

# Policy Discourse Analysis of Thailand's National Screening Mechanism and Shifting Refugee Policies

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**Abstract**—This research delves into the political dynamics surrounding Thailand's recent policy developments, particularly the introduction of a National Screening Mechanism (NSM) in late 2022. The NSM is designed to assess the status and eligibility of individuals unable to return to their country of origin, signaling a significant shift in Thailand's approach to asylum seekers. Methodologically, the research adopts a qualitative approach, focusing on policy discourse analysis. This study analysis reveals key terms, emphasizing the central role of a committee in evaluating individuals' status. The study examines the decision-making process, illustrating the committee's pivotal role and potential subjective errors in refugee recognition. The study delves into the ideological dimension, exploring how Thailand's historical experiences, military, and international collaborations shape its policies. The NSM, considered a balance of power, reflects a compromise approach amid ideological shifts.

**Keywords**—national screening mechanism, refugee, status determination, Thailand, ideology

## I. INTRODUCTION

In late 2022, the government of Thailand introduced a so-called National Screening Mechanism (NSM) for people “who came to Thailand and are unable to return to their country of origin” marking a significant development in its approach to so-called aliens who are unable to return to their country of origin. This screening mechanism is designed to assess the status and eligibility of “protected persons” seeking asylum or refuge in Thailand. The NSM was established under the Prime Minister's Office Regulation on the Screening of Aliens Entering into the Kingdom and Unable to Return to their Country of Origin (B.E. 2562). This regulation was enacted on December 24, 2019, following the Thai Cabinet's approval of a proposal to finalize and implement such a mechanism in January 2017 [1].

This overdue development arose from a longstanding complex relationship between Thailand and the refugee issue. Historically, Thailand did not allow the UN Refugee Agency (UNHCR) to conduct refugee determination screening for asylum seekers from Myanmar (Burma), Laos, or North Korea. UNHCR is permitted to issue “Persons of Concern” certificates to other refugees, but these certificates provide no employment authorization and little protection when police confront certificate holders on the street or in their homes [2]. Nevertheless, Myanmar refugees made up approximately 91,000 as of June 2023, according to UNHCR. The majority of these refugees are ethnic minorities from Myanmar, mainly Karen and Karenni, who reside in nine camps across four provinces along the Thai-Myanmar border [3].

For years, civil society organizations in Thailand have persistently called attention to the issue of acknowledging

refugees and asylum seekers. Thailand has grappled with administrative hurdles, such as issues pertaining to transnational repression, the forceful return of individuals (refoulement), and the detainment of refugees, thereby casting doubt on its commitment to upholding the rights of those forced to migrate. The recent establishment of a national screening mechanism marks a potential turning point in enhancing policies for refugees and asylum seekers. Nonetheless, the scrutiny surrounding the refugee question doesn't stop there. The National Screening Mechanism (NSM) has faced criticism from human rights advocacy groups, who deem it to be exclusive and lacking in transparency.

Against this backdrop, the NSM's emergence signifies a potential turning point. This paper looks into these concerns, examining how the Thai government's discourse surrounding refugees shapes its protection and recognition practices, particularly in light of the NSM's planned implementation. Here in this term paper, we use the words refugees and asylum seekers both to denote that under the international law they need protection by recognizing their status of having a well-founded fear of persecution and thus, the subsequent search for recognition and protection by these people.

Policy changes are triggered by key figures or economic reasons. The process of how to debate and resolve policies is presented through discourse [4]. Discourse involves processes such as ideology, value orientation, thinking concepts, knowledge production, and dissemination, and is therefore regarded by many researchers as an important explanation basis for policy changes.

## II. METHODOLOGY AND RESEARCH DESIGN

This research adopts a qualitative methodology, with a specific focus on policy discourse analysis. The analytical framework of this paper, is built upon the critical discourse analysis tri-dimensional framework of “the text dimension, the discursive dimension, the social practice dimension” by the renowned social linguist Norman Fairclough as shown in Fig. 1.

