

‘End child detention’: Understanding policy change in Thailand’s refugee governance

A Research Paper presented by:

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Thailand

in partial fulfillment of the requirements for obtaining the degree of
MASTER OF ARTS IN DEVELOPMENT STUDIES

Major:

Governance and Development Policy

(GDP)

Specialization: **Public Policy and Management**

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December 2019

Disclaimer:

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Acknowledgements

I would like to thank my supervisor, Roy Huijsmans, who has been nothing but kind, supportive, encouraging, and patient with me. I am grateful for my second reader, Sunil Tankha, for his sharp insight and comments that helped put the paper into perspective.

Thank you, Ms. Salinrat Phanichamnuay (Natty), for connecting me with your network of professionals. Thank you, Ms. Puttanee Kangkun, Dr. Parama Boonkueng, Ms. Unchalee Srichomphu, for sparing your busy schedule to be in an interview with me. Your expertise and experience in the field of human rights protection and children on the move has been genuinely enlightening and essential to the research.

Thank you, my dear friend, Abe Simons, who has given me constant support in every aspect ever since I arrived here and for your time spent proofreading this paper.

And most importantly, my parents, the light of my life who guided me through tough times with much love and understanding.

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List of Acronyms

APRRN	Asia Pacific Refugee Rights Network
COERR	Catholic Office for Emergency Relief and Refugees
CSO	Civil Society Organizations
CRSP	The Coalition for the Rights of Refugees and Stateless Persons
DCY	Department of Children and Youth
HRW	Human Rights Watch
ICRC	International Committee of the Red Cross
IOM	International Organization for Migration
IDC	Immigration Detention Centres
MoI	Ministry of Interior
MoJ	Ministry of Justice
MoU	Memorandum of Understanding
NGO	Non-Governmental Organizations
PM	Prime Minister
RTA	Royal Thai Army
RTP	Royal Thai Police
RTG	Royal Thai Government
UNBRO	United Nations Border Relief Operation
UNCRC	United Nations Convention on the Rights of the Child
UNHCR	The United Nations High Commissioner for Refugees
VOLAG	Voluntary Organizations

Abstract

Thailand, after decades of having an ad hoc and uncertain policy stance towards asylum seekers and refugees, has finally took the first step of agreeing to sign the Memorandum of Understanding to release refugee children from Immigration Detention centers in January 21, 2019. Considering the historical setting of the country and the region with refugee perception and dealings, the recent development piqued my interest to understand the process and stakeholders involved in realizing this sudden change of policy. The research attempts to comprehend Thailand's policy convergence to the global refugee norm, the transfer and translation procedure of international human rights and migration policy between states; which can be influenced by various incentives and relevant actors, and the Thai context of these universal concepts. Moreover, the study will focus on policy instruments application which has different degree of coerciveness and effect on state by multi-level actors. Additionally, the research will examine the MoU details to identify the extent of its enforcement and the country's supporting legal system along with practices and activities done by Thai authorities. The study on refugee children which is the sector given attention to by the Thai government will hopefully be able to shed some light on the refugee governance in Thailand.

Relevance to Development Studies

Most migration issues in Thailand that have been addressed on are human trafficking and smuggling, migrant labour welfare and treatment, and the sex industry as Thailand is the hub of economic opportunities for migrant workers within the region. However, the issue of refugee protection remained hushed until now. This research offers an insight into the inner workings of policy development towards providing assistance to refugees in Thailand with specific focus on children in detention centres. The research attempts to explore the extent of global policy influence into national agenda especially with commitments made with powerful states and the international community. It also tries to navigate through the practice of releasing and ensuring the best interest of a child to children of refugees by Thai authorities. The research attempts to discover the policy tools used by policy actors that have contributed to the emergence of the MoU. This research is relevant for policy makers and development workers in understanding Thailand's first take on merging the concept of refugee and child's rights protection.

Keywords

Migration, children, asylum seekers, refugees, detention, governance, childhood, policy diffusion, policy transfer, policy translation, policy instruments

Chapter 1

Queries and Qualms

1.1 Introduction

Despite past encounters with refugee influxes since the unfolding of the Indochina war, Thailand has employed an unreliable and contingent approach to refugee treatment which has long been brushed aside from government agenda (Frelick et al. 2012). However, when it comes to cases involving children, policies tend to be given more attention, not least due to the widely accepted moral obligation prioritise the wellbeing and safety of children. Thailand is a signatory to the United Nations Convention on the Rights of the Child (UNCRC) which provides legal grounds towards refugee protection endeavours. This research is concerned with governance of asylum seekers and refugees and will focus empirically on the new development of the Memorandum of Understanding (MoU) towards the release of children from Immigration Detention Centres (IDC) of Thailand. In the process of studying the recent policy development concerning children refugee protection in Thailand, this research offers more clarity into the country's governance and policy making process with regards to refugee; who was involved and how did the government come to agree with their suggestions.

Until very recently, refugee mothers in detention could post a certain amount of cash bail in order to be reunited with their children but only within holding shelters (Fortify Rights 2019). Getting out of the detention centre for migrant mothers and children is temporarily possible with the condition of having a trusted Thai citizen to vouch for the release. In January 2019, the Memorandum of Understanding (MoU) Ending the Detention of Refugee and Migrant Children emerged as a joint response from local and regional refugee advocacy groups and seven agencies of the government of Thailand. The MoU aims to “determine responsibilities and provide guidelines for related government agencies in integrating procedures on non-detention of migrant children in an effective and systematic manner. It reaffirms the Royal Thai Government’s endeavour and intention to assist and protect migrant children while taking into account the best interests of the child” (Office of the National Security Council 2019). This research aims to understand the involvement of Thai advocacy groups, local and international humanitarian agents in shaping regulations and practices

regarding protection of children of refugees in the Immigration Detention Centre while exploring the influence of international human rights norms on the local comprehension of the principles which changes the direction of refugee management policy in the country.

This research is relevant for analysing governance process around the issue of refugee detention through the lens of child rights that gradually brings about changes in the practice. Although Thailand has not rectified the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, the emergence of the MoU on Ending the Detention of Refugee and Migrant Children can be considered the first shift of the country's stance towards refugee protection commitment in line with international framework. The study of this development will allow us to identify factors influencing progressive policy change by diverse actors and their inherent practices that was crafted into the MoU. This research will further explore whether the MoU arrival may be extended to the remaining refugee population, not restricted solely to children or more of a boundary drawn to exclusively protect specific sector of refugee such as children.

1.2What is the problem?

The recent development of the MoU Ending the Detention of Refugee and Migrant Children came as a surprise, considering the country's past aversion to refugee reception. The attention of Thai government given to the issue of refugee children has piqued my interest to investigate the governance of the children-focused refugee policy. I will give the consideration to policy instruments employed by stakeholders, in effort to understand how national perspective of security and the rights of the child in Thai socio-political sphere have gradually transformed to meet international norms. Despite decades of encounters with asylum seekers, Thai policies and legislation framework towards refugee protection have barely been developed, thus have remained ambiguous and largely unwelcoming (Frelick et al. 2012).

Refugees are often portrayed as the 'others' and burdensome in the Thai media despite the actual awareness and sympathy towards the refugees' struggle. As the election result unfolded in August 2019, the Thai Prime Minister when presenting the new policies to the parliament and Thai public mentioned the prosecuted ethnic group as follows: "Speaking of the Rohingya, I am sympathetic. But their looks, their appearance is very different from us. If you can accept to have more of these people in Thailand, that is up to you"(Phasuk. 2019). Evidently, the Thai refugee policy reform has been somewhat reluctant and minuscule

throughout the decades despite strong advocacy of refugee rights from international and local organizations network. Provided that Thailand is hosting 3.9 million migrant workers mainly from Myanmar, Cambodia, Lao PDR, and Vietnam (Smith et al. 2019), the country's migration policy is geared towards ensuring legal entry of economic migrants as well as strengthening anti-trafficking operations.

Detention is considered part of the Thai immigration process as all migrants; adults and children alike, are to be held in detention facilities or face deportation if their entries are deemed inadmissible by Thai authorities. Some cases can take up to multiple years to be resolved. Holding cells are separated for males and females which often result in family separation. Children are reported to have been placed with adults whom are not their family members. They are scarcely reunited during the long period of imprisonment. The severe lack of hygiene and access to clean water, toilet as well medical services as has been well-documented (Farmer and Human Rights Watch (Organization) 2014). The Immigration Detention Centers (IDC) operates under the supervision of the Immigration Bureau of the Royal Thai Police. There are 14 detention facilities in total across Thailand. As per the Immigration Bureau's order regarding measures to receive and control alien detainees, concerned individuals must be assigned to different cells based on their sex, with the exception of young boys whom are allowed to stay with their mothers until they reach the age of eighteen, which by then they will be transferred to join other males detainees. The population in confinements are also sorted by nationality or race, pending status for



Source: Immigration Bureau of Thailand

investigation, the need for medical attention, and criminal activity involvement (wanted individual overseas with arrest warrants). Temporary bail can be granted to migrants for the sole objective of managing case files and travel documents to speed up the return to the origin country. Cash bail of THB 50,000 (approximately USD 1,600) is the most common procedure of short-term release (Immigration Bureau of Thailand. 2002).

In terms of arbitrary detention of asylum seekers and refugees in Thailand, urban refugees remain the main cluster subjected to Thai authority's measures and therefore will be the primary point of reference for this research. They are reported to have entered the country with tourist visa and to have continued to stay in urban areas. They earn livings through informal employment; which frequently subject them to discriminatory and abusive treatment. Some rely on stipend provided by international or local organization (Zijthoff. 2016). Due to the fear of arrests and detention, the opportunity for decent and dignified living severely curtailed as they conceal their presence in small rented flats among Thai communities.

The order to release children refugees and migrants proved to be an interesting development. There is a visible struggle of the Thai government to accept and mediate the universal human rights principle with powerful actors to Thai general public. The shift from 'arrest illegal migrants' mindset to protection of vulnerable people with great emphasis on children urged me to investigate the factors influencing the abrupt change of policy direction.

1.3 Research Question

The research is an attempt to understand how the international human rights norm that condemns arbitrary immigration detention and advocates the principle of a child's best interest have come to be adopted by the state through the application of various policy instruments by multiple stakeholders at varying degree of policy arena. It reflects on the underlying national perception of childhood and refugee and how the transfer and translation of standardised policy occurs.

1.3.1 Main research question:

With the examination of the diffusion, transfer, and translation of policy ideas and the enforcement of policy instruments while navigating through global and local dynamics, how

can we understand the recent emergence of the MoU Ending the Detention of Refugee and Migrant Children?

