



REFUGEE STATUS DETERMINATION (RSD)
PRACTICES IN THAILAND

BY

MISS YONRADEE WANGCHAROENPAISAN

A THESIS SUBMITTED IN PARTIAL FULFILLMENT OF THE REQUIREMENTS
FOR THE DEGREE OF MASTER OF ARTS
(ASIA PACIFIC STUDIES)
COLLEGE OF INTERDISCIPLINARY STUDIES
THAMMASAT UNIVERSITY
ACADEMIC YEAR 2017
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THESIS

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ENTITLED

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was approved as partial fulfillment of the requirements for
the degree of Master of Arts in Asia Pacific Studies

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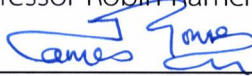
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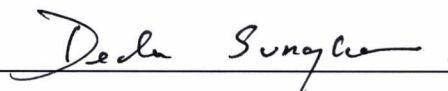
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ABSTRACT

Most scholars agree that asylum seekers are entitled to Refugee Status Determination (RSD) procedure. The fact that Thailand does not acceded to 1951 Convention Relating to Refugee Status and its 1967 Related Protocol makes it depends entirely on national RSD mechanism. This work acknowledges the prominence of refugee status as it paves the way to protection mechanism for refugees afterward. The aim of this study is to explore the refugee status determination regime in Thailand which ultimately is measured how effective it is being conducted. The measurement is done through examining what level Thailand conforms its practices with the core values of RSD procedure set forth by the United Nations High Commissioner of Refugees (UNHCR) which is internationally recognized as the expertise agency on refugee arena. Upon the discovering of RSD practices, it shows that despite Thailand has no formal RSD procedure, Thailand does attempt to adhere its practices to international standards; creating RSD ad hoc style of procedure. Although an ad hoc RSD is conducted by the Thai government, UNHCR is assumed to carry RSD for urban refugees (except Myanmar asylum seekers) under UNHCR's own mandate. The effectiveness of RSD practices in Thailand, hence, depends on the examination through the aspect from the Thai government and UNHCR mechanism or both actors.

Keywords: refugee, refugee status determination, RSD, migration, Thailand

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“You might think that you contribute so little, but you have no idea how significantly this meant to us....Thank you Nook”

I still remember vividly of the first time I encountered with refugees when I was volunteering as a citizenship tutor for refugees who got resettled in the United States. Little did I know that I would be obsessing over the words of a refugee from Ethiopia who spoke to me on the day she passed the naturalization test and become the US citizen. I felt so much joy coming out from her while she was saying the sentence above to me. I could never thank her back enough in making me realized of my capability to contribute more to those in need, especially refugees and displaced persons whom I admire dearest of their strong hearts.

Plenty of times that I have faced challenges and obstacles during the journey of completing this research. I would not be able to overcome that without the support from my thesis advisor, Dr. Robin Ramcharan. He allows me to fully be the captain of my ship, but still steered me whenever he sees I needed the right guidance.

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Miss Yonradee Wangcharoenpaisan

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LIST OF ABBREVIATIONS

Symbols/Abbreviations	Terms
AAT	Asylum Access Thailand
CPA	Comprehensive Plan of Action
ExCom	Executive Committee
IRO	International Refugee Organization
JRS	Jesuit Refugee Service Thailand
PABs	Provincial Admission Boards
PoC	Persons of Concern
RSD	Refugee Status Determination
RTG	Royal Thai Government
UNHCR	United Nations High Commissioner of Refugees

CHAPTER 1

INTRODUCTION

1.1 Significant of Study

Most scholars agree that refugees are entitled to some form of international protection. Existing refugee laws maintain that states are obliged to adhere to internationally accepted codes. The 1951 Convention relating to the status of refugees and its 1967 Protocol are the foundations of the international refugee system. Although the Convention and the Protocol have been signed or ratified by most countries, forty-three members of the United Nations have neither signed nor ratified either of them. Some of these non-parties have significant refugee populations. The reluctance of these countries to sign suggests that they have difficulty with the idea of protecting refugees. One explanation is that many states do not recognize refugee status, nor any rights associated with this status. Of course, the question of what should come first- the rights or the status of refugee - may also arise, bringing with it a range of legal and ethical considerations. 'Persons recognized by a country's asylum authorities as refugees under the 1951 Convention and 1967 Protocol are normally considered by the United Nations High Commissioner of Refugees (UNHCR) as coming within its international protection mandate' (UNHCR, 2005). In short, the protection mechanism fully functions only when governments grant refugee status to those who seek refuge. The prominence of refugee status must be acknowledged as it paves the way for all subsequent protection for refugees afterward. This study aims to explore the refugee status determination regime in Thailand. It further examines to what level Thailand adheres its practices to international standards by focusing on the two principal actors: the Thai government and the UNHCR. The primary purpose is to determine how efficiently Refugee Status Determination (RSD) procedures are conducted in Thailand by measuring observable practices against the core values of RSD set forth by the UNHCR.

The 1951 Refugee Convention and its 1967 related Protocol are the mandates that define who qualifies as being refugees. Those international laws also provide the protection framework to those asylum seekers who seek refugee outside of their origin countries. However, neither the convention nor the protocol addresses the criteria for the conduction of RSD. The Handbook on Procedures and Criteria for Determining Refugee Status was later created by UNHCR (2005) as an international guideline for countries to operate RSD. Despite the fact that the directive is not legally binding, through reliance on international frameworks, it has its universal legal elements which make it generally acceptable (Rebecca, 2012; Hamlin, 2012). However, the practice of RSD can differ from country to country, even when those countries are signatories to the Convention or the Protocol. What is more, within the Asia-Pacific region, few nations subscribe to both documents and Thailand is not one of them.

Saltsman (2014) claims that the RSD process ‘deserves scholarly scrutiny, as it reflects the transformation from laws and policies into practice.’ However, the scope of RSD varies with the selected perspective of observation; for instance, RSD administration and its procedures and the elements of fair, effective, or efficient RSD procedures being carried by those in charge. Hamlin (2012) suggests that aspects of RSD regimes should be observed as a whole as it is rather the sum of ‘the larger system rather than by comparing isolated elements.’

1.2 Research Question

Question:

How effectively is Refugee Status Determination conducted in Thailand?

Hypothesis:

The level of effectiveness of RSD conducted in Thailand is low and inefficient due to:

1. Not all asylum seekers get access to the determination process
2. Groups of asylum seekers and refugees are treated differently by various authorities

1.3 Literature Review

There is scant literature on RSD procedures in Thailand. One of the reasons for this neglect is due to the sensitivity of information sharing between the UNHCR and the Thai government over issues of sovereignty, national security, and foreign affairs issues (i.e. Thai-Burmese relations) (Muntarbhorn, 2003). Not only is access to information restricted, but the availability of up-to-date data is also limited. Hence, much of the material for this study has been gleaned from more easily available sources: academic analysis, reports, and journal articles. This literature review focuses on three themes relating to RSD: factors affecting processes in various states, operations in Thailand, and evaluation of its effectiveness.

The first part explores what factors potentially affect RSD systems in different states. Before examining the processes in detail, it is essential to take a step back and look at the big picture of how RSD originated before determining how useful it is. Three main aspects influence domestic refugee policy: perception of refugees, national security, and international relations (Jacobsen, 1996). These factors are difficult to separate. In fact, they are closely interrelated and influence each other in complex ways.

1) Perception of refugees

Beliefs about refugees certainly influence the way states approach RSD policy. Perceptions can be based on various factors; for instance, culture, historical experience, ethnicity and kinship (Jacobsen, 1996; Saltsman, 2014). As states are usually considered to be rational actors, what contributes to the beliefs about refugees is the calculation of the cost and benefit in the situation of accepting them based on those factors (Jacobsen, 1996). Furthermore, psychological fear is the predominant negative cause of hostility towards refugee, which may manifest itself in a variety of ways from neglect to blockade. Jacobsen stated out that ‘psychological fears links negative beliefs about refugees with the sense of loss of control and fear of being overwhelmed that results from mass influxes.’ That sense of overwhelmed is somehow relevant to the notion of ethnicity and kinship identity. For example, according to Saltsman, Thailand perceives Burmese refugees as ‘criminal and

deviant' as there is a culture of prejudice rooted for decades. Burmese are seen as 'criminals, vectors for disease, and economically burdensome.' (Saltsman, 2014). The fact that Thai people perceive Burmese migrants generally as low-skill labor migrants has led to the stereotype for anyone who has migrated from Myanmar. The notion of migrants' categorization is being mentioned by both Jacobsen and Saltsman. They use the term 'deserving refugees' which it relates directly to the calculation of the cost and benefit of accepting refugees. In opposition to the concept of deserving refugees, for Saltsman, would be 'deserving poor' which they are not in the real threat of life but rather have been conceptualized as 'opportunistically' economic migrants (Saltsman, 2014). He further quoted that, 'When refugees are believed to be responsible for social problems, antagonism towards them may override the welcome stemming from ethnic or religious attitudes.'

2) National security

National security is yet another factor that plays a significant role in both policy-making and also shaping perceptions of refugees, particularly towards new arrivals. Historical experiences have contributed to the typical desire of states to secure peace within the nation. Refugees fleeing violence they faced in origin countries raises the possibility that threats may be carried to the host countries, especially where the settlement is along the border next to the first flight destinations (Benard, 1986). Bernard illustrates his point on this subject by giving the example of Thailand when Cambodians stayed in camps along Thai-Cambodia borders. Although sheltered in temporary shelters, the Cambodians brought armed conflicts into Thai territories. This probably helps explain why the Royal Thai Army is a part of what Saltsman identified as part of 'a dizzying number of authority types management.' at work in Thailand. In his work, he also mentioned that during the screening process, asylum seekers face random informal security checks with different criteria applied by Thai security forces. However, during the 1970s, the massive upheaval brought about by the Cold War has enormous impact on national domestic policies (Benard, 1986; Muntarbhorn, 2003). In fact, Muntarbhorn argues that the answer to the question why Thailand has not acceded to the 1951 Convention and its related Protocol is mainly because Thailand was trying to protect

itself from the threat of 'Communism from the surrounding environment' (Muntarbhorn, 2003).

3) International relations

States play relationship games with other outside actors in an ever-shifting play of global power. In the context of international refugee policy, two particularly phenomena have been identified and discussed in the literature: the sending-state-receiving state dynamic and the development of the international refugee regime (Jacobsen, 1996).

In the sending-state-receiving state dynamic host countries rely heavily on the origin of sending in hope of the reversing flow of refugees. Factor of geopolitical and ideological elements dictate the relations. Considering the relationship between the government of Thailand and Military government of Myanmar, Muntarbhorn (2003) pointed out that Thailand would not 'risk' conducting RSD or giving status to Burmese refugees as it can be seen as an 'unfriendly act.'

On the other hand, the development of a powerful international refugee regime (consisting of international refugee organizations (IROs), UNHCR, for example) states can manipulate the power of negotiation in a much more flexible way. The UNHCR was invited by the Thai Royal Government in 1975 to assist conducting RSD as Thailand faced a mass influx of the refugee flows. Jacobsen sees that as the influencing power of IROs as 'the UNHCR sets standards for the operation and assumes a watchdog role.' Noted that the intention from Thai government was just screening those qualified as refugees in by only giving temporary shelter but not full-scale on recognition of refugee status due to the lack of domestic laws (Muntarbhorn 2003). In other words, the standards set forth by the UNHCR did not transform into domestic laws. Notwithstanding, states are cooperating with international norms purposely to maintain the assistance in the longer term (Jacobsen,1996).

An 'environment of separatism' results when IROs overlook the sovereignty of the states. Jacobsen refers to 'expatriate peer group ideology' which makes excessive demands on governments that eventually leads to 'friction with local officials.' For example, in Thailand, there was a tension between the UNHCR and the Thai government when the UNHCR assumed control of RSD and issued

refugee status to Burmese Urban Refugees (Muntarbhorn 2003). Thus, this relationship is indeed a complicated one that it can significantly affect RSD operation.

The second part of the review aims to observe the RSD operation in Thailand since the 1980s. The purpose of this historical review is to reflect on the shifting operations throughout the time, bearing in mind that Thailand lacks any RSD legal framework. RSD practices in Thailand can be traced back to 1989 when Thailand experienced a mass inflow of refugees from Cambodia, Laos, and Vietnam (often referred to as the Indochinese influx). Though Thailand was not a signatory to the 1951 Refugee Convention, Muntarbhorn (2003) argues that it respected two international refugee laws; first, the basic definition of refugee as a ‘person fleeing fighting and the consequences of Civil War.’ According to Worster, the state has to expand their practice in response to the definition of refugee: ‘it has been observed that increasingly refugee flows have been more likely due to civil wars, ethnic and communal conflicts and generalized violence, or natural disasters or famine—usually in combination—than individually targeted persecution by an oppressive regime’ (Worster, 2012). A report in 2006 reveals that Thailand expanded the criteria from just ‘fleeing fighting’ to ‘fleeing persecution or for other reasons.’ (UNHCR, 2006). Significantly, the adoption of the term led quickly to a de facto adherence to the principle of non-refoulement when Thailand granted temporary refugee status to those fall into that interpretation (Muntarbhorn, 2003).

Munatabhorn also notes that, despite the positive manner of Thai Government coordination with the UNHCR, there was an inconsistency in interpreting the definition of refugee; particularly in the case of Burmese applicants. Here the criterion failed to cover those who qualified as refugees. The interpretation rested on differing interpretations of those who are affected ‘directly from the armed conflict event’ or ‘consequence of armed conflict.’ Consequently, many of those who should have been screened were left behind and deported back to Burma which violated the non-refoulement principle. Indeed, the Provincial Admission Board that established specifically to screen Burmese refugees had become ‘dysfunctional and diverse in opinion’ during in 2002 (Muntarbhorn, 2003).