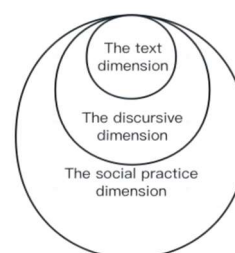


Fig. 1. Discourse analysis framework.

It is designed to analyze policy changes through the lens of “Policy Context-Policy Discourse-Policy Effects”. In this analytical framework, Foucault examines the influence of discourse in social change through the relationships among text, culture, and society. It can be said that Foucault’s discourse analysis framework provides some insightful references for studying the evolution of discourse in Thailand’s refugee policies. However, directly applying his research model, especially in the context of Thailand’s cultural background and complex policy landscape, has certain limitations. Therefore, by delving into the specificities of Thai policy changes, cultural dynamics, and taking into account the formulation and evolution of refugee policies, adjustments were made to propose the “Policy Discourse – Policy Practice – Policy Effects” analytical framework as shown in Fig. 2.

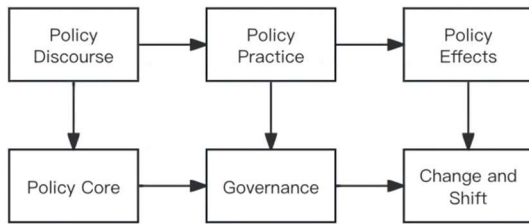


Fig. 2. Analytical framework of this study.

The primary data will be derived from the policy document titled “On the Screening of Aliens who Enter into the Kingdom and are Unable to Return to the Country of Origin B.E. 2562”. Thorough document analysis will be conducted to extract the discourse related to refugee policies.

Through the text of Thailand’s policy on refugees, we will explain the formulation, attention, and inherent laws of the policy, and explore in depth the evolution of the policy and the transformation of the relationship between ideology and power.



Fig. 3. Words cloud.

### III. NSM DISCOURSE ANALYSIS

#### A. Unveiling Key Terms in NSM

For the study ‘On the Screening of Aliens who Enter into the Kingdom and are Unable to Return to the Country of Origin B.E. 2562’, we conducted a detailed analysis,

resulting in Fig. 3 and Frequency Distribution Table 1. These two elements reflect the evolution of key terms and the distribution of attention during the policy changes.

Table 1. Distribution of Keywords

Rank	Keywords	Percentage
1	Committee	3.16%
2	Protected person	2.26%
3	Alien	1.36%
4	Nation	1.07%
5	Status	0.95%
6	Screening	0.78%
7	Country	0.58%
8	Person	0.58%
9	Ministry	0.45%
10	Government	0.29%
11	Cabinet	0.29%
12	Application	0.29%
13	Prime minister	0.29%
14	National Security	0.25%
15	Immigration law	0.25%
16	Administration	0.21%
17	Governments	0.16%
18	Resolutions	0.16%

The official definition of ‘Refugee’ in Thailand has received a new interpretation. The process involves categorizations such as ‘Alien’, ‘Protected Person’, and ‘Person Under Screening’. The term ‘Committee’ is repeatedly mentioned, indicating that the committee plays a crucial role in evaluating the transformation of individuals’ status. The policy revolves around the committee’s judgments regarding identity conversion. Additionally, internal considerations such as ‘National Security’ and ‘Immigration Law’ have become integral aspects that must be taken into account within the policy. “Any person who is not of Thai nationality, and not having origin within the Kingdom” “Protected Person” means any alien who enters into or resides in the Kingdom and is unable or unwilling to return to his/her country of origin due to a reasonable ground that they would suffer danger due to persecution as determined by the Committee, and is granted status as a Protected Person under this Regulation. “Person under Screening” means any alien who has been determined that he/she is eligible to submit the request to be a Protected Person, and has submitted the request to be a Protected Person under this Regulation [5].

