

Incorporating Therapeutic Jurisprudence in New Zealand Refugee and Protection Status Determination: Possibilities and Constraints

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Abstract

Therapeutic jurisprudence theory has potential to reinvigorate the law, legal processes, and practices for ‘refugee and protection status determination’ (RSD) through focusing on health and well-being alongside ensuring due process, thoroughness, and integrity of the RSD system. Employing this theory informed by the transformative paradigm, I conducted a content analysis of New Zealand refugee law and interviewed 32 refugee claimants and key professionals working in RSD sector related to their experiences and perspectives about lodging an asylum application and appeal.

The analysis demonstrates that the refugee law in principle preserves fundamental procedural rights, thereby enabling a fair and transparent atmosphere for RSD, even though some aspects of the law bear significant potential to cause harm. I conclude that the law in theory establishes a favourable atmosphere for therapeutic jurisprudence aspirations in RSD.

I infer further (drawing from participants’ voices) that existing therapeutic and claimant-suited initiatives in RSD (although minimal) suggest that some individual RSD decision-makers and lawyers have seized the conducive atmosphere in the law (but not fully) to align practice to therapeutic justice.

However, participants’ accounts also indicate that the RSD system is compromised considerably by a number of factors including:

- procedural fairness and access to justice problems throughout,
- a ‘rubber-stamping’ warrant of commitment law for reviewing claimants’ detention,
- a culture of disbelief, and working detached from the claimants; and
- concerns about interviewing techniques by decision-makers and lawyers.

These shortcomings expose refugee claimants and, to some extent, RSD professionals to psychological and physical harm, and in some cases, reported significant trauma.

Through presenting Thompson’s (2016) work on anti-oppressive practice, I critique the RSD procedure as a nested system with structural through institutional to individual professional layers, and demonstrate how oppression can work within it. In response, I propose multi-level approaches informed by therapeutic jurisprudence that could provide more thorough and safer processes for RSD. This, I argue entails a holistic approach to improving RSD: involving law reform, full guarantee of procedural fairness and access to justice, creation of more claimant-suited processes by the RSD institutions; and adoption of more trauma-informed interviewing approaches and techniques by decision-makers and lawyers.

Dedication

I dedicate this thesis to all who seek international protection as refugees and all who work directly with them in this process that is inherently challenging for many.

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List of Acronyms

AINZ	Amnesty International New Zealand
AODTC	Alcohol and Other Drug Treatment Court
ARCC	Aotearoa Resettled Community Coalition
ASST	Asylum Seekers Support Trust
CAPRS	Centre for Asia Pacific Refugee Studies
CAT	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CEO	Chief Executive Officer
CF	Consent Form
EU	European Union
ICCPR	International Covenant on Civil and Political Rights
IDMC	Internal Displacement Monitoring Centre
INZ	Immigration New Zealand
IPT or the Tribunal	Immigration and Protection Tribunal, formerly the ‘Refugee Status Appeals Authority’ (RSAA)
J	Justice
KC	King’s Counsel
LGBTQIA+	Lesbian, gay, bisexual, transgender, queer or questioning, intersex, asexual, and more
MBIE	Ministry of Business Innovation and Employment
NZ	New Zealand
NZHRC	New Zealand Human Rights Commission
NZIS	New Zealand Immigration Service

NZRC	New Zealand Red Cross
NZRRS	New Zealand Refugee Resettlement Strategy
MRRC	Te Āhuru Mōwai o Aotearoa – Māngere Refugee Resettlement Centre (MRRC), formerly the Mangere Refugee Centre (MRC)
Mt	Mount
PIS	Participant Information Sheet
PTSD	Post-Traumatic Stress Disorder
QC	Queen’s Counsel
RANZCP	Royal Australian and New Zealand College of Psychiatrists
RASNZ	Refugee As Survivors New Zealand
RSD	Refugee and protection status determinations
RSU	Refugee Status Unit, formerly Refugee Status Branch (RSB)
The Act	Immigration Act 2009
The Refugee Convention	1951 Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees
TJ	Therapeutic jurisprudence
UAHPEC	University of Auckland Human Participants Ethics Committee
UK	United Kingdom
UNHCR	United Nations High Commissioner for Refugees (also the UN Refugee Agency)
UoA	University of Auckland
USA	United States of America

CHAPTER 1: Setting the scene: The research problem, design, and New Zealand RSD system

They should treat us well here and not as animals because I feel we are being treated like baboons, but we are not (Claimant, #05).

[The RSD hearing is] an exercise and whatever happens in making people who have come from places where maybe the rule of law isn't respected or whatever, feeling like there is fairness, and they have had a fair process of being dealt with, with respect and dignity, then it is part of the point of the whole thing (IPT member, #23).

To be fit for purpose these [RSD] procedures must be sufficiently robust to protect the integrity of the overall decision-making process, and to protect the interests and wellbeing of those that participate in it: the claimants of course, but also the RPOs and practitioners (Casey, 2019, p. 9).

1.1 Part One: Background and overview of the study design

Facing political persecution in the Cameroons as an Anglophone rights activist, I fled to New Zealand (NZ) more than a decade ago, sought asylum and was recognised by the government as a convention refugee. The RSD procedure I traversed was challenging and bewildering. Nonetheless, this was not surprising. I had a bachelor's degree in law, worked in human rights law in the Cameroons as a pupillage, and had a working knowledge of quasi-judicial and judicial processes.¹ Despite that, I was struck by the extent of psychological and emotional distress from the RSD, especially from the asylum interview, and other problems I experienced accessing essential services as an asylum seeker (also known as, refugee claimant) in the community.

¹ Although quasi-judicial in nature, the RSD procedure in NZ is an administrative legal process at the first instance level at the Refugee Status Unit (RSU), and a quasi-judicial process at the appeal level at the Immigration and Protection Tribunal (IPT). The RSU operates as a division of Immigration New Zealand (INZ) under the Executive branch of government. In contrast, the IPT is an independent, specialist judicial body under the Ministry of Justice, established under section 217 of the Immigration Act 2009. Whereas the RSU's proceedings are inquisitorial in nature, the IPT can conduct its proceedings in an inquisitorial, adversarial, or mixed inquisitorial and adversarial manner as it sees fit (section 218 of the Immigration Act 2009). In practice, both RSU and IPT proceedings are typically inquisitorial in form. Meaning there is not usually an opposing stance (which occurs in an adversarial process, such as the criminal justice system), except when the IPT is conducting its proceedings as an adversarial Tribunal. In this case, the Crown will be on the opposing side. If appealed or judiciary reviewed to a senior court such as the High Court, the RSD process also becomes a full-blown adversarial judicial process, except the court orders an out of court resolution.

Prompted by my experience, I completed a master's thesis in 2017, exploring the coping behaviours of Sub-Saharan African asylum seekers in NZ, and identified amongst other findings that there was a need for a more therapeutically informed approach to RSD. In addition, I volunteered in the community, supporting people seeking asylum to access essential services. I also served on the boards of the 'Aotearoa Resettled Community Coalition' (ARCC) and 'Asylum Seekers Support Trust' (ASST), and as a cultural advisor for 'Refugee As Survivors New Zealand' (RASNZ). Wearing these hats exposed me to more depth and breadth of the issues refugee claimants encounter during RSD.

Some of the refugee claimants I supported in the community had gruelling experiences with RSD. One of the claimants I helped narrated experiencing an intimidating and hostile environment at Auckland International Airport on arrival to NZ. Another claimant described having an awful experience of detention in a police cell and prison after claiming asylum at the airport. I also helped a few refugee claimants who were under detention at the 'Māngere Refugee Centre', now 'Māngere Refugee Resettlement Centre' (MRRC),² and an asylum seekers' hostel in Auckland owned by ASST. Even those receiving social work support in these places still felt the RSD procedure was highly challenging and unbearable psychologically and mentally.

Motivated by these disturbing experiences of RSD, I decided to research using the therapeutic jurisprudence perspective how the RSD procedure could be more attuned to health and well-being, but beyond that, also use the research process informed by the transformative paradigm to advance social justice and human rights for refugee claimants in NZ.

Thus, through examining existing procedural legislation on RSD and conducting interviews with former refugee claimants and professionals related to RSD procedures and practices, I investigate and explain the elements of the RSD system that have significant therapeutic and anti-therapeutic bearings on health and well-being. I then gather insights from the participants and behavioural science research on the possibilities and constraints of how the RSD components with harmful implications can be improved. I also engage in social justice and human rights activism related to reported adverse impacts. More broadly, in this study, I discuss how the objectives of RSD can be achieved in a way that accords with the therapeutic jurisprudence perspective but also engage in some advocacy related to findings from the study.

² The MRRC is a government-run temporary housing facility in the Mangere suburb in Auckland for refugees who enter NZ under the Refugee Quota Programme (explained later), during their first five weeks in the country to help with orientation to life in NZ and onward settlement in the community. The centre was also used by INZ to detain some asylum seekers - mostly females.

1.1.1 The academic rationale for the study

The number of people seeking asylum worldwide have increased unprecedentedly over the last two decades. The United Nations High Commission for Refugees (UNHCR) estimates that persons officially registered as asylum seekers in the world rose from almost 620,000 in 2001 (UNHCR, 2011) to 876,100 in 2011 (UNHCR, 2012b) and to 4.6 million by the end of 2021. While the world is experiencing an increase in the conditions causing forced displacements and in the number of people seeking international protection as refugees, many Western countries have progressively adopted stern, deterrent, penalising, and controlling laws, policies, and practices against this population group in the last two decades (as can be gleaned from studies by Banks, 2008; Bessant & Watts, 2022; Bosworth & Turnbull, 2015; Davies, 2013; Hanen, 2014; Hodge, 2015; Majcher, 2021; Posselt et al., 2020; Welch & Schuster, 2005). Studies in several countries also indicate that contemporary asylum and refugee policies in the West are driven more by territorial, political, and economic protectionism (Eades, 2009; Sulaiman-Hill et al., 2011; West-Newman, 2015), and social and moral panics about the influx of refugee populations (Bogen & Marlowe, 2017).

New Zealand has to some degree, followed recent refugee law developments overseas, for example, in Australia, the United States of America (USA), the United Kingdom (UK), and some European Union (EU) countries, to pass deterrent and punitive asylum laws (Bogen & Marlowe, 2017; West-Newman, 2015). The harsher policies against refugee claimants have almost become a new norm in the Western world (Banks, 2008; Gibney & Hansen, 2003; Hartley et al., 2017; Majcher, 2021; Mayblin, 2014; Silove et al., 2000; Silverman & Molnar, 2016; Welch & Schuster, 2005), even though studies have consistently highlighted that many people forcibly displaced are psychologically and mentally vulnerable (Blackmore et al., 2020; Jowett et al., 2021; McColl et al., 2008; Sinnerbrink et al., 1997; Turrini et al., 2017; Youngmann et al., 2021), and they need humane instead of inhumane policies.

Like several other Western countries, NZ has adopted a tougher stance against refugee claimants³ despite receiving and processing relatively low and stable asylum applications, approximately 377 annually between 2004 to 2021 (Department of Labour, 2012; Haines, 2010; Immigration New Zealand, 2022c), compared with the more prominent figures (UNHCR, 2012a; 2015b; 2022) in other Western countries and other regions of the world.

In addition, recent NZ studies have suggested more generally that the RSD procedure results in (or has the potential to cause) adverse psychological consequences and worsening of the sufferings and hardships for refugee claimants (e.g., Bloom & Udahehuka, 2014; Bogen & Marlowe, 2017; Human

³ For example, the NZ warrant of commitment law under the Immigration Act 2009, and the Immigration Amendment Act 2013, providing for the detention of refugee claimants in prisons for long periods when they have not committed any crime except seeking asylum as an international human right (Amnesty International Aotearoa, 2021; Casey, 2022), can be said to be a harsh refugee law.

Rights Commission, 2017; West-Newman, 2015). Claimants remain in anxiety and limbo for long periods during the asylum process, often without meaningful support and encountering a challenging (and in some cases trauma-eliciting) asylum interview (Sama et al., 2020).

Studies in NZ have also suggested that these individuals face significant challenges including oppression, marginalisation, and discrimination related to the RSD procedure and the broader NZ society (e.g., Bloom & Udahehuka, 2014; Ferns et al., 2022). Representation of refugee claimants in NZ political and media discourse is embedded in negative framing, labelling, stigmatising, and discriminatory language, with few refugee claimant voices/perspectives and a lack of diversity in the coverage (e.g., Bogen & Marlowe, 2017; Sulaiman-Hill et al., 2011; West-Newman, 2015). This, in turn, has negative impacts on access to justice for people seeking asylum and exacerbates their feelings and experiences of oppression and marginalisation in the RSD system (Lafraie, 2006).

Studies about the experiences of refugee claimants overseas have also observed considerable harmful impacts of asylum laws, policies, practice, and political and media rhetoric in this population group, such as psychological distress, re-traumatisation, self-harm, and suicidality (e.g., Gibney & Hansen, 2003; Gill et al., 2021; Laban, 2009; Llewellyn, 2020; Mayblin, 2014; Schock et al., 2015; Welch & Schuster, 2005). The RSD procedure has been recognised in research in some countries as having immense psychological bearings and vicarious trauma on the professionals who work directly with refugee claimants (e.g., Mishori et al., 2013; Rønning et al., 2020; Splevins et al., 2010).

Hence, I infer that the focus and development of refugee law, policy, politics, and practice in the West in contemporary times is more on penalisation, limiting rights and access to services, and strengthening the rigour of the law, with less attention on health and well-being perspectives, which are equally essential for the wholeness of the law. I also argue that this current atmosphere has more potential to compound refugee claimants' stress and undermine their psychological well-being as they apply to be formally recognised as refugees and protected persons through what is now habitually a complex, bewildering, and arduous legal process.

While studies in other countries have variously documented the experiences of refugee claimants with RSD, the only NZ academic studies which included experiences with RSD are Bloom & Udahehuka (2014) and Sama et al., (2020). These were not also sufficiently detailed and did not cover the asylum process in the airport and experiences around detention. No NZ research has explored vicarious trauma amongst decision-makers, lawyers, interpreters, psychologists, and other professionals who work directly with refugee claimants. Further, there is yet to be a study either in NZ or overseas that has used the therapeutic jurisprudence theory and transformative paradigm in reviewing the refugee law and experiences with the RSD procedure, and advancement of social justice and human rights for this group.

Consequently, this study contributes to filling these existing gaps by evaluating the RSD system in NZ from a therapeutic jurisprudence lens, informed by a transformative approach to the research design. It

is the first research in NZ to focus exclusively on the RSD system, covering experiences and perspectives relating to asylum-seeking in the airport, detention, the first instance procedure by Refugee and Protection Officers working at the Refugee Status Unit (RSU), sitting under Immigration New Zealand (INZ), and the second instance (appeal) procedure by the Immigration and Protection Tribunal (IPT), sitting under the Ministry of Justice.

1.1.2 The aim and summary of the research process

The primary aim of this study is to evaluate the RSD system in NZ through the therapeutic jurisprudence theory. Guided by this theory, I review existing literature on the experiences of refugee claimants in NZ, and literature about laws and policies relating to refugee claimants and the RSD system in NZ. This provides a relevant background context to the experiences of asylum seekers in NZ.

Then, I analyse the legislative framework for RSD in NZ using procedural fairness as an evaluative lens for therapeutic processes.⁴ I also explore and explain the experiences of 32 individuals drawn across the board of the stakeholders in the RSD system, highlighting where RSD is said not to be working well (focusing on its harmful impacts), and noting where it works well towards safeguarding and enhancing health and well-being.

Lastly, I discuss how the RSD system can work better towards ensuring health and well-being, but also noting the complexities and constraints to inputting a more therapeutic climate in the regime. Further informed by the transformative paradigm, I discuss how the research process and the study's findings have improved social justice and human rights for refugee claimants in NZ.

1.1.3 The research problem

More generally, the research problem I seek to address in this thesis stems from the fact that anecdotal evidence and sparse research on RSD in NZ predominantly suggest that the RSD system is operationalised in ways that oppress, marginalise, and harm the health and well-being of refugee claimants. I pose and address the question what results might we derive reviewing or critiquing the legal rules, legal procedures, the statutory institutions in charge for RSD (that is, RSU and IPT), and practices of RSD decision-makers and lawyers (jointly referred to in this thesis as the RSD system or regime), from the lens of therapeutic jurisprudence?

Further, although some positive experiences with RSD have been reported in existing literature, these are very minute (presented in the next chapter at 2.1.1.1), thus, raising the question whether the RSD

⁴ Academic commentators have highlighted a strong relationship between procedural fairness and therapeutic jurisprudence. For example, Timmins (2015, p. 128), argues that “fairness or otherwise of procedures” can strongly impact participants’ health and well-being in the justice system. She asserts further that “fair procedures can cause therapeutic outcomes for participants and unfair procedures can cause anti-therapeutic outcomes.”

system might have more therapeutic aspects and implications not captured in existing literature. This also instigated me to embark on this study, in a quest for more about the therapeutic aspects of RSD.

Given the inherent nature of the therapeutic jurisprudence theory to explore both therapeutic and anti-therapeutic effects of the law, legal procedures, and practices of legal actors, this research draws, therefore, on the theory to shed new light on the RSD system and knowledge.

Hence, the central research question I explore in the thesis is what results might we yield from examining the RSD system in NZ through a therapeutic jurisprudence lens?

Informed by this theory and, to some extent, the transformative paradigm,⁵ this primary research question is further divided into five questions as follows:

1. What are the findings from existing literature and research relating to the experiences of refugee claimants and the RSD system in NZ? This item is addressed in Chapter Two.
2. What results might we yield evaluating NZ legislation on RSD from a therapeutic jurisprudence perspective, if we assume that fair procedures are more likely to produce better therapeutic outcomes for the person involved in the legal process, and as a result, use procedural fairness for the assessment? This item is addressed in Chapter Four.
3. What is the lived experience of the NZ RSD system from the perspectives of refugee claimants, and key professionals in this field such as lawyers, decision-makers (RPOs and IPT members), interpreters, psychologists (including psychotherapists), social workers and support workers, relating to the asylum process at the airport, detention, through the RSU to the IPT?
4. Where harmful consequences are observed, and where possible, what might we learn from other behavioural and social sciences research to strengthen the RSD system into a safer system, without compromising the law? What are some of the main constraints to improving RSD therapeutically? These items are addressed in the Discussion Chapter.
5. Are there actions deriving from this study that advance social justice and human rights for refugee claimants in NZ? This item is addressed in the Conclusion Chapter.

1.1.4 Significance of the study

The benefits of this research to society can be seen from a number of dimensions. First, the research adds knowledge to our understanding of the RSD procedure, by evaluating NZ substantive refugee law from a therapeutic jurisprudence perspective; and exploring experiences and perspectives of refugee claimants, lawyers, decision-makers (IPT members, and Refugee and Protection Officers - RPOs), interpreters, psychologists, psychotherapists, social workers, and support workers in the field of RSD.

⁵ These academic terms are explained later in this chapter and further in Chapter Three.

Second, findings from this study will inform the RSD sector (decision-makers, lawyers, interested civil societies, policymakers, and the government) about RSD processes and proceedings that work well and those that have considerable adverse effects on health and well-being. It also contributes knowledge on how the adverse consequences emanating from the RSD system can be eliminated or managed properly.

Against the backdrop of steady concerns about the mental well-being of refugee claimants in NZ (e.g., Bloom & Udaheureka, 2014; Department of Labour, 2004; Human Rights Commission, 2017; Sama et al., 2020; Upriety et al., 1999), a study such as this which includes the possibilities of also strengthening health and well-being in RSD is highly relevant to the broader RSD sector.

Through framing from therapeutic jurisprudence and transformative paradigm perspectives, this thesis seeks not only to develop new insights and knowledge on RSD, but also to advance social justice and human rights for refugee claimants and improve the RSD sector in NZ. The study advances arguments and conclusions that may also provide new insights to other Western RSD jurisdictions and the UNHCR RSD mechanism.

1.1.5 Overview of the research design used

The research design is guided by the therapeutic jurisprudence theory and transformative paradigm. The therapeutic jurisprudence theory shaped the research questions, methodology, and methods, while transformative paradigm guided the study's ontological, epistemological, methodological, and axiological assumptions. I adopted this fusion of academic theories believing that the therapeutic jurisprudence reinforced by the transformative paradigm will have more potential to illuminate and reinvigorate NZ refugee law, processes for RSD, and the practices of decision-makers and lawyers.

Therapeutic jurisprudence (TJ) is an interdisciplinary area of scholarship developed by American Professors David Wexler and Bruce Winick in the early 1990s in the mental health field, although David Wexler first proposed it in 1987 (Perlin, 2017). The scholars argue that “whether we know it or not, whether we like it or not”, the law, that is, legal rules, legal procedures, and roles of legal actors such as lawyers and judges, produce consequences, some positive and some negative (Wexler & Winick, 2003, p. 1). They argue further that lawyers, judges, and researchers have a moral and social responsibility to assess the law, legal procedures, and roles of the legal actors, and where adverse consequences are found, to investigate how these can be minimised and eliminated without trumping the law (if possible) through gathering insights from behavioural and social sciences such as psychology, social work, etc., to strengthen the law therapeutically. But, if it is impossible to improve the law within its existing framework, then through recommending law reform to address the adverse effects of the law (Wexler, 1995; Wexler & Winick, 1996).

Said differently, the TJ theory has come to be understood as focusing on the impacts of substantive law, legal procedures, and behaviours of legal actors on the psychological well-being of persons involved in

the justice system, including the legal actors themselves. It also borrows insights from behavioural sciences to transform observed anti-therapeutic effects; and bears a reform agenda where necessary (Alford, 2015; Babb & Wexler, 2014). I have assumed this remarkable proposition as the therapeutic jurisprudence commitment and used it as a yardstick for guiding this study.

As the goal of the TJ perspective is to improve and “transform” the law’s positive social force, which may involve a “reform agenda” “in a manner that promotes well-being” (Babb & Wexler, 2014, p. 5202), I also draw from Mertens’ (1999; 2007; 2009) transformative paradigm, which focuses on addressing societal inequality and injustice as well as advancement of human rights through incorporating an advocacy lens and culturally appropriate research methods.

In sum, the transformative paradigm “provides a metaphysical umbrella to guide evaluators who work in communities that experience discrimination and oppression on whatever basis — gender, disability, immigration status, race/ethnicity, sexual identification, or a multitude of other characteristics associated with less access to societal privileges” (Mertens, 2013, p. 28). The researcher works with the research participants as stakeholders to develop and advance an agenda for social justice and human rights (Mertens, 1999; 2009; Romm, 2015). Correspondingly, Wexler (2015, p. xiv) proposes that therapeutic jurisprudence is “a menu of conceptual tools or approaches for confronting the dysfunctional elements within legal institutions and procedures”.

Against the backdrop of the anecdotal evidence and academic research so far in New Zealand⁶ on the experiences of refugee claimants with RSD, the therapeutic jurisprudence theory appears to be a very fitting lens for critiquing and confronting the current reality in the RSD system. Therefore, in this research, I use therapeutic jurisprudence theory as a critical lens to inform the research methodology and methods within a transformative worldview. Conversely, the transformative paradigm provides the broader framework for suitably realising therapeutic jurisprudence’s transformative objectives. This helps to strengthen the impacts of the study.

1.2 Part Two: Definition of a refugee, refugee claimant and other refugees in NZ

In this part, I define and discuss a ‘refugee and ‘protected person’, refugee claimant, and the other categories of refugees in NZ.

⁶ Existing studies indicate that NZ RSD is increasingly operationalised in ways that appear oppressive, discriminatory, and progressively detached from the refugee claimants (e.g., Amnesty International Aotearoa, 2021; Bloom & Udahehuka, 2014; Bogen & Marlowe, 2017; Casey, 2019; 2022; Ferns et al., 2022; Human Rights Commission, 2017; West-Newman, 2015).

1.2.1 The person who is a refugee in law

The legal definition of a refugee in NZ is derived verbatim from ‘the Refugee Convention’,⁷ incorporated as Schedule 1 of the Immigration Act 2009. A refugee, according to the Refugee Convention, Article 1 (A)(2) is a person who:

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his [her] nationality and is unable or, owing to such fear, is unwilling to avail himself [herself] of the protection of that country: or who, not having a nationality and being outside the country of his [her] former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

The Refugee Convention definition is a declaratory statement, as a person does not become a refugee through recognition but is a refugee from the time they meet the criteria in the definition (Amnesty International Aotearoa, 2021; Frater, 2003). This Refugee Convention definition of a refugee (used for RSD in NZ) has been criticised by scholars elsewhere and NZ (e.g., Arboleda, 1995; Lentini, 1985; Wood, 2019) as inadequate, and “much narrower than the ordinary meaning of the word and [not including] those fleeing natural disasters” (Frater, 2003, p. 668).

Although the legal definition of a refugee for RSD in NZ is limited to the Refugee Convention, the country’s refugee policy also recognises more people (some who do not meet this strict definition of a refugee) as making up the refugee population in the country. They include protected persons.

A protected person is an individual recognised in law as a person deserving NZ protection under the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1987* (CAT); or the *International Covenant on Civil and Political Rights 1976* (ICCPR).⁸

The Refugee Convention lays down rights and minimum standards for treatment of refugees (Frater, 2003). In principle, at the international level, persons with ‘protection status’ do not have the same rights available to those recognised as refugees under the Refugee Convention (Hathaway, 2005). However, in practice, the NZ refugee policy treats both groups almost the same, granting entitlements and access to the rights preserved in the Refugee Convention (Bloom & Udahehuka, 2014; Ferns et al., 2022).

⁷ NZ acceded to the 1951 Convention Relating to the Status of Refugees on 30 June 1960 and later the 1967 Protocol Relating to the Status of Refugees on 6 August 1973 (jointly referred to as ‘the Refugee Convention’). However, it was not until 1999 that there was any reference to these international instruments in the immigration legislation - the Immigration Act 1987 (Frater, 2003).

⁸ NZ ratified the CAT on 10 December 1989, and ICCPR on 28 December 1978, and codified both instruments in its RSD mechanism under sections 137, 130, 131, and 198 of the Immigration Act 2009 (the Act).

This thesis includes the experiences and perspectives of persons who have applied for recognition as protected persons in NZ. It combines them with those who have applied for recognition as refugees and refers to both as ‘refugee claimant’.

1.2.2 Refugee claimant in NZ context

A refugee claimant (also known as claimant or refugee status claimant) is an individual who is awaiting a decision on their application to the RSU (or appeal to the IPT or the courts) for official recognition as a refugee and/or protected person (Immigration New Zealand, 2022d; Spiller, 2019b). A successful claimant can be designated legally as a refugee⁹, protected person,¹⁰ or both¹¹ but is described generally in NZ refugee policy as a convention refugee (Ferns et al., 2022) or a spontaneous refugee (Department of Labour, 2004). Successful claimants are entitled to remain in NZ, apply for permanent residence, and acquire NZ citizenship if they so desire and meet the criteria after a number of years. Unsuccessful claimants are liable for deportation from the country (Bloom et al., 2013).

Refugee claimants are known generally both in NZ and globally as asylum seekers. Nonetheless, the phrase is becoming increasingly less preferred by people from this background and their supporting organisations/advocates because of the negative labelling and stigmatisation associated with it (Nipperess & Clark, 2016), stemming from growing anti-asylum seekers’ sentiments and polarization of their circumstances by media and politicians (e.g., Bogen & Marlowe, 2017; O’Doherty & Lecouteur, 2007; Sulaiman-Hill et al., 2011; West-Newman, 2015).

Hence, in this study, I tend to use ‘refugee claimant’ rather than ‘asylum seeker’, subscribing to Mertens’ (1999; 2009) propositions that the transformative researcher should be culturally aware not to use research processes and language furthering the disenfranchisement and marginalisation of the community concerned. Consequently, except when specified otherwise or unavoidable, I use ‘refugee claimant’ in this study for a person who has at some point applied to the RSU (or appealed to the IPT or the courts) for official recognition as refugee and/or protected person status in NZ, regardless of whether their application was approved or declined.

Most people (around 85%) claim asylum in NZ whilst living in the community. A substantial majority of the 85 percent will have a valid visa to be in the country when making their claim for asylum or are granted one during the asylum process, while a very small proportion claim asylum after becoming unlawful or liable for deportation, thus are detained (Casey, 2022; Human Rights Commission, 2017). Casey (2019, p. 6) estimates that among the 85% who claim asylum while already in the country, “about

⁹ For instance, in *DS (Iran)* [2016] NZIPT 800788, para 325 to 329.

¹⁰ See also, *AC (Russia)* [2012] NZIPT 800151, para 114 to 116.

¹¹ For example, *BY (Sri Lanka)* [2014] NZIPT 800634, para 69 to 82, wherein the Tribunal held the appellant is a refugee under the Refugee Convention and protected person both under CAT and ICCPR.

one third of claimants lodge a claim in the first three months after arrival in NZ, another third lodge their claim between three and 12 months from arrival, and another third will have been in NZ for more than 12 months at the time they lodge their claim”. The rest, approximately 15 percent, claim asylum on arrival at the border¹² (Human Rights Commission, 2017).

Some of the border claimants are denied an entry visa into NZ and detained by INZ because of lack of proper identification documents or security concerns. Those liable for deportation in the country before claiming asylum are also detained.¹³ The detention duration can be up to 96 hours without a warrant,¹⁴ 28 days with a warrant of commitment, or six months with a mass arrival warrant.¹⁵ The detention can take place in a prison, the MRRC, or in the community under residence and reporting conditions and requirements.¹⁶ Roughly 86 claimants were imprisoned between 2015 and 2020 (Amnesty International Aotearoa, 2021; Hiew, 2020), and treated as remand prisoners under the Department of Corrections’ rules,¹⁷ while an estimated 22 were detained at the MRRC and in the community over the same period (Casey, 2022).

As stated earlier (refer to 1.1.1), approximately 377 asylum applications were made in the country annually between 2004 to 2021. This small annual figure is credited to NZ’s distant location and isolation from the rest of the world (Casey, 2022). It is also credited to the country’s introduction of an Advanced Passenger Processing scheme in 2004 at overseas departure ports, requiring international passenger carriers to pre-screen their passengers for valid visas before they depart for NZ (Glazebrook, 2013). This resulted in interception and prevention of many potential refugee claimants from boarding air or sea crafts to the country (Gregory, 2006; Tan, 2014),¹⁸ including alleged interception and forceful turn around of would-be boats of refugee claimants at sea who might have been heading to NZ (Perinpanayagam, 2019; Tan, 2014).

An estimated 22,284 asylum applications have been made in NZ from 1990 to 2021 (derived from data by the Department of Labour, 2012; Haines, 2010; Immigration New Zealand, 2022c). The top ten nationalities claiming asylum in NZ between 2015 to 2020 were from the Asian and Middle Eastern regions: China 16.8%, India 10.2%, Sri Lanka 7.2%, Iran 4.6%, Malaysia 4.4%, Bangladesh 3.8%,

¹² Border in this context refers to any of NZ international sea or airports. Most border claims are made at the Auckland International Airport.

¹³ Section 310 of the Immigration Act 2009 (the Act).

¹⁴ Section 313 of the Act.

¹⁵ Sections 316 – 317 and 318 – 324 of the Act provide for the detention of refugee claimants under a warrant of commitment by a District Court Judge, for an initial 28 days, subject to renewals. The law also provides in sections 317A – 317E and 324A of the Act for detention under a ‘mass arrival warrant’ for an initial period of six months and renewable indefinitely every 28 days after that, of people who arrive in a group of more than 30 and claim asylum. No such group of 30 or more have arrived in NZ since the passing of this law.

¹⁶ Sections 315 and 320 of the Act.

¹⁷ 184 of Corrections Regulations 2005.

¹⁸ Commentators have also noted that following the 2004 changes, the average number of people claiming asylum at NZ airports dropped dramatically (Glazebrook, 2013; Human Rights Commission, 2010).

Pakistan 3.7%, Turkey 3.6%, Afghanistan 3.6%, and Saudi Arabia 3.5 (Immigration New Zealand, 2021). Overall, the annual approval rate over the last decade, from 2011 to 2021, was around 30% for the RSU and 41% for the IPT (Immigration New Zealand, 2022c; Spiller, 2021).

This thesis includes the experiences of individuals who claimed asylum at the border and those who claimed in the community. It also includes people who had part or all of their asylum process in a detention facility. However, regarding the claimants with detention experience in the MRRC, police cell, or prison, I recruited and interviewed them in the study after they had been released from the detention and were living in the community.

In the following section, I briefly define the quota refugees and other persons classified as refugees in NZ.

1.2.3 Quota refugees in NZ

Typically, quota refugees are people already recognised as refugees or protected persons overseas under the UNHCR mandate and referred to the NZ government for resettlement. A specific quota is accepted yearly by the government and resettled under this scheme also known as the ‘refugee quota programme (Ferns et al., 2022; Mortensen, 2011; Wood, 2022), or the government-mandated programme.¹⁹

Although NZ began resettling refugees after the Second World War, the current quota programme was formalised in 1987 (NZ Red Cross, 2022b). The number of refugees admitted through the pathway sat roughly at 750 places yearly (Mortensen, 2011) for three decades, then heeding public pressure (Bonnett, 2016; Moir, 2016), the government increased the yearly places to 1000 in 2018 (Collins, 2016; Woodhouse, 2016); and to 1500 from 2020 (Ardern & Lees-Galloway, 2018; Cooke, 2018; Wood, 2022).

Quota refugees are granted permanent resident visas upon arrival in NZ and receive a government-sponsored orientation programme for the first five weeks at the MRRC. They are provided further ongoing settlement support funded by the government and have full entitlements to public services as NZ citizens. On the contrary, Refugee claimants and convention refugees are not afforded similar entitlements (Bloom & Udahehuka, 2014; Ferns et al., 2022; Marlowe & Humpage, 2016).

1.2.4 Other persons considered refugees in NZ

The other persons considered as refugees in NZ refugee policy include the relatives of refugees and protected persons²⁰ who have been sponsored to NZ under a tiered system known as the ‘Refugee Family Support Category’ (RFSC). The RFSC policy took effect in 2007, replacing the Refugee Family

¹⁹ Section 126 of the Act.

²⁰ And others so designated by the government.

Quota (Human Rights Commission, 2017). Initially, it accepted 300 applications annually. The government increased the number of places to 600 in 2020 (Lees-Galloway, 2020).

There is also a newly introduced community-sponsored refugee category. These are people recognised as refugees overseas and are sponsored by a community organisation to resettle in NZ. The government established the scheme in 2018 with 25 places (Collins, 2016), then increased it to 50 places yearly from 2021 to 2024 (Lees-Galloway, 2020).

Lastly, there is a small cohort of ‘Afghan interpreters’ resettled in the country as quota refugees (but not through the UNHCR pathway) from 2013 because of their involvement with the NZ Defence Force and NZ Police in Afghanistan (Guy & Coleman, 2012; Radio New Zealand, 2013). In 2022, NZ government also reached a special agreement with Australia, and began resettling under its quota refugee programme 450 persons who would otherwise be refugees in Australia but are denied this right and detained by the Australian government onshore or offshore in Nauru (Bonnett, 2023; Neas, 2022). Other recent humanitarian evacuees and visas that arguably fall under the refugee categorisation in NZ include the government’s evacuation of more than 1500 Afghans nationals (Afghan evacuees) following the Taliban takeover of Afghanistan in August 2021 (Heagney, 2022; NZ Red Cross, 2022a). And, the government’s 2022 special temporary visas policy allowing around 4000 Ukrainians to move to NZ following the Russian invasion of Ukraine in February 2022 (Fafoi, 2022).

This study captures only the experiences and perspectives of refugee claimants and professionals in the RSD system. It does not include the experiences of quota refugees, RFSC, community-sponsored refugees, Afghan interpreters, and the special humanitarian visas for Afghans and Ukrainians.

The following section describes the standard RSD procedure in NZ and the main institutions responsible for determining refugee and protection status.

1.3 Part Three: The RSD procedure explained

The RSD procedure is a legal process through which governments and the UNHCR determine whether a person who has applied for recognition as a refugee/protected person is indeed a refugee/protected or not (UNHCR, 2005). A claim for refugee/protected status in NZ and the process/proceeding for managing it is regulated by Part 5 of the Immigration Act 2009.

The first instance determination is made by the Refugee Status Unit (RSU), a division of INZ (formerly, the Refugee Status Branch - RSB) sitting under the Ministry of Business, Innovation and Employment (MBIE). Determination of the claim by the RSU is made by a Refugee and Protection Officer²¹ (RPO), an administrative decision officer of MBIE. The RSU proceeding is inquisitorial in nature, that is, “a

²¹ Section 127 of the Immigration Act 2009.

shared inquiry, with both the claimant and the RPO having responsibilities to provide and obtain relevant information” (Immigration New Zealand, 2022d, p. 21).

The second instance determination (appeal) is made by an independent specialist body²² – the Immigration and Protection Tribunal (IPT) (formerly the Refugee Status Appeals Authority - RSAA),²³ chaired by a District Court judge, sitting under the Ministry of Justice (Frater, 2003; Spiller, 2019b; Spiller, 2020). Officials known as members (generally, Tribunal members) decide appeals at IPT and are lawyers by training. In this study, I refer to them as Tribunal or IPT members. The IPT proceedings can be inquisitorial, adversarial, or a mixed inquisitorial and adversarial nature as it sees fit.²⁴ In practice, the IPT generally conducts its proceedings in an inquisitorial nature.

NZ senior courts also play a tertiary role as appellate bodies.²⁵ The RSD procedure is conducted in the English language, and the government provides funding for legal assistance and interpreters for claimants who cannot afford these representations.

Initial applications for refugee and protection status in NZ are determined by the RPO working at the RSU. In theory, the RSU is timetabled to issue decisions around 10.5 months from the lodgement of the claim form (Immigration New Zealand, 2022a). However, in practice, many cases have taken longer, constrained by several factors, including difficulties obtaining identification documentation from the country of origin and an increase in the number of claimants from 2015 (Sama et al., 2020).²⁶ The standard RSD procedure at the RSU is roughly in seven stages (Immigration New Zealand, 2022a):

1. The person signifies an intention to claim refugee and/or protection status to a Police or MBIE Officer. On the same or next day, the RSU acknowledges the claim and advises the claimant of the claim process and their rights.
2. Twenty days later, the claimant or their legal representative lodges a completed confirmation of claim (application) form for refugee and/or protection status. The RSU acknowledges on the same or the following day receipt of the confirmation of the claim form and advises the claimant of the claim process and their rights.
3. The claimant submits a written detailed statement and supporting evidence 60 days after lodgement of the claim, setting out the circumstances that have led them to claim refugee and/or protected person status in NZ.

²² Independent of INZ and the government.

²³ Section 217 of the Immigration Act 2009.

²⁴ Section 218 of the Immigration Act 2009.

²⁵ Sections 245 - 262 of the Immigration Act 2009.

²⁶ These scholars estimated that the waiting period for an interview at the RSU increased from roughly six months period prior to 2017 to 12 months in 2020.

4. The RPO interviews the claimant 70 to 80 days after receiving the detailed statement and supporting information. The claimant's legal representative and interpreter are allowed to attend the interview.
5. Twenty days after the interview, the RPO issues an interview report to the claimant summarising the claim for validation or correction by the claimant, and inviting the claimant to make further submissions on any outstanding and potentially prejudicial issues.
6. The claimant responds and submits any additional evidence supporting the claim 20 days after receiving the interview report.
7. The RPO issues a written decision 30 days after receiving the claimant's response, establishing whether, by the standard of NZ law, they have accepted that the person is indeed a refugee and/or protected person, or not. In essence, the RPO lays out the factual claim made, establishes whether they have believed the claimant or not, then discusses whether the claim meets the criteria in Article 1A(2) of the Refugee Convention, and associated protected person status under CAT and ICCPR or not (Immigration New Zealand, 2022d). If the outcome of the RPO's determination is positive, the person is recognised officially as a refugee and/or protected person in NZ.

It is worth noting that the days stated are working days (Immigration New Zealand, 2022a). Claimants who are detained under the Immigration Act 2009 have an expedited process with timeframes half the standard process (Immigration New Zealand, 2022d).

Persons dissatisfied with the RPO's decision are afforded a right of appeal to the IPT (also typically known as the Tribunal). The IPT assesses refugee and/or protection appeals on a *de novo* basis, and its process is roughly in four stages:

1. The appellant lodges an appeal form to the IPT.
2. The IPT acknowledges the appeal, schedules an oral hearing, and notifies the appellant (or their legal representative) of deadline for written submissions and supporting evidence. It also organises pre-hearing calls with the legal representative and may arrange pre-hearing visits with the appellant to help them familiarise themselves with the oral hearing environment.
3. The IPT conducts an oral hearing of the appellant (commonly referred to by the refugee claimant community as an interview).
4. The IPT delivers its decision in writing, stating whether, by the standard of NZ law, it recognises that the person is a refugee and/or protected person, or not (Spiller, 2019b).

It is also worth highlighting that there are no specific timelines for the IPT appeal process, but the law requires the IPT to determine appeals expeditiously.²⁷ In practice, the IPT takes approximately six months from when an appeal is lodged to release its decision (Spiller, 2019a; 2020).

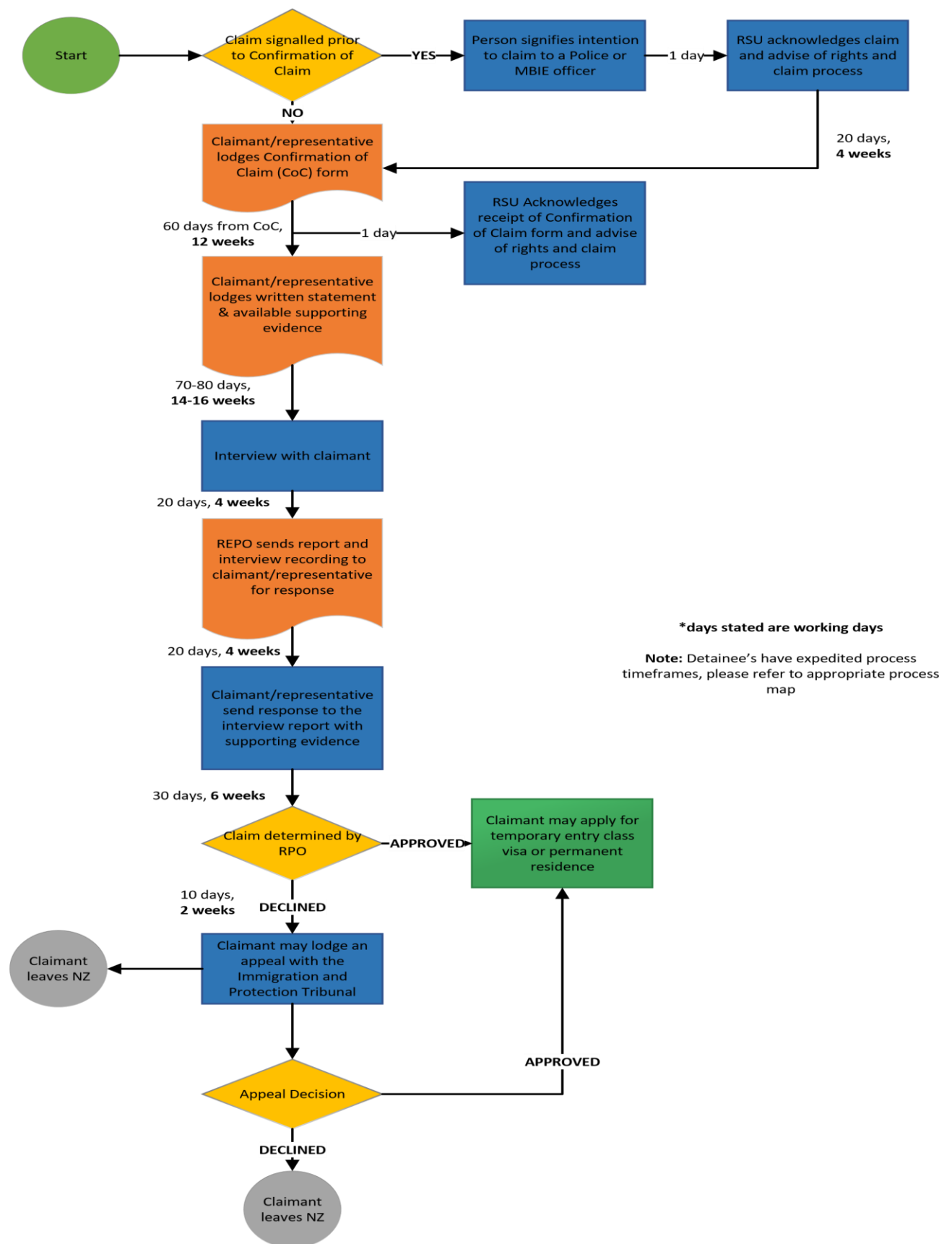
People recognised as refugees or protected persons by the RSU, IPT, or the courts are entitled to NZ protection and to live in NZ permanently (Bloom & Udahehuka, 2014; Ferns et al., 2022; Human Rights Commission, 2017). Those unsuccessful at the appeal level with the IPT are liable for deportation from NZ except if they elect to exercise their appeal or judicial review right in the High Court and beyond (Spiller, 2019b). *Figure 1* represent the NZ RSD procedure.

Generally, persons who do not have a valid visa in NZ during the claim (and appeal) process are entitled to apply for a temporary visa, typically a work visa from INZ. However, approval of this visa is not always guaranteed. Some temporary visa applications are declined, leaving the claimant in the community without any legal means of self or government support during the claim process (Ferns et al., 2022; Sama et al., 2020).

This thesis focuses on the experiences of refugee claimants and key professionals working directly with them related to the RSU and IPT procedures.

²⁷ Sections 220, 222 and 223 of the Immigration Act 2009.

Figure 1: Refugee and protection standard claim process, map with timeframes.



Immigration New Zealand (2022a, p. 6).

1.4 Outline of the thesis

The rest of this thesis is organised as follows:

Chapter Two reviews literature on refugee claimants' experiences, key legislative/policy developments related to RSD in NZ, and the representation of refugee claimants in the media and political discourse. It reveals that existing literature in NZ depicts mainly a concerning picture and atmosphere of refugee claimants' experiences with RSD. Literature on recommendations on how the experiences of refugee claimants with RSD can be improved is also covered. Overall, the chapter provides a background to understanding the NZ RSD system regarding oppression and marginalisation of refugee claimants in the country. It also sets the scene for this study's transformative research design and the knowledge contributed.

In **Chapter Three**, I turn to and discuss the research design as embedded in the transformative paradigm and therapeutic jurisprudence methodology. I present the transformative paradigm's ontological, epistemological, methodological, and axiological assumptions and juxtapose each of these to the context and experiences of refugee claimants with RSD in NZ. I then present the therapeutic jurisprudence theory as a critical and methodological lens aligning with the transformative paradigm. The central argument, principles, and development of therapeutic jurisprudence globally and in NZ are presented in the chapter. I also discuss the methods used for participants' recruitment, data collection and analysis. I discuss the ethical decisions made in the research process. Lastly, I evaluate the trustworthiness of the methodology and methods used.

In the following three chapters, I present the results of the research. Participants' experiences and perspectives mostly unveil harmful impacts of the procedures for RSD and practices of decision-makers and lawyers.

Chapter Four centres on whether the RSD, in theory and practice, aligns with therapeutic jurisprudence. Dividing the chapter into three parts, I conducted a deductive content analysis of the refugee legislation in the first, using fairness procedurally as an evaluative lens for therapeutic jurisprudence. I found that the law is grounded in the rules of natural justice, and has enabling atmosphere for therapeutic justice, but is also undermined by statutory provisions that dispose it to practices and cultures that considerably compromise the emotional and psychological well-being of refugee claimants. The second and third parts analysed the participants' voices related to access to justice and the processes and proceedings for RSD. I found some of the processes and proceedings to be user-friendly and safe in the context of the refugee claimants, but many others as undermining access to justice, due process, and adversely affecting the claimant's well-being. From a therapeutic jurisprudence perspective, the findings in the chapter suggest that when legal proceedings are fair and

suitable, in principle and practice to the context of persons seeking asylum, they have a safer and better experience of the law; and vice versa.

Chapter Five presents the participants' views of a 'culture of disbelief' in the RSD. The chapter reveals that institutional cultures related to credibility testing in RSD is clouded by cynicism. This in turn harms claimants' voice, evidence, health/well-being, and meaningful participation in the procedure. It also unveils that the issue however around credibility testing is not with why but how it is done by decision-makers to cause strong perceptions of a culture of disbelief and feelings of suppression of voice and evidence in RSD. I argue that the institutionalised cultures around the culture of disbelief in RSD in some ways perpetuate, reproduce, and mask biases, prejudices, and injustices inherent in some of the substantive principles of modern refugee law/related regulations, inadvertently perpetuating oppression and marginalisation refugee claimants already experience in NZ. Hence, dismantling the purported institutionalised culture of disbelief in the RSD system through full guarantee of the claimant's voice, natural justice principles, and health/well-being is necessary to strengthen the robustness of RSD.

Chapter Six builds on the results presented in Chapters Four and Five, highlighting the health and well-being impacts of RSD and practices of decision-makers and lawyers. The analysis in this chapter indicates that existing refugee law, related regulations, structures, processes, and practices by decision-makers and lawyers including a culture of working one-step removed from the claimant, create an unfair and unjust atmosphere for claimants in many respects, adversely affecting their health/well-being, but also the health/well-being of the practitioners. Adding to the previous chapter's findings on the culture of disbelief, I argue that there is a cycle of psychological harm in the RSD procedure, and it is indispensable for the RSD system to break this cycle through safeguarding health and well-being alongside ensuring due process and vigorousness. Thus, I discuss and propose recommendations in the next chapter and the Conclusion, informed by social science research that could strengthen NZ refugee law and practice.

In Chapter Seven, I critique the main results of this study via Thompson's (2016) anti-discriminatory and anti-oppressive social practice related to the personal, cultural, and structural levels of society and the interrelations between these layers (designated as the PCS analysis). Against the backdrop of the extensive adverse and complex results uncovered in this study, the PCS analysis appeared to be a holistic model for addressing the intricacies and challenges in the RSD system. I adapt the model in this study as the 'SCP analysis' and discuss the RSD system as nested from the structural through cultural to the individual level, highlighting the issues with the system that produce or contribute to harmful consequences. In response, I propose recommendations drawn primarily from social science research, suggesting how the adverse impacts of RSD could be minimised or eliminated, and discuss the constraints to improving the RSD therapeutically.

In **Chapter Eight** (the Conclusion), I restate my primary motivation to the study and aligned it to the results and impacts of the study. Informed by the transformative research perspective, I discuss how the research has contributed to meaningful advancement of social justice and human rights in the RSD sector in NZ. I also present the limitations of the research design and summary of the recommendations for the RSD sector, the government, and future research.

Chapter Summary

This chapter has presented the aim and rationale for this research, as inspired by anecdotal and academic evidence, and contributions the study will make to knowledge and society through its subscription to the therapeutic jurisprudence perspective and transformative paradigm. It has outlined the research design, and provided an exposition of a refugee, refugee claimant, and other population groups classified as refugees in NZ, as well as explication of the asylum process in NZ.

Overall, the research problem this thesis seeks to address draws from anecdotal evidence and existing research which suggests that the RSD system is operationalised in ways that oppress, marginalise, and harm the health and well-being of refugee claimants. Consequently, the study employs the therapeutic jurisprudence perspective to investigate the system for therapeutic and anti-therapeutic consequences. It then gathers insights from behavioural sciences to discuss the possibilities and constraints of aligning the system with the aspirations of therapeutic jurisprudence. Beyond that, I use the research process informed by the transformative paradigm to advance social justice and human rights related to the findings of the study. In the next chapter, I will focus mainly on NZ literature on the experiences of refugee claimants with RSD, uncovering further relevant context to the research problem.

CHAPTER 2: RSD: A micro-to-macro level analysis

This chapter provides a literature review related to seeking asylum in NZ and cross-references this with international studies. It is divided into three main parts to offer an understanding of the RSD system from micro to macro levels. The first articulates claimants' experiences with RSD, both from positive and negative standpoints. Within this section, special attention is devoted to the experience of detention. The second part shifts to the legislative and policy environment and associated settings to provide a broader appreciation of the RSD regime from a range of countries. The last part reviews existing key recommendations from NZ literature on how the RSD could be improved.

2.1 Part One: Experiences of refugee claimants in the community and detention

Research about the conditions of people seeking asylum has grown substantially over the last two decades globally. This has been prompted by many factors, including the ever-growing scale of the humanitarian problem, the introduction and proliferation of deterrent and penalising asylum laws and policies, and the unjust and discriminatory treatment of refugee claimants by nation-states (Bessant & Watts, 2022; Bosworth & Turnbull, 2015; Davies, 2013; Majcher, 2021; Welch & Schuster, 2005). There has been some academic interest in NZ in the last two decades on the experiences of refugee claimants, although relatively small compared to the research output on this topic in other Western countries. In this part, I review NZ literature that has included implications of RSD on refugee claimants while they are in the community or detention.

2.1.1 Experiences in the community

The findings from studies about the experiences of refugee claimants with the RSD whilst they are in the community can be grouped into two themes — a small account of positive experiences with the RSD procedure and a dominant narrative of negative experiences.

2.1.1.1 Positive experiences about the RSD procedure

Regarding the positive experiences, the Department of Labour (2004) reported (noting that this was nearly two decades ago) that refugee claimants were generally positive about their experience of RSD in NZ. Even though this positive report needs to be taken cautiously (as this was the government department in charge of processing initial asylum claims), reports of positive experiences and perspectives by claimants are not extraordinary. Bloom and Udahehuka (2014) also noted that some of the refugee claimants and convention refugees interviewed in their study reported having a positive

experience of RSD, receiving helpful support from community members during the RSD, although this was rare.

Sama, Wong, and Garrett (2020) found in their study, which focused on the coping behaviours of Sub-Saharan African asylum seekers, that they used more of positive than negative coping behaviours to deal with stress and other problems related to RSD. The behaviours the authors reported as positive includes planning, active coping, positive reframing, religion, self-distraction, acceptance, use of instrumental support, and use of emotional support. The study also reported that the positive practical activities that helped the African refugee claimants withstand the RSD stress included employment, fellowshiping in church/mosque, physical exercises, and use of social media to interact with friends and family overseas (Sama et al., 2020). Reports of rare positive experiences amongst refugee status claimants during the asylum process are also known to international literature (e.g., Hartley et al., 2017; Raghallaigh & Gilligan, 2010).

2.1.1.2 Negative experiences and perspectives about the RSD procedure

Besides the positive accounts, research studies have reported more negative experiences concerning NZ RSD. Uprety, Basnet, and Rimal (1999) observed that refugee claimants in the community and those under detention showed evidence of profound depression, helplessness, and hopelessness related to their experiences with the RSD system and general settlement in NZ post the asylum process. Over the years, literature that has included experiences of refugee claimants in the community during the asylum process has documented several factors as worsening daily stress and anxiety levels for this population group. More generally, these include:

- lack of social support and suitable information regarding NZ healthcare services,
- “language barriers, culture shock, racism”, and poor health status,
- “ongoing anxiety related to family members left behind” overseas (Young & Mortensen, 2003, p. 338),
- denial of a right to work, lack of entitlements and/or difficulty accessing government-funded services, for instance, tertiary education, social welfare services, employment, and limited access to healthcare (Bloom & Udahehuka, 2014; Ferns et al., 2022),
- homelessness, lack of affordable housing, and overcrowded housing (Human Rights Commission, 2017; Young & Mortensen, 2003), and
- lack of accurate and appropriate information about support services in the community, and exploitation by community members (Bloom & Udahehuka, 2014).

Refugee claimants also become people with an indeterminate immigration status upon claiming refugee status (and although they may be granted a temporary visa during this time, it does not automatically preclude them from the worries of facing deportation if the claim fails) (Ministry of Health, 2012). They

are often left to fend for themselves and find their way (Ferns et al., 2022) with little or no English and understanding of the prevailing system in NZ (Young & Mortensen, 2003). This results in a burden of unsupported and unmet needs and immense worries for many during the asylum process (Bloom & Udaheureka, 2014).

Young and Mortensen (2003, p. 337) commented (noting that this was about two decades ago) that people from refugee backgrounds, including refugee claimants, had a “proportionately higher rate of presentation in the emergency department with urgent and nonurgent complaints” than other New Zealanders. The Department of Labour (2004) also stated around the same period that more than a third of people from an asylum-seeking background reported having experienced emotional problems within their first six months in NZ.

Besides the problems sitting around the RSD, refugee claimants are subjected to further stress and anxiety related to the RSU’s and IPT’s processes and proceedings for RSD (Sama, 2017; Sama et al., 2020). Over 80 per cent of the 31 participants in Sama and colleagues’ research reported extreme stress levels from the entire RSD procedure (recording ten on a scale of one to ten). In addition, qualitative descriptions by participants in the research indicated that the asylum interview (and hearing) re-traumatised some claimants (Sama et al., 2020). Further context includes stress and anxiety associated with:

- accessing interpreters (Bloom & Udaheureka, 2014),
- accessing refugee lawyers (Ministry of Health, 2012),
- long, challenging, and complicated RSD proceedings and processes; in particular, interrogatory interview (oral hearing), and interview report,
- protracted waiting periods for the initial or appeal decision.
- living in prolonged limbo and uncertainty while waiting on the outcome of the asylum application (Bloom & Udaheureka, 2014; Sama, 2017; Sama et al., 2020).

These results corroborate in some ways earlier reports by Uprety and others (1999), some 25 years ago, wherein it was asserted that the challenging and interrogatory nature of the asylum interview resulted in the re-traumatisation of refugee claimants. In a recent study, Sama and others (2020) found that the asylum interview (and hearing) in NZ was challenging and confrontational, contributing to re-traumatisation and emotional/psychological health problems over a shorter period for some claimants, but for others, over more extended periods after the interviews. This came against the backdrop of existing documentation by the Ministry of Health (2012, p. 147) that anxiety and worry related to the RSD “can lead to re-traumatisation. It may not only exacerbate any pre-existing sequelae associated with psychological trauma, but may also lead to stress symptoms and mental health problems years after arrival in New Zealand”.

In a more recent review of the processes and proceedings for making RSD at the RSU, Casey (2019)²⁸ mirror some of the preceding negative commentaries. In addition, she found the application form, asylum interview, and interview report as “more drawn out and cumbersome than is necessary” (p. 8), “overly long and complicated” (p. 11) and placing an “extraordinary” burden on claimants (p. 19). Other procedural problems highlighted in the report include failure by the RPO to inform claimants of their rights as stated in Immigration Regulations²⁹ and the INZ Operational Manual;³⁰ and lack of clarity in processes regarding cases that needed stricter confidentiality. Casey noted that these issues, and others (not highlighted here), raise concerns about fairness and timeliness in the RSD, possibly having “quite a high toll on claimants” (p. 8), and exacerbate their anxiety in what is naturally an “incredibly high” stakes process for them (p. 19). She concluded that “while most of the substantive features” of the RSU’s processes for RSD are “generally sound, the practical day-to-day implementation of those processes” face several challenges, undermining the law, quality decisions, efficiency, and fairness at the RSU (Casey, 2019, p. 2).

Research studies with refugee claimants overseas have also found related problems in asylum-seeking populations, with lack of appropriate support, long and complicated RSD procedures and the asylum interview, making up some of the most significant sources of stress, anxiety, and re-traumatisation for refugee claimants (e.g., Gill et al., 2021; Hocking et al., 2015; Hornfeck et al., 2022; Kooy & Bowman, 2018; Laban, 2009; Llewellyn, 2020; Pitman, 2010; Schock et al., 2015). In addition, studies overseas have found that the professionals working in the RSD experience considerable vicarious trauma (e.g., Mishori et al., 2013; Puvimanasinghe et al., 2015; Rønning et al., 2020; Splevins et al., 2010).

Overall, literature in NZ and overseas indicate that refugee claimants’ experiences during the RSD are worsened by several factors including lack of adequate government support, uncertainty, protracted and challenging RSD processes, interrogatory interviewing, and psychological problems. Besides that, it can be concluded that NZ research on the experiences of refugee claimants has focused more on the issues around RSD, paying minimal attention in academia on the processes and proceedings for making RSD in the country. Several components of the RSD system have not been explored exhaustively from an academic perspective, for instance, experiences at the border, detention, and with processes and proceedings at RSU and IPT. There is also no NZ research on vicarious trauma in the RSD sector and how it can be avoided and managed. To a considerable extent, this research contributes knowledge to these gaps. It also provides more up-to-date qualitative data on first-hand experiences of the RSD system in NZ, capturing the perspectives of refugee claimants and a broad array of RSD professionals,

²⁸ The government commissioned Victoria Casey QC to evaluate of the processes for RSD at the RSU, following the Supreme Court’s judgment in *H v Refugee and Protection Officer* [2019] NZSC 13, [2019] 1 NZLR 433, wherein the Court identified substantial flaws in RSU practice and processes for making RSD.

²⁹ Clause 5 of Immigration (Refugee and Protection Status Processing) Regulations 2010.

³⁰ C4.30 and C4.55.

including IPT members, RPOs, lawyers, interpreters, psychologists, psychotherapists, social workers, and support workers.

2.1.2 Experiences with detention

Another area that has attracted academic interest and scrutiny, controversy and empathy, both locally and internationally, is the detention of people seeking asylum. Within the scope of detention, studies have focused primarily on the harsh nature of refugee laws and policies relating to the restriction of liberty for refugee claimants and corresponding harm to this population group. In this section, I focus on NZ literature on refugee claimants' experiences with detention, and justify the need for critical and transformative research on this subject in NZ.

Although the government was already detaining people seeking asylum in NZ in the 1990s (as suggested in, Frater, 2003; Lafraie, 2006; Uprety et al., 1999), the issue received hardly any coverage in the academic literature in the 1990s. The famous case of Mr Ahmed Zaoui, who was detained as an asylum seeker from 2002 to 2007, attracted early scholarly commentary criticising the law, policy, and practice under the 1987 Immigration Act.³¹ Lafraie commented that fleeing to NZ in 2002, Mr Zaoui expected better treatment and a new lease of life in the country, but what he got instead was worse than all he had experienced in the past. The long period of imprisonment and restriction of his movement in the community, despite being recognised as a refugee by the RSAA, showed loopholes in the law and severely undermined Mr Ahmed Zaoui's human rights and well-being (Lafraie, 2006).

Subsequent studies focusing on refugee claimants' experiences of being detained in criminal justice facilities came more than a decade after Lafraie (2006). These were Hiew (2020) and Amnesty International Aotearoa (2021). Hiew's (2020) research (a master's thesis) explored the experiences of six individuals formerly detained in prison whilst seeking asylum in NZ. The study's findings demonstrate that prison detention cause considerable psychological and physical suffering to the refugee claimants in the prison facility and after release to the community. Participants in Hiew's research reported distress from being locked up for long periods with remand prisoners, exposure and participation in prison violence, and difficulty communicating with the outside world. Hiew also found that some participants continued to experience psychological problems long after release to the community and some of their post-detention experiences resembled 'post-traumatic stress disorder' (PTSD) symptoms (Hiew, 2020).

Amnesty International Aotearoa (2021) conducted a broader study of the restriction of liberty for refugee claimants, analysing the legislation, operational policies and other documents relating to

³¹ The detention regime for refugee claimants under the Immigration Act 1987 was bolstered in the 2009 Immigration Act and 2013 amendment. I have discussed this in detail later on in this chapter on legislative and policy developments on the detention of refugee claimants.

immigration detention, and interviewing refugee claimants and some stakeholders in the sector. It reported that 86 refugee claimants had passed through a complex hybrid of civil and criminal detention processes between 2015 and 2020. Their journey into detention in NZ usually began with an arrest at the airport or in the community, then they are held in a police cell if over weekends, are brought on weekdays before a District Court judge for a warrant of commitment, and are typically detained in a prison, the MRRC, or community. The study revealed several themes which depict what could be described as an alarming and depressing reality for the refugee claimants who had passed through immigration detention in NZ up until May 2022, when the government announced it was stopping the practice.

Amnesty International Aotearoa named the detention legislation, policy, and practice as a “conveyor belt to prison” (pp. 18-23) for refugee claimants whose freedom of movement the state wanted to restrict, that is, a well facilitated route from the airport or community through a police station, the District Court, to prison. Participants in the study also viewed the procedures for detention at the airport as “the Wild West” (p. 16) and the warrant of commitment judicial process in the District Court as “rubber-stamping” (p. 22). Overall, Amnesty International Aotearoa described the detention of refugee claimants in police cells and prison as inhumane, arbitrary, and protracted with no maximum time limit in law, and at odds with the 2012 UNHCR Detention Guidelines for refugee claimants (Amnesty International Aotearoa, 2021).

Besides the themes discussed above, use of criminal justice facilities for detention has also been noted as having harmful consequences on the psychological, mental, and physical health of the refugee claimants. The Amnesty International Aotearoa study reverberate findings by Hiew (2020). Both studies describe a grim picture of terrified, distressed, exhausted, overwhelmed, depressed, hopeless, and helpless refugee claimants in penal detention facilities. Reported disturbing experiences include strip-searching, sexual assaults and exposure to gang violence, double bunking with inmates facing criminal offences, difficulty communicating with lawyers and family, and cultural and religious inappropriate feeding (Amnesty International Aotearoa, 2021; Hiew, 2020).

Following publication of the Amnesty International Aotearoa study, the government commissioned in 2021 an independent reviewer - Victoria Casey KC to evaluate its law and policy on the detention of refugee claimants (Burrell, 2021). Although the review was limited to the law and policy related to restriction of movement and liberty of refugee claimants, Casey made some observations directly speaking to harmful impacts of the practice (Casey, 2022). Like Amnesty International Aotearoa (2021), Casey (2022) identified the police cell and prison as operationally inappropriate for the detention of refugee claimants for many reasons, including:

- failure by INZ and the Police to give proper reason for the detention to the claimants,
- difficulties getting proper legal representation,

- difficulties contacting family and support systems, and denial of access to support services such as the NZ Red Cross and ASST,
- not being screened for mental and physical health problems before detention in prison,
- the potential for re-traumatisation of victims of torture, and
- obstruction of the claimant's meaningful participation in the asylum process (Casey, 2022).

Detention of refugee claimants in criminal justice facilities and the harm it causes has also attracted criticism in other NZ publications (e.g., Bloom & Udahehuka, 2014; Bogen & Marlowe, 2017; Human Rights Commission, 2010), although these research projects did not include the primary experiences of claimants in detention.

There is also a growing body of international evidence robustly demonstrating that the detention of refugee claimants whether for short and long-term, especially if they are already traumatised by past experiences of persecution and torture, can lead to depression, self-harm, suicidal ideation, PTSD, and other mental illnesses (e.g., Cleveland & Rousseau, 2013; Coffey et al., 2010; Filges et al., 2015; Gerena, 2022; Robjant et al., 2009; Silove et al., 2007; von Werthern et al., 2018).

I draw a number of inferences from this literature on the experiences of refugee claimants with detention in NZ. Primarily, the literature on this subject in NZ is still sparse and has not received deserving academic attention. Arguably, it can be inferred that the lack of interest may have been because fewer persons experience this predicament in NZ over the last three decades compared to the substantial figures in Australia, for instance, which, in turn, has attracted more academic research. However, the bare harm of detention in criminal justice facility, even if experienced by one person (so to speak), is unjustified and needs academic attention. The lack of academic interest supports, to some extent, Bogen and Marlowe's (2017) claim that there is a culture of indifference in NZ regarding the government's deterrent, differential, and discriminatory treatment of refugee claimants.

