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Yonradee Wangcharoenpaisan

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Yonradee Wangcharoenpaisan

Thammasat Institute of Area Studies, Thammasat University
99 Moo 18 Khlongnueng Sub District, Khlong Luang District,
Pathum Thani, 12121, Thailand

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For more information, please contact Academic Support Unit, Thammasat Institute of Area Studies (TIARA), Patumthani, Thailand

Telephone: +02 696 6605

Fax: + 66 2 564-2849

Email: academic.tiara@gmail.com

Language Editors: Mr Mohammad Zaidul Anwar Bin Haji Mohamad Kasim
Ms. Thanyawee Chuanchuen

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Ms. Yonradee Wangcharoenpaisan, Email: Nookyon@gmail.com
Or Academic Support Unit (ASU), Thammasat Institute of Area Studies, Thammasat University

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*

1. Introduction

Most scholars agree that refugees are entitled to international protection mechanism. Moral obligation is within international refugee laws that states have a duty to adhere themselves to. Ironically, those countries that do not acceded to 1951 refugee convention and its related protocol seems to have a difficult time to fully relate themselves to the ideal of providing protection to refugees. One explanation could be that because the refugee status is not yet recognized by states which makes the rights to refugee unrelated. In that regard, the question of what should come first of the rights or the status of refugee may arise. 'Persons recognized by a country's asylum authorities as refugees under the 1951 Convention/1967 Protocol are normally considered by UNHCR as coming within its international protection mandate' (UNHCR, 2005). In short, the protection regime would be fully functioning when the governments granted refugee status to those who seek refuge. This work acknowledges the prominence of refugee status as it paves the way to protection mechanism for refugees afterward. This work aims to explore on the refugee status determination regime in Thailand. It further examining what level Thailand adhere its practices to international standards by focusing on the two key conductors; the Thai government and the UNHCR. The main purpose is to determine how effective of RSD procedure is being conducted in Thailand by measuring with the core values of Refugee Status Determination (RSD) set forth by the United Nations High Commissioner of Refugees (UNHCR).

The author sees that the outcome of this study will contribute to the further study of RSD scholarly scrutiny that others expressed the necessity to develop one (Saltsman, 2014). This paper also contributes itself as one of the useful sources in finding answers to lingering questions such; how protection mechanism toward asylum seekers could be enhanced and What other ways to handle the RSD effectively without the breakouts between key stakeholders. Given the situation where Thailand RSD practices data is extremely limited both term of official publications and academic articles.

2. Methodology

This work focuses on the fact findings and analysis by using primary and secondary data. The qualitative study will cover both administrative structure and the practices that being carried out by different actors such as Thai Government, local authorities, and UNHCR. That includes the exploratory of Thai regulations and its practice related to asylum seekers. The sources will be gathered through any publishing of RSD process related materials such as government official reports, country reports, and documentary review from institutions and IROs. The collection of the data will be framed from 1990 till present time, considering that the trend of RSD practices might be different through each Thai governments throughout the period. At the same time, the reasons and motivations behind the practices, through the exploration of power relationships among actors, are emphasized on as well, as it justifies how the policies and regulations are being translated into actions (Hamlin, 2012; Saltman, 2014). The collection of information would reflect how Thailand response to the situations.

The second method that will be used is the informative seek out from RSD lawyers (informal interview). This method aims to gather to most recent RSD practices in Thailand. However, the number of RSD lawyer in Thailand is less than ten. The researcher had initially contacted four through personal connection. At the end, only two were available to do informal interview.

<u>Name</u>	<u>Organization</u>
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 been involving with RSD in Thailand?
- 2) Is there RSD procedure or regime existing in Thailand?
- 3) How is your experience with the RSD regime in Thailand?