The term “refugee” is not acknowledged in Thai legislation. Consequently, the introduction of the new term “Protected Persons”, specifically devised for the National Security Measure (NSM), has led to some confusion within the refugee sector. The policy discourse highlights the alterations in the term “alien” throughout the entire process, providing legal rights with the new definition. However, the process lacks clear and definitive criteria for identification. The regulation is deficient in essential elements defining a “Protected Person”. It fails to stipulate the grounds for persecution, leaving the definition of a “Protected Person” ambiguous, indicating “persecution as determined by the “Committee”. Furthermore, the guidelines for status determination under the NSM Regulation lack clarity. Article 20 of the NSM Regulation grants unlimited authority to the committee and the cabinet to establish criteria, procedures, and conditions for determining the status of a protected person.

The term “committee” plays a pivotal role in the identification of individuals, with Fig. 4 outlining the main components of the committee. The NSM does not provide specific standards, and there is a lack of clear delineation for the Standard Operating Procedure (SOP) process. This inevitably introduces subjective judgment into the assessment, as there is no explicit definition provided.

THE STRUCTURE OF PROTECTED PERSON SCREENING COMMITTEES (REGULATION,ARTICLE 5)	
CHAIRPERSON POL.GEN.DAMRONGSAK KITTIPRAPAT	
VICE CHAIRPERSON,DEPUTY PERMANENT SECRETARY, MINISTRY OF INTERIOR,INTERNAL SECURITY AFFAIR BUREAU	
DELEGATE OF	
	EXPERTS
MINISTRY OF FOREIGN AFFAIRS	1.POL.LT.GEN TEERASAK CHUKITKUN
MINISTRY OF SOCIAL DEVELOPMENT HUMAN SECURITY	2.MR.NATTAWUT POTISARO
MINISTRY OF INTERIOR	3.MS.RATTIKUL CHANSURIYA
MINISTRY OF JUSTICE	4.MR.WATTANA CHOKSUKWANICH
MINISTRY OF LABOR	
NATIONAL INTELLIGENCE AGENCY	SECRETARIAT
OFFICE OF THE NATIONAL SECURITY COUNCIL	SUB-4 IMMIGRATION BUREAU
OFFICE OF THE ATTORNEY GENERAL	
SPECIAL BRANCH BUREAU	
IMMIGRATION BUREAU AS A SECRETARIAT	
DIRECTOR OF INTERNATIONAL AFFAIRS	
DEPUTY PERMANENT SECRETARY,MINISTRY OF SOCIAL DEVELOPMENT AND HUMAN SECURITY RIGHTS AND LIBERTIES PROTECTION	
DIRECTOR OF THE FOREIGN AFFAIRS,MINISTRY OF INTERIOR	
DIRECTOR-GENERAL,DEPARTMENT OF RIGHTS AND LIBERTIES PROTECTION	
DIRECTOR-GENERAL OF THE DEPARTMENT OF EMPLOYMENT	
DIRECTOR OF THE NATIONAL SECURITY DIVISION	
DIRECTOR-GENERAL,PROSECUTOR OF THE FOREIGN OFFICE	
DIRECTOR DEPARTMENT 1(NIA1)	
POL.LT.GEN THANAPON SRISOPHA	
POL.LT.GEN SOMPONG CHITDUANG	

Fig. 4. Components of the committee.

The Committee comprises no more than four experts appointed by the Commissioner-General of the Royal Thai Police based on their expertise and experience in human rights or other fields pertinent to the Committee’s duties and authorities. Committee members must not hold positions or receive salaries as civil workers, nor can they be personnel or employees of civil service, government authorities, state enterprises, or local administrative organizations. The exception to this rule includes lecturers in public universities who are eligible for membership in the Committee.

The NSM is regarded as a subordinate or delegated legislation or regulation. Its purpose at this level is to issue the process flow or to coordinate the collaboration between several agencies. The Regulation is governed by Administrative Act, B.E. 2534 (1991), which does not require Senate approval. According to the deregulation report from the Office of the Public Sector Development Commission [6], challenges and issues arise in the subordinate legal framework of Thailand, including discrepancies in details between the governing Act and its accompanying Regulation. The outdated nature of the Act poses practical enforcement challenges and may potentially neglect considerations for the best interests of the public. Domestic refugee policy is shaped by three primary factors: the perception of refugees, considerations of national security, and the dynamics of international relations [7]. National security constitutes a crucial component of refugee policy.