While Muntarbhorn focuses on the broader issue of RSD operation in Thailand, Alexander (1999) emphasizes the detail of RSD element. In her analysis, she finds the UNHCR to be largely ineffective in its RSD practice. She believes that because UNHCR doesn't provide 'clear RSD guidelines', practices are consequently inconsistent within the UNHCR itself. The result is ineffective RSD operation coordination with the governments (Alexander, 1999; Pacifico, 2013). Alexander further explores RSD elements conducted in Thailand, declaring that there is a need for more transparency and openness to enhance fair hearing procedures. Her findings conclude that some of the elements put forward in the first section of UNHCR guidelines are best not carried out in Thailand. First, although urban asylum seekers can access documents in their language of preference, it is 'legalistic language' that is complicated to understand. At the same time, asylum seekers lack a proper understanding of RSD criteria, especially with the provision of 'consultation.' Moreover, once asylum seekers submit the statement application, the 'UNHCR will not provide asylum seekers with a copy' (Alexander, 1999). With respect to the right of asylum seekers to receive a written decision of the claim, Alexander found that oral explanations are provided to asylum seekers with written copies on granted on request, most of which are 'unclear.' The critical finding in Alexander's work on this matter is that refugees are not informed clearly of their rights nor the procedures their cases will follow.

The third section looks at the effectiveness of RSD procedures, a topic that lies at the heart of this study as the research question concerns aspects of RSD effectiveness. The concept of RSD is inextricably linked with the UNHCR. The organization has been conducting RSD procedures on behalf of over fifty countries, and in twenty nations it is conducted jointly with the government. Thus, the UNHCR is the second largest of RSD body in the world. Most importantly, Thailand has been embracing UNHCR assistance since 1975. In that sense, Thailand has recognized the legitimacy of the UNHCR RSD procedural standards. The core element model is adapted from 'The Handbook on Procedures and Criteria for Determining Refugee Status' (UNHCR, 2003) and 'The Self-Study Module on Refugee Status Determination'

The Core Element Model:

I. Procedural standards

- Access to asylum determination (non-refoulement principle)
- Specialized authority with single examination

II. Procedural safeguard and guarantee

- Right to access information; including reasons for rejection, report of personal interview, and other information on file
- Right to Confidential policy
- Right to legal assistance and representation
- Right to appeal procedure

Matthew (2010) sees that 'due process and procedural fairness' are the state's duty ordained directly from Human Rights law. In addition, Chetail emphasizes one of the most prominent elements of correct right procedure which is the time-appropriate on granting refugee status that it must not be 'unreasonable delay' (as cited in Matthew, 2010; Goodwin-Gill, 1983; UNHCR, 2005). Matthew, likewise, claims that 'Refugee status is often the only form of legal security available to those able to claim it. Thus, delaying the attainment of legal status denies access to rights owed to a refugee. The requirement for due process therefore carries with it a condition for granting refugee status without unreasonable delay (Matthew, 2010).

Simeon has emphasized the importance of keeping up with RSD core values and standards. According to him, to conduct RSD in the fairest, effective and efficient manner possible, two main components need to be taken into an account: the first instance of administration with sufficient and best quality of human resources; and the consistency of approach (Simeon, 2010). Approaching from the same angle as Hamlin, Simeon focuses on the RSD system of administration using comparative studies of countries. The crucial feature of effectiveness is the administration as they are the upfront decision-makers who carry laws into implementation (Simeon, 2010; Hamlin, 2012; Saltzman, 2013). In case of the United States, the regime consists of some bureaucratic branches and key actors (Simeon, 2010; Hamlin, 2012). Here too, there are poor qualities of administration are evident. In the United States, the power of decision making lies in the judicial branch. One case that is highlighted involved an

asylum application (Mr.Wang case in 2005) in which the federal judge executed decisions with a personal bias, resulting in the denial of the claim (Hamlin, 2012). At the same time, Simeon has found that politicalized appointment of judges plays a significant role as well. During the period of his study, Republican connections with the Justice department was dominant. In addition, Simeon claims many appointments 'half lacked experience in immigration law, according to Justice Department, immigration court and other records' (Simeon, 2010). The lack of professional decision makers has led to criticism of inconsistency in asylum appeal rulings. Therefore, regime that is 'professionalized and depoliticized' a long way off, even in the United States. Simeon maintains that actors have a duty work 'in union' regards the international core values of RSD. Hamlin builds on this in his analysis and has found that in the United States, the refugee regime 'accords to domestic patterns' rather than adhering to international human rights instruments.

The literature reflects the undeniable gap of knowledge in RSD practices, even among the world's leading powers. Presently, academic studies pertaining to the effectiveness of RSD are extremely limited when compared to policy analysis papers. Even when there are attempts to explore how states practice RSD accordingly to their own mandates, the patterns or elements of measurement have not even been identified. While there are numerous refugee protection articles, analysis of RSD in Thailand is, on the other hand, severely limited, and those which do exist are mostly outdated. Since no academic study has yet attempted to measure the effectiveness of RSD practices, this justifies the core focus of my study. This study ultimately aims to fill the gap in measuring RSD effectiveness by developing the core elements module based on a comparison of practices described in UNHCR RSD publications (The Handbook on Procedures and Criteria for Determining Refugee Status and The Self-Study Module on Refugee Status Determination). This study also observes of both conductors: the Thai government and the UNHCR. It is hoped that this research will help make reliable measurement of RSD effectiveness possible. This development will not only be applicable in Thailand but could also be universally adopted as well.

1.4 Conceptual Framework

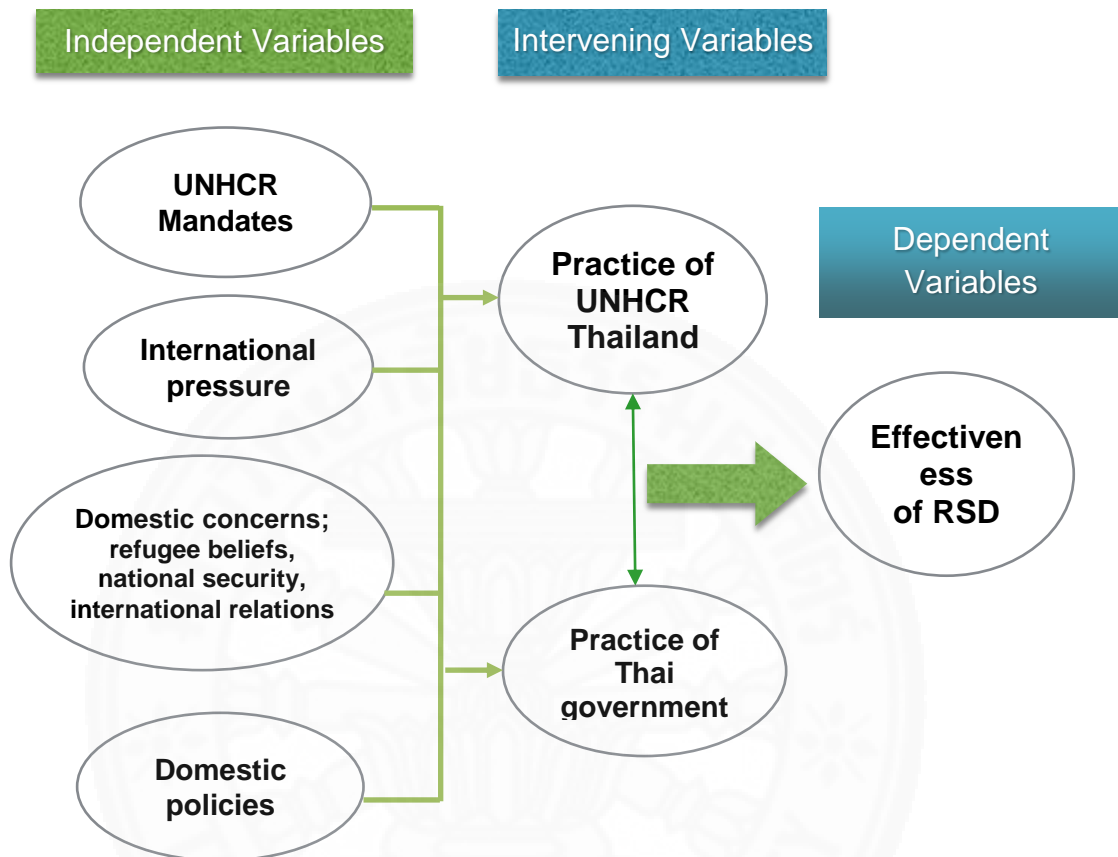


Figure 1.1 Conceptual Framework

Ultimately, the study aims to measure the effectiveness of RSD practices in Thailand. The intervening variables consist of two main RSD actors- the Thai government and associated authorities and the UNHCR. The relationships among them are particularly significant due to the dependency of RSD practices on power structures. It is well known that UNHCR carries its own set of mandates and guidelines on how to conduct RSD while Thailand does not own any criteria on status determination. In that situation, the core elements to measure the effectiveness are borrowed from UNHCR as they are universally accepted. However, both UNHCR and Thai government can influence each other. As for Thailand, with factors such as domestic concerns and UNHCR as well as international pressure will dictate the way they handle RSD system. Domestic policies toward asylum seekers

are the reflection of those interests and concerns. On the other hand, UNHCR has its justifications on the effective RSD criteria; however, the ability to carry out on actions is constrained by domestic policy and the Thai authority. Their motivation to act links to all the independent variables which leads to the dynamic relationship. Therefore, the measurement of RSD practices will hold accountable by the two actors. The end product is the integration of UNHCR and Thai government practices in Thailand.

1.5 Methodology

This work focuses on fact-finding and analysis using primary and secondary data. The qualitative study will cover both administrative structure and the practices that were carried out by different actors such as the Thai Government, local authorities, and the UNHCR. The scope of investigation includes the exploration of Thai regulations and practices related to asylum seekers. The sources will be gathered through published RSD process-related materials such as government official reports, country reports, and reviews from research institutions and International Refugee Organizations (IROs). The collection of the data will be framed from 1990 till the present time, considering that RSD practices differed under successive Thai governments throughout the period. At the same time, the reasons and motivations behind the practices, through the exploration of power relationships among the various actors, are emphasized. It is hoped that by exploring the power structure will shed light on how the policies and regulations are translated into action (Hamlin, 2012; Saltsman, 2014), specifically in the Thai context.

The second method that will be used is the collection of primary reports from RSD lawyers through semi-structured, informal interviews. By using this method, it is hoped to gather the most recent RSD practices in Thailand. However, there are fewer than ten RSD lawyers in Thailand. The researcher had initially contacted four lawyers through personal connections. In the end, only two were available to do an informal interview.

Table 1.1

RSD Lawyer Lists

Name	Organization
Kohnwilai Teppunkoonngam	Private RSD Lawyer
Megan McDonough	Asylum Access Thailand

The set of questions to be used in interviewing RSD lawyers are;

1. How long have you involved with RSD in Thailand?
2. Is there a standard set of RSD procedures in Thailand?
3. What is your experience with the RSD regime in Thailand?
4. How consistently is the RSD system being conducted?
5. What are the strengths and weakness of RSD in Thailand?
6. What are the issues faced by asylum seekers coming to Thailand?
7. What are the tactics do you use to gain favorable decisions?
8. Do you have any concerns about the RSD system as a whole?
9. What is your view of the procedural standards and safeguard

elements in the system?

CHAPTER 2

BACKGROUND OF REFUGEE STATUS DETERMINATION (RSD) IN THAILAND

2.1 Background

Thailand, in acknowledgement of its status as a destination country for asylum seekers, has agreed established screening criteria for settlement and is committed to abide to the principle of non-refoulement. Thailand adopted its screening process from the 1951 Refugee Convention using its definition to offer safety to those who have ‘a well-founded fear of persecution’ (Muntarbhorn, 2004). Nonetheless, refugee screening does not necessarily lead to the granting of refugee status per se. From the Thai perspective, it is the effort to determine who falls under the definition of refugee which determines who would be allowed to temporarily stay in the territory. The goal of screening is to grant temporary refuge to those selected to stay in the camps. Ultimately, those who stay in camps will be either resettled in third countries or repatriated. There has been no solution of local integration in Thailand, at least from the 1950s onwards.

2.1.1 Waves of Refugees

Historically, Thailand has long taken people who seek refuge under its wing. The first wave of refugees into Thailand can be dated to the 1910s when Vietnamese, Mon, and Chinese settled here. The Thai government of the day did not react negatively to the situation and, generally, the migrants were welcomed. With the nationality legislation of 1913, many of these asylum seekers were granted Thai nationality. However, the nationality act in question established criteria that was incredibly loose. It seems that the screening process did not consider the status of refugee at the time as being relevant, but instead focused on accepting those who could illustrate the ability to assimilate into Thai society. By the end of the cycle, they had assimilated into Thai society. It appears that Thailand did act with respect for the principle of non-refoulement. In addition, Thailand accepted asylum seekers

regardless of ethnicity and without the application of any discriminatory policies (Saisoonthorn, 2006).

After the first influx of refugees, Thailand experienced a second wave during the period post-World War II (in the 1950s). At that time of ideological schism, Thailand had become a Cold War 'buffer zone' in a critical geopolitical zone. Quickly, the country became a safe haven for many refugees. That resulted in an influx of refugees from Vietnam, China, and Burma. With ever higher numbers of asylum seekers coming, Thailand was forced to adjust policy accordingly to handle the increase. In contrast to the first wave earlier in the century, this time Thailand reversed its broadly welcoming policy of cultural assimilation to emphasize national security instead. The Nationality Act was revised and came into effect in 1952, replacing the 1913 version (Saisoonthorn, 2006). The legislation was again revised in a third version which passed into law in 1965. Although the law purportedly aimed to solve the problem of statelessness in Thailand, the new legislation negatively impacted the status of new immigrants. Ultimately, Thailand decided to pause its previously policy of granting nationality to newcomers, even if they could show ability to adhere into Thai society. This period certainly reflects the shifting legislative responses of Thai governments to asylum seekers.

During the 1970s, another influx of asylum seekers sought refuge in Thailand. This period is often referred to as the 'Indochinese Exodus' as hundreds of thousands of refugees from Laos, Cambodia and Vietnam sought refuge in Thailand. Arguably the effects of this are still haunting Thailand to the present. A wide range of reasons created the migration crisis, but the most immediate factor was the series of wars in Southeast Asia during the Cold War. This time, however, was different from the previous waves. First, the scale of the influx was continuous and heavy. The flow of refugees had become persistent, at least until the end of the 1980s. This led to a massive asylum caseload situation which required the creation of a screening process in order to handle the volume. Thailand was clear in its intention to prevent anyone assimilating by means of regulations, notably the use of 1965 nationality legislation and the introduction of the Comprehensive Plan of Action (CPA). The 1965 nationality legislation had banned 'any person born during 14 December 1972 - 25

February 1992 of an alien father with non-permanent residence’ (Saisoonthorn, 2006, p.48). However, Thailand had also realized that at this point national registration alone would not halt the massive influx of refugees. During 1980s, the CPA was introduced with regional agreement to create a refugee screening process.

