

Notes & Comment

Host Communities and Refugees in Southeast Asia: Report on a Workshop held at the National University of Singapore (NUS), 10–11 May 2019

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Background

This workshop was convened for the purpose of understanding and synthesizing current knowledge on the state of relations between host communities and asylum seekers, refugees, and other forced migrants who have crossed international borders (for convenience, ‘refugees’) in Southeast Asia.¹ Four countries—Indonesia, Malaysia, Myanmar and Thailand, the largest refugee-hosting or -producing countries in the region—were the main focus of discussion. The workshop took the following assumptions as its starting point: that the absence of robust domestic legislation addressing refugees was to be expected; that what might be called the ‘refugee environment’ in each country was marked by significant legal, temporal, spatial and cultural diversities; that the region’s experience with hosting refugees was not a recent phenomenon; and, that particular attention would be given to the roles played by non-state actors (for a longer discussion, see Appendix 2, Workshop Overview).

The event brought together academics, advocates and practitioners primarily from, or with expertise on, Southeast Asia for two days of discussion in a closed setting (for the list of participants, see Appendix 1). The workshop was divided into four thematic sessions and a concluding panel. Topics covered were as follows:

(a) Location and Duration of Refugee Presence; (b) Hospitality and Sanctuary; (c) Labour and Livelihoods; and (d) Responses of National Governments (for the key questions and lead presenters in each session, see Appendix 3).

This report does not seek to cover all the issues discussed at the workshop. Rather, it presents a selective and synthetic account of what we believe are the key themes and concerns expressed by participants, without identifying individual contributors by name. The report offers a range of conclusions and findings based on individual and collective knowledge while also identifying gaps in our knowledge and issues that need more research.

Historical Backdrop

Forced migrants have been crossing national and imperial borders in Southeast Asia since the time of the Japanese occupation (1942–45) and the ensuing period of decolonization. Border-crossings took place by land and sea, but especially the former. Many forcibly displaced people were assimilated into border communities and became accepted as legal residents with the passage of time. A flood of refugees entered Southeast Asia and Hong Kong with the formation of the People's Republic of China, beginning in 1949. Refugee admissions largely took place in a legal vacuum.

Most independent Southeast Asian countries, with the particular exception of the Philippines (1981), neither signed the United Nations (UN) Refugee Convention of 1951 nor crafted domestic legislation on refugees.² Some regional countries participated in the Asian-African Legal Consultative Committee's deliberations on refugee policy, leading to the Bangkok Principles (1966), a non-binding statement of state obligations and recommendations on dealing with refugee populations.

Turning Point

Most observers would agree that the turning point with regard to regional refugee policies was the multiple military, political and

humanitarian crises that came to a head in the mid-1970s with the reunification of Vietnam and fall of the Cambodian monarchy. It was from this moment that Southeast Asian countries collectively resisted acknowledging asylum seekers as persons entitled to special consideration under customary international law and insisted that finding a solution to the ‘Indochina refugee crisis’, as it came to be called, was the responsibility of the international community. In some cases, Southeast Asian states returned involuntarily asylum-seekers to their country of origin; in other cases, they defined their role as countries of transit and temporary residence for refugees who would be resettled elsewhere in the world. This dominant understanding—of Southeast Asian states as countries of transit and temporary residence—has shaped regional policies with regard to refugees since that time.

Transitory and Temporary

This understanding is no longer tenable. While recent developments at the global level may have exacerbated the problem (the rise in nationalist and populist sentiments in the Global North that have led states increasingly to be unwilling to fulfil their legal obligations for refugee resettlement), Thailand, Malaysia and Indonesia have been *de facto* countries of final destination for refugees since at least the mid-1980s. These governments have been loath to accept this understanding of their status and continue to shape policies—to the extent they exist—based on assumptions of transitory impermanence. Moreover, received understandings of the 1970s crisis as a starting point for the Indochina refugee crisis have led to institutional and public amnesia on pre-Indochina refugee movements and earlier incorporations of displaced and moving communities into local populations. There is also little acknowledgement of how the post-1970s geopolitical context informs how contemporary states in the region respond to refugee movements.