In addition, the NZ studies on the experiences of refugee claimants in detention depict what is unquestionably an alarming picture. The question then becomes if recent NZ research such as Hiew (2020) and Amnesty International Aotearoa (2021), have uncovered extensive experience of detention, is researching this aspect of RSD still needed (and if so) what contribution will this study make to knowledge? It is relevant to state that Hiew's investigation appears to have been completed contemporaneously (or perhaps) after this study was commenced. I began this PhD thesis in May 2018, while Hiew's master's thesis was completed in 2020. Regarding the Amnesty International Aotearoa report, it was initiated in 2020, more than two years into this study (and this research contributed significantly to its initiation). Further, this thesis makes a unique contribution to knowledge, as it also incorporates the therapeutic jurisprudence lens informed by transformative paradigm research design in studying the experiences of refugee claimants in detention. These academic dimensions were not outright constituents of Hiew or Amnesty International Aotearoa studies.

Overall, the literature in this part on the experiences of refugee claimants, particularly concerning their interactions with the RSD system, including detention, suggests that they face psychological and physical suffering, mental health problems, inadequate essential services, significant challenges in accessing entitlements, considerable stress and re-traumatisation stemming from the asylum process. Despite these challenges, some refugee claimants in NZ benefit from their social connections with local communities and support networks, which can assist with navigating the RSD procedure, and integration into mainstream society. These key findings provide insights into the experiences of refugee claimants in NZ, highlighting the need for continued research and support for this population group, which is often susceptible because of premigration stressors.

2.2 Part Two: Oppressive and discriminatory legislation, policy; and coverage of refugee claimants in politics and media

The literature reviewed thus far has focused on a micro, lived experience level of refugee claimants with the RSD system. The following three sections broadly overview the literature relating to the macro aspects of RSD. The cohort of literature in this part discusses oppressive legislation, policy and practice related to the detention of refugee claimants, discriminatory policies outside the RSD system, and inhospitable political and media discourses about refugee claimants. It provides relevant background to understanding the systemic oppression and marginalisation related to refugee claimants and the RSD system in NZ.

2.2.1 Oppressive legislation, policy, and practice on detention of refugee claimants

Legislation, policy, and practice relating to the detention of refugee claimants in NZ has received some research coverage as well. By and large, the literature critique whether developments in domestic laws, policy and practice concerning the detention of people seeking asylum corresponds with the Refugee Convention, UNHCR detention guidelines and domestic laws. The studies found this was not the case. They also highlighted the oppressive nature of the detention law, policy, and practice.

Focusing on the Immigration Act 1987, Frater (2003) examined the balance between the rights of refugee claimants and national security in the context of detention. The researcher observed that the 1990s and early 2000s were a worrying period for the human rights of refugee claimants as successive NZ governments adopted panic responses to perceived threats to national security, thereby unfairly and unnecessarily detaining claimants in instances not anticipated by Article 31 of the Refugee

Convention.³² She concluded that NZ laws, regulations, and refugee policies had shifted the balance from refugee rights to national security concerns, especially after the September 11, 2001 terrorist attacks in the USA (Frater, 2003).

Similarly, Lafraie (2006), examined the impact of the September 11, 2001, terrorist attacks in the USA on NZ's refugee law, policy and practice and implications for Muslim refugees. He observed that the law, policy, and practice in NZ post-September 11 resulted in widespread detention of refugee claimants in the country as in Australia, UK, USA, and other countries, but this was not as harsh as the UK and USA, except the protracted imprisonment of Mr Ahmed Zaoui (including solitary confinement) despite that he had been recognised as a refugee. The changes brought by legislation, policy and practice in NZ also effectively deterred potential refugee claimants from NZ, as the number of claimants dropped dramatically from 2005 onwards (Lafraie, 2006).

Both Frater (2003) and Lafraie (2006) identified several trends from the 1990s to early 2000s in NZ law and policy that indicated that the government prioritised security concerns over the rights of refugees, resulting in many refugee claimants being detained unnecessarily at the airport. This included security procedures adopted during the first Gulf War 1990–1991 for determining refugee status applications, which required that refugee claimants were denied clearance on the basis that not enough was known about them, resulting in unnecessary detentions, contrarily to Article 31 of the Refugee Convention (Frater, 2003).

Crown policy also facilitated the detention of refugee claimants under section 128 of the Immigration Act 1987 on mere suspicion that the person was a criminal or a terrorist (Frater, 2003; Lafraie, 2006). Frater cited in addition the enactment of the Immigration Amendment Act (No 2) 1999, under urgency, bringing forward to 16 June 1999 the commencement of specific provisions of the Immigration Amendment Act 1999, and allowing for the detention of mass arrivals.³³ Correspondingly, Davidson's (2000) undergraduate dissertation examined the consistency between Article 31(2) of the Refugee Convention (relating to the prohibition of restriction of movement except when necessary) and NZ law, policy and practice on the detention of refugee claimants in the years leading to 2000. He argued that against the prevalent detention of refugee claimants, NZ law was failing to meet its obligations under 31(2) of the Refugee Convention.

Frater (2003) and Lafraie (2006) noted that a controversial policy introduced by the NZ Immigration Service (NZIS) on 19 September 2001 in response to the terrorist attacks of September 11, 2001,

³² The article provides for non-penalisation of refugee claimants for unlawful entry and presence within a state's territory, and for non-restriction of their movements other than necessary.

³³ The fast-tracked provisions ((for instance, sections 128(13), 128(13A), and 128(13B) of Immigration Act 1987)) allowed detention of mass arrivals of undocumented migrants and refugee claimants for more than 28 days and prosecution for people traffickers, in response to the anticipated arrival of 102 Chinese by boat (Alexandra II), which had left the Solomon Islands on 12 June 1999 indicating that it was heading to NZ (Delamare, 1999).

completed the chain of actions for the detention of refugee claimants. Ninety-four per cent of the refugee claimants who arrived in the country after the policy was introduced were detained, whereas before September 19, 2001, only five per cent of refugee claimants were reportedly put in custody on their arrival in NZ (Frater, 2003; Lafraie, 2006).

Additional developments in the law which swung the balance towards detention rather than guaranteeing the rights of refugee claimants included the Court of Appeal's decision in *Attorney-General v. Refugee Council of New Zealand*,³⁴ recognising that: (a) the "power to detain created by the immediate turnaround provisions of section 128(5) of the Immigration Act 1987 applied to refugee status claimants"; and (b) "the operational instruction issued on 19 September 2001 by the general manager of the NZIS was valid in law". The Court acknowledged that even though widespread detention of refugee claimants was a direct consequence of the new NZIS policy, and the policy seemed unfair, regardless, the NZIS had the power under law to detain refugee claimants on their arrival in the country, under certain circumstances (Frater, 2003; Lafraie, 2006).

Aside from Lafraie (2006) and Frater (2003), Amnesty International Aotearoa recently examined NZ's legislation, policy, and practice concerning the restriction of movement for refugee claimants, some 15 years after Lafraie. Amnesty reported multiple failures with immigration detention proceedings for refugee claimants: from the airport to the police station, through the warrant of commitment process in the District Court, to use of criminal justice facilities. It also found NZ law, policy and practice as arbitrary and at odds with current UNHCR detention guidelines, significantly undermining the claimants' rights for a fair RSD procedure (Amnesty International Aotearoa, 2021).

Casey (2022) followed Amnesty International Aotearoa's research and provided another critical examination of NZ's legislation and processes relating to the detention of refugee claimants. She identified three significant areas of concern regarding the detention of refugee claimants: (i) the detention regime under the Immigration Act 2009; (ii) INZ's operational practice; and (iii) the use of criminal justice facilities for detention. In terms of the detention regime in the Immigration Act, Casey noted that the current Immigration Act 2009 establishes a fundamentally flawed framework for restricting the liberty of refugee claimants and is essentially at odds with domestic laws³⁵ and the country's international protection obligations. Casey also found the warrant of commitment process under the Act ineffective for judicial oversight and review of INZ's decision to detain a refugee claimant on a long-term basis. She observed in addition that INZ's Operational Manual was ineffective as a safeguard for internal decision-making regarding the detention of refugee claimants. Casey highlighted

³⁴ [2003] 2 NZLR 577

³⁵ For example, sections 22 and 23 of the New Zealand Bill of Rights Act 1990.

that these structural flaws allowed for arbitrariness and the possibility of indefinite detention of refugee claimants (Casey, 2022).

Besides the law and policy issues, Casey identified fundamental problems with how the law and policy operated. This included refugee claimants not being granted access to legal representation during detention at the airport and in the police cell, and being put through “catch-22” situations³⁶ (Casey, 2022, p. 14 and p. 16).

Other researchers (e.g., Bogen & Marlowe, 2017; West-Newman, 2015) have commented that the NZ Immigration Amendment Act 2013 represents an increasingly punitive, deterrent, and controlling trend by nation-states against refugee claimants, prevailing elsewhere, for instance in Australia, USA, UK, and EU countries (e.g., Banks, 2008; Bessant & Watts, 2022; Bosworth & Turnbull, 2015; Davies, 2013; Hodge, 2015; Majcher, 2021; Welch & Schuster, 2005). NZ government argued as with the case of Australia that the Immigration Amendment Act 2013 was intended to dissuade potential refugee claimants and people smugglers from choosing NZ as a desirable place for asylum (Bogen & Marlowe, 2017).

Overall, this literature indicates that over three decades, NZ has passed penalising and deterrent laws and policies restricting the liberty of some refugee claimants, and as a result violating their fundamental human rights under the guise of national security. It can be inferred that a common thread across the legislative, policy, and practice developments is the oppressive use of detention, given the usage of criminal justice facilities for this purpose. This section provides further insights and context to understanding the structural oppression and marginalisation of refugee claimants in NZ, thus demonstrating why the therapeutic jurisprudence and transformative paradigm are fitting theoretical lenses for critiquing this reality.

2.2.2 Discriminatory policies outside the RSD procedure

Several NZ studies have focused outside the RSD procedure, highlighting the oppressive and differential treatment of refugee claimants in refugee policies. This body of literature covers the period from NZ’s ascension to the Refugee Convention to date.

³⁶ For instance, the burden in law to establish the claim is on the claimant, yet they are locked up in a prison where they could not possibly access the supporting evidence required.

The Refugee Convention provides many rights³⁷ for refugee claimants during the asylum process (and after official recognition as refugees) (Hathaway, 2005). However, several NZ studies have argued that the government is failing in many respects to meet its obligations under the Refugee Convention to this population group. Uprety and colleagues (1999) were among the first researchers to discuss the discriminatory nature of NZ's refugee policy. They pointed out that many refugee claimants in the community lived in marginality and precarious conditions related to unmet needs during the asylum process. The researchers highlighted fundamental gaps and differences in government-funded services and entitlements for refugee claimants and convention refugees on the one hand compared to quota refugees on the other (Uprety et al., 1999).

Other researchers have asserted in addition that although the Refugee Convention makes no distinction in the rights and responsibilities of refugees based on how they arrive in the country of asylum or acquire official recognition as refugees,³⁸ NZ's refugee policy categorises refugees into different groups and treats them differently in the country depending on how they have arrived (e.g., Bogen & Marlowe, 2017; Ferns et al., 2022). Bogen and Marlowe noted that “a clear disparity exists between how asylum seekers, convention refugees, and quota refugees are perceived and supported by the New Zealand government, and by extension, within New Zealand society” (2017, p. 106).

Refugee claimants face barriers in government policies accessing rights under the Refugee Convention that the convention refugees and quota refugees in the country enjoy (Bogen & Marlowe, 2017; Ferns et al., 2022; Marlowe & Humpage, 2016). They lack entitlements or have difficulties accessing entitlements across several domains, including social welfare, work rights, housing, education, and mental healthcare (Bloom et al., 2013; Bloom & Udahehuka, 2014; Ferns et al., 2022; Human Rights Commission, 2017; Uprety et al., 1999). Discussing related challenges in his master's thesis which explored the experiences of people seeking asylum and refugees living in NZ during the COVID-19 pandemic, Zisuh (2023, p. 37) categorised the lack of entitlements and difficulties accessing entitlements as a “hypocritical hospitality” by the government. Inferences from these studies indicate that unmet essential needs increase refugee claimants' vulnerability and feelings of disenfranchisement during the asylum process and even after they have officially been recognised as convention refugees.

³⁷ The rights under the Refugee Convention include, but are not limited to, right to non-discrimination (article 3), right to freedom of religion (article 4), right to work (article 17), right to housing (article 21), right to education (article 22), right to social welfare and medical assistance (article 23), right to freedom of movement (article 26), right to identity papers (article 27), right to travel documents (article 28), right to not be penalised for illegal entry (article 31), right not to be expelled from a country unless the refugee poses a threat to national security or public order (article 32), and right not to be sent back to a country where their life or freedom would be threatened (principle of non-refoulement) (article 33). Conversely, article 2 requires that refugees abide by the law in the country of asylum.

³⁸ Article 1 (A)(2) of the Refugee Convention provides only a definition of a refugee, and Article 7 ascribes rights to refugees regardless of entry pathway.

Bloom and Udahemuka (2014) likewise, Bogen and Marlowe (2017) asserted further that the ‘New Zealand Refugee Resettlement Strategy’ (NZRSS) introduced by the government in 2012 focused entirely on improving well-being and the resettlement process for quota refugees in areas such as self-sufficiency through employment; education; health and wellbeing; housing; and a sense of belonging and active participation in the NZ community. Refugee claimants and convention refugees (and the other categories of refugees in the country) continue to be excluded from this crucial refugee policy.³⁹ The exclusion of refugee claimants and convention refugees in the strategy significantly reduces the support services available to them during the asylum process (Bloom & Udahemuka, 2014; Bogen & Marlowe, 2017). Some claimants experience extreme poverty, exploitation, homelessness and precariousness, which affects their ability to participate effectively in the RSD procedure (Ferns et al., 2022; Human Rights Commission, 2017; Sama et al., 2020).

Casey (2022) commented regarding some of the structural discrimination, that some refugee claimants and convention refugees are treated by the government (or some government institutions) as “bad” and “second-class” (p. 17) compared to quota refugees, arguably because they are perceived as “cheating the system, or queue jumping” (p. 2). She illustrated, for example, that refugee claimants “held at the MRRC do not have access to the same programmes or even catering as the accepted quota refugees, creating a real division” (p. 17) between the two groups, which is unfair to both and possibly heightens their vulnerabilities. Casey also noted that most refugee claimants are granted work or other types of temporary visas to regularise their immigration status while their asylum claim or appeal is being processed, allowing them to access welfare services, employment, healthcare, and education.

Academic commentaries from several jurisdictions overseas have also uncovered discriminatory government policies against refugee claimants (e.g., Chammas, 2022; Hartley et al., 2017; Kissoon, 2010; Llewellyn, 2020; Newman, 2012; Sales, 2002). These studies observed that government discriminatory treatment of refugee claimants cause or intensify extreme poverty, exploitation, homelessness, physical and mental health conditions, marginalisation, and estrangement to the fringes of society while claims are heard. Literature overseas has reported likewise problems of varying proportions with government policy on legal representation for refugee claimants, for example, in the UK and Canada (Burridge & Gill, 2017; Smith et al., 2021), and no government-aided legal representation for some categories of refugee claimants in Australia (Hamlin, 2012; Kaldor Centre, 2020).

On the whole, this literature shows that refugee claimants in NZ and in many other countries experience significant institutional challenges and socio-economic marginalisation, which can negatively impact

³⁹ It must be stressed however that government’s review of the NZRRS was underway at the time I was writing this thesis in early 2023. It is the prayer of the refugee community and researchers (e.g., Ferns et al., 2022) that refugee claimants and all the categories of refugees in the country are included in the NZRRS.

their mental health, well-being and meaningful participation in the RSD procedure. Greater support is needed for refugee claimants both from within the RSD system and the broader society to improve their experiences and effective participation in RSD.

It is relevant to note that although the issues discussed in this section sit predominantly outside the RSD process and are not included later in this study's results, I have covered it here as crucial background literature for understanding the systemic issues affecting refugee claimants' performance in the RSD. Fundamentally, the discriminatory and differential treatment of refugee claimants in NZ refugee policy creates contexts for systemic oppression and marginalisation of this group during the RSD procedure, critically undermining their ability to participate meaningfully in this indispensable legal process. The review here and the next section provide a broader context to assist with fully unpacking and understanding the structural and cultural issues related to this study's participants' experience and perspectives about the RSD system.

2.2.3 Inhospitable coverage of refugee claimants in NZ politics and press

In my 18 years (roughly) in NZ as a convention refugee, I have watched and read a number of news items concerning the political atmosphere in the country about people seeking asylum and refugees generally. Sometimes the opinion of a senior government official, minister, politician, or journalist about refugee claimants is positive and warm. Other times it is negative and unpleasant. This elicited a burning question for this thesis that I needed to answer in this literature review: what are the key up-to-date findings in NZ academic research on political and press rhetoric about refugee claimants, and what impacts (if any) does the rhetoric have on the RSD system?

In this section, I review the existing literature concerning the political and press environment that refugee claimants are occasionally immersed in when they arrive in NZ. The findings from this review indicate that although the depiction of refugee claimants in NZ has not had the extent of the considerable hostile and harsh representation seen overseas, some of the threads of negative rhetoric that have emerged in NZ are concerning. These representations by politicians and media can also help create a favourable atmosphere and broader context for the thriving of the oppression and marginalisation that refugee claimants may experience in society and RSD system.

Sulaiman-Hill, Thompson, Afsar, and Hodliffe (2011) conducted a comparative analysis of print media reporting in NZ and Australia between 1998 and 2008, assessing political climate, public attitudes and opinions concerning refugee issues. These scholars found that reporting of refugee issues in NZ and Australia "changed after the events of 9/11 and that reporting on Muslims [was] more likely to frame stories in ways that [was] less sympathetic to their circumstances than for other refugees" (p. 359). They also observed that whereas "refugee issues were often framed in political tones and sometimes portrayed asylum seekers negatively in Australia, especially after 2001, in New Zealand provision of background context and refugee perspectives provided newspaper coverage that was more balanced and

sympathetic” (p. 363). They noted as well that unlike Australia, political discourse, and newspaper coverages in NZ “celebrated the wider contribution that refugees have made to New Zealand society”, incorporating “a personal or human focus” to their story, and differed from “the refugee stereotyping, or reports linking refugees with mental illness or violence, that has occurred elsewhere” overseas (p. 359).

Like Sulaiman-Hill and colleagues, Lafraie (2006) examined NZ’s media and political atmosphere surrounding the Mr Ahmed Zaoui case, a Muslim. Lafraie found NZ’s media and political scene hostile and unwelcoming to Mr Zaoui. The researcher asserted that the media played a crucial role in implicating Mr Zaoui in terrorism. He explained that soon after Mr Zaoui was imprisoned, *The New Zealand Herald* (the largest NZ newspaper at the time) ran news reports about him being a terrorist who was being detained in the most secure unit of Auckland’s maximum-security prison. “It was only after the RSAA’s ruling in favour of Mr Zaoui, which found him innocent of all the charges, that other media outlets — such as the *New Zealand Listener*, *Scoop*, and *TVNZ* — tried to correct the impression created by *The Herald*” (p. 124). Notwithstanding that, *The Herald* instead questioned the RSAA’s decision, asserting the “lamentably shallow decision [by the RSAA spoke] volumes for how this public body failed in its duty” (p. 124). Lafraie noted that *The Herald* later “admitted its mistakes” (p. 124). The researcher also reported that the Minister of Immigration and politicians played a crucial role in painting Mr Zaoui to the public as a terrorist. For example, Prime Minister Helen Clark criticised the RSAA on media “for being cavalier and relying on advice from Mr Ahmed Zaoui’s side of the argument” to recognise him as a refugee (pp. 121-122).

Unlike Sulaiman-Hill and others (2011), West-Newman (2015) analysed NZ’s news media reporting on refugees since 2000 and found two prevailing narratives: a small account of generous communities receiving new arrivals, and a dominant account of people-smugglers, criminal convictions, and cancellations of refugee status before deportation, and other vices. She asserted that there was “a failure of informed media concern for the well-being of asylum seekers” (p. 11). Like Bogen and Marlowe’s (2017) opinion (discussed next) that there was a “culture of indifference” in the country concerning the plight of asylum seekers caused by adverse political and press rhetoric, West-Newman noted that there was a “general lack of public knowledge about and therefore concern for asylum seekers and refugees in Aotearoa”, caused or reinforced by media emphasis on the negative aspects of forced involuntary migration (2015, p. 11).

Citing public political rhetoric leading to the enactment of the Immigration Amendment Act 2013, West-Newman (2015) asserted that “the attitudes of policy makers, selectively relayed through mass media, reflexively influence and are informed by public opinion” about people seeking asylum (pp. 10-11). She argued that “as in larger and more influential Western nations, local policy and practice have arguably been strongly driven by fear and shaped through ethnic stereotyping that reflects perceptions of threat from dangerous strangers, despite the absence of local empirical evidence to that effect” (p.

11). It can be drawn from West-Newman's discussion that the alarmist political and media language against refugee claimants create a toxic environment for them, potentially marginalising their voices further, reinforcing negative stereotypes, and fuelling a lack of empathy among the public for their course in the country.

Correspondingly, Bogen and Marlowe (2017) analysed policy developments and associated discourses utilised in NZ leading to the passing of the Immigration Amendment Act 2013, and other international contexts concerning people seeking asylum. Citing numerous studies overseas, they argued that government and media rhetoric in NZ (evidenced by debates leading to the law change in 2013) bear similarities with attitudes and occurrences globally (for instance, in Australia and the UK), where there was a prevailing history of hostile political and media discourses targeted primarily towards proposing or advancing inhospitable legislation against people seeking asylum.

Bogen and Marlowe (2017) analysed some of the main labels used by politicians and mass media across many countries to stoke public fears against the people seeking asylum. These included "boat people", "queue-jumpers", "aliens", "bogus" claims, dishonest, illegitimate, "illegals" (p. 107), "dangerous", "destitute", and "deviant" people (p. 110). They also discussed international political and mass media stirring panic in the local population against new arrivals. For example, they found portrayals that suggested the country was being "swamped, inundated, engulfed, flooded, submerged, or washed away by tides, waves, or floods of asylum seekers", who were also "disease-ridden" and "health hazards" (p. 108). The scholars argued that these negative connotations served to diminish public empathy and compassion for the predicaments of asylum-seeking populations and their courses.

In the main, Bogen and Marlowe discussed some of the major binaries (polarization) in several countries stemming from harmful political and mass media rhetoric. These included the "us and them" perceptions, with the local population being the us and refugee claimants them; and "deserving and undeserving" refugees, with UNHCR resettled refugees being the deserving while people seeking asylum are "nondeserving" (p. 107). They also suggested a binary of "at risk and a risk" (p. 110) for the first time in NZ context. Prior to September 11, 2001, refugee claimants were generally seen in the world as a people at risk and needing protection, but after September 11, a hostile political and mass media rhetoric developed in many Western countries (including NZ to some degree), changing the image of refugee claimants to a risk to the country, needing to be repelled and expelled, thereby exacerbating their marginality in society. The scholars asserted that some of these binaries, which prevail in Australia, UK, and other countries, have emerged in the NZ context leading up to the introduction of the Immigration Amendment Act 2013, but have "not remained at levels that continue to foment fear or conceptions of risk among the public" (p. 109).

They concluded that while there was evidence of a moral panic in Australia and the UK, for example, against people seeking asylum, there was not yet "a full-blown moral panic towards asylum seekers

arriving in New Zealand”. Nevertheless, there was “evidence of a culture of indifference” to the predicaments of asylum seekers in the country, “which is supported by legislation and governmental practices that exclude, and essentially make [them] invisible in society” (p. 106). Notably, the scholars argued that “a society in a state of indifference partakes in a more covert type of racism. An indifferent public does little to contest, much less even consider, its government’s seemingly xeno-racist and anti-human-rights laws, nor challenge the widely used rhetoric and associated justification that discriminates against already vulnerable asylum seekers” (Bogen & Marlowe, 2017, p. 110).

International research has consistently demonstrated similarly that political discourses and news stories across many countries about people seeking asylum are, to a considerable extent, polarising, especially following September 11, 2001; and have had a significant influence on the formation of negative public attitudes toward refugees claimants (e.g., Bloch & Schuster, 2002; Gale, 2004; Malloch & Stanley, 2005; McKay et al., 2011; O’Doherty & Lecouteur, 2007). The hostile political and media depiction worsens issues of oppression, discrimination, and settlement difficulties for refugee claimants, intensifying mental health problems, isolation, and indulgence in maladaptive coping behaviours (Bozorgmehr et al., 2023; Leudar et al., 2008; Mulvey, 2010).

In general, the existing literature suggests that the representation of refugee claimants in NZ political and media discourse is sometimes harmful, limited, politicised, and surrounded by a culture of indifference by the public to the government’s injustices to this group. This inhospitable and limited representation can create an oppressive culture and contribute to a lack of understanding and empathy for refugee claimants’ experiences and needs by the public. It can also create a challenging environment for the RSD institutions to operationalise the Refugee Convention amidst the distorted media and political scrutiny. The existing literature also portrays a lack of diversity and inclusivity in the coverage of refugee claimants by politicians and mass media. It highlights the need for more research to challenge this dominant negative discourse and structural issue impacting people seeking asylum and need for increase advocacy for more compassionate and empathetic media and political responses for this population group.

2.3 Part Three: Recommendations on improving the RSD

Many of the NZ studies I have reviewed in this chapter have also postulated several ways by which the experience of people seeking asylum in the country can be improved. The key recommendations include ensuring appropriate support for refugee claimants, so they are safe in the community during the asylum process, ending the oppressive and discriminatory policies and practices, and law and operational reforms by INZ to end detention in criminal justice facilities.

More generally, in terms of the refugee policy and practice issues outside the RSD that significantly affect refugee claimants’ experience and ability to participate fully in the RSD procedure, Ferns et al

(2022) recommend that government should provide appropriate essential services (e.g., right to work, housing, specialist mental health support, etc.) and funding for community organisations so refugee claimants needs are met, and they are safe during the asylum process. Upirety et al (1999) made a similar call some 25 years ago, and there is yet to be a substantial policy and practice change by the government. The Human Rights Commission (2017), and Bloom and Udaheureka (2014) equally advocate for the government to respect the rights of refugee claimants under the Refugee Convention to eliminate hardships and deprivations in this group.

Other NZ researchers have advanced more ideas on how the experiences and representations of refugee claimants can be improved. West-Newman (2015), for instance, proposes that NZ refugee law and the official RSD procedure would have a much better, safer, and holistic perspective if insights are drawn from the Māori worldview to strengthen it. She argues that adopting the Māori value of *manaakitanga*⁴⁰ in the RSD could create a more hospitable, kind, and respectful reception and treatment of refugee claimants in the country (West-Newman, 2015). In the same vein of improving the conditions and image of the refugee claimants in NZ, Bogen and Marlowe (2017) challenge the social work profession to be more active, advocating for social justice and human rights for this population, which is easily one of the most silenced, discriminated and oppressed by government policy, political and media rhetoric. They argue that social workers are obligated to respond and raise public consciousness about the government's discriminatory policies and practices against refugee claimants, and challenge the culture of indifference in NZ (Bogen & Marlowe, 2017).

Aside the proposals related to improving discriminatory policies and discourses, Casey (2019) focuses on improving RSD processes and proceedings at the RSU. She asserts that "to be fit for purpose, [the RSD] procedures must be sufficiently robust to protect the integrity of the overall decision-making process, and to protect the interests and wellbeing of those that participate in it: the claimants of course, but also the RPOs and practitioners" (p. 9). Casey suggests amongst other points that the RSU should: (i) develop a Practice Note, modelled on the IPT's, to address several of the problems resulting from lack of clarity and certainty in its processes; (ii) review and limit the claim form for refugee and protection status to information absolutely needed; (iii) include refugee claimants' rights in key written correspondences concerning them; (iv) split the asylum interview into two half days with the first day focusing on the basis of the claim, then the biographical information on the following day; and (v) reduce the depth and breadth of inquiries in the interview report in cases likely to be approved (Casey, 2019).

⁴⁰ *Manaakitanga* is a Māori word or concept for hospitality, generosity, kindness, respect, support, and care for others.

Meanwhile, Casey (2022) focuses on the detention of refugee claimants and makes eleven recommendations for improving the law and operational practice. Three of the recommendations centre on the law related to the detention regime in Immigration Act 2009. Primarily Casey proposes that the government should reform the law and supporting regulation and policy to comply with current UNHCR detention guidelines and domestic laws, discontinue detention in criminal justice facilities for other alternatives in the community, and enshrine in the law maximum term limits for detention. Casey's other recommendations about detention focuses on INZ operations requiring besides other things that INZ should: (i) provide access to internet and free international telephone for claimant detained in the airport; (ii) prioritise identity checks to decrease and limit the time in custody for this purpose; (iii) ensure people in custody have appropriate access to legal representation and means of communication to establish their claim; (iv) fund community detention alternatives; and (v) while pending law change, not use criminal justice facilities such as police cells and prisons for detention (Casey, 2022).

Similarly, Amnesty International Aotearoa (2021) recommends in the main that the restriction of movement for refugee claimants should conform with the 2012 UNHCR detention guidelines and domestic laws, while Hiew (2020) proposes quite simply that "asylum seekers should not be put into prison" (p. 103).

On the whole, several of the studies have advocated for the government to guarantee entitlements and accessibility of essential services including rights to work, housing, mental healthcare, education, and social welfare for refugee claimants, as well as funding for the community organisations supporting them. Even more fascinating, the Casey (2019; 2022) reports illustrate that government's attention recently has focused on how the processes and proceedings for making RSD at the RSU and restriction of liberty for refugee claimants in the country could be improved. This study will add depth and breadth to these new developments by providing a more holistic approach to improving RSD processes at RSU, including perspectives about border arrival and appeal processes at the IPT; and will introduce a therapeutic jurisprudence lens to the analysis on how NZ RSD could be enhanced into a better and safer system.

Chapter Summary

The current body of literature related to RSD in NZ depicts predominantly a negative picture of the experience of refugee claimants during the asylum process and of the RSD system. This chapter provides the backdrop to understanding the oppression of refugee claimants in the RSD system in NZ. Although the existing studies have also canvassed several ideas for improving RSD, this thesis will provide, for the first time, an in-depth examination of experiences with RSD – something that long warranted critical investigation but has struggled to gain traction, arguably, because of the culture of indifference that operates at structural and societal levels. Through its reliance on the therapeutic

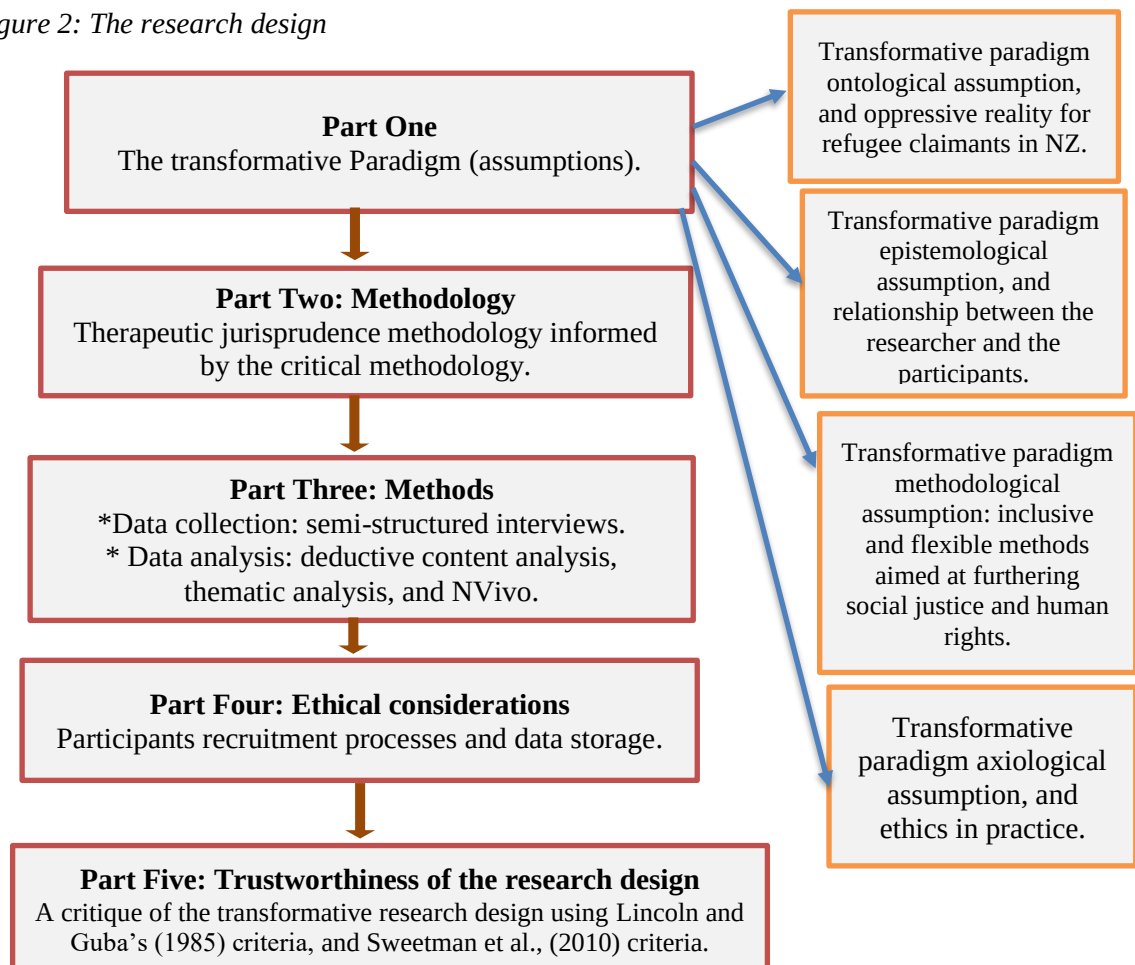
jurisprudence perspective, the study will also shed new insights into the experiences of refugee claimants and the perspectives of key stakeholders relating to the RSD procedure overall.

In the next chapter, I will discuss how the research design informed by the transformative paradigm, fits the conditions of refugee claimants as an oppressed and marginalised population group and how the design advances knowledge in this field.

CHAPTER 3: Research design: RSD through the lens of the transformative paradigm and therapeutic jurisprudence

This chapter presents the philosophical and theoretical assumptions that inform the study design and its commitments to the transformative paradigm and therapeutic jurisprudence. The chapter is divided into five parts. The first outlines the philosophical beliefs of the transformative paradigm and positions the context of refugee claimants in NZ within the doctrines of the paradigm. In part two, I discuss the research processes, as directed by the therapeutic jurisprudence methodology (informed by a critical methodology), thus devising ‘a critical therapeutic jurisprudence methodology’. The third part focuses on the methods used for participant recruitment, data collection and analysis. Part four addresses the ethical questions that arose in the research process. In part five, I critique the research design using Lincoln and Guba’s (1985) criteria for appraising the trustworthiness of qualitative research, and Sweetman, Badiee, and Creswell’s (2010) specific criteria for evaluating whether a study aligns with the transformative paradigm. *Figure 2* represents the research design informed by the transformative paradigm.

Figure 2: The research design



3.1 Part One: Why the transformative paradigm for this research?

Professor Donna Mertens first proposed the transformative paradigm in the 1990s as a philosophical framework for researchers who place importance on social justice and furtherance of human rights (1999). The scholar asserts that the research worldview emerged in response to individuals who have been pushed to the margins of society throughout history and who are finding a means to bring their voices into the world of research. Their voices are shared with researchers who work as their partners to support with advancing social justice and human rights, hence reflecting transformative beliefs (Mertens, 1999; 2009). With the transformative paradigm, rather than the participants “being emancipated” by the researcher, both “work together for personal and social transformation” (Mertens, 2009, p. 2).

The assumptions constituting the paradigm pull together many strands of existing philosophy that focus on issues of power inequities to further human rights and social justice (Mertens & Wilson, 2012). Citing the works of many critical researchers (e.g., Karl Marx, Jürgen Habermas, Max Horkheimer, and Paulo Freire), Mertens argues that the transformative research framework encompasses or borrows from diverse research perspectives, amongst which are emancipatory research, critical theory, feminist theory, anti-discriminatory research, participatory research, critical ethnography research, research with people with disabilities and oppressed communities, culturally responsive research, and research with people who work on behalf of marginalised groups (Mertens, 1999; 2009; Mertens & Wilson, 2012). Mertens and Wilson add that these philosophical and theoretical perspectives contribute to the framework for the transformative paradigm because they address issues of power inequities, the impact of privilege, and the consequences of these for achieving human rights and social justice. They comment that the transformative framework realises that additional philosophical strands needed to be brought into existing research “to understand the viewpoints of philosophers who are members of marginalised groups” (Mertens & Wilson, 2012, p. 162).

The transformative philosophy is also invested in transformative research by researchers who have a lived experience of the issue being researched or come from the same background (Mertens, 1999). As a former refugee claimant living in NZ as a convention refugee, this paradigm fits my circumstances as belonging to the population group being studied within the context of the RSD system. But, of course, this does not imply transformative paradigm research is exclusive to persons with lived experience of the condition under investigation. As Mertens (1999) states, this research approach is available to people who work with marginalised groups. Thus, the paradigm attracts researchers interested in working with people who experience oppression on whatever basis, including (but not limited to) race, ethnicity, disability, immigration or refugee status, political conflicts, sexual orientation, poverty, gender, and

age. The primary goal of the researcher who subscribes to the paradigm is to expose the power structures that perpetuate social inequities and injustices, and to seek furtherance of social justice and human rights (Mertens, 1999; 2007; 2009; Mertens & Wilson, 2012; Romm, 2015). As Mertens (1999, p. 4) observes:

The evaluator who works within this paradigm consciously analyzes asymmetric power relationships, seeks ways to link the results of social inquiry to action, and links the results of the inquiry to wider questions of social inequity and social justice.

In sum, the transformative paradigm draws tenets and traits from many paradigmatic perspectives such as emancipatory research, anti-discriminatory research, and participatory research that seek to advance social justice and human rights for communities experiencing discrimination and oppression in our society.

As noted in Chapter Two, refugee claimants experience several forms of civic, social and economic marginalisation in refugee policy and hostile political and media discourses, including penalising detention for some. Once the individuals have lodged an asylum claim, the literature clearly shows that the RSD processes and proceedings compound these challenges, including intensifying mental health and psychological problems. Against this backdrop, the transformative paradigm is a suitable metaphysical lens for critiquing these experiences. In the next section, I discuss the assumptions of the transformative research framework and situate the context and experiences of refugee claimants with RSD in NZ to the beliefs.

3.1.1 The assumptions of the transformative paradigm and application to this research

Creswell (2009) recommends that when discussing the research design, the researcher should explain the basic considerations of the philosophical assumptions underpinning the paradigm and how they have informed the study design. In line with Creswell's proposition, I discuss, beginning with the ontological assumption, the doctrines of the transformative paradigm and how these have informed and shaped the processes and approaches used in this study.

3.1.1.1 Transformative ontological assumption

The ontological assumption (known otherwise as ontological belief) is concerned with "the nature of reality, and by extension, truth" (Mertens, 1999, pp. 4-5). It also addresses, besides other questions, "how do we know that something is real?" (Mertens, 2007, p. 215).

The ontological assumption of the transformative paradigm recognises that there are many versions of what is considered to be real and is conscious of the interpretivists/constructivists' perception of "multiple socially constructed realities" (Mertens, 1999, p. 5). However, Mertens (2010) asserts that the

paradigm departs from this interpretivists/constructivists' "belief in that it holds that there is one reality about which there are multiple opinions" (470). This leads to epistemological implications, as the transformative researcher needs "to delve deeply into understanding factors that lead society to accept one version of reality over another" (Mertens, 2010, p. 470). The ontological assumption underpinning the transformative paradigm also holds that the reality society tends to accept as the truth comes from the worldview of those in privileged positions and power at the expense of the lived experiences and opinions of those experiencing oppression as a result (Mertens, 2007).

Said differently, the transformative paradigm's ontological theory accepts like constructivists, that there are "diversities of viewpoints with regard to many social realities" (Mertens, 1999, p. 5). However, it deviates from this constructivists theory, arguing that "it is necessary [for the researcher] to be explicit about the social, political, cultural, economic, ethnic, racial, gender, age, and disability values that define realities" (Mertens, 2007, p. 216). And, for the researcher to profoundly probe and understand the origin of and whose reality is credited in society and why (Mertens, 2010). But beyond that, the researcher needs to critique the consequences of society believing one version of reality over others (Mertens, 2013), and to challenge this status quo in the research, seeking social justice and human rights with the community concerned (Mertens, 1999; 2007). As Mertens (2013, p. 31) notes:

The transformative ontological assumption leads the evaluator to identify different versions of reality, interrogate their origins, and examine the consequences of accepting one version of reality over another.

Mertens proposes further that to really understand and challenge why one version of reality is privileged over another and the consequences of accepting one version of reality over others; researchers need to ask questions such as:

How is reality defined? By whom? Whose reality is given privilege? What are the social justice implications of accepting reality that has not been subjected to a critical analysis on the basis of power differentials? (Mertens, 2007, p. 216).

[Whose reality is privileged in this context? What is the mechanism for challenging perceived realities that sustain an oppressive system? What are the consequences in terms of who is hurt if we accept multiple versions of reality or if we accept the 'wrong/privileged' version?] (Mertens, 2010, pp. 470-471).

She proposes further that:

When the more powerful determine what is considered to be real in ways that oppress the less powerful, then the evaluator has a responsibility to reveal the dynamics of that situation (Mertens, 2013, p. 31).

Hence, according to the transformative research framework, reality is defined on the basis of inequalities in power and privilege, often associated with differences in social characteristics such as disability, gender, sexual identity, religion, race/ethnicity, language, immigration or refugee status, etc. These inequalities habitually result in oppression and subjugation of the less privileged alternatives of realities (Mertens, 2009; Mertens & Wilson, 2012).

In terms of the research process, the transformative paradigm's ontological assumption is consciously aware "that certain individuals occupy a position of greater power and that individuals with other characteristics may be associated with a higher likelihood of exclusion from decisions about the definition of the research focus, questions, and other methodological aspects of the inquiry" (Mertens, 2007, p. 216). Thus, the researcher is expected to uphold inclusiveness in the research process (Mertens, 1999). The assumption of the transformative paradigm also holds that power issues pervade the choice of variables, their definitions, and the determining of what is researchable. Power is also implicit in decisions about which interpretation of reality will be accepted for the research. Thus, a primary focus of a transformative researcher is to ensure that the voices of persons traditionally excluded in research ascertaining what the reality is for that community are included in the study as well. The transformative paradigm's ontological assumption has implications for determining the focus of a study, the development of the guiding questions, sampling, and other methodological aspects of the inquiry (Mertens, 2009).

Against the backdrop of the experiences of refugee claimants in NZ (discussed in Chapter Two), relating to various forms of oppression from the RSD procedure, discrimination in refugee policy, hostile political/media discourses, including penalising detention, this ontological perspective is a fitting worldview for critiquing this reality. It is relevant to interrogate and challenge the unfavourable status quo faced by refugee claimants in the country, exploring alternative realities from their perspectives, such as a better and safer RSD system. Mindful also of the fact that discriminatory practices and inequalities can and do find their way into research designs, often excluding persons traditionally excluded from the research process, I have aimed for inclusivity in this study. The research participants represented the diversity of RSD stakeholders (more details are provided later at 3.3.1).

3.1.1.2 Transformative epistemological assumption

The epistemological belief concentrates on "the nature of knowledge and the relationship between the knower [researcher] and that which would be known [participant]" (Mertens, 2010, p. 470). Mertens claims that epistemology addresses, amongst other interests, the questions: What do people know? If a researcher is to know something is real, how must they relate to the person being studied? Should they be distant and removed to prevent bias, or should they be close and involved? (Mertens, 2007; 2010).

The transformative paradigm's epistemological assumption holds that "knowledge is not neutral, but is influenced by human interests" (Mertens, 1999, p. 4). Knowledge is socially and historically located

within a complex cultural context (Mertens, 2007), and constructed within a context of power and privilege with consequences attached to which version of knowledge is given credence (Mertens & Wilson, 2012) (discussed earlier under ontological assumption). The transformative paradigm's epistemology assumes therefore that "all knowledge reflects the power and social relationships within society, and that an important purpose of knowledge construction is to help people improve society" (Mertens, 1999, p. 4).

Mertens claims that like the interpretivist/constructivist's epistemology, there is an interaction between the researcher and participant, however in the transformative worldview, to obtain the depth of understanding required, "it is necessary for the evaluator [researcher] to be involved in the communities impacted by the program to a significant degree" (Mertens, 1999, p. 5). Thus, to know the community's realities, the researcher must build a close and collaborative relationship (interactive link) between herself/himself and the stakeholders (participants) (Mertens, 2007). This requires respect, beneficence, justice (discussed later under axiology), and effective communication with the community concerned (Mertens & Wilson, 2012).

The transformative philosophical epistemology also assumes that the relationship between the researcher and participants needs to be in "culturally appropriate ways that acknowledge power differentials and support inclusion of all relevant voices, especially those who are traditionally marginalized" (Mertens, 2013, p. 31). Understanding the culture of the community and building trust is paramount to the transformative research framework (Mertens, 2007; 2009), as many members of marginalised communities are suspicious when researchers arrive in their midst to study them, given lived experiences of harm at the hands of researchers and oppression by the powerful majority who may have thought they were doing what was best for these communities (Mertens, 2013).

The transformative paradigm's epistemology theory holds further that the research focus, purpose, design, implementation, and utilisation should be developed through a cooperative process between the researcher and community members, and communication in the research should be a dialectical process of understanding the reality sought as a totality (Mertens & Wilson, 2012). In sum, the epistemology assumption of the transformative paradigm results in a cyclical model of research that includes the building of partnerships between researchers and community members [as stakeholders or co-researchers], including acknowledgement of discrepancies in power and establishing trust through the use of culturally competent practices (Mertens, 2007).

It can be drawn from the foregoing that a fundamental assumption of the epistemology of the transformative paradigm is that the researcher (typically someone with lived experience of the phenomenon) will work collaboratively with the research participants in the research process in culturally appropriate ways and towards achieving social justice and human rights. Accordingly, a fundamental part of the conceptualisation and design of this research came from contributions by

refugee claimants and concerned refugee service organisations and their professionals. The consultation process and participants' involvement in the research methods, including data analysis, is discussed later in this chapter at 3.4.1 and 3.3.4.2, while the collaborative advocacy with the participants for advancement of social justice and human rights is discussed in Chapter Eight at 8.1.

It is also relevant to note that this study was born primarily from my lived experience of NZ RSD as a refugee claimant, and my interactions with other refugee claimants, volunteering and leadership roles in the refugee community (discussed in Chapter One at 1.1). Further context to the conception of the study came from RSU-organised seminars regarding RSD processes I attended in Auckland between 2015 and 2018. I seized the opportunity to gather insights from stakeholders' concerns and discussions about critical and outstanding issues in the sector — a common thread related to health and well-being in RSD.

In addition, the study design received more impetus from the community between 2017 and early 2018 while I was volunteering at ASST. During this time, I conversed with some of my friends who were refugee claimants and teammates at ASST on my intention to pursue a PhD study on how the RSD system can also focus on people's health and well-being, using the therapeutic jurisprudence and transformative paradigm. I received overwhelming positive feedback stressing the potential benefit of the study. Thus, fitting with the epistemological assumption of the transformative paradigm, this research was born from my lived experience as a refugee claimant, and its conceptualisation and social impact were further enhanced through my engagements and collaborations with the asylum community and sector.

3.1.1.3 The transformative methodological assumption

The methodological assumption of research relates to the system of methods and principles used in doing the research and how the systematic inquiry was made (Creswell, 2009; Crotty, 1998). Generally, researchers have methodological choices relating to quantitative, qualitative, or mixed methods; and how they will collect the data about the human experience to capture reality (Mertens, 2007). In this study, I use the qualitative approach.

Mertens asserts that whilst the interpretivist/constructivist paradigm is considered as using mainly qualitative methods in a hermeneutical and dialectical manner, the methodological assumption of the transformative paradigm might also involve quantitative, qualitative, or mixed methods, but the community concerned is involved to some extent in the methodological decisions (Mertens, 1999). She adds that the transformative methodology is not tied to a single approach, theory, or method. Rather, methodological decisions are aimed at determining the approach that will best facilitate the use of the research process and findings to explicitly identify and address the systemic forces that support contextual and historical factors relating to power, privilege, oppression, and those that will allow

change to happen, thereby enhancing social justice and human rights (Mertens, 2007; Mertens & Wilson, 2012).

Mertens (2009) further proposes the transformative paradigm methodology as that which emphasizes forming partnerships between researchers and the community in determining the definition of the problem (discussed in the preceding section). She stresses that a researcher might use a qualitative data collection strategy to establish a dialogue with the participants and create critical and reflexive relationships about the research problem (Mertens, 2009; Mertens & Wilson, 2012).

The transformative paradigm's methodological assumption emphasises further that the methods used should accommodate dimensions of diversity relevant to the context of the community and tie the research process to social action (Mertens, 2009; Mertens & Wilson, 2012). Mertens notes, in addition, that data collection decisions in transformative research is complex, requiring an awareness of the cultural values and practices in the specific population of interest (Mertens, 2007). Thus, the transformative paradigm researcher is reflexive, dialoguing with the community concerned at the beginning of the research to ascertain the cultural context, build trust to obtain valid data, and use modifiable methods to capture the contextual complexity and breadth of cultural groups involved (Mertens, 2007; 2013).

It is argued that the methodological assumption of the transformative paradigm “explicitly recognize that certain voices have been absent, mis-represented, or marginalized, and that inclusion of these voices is necessary for a rigorous evaluation” (Mertens, 1999, p. 5). Mertens notes further that special efforts are needed in data collection processes to include the voices and perspectives of persons traditionally mis-represented, under-represented, or not represented in research in the area. She also stresses that the conclusions from the study should be based on the collection, analysis, and interpretation of inclusive data and not predetermined findings (1999).

In line with the transformative paradigm's propositions for involvement of the community concern in methodological decisions, and as I have noted earlier under the transformative epistemological assumption, the community concern and some of the research participants were directly or indirectly involved in this study's conceptualisation. Further, regarding the need for flexibility and adaptability of transformative research methods to the context of the population studied, as will be seen in the therapeutic jurisprudence methodology used in this study, informed by critical methodology (discussed later at 3.2), I chose these methods intentionally to match the uniqueness of this population, which is facing structural oppression, and with the hope that the research methods will lead to more advancement of social justice and human rights for this group (discussed later at 3.2.3).

More methodological decisions aligning fundamentally with the transformative paradigm's methodological assumption are discussed later, for example:

- the dialectical nature of the data collection through semi-structured interviews (refer to 3.3.3);

- accommodation of the diversity of the sector (refer to 3.3.1); and
- analytical processes, use of reflexivity to ensure that the results emerged from the data instead of my assumptions (refer to 3.3.4.2 and 3.5).

In Part Two (presented after the transformative axiological assumption below), I also discuss in detail how the therapeutic jurisprudence methodology (informed by critical methodology) has been used in this study, thus fulfilling the methodological assumption of the transformative paradigm.

3.1.1.4 The transformative axiological assumption

Axiological belief relates to the nature of ethics. It addresses many questions, including “how do I address issues of ethics when conducting research in culturally complex communities?” (Mertens, 2007, p. 215).

The transformative axiological assumption aims to advance social justice, human rights, and respect for cultural diversity (Mertens, 2010). According to Mertens and Wilson (2012), unlike interpretivist/constructivist researchers who are conscious of their positionality and the influence of their values in the inquiry process, transformative researchers take this a step further by deliberately expecting that their values regarding social justice and human rights will influence the research process and outcomes. Mertens contends that the ethical choices in research informed by the transformative paradigm need to include a realisation that oppression and discrimination are pervasive in society.

Consequently, transformative researchers “have a moral responsibility to understand the communities in which they work in order to challenge [the] societal process that allows the status quo to continue” (Mertens, 2009, p. 48). The pre-set goal of the researcher subscribing to the transformative paradigm is ethically bound to empower the participants to challenge and transform the status quo regarding unequal distributions of power and privilege in society, and resultant oppression or subjugation (Mertens & Wilson, 2012).

Mertens argues that the challenges that “researchers face around the world suggest that basing practice and policies on a social justice theory of ethics will allow the community to redress inequalities by giving precedence, or at least equal weight, to the voices of the least advantaged groups in society, who may not have sufficient power for accurate representation among stakeholder groups” (2007, p. 222). She states further that the implicit goal of the transformative researcher is “inclusion of those who may not have sufficient power for the accurate representation of their viewpoints but also to empower the less advantaged in terms of being able to take an active agent role in social change” (2007, p. 222). As Mertens (2013, p. 29) declares:

In order to produce credible evidence, evaluators must identify those cultural norms, beliefs, and practices that support human rights and social justice and those that sustain an oppressive status quo. ... They can ensure that all stakeholder groups, especially those from

marginalized and less powerful groups, are invited and supported in appropriate ways so that their voices are included throughout the evaluation.

The transformative paradigm's axiological belief also acknowledges the importance of cultural diversity and that culturally bound biases threaten the validity of the research. It holds that cultural competence could be reflected in researchers seeking awareness of their own culturally-based assumptions, their understanding of the worldviews of culturally-different stakeholders in the research, and the use of appropriate evaluation strategies and skills in working with culturally different groups and multiple social identities (Mertens & Wilson, 2012).

The transformative paradigm axiological assumption draws as well from three basic principles of regulatory ethics for research: respect, beneficence, and justice. It uses these in the research process to address inequalities, advance social justice, human rights, and respect of cultural norms (Mertens, 2007). Mertens suggests that besides these axiological assumptions, the relevant professional associations and organisations' code of ethics should guide researchers on what constitutes good ethical practice (Mertens, 2009).

Guided by this transformative axiological theory of deliberately having the same value as the community regarding advancement social justice and human rights, I embarked on this study with an overt intention to explore and understand how the therapeutic jurisprudence perspective can inform a transformation of RSD in NZ into a safer and better process. In terms of the research process and further informed by this axiological assumption, I endeavoured to recruit participants representing the diversity and complexity of the entire asylum sector in NZ. I also took necessary steps such as consultations with the stakeholders in the asylum sector including seeking consent from the managers of various key organisations that comprise the sector for their employees' participation. Additionally, given my standings in the community as a former refugee claimant and a leader, I recruited the refugee claimants in a culturally appropriate manner, adhering strictly to the University of Auckland's ethical guidelines for research with human participants. I discuss the full ethical considerations, focusing mainly on participants' recruitment processes, reflexivity, data storage and dissemination later at 3.4.

3.2 Part Two: Discussion of therapeutic jurisprudence (TJ) theory and the TJ methodology used

In this part, I discuss how the therapeutic jurisprudence methodology (informed by a critical methodology proposed by Fontana, 2004) has been used in this study, and how it aligns with the methodological assumption of the transformative paradigm. I begin by explaining the therapeutic jurisprudence theory and its development internationally and in the NZ context. Then I discuss the therapeutic jurisprudence methodological processes in this study, which I call a 'critical therapeutic jurisprudence methodology'.

The therapeutic jurisprudence theory is one of many modern movements⁴¹ towards embracing a more humane and emotionally aware legal practice for those who encounter or work within the law (Timmins, 2015). It is also a lens, conceptual framework, mechanism, methodology, vector, and heuristic for viewing and examining law (Brookbanks, 2015a; Ferrazzi & Krupa, 2015; Freckelton, 2008; Wexler, 2015).

The theory uses social science to study the extent to which legal rules, legal procedures, and the role of legal actors affect the psychological and emotional well-being of the people in the legal system (Wexler, 1995). It acknowledges that law is not merely about doctrine and theory but is a social force that produces consequences: some therapeutic and some anti-therapeutic (Wexler & Winick, 2003). Therapeutic jurisprudence is thus a lens through which to view and assess the law, legal proceedings and processes, legal institutions, and practices of legal actors for social impacts (Alford, 2015; Babb & Wexler, 2014).

The founding proponents of therapeutic jurisprudence theory (Wexler, 1990; Wexler & Winick, 1991; 1996) proposed that lawyers, adjudicators, and researchers should examine the extent to which the substantive rules, legal procedures and the role of legal actors (lawyers and judges primarily) produce therapeutic or harmful consequences on persons involved in the legal process, and ultimately work to improve legal outcomes without trumping fundamental principles such as due process. The theory is interdisciplinary in nature as it gathers insights from social and behavioural sciences such as psychology, sociology, social work, and other fields to improve the law (Wexler, 1995; Wexler & Winick, 1996).

Stated otherwise, therapeutic jurisprudence is “the study of the role of the law as a therapeutic agent” (Wexler, 1995, p. 220), “the study of the law’s healing potential” (Wexler & Winick, 2008), and “[r]e-imagining law as a healing profession” (Brookbanks, 2016). The central principle of therapeutic jurisprudence theory is that all else being equal, positive therapeutic effects are desirable and a proper aim of the substantive law, and that anti-therapeutic effects should be avoided or minimised (Glover, 2015). Another fundamental principle of the theory is that legal procedures and practices should be designed to promote positive outcomes for all parties involved. This means that legal processes and interventions should consider the psychological needs and interests of the people it affects (Brookbanks, 2015c).

These principles of the theory (e.g., harm minimisation in the law, promotion of the law’s positive outcomes, or exploring the therapeutic or healing potentials of the law) have strongly shaped and

⁴¹ For example, the preventive law, family systems theory, procedural justice, and restorative justice (Babb & Wexler, 2014).

informed the design of this study. In the main, the study explores what aspects of the RSD system have considerable implications on health and well-being and discusses how the system can be improved.

3.2.1 Development of therapeutic jurisprudence internationally

Wexler (2008) and Perlin (2017) outline comprehensive accounts of the development of therapeutic jurisprudence and from their work, therapeutic jurisprudence can be distilled into three dimensions. First, its growth from mental health law and practice to other disciplines. Second, the movement for mainstreaming therapeutic jurisprudence. Third, the development of the theory from the USA to a substantial body of international academic literature in just over three decades.

The term therapeutic jurisprudence originated in the USA from the works of Professors David Wexler and Bruce Winick in mental health law (Wexler, 1990; Wexler & Winick, 1991). Although developed in mental health law, the founders of therapeutic jurisprudence - Wexler and Winick (1991), prophesied that the framework would have much broader potential in a variety of allied legal fields rather than simply being a window into mental health law and practice. Brookbanks affirms that “[t]his prediction has been realised in a truly spectacular way” (2015a, p. 4).

In over three decades of the theory as an approach to the law, it has influenced policies and practices in both common law and civil law nations (Perlin, 2016). It has expanded from mental health law to health law generally, criminal law, civil law, family law, human rights law, disability law, tort law, probate law, labour law, employment law, evidence law, coronial law, and many other areas of law (Freckelton, 2008). Hence, there is a considerable and growing body of literature which has come to use the therapeutic jurisprudence theory, or aspects of such thinking, in a number of different ways, to both analyse and develop the therapeutic and emancipatory role of law (e.g., Brookbanks, 2015c; Stobbs et al., 2019). Another major accomplishment of therapeutic jurisprudence is its role in the creation of problem-solving or solution-focused courts (for instance, drug addiction courts, mental health courts, domestic violence courts and gambling courts) (Perlin, 2017), in what would otherwise be heavily laden penal criminal courts, with little prospects of rehabilitation of offenders.

Besides the extensive development of the TJ framework to other areas of law in practice, there is an international and interdisciplinary mainstreaming movement advocating the implementation of therapeutic jurisprudence principles into traditional court settings (Segev, 2013; Wexler, 2015). In light of mainstreaming, Wexler proposes the adoption of therapeutic jurisprudence-friendly legal processes and discusses how a therapeutic jurisprudence-focused legal practice - supported by a sort of model code of therapeutic jurisprudence processes and practices - might facilitate new judging (Wexler, 2014). Through what he refers to as an intricate, intimate, and seamless relationship between the Therapeutic Design of Law and the Therapeutic Application of the Law, Wexler suggests that laws should be designed therapeutically and applied therapeutically (Wexler, 2015). He also proposes the liquid and bottles (or wine and bottles) metaphor methodology for reviewing the law, legal processes, and practices

of legal actors generally, and for mainstreaming therapeutic jurisprudence (Wexler, 2014; 2015). Wexler argues further that just like the justice system has “*amicus curiae* briefs” to inform the appellate courts of the law, “*amicus justitia*—friend of justice — briefs” are needed in mainstream courts and legal processes to orient and educate the decision-makers and lawyers “of the way the law may be most therapeutically applied” (2018, pp. 1-3). These initiatives and others mooted in academic discourse focus on facilitating mainstreaming of the therapeutic jurisprudence theory (e.g., Jones, 2012; Marder & Wexler, 2021).

Therapeutic jurisprudence theory has also expanded considerably in the academic milieu. In the approximately three decades from when the theory was first introduced to academic research, there is already an insurmountable and growing amount of literature on it internationally (Perlin, 2017). According to Vols (2019), therapeutic jurisprudence-related research is quite diverse and can broadly be categorised into two groups. Research which is predominantly “fundamental” because it uses the concept as a lens (also described as a heuristic) to analyse legal systems and legal concepts. The research in this category assesses and compares the therapeutic jurisprudence theory and its primary constructs with other theories such as adversarial justice (e.g., Brookbanks, 2017; Stobbs, 2011), procedural justice (e.g., Kaiser & Holtfreter, 2016; Wexler, 2016), restorative justice (e.g., Lutui, 2015; Marshall, 2015; Maxwell & Liu, 2007), and comprehensive law movement (Daicoff, 2006). The second type of therapeutic jurisprudence-related research can be characterised as predominantly “empirical or applied” (e.g., Diesfeld & McKenna, 2007; Moore, 2015; Thom & Black, 2018). Vols (2019) also notes that this latter category is made up of diverse methodologies and methods, including interviews; observations; analysis of legislation, case law, policy, and regulations; and other qualitative and quantitative research methods. This thesis falls in this second category.

It is relevant to note that there have been a few therapeutic jurisprudence-related studies overseas with refugee claimant populations, refugees generally, and economic migrants (e.g., Erez, 2003; Ferris et al., 2019; Loreen, 2005; Marson et al., 2019; Marson & Ferris, 2021; Yamada, 2019). Regarding those seeking asylum, the findings from these studies suggest or clamour for hospitable, respectful treatment, therapeutically inclined refugee law, policy, and practice. To the best of my knowledge, none yet has focused entirely on the RSD system of any country specifically, making this thesis the first in this area, if not internationally, then certainly in the NZ context.

3.2.2 Key developments in NZ legislative framework fitting of the therapeutic jurisprudence theory.

Although the international literature on therapeutic jurisprudence is extensive, therapeutic jurisprudence literature still occupies minimal and liminal space in NZ. The most visible contemporary developments in the NZ judicial system that coincide with or precede therapeutic jurisprudence developments overseas have included:

1. The statutory recognition of restorative justice processes in the formal criminal justice system in NZ, for example, the Parole Act 2002, Victims' Rights Act 2002 and the Sentencing Act 2002. Lutui contends that the combined effect of these statutes is that courts must take into account any restorative justice processes (such as an apology, remorse and compensation), both formal and informal, in sentencing (2015). When the restorative processes (also considered the therapeutic jurisprudence principles in criminal justice) are given effect in trial and sentencing, the process may result in healing for both the offender and victim, the offender is likely to receive a lighter punishment, inclusion of reconstructive options in punishment, and less likely to re-offend (Maxwell & Liu, 2007).

2. The passing of the 'Children, Young Persons, and Their Families Act 1989', mandating the use of 'family group conferences' for all young offenders (except those guilty of murder or manslaughter) (Marshall, 2015). The 'family group conferences' are a diversionary measure aimed at ensuring young persons are held accountable and dealt with in a way that acknowledges their needs and allows them to develop in responsible, beneficial, and socially acceptable ways within the family group (Lutui, 2015). Specialist courts monitoring young persons experiencing drug dependency, mental health, and care and protection issues have developed as part of this significant development in the youth justice system (Thom, 2015).

3. The emergence of problem-solving courts in the 2000s (Thom, 2015; Timmins, 2015). Problem-solving courts are defined as specialised tribunals established to deal with specific problems, often involving individuals who need social, mental health, or substance abuse treatment services (Finau, 2015). Examples include the Family Violence Court, 'the New Beginnings Court' in Auckland which deals with offenders who are homeless (Thom, 2015; Timmins, 2015), and the adult 'Alcohol and Other Drug Treatment Court' [AODTC] (Finau, 2015; Thom, 2015).

4. An increasing preference in legislation for mediation avenues over the strictly adversarial system of justice (Duncan, 2015). Although mediation is not stated outrightly in therapeutic jurisprudence literature in NZ as a therapeutic jurisprudence movement, it can be argued that the increasing inclination of NZ to use mediation approaches to resolve conflicts instead of the traditional adversarial system of justice, would suggest mediation is. Mediation eliminates or minimises some of the adversities common to and entrenched in the adversarial system of justice. Duncan observes that the NZ government policy, particularly since the early 1990s, has favoured mediation as a primary form of dispute resolution. In addition to court-connected mediation, there are a growing number of statutory mediation schemes operating over 50 pieces of legislation that include provisions for mediation (Duncan, 2015).

5. Literature and research on the therapeutic jurisprudence theory in NZ: Academic interest in NZ has also focused on the therapeutic jurisprudence theory although sparse relative to other countries like the USA, Canada, and Australia. The literature on therapeutic jurisprudence in NZ indicates that Professor Warren Brookbanks has played a substantial role in the development of the theory in the country with

numerous publications on the subject, centring on non-adversarial justice and improving the criminal justice system for people with mental illness, disability, vulnerable offenders generally, and other areas of law (e.g., Brookbanks, 2015b; 2016; 2019a; 2019b). A book he edited - *Therapeutic Jurisprudence: New Zealand Perspectives*, is one of the most comprehensive texts on therapeutic jurisprudence in the country. It examines theoretical and practical issues relating to the facilitation and structure of therapeutic jurisprudence as applied to the judicial system within NZ (Brookbanks, 2015c). Elsewhere in the country, Professor Valmaine Toki (2018), in her book - *Indigenous Courts, Self-Determination and Criminal Justice*, makes a case based on therapeutic jurisprudence and restorative justice principles for a court system founded on Indigenous conceptions of proper conduct, punishment, and behaviour. Besides these main texts, other therapeutic ideas focusing on a mental health court in NZ (Ryken, 2016) and for Māori specifically (Toki, 2010); NZ Mental Health Review Tribunal (Diesfeld & McKenna, 2007); a domestic violence court (Toki, 2009); restorative justice practices (Maxwell & Liu, 2007), amongst others, have been mooted in the academic circles in NZ.

It is worth pointing out that therapeutic jurisprudence does not stand alone in recent developments for evaluating and responding to the law's anti-therapeutic effects in practice. Other movements (referred generally as the 'comprehensive law movement' by Daicoff, 2006) have arisen within the law, also aimed at ameliorating the harshness of the law, legal processes, and achieving more satisfactory outcomes for litigants and others affected by the operation of the law.

In sum, the literature on therapeutic jurisprudence in NZ shows that there have been movements in the NZ legal system over the last three decades towards therapeutic jurisprudence perspectives. Some happened almost concurrently with international movements on therapeutic jurisprudence. Some were driven by the individual initiative of judges and concerned communities to provide therapeutic interventions to family violence and offenders who are homeless. Others were a statutory recognition of restorative justice processes in the formal criminal justice system (Thom, 2015). NZ is even described in this regard as a leader internationally in youth justice policy (Marshall, 2015). Other movements, as in the case of the adult AODTC, have clearly been driven by movements overseas in countries such as the USA and Australia (Thom, 2015). Against this backdrop of a gradual shift in paradigm from adversarial and a strictly legalistic paradigm to non-adversarial and the inclusion of therapeutic aspirations in the law, legal procedures, legal institutions, and role of legal actors, I also explore the potential of therapeutic jurisprudence in the RSD system in Aotearoa NZ. In the next section, I discuss therapeutic jurisprudence as a methodology used in this study.