2.1.2 The Comprehensive Plan of Action (CPA)

The Geneva Conference of 1979 brought together key stakeholders to discuss the humanitarian crisis in Indochina. The attendees included the Secretary General of United Nations, UNHCR, governments, and related organizations. The crisis had attracted massive public attention and 65 governments attended the conference. The result of this conference was the Comprehensive Plan of Action which aimed to:

1. Diminish the number of asylum seekers by means of resettlement and voluntary repatriation
2. Promote regular departure procedures
3. Establish regional refugee status determination process
4. Ensure non-violation of the refoulement principle (Saisoonthorn, 2006).

Crucially, the goals needed multi-governmental cooperation to succeed. The countries of origin had an obligation to prevent clandestine departure (though only Vietnam and Laos agreed). At the same time, the countries of first asylum had to respect the principle of non-refoulement as well as establish refugee status determination procedures. Although they were not forced to implement local integration as a solution, they still had duty to guarantee the temporary stay for those who landed on their territories. The conference recognized that most of the first asylum countries were developing countries. Since they already carried their own economic and internal burdens, developed countries (third countries) offered space in resettlement programs for those asylum seekers. This agreement allowed first asylum countries to increase their capability to temporarily host more refugees who waited for resettlement in third countries.

2.1.3 Provincial Admission Boards (PABs)

Refugees from Burma/Myanmar, presented a unique problem for Thailand. Due to the continuous flow, long temporary stays and protracted duration of problem, Thailand had to develop a distinct response for this group compared to its approach for Vietnamese, Laotians, and Cambodians. In 1998, Thailand attempted to regulate the procedures to determine the status of those who would qualify for admission into the camps. Provincial Admission Boards (PABs) were established as the center for status determination. The boards consisted of representatives from the 'Thai Ministry of Interior at Provincial Level' (Muntarbhorn, 2004) who were in charge of determining the status of Burmese asylum seekers. It is important to point out that Thailand along with the UNHCR had agreed to cooperate on this issue and the Thai government allowed the UNHCR to observe the status determination procedure. Nonetheless, the criteria applied to determine just who were 'persons fleeing fighting and the consequences of civil war' (Muntarbhorn, 2004) were much narrower when compared to the CPA.

2.1.4 Persons of Concern (PoC)

While the Thai government was responsible for status determination for those refugees covered by CPA and PABs in camps, the UNHCR was responsible for processing the RSD for 'urban refugees,' those who had made their way to urban areas in Thailand such as Bangkok. Those asylum seekers who reached urban areas would not be able to access RSD procedures by the Thai government as only camp refugees were eligible to this. In this regard, UNHCR adhered its international standard of RSD to issue urban refugees a status of 'Persons of Concern (POC).' During the 1990s, regardless of the ignorance in conducting RSD for them, the Thai government still allowed UNHCR to carry out the process of identifying those who would qualify to live at 'Maneelay Camp,' set up in the province of Ratchaburi purposely to provide temporary shelter. Nevertheless, the camp was functioning from 1991 to 2001 (with reception of new refugees suspended in 1996) after it was ordered to shut down. The remaining refugees in camps were to relocate to the border camps. Following this, there was miscommunication between the Thai Government and the UNHCR about authority to determine status. This dispute will be examined in more detail in the next chapter on the relationship between the two stakeholders.

2.2 Degree of Refugee Status Determination (RSD) Implementations

The pattern of RSD implementation can be observed from state practices throughout the period of study. Some policies were put in place that can be seen as beneficial toward asylum seekers. However, many practices can also be viewed ambiguously, and some have been criticized as jeopardizing the lives of refugees. The CPA and PABs have been seen as the most prominent attempts thus far of the Thai Government to conduct RSD procedures. Despite the initial success they achieved, the manner of operation was largely ad hoc. The fact that Thailand lacks any national law on refugee status determination means there is no grounds for policies or regulations that could affirm a consistent approach to RSD.

In terms of practice and implementation, Thailand has constantly shifted its adherence to the principle on which its policies were based. Different policy approaches were enforced on different groups of persons seeking refuge in Thai territory. During the 1970s and 1980s, Thai national policies were based on confused intentions. In 1979, the open-door policy was adopted, except to urban refugees, which generally allowed people fleeing war conflicts to enter Thai borders. In this aspect, the policy accelerated the possibility for asylum seekers to access screening processes and enter camps. However, these liberal measures are balanced by periodic reactions such as the push back policy, also known as the closed door, which was implemented for certain groups of people who sought refuge here. The push back reflects a human deterrence strategy which in its practice of refoulement represents a total violation of principle. Vietnamese boat people and Cambodian asylum seekers were affected by this implementation, resulting in rejection at RSD for those arrivals (Muntarbhorn, 2004).

One can see the dynamic of responses shifting rapidly from accommodation to the denial in just a decade. Those behaviors can only be understood through the examining the various factors affecting implementation. In this regard, three factors- cultural perceptions of refugees, national security concerns and international relations- are worth paying attention to, as they are interrelated and influence each other in rather a complex way.

Thailand's approach to RSD, which has been understudied in academic literature on RSD, is the result of three factors: perceptions of refugees, national security, and international relations. All those factors certainly influence the way Thai government behave toward asylum seekers. Although Thailand is not a signatory to the convention, an approximation of RSD has long been imposed by the Thai Government. The bottom line is that as states are rational actors, what contributes to the RSD operation is the calculation of the cost and benefit in the situation of accepting refugees based on those factors (Jacobson, 1996). This largely reflects a realist orientation to RSD in that Thailand has displayed a concern for national security, and international and geopolitical considerations have influenced its policies and practice. While adhering to international norms, in practice, it has been reluctant to formalize an RSD system through the adoption of laws, thus maintaining full flexibility in its approach.

2.2.1 Perception on Refugees

Beliefs about refugees certainly influence the way Thailand practices RSD. Perceptions of refugees could be based on various factors, for instance, culture, historical experience, and ethnicity and kinship (Jacobson, 1996). During the first wave, in the 1910s, Thailand acted in an incredibly liberal manner toward refugees as the cost of screening was low. The criteria was solely based on how well they could be assimilated into Thai society, hence it was about the identity and value of 'Thainess.' Also, no narrative of major negative experiences with refugees had formed at this stage.

However, psychological fear is certainly the predominant negative factor driving perceptions of immigrants. Jacobsen stated out that 'psychological fears link negative beliefs about refugees with the sense of loss of control and fear of being overwhelmed that results from mass influxes.' That sense of being overwhelmed is somehow relevant to the notion of ethnicity and kinship identity. Thailand perceives Burmese refugees as 'criminal and deviant' as there is a culture of prejudice which has been rooted for decades. Burmese are seen as 'criminals, vectors for disease, and economically burdensome' (Jacobson, 1996). Generally, Thai

people perceive Burmese migrants as low-skill labor migrants, which has created the stereotype of anyone who has migrated from Myanmar.

The notion of migrant categorization is the end product of migrant perception. The terms ‘deserving refugees’ and ‘deserving poor’ were adopted to differentiate between real refugees and economic migrants. The term ‘deserving refugees’ relates directly to the process of accepting refugees by RSD (Jacobson, 1996). On the contrary, ‘deserving poor’ refers to those who are not facing real threat to life but rather have been conceptualized as ‘opportunistically’ economic migrants (Saltsman, 2014). In an extreme situation, ‘when refugees are believed to be responsible for social problems, antagonism towards them may override the welcome stemming from ethnic or religious attitudes’ (Saltsman, 2014). This explains the prevailing negativity towards urban refugees in Thailand, which does not even recognize them as existing. The fact that they try to settle in the capital to gain economic opportunity has led them to be labelled as economic migrants rather than being refugees who seek a safe haven from fear of persecution; even though according to international refugee laws, states have the duty to provide some protection that includes basic economic support for self-dependence.

2.2.2 National Security

National security is yet another factor that plays a significant role in both policy making and shaping perceptions of refugees, particularly new arrivals. Historical experiences have shaped the tendency of states to act to secure peace within nations. In view of the fact that refugees are fleeing from violence they faced in their countries of origin, there is a possibility that they may pose threats to host countries, especially where the settlement is along the border of their home country (Benard, 1986).

For instance, in 1979, Cambodian refugees were staying in camps along the Thai-Cambodia border. Although they had been given temporary shelter, the Cambodians brought domestic armed conflicts into Thai territory. The Vietnam incursion during 1980 had led to the fight spill over into Thailand territory; “The spokesman of the Supreme Command as very delicately announcing that “foreign forces” —mostly Vietnamese—“ had attacked a Khmer Serei unit at border mark

no.44 near the Thai border...the fighting spilled over into the Thai village of Non Mak Mun” (Vickery, 1982, p.301). Consequently, the military had to take charge of the situation as to avoid the ‘spillover of the fight into Thai territory’ (Vickery, 1982, p.301). Furthermore, a humanitarian official at the camp center in Nong Khai, which hosted Laotians specifically, reported that, ‘Guerrilla fighters from camp go into Laos at night to fight.’ (Robinson, 2000, p.111). In that sense, Thailand had screened in armed rebels.

Prior to the Vietnam incursion incident, Thailand had maintained their ‘Open door policy’ toward asylum seekers. Even in 1979, Cambodian asylum seekers were welcomed to seek temporary refuge in Thailand. At this time, Thailand pledged to guarantee safe haven (non-refoulement) in three temporary camps before sending screened-in migrants to a ‘National Refugee Center’ in Murat capable of hosting 300,000 refugees (Robinson, 2000, p.111). Also, the Thai Government promised to conduct voluntary repatriation (with the knowledge of UNHCR) and pursue resettlement programs as durable solutions.

However, from the 1980s onward Thailand has changed the spectrum of policies for asylum seekers. Generally, closed door policies came into effect in various forms, for example; human deterrence and push back practices were implemented. In 1981, the Ministry of Interior informed the public that they intended to ‘change some administrative implementation [in order] to cease the new arrivals” (Robinson, 2000, p.110). “The policy known as humane deterrence sought to stem the flow of new arrivals by keeping the borders open while closing the doors to resettlement and other UNHCR camp amenities,” said Robinson. The Vietnam incident was one of the contributing factors for this turning point. However, to illustrate further, the case of Lowland Laos demonstrates the success of ceasing the number of refugees by the adoption of closed door policies.

The fact that the only barrier between Laos and Thailand at Nong Khai is the river in between, the Thai authority chose to mount even tighter security. One of the relief officer reported that, ‘refugees are often pushed back into the river or shot.’ Furthermore, during the same period of time while Thailand was much depending on resettlement quota allowance from third destination countries such as

United States, Canada, and Australia, more restricted policies from those countries led to the reduction of quotas for Indochinese refugees to resettle.

The combination of both situations resulted in the dramatic decline of the new arrivals and the number of refugee departures. In 1982, the number of resettlement departures dropped from 102,500 to 33,000 in 1981. At the same time, the Laos arrivals also decreased to 16,300 in 1981 when compared to 29,000 in 1980.

2.2.3 International Relations

Most states are involved complex 'games' in their relationship with outside actors. This is especially apparent in the shifting dynamics between sending states and receiving states and other actors who aid international refugees in the RSD context (Jacobson, 1996). First-stop countries rely heavily on origin as a determining factor in hope of simply reversing the flow of refugees. However, geopolitical and ideological elements can complicate and even dictate the course of relations. The relationship between the governments of Thailand and Myanmar is a case in point. Thailand has always been extra careful when screening Burmese refugees, attempting to avoid any act that could be seen as 'unfriendly'. Also, as already mentioned, Thailand's willingness to screen in refugees is heavily dependent on the resettlement quota from the third countries. During the 1970s, 'Thailand was less willing to admit Cambodian asylum seekers when the US resettlement quota was reduced' (Robinson, 2000)

The ongoing Rohingya crisis shows the restraints at play in fully addressing the root causes of the problem in Myanmar, the country of origin. Cordial and cooperative relationships between Thailand, as well as Malaysia, as first asylum countries, and Myanmar are significant factors in any future resolution of the issue. During 2015, the Meeting on Migrant Crisis was hosted in Bangkok. The term 'irregular migrant' was used in place of the term 'Rohingya' to avoid injuring Myanmar sensibilities. Indeed, Myanmar had agreed to attend the Bangkok meeting only after being assured that the term "Rohingya" would not be used (Cochrane, 2015). The intractability of the situation is further indicated by the fact that despite international laws, Rohingyas in Thailand have no access to refugee status determination either by the Thai government or UNHCR (HRW, 2012).

“Most governments desire to be in good international standing and do not wish to appear inhumane, so the publicity given to refugee abuses is a political consideration shaping their responses. In the Thai case, there were several occasions where the government approved refugee programs or stopped refoulement practices only after extensive publicity in the western media”

On the other hand, under international refugee regimes (IROs, UNHCR, for example) states can manipulate the power of negotiation in a much more flexible manner. Although, Thailand is not a signatory to the 1951 Refugee convention or/and 1967 Protocol, Thailand has made efforts to uphold international standard of practices toward refugees at some level. The initial effort could be seen in the safe haven Thailand has provided through the establishment of nine camps along its borders to host those screened-in refugees. In addition, in 1975, the Thai Government invited the UNHCR to assist with RSD when Thailand faced a mass influx of refugees. One of the reasons why Thailand has cooperated with international norms could be to maintain the assistance of outside agencies in the longer term. To cooperate with international recognized organizations would not only reflect well on the image of the government but also to ensure further aid assistance as well.

An ‘environment of separatism’ can result when IROs overlook the sovereignty of the states. Jacobsen refers to ‘expatriate peer group ideology’ - those who make excessive demands on governments - eventually leading to ‘friction with local officials’ (Jacobson, 1996). In Thailand, tension arose between the UNHCR and the Thai government when the UNHCR sought to conduct RSD and issue refugee status to those Burmese Urban Refugees (Muntarbhorn, 2004). In regard to this sensitive issue where Thailand has not acceded to the Refugee Convention and its related protocol, Muntarbhorn sees that “it is necessary to maximize this advocacy in a step by step strategy geared towards a win-win situation, without being too dogmatic about accession.” As signatory to the convention, Thailand would be bound to set up an RSD mechanism or comply with UNHCR RSD procedural standards rather than following an ad hoc pattern.