- 4) How consistent of the regime being conducted?
- 5) What are the strengths and weakness of the RSD practiced in Thailand?
- 6) What are the prominent issues that asylum seekers faced?
- 7) What are the tactics you use to gain favorable decisions?
- 8) Are there any concerns about the RSD system as a whole?
- 9) The Procedural standards and safeguards elements

3. Literature Review

It is noteworthy to mention that there is limited in number of literature done on the RSD procedure in Thailand. One of the reasons is due to the sensitivity of the information sharing between UNHCR and the Thai government in regarding sovereignty, national security, and foreign affairs issues (i.e., Thai-Burmese relations) (Muntarbhorn, 2003). Not only that the information would be heavily confined but also that the most up-to-date data is severely lacking. Nonetheless, the literature review focuses on three themes; the factor affected RSD system in states, the RSD operation in Thailand, and the element of effectiveness in RSD Procedure.

First part of the review explores what factors potentially affect the refugee status determination system in states. It is important to take a step back and look at the big picture of how RSD originated before determining how effective it is. There are three main concerned aspects that influence domestic refugee policy which are; perception on refugees, national security, and International relations (Jacobsen, 1996). They are rather inter-related influencing each other in a complex way.

Second part of the review aims to observe the RSD operation in Thailand. Muntarbhorn (2003) discovered that that there was a non-consistency in interpreting the definition of refugee; particularly to Burmese Refugees. The criterion was falling short of who is qualified as refugees; between those who effected 'directly from the armed conflict event' or 'consequence of armed conflict.' Consequently, many of those who should be screening in have been left behind and deported back to Burma which that violating the non-refoulment principle. In his work, he stated

that 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 sense of RSD operation in Thailand, Alexander emphasizes on the details of RSD elements that she argues ineffectively carried out by UNHCR. She believes that because UNHCR doesn't provide 'a clear RSD guidelines', the practice of it then consequently inconsistent within UNHCR itself, resulting, somehow, in ineffective RSD operation coordinating with the governments (Alexander, 1999; Pacifico, 2013) She explores the RSD elements that conducted in Thailand, declaring that there is needed of more transparency and openness in enhancing fair hearing procedures.

The third section looks at elements of effectiveness in RSD procedure. Since, the research question concerns the elements of RSD effectiveness, the reason of justification to draw elements from UNHCR are mainly three; first the organization has been conducting RSD procedure for over fifty countries, which in additional of twenty countries it conducted jointly with the government. That reason has also made UNHCR being the second world largest of RSD body. Most importantly, Thailand has been embracing UNHCR's assistance since 1975. In that sense, Thailand has recognized the legitimacy of UNHCR's RSD standards of procedural. The core elements model is adopted from 'The Handbook on Procedures and Criteria for Determining Refugee Status' (UNHCR, 2003) and 'The Self-Study Module on Refugee Status Determination' (UNHCR, 2005).

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

Mathew sees that, 'due process and procedural fairness' are state's duty ordained directly from Human Rights law (Mathew, 2010). Chetail emphasizes on one of the prominent elements that indicates right procedural which is the time-appropriate on granting refugee status that it must not be 'unreasonable delay' (as cited in Mathew, 2010; Goodwin-Gill, 1983; UNHCR, 2005). Mathew, 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 thus carries with it a requirement for granting refugee status without unreasonable delay (Mathew, 2010).

However, the literature reflects that there is certainly a gap of knowledge in RSD practices, especially in Thailand. There are numerous of refugee protection articles but severely limited on RSD which the existed documents are mostly outdated. The measurement of effectiveness of RSD being practices, by both conductors; the Thai government and the UNHCR, have never been inclusively examined before.

4. Findings and Analysis

As Thailand does not own any domestic legal framework in conducting RSD, the refugee status then does not get fully recognized in Thailand. In that regard, Thailand has invited UNHCR into State in 1975, when Thailand realized it was beyond its capability to conduct RSD to mass influx of Indochinese refugees. Furthermore, asylum seeker and Refugee in Thailand can be categorized into two broad groups. First, 'Camp asylum seeker and refugee' which the Thai government took absolute authority in screening in refugees into temporarily shelters along the borders. Second, 'Urban asylum seeker and refugee' which UNHCR conduct RSD for those who made their way into urban areas expressing the will to file for refugee claims.

Procedural Standards:

I. Access to asylum determination

This is the initial step to ensure that genuine refugees get the opportunity to obtain their status which pave the way to further international protections as well as finding them the durable solution.