3.2.3 The methodological processes in this study: A critical therapeutic jurisprudence methodology.

While there is rich and extensive research globally using the therapeutic jurisprudence theory, a cross-section of the research I reviewed for this thesis indicates that many of the studies have not clearly

articulated the methodology and methods used, and generally, there is minimal research on therapeutic jurisprudence as a methodology and methods. Recognising this gap, Wexler (2014; 2015);⁴² and Stobbs, Bartels, and Vols (2019) offer some suggestions and illustrations on what a therapeutic jurisprudence-related empirical or applied research or practice could possibly look like. In this section, I discuss how I have used Vols (2019) suggestion complemented by Fontana's (2004) proposition for critical methodology in critical social science to devise 'a critical therapeutic jurisprudence methodology' for this study.

Vols (2019) proposes a therapeutic jurisprudence methodology made up of four stages involving: (i) a therapeutic doctrinal analysis of the law; (ii) a therapeutic analysis of how the law is applied in real life; (iii) an unravelling of any competing normative interests in the law and practice; and (iv) a prescriptive stance by the evaluator, recommending research-informed therapeutic improvements to the law and how it is to be applied.

It is worth noting that these scholars (e.g., Wexler, 2015; Vols, 2019) caution that their suggested methodologies are not prescriptive processes but should be used to spur academic reflection and further development of knowledge on the therapeutic jurisprudence methodology and methods. Vols (2019) advises further that "a TJ-related research project does not have to follow all [of his] four steps to qualify as decent research" (p. 75). He stresses that "depending on the research question that needs to be answered, it may be sufficient to only conduct a doctrinal analysis of the law" (p. 75), for example. Inspired by Vols' recommended therapeutic jurisprudence methodology, this study comprises roughly Five Stages.

In the **First Stage**, I did a preliminary review of the concept of therapeutic jurisprudence and experiences of the RSD in NZ to understand the context. The review comprised: (i) exploring therapeutic jurisprudence theory, its development and relevant research; and (ii) investigating key findings in the academic literature on the experiences of refugee claimants in NZ, and about NZ legislation, policy, and practice related to refugee claimants and the RSD system. This initial stage enabled the identification of the main problems with the experiences of refugee claimants and the RSD system. It also enabled the successful preparation of the research proposal and application for ethics approval from the University of Auckland in 2019.

In the **Second Stage**, I engaged in the participants recruitment, data collection and analysis. This involved semi-structured interviews with refugee claimants and key stakeholders in the RSD sector in NZ to investigate their experiences and perspectives of the processes and proceedings for making RSD.

⁴² Wine and bottles metaphor methodology.

The interviews were followed by transcription and analysis of the data collected. This stage will be discussed further and later at 3.3.

In the **Third Stage**, I reviewed the refugee legislation in NZ for therapeutic jurisprudence inclinations, using procedural fairness as the lens for this purpose. This was achieved through a deductive content analysis of the Immigration Act 2009 for procedural fairness rules, such as the hearing, evidence, and bias rules (Endicott, 2009). The results from the analysis are presented in Chapter Four's first part.

In the **Fourth Stage**, I analysed the interviewed data, investigating the health and well-being implications of the legal processes, proceedings, and practices comprising the RSD system. This included those relating to the border, through detention (where applicable), RSU and IPT. The interview results are presented in the second part of Chapter Four and the rest of Chapters Five and Six.

In the **Fifth Stage**, I discuss the critical results from the study using Thompson's (2003; 2016) PCS analysis of anti-oppressive and anti-discriminatory practice. The discussion includes recommendations (informed by social and behavioural science research) on how the RSD system could be improved therapeutically. It also embodies constraints to aligning the RSD system with therapeutic jurisprudence. The entire discussion is presented in Chapter Seven, while recommendations are relisted in Chapter Eight.

It is worth emphasising that although I have presented the research processes as occurring in five stages, movement from one stage to another was not sequential. There were some considerable back-and-forth movements between the different stages to analyse the data further or review more literature following new insights from the data and my PhD supervisors' feedback.

I also drew from the principles of a critical methodology proposed by Fontana (2004) for critical social science research⁴³ to strengthen the therapeutic jurisprudence methodology used in this study and adapt it to complexities in the research process. Thus, it can be said that the study has a methodological pluralism (Barker & Pistrang, 2005), forming what I call 'a critical therapeutic jurisprudence methodology'.

⁴³ The overall research design of this study is informed by the transformative paradigm, which itself is located within the broader spectrum of critical social science research (Creswell, 2009; 2013; Mertens, 2009).

Fontana's (2004) critical methodology⁴⁴ entails seven fundamental processes, also discernible from the core beliefs underlying Mertens' (1999; 2009) transformative paradigm.⁴⁵ Although Fontana writes about her critical methodology for nursing research, the methodology can be extrapolated to critical theory perspectives generally. The transformative paradigm is categorised within critical theory (Creswell, 2009; 2013). Thus, it is unsurprising that Fontana's critical methodology aligns well with the transformative paradigm.

According to Fontana (2004), when the following seven foundational processes are synthesised in research, they form a critical methodology regardless of how they have been incorporated in the study.

Critique: The research exposes the “forces of injustice and oppression by examining power relationships and imbalances within societal structures” and develops “a new critical awareness that is emancipatory” (p. 97). Chapter Two and the results and discussion chapters of this study cover this dynamic.

Context: The research focuses on the context of the people experiencing the phenomenon and takes the research process to them. In addition, the researcher contextualises “the phenomenon of interest by addressing the historical, economic, political, and social forces working to sustain it” (p. 97). Chapter Two provides a broader context for understanding the oppression and marginalisation refugee claimants experience in NZ. The recruitment and data collection processes are presented later at 3.3.2 and 3.3.3, including how the community was involved.

Politics: The researcher understands that “it is not possible to critique power and domination and remain neutral.” The researcher uses “the inquiry process to help participants understand and change their oppressive situations by understanding the political forces that have shaped them” (pp. 97-98). I have well positioned myself and my agenda for this research in the introduction chapter at 1.1. I also discuss the social justice and human rights impacts of the study in Chapter Eight at 8.1.

Emancipatory intent: Fontana asserts that empowering the oppressed and creating social change are fundamental goals of the research. She cautions, however, that the “lack of an emancipatory outcome is not sufficient to exclude a study from the critical paradigm because it is the possibility of change,

⁴⁴ Unlike Fontana (2004); Yanchar, Gantt, and Clay (2005) propose ‘a critical methodology’ from an entirely different angle. However, this is also contextually relevant to the discussion here. They critique and challenge the traditional expectation in academia that researchers should (or will) abide by existing methodologies. The authors believe there will be more advancement to knowledge if there is more flexibility for researchers to be critical of existing methodologies thereby developing new critical methodologies to address new research questions, rather than following the status quo religiously, and limiting the extent of new discoveries. Coincidentally and like Fontana, they name their methodology which allows for evolution as ‘a critical methodology’.

⁴⁵ Worth noting that Mertens has not designated a particular methodology or methods for the transformative paradigm.

rather than the promise of it, which defines critical science” (p. 98). As noted above, the impacts of the study are presented at 8.1.

Democratic structure: Fontana also asserts the critical methodology research process is characterised by a collaborative, non-hierarchical, democratic, mutually educative, and collegial relationship between the researcher and research participants. I have discussed the partnership nature of the relationship between the participants and myself earlier under epistemological assumptions at 3.1.1.2.

Dialectic analysis: Fontana proposes that the researcher employs dialectic analysis in the research process to probe contradictory values, beliefs, interests, and their significance and limitations about the phenomenon under study. This is covered under data collection at 3.3.3, analysis at 3.3.4.2, and trustworthiness at 3.5

Reflexivity: Through reflexivity, the researcher recognises their role in the research process: “how the data has been shaped by the researcher’s prior experiences, assumptions, and beliefs”, and [addresses] ethical and political questions encountered in the research process” (Fontana, 2004, p. 99). I have discussed my personal experience with the RSD at 1.1; the ethical questions I needed to address at 3.4; and how my assumptions might have obscured the analysis and results later in this chapter at 3.5.4 and in Chapter Eight under limitations at 8.2.

Fontana cautions, however, that “these processes are not meant to be discrete steps to follow when conducting a critical study. Instead, it is the synthesis of these processes that constitutes a critical methodology” (2004, p. 97).

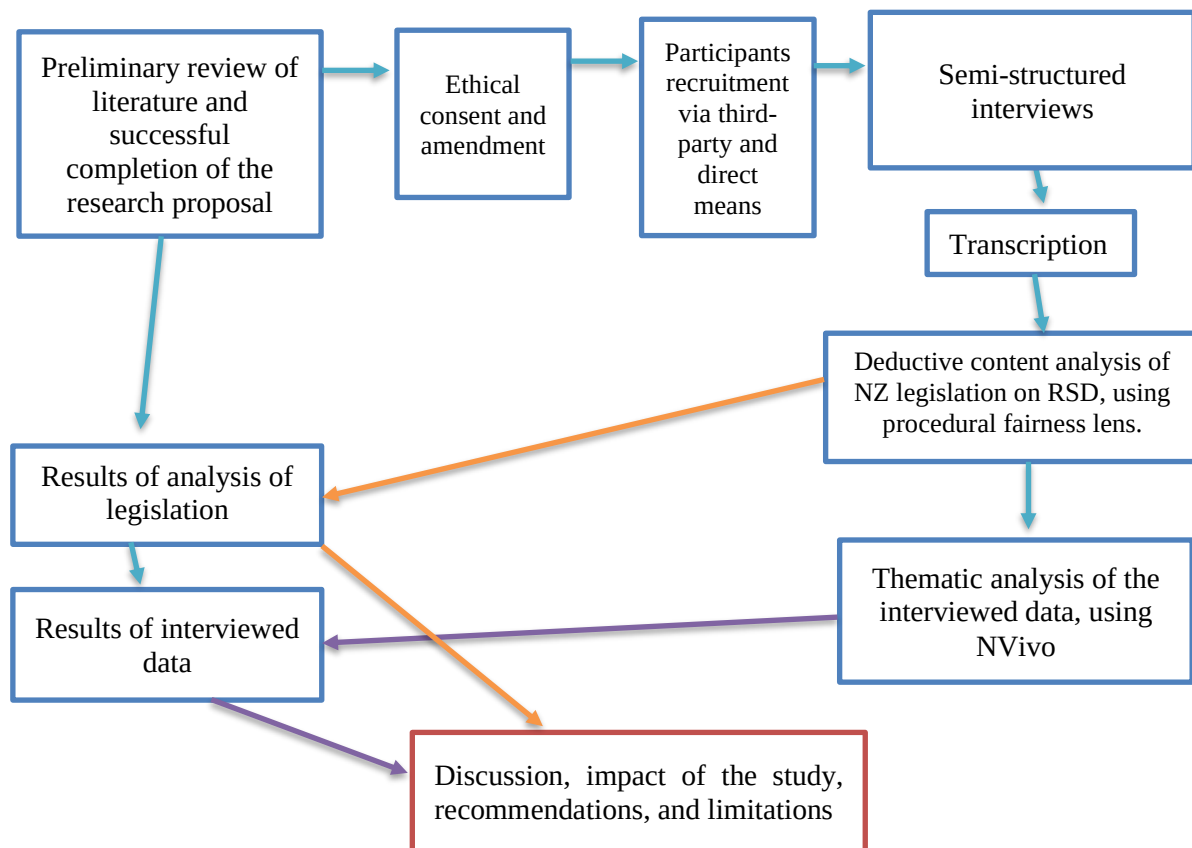
The therapeutic jurisprudence methodology guided the five different stages of the research. At the same time, these seven fundamental processes advanced by Fontana, which mirror the assumptions underpinning Mertens’ transformative paradigm (discussed earlier at 3.1.1), informed how the data was collected, analysed, and reported, thus devising ‘a critical therapeutic jurisprudence methodology’, and giving this thesis the full benefit of a transformative paradigm study.

On the whole, whilst one of the fundamental assumptions of the transformative paradigm holds that research needs to challenge the status quo in our society that oppresses a group of people, the paradigm does not actually prescribe how the challenge is to be done. The decision on how this should be done is left to the researcher to find from existing research methodologies and methods. As discussed earlier at 3.1.1.3, the transformative paradigm does not subscribe to any single methodology and methods but endorses any which would allow the researcher to safely work with the community as stakeholders in improving social justice and human rights for the community concerned. In this study, therefore, I have used the therapeutic jurisprudence methodology strengthened further by a critical methodology proposed by Fontana (2004) to devise a critical therapeutic jurisprudence methodology as a lens for challenging the status quo and seeking social justice and human rights for refugee claimants in NZ. In the next part of this chapter, I focus on the research methods.

3.3 Part Three: The research methods: Participants recruitment, data collection and analysis.

Research methods relate to the practical means and tools for participant recruitment, data collection and related processes, and analysis (Creswell, 2009). I subscribe to Mertens' (1999; 2009) and Fontana's (2004) propositions that the researcher should employ culturally appropriate research techniques that include participants traditionally excluded from research in the field and would result in advancing social justice and human rights for the community. In this part, I discuss the composition of the study population, recruitment process, data collection and analysis. *Figure 3* illustrates the research approach and methods.

Figure 3: The research approach and methods



3.3.1 Composition of the study population

As the transformative ontological assumption emphasises inclusiveness in the research process, I discuss the makeup and diversity of the research participants in this study. However, I do so with caution and consideration, ensuring that I do not divulge information that might identify the individual participants, especially as the RSD sector in NZ is small and predominantly in Auckland.

The persons who responded positively to the recruitment process and participated in the study were 32 people (17 females and 15 males). Twelve were from asylum-seeking backgrounds. The remaining 20 were professionals who have worked or are working directly with refugee claimants in the RSD space. Participants had to be older than 18 years, communicate in English, and had participated in an asylum interview at the RSU or hearing at the IPT from 2014 onwards. Further distinguishing characteristics of the participant group are presented below.

3.3.1.1 The refugee claimants

The refugee claimants comprised eight males and four females from either Africa, the Middle East, or South-East Asia. In terms of their experiences with the RSU, IPT, and the courts:

One had just completed the asylum interview with the RSU (while in Mount Eden prison) and was out in the community awaiting a decision on the claim.

Another had had his oral hearing IPT and was awaiting his decision.

Two were approved by RSU within six months of applying for refugee status.

Another two were approved by the IPT approximately two years after their first arrival in NZ.

Two had a protracted process. They had been through the RSU and IPT at least twice unsuccessfully, but their appeals at the Senior Courts level were successful. The courts referred their cases back to RSU or IPT for rehearing. The RSU or IPT ultimately recognised both as convention refugees.

Another two also had a long experience of many years of claiming asylum in NZ. They had been declined by both the RSU and IPT at least twice. However, they had regularised their immigration status via other channels with Immigration NZ.

One was living as a declined asylum seeker after at least two declines from RSU and the IPT, and unsuccessful appeals at the senior court level.

Another was declined by both RSU and IPT while in detention. He was deported from detention. The individual got word about the study from his colleagues here in NZ and participated via an online call from overseas.

It is relevant to highlight that none of the 12 individuals categorised in this study as refugee claimants were related to each other. Amongst the 12, five had experienced part or all of their refugee status determination process while in detention in a police cell, a prison, or the MRRC (or having been detained in all three places). All the refugee claimants (except for the one overseas) lived in Auckland at the time of the study. The successful refugee claimants had permanent residency status or were awaiting a decision about their residence application. A handful of the participants experienced the standard range of the asylum process in terms of time spent (that is, they were approved between six months and a year of their first-ever application for asylum to the RSU, or in less than two years

altogether if at the IPT). The others had an extensive experience with RSD at the RSU and IPT or the courts before succeeding or failing. The varying experiences presented the diversity needed to achieve inclusiveness in this group.

More about inclusiveness in this study is illustrated in the next group, which constitutes some of the professionals like decision-makers in this space who are traditionally excluded or under-represented in research both in New Zealand and other countries about asylum seekers' experiences with the RSD procedure.

3.3.1.2 Professionals recruited

The professionals consisted of 13 females and seven males, who worked habitually in RSD and from the Auckland region. They were mostly from European (Pākehā) backgrounds; less than a handful were Latin Americans, Middle Easterners, and Africans. Further characteristics included:

One former RPO of the RSU.

Three interpreters.

Six lawyers (also known commonly as refugee lawyers).

Five health-related professionals, comprising two psychologists, a psychotherapist, a social worker, and a support worker (from ASST and RASNZ).

Five IPT members.

A core component of the study which came up during the planning and consultation with the community was that it required the inclusion of professionals whose roles included the asylum interview (oral hearing), given the indispensability of the interview to RSD, as the Supreme Court held in *H v Refugee and Protection Officer*.⁴⁶ Professionals such as case managers at the RSU or IPT were not included in the study because they do not work in the asylum interview room. Many of the professionals had extensive experiences ranging from two to more than ten years of working directly with the refugee claimants in RSD in NZ.

3.3.2 Participants recruitment process

Qualitative researchers (e.g., Crabtree & Miller, 1992; Patton, 1990) propose that sampling methods such as convenience and purposive sampling are appropriate for a study that focuses on looking for persons who have had experiences relating to the phenomenon to be researched. Thus, in this study, I

⁴⁶ (SC 52/2018) [2019] NZSC 13, at [72] – [78].

use third-party recruitment (convenience sampling) as well as direct recruitment (purposive sampling) techniques in participants recruitment.

3.3.2.1 *Third-party recruitment (convenient sampling)*

Using third parties, I recruited individuals still in the asylum process and former refugee claimants. This was, in principle, to avoid further coercion of this population group which was likely vulnerable because of the structural oppression and marginalisation, discussed in Chapter Two.

I applied to the University of Auckland Human Participants Ethics Committee (UAHPEC) for ethics approval for this research. The application was approved on 09 July 2019 for three years until 09 July 2022. The approval reference number is 023296 (Appendix A). I commenced participants recruitment and data collection after UAHPEC approved my application for ethics.

I contacted and obtained written support from the management of ASST (the primary community organisation supporting refugee claimants in NZ) to recruit their clients who were still in the asylum process and former refugee claimants. I also sent the study Poster (Appendix B), Participant Information Sheet (PIS) (Appendix C) and Consent Form (CF) (Appendix D) for asylum seekers in an email to the management of ASST. I needed consent from ASST to advertise the study at their Asylum Seekers' Hostel in Auckland and for ASST to disseminate information about the research to the asylum community.

ASST management consented (Appendix E) and dispersed information about the research to the refugee claimant community. Following ASST's approval, I advertised the study at the Asylum Seekers' hostel in Auckland. Interested persons responded to the advertisement by contacting me by phone or email. This led to further discussion with them about the study and scheduling of an interview with those interested.

By the end of July 2019, I had received positive phone responses from eight refugee claimants. Given this number, I decided not to advertise the study at the ARCC, RASNZ, and NZRCS as I had planned initially. By the end of August 2019, I had interviewed the first three participants and sent the first interview transcripts to my supervisors for validation of the techniques I had used. The other refugee claimants' face-to-face interviews proceeded until the COVID-19 outbreak in NZ by the end of February 2020.

Some of the refugee claimants were recruited by their peers. The peers were among the first I interviewed in the research between August and November 2020. They then acted on their own accords as stakeholders in the study to inform or refer others, thus also giving the recruitment process a snowball sampling strategy (Crabtree & Miller, 1992; Patton, 1990).

I also used third-party recruitment for the support worker, social worker, psychotherapist, psychologists, and IPT members. I emailed the Managers/CEOs (Appendix F) of RSU and IPT in August and

September 2019, informing them about the research and seeking their consent to recruit their employees for the study. I also emailed the Managers/CEOs of ASST and RASNZ in October 2019 for the same purpose. The managers of ASST and RASNZ granted consent in October 2019, included as Appendix V and Appendix W, respectively.

Following the managers' acceptance and support for the research, I emailed the PIS (Appendix G) and CF (Appendix H) designed for ASST and RASNZ staff to the managers for dissemination in their workforce. Some ASST and RASNZ staff who were interested in the research contacted me by phone and email. We discussed the study and scheduled interviews.

I interviewed the ASST employees in October 2019 and the RASNZ employees in November 2019. Meanwhile, the consultation with the managers of RSU and IPT was ongoing. The Deputy Chair of IPT invited me to the IPT and we discussed my research proposal. He consented verbally to the research and scheduled a meeting in October for me to meet the members that make up the Refugee and Protection Stream (that is, members specialised in refugee and protection decisions) to discuss my research and recruitment with them. Unfortunately, a fire at a construction site near the IPT interrupted the IPT's business in the same week in October 2019 that the management of IPT had scheduled that I discuss my research proposal with the IPT members.

Additionally, the arrival of the COVID-19 pandemic in NZ by the end of February 2020 necessitated government protection of public health through lockdowns and social distancing. This also required a change in participants recruitment and data collection process. I applied for an amendment to the ethics consent, and in April 2020, UAHPEC approved the application (Appendix I). This allowed for telephone or online video call interviews instead of face-to-face interviews.

The recruitment of IPT members, which had been interrupted because of the fire in October 2019, and, subsequently, the outbreak of COVID-19 in NZ, finally saw a green light in May 2020. Management of the IPT consented (Appendix X) and dispersed information about the research and the PIS (Appendix J) and CS (Appendix K) tailored for this group to the IPT members within the refugee and protection stream. Five IPT members enrolled in the study (four of them participated in the form of interviews while one responded to the questions in writing).

Meanwhile, the recruitment process with the RSU was unsuccessful because management of this institution did not consent to the study. The management explained that the issues the study is purporting to address had already been canvassed in Casey's (2019) review of the processes and proceedings for making RSD at the RSU.

Overall, the third-party recruitment process I have used matches a self-selected sample, which is a convenience sample technique comprising research participants who have volunteered to participate in the study on their own accord, often in response to an advertisement (Crabtree & Miller, 1992; Patton, 1990).

3.3.2.2 Direct recruitment (purposive sampling)

Besides the third-party approach, I used a direct recruitment strategy via email to solicit and enrol some of the professionals in the research. I assessed that this direct contacting method of potential participants was not likely to coerce the professionals who included lawyers, interpreters, and a former RPO. I emailed them (Appendix L) between September 2019 and June 2020. The email included a PIS (Appendix M) and CS (Appendix N) tailored for this group and soliciting their participation. Excepting the former RPO whose contact details I received within the research team, I obtained the contact details of the lawyers and interpreters from publicly available sources on the internet.

I received positive responses and enrolled six lawyers, three interpreters, and a former RPO in the study. The recruitment process for this group and data collection was completed in September 2020. A few individuals who were initially keen to participate in the study from this group were later unable to do so because of COVID-19 restrictions. In the following section, I discuss how I completed the data collection.

3.3.3 Data collection

Collection of the data was achieved via semi-structured, one-on-one interviews. I followed Pietkiewicz and Smith's (2014) description of a semi-structured interview, whereby they suggested it allows the researcher and research participant to engage in a dialogue in real-time, focusing on pre-determined concepts, but also allowing sufficient space for novel issues to arise, which the researcher may investigate in more detail through further questioning.

I personally interviewed the 32 research participants. Nineteen of the interviews were done through face-to-face contact, 11 via phone or online video call, and two via written responses to the questions. All participants were asked questions centred around eliciting rich, every day and first-person accounts of RSD in NZ, and how this could be made safe and better. The questions explored many components of the RSD system, including participants' experiences and perspectives of claiming or working at the border, detention, completing the application and appeal form, participating in the asylum interview, and other processes and proceedings. The interview schedule for all the participants is included as 'Appendix O'.

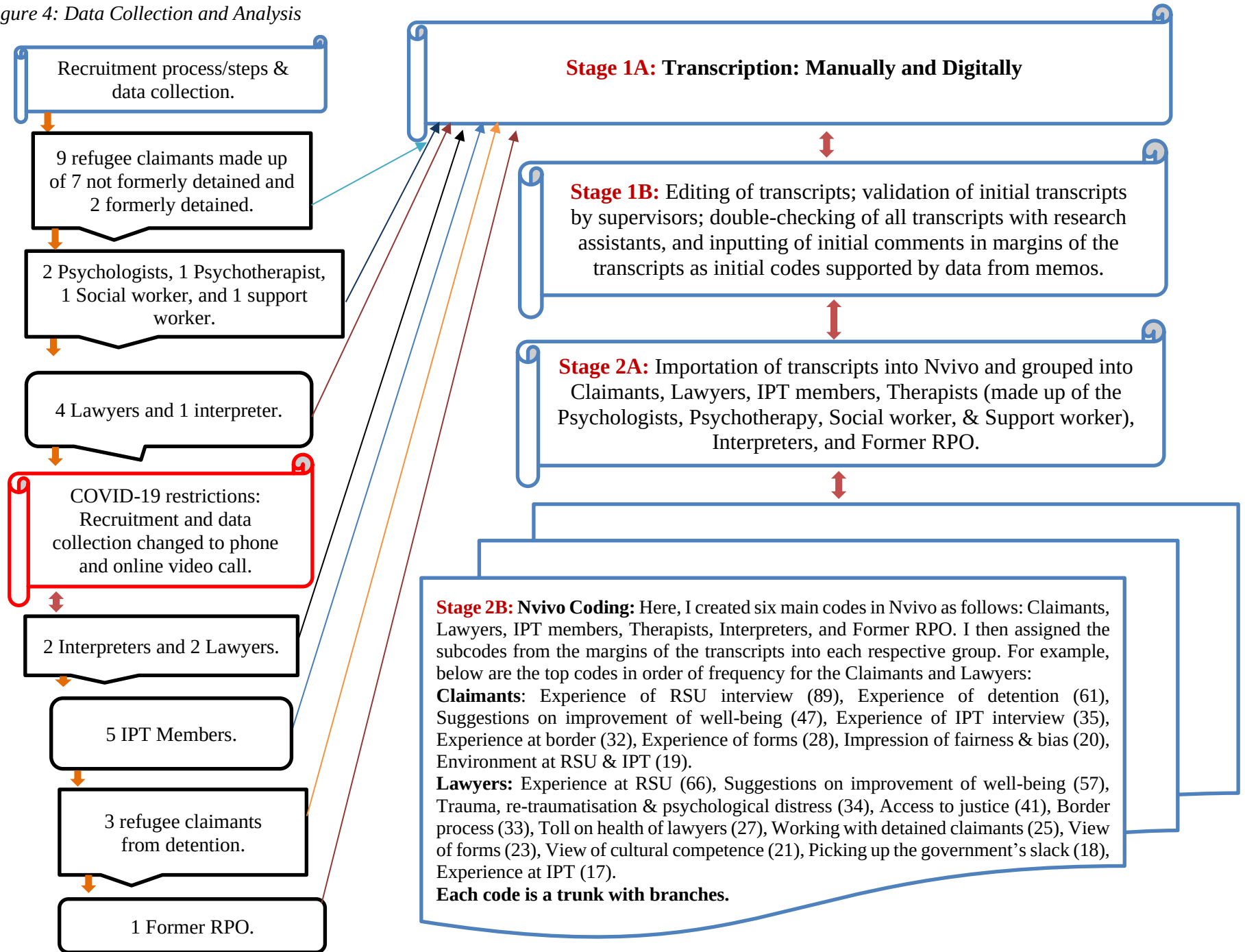
The first interview took place on 16 August 2019 and last on 23 September 2020. Each interview lasted approximately an hour. The in-person interviews were done at safe locations chosen by the participants, either in the community or at the University of Auckland Epsom campus, while most of the rest were by telephone or online video calls. I audio-recorded the interviews.

Data provided by participants 26 and 28 were not fully transcribed and were only partly included in the study. Their content indicated that the other participants had already exhaustively covered their experiences or perspectives. I completed the first five transcripts manually to get a feel of the data and

emerging themes, and then most of the rest was done by digital transcription. After obtaining the digital transcripts, I relistened to the audio, cross-checking it against the transcripts for accuracy and correcting the transcripts where necessary. All participants were offered an opportunity via the PIS and CF to verify or review their transcripts, but many did not indicate interest.

I employed two of the research participants from the claimants' group as research assistance to double-check the de-identified transcripts for typos and to discuss and bounce off ideas about the initial analysis, development of initial codes, sub-themes, and main themes. I used the two participants from the refugee claimants' group for data analysis to bolster participation of this community in the research process beyond their voices and experiences that researchers traditionally seek or utilise. In this light, Mertens (1999) argues that the transformative paradigm researcher should use inclusive research methods, supporting in particular participation of the community concern in areas they are typically excluded in research processes. She contends that the epistemology assumption underpinning the transformative paradigm requires the research focus, purpose, design, and implementation (e.g., research questions, recruitment, data collection, analysis, and presentation of results, etc) to be developed through a cooperative process between the researcher and community members (Mertens & Wilson, 2012). *Figure 4* below roughly illustrates the data collection process and steps to Stage Two of the data analysis.

Figure 4: Data Collection and Analysis



3.3.4 Data analysis: Therapeutic content analysis of refugee legislation and thematic analysis of interviewed data

The data analysis in this study is structured in two phases: A and B. In phase A, I conducted a deductive content analysis of refugee status determination legislation under the Immigration Act 2009, using the lens of procedural fairness to investigate alignment of the law to therapeutic jurisprudence. In phase B, I conducted a thematic analysis using NVivo of the data collected from the research participants via interviews regarding their experiences and perspectives of the processes and proceedings for making RSD.

3.3.4.1 Phase A: Analysis of TJ friendliness of legislation on RSD using procedural fairness lens

Using procedural fairness as a lens, I analysed NZ refugee legislation to investigate therapeutic jurisprudence elements in the law. The analysis helps determine whether or not the law in theory already aligns with therapeutic jurisprudence aspirations.

Generally, in content analysis, the researcher examines the text to identify meaningful concepts and themes that describe the research phenomenon or address the research question (Elo & Kyngas, 2008). However, the deductive form of content analysis (which I have used in this phase) is commonly used for examining existing concepts, theories, or ideas in a new context. Stated otherwise, a researcher using deductive content analysis already has prior theoretical concepts or ideas they will be looking for in the text (Kyngäs & Kaakinen, 2020). Thus, in this analysis exercise, I investigate to what extent the rights (or principles) generally constituting procedural fairness law have been protected (or guaranteed) in NZ refugee law. My premise for this analysis is that all else being equal, full guarantee of procedural fairness rights in the law would imply a favourable atmosphere in theory for therapeutic jurisprudence dispositions in RSD; and vice versa.

It is relevant to state that “[t]he concept of procedural fairness is founded on the principle of natural justice and requires that certain standards and procedures be observed in administrative decision-making” (Young & Zimmermann, 2016, p. 18). Writing on the intersection of procedural fairness and therapeutic jurisprudence, Timmins (2015) states that “procedural fairness spills over into the realm of therapeutic jurisprudence because fair procedures can cause therapeutic outcomes for participants and unfair procedures can cause anti-therapeutic outcomes” (p. 128). The scholar contends further that there are two aspects of procedural justice that are interlinked to therapeutic jurisprudence. The first “concerns the procedures themselves (whether they are unbiased, whether the litigant is given the opportunity to put forward their story, for example)” (p. 127). The second encompasses “concerns about how the decision-maker treats the participants on a personal level (respectful treatment)” (p. 127).

Using therefore the universal principles of procedural fairness (also known commonly as the rules of natural justice) such as the hearing, evidence, and bias rules (Endicott, 2009), I reviewed NZ legislation on RSD, examining it for provisions that guarantee or undermine these principles/rules, by implication, therapeutic jurisprudence.

Inspired by Timmins's (2015) postulations about the intersection between procedural fairness and therapeutic jurisprudence, in this study, I adopt the position that procedural fairness is an essential element of therapeutic jurisprudence. I also surmise that fair, impartial, and transparent legal rules that give a reasonable opportunity for a person to establish their asylum claim with legal representation/interpretation and evidence, are likely to create feelings that their voice will be heard meaningfully and respectfully in the process by the decision-maker. This can help reduce stress, anxiety and re-traumatisation associated with the RSD system, thereby promoting the psychological and emotional well-being of the refugee claimant and the professionals involved in the process. It can also help to promote amongst claimants and their representatives a sense of satisfaction and trust in NZ refugee law.

I assume this view, drawing from research in the field of psychology and law which has consistently shown that when litigants perceive that they have been treated fairly, justly, and respectfully by the legal system, they are more likely to engage positively with legal proceedings, accept legal decisions, comply with court orders, and cooperate with legal authorities in the future (e.g., Farber & Erez, 2023; Lind & Tyler, 1988; Tyler & Huo, 2002; Tyler, 2003). This, in turn, can lead to better outcomes for the individual and society as a whole.

Furthermore, I embarked on the analysis from this dimension postulating that fair and transparent legal procedures are even more critical in the context of refugee law where the individual may have experienced discrimination, torture, trauma, cruel, and unjust treatment from authorities in the country they have fled. Consequently, they may be naturally apprehensive and wary of the role and intentions of the administrative and judicial authorities in NZ. I summed up my suppositions with the statement: evidence of full guarantee of fair procedures in the law in principle, would suggest there is a conducive atmosphere for alignment of RSD practice (everything else being equal) with therapeutic jurisprudence aspirations; and vice versa. The results derived from the analysis is presented in the first part of Chapter Four.

3.3.4.2 Phase B: Thematic analysis of the interviewed data, using NVivo

In phase B, I analysed data derived from the interviews following the six stages in Braun and Clarke's (2006) reflexive thematic analysis. The analysis had features of both inductive and critical realist thematic analysis. The content of the data directed coding and theme development in the inductive thematic analysis form, whilst the critical realist thematic analysis helped in reporting an assumed reality evident in the data (Clarke & Braun, 2022).

Before starting the data collection, I noted, in the form of a memo, my own experience of going through the RSD procedure insofar as it related to the research topic. I later developed the memo and included it at the beginning of this thesis at 1.1. This made me more aware of my preconceptions and biases as I traversed interviews, transcription, and the thematic data analysis stages outlined by Braun and Clarke.

Stage One: Familiarising myself with the dataset.

The first step in the analysis involved notes (memos) that I took during the interviews or as a reflection at the end of each interview. Some of these notes helped me develop some of the subcodes later in the analysis. In the next step of

the analysis, I listened to each audio recording for the first time, without taking notes, and sometimes while driving, to understand a bigger picture of what was said and of the key points that were emphasised.

Then the next step was listening to the recordings, transcribing in Microsoft Word format, and de-identifying by numbering the transcripts. For the participants whose first language is English, I used an electronic means for the transcription. After each automated transcription was done, I listened to the recording, double-checking it against the transcript to ensure it reflected what was said. I made corrections when needed. Then I manually completed the transcription for participants whose first language was not English, and re-ensured that every transcript was de-identified, by removing facts or statements that could identify the participant.

By the end of the transcription, I had become immersed in the content of the data, especially as I personally completed all the interviews in the study and could sometimes hear the participants' voices in my head as I was doing something else at home or elsewhere. I created two copies of the de-identified transcripts on my computer: one to be used for commenting in the margin, and the other for no comments. Using the folder with the transcripts designated for comments, I reread and commented in the margins of each of the documents. Most of the comments were linked to specific sections of the text and became my subcodes.

Stage Two: Coding

The comments (subcodes) in the margin were descriptive of what I thought were the critical points of each section of the text. I also reflected during a second or third reading of the transcripts and commented on how I thought what was being said related to the therapeutic jurisprudence theory and the transformative paradigm. During the second or third reading of the transcripts (which were already de-identified), I got help from two research participants who acted as paid assistants in the analysis process (discussed earlier at 3.3.3). We edited and summarised the comments on the margin, giving each long comment a brief title. Each of us had a turn to work on a transcript in creating or confirming the subcodes.

Some of the initial subcodes included words like therapeutic, helpful, meaningful, beneficial, stressful, challenging, confrontational, trauma, etc. We later developed these into phrases like the experience at the border, the experience of the forms, the experience of the RSU interview, the experience of detention, the experience of the IPT interview, the environment at the RSU and IPT, suggestions on improving well-being in the RSD, etc.

I then clustered the transcripts according to the various participant groups, such as Claimants, Lawyers, IPT members, Therapists (comprising of psychologists, psychotherapy, social worker, & support worker), Interpreters, and Former RPO. I created the equivalent groups in Nvivo (refer to Stage 2A of *Figure 4* earlier). After that, I imported copies of the de-identified transcripts without comments in the margins into the corresponding group in NVivo.

Next, I created six main codes in Nvivo, naming them again as Claimants, Lawyers, IPT members, Therapists, Interpreters, and Former RPO (refer Stage 2B of *Figure 4*). I printed each copy of the transcripts containing the comments and subcodes. I then reviewed the corresponding transcript in NVivo, assigning the subcodes from the margins of the printed transcript.

As I moved from one transcript to the next, each time a portion of the text appeared to suggest a new subcode we missed in the initial analysis, I returned to the other transcripts and added the new subcode.

Stage Three: Generating initial themes

At Stage Three,⁴⁷ as I was using the NVivo software, this stage was easy to deal with because the software could quickly generate the entire data for a subcode, several subcodes, or all the subcodes, and for an individual or a combination of participants. This made it easier to analyse a subcode or a variety of similar subcodes for patterns and examine whether there was a relevant story to the research question. I repeated this process several times for each subcode I entered in NVivo, trying to figure out the picture and understand the story that could be told from a subcode or number of subcodes together. Over time and with occasional assistance from the paid research assistants, I crafted descriptions of potential themes from each subcode, even though this constantly changed due to my reflections and reflexivity at any given time, and contributions from the research team.

Stage Four: Developing and reviewing themes

At Stage Four, I explored how some of the themes could be clustered together to tell a bigger story, for instance, around the consequences of RSD processes and proceedings relating to the border process, application forms, asylum interview at the RSU or IPT. I followed emerging patterns from the subcodes to cluster a number of themes into more prominent themes, such as access to justice, culture of disbelief, health impacts of detention, the role of lawyers in RSD. I merged some of the themes to form leading themes, made other subthemes, and omitted those the research team deemed irrelevant or insufficiently substantiated.

During these processes, I reread some of the transcripts that I felt had more depth. I also reread all the key codes that intersected and were strongly connected to therapeutic jurisprudence and transformative paradigm. This helped me to achieve more immersion, reflection, reflexivity, and understanding of how I could convincingly discuss the themes in light of addressing the research question, that is, focusing entirely on participants' voices on the therapeutic and anti-therapeutic effects of the RSD, and how the system could be improved, and recognition of constraints to advancing the system therapeutically.

As I continued through this process, I gained more data insights and developed a more vital understanding of how to present the data. Each theme at this stage was still highly descriptive of the content.

Stage Five Developing and reviewing themes

At Stage Five, I merged similar themes, but these were still descriptive in the participants' voices. I also adopted a critical approach to the analysis. From a critical lens, I carefully reread some of the relevant or more vital codes and themes from stages one to four. I constantly edited and restructured the subthemes, themes, and titles, ensuring they gave an account of the experiences and perceptions of the RSD in a way that was relevant to therapeutic jurisprudence

⁴⁷ Stages three to six are not included in *Figure 4* above.

and the transformative paradigm. For example, in the culture of disbelief, I made inferences and pulled out different layers from the participants' voices that reveal that this culture exists in NZ RSD system.

Stage Six: Writing up

At Stage Six, most of the key themes I had selected to present as results for the data were almost entirely written up. I continually edited the selected themes to align them with the therapeutic jurisprudence lens and transformative worldview to properly address the research problem. The results are reported from the second part of Chapter Four, and all of Chapters Five and Six.

In sum, the methods used in this study allowed for the capturing and understanding of an original and broader picture of the experiences and perspectives of RSD in NZ than previously existed, ranging from standard experiences of RSD to protracted experiences and those who underwent the asylum process in detention. It also involved professionals from wide-ranging backgrounds and experiences. Even more crucial, the methods included decision-makers' voices (that is, a former RPO, and IPT members). Although the refugee claimant community generally perceive the voices of RPOs and IPT members as wielding so much power in RSD, when it turns to academic research in this sector, their voices are traditionally missing (or arguably marginalised), thus needing inclusion as proposed by the transformative paradigm. Including them in this research method fulfils methodological and axiological commitments of the transformative paradigm, which argues that evaluators have an ethical duty to ensure that the research also captures the voices of individuals routinely excluded from research in the field (Mertens, 1999; 2009; Mertens & Wilson, 2012; Romm, 2015). More about the ethical commitments made in the research design are discussed below.

3.4 Part Four: Ethics as practised in this research

The research was conducted under UAHPEC guidelines. As stated earlier, the initial design of the study, for which the UAHPEC ethics consent was granted, anticipated data collection by face-to-face interviews only. However, following the outbreak of the COVID-19 pandemic in NZ, UAHPEC approved my application for an amendment to the ethics, allowing for telephone or online video calls. Below, I outline the main ethical problems I encountered and discuss how they were addressed.

3.4.1 Consultation and respect for culture

After UAHPEC approved my ethics application, the next step in the research process was consultations with asylum services organisations in the Auckland region. Refugee claimants come from culturally and linguistically diverse backgrounds and from a broad range of countries (as indicated by RSU statistics, e.g., Immigration New Zealand, 2022c). Against this setting, it was difficult to conduct cultural consultations in a way that could possibly have represented all the backgrounds and countries where refugee claimants mostly come from.

However, being heavily involved in the community and occupying different leadership roles at ARCC, RASNZ, and ASST prior to my commencement of this study in 2018, I had already had many informal cultural consultations with colleagues at these organisations at the leadership level, including some who were formerly refugee claimants between 2000 to 2010. I spoke to them about my interest in undertaking PhD research using the therapeutic jurisprudence lens and transformative worldview to explore how the RSD journey in NZ could be safer and better. The community members strongly supported the study and encouraged it. No cultural issues were raised at each of the discussions we had regarding the study.

In addition to the support letter from ASST, cited earlier as ‘Appendix E’, I received a support letter for the study on 05 June 2019 from RASNZ for psychological support for any participants who may become distressed due to their participation in this research (Appendix P). I continued to have ongoing engagements at a leadership level with ASST. These engagements ensured that ASST continued to be a stakeholder in consultations and the research process concerning advocacy for social justice and human rights for the community. I have discussed the involvement of ASST in social justice and human rights advocacy under the impacts of the study in Chapter Eight at 8.1.

This reflection about cultural consultations has focused essentially on the refugee claimant population. No substantial cultural issues were identified in the research process regarding interviewing the professionals involved in the RSD system. The RSD professionals, such as lawyers, interpreters, psychologists, social workers, and decision-makers, work daily with people from other cultural backgrounds, such as myself as an African and others from ethnic diverse backgrounds.

Last but not least, I offered the research participant in this study a \$30.00 PAK’nSAVE Gift Card at the end of the interviews, as it is ethical and culturally appropriate to thank and compensate them for sharing their experiences. The lawyers, RPO, and IPT members directed that I keep or give the gift card to someone in the refugee community. The participants (including myself) who received the gift vouchers are very grateful for these kind gestures.

3.4.2 Addressing problems with participant recruitment methods

I had anticipated that the recruitment of the participants could pose an ethical problem, as the participants might feel coerced to participate in the study. Hence, I mostly used third-party and less direct recruitment to avoid coercion. I also excluded any close friends and persons under 18 years old. I did not recruit participants who were in vulnerable or challenging positions, such as those in detention. Refugee claimants interviewed with lived experience of detention were those formerly detained.

I used the third-party recruitment strategy for the refugee claimants and employees from ASST, RASNZ, and IPT to avoid coercing the refugee claimants and putting the professionals from ASST, RASNZ, and IPT at risk if they participated in the study without the consent of their management. Essentially, I consulted the managers/CEOs of ASST, RASNZ and IPT, and after they consented to the study (see Appendixes: V, W, and X), they advertised it within their organisations. Interested staff then contacted me directly (refer to 3.3.2.1).

I had hoped that the management of ASST, RASNZ, and IPT would not be aware of the employees that opted to participate in the study. However, given the smallness of these institutions, the management might have been aware of which of its employees participated in the study. Granting consent for their employees to participate in the study required the Managers/CEOs to give assurance that an employee's participation or non-participation in the study would not affect their relationship with their employer. This information was stated clearly in the PIS (Appendix Q) and CF (Appendix R) for the Managers/CEOs to peruse and consent to, before their employees could participate in the study. I have also taken all steps possible to de-identify participants' quotes in this study.

Regarding the direct recruitment process, I used it for the lawyers, interpreters, and the former RPO. None of these professionals were known to me in a personal capacity, and my only interactions with any of them had been at seminars or meetings in the sector concerning refugee claimants or refugees generally. I decided that a direct approach to recruitment (in the form of an email) was acceptable as these professionals were fully independent practitioners and could give informed consent without coercion or any risks. The invitation also clearly stated that they could agree or decline to participate in the study (refer to 3.3.2.2).

3.4.3 Ensuring participant and researcher's safety

Whilst this study was mainly about understanding the lived experiences and perspectives of RSD and how it can be improved rather than looking for participants to recall traumatic experiences, it was anticipated that participants could still become distressed because of their experience with RSD (especially if this was laden with bad experiences). For this reason, the participants were informed in the PIS and CF (and verbally for the refugee claimants) that they did not have to answer any question that put them at risk of distress. They could also terminate the interview and/or withdraw from the study and their data before it was analysed, without giving reason.

Some participants (including refugee claimants and professionals) I interviewed in the study experienced some level of distress, were upset (including sometimes being in tears), or spoke with frustration and anger about their experiences with RSD and the sector generally. I paused the interview whenever this happened, allowing an emotional break. I offered to end the interview and reminded (in the case of refugee claimants) of pre-arranged psychological help at RASNZ. However, none of the participants felt they needed psychological intervention by RASNZ. Instead, they appeared relieved by the end of the interview, having spoken to me at length and depth about what was an upsetting experience for them and what we shared in common: whether it was about the lived experience or about looking at how the RSD system could be safer and better. Some of the refugee claimants who have never had a former refugee claimant to discourse with about their experience with RSD were thankful by the end of the session that we had the conversation. They were also grateful that the research was exploring how the RSD procedure could be improved and made safer. Some became interested in participating in any advocacy for law, policy, and practice change that might ensue from this study.

I experienced some distress after transcribing and analysing the data centring around the experiences of the refugee claimants detained in police cells and prisons. I had regular supervision with my supervisors, talked through some of

the critical emotional issues with my peers in the community, and took time off the research for a couple of months in 2021 to recover.

3.4.4 Advancing social justice and human rights

The transformative paradigm requires the researcher to commit ethically to using the research process and findings to further social justice and human rights for the community. To this end, it can be anticipated that the dialectical interviewing process I had with the decision-makers and lawyers, examining the RSD system from a therapeutic jurisprudence lens, may have triggered their thoughts, and motivated them to think about how they can perform their roles in RSD in ways that align more with therapeutic jurisprudence.

I have also presented some of the preliminary findings of the research over the past four years at refugee seminars in NZ and overseas. I have written a news article informed by data from this research (Sama, 2021) and contributed to another (Marlowe & Sama, 2021), and I intend to publish social justice-related academic articles from this research. Some of the data collected for this research contributed to a report by the Centre for Asia Pacific Refugee Studies - Tāwharau Whakaumu (CAPRS) and ASST, advocating that the government should provide and fund essential services to refugee claimants and convention refugees so that they can have a safe and fair start in NZ (Ferns et al., 2022). I plan to disseminate and present the study's key findings to the participants, RSD sector, and refugee service organisations at domestic and international levels.

The use of the transformative paradigm in this study has not only resulted in the research process 'saving' some of the refugee claimants, especially those formerly detained. It has also provided participants with opportunities to be part of the transformative potential. The research process encouraged some of the refugee claimants who participated in the interviews in 2019 and 2020 to share their experiences in an Amnesty International Aotearoa (2021) report on the detention of refugee claimants in NZ. The release of the Amnesty International report and plans for a nationwide campaign against the detention of refugee claimants in criminal justice facilities pushed the government to conduct its own independent review (Casey, 2022) of the law and processes for detaining refugee claimants in NZ. Following Casey's findings, the government stopped detaining refugee claimants in criminal justice facilities and is yet to reform the law to conform with UNHCR expectations (noting that work on this has begun). This has undoubtedly resulted in the furtherance of social justice and human rights for refugee claimants in NZ, as they are not being detained in criminal justice facilities any longer but are in the community enjoying many of the liberties and freedoms that do not exist in prison. I provide more details about this study's social justice and human rights impacts later in Chapter Eight at 8.1.

3.5 Part Five: Critique of trustworthiness of the research design

In this part, I appraise the trustworthiness (or qualitative rigour) of this research design using Lincoln and Guba's (1985) four criteria for critiquing qualitative research design generally, and Sweetman et al's (2010) ten criteria for

evaluating transformative paradigm research, specifically. Lincoln and Guba's (1985) four criteria for evaluating the trustworthiness of a qualitative research design focus on credibility, dependability, transferability, and confirmability.

3.5.1 Credibility

Credibility establishes how accurate the researcher is when representing the participants' experiences (Coughlan & Cronin, 2017). It is seen in well-articulated and structured research methodology (Hamberg et al., 1994), the researcher's reflection on the research processes, and participants' ability to recognise their experience in the research account (Lincoln & Guba, 1985).

Credibility has been enhanced in this study through the comprehensive and well-illustrated research processes supported by academic literature, including reflective thinking and reflexivity in the data analysis stage, discussed earlier. I frequently use direct quotes from the participants to substantiate the themes and subthemes presented in the results from the next chapter.

3.5.2 Dependability

Dependability exists when sufficient information is presented for the reader to recognise and follow the decision trails in the research design (Lincoln & Guba, 1985) relating to how the theoretical, methodological, and analytical choices were made (Coughlan & Cronin, 2017). A study is also said to be dependable when another researcher could reach the same or similar conclusions with the use of the researcher's perspective, data, and situation (Ryan-Nicholls & Will, 2009), or could adapt the study to new environments and situations (Hamberg et al., 1994).

I have explained and, where appropriate, sketched the philosophies underpinning this study, including the methodology and methods, giving reasons and justification for decisions made in the research process, and supported them with literature. This should enhance dependability as other researchers can follow the decision trails related to the theoretical, methodological, and analytic choices throughout the study, and the arguments for aligning the research to the transformative paradigm and the therapeutic jurisprudence perspective.

3.5.3 Transferability

Transferability relates to the degree to which the study's findings fit into other situations outside the study's context (Lincoln & Guba, 1985), or when readers can apply the study's results to their own experiences (Coughlan & Cronin, 2017). Hamberg et al (1994) asserts that it is crucial for the researcher to describe the context in which the study took place and the essential demographical features of the research participants, if possible, so others can replicate the study in other settings (Hamberg et al., 1994).

I anticipate that the findings of this study will have some new insights and knowledge on RSD for countries with similar RSD systems as well as the UNHCR RSD system. Moreover, transferability is the province of the research reader rather than the researcher, thus other researchers will be able to draw and utilise any information they find relevant from the knowledge generated in this study. Further, mindful of the risk that participants might be

identifiable in a relatively small asylum sector in Auckland NZ if I disclosed their detailed demographic characteristics, I have revealed only what is necessary for proper reporting of the findings. However, the demographical information provided should suffice for readers needing to transfer this study's design or results to other contexts.

3.5.4 Confirmability

Confirmability is the standard by which neutrality is judged in qualitative research (Lincoln & Guba, 1985). It is about clearly demonstrating how interpretations were made and conclusions were drawn (Coughlan & Cronin, 2017). Confirmability also requires inclusion of procedures to verify that the findings and concepts described were founded in the data (Hamberg et al., 1994), not from the objective or subjective perspective of the researcher (Ryan-Nicholls & Will, 2009). Hamberg et al (1994) state that confirmability calls for reflexivity. Other researchers (e.g., Koch, 2006; Thomas & Magilvy, 2011) assert that confirmability is deemed to have occurred when credibility, transferability, and dependability have been established.

As a former refugee claimant, the possibility that my experience of RSD in NZ may have coloured the analysis and findings in this study cannot be eliminated completely. Nonetheless, I have disclosed my experience right at the outset of the research. While my disclosure raises the risk of perception of potential biases and blindness from the reader, it has also helped me to acknowledge and unpack my experience of RSD, and then enter the research process with a more explorative mind to find something new. In addition, as explained under the thematic data analysis earlier, I used six stages of analysis, supported with academic literature, and ensured that the results emerged from the data rather than my experience and preconceptions of RSD. I conducted all the interviews and listened to each recording at least twice during transcription. I also read the transcripts twice or thrice making or verifying notes and codes, and used two paid research assistants in the analysis process to verify that the coding on de-identified transcripts and further analysis using NVivo was accurate. I also used reflective thinking, and reflexive analytical processes of back-and-forth thinking between data and my experience of the RSD, examining my own feelings, reactions, and motives from my experience of RSD, and making sure these do not blind or colour the results. In addition, my supervisors verified the initial transcripts and initial codes on the margin of the transcripts to validate the transcription and initial analytical process.

Besides these Lincoln and Guba's (1985) four criteria, I used Sweetman and colleagues' (2010) ten criteria for evaluating transformative paradigm research to critique whether the design of this study aligns well with the transformative paradigm. Although Sweetman and colleagues' criteria relate to mixed methods (quantitative and qualitative) research, it also appears very fitting for use in exclusively qualitative research as this case. As would be observed in the affirmative responses below in *Table 1*, this study aligns well with the transformative paradigm design.

Table 1: Sweetman and others (2010) criteria for assessing whether a study fits the transformative framework.

Questions proposed by Sweetman et al (2010)	Responses in the context of this study
1) Do the authors openly reference a problem in a community of concern?	Yes, in Chapter Two. The literature primarily highlights the negative experience of refugee claimants during the asylum process. It also unveils structural oppression, discrimination, and marginalisation of refugee claimants in NZ.
2) Do the authors openly declare a theoretical lens?	Yes, besides the transformative paradigm, the study is informed by the therapeutic jurisprudence theory. This is stated in the abstract and introduction and discussed in detail here in Chapter Three.
3) Were the research questions (or purposes) written with an advocacy stance?	Yes, rather than a mere exploration and explanation of the experience of refugee claimants in NZ, the research questions also asked the participants how the RSD system could be improved into a safer and better process (refer to Appendix O: Interview Schedule for all the participants). In addition, by using Thompson's (2003; 2016) PCS analysis, this study discusses anti-oppressive and anti-discriminatory practice.
4) Did the literature review include discussions of diversity and oppression?	Yes, in Chapter Two, the literature mainly exposes oppression and discrimination against refugee claimants from micro to macro level analysis.
5) Did the author discuss appropriate labelling of the participants?	Yes, political and media discourses regarding refugee claimants have been covered in Chapter Two and Chapter Seven, highlighting the oppressive structural and cultural labelling of this population group in the country. The research has also been informed by Nipperess and Clark's (2016) caution against the label 'asylum seekers' because of increasing hatred, stigma, and stereotypes attached to it. Thus, I have mainly used refugee claimants throughout this thesis.
6) Did data collection and outcomes benefit the community?	Yes, this has been discussed earlier under ethics in practice. Chapter Eight will also provide further details about the positive impacts of this research.
7) Did the participants initiate the research, and/or were they actively engaged in the project?	Yes, the study came up from several involvements with refugee claimants in the community, including my lived experience as a refugee claimant in NZ, volunteering at the ASST, and personal encounters with other former refugee claimants in the community. I have this earlier under transformative epistemological assumptions at 3.1.1.2. More on the role of the participants in the study is covered later in Chapter Eight under the impacts of the study at 8.1.
8) Did the results elucidate power relationships?	Yes, a fundamental aspect of the discussion focuses on the power in the role of the decision-makers and the lawyers. For example, decision-makers are perceived by the community as wearing the hats of a prosecutor, judge, jury, and executioner at the same time, hence, their role is fraught with condescending practices and a culture of disbelief.
9) Did the results facilitate social change?	Yes, discussed in Chapter Eight at 8.1.
10) Did the authors explicitly state their use of a transformative framework?	Yes, in Chapter One, Three, Eight, and makes spontaneous inferences to the transformative paradigm throughout the rest of the thesis.

Chapter Summary

I have presented the transformative paradigm, outlining its underlying doctrines as matching the circumstances of refugee claimants in NZ within the context of the RSD system. I have also explained the therapeutic jurisprudence theory, its core principles, and how it works as a methodology for conducting research. Complemented by Fontana's (2004) critical methodology, I devised a critical therapeutic jurisprudence methodology for the research process in this study. The methodology, in turn, informed the strategies used for data collection and analysis. Ethical issues that arose in the study and the trustworthiness of the research methods and results have also been addressed.

The research design substantiates that the circumstances of refugee claimants as an oppressed and disenfranchised population group in NZ properly fit the transformative paradigm and therapeutic jurisprudence scrutiny. In the following result chapters, I will analyse NZ procedural refugee law, and will also theorise, using the participants' voices primarily, how oppression operates in practice in NZ RSD, and will discuss the results from an anti-oppressive practice perspective.

CHAPTER 4: Whether the NZ refugee law in theory and practice aligns with therapeutic jurisprudence

The results in this chapter centre on whether when assessed using the lens of procedural fairness and participants' lived experiences about access to justice and the processes related to RSD, NZ refugee law aligns well with therapeutic jurisprudence?

The chapter is divided into three parts. In the first, I present findings of a deductive content analysis on whether NZ refugee law, in theory, conforms with the general principles of procedural fairness, and consequently, therapeutic jurisprudence.⁴⁸ The analysis reveals that the law incorporates procedural fairness principles through protecting fundamental rights embodied in the hearing, evidence, and bias rules. I argue that the procedural rights enshrined in the law provide certainty, transparency, and confidence in the law, thereby an atmosphere for meaningful participation and respectful treatment of the refugee claimants by the RSD institutions. And conclude, NZ refugee legislation aligns with and provides, to some considerable degree, a favourable atmosphere for therapeutic jurisprudence aspirations in the RSD system. I argue further that whilst the law, in principle, is grounded in these rules of natural justice, it is also tainted by provisions that make it susceptible to practices and cultures that can possibly stifle fairness procedurally. With this possibility in the law, there is potential for negative flow-on impacts from the law on people's emotional and psychological well-being.

I move from the law in theory to analyse in the second and third parts, participants' experiences and views about access to justice and the processes and proceedings for RSD at RSU and IPT. The analysis reveals a few operational and practical aspects of the RSD that are user-friendly, appropriate, and safe for refugee claimants (claimant-suited processes), while many others are observed as embedded in procedural injustices, and reportedly having adverse consequences on the health and well-being of refugee claimants and the professionals working directly with them in the RSD system.

From a therapeutic jurisprudence perspective, the findings in this chapter suggest that where the refugee law both in principle and practice, is underscored by fair, transparent, appropriate, and respectful proceedings and hearings to the context of people seeking asylum, they and the other professionals involved in RSD are likely to have a safer and better experience of RSD; and vice versa.

⁴⁸ Refer to 3.3.4.1 in the previous chapter for the discussion of the intersection between procedural fairness and therapeutic jurisprudence.

4.1 Part One: Analysis of NZ refugee legislation for therapeutic jurisprudence principles, using procedural fairness lens.

The concept of procedural fairness is founded on the common law principle of natural justice and requires that certain standards and procedures are observed in administrative decision-making (Young & Zimmermann, 2016). In the administrative decision-making nature of RSD,⁴⁹ natural justice comes to life through procedural fairness. Academic commentators have hailed procedural fairness (by implication, the rules of natural justice) as a central principle of the rule of law (e.g., Endicott, 2009; Joseph, 2014). The principles of natural justice are protected as a fundamental principle of law and justice in NZ under section 27 of the New Zealand Bill of Rights Act 1990. As an administrative law principle, procedural justice is concerned with the procedures used by the decision-maker to arrive at a decision rather than the decision itself (Young & Zimmermann, 2016). It focusses on the subjective evaluation of a litigant's experience with administrative legal processes and requires that the decision-maker follow fair and proper procedures in deciding. Procedural fairness in administrative law traditionally involves three rules: (i) the hearing rule, (ii) the evidence rule, and (iii) the bias rule (Endicott, 2009). In this part, I discuss these rules in the context of NZ refugee law and make links with therapeutic jurisprudence.

4.1.1 The hearing rule in NZ refugee law

The hearing rule requires that a person is given prior notice of the case against them, and a fair opportunity to answer that case (Pearson, 2007). Put another way; this rule demands that the law gives the individual a reasonable opportunity to present their case to the decision-maker before a decision is made. Pearson (2007) proposes that the rule embodies: (a) prior notice of hearing, (b) opportunity to be heard, (c) right to present evidence, (d) right to legal representation, and (e) right to the decision and reasons for it.

More broadly, NZ refugee law safeguards a two-tier system (two independent opportunities) for an individual to establish their claim for refugee and protection status:⁵⁰

- The first attempt is with the Refugee and Protection Officer⁵¹ (RPO), also known as the first instance level or procedure at the RSU.
- The second attempt is a *de novo* (a new or fresh) appeal at the IPT,⁵² also known as the second instance level or procedure.

The law establishes further appeal and judicial review opportunities at the High Court (and the other senior courts).⁵³ However, these are not automatic and are dependent on certain conditions being met.

⁴⁹ Refer to Footnote 1.

⁵⁰ *H v Refugee and Protection Officer* (SC 52/2018) [2019] NZSC, at 43 – 47.

⁵¹ Sections 127(1), 133, 136, 136, 138, and 149 of the Immigration Act 2009 (the Act).

⁵² Sections of 193 and 217 of the Act.

⁵³ Sections 245, 246; 247, and 249 of the Act. See also paragraph 44 – 47 of H case above.

Specifically, regarding the statutory safeguarding of the hearing rule in NZ RSD, the right to be heard is satisfied by a number of provisions under the Immigration Act 2009. At the very least, an individual is deemed in law to have claimed refugee and protection status in NZ at the first instance level if they merely signalled an intention to claim to a representative of MBIE or a constable.⁵⁴ Following the indication of intent to make a claim, the law allows the individual to confirm their claim in writing using an approved ‘application form’; to include a detailed statement of grounds for the claim; and supply relevant information.⁵⁵ It also gives the claimant the right to legal representation and an independent interpreter;⁵⁶ and to present further information, evidence, or submissions that establishes the claim.⁵⁷

An interview or oral hearing is ordinarily available for the claimant to establish the refugee and protection status claim.⁵⁸ The interview also provides an opportunity for the RPO to put to the claimant any potentially prejudicial information and any other critical issues likely to compromise the claimant’s credibility and the facts of their case. The claimant is entitled to an interview report prepared by the RPO, which sets out the claim (as understood by the RPO) and allows the claimant to correct any facts and address other outstanding issues.⁵⁹

If the RPO declines the claim for refugee and protection status, the law guarantees a second attempt, known as an appeal to the IPT, that is the second instance level. The appellant is required to lodge an appeal to the IPT in a prescribed manner and within the required timeframe.⁶⁰ The IPT proceeds by way of a *de novo* hearing,⁶¹ implying the IPT treats the claim on appeal almost entirely anew (or, in principle, should), making its own findings of facts and law, without being tied down to RPO’s approach and conclusions.

The right for the claimant/appellant to be heard through an interview (or oral hearing) is integral and preserved in the first and second instance levels of the asylum procedure.⁶² The claimant/appellant is

⁵⁴ Section 133(1) of the Act, supplemented by C3.15 of INZ Operational Instructions.

⁵⁵ Section 133(3) of the Act; and regulation 4 of Immigration (Refugee and Protection Status Processing) Regulations 2010. See also regulation 4 of Immigration and Protection Tribunal Regulations 2010 on how an appeal is to be lodged to the Tribunal.

⁵⁶ Regulations 5(b) and (c), and 15 of the Immigration (Refugee and Protection Status Processing) Regulations 2010; and regulations 12(4)(a) and 14 of Immigration and Protection Tribunal Regulations 2010.

⁵⁷ Section 135(2) and section 226(1) of the Act.

⁵⁸ The RSU interview is stipulated in section 149(1)(f) and section 149(3) of the Act, supplemented by C4.55 and C4.55.1 of INZ Instructions; while the IPT’s oral hearing is by section 233(3) and (4) of the Act, and regulation 12 of Immigration and Protection Tribunal Regulations 2010.

⁵⁹ C4.55.1(d) and (e), and C4.75(c) of INZ Instructions.

⁶⁰ Section 225 of the Immigration Act 2009, supplemented by reg 4 of Immigration and Protection Tribunal Regulations 2010.

⁶¹ See for example, sections 196(1), 197(1), 198(1) and (2), and 233(3) and (4) of the Act; and regulation 12 of Immigration and Protection Tribunal Regulations 2010.

⁶² Refer to Footnote 58; and in H case cited at Footnote 50, wherein the Supreme Court held that the RPO had erred and derailed a statutory formality by not interviewing the claimant, and the RPO could not dispense with one of two interview opportunities provided for by statute for the claimant to establish his claim (except in a circumstance envisaged by statute).

entitled to a lawyer and an interpreter under the legal aid scheme⁶³ at the RSU and IPT to help them present the claim.⁶⁴

The critical question that remains to be answered from the foregoing is whether there is evidence to suggest that the statutory guarantee of these concepts that make up the hearing rule conforms with therapeutic jurisprudence in any way or form.

Academic commentators, such as Timmins (2015) have noted that one of the connections between procedural fairness and therapeutic jurisprudence concerns whether the litigant is allowed to put forward their story. It is also suggested that giving meaningful room for the litigant's voice in legal proceedings can augment their perception of procedural fairness. The fair procedures can, in turn, cause therapeutic outcomes for the individual (Timmins, 2015). It can be said that allowing the litigant to put forward their story or giving reasonable room for the claimant's voice in the legal procedure would entail all the rights proposed by Pearson (2007) (outlined in the introduction to this section) and preserved as well in NZ refugee law. More discussion and relevant research on the intersection between fairness procedurally and therapeutic jurisprudence has been presented at 3.3.4.1.

I conclude that the legislation on RSD in NZ preserves and guarantees the claimant's right to be heard in their application and appeal for refugee and protection status. I postulate that the protection by NZ refugee law of the rights related to the hearing rule provides a suitable atmosphere for therapeutic jurisprudence aspirations and positive consequences from the law. *Prima facie*, therefore, NZ refugee law broadly aligns well with procedural fairness in terms of the hearing rule and, by extension, the therapeutic jurisprudence perspective.

It is worth noting, however, that NZ refugee law has some shortcomings concerning the hearing rule, which can have negative flow-on effects on well-being, thereby compromising alignment of the law with therapeutic jurisprudence. Most significantly, for some refugee claimants, the law mandates 28 days of renewable detention⁶⁵ and six months of initial detention for mass arrivals and subsequent 28 days renewals.⁶⁶ Claimants subjected to these provisions (noting that the mass arrival provision has not been used yet in NZ) experience the RPO's asylum interview in a custodial environment, potentially including police cells and prisons. It is difficult to conceive how a refugee claimant's right to be heard reasonably and to seek evidence supporting their case (discussed next) is respected in an environment like a criminal justice facility. A prison, for instance, may be an intimidating, unsafe, counterproductive, counterintuitive, and highly challenging environment for a refugee claimant to participate fully and meaningfully in the asylum interview. Fittingly, recent NZ studies have underscored how the detention of refugee claimants in police cells and prisons and the completion of their asylum process in these environments severely

⁶³ Sections 10 and 7(1)(b)(j) to (n) of the Legal Services Act 2011.