1.3.2 Sub-questions:

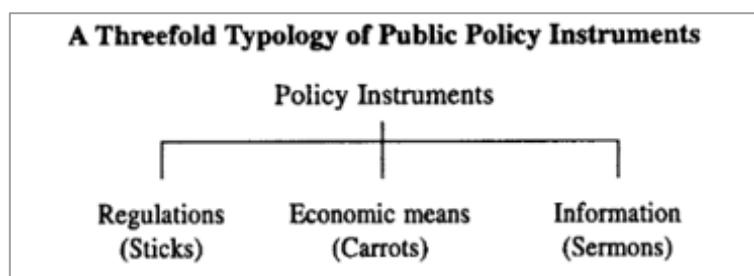
- i. What are the main policy instruments used by the international and local organizations to push the release of children refugee and migrants from detention?
- ii. What is the extent of no-child-detention policy transfer from global to national level and how are they translated into local context?

1.4 Research methods and methodology

1.4.1 Analytical Framework

The first framework I will use is Policy instruments: Sticks, carrots, sermons, and dialogues. Policy instruments are studied “in order to better understand the linkages between policy formulation and policy implementation, and to gain insights into the public policy decision making process”(Howlett 1991). Policy instruments are not solely used by the government to exercise control but also a way of keeping the government in check. Therefore, to investigate the governance of refugees in Thailand, there is a need to identify the mix of policy instruments employed by different actors involved in nudging the policy forward. As per (Bemelmans-Videc et al. 1998), the classic policy instruments are classified into three main types: Carrots (incentives), Sticks (regulations), and Sermons (information) as seen in Figure 1 below.

Figure 1



A Threefold Typology of Public Policy Instruments by (Bemelmans-Videc et al. 1998)

Considering the fragile political predicament with the junta-led government, policy instruments used by Civil Society Organizations in Thailand are composed mainly of endless Sermons and Dialogues. For example, joint statements produced by organizations such as

the Human Rights Watch, Save the Children, Coalition for the Rights of Refugees and Stateless Persons (CRSP), etc. The joint statements (Asia Pacific Refugee Rights Network (APRRN), et al. 2019) contain recommendations and demands for changes to be made by the government; for instance, the need to build-in the legal structure for refugee protection and the cease of inhumane treatment, given Thailand's commitment to the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment which was ratified since 2007 and the Convention on the Rights of the Child (UNCRC) signed in 1992. Dialogues can also be found for example in July 7, 2017, Mr. Filippo Grandi of UNHCR scheduled a meeting with the Thai Prime Minister Prayut Chan-o-cha to discuss the country's path to create a refugee-friendly environment. The talk includes Thailand's ongoing attempt to realize the non-refoulement principle (United Nations High Commissioner for Refugees (UNHCR). 2017). The MoU itself became a binding instrument devised by multiple actors (both state and non-state) and enforced among Thai ministries. As I will examine later in chapter 4 of the MoU's content, the document was signed by the head of 6 ministries plus the Royal Thai Police (RTP) to act in accordance to the delegated plan of action.

The second framework I will use is policy diffusion and transfer and translation. Migration issues have spread across the world and so have policy ideas about migration. (GILARDI and WASSERFALLEN 2019) concluded that diffusion of policies can be influenced by 1) lesson learnt from policies implemented 2) competition for resources 3) global pressure to follow an "acceptable behavior" 4) imitation and reproduction of policies found adequate for the situation. These four mechanisms are not always easily determined. I will further explore the conditional nature of these four mechanisms. Some states are under aid conditions, some are heavily influenced by powerful leadership, and some are more susceptible to hegemonic powers (Dobbin et al 2007:455-456). According to Gilardi (2012: 454-455), "Diffusion can take place also within countries, among a wide range of public and private actors, and it can lead to the spread of all kinds of things, from specific instruments, standards, and institutions, both public and private, to broad policy models, ideational frameworks, and institutional settings." Meanwhile, it is worth addressing the interrelations and deviations between policy diffusion and transfer literatures. Policy transfer is concerned with the learning of policy knowledge from one political sphere to another (one of the four mechanisms mentioned above) which is the reason for the emphasis on the role of agents who carry and make sense of these ideas in another social setting (Marsh and Sharman 2009:270). While

diffusion concentrates on how separate states have come to deploy the same or similar policy. It stresses on the importance of structure such as physical proximity and institutions. There is also an overlapping understanding of both literature which encompasses both brokerage of information and social fabric or establishment (Ibid: 271). In this research, my aim is to identify Thailand's assimilation of child's rights norm and investigate how policy actors (individuals or organizations) interact to modify and reconstruct the ideas that travels from a macro level to micro level by unpacking the content of the MoU as well as interviewing individuals involved in the making of the document.

1.4.2 Research Methods

The main research method is via secondary qualitative data. The research is focused on utilizing International Conventions and government documents, for instance the Memorandum of Understanding, reports published by the Council for National Security, records of cabinet resolutions, and national legislations. The MoU's essence is central to the analysis in chapter 4 which I will determine the standard procedure of refugee children treatment in comparison to international norms, the Thai childhood concept implied, the degree of enforcement on the signatories, and monitoring mechanism. The process of acquiring the MoU has been the major challenge which has delayed the research work plan and affected the interview questions. After months of unsuccessful contact through emails, phone calls, and through colleagues in Bangkok, with the Royal Thai Police and several ministries to gain the MoU and locate officers involved, I eventually received a copy of it in Thai and English version in October 2019 from a Senior Human Rights Specialist from Fortify Rights, Ms. Puttanee Kangkun whom I also interviewed. Her direct involvement in drafting and producing the MoU has significantly shed light on the policy development process including current practice by Thai authorities, the translation of the best interest of a child principle in Thai context and the joint efforts of CSOs in brokering and monitoring policy development. Country and regional reports produced by International Non-Governmental Organizations such as The Asia Pacific Refugee Rights Network Fortify Rights, Human Rights Watch and the United Nations High Commissioner for Refugees as well as the International Organization for Migration are incremental to the research in identifying policy devices their core programs and the country's situation from CSOs perspective.

Qualitative interview will be included to give the research more operational insight. Furthermore, I have conducted additional Skype interviews with NGO staff members: 1) Dr. Parama

Boonkueng, the head of educational service unit for urban refugee children from Catholic Office for Emergency Relief and Refugees (COERR) and 2) Ms. Unchalee Srichompu, a former Verification Officer at UNHCR and former teacher at Bangkok Refugee Center (BRC). Both have been involved in the assistance of providing education to refugee children inside and outside the immigration detention center. In interviews uncover their efforts in engaging with police and education authorities at field level as well as collaboration with partner organizations in agenda setting with at national and regional level. The urban refugee specialists are experienced in conducting best interest assessment for children asylum seekers to determine their needs, ensure family unification, and build trust with the local host community. The interview aims to understand the role of Thai civil society organizations with their translation of the best interest of a child principle into action and their interaction with government agencies in providing clarity for norm adjustment in child refugee treatment. Their experiences are simultaneously brought up for comparison with the processes and instructions in the MoU; how their work have been affected since the MoU became operational and how the practices can be improved. In terms of motivations in researching this topic, I undertook the subject of children refugee solely because of this MoU can be seen as a positive advancement of immigration detention policy in the country which is considered a rarity. As I have no personal involvement on the matter, the study strictly adheres to research ethics and found on available data for interpretation without bias.

Chapter 2

From national security threats to vulnerable children

In this chapter, based on national historical background, I will explain the Thai perception of children and refugees; the two separate concept that is being reconciled for the first time into the MoU. I will present how the Thai legislations have come to adopt the principles listed in the UN Conventions which shows the country's gravitation towards international norm over time. There are some discrepancies among Thai Immigration Law and other law concerning children which will also be addressed.

2.1 Childhood within the Thai Context

As per Child Protection Act, a child means “a person under eighteen years of age, but not include a person those who become *sui juris*⁶ through marriage”(Royal Thai Government Gazette 2003). According to the Juvenile and Family Court Act and Judicial Procedures for Juvenile and Family, Article 4 states that “Dek” or a child is the word used for calling an individual whose age does not exceed fifteen years old. “Yao-wa-chon” or youth is any individual who is over fifteen years of age but does not exceed eighteen years(Royal Thai Government Gazette 2008). In article 19 of Civil and Commercial Code, “A person, on completion of twenty years of age ceases to be a minor and become *sui juris*” (Royal Thai Government Gazette 2008). Based on these legislations, age boundary is an indicator for determining childhood from adulthood.

Thailand's first official conceptualization of childhood can be traced back to the time dominated by military dictatorship in the 1950s as the country began the customary national children's day on every second Saturday of the year to celebrate nation-wide recognition of children and family. Following the invitation of V.M. Kulkarni, a United Nations Social Welfare Fellow, the tradition was started by Field Marshall Phibul Songkram who was the prime minister in 1955: the time in which Thailand carried a deeply nationalistic campaign along with the strong influence of the U.S. government to contain the surge of communism in Indochina. Phibul Songkram was known as the “father of Thai ethno-nationalism and “Thainess”, the fundamental discourse about national identity”(Bolotta. 2016). He

⁶ *Sui juris* means being legally competent.

remodelled the country; boosting the Thainess by changing the country's name from Siam to Thailand (or Phrathet Thai; Phrathet mean country and Thai means free), devising trade policy that protects and support local industries ("Thai Tum-Thai Chai-Thai Charoen" meaning Thai-made-Thai use-Thai prosper), and westernizing or modernizing citizens' attire (although clothing material must be produced in Thailand) during his 14 years in total in office (Numnonda 1978).

The annual event often comes with speeches from Prime Minister with an instruction-like motto for children to conduct themselves as they are the future of the country. The objective of the national children's day set by the government is to "make Thai citizens realize the importance of children, nurturing and care of children, and supporting children with special needs for the children and youth to uphold the nation, religion (s), the monarch, and the democratic government with the King as the head of state, in order for children to understand their duty and remain in good discipline and to proliferate the Universal Declaration of the Rights of the Child" (The Government Public Relations Department of Thailand). The Children's day tradition has been carried out for 64 years until this day. Within the quote above reflected the combination of a highly politicized childhood view based on international norm of children's rights recognition and the obedience to adults and loyalty to their country and its ruling system. According to Bolotta (2016), "The ideal child, like the citizen, should be passively prone to welcome parents' (state authority's) superior benevolent knowledge and abilities. Only by doing so, each child-citizen will harmoniously fit the Thai socio-moral and political hierarchies."

In summary, in the eyes of the Thais, there is an embedded role of adults to navigate children's course of life into the Thai society according to national values and belief which is highly dominated by Buddhist teachings in order to carry the legacy of the nation. Instead of focusing on the rights of a child, adults in this context must take on the role of moral agent who determines rights and wrongs for children as they are deemed incapable of making one's own decision and are subjected to bend to the will of the nation. Meanwhile, Archard and Skivenes (2009:10) stated that "Any estimation of a child's maturity must be made independently of an evaluation of a child's opinion. Otherwise there is a danger of allowing a judgement of immaturity to be inferred simply from a disagreement with the prudence of a child's view". These two contrasting views offers a discrepancy within childhood concept and treatment between Thai and Western view. Considering the refugee children's

predicament, assisting and providing protection in their best interest fit very poorly into Thai cultural background of nationalistic and patronising view towards children.