Historical experiences have instilled a common inclination

among states to prioritize internal peace. This becomes particularly pertinent when considering the movement of refugees fleeing violence in their home countries, especially when settlements are located near border areas close to their initial destinations [8]. The concerns center around the potential transmission of threats to host countries. Adding to the complexity, during the pandemic, the cross-border spread of the virus emerges as a significant health concern for the populations of countries receiving refugees.

In this context, the NSM Regulation, contradicting the Immigration Act, lacks differentiation between individuals seeking protected person status and other immigrants. This creates a potential challenge, as individuals undergoing screening who neglect to assert their protected person status may face legal consequences under immigration law or other relevant legislation. Notably, the NSM regulation leaves the specific meaning of “legal action” unspecified, contributing to uncertainties in its interpretation and implementation.

*B. Committee Decision-Making Process*

The process from NSM Chapter 2 can be summarized as depicted in Fig. 5, even though it is not officially recognized or sanctioned by the governing body, it is conducted within the framework outlined in Chapter 2 of regulation.

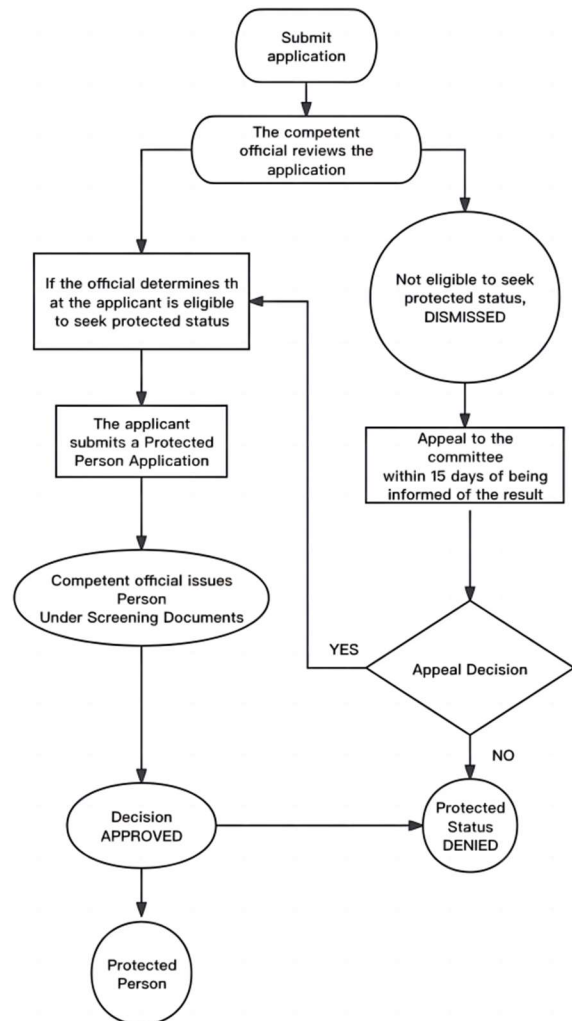


Fig. 5. Unofficial process.

The process is necessary to enhance transparency and fairness. This ensures that applicants receive fair and consistent treatment throughout the protected person recognition.