⁶⁴ Reg 5 of Immigration (Refugee and Protection Status Processing) Regulations 2010; and reg 12 of Immigration and Protection Tribunal Regulations 2010.

⁶⁵ Sections 309 (1), 316, 317, and 318 of the Act.

⁶⁶ Sections 317A, 317B, and 317E of the Act.

undermine their ability to be heard and gather the evidence needed to establish their claim (e.g., Amnesty International Aotearoa, 2021; Casey, 2022).

In the next section, I outline the evidence rule in the Immigration Act 2009 and link it to therapeutic jurisprudence.

4.1.2 The evidence rule in NZ refugee law

The evidence rule requires that the decision is based on evidence that logically supports the facts. It also requires that the litigant is informed of the evidence against them and is given a fair opportunity (either orally or in writing) to rebut that evidence. The rule demands that the decision-maker have a balanced assessment of the evidence and the law and to point to the evidence and the law upon which the determination has been made (Lane, 2007).

The law outlines quite clearly how a claim (application or appeal) for refugee and protection status must be made, the core proceedings for establishing the claim, and the nature of the decision to be given to the claimant/appellant. A refugee and protection status claim must be made, established, and determined as stipulated by the Immigration Act 2009, based on NZ's international protection obligations under the Refugee Convention, CAT, and ICCPR.⁶⁷

As discussed earlier, under the hearing rule, the law guarantees the proceedings for making a claim (or appeal). It allows for supporting evidence, including requiring an interview (or oral hearing) to establish the validity of a claim. This entails the individual furnishing the decision-maker with their evidence (written and oral) and the decision-maker establishing the facts and the claimant's credibility from the evidence.⁶⁸ Therefore, at the heart of NZ RSD is the evidence (written and oral) from the claimant establishing their claim and a written decision from the decision-maker with reasons based on the law.⁶⁹

But more importantly, as opposed to the strict rules around admissibility of evidence in a court under the Evidence Act 2006, NZ refugee law allows some elasticity regarding the nature of the evidence an individual can provide to establish their claim for refugee and protection status at the RSU level (Immigration New Zealand, 2022d, p. 21) and the appeal at IPT level. The law allows the decision-maker to receive as evidence any document, information, or matter that, in its opinion, may assist it, whether or not it would be admissible in a court of law – (clause 8(1), Schedule 2) of the Immigration Act 2009. Subject to this, the Evidence Act 2006 applies to the IPT as if it was a court – (clause 8(2), Schedule 2).

The flexible nature of evidence required in refugee law fits appropriately with the spirit of therapeutic jurisprudence. It likely minimises the stress and anxiety involved with producing tenable evidence as per court standards, as the claimant can furnish the decision-maker with evidence that would ordinarily be

⁶⁷ Sections 125, 137(1), and 198(1)(b) of the Act.

⁶⁸ Sections 133(3), 137(5)(a), 141(2), 231, and 218(1) as supplemented by regulations 4(4) and 6 of the Immigration (Refugee and Protection Status Processing) Regulations 2010; and C3.30.5 of INZ Instructions.

⁶⁹ Section 138(4)(b), and clause 17(3), Schedule 2 of the Act.

untenable and rejected in a law court. However, this is not without some concerns and challenges that might have anti-therapeutic consequences. Elastic evidential standards can create a slippery slope. For instance, claimants can adduce or argue around weak evidence, thereby exposing themselves to more criticism by the decision-maker. Likewise, decision-makers can demand or expect insurmountable evidence (especially in the current context of the proliferation of the internet, digital media, and social media platforms in most parts of the world), thereby eroding the long-held case law principle of ‘benefit of doubt’ in refugee law,⁷⁰ and put the claimant through undue stress.

4.1.3 The bias rule in NZ refugee law

The bias rule safeguards against a person deciding any case in which they may be biased or fairly suspected of being biased (Groves, 2007). The common law rule against bias has a long history. In the United Kingdom (UK) case of *Metropolitan Properties Co (FGC) Ltd v Lannon (1968)*,⁷¹ Lord Denning stated that:

[I]n considering whether there was a real likelihood of bias, the Court does not look at the mind of the Justice himself or at the mind of the Chairman of the Tribunal, or whoever it may be, who sits in a judicial capacity. It does not look to see if there was a real likelihood that he would, or did, in fact favour one side at the expense of the other. The Court looks at the impression which would be given to other people. Even if he was as impartial as could be, nevertheless if right-minded persons would think that, in the circumstances, there was a real likelihood of bias on his part, then he should not sit. And if he does sit, his decision cannot stand.

In effect, the parties in court (by extension, the public) should be able to clearly see the decision-maker as an independent and impartial adjudicator (Groves, 2007).

The rule against bias operates to curb impartiality and maintain public trust and confidence in the rule of law.⁷² This is likely to result in minimal stress and anxiety about the legal proceeding and enhance the law’s therapeutic consequences.

NZ refugee law appears somewhat to adequately guard against perception of bias in the function and role of decision-makers in RSD. Primarily, the law is very clear on how the RPOs and IPT members should determine refugee and protection cases.⁷³ As noted under the evidence rule above, the decision-maker must (a) determine refugee and protection claims solely according to NZ refugee and protection obligations and

⁷⁰ The principle of benefit of doubt is discussed in NZ refugee law, for example, in the cases of *Jiao v. Refugee Status Appeals Authority*, CA167/02, [2003] NZAR 647; and *M v. Refugee Status Appeals Authority*, [2010] NZHC 1885).

⁷¹ EWCA Civ 5, [1969] 1 QB 577, Court of Appeal (England and Wales).

⁷² Ibid, as per Lord Denning: “Justice must be rooted in confidence and confidence is destroyed when right-minded people go away thinking: ‘The judge was biased’”; and, Lord Hewart in *R v Sussex Justices, ex parte McCarthy* [1924] 1 KB 256 at 259, High Court (King’s Bench) (England & Wales): “It is not merely of some importance, but of fundamental importance that justice should not only be done but should manifestly be seen to be done”.

⁷³ Sections 124 – 148; and 193 - 200 of the Act.

(b) give reasons for the decision in writing.⁷⁴ The law also mandates the IPT to publish its decisions⁷⁵ except as otherwise prohibited.⁷⁶ These stipulations ensure the law's clarity, certainty, consistency, and transparency. It also minimises the possibility of the decision-makers not acting judicially. It preserves the public's perception of the rule of law and, by extension, reduces perceptions of bias.

Further, the law ensures that RPOs do not double up and perform the functions of immigration officers,⁷⁷ which can compromise their ability to 'keep a balanced head' as RPOs. The functions and powers of immigration officers include visa decision-making, entry permission decision-making, compliance and enforcement, and power of detention.⁷⁸ In contrast, the functions and powers of RPOs are to determine refugee and protection status.⁷⁹ The law adds that "no person may be designated as a refugee status officer, or act as a refugee status officer, at any time when the person is also currently employed in considering applications for permits under this Act or in administering the removal provisions."⁸⁰ Thus, the chances or incidences of bias that can arise from an officer wearing 'two hats' as an immigration/compliance officer and an RPO are prohibited, in principle, thereby eliminating imputed, apparent, or perceived bias.

In addition, the law safeguards against the perception of bias at the IPT level. The IPT functions as "an independent, specialist judicial body" (Spiller, 2019b, p. 4)⁸¹ from the INZ, and sits within the Ministry of Justice rather than MBIE as is the case with INZ. IPT members are appointed by the Governor-General, following recommendations by the Minister of Justice in consultation with the Minister of MBIE,⁸² rather than being recruited directly by the Minister of Immigration, as is the case with RPOs. Further, the law prohibits appointment of former immigration officers and RPOs to IPT members within five years of leaving INZ.⁸³ These factors almost certainly remove imputed, apparent, and perceived biases that otherwise may be ascribed to the IPT by the appellants and the public.

That notwithstanding, the position of the RSU as an integral part of INZ and with RPOs as employees of the Minister of Immigration creates room for the perception of bias. It is difficult for a claimant to perceive the RSU as wholly insulated from potential political tinkering that might flow from top down in the Executive branch. In this regards, Casey also commented that "RPOs are statutory decision makers but do not have the independence of a judicial officer: they are employed and managed through a government department that has many and varied pressures and processes" (2019, pp. 50-51). Further, the position of

⁷⁴ See also section 127(2)(b) of the Act.

⁷⁵ Section 151(2)(d) and clause 19, Schedule 2 of the Act.

⁷⁶ Section 151, and clause 18(4), Schedule 2 of the Act.

⁷⁷ Sections section 388(6) and 390 of the Act, complemented by A15.1(e), and A15.1.25 of INZ Instructions. Section 388(6) of the Act stipulates that "[a] person may not at any one time be designated as an immigration officer and a refugee and protection officer", while A15.1(e) of INZ Instructions state that "[a] person who is designated as a refugee and protection officer cannot also be designated as an immigration officer, and vice versa".

⁷⁸ Sections 389(1) and 389(2) of the Act, complemented by A15.1.15 of INZ Instructions.

⁷⁹ Sections 127, 149, and 390 of the Act, complemented by C2.5 of INZ Instructions.

⁸⁰ Section 129E(3) of the Act.

⁸¹ Section 217 of the Act establishes the IPT, while section 218 stipulates the nature of the IPT business as a distinct entity from INZ.

⁸² Section 219(3) of the Act.

⁸³ Section 219(4) of the Act.

the RSU as an integral part of INZ brings about imputed bias. The views of refugee claimants and many of the professionals in this study indicate they conflate the roles of RPOs (because the RSU is an integral part of INZ) as performing primarily refugee and protection, but also having a strong say on visa related issues, and appearing as if their role is to protect NZ borders from refugee claimants and illegal immigrants.

In addition, concerns were raised by some of the lawyers in this study that even though the IPT, in principle, conducts its hearing on *de novo* basis, in practice, in many cases, the IPT makes inferences about adverse findings of credibility and facts made by the RSU, thereby absorbing some of RSU's imputed bias.

Overall, it can be anticipated from a therapeutic jurisprudence perspective that the statutory provisions guarding against bias in NZ refugee law, when well communicated to the persons seeking asylum, can enhance their perception of the role of the decision-maker in RSD as a neutral party. The claimant's perception of the RSU, and impliedly the RPO as a neutral party in RSD, is also likely to be positive if the position of the RSU as an integral part of INZ is reconsidered in view of making it an independent body from INZ. This will likely increase the refugee claimant and their advocate's trust and confidence in refugee law and decrease potential stress and anxiety that ensue from the perception of decision-makers as biased officers working alongside INZ, which primarily is responsible for implementing and, in some instances, making the inhospitable, oppressive and discriminatory refugee policies against refugee claimants (refer to Chapter Two for structural oppression and marginalisation against people seeking asylum in NZ).

It can be concluded from the analysis in this part that, in theory, the NZ statutory scheme substantially guarantees and protects certain procedural rights for refugee claimants in the country. More generally, the law ensures the people applying for asylum have at least two independent opportunities to test the claim – a first attempt at the RSU, and, if unsuccessful, a second attempt (appeal) at the IPT.

The right to a first instance determination by the RSU typically involves the following rights (which I refer to as the first category of statutorily protected procedural rights for all refugee and protection status claimants):

- A right to signify an intention to claim, and be treated, in effect, in law as having claimed refugee and protection status in NZ; and to follow that with lodgement of a filled claim (application) form for refugee and protection status.
- A right to submit supporting information and evidence to the RPO that establishes the claim.⁸⁴
- A right to legal representation and an independent interpreter.
- A right to an interview by a RPO and to be provided with a summary of the interview (an interview report), and to be given an opportunity in the report to correct any aspect of the record or deal with any concerns about the claim raised by the RPO.
- A right to a reasoned decision from the RPO which is impartial and based on the law.

⁸⁴ Section 133(3) of the Act.

If dissatisfied with the RPO's decision, then the following rights are available to the claimant on appeal to the IPT (which I refer to as the second category of statutorily protected procedural rights for all refugee and protection status appellants):

- A right to a *de novo* appeal to the IPT by lodging a designated appeal form within the specified timeframe.
- A right to submit supporting information and evidence to the IPT that establishes the claim.
- A right to legal representation and an independent interpreter at the IPT.
- A right to a hearing by the IPT, allowing the appellant to clarify and confront any concerns raised about the claim.
- A right to a reasoned decision from the IPT, which is impartial and based on the law.

There is yet a third category of rights to appeal and judicial review in the High Court; and further rights of appeal to the Court of Appeal and the Supreme Court.⁸⁵ The focus of this research does not include this third category of rights.

I conclude that these procedural rights enshrined in NZ refugee law provide certainty, transparency, and confidence in the law, and room for meaningful participation and respectful treatment of the refugee claimants by the RSU and IPT. Thus, the existing law conforms with and provides, to some extensive degree, a favourable atmosphere for therapeutic jurisprudence aspirations in the RSD system.

It is relevant to note that although NZ's refugee legislation is grounded in procedural justice, some of its provisions are fundamentally at odds with the concept, creating almost textbook situations for discontent because they undermine the claim, dignity, and well-being of some refugee claimants. Most significantly, the law provides for the detention of some refugee claimants in criminal justice facilities and for them to establish their claim under these circumstances. As outlined in Chapter Two at 2.1.2 and 2.2.1, and will be seen later from the participants' voices about detention (presented in Chapter Six at 6.2 and Chapter Seven at 7.3.1.1); the restrictions, controls, and the oppressive nature of police cells and prisons inherently inhibited claimants' effective participation in the RSD procedure. It obstructs access to evidence necessary for establishing the claim. It also has debilitating emotional and psychological consequences on their well-being, undermining participation in the asylum process.⁸⁶

The findings in this study are also dominated by the research participants' voices stressing critical problems with the RSD system and how these affect the claim and well-being. The remaining results focus on the main themes emerging from the participants' views relating to access to justice, as well as the core processes and proceedings for RSD, linking this with the therapeutic jurisprudence theory.

⁸⁵ Sections 245 – 251 of the Act.

⁸⁶ Another area where the law opens up room for consternation about natural justice in the RSD is the use of an advanced passenger screening system ((section 96(2) of the Act; and regs 4 – 6 of Immigration (Carriers' Information Obligations) Regulations 2010)); and interdictions of potential refugee claimants, thus precluding them entirely from even getting into NZ to exercise their right to seek asylum.

4.2 Part Two: Perspectives about access to justice in RSD

Participants' voices highlighted critical operational and practice issues with access to justice that have far-reaching consequences on the well-being of refugee claimants and, by implication, conformity of the RSD with therapeutic jurisprudence principles.

The phrase access to justice has been considered to include "one's ability to participate competently and confidently in the legal system", including the administrative legal processes for RSD (Silverman & Molnar, 2016, p. 111), or as not simply meaning "staging a hearing, but also ensuring the conditions of the event are conducive to effective engagement in the proceedings" for RSD (Gill et al., 2021, p. 62). I subscribe to Smith et al.'s (2021, p. 12) view that access to justice refers to "early and affordable access to high-quality legal representation to both prepare claims and appear [for the asylum interview/hearing], without systemic or economic barriers; to fully participate in and understand the refugee status determination process; to obtain just and fair outcomes in a timely and efficient manner; and to have recourse for poor quality or abusive representation by counsel".

In line with a growing body of academic research that has shown a positive association between access to justice and better outcomes (and, to some extent, therapeutic outcomes) for refugee claimants (e.g., Gill et al., 2021; Silverman & Molnar, 2016; Smith et al., 2021), I surmise that access to justice, like procedural fairness, is an essential component of therapeutic jurisprudence. It is vital to understand how refugee claimants (and the professionals of RSD) interpret their experience of navigating the asylum procedures and their rights, and translate that experience into a subjective evaluation of the RSD system. I theorise that when legal proceedings are conducive to refugee claimants (claimant-suited processes) and conducted fairly, impartially, and with timely access to proper legal representation, it can help reduce associated stress and anxiety (including lowering risks of re-traumatisation) from the proceedings, promoting positive engagement and a sense of trust/satisfaction with the decision; and vice versa.

The findings in this study reveal access to justice problems related to claimants' participation in the RSD system, with adverse effects on their health and well-being. These problems include inaccessibility of legal counsel by border claimants, challenges accessing counsel and evidence by those detained in prison, low legal aid rates and its implications on lawyering in RSD.

4.2.1 Limited to non-existent legal support at airports and for prison detention

Participants' voices highlight a link between the proceedings for seeking asylum in any of NZ's international airports (referred commonly as the border), detention, and consequences on well-being. It indicates that access to legal representation and evidence is denied for claimants at the border, and although granted for those detained in criminal justice facilities, the access to lawyers and means of seeking evidence is largely ineffective in advancing the claim. The difficulty or inability to access legal counsel and evidence in these circumstances left the claimants stressed out and anxious, fearing that they would be deported from NZ during the asylum process.

The individuals interviewed in this study who claimed asylum at the border (usually, the Auckland International Airport) described being interviewed by immigration officials about the reason for the claim but were not informed of or given access to legal representation. They explained that even though they needed a lawyer's support at the airport and asked to be given access to one (at least via phone), the interviewing immigration officer refused access while they were still at the airport. A claimant added:

A lawyer would have given me more support. I would have felt that there is somebody like on my corner and there is a person who is intervening for me. When you are there at the airport, you are scared, basically. It's not like a job interview. You are very scared because you don't know if the way you formulate your words will come back to bite you or hinder you in the process. Your mind is not relaxed. ... There is no support (Claimant, #06).

Some of the lawyers also said that upon arrival in NZ and seeking asylum at the airport, claimants are interviewed without legal counsel even though their statements could be used against them later in the asylum process. As one commented:

They are tossed into a room and asked a bunch of questions with often an interpreter over the phone, and then this interview, like this kind of pre thing that they have to go through is often used against them down the line at the interview process, right! (Lawyer, #16).

Another lawyer said similarly:

The statements that people make at the airport while exhausted, with no legal representation, and are frightened, etc., those statements are then looked at during the refugee claim and can be used against the claimant, if they have got dates wrong, or if they have left something out (Lawyer, #20).

Claimants detained in police cells and prisons explained that they were granted access to a lawyer, but the access and communication with a lawyer and the rest of the outside world, which was absolutely necessary for gathering evidence to establish their claim, was severely restricted or almost impossible. In addition, their asylum interview by the RPO was conducted in a room within the prison facility. This made it extremely difficult for them to interact with their lawyer, participate fully in the interview, adduce evidence, or call witnesses in prison. It also had negative emotional and psychological impacts, as the interview in prison felt like a criminal interrogation in a police cell.

Access to lawyers and evidence was also reported as a problem with anti-therapeutic consequences for claimants detained in prison and needing to attend an appeal hearing at the IPT. An IPT member stated that detention in prison undermined natural justice for appellants because they were transported to and from the IPT by Correctional Security Officers and were guarded during the oral hearing. The IPT member noted as well that appellants often appeared at hearings with little or no prior access to evidence or witnesses to support their appeal. As the member explained:

Actually, I've had people coming up from Waikeria prison which is in the Waikato. I think there're lots of issues for people who are going through the process and are actually in prison custody as

opposed to Mangere [MRRC]. They find it difficult to talk to their lawyers. They find it difficult to get help if they need any support. They find it very difficult to communicate with anybody in the home country. So, it's very difficult for them to give evidence ... It's obviously not very much fun being in prison. It's stressful, possibly frightening. They turn up for the hearing, sometimes they're in handcuffs. There're prison officers who are sitting in the hearing. Sometimes people are talking about very, very personal intimate details and I've got two burly prison guards sitting in the back. They may not have enough time to talk to their lawyers, so quite often I will give somebody the chance to talk to a lawyer before the hearing. There are always problems with documents because they haven't been able to, sometimes they actually have things in a bag at the prison and have not been able to get possession of it to give to their lawyer or whatever. And sometimes we have to intervene and say to the prison that hang on, this person has got a bag, we need it. I think detention in a prison facility is very very problematic. You're definitely not going to get the best evidence out of an appellant who is detained in a prison facility (IPT member, #23).

On the other hand, participants' accounts also revealed that the claimants detained at the MRRC or otherwise in the community had equitable access to a lawyer and to evidence needed for their claim. This had positive implications for their asylum process, well-being, or both.

The findings in this section show that access to justice for people who claimed asylum upon arrival at the airport in NZ and for those detained in police and prison cells is undermined by difficulties or inaccessibility to lawyers, evidence, and witness. This, in turn, has negative consequences on outcome of the claim and the claimant's well-being. More on the negative impacts of border proceedings and detention in the criminal justice system will be presented in Chapter Six.

4.2.2 Domino effect from an inefficient legal aid process and rates

Participants' accounts demonstrate that even though claimants are afforded a right to free legal representation/interpreters, structural problems with the legal aid scheme have direct adverse implications on the pool of lawyers in refugee law, the quality of lawyering done on legal aid, claimants' meaningful participation in RSD, and on well-being.

As noted earlier, all refugee claimants in NZ have a right to independent legal representation (subject to their ability to pay for that representation), or are eligible for a public-funded counsel and interpreter via the legal aid scheme (subject to meeting a disposable income test).⁸⁷

In practice, claimants are provided information by the RSU and IPT on their rights to legal representation and an interpreter, the legal aid scheme, and a list of lawyers who provide refugee legal aid services. Community-based organisations (such as ASST; ChangeMakers Resettlement Forum; Citizens Advice

⁸⁷ Sections 10 and 7(1)(b)(j) to (n) of the Legal Services Act 2011.

Bureaus; Community Law Centres; etc) also assist claimants who contact them and need help with finding and contacting a lawyer and interpreter.

Participants' views indicate that despite the government having approximately 25 refugee lawyers on the legal aid list in 2019, less than half were in active practice and contacting them presented a particular burden for refugee claimants who mainly were from non-English speaking backgrounds and required language interpretation.

The claimants and some of the lawyers felt that the legal aid application process for refugee claimants was not fit for purpose. Many claimants reported that they did not have access to an interpreter during the initial stage of getting a lawyer (except through community agencies and other refugees), as it was usually the lawyer who would then have to engage an interpreter. Legal aid for the interpreter was unavailable until an application for one had been made by the lawyer and approved by the Ministry of Justice. Hence, lawyers and interpreters would engage in the initial stage of receiving instructions from the claimant, not knowing whether they would be paid or not. A couple of lawyers cited cases where legal aid applications were declined, leaving them and interpreter unpaid for work they have done receiving initial instructions.

In addition, some lawyers described the legal aid rates as significantly insufficient: approximated at 2500 – 3500 NZ dollars for a claim at the RSU and less at the IPT. The lawyers stated they could earn 10,000 dollars for the same job in private practice. They also explained that the low legal aid rates contribute to lawyers (especially new graduates/trainees) quitting refugee law altogether for other practice areas and “disincentivise” existing lawyers from working entirely in the refugee law field. As a lawyer explained:

There's still the pressing problem that the hourly rate for lawyers haven't improved for eleven years. And so, the rates are really far too low to make it a sustainable area of law for people to practice in (Lawyer, #20).

The reported outcome was fewer lawyers practising refugee law on a regular or permanent basis, resulting in overworked, often stressed-out, and burned-out lawyers who take on a high volume of cases to meet overhead costs, and in some cases resulting in poor quality representation. It was also reported that low legal aid rates incentivise lawyers' detachment from claimants as they could not afford to spend more unpaid time communicating with or sufficiently preparing claimants. This left some claimants more worried and frustrated.

Challenges were also reported in access to civil legal aid by refugee lawyers to represent claimants for the warrant of commitment process in the District Court, that is, to challenge the detention of the person in prison or elsewhere in the community.⁸⁸ Reportedly, claimants were mostly represented in the District Court

⁸⁸ A warrant of commitment is an order by a District Court judge detaining a refugee claimant for 28 days based on an application and reasons given by an immigration officer. The warrant is reviewable by the District Court every 28 days and renewed if needed. A mass arrival warrant also exists in the law allowing for detention for six months (and renewable every 28 days after) of people who arrive in NZ in a group of more than 30. The mass arrival warrant has never been used in NZ (Sections 316 - 324A of the Immigration Act 2009).

for this warrant of commitment by the duty lawyer (because their refugee lawyers could not access appropriate legal aid to represent them), but the duty lawyers were criminal law inclined and had little or no knowledge about the unique circumstances of refugee claimants under detention. Many claimants in this category ended up in prison detention facilities without a proper defence from a lawyer (Amnesty International Aotearoa, 2021; Casey, 2022). One of the lawyers in this study commented on the difficulties accessing civil aid for reviewing the detention of refugee claimants and ineffectiveness of the warrant of commitment review process in the District Court, describing it as

The process is, in my view a travesty of justice actually, and it's been like that for years and the lawyers have tried to improve it and reform it, but we just get nowhere. ... everybody in the system knows it's a broken system (Lawyer, #20).

Caught up in a sector where it is very difficult to find a good refugee lawyer, and for claimants in detention – receiving ineffective legal representation from the duty lawyers in the District Court; the claimants reported feeling stressed-out, helpless, and hopeless during their RSD.

4.2.3 Poor quality legal representation

In addition to the problems stemming from the legal aid scheme, the participants discussed other issues concerning the quality of representation in the RSD system. They pointed out that abusive and substandard practices occur in RSD, with considerable impacts on claimants' well-being and ability to access justice.

Some of the examples given by the participants regarding poor quality legal representation included instances of lawyers attending the asylum interview at the RSU (or oral hearing at IPT) unprepared. Some claimants reported feeling frustrated that their lawyer hardly responded to their enquiries during the asylum process, seldom met with them, and barely prepared them for the interview. Others recalled meeting with the lawyer only two or three times during the entire asylum process at the RSU, and blamed the failure of their initial claim at the RSU on the lack of proper representation, as they subsequently succeeded with another and more helpful lawyer on appeal at the IPT. The claimants in this group described the lawyers as merely proofreading and editing their written statements, explaining further that the lawyer did not conduct independent research to support their claim, did not intervene in the interview, and did not make a convincing opening or closing remark in the asylum interview at the RSU (or oral hearing at IPT) when the decision-maker gave them the opportunity. As noted by this claimant:

I don't really think my lawyer was of great help because I did almost everything on my own. During the interview, he didn't intervene at any point, even when he was given the opportunity to, he didn't say anything (Claimant, #27).

Another claimant perceived his lawyer as an editor:

I just felt I had to say my story, and everything was just transcribed into paperwork and presented. And anything that was asked was just relayed back to me, and I found myself having to defend myself back and over and explain myself in the situation ... I felt like I had to do more of the

research myself, do more of the explanation, and he did more of the structure, organisation, rather than input. ... It [felt] more of an editor rather than a lawyer, or an adviser or an editor, rather than a lawyer (Claimant, #01).

Some of the lawyers explained that frequent communications with the claimants would have taken away the minimal paid legal aid time they had to research and prepare the claimant and written submission. The decision-makers also discussed the impact of poor legal representation on the decision, pointing out that some lawyers sleep in the interview, do not prepare the claimant, and “dump” everything in the name of evidence, including irrelevant material for the decision-maker to sort out rather than providing just what was relevant to the claim. As the former RPO noted:

Unfortunately, there are also some lawyers who are not particularly good either. I had a lawyer who was sleeping in my interviews multiple times, which is not acceptable, or lawyers who really haven't done anything to prepare the case or client for the interview. ... Sometimes lawyers will just give you like stacks of things ... which are not necessarily relevant (Former RPO, #32).

IPT members also observed that occasionally lawyers include patches of evidence that may even undermine rather than bolster the claim. The effect of poor-quality representation is that some claims are lost and lead to a loss of trust and confidence from refugee claimants in the role of refugee lawyers in the RSD system. In addition, it leaves some claimants aggrieved and devastated in or by the RSD procedure.

It is worth stressing that participants' accounts also indicate that some of the lawyers are highly experienced in the field, regularly do refugee work and provide high-quality representation on legal aid. Lawyers also stated that some of their jobs involve pro bono work such as advocating and helping claimants access necessary support services (e.g., social welfare and accommodation from government departments), and sometimes providing food or housing, without which the claimant could not be expected to meaningfully participate in RSD.

Overall, the voices on access to justice demonstrate that the border claimants and those detained in police cells and prisons have unique problems accessing lawyers and evidence for their claims. Further, poor legal aid rates contribute considerably to shortfalls of different proportions in the refugee law field. Accounts also portray substantial concerns with the quality of legal representation in RSD. These reported access to justice problems are emphasized as harming the claimant's ability to participate fully in the RSD, and as having detrimental consequences on the emotional and psychological well-being of claimants and lawyers. Conversely, the findings in this part suggest that access to legal counsel at the border, non-criminal justice detention, appropriate legal aid rates, and high-quality legal representation can potentially improve claimants' experiences regarding access to justice and well-being in the RSD procedure.

In the following section, I discuss additional issues and claimant-suited processes highlighted by the research participants regarding RSD at the RSU and IPT levels.

4.3 Part Three: Perspectives about the processes and proceedings for RSD at RSU and IPT levels

This part outlines the participants' voices about their experiences of lodging an asylum application or appeal (or working in the system), focusing on the implications of RSD procedures on well-being.

It is worth pointing out very early on that some of the themes I have presented in this part overlap between procedural fairness, access to justice, and therapeutic jurisprudence. This is to be expected, given that procedural fairness in RSD focuses on whether certain standards and procedures have been observed (McDonald & O'Sullivan, 2018). In the same vein, the access to justice lens can also focus on the processes for RSD, examining whether they are conducive to effective participation by claimants (Gill et al., 2021; Smith et al., 2021). On its own part, as an evaluative or critical lens of the law and legal processes, the therapeutic jurisprudence theory offers a holistic perspective that can incorporate procedural fairness, access to justice, and other legal perspectives into assessing the law and legal procedure/process for social impacts (Brookbanks, 2015c). It is also worth emphasising that although a link can be implied between procedural fairness, access to justice and therapeutic jurisprudence in some of the themes presented here, the focus here is not however on exploring this link. Instead, my attention is on presenting the processes and proceedings for RSD reported by the participants as having therapeutic or anti-therapeutic consequences on the individuals involved in the RSD (thus, fulfilling in this part a therapeutic jurisprudence commitment relating to evaluation of the legal procedures and processes from a therapeutic jurisprudence lens) (Vols, 2019; Wexler, 2014; 2015).

Many of the study participants expressed considerable concern that some of the core proceedings and processes related to RSD are cumbersome and arduous for refugee claimants and have harmful consequences on their psychological and emotional well-being. They also appraised a few processes as well-suited and appropriate to the circumstances of refugee claimants and having therapeutic effects on their emotional and psychological well-being. The accounts centred around the legibility and accessibility of forms, cumbersome proceedings, and divergent perspectives regarding appropriateness in the RSD system.

It is relevant to point out that participants' accounts about the asylum interview (oral hearing) environments had some bearing on access to justice and therapeutic jurisprudence; for instance, hospitable and conducive interview environment and atmosphere appear safer and less anxiety-inducing; and vice versa. I will present the voices on this subject later in Chapter Six at 6.3.1 because the participants' views are centred more on the health and well-being consequences of the interview environment and atmosphere at RSU and IPT.

4.3.1 Accessibility and legibility of forms

Participants' experiences of the primary application forms related to a claim and appeal for refugee and protection status suggests that the breadth and length of the forms contributed to positive or negative perceptions of access to justice, fairness procedurally, and impacts on well-being in RSD. User-friendly

forms are reported as more suitable to claimants' circumstances, with fewer adverse effects on emotional and psychological well-being. The forms that attracted some level of commentary from the participants included:

- i). the application form for refugee and protection status (known as 'the Confirmation of Claim to Refugee and Protection Status in New Zealand - INZ 1071'),
- ii). the application form for civil legal aid to the Ministry of Justice for legal representation and an interpreter (known as 'the Application for Family or Civil legal aid'), and
- iii). the IPT appeal form (referred as 'the Notice of Appeal – Refugee and Protection Status Appeal – Form 2').

4.3.1.1 Confirmation of Claim to Refugee and Protection Status in New Zealand – INZ1071

The application form for refugee and protection status in NZ: Confirmation of Claim to Refugee and Protection Status in New Zealand – INZ1071, is generally known in the sector as 'the confirmation of claim form'. The findings reported here relate to the old confirmation of claim form, which existed before March 2021. I interviewed the research participants in 2020 about the confirmation of claim form. The RSU revised and released an abridged version of the same form in March 2021.

Refugee claimants described the old form as: (i) long and requiring detailed and irrelevant biographical information; (ii) complicated; (iii) cumbersome and arduous; and (iv) repetitive in some areas. As a claimant noted:

The first thing I realised was how long the form was, and a bit repetitive, and there were some irrelevant questions (Claimant, #27).

Lawyers described the form in a similar manner and sometimes in stronger tones. One of the lawyers said the form looked like an overload and designed for RPOs to make their job easier, not for refugees.

It's too long. It's overly cumbersome. ... It seems like overkill. But it's, yeah, I think it's not been designed for refugees. It's been designed for RPOs, you know. It's given not a crap about you [claimants] or anybody else. It is this will make my job easier, you know. It's not about the claimant (Lawyer, #15).

Another lawyer thought the form was hard, dreadful, and unnecessarily long.

It's brutal, and no one needs to know this much. It is painful. ... The form itself is unnecessarily long, especially when these questions are to be repeated at the interview to cross-check whether you're lying (Lawyer, #16).

The lawyers also thought the form's extensive nature was designed to "bludgeon" claimants and "poke holes" in their claim, as the detailed information collected would be cross-checked later in the asylum interview, and it often tripped claimants into making mistakes.

It is worth noting that the current revised application form is shorter, from 28 to about 24 pages. In addition, the number of questions in the section on the grounds for claiming refugee and protection status have been reduced from nine to four. The section on grounds for seeking asylum has been moved to the front pages as opposed to the past, where it was at the rear.

It can be estimated that the current revised form has addressed some of the concerns relating to the challenging, stressful, and unsuitable nature of the old form to refugee claimants. A future study could include an appraisal of whether the problems highlighted about the old claim form are present in the current form and whether the current form is well-suited to the context of refugee claimants. It is also worth stating that there is no fee for applying for refugee and protection status in NZ. Signalling an intent to claim and submitting the claim form is accessible to all immigrants to NZ, subject to language and any other barriers.

4.3.1.2 Application for civil legal aid

The claimants had mixed reviews of the civil legal aid application form. During this study, the Ministry of Justice also reviewed its civil legal aid application form, issuing a new version in early 2020. The participants' view of the legal aid form is based on both the old and revised versions of the form.

Speaking about the old form, one claimant who received legal representation at the time she completed the legal aid application form said it was easy to complete:

It was somehow easy [to complete] (Claimant, #04).

Another claimant referring to the same form and in a similar context thought it was a complex and challenging form. The lawyers felt the same about the old form, describing it as unnecessarily demanding, but they said the newly revised form from 2020 was straightforward and user-friendly. As a lawyer said:

I have no issues with [the application form for legal aid]. It's quite new, over the last few months, I think. So, that has been good. And overall, I would say that the Ministry of Justice's legal aid process for refugee claimants is the best it's ever been. There have been periods in time where it's been very difficult to navigate and to use, but we're not in a bad patch now (Lawyer, #20).

In addition to the user-friendly nature of the current legal aid form and process, lawyers found the administrators of the civil legal aid application process in 2020 more helpful than others who had been there in the past.

4.3.1.3 Notice of Appeal – Refugee and Protection Status Appeal – Form 2.

Participants' views of the IPT's Notice of Appeal form were completely positive, describing it as suitable for refugee claimants. They described it as short (six pages only), straightforward, and user-friendly, as it could be completed electronically. Like the application process with the RSU, there is no fee for appealing refugee and protection status to the IPT. A claimant reviewed the IPT's appeal form as simpler to fill compared to the RSU's claim form:

I think the IPT form was easier to fill. Yeah, I think it is easier compared to the Refugee Status Branch form (Claimant, #04).

Lawyers had similar opinions as the refugee claimants about the appeal form. An IPT member also spoke regarding the appeal procedure, stating that it is the goal of the IPT to make its processes user-friendly:

We're very, very aware of need to make sure that our processes are as user-friendly as possible (IPT member, #24).

In summary, participants' appraisal of the IPT's appeal form demonstrate that it is straightforward, user-friendly, and appropriate to the context of refugee claimants, thus suitable for fairness procedurally, access to justice, and therapeutic jurisprudence inclinations. Similarly, favourable inferences can be drawn from the current refugee and protection status and civil legal aid application forms.

The findings in this study suggest that straightforward and user-friendly forms align more with therapeutic jurisprudence as the documents are more appropriate to the context of refugee claimants and have less potential for causing emotional and psychological distress. Stated otherwise, claimant-suited processes are more likely to minimise stress and other adverse effects related to RSD. Future studies in this field may include a therapeutic jurisprudence appraisal of the current claim form for refugee and protection status at RSU.

4.3.2 Inhospitable reception at the airport as asylum seekers in NZ

Related to the non-existent of legal representation at NZ airports (also known as the border), participants (mostly, claimants, lawyers, and interpreters) stressed crucial problems with the asylum process at the border. Amongst these were a long and arduous asylum interview in the airport without access to a lawyer, and possible contravention of the statutory role of RPOs. These problems undermined the claim and the claimant's well-being, leaving some with an impression that the RSD system is based on a "culture of disbelief" (discussed in the next chapter).

The refugee claimants and many of the professionals described the asylum interview at the border (typically, the Auckland International Airport) as exhausting for people who have come off long-haul flights and are terrified in the airport, fearing that they could be turned around on the next available flight. Some of the claimants explained that their interview at the airport took half a working day, while others said they were detained overnight at the airport and spent the next day being interviewed before being released later in the day. As narrated by the following claimant:

I think when you are just from landing, and straightaway, you are put into a room, and straight they start asking you questions, questions, it is very intensive. You are tired first of all, and then you are put inside that room and just being interrogated. It's stressful. ... When I got there, the male officer started asking us questions there. The only thing is that it was a night, and we had to sleep, and that was the only break we had, and then the following morning, we were back again and finished in the afternoon (Claimant, #06).

Another claimant reported having a similar experience. The long asylum interview in the airport made claimants more exhausted, stressed-out, and scared that it would culminate with their deportation from NZ. An interpreter who has worked as a translator in the airport for many years also noted:

It's like very difficult. It's like that person has travelled 36 hours and then have to sit through a more than 3 hours interview, which he will be accountable for afterwards (Interpreter, #19).

Besides the concerns presented earlier at 4.2.1 about claimants not being given access to legal representation in the airport, a lawyer noted that, under statute law, the RSD is to be conducted by persons designated as RPOs (discussed earlier under the bias rule at 4.1.3). He harboured concerns that refugee claimants in the airport were reportedly being interviewed by immigration officers who are not trained in refugee law and have little or no working knowledge of NZ refugee law and protection obligations:

The way that it is supposed to go at the airport is that the only person who should interview a person who wants to claim asylum is a RPO, Refugee Protection Officer, but ultimately, it's somebody at the border, an Immigration Officer at the border who doesn't really have any training in respect of refugee law, is making an initial inquiry (Lawyer, #15).

This conflation of roles, and alleged lack of competence and knowledge in interviewing approaches, supposedly results in the immigration officers treating refugee claimants as regular migrants by making statements or declarations that imply the person would be deported without their claim being heard. The statements increased stress and anxiety for claimants in detention in the airport. For example, a claimant explained that an immigration officer⁸⁹ who interviewed him at the Auckland International Airport after he had claimed asylum, told him that they – INZ would find any way to send him back to where he had come from.

I said it by myself that I am here to seek asylum, ... He listened to my story about my background, and about my country, and why I came here. And he said we are not going to grant you a visa. And the Police were going to keep me because I came here on a fraudulent passport. They [INZ] are going to detain me, and they [INZ] are going to search for a way to send me back (Claimant, #03).

Baffled by the nature of some of these problems, a lawyer described the RSU (generally, the INZ) approach to the asylum process (mainly at the border) and some of the RPOs approach to RSD and their interviewing techniques as guided by “a coast guard mentality”. He described the mentality as treating refugee claimants as potential illegal immigrants (a risk) needing to be intercepted and prevented from entering NZ, instead of seeing them first as potential refugees (at risk) who deserved to be treated according to the Refugee Convention and domestic laws related to RSD. The lawyer explained:

⁸⁹ He referred the officer as an immigration officer, but we have no means of ascertaining in this thesis whether or not the officer was indeed an immigration officer.

A lot of the officers [RPOs], especially the older ones, have this kind of what I call a coast guard mentality. They seem to see their job as kind of stopping people from getting in (Lawyer, #17).

More relevant context about this mentality, centring on the culture of disbelief in RSD, is presented in the next chapter.

Many of the participants proposed that processing of refugee claimants at the border, specifically the initial interview, should be short, focusing primarily on the intent to claim asylum rather than the basis of the claim, conducted only by RPOs and with access to a lawyer. They believed this would make the process suitable for refugee claimants.

Overall, the accounts about the border process highlight problems with access to justice and procedural fairness as claimants are not granted access to legal representation, and reportedly have asylum interviews by immigration officers rather than RPOs as designated by the law, and are not given information about the asylum process or informed of their rights and obligations as refugee claimants in NZ. The airport is not also a conducive atmosphere for an asylum interview as claimants are not able to fully participate in the interview given the exhaustion and fright they harbour upon arrival to NZ. Against this backdrop, the border process reportedly aggravates the psychological and physical vulnerability, especially for those who may have experienced torture and other awful forms of persecutions before arrival to NZ. More context on the well-being impact of the border process is provided later in Chapter Six.

4.3.3 A ‘rubber-stamping’ review of detention by the District Court

The participants also discussed a number of critical problems with the detention of refugee claimants in criminal justice facilities, stressing inadequacies with the warrant of commitment process in the District Court. As discussed earlier under 4.2.1, the use of police cells and prisons for the detention of refugee claimants has direct and tragic implications on their access to justice, procedural fairness, and the claim, relating to improper representation by duty lawyers, and inaccessibility to refugee lawyers and evidence needed to establish the claim.

All the former male detainees I interviewed explained that they had been detained because they did not have proper identity documentation and/or had destroyed the false passport used to travel to NZ before claiming asylum at the airport. They were detained at the airport by immigration officers and then handed to the police after an initial asylum interview with an immigration officer. The police held them in a police cell (usually the Manukau Police Station) over the weekend, where applicable. Then after a brief appearance before a District Court judge and represented by a duty lawyer, they were imprisoned for 28 days, renewable every 28 days. Some spent less than six months in prison, while others spent beyond six months to a year or more in prison. They stated that little or no information was given as to why they were being arrested and detained in a criminal justice facility. Left without adequate information, they wrongly believed they were being prosecuted and criminalised for travelling to NZ without proper identity documentation or on false documentation to claim asylum.

An IPT member explained that the use of criminal justice facilities to detain refugee claimants was inappropriate, thwarting their job and the claimant's ability to participate effectively in their hearings.

It's not the right environment. If you look at any international law on the rights of refugees, it says we shouldn't be detaining them. So, I don't think that helps us in trying to do our job because when you are in that environment, it can create mental health issues for people. ... You know, they are not prisoners, they have not committed crimes, they are being detained under Immigration Warrant because sometimes you can't identify who they are (IPT member, #22).

The use of police cells and prisons for the detention of refugee claimants was stressed by many participants as particularly undermining the claimants' ability to participate fully in the claim process, often hampering regular access to their lawyers and evidence. Claimants who experienced their asylum interview in prison described it as a perfect way of setting them up to fail in the claim, suggesting adverse implications for procedural fairness and access to justice, and severe displeasures in the justice system for this group.

In addition, IPT members and lawyers alike appraised the warrant of commitment process and the RSD process as confusing to refugee claimants given that one is held in the District Court (usually represented by duty lawyers) and the other at RSU and IPT (represented by refugee lawyers). From a refugee law and human rights perspective, the refugee lawyer is more appropriate and competent to appear in both the warrant of commitment and the RSD hearing, but challenges in accessing legal aid often impede them from doing both.

Further, the lawyers criticised the law for putting 'far too much discretion' in the hands of the immigration officials and the District Court judges in relation to detention of refugee claimants. They noted that the discretion is often used harshly and unfavourably against refugee claimants. The discretionary power makes it extremely difficult for lawyers to successfully challenge INZ's application to detain a refugee claim in prison, resulting in a perception of the warrant of commitment law⁹⁰ by the sector as merely a rubber-stamping process. As one of the lawyers explained:

There's a lot of discretion given to the officials at Compliance New Zealand and the District Court judges. Essentially, it provides no effective oversight of people's detention. ... So, there's just massive administration disorganisation. It's not a serious or credible process in my view. It has been described by judges and lawyers alike as a rubber-stamping process. But yet we carry on this fiction as though it works. And so, then refugee claimants are dragged to prison. They're in the prison van 7:30 in the morning and can often lose their cell, you know, they have a pretty awful experience in the court for the day. They go there [and] stand up, nothing meaningful happens, and then they get sent back again. And on the occasion, where lawyers do decide to try and challenge the warrant, the judges basically don't intervene at all (Lawyer, #20).

⁹⁰ Sections 316, 317, and 318 of the Immigration Act 2009

The lack of proper legal representation compounded perceptions of a rubber-stamping process in the District Court.

Some of the professionals also noted that claimants were treated discriminatorily and differently in the enforcement of the warrant of commitment, with females receiving preferential treatment (mostly detained at the MRRC or in the community and having access to lawyers and evidence), whereas their male counterparts were put in prison. As a lawyer explained:

Two situations are dealt with in different ways. ... Ladies get away with it. Almost all ladies are never sent away to Mount Eden [prison]. Is this not discrimination? Are males less humans? ... There is so much inconsistency. Maybe that's the only consistent part ... The other sad part is some people who don't even meet the threshold are released. So, it is inconsistent. ... some clients being sent to Mount Eden prison. Some clients are sent to the Mangere. And some clients sent to the community (Lawyer, #25).

A former female detainee recalled that after being detained for a night and interviewed at the airport, she was denied a visa and then was detained in a police cell, brought before a District Court judge, but was detained at the MRRC for nearly two years. During this time, she saw primarily women being detained at the MRRC while her male equivalents were mostly detained at Mt Eden prison. In this woman's case, she had a fair procedure and access to justice, comparably safer and better, as the custodial environment at MRRC permitted full access to her lawyer and evidence for the claim as opposed to the male counterparts detained in prison.

These findings suggest that the refugee law appears as a penal system for male refugee claimants at the airport who are declined a visa because of want of proper identification documentation or other reasons. Participants' experiences reveal critical procedural fairness and access to justice problems relating to detention in police cells and prisons, which included a lack of proper legal representation for the warrant of commitment and the perception of the current warrant of commitment law as ineffective, in principle and practice, for reviewing restriction on refugee claimants' liberty in NZ. Claimants reportedly felt aggrieved and lost in the justice system while traversing the warrant of commitment process and felt the justice system was not for people like them.

4.3.4 How long is too long for determination of refugee and protection status?

The results in this section focus on the waiting time and the impact of waiting in RSD. Participants' statements harbour concerns about the time it took for the decision, stressing that (all other things being equal) extended waiting periods contribute to deterioration in refugee claimants' psychological and mental well-being.

The claimants found longer waiting periods more challenging and distressing psychologically and, in some cases, waiting affected their physical well-being. The waiting time in RSD before 2020 was longer at the RSU than at the IPT (discussed earlier in Chapter One at 1.3). Many of the professionals noted that the

waiting time from lodgement of the claim to release of the decision by the RSU had increased considerably in the few years to 2020, and was distressing to claimants. Some of the claimants waited for long period, about a year to two for their decision by the RSU, as these excerpts from two claimants indicated:

Another important aspect is the timeframe during the whole process was long and stressful because, from the time you submit your claim and the time you have the interview and after the interview report to the decision is a long time to wait (Claimant, #27).

The decision-makers who had my case took a year no answer. There was a time I waited for two years and had no answer. I have never waited less than 5 months to get my answer (Claimant, #07).

The health impacts of longer waiting periods for decisions at the RSU level were discussed across the board. As a lawyer noted, a prolonged RSD process can be mentally and physically distressing for claimants, especially those who were already vulnerable psychologically:

I've equally had one case where the woman was subjected to quite a lot of sexual assault and her decision is still pending and it's been months and months and months to this point, and so, she's just sitting here waiting for the decision as to whether we're going to appeal it or whether it's going to get approved and she's kind of in a flux as that tends to exacerbate mental health conditions as well because they're just stressed. They lose weight. They aren't able to communicate. They're not taking care of themselves, and their physical health also drops at the same time. So, it's kind of a combined effect, everything feeds into it and it doesn't help (Lawyer, #16).

The therapists (in this case, a psychologist and social worker) expressed concerns that claimants were finding it challenging to cope with longer waiting times and uncertainty at the RSU. As one stated:

The other thing they find really difficult is I guess after the interview, so the waiting time, you know I got a lot of clients who have been waiting for a long time, ..., and it's just taking a long time to hear an answer (Psychologist, #11).

The claimants, on their part, stated that long waiting pushed them into unsafe states: stress, anxiety, despair, hopelessness, self-harm, and suicidality, as one commented:

The first thing that could be done to make the process safer is to reduce the timeframe. The waiting time for the asylum seekers should be reduced, and they should do these things speedily because people go into trauma and so much stress that might lead to something else. People can even take their lives, can even commit suicide. For someone like me, if I was not strong in the things of God, no one can go through what I went through if you are not strong. You can even take your life. So, they should reduce the timeframe (Claimant, #2, Male).

More details about the health impacts of the long waiting will be presented in Chapter Six.

Turning to the IPT procedure, the waiting period from the lodgement of notice of refugee and protection appeal to the release of the decision decreased significantly from around 13 months in 2013 to less than six months by 2018 (Spiller, 2018; 2019a).⁹¹ Claimants who experienced this shorter timeframe felt IPT's turnaround of their appeal in around six months was much more appropriate and helpful to their psychological and mental well-being than the delay they experienced at the RSU.

It is worth noting that despite the participants highlighting the benefits of shorter waiting times for the determination of their claim or appeal, they also pointed out that RSD is suitable when it is responsive and flexible to accommodate the unique health needs of the individual. This can be as an accelerated or adjourned and trauma-informed questioning as directed by a medical or health professional. As this claimant suggested:

They have to consider the medical situation first ... Funny to note is that when the medical reports came, they [decision-makers] didn't consider it. If you don't consider the medical report then you can't get serious with the person you are interviewing ... If they had considered the medical reports, then they could have seen that the person has real problems. ... Medical advice is there to help the person who is asking you questions to be very careful (Claimant, #07).

A psychologist echoed the claimant's voice saying decision-makers needed to be more flexible about timing and work more collaboratively with the registered health professionals, respecting their expert opinions as well:

Maybe also a bit more flexibility with the timing. I've had clients who were not ready for their interviews and we did say that as a mental health professional. We did advocate saying that this client is not ready but that wasn't accepted. They had gotten to the interview and they just had a massive breakdown, you know. They couldn't carry on and that's why we were trying to prevent this from happening. So, with a little bit of more trust, I guess, trusting the professionals as well, you know, you are a professional, you are an expert in your area, and we are experts in our area, so let's have a consultation, let's have a meeting about this. ... how can we work together to make sure it is safe for the client (Psychologist, #11).

Despite the claimant and psychologist contending that some decision-makers do not follow advice from medical or health professionals, the IPT members explained that the IPT makes hearings as flexible as possible, subject to the law. For instance, the IPT has a 'triage system' for medical reasons to assess for priority or adjourned hearings, and offers more breaks in the hearing when needed, as this member explained:

We have a triage system whereby people can request to have a priority hearing, so if they want to have a hearing more quickly for some reason, they can equally if they are unwell or the waiting

⁹¹ Noting that the time frame includes other IPT workloads such as residence, deportation (non-residence), and deportation (resident) categories.

for medication to kick in, or they need to have more psychotherapy before they come to the hearing, they can ask for an adjournment or ask for the hearing not to be scheduled for another three months (IPT member, #23).

In sum, the refugee claimant's experiences in this study suggest that a shorter waiting period is better for their mental and psychological well-being. It results in less anxiety and stress from uncertainty and limbo of waiting. But the process also needs to be flexible and adaptable to accommodate the health needs of the claimant as directed by medical and health professionals.

4.3.5 How long is too long for an asylum interview? Divergent perspectives

Participants' views centred as well on the duration of the asylum interview (oral hearing) and its impacts on health and well-being. Generally, participants highlighted that the asylum interview was "too long", "stressful", and exhausting, but two divergent opinions also emerged among the participants' voices on whether a long asylum interview was necessary for RSD.

The RSU and IPT interviews were estimated to be seven to eight hours in one sitting (although with timely breaks).⁹² A claimant described being interviewed for several days at the RSU.

This guy was interviewing me from 9am in the morning and we will finish 5pm. For 3 days he could not finish. ... After all this, this guy said the interview is not finished and we will have to extend it to another 2 weeks. After two weeks, I went back and had the same interview, repeating the same questions (Claimant, #07).

A former RPO with considerable experience at the RSU asserted that having an eight-hour-long interview was highly tiring for everyone involved in the room.

I completely think eight hours can be really difficult for all parties to concentrate and it's a really long time to be doing something so full on (Former RPO, #32).

The claimants, lawyers, psychologists, and social workers noted that the RSU and IPT interviews were too long, with the RSU interview appearing more detailed, dense, intense, and repetitive than the IPT's, although both had the same timeframe. As this lawyer explained:

RSB [RSU] and IPT both of them are just too long. RSB interviews seems longer than the IPT but it's the same length of time, but [RSU just seems] more dense. The RSB interview is more detailed and more intense, questions more repetitive, and more irrelevant questions that get asked at RSB (Lawyer, #15).

All the claimants, interpreters, psychologists, and social/community workers; and all lawyers except one explained that the length of the interview is stressful and arduous, and not fair on refugee

⁹² It is relevant to note that after the interviews for this study were completed, the RSU interview process has been changed into two half days of about four hours each, following recommendations in Casey (2019) report.

claimants/appellants and not attuned to their health and well-being, likewise on the health and well-being of all the professionals in the hearing room.⁹³

Another concern the participants held was whether a long asylum interview of about eight hours in one sitting was appropriate and safe for refugee claimants. Casey (2019) addressed this issue regarding RSD proceedings at the RSU, viewing it as overly burdensome on refugee claimants, and proposed that the RSU should split the interview into two half-working days. While this suggestion has been adopted by the RSU, the long hearings at the IPT have not changed. All the lawyers and all the other professionals (except an interpreter) endorsed Casey's proposal for the RSU to change its interview to two half-working days, stating it was better on well-being. Appraising the Casey proposal, a lawyer said:

I mean, then you've got the clients who are just getting tired or badly, badly stressed and that's where this Casey recommendation of cutting it into 2 shorter days is all good (Lawyer, #17).

One of the interpreters thought, however, that splitting the interview into two half-working days would instead create more room for psychological and other problems for the claimants. She said:

You know how the lawyers and some people say oh it is too long, we should have the interviews over 2 days, it's too stressful. If you ask me, I will say if I was an asylum seeker, I want it done and finish in one day. I don't wanna go home and have another sleepless night. ... Yes, I would come prepared. It's going to be a tough day, I am going to the RSU and I know it's going to be a tough long day, but it is only one day, and the officer is the same. So, I am against the idea of dividing or making the one-day interview across 2 days to make it less long or shorter. Hmm I don't think that will have a positive effect on the asylum seeker's stress because he is going to be stressed out, anyway. He's gonna go back home, he's stressed out, he's not gonna go to sleep (Interpreter, #19).

Participants also had divergent perspectives regarding whether the IPT's long hearing was safer and suitable for claimants or whether a shorter interview would be better. IPT members believed a hearing for a working day - usually seven hours (and in some cases, more than a day) was good for natural justice because it allowed the voice of the claimant (and their witnesses) to be heard satisfactorily. As an IPT member explained:

I do think the fact that we don't rush our hearings, you know, if we were in England or anywhere in Europe, really, our hearings would take two hours, maybe three hours at the most, whereas for most of us, a day hearing is minimum. It's always very rare that you wouldn't use the whole day ... I have actually had appellants and I think, genuinely say, thank you for listening to me. I feel listened to ... For me that's a really important part of the process, not to rush people and sometimes when people are talking about events or things that have happened, to take some time to ask them how they felt about that ... It's an exercise and whatever happens in making people

⁹³ Participants' discussion of the burden of the long asylum interview on health is presented later in Chapter Six.

who have come from places where maybe the rule of law isn't respected or whatever, feeling like there is fairness, and they have had a fair process of being dealt with, with respect and dignity, then it is part of the point of the whole thing (IPT member, #23).

On the contrary, another IPT member (whom one of the lawyers I interviewed in this study - Lawyer, #25, Male also cited as having short and effective hearings), suggested that the appeal process can be more effective if IPT members prepare well and “front-load hearings”. The member stated:

Also being flexible, well prepared, sensible and realistic. Tribunal members should “front-load” hearings with as much preparation as possible, in order to make hearings focussed and effective, and so as to produce prompt decisions. There are still instances of some Tribunal decisions taking far too long to be delivered. Members need to have stamina and resilience, and exercise human compassion subject to the law applicable (IPT member, #26).

It can be said that some of the IPT members interviewed in this study believed a long hearing is better as it gives ample space for the person's voice to be heard (and sometimes therapeutically), but one member thought RSD could be effective (possibly shorter) if members prepare well and organise hearings such that the evidence and witness is critically analysed first, resulting in shorter time on the interviewing. Similarly, all the other participants (including a former RPO), felt the interview was too long and arduous, and it need not be that way. The findings suggest that the IPT might also benefit from Casey's (2019) inferences about the interview process at RSU.

Besides issues with the interview length, many participants raised fundamental issues about the depth and breadth of the interview. The next chapter will present those concerns under the culture of disbelief.

4.3.6 Whose interview report and written decision? Divergent perspectives

The participants identified the RPO's interview report and the written decisions from the RPO and IPT as the main correspondence from the decision-makers, which have direct bearings on natural justice and, to some extent, adverse effects on the claimants' well-being. The participants' views regarding the interview report and the written decisions were quite diverse, from claimants who understood the decision to those who did not; and from lawyers who believed RPO and IPT decisions were written for the courts, to decision-makers who said the assessment by lawyers was not entirely correct.

Some of the claimants stated they understood their interview report and the decision. One of the claimants who understood the interview report and decision said:

It [the interview report] was written in a way I understood ... Yes, the decision was clearly understood (Claimant, #02).

Those who did not understand the interview report by RPOs and decisions by RPOs and the IPT, stated that the language was difficult. As one recounted:

I don't think it's written in a way that an asylum seeker will understand in terms of maybe the language. It can be too technical, and you may have to go yourself to start researching maybe what does this terminology exactly mean. It's not just simple and you have to start digging what does this exactly mean. I could imagine that somebody who cannot read properly will find it challenging for them to understand exactly what they meant (Claimant, #06).

Commenting about the written decisions, the lawyers said the IPT's decisions were written for the courts rather than for claimants. One of the lawyers explained the IPT's decisions were written with the High Court at the centre of it, ensuring it was difficult to successfully challenge the decision.

I really feel that the Tribunal has designed its decisions to ensure that they are not challenged by the Court. I've tailored my decision in such a way that I have considered this, this, this. I've ticked the boxes, and therefore, I've said I've done it and I must have done despite the fact that the outcome would clearly indicate I haven't, but I've said I've done it. And then the High Court would say oh they say they've done it, so they've done it and that's the end of the story, really. ... Potentially, the Tribunal has taken that position of, we need to write our decisions, we'll write it for the Court. We'll write it to ensure that it is future proof that nobody can challenge this decision to the High Court (Lawyer, #15).

The lawyers claimed, in addition, that some RPO and IPT decisions are value-based, predetermined, and subjective rather than objective, as one commented:

There are some offices there where I know that I'm never going to get a case through because they are just decliners (Lawyer, #17).

Another lawyer added:

It seems to my mind a lot of the times to be, if I like you, and if I think that sounds reasonable to me, then okay, I'll grant it to you. ... The current process we have seems to my mind too easy to just say - what way is the wind blowing, do I like you, you seem like a nice guy, and reasonable person, ah I like you, you can have it. I've already decided before you even walked in the room that I was going to give it to you. Now, I'm going to write the decision that way, whereas for other persons it is - I don't want to give this and I'm going to write any stuff that I want to say that's why I don't want to give it. I mean it might seem to be deeply unfair on RSU and to the IPT, but that's the way I feel about it (Lawyer, #15).

The IPT members disagreed with the idea that their decisions are written for the High Court and are not objective. Instead, as illustrated by a member below, the IPT's decisions are adequately comprehensive as they strive to assess every piece of evidence, normally based around credibility, and to apply the law to the set of facts properly.

I think our decisions can err on the side of being almost too detailed because we make it clear that we've thought of every little thing. If we were in the District Court, I think a lot of the time probably, our decisions would be a bit less detailed, but that is our effort, I suppose to kind of

indicate, yes we really have heard your evidence, and we have taken it into account in explaining to you why we have come up with the decision that we have (IPT member, #23).

Nonetheless, the IPT members also acknowledged that it was challenging to strike a right balance for their decision to speak directly to the claimant, the public, the lawyer, and the courts. To achieve this, besides using other techniques, they strive to use simple, straightforward, non-formal, less technical, and plain language as much as possible. As two members stated:

I try and use simple and clear language. I try to if I can avoid words that someone who speaks English as a second language might not be able to understand easily (IPT member, #21).

Something we strive to achieve is to be clear and concise and understandable (IPT member, #22).

The members noted that besides writing to the comprehension of the appellant, they must also be persuasive enough and write to lawyers and the courts since the decisions could be challenged in the High Court, as this member explained:

I try to keep my decisions as short as they can be and try to be clear but also persuasive because you know that they could be also read by a High Court judge and you want the judge to be able to understand the process by which this result was met. ... I try to use headings to make it more clear and I try to keep my paragraph short (IPT members, #21)

Another IPT member conceded that decision writing was undoubtedly an area with room for improvement from a general and therapeutic jurisprudence perspective. The member contemplated whether adding an executive summary in the decision and more sub-headings might ease understanding for claimants and the public.

In essence, participants had contradictory opinions about the interview report by RPO and written decision by RPO and IPT. Nevertheless, at the centre of these differing perspectives lies a desire to improve the IPT's written decisions for refugee claimants whilst being mindful of other stakeholders' interests. These findings suggest that more thoughts and innovation need to be given by the institutions concerned (especially the IPT) on getting the balance right in terms of writing to the refugee claimant, the public, the lawyer, and of course, the courts at the same time, especially in light aligning RSD to therapeutic justice.

Chapter Summary

The findings on analysis of NZ refugee law in theory reveal that the law guarantees fairness procedurally through several rights around the hearing, evidence, and bias rules. I conclude that the body of protected procedural rights are a conducive atmosphere for therapeutic jurisprudence aspirations in RSD, even though there are also situations in the law for a valuable debate and questions about whether it has gone far enough in guaranteeing natural justice.

In addition, participants' voices related to lodging an asylum application or appeal (or working in the RSD system) have implications connected to therapeutic jurisprudence. It shows effective and meaningful

participation of refugee claimants in RSD is rooted in appropriateness of the processes and proceedings for RSD to the context of claimants. Simply put, claimant-suited processes and proceedings are more likely to result in their effective and meaningful participation in RSD. This, in turn, can improve their trust and satisfaction in refugee law likewise promote health and well-being. On the other hand, processes surrounded in procedural injustices and unfairness have the potential for opposite effects, including undermining claimants' meaningful participation and increasing perception of injustices in refugee law. More details on the adverse impacts of RSD procedures are presented in Chapter Six, while further discussion about the findings unveiled in this chapter will be provided in Chapter Seven. The next chapter builds on some of the participants' views presented in this chapter, depicting what they regarded as a culture of disbelief in the RSD system.

CHAPTER 5: A culture of disbelief in New Zealand RSD

This chapter presents participants' concerns that the NZ RSD is predicated on a culture of disbelief. The claimants and the professionals (except decision-makers) asserted that the RSD is grounded in mistrust of refugee claims. The decision-makers contended that their practice and RSD generally is not based on this culture. However, they also had some similar views to the other participants, suggesting there is some merit in the assertion that the RSD procedure is grounded in a culture of disbelief. They affirmed that as the law and natural justice require that they (decision-makers) put any doubts they have about the claimant's factual account and evidence to them for their response before deciding the claim, the asylum interview (oral hearing) can sometimes appear confrontational and interrogatory to refugee claimants.

Although presented as a culture of disbelief in RSD, the findings in this chapter essentially hinge on how credibility is tested and its impacts on refugee claimant's voice and well-being. Credibility assessment as a fundamental principle of refugee law (Noll, 2005; UNHCR, 2015a) is stipulated in NZ law in sections 137(5)(a), 141, 231, and 368(3) of the Immigration Act 2009, to ensure the system recognises only genuine claims. It also ensures rigour and the integrity of the RSD system. The law requires the decision-maker to ascertain the refugee claimant's factual account and evidence by testing whether the story and evidence presented is truth and not simply made up exclusively to gain recognition as a refugee in NZ. This is typically done through an oral asylum interview by the RPO at the RSU level (or an oral hearing by the IPT, if on appeal) wherein the decision-maker puts any concerns they have about the claimant/appellant's factual account and supporting evidence to them for their response. Generally, credibility assessment will include further written questions from the RPO in the interview report at the RSU level.⁹⁴ For the border claimants, the process may already have started with an initial oral interview with an immigration officer at the airport, often bearing interrogatory questions (as reported by some of the claimants in this study).

Claimants mostly said interrogatory and confrontational style of interview and being asked the same question repeatedly left them feeling the decision-maker was having serious doubts, and the system is not designed to believe them. All professionals (except the decision-makers) expressed similar views that claimants are generally disbelieved by RSD decision-makers.

Participants' contention is not with *why* credibility is tested in the RSD procedure. All who spoke about the issue acknowledged that assessing a claimant's credibility is necessary to protect integrity of NZ RSD. The issue is instead with *how* credibility assessment is done, making claimants feel their accounts

⁹⁴ *H v Refugee and Protection Officer* (SC 52/2018) [2019] NZSC, at 32 – 47.

are rejected *prima facie*. This, in turn, has far-reaching negative implications on their voice, well-being, and outcome of the claim.

In the subsequent sections, I present the argument and concerns that there is a culture of disbelief in RSD and the opposing view. I then offer the main reasons why many participants believe the RSD is predicated on a culture of disbelief, and link the implications of this culture to therapeutic jurisprudence.

5.1 Competing discourses on a culture of disbelief in RSD

While the refugee claimants and several professionals viewed confrontational and interrogatory aspects of RSD as a culture of disbelief, the decision-makers did not agree that their practice is premised on this culture. However, both sides acknowledged that the asylum interview (and oral hearing) can be confrontational and challenging for the refugee claimant. This, in turn, can make claimants feel the RSD system is set up not to believe them. Negative effects of perception of this culture include marginalisation of the claimant's voice, feelings of hopelessness, helplessness, frustration, and other forms of emotional and psychological breakdowns in RSD.

On the one hand, the refugee claimants and all the professionals interviewed in this study (except the decision-makers) allude to a culture of disbelief in the RSD, demonstrated by these participants:

Everything you say is taken on the basis that they don't believe you, and you have to justify yourself (Claimant, #01).

Wild goose chase! And I think there is a lot of non-acceptance, and you know, people are ruled out first as opposed to being believed first (Psychotherapist, #10).

Clients often on reflection, will say that they felt interrogated and pulled to pieces (Support Worker, #09).

Discussing the prospect that there is a distrust of refugee claimants in the RSD procedure, a lawyer said affirmatively:

It's a culture. It's an ingrained culture (Lawyer, #25).

A psychologist also commented that the culture exists, adding it adversely affects claimants' performance in the hearing room:

I get that sense that they assume that the person in front of them is lying, what do you call it, guilty until proven innocent, instead of the other way around. And clients can feel that you know. If you have that attitude, it impacts the energy you're working with. That's just an unhelpful culture (Psychologist, #11).

