuffles makes it challenging to maintain smooth relationships, and CRSP still has no access to the decision-making officials of the Immigration Bureau and the Royal Thai Police. In addition, the comments and recommendations that

CRSP provides often get lost before they reach higher levels of government.

CRSP has found it helpful to link refugee issues with existing domestic laws and policies that can immediately apply to refugees, without the need to amend existing policies or adopt new ones. While advocacy for the rights of refugees alone has often proven unsuccessful, where issues (such as detention of children, universal education or health care access) have an impact on a broader population, the government is less reluctant to discuss solutions that include refugees. With both of these strategies, CRSP has found that presenting their desired changes as linked to Thai identity — that is, presenting the desire for change as stemming directly from their understanding of Thai local norms and values — can increase government officials' willingness to consider or agree to CRSP's proposals.

In addition to engaging directly with the Thai government, CRSP also leverages the power of peer governments, in particular those governments that also provide significant aid and/or trade benefits to Thailand. With these actors, CRSP uses the language of international human rights, rather than emphasising their proposals' links to Thai identity and values. Diplomatic missions participate actively in CRSP's quarterly diplomatic briefings, and some were also able to provide financial support for the coalition. This coordination and mutual support between civil society and influential peer governments has improved the ability of both sets of stakeholders to effectively encourage Thailand's progress on the NSM to date.

Another important strategy has been to keep urban refugee rights on the policy agenda at national, regional and international levels, so all stakeholders are constantly reminded of the situation and encouraged to collaborate more to ensure that NSM is in line with international mechanisms. For example, CRSP regularly organises open forums bringing together all stakeholders from government, diplomatic missions, international organisations, UN agencies, academia and local civil society.

Lastly, CRSP also uses international human rights mechanisms such as the Universal Periodic Review and the review by the Committee on the Elimination of Racial Discrimination to report on progress and concerns related to refugees' rights and well-being in Thailand. This keeps Thailand in the international spotlight and requires the government to respond, including by taking concrete remedial action to provide legal protection for refugees. Even though it can sometimes be difficult to see immediate results from the pressure such international mechanisms exert on Thailand, CRSP can use the reports issued through these mechanisms as an advocacy tool.

Lessons from CRSP's experience

Chief among the lessons emerging from CRSP's success is the importance of national civil society organisations and the essential skills and capacity they can provide. Thai government officials have emphasised that in some cases they take CRSP's input into account where they would not, or do not, take into account the input of non-Thai actors, particularly non-Thai NGOs. In this way, CRSP's experience differs somewhat from theories that transnational networks are central to "empower and legitimate the claims of" domestic NGOs opposing or seeking to transform government behaviour;² rather, refugee rights advocacy in Thailand has been more effective when transnational networks are not visibly urging a new policy or practice. Relatedly, CRSP's success relies in part on the coalition's ability to 'code switch' between the language of Thai values and that of international human rights, depending on which actor is addressed.

Furthermore, CRSP's strategy of both raising problems and suggesting solutions, including its offers of expertise and implementation support, have had an important impact on the Thai government's progress on the NSM. For example, in addition to providing training for government officials, CRSP also provided case management for refugee mothers and children released from detention; this support has made the Thai government more willing

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to discuss refugee-related problems with CRSP, and to embrace CRSP suggestions for policy changes to address those problems.

CRSP's myriad contributions toward advancing the shared agenda of lawful stay for refugees in Thailand were possible because the coalition and its members had access to funding resources from within and beyond Thailand. Funding national civil society organisations and coalitions should be a priority; such funding is all too often an afterthought for international donors, even though national policy reform is the centrepiece of sustainable solutions for refugees and other displaced persons.

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