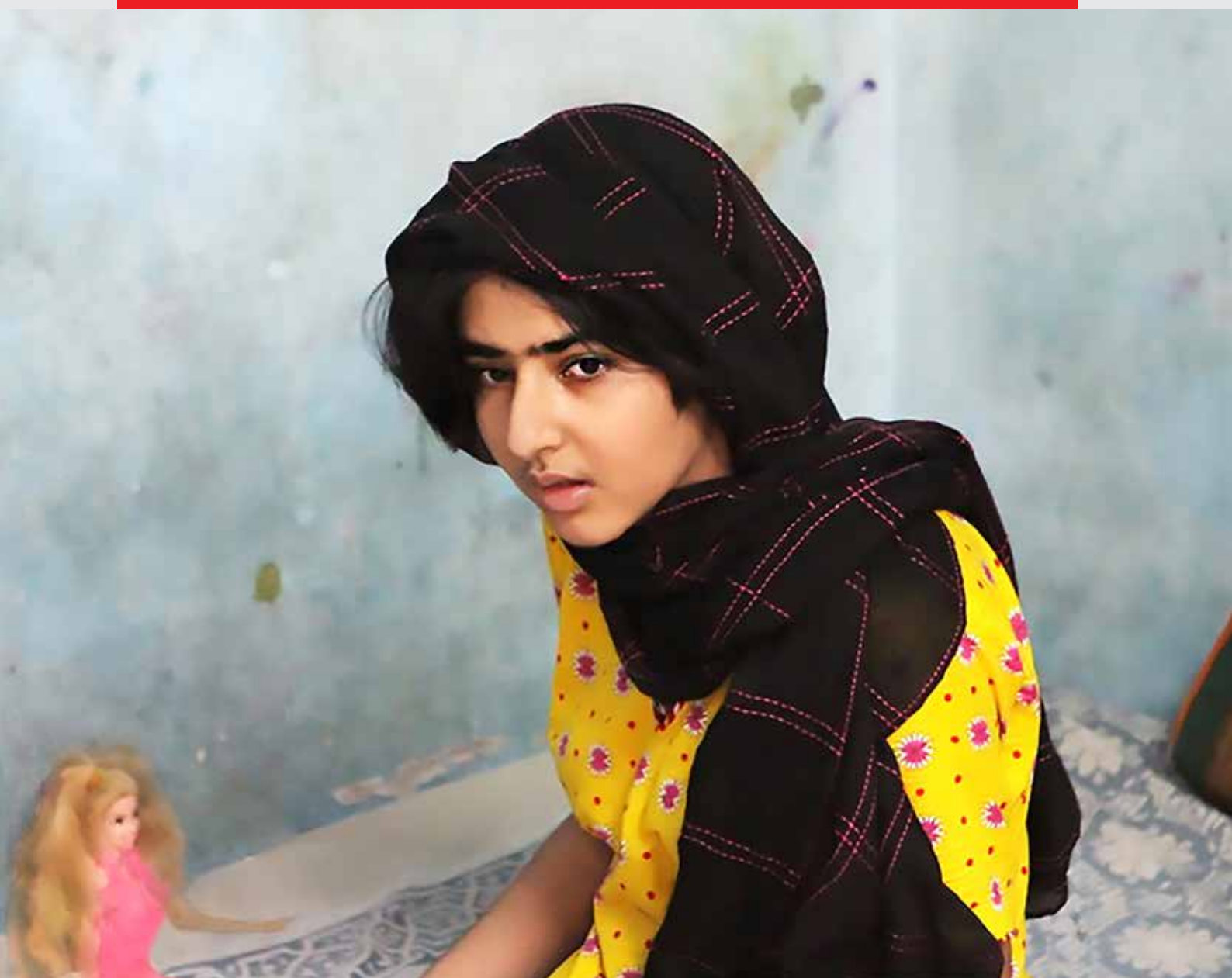


Fact Finding Mission to Thailand and Malaysia

From Persecution to Desperation



Picture of a refugee child in Thailand



INTERNATIONAL
HUMAN RIGHTS
COMMITTEE

A Christian Refugee Family in Malaysia supported by a local NGO



INTERNATIONAL
HUMAN RIGHTS
COMMITTEE

In Partnership with



CSW everyone
free to believe



Contents

Table of Contents

Preface	4
Foreword	6
Key Findings	8
Methodology	10
Recommendations	12
Executive Summary	18
International Legal Obligations	22
Thailand	24
Legal Framework	26
Case Study Accounts from Fact-Finding Mission: Thailand	47
Malaysia	51
Fact-Finding Mission's visit to Kuala Lumpur	52
Case Study Accounts from Fact-Finding Mission: Malaysia	60
Medical - Thailand and Malaysia	62
Conclusions	68
Annexes	72

Preface



Ahmed Shaheed, United Nations Special Rapporteur for Freedom of Religion or Belief

Some 70.8 million people were displaced worldwide as of 2018. Of these, an estimated 13.6 million people were newly displaced that year due to conflict or persecution on the basis of their ethnicity, their exercise of conscience, or because of their religion or belief. Today's news is filled with shocking accounts from various countries about the situation of the Ahmadiyya Muslims, Baha'is, Christians, Hindus and other religious minorities. **Many of these individuals face harrowing circumstances in their home countries simply for claiming their religious identity, exercising or manifesting their faith.** This includes serious threats to life, liberty and physical integrity, leading them no choice but to flee their homes, towns, or countries, with or without their families, to countries where they think they could seek protection. By the end of 2018, about 25.9 million people were refugees, and another 2.8 million applied for asylum in foreign countries by the end of that year.

These journeys, which all begin with the dreams for a better future, can also be full of danger and fear. Some people risk falling prey to human trafficking and other forms of exploitation. Some are detained by the authorities as soon as they arrive in a new country. Others may face years of frustration and be subject to abject poverty and fear as they await decisions on their fate by authorities that may be suspicious of their claims, lack a substantive understanding of what constitutes the right to freedom of religion or belief, be uninformed about the situation of religious freedom in the country from which they fled, or may hold personal convictions or prejudices of their own. Moreover, once in their new country these victims can also find themselves strangers in a new land troubled by familiar aspects of their persecution, including daily racism, xenophobia and discrimination. Hence, these victims of religious persecution are trapped in a vicious cycle of unfair treatment simply for laying claim to their identities.

I read with much concern, the Report that reflects on the findings emanating from the 13-18 May 2019 fact-finding mission carried out by the International Human Rights Committee (IHRC) working in collaboration with the Centre for Asylum Protection, Forum for Religious Freedom – Europe (FOREF), Christian Solidarity Worldwide (CSW), Asian Resource Centre, and CAP Freedom of Conscience.

The Report documents many of the aforementioned challenges facing Pakistani refugees, especially the Ahmadis, in Thailand and Malaysia, including risk of being arbitrarily detained beyond a reasonable period at various Immigration Detention Centres and that despite their refugee status, many still fear for their physical safety due to discrimination and inadequate legal protection. Moreover, many live under precarious conditions, having poor access to employment, healthcare and education.

It is well documented that Ahmadis have fled from Pakistan where they face multiple forms of persecution from the State and non-state actors. This Report identifies the immediate steps that now need to be taken to safeguard refugees, particularly Ahmadi Muslims, by the host countries and by the UNHCR. The resettlement of Ahmadi Muslims to third countries should also be prioritised.