CHAPTER 3

REFUGEE STATUS DETERMINATION (RSD) IN THAILAND

The relationship between the UNHCR and the Thai government began during a period of crisis when each was managing an influx of millions of Indochinese refugees from regional conflicts. As per the 1951 Convention, responsibility for RSD lies primarily with the states; however, the UNHCR will assist states which do not have internal mechanisms for RSD. Fundamentally, without the consent of the concerned country, the UNHCR will never insert itself as the vehicle for RSD (Muntarbhorn, 2003). As a result, the RSD system differs from state to state depending on the administrative structures and national policies implemented.

It is a well-established fact that Thailand is not a signatory to the 1951 Refugee Convention nor its 1967 protocol. Despite this, Thailand has been coordinating its activities with the assistance of the UNHCR for many decades. Indeed, it was the Thai government who initially invited the UNHCR to assist it and they have been working together in various ways since 1975. The process of status determination consists of a complex bureaucracy of many levels. This chapter looks at the RSD structures in Thailand since the 1970s. It examines administrative levels with direct responsibility for RSD, but also studies actors who might be involved more indirectly in the decision-making procedures (power-related authorities). As the purpose of this study is to look at Thailand in relation to international standards (see Chapter 4), refugee policy from the 1970s to the present will be examined.

In Thailand, the UNHCR determines 'who is a mandate refugee, but not who is a state refugee' (Pacifico, 2013). In fact, Thailand does not legally grant refugee status to any asylum seekers. However, the act of screening in those who fall under the definition of 'refugee' is significant in itself. In screening in individuals who are later recognised as refugees, Thailand demonstrates its use of RSD as a method to extend some protection to those qualified for asylum.

As mentioned in the last chapter, refugees in Thailand could be categorized broadly into two groups: urban refugees and camp refugees. The Thai government holds the ultimate power to conduct refugee status determination while

it recognizes the role of UNHCR in conducting RSD specifically to only urban refugees. This distinction will be further explained later in this chapter. Hence, two prominent aspects of RSD practices can be identified. The first is the distinction between camp and urban environment, which, due to the different procedures employed in both contexts, complicate RSD further. The second is the power dynamic created by the relationship between two main actors- Thailand and the UNHCR- which at times of tension becomes competitive as each vies for legitimacy.

3.1 Role of United Nations High Commissioner for Refugees (UNHCR)

Although Thailand invited the UNHCR to provide assistance in 1975 under a joint agreement, RSD activities only began a few years later. Indeed, the attempt of the Thai Government and the UNHCR to cooperate on clarification of RSD procedures did not start until the 1980s. The dynamic of their relationship has remained unstable, bouncing back and forth from positive to negative depending on the social, and political climate.

The UNHCR had initially proposed a draft agreement of joint operation of RSD for Lao asylum seekers in Nong Khai City. In the end, after protracted negotiations, the conclusion reached in 1981 was rejected by the deputy director of the UNHCR Division of International Protection, Mr. Ivor Jackson. He determined that Thailand would not be ready for installation of RSD procedures. Compared to European countries, Thailand has no safety net for applicants who are rejected. In other words, Thailand lacks a process for asylum seekers to re-adjust or be offered other durable solutions. Jackson legitimized his decision by claiming that if Thailand had RSD or screening procedures, it will 'be used as justification for forcible repatriation' (Robinson, 2000). As a result, so far, refugee resolutions available in Thailand have been limited to resettlement in a third country or repatriation. Local integration has never been on the table for discussion. Clearly, Jackson's concern that establishing determination procedures would lead to the acceleration of forcible repatriation is not a strange idea. In any case, the Thai government rejected the proposal too.

In 1989, Thailand faced international pressure to formalize RSD procedures so as to be more transparent. The resulting Comprehensive Plan of Action (CPA) demonstrated that Thailand, at least, had an intention to formalize the screening process. The CPA established screening criteria for Thailand by drawing the definition of ‘refugee’ from the 1951 Convention. According to the convention, a refugee is ‘someone who is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a social group, or political opinion.’ (UNHCR, 2010, p.3). The Comprehensive Plan of Action (CPA) covered the entire south-east Asian region and thus the UNHCR would play a role as observer to the RSD conducted by each government. In addition, in Thailand, the UNHCR was expected to carry duties regarding RSD procedure. Those included:

- 1) to be involved as ‘an observer and advisory capacity’ and to ensure that ‘qualified and competent national authority body in accordance with established refugee writer and procedures.’

- 2) to assist with legal procedural such ‘advise in writing to each individual of the nature of the procedure, of the implications for rejected cases and of the right to appeal the first-level determination.’

- 3) to do regional capacity building on RSD training programs for screening officers. In this regard, UNHCR was to work in cooperation with the governments to achieve ‘proper and consistent functioning of the procedures.’

Another significant relationship shifts between the UNHCR and Thailand was in the 1990s. The Thai Ministry of Interior established PABS to oversee operations for Burmese asylum seekers in the border camps. It was agreed that UNHCR would have the authority to be an observer of status determination. Furthermore, the UNHCR got direct access to the border population for the first time (Muntarbhorn, 2003).

At the same time, the UNHCR had assumed direct responsibility to conduct RSD for urban refugees in Thailand. Initially, the Thai government had recognized urban refugees as an issue and was trying to transfer them to camps. In

1991, the Thai government declared a 'Safe Area,' 'Maneelay Camp' in the province of Ratchaburi, for the temporary hosting of Burmese asylum seekers. Those asylum seekers would first have to register with the Ministry of Interior. The UNHCR was granted full authority to legally conduct RSD to screen-in those falling under the definition of refugee according to the terms of the 1951 Convention. Individuals screened in by the UNHCR were termed Persons of Concern (PoC).

The Maneelay Camp functioned until the Thai government ordered a pause in 1996. The order was made to transfer the PoCs to border camps. The implication of the closure was a change of role for the UNHCR- no longer RSD but to manage existing refugees in moving to border camps instead. Nevertheless, the Maneelay Camp was eventually shut down in 2001. Officially, RSD has been on hold since then. The UNHCR had to stop performing screening process for urban refugees in qualifying for entry to the Maneelay Camp, leaving its role ambiguous. There was no agreement to clarify the role of the UNHCR in conducting status determination. Nonetheless, the UNHCR had assumed responsibility even after the change of order as the flow of asylum seekers reaching urban areas did not stop. It appeared in the following years that the number of unregistered cases had gone up to over 19,000 (Muntarbhorn, 2003). As of 2013, the number of unregistered cases had surpassed over 130,000 Myanmar asylum seekers (Saltsman, 2014).

The atmosphere of mistrust intensified in 2003 when there was a miscommunication between the UNHCR and the Thai government on the authority of RSD processing. The confusion happened when the Thai government believed that the UNHCR had granted refugee status to Burmese asylum seekers without recognition from Thailand, a breach of the law and Thai sovereignty. However, as mentioned previously, the applicants in question qualified as being mandate refugees, not national refugees. The UNHCR had tried to clarify this distinction to the Thai government, and claimed that they had constantly invited the Thai government input into RSD procedures. As the order to transfer urban Burmese refugees to the border camps, came directly from the Thai authorities, the UNHCR had respected it and expressed willingness to cooperate at all levels with the Thai authorities. Furthermore, the UNHCR stated that they had shared records on a monthly basis,

including all refugee information, with three Thai departments: The National Security Council, the Ministry of Interior, and the Department of Immigration. The UNHCR also stated that the population of Burmese migrants approaching the UNHCR Bangkok office was relatively low, let alone the number of those getting Refugee Certificates from the UNHCR (Muntarbhorn, 2003).

As a result of the misunderstanding, issue of PoCs to all Burmese refugees in urban areas was stopped. It was not until March 2004 that the Thai Cabinet accepted the proposal from the National Security Council, the decision-making body of the government of the time, for the UNHCR to work in assistance with the Thai government to deal with persons fleeing conflicts in Burma. The duty of the UNHCR, from 2004 onward and up until the present, would no longer be on operating RSD processes for any Burmese in Thai territory. RSD for Lao Hmong was also suspended in 2006 when the office of UNHCR lost access to this group of asylum seekers. However, it should be noted that for other asylum seekers, such as Afghanistan, Sri Lanka, Iran, and Africa, the UNHCR has conducted RSD continuously for urban cases, applying the 1951 Convention and its mandate to all through its five offices operating in Thailand: Mae Hong Son, Mae Sariang, Mae Sot, Kanchanaburi, and Bangkok.

3.2 Refugee Status Determination (RSD) in Camps

3.2.1 Situation

Thailand has a long tradition of hosting refugees since the 1980s. Despite policy shifts at various times, Thailand still provides shelter, also known as temporarily camps, for vulnerable migrants from neighborhood countries. In the 1980s, there were about thirty camps in Thailand. The operation of the camps was loosely restricted: 'open, village-like, and self-managed' (Saltsman, 2014). Nonetheless, Thailand tightened its security control during the 1990s. Attempts to close down some camps were made continually until the 2000s. At the present time, only nine camps are still in operation: Ban Mai Nai Soi, Ban Mae Surin, Mae Ra Ma

Luang, Mae La Oon, Mae La, Umpiem, Nu Po, Ban Don Yung, and Tham Hin (UNHCR, 2017).

By December 2000, there were about 127,000 refugees from various ethnic backgrounds- Karen, Karenni, Tenasserim, Mon, and others- living in camps (The Border Consortium, 2001). A decade later, the number was slightly higher at 135,000 (The Border Consortium, 2012). The majority were refugees from Myanmar. However, the estimated number of those who were not registered but living in camps was 50,000 (UNHCR, 2011). The high number of unregistered refugees living in camps was problematic and led to 'the pre-screening pilot' in 2009 to try to improve the effectiveness of the system. The process aims to set up a more robust screening system for new arrivals. The program was established in four camps, conducted by the Thai government with the support of the UNHCR. More than 10,000 interviews were conducted with unregistered camp residents (UNHCR, 2011).

However, the acceleration of refugee flows in 2010 meant the Thai authorities struggled with the caseload management. During 2012, the Thai government launched the policy of 'Fast Track' which was to be carried out by the PABs (FT-PABs). The Fast Track policy prioritized the registration of asylum seekers in need of serious assistance. The screening-in was based on consideration of existing links with registered refugees as well as links with those already resettled in the third countries. Arguably, it helps prevent refoulement and forced repatriation as they are now permitted to live in the shelters by law. This system has allowed registration to be more efficient as it will enable bio-data to be collected. In 2015, about 3,500 Myanmar refugees were recognized of the status through FT-PABs (UNHCR, 2013). Most recently, in July 2017, the number of refugee living in camps was 100,238; registered 50,101 while unregistered 50,137 (UNHCR, 2017).

3.2.2 Administrative Structure

In terms of administration, it has always been difficult to layer out the organizational structures and responsibilities precisely in RSB. The screening committees in camps consist of a complex set of representatives from different departments. The administration involved various sectors: The Ministry of Interior

(MOI), the Royal Thai Army(RTA), the Immigration Department, the police, district officials, and forced migration authorities in camps.

The Ministry of Interior played a crucial role in preparing the training for qualifying RSD officers. In 1985, Thailand intended to install a more organized RSD system for Laotian asylum seekers in the border camps. The MOI took charge of providing RSD officers to carry out the determination process at the borders. The MOI collaborated closely with the UNHCR from the start. At this point, Thai authorities had absolute power to screen in those qualified as refugees. However, the UNHCR could assist the Thai authorities and acted as an observer to the RSD process. Further to their role with MOI, the UNHCR also worked in close contact with the RTA. The MOI and RTA carried five different security forces to be installed in the camps. The UNHCR reported that in 2000, the PABs were operated by civilian and military authorities whose power was invested in carrying the refugee status determination (UNHCR, 2013).

‘Parallel to official RSB actors, the role of ‘street-level bureaucrats’ must be considered. ‘Street-level bureaucrats’ refers to those in lower positions who possess related powers, distinct from official ones, in influencing RSD decisions. These include forced migrant authorities and ethnic armed groups along the border. The fact that these groups exist implied that there could be an informal (ad hoc) screening process that aped the primary procedures supposedly operated by a single authority, in this case, the Thai officials.

3.2.3 Criteria on Refugee Definition for Status Determination

Despite Thailand lacking a formal RSD procedure, it has largely complied with the Comprehensive Plan of Action for establishing screening criteria. This was an initial success in agreeing to many international definitions under refugee law. Two further significant points hinted at Thailand’s intention to uphold international values: first, the adoption of the definition of ‘refugee’ from the 1951 Refugee Convention as those who have ‘well-founded fear of persecution.’ Secondly, Thailand has adhered to the principle of non-refoulement, though it should be noted that the CPA was meant to deal with only asylum seekers from Laos, Vietnam, and Cambodia.

In 1985, under pressure from the UNHCR and the United States, the Thai government established a more reliable and formal determination system. Despite the commitment of the Thai government to comply with international definitions, by July 1985, the MOI had developed four more criteria for status determination which specifically applied to Laotians (excluding Lao Hmongs). The MOI was, as well, charged with providing qualified RSD officers to interview Laos asylum seekers who were housed in nine camps along the borders. The criteria used in determining Laotians refugee status were:

1. Those who were in military and police services during the Pre-LPDR regime
2. Former persons who associated with embassies and international organizations, including firms
3. Persons who had participated in the anti-communist movement in Laos
4. Those who already had direct relatives in the third countries (Robinson, 2000).

One of the reasons Thailand introduced these elements into status determination criteria was to increase the number of resettlements, primarily in the United States. The last point directly relates to the international law which states that refugees have the right to be reunified with relatives in third countries. Due to the generous number of Laotians who had been resettled in the United States, this provision increased the probability that they would be resettled there. Furthermore, this new set of criteria seem to be detached from the definition of who qualifies to be recognized as a refugee based on the persecution aspect.