These combined factors—an unwillingness to acknowledge their change of status and the loss of historical memory of refugee

assimilation—continue to shape policy in the primary refugee-receiving states in the region. Yet, almost every decade since the 1980s has seen at least one wave of forced migration into neighbouring countries, with Myanmar being the prime and continuing source of refugee outflows in the region.

The main refugee-hosting countries of Southeast Asia have hosted refugee populations for decades: Thailand for at least thirty-five years, Malaysia for at least twenty-five years, and Indonesia for at least fifteen years. In the absence of formal acknowledgment of this condition, practical experience gained as a result cannot be systematized nor incorporated into institutional practice. This hands-off approach leads to multiple sovereignties in practice, with informal and socially grounded authorities contesting the formal authority of the territorial state around refugee settlements. Seen from another standpoint, what this also means is that a generation (or more) of refugees in each country have grown up there and have no lived memory of any other place of residence. Repatriation to an ostensible homeland for these young people under these conditions is no longer a ‘durable solution’, but rather becomes forced exile from the only home they have known.

This mismatch between policy and experience, reflected in the distance between state actions (and inactions) and social reality, should not be understood as anomaly or distortion but seen as a characteristic condition of the refugee environment in Southeast Asia. Moreover, such a gap is not entirely malign as it opens up a zone of ambiguity that, on many occasions, has been to the benefit of both refugees seeking sanctuary and means to livelihood and their hosts and civil society advocates offering informal protection and aid to asylum seekers.

Refugee Locations

Not all refugees are found in refugee camps. Many are residents of the margins of global cities. They may be also found in transit to a third country, in rural borderlands among ethnic kin, and incarcerated

in detention centres as ‘irregular migrants’, among other sites. Each location is a distinct environment, making the character of interactions between asylum seekers and host communities hugely dependent on place. While hospitality and hostility recur as the dominant tropes in the refugee studies literature to describe the relationship of refugees to host communities, this binary may not be the most useful frame of reference in Southeast Asia. This is both due to the conceptual limits of the ‘guest/stranger/outsider’ categories that shape the refugee studies literature and because a range of other affective relations and practices may be more relevant, from pity and charity to the religious duty to offer sanctuary to those in need.

Length of stay, a major fault line of the hospitality literature, does not appear to be prominent among the factors shaping relations between hosts and refugee communities in Southeast Asia. Further, there is huge variation in the extent to which the refugee is perceived as an outsider or stranger, including social class, colour of skin (the lighter the better), geographical origins (in general, Africans and Rohingya are treated worse than other Southeast Asian refugees), religious affiliation, proximity of origin country, mode of entry into the country (air, land or sea; visa overstay or illegal entry), local understanding of the reasons for flight, and, not least, linguistic familiarity. Not surprisingly, local politics matter too: in one well-known case in eastern Malaysia (the notorious Project IC), official identity cards were handed to irregular migrants from the Philippines in order to shape the outcomes of national elections in favour of the government in power.

If refugees are found in diverse locations, equally diverse are the ‘host’ communities they encounter and interact with. These can include local shopkeepers and urban neighbours, landlords and criminal gangs, labour recruiters, village leaders, local politicians and employers, civil society groups and advocates, religious organizations and places of worship, to name just the most common. The state is likewise encountered at many scales and places, from the local beat policeman to the district police station and detention centres, health workers, nurses and doctors, immigration officials, court

translators, prosecutors and judges. These officials often have different understandings or concerns regarding refugees and irregular migrants, adding to the ambiguities and gaps between law and practice. Private sector entities may also be part of the refugee experience, as when Malaysia attempted to outsource refugee registration to a digital startup company or when refugees attempt to open bank accounts or access remittance transfers from overseas. Finally, there are multilateral agencies such as United Nations High Commissioner for Refugees (UNHCR) and International Organization for Migration (IOM), international advocacy groups, international charities, and aid and relief providers—all of these another kind of ‘host’.