II. Specialized authority with single examination

To achieve the best quality of RSD, it is necessary to have single RSD expertise unit who determine refugee status. Single examination means all forms of rights is included during the process. Specialized authority with single examination will enhance the efficiency in term of status decision-making.

<u>Procedural Standards</u>	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.	- 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

Source: Author's own analysis

Procedural Safeguards and Guarantees:

I. Right to access information

The written reports provide the concrete evidence for asylum seekers and refugees to refer to their own case data

II. Right to Confidential policy

The confidential policy concerns the life security of asylum seekers and refugees. Their information should not be shared with the origin countries or outside sources in purposely to prevent asylum seekers facing the previous or future fear of persecution.

III. Right to legal assistance and representation

Right to legal assistance is recognized as a cornerstone in protection safeguard. As in reality, the RSD procedure itself is complicated and not easily to understand. Quality legal assistance and representation is a tool that helps asylum seekers be more prepare with the procedure, especially during RSD interviews.

IV. Right to appeal procedure

The appear procedure give asylum seekers the second chance to challenge the negative decision (only when there is new evidence of proof). The RSD officer can mistakenly made the decision. The right to appeal is a way to reaffirm the rejection of refugee status that it is made concisely.

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

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

Source: Author's own analysis

5. Conclusion

Upon the completion of this research in answering the question of 'How effective Refugee Status Determination procedure conducted in Thailand is', the author has learned the following significant knowledge which has led to answer the question:

- 1) The category of refugees in Thailand can be categorized into two: Urban and Camp refugees. The Thai government allows UNHCR to conduct RSD for urban refugees. Meanwhile, refugee camps are fully under the Thai government authority to carry screening-in process. Despite the lack of national framework on RSD, the government attempts to adhere itself to international standards of practices.

- 2) The effectiveness of RSD practices in Thailand is examined through two conductors; UNHCR and the Thai government. It is necessary to take into consideration that UNHCR exists on the merit of permission granted by the Thai government. Any practices must be notified and approved by the Thai government.

- 3) By using international standards of practices provided by UNHCR, it is possible to investigate each element accordingly to perspective preferred. As concluding, it could be seen that the RSD practices are not consistent regarding; first, not all asylum seekers get access to the determination process which it is the purpose of having RSD procedure at the first place. Second, different groups of asylum seekers and refugees get treated differently by different authorities. Since it is State responsibility to conduct fair and efficient RSD, this research concludes that the level of effectiveness of RSD conducted in Thailand is low and inefficient.

- 4) Notwithstanding, in the light of ineffectiveness of current RSD system, earlier this year, the Thai cabinet approved the proposal to be finalized on comprehensive screening mechanism for undocumented immigrants, asylum seekers and refugees, which will pave the way to standardize RSD system. Therefore, that could create more effective RSD procedures by incorporate all the procedure standards, safeguards, and guarantees to all asylum seekers. The potential refugees have more chances to get recognized or at minimum will be included in protection mechanism by the Thai authority. In that regard, the future observation must be kept in close attention to see if positive practices will be implementing.

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Author's Profile

Name Miss Yonradee Wangcharoenpaisan

Date of Birth June 2, 1993

Educational Attainment

- 2016 – Present: Master of Arts in Asia Pacific Studies, College of Interdisciplinary Studies, Thammasat University, Bangkok
- 2011 – 2016: Bachelor of British and American Studies, Faculty of Liberal Arts, Thammasat University, Bangkok

Scholarship and Awards

- 2016 - 2017: Thammasat University Scholarship Recipient (full-scholarship) - Master of Arts in Asia Pacific Studies, College of Interdisciplinary Studies, Thammasat University, Bangkok
- 2014 - 2015: Thammasat University Exchange Student Program, ISEP Program – San Diego State University
- 2009: Oversea Compatriot Affairs Commission (OCAC)– ‘Expatriate Youth Taiwan Study Tour’

Work Experiences

- Present: Winrock International (Logistic and Event Assistant)
- 2016: Asia Pacific Refugee Rights Network (APRRN) (Internship Program)
- 2014: Immigration Department, Resettlement Program at International Rescue Committee (IRC), San Diego, California, United States (Citizenship Tutor)
- 2013: Marketing Department at Luxasia Siam Co.,Ltd. (Internship Program)