Since Thailand established the Provincial Admission Boards (PABs), there have been many criticisms of the consistency of the criteria, particularly of the definition used for determining who qualifies as being refugees. In this regard, PABs were explicitly set to handle Burmese asylum seekers in camps. Contrary to the CPA, the criteria for screening these Burmese refugees were vague and narrow. The controversial issue hinged on judgments that applicants from this group were not affected 'directly from the armed conflict event' or 'consequence of armed conflict'

(Muntarbhorn, 2003). Also, the definition did not expand to other causes of flight such as religious or political reasons, unlike those from Laos, Vietnam, and Cambodia. Consequently, this, in general, has led to questions about whether Thailand intends to conform to international screening criteria for refugees. Furthermore, this led to many who should have been screened in being left behind and deported back to Burma, thus violating the non-refoulement principle.

3.3 Urban Refugees

Asylum seekers who made their way to urban areas in Thailand, mainly to Bangkok where the office of UNHCR is located are known as 'urban asylum seekers' or 'urban refugees.' In the 1990s, the UNHCR assumed control of carrying out RSD for them. Hence, status determination accorded to international refugee law in a similar manner to CPAs. Thai authorities have never conducted RSD for urban refugees. In other words, Thailand lacked a mechanism regarding RSD operation for this group of asylum seekers. As mentioned, earlier in 1991 the Thai government recognized urban refugees as existing and was trying to transfer them to the 'Safe Area.' The UNHCR, who had assumed responsibility for conducting RSD for those urban refugees in Thailand was being granted the authority to legally conduct RSD to screen-in those falling under the definition of 'refugee' according to the Convention. The status of PoCs was issued by the UNHCR and recognized by the Thai government.

UNHCR RSD activity was suddenly paused again in 2003, and it took about four years before it was resumed. In 2007, the UNHCR was allowed to continue its RSD processes for urban refugees but not for any Burmese asylum seekers. The office of the UNHCR expressed concern that access to urban refugees remained difficult although they gained back permission to determine Persons of Concern status for asylum seekers (UNHCR, 2010).

By 2014, the UNHCR had registered about 2,660 cases with a total of 5,411 individual non-Myanmar urban asylum seekers. Of those asylum seekers gaining

access to RSD procedures, 809 RSD cases were conducted through first instance RSD interview. Through that year, 613 decisions on a total of 1,331 individuals were made (UNHCR, 2013). More recently, in July 2017, the total number of registered urban asylum seekers totaled 7,212 persons, of which 4,244 were recognized as refugees by the UNHCR. The primary origin countries are Vietnam, Pakistan, Somalia, Syria, and Palestine (Amnesty International, 2017).

3.3.1 United Nations High Commissioner for Refugees (UNHCR) Refugee Status Determination (RSD) Operation

The UNHCR has structured the RSD Unit under the umbrella of its Protection Unit. The Protection Unit consists of four subunits: Registration, RSD, Durable Solution, and Protection. In this work, more emphasis is placed on the first two aspects. The guidelines that UNHCR have developed for to status determination procedures are found in two documents. First, ‘The Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status Under the 1951 Convention and the 1967 Protocol Relating to The Status of Refugees’ introduced in September 1979 and revised several times since (UNHCR, 2011). In 2005 the UNHCR saw the need for a universal set of RSD procedures, available and applicable to any authority. The office drafted the ‘Procedural Standards for Refugee Status Determination under UNHCR’s Mandate.’ The difference is that while the Handbook deals mainly with the definition of refugees, the Mandate set forth the standards for RSD procedures that would enhance the ‘fairness, quality, and integrity’ (UNHCR, 2005).

3.3.1.1 Registration Unit

(1) Reception

The reception procedure is designed to assist those who seek asylum seeker status at the first contact with the UNHCR. At this point, claimants are not yet entitled to be ‘asylum seekers’ but only to be validated as candidates. The reception officers, including interpreters, are trained in welcoming every request for the official status as asylum seeker.

Each person who wishes to enter the RSD process needs to pass this first stage. The applicant will meet with the receptionist who would record

their needs and schedule the registration interview for them. However, if asylum seekers are seen to be in need of special assistance, the UNHCR will provide special and appropriate protection during initial RSD procedures. They will be put on priority in getting access to subsequent RSD processes. Those who are in extra-vulnerable category include:

- 1) Persons who needed immediate protection
- 2) The victims of torture and mentally damaged
- 3) Women who needed special care
- 4) Minors (under eighteen) or unaccompanied children (without parents or guardians)
- 5) Elderly people
- 6) Handicap or disability people
- 7) Persons with health problems

(2) Registration

Registration officers will take charge in gathering all the important data, such as personal information, flight story, and the reasons their asylum application, from all persons of concern through the registration interview. All the data will be recorded in the 'RSD Application Form.'

Nonetheless, some documents are required during the registration procedure. Those documents include: letter detailing the reasons for the asylum or refugee application, official documents such as identification card, passport, and birth certificate, address and telephone number in Thailand, and other supporting documents. Gathering and preparing legal documents might be beyond the capability of some applicants, so at this stage, recognized legal representatives- Asylum Access Thailand (AAT), Jesuit Refugee Service Thailand (JRS), and Lawyers Council of Thailand - are allowed to assist them in their preparation.

During the registration interview, the UNHCR takes photographs of all applicants. Data is stored in electronic file systems which are only accessible by assigned registration officers. All documents will be copied to preserve evidence. After the interview, applicants receive a registration number used for keeping track of all their data records.

(3) UNHCR Asylum Seeker Certificate

The Asylum Seeker Certificate is issued to each family of applicants. The certificate is valid for a maximum of one year. After expiration, it can be renewed. In Thailand, the UNHCR also print a Thai version on the back of the certificate that allows Thai officers to read and instantly recognize the current status of applicants. At this stage, they are officially recognized as asylum seekers and access to RSD processes. It functions as the proof of registration and indicates that holder is awaiting refugee status granted by the UNHCR. Those qualified to enter the RSD process will be informed of the date of the RSD interview. It is critical that asylum seekers present themselves on that day, except in some emergency cases, such as falling ill, when a medical script is required to reschedule the interview. It is likely that when asylum seekers are absent on their date of interview, they have to wait at least another two months for the next potential date.

3.3.1.2 Refugee Status Determination (RSD) Unit

The RSD procedure consists of different stages which occur at various points of the process. Some of the RSD procedure are the RSD interview (First Instance), the Appeal process, File Closure, Reopening the case, and Cancellation of Refugee Status. This section will give an overview of the entire process. The prominent elements include 1) the RSD interview; 2) Notification of RSD decisions; 3) Appeal of negative RSD decisions. As with the registration interview stage, asylum seekers can always seek advice from legal representatives during the preparation for the RSD interview and appeal process.

(1) RSD Interview

The RSD interview counts as the initial means for asylum seekers to prove their declaration as refugees. The interview aims to provide applicants with an opportunity to explain themselves. Further details and reasons can be presented, in addition to essential data already provided at the registration stage. All this will be used to determine status according to the 1951 Refugee Convention and its protocol. Hence, this stage of RSD is the most significant one as it is an anchor falling under the UNHCR mandate, although there is a chance of being rejected which would mean a loss of all the protection in Thailand.

Eligibility officers conduct the interviews with the asylum seekers. Before beginning the interview, asylum seekers are told of all their rights and duties during the interview. Asylum seekers have: 1) the right to request an interpreter for their understanding in their preferred language; 2) the right to request the sex of the interviewer; 3) the right to ask questions if unsure of anything before answering; 4) the right to confidentiality; 5) the right to rest or take a break during the process of interview; 6) the right to access to specialized care for those who need assistance.

The interviewer requires the asylum seeker to tell the truth and cooperate with the RSD process. The questions the asylum seekers will be asked cover, but are not limited to, their personal information, family history, the reason for flight, the reason for not returning to their origin country, or the consequences if they return.

During the interview, the RSD officers will record every detail of the conversation onto the 'Interview Transcript.' At the end, the officers must make sure that the asylum seekers have expressed themselves completely by asking if there would be anything they wish to address further. At the same time, the officers have to brief the applicant about further steps in the process; for instance, the date of notification of RSD decision, the right to appeal in the event of a negative RSD decision, and the process for it.

(2) Notification of RSD Decision

The RSD officers make the decision themselves whether asylum seekers claims are strong enough to be granted refugee status. The officers will fill in 'The RSD Assessment Form' which will further need approval from the UNHCR Protection officer or RSD Supervisor. The notification of RSD Decision, however, is expected no later than two months after the RSD interview. Moreover, to receive the decision, asylum seekers have to attend in person. In addition, the asylum seekers have the right to receive written notice of that decision.

Two scenarios result: recognition or rejection of refugee status. The asylum seekers who get a recognition notification are granted refugee status. This comes with a written decision declaring that they have now officially

obtained the status. Also, the UNHCR will further explain the certain procedures to which the refugees must conform. At this stage, the UNHCR will issue a 'Refugee Certificate' for those individuals or families who have passed the interview process. They will move to processing for a 'durable solution' carried out by the Durable Solution Unit of the UNHCR. In the Thai context, 'durable' solution' means either repatriation to a (now) safe place of origin or resettlement in a third country.

Those who received a rejection decision will get a 'Notification of Negative RSD Decision' which describes the reasons why refugee status is denied. Furthermore, details of which part of the interview was positive or negative would be provided to them. Most importantly, they will be informed of their right to appeal the rejection.

(3) Appeal of Negative RSD Decision

Each applicant who receives a "Notification of Negative RSD Decision' has the right to appeal. They have a minimum of thirty days after the initial decision to lodge the appeal.

The appeal process is carried out by different RSD officers. The officer of first instance can play no part. The asylum seekers receive an 'Appeal Application Form' from the UNHCR in which they have to state: 1) reasons why the decision was wrong; 2) objections for each claim decision, 3) any new information can be added provided reasons are for its non-appearance during the first instance. The applicant can also provide additional or supporting documents to strengthen the claim. The officers will determine if the claims are valid before readmitting asylum seekers to the interview process. If the claims are not strong enough, the case will be closed.

During the interview process, the interviewers record the conversation in the 'Appeal Interview Transcript.' The officer also completes the 'Appeal Assessment Form' when they have made the decision. This document is the same as the assessment form used during the first instance, and the decision will have to be approved by the RSD supervisor or Protection officer before it comes to affect.

Notification of the appeal, ideally, should be as fast as possible in writing to the asylum seekers. If rejected, explanation will only be provided for the claims that are new or claims that were not justified in the first RSD notification. Generally, rejected cases will be closed through the ‘Procedures for File Closure.’ However, in some exceptional circumstances, cases can proceed to the ‘Procedures for File Reopening’ for reevaluation.



CHAPTER 4

REFUGEE STATUS DETERMINATION (RSD) STANDARDS IN THAILAND

The first section of this chapter will explore the standards set forth by the UNHCR as best practices for RSD. This study adopts these elements as the criteria to evaluate the effectiveness of RSD practices in Thailand.

In 2001, global consultations on international protection in the asylum process resulted in the agreement of elements of fair and efficient asylum procedures. The resulting ‘Procedural Standards for Refugee Status Determination’ fell under the mandate of the UNHCR. It identified the core elements that should be adopted to ‘keep up with standards of fairness and due process.’ In addition, the Procedural Standards for Refugee Status Determination under the UNHCR’s Mandate (UNHCR, 2003), along with ‘The Self-Study Module on Refugee Status Determination’ (UNHCR, 2005), laid down further requirements to uphold fair and efficient RSD procedure. The procedural standards are designed to create safeguards whereby international standards of fairness and due process can operate. The elements consist of, but are not limited to:

- I. Procedural standards
 - Access to asylum determination (Non-refoulement Principles)
 - Specialized authority with single examination
- II. Procedural safeguard and guarantee
 - Right to access information; including reasons for rejection, report of personal interview, and other information on file
 - Right to confidential policy
 - Right to legal assistance and representation
 - Right to appeal procedure

4.1 Procedural Standards

4.1.1 Access to Asylum Determination (Non-Refoulement Principle)

4.1.1.1 UNHCR Standard

The UN General Assembly and the UNHCR Executive Committee (ExCom) have repeatedly emphasized the importance of the non-refoulement principle (UNHCR, 2005). It can be argued that all other aspect of the process stem from this principle. Access to the asylum determination procedures is an essential precondition to full protection for asylum seekers as potential refugees. Anyone expressing the desire for asylum determination should receive access to the procedures. This standard helps uphold the non-refoulement principle, which is the keystone to the international refugee protection (Amnesty International, 2017). Furthermore, access to determination procedures covers all those who enter a territory or state, in whichever way, expressing the desire to file a refugee claim, including all points of entry such as borders, seas, and airports. States are legally obliged to follow preliminary screening procedures for all whose claims may fall under the definition of 'refugee' (UNHCR, 2005).

On the other hand, denial of entry (grounds for inadmissibility) to a territory can be made in only certain conditions where: first, the persons are found to already be under the protection of the first country of asylum (the first country the applicants seek for the protection) (UNHCR, 2005); second, if the persons are under the protection of a safe third country (the third country where the asylum seekers will receive the protection). In this regard, the principle of non-refoulement will not be violated even in circumstances of inadmissibility. It is also important that each assessment should be processed by a specific assigned asylum authority. In other words, the process of RSD will be at best practice when all forms possible of international protection are included in a single procedure.

4.1.1.2 Thai Practices

Thailand, historically, has attempted to adhere to the principle of non-refoulement. Thai governments have signed two treaties which contain the elements of refoulement prevention: The Convention against Torture

and The ASEAN Human Rights Declaration. The latter clearly addresses the right to seek and receive asylum (Amnesty International, 2017). This principle of non-refoulement is the gateway to ensure RSD process admissibility for asylum seekers.

In term of practice and implementation, Thailand has continuously vacillated in the extent of it conforms to the principle. Generally, Thai commitment to the term has depended largely on the source of the asylum seekers with different enforcement for different groups of persons. During the 1970s and 1980s, Thailand national policies were often contradictory. In 1979, an open-door policy was adopted at the borders, which allowed people fleeing conflicts, but the door was closed to urban refugees. The open-door system accelerated the possibility for asylum seekers to access screening processes but only into camps. However, in practice a pushback policy was also implemented for specific groups. The pushback reflects a human deterrence strategy but was in total violation of the refoulement principle.