### *C. Analysis of Policy Impacts of the NSM*

For Thailand, the economic objectives of immigration policies are crucial, with the policy direction aimed at fostering domestic economic development. The Thai cabinet approved the creation of a National Screening Mechanism (NSM) to differentiate between economic migrants and individuals requiring international protection. However, there are no explicit criteria provided for the term “protected person” leaving it in an ambiguous state. The current process of interpretation and determination is carried out by a “committee”. When the issue escalates to the national security level, the committee’s rejection of otherwise qualified applicants based on “national security” may lead to arbitrary denial of refugee protection. Furthermore, the rejected applicants are unable to obtain any information regarding the decision and cannot participate in an appeals process. Questions also remain about who may be excluded from “protected persons” status and how exceptions relating to “national security” will be interpreted [9]. Analysis of the drafting history of the 2019 immigrant-screening regulation indicates that the Thai government deems “people fleeing fighting from Myanmar, Rohingya, Uyghur, and North Koreans” as populations having “special security issues” that may seriously impact Thailand’s “international relationships” [9]. The border security issues with neighboring countries serve as a primary basis for decision-making and assessment by the Thai government. Thailand’s national security objectives primarily focus on countering espionage, subversion, sabotage, and terrorism. The country lacks specific policies for evaluating the threat posed by foreign governments specifically to exiles or members of diasporas residing within its borders. Additionally, security agencies are not well-informed about the potential risks associated with transnational repression.

The external response to Thailand’s policies, particularly regarding the establishment of refugee policies, indicates that they do not meet international legal standards. There are also concerns and questioning regarding the criteria for rejecting identity recognition. The proposed mechanism has already come under criticism from human rights groups for failing to meet international standards. There are concerns that the government regulation that established the mechanism deliberately avoids commitments to international refugee law [9], and that the mechanism does not require officials to provide an explanation for rejecting an application [10].

The national security issues within Thailand serve as the primary basis for the committee’s decision-making, yet there is a lack of explicit standards and definitions for national security. According to the U.N. Commission on Human Rights, restrictions on rights based on national security are justified only when there is “force or a threat of force” against “the existence of the nation or its integrity or political independent” [11]. For the NSM to effectively function as a reliable means of protecting refugees, Thailand needs to guarantee that both the mechanism and its implementation align with international legal norms and standards.

The political system has undergone multiple transformations, including the alternation between military and civilian governments, resulting in the instability and uncertainty of policy formulation. While the committee’s form lacks explicit norms and standards, to some extent

collective decision-making reflects a balance of different interests and perspectives. Although Thailand has traditionally been a monarchy, the stability and nature of the regime may influence the way policies are formulated. The continual changes in the political system may lead to a lack of fixed standards and norms, rendering policy formulation more flexible and dependent on the political power dynamics of specific periods.

Burmese refugees may encounter heightened concerns and uncertainties as the legislation falling short of international standards may lead to restrictions on their right to asylum. This could expose them to increased security and human rights risks. Many Myanmar nationals in Thailand may meet the criteria for refugees as defined by international law, as they are unable or unwilling to return to Myanmar due to well-founded fears of persecution. However, the new regulations appear to exclude those who hold migrant-worker status in Thailand from accessing protection under the NSM. Given the problematic exclusionary clauses and the possibility of denying protection arbitrarily without an appeals process, Fortify Rights expressed in its letter to Prime Minister Prayut Chan-o-cha, “These concerns could result in the establishment of a National Screening Mechanism (NSM) that does not meet international human rights standards and may lead to the forced return or refoulement of refugees.”

Moreover, the government maintains a steady output of pamphlets and other publications to imbue this ideology into the minds of the Thai people [12]. In the NSM text, it is evident that Thailand’s standards for refugee policies differ from those of the UNHCR, and the expression of these standards is also vague. The recently introduced NSM, in contrast to the government’s previous neglectful attitude, can be seen as both a progression and a balance of power. Similar to the Thai elections, Move Forward party, which holds a liberal ideology, not winning the final election, the composition of the coalition government at the end of the game is a reasonable solution to move away from extremism and seek a balanced state. The transformation in this ideological shift makes it clear that, even after incorporating western democratic policy ideas, Thailand has opted for a compromise approach.

Thailand has experienced multiple coups throughout its history, some of which resulted in military rule. While the ideology of the government may be influenced during military rule periods, typically, military governments prioritize national security and political stability. Thailand has maintained relatively close relations with China, particularly in terms of economic and military cooperation. During periods of military rule, there have been notable collaborations between Thailand and China in economic and military domains, such as infrastructure investments and weapons deals. Thailand has expressed support for China’s Belt and Road Initiative, strengthening cooperation in infrastructure and trade.