Many of the participants said that it is important for decision-makers to test the credibility of the claimants' facts and evidence. They said this is essential because if stories are not checked, crooked

people will exploit and compromise NZ RSD system. Nevertheless, claimants and the representatives added that the testing should not be done in a way that penalises or treats all claimants as potential liars. As can be implied from this claimant's statement:

It is true there are certain people who are trying to beat the system maybe, but you don't have to just assume everybody is trying to beat the system because by so doing, you are penalising those who are actually genuine (Claimant, #01).

A lawyer also commented that:

It's natural to be a bit suspicious of other people after 'you've had people lying to your face', but the process of [professional] supervision will help us rebalance and keep it a balanced view and not become cynical and jaundiced (Lawyer #20).

Decision-makers emphasised likewise that it is essential for credibility to be tested in RSD. For example, the former RPO commented that this is needed because "not all asylum seekers are credible". An IPT member explained that natural justice requires that they put credibility issues to claimants for their response before deciding. As the member explained:

We have to test people's evidence. Just because you say the police came to your house and took your brother away, we have to test that, and that's very difficult to suggest to somebody who says that these awful traumatic things have happened. If we have reasons why we doubt that, natural justice requires us to put it to them, to tell what we think the problems are with what they're saying, and to give them the opportunity to give us an explanation for that (IPT member, #21).

The RPO added:

At the same time, there's also the challenge of testing credibility, and unfortunately, not all asylum seekers are credible (Former RPO, #32).

Despite stating the necessity for and acknowledging that they test credibility if in doubts about the facts or evidence, the decision-makers (that is, the IPT members and a former RPO) contended that this practice is not a culture of disbelief. As an IPT member explained:

I don't think this holds true so much in New Zealand, but you know, certainly in other systems, there's this huge culture of disbelief. I don't think it holds true here (IPT member, #24).

Nonetheless, the decision-makers acknowledged that assessing credibility as required by law and natural justice can be challenging and confronting to the refugee claimants and may give rise to this sense of not being believed, especially as they have to query claimants' evidence if in doubt. In this regard, the former RPO commented that she did not think NZ RSD is grounded in this culture but added that testing credibility can take longer and is challenging:

Sometimes testing credibility takes longer, and it is challenging (Former RPO, #32).

The IPT member mentioned earlier illuminated in addition that decision-makers can occasionally become quite confrontational when testing credibility:

Decision-makers need to have an open mind and be fair to not let the emotional hearing get the better off you because sometimes they can be confrontational. Sometimes they become quite confrontational for a period of time (IPT member, #24).

Another member noted that their job can sometimes feel like wearing the hats of a prosecutor and judge at the same time because if they have doubts about the individual's evidence, they have to question them about it before deciding, and doing so can feel confrontational to the appellant.

If there was some reason why we might disbelieve what the person is saying, we have to tell them and that can feel confrontational. ... I think that it can be difficult because we end up almost like a prosecutor, sometimes the prosecutor and the judge, wearing the same hat, you know. I put it to you that what you've said happened didn't happen and I hear your explanation for that and then I make a decision based on my assessment of that (IPT member, #21).⁹⁵

All the same, the voices of the refugee claimants and many professionals, including decision-makers (to some extent), suggest that there is some substance in the claim that the RSD is based on a culture of disbelief, which is related to how credibility is tested. The issue, therefore, with the RSD system, which gives the impression of a culture of disbelief, is not with the *why* (since a cross-section of the participants – including claimants agree that credibility should be tested to protect the integrity of the RSD), but it is with the *how* this is done (as the current framework seems to give a feeling of a culture of disbelief).

The consequence of this culture is suppression of claimants' voice in the RSD system and several adverse implications on their health and well-being.

Participants' accounts (including decision-makers speaking about the confrontational nature of the interview) suggest that probing credibility often diminishes the claimant's voice in the oral interview and hinders their full participation in the process. This, in turn, can trigger and intensify emotional and psychological problems, including emotional breakdowns, anxiety, helplessness, hopelessness, and sometimes trauma and re-traumatisation for some. More consequential health impacts of this system are advanced in the next chapter.

In the following sections, I present why the refugee claimants in this study and most professionals think there is a pervasive culture of disbelief within the RSD system and practice.

⁹⁵ Lawyer number 16 also described the role of decision-makers in inquisitorial RSD as constituting a "judge, jury, and executioner".

5.2 Questioned repeatedly, differently, at length and meticulously.

Most participants attributed the culture of disbelief in RSD to how refugee claimants are assessed (whether verbally or in writing), often repeatedly, differently, at length and meticulously by the decision-makers. Part of this is that these processes (which can be traumatising) are justified under the mantle of credibility and a rigorous system. These ideas support an unarticulated culture of disbelief and allow for damaging practices to be justified.

Claimants are expected to retell their story chronologically at different stages of the asylum process, including discussing issues such as torture, persecution, and any other fears about experiences that have caused them to apply for asylum. Besides the asylum interview at RSU (and hearing by IPT, where applicable), the other means by which claimants reported that they were required to retell their story sequentially included: (i) at an initial asylum interview at the airport (for individuals who claimed asylum at the border), (ii) the confirmation of claim form, and (iii) a separate detailed statement. Participants explained that these stages involved claimants providing detailed and often complex accounts surrounding their asylum claim. The lawyers illuminated that the detailed statements (oral and written) collected at the different stages of the procedure are then cross-checked, and the individual is disbelieved if any inconsistencies are found in the story. As one of the lawyers explained:

A great deal is made of the fact that people give inconsistent answers to questions. Even within the same hearing but especially when they're being asked to repeat the same story multiple times in writing and at hearing or interview (Lawyer, #13).

The health professionals and interpreters also said that interview questions are repeated differently in an interview on the same day or across different days. They added that this lures some claimants into a falsehood that the decision-maker did not believe their initial response, resulting in them changing their initial answer. Decision-makers then treat the new answers as inconsistent or a change in the story, resulting in adverse credibility findings.

A psychotherapist explained that repeating questions in the same or different ways in an interview on the same day or across different days can be very confusing and traumatising for anyone, more-so for someone like a refugee claimant with a history of torture and trauma relating to the experience scrutinised.

I also think that the process is highly confusing for the clients in the sense of being asked questions in different ways, and the same question in many different ways is highly confusing for anybody and not in my mind anyone who has had a trauma background (Psychotherapist, #10).

Also emphasised by an interpreter:

One thing is to try to convince another person that you are in danger if you go back but the other one is like being asked to repeat the thing. Where were you, who approached you, what happened to what and who did what. I think it is not really needed. They can be asked to say something once and not having to go back, go back, and go back, because they are sweating, and they are crying, and they are shaking. Not all of them, I have to be honest, but many cases I have observed that it happens. The case officers say that they will find if the person is lying if they ask the questions in that manner but I am thinking the person can just be as confused like everyone else trying to remember things or they are being confused by being asked the questions again and again and again, and in different ways, I don't know (Interpreter, #18).

Claimants also felt that RPOs and IPT members repeated questions and sometimes worded them differently during the interview. This gave them the impression that the decision-maker was not trusting them. Speaking about the repetition of questions by an RPO, a claimant said:

In some sections, I felt the questions were repetitive. It seems she was not believing what I was saying. We are all humans, and we understand human psychology. If I am saying something and several times you ask me the same questions, it means you don't trust me, and you think I am lying. ... The repetitive questions were not feeling good for me (Claimant, #03).

They felt as well that the repeated questions (which, for many, included accounts of torture and other traumatic experiences) appeared as though the procedure was intended to confuse or trip them into making mistakes that would result in a decline of the claim. As these claimants recounted:

At the back of my mind, the questions they asked, it's like you are being forced to commit an error because they will ask a question and then still bring the same question again and still go back and still bring the same question to you. I feel like somehow, they want to push me into making a mistake. To me, I don't think it is proper (Claimant, #04).

Asking questions going round and round, you know, trying to make you make some mistakes, little errors so they can use it against you that you are inconsistent, especially with events that have been many years ago (Claimant, #02).

The lawyers held the same view, adding that the way some of the questioning is done look like decision-makers are trying to confuse or push claimants into making mistakes instead of encouraging them to tell their story without coercion, as one explained:

It seemed like a lot of the process was not instead of encouraging you [claimants] to give the right story, it was trying to trip you [them] up. ... when you look at the kind of things that they bring up at the interview, it is like they aren't trying to get the right answer, they're trying to trip them up (Lawyer, #17).

Several participants also perceived the culture of disbelief from the length, depth, and breadth of the interviews by the RSU and IPT. As presented in the previous chapter at 4.3.5, the asylum interview (and oral hearing) is long – seven to eight hours. Some of the lawyers said the length, depth, breadth of interviews (when compared to two to four hours that it takes to do similar interviews in Australia, the UK, the USA and Canada, for instance) demonstrates that NZ has technically eroded the case law principle of the ‘benefit of doubt’ afforded to refugee claimants.⁹⁶ In this light, claimants noted that the decision-makers questioned them on specific and minute details about their past, focusing on dates, time, and the particular order of events. When they made any mistakes in recalling these details, it was used as a reason for not believing them.⁹⁷ As one of the claimants narrated:

Sometimes they can stick onto something you think its very minute, and they just hold onto that and say I don't believe you because there was a mistake with what you said at the airport and what you are saying here now (Claimant, #06).

A lawyer supported this claim, explaining that a refugee inquiry is facts and date specific, and if the refugee claimant cannot answer or got it wrong, it can adversely affect their credibility.

A refugee inquiry is really kind of facts and dates specific. I mean, the lawyers and judges and decision-makers, they want dates. We want to know when that happened and the order in which that happened, and then they are going to kind of attack you if you're going to get it wrong. 'I find it surprising' that you said this attack happened before that one, and later on you said that one actually happened before this one kind of thing (Lawyer, #17).

This lawyer added that some RPOs make the refugee inquiry worse for claimants by “fixation on really stupid points and irrelevant points”.

In sum, being questioned repeatedly and on fine details appear to the refugee claimants as though they are not being believed and are being coerced to make a mistake that could have grave consequences on their claim. Claimants also perceive RSD as an unfair process, as they are being interrogated and expected to squarely recall historical events that most people would generally struggle to remember with the desired precision and in the given circumstances. Caught up in the atmosphere of interrogation and cynicism and having nowhere else to escape, some refugee claimants reportedly became stressed, hopeless, helpless, frustrated, experience emotional breakdowns, re-traumatisation, and suicidal ideations from the interview. The next chapter will focus on the health and well-being impacts of RSD procedure. In the section that follows, I present another reason that suggest there is a culture of disbelief in the RSD system.

⁹⁶ Refer to Footnote 70.

⁹⁷ Also note that in some cases, mistakes in factual accounts have a positive effect, contributing to the decision-makers believing the claimants. However, this perspective was not canvassed by the participants in this study.

5.3 Elevated standards of credibility

The lawyers explained that the threshold for accepting that a claimant/appellant is credible has been “elevated too high” in NZ RSD, making it challenging for many refugee claimants to attain. The high standard may account for the high ratio of refugee cases being declined in NZ, roughly 70 and 60 percent by the RSU and IPT, respectively (Sama et al., 2020).

A lawyer with extensive practice experience in NZ refugee law explained that:

You’re obviously aware of James Hathaway. He gave an interesting talk about credibility a few years ago to the Law Society and his view was that credibility determination in refugee and protection matters has been elevated too high and I would tend to agree with that (Lawyer, #13).

The elevation may imply that from the start to finish of the RSD procedure, refugee claimants have an uphill and arduous task proving that they are credible rather than being perceived first as credible until there is a reason to doubt the claim. All the claimants thought the entire RSD system sees and treats them first as liars before anything else. Besides the repeated questioning and mostly interrogatory style of the interview at RSU and IPT, claimants formed this impression partly from what they described as an extensive quantity of documents requested as evidence to establish their claim and the wide-ranging nature of disbelief. As a claimant commented:

I was feeling like my voice was not being heard at all in this whole process. Nobody was believing or understanding the whole of me. The system did not believe me. Everything I said, the Officers made it look nonsense or rubbish to them (Claimant, #05).

Further, participants’ perspectives demonstrate that much weight is given to the current form and threshold of credibility testing even though some of the components of RSD including (i) the initial interview at the border, (ii) prison custody, and (iii) length, depth, and breadth of RSU and IPT interviews; can intimidate the person into making grave mistakes. For instance, some of the claimants who participated in this study reported that they were interviewed in the airport but without a lawyer even though they were: (i) highly vulnerable at the time of arrival to NZ, (ii) from a different cultural background and country, (iii) distrustful of administrative authoritative figures including the interpreter, and (iv) not given full information about the NZ asylum process, their rights and obligations. Detention in police cells and prisons raise similar concerns, while a protracted interview with repeated questions is certainly burdensome, overbearing, and psychologically distressing on anyone, more-so on a refugee claimant who is powerless in the system and vulnerable.

In these contexts, RSD procedures can risk mystifying, confusing and scaring claimants. Thus, rather than creating a context for credibility, the RSD system potentially reduces it and is counter-intuitive

and counterproductive because some of the processes erode the conditions through which people can provide evidence to support their claims.

In essence, although testing the refugee claimant's credibility is undoubtedly crucial in RSD, how it is done generates and sustains a sense and perception of a system disbelieving claimants. It leaves extensive adverse consequences on claimants when they step into the process with powerful and hopeless implicit (and at times overt) messaging that they would not be believed. As outlined earlier, this suppresses the claimant's voice instead of fostering it in RSD and has harmful psychological and mental health consequences on them. A claimant described her experience of the interview and the effect of her not being believed in the following way:

I felt terrible. I felt so down. You are emotionally so drained. I remember when I finished the interview, my lawyer said, 'you look pale. It's finished now, you can go home'. I was so drained because you know the accounts of the things you have gone through, and then when somebody is telling you, I just don't feel the genuineness in your story. You don't just know what else to say because I have painted a picture of what I have gone through, and I have painted a picture of the reason why I am here, and when somebody doesn't believe what your story is and why you are here, it's really draining. Very stressful (Claimant, #06).

Another explained:

It is never a good feeling to be in a position where you are saying the truth, and no one believes you. Even on a regular normal scenario, it is not ideal then talk less of when you are facing so much trouble ... When your life is on the line, sometimes you might even have suicidal thoughts running through your mind like, okay, this is it, but I am lost, so there is no point (Claimant, #01).

Notwithstanding that some of the participants' views suggest that the threshold for accepting credibility has been elevated too high in NZ, leading to a systemic culture of disbelief by both the RSU and IPT (with related implications), their accounts also indicated differences between RPOs and IPT members in some respects, with the IPT members being better than the RPOs in testing credibility. I present this next.

5.4 Differing magnitudes and thresholds of disbelief

Participants' accounts portray differences in the extent of disbelief within RPOs, and between the RSU and IPT. Many participants felt the culture of disbelief was more intense at RSU than IPT. They claimed that newer RPOs were more likely to believe claimants than RPOs who were longer on the job for several years, while IPT members were more likely to believe the appellants than RPOs. While participants articulated differing practices amongst the RPOs and across the RSU and IPT, there was

evidence of this culture at both levels. Again, credibility was a pillar that supported the ideas that backed up certain practices that had the potential to cause harm.

Some of the participants' (mostly lawyers) description of the RSU included words and phrases such as a culture of disbelief, cynical, jaundiced, abject disbelief, etc., as demonstrated by the following excerpts:

The problem is that the RSU is, by and large, acting with a culture of disbelief of refugee claimants. There's a culture of suspicion and fraud for all refugee claimants. And so, every document that any refugee claimant uses is a potential source of discrediting their claim (Lawyer, #20).

Generally, I would say that okay, a lot of the Refugee Status Branch Immigration Officers became rather jaundiced, and they disbelieved the claims that they saw (Lawyer, #13).

I think my concern with RSU is, it starts from a position of abject disbelief. It's we think you're lying. And what my job here is to figure out how you're lying as opposed to, okay, you've said this, I believe you but let's test that out (Lawyer, #15).

The claimants, lawyers and interpreters' accounts indicated that the magnitude of the RSU's scepticism of refugee claimants was felt (or seen) more at the airport, in the interview by the RPO, and in the interview report. The lawyers' accounts also suggested that the culture of disbelief may have been normalised at the RSU to a point where some RPOs are known in the sector as decliners. As one of the lawyers noted:

There are some officers there where I know that I'm never going to get a case through because they are just decliners (Lawyer, #17, Male).

The culture is also said to be expected at the RSU to a point where some of the lawyers explained they almost always have to prepare claimants for the sad reality that they were likely not going to be believed by the RPO and would be declined but that they stood a better chance of succeeding at the IPT. One of the lawyers recalled that the RSU had been questioned why many of its declines are based on credibility (meaning the claimants are not believed), whereas many of the same decisions are overturned by the IPT. The lawyer added that the RSU management responded that perhaps the RSU has a stricter standard of credibility than the IPT. The lawyer commented that the RSU should not have a more stringent measure of credibility when the IPT was through many overturns, signalling that the RSU was getting the credibility assessment wrong. As the lawyer said:

But you would want to see credibility assessment improving because RSU officers are learning from the Tribunal. And so, when discussing this with the head of RSU, when specifically asked the question, their response was well yeah, I guess we are stricter on

credibility than the Tribunal is. But you shouldn't be stricter than the Tribunal because the Tribunal is a decision-making body that's telling you you're wrong (Lawyer, #16).

It is relevant to decontextualise the lawyer's point as this can be conflated. I analyse the difference between the RSU and IPT in terms of form and substance. I assume form relates to the process, while substance relates to the law. In terms of form, the RSD conducts its asylum determination process quite differently from the IPT. In terms of substance, the RSU is bound by law to follow decisions made by the IPT (and the courts, of course), as the IPT is primarily the refugee law interpreting body in NZ. Thus, the lawyer is saying, in effect, that RSU should follow the form used by the IPT to assess credibility so as to give more credence to the claimant's voice. However, the form adopted by the IPT is rejected by the RSU manager, who prefers a stricter standard. But, both are the same (or should be) in terms of substance, that is in interpretation of the law.

It is also relevant to point out that within the culture of disbelief described about the RSU, participants' views also demonstrated that some RPOs believed refugee claimants more than others. The newer RPOs were seen as more likely to believe claimants than long-serving ones. Some of the participants (mostly the lawyers) noted that many RPOs come into the job not having a cynical tone or approach in the interview. However, as they spend more years in the role, they gradually adopt a culture of cynicism toward refugee claimants. A lawyer narrated that over many years, they have observed a point in the RPO's career (typically after several years on the job) that they become burned out, cynical, and jaundiced. Another lawyer commented:

I think people who are making these decisions end up getting a bit thick-skinned about them and tend to treat the refugee claimants with mistrust. I think that's always been a bit of a problem (Lawyer, #13).

That is not to say, however, that all RPOs who have worked in the role for several years were noted as having a culture of disbelief and cynicism toward refugee claimants. A lawyer explained that a small number of long-serving RPOs have always demonstrated genuine curiosity, empathy, and sympathy in their interviews, and are not ingrained in the culture of disbelief at the RSU.

I mean, there are some officers who have been there a hell lot of a long time, and are amazing. I mean, there is one that he's probably the longest one, and I never ever had that feeling that he's kind of got tired and cynical but of the older ones, he would be a very small minority I reckon. ... [Another] officer was amazing. She did a really good job. She was sympathetic (Lawyer, #17).

Participants also noted that the culture of disbelief was not as pervasive in IPT. Some of the lawyers commented that the IPT was better than the RSU in assessing and accepting the appellants' credibility than the RPOs. As one explained:

I'm also concerned with the Tribunal's credibility because well, I mean, it's better than the RSU by far because RSU will find fault with absolutely every little thing (Lawyer, #16).

Another commented that:

The IPT is a bit better and would often give the benefit of the doubt (Lawyer, #13).

An IPT member underscored likewise that among all aspects of RSD, credibility assessment has the most potential for therapeutic outcomes if the interview is done in a manner that conforms with therapeutic jurisprudence.

We need to make credibility findings. We have to ask people to explain their claim and that does involve revisiting traumatic events. And I am very aware of the impact that that has on the appellants. And having to go over things is a necessary part of the process to make factual findings, but it is the way in which that is done that I think has impacts on well-being, and the most potential for a scope for therapeutic approaches to that (IPT member, #22).

The member gave an example of how she used therapeutic potentials such as empathetic listening and mindfulness in her interviewing skills to support a claimant experiencing emotional distress (presented in the next chapter). This might also indicate, amongst other factors, why for some of the participants in this study, the IPT's approach to the interview is better in relation to the culture of disbelief than the RSU.

Generally, participants' views show that refugee claimants' voices are more likely to be heard and properly acknowledged in the asylum interview (oral hearing) by newer RPOs than RPOs who have been in the job longer; and at the IPT members than the RSU level, although the culture of disbelief is perceived at both levels. This would suggest that it is still very possible to ensure the vigorousness thus integrity of RSD through testing an individual's credibility while safeguarding and encouraging the claimant's voice and full participation in the asylum process at the same time. Therefore, credibility testing approaches by decision-makers that do not considerably undermine the claimant's voice and do not significantly harm their psychological and mental well-being are those likely to conform with therapeutic jurisprudence (if not, therapeutic justice).

The culture of disbelief in the RSD was also attributed to failures of the Western worldview (which dominates the RSD system) to recognise and accept the worldviews and practices of the claimants. I focus on this next.

5.5 Concerns around disconnections in cultural perspectives around credibility testing: A White Ivory Tower thinking

Many persons who participated in this study attributed the culture of disbelief as well to the dominance of the Western worldview in credibility assessment in RSD. The participants in this group viewed the RSD in NZ (both theory and practice) as based predominantly on the Western worldview which gives credence to documentary evidence and interrogative processes around credibility assessment, whilst overlooking other worldviews around this, thus disbelieving claimants. They discussed how the dominant Western RSD procedures often came into tension with the worldviews of claimants who carried different ontological and epistemological positions, resulting in a disbelieving of the refugee claimants from the non-Western cultural backgrounds.

Many participants described the decision-makers (both at RSU and IPT levels) as mostly from NZ European background and assessing credibility mainly from a Western worldview, and as a result having issues understanding and believing the cultures and contexts of the refugee claimants. For instance, one of the lawyers said that the culture of disbelief was due to decision-makers using mainly a “White Ivory Tower thinking” in testing the credibility of people from non-Western countries.

Basically, the main issue with [the] whole process of refugee claim in New Zealand is credibility, and it is criticised because it's all that's implausible, but how is it implausible, you know, sometimes it's White Ivory Tower thinking (Lawyer, #15).

A support worker who has supported claimants to the asylum interview at the RSU and IPT felt that the problems refugee claimants face proving their claim and being disbelieved are due to a disconnect between the decision-makers and claimants' worlds. She explained that decision-makers use and rely heavily on Western ways (such as paper trails of evidence) to test credibility at the expense of refugee claimants' context and worldviews.

Here we are with our very Western model of how you prove credibility which is about a paper trail. And, here they are coming from a different worldview, you know, I am assuming that if you want to prove credibility in Africa, maybe different countries, different areas would have different ways of doing that, but it might not be a big folder of documents. There might be many different ways of doing that and so if that's your worldview and that's your experience, and that's where you come from, and you turn up in New Zealand; how do you prove your credibility, and you don't have those things to prove your credibility and are being discriminated against because of that, is it fair? Do we need to look at other ways of other worldviews or other ways of letting a person's experience be seen as legitimate? (Support worker, #09).

In the same vein, a lawyer articulated that the implausibility often ascribed to refugee claimants' stories is coming from decision-makers sitting in a safe country like NZ and making imaginary assessments about other cultural practices. They may never have had a foot on the ground in the context of the reported events as someone persecuted (the lawyer said). The lawyer added that the culture of disbelief was heightened by the decision-makers' inability to understand other cultural practices, as he noted:

Essentially, there are a lot of decisions made on whether something is plausible or not, right? And that level of understanding as to whether something is plausible or not comes from sitting here in a country where everything is safe and everything is perfect, and we don't have the same concerns. And so, what I find decision-makers, including the Tribunal do is go – hmm that seems implausible. ... It's kind of an inability to understand other cultural practices (Lawyer, #16).

Speaking about his experience traversing the RSU and IPT interviews at least twice before being recognised as a refugee, a claimant described a cultural and contextual disconnect between the decision-maker and his background, narrating how it resulted in cynicism, with a decision-maker questioning and disbelieving how he survived torture, as if all that needed to happen for him to be believed was dead from torture.

The problem is when an African goes to the interview, they send a Chinese or a British who does not know his torture, does not know what torture in Africa looks like. He does not even know how teargas looks like or feels. He does not know anything and has never seen war except in James Bond that he watches on TV. ... They have to change the perspective with which they see Africans refugee applicants and they also have to know more where we are coming from. They can't just be asking that how did you go through and survived this? Are you James Bond? And end up saying I can't believe this is what happened to you (Claimant, #07).

Another claimant from Africa believed there is a misunderstanding of cultures in the RSD system and explained that, unlike the Western culture, where people are expected to give direct answers to questions, they do not generally answer questions directly in Africa. When he responded to questions in this way, the decision-maker considered that he was lying, the claimant explained:

There is a misunderstanding of culture, how we say things and how we talk. There is a lot of difference. We are like direct in some things we say, you know, but to answer questions, we can kind of massage the area instead of coming to the question, and that is how we answer questions. And they might feel like we are lying about our cases and things like that. ... So, the system sets us up to make mistakes and fail. ... Yes, for instance, if you ask me a question I might not answer directly. Africans, we go around to answer the question. This is hard for them to understand (Claimant, #2).

Overall, participants' voices show that despite the RSD system dealing predominantly with people from non-European cultural backgrounds, the decision-makers, and the institutional culture at RSU and IPT is dominated by Eurocentric worldviews. The dominance of the Western worldview in assessing credibility amounts to failures by those working in RSD to fully appreciate the complexities surrounding the origins of refugee claimants, resulting in a condescending view of their worldviews and in disbelieving them. The Western-inclined processes about credibility assessment which prioritises, for instance, documentary and other forms of evidence and of harbouring an initial suspicion of claimants also have a silencing effect on the claimant's voice, resulting in their inability to provide evidence relevant to their culture and context.

Further, these concerns around disconnections in cultural perspectives and understandings in credibility testing that result in a culture of disbelief and the silencing of claimants' voices add to or reflect the broader systemic oppression and marginalisation of refugee claimants in the community (discussed in Chapter Two). The findings in this part suggest that culturally appropriate credibility assessments will likely cause less agony for refugee claimants and are more likely to align RSD with therapeutic jurisprudence principles.

5.6 Influence of IPT's reasoning on credibility

Related to White Ivory Tower thinking is the impact of IPT's reasoning in the justice system related to adverse credibility. The lawyers' accounts indicate that IPT decisions (discussed earlier as substance at 5.4) including those relating to adverse credibility findings are picked up by the RSU or deferred to by the High Court as a benchmark for credibility evaluation in NZ. This then creates or reinforces the culture of disbelief in the RSD system.

Some of the lawyers expressed concerns that IPT members mask their subjective feelings about credibility as objective credibility assessments. This then have profound implications about refugee claimants' credibility in the justice system. As one of the lawyers explained, IPT members are meant to do objective findings of credibility, but what happens, in reality, is that they make subjective assessments and then cloak them in objective language about somebody's credibility:

One of the reasons why it was so frustrating working with this process certainly at the IPT level is because they could essentially put the right wording around their gut feeling about somebody, and say it was an objective credibility finding where it wasn't (Lawyer, #13).

Another lawyer added that the wording (or reasoning) then leads to an 'awful line' of decisions on credibility by the IPT, which the RSU and the courts will also adopt. These decisions, in turn, bolster the culture of disbelief of refugee claimants.

An example given by the lawyer is the reasoning that any document submitted by a person who has provided misleading information or forged documentation to INZ “should be treated with absolute caution”.⁹⁸ The lawyer explained that a refugee claimant who has provided misleading information to obtain their visa to NZ (without which INZ would not have granted the visa for them to flee persecution); or who has travelled to NZ on a false passport, for instance, could afterwards be submitting genuine documentation or information that proves their claim, but that would be considered with mistrust, as the lawyer noted:

But also, the fact that you presented forged documentation to Immigration itself sets off a chain of events as, well, in terms of, there's a line of reasoning from the Tribunal and as adopted by RSU which is - if you've presented forged documentation, then any other document that you supply will be treated with absolute caution. ... It's an awful line of reasoning. I mean, I get it in terms of some respect where they're saying, well if you've provided a false or misleading information or documentation then we need to be a bit cautious about the next thing but to take a sweeping approach, which is we can therefore disregard any documentation that you now seek to provide and will say that's probably false, it's gone too far (Lawyer, #15).

It is important to note that the lawyer acknowledged that not every claim involving misleading information or false documentation results in declined refugee status. Some (in fact, many) are ultimately recognised as refugees or protected persons. Nonetheless, the point to be stressed here is that the refugee claimants are critically confronted – somewhat substantially disbelieved in the interview because of this reasoning - before being accepted. The interrogation undermines the claimant's voice and well-being considerably.

As further context, the lawyers observed that the IPT's decisions that hinge on adverse credibility findings are difficult to appeal or judicially review in the High Court. They noted that the IPT makes ‘appeal-proof decisions’ by basing them on credibility. In addition, the High Court typically defers to the expertise of the IPT on credibility assessments and prefers a hands-off approach in refugee and protection matters. As these two lawyers explained:

⁹⁸ The IPT has a long-standing approach that the weight afforded to documentary evidence follows the credibility assessment of the appellant (see, *DJ (India) [2017] NZIPT 801064*, at [92] - [99]). In terms of how it balances the credibility of someone who has lied for example, see the recent case of, *AQ (Cameroon) [2019] NZIPT 801410*, at [113] wherein the Tribunal reminded “*itself that the fact the appellant has been untruthful about one aspect of her claim does not mean she is necessarily lying about another. However, the fact that the appellant was willing to exaggerate and lie throughout her RSB and Tribunal hearings with respect to the length of that detention to 'help her case' means the Tribunal approaches her evidence with a degree of caution*”.

The difficulty with credibility findings and from a legal perspective, if for instance, the IPT makes a negative finding against someone on credibility grounds, it's very difficult to judicially review that or appeal it (Lawyer, #13).

I also find the overall credibility assessment isn't accurate and I think that a big contributing factor to that is actually the courts ... The High Court goes - we don't know refugee law, sorry. The Tribunal does. It has 15 years of experience or 20 years of experience as the RSA before, so we will defer to their expertise (Lawyer, #16).

These accounts indicate that lawyers hold considerable concerns regarding the IPT's decisions on credibility assessment in terms of the decisions emboldening the culture of disbelief. The law thus translates into practices that are not therapeutic jurisprudence friendly and have potential to harm claimants.

Chapter Summary

Overall, this chapter unveiled concerns that the RSD system treats refugee claimants with mistrust which can easily discredit their evidence. Participants accounts indicate that the issue is not with *why* credibility is tested in RSD but with *how* it is done, and the fact that it results in an impression of a culture of disbelief. Several explanations are drawn from most of the participants' voices to substantiate why they think the RSD is predicated on a culture of disbelief. These include participants being interrogated and confronted repeatedly and feeling coerced through questioning, and a disconnect and lack of cultural understanding by decision-makers of the backgrounds of refugee claimants.

Participants views also show a substantial difference within RPOs, and between the RSU and IPT regarding the believability (conversely mistrust) of the refugee claimant. It suggests newer RPO and, by and large, the IPT hears the claimant's voice more appropriately than the RSU. The participants' voices also reveal a competing discourse between the decision-makers and the rest of the participants on whether there is a culture of disbelief in RSD. Nevertheless, both sides acknowledge that confrontational and interrogatory interviews with disbelieving statements can impart the existence of this culture to claimants and significantly undermine their voices and well-being.

Even though the RSU and IPT procedures are normally inquisitorial in nature, this study's findings show that in practice and tradition, they have become subsumed under highly interrogatory and somewhat adversarial cultures with practices that mirror cross-examination. Hence, the decision-makers at RSU and IPT are even viewed as wearing the hats of the prosecutor, judge, jury, and executioner at the same time and acting for the government against refugee claimants rather than independent 'adjudicators'. The decision-makers do not see this as a culture of disbelief but as a requirement for rigorousness and natural justice. Ascribing the culture of disbelief to the decision-makers would thus suggest it rests on the premise that stringent and interrogative approaches to establishing credibility are

central to natural justice and the integrity of the RSD system. From the claimant's standpoint, decision-makers are perceived as contesting everything about the grounds of their claim, using the mantle of 'credibility' to justify mistrusting them.

Despite officials arguing that stringent processes to ensure credibility are warranted (effected through the culture of disbelief), the findings in this study demonstrate that the culture has the potential to erode credibility and has great potential to do harm. This culture can easily create toxic processes, which are damaging to claimants and potentially those working in the RSD system, and translate into practices that are not therapeutic jurisprudence friendly. The disbelief ties into broader parallels and systemic issues where refugee claimants are perceived in refugee policies and political discourses as "a risk" instead of "at risk" (refer to 2.2.3).

Against the backdrop of claimant-suitable approaches taken by some decision-makers (e.g., newer RPOs, and the IPT) in interviewing claimants and assessing credibility, and the reported positive impacts of the approach (presented in the next chapter at 6.3.4), I propose that it is still very possible to ensure the rigorousness and integrity of RSD while safeguarding and encouraging the claimant's voice and full participation in the asylum process at the same time. In addition, I propose that culturally appropriate credibility assessments will likely align RSD with therapeutic jurisprudence.

In the next chapter, I present some of the participants' main experiences regarding the impacts of the processes and practices for RSD on health and well-being.

CHAPTER 6: Health and well-being impacts of RSD processes and practices

Although people fleeing wars, armed conflicts, persecutions, and human rights abuses are likely to have lived through tormenting and disturbing experiences with lifelong implications, the legal procedure they must traverse in the country of refuge to be recognised officially as refugees can also have far-reaching consequences on their health and well-being. Focusing in this context on the extent to which the legal processes/proceedings for RSD and the role of legal actors in RSD produce therapeutic or anti-therapeutic consequences on the persons involved in RSD, in this chapter, I present the participants' voices regarding the effects of RSD on health and well-being.

Participants' voices indicate that, to a large extent, some of the processes and practices constituting NZ RSD have profound consequences on health and well-being of the people seeking asylum and the professionals working closely with them. It establishes that unwelcoming, undeservedly harsh, challenging, or confrontational procedures and practices of decision-makers and lawyers cause or intensify psychological and physical distress and other related health problems for refugee claimants. In contrast, hospitable, user-friendly, and trauma-informed interviewing approaches result in the claimants experiencing less (or better managed) psychological and physical distress from the RSD, even if their asylum claim is unsuccessful.

The results in this chapter cover participants' experiences relating to the border, detention, the role of lawyers and decision-makers, and the RSU and IPT interviews, canvassing what is troubling and where some good practices occur. The accounts reported in this chapter add to some of the consequences of the RSD proceedings and practices already registered in chapters Four and Five. The next chapter then fulfils another core therapeutic jurisprudence commitment regarding how the harmful effects of the entire RSD system can be improved, borrowing from other behavioural and social sciences.

6.1 Harm from inhospitable asylum process at the border

The participants' experiences with the RSD procedure suggest that the border (usually the Auckland International Airport) is an unwelcoming environment for persons seeking protection in NZ as refugees, and it adversely affects their health and well-being. Participants' accounts show that the airport experience in NZ (the first stage of the RSD journey for roughly 15 percent of claimants) generates fear, anxiety, uncertainty, helplessness, hopelessness, and despair in the refugee claimants.

The lawyers explained, for instance, that many refugee claimants arrived at the airport in NZ⁹⁹ exhausted, having travelled on long-haul flights. Upon declaring asylum (or being identified as a refugee claimant) at the border by immigration officials, the individuals are often interrogated for about three to four hours about their itinerary and the basis of their asylum claim. Some of the claimants are detained in the airport overnight for the interview but are not given basic necessities like food. As two of the lawyers explained, the airport process is very stressful, challenging, and immersed in anxiety and confusion for refugee claimants due to a lack of information and direction.

It is also to be remembered that these people are under an immense amount of stress. They have just left their hometowns crossed most of the world really to come here. They probably haven't eaten. They probably don't have an identity. They probably are quite stressed out. Often, they don't get to eat. They don't really get any direction on what's happening (Lawyer, #16).

There is also a question of a new environment. Somebody has never been to New Zealand, they are nervous, then they get interviewed. It's a legal process. How do you give your best when you're being asked all these questions? It is very challenging. So, in terms of my observation, at times it makes things very very hard (Lawyer, #25).

The claimants also explained that the border process was very intimidating, as they were terrified during the entire process in the airport that the authorities would force them onto another flight back to their country. A claimant recounted that his fears at the airport worsened when the immigration officer told him they would find a way to send him back to his country. Another claimant, who was a mother at the time, narrated her border experience of detention in a room in the airport with her children for about 24 hours as a frightening moment and with no hospitality:

I think when you are coming with children, it's not easy being confined for like 24 hours in a small room. You know, it's a scary moment for the children and for yourself. There is so much going on in your mind. You are thinking about the interview, and you have to deal with the small children too. That's very stressful, and on top of that, you are not given meals. So, I was there with very small children. The last meal we had was on the flight, and when we got there in the evening, we had to sleep, and there was nothing we ate. In the morning, we woke up, nothing and no food to eat, and I had my little one, and I had to give him milk, but we didn't have any milk with us. Only later in the afternoon, that's when we were allowed to go to the shops within the airport for me to buy ... You are tired from the long flight you have been in. You are so stressed and tensed. I think they don't give you time to breathe and start on with the questions they wanna ask you then. Immediately you get off, you are put aside, and the officer is in there with you and

⁹⁹ 146 people made claims for asylum at the border on arrival in NZ between 2015 and 2020 (Casey, 2022), while roughly 2077 claims were made over the same period by people who were already in the country (Immigration New Zealand, 2021).

starts the questions. ... It is very intensive. You are tired first of all, and then you are put inside that room and just being interrogated (Claimant, #06).

The participants' accounts demonstrate that the asylum-seeking process in the airport is unwelcoming to refugee claimants. It is highly stressful, challenging, and confrontational for claimants who are already exhausted and scared that the interviewing authority could quickly remove them from the country.

The border claimants with valid visas and proper travel documentation explained that the immigration authorities granted entry for them into NZ to pursue their claim. I present their experiences later under the RSU and IPT processes. Other claimants who did not arrive with the required documentation were denied entry visas into the country and were transported from the airport to detention in a police cell and later a prison. In the following section, I present the experiences of the persons in this group.

6.2 Harm from detention in criminal justice facilities

Many of the participants described detention of refugee claimants in criminal justice facilities (police cells and prisons) as profoundly concerning for many reasons, including the harmful effects of this form of detention on health and well-being. Most participants viewed INZ's use of police cells and prison for the detention of claimants as a disguised punishment for people who have travelled on false documentation to NZ. The voices of claimants and professionals who have worked with claimants under custody in criminal justice facilities suggest that the treatment is inhumane because of the physical and psychological torture and distress imprisonment causes on the individuals.

The implications of NZ's detention of people seeking asylum in criminal justice facilities have been covered recently and elaborately by Hiew (2020),¹⁰⁰ and Amnesty International Aotearoa (2021). Both pieces of research underscored numerous concerns about the effects of criminal justice facilities on the health and well-being of refugee claimants. The findings in this study bear similarities to the results of both studies but also provide new insights into the experiences of claimants formerly detained. I present the aspects most echoed in this study. The first part of the results on detention in criminal justice facilities will focus on the health impacts of the use of police officers and cells for detention of refugee claimants. The second part will focus on the same issue in terms of prison.

6.2.1 Harm from use of police officers and police cell for detention

This part is centred on the impacts of police cell detention on the well-being of people seeking recognition as refugees and protected persons. The research participants' voices depicted detention in a police cell as an aspect of the RSD procedure that puts some refugee claimants in a terrible and more vulnerable state

¹⁰⁰ Master's thesis submitted to the AUT University.

physically and mentally than the circumstances they fled in their home countries. Extreme emotional ups and downs marked the refugee claimants' experiences in the police cells.

By and large, claimants who have experienced police detention recalled that, while being transported by a police officer from the airport to a police cell or from the airport to the District Court, they were petrified of the police officer. Being escorted in handcuffs by police reminded some claimants of the most brutal regimes and oppressive systems they had fled from. Some of the claimants recounted breaking down in tears, fearing that the police here might treat them like police in their home countries; for example, they feared and thought they would be assaulted or tortured in police cells.

One of the claimants described his experience of being detained in a police cell as physical and psychological torture. He was made to sleep in a cold cell with the effect that he did not sleep for three nights, and started feeling like he was hallucinating. The claimant also felt that he was dehumanised as a Muslim because he was given food containing pork even though Muslims do not eat pork. He induced vomiting after realising he had been fed food which contained pork. He noted that a security officer at the cell also insulted, mocked, and disrespected his prophet (Mohammed) and religion (Islam). This got the claimant furious, and he wanted to fight the security officer. The claimant reached a lowest point, feeling sad, helpless, and less human because of this ill-treatment. The claimant also recounted attempting suicide because of the dehumanising experience in the cell but was rescued by other security officers. In his words:

I was abused in the police cell in Manukau. There was this guy who was a Christian from [name of country withheld]. He was a guard at the police cell. He was not a policeman. Once he noticed that I was a Muslim. ... This man came up to me and spoke to me. I told him ... we are part of the Arabs and I am a Muslim. He said which Muslim, Muslim shit. He started insulting my religion. That was so sad for me, and he even started swearing at my prophet. He said my prophet was nothing and he swore at him. I was so angry towards him, but I could not do anything because I was behind the bars. I felt like I was less, and I was shit, and I knew from that time that I was in the wrong place ... I was given food there, but the food I was given was pork. I am a Muslim I don't eat pork. But I did not know it was pork. I was so hungry. I ate it for 2 days thinking it was chicken. Then the 3rd day I saw the label and I started vomiting out. I did not eat anything on the 3rd day because I realised I was eating pork.... I got so angry. It reached a point where I wanted to take my life. I went to the toilet where there was water and I wanted to drown myself in the water, but the officers came immediately and stripped me off my clothes as punishment (Claimant, #29).

It is worth highlighting that the claimants' periods of detention in police cells were brief (usually only over weekend), and then they were then taken to the District Court on Monday for a warrant of commitment order. If granted by the court, the order committed them to a prison, the MRRC, or the community. The refugee claimants who spoke about their experiences in detention had been detained in the police cell, prison, or the MRRC, but were living in the community at the time of this study.

6.2.2 Harm of imprisonment on refugee claimants

The participants' accounts show that the disturbing picture of experiences from the border process and police custody continued and even worsened in prison. All the participants who spoke about the use of prison facilities for the restriction of the movement of refugee claimants portrayed the practice in deeply concerning terms. The main narrative pointed to different types and levels of physical and mental health problems resulting from prison custody. While several concepts were shared by the participants on the detrimental effects of prison detention on the health and well-being of the refugee claimants, the following were the most resounding.

6.2.2.1 *Physical harm from detention in prison.*

Physical torment and violence emerged as central concerns to the claimants' experiences in prison. The minimum time the claimants who participated in this study had spent in jail was approximately three months, and the longest was around 12 months, but they also knew others who had been in prison custody as refugee claimants for more than a year. During their time in prison, it was challenging for the claimants to contact people from their communities in NZ or overseas for support. The claimants believed prison custody stripped them of their dignity, and they considered it penalisation and torture by the government for having travelled to NZ on false documentation to claim asylum. The problems they reportedly suffered in prison custody included dehumanising treatment, physical health problems, bullying, intimidation, coercion, and gang violence.

The claimants described having dehumanising and humiliating experiences from prison detention. From the beginning of the journey to prison, they were chained by their hands, waist, and legs, and transported back and forth in armoured vans like criminals from the District Court to jail (typically, Mount Eden prison). This happened every 28 days for the warrant of commitment review. They were also taken from prison in the same chain-like manner to the IPT in the Auckland City Centre for their appeal hearing, and then brought back in the chains to the prison. As a claimant narrated:

Because of asylum, I was chained on my hands, legs, and waist when they were carrying me to the court ... When I was in prison, ... I wrote to the Immigration and Protection Tribunal and was invited to the appeal interview. They came and carried me from the prison. They took me from the prison put [and] a chain on my hands and on my legs. When we arrived, they parked the car somewhere and asked me to get out. I told the guy to remove the thing from my hands. I asked him to remove it because I will be moving, and people will be looking at me like a criminal. I said I'll not run, remove it. How did they expect me to walk across the road with the chain on my leg? (Claimant, #31).

His experience was almost analogous to comments by IPT member #23 (reported earlier at 4.2.1), stressing also that prison was “stressful” and “possibly frightening” to the refugee claimants.

Besides being transported humiliatingly like criminals, the refugee claimants explained that they acquired physical health problems in prison. For example, they developed poor eating habits and lost body weight. Occasionally, they were forced to starve because other inmates (usually gang members) deliberately kicked or knocked their food out of their hands in the refectory. A claimant stated that he ate only once daily and described the food as poor and small. Like in the police cell, two claimants from Muslim background explained that they were given food containing pork and were left to starve or eat it against their religious belief. They ate the food and later induced vomiting. The claimants recounted that the experience in prison caused them to lose bodyweight and affected their eating habits for a long time after leaving the prison.

In addition to the physical health problems, the claimants reported experiencing bullying, intimidation, coercion, and violence in prison. A claimant recounted that other inmates coerced him to join a gang fight club in prison for protection. The gang members forced him to train violently to fight with other gangs. Ultimately, he got into fights and was injured. He recounted his experience in prison as:

We've been forced to train every day. We've been forced to kick ourselves, both of our thighs and that is called conditioning. We had to be prepared for the war from the cells because the [opposing gang] can attack us at any time, and we needed to protect ourselves. Now, I have joined a war and I didn't even know what the war was about. This is the story. From there, I knew I was in deeper problem. ... So, what happened in there was that we were fighting and fighting and taking wars in the prison. ... And I had one of my bad fights there. My lawyer has a record of it. I got my head smashed and I was beaten badly (Claimant, #29).

A lawyer also said:

When at Mount Eden, they spend time with common criminals. They're fighting gangs (Lawyer, #25).

Another claimant remembered sustaining injuries to his head in prison because he was attacked and severely beaten by a gang, although he was not involved in gang activity. He retaliated after receiving medical intervention and recovering from the trauma. Correction Officers intervened, chained, and locked him up in a cell for up to 23 hours daily. The claimant narrated:

I beat two guys in prison, and I was chained in my cell because of that fight ... The prison has iron doors. There is this guy who usually talks to me. Those gang guys had noted that we usually discuss. Once in a while, the gate was opened that we take fresh air. On that day, I was called in to meet this guy whom I usually talk with. Normally, these guys smoke weed in prison. They had planned to hurt me. As I entered the door, one person called me from outside, and as I turned to look, they bounced [slammed] the door on my face [forehead]. I fell down and collapsed. It was an iron door. If not because I collapsed, I would have killed at least two or three of those boys before I would have been stopped. ... They took Bibles and tied in a bedsheet, then used it in hitting my face. You know, there are no weapons in prison. That was the only way they had to beat me on my face and on my body (Claimant, #31).

The participants' accounts show that prison custody is a dehumanising and hostile environment where the refugee claimants are transported and treated like criminals. They are assaulted and sustain injuries from gang violence in prison. Generally, detention in prison caused many physical health problems for refugee claimants.

6.2.2.2 Mental health and psychological harm from detention in prison.

The participants also highlighted psychological distress and trauma resulting from detention of refugee claimants in actual prisons with other inmates. They described prison custody as causing anxiety, helplessness, hopelessness, despair, frustration, and trauma in refugee claimants.

Prison custody was reported as bringing back some of the fears and conditions the claimants had fled from. Several professionals explained that refugee claimants often come from backgrounds where they have witnessed or experienced arbitrary and severe use of the criminal justice system for persecution of dissenting political voices. The same claimants then had to contend with being put back in prison settings and having to face the same fears they had tried to escape from in the first place. As this lawyer explained:

They have just come here fearing detention and cruel inhumane treatment from their own country. And then they're tossed in prison here (Lawyer, #16).

Another lawyer commented similarly, associating the fears with trauma experience:

You've come from a traumatic experience, hence, why you're claiming asylum to begin with, and then the first thing that happens to you, when you come to this so-called safe country is, you're thrown in a prison cell along with all the criminals and you're like I thought I was getting away from this (Lawyer, #15).

The lawyers also said that some of their clients have reported having creepy feelings from sharing a room or space with other inmates, some of whom they described as very scary, and as having no remorse for the crimes for which they had been convicted. As the lawyer just cited narrated, claimants lived in fear and did not feel safe sharing space with other inmates:

It's fighting to survive in there and when I'm trying to go and see you in prison, all your thinking of is, can you get me the fuck out of this prison. You're like I just want to get out of here. How do I get out of here? And we're like, okay we need to focus on your claim, and we need to, but you're edgy because you're living in this prison. You're watching your back the whole time in a prison. It's an alien environment to you. You don't know anybody. You don't know who's safe, who's a bad person, whatever. You don't know whether the guards are safe (Lawyer, #15).

One of the claimants explained that prison caused him to lose his self-confidence:

When you first get into the prison, you can feel as your self-confidence is gone. You know there are really negative effects on you and the most serious effect is that you don't feel self-confident. In prison, obviously, you can't express yourself. I was a genuine refugee, but I couldn't express

myself in prison. You start thinking of how you are going to express yourself and how to get out (Claimant, #03).

The other professionals described prison custody as potentially causing psychological problems for the refugee claimants. An IPT member, for example, observed that prison custody possibly had psychological impacts on mental health and was re-traumatising for claimants:

It can create mental health issues for people. You know, I am not an expert on this, so I can't say that it does, but I am just saying that I believe there is literature saying if you are in detention or a prison for a certain amount of time, it causes all sorts of psychological impacts. So, you have asylum seekers who are put to prison, who are being re-traumatised by that plus whatever they fled (IPT member, #22).

The IPT member's views were echoed by a psychologist who also identified the negative psychological impact of prison custody on claimants:

That's been my biggest role, I feel, is holding their distress in relation to their experiences of being in this process here in this country and that has been quite shocking for me to support at that depth. And I would have to say that the ones who were held in detention in prison are those who have been the hardest, actually, because of what seems like inconceivable sort of dehumanising treatment for them. They have been the hardest to sit with and support them as they are so dishevelled having come fleeing from trouble and wanting to find a safe place and then having ended up in a situation like this (Psychologist, #10).

The professionals' opinions were backed by the claimants, who reported that they were often sad, in tears, and gave up hope about the asylum process. They experienced extreme stress, fear, anxiety, anger, despair, helplessness, and frustration. As a claimant commented:

It is very difficult to keep your faith, and it is a very hard time, especially in the first days (Claimant, #03).

The claimants saw prison custody and treatment in prison as inhumane. As one of them put it, he felt imprisonment meant they, as refugee claimants, were treated "like shit" by the NZ government but with an optics to the rest of the world as one of the safest countries in terms of human rights protection:

The condition in prison, I could not take it anymore. It was too much for me. ... Those guys mishandled me. They treated me terribly. New Zealand pretends to the rest of the world that it is the safest country and is respecting human right, but it puts asylum seekers in prison like criminals ... They treat us here like shit, while on media they say New Zealand is the best concerning human rights (Claimant, #31).

Two claimants reported indulging in self-harm and attempted suicide because they were frustrated and felt hopeless relying on a system that was penalising them instead of helping them. Others described having sleepless nights, nightmares, daymares, and hallucinating. Claimants also reported having emotional ups

and downs (also described by some professionals in this study as emotional roller coaster) in prison from a refugee lawyer's first visit. Seeing the lawyer, they were excited and hopeful, expecting to be released from jail. However, they were disappointed that the lawyer's visit was mostly or entirely about receiving instructions on the refugee claim, and had little or nothing to do with the warrant of commitment and their release from prison. Hence, their emotions plunged from excitement back to despair, uncertainty, and sadness upon being told by the lawyer that it was not immediately possible to get them out of prison. The news left them upset and depressed.

Detention in prison also put the claimants in a challenging psychological situation, as they had to complete the application (claim) form for refugee status, the detailed statement, and the refugee status interview in incarceration. As one of the lawyers commented, the main asylum interview for the refugee claimants in prison custody is done in the prison itself by the RPO at the RSU level. The lawyer explained that prison is an intimidating, unsafe, counterproductive, and highly challenging environment to interview someone needing protection as a refugee:

You don't know whether it's safe to speak about the events that brought you there and what have you. It's not the best environment, and then to have your RSU interview held inside the prison, I mean, it's just not right (Lawyer, #15).

A claimant added that he was frightened and scared of being in prison, adding that nothing was clear about the asylum process in prison:

Nothing was clear to me because I was actually frightened. I was scared; I was in a prison (Claimant, #29).

Beyond the experiences reported as emanating directly from the prison environment, participants explained that after their release from prison into the community, they still had difficulties sleeping and nightmares related to detention in prison.

Overall, the participants' accounts in this study demonstrate that the use of police cells and prisons for the detention of refugee claimants results in far-reaching physical and mental health consequences. This undoubtedly suggests that a reform in the current law and practice is critically needed to turn the RSD from a harmful and punishing procedure into a safer and better process for refugee claimants falling under the restriction of liberty category. More on this will be covered in the next chapter at 7.3.1.1. In the section which follows, I present participants' voices concerning the health and well-being impacts of the core procedures for RSD at RSU and IPT.

6.3 Health impacts of core RSU and IPT processes and practices

This section focuses on the RSU and IPT's processes and practices¹⁰¹ that emerged from this study as having substantial bearings on the health and well-being of refugee claimants and the professionals who work closely with them, including the decision-makers. It mostly depicts a harmful picture of RSU and IPT processes and practices. The participants' voices mainly centred around the asylum interview by the RSU and oral hearing by IPT and corresponding environments. It is relevant to note that participants' views on other core aspects of RSD, for example, the RSU claim form for refugee and protection status and corresponding IPT appeal form, have been discussed in Chapter Four at 4.3.1.

Regarding the RSU and IPT interviews, some of the participants' experiences suggest that the interview and hearing environments (at RSU and IPT) are intimidating and, to some degree, unwelcoming. Accounts also indicate that the interview (oral hearing) is psychologically and physically distressing because of its extended length, depth, and breadth.

6.3.1 The asylum interview (oral hearing) environment

Some of the participants perceived the asylum interview environment (at RSU and IPT) as intimidating and unwelcoming to the refugee claimants and appellants. These included lawyers, interpreters, and claimants who compared the interview rooms at the RSU to a police interview cell and prison room. A lawyer remarked:

[The IPT hearing] doesn't feel as if you're in a police interview cell, which RSB [RSU] does (Lawyer #15).

Speaking also about the room, an interpreter said the RSU interview room in 2020 was small and felt like a prison cell with no window. The interpreter added that she felt like it was airtight and suffocating in the room:

They are exactly like the prison room. Not a window, they are very small, there is no window. The first time I did an interview, I said to the officer, I feel like I am suffocating. I can't breathe, and it took me a couple of interviews to kind of accept the fact. It is so hard. ... I hate the new room. All the officers hate them too, and they say that we don't have a choice. ... It's stupid. I mean, you're in a room with no window for eight hours; imagine that (Interpreter, #19).

Nearly all the claimants thought video cameras (which they perceived as spy cameras) were in use in the RSU interview room. They explained that the feeling of being constantly surveilled and not being informed about it increased their stress and anxiety in the interview. As this claimant believed:

¹⁰¹ This covers the period from lodgement of an initial claim for refugee and protection status to release of the decision by the RSU; and the period from the lodgement of an appeal to release of the decision by the IPT.

I did not like the aspect that the room had cameras ... You know that there are cameras around because, for instance, if there was a break and after the break, the officer will ask you what you were discussing with your lawyer. ... Yea, that means there are cameras, and secretly you are being watched ... I just feel that every second and step is monitored and everything. This adds to that pressure and that stress. ... Yeah, it makes you feel very uncomfortable because you are confused in your posture or your sitting positioning because it can be interpreted in the wrong way (Claimant, #04).

Participants in this group who thought the RSU environment was inhospitable also felt the RSU was unwelcoming because its lavatory was on a different floor and quite away from the interview rooms.

Regarding the IPT hearing room, some of the appellants reported that they felt intimidated and nervous not because of the nature or structure of the room but because they perceived that they were in a court and that the person doing the appeal hearing was a judge. As one of the individuals said:

There were many chairs there, then the judge was sitting on the other side, and we were sitting opposite to her. We had to stand when she walked into the room. Yeah, it's very formal, and everything is very intimidating (Claimant, #06).

It is worth noting that while the setting of the IPT is like a court in some respects, it is not, in fact, a court. The IPT decision-maker is referred to as a member, not a judge (except the chair of the IPT, who is a District Court judge). An IPT member explained that the IPT operates as an informal court. For example, the member's bench is not on a raised platform as in a standard court.

I think we try to run our hearings in a way that is informal like not with all the complex circumstance of a big court. So, the way the hearing rooms are set up, we all are sitting on one level rather than the judge up high. And that the rooms are just pretty small [compared to the size of a standard court] and is supposed to be conducive to having more of a conversation than a sort of court trial situation (IPT member, #23).

However, some of the former appellants interviewed in this study did not have this knowledge that the IPT is not a court and that the members are not judges. Besides the appellants' fear and anxiety from IPT members being in a judicial-type role, an IPT member and an interpreter observed that the ventilation in the IPT hearing room was not good. They stated that the hearing room had no windows, and the air conditioning system was not good as well.

Participants also described the RSU and IPT as unwelcoming because there were no amenities for complimentary tea, coffee, and snacks for the claimants. They believed this form of hospitality might help during breaks, de-escalate stress and related circumstances, and foster a sense of humanity in the environment.

Some of the participants viewed the IPT's hearing environment and atmosphere as slightly safer and less anxiety-inducing than the RSU. The IPT's hearing room was noted as more spacious than the RSU's.

Further, the refugee claimants, interpreters, and therapists who have had interviews at the RSU and IPT explained that the IPT's toilet facility is more easily accessible than the RSU's. These features contributed to reducing some of the claimants' environmental stress and anxiety at the IPT compared to the RSU. Further, some IPT members said that appellants can arrange for and have prehearing visits to familiarise themselves with the IPT hearing environment before their hearing. This may help reduce anxiety and demystify the IPT, especially for those appearing before what looked like a court for the first time.

In sum, the participants' accounts show that the interview rooms at the RSU and IPT are intimidating and unwelcoming, causing, or adding to the claimants' stress and anxiety, but the IPT hearing environment is slightly better and safer than the interview environment at the RSU. This would suggest that hospitable and claimant-suited hearing environments have more potentials for therapeutic outcomes in RSD, while the reverse is true.

6.3.2 Physical and mental exhaustion from the interview

As discussed in the previous chapter focusing on a culture of disbelief, participants' views broadly indicate that the interview (at RSU and IPT) is challenging physically and mentally. Accounts given suggest that the more intense, protracted, interrogatory, and confrontational the interview, the more flow-on physical and psychological distress on claimants (refer to 4.3.5).

Many of the claimants described experiencing more headaches and problems sleeping and eating, and experiencing anxiety, forgetfulness, and confusion in the weeks or days leading up to the asylum interview. As this claimant narrated:

You know, when there are so many problems that come with stress. When someone is stressed, he will not be able to eat food and it goes down. You are there you are panicking, you feel headache, you feel like your heart is going to come out because it's beating too hard. Confusion can cause you to say certain things and after when you are asked about what you have been talking about, you can't remember. Then again when these case officers come, they talk as if they are talking to someone who is nothing (Claimant, #07).

Some claimants also explained that they started the RSD procedure seemingly fine without mental or psychological problems. However, by the time they reached the end of the process, their friends and support persons informed them that they were becoming psychologically and mentally unstable. The claimants believed their psychological and mental health deteriorated because of the arduous and overwhelming nature of the interview and the entire RSD process. Some of the claimants recounted being overwhelmed emotionally in the RSU and IPT interviews and indulged in self-harm and suicidality post the interview.

Claimants' stress in the asylum interview emanated as well from their perception of the RSD institutions (notably the RSU) as the government's gatekeepers. Through this lens, claimants viewed decision-makers as already having a predetermined mindset and subsumed in the government's inhospitable attitude towards the refugee claimant population (discussed at 2.2). The claimants believed the decision-makers came into

the interview room, masking it as if they wanted to hear their story genuinely but had other agendas to decline and expel them from the country. Some claimants described the interview (at RSU and IPT) as a mere formality. The questions posed implied to them that the decision-maker already had a predetermined mind. As a claimant said:

Any application that is being seen in the light of being declined, cannot succeed even if the asylum seeker provides whatever evidence or establishes the claim at the highest light, because the application has been predetermined. Predetermination kills the process (Claimant, #02).

These feelings kept claimants in immense anxiety, stress, helplessness, and hopelessness throughout the asylum process.

As further context, although the RSD procedure is typically an inquisitorial process, some of the lawyers described the interview as seemingly an adversarial process with the decision-maker occupying the positions of the “judge, jury, and executioner” (Lawyer, #16).¹⁰² They also viewed the RSD as a somewhat biased procedure, with some decision-makers leaning towards border protection or a “coastguard mentality” (refer to 4.3.2 and the culture of disbelief in the previous chapter). Lawyers explained that these negative perceptions contributed to claimants’ stress and anxiety.

Some claimants explained that they felt intimidated, coerced, and interrogated by the RPO into answering questions than at the IPT. The intimidation and interrogation increased the levels of stress and vulnerability in the asylum process, as one alluded:

I can say it was by far one of the most stressful experiences I have ever gone through in my life. First, the interview was long, and it felt more like an interrogation than an interview. Another thing that bothered me was the type of intimidating and intimating questions they were asking. Just going through some things are already bad, but it’s even worse when you are being questioned as if it was your fault these things happened to you (Claimant, #27).

The claimants also explained that the RSU interview report was very challenging psychologically as some of the questions in the report were incredibly tough and caused them to give up hope in the claim.

Across the board, many participants highlighted physical and mental exhaustion for claimants and professionals in the RSU and IPT interview room, attributing it to the length, depth, and breadth of the interview. An IPT member commented in this regard:

These hearings take all day, you know, and you’re in close contact with a person. ... Most people I would see are exhausted physically and mentally exhausted at the end of the hearing. The decision-maker is emotionally exhausted sometimes because of the nature of what an inquisitorial role means. Basically, you’re having a dialogue, a conversation with the person may be mediated

¹⁰² An IPT member also noted that their role in RSD can feel sometimes like they are wearing the hats of “the prosecutor and the judge” at the same time (IPT member, #21).

by an interpreter, but this goes on for hours. So, that in itself is quite an emotional roller coaster or can be, and you do come out feeling being drained in the hearings. It's not an easy thing to do (IPT member, #24).

It is worth noting that some of the lawyers and decision-makers reported experiencing repetitive strain injury from constantly taking down notes in briefings and interviews. This included having 'sore elbows, wrists and hands, neck and shoulders and requiring time off work.

Participants' description of the interview (RSU and IPT) shows that it is a long, strenuous, and exhausting process with considerable consequences on health and well-being. The findings also suggest that the position of the RSU within INZ and the nature of the asylum interview (RSU and IPT) have significant undermining implications on the claimants' voice and therapeutic jurisprudence.

6.3.3 Disconnection and discontentment with role of refugee lawyers

The results in this section provide further context to the reports earlier in Chapter Four at 4.2.3 relating to claimants' perception of low-quality skills by some lawyers. Participants portrayed a contradictory picture about the role of lawyers in RSD. Some of them wanted the lawyers to be more adversarial and confrontational. Others thought the lawyers were too confrontational and adversarial. In both situations, there were negative therapeutic results. In addition, some of the claimants viewed the role of refugee lawyers in the RSD procedure as siding more with the government rather than with them. This perception increased claimants' worries and concerns with RSD as they had little hope of succeeding with their asylum application.

The claimants I interviewed came from countries and backgrounds where their understanding of the role of a lawyer in a judicial process is predominantly adversarial. The adversarial justice system uses a competitive process between prosecution and defence to determine the facts. In civil matters, the lawyer acting either as the plaintiff or defendant plays a very active role in the adversarial system, while the decision-maker serves more as an arbiter between the plaintiff and defendant (Reichel, 2017). Some of the claimants in this study expected the refugee lawyer to be a challenger and vocal advocate for them in the RSD procedure, similar to the plaintiff's lawyer. However, they felt disappointed when this was not the case, as RSD is typically inquisitorial in nature. The inquisitorial system involves an official inquiry to ascertain the truth. The inquisitorial legal process grants more power to the decision-maker who oversees the process (Reichel, 2017). Thus, the lawyer is less active in the process compared to the adversarial process.¹⁰³

¹⁰³ In light of the findings in this study, one of the lawyers explained that some claimants expect a lawyer to be like what they see in the Hollywood movies. He added that the reality is that the RSD procedure "*is not an adversarial process ... it's not like the TV dramas*" (Lawyer, #13).

In terms of perspectives that were familiar with and preferred the adversarial system of justice, describing his experience with a refugee lawyer, a claimant said:

I just feel sometimes the lawyers here are just toothless bulldogs. They don't seem to speak out or they don't seem to query or [question] the RSB [RSU] officials conducting the interview. They don't seem to be that kind of lawyer that would challenge the officials. A lawyer should be able to speak out. Defend your client, not supporting the Crown. They seem to give so much allegiance to the Crown (Claimant, 30).

This confusion increased their stress and frustration with the role of their lawyer in RSD and, consequently, their sense of helplessness and hopelessness as refugee claimants.

Despite others holding the view that their lawyers did not advocate for them, some of the claimants and the former RPO explained that some lawyers are very confrontational or adversarial in the pre-hearing briefings and the asylum interview. This distressed the claimant and, in some cases, the RPO psychologically. The former RPO commented that:

I think it's just operating in a way that is professional and respectful and yeah, not necessarily adversarial. I think sometimes lawyers were quite adversarial in the way that they approached it and I didn't necessarily find that helpful when from my perspective anyway as an RPO, I wasn't coming at it as an adversary or like I'm trying to decline you [the claimant]. I'm just trying to get the claim out so that we can make a decision which is based on all the facts. ... If I'm thinking about some of the stresses that lead to high turnover of RPO, and if I'm being frank, working with the lawyers is really really challenging and sometimes there's bullying behaviour. ... I think a system which is just too adversarial is not in their [claimants] best interest. I don't think it was designed to be that way, but sometimes for whatever reason it has become a lot more adversarial between the lawyer and the RPO. ... I mean, obviously there's exceptions because there are some wonderful lawyers that we work with as well as RPOs (Former RPO, #32).

The support worker also said she had observed lawyers being confrontational with claimants whilst preparing them for the interview, and potentially harming or traumatising them through this way.

I see with some of the lawyers, it's like to prepare their client for what they're going to experience in the interview, they are almost applying that line of questioning and that technique to see what their clients going to do. But it's also to prepare like you're going to be pulled apart. So, I'm going to pull you apart a little bit here to see what's there, to see what that case officer is going to see and that prepares the lawyer and the client. But it's also another layer of, you know, potentially causing harm and causing trauma to this person. And I, you know, I think in some ways it's a clever thing that the lawyers do and in another way it's harmful (Support worker, #09).