2.2 A brief history of Refugee Crisis and Management in Thailand

1945-1975

Thailand has simultaneously received influxes of refugees due to regional political disturbances; most prominently in 1975 in the aftermath of the second Indochina war. Even though Thailand did not recognize the status of refugees, nor was it under any legal obligations to provide support and shelter for asylum seekers, the Thai government provided humanitarian responses to emergency situations along the borders due to the geographical proximity. As Thailand did not follow the international mandate by rectifying the 1951 Refugee Convention, the country established its own terms for people fleeing war as 'displaced persons'. As Thai Immigration Law came into effect in 1979, any foreigner without travel documents, no work permit, or those who are deemed a threat to national security, were labelled 'illegal migrants' (Chantavanich and Rabe 1990: 68). By the end of the first wave of the Indochinese war, Vietnam was divided into North and South which created the first ripple of migration of more than one million people towards the south of the country (United Nations High Commissioner for Refugees (UNHCR) 2000). The American government – heightened by the fear of the domino effect of communism in Southeast Asia at the time – played an instrumental role in the second wave of dispute from 1954-1975 in Vietnam, Laos, and Cambodia. Thailand was among its supporters in fighting against communist regimes.

1975-1989

During this period, Thailand was introduced to the international framework of refugee treatment. Soon after the triumph of the communist parties in Cambodia, Laos, and Vietnam in 1975, mass exodus ensues in the respective countries for two subsequent decades. Over three million people fled to safety across borders and waters. Thailand as a known opposition to the communist regimes in the region who shares more than 800 kms of border in the east with Cambodia and Laos along the length of the Mekong River became one of the Southeast Asian countries first responder to the Indochina refugee crisis. While trying to commit to international humanitarian obligation, Thailand also had to mediate political tensions with neighbouring governments in harbouring refugees; some of whom were considered to have

hostile intent towards the Indochinese governments; into Thai territories. This puts a strain on regional relations and adding risk to national security (Chantavanich and Rabe 1990: 68).

In mid-1979 when Thailand and Malaysia announced the cease of receiving asylum seekers due to the lack of capacity and underlying fear of becoming a permanent resettlement country in place of the United States, France, and Canada whom initially pledged to take responsibility (Stein 1979: 717). The halt created an operational impact which called for a UN meeting in Geneva which brought together representatives of 65 states including aid organizations involved. As a result, the first countries of reception were assured temporary intake of refugees while the number of places for resettlement was increased.

Another surge of refugee arrival in 1987-1989 rattled the open-door agreements in 1979. After a decade of the first agreement, the Comprehensive Action Plan (CPA) emerged which involved three main parties: the governments of origin country (Lao and Vietnam), the first countries of asylum, and the destination country. The CPA was aimed to prevent illegal and dangerous border-crossing whether on land or at sea by spreading a common understanding of the implicated risks of unauthorized passages. And most importantly, a mechanism for separating refugees and economic migrants were established to ensure safe and sustainable repatriation (UNHCR 2000:1). During the crisis, the Thai Ministry of Interior collaborated with international organizations such as UNHCR, United Nations Border Relief Operation (UNBRO), International Committee of the Red Cross (ICRC), and various voluntary organizations (VOLAG) in managing refugee camps along Thai-Cambodian borders. Their mission was to offer shelter, healthcare services, food supplies, life skill training, etc. (Chantavanich and Rabe 1990: 73).

1990 – Early 2000s

Since 1996, the Thai government became vigilant of heroin and speed pills (Yaba) which became widespread in the country and led to crackdowns on drug production villages on the border Shan state and Thailand. The narrative of cross border danger and chaos presented by Thai media has led to an aversive response to the displaced people in fear of their associations with illegal activities. Thai press, for instance, has often associated drugs production under the control of warlords and armed military group. Local newspaper headlined “Dissecting the source of “Hellish drugs factory” Exposing trafficking route to

Thailand.” (Thairath Newspaper 2018) International news coverage also shows that Shan state is a “‘hub’ for the global trade in crystal methamphetamine or ice” (Allard 2019). Despite the fear of assimilation due to media xenophobic instigation, it is also worth noting that “Thailand is often the preferred destination for Burmese refugees because there is a high demand for foreign labor” (Brees 2010: 36). Thai economy thrives with the help of Burmese labor especially in exports of agricultural and manufacturing sector.

2009 – Present

The Myanmar state’s brutality reached its zenith during the mass killings of Muslim Rohingyas by the Burmese troops in 2015 in retaliation of the reported attacks by the Arakan Rohingya Salvation Army (ARSA). Even since this incident, the number of refugee exodus to neighbouring countries has spiked. The major source of complications was due to the 1982 citizenship law passed by the government of Myanmar, which included 135 ethnic groups as national race without mentioning the Rohingya; effectively rendered the Rohingyas stateless. Without the required documents from foreigners to enter Thailand according the immigration law, Rohingyas refugees cannot be lawfully permitted into Thai soil. Rohingya boats coming from Myanmar and Bangladesh “are either detained by the Thai authorities and remain in detention indefinitely or are intercepted by Thai authorities, and risk being pushed back to sea, something which has happened multiple times in the past” (Danish Immigration Service 2011: 46).

2.3 National legal development on children and migration

The Convention on the Rights of the Child was adopted by the General Assembly and opened for state parties’ signature in 1989. The country signed and ratified the convention in 1992 in close time proximity to its Southeast Asian neighbours. Since then, Thailand has been tailoring its national legislation regarding children to comply with the UNCRC mandate. The UNCRC provides an all-encompassing coverage for children within the kingdom regardless of their nationality or immigration status. Article 3 highlights “In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration” (UN General Assembly 1989). Correspondingly, the Thai Child Protection Act includes in Section 22: “The child treatment in any case shall be made with

the view to maximize the benefit of a child without unfairness and discrimination or not shall be made in accordance to the rule as prescribed by the Ministerial Regulation”(Royal Thai Government Gazette 2003).

While Article 9 of the UNCRC states that children should not be separated from their family unless the legal procedure deemed it contradictory to the child’s best interest (UN General Assembly 1989), in practice asylum seekers are “separated into cells separated by gender and perceived ethnicity” (Chia 2018). The death of a Rohingya girl in Sadao Immigration Detention Centre in the south of Thailand in 2017 (Walden 2017) is one of the cases that proved the Thai government has yet to fully adopt Article 37 and Article 22 of the UNCRC which speaks against arbitrary detention and provides the refugee children treatment guideline (consecutively).

The incompatibility of national law with regards to child protection and immigration adds another layer of complexity. The Thai Immigration Law 1979 provides the basis for arrest, deportation, and detention. As per section 12, any foreigner with no valid passport or travel documents or proof of employment will not be allowed into the country and therefore treated as illegal migrants (Royal Thai Government Gazette 1979). Police raids of housings in urban areas due to government’s crackdown on illegal migrants often results in arrest and detention and eventual separation of families which goes against the fundamentals of the UNCRC.

Even though Thailand has not rectified the 1951 Convention relating to the Status of Refugees and its 1967 Protocols, the Thai government led by Prayut Chan-o-cha has shown series of attempt to bring refugees protection into practice. At the Leaders’ Summit on Refugees 2016, United Nations Headquarter in New York, the prime minister vowed to assist displaced people and to strengthen screening system for refugees in order to prevent them from falling into the hands of traffickers (Ministry of Foreign Affairs of the Kingdom of Thailand 2016). Later in 2017, the cabinet resolution was issued with the demand for creating a Committee for the Management of Undocumented Migrants and Refugees. Their role is to set up a mechanism for identifying refugees and illegal migrants (Human Rights Watch 2019). Thailand also endorsed the UN’s Global Compact for Safe, Orderly and Regular Migration in 2018 to practice progressive migration management. The recent signing of MoU ending children refugee detention marks a shift of government’s perspective majorly pushed by local and international civil society organizations.

Despite the government's attempt to remain faithful to the human rights doctrine as shown by the vows at global conferences, there is also a struggle to maintain national sovereignty and border safeguarding that is the inherent duty of the government, considering the notably strong ties of the country's leadership with the Royal Thai Army whose duty is to serve the nation, religions, the monarch, and the people. The endeavour to reconcile the peacekeeping stance along with anti-refugee rhetoric broadcasted at national level media clashes with the promise made at international arena. For instance, when speaking of refugee statuses in Thailand, the PM concluded that Thailand has taken this responsibility of sheltering individuals fleeing wars for twenty years and "There is about 100,000 left unbeknownst as to when they will return which is considered quite a burden (to Thailand). The important thing is the longer they stay, they will have family and their children born in Thailand with Thai nationality which (the government) has to be careful" (Khaosod 2019).

2.4 Best interest of the child principle

The child's rights protection initially stemmed from the 1924 Geneva Declaration which was later adopted by the United Nations. The document provided outline/blueprint that was later on developed into the UNCRC. A child as a capable individual whose opinion is now recognized in decision making process for the situation concerning their lives; in contrast with the preceding documents which hinted towards adult's obligation towards youth while children stand aside to receive help (Wells 2009: 30-31).

Ever since the adoption of the United Nations Convention on the Rights of the Child in 1989, the best interest concept has become increasingly prevalent in different parts of the world as governments start to realize the significance of children's rights in terms of safety, expression of opinion and participation. The principle, however, is problematic as the concept's open-ended definition leaves room for interpretation which oftentimes are dictated by adults; much less involvement from young people whom are the direct beneficiaries. Determining what's best for a child is essentially a moral issue. Representation of the view of children remains a challenge in various cultural background and context. There is a lack of 'teeth' in the UNCRC unless they are incorporated into domestic law. Apart from the complications of carrying out the principle, there are some obscurity in the charter. For instance, Article 12.1 which states "States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the

child.” (General Assembly. 1989). This indicates the assumption of maturity that comes with older age. Which means not all children can enjoy full rights, only the ones that are considered matured enough to make life choices. Moreover, there is no guarantee that rational decision comes with age (Archard 2004:65).

Archard (2004:68) also identifies ambiguity in Article 3.1, which states that the best interest for children ultimately rest upon their caretaker or guardians even though their opinion must be considered primarily. Despite rights given to a child to voice their intentions, there is no assurance their decisions will prevail over others. The fact that children may choose to do things that are considered against reason for an adult, however the action should not be identified as due to the lack of maturity as it only perpetuates the patronizing attitude towards children. In the debate to free refugee children from detention, the best interest of children whom are the beneficiaries are mostly considered as responsibility of adult to determine what is needed to be done which leads to issue during case management such as separation of family members.

Chapter 3

Sticks, Carrots, and Sermons

3.1 Policy instruments

In this chapter, I will examine policy instruments used by policy actors through the expanse of local scale to regional and global scale that inspires movements and gradual changes in Thailand's refugee governance direction. To recap, policy instruments are tools or measures applied by policy makers or influencers to reinforce, prohibit, or modify certain behaviour of individuals or organizations that has impact on public affairs. It is, as Elmore (1987:175) put it, "an authoritative choice of means to accomplish a purpose".