I urge all the relevant authorities in Thailand and Malaysia to step up in their efforts in ensuring that the human rights, especially the right to freedom of religion or belief, of these religiously persecuted refugees are upheld and protected. Additionally, I urge the authorities to review their refugee and asylum policies to ensure that they are compatible with the international standards provided in the Refugee Convention 1951 and its 1967 Protocol. I would like to stress the principle of non-discrimination as to race, religion or belief or country of origin and the equal treatment of the refugees in respective territories of the States concerned. I hope that these religiously persecuted refugees will receive more support through an enhanced legal and social system following a thorough review of the existing challenges and inadequacies that lie in the systems.

//

The resettlement of Ahmadi Muslims to third countries should also be prioritised.

//

Foreword



Prof. Dr. h.c. Heiner Bielefeldt, former UN Special Rapporteur on Freedom of Religion or Belief

Being forced to hide or deny one's deeply felt convictions typically causes feelings of self-betrayal, humiliation, loss of identity and the erosion of self-respect. To describe the concomitant suffering, Roger Williams once coined the metaphor of “soul rape”. Thus, it is for good reasons that international human rights law prohibits coercive interferences into a person's inner nucleus of faith formation in absolute terms. Indeed, the prohibition of coercion in the “forum internum” of freedom of religion or belief is one of the few absolute norms, on par with the ban on torture or the prohibition of slavery.

As we know, realities can differ dramatically from normative standards. The situation of the Ahmadiyya Muslim Community is a case in question. In Pakistan, Ahmadis suffer discrimination in all spheres of life, from education to employment, from family life to political participation, from physical safety to access to official documents. Their persecution is systematic, orchestrated by state agencies and militant groups, which frequently cooperate. Criminal law provisions specifically targeting Ahmadis forbid them from manifesting their religious self-understanding while forcing upon them a religious label that they reject. No wonder that many Ahmadis flee from the country, in which they cannot feel safe and at home.

Tragically, the situation in some other Asian states is no better. This Report documents the dire circumstances, which Ahmadi refugees from Pakistan endure in Malaysia and Thailand. In Malaysia, where Islam has the status of an official religion, the general ideological pattern of discrimination seems to follow the example of Pakistan. Ahmadis are treated as “heretics”, whose sheer existence allegedly endangers the purity of the Islamic creed. In addition to this comes extremely inhospitable conditions for refugees. In Thailand too, the situation of Ahmadis is characterized by the denial of even a minimum respect for human rights, including school education for their children, provision of basic health care and access to legal aid.

In the face of this unbearable situation, the international community has to step in. Turning a blind

eye to the ongoing suffering of Ahmadis, whether in Pakistan or elsewhere, would ruin the credibility of international human rights commitments in general. One way of showing solidarity is by designing resettlement programmes for certain groups of Ahmadis, in line with the criteria set up by UNHCR. Given the degrading circumstances in refugee camps, as documented in this Report, resettlement may be the only viable solution to enable some groups of Ahmadis to live a life without fear and experience respect for their human dignity.



Turning a blind eye to the ongoing suffering of Ahmadis, whether in Pakistan or elsewhere, would ruin the credibility of international human rights commitments in general. One way of showing solidarity is by designing resettlement programmes for certain groups of Ahmadis, in line with the criteria set up by UNHCR



Key Findings

The fact that Thailand and Malaysia are not parties to the Refugee Convention means that asylum seekers and refugees in these countries have no legal status and this renders them extremely vulnerable. They are at risk of detention and refoulement contrary to the principles of UN Convention.

Weaknesses and absence of uniformity in UNHCR RSD and documentation procedures exacerbate the position of the asylum seekers and refugees in such circumstances.

Having no legal status within the territories entails a lack of access to employment, housing, sustenance, healthcare, education, mental healthcare and all basic and essential services.

The absence of a national screening mechanism is leading to much suffering.

More proactive engagement and dialogue by UNHCR with local authorities responsible for immigration is urgently needed to understand the particular position of asylum seekers and refugees to avoid them being treated as illegal migrants or an issue of national security.

UNHCR needs to manage the expectations of asylum seekers and refugees if resettlement is remote and provide them with more support in accessing essential services such as healthcare and education to facilitate integration.

Immigration detention in both countries could be indefinite and conditions are appalling, inhumane and degrading.

The principle of family unity and best interests of children are being overlooked in Thailand and Malaysia detention policies due to detention of minors with unrelated adults and/or separation of parents from children.

A review of immigration detention centres and policy in Thailand and Malaysia should be matters of urgent concern for the international community and the States concerned will require support on best practice by nations with more modern and developed systems of incarceration.

Limited resources, inadequate training of some front line staff may be thwarting the efforts of UNHCR in carrying out their work on the ground.

In Malaysia, the position of Ahmadi Muslims is not far removed from the problems faced by them in Pakistan.

Methodology

This Report was commissioned by the International Human Rights Committee (IHRC) working in collaboration with the Centre for Asylum Protection (Thailand), Forum for Religious Freedom – Europe (FOREF), Christian Solidarity Worldwide (CSW), Asian Resource Centre (Thailand), and CAP Freedom of Conscience (NGO with ECOSOC consultative status).

The purpose of the Report was to assess, review and ascertain the current position of Pakistani Ahmadi and Christian refugees in Thailand and Malaysia. However, due to logistical and time constraints, the scope of the Report has now been limited to Ahmadi refugees. Due to the relatively lax visa requirements and cost of living, Thailand and Malaysia were from 2010 to 2015 the countries easiest to reach for many Pakistani minorities, fleeing persecution in their country. Thousands unfortunately are now stuck in Thailand and Malaysia despite being granted refugee status with little or no hope of getting resettled to a safe third country. Since 2015, the flow of Pakistani refugees to Thailand and Malaysia has reduced drastically as it is now more difficult to leave Pakistan.

The relatively low numbers of Ahmadis in Thailand and Malaysia is not indicative of the magnitude of their suffering. Despite being recognised by the UNHCR in their most recent “Eligibility Guidelines for Assessing the International Protection Needs of Members of Religious Minorities from Pakistan” (“Eligibility Guidelines”), this recognition is neither reflected in the resettlement criteria

nor in the resettlement of Ahmadis. Whilst resettlement is not a right and only available to less than 1% of refugees there is no alternative durable solution for Pakistani refugees, at least in the short-term, and particularly in Thailand. This will be elaborated further in the contents of this Report.

To undertake this work, the IHRC assembled a delegation of 9 people comprising of non-governmental organisations, lawyers, researchers, politicians, human rights activists and a psychologist (“Delegation”) to carry out a week-long fact-finding mission to Thailand and Malaysia to review and assess the position of Pakistani refugees, particularly Ahmadis and Christians. As mentioned above, the Delegation was regrettably not able to meet as many Christians as it would have liked, which will hopefully be covered in a future visit. This Report has therefore been limited to Ahmadi refugees who are persecuted by law in Pakistan, with no religious freedom to practise or manifest their religion.