Some of the lawyers explained that they are mindful of the claimant's trauma when exploring the facts necessary for establishing the claim. But, if the fact is potentially traumatic yet crucial to the claim, they must ask the hard questions in the pre-hearing briefings to prepare the case properly and the person for the interview. This, they acknowledged, can be confronting and challenging for claimants to understand:

At times we've got to really do some really tough talking ... You've got to be so hard so to get to the bottom of what has got to be done. ... When clients tell us things that do not add up, we've got to challenge them. Law is about logic. If things are not logical, how are you going to present it to the judge? ... At times you have got to be cruel to be kind (Lawyer, #25).

Two lawyers added that when they started practising refugee law, they were too tough on claimants and not trauma-informed in their approach. However, after many years on the job, they realised the harm they were causing in terms of contributing to the claimants' stress and trauma, and as a result, adopted a trauma-informed approach.

As the RPO noted above that, "there are some wonderful lawyers"; some claimants also found their lawyers to be excellent advocates. They explained the lawyers 'fought for them', were helpful, understood precisely where they came from and treated them like human beings. Speaking about his experience with two lawyers, a claimant highlighted that they were calm, humble, good listeners, non-judgmental, great advocates and that they treated him as a human:

Yeah, [my second lawyer] brought me back to trust the lawyers and I could seat with him. He is so cool, calm, and humble man. He talks to you and listens to you. In fact, he did a very great work comparatively. He could listen to me talk to him without any fear and he could not find any issue with what I was telling him. That's what [my third lawyer] too said that he did a very great job. [My third lawyer], she is so wonderful because she can listen to you and take you as a human being (Claimant, 07).

Claimants who experienced genuine curiosity, empathy, and advocacy from their lawyers reported having a much better experience of the RSD regardless of whether their claim or appeal for refugee/protection status was declined. The empathy and sound advocacy made them feel they were treated well as a human in the RSD procedure.

Whilst it is relevant to note that some persons interviewed thought lawyers were not confrontational and adversarial enough, and others felt lawyers were too adversarial, claimants who reported having therapeutic outcomes in RSD were the ones that had a calm and empathetic lawyer, who also demonstrated genuine curiosity. Hence, the findings in this section suggest that besides the concerns about the passive role of lawyers in RSD and worries around less or too much adversarial approach, empathetic listening skills and good advocacy in the inquisitorial system have the potential to benefit the claimants therapeutically.

6.3.4 Practices of decision-makers in asylum interview

This section builds on participants' concerns in the previous chapter that the asylum interview (at RSU and the IPT) is largely cynical, interrogatory, confrontational, and harms emotional and psychological well-being. Claimants' experiences with the asylum interview by the RSU and IPT stood out amongst the claimants' encounters as the element of RSD with the broadest implications on health.¹⁰⁴ The asylum interview is a core and almost indispensable component of RSD (refer to Chapter Four at 4.1.1 and the previous chapter).¹⁰⁵ Hence, it is a common denominator in participants' accounts and concerns related to the health and well-being impacts of the RSD procedure.

Besides the claimants' concerns already highlighted under the culture of disbelief in the RSD system, they viewed the determination officers' approach to the interviews as sometimes provocative, insensitive, and capable of triggering psychological breakdowns. For instance, a claimant explained that during her RSU interview, the RPO brought out a prayer the claimant had written in her diary before departing to NZ. In the prayer, she had asked God to protect her and save her from tribulations by granting her protection status in NZ. The RPO then asked why she did not stay in her country, where she encountered persecution, and prayed for God's protection. The claimant said she found the question provocative, and it almost caused her to weep in the interview.

Some of the questions she asked me were very judgemental and provocative, especially when she had to question me based on what I had written in my diary, like the case where I wrote my prayers in my diary. She told me that I should have stayed back home and prayed for the situation back home rather than run away from it. I almost cried. I felt it was not right for her to say so (Claimant, #05).

Several professionals discussed likewise instances where a line of questioning or approach by the decision-maker at the RSU or IPT was confrontational, pushing claimants into angry reactions, tears, and emotional breakdowns in the interview room (this is covered more fully later at 6.3.5). The decision-makers acknowledged that sometimes they might unintentionally become confrontational in the interview. As an IPT member commented:

It's you and them, and the emotions go the up and down. If you challenge them about stuff you are not sure about, they can get mad. You know, there is an emotional response to emotional episodes. ... Decision-makers need to have an open mind and be fair, to not let the emotional hearing get the better off you because sometimes they can be confrontational. Sometimes they become quite confrontational for a period of time (IPT member, #24).

¹⁰⁴ Although the experiences of refugee claimants detained in police cells and prisons were grimmer, this affected only a "small number" of all refugee claimants in NZ (Casey 2022, p. 3).

¹⁰⁵ See also, *H v Refugee and Protection Officer* (SC 52/2018) [2019] NZSC, at 31 – 47.

Aside from these reported negative attributes that adversely affect health, participants mentioned some conducts and techniques by determination officers, which were better and safer practices for refugee claimants. The lawyers explained, for example, that the IPT's hearing felt slightly lighter and less intense than the RSU interview (refer to 5.4), even though both were tediously long.

Some of the claimants asserted that they felt less stress at the IPT than at the RSU. They encountered the IPT members as more professional and friendly. The member also encouraged them in a calm manner to speak, supported them to feel safe, and gave them more time to think before answering the question. Moreover, the IPT members tended to believe them more than RPOs. As one of the claimants explained:

The IPT was very good. They are very good. They ask you the questions, and they give you time to answer. They don't pressure you, and they don't repeat their questions many times. Like they are really professional. ..., it was better because when they ask you the question, they will give you the time for you to answer, and they will be very calm and nice with you to see what you are going to say (Claimant, #02).

Another claimant (who had been on an appeal to the IPT at least twice) noted that the IPT member used soothing language, encouraging him to speak and not to be scared:

The Tribunal members were more easier to talk to. And you can just tell, they wanted you to explain, they want you to just speak out your heart. They even encourage you - you don't have to be scared. That's one of the most important things that I loved about them. They will tell you - you don't have to be scared. That they are here for you (Claimant, #30).

The claimants' experiences were corroborated by a social worker who has supported refugee claimants in the RSU and IPT interviews. She said:

I would say it seems like IPT gets a lot better than RSB [RSU] does in terms of fairness and hearing things objectively, but also holding space for what's coming up. So yeah, being compassionate without showing, indicating it's going to be positive or negative, whereas RSB just seems like a Wild West, however like personality, I guess (Social worker, #08).

A lawyer thought that the IPT's interview felt better and safer because it was more inclined to give the "benefit of doubt" to the claimant than the RSU (Lawyer, #13).

Further, among the many interviewing skills by decision-makers that participants pointed out as potentially positive and therapeutic for refugee claimants, the common denominator was empathetic interviewing and listening skills. For example, an IPT member emphasised the importance of conducting the inquiry with empathy, saying:

It's just making sure that people are approaching the task with empathy, you know, and personally I take the view that even if we don't believe someone telling us the story is credible or not, at the end of the day, at worst, the person has tried to come to New Zealand to have a better life for themselves because they come from a slum in Bangladesh or wherever. I mean, you know,

what would we do? We did the same thing in the issues. No doubt, probably. So, I think having that basic understanding that at worst, that's what's going on with those people. That's an absolute almost worst-case scenario. What's going on at a human level, and to have that basic empathy. We do believe it is super important to have them just be aware through the way in which you manage that hearing that you have that empathy, I think is important (IPT member, #24).¹⁰⁶

The former RPO also spoke about the importance of decision-makers showing empathy in the interview, saying:

But then yeah interviewing is a skill in itself and I think you want an RPO who is empathetic not necessarily sympathetic, but someone who shows empathy with someone that they can establish rapport and make someone feel comfortable enough that they can talk to you about some of the most traumatic experiences of their lives, and you can help put them at ease in the way that you interviewed them. But at the same time, you don't want to go too far down the scale that you necessarily give someone a false sense of security that you're approving them if that's not necessarily going to be the case. So, you need to still be professional but empathetic. It can sometimes be a hard line to balance (Former RPO, #32).

As this RPO and the social worker quoted earlier suggested, interviewing with empathy should not lead to an inclination to approve. Empathy ensures that the claimants are treated fairly, with respect and dignity, even if they are to be declined. Claimants noted likewise that when decision-makers conveyed genuine curiosity and empathy, they knew the decision-makers had treated them respectfully at a human level, even if the decision was negative at the end of the day. A claimant insinuated besides advocating that they should be treated fairly, respectfully, and with dignity:

They should treat us well here and not as animals because I feel we are being treated like baboons, but we are not. We are all one. If not for the issues in our countries where we are coming from, we wouldn't be here. We are here because we have got problems where we came from. So, we are here for the government to protect us in a good way and not in a pretending way, acting as they care. I know some do care but not all of them (Claimant, #05).

It is worth noting that there is very little information from the RSU's perspective in this study. The only person who contributed data from the RSU's view was a former RPO. I had invited the RSU to participate in the study. The opportunity was declined by management. RSU participation may have added more breadth and depth to the data from their perspective.

¹⁰⁶ Another IPT member I quoted in the previous chapter at 5.4, commented similarly that the way in which an interview is done has the most potential for a scope for therapeutic jurisprudence in RSD. For example, IPT member #23 (presented in the next two sections), discussed how she left her bench and sat by a woman who was experiencing an emotional breakdown in the interview, and successfully helped her therapeutically by practising mindfulness and meditation with her.

Overall, the views about the impacts of decision-makers' practices in asylum interview suggest that their interview skills can cause or worsen psychological problems for refugee claimants. The IPT members' interviewing approach appears better and safer for refugee claimants than that of the RPOs. More importantly, empathetic interviewing and listening skills emerged across the board from the participants' narratives as very beneficial for claimants' health when used appropriately in the interview by the decision-maker.

6.3.5 Reported trauma and re-traumatisation in the interviews

More generally, participants' experiences and descriptions of the asylum interviews by RPOs and IPT members were laden with words such as trauma, dissociation, avoidance, hysterical, self-harm, suicide, and several others relating to psychological trauma. Claimants focused more on how the interviewing techniques by decision-makers caused them significant emotional and psychological distress, triggering trauma or elevated the risks of re-traumatisation in the interview. They also described experiencing worrying health impacts post the interview. Overall, the participants' voices presented here highlight the hollowness and impacts of the dearth of trauma-informed interviewing approaches in the RSD system.

The claimants recounted that the interview explored specific and detailed accounts of their torture, other human rights abuses, and the persecution they and their families and associates experienced, all of which were challenging to retell. The questions caused them to relive past events, some of which were traumatic. For instance, one of the claimants stated that the RSU and IPT interrogated him on how he was beaten. He explained that questions brought back memories of the incident and caused him to re-experience the stress, trauma, depression, difficulty sleeping, and other harmful psychological conditions.

He was asking me so many irrelevant questions like ... how were you beaten? It brought my trauma back. It brought my stress back. It brought my depression back. Each time I finished the interview and returned home, I could not sleep because it was very, very hard at times going through the things I went through like torture and allegations ... Another problem is that I had trauma and stress from the torture and the situation I had been through. All the process brings about fear and depression. The case officer should know all about these things. They have to consider the medical situation first before they go into asking all these nonsense things on how did they beat you, how were you tortured? Did they slice you with a pair of scissors, did they put something in your mouth? (Claimant, #07).

An interpreter observed similarly:

I see people telling their stories, sometimes I feel very frustrated because ... they are being re-traumatised telling their story again and again, and they are being question again and again, and they have to answer questions on what they had said (Interpreter, #18).

An IPT member somewhat echoed the claimant's concerns regarding the psychological trauma from the interview, stating:

We have to ask people to explain their claim and that does involve revisiting traumatic events. And I am very aware of the impact that that has on the appellants. And having to go over things is a necessary part of the process to make factual findings ... I think it has an impact on everyone. It has an impact on the appellant having to revisit events or fears for future harm or past harm, and it can have an effect, you know, vicarious trauma for lawyers, interpreters, and for myself as a member (Tribunal member, #22).

The concerns about vicarious trauma that this member pointed out will be presented in the next section. Claimants described experiencing various emotions in the interview and several days and weeks after, including frustration, confusion, anger, helplessness, flashbacks and nightmares about torture, difficulty sleeping, and other psychological distress that needed intermittent hospitalisation. A claimant explained, for instance, that she overdosed on medication to kill herself because the RPO did not treat her as a human and did not believe her in the end, declining her claim at the RSU level. Heading to the IPT hearing, she did not want to experience the same feeling of not being believed. She decided to end her life by overdosing on anti-depressants on her way to the interview. She became very sick in the interview, told her lawyer about the medication, and was rushed to the hospital by ambulance. The claimant survived and completed the interview on another day. She also remembered idealising this suicide following another claimant who committed suicide.

While I was on my way to the IPT interview, I said to myself, if I take these tablets here on the train, maybe I'm not going to reach the city, where I would not be believed again. I just wanted the whole thing to end. I did not want to get to the interview in the city. Then I took the medications without eating anything. When I got to the interview, the medication was still not working in me, but my mind was not even there. Sometime in the interview, I became sick in my stomach, and an ambulance was called for me. The ambulance took me to the hospital ... I knew this man from Sri Lanka who was with us at the [location withheld] but he finally gassed himself to death in his car because the system was not believing him and kept declining him. So, I asked myself why was I living then? I just wanted to end my life. Maybe if I did not have kids, I might have done it in a hard way (Claimant, #05).

Two other male claimants stated that the process was gruelling and considerably arduous, and compounded by the fact the decision-makers did not believe them; it pushed them to contemplate suicide:

It was hell. There was a time when I wanted to die. I just wanted to die or commit suicide and just rest. It was too much (Claimant, #07).

When your life is on the line, sometimes you might even have suicidal thoughts running through your mind like okay, this is it, but I am lost, so there is no point (Claimant, #01).

Many of the professionals explained further that the RSU and IPT interviews sometimes unearthed sobering and disturbing experiences that claimants who were victims or witnesses, had forgotten or been avoiding. The professionals asserted that the questions about the horrific experiences often result in the claimants

having a scary trauma response in the interview room, and sometimes for a long time after the interview. A lawyer explained, for example, that some of their clients (that is, claimants) have broken down and had panic attacks in the interview room from inappropriate and culturally insensitive questioning by the decision-maker. The lawyer illuminated that they “are aware of extreme cases of trauma being triggered regularly by a bunch of legal professionals or even nonlegal professionals” with no “proper trauma training”, and with “absolutely no safety procedures”, and no “proper professional support in the room” (Lawyer, #20). The lawyer added that at the end of the interview, the refugee claimant is left alone to go home without any immediate psychological support, which is terrible for the individual.

Some of the trauma responses the professionals reported observing in the interview room included the individual becoming hysterical and distressed as well as strolling uncontrollably, breaking down, and throwing up. It also included a violent response by a claimant triggered by a line of questioning. The claimant allegedly “banged their head repeatedly on the table in the interview room, sustaining injuries to the face” (Lawyer, #20). This left the decision-maker and lawyer in shock. Other professionals also described witnessing claimants dissociating and becoming disconnected and detached from themselves, getting into a trance-like state in the interview room, having memory lapses and forgetting crucial personal information. As an IPT member described an interview experience:

We were like literally 20 minutes in her evidence, and I can just see her melting in front of me, you know, just kind of hunched over and she didn't answer, and she had tears streaming down her face. And I'm thinking, oh my goodness, we're 20 minutes into the hearing, which is for two days and she's already, you know, I could just see that I've lost her, like she's gone off somewhere in her mind and didn't even answer my question. I thought this is just going to be one of those hearings. If I just keep sitting up and asking her questions, she's going to be in tears all day, and we're not going to get anywhere, really (IPT member, #23).

The member added that she left her bench, sat by the woman and intervened therapeutically by practising mindfulness and meditation. This helped as it brought the woman back to the world around her (I present the results of the trauma-informed interviewing in the next section). A psychologist also commented on the extent of dissociation by claimants in the interview:

I am just thinking of a colleague who mentioned to me that he had gone to support a client at IPT, I think it was, and he thought he really knew the presentation of the client because the client did dissociate in his session, but he was shocked at the level of dissociation and even though he had done a lot of work in session with the client, he couldn't reach the client (Psychologist, #11).

The professionals also described having worked with claimants who avoided answering questions in the interview related to traumatic events in their life. Further, a psychotherapist working with claimants in the community expressed grave concerns about suicidality in this group after their RSU or IPT interviews. She believed the suicide ideation and attempts were triggered by deficiencies in trauma-informed interviewing techniques. The psychotherapist explained:

I am really concerned about the safety of my clients. The suicidality of my clients going through this system. Coming in and having to go through something like this is a massive risk. I feel like it's a really dangerous approach actually, you know to put them carrying so much weight based on everything and so that is highly concerning for me as a therapist, because I am trying to hold lives together and this system is not helping, and I have huge concerns about that. ..., it's highly concerning because it is life and death and you know, it quite happens when it's too much for someone you know, then I've had two people attempt to take their own lives. You know that's how serious this is. And I have seen the dishevelment of people as well and the distress, you know, so I see the deterioration of people in a really worrying way. I feel it's just needless. Like why does it have to be like this? You know it doesn't make any sense. So that is massively concerning (Psychotherapist, #10).

A support worker who has worked with many refugee claimants at a hostel for refugee claimants also discussed witnessing a decline in their mental state due to them waiting far too long in the RSD, and the impact of interviews. The support worker narrated having to call an ambulance at night for a claimant who overdosed on her medications to commit suicide and having to mop the blood of others who self-harmed.

I see this process take place and I see mental health begin to decline. And depending on how long the process takes, will show what that looks like. So, the type of things that I'll witness is people, you know, it starts maybe issues around sleep and then there's issues with boredom and time just passing by, and so the mind getting really busy, that feeding into greater issues with sleep, need for medication, you know. I've had to call an ambulance from home at 10pm at night for someone who's overdosed on too many pills because they just don't want to wait anymore. They've had enough. I've mopped up blood from people who have cut themselves because when everything is feeling emotionally so hard and there doesn't feel like there's any outlet for that pain, cutting themselves has seemed like the best solution, or a way to alleviate the focus on that (Support worker, #09).

These participants' accounts portray a worrying picture of the depth and breadth of psychological trauma, mainly from the RSU and IPT interviews, but also deterioration in mental health from protracted waiting. Participants' description of the interview included words such as trauma, dissociation, avoidance, suicidality, self-harm, hysterical, and others that portrayed the intensity of the negative mental health impact of the interview on refugee claimants. The findings indicate that there is a dearth of trauma-informed interviewing techniques in the RSD system, and a critical need for practical trauma-informed approaches in the RSD to protect and improve health and well-being. In response, in the following section, I present the main trauma-informed interviewing techniques participants discussed in this study.

6.3.5.1 The “breakdown-breakthrough” effect: A reported trauma-informed interviewing approach

Participants’ descriptions also highlighted some therapeutic effects of the refugee status interview on the claimants. This arose out of the trauma unveiling in the room and what one of the therapists described as the “breakdown-breakthrough” effect (Psychotherapist, #10). The breakdown-breakthrough effect as used by this psychotherapist explains a situation where the refugee status interview caused an emotional or psychological breakdown in a claimant, but the claimant felt much better after the interview because their voice was heard in an appropriate and meaningful way to the extent that the interview even had a therapeutic effect on them. The psychotherapist explained:

I find myself after one client recently with IPT interview and I was really disappointed because I wanted to go and be with her at it, but we don’t really have a process for that yet. That’s another thing. I tried to keep in touch and then anyway it all went very overwhelmed in the end. It was going well and then it all went sort of into sort of a breakdown-breakthrough and the client got emotionally very overwhelmed in all this. And I felt very disheartened like I had missed what I needed to be there for my client. And it was heart-breaking. I felt like the trauma opened and there was no one there for her like I have described. ... but when I listened to [the client] afterwards, I realised that the client kind of opened everything in the space and in many ways she did herself a favour. She had huge courage, and she opened the whole thing and the shock of it all came through but at the same time, she gave the whole story and probably will help her claim and afterwards, you know, she recovered. It took a couple of days, but I was surprised because it was almost like giving birth ... And I think some of what happened was very healing and cathartic for her (Psychotherapist, #10, Female).

The therapists (the psychologists and a social worker) explained that many of their clients experienced an emotional breakdown in the RSU or IPT interview. An IPT member called the breakdowns an “emotional roller coaster” (IPT member, #24). A lawyer described it as “a trauma response” (Lawyer, #20). Put simply; these are emotional crisis moments for claimants in the interview room. However, it is noteworthy and interesting that some health professionals (including IPT members) received positive feedback from some of the claimants later, stating that they felt much better and relieved because they had finally opened up and spoken about the trauma event. The claimants reportedly had a positive and therapeutic experience from the crisis encounter because they were listened to in an empathic, meaningful, and appropriate way.

An IPT member recalled several psychologically vulnerable cases she had worked with, and it appeared her empathetic interviewing and listening skills positively affected the appellants. The appellants were vulnerable women and often victims of sexual assault. They broke down in the interview, describing the assault and other abuses from men. The member moved from her bench and sat next to the appellants, soothed and supported them in the moment as they were retelling the story. As the member recounted:

I have had a number of cases with vulnerable women often involving kinds of sexual assault and very tearful. I actually just came out from my desk and went and sat with them right at their desk, so I am right there with them as I take the evidence, because it seemed like it was the right thing to do at the time and I wanted to make it more than them having to sit on a microphone and be meters and meters away from me. I just felt like it was better to be with them (IPT member, #23).

The member also described the case of a woman who had what she called “PTSD” from family violence. The member explained that the woman started sobbing twenty minutes into the hearing, tears streamed down her face, and the woman was dissociating. The member stopped the interview, sat beside her, and guided the woman through mindfulness and meditation. This helped to ground the woman, and ten minutes into the therapeutic intervention, the woman was calm again. They continued with the interview with some odd tears and only had to stop once for the mindfulness exercise when the woman got upset again. The member added that the woman appeared relieved and confident after the interview and thanked her, as she detailed:

We were like literally 20 minutes in her evidence and I can just see her melting in front of me, you know, just kind of hunched over and she didn’t answer, and she had tears streaming down her face. ... I could just see that I’ve lost her, like she’s gone off somewhere in her mind and didn’t even answer my question ... I put the lawyers out. ... I went and sat next to her, and we did some mindful breathing. So, for probably 10 minutes or so, we both sat there, and I literally was sitting right next to her. I think I touched her arm and, you know, I talked to her to put her bare feet flat on the floor, and she closed her eyes, and I basically talk her through what I do when I do meditation, and got her thinking about somewhere where she felt safe. And honestly, it was absolutely mind opening for me, because after 10 minutes, she was calm. The lawyers came back in, and I did it one more time during the day, I think it was before lunch. At the end of the hearing, I said, do you have anything else you want to say, and she was like, oh can I have a hug before I go, and so I gave her a hug which is the first time ever and she was really thankful. She said you’ve given me so much confidence to kind of go out there... And, you know what, that was a declined outcome. ... And I felt I have listened to her and I felt like there was a meaningful interchange. We got the best evidence that we got. And it was a very human interaction and I think when she got the decision, she will think: fair, cool (IPT member, #23).

The IPT members also commented that some of the appellants they have interviewed have been thankful to them for listening empathetically, respectfully, safely, meaningfully, and appropriately. As noted by these IPT members:

I think in the hearing, there have been times when you know at the end of the hearing, the appellant has thanked me for listening and understanding, and we’ve engaged eye contact to such an extent that you do know that they feel heard. It’s quite powerful (IPT member, #22).

I have actually had appellants and I think, genuinely say, thank you for listening to me. I feel listened to, you know. I am not having a go at the RSB [RSU], but they're kind of like, oh, I didn't really feel like they understood my point (IPT member, #23).

It is also worth mentioning that some of the lawyers and decision-makers noted that besides practising trauma-informed interviewing techniques, acquired from work-related training provided by RASNZ clinicians and others, they kept safe in RSD by working 'one step removed' (or detached or distant) from the claimants. The lawyers and decision-makers who held this position explained that by working one step removed, they did not get involved in the claimant's testimony more than it was necessary for establishing or determining the claim. Essentially, they walked into a briefing or asylum interview room mentally prepared to explore, if necessary, the emotional and potentially traumatic issues. Nevertheless, they shielded themselves emotionally and mentally from adverse emotions that might flow from a refugee claimant's unnerving story or mental breakdowns. Thus, the decision-makers and lawyers remain fully engaged in the RSD procedure, by thoroughly interviewing the refugee claimants. However, at the same time, they try not to show any emotions and not engage with the claimants' psychological problems.

Some of the decision-makers and lawyers also explained that they do not support the claimant materially or financially, even if that was critically needed, because doing so would be going down a "slippery slope" and "blurring" the professional and ethical line between themselves and the claimants (Lawyers, #25 and #16). Further, working one step removed also meant the decision-maker was less active in ensuring the claimant was in a safe place for the interview. This, in a way, kept the decision-maker and lawyers who worked in this way less involved in managing emotions that could also make them vulnerable.

These accounts suggest there is some usage of trauma-informed interviewing strategies by some decision-makers and lawyers in RSD such as empathic interviewing and listening skills; respectful interview processes that protects the claimant's dignity; claimant-suited RSD processes; adherence to advice provided by claimant's medical doctor, psychiatrist, or psychologist; and therapeutic interventions such as mindfulness and meditation in the hearing room. The findings in this study show that when practised effectively, the trauma informed interviewing techniques can have therapeutic benefits for psychologically vulnerable claimants. This assertion also extends to claimants who are not psychologically vulnerable. Accounts by the professionals suggest that claimants felt better despite breaking down (experiencing the breakdown-breakthrough or emotional roller coaster) if the decision-maker used appropriate trauma-informed interviewing and listening skills to explore the traumatic event. Questions abound however regarding appropriate trauma-informed interviewing techniques for RSD, the effectiveness of the working one-step-removed strategy, and how these align with therapeutic jurisprudence. In the next chapter at 7.3.2 and 7.3.3., I provide further context to these results and insights on other trauma-informed interviewing approaches that might be appropriate for RSD.

6.3.6 Reported burnout and vicarious trauma in the RSD

The professionals reported experiencing considerable burnout¹⁰⁷ and secondary or vicarious trauma¹⁰⁸ in the RSD procedure from working with claimants and hearing details of, or witnessing the after-effects of a traumatic experience by the claimants. Participants' accounts at 6.3.5 indicated that the professionals working with claimants are exposed to claimants' experiences of or responses to psychological and physical trauma, including emotional breakdowns, self-harm, and suicide attempts. The professionals' voices showed that there is a toll on their psychological health as professionals resulting from witnessing these terrifying experiences and listening to participants' stories of torture and other related violence.

The professionals supporting or representing the claimants (such as the support worker, social worker, psychologists, psychotherapists, and lawyers) described experiencing burnout from a stressful and underpaid sector. Besides the stress and trauma from the RSD itself, other stressors such as the government's systemic oppression and marginalisation of refugee claimants (refer to Chapter Two at 2.2.2), poor civil legal aid rates (refer to Chapter Four at 4.2.1), and an under-resourced asylum sector (Ferns et al., 2022), makes working with refugee claimants highly challenging to these professionals.

The professionals supporting and providing legal representation to the claimants also reported providing significant pro bono services to help the refugee claimants meet their essential needs and be in a good space for the asylum process. After working with claimants for a few years, these professionals become emotionally, mentally, and physically depleted from constantly working in a stressful environment, as one of the lawyers exemplified:

It's stressful because the people that you're dealing with are traumatised half of the time, they're suicidal, you know, they are really messed up and they are getting all these issues with getting visas and so on, that the lawyers representing them get burned-out. I know at least one, possibly two people who left in the last year, who stopped practising altogether and they were competent at what they were doing, and they both walked away from it, because they couldn't cope any longer (Lawyer, #13).

Another lawyer commented that:

The problem you've got is you've got lawyers burning out and leaving, and we do have a problem because we're not seeing new lawyers coming through, really. ... they just can't sustain the stress and the demands in a less remuneration (Lawyer, #20).

¹⁰⁷ According to Maslach and Leiter (2016, p. 103) burnout "is a psychological syndrome emerging as a prolonged response to chronic interpersonal stressors on the job. The three key dimensions of this response are an overwhelming exhaustion, feelings of cynicism and detachment from the job, and a sense of ineffectiveness and lack of accomplishment".

¹⁰⁸ Vicarious Trauma, also known as secondary trauma, "refers to the exposure to the trauma experiences of others". It is the emotional residue of exposure to traumatic stories and experiences of others through work, e.g., witnessing the fear, pain, and terror that others have experienced; or hearing their horrific stories (Molnar et al., 2017, p. 129).

Some of the professionals also explained that the RSU and IPT have had a long history and culture of being “paternalistic” and inflexible institutions (Lawyer, #20), constantly pushing back against civil society’s drive to see safer and better improvements in the RSD system. This has left many professionals working on the claimants’ side frustrated, stressed out and exhausted from doing things the hard way and fighting hard to change an inhospitable system.

Participants’ accounts indicated that burnout was common among the decision-makers at the RSU level. For example, some lawyers explained that decision-makers at RSU gradually become exhausted emotionally, burned out, and cynical after several years in the role. As a lawyer said:

I have seen that so many times over [several] years, that there’s a certain point in the career of an RPO that they become burned-out and they change (Lawyer, #20).

Another lawyer noted that there was a high turnover of RPOs at the RSU, stemming mainly from prolonged stress, exhaustions, and trauma in the workplace.

The turnover of staff at RSU is very high. People don’t stay much It’s a very traumatic exercise (Lawyer, #25).

Turning to the experiences of vicarious trauma, some of the lawyers, decision-makers, therapists, and interpreters said they experienced vicarious trauma in the RSD procedure. As this lawyer explained:

Another thing that I’m seeing is that because of all this lack of safety, the lawyers themselves are suffering major vicarious trauma issues. And it is a real problem. I see clients suffering vicarious trauma and being seriously burnt out and there is no cure for these professionals at all (Lawyer, #20).

Several other professionals recalled experiencing considerable emotional or psychological distress in the asylum interview hearing the claimants’ traumatic stories. This moved the professionals to shed tears in the room with the claimant, or alone during breaks, at the end of the interview in their office, or while driving home, and/or at home. As a psychotherapist talked about her experience with vicarious trauma:

During [the therapeutic session], it just touches my heart deeply and sometimes like I find tears, you know, I cry with them. ... So, sometimes I do get affected, like obviously I really get affected in the room and afterwards. Sometimes I can only be so affected in the room, afterwards, I get affected later on. I quite often used to cry and still do cry in my car on the way home. Had to remember what I heard that has upset me because something has really upset me (Psychotherapist, 10).

Likewise, the former RPO said:

In terms of vicarious trauma, I definitely like, I remember crying in one interview because I was so touched by what the person was telling me, not in a bad way. I was just, you know it was just

a very upsetting account and I do think that you do get vicarious trauma from hearing traumatic accounts (Former RPO, #32).

Some of the professionals reported becoming emotionally or psychologically disturbed for days or weeks after exposure to trauma stories. The professionals had intrusive thoughts about the claimants, worrying about the claimant's safety for several days or weeks after the interview. They also had difficulties forgetting the claimants' experiences for months or years and sometimes had problems sleeping immediately after hearing it. This was the case for one IPT member who said:

I've often been impacted. I think it would be hard not to be. It's about how to cope with that, and it can be very upsetting, at times I've woken up in the night because you are reliving what has happened in the day and someone like me who wants to engage fully in my hearings, so that I can do the best of my job (IPT member, #22).

An interpreter recalled the story of a claimant who had a very traumatic experience fleeing persecution from the same country, and the story was similar to her family's experience of persecution and escape from the same city around the same time. This reopened her trauma and affected her considerably.

I remember once I was interpreting at the RSU and the claimant was from a city in my country, and she was a doctor and she had gone through exactly the same thing as my father had gone through at the same time. We were there in that city living what she was living. And I think that was the only time that I lost it that I had to actually ask for a break and I was sobbing, because it brought back, so many raw memories that it was so difficult. And, yes, when I got home, I was upset and I cried some more and it brought back a lot of memories and for a few days I was upset but and then that's it, that's life, more jobs, different jobs and it just yeah, you're dragged into something new. But we are all human, and for me and I get upset. Sometimes I feel like crying when I'm interpreting for someone, but as soon as I'm out, it just takes some time for me to get over it and I tell myself it's not my story, it's that person's story. So yeah, it just depends on how close it is to home, how close it is to my personal experience (Interpreter, #19).

Some of the professionals also described the trauma-related behaviours they witnessed in the interview room or afterwards, including hysterical behaviour, dissociation, self-harm, and attempted suicide, as frightening and having long-term unforgettable consequences on their health and well-being.

The participants' experiences suggest that burnout and vicarious trauma lurks in the shadows among the professionals working in RSD. Trauma-informed interviewing techniques and other interventions are critically needed to make RSD safer and better. I return to this consideration in the following chapter.

Chapter Summary

The aim of this chapter was to present participants' voices regarding the therapeutic and anti-therapeutic consequences of the processes and practices in the RSD system. The harrowing quotes from claimants and

professionals indicate RSD processes from the border through detention to the RSU and IPT interviews, and the role of lawyers and approach by decision-makers have considerable potential to harm health and well-being. Thus, it can be said NZ RSD procedure has significant shortcomings in ensuring people's health and well-being.

More importantly, participants' accounts demonstrate that hospitable interviewing environments and claimant-suited processes (such as the IPT interview room) have the potential to reduce some anxiety associated with the asylum interview. Use of empathic interviewing and listening skills by decision-makers and lawyers also emerge from participants' voices as having some considerably therapeutic outcome for refugee claimants.

Drawing from the complex nature of the harm reported about the RSD system and the therapeutic interventions provided, I conclude that there is a cycle of psychological harm in RSD. For example, a refugee claimant with or without signs or history of trauma walks into the asylum process, perhaps into a lawyer's office, the RSU or IPT for an asylum interview. The interview with the lawyer or decision-maker, if interrogatory, confrontational, or not trauma-informed, inadvertently triggers an adverse emotional reaction or trauma in the claimant. The claimant displays an emotional breakdown or a trauma response in front of the professional. Even where the interview is not trauma-eliciting, and the claimant does not have an emotional breakdown in front of the professional, the story can include plausible disturbing accounts of trauma-related experiences, which may adversely affect the professional psychologically and emotionally immediately or later.

The professional absorbs the impacts of the emotional breakdown or disturbing trauma-related story and goes home ultimately experiencing some form of vicarious trauma. This causes or worsens stress and burnouts, compounded by compassion fatigue resulting from the tedious nature of the job, aggravated by an oppressive sector on the refugee claimants, their representatives, and the decision-makers. The professionals return to work adopting some trauma-informed interviewing techniques but also working one-step-removed (that is, detached and distant) from the claimants to keep themselves safe.

Notwithstanding that the professionals have adopted this alert position or approach (technically, distancing themselves from claimants' feelings), some of what is already vicarious trauma and burnouts lurk in their background, possibly making them more vulnerable, defensive, cynical, and insensitive over time, resulting in further compassion fatigue and apathy. This places more claimants on the path to emotional breakdowns and traumatisation in the RSD interview by the affected professional.

Hence, the cycle of psychological harm continues, causing for instance high turnovers in RPOs and pushing new and inexperienced lawyers to exit the profession, while leaving a few, some of whom over many years have become emotionally and psychologically insensitive to the contexts of refugee claimants. I argue that this is where aligning the RSD with the therapeutic jurisprudence perspective could play a significant role in breaking this cycle.

Consequently, I propose that strengthening the refugee law and the RSD system from a holistic perspective would require attention and investments in improving health and well-being besides ensuring other essential aspects of the law such as vigorousness. This can be achieved through incorporating therapeutic jurisprudence principles at the different processes and practices identified in this chapter as harmful. In the next chapter, I discuss how research from other social sciences might enlighten and illuminate the RSD into a safer and better system.

CHAPTER 7: Addressing the harm in the RSD: A nested RSD SCP analysis

In the previous three chapters, I have presented the findings regarding my therapeutic jurisprudence assessment of NZ refugee law focusing on procedural fairness aspects, and stakeholders' perspectives regarding:

- i). Access to justice related to the border, detention, legal aid scheme, quality legal representation and the warrant of commitment process.
- ii). The processes and procedures related to claiming asylum at the border through the main application and appeal forms, interview environment, and tenor and duration of the interviews at the RSU and IPT,
- iii). Perception of a culture of disbelief in RSD, and
- iv). Health and well-being impacts of the processes for RSD, and the implications of the role of lawyers and practices of decision-makers in RSD.

The results show that NZ refugee law in principle preserves an extensive body of rights related to procedural fairness, thereby providing an enabling environment for refugee claimants to participate fully in RSD. I conclude that the law in theory thus establishes a favourable atmosphere for therapeutic jurisprudence aspirations in RSD, although it must be recognised as well that some aspects of the law (e.g., governing the detention of refugee claimants) is fundamentally flawed and bears potential to cause harm.

I deduce further that reported therapeutic and claimant-suited processes (from stakeholders' voices, although relatively small) suggest that the RSD institutions and individual professionals have seized some of the potentials and opportunities in the law but not fully, to align practice to therapeutic justice. Some of the remarkable initiatives with therapeutic outcomes include user-friendly application processes, hospitable interviewing environments, and adoption of empathetic, respectful, trauma-informed interviewing and listening skills by some decision-makers and lawyers.

That notwithstanding, the RSD system (and, by implication, potentials for therapeutic jurisprudence) is compromised and thwarted by a number of factors including:

- i). Access to justice and procedural problems throughout,
- ii). A 'rubber-stamping' warrant of commitment law and process,
- iii). A culture of disbelief, also underpinned by professionals working 'one step removed', and
- iv). A dearth of trauma-informed interviewing techniques by decision-makers and lawyers.

These shortcomings have the potential to cause harm of various dimensions to the health and well-being of refugee claimants and professionals.

In this chapter, I unpack these results further, discussing how the therapeutic jurisprudence perspective could enlighten and illuminate the RSD system. I use Neil Thompson's (2003; 2016) social theory for anti-discriminatory and anti-oppressive practice, known as the PCS analysis, as a suitable lens for therapeutically enlightening RSD.

Drawing from and adapting Thomson's PCS analysis (explained below at 7.2), I argue that the RSD is a 'nested system' with intricately linked three circular layers. The outer layer, referred to as the structural or systemic layer, comprises an adverse legal and political landscape for refugee claimants. It surrounds a layer of inhospitable institutional or organisational cultures in the middle (known as the cultural layer). That layer, in turn, envelopes a layer of often adversarial individual approaches of the decision-makers and lawyers (known as the personal layer). Consequently, I propose that given the nested nature of the RSD, a nested response is equally required to make the procedure safer – by implication, therapeutic jurisprudence-friendly. This chapter provides therefore a holistic lens for investigating and providing therapeutic interventions to the problems in RSD.

The chapter is structured into three main parts. The first part discusses the concerns that the RSD procedure is causing undue harm. The second provides an overview of Thompson's PCS analysis and its adaption to this study as the SCP analysis by reversing the focus on these three layers. The third dissects the anti-therapeutic problems in RSD in terms of the SCP levels. It draws from other social sciences to inform RSD therapeutically while also acknowledging possible constraints of the inclinations.

It is worth emphasising at the outset that the discussion which follows is not only therapeutically inclined but is also change, advocacy, and social justice disposed, following the transformative paradigm presented in Chapter Four. As with the social justice and human rights advocacy and change commitments in the transformative approach (Mertens, 1999; Romm, 2015), the therapeutic jurisprudence theory is solution-oriented and acknowledges that the law can and does have unintended health and social consequences – for better and worse. In some regards, like the transformative paradigm, the therapeutic jurisprudence theory seeks to improve the social force and "role of the law as a therapeutic agent" (Wexler & Winick, 1996; Wexler et al., 2016), and "the law's healing potential" (Brookbanks, 2019a; Wexler & Winick, 1996), through drawing from behavioural and social sciences (Brookbanks, 2015a).

In sum, therapeutic jurisprudence seeks to improve the law as a positive social force while ensuring at the same time that the law still serves its intended purpose (Brookbanks, 2015c). I adopt this therapeutic positioning and rely on Thompson's PCS analysis to inform the possibilities of therapeutic jurisprudence in the NZ RSD procedure.

7.1 Part One: Contextualisation of the concerns that the RSD is harmful

In this part, I put the concerns reported in this study that the RSD is detrimental to health and well-being within a broader context. This study shows that the RSD procedure disproportionately impacts the refugee claimants' health and well-being and, to some degree, the professionals. The reports of psychologically and physically harmful nature of the RSD procedure are not entirely surprising, however. Several other NZ studies (both recent and over two decades) that included the experiences of claimants (e.g., Bloom & Udaheureka, 2014; Ferns et al., 2022; Hiew, 2020; Human Rights Commission, 2017; Uprety et al., 1999; Young & Mortensen, 2003), observed (although not to the same breadth and depth seen in this study) that RSD and asylum policy harms health and well-being.

The findings in this study also echo observations in other studies overseas where the RSD procedure has been noted to have severe and often unbearable consequences on the psychological and mental health of refugee claimants (e.g., Hornfeck et al., 2022; Jakobsen et al., 2017; Johnston, 2009; Schock et al., 2015). Others have to some degree, made similar observations in the case of vicarious psychological impacts of the process on the professionals working directly with refugee claimants (e.g., Mishori et al., 2013; Puvimanasinghe et al., 2015; Rønning et al., 2020; Splevins et al., 2010). To the best of my knowledge, no NZ study has explored the experience of vicarious trauma in the entire RSD process to date. Although reported in this study, the NZ's RSD sector would still benefit from further in-depth study on the experience of vicarious trauma in RSD and how this could be addressed.

Besides observations of the impacts of RSD generally, other studies have focused on specific aspects of the RSD procedure. Like the findings in this study, significant and often devastating consequences of detention on the health and well-being of refugee claimants have been recorded in other countries (e.g., Cleveland & Rousseau, 2013; Filges et al., 2015; Gerena, 2022; Silove et al., 2007). Studies in other jurisdictions have also found the asylum interview atmosphere to have considerable adverse effects on the health and well-being of refugee claimants (Gill et al., 2021; Schock et al., 2015), including "elevated levels of mental distress and increased posttraumatic stress symptoms after asylum interviews" (Hornfeck et al., 2022, p. 2). Many of the refugee claimants and representatives in this study identified the asylum interviews (at RSU and IPT) as one of the most systemic and institutional problems with NZ refugee law in practice. The asylum interview is described as Eurocentric and culturally insensitive, protracted, challenging, confrontational, interrogatory, distressing, traumatising, re-traumatising, without sufficient and meaningful therapeutic support in the room and immediately afterwards.

Accordingly, it can be said that the results of this study generally align with other NZ and international studies. However, this study provides new and extensive insights and contexts about our understanding of the experiences with RSD. The experiences at the border, including cultures of disbelief and working one step removed, access to justice perspectives regarding legal aid and legal representation, and procedural

fairness perspectives, are new. For the first time in research, this study, informed by therapeutic jurisprudence and transformative paradigm, draws from other disciplines to address some of the main concerns that NZ refugee law and RSD procedure cause harm to health and well-being.

7.2 Part Two: The PCS Analysis: An overview

This part provides an overview of Thomson's (2003; 2016) PCS analysis for anti-discriminatory and anti-oppressive practice. I discuss with illustrations from the RSD procedure, Thompson's proposed personal 'P', cultural 'C', and structural 'S' attributes (the PCS analysis). I then discuss how I have adapted the PCS analysis to SCP analysis in this study.

Traditional social work primarily involved social justice practitioners providing interventions at individual level. For example, it centres around advocating for and ensuring a disadvantaged individual can secure suitable employment, welfare, standard housing, medical care, education, etc., and can fully exercise their civil rights in society. Thompson (2003; 2016; 2017) challenges this conventional way of social work practice, which is mainly at the individual or personal level.

Through his PCS analysis, he invites social justice and human rights practitioners to move beyond individual interventions to critique and challenge the status quo at the cultural and systemic levels of society that discriminate, oppress, and create entrapping conditions for the disadvantaged and disenfranchised. He calls on the practitioner to examine their personal values, practices, and views about the client population group, whether these, in any way or form, intensify any discrimination and oppression against them. Thompson proposes anti-discrimination and anti-oppression intervening measures at the personal, cultural, and systemic levels of society but cautions that the recommendations are pointers to holistic social practice, not conclusive and exclusive.

He challenges the practitioners to be creative and innovative at tackling discrimination and oppression in their professional practice, workplace culture, and society at large, and to draw helpful insights from other anti-discriminatory and anti-oppressive research and social practice to achieve this. Thus, Thompson proposes the PCS analysis model for challenging and developing anti-discriminatory and anti-oppressive interventions at society's personal, cultural, and structural levels.

The personal 'P' level is defined as relating the practitioner's personal thoughts, attitudes, feelings, and actions. Thompson asserts that how an individual views the world, interacts, and works with another person is shaped to a certain degree by their personal experiences, encompassed by cultural and systemic influences, which can be entrenched in conscious and unconscious discrimination and oppression. Hence, a holistic anti-discriminatory and anti-oppressive social practice requires focusing on addressing the professional's individual role in the process, in addition to addressing issues at organisational culture and structural levels (Thompson, 2003; 2016; 2017).

In this chapter, the RSD's personal 'P' level analysis focuses on the most influential RSD professionals: the decision-makers and lawyers – providing further context on how their roles, power, authority, and approaches affect claimants. It will explore the possibilities for therapeutic inputs in the roles of decision-makers and lawyers and constraints on therapeutic dispositions at this level.

Thompson equally describes the cultural 'C' level attributes as those relating to an institutional or organisation's culture. This includes consensus and shared ways of seeing, thinking, and practising in any given circumstances. He asserts that the cultural level values produce conformity to social norms and reinforce shared meanings. The C level focuses on discriminatory and oppressive organisational cultures and the bearing of the individual and systemic attributes on the organisational culture. The C level surrounds the P level, while the structural level encompasses it; hence, a holistic anti-discrimination and anti-oppression practice encapsulates all three levels (Thompson, 2003; 2016; 2017).

The RSD's culture 'C' level analysis will focus on concerns about adverse institutional RSD culture at the RSU and IPT, that is, organisational culture (and lawyers, to an extent). It will also explore the possibilities of therapeutically transforming the reported negative RSU and IPT institutional culture and discuss constraints to therapeutic inclinations at this level.

Last but not least, Thompson asserts that the structural or systemic 'S' level is concerned with the network of social divisions, policies, and broader socio-political dimensions of power and influence in which oppression and discrimination are institutionalised in society – effectively sewn in. He asserts that the structural level designs the laws and sets the rules and political dialogue, which influence society generally, shaping the personal and cultural levels, and is also influenced by them (Thompson, 2003; 2016; 2017). Nelson and Prilleltensky (2010) suggest that anti-discrimination and anti-oppression transformations targeted at the systemic level have more potential for generating far-reaching implications for disadvantaged populations. Nonetheless, changes at the personal and cultural levels need to accompany systemic change to create a holistic anti-discrimination practice (Thompson, 2003; 2016; 2017).

The RSD's systemic 'S' level analysis will mainly focus on concerns that the law and related policy compromise access to justice and procedural fairness, thereby creating enabling environments for harmful consequences. It will also explore the prospects and constraints for structurally transforming refugee law and related policy, access to justice and procedural fairness in RSD.

In sum, Thompson's PCS analysis is a holistic multi-level model for anti-discriminatory and anti-oppressive practice. The levels are interconnected, with each smaller level nested within the larger levels. By implication, it can be said that the RSD is 'a nested system' with the behaviours of decision-makers, lawyers (and other professionals in the space) nested by RSU and IPT institutional cultures, which in turn is nested by the legal and political landscape in Aotearoa NZ. For example, through the nested RSD system, oppressive practices at the P level may go unnoticed because they are persuasive and justified ways of thinking that are informed by the institutional culture, which in turn is informed by systemic influences. This then allows practice at the individual level to emerge in problematic and anti-therapeutic ways for the

refugee claimants. Therefore, a full therapeutic transformation of the RSD requires change at all three levels.

It is relevant to note that while this study is the first with the transformative paradigm – therapeutic jurisprudence – PCS analysis design regarding the RSD procedure, it is not the first to have used a transformative lens and PCS analysis in the context of asylum population. Using case studies from their social practice over many years with people seeking asylum in Australia, Nipperess and Clark (2016), for example, critique and advance transformative principles for anti-oppressive practice at personal, cultural, and structural levels of the RSD system in Australia.

Figure 5 below (adapted from Thompson) largely represents the adverse results in study regarding the RSD system. It shows that the cultural characteristics surround individual level features, while structural attributes of RSD encompass the cultural elements. These three layers are laden with oppressive and marginalising features, which, as the results in this study indicate, have anti-therapeutic effects on refugee claimants and professionals.

It is worth emphasising that unlike Thompson, who discusses his PCS analysis beginning with the P, then the C, and finally the S, in this study, I have used it in a reverse order starting with the S, then moving to the C, and finally the P. I formulate this approach borrowing from the first two stages of Vols (2019) proposed methodology for therapeutic jurisprudence research (discussed earlier at 3.2.3), complemented by Wexler (2014; 2015) therapeutic jurisprudence methodology. Both authors propose that the task of a therapeutic jurisprudence researcher is first to therapeutically review the legal rules (substantive law) and legal procedures (procedural law). I consider this stage of the therapeutic review of the legal rules and procedures as equivalent to the ‘S’ level in Thompson’s PCS analysis. Hence, I adopt this as the first level analysis. They add that the next step for the researcher is to therapeutically review the courtroom and legal process in practice and the role of the legal actors (such as judges and lawyers). I consider this proposition for a therapeutic review of the courtroom and legal process in practice as equivalent to the ‘C’ level, then the therapeutic evaluation of the legal actors’ role as equivalent to ‘P’ level, thus culminating with the SCP analysis. The rest of this chapter focuses on an exposition of the SCP analysis proposed.

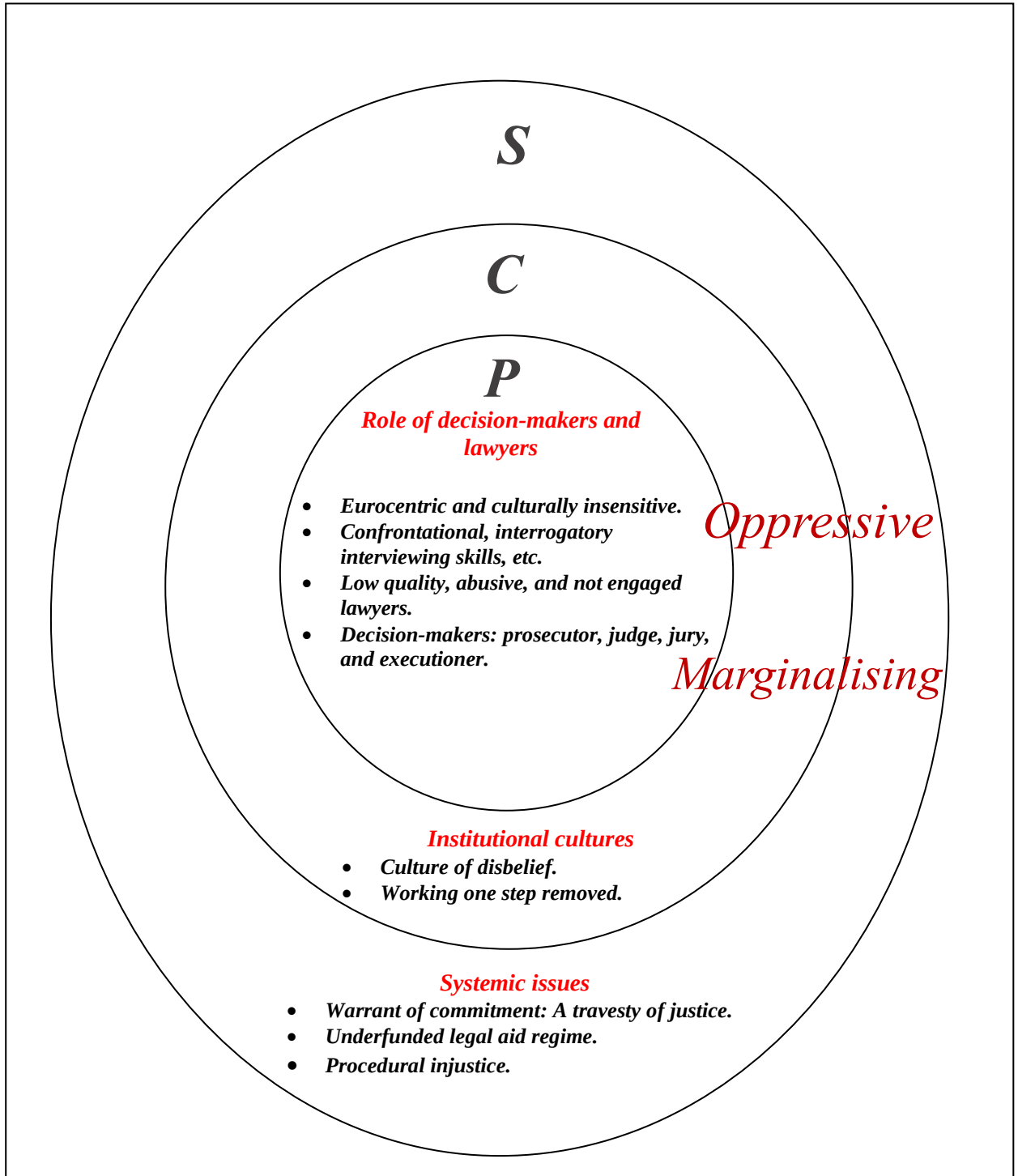
SCP analysis: Nested RSD System

S = Structural

C = Cultural

P = Personal

Figure 5: SCP Analysis



Adapted from Thompson (2016)

7.3 Part Three: The nested RSD system: TJ possibilities and constraints.

In this part, I explore, using the SCP analysis lens, how the components of the RSD which appear to produce adverse consequences on health and well-being can be transformed into a safer procedure for refugee claimants and, by extension, the RSD professionals. I also consider what challenges there might be thinking therapeutically in this space. First, I discuss the structural issues stemming from the legal rules and procedures. The discussion at this stage will centre on access to justice and procedural fairness in relation to the law on detention and other legal processes and policy associated with RSD. It will be designated as the S level analysis. This will be followed by C level analysis, focusing on institutional cultures of disbelief, and working ‘one step removed in RSD. The last section will focus on the P level analysis, discussing the roles, including the power and authority of decision-makers and lawyers, as the most influential officers (or legal actors) in RSD.

7.3.1 The S level analysis: Access to justice and procedural fairness in the RSD regime.

This section focuses on access to justice and procedural fairness in the RSD, as some of the participants deeply discussed these two themes. The access to justice and procedural fairness problems (from participants’ perspectives in Chapter Five) are represented here as structural issues as they originate from aspects of refugee law, related policy, and legal procedures for RSD. Many participants deemed access to justice and procedural fairness problems as having considerable adverse effects on the claimants’ health and well-being. The discussion which follows identifies structural problems with the warrant of commitment law in relation to access to justice and fairness procedurally and proposes reform concerning the law. It equally highlights issues with the legal aid regime and consequences on the quality of counsel in RSD, and argues that more government funding for the legal aid regime is needed to improve representation in RSD. This discussion at this S level also encapsulates systemic problems with the processes at RSU and IPT, and critiques how these might align more with therapeutic jurisprudence principles.

7.3.1.1 The warrant of the commitment law: A travesty of justice for refugee claimants

Drawing from this study’s findings, I argue that the warrant of commitment law (refer to 4.2.1 and 4.3.3) constitutes a systemic failure of justice and a contravention of the Refugee Convention (specifically, current

UNHCR detention guidelines). The warrant of commitment law¹⁰⁹ governs the processes and proceedings relating to restrictions on the movement of refugee claimants in Aotearoa NZ.

Concerns were raised in this study that the warrant of commitment law poses a structural problem in the RSD as it results in detention, discrimination, penalisation, oppression, and marginalisation of the refugee claimants concerned. Although it must be noted, as Casey (2022), that the “vast majority of Convention refugee claimants do not end up in detention: of the approximately 2,500 people who made claims between 2015 – 2020, only around 100 were detained” (p. 3). However, as I will illustrate in the subsequent paragraphs, the law is arbitrarily and fundamentally flawed in many respects, thus posing a structural problem to many refugee claimants who experienced it. The views of the participants in this study (refer to 6.2.2), as well as Amnesty International Aotearoa (2021) and Casey (2022), suggest that refugee claimants under this law appear worse off in any respect in the criminal justice system than persons remanded in custody.

The government uses the warrant of commitment law to detain refugee claimants for various reasons and durations, including not having satisfactory evidence of identity, threat, or risk to security, and in theory, a mass arrival group.¹¹⁰ Many of the participants in this study believe the law is a travesty of justice. Their accounts (presented at 4.2.1, then 4.3.3, and 6.2.2) show considerable structural flaws with how the law is enforced at the border, police cells, and prisons. For example, some of the lawyers interviewed described the District Court’s review of peoples’ detention under the warrant of commitment as a ‘rubber-stamping process’ due to weaknesses in the law that inherently hamstringing the Court from serving as a proper review process.

The law also provides for the long-term detention of refugee claimants in prison facilities and for them to establish their claim, including attending the RPO’s asylum interview, in the custodial environment, including in a prison.¹¹¹ This appears counter-intuitive and counter-productive to the asylum process as the prison wall is impervious to the information needed to establish the claim; meanwhile the onus in law remains on the refugee claimant to prove their claim with evidence.¹¹² These structural problems and others not listed here (but discussed in the previous chapter) show that fundamental procedural flaws compromise the law at each turn of the detention process. It is, therefore, unsurprising that there is substantial scope for the law to cause harm and negatively impact health and well-being.

This study’s findings on the warrant commitment law and process have recently been corroborated in many ways by an independent review of the law commissioned by the government in 2021 (instigated partly by activism from this study). The report by Casey (2022) describes the law in principle and practice and its associated regulations variously as a “flawed framework” (p. 8); “a complex mess” (p. 10); “arbitrary” (p.

¹⁰⁹ Sections 316 to 324A of the Immigration Act 2009.

¹¹⁰ Sections 316, 317A, and 9A of the Immigration Act 2009; see also Casey (2022, p. 2).

¹¹¹ Section 149(3) of the Immigration Act 2009.

¹¹² Sections 133 and 135 of the Immigration Act 2009.

11); “ineffective”; and “out of date” (p. 11) compared to current UNHCR detention guidelines.¹¹³ The report also views the law as sitting at odds in principle and practice with NZ international protection obligations and domestic laws.

Besides the Casey report, an Amnesty International Aotearoa (2021) report (which primarily instigated the government review discussed in the previous paragraph) criticises the warrant of commitment law for failing on many human rights law dimensions: for example, penalising detention as opposed to Article 31(1) of the Refugee Convention, and arbitrary and indefinite detention in criminal justice facilities contrary to 2012 UNHCR detention guidelines.

There is also an extensive body of international literature highlighting far-reaching devastating and long-term effects of incarceration on the health of refugee claimants (e.g., Cleveland & Rousseau, 2013; Coffey et al., 2010; Gerena, 2022; Keller et al., 2003; von Werthern et al., 2018). The law also represents a growing systemic trend and international culture by nation-states to control, criminalise, punish, and deter potential refugee claimants (Banks, 2008; Bessant & Watts, 2022; Bosworth & Turnbull, 2015; Davies, 2013; Hodge, 2015; Majcher, 2021; Welch & Schuster, 2005). Thus, concerns expressed in this study on the warrant of commitment law and process are alarming but not uncommon. It fits within other domestic (refer to 2.1.2 and 2.2.1) and international narratives.

Just how bad the warrant of commitment law is for the refugee claimants can also be gleaned by comparing their situation under this law with other people remanded in custody. Essentially, the warrant of commitment law imprisons refugee claimants just for entering NZ illegally to claim asylum or for claiming asylum after being liable for deportation (Casey, 2022), not because they are offenders or accused of committing a crime. At the same time, Article 31(1) of the Refugee Convention cautions against penalisation of refugee claimants for illegal entry and presence in the country. The law requires only a “balance of probabilities” on the case made for detention for the District Court Judge to make an order to commit a refugee claimant in custody, including into prison,¹¹⁴ despite the possibility of endless renewals. The stipulations in the law for an application by the responsible officer for a warrant of commitment to a District Court do not appear to conform with well-established NZ criminal law principles (Casey, 2022), including requirements for ‘proof beyond reasonable doubt’ (Zuckerman, 1989) and the threshold typically required for remand in custody.¹¹⁵ There is also no maximum term limit in the law for the imprisonment of the refugee claimant,¹¹⁶ and the claimant can only be released under “exceptional circumstances”. In contrast, common criminals and persons remanded in custody usually have a maximum period for loss of their liberty.

¹¹³ UNHCR (2012).

¹¹⁴ Sections 317, 317B(4), and 318 of the Immigration Act 2009

¹¹⁵ Section 8(1)(2) of the Bail Act 2000.

¹¹⁶ Sections 316, 323, and 317E of the Immigration Act 2009

This study shows thus that it is far easier in law for a refugee claimant to be imprisoned for an extended period than for a common criminal. As Casey (2022, p. 3) affirms, detention of refugee claimants

in a Corrections facility is in practice essentially the default position, and can extend for a long time: over the 2015 – 2020 period 60% were detained in prison for more than 3 months, and 12% for over a year. One person was held for over three years.

Majcher (2021) also observes in the EU context that refugee claimants traversing detention proceedings do not usually benefit from the due processes that typically accompany criminal law proceedings for people remanded in custody. Hence, the results observed in this study are not isolated as NZ is amongst many other Western countries which currently treat the refugee claimants under this category worse than accused and criminals (Banks, 2008; Dudley et al., 2021; Majcher, 2021; Silverman & Molnar, 2016; Welch & Schuster, 2005).

With these structural problems, the warrant of commitment law and the process can be said to discriminate, oppress, and marginalise refugee claimants, causing substantial health problems. By any means, they appear worse off in the criminal justice system than the accused or offender.

Against this backdrop, the therapeutic jurisprudence professed by many of its renowned scholars: Brookbanks (2015c), Wexler & Winick (1996), and Perlin (2013), to list but a few, calls for law reform. Wexler (2015; 2018; 2020), for example, proposes a therapeutic design of laws. In this case, a therapeutic design of the law on restrictions on the movements of refugee claimants would ensure they do not experience harmful consequences from the law. It would also ensure that claimants' ability to fully benefit from natural justice principles, such as the hearing, evidence, and bias rules guaranteed in refugee law, is not compromised even under detention conditions.

Consequently, I argue that reform is needed on the restriction of liberty for people seeking asylum in NZ to eliminate the discrimination, oppression, and marginalisation they face under the current law. I subscribe to Casey's (2022) overall view that NZ law on the restrictions on the movements of refugee claimants needs to align with the Refugee Convention, current UNHCR guidelines on detention, and other domestic regulations on the detention of persons in the country.

It is worth noting that following the release of Casey report on 03 May 2022, which included several recommendations for improving the detention of refugee claimants, the government announced it would implement all the proposals. These include a reform of the warrant of commitment law under the Immigration Act 2009 to conform with the Refugee Convention, current UNHCR detention guidelines, and other domestic regulations. Although it remains to be seen what form the changes will take, this gigantic step and turnaround by the government after approximately thirty years of pressure from the asylum community and supporters is worth praising. It can be anticipated that the structural transformation (for example, reform of the border and District Court review of detention of refugee claimants; and discontinuation of detention of claimants in criminal justice facilities) will likely have ripple-enhancing effects at the cultural and personal levels. However, more deliberate and conscious efforts and changes will

still be needed at the cultural and individual levels to eliminate all the adverse practices under the current system. I discuss later the core changes required under the C and P levels, but the section which follows immediately focuses on the legal aid regime as a structural issue and its effects on the quality of counsel in the RSD system.

7.3.1.2 Underfunded legal aid regime and poor-quality representation: The domino effect.

This section focuses on concerns that the legal aid regime is causing significant duress and barriers to access justice and procedural fairness in RSD. The results of this study suggest that the government's legal aid regime contributes considerably to a lack of refugee lawyers, poor quality representation, and sometimes abusive representation, thus resulting in poorer outcomes¹¹⁷ in RSD. In other words, the participants' accounts suggest a domino effect from poorly paid legal aid lawyers. The low rates on legal aid push lawyers (especially new trainees) to quit practising refugee law altogether, leaving roughly a handful of regular or permanent practitioners. The regulars are often overworked and stressed-out (as some of them narrated experiencing emotional exhaustion and/or compassion fatigue). This, in turn, results in poor quality representation in some cases, possibly contributing to poor quality decisions and even failures in some cases.

New Zealand law¹¹⁸ allows representation for refugee claimants from the initial claim at the RSU to the appeal proceedings before the IPT and the senior courts.¹¹⁹ Refugee claimants are also eligible for "income or disposable capital" tested government-funded legal assistance¹²⁰ from the initial claim through all levels of appeals,¹²¹ subject to prospects of success at senior courts level.¹²²

Despite the availability and accessibility of legal aid at the RSU and IPT levels, historically, the legal aid regime in NZ generally is plagued by long-standing structural problems. This includes the government underfunding the system, resulting in low payment for lawyers (Winkelmann, 2022). In turn, this creates oversized adverse effects on the availability of lawyers for all areas of law needing legal aid, including

¹¹⁷ I use the word outcome more broadly to include the decision of the asylum application (whether positive or negative decision), as well as perception of the process (whether fair and just, or not), and the impact of the process on health (both physical and psychological well-being). However, it is worth emphasizing that the word outcome is commonly used in the asylum sector in a narrow sense to refer to the decision only.

¹¹⁸ For example, regulation 5 of Immigration (Refugee and Protection Status Processing) Regulations 2010, allows representation for RSU proceedings, while clause 13, Schedule 2 of Immigration Act 2009, allows representation for IPT proceedings.

¹¹⁹ The senior courts of New Zealand are made up of the High Court, the Court of Appeal, and the Supreme Court, and are governed by the Senior Courts Act 2016.

¹²⁰ Sections 10 of the Legal Services Act 2011.

¹²¹ Section 7(1)(b)(j) to (n) of the Legal Services Act 2011.

¹²² Ibid, at section 14.

RSD, as well as on the quality of counsel and outcomes.¹²³ The legal aid regime has also been described lately in mainstream media and by lawyers and law scholars alike as a “crisis” which is “eroding the right to justice” for people in the lower socioeconomic stratum (e.g., Gledhill, 2021; New Zealand Law Society, 2021). Voices in this study (refer to 4.2.2) indicate it is equally the case for refugee claimants. Similarly, NZ Chief Justice Helen Winkelmann observes that the “system has broken down, leading to increasing numbers of unrepresented before our courts” (Winkelmann, 2022, p. 3). Her Honour added:

New Zealand’s legal aid system is underfunded and some of its legislative and regulatory settings are creating their own barriers to access to the courts and legal representation. These deficiencies are causing the system to fail to meet its objectives of facilitating access to justice and upholding the rule of law. ... The hourly rate for lawyers has not increased since 2008 ... This has led to a reluctance on the part of lawyers to do work on legal aid and it is now often difficult for people to find lawyers prepared to represent them on legal aid (p. 41).

Refugee claimants are caught up in this reality. The lawyers interviewed in this study explained that the situation for refugee claimants is exacerbated by their unique vulnerabilities,¹²⁴ which need extra work and support, but the legal aid scheme does not cover such work. They also explained that low legal aid rates disincentivise lawyers from working on legal aid generally, including in the refugee law field. It leaves some passionate and dedicated refugee lawyers overburdened and overworked as they try to break even by taking in more work than they should. These factors, in turn, contribute to duress and burnout in the lawyers, low-quality representation, and in some rare cases, abusive services and poor outcomes in the RSD system.