In the 1980s, the Vietnamese ‘boat people’ and Cambodians faced a closed-door policy. The implementation of a closed-door resulted in RSD inadmissibility for those arrivals (Muntarbhorn, 2003). As recently as 2009, Thailand was found to be forcibly repatriating Lao Hmongs en masse. More recently still, the UNHCR reports that Thai navy sailors shot at Rohingyas to deter them from entering Thailand and pushed their boats out back to the sea. Thailand does not recognize Lao Hmongs and Rohingya as people fleeing from persecution, instead their status is purely that of illegal migrants when entering Thai territory. Despite the pushback policy toward Rohingyas, Thai authorities, nonetheless, do allow the UNHCR and the United States Embassy to assist in the RSD process. One incentive is that the US government provides a quota in resettlement programs for those Rohingyas who have already entered Thailand (Amnesty International, 2017).

Documents on admissibility at airports are incredibly limited which that constrains the analysis of how Thailand consistently compliance to the principle. Notwithstanding, the UNHCR reports that Thailand practices denial of entry at Suvarnabhumi Airport. One example was a Syrian child who arrived at the airport in 2015. The Thai authorities ignored the status determination by the UNHCR as the

child was already issued with refugee status and deported him back to Lebanon. The child was consequently sent back to Syria after which there is no follow up (Amnesty International, 2017).

There is no official RSD in camps. However, refugee committees carry unofficial screening of those they see fit as qualifying to be refugees. As already mentioned, the criteria are unclear creating a de facto system for status determination. However, Amnesty International reported attempts by Thai authorities, such as police and immigration officers, to work cooperatively with the UNHCR along with NGOs to prevent the deportation of refugees. That effort has helped to ensure that those refugees presence outside the camps are safe from forced repatriation.

For urban refugees, the Thai government allows the UNHCR to conduct RSD processes for any person who makes a refugee claim. However, in practice, 'any persons' includes most groups of asylum seekers but restricts certain ethnicities. The UNHCR has no authority in carrying RSD for Myanmar, Rohingya and Lao Hmongs, urban refugees. It could be viewed that while the UNHCR attempts to allow all persons right to RSD, the organization is significantly constrained in the jurisdiction of Thailand.

4.1.2 Special Authority with Single Examination

4.1.2.1 UNHCR Standard

To achieve the best quality of first instance RSD, it is necessary to have expertise in the identification of refugee claims. RSD procedures require well-trained officers with specialized knowledge. Without well-trained experts, a fair and efficient RSD regime in accordance to international refugee protection standards would be impossible. With this in mind, the UNHCR mandated that a single central authority should be set up specifically deal with the determination (UNHCR, 2005). In this respect, the specialized authority takes responsibility from the initial to the last step of the RSD regime. That includes eligibility officers on admissibility, interview claims of asylum seekers and refugees, interpreting, and owning deep understanding of cross-cultural sensitivity for vulnerable asylum seekers (UNHCR, 2005). The specialized authority helps create

‘the clearest and swiftest’ proceeding of RSD which eventually enhance the credibility of the RSD system (UNHCR, 2001).

Single examination embraces all complementary protections within one RSD process. Giving the standard of determining refugee status covers not only effective procedures, procedural safeguards and guarantee must also be implemented. It is understood that national frameworks are the primary source for conducting RSD. Nonetheless, complying with international refugee protection standards is considered one of the best state practices (UNHCR, 2001). The office of the UNHCR suggests that ‘all forms of international protection’ that exist in national legal legislation should be intertwined with both ‘1951 Convention grounds and complementary/subsidiary protection needs’ (UNHCR, 2005). The single procedure combined with a specialized authority will contribute to increased efficiency in RSD leading to cost savings particularly in the decision-making stage (UNHCR, 2005)

4.1.2.2 Thai Practices

As has been mentioned already, Thailand does not have yet have a legal framework for RSD. However, the MOI has appointed what they claim are ‘specially trained’ officers to determine the status of refugees in camps, usually at those times when Thailand adopted open-door policies. Generally, there exist layers of authority exercising power that sometimes overlap. Power lies with several departments: The Ministry of Interior(MOI), the Royal Thai Army(RTA), the Immigration Department, the police, district officials, and even forced migration authorities (Committee) themselves (Saltsman, 2014). Thailand has been heavily criticized on the training of officers as they practice on a non-consistent definition of refugees.

The absence of a formal domestic RSD system has left procedures improperly defined. The screening process involves a large number of officers. Human Right Watch reports that RSD officials work with groups of refugees with diverse ethnicities living in the camps. The power dimension, then, diffuses to unofficial authorities such as refugee committees, which assume some extent of legitimacy in determining who qualifies as being a refugee. Refugee committees also play a role in unofficially conducting RSD interviews. The criteria are known to be uncertain and broad. Decisions are often based only the displacement stories of

newcomers (Saltsman, 2014). The interviews conducted by refugee authorities follow no form of set procedure. If there is an indication that the newcomers are believed to be economic migrants who seek jobs in Thailand, the refugee camp committee will reject the claim and declare it inadmissible (Saltsman, 2014).

Although some power is granted to refugee camp committee, its use depends on the full legitimacy of Thai officials. Often that the committees rely on cooperation with military officers to allow newcomer to stay in the camps temporarily. However, this permission is usually granted on the understanding that they will return to Myanmar voluntary afterward.

Despite the positive support, it has been observed that Thai authorities use the threat of physical harm during RSD. Officials usually carry guns. Thus, a climate of fear results: “The Thai authorities ask us if there are new arrivals. As the committee, we just say to them that we still do not know even if we know they are in the section. Before we conduct our interviews, we don’t tell the Thai authorities that there are new arrivals. We are scared they will kick them out” (Saltsman, 2014, p.468).

Furthermore, in practice, many refugees in camps face what is called ‘deregistration,’ where those screened-ins have their right to stay in camps taken back. The procedure of de-registration is unclear in that it is not based on any concrete criteria or laws. In addition, the authorities also engage in mixed power exercises. The article ‘Beyond the Law: Asylum Space in Thailand,’ defines this as the ‘opportunity for people’s status to shift as cases are displaced without accountability.’ The lack of accountability stems from the multiple authorities who are involved in the scenario. The case cites the example of Naw Hser Oo, who reported that she had received de-registration status. The explanation given to her was different each time she met with authorities:

“The first time that I asked her (Thai official in the camp), they told me the reason was because I was out of the camp and the next time I tried to ask, they told me another reason: that I have PAB status and to go from PAB to BMN there were interviews, and because I failed to be present at those interviews, I lost my registration. All those interviews were documented, and they have the list

at the Camp Committee and, so I went to see them and saw the secretary...and asked about when I was invited for the interview, and she looked at the list and told me that I was never invited for the interview” (Saltsman, 2014, p.465).

On the other hand, the UNHCR has assumed specialized authority through a single RSD examination for urban refugees. As a dedicated refugee organization, the UNHCR has developed its international accepted standards of staff trained which produces qualified officers. Along with well-trained staff, the procedure includes all forms of international protection. However, some protections are limited due to the lack of national legislation regarding asylum seeker admission. For instance, in comparison to European countries, Thailand has no safety net for those who are rejected. In other words, Thailand lacks consideration for asylum seekers to re-adjust themselves before proceeding the further durable solutions. Another issue is that despite the recognition of UNHCR RSD operation by the Thai government, refugee status is not legalized within the kingdom. Hence, those persons violating domestic immigration law are subjected to arrest, detention, and deportation at any stage of RSD procedure.

In addition, the UNHCR has admitted that financial constraints also affect the overall quality of its RSD operations. Budget cuts directly impact performance by reducing the of number of trained staff. In 2015, the UNHCR had targeted the training of forty RSD staff, but at the year-end, only twenty-five were successfully trained (UNHCR, 2015).

4.2 Procedural Safeguard and Guarantee

This study has repeatedly stressed the difficulty of accessing RSD data from any possible sources. Specifically, to RSD processes, responsible authorities are expected to provide official the statistic and reports. In this regard, where Thailand does not own a formal RSD system, to evaluate the procedural safeguards and guarantees is hugely challenging. There is also limited up-to-date information regarding RSD rights. However, this section draws on every available source related to RSD rights in both camps and urban contexts from journals, articles, organizations reports. Some reports reference ground-based practices that the authorities deny occurring. As they are informal practices, unverified by Thai laws, they do not appear on official reports. However, in the urban refugee context, the UNHCR has a set of procedural safeguards and guarantees, including all required forms of protection through its RSD procedure accordingly to international standards.

4.2.1 Right to access information, including reasons for rejection, report of personal interview, and other information on file

4.2.1.1 UNHCR Standard

Accessibility of information is required during the entire RSD procedure. The UNHCR states that asylum seekers have full rights to be informed of the whole process included their rights and duties during the RSD procedure (Alexander, 1999). In the stated best practices, every interview conducted is required to be recorded in written form. Generally, at the end of the interview, the interviewers read the information taken down back to the asylum seekers to check the accuracy of the details. Transcripts of interviews also should be available to asylum seekers. In other words, the written reports provide the concrete evidence for asylum seekers and refugees to refer to their case data. Also, it is essential to have the applicants verify the contents of their file which allows content correction, as well as use any clarification (UNHCR, 2005).

Reasons for rejection of refugee status need to be addressed to asylum seekers in written form. When a negative decision is made, asylum seekers

should also be given information about the next steps of the procedure: informing of the right to appeal of the negative decision and the time-limits (UNHCR, 2005). During the first instance, the reasons should be provided on time so that rejected applicants can appeal the unfavorable decision as soon as possible (UNHCR, 2005). Furthermore, if asylum seekers believed the decision is mistakenly, according to the principle of fairness, they can request for a revision (Alexander, 1999).

4.2.1.2 Thai Practices

The Minister of Interior does not provide information regarding accessibility of files. However, some articles from independent authors can be used to shed light on this aspect. In the case of Naw Hser Oo, mentioned above, when she faced contradicting answers from different RSD authorities when she declared to be de-registered status, her attempts to get access to formal written of decisions were prevented (Saltsman, 2014). Firstly, it is doubtful that the authorities have any accurate records to which to refer. In addition, if there were official records, regardless of the number authorities, the explanation should be uniform among them. In any case, the claimant had no awareness of any negative report on an interview she had conducted. In conclusion, the reversal of status was not done through the appeal process and was not correctly informed to asylum seekers.

Haw Hser Oo also mentioned that ‘all those interviews were documented, and they have the list at the Camp Committee.’ This implies that there are written documents of RSD interviews for those screened-in. Nevertheless, the Camp Committee has relatively low power as they entirely depend on the Thai authorities. It is unknown if asylum seekers have access to their documents as there is no affirmation from any sources at present.

Even for urban refugees, not all files are accessible to asylum seekers. For instance, the UNHCR only provide a copy of the transcript of the interview to the lawyers representing asylum seekers if it is specifically requested by the lawyer for the purpose of review. Asylum seekers do not obtain a copy of their interviews, but they are given a summary of the interview transcript if they are ask for it at the end of the interview. The readout of the whole transcript does not appear to be practiced for asylum seekers.

Critics claim that most refugees have insufficient understanding of the process, both interview and appeal, because many RSD steps involve legal aspects to which asylum seekers are unable to relate. Another issue of concern is the status of written decisions of reasons for rejection. When cases are denied, the UNHCR will provide the rejection letter. However, the message is issued only in English. In the event of a negative finding, the interpreter is provided only with the duty of translating UNHCR messages. The RSD lawyers reveal that UNHCR officers would inform the claimant of the denial of status, but not explain or clarify the reasons for rejection in detail.

4.2.2 Right to Confidentiality

4.2.2.1 UNHCR Standard

Confidentiality of asylum seeker information is required during all procedures (UNHCR, 2005). Testimony provided by applicants should be used only by the authorities within the hosting country. On the other hand, the authorities must not share the information to the country of origin, nor to any outside sources without the consent of asylum seekers. Concern for the safety of those seeking asylum and refugee status means that confidentiality is essential.

4.2.2.2 Thai Practices

The Thai government has been in violation of the confidentiality principle through its practices of sharing information of those who seek asylum in Thailand with the origin countries. In 2009, Thailand returned Lao Hmongs to Lao territory when it decided to shut down the Huay Nam Khao camps, located in the north of Thailand (Amnesty International, 2017). The return was forced repatriation, violating the non-refoulement principle. In that matter, those who were already screened-in to the camp had been recorded by the MOI. The Thai authorities claimed their action was justified by declaring those Lao Hmongs as economic migrants. Although the Laos government issues assurance of their good treatment, consent from those asylum seekers was not expressed.

The UNHCR upholds confidentiality as the conductor of RSD for urban refugees. However, functioning as an assistant to the Thai government, the UNHCR is required to report necessary information on asylum seekers and refugees

to the Thai authorities. Thailand has thus semi-accepted the legitimacy of UNHCR processes. However, there are cases where those granted refugee status by the UNHCR are subject to the sharing of their personal information without consent. Undergoing RSD procedures through the UNHCR, hence, does not necessarily mean the UNHCR has the power to keep all files confidential in the host country. Activists from China, Cambodia, and Vietnamese have faced refoulement to their countries of origin with the cooperation of the Thai government.

Jiang Hefei and Dong Guan Ping were Chinese refugees recognized by the UNHCR. Dong Guan Ping, in his situation, was approved by the Canadian embassy guaranteeing his resettlement. Despite his refugee status, the Thai government responded to a request by the Chinese government for deportation insisting they are lawbreakers. It should be noted that Thailand has developed strong connections with China in recent years. In 1993, they signed a 'bilateral extradition treaty' by which Thailand treats any Chinese person fleeing as an illegal immigrant (Amnesty International, 2017). Thailand claimed it is justified in returning those on arrest warrants. Furthermore, the government claims that they were unaware of the status granted by the UNHCR nor the resettlement approved by the Canadian embassy.

Apart from sharing information of asylum seekers and refugees to the Chinese government, Thailand is also known to be give applicants' files to other sourcing governments. Human Rights Watch (2012) has expressed concern that the Thai government should uphold international protection standards for refugees in its dealing with other governments.

4.2.3 Right to Legal Assistance and Representation

4.2.3.1 UNHCR Standard

Standard Operating Procedures (SOPs) for legal assistance during RSD in Thailand addressed in UNHCR Section 5, 5.1. The document states that "Legal Representatives may accompany Clients in RSD interviews and all supplementary interviews, at the first instance, appeal or re-opening stage." (UNHCR, 2010, p.4). The right to legal assistance is recognized as a cornerstone of protection safeguard (UNHCR, 2005). As in reality, the RSD procedure itself is complicated for asylum

seekers to understand easily. The process of RSD indeed involves jurisdiction which in the situation of being in foreign countries with unfamiliar systems and languages. Hence, quality legal assistance and representation is a tool that helps the applicants getting into full efficient RSD mechanism.