During the week-long mission, time was evenly spent in both Thailand and Malaysia. The Delegation first went to Thailand and was based in Bangkok. In Malaysia the Delegation was based in Kuala Lumpur. The Delegation interviewed state actors, human rights activists, journalists and leading members of civic society, lawyers, politicians, UNHCR both in Thailand and Malaysia and took evidence from over five hundred individuals the

majority of whom were refugees. This was an intensive exercise, and, in some cases, the Delegation members were split into groups, so that meetings could take place concurrently in order to gather the relevant evidence and take statements efficiently.

As a general principle, refugees and asylum seekers who have been interviewed have been granted anonymity for their welfare and protection. The anonymity that was to be afforded to them was made clear to them from the outset, in order to facilitate the objectives of the fact finding mission.

The expenses of the Report were met by the Ahmadiyya Muslim Community and the IHRC. No member of the Delegation has or will receive any compensation for their time expended in putting together the Report. Members of the Delegation have been granted anonymity for security, welfare and political reasons.

Since returning, the Delegation has followed up with subsequent research and verified accounts in order to ensure the accuracy of this Report. As Thailand is particularly problematic with the conditions of refugees described at best as harrowing, greater emphasis has been given in certain areas such as the legal structure to assess and analyse this situation. Most of the evidence is from primary sources i.e. testimonies and evidence from refugee and asylum seekers, organisations, institutions

and available reports from the UN. The Delegation would have liked to include statistics particularly around Pakistani Ahmadi refugees, which it tried but failed to receive from UNHCR.

The Delegation has endeavoured, at all times, to provide a neutral and factual account of the persecution of Ahmadis. The initial draft of the Report was produced by the Delegation, following which a separate and independent team made up of lawyers and human rights activists screened and edited the draft Report. The IHRC is grateful to all who have, at no cost, contributed and given their valuable time to help produce this Report.

Recommendations

Ahmadi Muslim refugees and asylum-seekers in Thailand and Malaysia alike are trapped in an extremely vulnerable situation and urgently need practical, sustainable solutions. The absence of a legal status within the territories they are now in, certain avoidable weaknesses in the UNHCR assessment processes, language barriers, poor housing conditions, lack of adequate nutritious food, sanitation, medical care, education, lack of proper legal and welfare advice, and inadequate protection and exposure to prolonged stress jeopardise and exacerbate their physical and mental health. They are at risk of “refoulement” to their country of persecution contrary to the principles of international protection. They suffer inhumane and degrading conditions both within and beyond the confines of Immigration Detention Centres (“IDCs”) despite being persons of concern to UNHCR.

In light of the above and on the basis of our findings from the fact-finding mission, we make the following recommendations:

To UNHCR:

On an urgent basis

1

Designate Ahmadis as a group which needs protection, thus prioritising the resettlement of Ahmadi asylum-seekers and refugees.

2

Adopt a more pro-active approach when looking at alternative pathways for resettlement.

3

Adopt a more pro-active and flexible approach to refer Ahmadis for resettlement under programmes such as the Mandate Refugee Scheme and Gateway Protection Programme.

4

Design resettlement programmes for certain groups of Ahmadis, in line with the criteria set up by UNHCR.

In the immediate term

UNHCR should also identify any weaknesses in their own procedures by sharing good practice with their colleagues in Thailand and Malaysia, where they face similar challenges in relation to documentation and provision of access to necessary advice and resources. Such good practices include the following:

1	Translate advice leaflets into the relevant languages and ensure that standardised procedures of documenting and assessment of asylum-seekers and refugees are adopted throughout the region.
2	Train front-line staff to identify and be receptive and supportive of, and sensitive to, asylum-seekers and refugees' needs; and to avoid becoming case-hardened to their plight such that urgent cases are not turned away.
3	Ensure that a standardised system of documenting and assessing of asylum-seekers and refugees is adopted throughout the region.
4	Ensure that detainees and their families in IDCs are given priority attention and support to secure their immediate release through more proactive and rapid interventions with the Thai and Malaysian immigration and detention authorities.
5	Ensure that an up-to-date list of services of NGOs is maintained and that asylum-seekers and refugees are advised on an on-going basis as to where they may go for help.
6	Ensure that those asylum-seekers and refugees in IDCs are given proper access to medical care to avoid deterioration of health and psychological damage from prolonged detention in deplorable and inhumane conditions.
7	Ensure that adequate support is provided to asylum-seekers and refugee children to be matched to local schools as early as possible and that UNHCR documentation is provided promptly to ensure that children and parents have the means to travel to school without fear of detention.

8	Ensure that asylum-seekers and refugees are given the means and support to integrate locally if resettlement is not a viable option and manage their expectations throughout the process.
9	Ensure that cases that meet the resettlement criteria are identified as early as possible and that no individual that meets this criterion (in particular medical cases or those involving vulnerable groups) is placed in an IDC.
10	Ensure that there is adequate advice and follow-up where cases for resettlement are put forward to receiving countries and requiring any rejections to be fully reasoned.
11	End indefinite detention of persons within IDCs and reduce bail recognisance.
12	Ensure that any appeal following rejection by a receiving country is examined and fully supported with adequate legal advice and intervention by UNHCR and any resubmission to a different receiving country is not prejudiced by an earlier refusal.
13	Actively promote the right to work for asylum-seekers and refugees to the Thai and Malaysian governments.
14	Support the National Screening Mechanism for asylum-seekers and refugees within state laws and procedures.

In respect of Malaysia specifically, UNHCR should:

1	Ensure that resources are directed towards a much faster and efficient refugee status determination procedure to avoid the repeated pushing back of assessment interviews and rendering asylum-seekers more vulnerable to local state authorities due to inadequate paper-based ID documentation.
2	Ensure that tamper-free UNHCR biometric cards are promptly issued to asylum-seekers and refugees and undertake advocacy with Malaysian authorities to ensure that police and immigration officials receive the required knowledge and training to recognise the special status of asylum-seekers and refugees.

Recommendations to both the Kingdom of Thailand and the State of Malaysia.

1	Immediately release from IDCs any person that UNHCR has declared an asylum seeker or refugee and who UNHCR has raised concerns about.
2	Immediately conduct a review of detention conditions in IDCs and implement changes to improve the inhumane and degrading conditions faced by detainees in line with the United Nations Standard Minimum Rules for the Treatment of detainees and prisoners.
3	Implement an immediate plan of action to provide proper healthcare facilities and sanitation to asylum-seekers and refugees in IDCs and address overcrowding in IDCs.

To the Kingdom of Thailand:

1	Withdraw Thailand's reservation to Article 22 of Convention on the Rights of the Child and guarantee that education in Thailand is accessible for forcibly displaced Ahmadi and other asylum-seeking and refugee children.
2	Implement structures to enable Thailand to sign and ratify the 1951 Refugee Convention, its 1967 Protocol and recognise the status of refugees.
3	Implement the promises made relating to the National Screening Mechanism.

4	End detention of parents of minor children.
5	Ensure that adequate mental health care is provided to detainees within IDCs.
6	Train police and immigration officials to recognise and accept UNHCR documentation as a legitimate form of ID for those in need of international protection.
7	Implement systematic data collection to identify the health needs, risks and vulnerabilities of Ahmadi Muslim asylum-seekers and refugees residing in Thailand and Malaysia.
8	Ensure that state education is available to asylum-seeking and refugee children so that children may attend school accompanied by their parents without fear of detention.
9	Ensure that medical costs for asylum-seekers and refugees are brought in line with those paid by Thai nationals.
10	Improve access to healthcare facilities, outreach services for the reproductive health among displaced Ahmadi women and developing health coverage for children and women.