‘Informal’ Protection

The protection of asylum seekers is considered an irreplaceable standard by international lawyers and refugee advocates, making the idea of ‘informal protection’ an oxymoron. By this measure, protection is assumed to be missing in the absence of a formal legal framework, often leading advocates to push for legislation explicitly protecting refugees from, especially, involuntary return or refoulement. Without questioning the importance of non-refoulement as a universal principle of refugee protection, there are everyday modes of protection that exceed a narrow legal definition. Just as informality should be understood as a normal social condition with its own practices and opportunities, protection can also emerge from gaps and ambiguities in the law.

In Thailand, advocates have used universal obligations imposed by other international laws, notably the Convention on the Rights of the Child and the Convention for the Elimination of Discrimination Against Women, to permit refugee children to be enrolled in public schools and for women to be released from detention centres. In Malaysia and Indonesia, civil society organizations and religious charities offer informal protection through refugee schools, medical camps, home-based work and literacy programmes. Informality may even be embedded in formal practices by recognized agencies. In

Malaysia, Indonesia and Thailand, asylum seekers can register with the UN Refugee Agency to be recognized as refugees. Given the huge backlog of applications in UNHCR field offices, it is not uncommon for delays of up to three years before interviews determining refugee status are conducted. In the interim, most asylum seekers have little option but to enter into illicit and sometimes illegal relationships with landlords and employers in order to survive. While the UNHCR cannot acknowledge this openly, it is aware that, given this delay in processing, registered asylum seekers have no choice but to join the informal sector. For legitimate asylum seekers who are denied refugee status in error, there is little option but to seek refuge in the informal sector, given the risks entailed in returning to their original homes. Informality, in other words, is an everyday and ubiquitous condition in the Southeast Asian refugee environment, while protection comes in forms that include the economic, cultural and social.

The ambivalent nature of possibilities opened up through ‘informal protection’ poses particular challenges for refugees and their advocates. For some asylum seekers, a degree of sustainable protection may be found outside the law, through fortunate conjunctures of goodwill, hospitality and/or faith-based charity. However, these are ‘non-durable solutions’, potentially lost at a moment’s notice in the absence of formal protections. The concern expressed by advocates is that if regional states are pressed too hard to accept the *de facto* reality that they are no longer ‘temporary-transit’ spaces, they may see no other option but to crack down on even these small spaces of refuge allowed by informality.

Given the range of possibilities produced by the intersection of informality and protection, formalizing legal protections may paradoxically end up imposing additional burdens on asylum seekers, including onerous conditions for being recognized as a refugee and legal restrictions on working. While informality carries no small cost in terms of precarity of life, it also offers needed benefits that cannot be ignored, especially the chance to work and make a living. When the informal sector becomes the locus of attention, the asylum seeker waiting for the award of refugee status by the international

community becomes indistinguishable from the irregular migrant who has crossed borders in order to work.

Criminality and Rights

‘Mixed’ migration is now a characteristic feature of international migration flows around the world. In the informal sectors of global cities such as Kuala Lumpur, Bangkok and Jakarta, internal migrants live alongside undocumented international migrants, while political refugees join with ‘economic’ migrants seeking work, making it difficult for state authorities to separate and distinguish ‘legitimate residents’ from irregular migrants on account of their incomplete or partial legibility. With the fear of international terrorism amplified as a result of endless conflicts and constantly reiterated as public anxiety, many governments have come to see all migration-related problems through the lens of state insecurity, leading to the denial of established rights and protections in the interests of public safety. This tendency has been given institutional shape through Australia’s effort to prevent refugees from reaching their shores, in the form of its notorious turnback policy (Operation Sovereign Borders), which effectively criminalizes asylum seekers and places the burden of interdiction on ‘transit’ countries. Host governments are also concerned about political activism among refugee populations for fear of endangering inter-state relations with neighbours, an especially fraught concern in Southeast Asia because of the importance given the norm of non-interference in the domestic affairs of other regional states. These tendencies have led to the weakening of informal refugee protection with no alternative or sustainable alternatives emerging.