It is worth highlighting that this study’s findings on low-quality and abusive representation should not be taken to impugn the competence of all refugee lawyers in NZ who toil on the legal aid system to represent refugee claimants. The study reveals as well that some legal aid lawyers do an excellent job representing refugee claimants. They provide high-quality representation and are generally not overly profit-driven. They go the extra mile to support the claimants even in non-legal issues and on a *pro bono* basis (usually also doing social work-related support for the claimants). The nature of the extra-legal work directly impacts the claimant’s ability to perform better and be safer in the asylum process. For example, they

¹²³ Typically, in the asylum sector, a negative outcome (or result) in the RSD procedure is associated with a negative decision from the asylum claim or appeal, but in this study, I have considered a negative outcome via the lens of therapeutic jurisprudence as including a combination of factors, for example: it could mean a negative decision, accompanied by a perception of an unfair and unjust process, and experience of harmful impacts of the process on the health/well-being. It could also mean a positive decision, compromised by worrying perceptions of an unfair and unjust process, and harmful impacts of the process on the health/well-being. Thus, the RSD process need not only have a positive decision, for instance, for it to be deemed as positive. It needs also be fair and just in theory and practice, and have little, minimal (or well-managed) adverse health/well-being impacts. Consequently, I argue that the focus of therapeutic jurisprudence in the RSD procedure is also on the fairness, justness, and on the minimal (appropriately managed) health/well-being impacts of the refugee law in principle and practice, rather than resting entirely on a negative or positive decision.

¹²⁴ For example, lived experiences of trauma, language and cultural barriers, gender issues, low educational levels, fear of authority, facing systemic discriminatory in asylum policies, and denial of essential services in NZ (Ferns et al., 2022; RANZCP, 2017).

advocate and seek intervention at institutional and systemic levels for law reform, entitlements, and rights to work, welfare, accommodation, health, and others. I will return later under the P level, discussing the lawyer's role in RSD.

Against the background of the concerns around low legal aid rates and its effects on the quality of counsel in the RSD, I subscribe to Chief Justice Winkelmann's (2022, p. 41) assertion that there "is a pressing need for investment in the legal aid system, so that legal aid is available to a wider range of people" in Aotearoa NZ. Appropriate government funding of the regime is indispensable for high-quality representation and for better and safer outcomes in the asylum process.

Studies in Canada, the USA, UK, and EU countries have shown that appropriate legal aid has positive effects on the quality of counsel and the prospects of positive outcomes in the RSD system (e.g., Ardalan, 2015; Bianchini, 2011; Borland, 2015; Burridge & Gill, 2017; Kaldor Centre, 2020; Smith et al., 2021; York, 2013). Early and consistent access to reliable counsel is critical for NZ RSD as it is strictly a legal process from the beginning. A high-quality lawyer has the potential to aim for a favourable decision, safeness, and fairness in the RSD procedure, ensuring it upholds the principles of natural justice underpinning administrative law. Smith and others (2021) suggest in the Canadian context that early access to a reliable and effective counsel could have enormous positive returns, including fewer unnecessary appeals and applications to stay on other grounds, and save the high cost of administering removal orders.

It is relevant to note that while I was writing this discussion chapter, the government coincidentally announced on 19 May 2022 that it would provide an extra 190 million NZ dollars to improve the legal aid system. Following this announcement, the New Zealand Law Society (2022) and another media commentator (Cornish, 2022), reported that the legal aid regime will now enhance access to legal advice and the quality of representation for all persons in NZ. Thus, it can be anticipated that the refugee claimants will benefit from the current improvement in legal aid funding and will likely experience some degree of better outcomes in this respect rather than in the former period with considerable underfunding. However, it cannot be taken for granted that the increased government funding for the legal aid regime alone will eliminate the problem of low-quality or abusive counsel in RSD. In addition to such investments, there is a pressing need for measures to encourage high-quality lawyering in RSD and the detection and sanctioning of inept and abusive lawyers. Further research can explore whether the quality of representation in RSD has improved following the added government investment.

In the following section, I make further inferences from the results of this study and discuss (as another structural issue) broader concerns that refugee claimants are generally treated unfairly and unjustly in or by the RSD procedure (not necessarily only about the procedural fairness presented in the first part of Chapter Four, centring on the hearing, evidence, and bias rules at 4.1).

7.3.1.3 *Unfairness and unjustness in the RSD system*

In this section, I draw inferences from the entire results and provide further contexts to concerns that the nature of some of the core processes for applying for and appealing refugee status are unfair and unjust and have significant adverse implications on the health and well-being of refugee claimants.

As presented in the results across chapters four to six, claimants experience problems of varying proportions from the border, through detention, the RSU, to IPT. These problems create an unfair and unjust environment for them, especially given their circumstances as new and vulnerable migrants in NZ. For example, they endure a border interview without legal representation and in challenging and highly vulnerable circumstances. Those in detention experience inaccessibility to evidence and difficulties accessing lawyers from prison, compounded by health problems emanating from incarceration. The tenor and duration of the RSU and IPT hearing is seen as stifling rather than allowing the claimant's voice to be heard fully in RSD, and there is a perception of increasing erosion of the benefit of doubt principle in refugee law (through the culture of disbelief, presented in Chapter Five).

These systemic problems (compounded by the broader context of the structural oppression of refugee claimants, presented in Chapter Two) instigate many of the refugee claimants, legal and health representatives, and interpreters to perceive decision-makers (especially the RPOs due to RSU's position as part of INZ) as not a neutral and unbiased decision-maker. Some of the participants view decision-makers (RPO and IPT members) as the prosecutor, judge, jury, and executioner in RSD. More on this will be covered in the institutional culture of disbelief under the C level below at 7.3.2.1 and under the role of decision-makers under the P level later at 7.3.3.1. These concerns, amongst others that suggest that the RSD is unfair and unjust, have complex health and well-being implications (presented in the previous chapter) and highlight a dearth of therapeutic jurisprudence in RSD.

Although these inferences about unfairness and unjustness relating to RSD processes and proceedings are concerning in many respects, they are not entirely new. They support trends seen recently in other studies (both locally and internationally) about the processes and proceedings for RSD. The two recent independent reviews commissioned by the government are worth noting on the domestic scene (Casey, 2019; 2022). The Casey reviews highlight, to some considerable degree, substantial problems with fairness relating to RSU's processes and proceedings for making RSD or about the law and operational practice on restriction of movement of refugee claimants in NZ. Other NZ studies (e.g., Amnesty International Aotearoa, 2021; Bloom & Udahehuka, 2014; Sama et al., 2020) and research with refugee claimants in other countries (e.g., Borland, 2015; Campbell, 2020; McDonald & O'Sullivan, 2018) have also pointed out significant concerns with injustices for refugee status claimants.

It is worth mentioning that the NZ government has invested recently in improving the processes for RSD at the RSU by accepting and working on implementing the recommendations of the two reviews by Casey (2019; 2022). The newly developed RSU Practice Note, which is detailed guidelines for refugee claimants and practitioners, spelling out every aspect of the RSD process at RSU, and rights and responsibilities, is

one of the most significant changes introduced. This document provides answers and clarity, resolving some of the anxieties and uncertainties surrounding many unanswered questions that claimants had in the past concerning the asylum process.

While the RSU processes and proceedings for RSD have been traversed recently in the Casey reviews (2019; 2022), the IPT has not had similar scrutiny. With the IPT also engulfed in some of the problems reported in this study with hearings on fairness (although to a lesser magnitude in many respects compared to the RSU), I propose that the IPT will benefit from a review of its processes and proceedings.

Furthermore, a search I conducted on RSU and IPT websites on 30 June 2023 indicates that both RSU and IPT do not currently have (or if they have, this is not published) written guidelines, for instance, on interviewing individuals with psychological vulnerability and mental health conditions, and other vulnerable and sensitive groups such as LGBTQIA+¹²⁵, and others. There is a benefit to perception of fairness and, by implication, therapeutic jurisprudence in having and publishing such guidelines, especially in a field such as RSD where the procedure itself (as the findings in this study effectively suggest) is believed to exacerbate existing or cause new psychological and mental health problems. Moreover, guidelines will be essential to improving fairness and certainty against the backdrop of extensive international research documenting high levels of pre-migration and migration-related adverse mental health conditions and psychological vulnerability amongst this group of migrants (e.g., Blackmore et al., 2020; Jowett et al., 2021; Youngmann et al., 2021), and added layers of vulnerabilities in people who identify as LGBTQIA+ (e.g., Gerena, 2022; Llewellyn, 2020; Selim et al., 2022).

7.3.1.4 Fairness in the RSD system

Despite the problems identified in the preceding section, the refugee law also guarantees certain procedural rights, which positively affect the individual's ability to present their claim and well-being in RSD. The content analysis of the refugee law in Chapter Four reveals that the refugee law guarantees the hearing, evidence, and bias rules; and several procedural rights underpinning these rules. For example, a right to simply declare an intention and submit an asylum claim to RSU, and a *de novo* appeal to the IPT, an independent body from RSU and INZ. A right to submit supporting information and evidence establishing the claim or appeal, and to be interviewed. A right to be represented in the RSD by an independent lawyer and an interpreter funded by legal aid. And, a right to be given a written decision based on the law. It can be argued that the protections in the law of these procedural rights create a favourable atmosphere for fairness and therapeutic jurisprudence in RSD.

In addition, the findings demonstrate that some of the processes and proceedings for RSD are fair and have positive implications on the claim and health and well-being of the claimants. For example, the recently revised RSU application form for refugee and protection status and the Ministry of Justice's recently revised

¹²⁵ Abbreviation for lesbian, gay, bisexual, transgender, queer or questioning, intersex, asexual, and more.

legal aid form are more user-friendly. It can be anticipated that the streamlined claim (or application) form is less burdensome compared to the long former version. The IPT appeal form is also user-friendly and can be completed on a computer. Moreover, the IPT functions as an informal court, with a fairly hospitable atmosphere compared to the RSU. Further, both RSU and IPT hearings are normally inquisitorial in nature. This eliminates stress and anxiety common in adversarial justice systems, for instance, from cross-examination or a lawyer's destructive arguments and intimidation of the opponent. The opportunity for prehearing visits at IPT and the use of triage systems by RSU and IPT in scheduling interviews for vulnerable claimants also have potential to enhance therapeutic outcomes in RSD. Other fair and therapeutic approaches in terms of how some decision-makers interview and work with claimants/appellants are discussed later under the C and P levels. Therapeutic jurisprudence will argue that when the processes and proceedings for making RSD are appropriate and user-friendly to the context of refugee claimants, as in some of these examples, the RSD is likely to have positive impacts on the individuals, even if the result of the asylum claim is negative.

Overall, in terms of the structural issues in RSD, while the government has made recent investments to reform the detention of refugee claimants, the legal aid scheme, and RSU's processes and proceedings for RSD; other outstanding systemic problems remain to be addressed to align the NZ RSD with therapeutic jurisprudence. Fundamentally, these are issues relating to the legal processes and proceedings for RSD from the border through the RSU to the IPT. The adverse nature of the findings in this study indicates that some of the processes and proceedings at the border, RSU and IPT are still very problematic, potentially harmful, and need trauma-informed reform to align them with therapeutic jurisprudence. Access to legal representation for claimants at the border and a more welcoming environment and treatment in the airport will undoubtedly improve a sense of fairness and respectful treatment by the RSU. The procedural fairness issues on detention have been addressed in a section earlier. More about the RSU and IPT regarding therapeutic improvement of the interview will be covered later under the C and P levels.

Despite these transformative recommendations at the S level, it can still be contested that transforming the RSD structurally into a safer and better process for refugee claimants and professionals involved in it will require a significant paradigm shift in NZ. The central question is whether a holistic and therapeutic transformation of the RSD system is even possible against the backdrop of macro-level oppression and discrimination (discussed in Chapter Two). Thompson (2003) cautions that despite the apparently challenging environment, practitioners should not shy away from seeking change simply because the change sought would be challenging to achieve. He argues that to do so would amount to complacency with apparently systemic and historical discriminatory practices and social injustice.

I subscribe to Thompson's view supported by the ontological assumptions underpinning the transformative paradigm (Mertens, 1999; 2009) and contend that it is crucial to challenge the oppressive status quo in RSD, believing that change is still possible at this structural level of the nested system. Putting refugee claimants in safe and active participatory positions in RSD requires the government resolving the outstanding structural problems discussed in the preceding sections. It also requires significant changes in

asylum policy to allow full entitlements and accessibility of working rights, social welfare, accommodation, tailored mental health and government funding for essential services during the asylum process (Ferns et al., 2022).

It is also worth mentioning that even though these changes at the structural level are crucial to improving the RSD, changes at the S level alone do not suffice to resolve the issues arising from a status quo of more than thirty years of oppression and marginalisation of refugee claimants in NZ. Changes at the cultural and personal levels are equally crucial for the RSD to be transformed into a safer and better procedure. I will turn my attention now to the C level and discuss the implications of the results to therapeutic jurisprudence.

7.3.2 The C level analysis: Culture of disbelief and working one step detached from claimants in RSD procedure

The word culture is broad and can mean different things in different contexts, but in this study, I propose it as used by Neil Thompson. He defines culture as a “sociological concept which describes sets of patterns shared across particular groups” (Thompson, 2003, p. 15). The results of this study reveal that the RSU and IPT as statutory institutions interpreting and applying NZ refugee law are embedded in a culture of disbelief and working one step removed (detached or distant) from the refugee claimants/appellants. It could even be said more broadly that the practice of working one step removed from refugee claimants/appellants in some way appears to reinforce RSD professionals’ mistrust of refugee claimants and the need to be distant from them. These adverse institutional cultures have considerable implications on RSD as a fair and safe process. I discuss the cultures in the following sections, including assessing how they can be improved.

7.3.2.1 The culture of disbelief in the RSD system

Many of the participants’ perspectives in this study indicate that credibility assessment in NZ RSD is entrenched in a culture of disbelief. As outlined in Chapter Five, the culture permeates the RSD system, and is felt most in the asylum interview. It revolves around *how* credibility is tested in RSD, and around participants’ concerns that decision-makers view and treat refugee claimants in the interview with high suspicion and mistrust of their claim.

Several accounts from the participants illustrate why they believe NZ RSD is predicated on this culture of disbelieving refugee claimants. These include repeated and fact-centred questioning, decision-makers occasionally taking confrontational and interrogatory stances in the interview, and concerns around disconnections in cultural perspectives around credibility testing. While this finding of a culture of disbelief in RSD is new to NZ academic literature, studies elsewhere have well established that the culture permeates RSDs in many other Western countries (Bohmer & Shuman, 2018; Conlan et al., 2012; Gibson, 2013; Jubany, 2017).

While the reasons advanced by the participants to illustrate that there is a culture of disbelief in RSD require little or no additional context, the concern that the RSD is dominated by White Ivory Tower thinking (that

is, the concerns around disconnections in cultural perspectives around credibility testing) needs further context.

Many of the participants associated the culture of disbelief with the fact that the principles of refugee law and practice centring on credibility testing is essentially from a NZ European lens, whereas the refugee claimants are primarily from non-European backgrounds and have a different conceptualisation of storytelling. Further context can be drawn from academic literature overseas which has shown that there is a disconnect between Eurocentric cultures and other indigenous cultures and that Eurocentric culture is pervasive in disbelieving refugee claimants (Sigona, 2014).¹²⁶ Other studies with refugee claimants (yet overseas) have identified the Eurocentric or dominant Western lens of assessment of asylum application as problematic (Selim et al., 2022) and enabling mistrust of others. I argue that the culture of disbelief inhibits the essence of the claimants' voice and meaningful participation in RSD.

The prospect that there is a culture of disbelief and reported adverse impacts from this culture calls into question whether the current form and tenor of interviewing refugee claimants in the inquisitorial RSD procedure is minimising and avoiding some of the adversities known to adversarial RSD procedure.

Against the overwhelming concerns from participants that the culture of disbelief is ingrained in RSD, it can be inferred that the RSD procedure appears to claimants more as an adversarial process (even though inquisitorial in nature). Due to the confronting manner of some interviewing (reported in Chapter Five), the refugee claimants perceive the decision-maker and their role as the opponent rather than a neutral adjudicators.¹²⁷ The confronting questioning also pushes refugee claimants to view the decision-maker as sitting in an adversarial position or role and as part of a government that does not want refugee claimants in NZ through maintaining discriminatory and oppressive laws, policies, and politics against them (discussed in Chapter Two).

Studies with refugee claimants in other Western countries have indicated likewise that the development of the culture of disbelief in RSD (Bohmer & Shuman, 2018; Conlan et al., 2012; Gibson, 2013; Jubany, 2017; Sigona, 2014) is often linked to an unwelcoming political agenda (Eades, 2009) under the pretence of "overwhelming numbers of bogus claimants" (Heckman, 2003, p. 213). For example, Eades (2009, p. 30) asserts that the culture originates from growing "anti-immigration sentiment and rhetoric" in the West. He

¹²⁶ Sigona asserts in the article that "A widespread and pervasive culture of disbelief underpins the asylum process, with public attitudes to asylum seekers in many Western countries being overwhelmingly negative, tending to see 'them' as liars or 'bogus' claimants." (p. 374).

¹²⁷ It is worth stating that during the interview for this study, I asked the decision-makers - why are they in this job? The most common response I got was that they enjoy helping and love working with people who have come from some of the most vulnerable backgrounds in the world as asylum seekers, to grant them international protection, and through that, hopefully, restore their dignity in NZ, subject to the law. Unfortunately, this study's findings show that because of the perception of the culture of disbelief by refugee claimants as a result of the way decision-makers interview them, this goodwill intention by decision-makers is tainted and leaves the refugee claimants (including those recognised as refugees), generally with a bad or wrong impression of decision-makers (RPOs and to some extent, IPT members), as protecting NZ borders from illegal migrants (border officials), instead of applying the refugee law as neutral or independent adjudicators.

adds that “many people who leave third-world countries and seek asylum in a first-world country” are not perceived in the first place as having genuine asylum claims but are seen first as economic migrants, thus, are not treated as they should be.

Against the context of an RSD lens that largely views and treats people seeking asylum with cynicism, it is not surprising that the procedure has widespread negative implications on outcomes. The mere perception of the existence of this culture is thought by some participants in this study to increase the vulnerability of the claimants in the procedure. The claimants reported not being believed by the decision-makers from the ‘get-go’ and felt pushed to extreme lengths to provide more evidence and extraordinary answers to questions. Inadvertently, they wrongly assumed the only way they would be accepted was to embellish the claim. However, embellishing the claim may also result in a decline. I argue that the operation of the law in this way is confusing and somewhat, ‘a catch-22 situation’.

In addition, the culture of disbelief significantly undermines the refugee claimant’s voice, and perception of the RSD as a fair process. In some severe cases, the culture inhibits and forestalls the provision of international protection in NZ law. A confronting interview triggers emotional and mental crises in some cases, and leaves some claimants with reportedly long-term effects of re-traumatisation. The adverse nature of the decision-maker’s attributes in the interview is covered further under the P level below (refer to 7.3.3.1).

The culture of disbelief can also be perceived as helping to sustain the status quo of deterrent laws and policies against claimants. From the claimants’ and their representatives’ perspectives, it enforces, shapes, and creates some of the adverse RSD legal rules, principles, and procedures. Working one step detached (discussed next) also adds to claimants’ feelings of denigration and rejection in the system. But, these organisational cultures are also created and impacted by broader systemic forces such as asylum laws, policies, regulations, and politicised discourses that are unwelcoming and create moral panics about asylum (Bogen & Marlowe, 2017). Given the interconnectedness of these three levels, it is not surprising that an effective and holistic transformation of the RSD requires changes at all three levels.

Accordingly, I argue that one of the most logical ways to protect health and well-being in the RSD system and improve the experience and perception of RSD as a fair and unbiased process would be to change the adverse cultures, primarily at the institutional and structural levels. RSD practice and research could explore the possibilities of incorporating culturally responsive interviewing practices (e.g., Bishop, 2021; Hass & Abdou, 2019; Smith-Khan, 2017), narrative interviewing approaches (e.g., Guilfoyle, 2014; Madigan, 2019; Marlowe, 2010), cognitive interview techniques (Maras & Bowler, 2010; Memon et al., 2010), and trauma-informed interviewing approaches (e.g., Fisher & Geiselman, 2010; Goldenson et al., 2022; Jones, 2012; Madsen & Holmberg, 2015; UNHCR, 2017; 2020), in credibility assessment.

Further, in line with West-Newman's (2015) postulations on the possibilities of a Māori worldview in this space, RSD practice and future research can explore how some of the guiding principles¹²⁸ from *Te Tiriti o Waitangi*, derived by the Waitangi Tribunal and the courts can uniquely edify and illuminate RSD practice. These explorations might uncover novel ways for the claimant's voice to be heard meaningfully in the RSD with less of a sense of surrounding disbelief and without compromising the law.

The study's results also suggest that the RSU and IPT institutions need to create a more enabling environment and opportunities for frequent knowledge and experience sharing on empathetic interviewing and listening, and trauma-informed strategies. For example, more support for bottom-up sharing amongst decision-makers and genuine regular consultation with all stakeholders on how to improve RSD practice might increase the possibilities for new therapeutic insights to practice and transform unhealthy status quos.

While these changes at the institutional level (and, by extension, the structural level) are crucial, more can equally be done by the professionals at the individual (or personal) level to address the culture of disbelief in their practice. The following suggestion, therefore, can also suit the P level (or even S level), but I have discussed it here because of its apparent relevance to the culture of disbelief in RSD.

The findings of this study indicate that more government funding and resourcing is needed for more self-care and competency improvements for the decision-makers, such as appropriate external supervision. Regular training on how the therapeutic justice lens can illuminate decision-makers' roles might also be beneficial. Maximum term limits for RPOs and rotation to different roles within MBIE to reduce empathy and compassion fatigue. Thompson (2016) asserts that proper self-care and appropriate training can enhance safe reflective practice and increase staff awareness of discriminatory and oppressive practices in the workplace. Self-care and training can make practitioners less prone to empathy and compassion fatigue, burnouts, and vicarious trauma, which when unchecked, can nurture adverse workplace cultures like the culture of disbelief.

Nonetheless, it is relevant to stress that impaired practice can result from workplace stress related to harmful or toxic work culture. Therefore, while practitioners have the responsibility to be self-aware and to self-monitor, no amount of self-care will reduce workplace stress and consequently impaired practice if staff are not supported appropriately from an organisational/institutional perspective (McAuliffe, 2021), and if the work culture that harms people in the first place is not changed.

7.3.2.2 Working one step removed in the RSD system

This study also points to a norm in RSD of decision-makers (and, to some extent, lawyers) working one step, detached, or distant from the refugee claimants. It indicates that one of the ways the decision-makers and lawyers work in RSD, especially in the asylum interview room (including briefings), is by staying or

¹²⁸ For instance, protection and active participation in terms of ensuring claimants are safe and participate meaningfully in the RSD procedure.

appearing reasonably distant emotionally in their sessions with the refugee claimants. Essentially, the decision-maker or lawyer walks into the briefing or asylum interview room, shielding themselves emotionally from any adverse emotions that might flow from the refugee claimant's story, thus, practising what is known as 'controlled empathy'. Control empathy involves the professional constantly monitoring their emotions to not react to the client's testimony or absorbs the client's story without displaying emotion; as opposed to autonomic empathy, which allows the brain to react to the testimony with appropriate emotion, thus, releasing tension (Hodges & Wegner, 1997). One of the main virtues of the working one step removed strategy is that it ensures self-care for the decision-makers and lawyers and preserves a safe and healthy boundary between them and the refugee claimants.

Working one step removed is not without its controversies, however. The findings in this study suggest that when decision-makers and lawyers remain steadfast in the distant position, the refugee claimants experience an increase in the intensity of emotional and mental breakdowns in the asylum interviews (and briefings). The decision-makers and lawyers also appear cold-hearted, as they fail to do the little, including necessary gestures that people as social beings (especially from non-Western backgrounds) still hold dear and naturally expect from human interactions, even in a professional setting — for example, they appear as not showing at all or enough genuine empathy, compassion, respect, generosity, hospitality, kindness, and care for others (referred in Māori context as *manaakitanga*).

These qualities are not generally valued and utilised by the cultural frame of what constitutes RSD practice as they are too often discarded as qualities that reduce rigour and reliability. They are also discarded because the professionals need to work in ways that conform to the existing Western practice consensus. The implications of the necessity to work in ways that conform to the status quo is discussed further under the P level. Several scholars of mental health therapy (e.g., Barnett, 2007; Lazarus, 1994; Williams, 1997) have highlighted and argued that the practice of professionals working in ways that can be helpful to the service user (precisely, practising boundary crossings) is therapeutically beneficial to the service user.

On the other hand, when decision-makers and lawyers engage in humane, intervening, or curative therapeutic measures, they could be stepping down a slippery slope, which will undermine ethical and professional boundaries (also argued by Bennett et al., 1994; Gabbard, 1994, in mental health therapy). It may lead to multiple relationships, multiple professional roles, or conflation of functions (as suggested by, Amaglo, 2022; Herlihy & Corey, 2015; Zur, 2016). In the refugee claimant's eyes, it can distort the line between a decision-maker and a therapist or helper; or between a lawyer and a therapist or helper. It can lead to unrealistic expectations that the decision-maker will approve (or grant) the claim or appeal.

Further, the one step removed posture also assumes it is the refugee claimant's responsibility (and their representative's) to ensure they are in a safe place for the asylum interview. However, many refugee claimants are psychologically vulnerable, and may have little or no insights into their condition or triggers until it unravels in the asylum interview room. The findings of this study suggest that refugee claimants experience unforeseen mental health crises in the asylum interview room, which vicariously affect the

professionals working in this space, regrettably, without any appropriate and timely interventions. Some decision-makers cope by being relatively distant, whilst there are no mental health professionals nearby to provide immediate interventions to the refugee claimants/appellants. The lawyer is usually left to deal with the situation, but lawyers are not mental health professionals (not therapists), thus conflating the role of lawyers in the asylum interview.

This brings to the fore critical questions. Is the practice of working one step removed a safe and healthy measure in the RSD procedure? And, if indeed it is a safe way of self-caring, how can it be justified against the accounts of burnouts and vicarious trauma reported by some of the decision-makers and lawyers in this study? One also wonders whether the strategy is simply the decision-makers and lawyers ignoring or covering a deep wound with a bandage and missing the opportunity to be more active with preventive, or proper intervening and curative measures, as therapeutic jurisprudence would imagine. What might the RSD professionals learn from other social science literature on maintaining healthy boundaries with psychologically vulnerable refugee status applicants?

I argue that the current steadfast one step removed posture is not entirely safe and healthy for RSD if done absolutely without boundary crossings. Gutheil (2008) defines boundary crossings as “minor deviations from traditional psychotherapy [and any other professional practice] that neither harm nor exploit the patient and may even advance the alliance or the therapy.” Although discussed primarily in psychotherapy and other therapeutic literature, boundary crossings have been professed as inalienable to human nature and beneficial to the professional relationship and client’s experience (e.g., Amaglo, 2022; Barnett, 2007; Gutheil, 2005; Lazarus, 1994; Schiff, 2020; Williams, 1997; Zur, 2007). For example, Lazarus (1994) makes an interesting argument in favour of boundary crossings, stating

If I am to summarize my position in one sentence, I would say that one of the worst professional or ethical violations is that of permitting current risk-management principles to take precedence over humane interventions. By all means drive defensively, but try to practice psychotherapy responsibly - with compassion, benevolence, sensitivity, and caring (p. 260).

Schiff (2020) also makes a very compelling case for boundary crossings as necessary for well-being (noting that he does so in the medical field). He asks:

Who are those limits designed to protect? Are [the limits] protecting the patient, or are they protecting us — protecting our time or even protecting our consciences, allowing us to avoid painful questions of inequality or taking needed moral action? (p. 1674).

Quite possibly, boundary crossings can have similar positive effects in RSD. In terms of the procedure for RSD, a boundary crossing can be considered a deviation from classical RSD activity that is non-exploitative, harmless, and possibly supportive of the claimant. Whilst not exclusive, some interventions reported in this study that might constitute boundary crossings in RSD include:

- A modest and genuine greeting, perhaps a handshake from the decision-maker where culturally appropriate before the interview can help to settle some nerves, anxieties, and create a more humane or human-level interaction.
- Checking at the start of the interview whether the individual has had a meal or not, and if not, whether they have a means for one, and ensure they do before and during the interview if needed.
- In the case of psychologically vulnerable claimants, or where the facts before the decision-maker indicate a possibility of re-traumatisation or psychological vulnerability, the decision-maker engages the legal representative and claimant prior to the hearing to arrange appropriate therapeutic intervention before, during, and/or after the interview.
- Decision-maker allows support persons to the interview and gives more breaks.
- Provide a hospitable waiting room or any other appropriate space with basic refreshments (and gift or fast-food vouchers for those who have come to the interview on an empty stomach and have no means to provide for themselves).
- Have sanitary pads for females, as the extreme stress around the interview can lead to embarrassing and unexpected periods.
- RSU and IPT can help with emergency accommodation for a few days during the interview for the homeless claimants who do not also have welfare support.
- Specifically, for the IPT, finish all interviews by 3pm at most to allow those that participate in it: the appellants of course, but also the representatives (e.g., lawyers, interpreters, psychologists) and Tribunal members to seek (if needed) therapeutic debriefing or interventions from a psychologist, mental health counsellor, or related professional before the working day ends.

None of these interventions constitutes classic RSD activity, but as many of the professionals and refugee claimants in particular felt, the effect of any of these activities, in most circumstances, is benign, humane, and improved their experience with RSD.

It is worth highlighting that some of the professionals in this field, including the former RPO, some of the lawyers and IPT members I interviewed, mentioned some of the recommendations above amongst the list of things they have done to ensure claimants are in a good space for the interview. They also acknowledged that these are not conventional practices for their role. However, some the lawyers and decision-makers also noted that they do not engage in some of these helpful activities with claimants because it may lead them down a slippery slope.

It is relevant to note that the use of boundary crossings in professional practice is not without debates and concerns (Younggren & Gottlieb, 2004). The approach has been criticised (in, Bennett et al., 1994; Gabbard, 1994; Gutheil & Gabbard, 1993; Gutheil, 1994, for instance), as potentially starting a slippery slope in the professional relationship and ultimately leading to boundary violations. Boundary violations, on the other hand, “do harm the patient, usually by some form of exploitation, whether it be psychological, sexual, financial, emotional, or based on the patient’s dependency needs” (Gutheil, 2008). However,

appropriate boundary crossings can prevent or help de-escalate the effects of an emotional and mental crisis in RSD, and improve the refugee law experience.

Accordingly, the boundary crossings I am proposing are not for decision-makers and lawyers to be too close to the claimants to bear the brunt of their predicaments in RSD, or for these professionals to pretend to be mental health counsellors. This study suggests that the decision-makers need to be more flexible and proactive in terms of therapeutic initiatives and to do a bit more of the extra, small non-RSD activities that make their processes humane for the refugee claimants. It also suggests that mental health professionals need to be integrated as necessary features for therapeutic intervention in the RSU and IPT asylum interview rooms. Insights from other areas of law indicate mental health professionals are already playing mandated and therapeutic roles in the new trends of justice in NZ,¹²⁹ and are well acclaimed in the therapeutic jurisprudence movement. The findings of this study points that incorporating mental health professionals role in the interview will likely improve safety and well-being and bring a much-needed holistic dimension to the refugee law experience, but beyond this, it could also, in fact, strengthen the refugee law.

It is noteworthy that all the changes I have posited here at the cultural level sound simple in some respects, but because the S, C, and P levels are connected and nested, these are not necessarily easy to achieve. One might ponder whether it is possible to change existing institutional cultures at the RSU and IPT within the broader unfavourable systemic aspects of the refugee law. Is it possible to contemplate a culture change against apparently taken-for-granted oppressive and marginalising practices that appear as lawful administrative and judicial means to achieve the aims of refugee law? Is it also possible to change the organisational cultures against Western institutionalised discriminatory and oppressive practices that filter down unconsciously from broader political discourses and international trends through the bureaucrats, senior management, and longest-serving professionals into official practice? Hamlin (2012) argues and demonstrates through various examples that RSD institutions (for example, in the USA, Canada, and Australia) are not absolutely insulated from political tinkering.¹³⁰ One might also theorise that there is some degree of this tinkering in NZ, in the position of the RSU as a unit of INZ (refer to 4.1.3).

In light of these thoughts, one can tentatively argue that changing the organisational culture in the institutionalised and highly legalised RSD context will be extremely difficult but not impossible. If the change can be made at the organisational/institutional level, then all the professionals would be involved. But, if the organisational/institutional culture is reluctant to change, then confronting the discriminatory and oppressive practices will also require the professionals at individual levels to challenge or work in ways

¹²⁹ For example, in the 'Family Violence Court'; 'the New Beginnings Court' in Auckland (Thom, 2015; Timmins, 2015); the 'Alcohol and Other Drug Treatment Court' (Doolin & Te Aho, 2018; Finau, 2015; Thom & Black, 2018); and the 'family group conferences' for all young offenders (Lutui, 2015; Marshall, 2015).

¹³⁰ Concerns were also raised in this study about the RSU's position as an integral part of INZ and RPOs as employees of INZ and MBIE. The refugee claimants conflated the roles of RPOs with RSD, visa officers, border protection, and compliance officers due to this position. This confusion made it difficult for the refugee claimants to perceive RPOs as totally insulated from adverse political tinkering and influences from INZ and MBIE. This will suggest that there is good cause and benefit to be derived if an independent RSU from INZ and MBIE is created.

that are anti-oppressive and anti-marginalising of refugee claimants. However, working in this way can put the concerned individual RPOs and IPT members at odds with the rest of the team and management in particular and at risk of losing their job, especially as they do not have security of tenure. Against these unanswered questions, this area will undoubtedly benefit from further academic research and exploration by the institutions concerned.

In sum, although the changes I have suggested here at the organisation culture level and those discussed earlier at the S level are highly likely to strengthen the refugee law and improve health and well-being in RSD, they are unlikely to transform RSD holistically. The individual roles of decision-makers and lawyers regarding how they work one-on-one with the refugee claimants are also indispensable to the change needed for RSD.

7.3.3 The P level analysis: Role and power of decision-makers and lawyers in the RSD system

The P level relates to analyses of professional practice at an individual level, focusing on the individual worker's role, values, beliefs, assumptions, and interactions with the service user (Thompson, 2016). Professional practices at the personal level, according to Thompson, "can have a significant bearing on inequality and oppression" of specific population groups in society, and it is "particularly the case when the [professional] concerned is in a position of power" (2003, p. 13) and authority. Thompson also asserts that structural and organisational cultural prejudices and biases can influence personal beliefs, thus informing practice at the individual level.

As has been emphasised earlier, RSD operates in a nested system where structural/systemic and organisational/institutional discrimination, oppression, marginalisation of refugee claimants can affect practice at the individual level. Many refugee claimants flee torture and persecution from government officials who wielded great power and authority yet must now encounter RSD officers (including lawyers) who also have a lot of power and control over their future in NZ, and at the same time are up against uniquely challenging systemic pressures in NZ. Thus, the personal behaviours, attributes, and techniques used by these professionals in determining whether the person is a refugee or not are also critical to the

outcomes in RSD. I discuss the implications of the roles of decision-makers and lawyers in RSD and how these could be improved, starting with the findings that relate to the decision-makers.¹³¹

7.3.3.1 Influences of decision-makers at a personal level

This study asserts that the decision-makers (RPOs and IPT members) wield great power and authority in the RSD procedure. Their roles as the deciding officers and authority in RSD is preserved in law. For example, the RPO is the only authority to determine initial refugee and protection status applications in NZ.¹³² A similar power is bestowed on the IPT members regarding the appeal.¹³³ Those who work in senior courts (routinely, the High Court judges) also play judicial roles in next-level appeals and judicial reviews. However, the lawyers' views in this study indicate that the High Court tends to defer to the reasoning of the IPT. This means that the thoughts, values, feelings, and logic of RPOs and IPT members (whether objective or subjective) are very influential in shaping the law. Their actions and words are also powerful in the eyes of the person who is in a vulnerable position by virtue of the fact they are a refugee claimant and are desperate for an official resolution of their immigration status. Hence, the individual decision-maker's attributes, values, and approaches contribute considerably to outcomes in RSD, including how therapeutic or anti-therapeutic the process is for a refugee claimant.

Primarily, although RSD is routinely an inquisitorial process, most participants in this study, including some decision-makers, described (or acknowledged) that the interview styles of some of the decision-makers are occasionally confrontational and adversarial in nature. They also perceived the role and power of the RPO and IPT member as combining the prosecutor, judge, jury, and executioner. In addition, interviews by these officers are depicted as often not culturally sensitive and trauma-informed, exacerbating health conditions and discontent with the procedure. An interview with negative implications also seems to enforce perceived institutional culture of disbelief.

Thus, it can be said that the dominant attributes observed in the RSD regime and discussed in the preceding sections (under the S and C levels) are formed substantially by many like-minded individuals who sustain the systems and cultures unfavourable to the people seeking asylum. Said differently, at the heart of the

¹³¹ The other professionals in the study included interpreters, psychologists, a psychotherapist, a social worker, and a support worker. These professionals are not the focus of the discussion at this level, as the perspectives in the study indicate that even though they play an essential role in the RSD, the power and authority in the process is mostly in the hands of the decision-makers and the lawyers. Indeed, it is worth admitting that I am biased in this discussion as I have critiqued primarily where the power and considerable influences are. But that is not without cause. I have adhered to one of the tenets of the transformative paradigm ontology, which calls on researchers to seek and critique in the research process the privileges of power which generally defines what is or should be accepted as reality in a given society, if that definition results in an oppression and marginalisation of the less privileged in the same society on the basis of their social status, because their perspectives about the same reality are ignored. However, the RSD procedure would undoubtedly benefit from a study that critiques the roles of the interpreters and other professionals in the RSD.

¹³² Sections 127 and 390 of the Immigration Act 2009. Refugee and protection officers (RPOs) are the decision makers at the Refugee Status Unit (RSU) of Immigration New Zealand (INZ).

¹³³ Sections 217 and 219 of the Immigration Act 2009. The IPT members are the decision-makers for the appeal at the Immigration and Protection Tribunal (IPT).

structural and cultural levels of the RSD procedure are individual professionals in NZ society, for example, decision-makers, whose thoughts, feelings, actions, and words support the current RSD regime. Hence, the personal attributes of an individual decision-maker are indispensable in the grand scheme of things in RSD. A central concern with the regime is that the system (as the accounts of many participants in this study indicate) oppresses and marginalises the people seeking asylum, inadvertently causing psychological and mental health problems of various dimensions and intensity to them.

It would, however, be unfair to put every decision-maker in the same basket, as having individual values which support or enable the cultural values or tendencies that sanction the structural oppression and marginalisation of the refugee claimants. Even though the decision-maker as an individual is part of the whole in terms of the interpretation of refugee law,¹³⁴ the findings in this study reveal that some of them use unique personal approaches (including some boundary crossings) in ways that conform with the law, but also advance therapeutic outcomes for claimants.

The IPT members I interviewed for example, reported using therapeutic skills such as active listening and empathetic listening to minimise or help refugee appellants overcome mental breakdowns and crises in the hearing room. One of the IPT members recounted practising mindfulness and meditation in the hearing room with the appellants to soothe and help them cope with what looked like trauma response and dissociation. This positive conclusion cannot be extended to the RSU as its management declined an invitation for RPOs to participate in the study. It must be said, however, that it is possible that some RPOs also work in this way. Indeed, a former RPO who participated in the study reported using empathetic listening skills in her practice at RSU.

An inevitable question from the preceding is - how can the exemplary practice by the decision-makers who are also therapeutically minded but perceived to be in the minority be made the norm in the RSD procedure? I argue that a paradigm shift is needed in the attributes and practices of the decision-makers in RSD. Fundamentally, the RSD institution could explore how it can promote and support therapeutically mindful adjudication across the board. As indicated earlier under the cultural level analysis, regular training on trauma-informed interviewing and better self-care by the decision-makers are essential for improving the RSD, noting though that any harmful work culture must also be removed for the self-care and training to be effective. For example, in terms of training, Jones (2012, p. 769) proposes and illustrates how decision-makers (and lawyers) can benefit from “gentle use of confrontation” in oral hearings. More strategies that can reduce, at an individual level, the adverse effects observed in the RSD have been discussed at the C level above and new insights will be added in the next section on lawyers.

¹³⁴ A law which itself is problematic as it is predominantly of a Eurocentric culture, and dominated in practice by a culture of disbelief.

7.3.3.2 Influences of refugee lawyers at the personal level

Besides the decision makers, this study portrays lawyers as the other RSD professionals with power that can favourably or unfavourably affect refugee claimants. The lawyer's thoughts, feelings, actions/inactions, and words are equally crucial in the consequences experienced in the RSD procedure. Lawyers also have traditional and statutory authority and power in society, especially in court procedures, as advocates of litigants.¹³⁵ In the eyes of the public (and in this case - refugee claimants, many of whom are new in NZ and experiencing a cultural shock), the lawyer is often the only best person with the statutory power and authority to defend and advocate for them. Hence, how the refugee lawyer as an individual goes about the job with the claimants crucially matters.

This study highlights several concerning and, in some cases, abusive services rendered by some lawyers practicing refugee law. Refugee claimants experience substantial psychological distress as a result (refer to 4.2.3). In addition, many claimants' understanding and experience of the law and justice in their countries of origin is based on the adversarial justice system (wherein the lawyer plays a more active role in the judicial process). In contrast, the RSD procedure in NZ is largely inquisitorial (with lawyers less engaged in their roles). I also note that some participants said some lawyers are too adversarial in the inquisitorial process (refer to 6.3.3).

But on a large scale, claimants reported being defeated morally, distressed, and devastated as they did not see their lawyers actively advocating for them. Some even wrongly perceived their lawyer as another agent of the unwelcoming state. This leads to mistrust and fear of the lawyer and, in severe cases - angry outbursts at the lawyer, and adds to the claimant's overall distrust of the entire RSD system. Such sentiments are not new to this population group, as Gill and colleagues also reported in the case of a study with asylum appeals at the Tribunal level in the UK that "appellants become distrustful of the courtroom when they cannot see it as independent of the state" (Gill et al., 2021, p. 1).

In essence, although lawyers as legal professionals are authoritative, their attributes and role in the primarily inquisitorial RSD procedure do not reflect from the refugee claimant's perspective the authority they should have in a legal process. This adds to the claimant's predicaments as they may have lived as victims of appalling human rights abuses and dignity violations elsewhere in the world and need a more assertive and uplifting advocacy voice on their side in the apparently institutionalised and structurally discriminating and oppressing RSD procedure. Moreover, when the lawyers' role is less engaged or relegated to the background, it increases the perception of the decision-maker in the process as the prosecutor, judge, jury, and executioner.

It is important to note that the findings in this study also highlight that some of the lawyers practice in commendable ways that contribute considerably to making the asylum process safer and better for the

¹³⁵ Lawyers and Conveyancers Act 2006.

refugee claimants. However, more still needs to be done to improve the role and perception of a lawyer in RSD. The findings in this study suggest that the sector would benefit if the few reliable and high-quality lawyers in the sector can be more active as role models in the refugee law society or community, advocating and ensuring a considerable shift and improvement of representation in refugee law to predominantly high-quality and trustworthy practice. Further, as discussed earlier at 7.3.1.2, the increased government funding for the legal aid regime might improve legal representation in the RSD procedure. That is only if it results in enhanced tariffs for the lawyers. This can attract more lawyers to the sector while existing practitioners are likely to be motivated by improved tariffs to do a better job.

The findings also suggest that claimants would benefit from a clear and upfront explanation of the inquisitorial nature of RSD, the lawyer's role in the process, including expectations, and a clear set of actions for recourse if responsibilities and ethical duties are not met. The asylum service community organisations can play a more active role here to help claimants understand the role of lawyers in the RSD context and connect them with trusted counsel.

In addition, the NZ Law Society and Auckland Law School could explore the potential for developing a *pro bono* or legal aid clinic devoted to refugee law to handle extra claims in the event of a shortage of refugee lawyers and mounting asylum applications. The clinic could be paired with a dedicated community organisation for refugee claimants, such as the ASST, to provide wraparound support.

Lastly, the findings indicate as well that law schools generally might benefit from exploring whether training on trauma-informed lawyering might better prepare law students for future practice as lawyers and adjudicators in psychologically challenging areas of law such as refugee law, human rights law, and criminal law. The training can also take the form of routine law school-hosted trauma lawyering seminars or conferences.

It is to be noted that this discussion at the P level proposes, in the main, that a paradigm shift is needed in the RSD workforce. In effect, it suggests that a transformation is required from an atmosphere of what appears to be a minority of decision-makers and lawyers who mainly incorporate empathetic interviewing and listening approaches in their practice to a dominant RSD culture where the refugee law will be edified and strengthened by safe practice.

It can be argued, however, that this is easier said than done as it will require considerable courage from the therapeutically conscious professionals to challenge the status quo and will require government investment to structurally change the adverse forces in the paternalistic institutions as one of the lawyers mentioned in the previous chapter at 6.3.6. In addition, several behavioural science studies have shown that changing old habits is extremely difficult (e.g., Klöckner & Prugsamatz, 2012; Triandis, 1977), but not entirely impossible. Like many other workplaces in society, the RSU and IPT have work cultures, as illustrated under the C level above. The individual practitioners who might decide to practise differently from the organisational/institutional cultures (or, in more severe cases, challenge the status quo), risk appearing over time as outliers and non-conformant and might put their jobs at risk, as Thompson (2016) notes. However,

this need not be the case if the RSU and IPT institutions can explore and create more genuine and meaningful opportunities for constructive feedback from the decision-makers and lawyers on improving safe practice alongside vigorousness and integrity.

Chapter Summary

Overall, this chapter indicates that the RSD system is made up of different interconnected and nested adverse levels against refugee claimants in NZ. Transforming it into a safe and healthy procedure will need change at all levels. The SCP analysis provides a suitable model for illuminating this. It illustrates how the RSD system could be transformed at the structural, cultural, and individual levels. But, the thought of changing RSD at these levels is not without the constraints highlighted in the discussion. It is also worth emphasising that Nelson and Prilleltensky (2010) note (although doing so in community psychology) that a change at one of these levels can have a ripple effect on the others. For instance, a positive refugee law reform can have a ripple effect on the status quo at the RSU and IPT, and consequently on the individual behaviour of decision-makers and lawyers.

That notwithstanding, the focal point remains that a change such as positive law reform not accompanied by a transformation in the organisational/institutional cultures, and not followed by a change in the individual/personal approaches of the decision-makers and lawyers (to trauma-informed interviewing, for instance) will hardly transform RSD effectively and holistically. Thus, change is needed at all three levels for NZ RSD to be safer and better, but all three levels need not change simultaneously. The change can start with the individual attributes of the decision-makers and lawyers. It can also start with a positive change at the cultural or structural levels. However, the other levels must accompany the change initiated by one or two levels to give it a holistic transformation.

In the next chapter focusing on the conclusion, I reemphasise the aim and main finding of this study and discuss the impacts, recommendations, and limitations of the research.

CHAPTER 8: Impacts of the study, limitations, recommendations, and conclusion

I began this study with the impression that NZ RSD procedure is highly stressful and arduous. I first formed this feeling over a decade ago from my personal experience with RSD.¹³⁶ I also got the impression from the accounts of other individuals I have met and supported in the community who struggled to cope with the psychological impacts of the processes for making RSD. They included individuals who had favourable decisions. Informed by this anecdotal evidence, I wondered how the system could be more attuned to minimising and eliminating its harmful consequences. Using the therapeutic jurisprudence theory and transformative research paradigm in this study, I have analysed the refugee law through the lens of procedural fairness and through interviewing stakeholders about RSD system, I investigated practice related to access to justice and processes for RSD.

The findings reveal that NZ refugee law preserves procedural fairness rights in theory, thus providing a conducive atmosphere for therapeutic jurisprudence aspirations in RSD, although the law itself has some alarming flaws. A considerable amount of participants' voices also indicates that the favourable opportunities in the law are not fully being utilised by decision-makers to advance access to justice and safeguard wellness in RSD. Considerable concerns about the processes for RSD centre around practice and experiences at the border, detention, interviewing techniques by decision-makers and the fact that this causes a culture of disbelief, amongst others. Overall, the results mostly present a disturbing picture of the RSD system. Borrowing from Neil Thompson's PCS analysis for anti-discriminative and anti-oppressive practice, I critique NZ RSD as a nested system, discussing how it can be strengthened holistically, but also acknowledging constraints to reforming the different layers that make up the system.

The findings in this study suggest many of the claimants felt overwhelmed by psychological distress from RSD and frustrated by it from participating meaningfully in the procedure. Against the backdrop of the magnitude of harmful impacts of RSD processes and practices reported in the study, I submit that although some psychological distress is to be expected from a strictly legal procedure as the RSD, given the vulnerability that refugee claimants are generally in, the distress should not, however, overpower and undermine their ability to participate meaningfully and fully in the process. Thus, I argue that a constructive reform of the RSD system is critically needed at the systemic, institutional culture, and individual levels to change it from a predominantly condescending and harmful system to one that has safer legal rules and practices for RSD.

¹³⁶ I note however I do not have a full experience of the RSD system, as my journey and experience with RSD terminated at the RSB level (now the RSU). I also did not experience detention as a refugee claimant.

Across the results and discussion chapters, I have highlighted, where applicable, several recommendations drawn from participants' perspectives and from relevant behavioural science research, centring on how the RSD system could be improved from a therapeutic jurisprudence perspective. The recommendations also focus on areas for future research in this space. I summarise and outline these later in this chapter.

In the following section, I discuss the social justice and human rights implications of this research on the asylum and refugee community in NZ. An outline of the limitations also follows later.

8.1 Using the research process to advance social justice and human rights for refugee claimants in NZ.

This study relied on two academic theories which helped to bolster the chances of achieving the impacts desired from the research. The therapeutic jurisprudence theory informed the research questions, including the data analysis, results, and discussion, while the transformative paradigm guided the research design.

The transformative paradigm tasks researchers to work collaboratively with the research participants to challenge oppressive and discriminatory status quo they live in and engage in advancement of social justice and human rights for the community (Mertens, 1999; Romm, 2015). To achieve the impact needed for this research process, I used Sweetman, Badiee, and Creswell's (2010) criteria for transformative research, which advances incorporation of an advocacy lens with the community concerned in the research process to seek improved social justice and human rights.

As with the social justice and human rights action agenda required in the transformative paradigm, the therapeutic jurisprudence theory typically involves improving the law as a positive social force (Brookbanks, 2015c). Wexler and colleagues described the "law as a social force" (Wexler et al., 2016, p.1); and therapeutic jurisprudence as "the study of the role of the law as a therapeutic agent" (Wexler, 1995, p. 220), and "the study of the law's healing potential" (Wexler & Winick, 2008). It can be inferred from the foregoing that the intersection between therapeutic jurisprudence and the transformative paradigm lies fundamentally in seeking to improve the social force of the law.

Consequently, in the following section, I discuss the steps I have taken in the research process with some of the research participants and other stakeholders to seek social justice and human rights for refugee claimants in NZ. This is related to the work we have done to end the detention of refugee claimants in criminal justice facilities specifically and improving refugee claimants' well-being more generally.

8.1.1 Advocacy to end the detention of refugee claimants in criminal justice facilities.

Prompted by the worrying preliminary results from interviews I had conducted between August and October 2019 with some of the formerly detained refugee claimants, I decided to work with the asylum community to advocate for the government to stop using police cells and prisons for detention. I also wore

the hats of a former asylum seeker in the community and the ASST's board chair. The ASST is the leading organisation that provides essential support and accommodation to refugee claimants in NZ. I worked with the general manager of ASST as well as some of the claimants I had interviewed to engage Amnesty International Aotearoa to advocate for law reform and the ending of the government's practice of detaining some people seeking asylum in police cells and prisons.

Contemporaneously, Amnesty International Aotearoa was interested in investigating the experiences of refugee claimants in police cells and prisons whilst their asylum claims were being processed. Amnesty International Aotearoa also had plans for advocacy and protests in NZ for the government to end the harmful practice.

In October 2020, I participated in the Amnesty study. Some of the former detainees I interviewed in this study also did. On 18 May 2021, Amnesty released its findings in a report uncovering deeply concerning experiences of refugee claimants who had been detained in high-security prisons. The report included several recommendations, calling on the government to ensure the law and practice on detention conforms with the Refugee Convention, 2012 UNHCR detention guidelines, and domestic laws (Amnesty International Aotearoa, 2021).

I also participated as a leader of the asylum community at a protest Amnesty International Aotearoa organised by Mount Eden prison on 18 May 2021 to launch this report. Some of the refugee claimants who had been detained in the Mount Eden prison participated in the Amnesty International Aotearoa protest. I spoke at the rally about torture and inhumane treatment people receive in jail; and called on the government to end using police cells and prisons for detention. Attached as 'Appendix S' are pictures taken while I was speaking at the protest by Mount Eden prison.

In June 2021, I travelled from Auckland to Wellington, invited by Amnesty International Aotearoa to join their team in a meeting with the Minister of Immigration, Kris Faafoi, to present the Amnesty International Aotearoa report on detention to the government. Besides a speech by the Executive Director of Amnesty International, Meg de Ronde, I spoke to the Minister of Immigration and his associates,¹³⁷ explaining that our problem as a community is not with why detention is needed in some cases but how it is done. The community prefers restriction of movement and liberty that is safe for refugee claimants, which is best done in community settings rather than in criminal justice facilities. We persuaded the government to reform the detention law and ensure NZ's practice is consistent with current UNHCR guidelines on detention and domestic laws. Attached as 'Appendix T' is a picture I took with the Amnesty International Aotearoa team in front of the Beehive (New Zealand House of Parliament) after the meeting with Ministers.

Following the meeting with the Minister of Immigration, the government commissioned Victoria Casey (QC then, now KC) in July 2021 to independently review the law and practices for the detention of refugee

¹³⁷ Attended also by the Associate Minister of Immigration, Phil Twyford

claimants (Burrell, 2021). On 03 May 2022, the government released the findings of the review by Casey (2022) and accepted all the recommendations of the report (Immigration New Zealand, 2022b).

Achieving this milestone is remarkable for the sector as civil societies have been pushing for over 30 years (as recounted by an Amnesty International Aotearoa activist who was also at the protest at Mt Eden prison on 18 May 2021) for the government to end police and prison detention. The activist was at a similar protest some 30 years ago for the government to end the detention of refugee claimants in prison.

After the release of the independent report, INZ set up regular Working Group Meetings comprised of all the stakeholders in the asylum sector to implement all of Casey's recommendations. I have sat in the meetings with the general manager of ASST for over a year, representing the voices of refugee claimants. We are working with the rest of the concerned civil society groups, leading refugee lawyers, and INZ to implement Casey's recommendations on detention, pending law reform.

Responding to Casey's recommendations for law reform, the government proposed two law changes in 2023. One relating to detention of individual arrivals and the other to mass arrivals. The Bill on individual arrival is yet to be put to NZ public review and submissions but that on mass arrivals was put to the public review and submissions in 2023 and was overwhelmingly rejected by the public for not adopting the Casey recommendations against use of criminal justice facilities for detention. As a result, the Parliament Select Committee in charge also recommended to Parliament that it should not be passed into law. At the time I was submitting this thesis in February 2024, it remains to be seen what form and when the law changes Casey proposed shall be effected by the government.

The following section focuses on advocacy done in this research process for refugee policy change to ensure that people seeking asylum are supported and feel safe in NZ while traversing the asylum process.

8.1.2 Advocacy for better treatment of refugee claimants in NZ

Besides working with the asylum community to end detention in criminal justice facilities, I have also worked with them in several other capacities during this study, advocating for favourable changes in government policies concerning refugee claimants.

I have been involved for over three years with the general manager of ASST and the other stakeholders in the asylum sector in an INZ Working Group for implementing recommendations of another independent review commissioned by the government concerning the processes and proceedings for making refugee and protection status determination at the RSU. Victoria Casey KC also completed the investigation (Casey, 2019) and outlined several recommendations for improving RSU processes and practices. I represent the refugee claimants' voice in this forum. One of the Working Group's main achievements is the development of RSU's maiden Practice Note. The document painstakingly explains all the stages of the RSD procedure at the RSU to claimants, spelling out refugee claimants' rights and responsibilities more clearly, and in ways that had never been done before. Knowledge from this research informed my participation and contributions to this Working group.

Data from this research was also used in CAPRS and ASST's *Safe Start Fair Future report* (Ferns et al., 2022), which focuses on the government's differential and discriminatory treatment of refugee claimants and convention refugees in NZ on the one hand, compared to the quota refugees on the other. The report calls on the government to provide essential services (such as working rights, welfare, and accommodation) for refugee claimants to reduce undue suffering, so they are safe during the RSD procedure. The report was launched at the House of Parliament in May 2022, and I was one of the co-presenters at this ceremony. I also co-presented the report at the Aotearoa Refugee Hui on 21 November 2022, held again at the Parliament, and a symposium on Refugee Journeys organised by the AUT University Migrant and Refugee Research Centre on 30 November 2022. Attached as 'Appendix U' are photos that I was part of at various community engagements concerning the launch and presentation of the *Safe Start Fair Future report*.

In addition, I have advocated with the ASST and succeeded in getting the Ministry of Social Development, as of 01 May 2022, grant entitlements for Student Allowance and Loans to successful refugee claimants and their immediate families in NZ on a temporary visa,¹³⁸ while they wait for permanent residence applications. This means they can start tertiary education sooner without having to wait for one to two years until permanent residence has been approved, and they can receive full government support for tertiary students in the same way as NZ citizens.

I have also attended and presented data from this research at seminars in NZ in 2019; an academic conference at the University of Melbourne, Australia, in 2019; and a conference on Alternatives to Detention jointly organised by the Office of the United Nations High Commissioner for Human Rights, and the International Detention Coalition in Bangkok, Thailand in 2022.

Informed by data from this research, I wrote an opinion editorial in *Newsroom* (Sama, 2021) and co-authored another in the *Guardian* with my supervisor (Marlowe & Sama, 2021) following the LynnMall terror attack on 3 September 2021 by a former refugee claimant who was also psychologically unstable. The articles call on the government to provide adequate and timely support to refugee claimants during their asylum process to ensure those who might be vulnerable are not estranged further to the fringes of society.

8.2 Limitations of the study

As with any piece of research, several factors restricted both the research process and the findings in this study. The word limit also restricted the scope of the issues I could cover. It is impossible for a thesis of this nature to capture everything about a complex procedure as the RSD system. These results focus only on what I observed as the key themes from the review of the refugee law (from arguably a limited or carved out perspective) and participants' experiences of the processes and practices constituting NZ RSD. It is

¹³⁸ Regulation 12(vii)(viii) of Student Allowances Regulations 1998.

possible that some of the aspects and principles of the law not covered, and themes not featured in the results are equally as crucial as those discussed here.

I have acknowledged some of the limitations of the research under trustworthiness (refer to 3.5). I have also recognised a significant bias in the results presentation and discussion at Footnote 131 concerning my failure not to discuss the role and impact of any power dynamics of the other stakeholders such as interpreters, psychologists, social worker in the asylum hearing setting. This area is open for further research.

Given that I used snowball sampling to some degree in the recruitment of the participants, the possibility that the sample in this study might have been mainly persons with similar experiences of RSD cannot be eliminated entirely. Nevertheless, I made a deliberate and targeted effort to recruit participants from all the different stakeholder categories in RSD, including claimants who had been approved at RSU or IPT and those declined by both institutions. Thus, these findings may well be a reflection of most stakeholders' experiences and perspectives about NZ RSD.

I have had to remind myself time and again during the research process of my assumptions and biases from my personal experience of RSD and of my motivation for this research. Undoubtedly, my experience of RSD has had an effect on me and coloured to some degree how I have collected the data, analysed it, and presented the findings. For instance, it could be argued that the advocacy lens used, which is essential to transformative research (Sweetman et al., 2010), may suggest that I came into the study with an overt critical and political agenda from the outset; hence the depth of the negative results is not unexpected. This criticism is not without merit. Even so, the transformative paradigm and critical methodology firmly hold that researchers of this school are typically persons from the oppressed community, and they should not shy from having a political agenda, challenging institutionalised injustices and oppression (Fontana, 2004; Mertens, 2009; Mertens & Wilson, 2012). Further, it can also be said that any research position (even one that claims the supposed mantles of neutrality) are inherently political.

Despite my explicit political agenda, I ensured the research methods were rigorous, and regular PhD supervision process ensured that the findings in this study emerged from the data through in-depth analysis and reflexive process and a commitment to reflecting participant voices to support my assertions. Inferences I have made in the study are also backed by participants' quotes or other forms of data and analysis.

8.3 Outline of recommendations to improve the RSD system to a safer process.

The results and discussion chapters are weaved with several recommendations for improving RSD to a safer procedure, drawing from participants' experiences and behavioural science research. Given the word limits, it is not possible to relist and discuss all the recommendations here. Therefore, I present in a list and summary form those I believe are key to improving and transforming the current state of RSD.

The border process, INZ:

- i. Provide relevant information and the RSU booklet “Claiming Refugee and Protection Status in New Zealand” to all persons who have indicated an intent to seek asylum in the country.
- ii. Assure the individual that they are now in a safe place and country pending the determination and outcome of their refugee status.
- iii. Allow access to legal representation (at least by phone) if the individual is interviewed about their claim at the airport.
- iv. If an interpreter is used, inform the individual that the interpreter is independent of INZ but is working for New Zealand government, not the government of the country whose language they speak.
- v. Ensure asylum processes and interviews in the airport are conducted by RPOs only, so as to conform with NZ statute law.
- vi. In addition to implementing Casey’s (2022, p. 32) recommendation relating to the provision of “access to the internet and free access to a telephone in the appropriate time zones” for claimants in custody in the airport, provide meals and ensure the custody room has basic refreshments and sanitary provisions for females.

Detention:

- i. This study endorses all the Amnesty International Aotearoa (2021) and Casey (2022) recommendations for improving the detention of refugee claimants in NZ.

The forms: claim form, appeal form, and legal aid application form:

- i. These forms (if not already are), should be more user-friendly and fillable electronically.

Hospitable environment: the RSU and IPT institutions:

- i. The hearing environment and atmosphere should be user-friendly and conducive: appropriately spacious and well-ventilated.
- ii. The waiting rooms should be hospitable, having basic refreshments and sanitary provisions for females.

Interview (oral hearing), decision-makers:

- i. Explain and check at the beginning of the interview that the claimant understands the inquisitorial or adversarial nature of the hearing (whichever is used) and the role of the decision-maker in the interview. The decision-maker should also give room for the lawyer to explain their role to the claimant. This can also be done in the pre-hearing arrangements.
- ii. Use gentle confrontation skills, genuine curiosity, empathetic listening skills, de-escalating interviewing techniques, and other suitable trauma-informed interviewing techniques.

- iii. Be calm and not come across as intimidating, threatening, harassing, or having a predetermined mind.
- iv. Ask clear, short, and concise questions in a calm manner, allow ample time for the answer, and should avoid unnecessary repetition of questions.
- v. Follow advice from medical or health professionals in setting up the interview for psychologically vulnerable individuals.
- vi. Work more collaboratively with, and where possible, include psychologists in the hearing room for appropriate and timely intervention in cases of psychological vulnerability.
- vii. Front-load decisions and in the case of IPT, finish all interviews by 3pm at most to allow all involved in the process to seek therapeutic debriefing or interventions from a psychologist or related professionals before the working day ends (if required).
- viii. Treat claimants with respect and dignity, even if they are to be declined.
- ix. Practice safe and appropriate boundary crossings (refer to 7.3.2.2 for a list of suitable examples within the RSD context).

The RSU and IPT institutions:

- i. Provide regular training in interviewing skills such as culturally responsive interviewing practices, cognitive interviewing techniques, narrative interviewing techniques, and trauma-informed interviewing approaches in relation to credibility assessment.
- ii. Recruit more culturally diverse decision-making workforce, including professionals from refugee backgrounds.
- iii. Provide more professional supervision opportunities for decision-makers to help with managing vicarious trauma, and other work-related stress.
- iv. Provide more enabling environment and opportunities for frequent knowledge and experience sharing (encouraging bottom-up sharing) within the team on trauma-informed and other therapeutic strategies.
- v. Increase possibilities for new therapeutic insights to practice and transformation of harmful workplace practices through having genuine regular consultations with stakeholders on how to improve RSD processes and practices from a therapeutic justice perspective.
- vi. Incorporate psychologists in the hearing process through drawing relevant insights from the therapeutic roles of psychologists in other problem-solving courts, such as the AODT.
- vii. Develop guidelines for interviewing psychologically vulnerable and mental health claimants, as well as guidelines for interviewing LGBTQIA+ claimants (if not available yet).
- viii. Fully guarantee procedural fairness and access to justice.
- ix. Recruit lawyers for RPOs.
- x. Have maximum term limits for RPOs and then rotate to different roles within INZ and MBIE to reduce empathy and compassion fatigue, burnouts, and high turnovers of RPOs.

Lawyers:

- i. Clearly explain the inquisitorial nature of RSD, the role of a lawyer in the process, including expectations, and a clear set of actions for recourse if responsibilities and ethical duties are not met.
- ii. Be calm, respectful, and a good advocate in the inquisitorial system.
- iii. Use gentle confrontation skills, genuine curiosity, empathetic listening skills, de-escalating interviewing techniques, and other suitable trauma-informed interviewing techniques.
- iv. Treat claimants respectfully, communicating and updating them regularly.
- v. Use safe and appropriate boundary crossings (refer to 7.3.2.2 for discussion on boundary crossings).

Strategies for coping with burnouts, vicarious trauma, etc:

- i. Not working on weekends.
- ii. Not working late.
- iii. Not taking work home.
- iv. Not checking emails out of work time.
- v. Make a conscious effort to leave the client's traumatic experience at work by engaging in professional supervision after experiencing a traumatic incident.
- vi. Diversify work (lawyers).
- vii. Indulge in proper self-care and regular professional supervision.

Psychological reports:

- i. Besides suggesting when the hearing might be appropriate in the case of a claimant who is vulnerable psychologically, it might help to indicate how the hearing itself should be structured to be safe for the individual.

The government:

- i. Ensure the RSU and IPT are better resourced.
- ii. Appraise RSU in view of sitting it outside INZ.
- iii. Provide permanent tenure to IPT members.
- iv. Provide professional note-takers and transcribers to minimise and eliminate occupational overuse syndrome in decision-makers.
- v. Ensure therapeutic design of refugee law and therapeutic application of refugee law.
- vi. Law schools might benefit from exploring how a course on trauma-informed lawyering might better prepare law students for practice in psychologically challenging areas of law such as refugee law, human rights law, criminal law, etc.

8.4 Recommendations for further study

A number of issues and gaps emerged from this study fitting for scholarly investigations. However, against the words and time constraints, I could not examine all of them, especially considering the extensive nature of a controversial and polarising legislative scheme as refugee law (as presented in Chapter Two).

The sector would therefore benefit from further critical research on the processes and proceedings for RSD at IPT; and in same vein, of the refugee and protection regulations, standard operating procedures, and guidelines at the RSU and IPT.

Further critical analysis of the refugee and protection legislation and case law from a human rights and therapeutic jurisprudence perspective is needed. An exploration of access to justice for refugee claimants at the senior courts level would also be beneficial to the sector.

There is also value in future research investigating how counselling and clinical psychologists can work effectively and efficiently in RSD, specifically with the lawyers and decision-makers to advance the interest of the law but also protect claimants from psychological harm.