In the Medium term:

To achieve the 2030 Sustainable Development Goals, including to make a significant move towards the goal of leaving no one behind, it is imperative that the right to education, proper healthcare and other legal rights of refugees and asylum-seekers are adequately addressed. The underlying determinants of health, such as an adequate nutritious diet, adequate housing, and access to clean water and sanitation, need to be addressed to ensure that Ahmadi asylum-seekers and refugees can have healthy, productive lives. Thailand and Malaysia need to develop inclusive health policies and legal frameworks for the forcibly displaced in collaboration with the UN and other non-governmental organisations and adopt a national strategy to address the needs of Ahmadi refugees and the forcibly displaced.

Recommendations to the State of Malaysia:

1	Accede to the 1951 Convention as set out in the government's manifesto.
2	Deliver its promise to grant refugees the right to work.
3	Legally recognise the rights of Ahmadis to practise their beliefs and ensure Constitutional guarantees in relation to freedom of religion are applied in fact to those of the Ahmadi Muslim faith without any possibility of backlash from the local Muslim population, National Fatwa Committee or the Malaysian Islamic Party (PAS).
4	Promote and implement a National Screening Mechanism, such as that promoted in Thailand.

Executive Summary

This Report was commissioned by the IHRC in partnership with FOREF, CSW and local NGOs in Thailand, including the Asian Resource Foundation. It is based on a fact-finding mission that took place from 13 to 18 May 2019 in Thailand and Malaysia. The purpose of the mission was to assess, review and ascertain the current position of Pakistani refugees who have left Pakistan due to a well-founded fear of persecution and now are refugees in Thailand or Malaysia. The mission had a particular focus on the Ahmadi Muslim refugees.

This Report is a follow up to the 2016-2017 report entitled 'Ahmadis in Pakistan face an existential threat' (the 2016-2017 report). The 2016-2017 Report describes the growing violence, legal discrimination and social exclusion in Pakistan since 2015 as follows:

'Ahmadi Muslims face multiple forms of persecution— both by State and non-state actors. State authorities do not formally recognize Ahmadis as a belief group. Accused of heresy, they are deprived of meaningful communal worship and the freedom to manifest their beliefs. Anti-Ahmadi provisions permeate the Pakistani legal system and Ahmadis are prohibited from identifying themselves as Muslims. Furthermore, failure by the State to adequately protect their physical security, exposes Ahmadis to violence perpetrated by non-state actors, including by those that intentionally target Ahmadis. Hateful discourse in the media, moreover, contributes to this climate of impunity.

These facts create a toxic combination that makes normal life impossible for the Ahmadiyya Muslim Community in Pakistan.'

As the persecution in Pakistan increases, a growing number of Ahmadis are leaving Pakistan to seek asylum in Southeast Asia and elsewhere. Sources within Pakistan and statistics released by the UN indicate that Ahmadis are the largest asylum seeking group from Pakistan. Countries with a significant Ahmadi refugee population include Sri Lanka, Nepal, Thailand and Malaysia.

Neither Thailand nor Malaysia are signatories to the 1951 UN Refugee Convention relating to the Status of Refugees ("Refugee Convention") or its 1967 Protocol. Both countries also lack a national asylum policy. Without a legal status, refugees are vulnerable to arrest, indefinite detention, deportation and possible "refoulement" in contravention of the principles with the UN Convention. Living conditions of refugees are generally poor, with large families often living in one room only.

Access to education is limited in Thailand because of the language of instruction in Thai government schools being the Thai language, which is not spoken by most refugee children. Further, the transportation fees to these schools are too high for Ahmadi parents who then take

the risk of transporting children which increases the risk of them being detained. Access to health services is non-existent for most refugees due to the high cost of treatment and medicines. Labour laws in Thailand and Malaysia prohibit refugees from working legally, leaving refugees no choice but to seek employment informally, where they end up working in hazardous conditions and are extremely vulnerable to exploitation. This also leaves them open to the very real risk of arrest and detention. Indeed, the mere fact of being over-stayers on their initial entry visas and lack of regularisation of their status within the territory's domestic laws, within States which are non-party to the UN Convention, make their position particularly vulnerable and make them susceptible to detention in IDCs at any given time, on the way to school or on the streets.

Conditions in IDCs are inhumane and deplorable. The delegation visited IDCs in Bangkok and Kuala Lumpur and spoke to Ahmadi detainees. In both countries detainees described severe overcrowding in IDCs with up to 200 people being held in cells with limited toilets, with no privacy, grave limitations on fresh water and lack of healthcare services. Detainees can be held in IDCs indefinitely. Some of the detainees the delegation spoke with have been imprisoned up to 6 years.

According to UNHCR estimations there are 1,200 Ahmadi refugees in Thailand. All Ahmadi refugees are recognized by UNHCR and receive a refugee card after a process of Refugee Status Determination ("RSD"). As a first step in the RSD, asylum-seekers receive an appointment letter (See Annex 7) from the UNHCR stating that the person is registered and that the refugee status is in the

process of being examined. Both the appointment letter and the refugee card (See Annex 9) carry a photo and the date of birth of the person in question. As Thailand is not a signatory to the Refugee Convention, neither documents offer legal protection to asylum-seekers and refugees. In Thailand, asylum-seekers with an appointment letter can be arrested and detained indefinitely. On the other hand, refugees with an UNHCR refugee

01

key point 1

“At least in Pakistan we die from a bullet but in Thailand it is a slow death” (testimony from Ahmadi Refugee)

02

key point 2

“Conditions in IDCs are inhumane and deplorable...”

03

key point 3

“Living conditions of refugees are generally poor, with large families often living in one room only....”

card can be arrested and detained for a maximum of 14 days in Malaysia. As a result of their insecure situation, asylum-seekers and refugees, and especially their children, are permanently under enormous stress. This leads to mental and psychological health issues.

In Malaysia, asylum-seekers and refugees face similar problems as in Thailand. Access to healthcare is extremely expensive and lawful employment not available. Several refugees reported police brutality. Additionally, Ahmadis face discrimination because of their religion. Article 3 of the Federal Constitution states that Islam is the official religion of Malaysia, but the federal government has no authority to regulate Islamic religious affairs throughout the country. In Malaysia, Ahmadis are considered non-Muslim and are therefore not allowed to practice their religion. Notwithstanding, many Ahmadis are identified as Muslims in their National Registration Identification Card (“IC”). This fact gives the State Islamic Religious Department the right to investigate the Ahmadiyya community and call them to the State’s Shariah Court. On 11 April 2014, a group of 39 Ahmadis was arrested and accused of performing Friday prayers in a place that was not a mosque. Their case is now before the High Court.

Many asylum-seekers and refugees in Thailand and Malaysia do not have a clear understanding of the services UNHCR can offer. Expectations are often too high. Most asylum-seekers and refugees reported that they were unaware when they left Pakistan that the UNHCR does not provide financial support, medical aid or education. Because of the hardship refugees face in their daily lives in Thailand and Malaysia, many prefer resettlement in third countries to local integration. UNHCR representatives, however, clearly

state that the worldwide number of resettlement places has declined dramatically and that whilst recognition is a right of refugees, resettlement is not.