Military governments may lean towards centralizing power to ensure political stability and national security. Decision-making is more centralized, with a few military leaders playing a significant role in the decision-making process. Civilian governments, on the other hand, tend to emphasize democratic values and international cooperation, maintaining balanced diplomatic relations with various

countries, including cooperation with western nations like the United States. Civilian governments often favor decentralization of power, highlighting democratic systems to ensure a more dispersed and transparent political power structure. The idea of “Nation” (Chat or Chat Banmuang in Thai), in the sense of a national political community, came to be frequently used in the 1880s by western-educated Thai intellectuals. Thailand, as a non-western country, has established a robust national ideology based on its political traditions, while also incorporating influences from Western liberalism. The country has an electoral system and a parliamentary structure. The official national ideology is explicitly outlined in the current constitution, stating that “No person shall exercise his constitutional rights and liberties in a manner adversely affecting the Nation, Religion, King, and Constitution.” The attitude of the Thai government is a dynamic issue, as it can be influenced by factors such as leadership, geopolitics, national interests, and other elements.

#### IV. REFUGEE SCREENING AND STATUS DETERMINATION

Jittiang [13] analyzed the evolution of Thailand’s refugee policy and practices in four periods, each corresponding to a major influx of refugees from different countries. The first period dealt with the refugees from China and Vietnam, who fled from the communist regimes in their countries. The second period involved the management of about 700,000 refugees from Cambodia, Laos, and Vietnam, who arrived in Thailand between the mid-1970s and the 1980s. The third period focused on the ethnic minorities from Myanmar, who escaped from the violent repression of the Myanmar Armed Forces in the mid-1980s. The fourth period started in the early 21st century, when Thailand faced new groups of refugees from various regions of refugees who settled in urban areas. Thailand’s refugee policy has not changed much since the first wave of refugees during the Cold War, when it used its discretion to manage refugees such as Kuomintang soldiers who opposed communism [14]. The anti-communist policy adopted by the Thai government during the Cold War manifested in both domestic and international politics. Domestically, the government suppressed movements associated with communism, curtailed political freedoms, and strengthened the power of the military and police. On the international front, Thailand actively participated in international efforts against communism, including supporting the United States and its allies during the Vietnam War.

A multilateral agreement that helped resettle many refugees, the 1989 Comprehensive Plan of Action (CPA), was signed by Thailand and other countries to cope with the second wave of boat refugees and some Khmer. It was the first time that refugee status determination was practiced, where refugees who were considered ‘genuine’ were resettled outside the region and those who were considered ‘non-genuine’ were forcibly repatriated [15].

The implementation and acceptance of CPA also revealed the prevailing Cold War-era concerns about communism among ASEAN states. Consequently, the inclination to deter specific refugees, particularly Vietnamese asylum seekers and refugees, many of whom were of ethnic Chinese descent, stemmed from the fear that such individuals might reinforce communist movements in each nation [16]. Thailand

followed this trend, as did other ASEAN states, enforcing resettlement to third countries through CPA and repatriation collaboration with the Vietnamese government. In the 1980s, Thailand underwent a series of political reforms, including some modifications to the electoral system, but the government remained dominated by the military. In 1988, protests erupted in Thailand, leading to political unrest. However, during this period, the Thai government continued to adhere to its fundamental anti-communist stance and maintained cooperation with anti-communist nations, including the United States.

The influx of Myanmar refugees since 1989 has posed a complex challenge for the Thai government, which has set up temporary shelters along the border with restricted mobility beyond the shelters for the refugees [13]. The Thai government permits UNHCR to conduct Refugee Screening Status (RSD) for urban refugees, while it retains the authority to screen refugees in the so-called temporary shelters [17].