As explained earlier in methodology section, this research will adhere to the 3 main categories of policy instruments: regulations (sticks), economic means (carrots), and information (sermons or dialogues) as compressed and compiled from various approaches by Vedung. Rules and regulation have an element of command to set the boundaries of conduct. In the event of non-conformation of actors, regulators (not necessarily governments) are authorized to impose sanctions on them. Sanctions are considered by some normative coercion or enforcement while some emphasize on the power relations of the enforcer and other actors which is the key feature of this type of instrument (Borrás and Edquist 2013: 1516). Economic instrument comes in various forms. For instance, monetary form such as incentives (subsidies and tax breaks) and trade deterrents (charges, fees, and taxation) or in non-monetary form of business conduct (Ibid). Lastly dissemination of information is the least coercive kind of instrument. It generally takes place in the form of discussions, recommendations, collaborative network agreements, etc. This policy instrument is becoming widely used in governance as a diplomatic tool which holds lesser extent of hostility while reinforcing coordination and alignment of frameworks (Ibid).

In the process prior to the signing of the Memorandum of Understanding on the Determination of Measures and Approaches Alternative to Detention of Children in Immigration Detention Centers was led by the following organizations: Asia Pacific Refugee Rights Network (APRRN), Asylum Access Thailand (AAT) Center for Asylum Protection (CAP), Coalition for the Rights of Refugees and Stateless Persons (CRSP) Fortify Rights, Human Rights Watch, and Migrant Working Group (MWG). Following the signing of the MoU by seven ministries of Thailand, a joint statement issued by the above-mentioned actors

addressed the content of the MoU as well as offering insights and suggestions on the basis of international norm of human rights and refugee protection for the Royal Thai Government's immediate follow-up actions. In this part I will investigate major policy actors both present and absent in the events leading up to the MoU based on the nature of their organization's mission, vision, scale of operation, relationship with Thai government and types of programmes active in Thailand. In this part, I will go into details for the work of APRRN which is an organization operating at regional level and the CRSP which is a collective group of mainly Thai refugee rights advocates and explore their collaboration as well as their interactions with the global level organizations such as the UN Human Rights Council and the International Detention Coalition in devising and realizing policy instruments.

3.1.1 Regional Collaboration for Refugee Rights

The Asia Pacific Refugee Rights Network (APRRN) is a compilation of more than 400 civil society entities focusing on mobilizing rights and assistance to asylum seekers and refugees in Asian Pacific territory. The network originated from the joint effort at Asia Pacific Consultation on Refugee Rights (APCRR) held in Kuala Lumpur (Malaysia) in November 2008. The meeting was a gathering of multi-level human rights upholder groups for exchange of ideas and liaising regional linkage to systematically tackle refugee rights situation. The APRRN's main objectives are to encourage active participation and cooperation among various stakeholders in driving the regional refugee protection agenda forward. The organization operates based on the framework of durable solutions, the principle of non-refoulement without discrimination, basic requirements for refugee treatment as stated in the 1951 Refugee Convention and the Global Compact for Refugees and the Global Compact for Safe, Orderly and Regular Migration. (Asia Pacific Refugee Rights Network (APRRN). 2019b). The APRRN has a working group within the Southeast Asia region. There are eight 8 thematic working groups: 1) Durable Solutions 2) Immigration Detention 3) Legal Aid and Advocacy 4) Refugee Leadership and Participation 5) Regional Protection 6) Rohingya 7) Women, Gender and Diversity 8) Youth⁷.

Their program activities on Immigration Detention are focused on equipping an up-to-date knowledge, tools, and skills beneficial for personnel from various background such as human rights policy and advocacy, legal practitioner, journalism, NGO officers in the context

⁷ Detail of working groups <https://aprrn.info/our-work/thematic-working-groups/>

of forced migration. The capacity building course on Refugee Rights and Advocacy in 2018 was designed with the collaboration of the Legal Aid and Advocacy Working Group (LAAWG) which is the integral part of the Asia Pacific Refugee Rights Network (APRRN)'s core function with South Asia and Southeast Asia's research and human rights institution respectively. Another type of program activity carried out by APRRN is expansion of knowledge via online communication channels with much emphasis on information sharing on social media. The organization broaden its connectivity through participation of forced migration forums and workshops at regional level (APRRN 2019). The APRRN works in close partnership with local NGOs and CBOs network in Thailand to focus on enhancing protection of asylum seekers from various states in Southeast Asia especially from Myanmar which has been affecting the bilateral socio-politico-economic dynamic for decades. APRRN's major accomplishment mentioned in the 2018 Annual Report was their collaboration and constant support for the Coalition for the Rights of Refugees and Stateless Persons (CRSP) which is comprised of mainly Thai NGOs and legal practitioner for asylum seeker's rights in Thailand (APRRN) 2019).

3.1.2 Local initiatives for Refugee Rights

The coalition for the Rights of Refugees and Stateless Person (CRSP) emerged as the joint effort of Thai civil society organizations, activists, concerned members of Thai human rights advocate, and academics to move forward the Thai government's policy on urban refugees and stateless people protection and a more humane treatment. Their activities consist of dissemination of human rights knowledge to local and international audiences which will then stimulates public awareness and recognition of refugee rights and places the government's action under scrutiny. According to the interview with the Senior Human Rights officer of Fortify Rights,

“The Coalition is a crowd. There’s no administrative body. It is only the gathering of like-minded Thai people and some expats. But we wanted to drive this organization by Thais because Thai authorities always say that there’s only non-Thai who cares about this matter. Thai people don’t really care. So we wanted to demonstrate to the government that there’s enough Thai people who cares. As you also know that Thai public perception of refugees in general are quite negative, to Rohingyas, refugees, migrant workers. It was quite easy for the government to ignore the issue. So now we have a strong point that the coalition is led by all Thais in order to negotiate and advocate

refugee's rights to state's agencies. We started to build our own capacity and started to engage with key agencies such as DCY and Immigration Bureau. Then we also provide alternative care so then the government started to see the possibilities not to detain children. Because before that they said they don't want to detain children but what else they can do as they're illegal and their parents might be considered a threat to national security. So, we showed them there's a way to take care of children. We formed the coalition and now invited new member such as Host International which is an Australian NGOs interested in the work of CRSP and they have expertise in taking care of refugees in Australia and they now operate in Thailand focusing on case management of children refugees who are out of the detention centres. So, it emerged as a lot of effort and work and coordination and engagement and most important is political will of the government." (Kangkun 2019, personal interview)⁸

Based on this interview, this network of governance emerged from local efforts in steering state's policy. The coalition has no organizational structure and no legal enforcement; however, their gathering was the result of collective action to alter the way national refugee policy is made and the general public's perception and practice for the people of concern. Even though the provision of public information and campaigns have the lowest coercive power, there is a higher appeal of having Thai citizen protesters and activists fighting for the rights of refugees and migrants to the Thai authorities since the overall public opinion of This people towards refugees are quite negative. Oftentimes activities for human rights cause are thought to be driven by western organization and dogma; which is the reason for slow pace or reluctance to work with NGOs. As per definition provided by Ansel and Gash (2008:546) that "collaborative governance also sets standards for the type of participation of nonstate stakeholders. We believe that collaborative governance is never merely consultative. Collaboration implies two-way communication and influence between agencies and stakeholders and also opportunities for stakeholders to talk with each other." There is an established line of conversation and information exchange between concerned Thai citizens and relevant state agencies. Thus, there is a noticeable shift of dynamic from CSOs criticising government into strategic partnership. For instance, according to (Kangkun. 2019), the Department of Children and Youth which is part of the Ministry of Social Development and Human Security and the Immigration Bureau of Ministry of Interior consultation lead by

⁸ Personal interview with Ms. Puttanee Kangkun on the emergence of the MoU, via Skype, 15 October 2019.

Fortify Rights and other CSOs. The advocate groups provide trainings by legal experts and case management. Moreover, the assessment result of immigration detention scorecard had been clarified to member of ministries for further actions. Children rights bodies and police authorities have finally converged their operating principles to cover the intersectionality of the status of children whom are asylum seekers or refugees.

3.1.3 What policy instrument do they use?

The garbage-can approach is oftentimes used to explain the selection process of policy instruments where problems and solutions are thrown together into a garbage can. The final verdict is the result of determination of the four main streams: problems, solutions, participants, and choice opportunities. Problems emerged from all types of outcry from the worried and fearful stakeholders who desire for immediate action to be taken on a particular issue. Solutions are the outcomes that are formulated and engineered not necessarily to tackle the pre-existing problems but to be matched with the problem with consideration of choices made at certain time. Participants, depending on their time availability, may be present or absent in one or more decision making process. Thus, their characters, skills, experience varies in each situation; making the outcome differ as well. The first three streams will meet with Choice Opportunities stream which is the moment decisions will be made at a time determined by involved parties (Cohen et al. 1972: 3). The model has several drawbacks such as the lack of organizational structure taken into account, the streams or factors determining the issue on the agenda is quite expansive and ventured with possibilities, the lack of recognition of shared relations between the streams, and the unpredictability of policy window appearance (Mucciaroni 1992: 461). Taking these flaws into account, the following process of identifying policy instruments will address these streams involved. In the policy instruments in the following section, different participants were involved in the decision-making process. Some organizations were included and some were left out.

NextGen Index: End Child Detention Scorecard 2018 report was the result of the joint effort of Thailand NextGen Index Committee consisted of APRRN, Fortify Rights, Asylum Access, Save the Children, Coalition for Rights of Refugee and Stateless Person (CRSP). The NextGen Index is a part of the Global Campaign to End Child Detention of the International Detention Coalition. The index is “a comparative tool that ranks States on their progress in ending child immigration detention. The Index uses a standard scoring framework to assess the key factors that ensure national migration management systems are sensitive to the needs of children and, importantly, avoid child detention.”(Global NextGen Index.).

According to the (Global NextGen Index. 2019), “The Thailand NextGen Index Committee completed the baseline assessment of Thailand’s progress; however, the scores and rankings have not been published at this stage.” The scorecard was designed as a questionnaire⁹ for assessment in 8 areas with the total score of 100 points. The report summarizes the main points taken into consideration as per following criteria. First, Thailand rectified three out of six treaties relating to children and refugee rights protection. The national law with regards to the exemption of detention of minor grants immunity to youth under 15. However, the government has not expanded the age limit to 18 as per international standards (UNCRC). Status determination procedure of all children in need of asylum in line with the Best interest of a child principle has been sporadic and unclear. The bailing cases (for temporary release) have remained inconclusive and therefore children placement and family unification remain a challenge. Rights to welfare and education are limited due to the lack of systemic record. There is yet to be a separate national body from the government that oversees, evaluate, and report detention cases and figures of affected persons. The extra points go to the Thai Cabinet Resolution 10/01, B.E. 2560 which led to the new Committee for the Management of Undocumented Migrants and Refugees that devise strategies for screening and management of migrants and refugees without legal documents (Global NextGen Index. 2017).