Local integration of refugees would require Thailand and Malaysia to become party to the 1951 Refugee Convention relating to the Status of Refugees. The Malaysian government suggested becoming a party to the Refugee Convention in its latest government manifesto. It also mentioned granting refugees the right to work. UNHCR reports that the government of Thailand has plans to set up its own system to screen asylum-seekers. UNHCR considers the above to point to implicit recognition of the status of refugees by these two countries, which could lead to an improvement in the lives of these refugees.

As voluntary repatriation to Pakistan is not a viable option for Ahmadis, resettlement in third countries remains the only durable solution. UNHCR stresses that less than 1% of the world’s refugees are resettled as only a small number of categories are eligible for resettlement such as survivors of torture, refugees who need life-saving treatment and certain cases of family reunification. Third countries are called to accept more refugees for resettlement.

This Report shows multiple examples of how Ahmadis are intimidated, arrested and indefinitely detained in Thailand and Malaysia. The Report provides evidence of systemic discrimination and exclusion of Ahmadis from Thai and Malaysian societies and violation of their civil rights. A durable solution does not seem to be at hand. Governments, human rights organizations and activists are called upon to act now to stem this injustice and stand together against this crisis so that future generations can live in a peaceful, tolerant, diverse, compassionate and just society respecting the fundamental pillars of basic and universal Human Rights.

//

This Report shows multiple examples of how Ahmadis are intimidated, arrested and indefinitely detained in Thailand and Malaysia.

//

Malnourished Child



Food Utensils of Refugee Family



Typical Refugee Accommodation - serving as both bedroom and living area



International Legal Obligations

The 1951 Convention relating to the Status of Refugees is the foundation of international refugee law. It defines the term “refugee” and establishes the principle that refugees should not be forcibly returned to a territory where their lives or freedom would be threatened.

The 1951 Convention and its 1967 Protocol enshrines the international protection system, in conjunction with regional treaties and declarations that address the rights of refugees. This is best understood in human rights law starting with the 1948 Universal Declaration of Human Rights (“UDHR”) and with international humanitarian law (otherwise known as the laws of war).

The Refugee Convention focused on the challenges facing refugees following the Second World War. With the emergence of new refugee crises, however, the scope of the 1951 Convention needed to be broader which led to the adoption of the 1967 Protocol to the Convention (“1967 Protocol”).

The 1967 Protocol is independent of, though integrally related to, the 1951 Convention. The Protocol removes the temporal and geographic limits found in the Convention. By acceding to the Protocol, States agree to apply the core content of the 1951 Convention (Article 2-34) to all persons covered by the Protocol’s refugee definition, without limitations of time or place.



Who is a refugee under the 1951 Convention?

According to the 1951 Convention, a refugee¹ is someone who has a 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 (or her) nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; country of origin or habitual residence.

An “asylum-seeker”² is a general designation for someone who is seeking international protection. In some countries it is a legal term referring to a person who has applied for refugee status and has not yet received a final decision on his or her claim. Not every asylum-seeker will ultimately

¹ Convention and Protocol relating to the Status of Refugees, <https://www.unhcr.org/uk/3b66c2aa10>

² A guide to international refugee protection and building state asylum systems, Handbook for Parliamentarians N° 27, 2017 accessed on 3 June 2019

be recognised as a refugee. However an asylum-seeker should not be sent back to his or her country of origin until the asylum claim has been examined in a fair procedure.

A migrant³ is best understood as someone who chooses to move, not because of a direct threat to life or freedom, but in order to find work, for education, family reunion, or other personal reasons. Unlike refugees, migrants do not have a fear of persecution or serious harm in their home countries. Migrants continue to enjoy the protection of their own governments even when abroad and can return home.

The principle of non-refoulement

The right of a refugee to be protected from forced return, or refoulement is the cornerstone of international refugee protection as described in Article 33 of the 1951 Convention, which is also binding on States Party to the 1967 Protocol. Article 33(1) of the 1951 Convention states:

“No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers or territories where his [or her] life or freedom would be threatened on account of his [or her] race, religion, nationality, membership of a particular social group or political opinion.”⁴

All refugees, whether they have been formally recognised as such or not, are entitled to protection from refoulement. In other words, asylum-seekers whose status has not yet been determined by the authorities are protected from forced return.

Non-refoulement under human rights law

The prevention of refoulement in international refugee law is complemented by provisions in international human rights law as well as regional human rights instruments which guarantees that no one should be returned to a country where they would face torture, cruel, inhuman or degrading treatment or punishment and other irreparable harm.

Neither Malaysia nor Thailand are parties to the 1951 Refugee Convention. As such, refugees lack legal status and are considered illegal migrants, in both countries and are consequently often subject to arbitrary detention and deportation. Thailand has long failed to respect the principle of non-refoulement prescribed by Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“Convention against Torture”), of which it is party, having forcibly returned many asylum-seekers despite credible risks of torture and human rights abuses in their home countries.

Unlike Malaysia, Thailand is party to the International Covenant on Civil and Political Rights (“ICCPR”) which, alongside the Convention against Torture, imposes non-refoulement obligations not limited in application to “refugees” within the meaning of the Refugee Convention and the 1967 Protocol and is applicable without exception.

³ A guide to international refugee protection and building state asylum systems, Handbook for Parliamentarians N° 27, 2017 accessed on 3 June 2019

⁴ <https://www.unhcr.org/4d9486929.pdf>

Thailand

Geo Political Context

- ✓ Thailand is situated in Southeast Asia, bordering the Andaman Sea and the Gulf of Thailand, south-east of Burma.
- ✓ It is composed of 76 provinces and 1 municipality Krung The (Bangkok). It is a constitutional monarchy headed by King Vajiralongkorn who succeeded his father, the long serving King Bhumibol, in 2016 and who recently got crowned in a ceremony in May 2019. Unlike many of its neighbours, Thailand has never been colonised. The country is presently ruled by a military junta which took power in a coup in 2014. There was much controversy surrounding the recent elections – the first general elections since the coup – which kept the military junta in power.⁵

The country has a high literacy rate of 92.9%.⁶

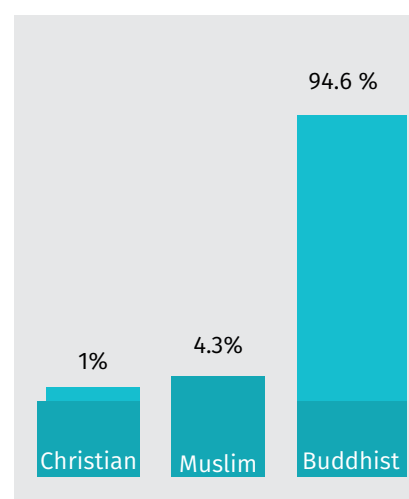
50%

69 million people Live in urban areas



10.156 million BANGKOK (capital), 1.272 million Samut Prakan, 1.135 million Chiang Mai, 940,000 Songkla, 937,000 Nothaburi, 889,000 Pathum Thani (2018 estimates)⁸

Faith Split in %⁷



- ✓ In 2013, the Thai Government implemented a nationwide 300 Baht (roughly \$10) per day minimum wage policy and this now stands at 325 Bahts per day.⁹

The country's Constitution which has seen many changes in recent decades was last revised and signed by the King on 6 April 2017. *Lese majeste*, which criminalises criticism of the monarchy, is strictly enforced.