Lastly, even though I have proposed some trauma-informed approaches and techniques for the asylum interview which have the potential to improve the RSD into a safer procedure for both claimants and practitioners, I have not discussed the depths and breadths of lawyering or judging using the suggested approaches and techniques. Just what might the lawyers and judges say or do in the interview room with a psychologically vulnerable claimant using any of the posited interviewing techniques and approaches to ensure the procedure is safer but also ensuring the decision-making process is sufficiently robust to protect the integrity of the RSD remains to be explored some more. Further academic exposition on this aspect will have the potential not only to transform current harmful RSD interviewing practices but also impart safer practices in other areas of human rights and criminal law, for instance.

8.5 Conclusion

This research establishes that NZ refugee law in theory guarantees procedural fairness rights, thereby creating a favourable atmosphere for therapeutic jurisprudence aspirations in RSD, even though some components of the theoretical law bear significant potential to cause harm. Despite the TJ-friendly atmosphere in the law, associated analysis related to stakeholders' experiences with practice in RSD depicts a concerning picture. Participants' accounts suggest that the processes and proceedings for RSD are challenging and arduous, predicated on a culture of disbelief besides other problems, and bear considerably harmful effects on health and well-being. Taken altogether, these findings amplify broader concerns in existing literature that people seeking asylum are oppressed and marginalised systemically in Aotearoa NZ.

Informed by Neil Thompson anti-oppressive and anti-discriminatory work, I analyse NZ RSD as a nested system, comprising oppressive and marginalising attributes at various levels. In response, I discuss how the system can be more thorough and safer by eliminating the layered oppressive qualities individually and

collectively. This, I argue entails a holistic approach to improving RSD: through law reform, full guarantee of procedural fairness and access to justice, creation of more claimant-suited processes at RSU and IPT, and incorporation of more trauma-informed practices by decision-makers and lawyers.

Whilst the transformative approach enabled collaboration with the asylum community and interested civil societies in advocacy for the government to address alarming systemic problems reported by the participants in this study, and this yielded some remarkable positive outcomes; there is still considerable scope for more transformative research in this field, as there are still critical changes needed in the sector to fully align the RSD with therapeutic jurisprudence principles.

Appendix A: Ethics Approval by UAHPEC

Office of the Vice-Chancellor
Office of Research Strategy and Integrity (ORSI)



The University of Auckland
Private Bag 92019
Auckland, New Zealand

Level 11, 49 Symonds Street
Telephone: 64 9 373 7599
Extension: 83711
humanethics@auckland.ac.nz

UNIVERSITY OF AUCKLAND HUMAN PARTICIPANTS ETHICS COMMITTEE (UAHPEC)

09-Jul-2019

MEMORANDUM TO:

Assoc Prof Jay Marlowe
Counselling, HumServ & SocWrk

Re: Application for Ethics Approval (Our Ref. 023296): Approved

The Committee considered the application for ethics approval for your study entitled **Incorporating therapeutic jurisprudence in New Zealand's refugee status determination process: Possibilities and constraints..**

We are pleased to inform you that ethics approval has been granted for a period of three years.

The expiry date for this approval is 09-Jul-2022.

Completion of the project: In order that up-to-date records are maintained, you must notify the Committee once your project is completed.

Amendments to the project: Should you need to make any changes to the project, please complete an Amendment Request form in InfoEd, giving full details along with revised documentation. If the project changes significantly, you are required to submit a new application to UAHPEC for approval.

Funded projects: If you received funding for this project, please provide this approval letter to your local Faculty Research Project Coordinator (RPC) or Research Project Manager (RPM) so that the approval can be notified via a Service Request to the Research Operations Centre (ROC) for activation of the grant.

The Chair and the members of UAHPEC would be happy to discuss general matters relating to ethics approvals. If you wish to do so, please contact the Ethics Administrators at humanethics@auckland.ac.nz in the first instance.

Additional information:

1. Do not forget to complete the 'approval wording' on the PISs, CFs and/or advertisements and emails, giving the dates of approval and the reference number. This needs to be completed before you use the documents or send them out to your participants.

Please quote Protocol number **023296** on all communication with the UAHPEC regarding this application.

(This is a computer generated letter. No signature required.)

UAHPEC Administrators
University of Auckland Human Participants Ethics Committee

c.c. Head of Department / School, Counselling, HumServ & SocWrk
Miss Anna Hood
Mr Bernard Nde

Appendix B: Poster



POSTER

Research Participants Needed



- Are you an asylum seeker or a former asylum seeker in New Zealand?
or
- Are you a professional who is working with or has worked with asylum seekers in New Zealand?

My name is Bernard Sama. I am a former asylum seeker and am conducting a research study about how to better protect asylum seekers' and the professionals' emotional and psychological wellbeing during the process of refugee status determination in Aotearoa New Zealand.

You can help in this research by telling me in an interview (of about an hour) how the process of refugee status determination in New Zealand is working and how it could be improved to ensure people's wellbeing.

I am looking to talk with people who can tell me how the process can be conducted in a better and safer way for asylum seekers and professionals.

You would be welcome to participate or contact me with your potential interest if you are:

- an asylum seeker or a former asylum seeker in New Zealand.
- A professional such as a lawyer, interpreter, social worker, psychologist, RPO or IPT member who has current or past experience working with asylum seekers.

To thank you for participating, you will receive a \$30 PaknSave gift voucher.

For more information on how you can participate in the research please contact Bernard Sama at:

Telephone (call, text or WhatsApp): 027 3344675

Email: bnde001@aucklanduni.ac.nz

APPROVED BY THE UNIVERSITY OF AUCKLAND HUMAN PARTICIPANTS ETHICS COMMITTEE ON 09-JUL-2019 FOR THREE YEARS, REFERENCE: 023296



Appendix C: PIS for Refugee Claimants



**EDUCATION AND
SOCIAL WORK**
SCHOOL OF COUNSELLING,
HUMAN SERVICES AND SOCIAL WORK

Participant Information Sheet [Interviews: Asylum Seekers]

Date:

Project title: Incorporating therapeutic jurisprudence in New Zealand's refugee status determination process: Possibilities and constraints.

Name of Student Researcher: Bernard Sama

Names of Supervisors: Jay Marlowe (Associate Professor) and Anna Hood (PhD)

Researcher introduction

My name is Bernard Sama and I am a PhD student at the University of Auckland. I have a background in law, mental health, and am a former asylum seeker. My study is being supervised by Associate Professor Jay Marlowe and Dr Anna Hood at the University of Auckland.

What is the study about?

I am conducting a study about how to better protect asylum seekers' emotional and psychological wellbeing during the refugee status determination process in New Zealand. As a former asylum seeker and having experienced some of the stressful moments in the process, I am very interested to find ways of resolving these challenges. I believe your experience and perspective can help us understand how to better protect the asylum seekers' emotional and psychological wellbeing during the refugee status determination process in Aotearoa New Zealand.

In this research, I will conduct interviews with asylum seekers and the professionals who work in refugee status determination process to understand how it is working and how it could be improved to ensure people's wellbeing.

What would be involved?

I am inviting you to participate in an interview that will help us better understand how the process of refugee status determination in New Zealand can be achieved in a better and safer way. Your experience and knowledge will help me understand how the law, policy, and practice can resolve or minimise some of the problems being experienced in the refugee status determination process.

The interview should take about 60 to 90 minutes. It will be facilitated by me – Bernard Sama. A list of the sorts of questions that will be covered in the interview include:

- How did you find completing the application form for refugee status?
- What do you think could have made the completing of the form less stressful for you?
- How was the refugee status interview to you? Do you think your voice was heard in the interview?
- How was your lawyer to you? Was he or she helpful? Are there any ways you think he or she could have been more helpful to you?
- When you have received communication about your application (e.g. the interview report, or the decision, etc) did you fully understand it?
- Were there any things that made the process less stressful for you at the Refugee Status Branch or the Immigration and Protection Tribunal?
- What do you think could make the process fair and just for asylum seekers?
- What do you think could help sustain people's wellbeing in the process?
- What do you think could make the process better and safer?

The interview would be conducted at a private location that is suitable for you or at any of the campuses of the University of Auckland. It will be conducted in English. I will record the interview with a digital voice recorder though you can request to have the recorder turned off at any time. Only my supervisors and I will have access to the recording. I will manually transcribe the recording. You will be given a \$30 voucher for groceries to compensate and thank you for your time.

The Refugee Status Branch, Immigration and Protection Tribunal, and your lawyer will not know that you have participated in this study and will not know what you have specifically said in the interview.

Will anyone know what you have said?

Your data will be securely stored and backed up on a password protected computer at the University of Auckland and accessible only to myself and my supervisors. After transcription has been completed, checked and confirmed by you, the audio recording will be permanently deleted from the digital voice recorder and the computer. I will not identify you in the notes and transcripts. Your consent form will be kept in a separate location from the research data in a locked cabinet in my supervisor's office and will be destroyed permanently after six years. The data from the study will be used for my doctoral thesis, journal articles, and conference presentations but I will not use any information that might identify you personally in the publications or presentations. However, absolute confidentiality cannot be guaranteed, and it is possible that someone in your close community where you live might know that you participated in the study. But they will not know what you personally said in the study.

Will you hear about the results of the study?

You can inform me if you would like the summary of findings of the study sent to you. I will make a public presentation in the refugee community generally about the study once it has been completed. I will inform you and will make announcements in your community about this presentation. The information from your interview may also be published in a report or journal articles. As noted above, I will take all reasonable measures to maintain confidentiality, and will not reveal your identity in any publications/presentations arising from this research.

Your rights and choice:

It is your right and choice to take part or not to take part in this research. If you do participate, you also have every right to leave the interview at any time or decline to answer any questions without providing a reason. You will still receive your \$30 voucher if this happens.

If anything I talk about during the interview makes you feel upset or distressed, the Refugee As Survivors New Zealand has agreed to provide additional support and/or refer you to other relevant support services if necessary. This information will be provided when I conduct the interview. You would not need to identify that you were a participant of this study to receive this support.

You will be sent an audio recording of the interview and a written transcript (in English). You will have up to three weeks to make any changes or withdraw your interview from the study once it is sent to you. After the three weeks period, the information cannot be removed from the study.

Research team contact details:

If you have any questions or want to know more about the study, please feel free to contact me or my supervisors:

Student Researcher	Main Supervisor	Secondary Supervisor	Head of School
Bernard Sama	Associate Professor Jay Marlowe	Dr. Anna Hood	Dr. Allen Bartley
Email: bnde001@aucklanduni.ac.nz	Email: jm.marlowe@auckland.ac.nz	Email: a.hood@auckland.ac.nz	Email: a.bartley@auckland.ac.nz
Phone: 027 3344675	Phone: 09 373 7999 ext. 48248	Phone: 09 923 2242	Phone: 09 373 7999 ext. 48140
School of Counselling, Human Services, and Social Work	School of Counselling, Human Services, and Social Work	Auckland Law School	School of Counselling, Human Services, and Social Work

Thank you for taking the time to read this Participant Information Sheet.

For any queries regarding ethical concerns you may contact the Chair, University of Auckland Human Participants Ethics Committee, Office of Research Strategy and Integrity, University of Auckland, Private Bag 92019, Auckland 1142. Telephone 09 373-7599 ext. 83711. Email: humanethics@auckland.ac.nz

APPROVED BY THE UNIVERSITY OF AUCKLAND HUMAN PARTICIPANTS ETHICS COMMITTEE ON 09-JUL-2019 FOR THREE YEARS, REFERENCE: 023296

Appendix D: CF for Refugee Claimants



**EDUCATION AND
SOCIAL WORK**
SCHOOL OF COUNSELLING,
HUMAN SERVICES AND SOCIAL WORK

Consent Form [Interviews: Asylum Seekers]

THIS FORM WILL BE STORED SAFELY FOR SIX YEARS

Project title: Incorporating therapeutic jurisprudence in New Zealand's refugee status determination process: Possibilities and constraints.

Name of Student Researcher: Bernard Sama

Names of Supervisors: Jay Marlowe (Associate Professor) and Anna Hood (PhD)

If you agree to participate in the research project as described in the Participant Information Sheet, please complete this form. It will be discussed with you again by Bernard Sama before the interview begins. This consent form will be safely stored and locked at the University of Auckland for six years.

I (write your name here)

Hereby consent to participate as requested in the research project mentioned above and have read the information provided in the Participant Information Sheet. I have had this study explained to me and I acknowledged the following:

- I understand that it is my choice to participate or not to participate in this study.
- I know who to speak to if I am concerned or would like to ask questions about this study.
- Although absolute confidentiality cannot be guaranteed, I understand that I will not be identified by name and that other identifying information will be changed in any presentations or publications.
- I have had enough time to think about whether I want to take part in this study or not.
- I acknowledge that the interview will be audio recorded and transcribed.
- I understand that I can choose not to answer any questions and it is my right to leave the interview at any time.
- I also understand that I can receive a copy of my transcript and audio recording and that I have three weeks to make any changes to it or to withdraw my participation and data from the study.
- I understand that the audio recordings will be deleted permanently from the digital voice recorder and from the computer after transcription is completed.
- I have been informed of who to talk to if I need support in relation to participating in this project.
- I understand that the data from this study will be held securely, and this consent form will be safely stored and locked by the research supervisor(s) at the University of Auckland for six years. After this time, the consent form will be destroyed.
- I understand that I will receive a \$30 voucher for my participation in the interview irrespective of whether I do not answer some of the questions and I do not finish the entire interview.

I have received a \$30 voucher for participating in this interview. ☐ Yes

a) I would like to receive a copy of my transcript and audio recording ☐ Yes ☐ No

b) I would like to receive a summary of findings of the study ☐ Yes ☐ No

If yes to (a) and/or (b) above, please provide email or postal address for correspondence:

Signature: Date:

APPROVED BY THE UNIVERSITY OF AUCKLAND HUMAN PARTICIPANTS ETHICS COMMITTEE ON 09-JUL-2019 FOR THREE YEARS, REFERENCE: 023296

Appendix E: Support Letter from ASST



09/07/2019

To Whom It May Concern,

I am a registered social worker for Asylum Seekers Support Trust, an organisation providing advocacy and support for asylum seekers and convention refugees.

I am writing to express my support for Bernard Sama Nde's PhD research (**Project title:** Incorporating therapeutic jurisprudence in New Zealand's refugee status determination process: Possibilities and constraints.)

I am happy to distribute information about Bernard's study within our community networks and also to allow posters advertising the study to be posted around the ASST asylum seeker hostel. I am also willing to be interviewed for the research and participate or assist in any other way.

Please don't hesitate to contact me on 02102364658 if you have any further questions.

Kind Regards,

Freyja Stocker

A handwritten signature in blue ink that reads "Freyja Stocker".

Social Worker

Asylum Seekers Support Trust

PO Box 78 024, Grey Lynn, Auckland 1245

09 378 7434 (office) 09 626 6067 (direct service) info@asst.org.nz www.asst.org.nz

Auckland Asylum Seeker Support Trust Ltd

Appendix F: Email to Managers/CEOs

INTENDED EMAIL FOR MANAGERS/CEOs

Subject: Seeking to recruit participants from your agency for my research study.

Dear Manager,

My name is Bernard Sama. I am a former asylum seeker and a PhD student at the University of Auckland.

I am writing to let you know about a study I am conducting that explores how to better protect asylum seekers' and the professionals' emotional and psychological wellbeing during the process of refugee status determination in Aotearoa New Zealand.

I would like to ask if you would be willing to offer your consent for me to interview employees who work for your agency and are involved in the refugee status determination process.

The attached Participant Information Sheet contains further details about the study.

If you are willing to consent to your employee or employees participating in the research study, please let me know. If you have any questions, please do not hesitate to ask.

My email address is: bnde001@aucklanduni.ac.nz

Mobile number: 027 3344675

Thank you.

Best regards,

Bernard Sama.

APPROVED BY THE UNIVERSITY OF AUCKLAND HUMAN PARTICIPANTS ETHICS COMMITTEE ON 09-JUL-2019 FOR THREE YEARS, REFERENCE: 023296

Appendix G: PIS for RASNZ and ASST Staff



**EDUCATION AND
SOCIAL WORK**
SCHOOL OF COUNSELLING,
HUMAN SERVICES AND SOCIAL WORK

Participant Information Sheet [Interviews: Staff of RASNZ and ASST]

Date:

Project title: Incorporating therapeutic jurisprudence in New Zealand's refugee status determination process: Possibilities and constraints.

Name of Student Researcher: Bernard Sama

Names of Supervisors: Jay Marlowe (Associate Professor) and Anna Hood (PhD)

Researcher introduction

My name is Bernard Sama and I am a PhD student at the University of Auckland. I have a background in law, mental health, and am a former asylum seeker. My study is being supervised by Associate Professor Jay Marlowe and Dr Anna Hood at the University of Auckland.

What is the study about?

I am conducting a study about how to better protect asylum seekers' and the professionals' emotional and psychological wellbeing during the refugee status determination process in New Zealand. As a former asylum seeker and having experienced some of the stressful moments in the process, I am very interested to find ways of resolving these challenges. I believe your knowledge, experience, and perspective can help us understand how to better protect emotional and psychological wellbeing during the refugee status determination process in Aotearoa New Zealand.

In this research, I will conduct interviews with the asylum seekers and the professionals who work in refugee status determination process to understand how it is working and how it could be improved to ensure people's wellbeing.

What would be involved?

I am inviting you to participate in an interview that will help us better understand how the process of refugee status determination in New Zealand can be achieved in a better and safer way. Your experience and knowledge will help me understand how the law, policy, and practice can resolve or minimise some of the problems being experienced in the process by the asylum seekers and the professionals who work with them.

The interview should take about 60 to 90 minutes. It will be facilitated by me – Bernard Sama. A list of the sorts of questions that will be covered in the interview include:

- What is the most challenging aspect of the process? How could this be managed?
- How well are issues to do with trauma/mental health, and any other vulnerabilities accommodated in the process?
- What do you think of the current methods of interviewing/questioning at RSB and IPT? Could it be done differently?
- How are people's testimonies generally received?
- Do you think your client's voices are heard and that they feel comfortable participating in the process?
- How do your clients feel generally after the conclusion of the RSD process either by the RSB or IPT?
- Are there any biases/prejudices apparent in the process (e.g. on the basis of ethnicity, gender, age, sexual orientation, disability)?
- Overall, how fair and just do you feel the RSB or IPT process is?
- What do you think could help sustain people's wellbeing in the process?
- What do you think could make the process better and safer?

The interview would be conducted at a private location that is suitable for you or at any of the campuses of the University of Auckland. It will be conducted in English.

I will record the interview with a digital voice recorder though you can request to have the recorder turned off at any time. Only my supervisors and I will have access to the recording. I will manually transcribe the recording.

Your organisation, the Refugee Status Branch, and Immigration and Protection Tribunal will not know that you have participated in this study and will not know what you have specifically said in the interview.

You will be given a \$30 voucher for groceries to compensate and thank you for your time.

Will anyone know what you have said?

Your data will be securely stored and backed up on a password protected computer at the University of Auckland and accessible only to myself and my supervisors. After transcription has been completed, checked and confirmed by you, the audio recording will be permanently deleted from the digital voice recorder and the computer. I will not identify you in the notes and transcripts. Your consent form will be kept in a separate location from the research data in a locked cabinet in my supervisor's office and will be destroyed permanently after six years. The data from the study will be used for my doctoral thesis, journal articles, and conference presentations but I will not use any information that might identify you personally in the publications or presentations.

However, absolute confidentiality cannot be guaranteed, and it is possible that someone in your workplace might know that you participated in the study. But they will not know what you personally said in the study.

Will you hear about the study?

You can inform me if you would like the summary of findings of the study sent to you. I will make a public presentation in the refugee community generally about the study once it has been completed. I will inform your organisation about this presentation. The information from your interview may also be published in a report or journal articles. As noted above, I will take all reasonable measures to maintain confidentiality, and will not reveal your identity in any publications/presentations arising from this research.

Your rights and choice:

It is your right and choice to take part or not participate in this research. If you do participate, you also have every right to leave the interview at any time or decline to answer any questions. You will still receive your \$30 voucher if this happens.

In the unlikely event that you become distressed by this study, I will advise you to either seek supervision assistance through your agency or from any relevant and reliable resources.

You will be sent an audio recording of the interview and a written transcript (in English). You will have up to three weeks to make any changes or withdraw your interview from the study once it is sent to you. After the three weeks period, the information cannot be removed from the study.

Research team contact details:

If you have any questions or want to know more about the study, please feel free to contact me or my supervisors:

Student Researcher	Main Supervisor	Secondary Supervisor	Head of School
Bernard Sama	Associate Professor Jay Marlowe	Dr. Anna Hood	Dr. Allen Bartley
Email: bnde001@aucklanduni.ac.nz	Email: jm.marlowe@auckland.ac.nz	Email: a.hood@auckland.ac.nz	Email: a.bartley@auckland.ac.nz
Phone: 027 3344675	Phone: 09 373 7999 ext. 48248	Phone: 09 923 2242	Phone: 09 373 7999 ext. 48140
School of Counselling, Human Services, and Social Work	School of Counselling, Human Services, and Social Work	Auckland Law School	School of Counselling, Human Services, and Social Work

Thank you for taking the time to read this Participant Information Sheet.

For any queries regarding ethical concerns you may contact the Chair, University of Auckland Human Participants Ethics Committee, Office of Research Strategy and Integrity, University of Auckland, Private Bag 92019, Auckland 1142. Telephone 09 373-7599 ext. 83711. Email: humanethics@auckland.ac.nz

APPROVED BY THE UNIVERSITY OF AUCKLAND HUMAN PARTICIPANTS ETHICS COMMITTEE ON 09-JUL-2019 FOR THREE YEARS, REFERENCE: 023296

Appendix H: CF for RASNZ and ASST Staff



**EDUCATION AND
SOCIAL WORK**
SCHOOL OF COUNSELLING,
HUMAN SERVICES AND SOCIAL WORK

Consent Form [Interviews: Staff of RASNZ, and ASST]

THIS FORM WILL BE STORED SAFELY FOR SIX YEARS

Project title: Incorporating therapeutic jurisprudence in New Zealand's refugee status determination process: Possibilities and constraints.

Name of Student Researcher: Bernard Sama

Names of Supervisors: Jay Marlowe (Associate Professor) and Anna Hood (PhD)

If you agree to participate in the research project as described in the Participant Information Sheet, please complete this form. It will be discussed with you again by Bernard Sama before the interview begins. This consent form will be safely stored and locked at the University of Auckland for six years.

I (write your name here)

Hereby consent to participate as requested in the research project mentioned above and have read the information provided in the Participant Information Sheet. I have had this study explained to me and I acknowledged the following:

- I understand that it is my choice to participate or not to participate in this study.
- I know who to speak to if I am concerned or would like to ask questions about this study.
- Although absolute confidentiality cannot be guaranteed, I understand that I will not be identified by name and that other identifying information will be changed in any presentations or publications.
- I have had enough time to think about whether I want to take part in this study or not.
- I acknowledge that the interview will be audio recorded and transcribed.
- I understand that I can choose not to answer any questions and it is my right to leave the interview at any time.
- I also understand that I can receive a copy of my transcript and audio recording and that I have three two weeks to make any changes to it or to withdraw my participation and data from the study.
- I understand that the audio recordings will be deleted permanently from the digital voice recorder and from the computer after transcription is completed.
- I know where to seek help if I need support in relation to participating in this project.
- I understand that my CEO/manager has assured that my participation or non-participation in this study will not affect my relationship with the organisation or my employer.
- I understand that the data from this study will be held securely, and this consent form will be safely stored and locked by the research supervisor(s) at the University of Auckland for six years. After this time, the consent form will be shredded.
- I understand that I will receive a \$30 voucher for my participation in the interview irrespective of whether I do not answer some of the questions and I do not finish the entire interview.

I have received a \$30 voucher for participating in this interview. ☐ Yes

a) I would like to receive a copy of my transcript and audio recording ☐ Yes ☐ No

b) I would like to receive a summary of findings of the study ☐ Yes ☐ No

If yes to (a) and/or (b) above, please provide email or postal address for correspondence:

Signature: Date:

APPROVED BY THE UNIVERSITY OF AUCKLAND HUMAN PARTICIPANTS ETHICS COMMITTEE ON 09-JUL-2019 FOR THREE YEARS, REFERENCE: 023296

Appendix I: UAHPEC Approval of Amendment to Ethics

Office of the Vice-Chancellor
Office of Research Strategy and Integrity (ORSI)



The University of Auckland
Private Bag 92019
Auckland, New Zealand

Level 11, 49 Symonds Street
Telephone: 64 9 373 7599
Extension: 83711
humanethics@auckland.ac.nz

UNIVERSITY OF AUCKLAND HUMAN PARTICIPANTS ETHICS COMMITTEE (UAHPEC)

07-Apr-2020

MEMORANDUM TO:

Assoc Prof Jay Marlowe
Counselling, HumServ & SocWrk

Re: Request for amendment of Ethics Approval (Our Ref. 023296): Amendments Approved

The Committee considered the amendment(s) requested to your ethics approval for the project entitled **Incorporating therapeutic jurisprudence in New Zealand's refugee status determination process: Possibilities and constraints..**

Approval was granted for the following amendments on 07-Apr-2020:

1. Conducting interviews with participants via phone or video-chat instead of in person (due to Covid-19 restrictions).

The expiry date for your ethics approval is **09-Jul-2022**.

Completion of the project: In order that up-to-date records are maintained, you must notify the Committee once your project is completed.

Amendments to the project: Should you need to make any further changes to the project, please complete a new Amendment Request form giving full details along with revised documentation. If the project changes significantly, you are required to submit a new application to UAHPEC for approval.

The Chair and the members of the Committee would be happy to discuss general matters relating to ethics approvals. If you wish to do so, please contact the UAHPEC Ethics Administrators at humanethics@auckland.ac.nz in the first instance.

Please quote reference number **023296** on all communications with the UAHPEC regarding this application.

(This is a computer generated letter. No signature required.)

Appendix J: PIS for RPOs and IPT Members



**EDUCATION AND
SOCIAL WORK**
SCHOOL OF COUNSELLING,
HUMAN SERVICES AND SOCIAL WORK

Participant Information Sheet [Interviews: Refugee and Protection Officers, and Immigration and Protection Tribunal members]

Date:

Project title: Incorporating therapeutic jurisprudence in New Zealand's refugee status determination process: Possibilities and constraints.

Name of Student Researcher: Bernard Sama

Names of Supervisors: Jay Marlowe (Associate Professor) and Anna Hood (PhD)

Researcher introduction

My name is Bernard Sama and I am a PhD student at the University of Auckland. I have a background in law, mental health, and am a former asylum seeker. My study is being supervised by Associate Professor Jay Marlowe and Dr Anna Hood at the University of Auckland.

What is the study about?

I am conducting a study about how to better protect asylum seekers' and the professionals' emotional and psychological wellbeing during the refugee status determination process in New Zealand. As a former asylum seeker and having experienced some of the stressful moments in the process, I am very interested to find ways of resolving these challenges. I believe your knowledge, experience, and perspective can help us understand how to better protect emotional and psychological wellbeing during the refugee status determination process in Aotearoa New Zealand.

In this research, I will conduct interviews with the asylum seekers and the professionals who work in refugee status determination process to understand how it is working and how it could be improved to ensure people's wellbeing.

What would be involved?

I am inviting you to participate in an interview that will help us better understand how the process of refugee status determination in New Zealand can be achieved in a better and safer way. Your experience and knowledge will help me understand how the law, policy, and practice can resolve or minimise some of the problems being experienced in the process by the asylum seekers and the professionals who work with them.

The interview should take about 60 to 90 minutes. It will be facilitated by me - Bernard Sama. A list of the sorts of questions that will be covered in the interview include:

- What would you say is the most challenging aspect of the process, and how is this managed?
- Are there any measures at the Refugee Status Branch (RSB) or Immigration and Protection Tribunal (IPT) to make the process less stressful? What are these measures?
- Are there any areas that you think more could be done at RSB (or IPT) to make the process less stressful? What areas?
- Are there approaches taken to people of different ethnicities? Also, are there any gender, age, sexual orientation, disability considerations in the allocation of cases?
- What are some of the things that you personally do in your job to make the process less stressful?
- Does the law allow for much of this kind of thinking in your role? What are the strengths or limitations of the law in the process?
- What tensions might arise if we think about making particular aspects of the process less stressful?
- How are people's testimonies generally received? Could this be done better?
- What do you think would help sustain people's wellbeing in the refugee status determination process?
- What do you think of the current methods of interviewing/questioning at RSB and IPT? Could it be done differently?
- How well are issues to do with trauma/mental health, and any other vulnerabilities accommodated in the process?
- Overall, would you say the process is fair and just? Any apparent biases/prejudices?

The interview would be conducted at a private location that is suitable for you or at any of the campuses of the University of Auckland. It will be conducted in English.

I will record the interview with a digital voice recorder though you can request to have the recorder turned off at any time. Only my supervisors and I will have access to the recording. I will manually transcribe the recording.

The Refugee Status Branch and Immigration and Protection Tribunal will not know that you have participated in this study and will not know what you have specifically said in the interview.

You will be given a \$30 voucher for groceries to compensate and thank you for your time.

Will anyone know what you have said?

Your data will be securely stored and backed up on a password protected computer at the University of Auckland and accessible only to myself and my supervisors. After transcription has been completed, checked and confirmed by you, the audio recording will be permanently deleted from the digital voice recorder and the computer. I will not identify you in the notes and transcripts. Your consent form will be kept in a separate location from the research data in a locked cabinet in my supervisor's office and will be destroyed permanently after six years. The data from the study will be used for my doctoral thesis, journal articles, and conference presentations but I will not use any information that might identify you personally in the publications or presentations.

However, absolute confidentiality cannot be guaranteed, and it is possible that someone in your workplace might know that you participated in the study. But they will not know what you personally said in the study.

Will you hear about the study?

You can inform me if you would like the summary of findings of the study sent to you. I will make a public presentation in the refugee community generally about the study once it has been completed. I will inform your organisation about this presentation. The information from your interview may also be published in a report or journal articles. As noted above, I will take all reasonable measures to maintain confidentiality, and will not reveal your identity in any publications/presentations arising from this research.

Your rights and choice:

It is your right and choice to take part or not participate in this research. If you do participate, you also have every right to leave the interview at any time or decline to answer any questions. You will still receive your \$30 voucher if this happens.

In the unlikely event that you become distressed by this study, I will advise you to either seek supervision assistance through your agency or from any relevant and reliable resources.

You will be sent an audio recording of the interview and a written transcript (in English). You will have up to three weeks to make any changes or withdraw your interview from the study once it is sent to you. After the three weeks period, the information cannot be removed from the study.

Research team contact details:

If you have any questions or want to know more about the study, please feel free to contact me or my supervisors:

Student Researcher	Main Supervisor	Secondary Supervisor	Head of School
Bernard Sama	Associate Professor Jay Marlowe	Dr. Anna Hood	Dr. Allen Bartley
Email: bnde001@aucklanduni.ac.nz	Email: jm.marlowe@auckland.ac.nz	Email: a.hood@auckland.ac.nz	Email: a.bartley@auckland.ac.nz
Phone: 027 3344675	Phone: 09 373 7999 ext. 48248	Phone: 09 923 2242	Phone: 09 373 7999 ext. 48140
School of Counselling, Human Services, and Social Work	School of Counselling, Human Services, and Social Work	Auckland Law School	School of Counselling, Human Services, and Social Work

Thank you for taking the time to read this Participant Information Sheet.

For any queries regarding ethical concerns you may contact the Chair, University of Auckland Human Participants Ethics Committee, Office of Research Strategy and Integrity, University of Auckland, Private Bag 92019, Auckland 1142. Telephone 09 373-7599 ext. 83711. Email: humanethics@auckland.ac.nz

APPROVED BY THE UNIVERSITY OF AUCKLAND HUMAN PARTICIPANTS ETHICS COMMITTEE ON 09-JUL-2019 FOR THREE YEARS, REFERENCE: 023296

Appendix K: CF for RPOs and IPT Members



**EDUCATION AND
SOCIAL WORK**
SCHOOL OF COUNSELLING,
HUMAN SERVICES AND SOCIAL WORK

Consent Form [Interviews: Refugee and Protection Officers, and Immigration and Protection Tribunal members]

THIS FORM WILL BE STORED SAFELY FOR SIX YEARS

Project title: Incorporating therapeutic jurisprudence in New Zealand's refugee status determination process: Possibilities and constraints.

Name of Student Researcher: Bernard Sama

Names of Supervisors: Jay Marlowe (Associate Professor) and Anna Hood (PhD)

If you agree to participate in the research project as described in the Participant Information Sheet, please complete this form. It will be discussed with you again by Bernard Sama before the interview begins. This consent form will be safely stored and locked at the University of Auckland for six years.

I (write your name here)

Hereby consent to participate as requested in the research project mentioned above and have read the information provided in the Participant Information Sheet. I have had this study explained to me and I acknowledged the following:

- I understand that it is my choice to participate or not to participate in this study.
- I know who to speak to if I am concerned or would like to ask questions about this study.
- Although absolute confidentiality cannot be guaranteed, I understand that I will not be identified by name and that other identifying information will be changed in any presentations or publications.
- I have had enough time to think about whether I want to take part in this study or not.
- I acknowledge that the interview will be audio recorded and transcribed.
- I understand that I can choose not to answer any questions and it is my right to leave the interview at any time.
- I also understand that I can receive a copy of my transcript and audio recording and that I have three two weeks to make any changes to it or to withdraw my participation and data from the study.
- I understand that the audio recordings will be deleted permanently from the digital voice recorder and from the computer after transcription is completed.
- I know where to seek help if I need support in relation to participating in this project.
- I understand that my CEO/manager has assured that my participation or non-participation in this study will not affect my relationship with the organisation or my employer.
- I understand that the data from this study will be held securely, and this consent form will be safely stored and locked by the research supervisor(s) at the University of Auckland for six years. After this time, the consent form will be shredded.
- I understand that I will receive a \$30 voucher for my participation in the interview irrespective of whether I do not answer some of the questions and I do not finish the entire interview.

I have received a \$30 voucher for participating in this interview. ☐ Yes

a) I would like to receive a copy of my transcript and audio recording ☐ Yes ☐ No

b) I would like to receive a summary of findings of the study ☐ Yes ☐ No

If yes to (a) or (b) above, please provide email or postal address for correspondence:

Signature: Date:

APPROVED BY THE UNIVERSITY OF AUCKLAND HUMAN PARTICIPANTS ETHICS COMMITTEE ON 09-JUL-2019 FOR THREE YEARS, REFERENCE: 023296

Appendix L: Email to Lawyers, Interpreters and Former RPO

INTENDED EMAIL FOR REFUGEE LAWYERS

Subject: Invitation to participate in my research.

Dear Barrister/Solicitor,

My name is Bernard Sama. I am a former asylum seeker and a PhD student at the University of Auckland.

I am conducting interviews as part of my research study to explore how to better protect asylum seekers' and the professionals' emotional and psychological wellbeing during the process of refugee status determination in Aotearoa New Zealand. As a lawyer/interpreter who works (or former RPO) in this status determination process, I believe you would be able to provide valuable first-hand information about these issues.

The attached Participant Information Sheet contains further details about the study.

If you are willing to participate, please suggest a day and time that suits you. If you have any questions, please do not hesitate to ask.

My email address is: bnde001@aucklanduni.ac.nz

Mobile number: 027 3344675

Thank you.

Best regards,

Bernard Sama.

APPROVED BY THE UNIVERSITY OF AUCKLAND HUMAN PARTICIPANTS ETHICS COMMITTEE ON 09-JUL-2019 FOR THREE YEARS, REFERENCE: 023296

Appendix M: PIS for Lawyers, Interpreters, and Former RPO



**EDUCATION AND
SOCIAL WORK**
SCHOOL OF COUNSELLING,
HUMAN SERVICES AND SOCIAL WORK

Participant Information Sheet [Interviews: Refugee lawyers/Interpreters/Formal RPO]

Date:

Project title: Incorporating therapeutic jurisprudence in New Zealand's refugee status determination process: Possibilities and constraints.

Name of Student Researcher: Bernard Sama

Names of Supervisors: Jay Marlowe (Associate Professor) and Anna Hood (PhD)

Researcher introduction

My name is Bernard Sama and I am a PhD student at the University of Auckland. I have a background in law, mental health, and am a former asylum seeker. My study is being supervised by Associate Professor Jay Marlowe and Dr Anna Hood at the University of Auckland.

What is the study about?

I am conducting a study about how to better protect asylum seekers' and the professionals' emotional and psychological wellbeing during the refugee status determination process in New Zealand. As a former asylum seeker and having experienced some of the stressful moments in the process, I am very interested to find ways of resolving these challenges. I believe your knowledge, experience, and perspective can help us understand how to better protect emotional and psychological wellbeing during the refugee status determination process in Aotearoa New Zealand.

In this research, I will conduct interviews with the asylum seekers and the professionals who work in refugee status determination process to understand how it is working and how it could be improved to ensure people's wellbeing.

What would be involved?

I am inviting you to participate in an interview that will help us better understand how the process of refugee status determination in New Zealand can be achieved in a better and safer way. Your experience and knowledge will help me understand how the law, policy, and practice can resolve or minimise some of the problems being experienced in the process by the asylum seekers and the professionals who work with them.

The interview should take about 60 to 90 minutes. It will be facilitated by me – Bernard Sama. A list of the sorts of questions that will be covered in the interview include:

- What are the attitudes and approaches of the RSB or IPT employees?
- What do you think of the current methods of interviewing/questioning at RSB and IPT? Could it be done differently?
- How would you describe the extent to which the asylum seekers' voices are heard and how they feel comfortable participating in the process at RSB or IPT?
- Does the physical environment, conventions, and customs of the RSB and IPT impede or enhance the client's comfort participating in the process?
- What is the tone of the correspondence from the RSB or IPT? How readable/understandable is the interview reports or decisions?
- Are you satisfied with the with Legal Aid and the timelines/deadlines for your clients?
- How well are issues to do with trauma/mental health, and any other vulnerabilities accommodated in the process?
- How do your clients feel after the conclusion of the RSB or IPT process?
- What are some of the most challenging/problematic issues in the current law and the process?
- Are there any biases/prejudices apparent in the processes at RSB or IPT?
- Overall, how fair and just do you feel the RSB or IPT process is?

The interview would be conducted at a private location that is suitable for you or at any of the campuses of the University of Auckland. It will be conducted in English.

I will record the interview with a digital voice recorder though you can request to have the recorder turned off at any time. Only my supervisors and I will have access to the recording. I will manually transcribe the recording.

The Refugee Status Branch and Immigration and Protection Tribunal will not know that you have participated in this study and will not know what you have specifically said in the interview.

You will be given a \$30 voucher for groceries to compensate and thank you for your time.

Will anyone know what you have said?

Your data will be securely stored and backed up on a password protected computer at the University of Auckland and accessible only to myself and my supervisors. After transcription has been completed, checked and confirmed by you, the audio recording will be permanently deleted from the digital voice recorder and the computer. I will not identify you in the notes and transcripts. Your consent form will be kept in a separate location from the research data in a locked cabinet in my supervisor's office and will be destroyed permanently after six years. The data from the study will be used for my doctoral thesis, journal articles, and conference presentations but I will not use any information that might identify you personally in the publications or presentations.

However, absolute confidentiality cannot be guaranteed, and it is possible that someone in your work community might know that you participated in the study. But they will not know what you personally said in the study.

Will you hear about the study?

You can inform me if you would like the summary of findings of the study sent to you. I will make a public presentation in the refugee community generally about the study once it has been completed. I will inform you of this presentation. The information from your interview may also be published in a report or journal articles. As noted above, I will take all reasonable measures to maintain confidentiality, and will not reveal your identity in any publications/presentations arising from this research.

Your rights and choice:

It is your right and choice to take part or not participate in this research. If you do participate, you also have every right to leave the interview at any time or decline to answer any questions. You will still receive your \$30 voucher if this happens.

In the unlikely event that you become distressed by this study, I will advise you to either seek supervision assistance through your agency or from any relevant and reliable resources.

You will be sent an audio recording of the interview and a written transcript (in English). You will have up to three weeks to make any changes or withdraw your interview from the study once it is sent to you. After the three weeks period, the information cannot be removed from the study.

Research team contact details:

If you have any questions or want to know more about the study, please feel free to contact me or my supervisors:

Student Researcher	Main Supervisor	Secondary Supervisor	Head of School
Bernard Sama	Associate Professor Jay Marlowe	Dr. Anna Hood	Dr. Allen Bartley
Email: bnde001@aucklanduni.ac.nz	Email: jm.marlowe@auckland.ac.nz	Email: a.hood@auckland.ac.nz	Email: a.bartley@auckland.ac.nz
Phone: 027 3344675	Phone: 09 373 7999 ext. 48248	Phone: 09 923 2242	Phone: 09 373 7999 ext. 48140
School of Counselling, Human Services, and Social Work	School of Counselling, Human Services, and Social Work	Auckland Law School	School of Counselling, Human Services, and Social Work

Thank you for taking the time to read this Participant Information Sheet.

For any queries regarding ethical concerns you may contact the Chair, University of Auckland Human Participants Ethics Committee, Office of Research Strategy and Integrity, University of Auckland, Private Bag 92019, Auckland 1142. Telephone 09 373-7599 ext. 83711. Email: humanethics@auckland.ac.nz

APPROVED BY THE UNIVERSITY OF AUCKLAND HUMAN PARTICIPANTS ETHICS COMMITTEE ON 09-JUL-2019 FOR THREE YEARS, REFERENCE: 023296

Appendix N: CF for Lawyers, Interpreters, and Former RPO



**EDUCATION AND
SOCIAL WORK**
SCHOOL OF COUNSELLING,
HUMAN SERVICES AND SOCIAL WORK

Consent Form [Interviews: Refugee lawyers/Interpreters/Former RPO]

THIS FORM WILL BE STORED SAFELY FOR SIX YEARS

Project title: Incorporating therapeutic jurisprudence in New Zealand's refugee status determination process: Possibilities and constraints.

Name of Student Researcher: Bernard Sama

Names of Supervisors: Jay Marlowe (Associate Professor) and Anna Hood (PhD)

If you agree to participate in the research project as described in the Participant Information Sheet, please complete this form. It will be discussed with you again by Bernard Sama before the interview begins. This consent form will be safely stored and locked at the University of Auckland for six years.

I (write your name here)

Hereby consent to participate as requested in the research project mentioned above and have read the information provided in the Participant Information Sheet. I have had this study explained to me and I acknowledged the following:

- I understand that it is my choice to participate or not to participate in this study.
- I know who to speak to if I am concerned or would like to ask questions about this study.
- Although absolute confidentiality cannot be guaranteed, I understand that I will not be identified by name and that other identifying information will be changed in any presentations or publications.
- I have had enough time to think about whether I want to take part in this study or not.
- I acknowledge that the interview will be audio recorded and transcribed.
- I understand that I can choose not to answer any questions and it is my right to leave the interview at any time.
- I also understand that I can receive a copy of my transcript and audio recording and that I have three weeks to make any changes to it or to withdraw my participation and data from the study.
- I understand that the audio recordings will be deleted permanently from the digital voice recorder and from the computer after transcription is completed.
- I know where to seek help if I need support in relation to participating in this project.
- I understand that the data from this study will be held securely, and this consent form will be safely stored and locked by the research supervisor(s) at the University of Auckland for six years. After this time, the consent form will be shredded.
- I understand that I will receive a \$30 voucher for my participation in the interview irrespective of whether I do not answer some of the questions and I do not finish the entire interview.

I have received a \$30 voucher for participating in this interview. ☐ Yes

a) I would like to receive a copy of my transcript and audio recording ☐ Yes ☐ No

b) I would like to receive a summary of findings of the study ☐ Yes ☐ No

If yes to (a) and/or (b) above, please provide email or postal address for correspondence:

Signature: Date:

APPROVED BY THE UNIVERSITY OF AUCKLAND HUMAN PARTICIPANTS ETHICS COMMITTEE ON 09-JUL-2019 FOR THREE YEARS, REFERENCE: 023296

Appendix O: Interview Schedule for all the Participants

INTERVIEW SCHEDULE (All Participants)

Asylum seekers

- How did you find completing the application form for refugee status?
- What do you think could have made the completing of the form less stressful for you?
- How was the refugee status interview to you? Do you think your voice was heard in the interview?
- How was your lawyer to you? Was he or she helpful? Are there any ways you think he or she could have been more helpful to you?
- When you have received communication about your application (e.g. the interview report, or the decision, etc) did you fully understand it?
- Were there any things that made the process less stressful for you at the Refugee Status Branch or the Immigration and Protection Tribunal?
- What do you think could make the process fair and just for asylum seekers?
- What do you think could help sustain people's wellbeing in the process?
- What do you think could make the process better and safer?

Interpreters

- What is the most challenging aspect of the process? How could this be managed?
- How well are issues to do with trauma/mental health, and any other vulnerabilities accommodated in the process?
- What do you think of the current methods of interviewing/questioning at the Refugee Status Branch (RSB) and Immigration and Protection Tribunal (IPT)? Could it be done differently?
- How are people's testimonies generally received?
- Do you think your client's voices are heard and that they feel comfortable participating in the process?
- How do your clients feel generally after the conclusion of the refugee status determination process either by the RSB or IPT?
- Are there any biases/prejudices apparent in the process (e.g. on the basis of ethnicity, gender, age, sexual orientation, disability)?
- Overall, how fair and just do you feel the RSB or IPT process is?
- What do you think could help sustain people's wellbeing in the process?
- What do you think could make the process better and safer?

Refugee lawyers

- What are the attitudes and approaches of the RSB or IPT employees?
- What do you think of the current methods of interviewing/questioning at RSB and IPT? Could it be done differently?
- How would you describe the extent to which the asylum seekers' voices are heard and how they feel comfortable participating in the process at RSB or IPT?
- Does the physical environment, conventions, and customs of the RSB and IPT impede or enhance the client's comfort participating in the process?
- What is the tone of the correspondence from the RSB or IPT? How readable/understandable is the interview reports or decisions?
- Are you satisfied with the with Legal Aid and the timelines/deadlines for your clients?
- How well are issues to do with trauma/mental health, and any other vulnerabilities accommodated in the process?
- How do your clients feel after the conclusion of the RSB or IPT process?
- What are some of the most challenging/problematic issues in the current law and the process?
- What would you say is the most challenging about working in this area, and how could this better be managed?
- Are there any biases/prejudices apparent in the processes at RSB or IPT?
- Overall, how fair and just do you feel the RSB or IPT process is?

RPO, and IPT members

- What would you say is the most challenging aspect of the process, and how is this managed?
- Are there any measures at the Refugee Status Branch (RSB) or Immigration and Protection Tribunal (IPT) to make the process less stressful? What are these measures?
- Are there any areas that you think more could be done at RSB (or IPT) to make the process less stressful? What areas?
- Are there approaches taken to people of different ethnicities? Also, are there any gender, age, sexual orientation, disability considerations in the allocation of cases?
- What are some of the things that you personally do in your job to make the process less stressful?

- Does the law allow for much of this kind of thinking in your role? What are the strengths or limitations of the law in the process?
- What tensions might arise if we think about making particular aspects of the process less stressful?
- How are people's testimonies generally received? Could this be done better?
- What do you think would help sustain people's wellbeing in the refugee status determination process?
- What do you think of the current methods of interviewing/questioning at RSB and IPT? Could it be done differently?
- How well are issues to do with trauma/mental health, and any other vulnerabilities accommodated in the process?
- Overall, would you say the process is fair and just? Any apparent biases/prejudices?

Staff of RASNZ, and ASST

- What is the most challenging aspect of the process? How could this be managed?
- How well are issues to do with trauma/mental health, and any other vulnerabilities accommodated in the process?
- What do you think of the current methods of interviewing/questioning at RSB and IPT? Could it be done differently?
- How are people's testimonies generally received?
- Do you think your client's voices are heard and that they feel comfortable participating in the process?
- How do your clients feel generally after the conclusion of the RSD process either by the RSB or IPT?
- Are there any biases/prejudices apparent in the process (e.g. on the basis of ethnicity, gender, age, sexual orientation, disability)?
- Overall, how fair and just do you feel the RSB or IPT process is?
- What do you think could help sustain people's wellbeing in the process?
- What do you think could make the process better and safer?

Appendix P: Clinical Support Letter from RASNZ



June 5, 2019

Dear Bernard

I am writing on behalf of RASNZ to offer support for your PhD research *"Incorporating therapeutic jurisprudence in New Zealand's refugee status determination process: Possibilities and constraints"*.

RASNZ is very happy to be able to provide psychological support for any of your research participants if they become distressed as a result of their participation. You would just need to inform myself, Aklilu or Kate Brady Kean so we can arrange a referral.

We would also be very pleased to provide cultural consultation for your research. Please do not hesitate to get in touch at any time.

The emotional and psychological wellbeing of asylum seekers during the process of refugee status determination is a very important topic which is dear to our heart, so we are keen to support you in any way we can.

We wish you all the very best and look forward to reading your thesis with great interest.

Kind Regards

Ann Hood
CEO RASNZ

Refugees as Survivors New Zealand
National Refugee Resettlement Centre, 251 Massey Road, Mangere East, Manukau 2024
PO Box 22315, Otahuhu, Auckland 1640 • Phone (09) 270-0870, Fax (09) 270-0056
Website: www.rasnz.co.nz • Email: admin@rasnz.co.nz

Appendix Q: PIS for Managers/CEOs



**EDUCATION AND
SOCIAL WORK**
SCHOOL OF COUNSELLING,
HUMAN SERVICES AND SOCIAL WORK

Participant Information Sheet [Interviews: Managers/CEOs of the Refugee Status Unit; Immigration and Protection Tribunal; Refugee As Survivors New Zealand; Asylum Seekers Support Trust]

Date:

Project title: Incorporating therapeutic jurisprudence in New Zealand's refugee status determination process: Possibilities and constraints.

Dear

Hello, my name is Bernard Sama and I am a PhD student at the University of Auckland. I have a background in law, mental health, and am a former asylum seeker. I am writing to inform you of a research study that I would like to conduct. The study is being supervised by Associate Professor Jay Marlowe and Dr Anna Hood at the University of Auckland. I would like to ask if you would consider allowing me to interview an employee or employees that work for your agency.

The study is about how to better protect emotional and psychological wellbeing during the refugee status determination process in New Zealand. As a former asylum seeker and having experienced some of the stressful moments in the process, I am very interested to find ways of resolving these challenges. In this study, I will conduct interviews with the asylum seekers and the professionals who work in refugee status determination process to understand how it is working and how it could be improved to ensure people's wellbeing.

I believe the knowledge, experiences, and perspectives of your employee(s) can help us understand how to better protect emotional and psychological wellbeing during the refugee status determination process in New Zealand. The study will strengthen the positive social impacts of the law and policy as it will stimulate the professionals in the process to examine their practice in ways that can maximise emotional and psychological wellbeing.

What would be involved?

This study involves conducting interviews. I am writing to ask if you would consider providing consent for me to conduct this research with employee(s) from your agency. This would involve the employee(s) participating in an individual interview (lasting approximately 60 to 90 minutes).

It is important to emphasise that the focus of this study is on the law, policy, and practice implications that arise from working in refugee status determination, and how this can be minimised or eliminated. The research will broadly address the following questions and others:

- What would you say is the most challenging aspect of the process, and how is this managed?
- How well are issues to do with trauma/mental health, and any other vulnerabilities accommodated in the process?
- Are there any measures at RSB (or IPT) to make the process less stressful? What are these?
- Are there any areas that you think more could be done at RSB (or IPT) to make the process less stressful? What areas?
- What are some of the things that you personally do in your job to make the process less stressful on you and the asylum seekers?
- What do you think could help sustain people's wellbeing in the process?
- What do you think could make the process better and safer?
- Does the law allow for much of this kind of thinking in your role?
- What are the tensions that arise if we think of making particular aspects of the process less stressful?

Before any participant would be able to participate from your organisation, you as the manager/CEO of this organisation would need to sign a consent form that provides an assurance that the participant's activity in the study would not affect their professional relationship with you or compromise their standing with the agency.

If you provide this consent for me to approach staff members from your agency to conduct an individual interview, I would then approach the reception/administration desk of your agency for them to advertise the study within your agency. You would not have any knowledge of who chose to participate or not in order to protect participant confidentiality.

The individual interview will be audio recorded with a digital voice recorder. Only my supervisors and I will have access to these audio recordings, which will be transcribed, de-identified and securely stored and backed up on a password protected computer at the University of Auckland. I will give each participant a copy of their transcript for verification and comments. The participant will then have three weeks from when he or she received the transcript to decide whether to remove their participation in the study. After the participant has completed the verification, the data will be used in my thesis and publications/presentations, but the audio recording will be permanently deleted from the digital voice recorder and the computer. The consent forms will be locked in a filing cabinet in my supervisor's office at the University of Auckland and will be destroyed permanently after six years.

In the unlikely event that a participant was to become distressed by the interview, he or she would be advised to either seek supervision assistance through your agency or from any relevant and reliable resources. It is important to note that participants can decline to answer any questions and can leave the interview.

Participants will be given a \$30 voucher for groceries to compensate and thank them for their participation in the study.

Reporting of the Study

You can inform me if you would like the summary of findings of the study sent to you. Information from the study will be published in my doctoral thesis and may be published in a report or journal articles though specific agencies and participant identities will not be disclosed. I will inform your organisation and will make a public presentation about the study once it has been completed. Specific agencies and participants will not be identified in this presentation. However, absolute confidentiality cannot be guaranteed, and it is possible that some of the employees might know within the work environment who has participated in the study. But they will not know what the individual has said in the study.

It is also possible when speaking with participants about the refugee status determination that they may mention their particular agency that they work for. However, the focus of these interviews is more to understand if there could be a better and safer way to establish refugee status in New Zealand. I will keep the interview focussed on this theme.

Your rights and choice:

It is your right and choice to take part or not consent to this research. If you have any questions about this study, please use the contact details below:

Student Researcher	Main Supervisor	Secondary Supervisor	Head of School
Bernard Sama	Associate Professor Jay Marlowe	Dr. Anna Hood	Dr. Allen Bartley
Email: bnde001@aucklanduni.ac.nz	Email: jm.marlowe@auckland.ac.nz	Email: a.hood@auckland.ac.nz	Email: a.bartley@auckland.ac.nz
Phone: 027 3344675	Phone: 09 373 7999 ext. 48248	Phone: 09 923 2242	Phone: 09 373 7999 ext. 48140
School of Counselling, Human Services, and Social Work	School of Counselling, Human Services, and Social Work	Auckland Law School	School of Counselling, Human Services, and Social Work

Thank you for taking the time to read this Participant Information Sheet. If you have further questions, please let me know and I am also happy to send through a consent form if you are willing for employees with your agency to participate in the interview. My email address is the easiest way to contact me: bnde001@aucklanduni.ac.nz

For any queries regarding ethical concerns you may contact the Chair, University of Auckland Human Participants Ethics Committee, Office of Research Strategy and Integrity, University of Auckland, Private Bag 92019, Auckland 1142. Telephone 09 373-7599 ext. 83711. Email: humanethics@auckland.ac.nz

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Appendix R: CF for Managers/CEOs



**EDUCATION AND
SOCIAL WORK**
SCHOOL OF COUNSELLING,
HUMAN SERVICES AND SOCIAL WORK

Consent Form [Interviews: Managers/CEOs of the Refugee Status Branch, Immigration and Protection Tribunal, Refugee As Survivors New Zealand, New Zealand Red Cross, Asylum Seekers Support Trust, and Law Firms]

THIS FORM WILL BE STORED SAFELY FOR SIX YEARS

Project title: Incorporating therapeutic jurisprudence in New Zealand's refugee status determination process: Possibilities and constraints.

Name of Student Researcher: Bernard Sama

Names of Supervisors: Jay Marlowe (Associate Professor) and Anna Hood (PhD)

If you agree to provide consent for employees of the organisation you work for to participate in the research project as described in the Participant Information Sheet, please complete this form. This consent form will be safely stored and locked at the University of Auckland for six years.

I (write your name here)

Hereby provide consent for you to conduct the individual interviews with employees from my organisation as requested in the research project mentioned in this form.

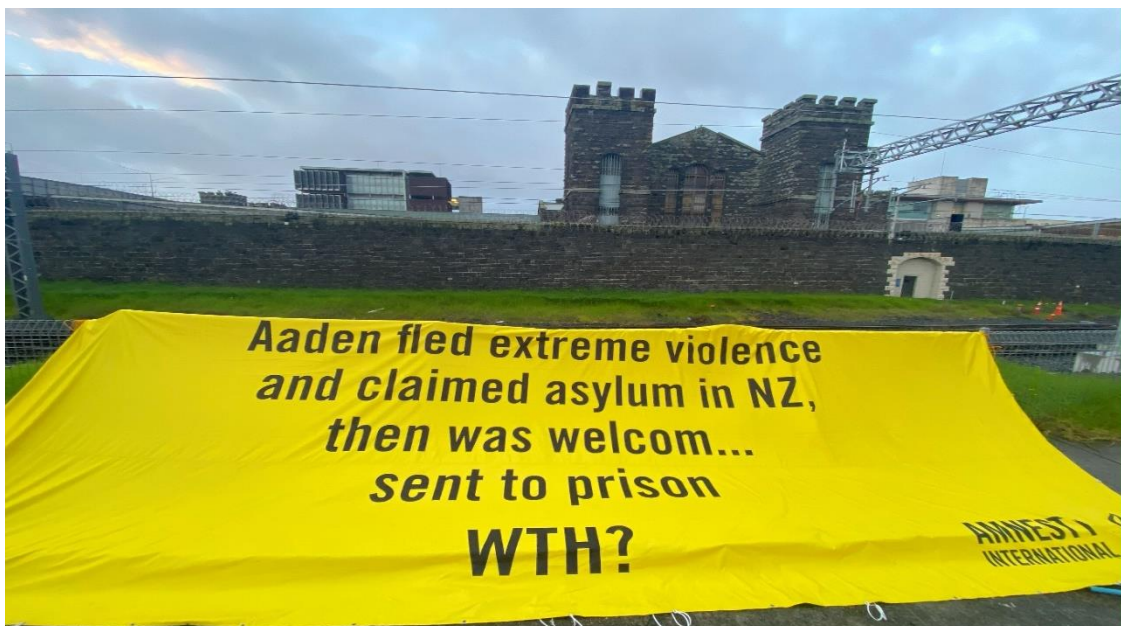
I acknowledge that I have read the information provided in the Participant Information Sheet and acknowledge the following:

- I understand it is my choice to consent or not consent to this study with respect to recruiting participants who are employees of the agency I work for.
- As Manager/CEO of this agency, I agree that anyone's participation or non-participation in this study will not affect their relationship with me or the agency they work for.
- I know who to speak to if I am concerned or would like to ask questions about this study as outlined in the participant information sheet.
- Although absolute confidentiality cannot be guaranteed, I understand that participants and agencies will not be identified by name and that other identifying information will be changed in any presentations or publications.
- I acknowledge that the individual interviews will be audio recorded and transcribed.
- I understand that the data from this study will be held securely, and this consent form will be safely stored and locked by the research supervisor(s) at the University of Auckland for six years. After this time, the consent form will be shredded.
- I understand that the participants will receive a \$30 voucher for their participation in the interview.
- I wish/do not wish to receive a summary of findings of the study, which can be emailed or mailed to me at this email/postal address:

Signature: Date:

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Appendix S: Speaking at Amnesty International Aotearoa Protest by Mt Eden Prison



Appendix T: Photo with Amnesty International Aotearoa Team Infront of the House of Parliament



I am first from left, in my colourful traditional insignia from Southern Cameroons.

Appendix U: Various Community Engagements Concerning the Launch and Presentation of the Safe Start Fair Future report



Speaking at the Launch of Safe Start Fair Future report in the House of Parliament on 03 May 2022.



Part of the research team and refugee community leaders at the launch of Safe Start Fair Future on 03 May 2022. Photo in front of the House of Parliament.



Presenting Safe Start Fair Future report at the Aotearoa Refugee Hui on 21 November 2022 in the House of Parliament.



Photo with my supervisor (Professor Jay Marlowe) and refugee community leaders at Aotearoa Refugee Hui on 21 November 2022 in the House of Parliament.



Photo with the organisers (all academicians) of the AUT symposium on Refugee Journeys organised hosted by the AUT Migrant and Refugee Research Centre on 30 November 2022, where I co-presented the Safe Start Fair Future report.

Appendix V: Consent from General Manager of ASST



**EDUCATION AND
SOCIAL WORK**
SCHOOL OF COUNSELLING,
HUMAN SERVICES AND SOCIAL WORK

Consent Form [Manager of the Asylum Seekers Support Trust]

THIS FORM WILL BE STORED SAFELY FOR SIX YEARS

Project title: Incorporating therapeutic jurisprudence in New Zealand's refugee status determination process: Possibilities and constraints.

Name of Student Researcher: Bernard Sama

Names of Supervisors: Jay Marlowe (Associate Professor) and Anna Hood (PhD)

If you agree to provide consent for employees of the organisation you work for to participate in the research project as described in the Participant Information Sheet, please complete this form. This consent form will be safely stored and locked at the University of Auckland for six years.

I Tim Maurice..... (write your name here)

Hereby provide consent for you to conduct the individual interviews with employees from my organisation as requested in the research project mentioned in this form.

I acknowledge that I have read the information provided in the Participant Information Sheet and acknowledge the following:

- I understand it is my choice to consent or not consent to this study with respect to recruiting participants who are employees of the agency I work for.
- As Manager/CEO of this agency, I agree that anyone's participation or non-participation in this study will not affect their relationship with me or the agency they work for.
- I know who to speak to if I am concerned or would like to ask questions about this study as outlined in the participant information sheet.
- Although absolute confidentiality cannot be guaranteed, I understand that participants and agencies will not be identified by name and that other identifying information will be changed in any presentations or publications.
- I acknowledge that the individual interviews will be audio recorded and transcribed.
- I understand that the data from this study will be held securely, and this consent form will be safely stored and locked by the research supervisor(s) at the University of Auckland for six years. After this time, the consent form will be shredded.
- I understand that the participants will receive a \$30 voucher for their participation in the interview.
- I wish/~~do not wish~~ to receive a summary of findings of the study, which can be emailed or mailed to me at this email/~~postal~~ address:

_____tim.maurice@asst.org.nz_____

Signature:_____

Date: _____14/10/2019_____

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Appendix W: Consent from CEO of RASNZ



**EDUCATION AND
SOCIAL WORK**
SCHOOL OF COUNSELLING,
HUMAN SERVICES AND SOCIAL WORK

Consent Form [Manager of Refugee As Survivors New Zealand]

THIS FORM WILL BE STORED SAFELY FOR SIX YEARS

Project title: Incorporating therapeutic jurisprudence in New Zealand's refugee status determination process: Possibilities and constraints.

Name of Student Researcher: Bernard Sama

Names of Supervisors: Jay Marlowe (Associate Professor) and Anna Hood (PhD)

If you agree to provide consent for employees of the organisation you work for to participate in the research project as described in the Participant Information Sheet, please complete this form. This consent form will be safely stored and locked at the University of Auckland for six years.

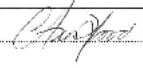
I, Anna Hood (write your name here)

Herby provide consent for you to conduct the individual interviews with employees from my organisation as requested in the research project mentioned in this form.

I acknowledge that I have read the information provided in the Participant Information Sheet and acknowledge the following:

- I understand it is my choice to consent or not consent to this study with respect to recruiting participants who are employees of the agency I work for.
- As Manager/CEO of this agency, I agree that anyone's participation or non-participation in this study will not affect their relationship with me or the agency they work for.
- I know who to speak to if I am concerned or would like to ask questions about this study as outlined in the participant information sheet.
- Although absolute confidentiality cannot be guaranteed, I understand that participants and agencies will not be identified by name and that other identifying information will be changed in any presentations or publications.
- I acknowledge that the individual interviews will be audio recorded and transcribed.
- I understand that the data from this study will be held securely, and this consent form will be safely stored and locked by the research supervisor(s) at the University of Auckland for six years. After this time, the consent form will be shredded.
- I understand that the participants will receive a \$30 voucher for their participation in the interview.
- I wish/consent to receive a summary of findings of the study, which can be emailed or mailed to me at this email/postal address:

bernard@casanv.co.nz

Signature: 

Date: 21-10-19

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Appendix X: Email consent from Deputy Chair of IPT

Treadwell, Martin <martin.treadwell@justice.govt.nz>

To: Spiller, Judge, Burson, Bruce, Aitchison, Sharelle, Dingle, Bridget, Molloy, Andrew and 7 more...

Cc: Bernard Sama

Fri, 8 May at 11:08 am

Dear Refugee Stream Members,

Attached please find a questionnaire, personal information sheet and consent form from Bernard Sama.

Bernard is a postgraduate student at AU, doing a thesis in "Incorporating therapeutic jurisprudence in New Zealand's refugee status determination process: Possibilities and constraints." He would be very grateful if some members could assist his research by completing a questionnaire and being interviewed. It is entirely anonymous and nothing will be attributed to any individual. I did raise with Bernard the reference in the consent form to a 6-year holding of the research results in confidence and he assures me that this means that, after 6 years of being held in confidence, it is then destroyed.

If any of you would like to assist Bernard in his research into what is an important topic (and may have long term benefits for RSD in NZ), please feel free to contact him at bernardsama@yahoo.com. I have conferred with the Judge and we are both comfortable that members are able to assist Bernard in this way. You do not need to let either the Judge or me know as it is confidential between you and Bernard.

I hope that some of you are able to assist in what is a valuable project. Bernard was due to come to meet with us at a refugee stream meeting last year when the Sky City fire broke out and, of course, that has been followed by the frustration of the lockdown, but he needs to get things underway fairly promptly if he is to meet his June deadline.

Kind regards

Martin

Legislations, case law and other legal instruments cited

Legislations

- Bail Act 2000.
- Children, Young Persons, and Their Families Act 1989.
- Corrections Regulations 2005.
- Evidence Act 2006.
- Immigration Act 1987.
- Immigration Amendment Act 1999
- Immigration Amendment Act (No 2) 1999
- Immigration Act 2009.
- Immigration Amendment Act 2013.
- Lawyers and Conveyancers Act 2006.
- Legal Services Act 2011.
- New Zealand Bill of Rights Act 1990.
- Parole Act 2002.
- Victims' Rights Act 2002.
- Sentencing Act 2002.

Regulations

- Immigration and Protection Tribunal Regulations 2010.
- Immigration (Refugee and Protection Status Processing) Regulations 2010.
- Student Allowances Regulations 1998.

Cases

- AC (Russia) [2012] NZIPT 800151.
- AQ (Cameroon) [2019] NZIPT 801410.
- Attorney-General v. Refugee Council of New Zealand [2003] 2 NZLR 577.
- BY (Sri Lanka) [2014] NZIPT 800634.
- DJ (India) [2017] NZIPT 801064.
- DS (Iran) [2016] NZIPT 800788.
- H v Refugee and Protection Officer [2019] NZSC 13, [2019] 1 NZLR 433.
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- M v. Refugee Status Appeals Authority, [2010] NZHC 1885).

- Metropolitan Properties Co (FGC) Ltd v Lannon [1968] EWCA Civ 5, [1969] 1 QB 577, Court of Appeal (England and Wales).
- R v Sussex Justices, ex parte McCarthy [1924] 1 KB 256 at 259, High Court (King's Bench) (England & Wales).

Operational instructions, directives, and guidelines

- INZ Operational Manual.
- Refugee Status Unit Practice Note (refugee and protection status determination).

International treaties and conventions

- 1951 Convention Relating to the Status of Refugees.
- 1967 Protocol Relating to the Status of Refugees.
- 1976 International Covenant on Civil and Political Rights.
- 1987 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

UNHCR guidelines and manuals

- UNHCR Detention Guidelines, 2012.

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