The Global Campaign to end child detention is considered an instrument to **name and shame states** that internalize refugee protection norms. This index serves as ‘Sticks’ in a way that it listed the desirable behaviour and practices of states according to the internationally accepted legal norms standards. It matched the existing national legislation, processes, and detention conditions to the mandate that the country is subscribed to. Furthermore, it provides recommendations of actions for parties involved within each criterion based on the structured scoring framework of the International Detention Coalition (IDC).

The psychological effect of the sticks on the actor under observation produced a penal-like impact that led to shame and embarrassment of state who ‘misbehave’ at global level onto local level. It generates the drive to avoid being the transgressor. “According to the deterrence theory, the rational calculus of the pain of legal punishment offsets the motivation

⁹ Categories for assessment and weighted points in brackets: International Treaties (20), National law (10), Processing (26), Placement (12), Rights (20), Oversight (12), Points off (-15), Bonus points (+15)

<http://next-gen-index.org/wp/wp-content/uploads/2018/08/Scorecard-Questionnaire.pdf>

for the crime (presumed to be constant across offenders but not across offenses), thereby deterring criminal activity. In comparison, the rational choice theory posits that one takes those actions, criminal or lawful, which maximize payoff and minimize costs" (Akers 1990). States may not take into consideration conscience and sense of responsibility towards humanity as they come with higher cost to implement and lengthy period of execution. However, at the same time, there is a cost on society: national reputation suffers, various type of sanctions and the lack of respect from the international community. In relations to the western childhood concept, the universally recognized trait of children is the physical and cognitive vulnerability which calls for protection from adults. Children are commonly perceived to be susceptible to influence and manipulation from their surroundings, therefore there is an inherent social expectation of adults at a certain level of responsibility towards children (Wells 2009: 2-3). Thus, states should not deprive them of rights to grow up in safe environment and with their best interest at heart. The moral obligation towards children paved the way for legal instruments for child protection to be enforced.

Normally 'sticks' or in a limited definition as per the threefold typology of public policy instruments: *Regulations*, are considered a formal directive that the government produces to impose authority and to confine the behavior of the governed. Although the index report is not legally binding, however, as the scores are shown to States, it would conceptually create a driving force for countries to address the gap and transform the current practice towards a more verifiable system and harmonized with international standard. In other words, the index is meant to steer the governments into the right direction of children treatment with the supervision and assistance in monitoring progress of the civil society members, academics, and advocacy groups whom are familiar with the national context. In case of Thailand, the national committee decided to release only the narrative part of the index while omitting the publication of the index. Ms. Kankun explained the process that:

"There are actually more than 20 organizations who joined the scorecard meeting.

First time in 2017. We planned to have a 2-year comparison report (2017-2018).

After the scorecard is done, we had a meeting among NGOs first. After the ranking was produced, we engaged with state's agencies (National Human Right Commission, Attorney Generals on child expertise, 7-8 government organizations). We presented the scorecard and then hear feedback from these agencies. Of course, they're not happy (Thailand is not doing well) with the score. We engaged with UNHCR, but the score

was not published because there's strong rejection from UNHCR not to publish it in early 2018 because the MoU was coming, and the government might not like the outlook of it. UNHCR also mentioned that in Southeast Asia only Thailand is doing the scorecard and there's no other neighbouring countries to compare the index to. This year we also did the score of 2018 in March 2019. But we have not come up with the report yet. But we planned to do the 2017-2018 comparison report. Before the emergence of the MOU, we did a seminar with the National Human Rights Commission with NGOs. And another one with the IDC (Immigration Detention Centre). We launched the scorecard in August 2018 in an event which we invited government agencies to come. So, we think it's quite a useful campaign tool.” (Kangkun 2019, personal interview)

Based on this interview there is an observed dynamic among government agencies, local NGOs, and international organizations to be addressed. The National Human Right Commission of Thailand is an independent body that promotes, advises, and monitors human rights principle at domestic and international level. The institution is obliged to report human rights violation cases to the Constitutional Court or Administrative court. Child protection experts from the Office of Attorney General (which reports to the Ministry of Justice) had also agreed to join the presentation of the index. The fact that governmental agencies expressed their concerns and interests showed the magnitude and the level of trust placed in the NextGen Index national committee. However, the prohibition of the Global NextGen Index online publication speaks the level of influence of UNHCR Thailand (which is an Intergovernmental organization operating at local and regional level) on the issue of refugee detention. It is worth noting that since 2014, UNHCR Thailand has been working with Thai Immigration Bureau and partner NGOs¹⁰ to produce a National Action Plan (NAP) as part of its Global Strategy - Beyond Detention campaign which focuses on removing children from detention and introducing alternatives to detention (ATDs) into practice in selected

¹⁰ UNICEF, OHCHR, IOM, Jesuit Refugee Services (JRS), Catholic Office for Emergency Relief and Refugees/Bangkok Refugee Center (COERR/BRC), Thai Committee for Refugees (TCR), Asylum Access Thailand (AAT), UNHCR and, as observers, the Asia-Pacific Refugee Rights Network and the ICRC.

communities (United Nations High Commissioner for Refugees (UNHCR). 2019). However, since the NextGen Index committee was not consisted of the same policy actors involved in the conception of the National Action Plan which may have created discrepancies in the overall basis understanding of the Thai's refugee detention situation, the final index publication was requested by UNHCR to be withheld.

According to the APRRN (2019),

“Together with Asylum Access Thailand (AAT), Fortify Rights, and Jesuit Refugee Services (JRS), APRRN assisted in producing a Universal Periodic Review (UPR) factsheet on the current situation of Thailand’s Asylum Seekers and Refugees. This factsheet covers the period of June 2016 – December 2018” (APRRN 2019:7).

The UPR is the process of reviewing the human rights situation of 193 UN member states conducted by the UPR Working Group comprised of 47 members of the Council. It was designed to assist member states with discussions and dialogues to improve states human rights situation. The review is based on 1) National Report submitted by the state under review 2) the Special Procedures Report (of the Human Rights Council) from independent human rights experts assigned to provide recommendations to particular country or theme 3) reports from other concerned parties such as NGOs and national human rights institutes (United Nations Human Rights Council. 2019).

The National Report submitted to the Human Rights Council by the Royal Thai Government summarizes the government’s policies towards human rights protection, existing legislations, human rights mechanism and instruments including the 3rd National Human Rights Plan (2014 - 2018) and its progress of integrating the recommendation of the first review cycle UPR into the national framework. In terms of the 3rd National Human Rights

Plan, Thailand included 11 issues¹¹ and 15 target groups¹² of vulnerable persons whom are prone to human rights abuse and are faced with social security deficit. Within the context of migrant and refugee children issue, it is worth noting that there is more attention paid to the conditions and rights of individuals in detention with significant emphasize on children and women whom are perceived to be highly exposed to risk.

“Information is either a policy instrument in its own right or a metapolicy instrument in the sense that it is used to disseminate knowledge of the existence, meaning, and availability of other policy instruments” (Bemelmans-Videc et al. 1998). The UPR is considered as a tool for dialogues between member states and the human rights council. It offers suggestions which can be measured with country’s progress report in the next cycle of review. Additionally, pledges given by country will be taken into consideration in the following cycle meeting. Unlike ‘hard law’, there is no punishing body to impose the regime on the state. For this policy instrument to be successfully employed, there is strong reliance on political will and promptness of the state under the radar.

For treatments of children within the context of detention centres (although not specifically stated about immigration detention centres), these are the 3 relevant categories that were listed as on the national plan (Ministry of Justice of Thailand 2013):

(1) A Human Rights Plan on the Accused Persons/Persons Deprived of Liberty.

The operational measures developed for this plan are

¹¹ 1) Public Health; 2) Education; 3) Economic Rights; 4) Natural Resources and the Environment; 5) Housing; 6) Cultural Rights and Rights concerning Religion; 7) Data, Information, Information Technology, and Communication; 8) Transportation; 9) Civil and Political Rights; 10) Judicial Process; and 11) Social Security.

¹²(1) Accused Persons/Persons Deprived of Liberty; (2) Former Inmates/Persons Released from Detention; (3) Accused Persons Charged with Drug-Related Offences Pursuant to the Narcotics Addict Rehabilitation Act B.E. 2545 [A.D. 2002]/drugs addicts and individuals who have undergone rehabilitation treatments for drugs addiction; (4) Victims and Injured Persons; (5) Persons Living with HIV/AIDS; (6) Workers; (7) People Living in Poverty/Individuals Affected by the Development Process; (8) Farmers; (9) Older Persons; (10) Children and Youth; (11) Women; (12) Persons with Disabilities;

- *Improvement of the current conditions of prisons, and **places of detention**, including an extension of public utilities as necessary;*
- *Availability of lawyers to provide legal assistance to defendants in both civil and criminal cases;*
- *Development of a screening, classification, and referral system **for children and youth** in the justice procedure, as well as the development of a system for the treatment, correction, and rehabilitation of children and youth;*
- *Promotion of good treatment practices vis-à-vis suspects or defendants by taking into consideration human rights principles, including an exploration of other approaches to or tools in monitoring alleged offenders or defendants;*
- *Promote a reform of the treatment system vis-à-vis **children and women** in the justice procedure so as to achieve an appropriate system thereof;*
- *Develop alternative punishment systems;*
- *Revise the Corrections Act, B.E. 2479 [A.D. 1936] so that it is in line with the UN Standard Minimum Rules for the Treatment of Prisoners as well as other international human rights standard;*
- *Enhance understanding regarding human rights and human dignity among personnel in agencies concerned; the development of security arrangements and practices vis-à-vis the reproductive hygiene of persons deprived of liberty, by taking into consideration both men and women's specific problems and needs;*
- *Ensure that persons deprived of liberty receive medical treatment on an equal footing with members of the general public; and*
- *Promote spiritual development in terms of religious practice governance for persons deprived of liberty on the part of religious organizations.*

(2) A Human Rights Plan on Stateless Person, Ethnic Groups, and Asylum Seekers or Displaced Persons is comprised of the following measures:

- *Expedite the clarification process regarding relevant state policy and laws in practice;*

- *Consistently promote measures to ensure the promotion and protection of human rights;*
- *Develop measures designed for the protection of benefits as well as the protection thereof through appropriate legal measures;*
- *Strengthen the legal framework, the state's policy, relevant laws as well as human rights promotion and protection measures;*

Enhance legal knowledge and understanding;

Promote normal and regular access to health-related security arrangements;

- *Set up a joint committee for managerial purposes at the national and local levels;*

Develop a system for the selection and determination of status for stateless individuals and alyssum seekers, or displaced persons in Thailand;

- *Coordinate with the ASEAN community and South Asian countries in order to collectively determine a set of concrete programmes of action;*
- *Develop a database on stateless individuals and alyssum seekers, or displaced persons; and*
- *Enhance positive attitudes within Thai society so as to encourage members of the public to appreciate and accept identity and ethnic diversity.*

*(3) A Human Rights Plan on Children and Youth included an operational measure to 'Hasten preventative measures vis-à-vis groups of **children requiring special protection**¹⁴'. (Ministry of Justice of Thailand 2013:24-28)*

¹⁴ The National Child and Youth Development Plan B.E. 2555 - 2559 (2012 - 2016) defined 'Children in need of special protection measures' with the inclusion of "Children with problems related to state, such as displaced children, children of immigrants, hill tribe children, stateless children and children with no birth certificates" http://www.youthpolicy.org/national/Thailand_2012_Youth_Development_Plan.pdf

The National Report submitted to the UPR also addresses the International human rights instruments adopted, for instance, the ratification of the Optional Protocol to the Convention on the Rights of the Child on a communications procedure since 2012 which led to a nation-wide acknowledgement of the protocol as well as development of national mechanism towards this goal. Meanwhile, Thailand has stated to have been “studying the possibility of ratifying the Optional Protocol to the CAT (OPCAT)¹⁵. The Ministry of Justice (MOJ) has been working, in collaboration with various organizations such as the Association for the Prevention of Torture, International Commission of Jurists, and the OHCHR, to raise awareness and promote understanding of the OPCAT among all concerned agencies” (Government of Thailand 2016:6).