⁵ See, for example, "Thai parties cry foul after election results favour military junta", The Guardian, 8 May 2019, available at www.theguardian.com/world/2019/may/08/thai-parties-cry-foul-after-election-results-favour-military-junta

⁶ <https://www.theguardian.com/world/2019/may/08/thai-parties-cry-foul-after-election-results-favour-military-junta>

⁷ <https://knoema.com/atlas/Thailand/topics/Education/Literacy/Adult-literacy-rate>

⁸ Estimates taken from 2018, see <https://www.cia.gov/library/publications/the-world-factbook/geos/th.html>

⁹ <https://tradingeconomics.com/thailand/minimum-wages>



Legal Framework

Refugees in Thailand live a precarious existence mostly outside the legal framework of Thai society. The status as a refugee does not exist under Thai law, and all applicants and refugees who are not able to obtain a visa reside in the Kingdom as illegal immigrants.

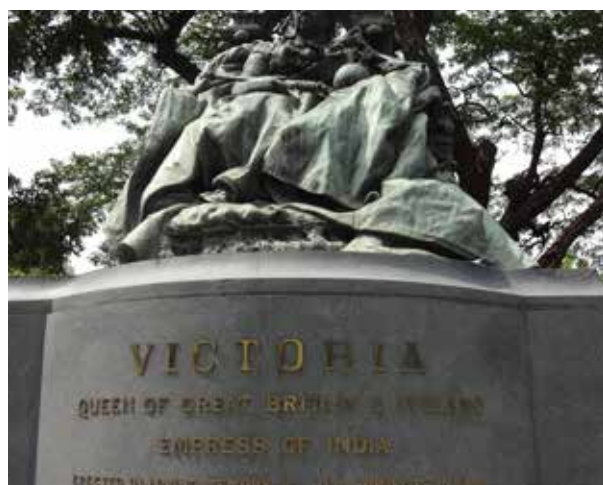
United Nations Treaties

In 1948, Thailand voted in favour of the UDHR.¹⁰ Since then, Thailand has acceded to seven of the nine core international human right treaties.¹¹

These include the International Covenant on Civil and Political Rights (“ICCPR”), the International Covenant on Economic, Social and Cultural Rights (“ICESCR”), the Convention on the Elimination of All Forms of Discrimination against Women (“CEDAW”), and the Convention on the Rights of the Child (“CRC”).

Core Human Rights Treaties

The rights afforded under the ICCPR are generally applied to all individuals, “without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”¹² Only the right to political participation is restricted to citizens.¹³ As such, the Covenant guarantees everyone – including refugees residing illegally in Thailand – the right to life, freedom of religion, speech and assembly, the right to a fair trial, and protection of the family and civil registration. However, the ICCPR contains an important restriction on illegal immigrants in that article 12 restricts the freedom of movement to “[e]veryone lawfully within the territory of a State”. The rights protected by ICESCR are



similarly directed at everyone, “without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”¹⁴ The ICESCR provides international protections of labour rights, social security rights, the right to an adequate standard of living, health and education. None of these rights are in themselves restricted to citizens or foreigners lawfully present. However, unlike the ICCPR, the rights protected by the ICESCR are subject to the principle of progressive realization,¹⁵ and developing countries are afforded discretion as to “what extent they would guarantee the economic rights recognized in the ICESCR to non-nationals.”¹⁶

Although no international human rights treaty permits discrimination on the basis of sex, CEDAW is a positive reaffirmation of the principle of equality between the sexes. The convention notes that “extensive discrimination against women continues to exist”, and that such discrimination “violates the principles of equality of rights and respect for human dignity.”¹⁷ The Convention aims to “modify the social and cultural patterns of conduct of men and women”¹⁸ in order to eliminate discrimination, as well as providing special

¹⁰ <https://digitallibrary.un.org/>

¹¹ See OHCHR, ‘Status of Ratification’ at <http://indicators.ohchr.org/>.

¹² ICCPR art 2(1).

¹³ ICCPR art 25.

¹⁴ ICESCR art 2(2).

¹⁵ ICESCR art 2(1).

¹⁶ ICESCR art 2(3).

¹⁷ CEDAW preamble.

¹⁸ CEDAW art 5(a).

protections for maternity¹⁹ and for measures to suppress trafficking in women and the exploitation of prostitution of women.²⁰ The CRC has similarly been borne out of the need to provide special safeguards and legal protection for children, irrespective of a ‘child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.’²¹ CRC requires that social welfare institutions, courts, administrative authorities and legislative bodies have the best interests of the child as a primary consideration in any action they take,²² and to respect the responsibilities, rights and duties of parents, extended family or the community.²³ The CRC’s protection apply equally to everyone under the age of 18, including those children that are unlawfully residing in a State Party’s territory. This includes fundamental human rights, which CRC reaffirms, as well as a right to “highest attainable standard of health”,²⁴ and the right to free primary education.²⁵

Convention Relating to the Status of Refugees

Article 14 of the UDHR recognises the right to “seek and enjoy in other countries asylum from persecution.” The Refugee Convention, which entered into force on 22 April 1954, was originally limited in time to “events occurring before 1 January 1951”, and by some states understood also to include a geographical limitation to events occurring in Europe before that date.²⁶ The 1967 Protocol removed these limitations.^{27, 28} Under the Refugee Convention, a refugee is a person who has a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion. As stated above, Thailand has not acceded to the Refugee Convention, nor does it have a national asylum system. As such, the concept of a refugee does not exist under Thai law, and UNHCR recognised refugees have no special protection under the law.

Practical Legal Considerations

As the concept of a refugee does not exist under Thai law, asylum-seekers and refugees are subject to the same rules and regulations as any other foreigners present in Thailand.

Human Rights Provisions in Thai Law

While international human rights instruments presuppose that “[a]ll human beings are born free and equal in dignity and rights” the attainment of these rights are a matter of interpretation of international law and respect and implementation of such rights under domestic legislation. The current Thai constitution, enacted in 2017,²⁹ requires only that treaties affecting territory under Thai sovereignty or which have “wide scale effects on the security of economy, society, or trade or investment of the country” requires an act of Parliament to give effect to the treaty. Whether a treaty has “wide scale effects” is a matter for the Constitutional Court to decide. However, Thai judges generally restrict themselves to applying the existing Thai laws without regards to the human rights commitments that Thailand have ratified. While one might argue that, in the absence of a determination by the Constitutional Court that a treaty has “wide scale effects”, there is no direct constitutional bar in applying human rights standards, efforts seeking to do so have had little success. The Human Rights Committee may be called upon by the parties to offer their opinion, but their opinion is not binding on the court in any way, and the judge may choose to disregard their advice. As such, the mechanism is generally regarded as ineffective.

19 CEDAW arts 4 and 11.

20 CEDAW arts 6.

21 CRC art 2(1).

22 CRC art 3(1).

23 CRC art 5.

24 CRC art 5.

25 CRC art 28.

26 1951 Refugee Convention art 1(B)(1).

27 1967 Protocol art 1(2).

28 For the purposes of this text, the term “Refugee

Convention” also incorporates the 1967 Protocol.

29 2017 Constitution, unofficial translation by Council of State.

Available at http://www.constitutionalcourt.or.th/occ_en/download/article_20170410173022.pdf.