In addition, it must be recognized that in environments where the protections of citizenship and the provision of economic rights are in abeyance, working to strengthen the rights of refugees may generate hostile local reactions. The effort by the international community to protect refugees by awarding them universal rights can lead to them being seen as a special and unwelcome category within the informal

sector, a setting where citizens and migrants alike have weak claims on the privileges of citizenship (public service delivery, right to livelihood, etc.) and find themselves in competition for scarce jobs and economic resources.

Conclusion

This workshop report reminds us of a long and largely forgotten history of refugee inclusion and asylum provision in Southeast Asian states that are not signatories to the 1951 UN Refugee Convention. It also affirms a quality of refugee protection that is at odds with the hostility currently projected at asylum seekers by a number of developed states that have signed the convention.

The report locates the current policy vacuum in the region as the outcome of contemporary denial, itself a product of historical amnesia and overemphasis on the received memory of the 1970–80s Indochina refugee crisis. It offers an alternative historical account of the refugee environment in Southeast Asia, emphasizing the diversity of refugee and host community identities and the ensuing complexity of their mutual relations. The report also points to increased securitization of international migration flows and its negative implications for urban refugees in particular. Finally, the report acknowledges latent tension between marginal and subaltern host communities and refugees when the selective provision of universal rights becomes the main focus of refugee advocacy.

Informality, the prevailing condition of the refugee environment in Southeast Asia, is not an unmitigated bad, this report argues. Yet, for all the short-term possibilities that informality offers in a context of legal vacuum, it would be irresponsible to propose that it produces desirable or sustainable outcomes, whether for refugees or other irregular migrants. While all refugee crises are by definition transnational and regional, seeking a purely regional or international solution to the problems faced and produced by refugees does not appear to be practical. This is so for at least two reasons, the first being the political unwillingness of Southeast Asian states to hold

responsible the main cause of regional refugee flows—namely, Myanmar—and the second being the effective breakdown of the international refugee regime, with so many countries now in explicit violation of Refugee Convention obligations, beginning with the United States and Australia. While there are no easy or singular answers, some of us believe there is greater hope for sustainable solutions at the national (or in some cases sub-national) level, while others insist there is still space for international/regional action in order to stabilize the system, not least burden-sharing. Some judicious combination of the two levels would probably be the most effective outcome.

State officials rarely want to take the lead in designing new refugee policies for fear of engendering ‘pull’ forces that attract refugees to their shores. They may well be correct, though research-based evidence is not available to support this conclusion. What does remain true is that by and large, and with some exceptions, national publics have often shown their willingness to be tolerant and welcoming of forcibly displaced communities. Bridging this gap between states and their societies is an enormous challenge that is made worse by the limited time available to make it happen: it is obvious that this problem is only going to get worse and more indiscriminate in the future as the numbers of forcibly displaced around the world increase for reasons beyond the political, including climate change and natural disasters. Given what we know, it is important to explore solutions that do not begin from the elimination of informality.

Looking forward, we consider it imperative that (a) academics and the policy research community produce the evidence and analysis needed to underpin innovative and sustainable responses to refugee movements beginning from facts on the ground, not assumptions about the nature of the refugee environment, while learning from contemporary and historical experience; (b) national governments in the region, despite their non-signatory status, find ways to come to terms with the fact that they are simultaneously countries of transit, temporary, short-term and long-term residence and to develop policies from that starting point. What is clear is that the status quo will not

be able to continue indefinitely, and active rather than reactive or passive stances are needed.

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NOTES

1. This workshop was funded by the Faculty of Arts and Social Sciences, NUS.
2. Cambodia would sign in 1992 and Timor Leste in 2002.