Uncharged legal assistance should be provided for asylum seekers during RSD interviews. Having legal representative presence in the first instance not only enhances efficiency but also comforts asylum seekers who experience traumatic situations. Asylum seekers with special needs also have right to access to adequate assistance. This includes legal representation and consultation in the appeal process. Representation also covers qualified interpreters in the interview process.

4.2.3.2 Thai Practices

There is no record of legal assistance regarding RSD from any authorities in camps. However, the UNHCR does emphasize the importance of having legal representatives during RSD interviews from the registration interview stage to appeal process. The UNHCR does allow legal representatives to assist vulnerable asylum seekers who are not capable of representing themselves. However, the most significant problem is a severe lack of RSD lawyers from legal representative organizations. The number of asylum seekers who need RSD legal representation far outweighs the scope of the ten lawyers currently available in Thailand.

One concern raised by RSD lawyers is that the presence of a third person who the applicant trusts in interviews is not guaranteed. It is important, especially for those very vulnerable applicants, to have someone they feel comfortable to be around during interviews. A third person, at least, should be present regardless of whether they are a representing lawyer or not (Teppunkoonngam, 2017).

Two cases of asylum seekers from Afghanistan and Ethiopia will be used as for illustration. The Afghan woman received a negative decision in the first instance after which she decided to enter the appeal process. The lawyer who assisted her preparation for the appeal found that she was a vulnerable person struggling with mental illness. Furthermore, the asylum seekers claimed that she had

already informed the RSD officer of her condition during the first instance. The asylum seeker from Ethiopia experienced abusive actions from her employer. She was diagnosed with mental instability and had attempted to commit suicide.

4.2.4 Right to Appeal Procedure

4.2.4.1 UNHCR Standard

As mentioned in the last chapter, each applicant who receives “Notification of Negative RSD Decision” has the right to appeal. The written negative decision includes an explanation explains the right to file for the appeal process. The UNHCR Handbook states that the time to appeal would be appropriate to the situation (UNHCR, 2011). In Thailand, the appeal should be done a minimum of thirty days after the initial decision (Saendi, 2015). A different body should carry the appeal itself. However, in places where the appeal procedure cannot be conducted by a different body, different persons of that authority should be the reviewers (UNHCR, 2005).

In the appeal, asylum seekers can provide new information of facts that they excluded in the first instance. They will also have the same right to accessibility of information similar to other interviews being conducted throughout the RSD procedure. The notification of the appeal, ideally, should be as fast as possible in writing. If rejected, the explanation is provided only in claims that are new or were not explained in the first RSD notification. Cases of rejection will be closed through the ‘Procedures for File Closure.’ Occasionally, some cases proceed with the ‘Procedures for File Re-opening.’

4.2.4.2 Thai Practices

The Thai government does not include the appeal process in the RSD system conducted in camps. In the urban context, the UNHCR does practice the appeal process. Once the asylum seekers receive the rejection letter, UNHCR staffs will inform them of their rejection status along with the appeal procedures. In this step, interpreters are present. However, the details in the letter are not read to the clients. In practice, asylum seekers do have 30 days to appeal. The person who re-interviews is different from the first instance, though is still from the UNHCR.

From the legal perspective, it can be argued that the assurance of access to appeal is possible but not guaranteed. However, there are some critical concerns about the quality of knowledge the asylum seekers obtain from UNHCR officers. First, the duration allowance for appeal is at minimum on standard. Although the time allowance should be appropriate to the case as set forth by the UNHCR, thirty days is applied to every client who questions case determination. Moreover, thirty days is the absolute minimum requirement listed in the procedural standards. As a matter of fact, more time for asylum seekers to prepare their appeal process, which involves a great deal of legal language, would increase readiness and produce more positive appeal decisions. Another aspect of concern is that the appeal process is heard only orally. As most asylum seekers do not have legal knowledge or background, it is somewhat difficult for them to understand clearly through every step of the procedure. Lastly, despite that the interviewer during an appeal is changed, the fact that UNHCR still operates the process renders it not wholly independent of the first authority. In Thailand, despite the lack of UNHCR jurisdiction, it is left as the only agent to conduct every single procedure of RSD.

On the other hand, legal representative organizations such as AAT, do provide legal training in the appeal process; for example, writing workshops are held to give asylum seekers advice on how to correctly write their new claims. RSD lawyers in AAT also screen cases they see appropriate for lawyers to enter the appeal process. It is undeniable that is the severely limited number of lawyers that outweighs the number of asylum seekers, both generally and those who approach AAT. In cases where lawyers decided not to represent asylum seekers on appeal, they still provide them advice if they wish to self-appeal.

4.3 Conclusion

4.3.1 Accessing to Refugee Status Determination (RSD) Standards

Table 4.1

Accessing to RSD procedural standards

Procedural Standards	UNHCR (Urban Asylum Seeker/ Refugee)	Thai Government (Camp Asylum Seeker/ Refugee)	Effects
I. Access to asylum determination	- Conduct RSD for Urban asylum seekers. They can access to the determination but limited for some nationalities	- No official RSD operation in camps - Asylum seekers at territory entry points get Limited accessibility of determination. Ex: Syrian Child	- Urban and camps asylum seekers get different treatments on status determination - Potential refugees is prevented to get international protections they are entitled to
II. Specialized authority with single examination	- Assumed specialized authority with single RSD examination for urban asylum seeker	- Multiple authorities exercise camp management - No single RSD examination	- Camps refugees confused who in authority they can approach

RSD procedural standards in Thailand can be analyzed from several perspectives. On the macro-level, it could be argued that the lack of any single authority makes a nonsense of the ideas of standards. Given that there are multiple

actors- the UNHCR and the Thai Government- a coordinated system of RSD operation is very challenging. In addition, urban and camp refugees get different treatments on status determination. Accessibility is limited as urban refugees are not able to formally enter the procedure. Despite the role of the UNHCR in conducting RSD, the Government still does not fully recognize the power of the UNHCR to issue refugee status. The semi-recognized authority of the UNHCR by the Thai government has left the issue of single body and single examination in question.

On the micro-level, looking at each agent, the lack of legal frameworks or domestic laws to regulate the RSD system in Thailand mean it is still far from consistency. On the other hand, the UNHCR has RSD procedural standards which accord to international laws. However, the UNHCR does practice discrimination of accessibility for certain nationalities. It is necessary to consider that the UNHCR exists on the merit of permission granted by the Thai government. Any practice must be notified and approved of by the Government.

4.3.2 Accessing to Refugee Status Determination (RSD) Safeguards and Guarantees

Table 4.2

Accessing to RSD safeguards and guarantees

Procedural Safeguards and Guarantees	UNHCR (Urban Refugee)	Thai Government (Camp Refugee)	Effects
I. Right to access information	- UNHCR does provide but not all the information on files; ex: Transcript of interview, the rejection letter	- Thai authorities do not share information on files.	- Asylum seekers faced difficulty in defense themselves to contradict claims

Table 4.2

Accessing to RSD safeguards and guarantees (cont.)

Procedural Safeguards and Guarantees	UNHCR (Urban Refugee)	Thai Government (Camp Refugee)	Effects
II. Right to Confidential policy	- UNHCR shares necessary information with the Thai authorities but not outside sources	- Share information to origin countries	- Asylum seekers and refugees get forced repatriation where they face the fear of persecution
III. Right to legal assistance and representation	- UNHCR has partnered with legal representatives NGOs; allowing asylum seekers to be assisted in RSD preparation	- No legal assistant on RSD procedure to asylum seekers	- The quality of RSD can be affected as if the asylum seekers fail to understand the procedure steps
IV. Right to appeal procedure	- UNHCR practices appeal procedure when asylum seekers get negative decision (only when there is new evidence of proof)	- No appeal procedure	- The RSD procedure get to be challenged. Benefiting both the mechanism and asylum seekers

Accessibility to files is one aspect that remains semi-detached from international standards. In the urban setting, the UNHCR does allow limited accessibility to record for asylum seekers. Right to a rejection letter is, arguably, being protected by the UNHCR, even if this letter is available only in English. While many asylum seekers are literate in English, the situations still leave open the possibility

that some claimants will be left with no clarification of the reasons for their rejection. Asylum seekers are forced to find their own way to outside translation services. Given the fact that there is only a thirty-day period for asylum seekers to prepare an appeal process, it could significantly reduce the percentage of appeal successes. Meanwhile, the Government affirmation to accessibility to file is entirely unclear. Despite some evidence to suggest availability of screening-in interview records, these are usually unofficially written by refugee committee. Finally, the multiple authorities involved in the process is the most significant obstacle for camp refugees to access their RSD records.

As the UNHCR exists in Thailand to assist the Thai government in RSD operations, supreme power lies with the Government to determine the degree of implementation in Thai territory. Thai authorities are bound to uphold confidentiality for applicants. However, Thailand does not enforce the right to confidentiality of asylum seekers and refugees citing its status as a non-signatory to the 1951 Refugee Convention and its 1967 protocol.

To some degree, the lack of RSD lawyers does affect the quality of the appeals process in that asylum seekers tend to be less well-prepared for the appeal interviews. The right to appeal is practically existing. However, the critical point arose on the matter of the way UNHCR inform the negative decision to asylum seekers which are the preliminary step to quality appeal. The procedural rights could then be linked which would enhance the overall quality of RSD operation which increases the effectiveness of RSD system in Thailand.

CHAPTER 5

CONCLUSIONS

Upon completion of this research addressing the effectiveness of Thailand's refugee status determination procedures, the author has gained the following insights:

1) Refugees in Thailand can be categorized into two groups: urban and camp refugees. The Thai government allows the UNHCR to conduct RSD for urban refugees. Meanwhile, screening in refugee camps is fully under Thai government authority. Despite the lack of any national framework on RSD, the government attempts to adhere to international practice standards.

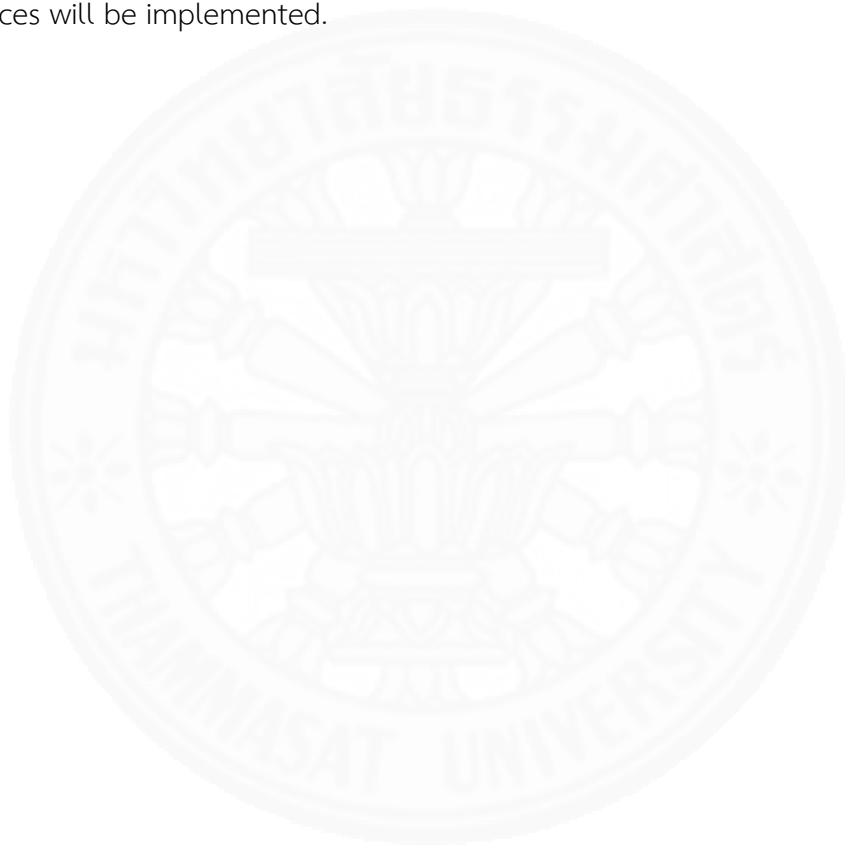
2) The effectiveness of RSD practices in Thailand is determined by two conductors; UNHCR and the Thai government. It is necessary to take into consideration that UNHCR functions only by merit of permission granted by the Thai government. All practices must be notified to and approved by the Thai government.

3) By using international standards of practices provided by the UNHCR, it is possible to investigate each element according to standard criteria. It can be seen that RSD practices are not consistent in several areas: first, not all asylum seekers get access to the determination process, which defeats the purpose of having RSD procedures. Second, groups of asylum seekers and refugees are treated differently by various authorities. Since it is the state's responsibility to conduct fair and effective RSD, this research concludes that the quality of RSD conducted in Thailand is low and inefficient.

4) Thailand should own domestic refugee laws that aligned with refugee convention and international laws. Furthermore, those domestic refugee laws should be political independent. Thailand should also continue working closely with UNHCR. Those are to ensure that potential refugees will get access to RSD determination, not being discriminated by the authorities, and gaining all safeguards and guarantees they are entitled to.

5) In light of the ineffectiveness of the current RSD system, earlier this year, the Thai cabinet approved a finalized proposal on a comprehensive screening

mechanism for undocumented immigrants, asylum seekers and refugees, which will pave the way for a standardized RSD system. Therefore, the new system could create more effective RSD procedures by incorporating all existing standards, safeguards, and guarantees for all asylum seekers. Potential refugees will have a higher chance of gaining recognition, or, at minimum, being included in protection mechanisms by the Thai authorities. However, a year has passed with no progression. In this regard, in the future, close scrutiny must be maintained to see if positive practices will be implemented.



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The image features a large, faint watermark of the Thammasat University seal in the background. The seal is circular and contains the university's name in Thai script at the top and 'THAMMASAT UNIVERSITY' in English at the bottom. In the center of the seal is a traditional Thai symbol, the 'Phra Prang' or 'Phra Prang' (a stylized lotus flower with a crown on top).

APPENDICES

APPENDIX A

Lawyer Interview Transcript: Kohnwilai Teppunkoonngam (Urban Refugee Setting) July 28, 2017

1. How long have you involved with RSD in Thailand?

About 3 years with 6 cases. Because I am an individual defense lawyer, among half of them are weak cases which involved vulnerable asylum seekers.