Thailand also reported the four strategies that have been adopted into the National Children and Youth Development Plan (2012–2016) as follows “(1) increasing life immunity, (2) protection and development of children in need of special protection, (3) capacity-building of alliances for child and youth development, and (4) improvement of the administration and management system for child and youth protection and development” (Government of Thailand 2016: D) . The plan also addressed the situation of stateless children: “On 21 September 2010, Thailand finally withdrew its reservation to Article 7 of the Convention on the Rights of the Child concerning nationality, opening up opportunities for stateless children to receive nationality (not necessarily Thai)” (Ministry of Social Development and Human Security, Government of the Kingdom of Thailand 2012:35). This allows children of migrant workers and stateless individuals without birth registration and possess no identity card to have legal presence in the country and therefore able to receive universal basic needs. Although the acknowledgement of statelessness and provision of nationality which can prevent arbitrary detention of asylum seeker and migrant children took place in the national agenda, the realization of the plan in practice continues to be ambiguous. Moreover, the Ministry of Social Development and Human Security (MSDHS) has generated a national action plan to increase the welfare of ethnic group, stressing on their rights to live in harmony with nature in conservation areas in a non-discriminatory way (Office of the National Economic and Social Development Board 2017: 143). The country placed a great priority towards tackling irregular migration issue. Although having been the first country of asylum for Myanmar

¹⁵ Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

(including Rakhine state) and Bangladesh, Thailand maintains its stance of providing temporary shelter and skill training for voluntary returns (Government of Thailand 2016).

The Report of the Working Group on the Universal Periodic Review in September 2016 contains the comments from the working groups and discussion with the state under review. In summary, Thailand presented its case with commitment of undergoing the consideration of full compliance with article 22 of the Convention on the Rights of the Child to ensure asylum seekers and refugee children's protection and family unity along with their universal rights enjoyment paralleling the international human rights and legal frameworks in close partnership with international and local civil society organizations (Government of Thailand 2016:8). Additionally, since the country has been sheltering more than 100,000 individuals in need of asylum whose presence may not be recognized as legal according to Immigration Act 1979, Thailand is devising the screening mechanism to make a distinction between economic migrants and asylum seekers in order to ensure adequate measures for each group (Ibid:11). Thailand has also agreed to support the following recommendations of 1) improving the situation of the Immigration detention centers to meet detention standards and conditions (Ibid: 23) 2) ending arbitrary detention as per the International Covenant on Civil and Political Rights(Ibid: 24) 3) end refoulements practice of migrants and asylum seekers and detention of children(Ibid:28). Moreover, Thailand has given the voluntary pledge of becoming a party the international conventions of the Optional Protocol to the International Covenant on Civil and Political Rights, the Optional Protocol to the Convention against Torture, and review the possibility of joining the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (Ibid: 28-29).

The UPR progress report can be categorized as the use of information as policy instruments in a multi-way communication where the sender(s) and receiver(s) of information collaborate to develop the messages, circulate the content to the entirety of the member, and lastly the result of evaluation and comments flows back to from the designated recipient to the board or senders (Bemelmans-Viduc et al. 1998). In this case criteria and human rights law and policy of concern to the state under review were formulated. Questionnaires of the working groups by each member countries were distributed to the addressing country. The national committee reviews and decides the outcomes to be published. In terms of the UPR, each target country presents the result summary in a form of National report at the next cycle of UPR meeting. All of these documents and comparison reports were available online for the public eyes. Furthermore, with the help of online infographics on websites which

instigates knowledge sharing and engagement in discussion of the migrant and refugee children detention issue across the globe without boundaries.

Chapter 4

The MoU Content Analysis

Chapter 3 provided examples of policy instruments used by various actors such as member states in the UPR working groups and CSOs in pushing the Thai government to increase commitment towards ending detention of refugees as well as the acceptance and incorporation of UN Conventions into National Action Plans which eventually resulted in the production of the MoU which further reaffirms the promise and provides framework for children refugee treatment at national level.

The MoU forged the binding mechanism among government agencies involved to act in the interest of children regardless of their nationality. It challenges the mindset and usual practices of Thai authorities. The document itself is also considered an instrument used by local and international organizations to monitor the government's actions. The APRRN has been consulting with CRSP and other NGOs in designing the MoU.

Based on the official translated version of the Memorandum of Understanding on The Determination of Measures and Approaches Alternative to Detention of Children in Immigration Detention Centers B.E. 2562 (2019) obtained from Fortify Rights' Senior Human Rights Officer, I will analyse the content of the MoU by each component in the following part with consideration to the alignment to international refugee policies and compare them to the current practice and existing national legislations. The MoU was divided into 7 parts namely: 1) Preamble 2) Objectives 3) Definition of children who shall be assisted 4) Principles 5) Operations 6) Child Protection Process on Individual Basis 7) Cooperation with international organizations, the private sector, and civil society 8) Follow-Up and Assessment 9) Revision and Termination 10) Enforcement

The first part addresses the domestic and global political climate that affects the migrating population. There is a comparative element and convergence of national legislation on child protection in relations to the commitment made to the UN Conventions, the general comments published by UN Committee on the Rights of the Child with regards to the issue of separated and unaccompanied children in 2005. The general comments discuss the inconsistencies in the implementation of children assistance in various countries as children traveling without their guardians are often subjected to discrimination, sexual abuse and exploitation (especially girls), denial of legal aid and official status registration (UN Committee on the Rights of the Child (CRC) 2005:5). Thus, the documents laid down principles (non-

refoulement, best interest of a child, non-discrimination, fundamental child's rights), protection measures (initial assessment, guardian and lawyer appointment, family unification) to be taken including the durable solutions¹⁶.

In part two, the MoU is intended to guide and define a plan of action for involved institutions and authorities to stop detention for children migrants and asylum seekers and to ensure they are treated according to their rights.

In terms of perception of childhood on part three of the MoU, there is a regard on children as “highly vulnerable and at risk of various forms of exploitation” (Government of Thailand 2019: 2), especially for the segment that are on the move. The MoU calls for different ministries in charge of children’s welfare and Immigration Detention Centres to follow the guideline listed and “to determine clear mechanisms and responsibilities among agencies to ensure that the rights of the child are protected in accordance with Thailand’s domestic laws and international obligations.”(Ibid:2) Note that there are still limitations in Child Protection law and Immigration law in practice as the national law itself does not have any clause that recognises the status of asylum seekers and refugees. Although the wordings in the quote resonates positive prospect, it leaves room for interpretation; protection would be provided in accordance with the international norm however as much as the national law can extend to intersect. The definition of children in this document is in line with the UNCRC in terms of age limit. Children under the age of eighteen in detention centres under the supervision of the Immigration Bureau are considered in need of assistance.

Part four listed the following principles to be taken on high alert by involved organizations:

First, no children are to be detained unless it is deemed the last resort. This part mirrors Article 37 (b) of the UNCRC which emphasizes the liberty of a child which should be prioritized in the event of arbitrary arrests and any form of detention. In case of necessary detention deemed by authorities, the duration should be the “shortest appropriate period of time”. Under the Thai Child Protection Act, detention falls under “Torture” as the term entails “any act or omission to act which cause a child to be deprived of liberty or to be in danger, physically or mentally, any sexual abuse to a child or any use of a child to act or behave which is likely to harm physical or mental condition of a child or illegal or contrary to good morals,

¹⁶ Durable solutions are 1. Voluntary repatriation (to the country of origin) 2. Local integration (in the country of asylum) 3. Resettlement to a third country.

irrespective to consent of a child”(Royal Thai Government Gazette 2003). This principle is still supported by national law. However, in practice it still requires action from CSOs to ensure the enforcement. The CSOs in this case acts as an agent in the process of explaining human rights norm to local authorities. This process of policy diffusion will be further discussed in Chapter 5.

Second, the MoU states that the best interest of a child including a child’s view must be taken into consideration. However, there is no further clarification of the term ‘best interest’. This international principle itself is broadly defined, therefore the interpretation of the term and incorporation with national law varies in different states. In case of the very young children whom are often assumed to lack cognitive capability, adults assigned as their guardian acting as their moral agent will be the one to make judgements in a child’s stead. Thus, each case will be dealt with differently; depending on the extent of children’s involvement and mindset of the guardians. An example case from my interview with Dr. Boonkueng from COERR:

“We can see from the authorization of bail for refugee mothers to take care of their children whom were previously released. However, it might take some time, or the policy might not reach the release of the family leader (father) because the government thinks the release of caregiver (the mother) is already enough. The release of the caregiver is in accordance to the UNCRC.” (Dr. Boonkueng 2019, Personal Interview)¹⁷

Or another case from my interview with Ms. Kangkun from Fortify Rights with regards to family separation:

“When we first started working with DCY a few years ago, they don’t understand the meaning of refugee children. So when they look at Child Protection Act, they only to Thai children. I think they’ve learned a lot. But caring for refugee children is not easy because here we have more than 10 nationalities. That means 10 different cultures and languages. And the way the government managed in 2018. There was a big raid. The

¹⁷ Personal interview with Dr. Parama Boonkueng, via Skype, 22 September 2019.

MoU has not been signed at that time, but the pilot project has started. The authorities know that they shouldn't detain children. But what happened was the Nonthaburi (province) governor contacted the Ministry of Human Development and Security's shelter. They separated children according to the facility of the shelter. 3 children from the same family, one boy who's 10 years old and one girl around the same age and one very young (infant) girl were all separated. Because boys and girls and infants' quarter are separated. According to them the best interest is not being detained in immigration detention center. Being in the shelter is the best for that time. But the shelter facility itself violates the best interest practice. It's not by intention but by default. So the best interest principle still needs to be discussed within the society. Not only within the government but also NGOs. And when it comes to refugee children, it's more complicated. At the time, the Ministry of Human Development and Security said not putting children in detention is the best practice. But according to parents, it's better to not separate the 3 children from each other. The mother would say it's best her children stays with her in detention centre. There's no best interest. The whole society still need the knowledge of the best interest of a child" (Kangkun 2019, Personal Interview).