Immigration and Detention

All foreigners are subject to immigration regulations. As Thai law makes no provisions for the legal entry or stay for asylum-seekers, most enter Thailand with a tourist visa. Tourist visas are easy to obtain and available with proof of having 20,000 Baht available, as well as a confirmed flight ticket and hotel reservation. Current regulations also call for showing one year of bank statements.

Some refugees may be able to secure non-immigrant visas. These are available in several categories, such as education, work, or for retirees. While most non-immigrant visas require sponsors in the form of educational institutions, businesses, or family, the retirement visa, often referred to as a non-immigrant OA visa, is available to foreigners who fulfil the requirements. However, particularly the financial requirement, being able to show proof of funds in excess of 800,000 Baht, makes it difficult to obtain. Further, this requirement must be satisfied every year, and as such is rarely a secure, long-term solution for a refugee in Thailand.

The practical result of the Thai immigration system is that the vast majority of urban refugees in Thailand are overstaying their visas. Previously, this was less of a problem than what it is today. Since the military coup in 2014, the government has initiated several measures in order to combat visa overstay and foreign criminals. This has led to the arrest and indefinite detention of a large number of refugees, even if their only offence is overstaying their visa. Refugees were previously eligible for bail (typically at 50,000 Baht) in return for reporting their whereabouts twice a month. However, the past two years bail has not been possible, and refugees already out on bail have had their bail revoked. The result has been a swell in numbers of detainees in Thai IDCs, particularly in Bangkok.³⁰ These detention facilities are meant as a short-term solution pending the foreigner making the necessary arrangements to

leave Thailand, but as Thailand does not practice deportation of most foreigners, refugees have generally not been forced out of IDCs. The result is severe overcrowding, coupled with the almost total lack of healthcare, a situation which has persisted for years for some refugee detainees. As bail is no longer an option for refugees, they stay in the IDC until they make arrangements for returning to the country they fled from, or resettlement to a third country.

One recent positive development, however, is that Thailand has ended their practice of detaining children and have released mothers with children under the age of 18.³¹ However, such efforts comes at a tremendous cost: UNHCR and NGOs worked with relevant government agencies and the police for years before the policy was implemented.

Housing and Labour

Foreigners are eligible to rent long-term accommodation in Thailand. However, unless refugees have some form of legal residence status, they are in principle barred from obtaining accommodation, as landlords are required by law to report the residence of any foreigners on their premises. In practice, many landlords have avoided the registration of foreigners staying with them. However, it is clear that the possibilities for refugees to rent accommodation in Thailand are getting slimmer. In 2017, police reported a possible crackdown on landlords not reporting foreigners staying at their properties, which raised the fear that refugees who were staying illegally in Thailand at the time would be evicted at short notice. The crackdown was not implemented, although there are now more frequent reports about landlords demanding a valid

³⁰ For an introduction to Thai immigration detention, <https://www.bangkokpost.com/news/special-reports/1414047/detention-centres-stuck-in-past-century>.

³¹ www.unhcr.or.th/en/news/general/pr/UNHCR-welcomes-RTG-commitment-release-detained-children-in-Thailand.

passport before illegal immigrants are allowed to rent. With regard to labour, however, the situation is different. The Thai government has stepped up enforcement of labour laws substantially in the past few years. As well as better enforcement of the work permit rules applicable to foreigners, the government has become stricter in its dealings with employers as well, who now face stiff financial penalties for employing foreigners without a work permit. The result is that it is now very difficult for refugees to find any sort of job, and that opportunities for exploitation are substantially higher.

Taken together, it is clear that increased enforcement of Thailand's existing regulations governing housing and labour has contributed to a substantially more difficult environment for refugees in their daily lives. As such, more refugees are now dependent on drawing on their own and their families' savings, as well as UNHCR and NGOs, which operate with very limited budgets.

Civil Registration

Civil registration is an overlooked field with great repercussions for refugees. Civil registration – the registration of birth, marriages, and deaths, along with issuance of the respective certificates – plays an important role in establishing the identity and belonging of a person. Generally speaking, civil registration is the responsibility of the district office, a bureaucratic organisation that is not affiliated with the police.

District offices will generally issue birth certificates upon receiving a birth notification from a hospital or someone who delivered a baby. The fact that the parents are illegal immigrants does not restrict them from obtaining a birth

certificate, although it is obvious that many refugees are deeply distrustful of any part of the Thai government. Death certificates are likewise the responsibility of the district office, although Thai law calls for the participation of the police in establishing the cause of death before the district office can present a death certificate.

Marriages, on the other hand, can only be legally entered into by foreigners lawfully present. As such, it is not possible to obtain a marriage certificate for an illegal immigrant. However, with respect to the UNHCR RSD process and resettlement, it is usually up to the parties to define and prove their relationship. UNHCR will for example accept a couple as married even if they met and got together in Thailand and are unable to obtain a marriage certificate. Some resettlement countries may also accept that two persons are married even if they are not legally (able to be) married in Thailand.

Refugee Screening Procedure in Thailand

The Thai government is currently in the process of drafting regulations which would establish a government-run screening process for persons who are today under the UNHCR mandate. This process has been on-going for several years, and it is unsure how the screening process would be conducted and what rights and obligations those who are being screened would have. Worryingly, the Thai government may opt for a screening procedure where already recognised refugees may have to undergo the Thai screening process. Recent developments suggest that those who successfully pass the screening procedure would have some limited right to stay in

Thailand legally, but that the government nonetheless expects such persons to be resettled in the future.

Refugee Status Determination

Refugee Status Determination (RSD) refers to the process under which UNHCR assesses a claim for international refugee protection. RSD under UNHCR's mandate are governed by the Procedural Standards,³² which were first issued internally in 2003. The Procedural Standards are currently in the process of being updated.³³ While the Procedural Standards provide a minimum standards applicable to UNHCR's RSD work, and describe the process which the applicant is subject to, the modalities of processing the claim, and the skills and training necessary for staff, each office may adapt those processes and procedures which suit their needs. For that reason, and because RSD processing in general varies wildly across the globe, the current section will describe the processing modalities throughout the different RSD stages from registration to recognition or rejection of an application for international protection, as observed at UNHCR's office in Bangkok.

The claimant is referred to as the applicant by the UNHCR. Formally, one becomes an asylum-seeker after the registration interview has been conducted and an asylum-seeker card has been issued. Once the refugee application has been successfully recognised, the applicant will be referred to as a (recognised) refugee. It is important to note that a person becomes a refugee as soon as he fulfils the criteria set forth in the Refugee Convention, which would necessarily happen before UNHCR has recognised the claim. A positive decision on the applicant's refugee application rather declares him or her to be a refugee, than makes him or her one. Below, the term applicant is used to refer to the person seeking asylum prior to his/her claim being recognised or rejected.

Registration

The registration process is fairly simple, yet crucial for the

outcome. The first step consists of submitting a written statement (also called a registration statement) to UNHCR. The written statement is used by UNHCR as the foundation for the interview and research into the applicant's refugee claim. However, the written statement is not intended to provide a comprehensive overview of everything the applicant has experienced or fear will happen, but rather serves as an outline of the major events that led to the applicant's departure from their home country. For that reason, UNHCR expects that the applicant will mention all major events that the applicant will rely on as supporting his or her claim in the interview.