Appendix 1: List of Participants

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Caitlin Celestine Fernandez

Organizational Staff, Global Studies Undergraduate at the Faculty of Arts and Social Sciences of the National University of Singapore

Assistant Prof Caroline Brassard

Assistant Professor at the Lee Kuan Yew School of Public Policy and Academic Adviser at the Centre for Peace and Justice, BRAC University in Bangladesh

Associate Prof Decha Tangseefa

Associate Professor at the Centre for Southeast Asian Studies at Kyoto University

Deepa Nambiar

Asia Pacific Regional Coordinator of the International Detention Coalition (IDC)

Assistant Prof Elliott Prasse-Freeman

Assistant Professor of Anthropology and Sociology at the National University of Singapore

Eunice Lim Chian Hwee

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Dr Gerhard Hoffstaedter

Senior Lecturer in Anthropology at the University of Queensland

Hui Ying Tham

National Director of Asylum Access Malaysia

Prof Itty Abraham

Co-Organizer, Head of the Department of Southeast Asian Studies at the National University of Singapore

Janet Lim

Former Assistant High Commissioner for Operations of the UNHCR and currently sits on the Board of Directors of a number of international non-governmental organizations (NGOs) related to refugee issues

Lars Stenger

National Information Advocacy Officer for Jesuit Refugee Service Indonesia

Miriam Jaehn

Organizational Staff, Doctoral Candidate in Comparative Asian Studies at the National University of Singapore

Nursyazwani Jamaludin

Graduate Student in Sociology, National University of Singapore and Research Coordinator (Advocacy), Advocates for Refugees – Singapore (AFR–SG)

Dr Ola Gamil El-Taliawi

Former Doctoral Candidate at the Lee Kuan Yew School of Public Policy and a Scholar Affiliate of the Columbia Center for Middle East Studies

Dr Paolo Novak

Lecturer in Development Studies, and co-chair of the Centre for Migration and Diaspora Studies at SOAS, University of London

Dr Robin Bush

Co-Organizer, Political Scientist and co-founder of JAPPSI (Jaringan Advokasi Pengungsi dan Pencari Suaka Indonesia)

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Asylum Access Thailand's Refugee Status Determination (RSD) Team Leader

Dr Su-Ann Oh

Visiting Fellow at the ISEAS – Yusof Ishak Institute

Trish Cameron

Human Rights Lawyer, Expert Advisor for Jakarta Refugee Network (JRN) and Founding Member of the Jaringan Advokasi Pengungsi dan Pencari Suaka Indonesia (JAPPSI)

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Human Rights Advocate and Executive Director of The Freedom Story, Thailand

Appendix 2: Workshop Overview

Times have Changed: The complex relationship(s) of host communities to forcibly displaced persons and communities is not a new concern in the vast literature on refugee studies. However, we propose that the terms and our understanding of the conditions governing relations between host communities and asylum seekers have changed, especially over the last decade. In particular, we note the systematic unwillingness of numerous developed countries to meet their legal obligations under the UN Refugee Convention, the mistaken but widely held assumption that a refugee presence constitutes a crisis and reflects an emergency, and the de facto changing meaning of ‘durable solutions’, reflected in the breakdown of the distinctions between countries of first asylum, transit and final resettlement. Put another way, ‘local integration’ has now become the dominant outcome of refugee movements, through the unspoken back door of international refugee regime failure.

These changes in our view require a collective return to understanding the issue of host communities under new and altered conditions. Hence, we feel it is timely to seek to identify and discuss the most important points of reference through which to understand host community-displaced population relationships in the present. Through this discussion, we hope to find collective (if necessarily tentative) agreement regarding the relative importance of different elements of those relationships. We believe that this exercise will be useful both for shaping advocacy and practitioner agendas as well as act as a guide for future academic and policy research.

Going Beyond the Law: In order to make this collective discussion grounded, manageable and useful, we take the following conditions as our starting point. The focus of this discussion is Southeast Asia’s response to forced movements of populations. This region’s experience with forced displacement exhibits some distinct characteristics that do not map easily on to the experience of other world regions but is comparable in other respects.