Thailand doesn’t have clear rules for dealing with refugees, and its approach depends on the government in charge. They don’t use the term “refugee” in official documents and often use words like “displaced people” or “illegal entrants” instead. This might be to avoid being bound by international agreements on refugees that Thailand hasn’t signed. Since there’s no specific law for refugees, the main rule for foreigners coming to Thailand is the Immigration Act from 1979.

The Thai government’s approach to status determination for refugees has been inconsistent. In the Comprehensive Plan of Action (CPA) era, it excluded certain Cambodian refugees [18] and, under presumed political pressure and national security concerns, forcibly returned some Uyghur refugees to China in 2015 [13]. Given that Thailand’s ad hoc policy for status determination and the provision of humanitarian assistance is arbitrary, it is primarily influenced by the prevailing domestic politics at the time and, occasionally, the reputation-based foreign relations that the country seeks to portray. Refugee status determination policies and practices within the National Screening Mechanism may vary based on the country of origin and the perceived level of threat to national security. Civil society has raised concerns about these variations in the Thai government’s practices [19].

After going through a political transition due to a coup d’état in 2014, Thailand aims to project stability on the international stage. In 2016, General Prayuth Chan-o-cha, the leader of the Thai junta, expressed Thailand’s commitment to global humanitarian principles and increased support for refugees during the United Nations General Assembly [20]. This led to the creation of 10 pledges and the development of a national screening mechanism. However, the actual implementation faced delays due to the government’s actions, changes in domestic politics during the 2019 and 2023 elections, and the impact of the COVID-19 pandemic.

The official implementation of the National Screening Mechanism (NSM) in Thailand, scheduled for 2023 [21], has faced challenges. It has been somewhat overlooked amid the government transition after the 2023 election. The NSM’s progress has been affected by political events, including the four-month-long negotiation period to form a new government, hostage situations involving Thai citizens in the

Israel-Hamas war, a focus on pandemic recovery, and increased conflicts in Myanmar leading to a rise in refugees. However, the ideology behind the formation of NSM is that it emerged amidst growing international pressure on refugee issues. High-level meetings and global attention to refugees pushed Thai officials to develop the NSM, with hopes of improving their image and gaining international recognition. However, implementing the initial “victory” in practical terms presented difficulties. Bureaucrats from different agencies, who favored the current system, opposed the proposed changes.

This resulted in a less progressive NSM than originally envisioned, despite its eventual legal approval. In the end, external pressure drove the NSM’s creation, but internal resistance limited its potential.

## V. CONCLUSION

In the concluding remarks of this study, we conducted a thorough analysis of Thailand’s introduction of the National Screening Mechanism (NSM) in 2022, delving into its historical context, political dynamics, and potential ramifications of policy shifts. Employing the methodology of policy discourse analysis to scrutinize NSM documents, we underscored the pivotal role of the committee in assessing individual identities. The analysis revealed issues in the lack of clarity in defining terms such as “Protected Person” and “Refugee”, potentially leading to ambiguity in the identification process. We provided a detailed exposition of the committee’s internal decision-making process, emphasizing the lack of explicit, objective, and measurable criteria in refugee determination. This subjectivity may result in inconsistent decisions, raising concerns about transparency and fairness. Overall, the NSM is regarded as a manifestation of progress and power balance in Thailand’s political evolution. We highlighted challenges and criticisms surrounding the NSM, including concerns about its exclusivity, lack of transparency, and potential deviation from international standards. The influence of political dynamics, historical experiences, and global pressures on Thailand’s refugee policy underscored the complexity of the issue. In summary, the implementation of the NSM reflects the intricate interplay of ideology, power, and external influences in shaping Thailand’s attitude towards refugees and asylum seekers.

## CONFLICT OF INTEREST

The authors declare no conflict of interest.

## AUTHOR CONTRIBUTIONS

Conceptualization: Bing Pang; methodology: Bing Pang; formal analysis: Bing Pang and Kenneth V. Tling; data curation: Bing Pang; writing—original draft preparation: Bing Pang and Kenneth V. Tling; writing—review and editing: Bing Pang and Kenneth V. Tling; all authors have read and agreed to the published version of the manuscript.

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