2. Is there a standard set of RSD procedures in Thailand?

By UNHCR

3. What is your experience with the RSD regime in Thailand?

The regime is not a sustainable system. That is partly due to that Thailand is not signatory to refugee convention and its protocol. Furthermore, Thailand does not have any domestic law of structure that deal specifically with Refugee Status Determination, and refugee in general, which left to UNHCR to operate the procedure. Of that being said, the aspect of authority is often conflicted between the Thai government and UNHCR. Trust issue has become the predominant factor that prevent UNHCR to fully operate RSD in Thailand.

The lack of domestic law also reflects the paranoid over the security of the state which effect the performance of UNHCR. In term of RSD interview conducted by UNHCR, there should have been a judicial review setup carried out by the judicial court from the state authority. That would enhance the transparency of the process. While UNHCR itself handling both the interview and appeal procedure, it somehow contradicted with the first instance regulation which that the appeal process should be independent from any agent involved in the first instance interview. In simply, even the asylum seekers gets different interviewee during the appeal stage, anyhow, at the end of the day the only agent, which is UNHCR, is singly proceed the review.

4. How consistently is the RSD system being conducted?

In term of the application RSD form, UNHCR has been consistently adhere themselves to it. However, there are ambiguous actions that determine the consistency as for a whole system. First, the time in making the decision from the interview to determining refugee status. When the number of case was not overloaded, it was good enough but now the period of waiting could be up to 3 years.

Another aspect is that UNHCR has no full authority to conduct the RSD to every asylum seekers. Not all ethnicity of asylum seekers get the access to RSD. For example, Lao Mongs and Rohingyas are not qualified as asylum seekers from the Thai government perspective. Thai authority sees the place of origin is safe, hence there is no reason to flee or seek asylum anymore. For Rohingyas, only those who found to be the victim of human traffickers are qualified to get resettle in the third countries. There seem to be an ambiguous way to handle the regime that it tend to rather be as 'piece meal,' or 'ad hoc'.

5. What are the strengths and weakness of RSD in Thailand?

Weakness would be the mistrust between key actors; UNHCR and the Thai government. The mistrust has led to unsustainable RSD system, poor in standardization, and question of procedural right and transparency in case reviews.

As in the timely basis, UNHCR is in charge of RSD conducting, the main strength is that it has its own expertise which accord to the Refugee Convention and mandate. On the other hand, Thai government does not own any criteria of RSD procedure which that could be a struggle to take over the process at this period of time. There would have to have a procedural structure, such as the definition of who qualify as being refugee, first before proceeding RSD.

6. What are the issues faced by asylum seekers coming to Thailand?

In case of vulnerable asylum seekers, which include; victim of human traffickers and mentally unstable person, children, and unaccompanied children, there is no proper procedure that support their disability. One aspect that should be complimentary to the process is the guarantee of the 3rd person who they trust and

feel comfortable with to be sitting in while having RSD interview (not representing as lawyer).

Case example is an asylum seeker from Afghanistan. She got rejected during the first instance and I had assisted her with appeal process. Her condition is obviously fall into vulnerable person with the evidence of medical proof that she has been struggling with mental instability. She told me that during the first instance she already had inform of her condition to the RSD officer. However, the appeal was successful as the case was stronger with more concrete evidence of medical records. Another case is an asylum seeker from Ethiopia. She experienced abusive actions from her employer. She also has mental instability and was trying to commit suicide. I assisted her with file appeal process which now the process has not yet begun as I know of.

From the two cases, I see that there should be a multidisciplinary applied to vulnerable asylum seekers since the first instance of the RSD interview, especially having the 3rd person in the interview room with them. In UNHCR manual, there is a mentioned of persons of disability, but it is still vague. However, last year (2016) UNHCR has produced the recommendation paper that address the multidisciplinary actions. One is the aspect of relaxation in proving the evidence of qualification to be refugee.

In term of protection, sometimes vulnerable asylum seekers have no sufficient evidence of proof. Some refugee organizations provide legal consultancy. For example, JRS has psych social unit that issue document recommendation to asylum seekers who has mental illness. Nonetheless, I still see that it should be judicial court who do the reviews instead of the same agent of UNHCR.

7. What are the tactics do you use to gain favorable decisions?

It should be noted that not all asylum seekers is educated hence some of them might not be as quick-witted. In term of the tactics I use, it would depend on case by case. As a defense lawyer, I try to find the weakness in each case by identifying what point should clarify to be clearer. To make the points stronger, more explanation and evidence must be provided.

I do believe that telling stories in sequence is the key to gain favorable decisions. The components such as time, actors, and actions would put the weight to asylum seekers's stories. It is important to put it in order as it will allow the interviewer to understand the story easier. Another thing I always told my clients is to ensure they understand what the questions mean before they answer. They have the right to ask the interviewers to repeat the questions if they are unsure about them. I would also advise them to observe the body language and ability of the interpreters. As interpreters are the crucial factor in gaining favorable decision; this is to ensure that the interpreters is qualify and able to translate accurately. Asylum seekers have a right to request new interpreters if they see their interpreter is not performing well. Nonetheless, interpreter is limited in numbers; also requesting new interpreter risks re-scheduling the interview. So, I would suggest the asylum seekers to request a new interpreter as in necessarily circumstances only.

8. Do you have any concerns about the RSD system as a whole?

The predominant concern is the lack of judicial court to review to case. As already mentioned, it is important to have an independent body to judge the cases as to avoid biases. Moreover, the criteria to support vulnerable asylum seekers during the first instance should be in place as soon as possible. Last but not least, RSD system should become more sustainable by enhancing these aspects;

I. Specialization of RSD procedure — to have clear criteria of RSD process for the key actors to adhere to. That would result in standardize the process and having transparency status determination procedure.

II. Thailand to ratify to 1951 refugee convention and its related protocol — to determine who is qualify as refugee in accordance to international refugee mandates. Ultimately, Thailand to legalize the RSD system.

III. Increase the number of Thai Lawyers — Thai lawyers have better understand with Thai domestic laws hence could interpret domestic laws better than foreign lawyers.

IV. Capacity building to any involved actors such as institutions, Thai government, United Nations staffs, and civil society organizations — training session should be provided regularly to enhance RSD knowledge to related stakeholders.

9. What is your view of the procedural standards and safeguard elements in the system?

Procedural standards:

1. Access to asylum determination — there is still a limitation for asylum seekers to access to RSD procedure; Lao Hmongs and Rohingya for examples.

2. Specialized authority with single examination — UN specialized in operating RSD. However, Judicial review should be in place as it is in accordance to fair trial of ICCPR. Furthermore, refugee lawyer affirmative should the interviewers as the decision making require intensive law knowledge background

Procedural safeguard and guarantee:

1. Right to access information; including reasons for rejection, report of personal interview, and other information on file — There is no complain of inability to access to important files as of my clients by far. UNHCR provides the letter of rejection without having to ask for.

2. Right to legal assistance and representation — an Afghanistan asylum seeker complained that UN provided interpreter that speak the language but because of the different accent has made the asylum seekers struggling with the context. Furthermore, vulnerable asylum seekers should have trustee person sitting in during the first interview. The multidisciplinary should also put in place as soon as possible.

APPENDIX B

Lawyer Interview Transcript: Megan McDonough

(Urban Refugee Setting)

November 14, 2017

1. How long have you involved with RSD in Thailand?

I've been working in Thailand since October 2016. So it is about a year and a half

2. Is there a standard set of RSD procedures in Thailand?

Only the RSD standard set by UNHCR

3. What is your experience with the RSD regime in Thailand?

The regime is facilitated by UNHCR. The situation in camp situation is more of a group processing. Meanwhile the urban is individual interviews. Part of my job is to work in counter-balancing to the UNHCR. So, we are helping them in their decision making by representing the clients, by presenting the case clearly which including the appeal process. So it is to facilitating while holding the process the accountability by making sure that they are following their own standards and international legal standards.

4. How consistently is the RSD system being conducted?

They are mostly with their own standards already.

5. What are the strengths and weakness of RSD in Thailand?

Weakness are that UNHCR has a little power on the issue of sovereignty for example, Visa and legalizing the documents. So even the UNHCR recognized the status for urban refugees that has not fully recognized in Thailand. They are still illegal migrants and can be arrested at any time.

On the strengths, the management of the case flow is good.

6. What are the issues faced by asylum seekers coming to Thailand?

The major issue is about understanding the legal standards. So, you have right to availability to legal representative. It is not the automatic rights, but it is the matter of if you have that access. In especially, the literacy and person with

sensibility and vulnerability that they can have the difficult time understanding the procedure if they do not have someone representing them. The process itself is supposed to be easy enough for clients to go through without assistance which is why the automatic lawyer isn't attached. It is the accessibility to the lawyers that is the issue which they are very few. So, a lot of cases that might need lawyers do not have access.

7. What are the tactics do you use to gain favorable decisions?

First instance, appeal, and re-opening; in first instance is much on the individual telling story clearly and concisely. So, we are preparing the statements where we interview the clients for hours. We then write out the statement and read back to them. So it helps guide the UNHCR process as well as support the country of origin information that, such as general reports and testimonial data, the support their cases.

For the appeal is much more about legal error. So, we review the case for strengths and merits to see if they are meeting the standards. As well, we review what mistakes the UNHCR may have made during the process; no matter the procedural itself, the way they interview someone or interpreter issues, legal errors if they applied to legal standards, to see if how we can help the clients argue the decision.

The re-opening is on change of circumstances and new evidences. So we need really new compelling evidences such as the situation of the country of origin. For example, the civil war has begun, and certain laws have been passed and changed the persons dissidents

8. Do you have any concerns about the RSD system as a whole?

There is always room for an improvement. Each case should be treated independently. Sometimes we see the height of the standards that the individuals have to prove too much of their case or UNHCR has been too strict on the interview. We also see the issue of problem in accessibility to registration. Some nationalities are restricted to the access to the procedure due to the external political issues.

9. What is your your view of the procedural standards and safeguard elements in the system?

Procedural standards

1. Access to asylum determination (non-refoulement principle)

From the legal advocacy perspective, I couldn't say there is a positive perspective of this. But good thing is that the government allows the determination process to happen because the Thai government allows the UNHCR to practice and it is important that someone can carry of this practice. UNHCR and the government have some certain agreements regarding the restriction on accessing

2. Specialized authority with single examination

UNHCR carries the RSD procedure. There are no domestic rights for refugees in Thailand. The UNHCR in term of facilitating by the international laws. They are implementing international protections such as rights of the child and human rights law. However, they are not including the domestic laws because there is no domestic laws. In this case, there have been an inclusion where the laws that the Thai government are signatory to such as the non-refoulment principle that Thailand cannot deport anyone who fear the prosecution from their origin countries.

Procedural safeguard and guarantee

1. Right to access information; including reasons for rejection, report of personal interview, and other information on file.

So everyone who is rejected get the personalized of the reasons why they get rejected. In regard to access to files, UNHCR will provide the interview transcripts to legal representatives but will not provide to the clients. The documents that would provide to the clients are the documents that they are submitted to UNHCR themselves. They will not provide any internally created to the clients and asylum seekers. Legal representatives have to right to request for the reviews. The internal files, for example, are like the evaluation of the case and the files that the interview. In the procedure standards, the applicants can ask the officer to read back the transcript, but I've never seen that happened in practices. Generally, if the applicants asked for then the officer will just summarize the transcript for the applicants.

2. Right to Confidential policy

The guideline said that it is acceptable for UNHCR to provide the basic information to the government, such the case status. The personal detail about cases, I've never seen it happened also I would not know. However, it has not came up as an issue to me.

3. Right to legal assistance and representation

In practice, the legal representative allowed to sit in with the asylum seekers during the interview. However, it is not automatically. You will have to inform the request ahead of time and the UNHCR can decline the request. In the case of vulnerable people, the legal assistance is there to observe, and they should keep their rejection to the minimum. At the end of the interview, UNHCR will give the legal representative the opportunity to make a statement on behalf of the clients, for example the written of submission after the interview. Right to the translator, the applicant has the right to request the new interpreter or where the conflicts of interests happens on the merit.

The number of RSD Lawyers in Bangkok, the numbers are less than ten of us. On given the amount of asylum seekers and refugees in Thailand 6000-10,000, so you can do the math. In our office; including volunteers and staffs' lawyers give the training to the community. The training and representation are very different. For those who have no legal education, it is hard to understand the complexity of the law in order to represent themselves. We definitely then have to swift from representing to training for providing much more basic understanding of law language of procedure.

4. Right to appeal procedure

Here in Bangkok context, you have a absolute minimum of law require for 30 days to appeal. The rejection letter is issued in English language only. There is no assistance automatic for someone is literate, the letter is not read or explain to the client from the UNHCR. So yes, they do have the right to appeal. However, if that access is really sort of accessible from a legal standpoint, that is arguable. In order to appeal, for instance, I (as a literate person) has to understand the language. Then I will have to find a person who can read and translate the

language to me because I don't understand English. Then I have to understand the way to appeal and how to argue that its wrong. I have to be able to write in the way that it makes sense and clear. The way it works is that the UNHCR will explain to you with the interpreter that you have 30 days along with procedural things. But they will not review the letter with you. They don't read and clarify it to you, only the appeal process that being explained.

Our office will translate the rejection letter. And if the applicants cannot read, we will explain to them. This is the training program we have, appeal group and individual training where we meet with people with the writing workshop. We'll need one on one for those who want us the explain the reasons of rejection and to give them advices on how to focus on the important points to their cases. Right now, with the slowdown in cases, we are screening the case which we want to assist them or not.

In over all, the issue of transparency is a big problem in regard to access to file and UNHCR decision making. As well as the higher-level basis, such as the reason to not register to certain nationalities. Transparency as a whole is a very important.

To me, it is less about UNHCR, but the system itself that exist. The system has not changed since 1951, there are a lot going on from 70 years ago. The point is the credibility of how the applicants can tell the convincing story. The whole system is really fraud which I would like to see the reform regarding the refugee law requirements and how we made the decision about these things. Again, in refugee laws, the requirement standards in requiring who are refugees is so different now in regard to how conflict happened. The system has to be refreshed and I think UNHCR could do things a lot better. However, the system itself that is really fraud and very need of the reform

BIOGRAPHY

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