These are example of error of understanding on the concept of child's best interest which resulted in partial compliance to the UNCRC but not fully realized.

Third, basic livelihood standard must be provided. In Section 8 of the National Education Act, B.E. 2542 (1999) as amended by Act (No.2), B.E. 2545 (2002) provides a life-long, all-inclusive education for every child regardless of social status and nationality. This principle became the basis of operation for NGOs working towards educational rights of migrants and refugee children such as COEER as per my interview result. According to the Ministerial Regulation set of guidelines for determining actions most beneficial to children or unfair treatment to children B.E. 2549 (2006) can be summarized as follows. Actions that maximize the benefit to children must be tailored to fit the character, the need, and the situation of a child. Appropriate attention and care for mental and physical health should be ensured for every child. This also includes any activities that will further enhance their intellectual ability. Emotional and life skills development yielded from attentive care and proper education. Children must receive assistance; especially children in a condition that needs support, and protection against harm, abuses, violence, and abandonment. Discriminatory act due to country of origin, nationality, language, sex, age, social status, religion, political opinion is considered unfair and double standard treatment which could lead to detrimental effect to

the children and youth of concern in a long run (Ministry of Social Development and Human Security, Government of the Kingdom of Thailand 2006)).

Fourth, family reunion and child-care must be prioritized by Thai immigration authorities. With the short-term shelters (or reception centers), families are to be placed there as other alternatives run out. With regards to my interview with Ms. Kangkun from Fortify Rights, the current situation is that:

... now they (Thai authorities) transfer children and mothers from Immigration Detention Centres to new facilities called Don Muang training centre. It's sort of like an apartment but they're still under detention because they cannot go out. And Immigration Bureau planned to have a new facility at the police club near Rama Garden. They said it's almost ready and they wanted to invite NGOs to look at it this November. They say this is where the whole family can stay together. We still need to see what will happen because we see the effort of the Thai government, but we still don't see the solid action. We have to make sure there's no children in detention. (Kangkun 2019, Personal Interview).

With this clause in the MoU, NGOs can use this document as an instrument (as it is now binding now state) to follow up on the development of shelters.

Fifth, alternative care must be mindful of factors affecting physical and mental conditions of a child. Sixth, concerned agencies must provide relevant care to a child. No further detail was listed under this clause; thus, lacking the binding condition for precise course of action of each governmental unit.

In part five of the MoU, there are three major operations listed under the responsibility of governmental agencies. First, “Reception” of children migrants and refugees are to be managed by the Immigration Bureau prior to referrals to other agencies. Second, “Assistance and welfare protection” are to be provided as per listed on the national Child Protection Law. And lastly, the “Return” procedure is to be executed only if the situation in the home country or country of origin is stabilized and safe for resuming their residency.

In part six, the Process of Child Protection on individual basis has been categorized as follows:

1. Screening and making personal records
2. Determining appropriate care
3. Prescribing an assistance plan on individual basis
4. Coordinating and referring children to appropriate services
5. Determining services and alternative care
6. Determining standards of foster care
7. Processing return to family and society, and seeking sustainable solutions (Government of Thailand 2019)

The Standard of Operation (SOP) of each ministry involved has not been published. Based on the preliminary guideline above, a child's situation is to be evaluated on case-based basis which will later result in a personalized assistance in accordance to their needs. As per the definition on the Child Protection Act, the 'search and examine' phase is the data gathering and analysis stage with consideration of expert's opinion in legal, psychological, medical, social welfare, and other relevant fields which will lead to appropriate action to be taken. Individuality is emphasized in the process. Therefore, a child may be placed in a different kind of residential care; for instance, a nursery (for children no more than the age of six), a development and rehabilitation unit (for children with encounters with traumatic experiences to recover and heal and to receive developmental welfare), an assistance unit (for children who need care and services), or foster family, etc. (Royal Thai Government Gazette 2003) In the process of screening and determining assistance, national law has already a clear mandate.

The UNHCR child protection framework prioritizes on the legal documentation attainment, do no harm procedure in status determination process, assistance for specific groups of children who need special attention, child's welfare and safe environment, participation of children in their own case assessment and a child's best interest as basis for case assessment (UNHCR 2006). In comparison to the MoU protection content, there seem to be an emphasize on referrals to institutions or individual for childcare and much less on the child's opinion on their fate.

Given the update based on my interview with Ms. Kangkun from Fortify Rights, the Royal Thai Police has taken a serious step in administering structural change within its

organization to meet the needs of these operations. After the MoU came into effect in January 2019,

In March (2019), they (Thai government) established a new division called Immigration Division 4 (normally there's three) under Immigration Bureau. Their mandate is to mainly screen and determine refugee status and provide protection. That means the government has already allocated the resources (manpower, division of work, budget). That means they're serious about this issue. But this new division cannot fully function now because they're still waiting for the Prime Minister Regulation to screen immigrants and refugees to be endorsed. And we know that the Council of State has already passed the bill. It is pending to be submitted to the Cabinet for approval. But we don't know when the Cabinet will approve so we still to make sure it's signed in the near future. The fact that the government has created this new Division is a big thing. It means they're committed. They have about 20 staff already in this Division and they try to work with us a lot on technical knowledge and learn from us. They admitted to us that as Immigration Officer, their job was only to arrest (prevention). But they have never 'protect'. (Kangkun 2019, Personal Interview)

The establishment of the new division was accomplished majorly through the political will of the Prime Minister Prayut Chan-o-cha's government which approved the refugee identification and protection mechanism in January 2017. As per the statement of the Deputy Spokesperson of the Prime Minister's Office, with the combined efforts of the Thai Immigration Bureau and the new cross-function (ministries) governmental body, "this (the final draft of the screening mechanism) would be done in collaboration and cooperation with foreign governments or foreign government agencies, international organizations and relevant non-governmental organizations" (UNHCR 2017).

An interesting note from the MoU statement regarding cooperation is "Concerned agencies in 7.1¹⁸ shall jointly consider a list of international organizations, private organizations, and civil society organizations to collaborate with under this Memorandum of Understanding" (Government of Thailand 2019). This means list of organizations chosen by this circle

¹⁸ Concerned agencies are the Royal Thai Police and the involved ministries.

of ministries permits selective organizations to work with ease, however, at the same time the list could also create barrier of entry for relevant external parties essential to the realization of the MoU mandate.

Part eight includes monitoring of detention cases after the MoU came into effect. The mandate stated in this section is the call for meetings among agencies for bi-annual progress report (at the end of June and December) has been designed to monitor the implementation of the MoU and to ensure the practice is in line with the initial baseline and requirements. The final reports are to be submitted to the Office of the National Security Council – an entity which is responsible for the national policy draft and plans for the cabinet's consideration and approval.

Part nine states that the MoU content is open for future revision with consideration to the compatibility with the national legislations' context. In case the annual review by all ministries involved deems the situation development incompatible with the essence of the MoU, the termination of the MoU is possible through the consensus of signatory ministries.

Part ten, which is the last part of the MoU, concludes the MoU becomes effective the day after all the head of ministries and governmental organization involved sign the document. It is also stated that all signatories have received a copy of the document. However, after almost one year, the MoU has yet to be made available online for the general public. It is worth noting that as I was searching for the MoU document, it had been a struggle to locate the exact department or division that was directly responsible for the MoU and its implementation such as the Immigration Bureau or the Legal or Foreign Affairs Division of the Royal Thai Police or the Ministry of Foreign Affairs.

Chapter 5

How policy moves

5.1 Policy diffusion and translation at local level

The idea of policy translation materialized from various field of studies; ranging from cultural science to law, politics, international relations, economy or sociology. The compressed outline of the translation process starts from the inception of an idea or best practice at a microscopic stage which then through mediums of information dissemination spreads throughout organizations or communities or states. During the process, exemplary ideas were understood and appropriated in another environment or situation. Eventually the barrier expands, allowing the model concept to travel across borders and cultures. Meanwhile, as policies advances globally, questions emerge as to the extent of their diffusion: whether they were adopted partially or fully and how the outcome from the implementation poses beneficial to which actor and the impact of existing establishment/social structure of each state on absorption/emulation (Mukhtarov 2017). Policy transfer also comes in different forms which can be roughly categorized as follows: 1) a travel of idea to reach a general/ broadly pictured outcome 2) matching institutional structure for the ease of transfer 3) adopting of legislations or administrative bodies 4) ideologies and belief that influences policy decisions 5) human resources lending or exchange (Stone 2012:485-486)

Gilardi (2005:1) speaks about the “convergence” or similarity of policies and institutions in the era of globalization and liberalization of markets: the setting which are sponsoring the resemblance of policy direction. “It could be the case that this convergence in choices was the outcome of an independent discovery of the best practice by independent units. But it could also be the case that choices in one country affected the choices of other countries in the same direction. This is what we shall define as 'diffusion.'” Gilardi (2005:1). The fundamental study of diffusion process has categorized the transfer or lending of policy from one place to another into four situations. First, policy transfer occurs by powerful actors with compulsory (social-political) force to bend the will of another actor. Developing countries often face conditions of having to meet certain international standards to receive aid from major global institutions. Another scenario is due to an adaptation to the current state of market in order to increase economic competitiveness against rival actors. This includes the use of economic incentive policies which attracts capital and resources from investors who

expect highest return. Alternative reason is the imitation of policies as a gesture of norm acceptance and adoption to gain approval from internal and worldwide spectators with lesser concern with their actual functionality (Marsh and Sharman 2009:272). And lastly, the learning from other actors who possess the experience of manoeuvring steps to create desired effect and consequences. The transfer of knowledge can be fractional or in all its entirety (Ibid: 271).

The external pressure from entities such as the United Nations Human Rights Council; an institution that holds State Parties accountable for any actions against the universal human rights principles. Countries are obligated to provide an update report with explanation on the current national human rights situation and practices. Ratifying treaties is in fact a power transfer; one state relegating its sovereignty for the good graces of the international community by conforming to the code of conduct legitimized by the U.N. Although there is no solid enforcement or punishment mechanism, any actions by the signatory state violating the human rights code will be condemned by domestic and international civil society organizations.