Within the region, the geographical scope of this discussion is limited to Indonesia, Malaysia and Thailand, the three largest hosts of asylum seekers and forcibly displaced populations in the region. As a result, we start from a position that the absence of robust domestic and international laws governing individuals and communities seeking refugee status is normal. Since none of these three countries is a signatory to the UN Refugee Convention, the discussion must go beyond legal considerations, since protections as identified by international law exist at best only as a weak customary norm.

A Radically Diverse Environment: The refugee environment in Southeast Asia is complex and difficult to summarize easily. However, the following points are particularly noteworthy. Given the absence of domestic refugee laws, state officials typically cannot distinguish between undocumented economic migrants and asylum seekers, lumping them all into the undifferentiated category of ‘irregular’ migrants. State actions towards refugees are increasingly securitized and tend to be shaped by the prevailing international context, implying that they may change rapidly and without warning. Notable differences in asylum outcomes prevail depending on where and how refugees enter the country. Asylum seekers may be found in detention centres, formal camps, rural settlements and in the informal economies of major urban areas of Bangkok, Kuala Lumpur and Jakarta.

Considering Old and New Generations: In these three countries, the presence of refugee populations, whether undocumented, asylum-seekers or UN-identified persons of concern, is not new. Indonesia, Malaysia and Thailand have been hosts for forcibly displaced persons for decades. Hence, it is important to remind ourselves that these countries host multiple generations of refugees, from more than one source country, each with distinct relationships to host communities and to each other. What may have been true for one generation and one community may not hold true for persons from other countries, more recent arrivals, or for those who have grown up as displaced

persons in regional refugee camps or in the informal margins of host cities.

Particular Focus on Non-State Actors: In these three countries, non-state actors, including philanthropic individuals, illicit entrepreneurs, non-governmental organizations, civil society groups, advocacy groups and religious charities now carry a considerable burden of hosting forcibly displaced communities. While recognizing the valuable work being done by UNHCR and IOM under difficult circumstances, and in the interests of rethinking what we mean by sustainability, we propose to focus our discussion of host communities on non-state actors. We note that the term ‘non-state actors’ is not a homogenous category and that there are marked differences among non-state actors with regard to resources, ideologies, capacities, and the nature of their relationships with the state.

Appendix 3: Key Questions and Lead Presenters

Session 1: Location and Duration

Lead Presenters: Associate Prof Decha Tangseefa and Samuel Siew

We believe that where, when and how refugees are found in their country of residence makes a difference.

- Do how refugees arrive in the country matter?
- What are the key differences between older residents and more recent arrivals from the standpoint of host communities?
- What are the key issues when host communities encounter camp dwellers, informal urban and rural residents respectively?
- Does length of stay change host community feelings about asylum seekers?

Session 2: Hospitality and Sanctuary

Lead Presenters: Dr Antje Missbach and Dr Gerhard Hoffstaedter

We believe that cultural and religious norms shape local and community and state responses to forced migration.

- Is hospitality an adequate concept to get at the bonds between refugees and host communities; is it a useful concept to help understand the relative lack of hostility in Southeast Asia to the presence of refugees?
- Does a focus on hospitality make it easier to move away from a securitized response to refugees and asylum seekers?

Session 3: Labour, Livelihood and Refugees

Lead Presenters: Trish Cameron and Lars Stenger

We want to understand how employers, landlords, co-workers, neighbours and local authorities respond to and understand the economic impact, both benefits and costs, of refugees.

- Do the majority of refugees inevitably end up in the informal sector and become illegal economic actors?
- What does sustainability mean in this context?

Session 4: Responses by National Governments

Lead Presenters: Deepa Nambiar and Veerawit Tianchainan

We want to understand how the three states have responded (or not) to this rapidly changing environment.

- Is security the dominant frame with which current refugees and asylum seekers are addressed by governments?
- Do different kinds of officials (immigration authorities, police, judges, etc.) working at different levels of the state (federal, province, local) exhibit notably different responses to asylum seekers?
- Is passing domestic refugee laws the best means to ensuring greater protection for asylum seekers and refugees?
- What does this entail?