Thailand adopted the Convention on the Rights of the Child in March 1992: the year filled with political turmoil. Following the coup in 1991 to overthrow the previous government charged of corruption, Anand Panyarachun was appointed as Prime Minister to head the interim government until the next election in March 1992. As the election result unfolds, the new government was eventually led by coup leader: General Suchinda Kraprayoon, who later resigned from the army to become the Prime Minister. His rise to power led the national tragedy called 'the Black May', a military crackdown on protestors which resulted in many injuries, disappearances, and death of civilians. Furthermore, in terms of the economy, ever since 1987 until mid-1990s, Thailand flourished due to emergence of foreign investments and the government's stable macroeconomic policy (with emphasize on industrial advancement and moderates interventionist policy) (Phongpaichit 1996). According to World Integrated Trade Solution (n.d.), the United States, Japan, Singapore, Hong Kong, and Germany were the top five countries Thailand exported to in 1992 which amounted approximately to USD 18,746 million. It is safe to say that in the time of political instability and thriving economy, there was a much-needed support from influential states who proliferate and instrumentalized the UN human rights ideologies to coerce other weaker nations (Wotipka and Tsutsui 2008:734). Countries that are economically reliant on these strong nations may opt to ratify the treaties to maintain their image and legitimacy.

During 2015-2016, the world erupted with global migration crisis. With mass influx of migrants and refugee from the Middle East and Africa into Europe, the Rohingya refugee crisis in Southeast Asia, the Leaders' Summit on Refugees in September 2016 was held to strengthen the capacity and to affirm both budgetary and political pledges of member states to increase humanitarian assistance such as the number of refugee intake, collaborations with UNHCR , and welfare programs. At this arena, the Thai government promised to establish a system to filter migrants from refugees in order to tend to their respective needs. The Prime Minister stressed on children's wellbeing in camps and their rights to education and citizenship. Provided the accountability that entails this commitment, the Thai government remain under scrutiny of the international community to do as they say. This event, as also confirmed by NGO officers I have interviewed, have more or less influenced the execution of the MoU releasing children from immigration detention cells. Following the New York Declaration for Refugees and Migrants in 2016 which calls for inter-states partnership, the Global Compact for Safe, Orderly and Regular Migration (GCM) in 2018 was devised to "*provide a comprehensive menu of options for States from which they can select policy options to address some of the most pressing issues around international migration*" (International Organization for Migration. 2019). The fact that Thailand entered the compact allows the country itself to imitate the existing policy models outlined by other states. This process of policy diffusion through duplication and reproduction of the GCM principles can be partly explained by the large number of signatories (164 members of all 193 participating countries, excluding the US) which influenced the decision of Thailand. The GCM pressed on the issue of arbitrary detention in one of its objectives that immigration detention facilities should be employed only when alternative solutions cannot be found. Furthermore, as mentioned in previous interview, the structural reform of Thai immigration bureau to include another unit for determining migration status. This diffusion of new immigration division is reproduction of other states' status determination unit while its functionality is still in development process. As Thailand has committed itself to more agreements, the country is also pressured to adopt the norm imposed by these global institutions. These principles of best interest of a child and basic human rights were reflected in the MoU as instructive guidelines for implementing authorities.

5.2 Translation

Universal concepts such as human rights principle time and again clashes with local ideologies. The transnationality of global ideas poses a challenge and a threat to leaders of the

country or community due to the fear of losing a firm grip on sovereignty and power over its governed. Governments reject these ‘foreign’ perception in the name of saving local values and cultural incompatibility. Inarguably these pillars are originally and inherently western notions, however through the lens of domestic struggle for human rights there is in fact an ongoing stir of movement which coincides and intersect with these universal ideas (Merry 2006: 38). As found in many countries, at every local level there are agents or actors who disseminate, adapt, and translate global policies for instance in the Charters of the United Nations and international law norm. Merry (2006: 42) called these intermediaries or agents “human rights translators” who function as a link between the globally recognized mandate who possess a clear comprehension of national circumstances. They are in the position to convey human rights issues in the direction that is culturally acceptable to local leadership. At the same time, they broadcast the stories to the world.

The role of international organizations as policy intermediaries or broker has limitations. They have little to no control over the actions of the implementing state which is why they resort to having discussions and negotiations as policy transfer device. During these meetings is when the policies are dissected, realigned, and redefined. This collaboration of network of state and non-state actors reformulates cross-border policy translation through mediation of agents and structures (Stone 2012). In assuming the role of knowledge broker, they function as translator and harmonizer (of knowledge), network liaisons, and distributor of knowledge (skill enhancement) (Meyer 2010).

Within the context of Thailand, there are various scale of organizations that are directly in touch with detained refugees including children, the Immigration Bureau, and the Office of the Prime Minister. As described above, there are clusters of regional and Thai agencies that combined forces to demand the rights for at risk and vulnerable children whom are on the move. Normally there are community-based organizations which provide necessary assistance to refugees including the role of conveying to the Thai education institutions the education rights of refugee children and their critical need to enter Thai schools in relations to their development. Some organizations engage in negotiations with Thai Police in order to remove refugees from detention and/or provide basic needs in holding cells. Local endeavours of legal experts, academics, NGO workers, and human rights advocate can be found for instance in The Coalition for the Rights of Refugees and Stateless Person (CRSP). This unified effort formed solely by Thais holds a greater extent of leverage when entering into discussions with the police or any governmental agencies. At regional level, the Asia Pacific Refugee Rights Network (APPRN) provides a network of civil society organizations

in collaborations with UNHCR and states with the main aim to instil refugee rights and protection knowledge and building the capacity of its members in order for them to operate according to standardized practice at domestic level.

5.3 Conclusions

In the absence of supporting national legal structure for refugee protection, the fate of refugees often rests in the hands of international organizations and local advocacy groups, who mediate with Thai authorities on arrests and arbitrary detention. Meanwhile, Thailand has been struggling with political unrest and a constant shuffle between military coups and elections spanning several decades. In such a political atmosphere, refugee policy has hardly become prioritized in the government's agenda.

Nevertheless, the new MoU ending the detention of migrants and refugee children marks a departure from this stagnation and can be understood as being catalysed by international norm dynamics coupled with the mediation of regional stability and politics. In analysing how Thailand has come to embrace global migration policies and the practice of non-arbitrary detention in the form of this MoU, the study looked at the following perspectives: 1) national conceptions of childhood and asylum seekers in Thailand in its historical and regional context 2) relationships among networks of actors at the domestic level, and their roles in influencing policies 3) types of policy instruments devised and applied by global, regional, and local stakeholders 4) the MoU content itself and its departure from the current legal system and practices by Thai authorities. The central argument emerging from these perspectives are informed by interviews with NGO officials involved in the process of formulating the MoU and their day-to-day experience with refugee children.

The groundwork for political change was prepared at various levels. Domestically, such entities as CRSP, a coalition comprised of NGOs, academics, advocacy groups, and legal practitioners, have succeeded in initiating dialogue with Thai authorities and the general public, particularly by disseminating information of what it means to be a refugee and their entitled rights. The distribution of information through public engagement - Sermons - is one of the key policy instruments used by local CSOs to progressively change perceptions towards refugee issues in Thai society. Amid widespread misconceptions that activism relating to refugee rights is driven by Western agendas, collective action by Thai individuals and local groups have been particularly crucial in making the case for change from a domestic perspective.

At the regional level, the APRRN emerged from collaboration between international CSOs all over the region. Their activities are mainly capacity and skill enhancement of human rights advocates for people on the move. There is a specific working groups on immigration detention. Thus, education and training is also a form of information as a policy instrument. Furthermore, regulation instruments can be found in the combined endeavor of both regional and local CSOs in creating the NextGen Index, an assessment tool for the state of children in immigration detention in different countries. Comparisons between rankings generate pressure on states to improve their practices. Lastly, the UPR produced by the aforementioned CSOs, presented to members of the Human Rights Council, is another notable information instrument. During the cycle review, the country has to present an update on their national human rights agenda and provide further commitment. The report is also evaluated and commented by peer member states.

The framework of policy diffusion and translation has been used to explain the country's reception and enactment of universal refugee policies. Due to political and economic pressure over the years, Thailand acceded to the UNCRC in 1992, and has pursued the commitment made at international level ever since. The policy adoption can be viewed as coercion by influential states and UN entities, as governments are encouraged to emulate the policies in use by powerful states. The firm resolve of the government stemmed from the vow given by the Thai Prime Minister in 20 September 2016 at the UN Summit for Refugees and Migrants, hosted by the United Nations Secretary-General and seven Member States in New York. Thailand pledged to create a system to differentiate migrants and refugees, in order to meet the needs of each group. Along with the education for all policy, Thailand intended to provide basic education in refugee camps along the Thai-Myanmar border, and to develop skills trainings on agriculture to integrate displaced Burmese populations into its workforce. The issue of statelessness would also be substantially addressed through the issuance of birth certificates for children born in such shelters.

Where informed by a strong understanding of the functions of multi-level governance and domestic agencies, policy agents are of great importance as translators and adapters of norms. The assistance of policy intermediaries (CSOs) in shaping national codes of conduct, rules and practices towards refugees enable norm diffusion and internationalization to take place, through the transformation of state's refugee policy and the structural adjustment of the Immigration Bureau. The MoU itself is a notable product of diffusion, representing as it

does the Thai government's recognition of the best interest of the child and freedom from arbitrary detention principles, as well as the intersecting statuses of children and refugees. The MoU is also an instrument for regulating the mechanism of screening and protecting the rights of refugees and migrant children.

As Thailand enters into more agreements with the international community, the way is paved for further policy diffusion and transfers in terms of information and policy guidelines. The policy instruments, laying down various degrees of coercion, urge Thailand to continue its orientation towards internationally accepted models of refugee treatment. Although it will take time for all corresponding agencies to understand and apply the concepts integral to the MoU in practice, the ongoing operations of CSOs will be important in enabling this implementation to take place, through capacity building and training, and by monitoring future cabinet resolutions. Rather than being viewed in isolation then, it is possible that the MoU will be able to compel related ministries to make corresponding changes in line with these concepts. It therefore looks likely that these recent developments will be proven to be a positive development in the evolution of Thai refugee protection policy, a process which remains to be furthered in future.

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Annexure I

Interview Questions

1. Could you briefly describe the nature of your work and responsibility?
2. Could you explain the process prior to the emergence of the MoU ending detention of children refugees and families separation following the country's lengthy period of no refugee policy?
3. The new MoU is quite a development in Thai context. Can you explain why the focus on this particular segment of refugees (children)?
4. To what extent do Thai authorities translate the Best interest of the child principle? What's the definition of the principle within the Thai context?
5. What are the process of consultation/negotiation between Thai immigration authorities and Civil Society Organizations (the UN and other refugee advocate agencies such as Asia PacificRefugee Rights Network members) that led to gradual changes in the policy? (how to influence the key stakeholders)
 - NextGen Index (Detention) End Child Detention Scorecard (how is it used?)
 - Universal Periodic Review
6. Does the commitment of the Thai government to the international community; for instance the vows Prayuth made in 2016 Leaders' Summit on Refugees at the United Nations in New York, play a role in this policy development?
7. In consequence to the emergence of this MoU, is there any gradual changes you see reflected in your work? (Is it easier to work)
8. how do you see Thai refugee policy is headed in the future? Can the focus on children refugee be the first step of improvement of the situation of adult-refugees? Or does the focus actually delimits this potential and keeps the concerned limited to special group of refugees only?