After UNHCR has processed the written statement, a registration interview will be scheduled. The period to schedule a registration interview can vary from a day to several months, depending on the office's processing capacity. In order to schedule a registration interview, there must be available interview rooms, registration staff, and interpreters.

The purpose of the registration interview is to obtain background information (family, education, occupation, identification papers, travel details). Families can register together under the same case file number. In that case, one person will be designated the Primary Applicant (PA), while the remaining family members would be designated derivative applicants. See Family Unity and Individual Assessment of Adults' Refugee Claims for more information. Both the PA and adult accompanying family members will have separate registration interviews. It is important to note that only the PA will have their refugee claim assessed. If other family members have separate refugee claims, they may request for their cases to be separated. If there are indicators that it would be appropriate that UNHCR adjudicate other family members' refugee

32 UNHCR, 'Procedural Standards'. Available at: <https://www.refworld.org/docid/42d66dd84.html>.

33 <https://www.refworld.org/rsdproceduralstandards.html>. For references to updated chapters the section number is followed by the sign (updated).

claims individually, UNHCR may separate the cases ex officio, although in practice this rarely happens.

As part of the registration process, UNHCR will take the claimant's photograph and fingerprints. At the end of the registration process, the applicant and the remaining family members will be issued an applicant card. The card contains the applicant's photograph, first and last name (in Latin and Thai script), date of birth, and country of origin. In addition to these elements, there is a serial number printed underneath the photograph, which is the unique ID number assigned to the applicant. The card also features the applicant's case file number, which is shared amongst all family members on the same case. The case file number is 815-YYCNNNNN, where 815 indicates Thailand; YY is the year of registration (e.g. 19 for 2019), while NNNNN is the case serial number. For example, the first case of 2019 would be 815-19C00001.

First instance

After the registration interview is finished, the applicant enters the first instance. An Eligibility Officer (EO) will be assigned to the case, who is responsible for the interviewing, researching and decision of the case. The first instance stage consists of one or more RSD Interviews (also called first instance interviews), and the RSD Assessment.³⁴ The outcome of the RSD Assessment is then notified to the applicant in writing.

A preliminary date for the RSD Interview is given at the registration interview. However, in practice this date is not adhered to. As with the registration interview, the RSD Interview requires that an interview room, an EO and an interpreter is available. For Pakistanis arriving during 2013-2015, when the number of pending cases swelled to several thousands, waiting periods of up to three years for the RSD

Interview could be encountered.

The RSD Interview is normally scheduled according to the sequence in which cases were registered. However, that does not necessarily mean that lower case numbers will always be interviewed before higher case numbers. Interpreter availability is an important factor in interview scheduling, and certain cases may be accelerated. For this reason, the interview date is always uncertain, and an interview may be brought back or pushed back with a few days' notice. The applicant will typically be called by an interpreter a few days before the interview is scheduled to happen. However, for applicants who are detained in the IDC, it has been observed that some do not get any notice before the interview.

The importance of the RSD Interview cannot be underestimated, not least because of the difficulty the majority of applicants will have in presenting evidence which conclusively proves their case. The UNHCR Handbook³⁵ recognises the inherent difficulties applicants have in presenting such evidence, and establishes that while the burden of proof in principle rests with the applicant, the duty to "ascertain and evaluate all the relevant facts"³⁶ is shared between the applicant and the EO. Depending on the circumstances of the case, the duty of producing the necessary evidence may, in fact, rest with the EO through independent research. If evidence cannot be obtained, or statements are simply not susceptible to proof, the applicant's account, if it "appears credible, he should, unless there are good reasons to the contrary, be given the benefit of the doubt",³⁷ insofar as that account is not inconsistent with the general account put forward.³⁸

An RSD Interview typically starts at 09.00 and lasts for several hours. Families will usually be called together – although only the PA needs to substantiate his/her claim, family

³⁴ See Procedural Standards 4.3.

³⁵ <https://www.unhcr.org/publications/legal/3d58e13b4/handbook-procedures-criteria-determining-refugee-status-under-1951-convention.html>.

³⁶ Handbook, 196.

³⁷ Handbook, 196.

³⁸ Handbook, 197.

members above the age of 12 at the time of interview are likely to be interviewed as well in order to support the PA's testimony. The family will attend the opening and closure of the interview together, but only the interviewee will be present (together with the interpreter, EO, and legal representative, if any) during the main part. The EO will be typing down the entire interview as it happens. In addition, an audio recording will be conducted. The basic outline of the interview consists of a short introduction to the interview, confidentiality, and the refugee definition. The EO would confirm that the applicant is aware of the documents in UNHCR possession, and whether they have written their own statements. After this introduction, the officer will ask questions on the applicant's background, including upbringing, education, occupations, etc. These questions may be unrelated to the refugee claim in itself, but are asked to ensure that the applicant's background is in fact as he/she claims it is. After the background has been established, the EO will ask the applicant to first provide an account of the reasons why he/she fled. After the applicant has provided the account, the EO will proceed to ask more detailed questions relating to that account. At the end of the interview, the applicant will be asked questions where the EO feels that there is a need to clarify certain issues, elaborate on previous answers, or in order to confront the applicant with inconsistencies and incoherence.

The questioning during the interview serves several purposes: it is expected that the applicant will be able to answer certain verifiable facts. For example, an applicant who claims to be from a certain city or being a member of particular religious congregation may be asked questions on the details of the city, or important details about their congregation. The questions are also meant to check that the events that have happened, or that the harm that the

applicant fears, is in fact so serious that it is persecution, and that this persecution is because of a Convention protected ground. Lastly, but perhaps most importantly, is that the questions are designed to test the applicant's credibility. An applicant is expected to render an account that is consistent and coherent. This is particularly important in connection with statements which cannot be proved by documentary evidence and corroborating statements from family members, for example.

The applicant is expected to bring original documents to the interview. However, the applicant may not rely on their own notes during the interview. An applicant may be called for several interviews; however this is not a right and should not be expected. As such, an applicant cannot expect to be able to provide an additional account if it is discovered later that some statements are inconsistent or incoherent. Additional interviews are always scheduled if the interview is cut short for any reasons, but may also be scheduled later if the EO believes that it is necessary to obtain more information on certain issues, or in order to confront the applicant with contradicting information not known to the EO at the time of the first interview.

Once the interview(s) is/are finished, the EO will use the interview, evidence provided by the applicant, country-of-origin information, and information gathered from independent research, to complete the RSD Assessment.³⁹ The RSD Assessment is the structured assessment leading to a positive or negative decision on the applicant's claim. The RSD Assessment takes into account the applicant's credibility; whether he/she has a subjective fear of persecution; whether this fear is supported by an objective basis; if that harm rises to the threshold of persecution; that the agents of persecution are either the state or non-state agents which the state is unable or unwilling

³⁹ A sample RSD Assessment form can be found in the Procedural Standards, Annex 4-2.

to protect the applicant from; and finally, whether that persecution is on the basis of a Convention ground (race, religion, nationality, membership of a particular social group, or political opinion). These are the criteria for inclusion. If the decision is positive, the EO must then conduct an exclusion assessment (see Exclusion on page 36) to ensure that the applicant is not excluded from refugee protection.

If the applicant fulfils the criteria for international refugee protection, a date of notification will be scheduled to inform the applicant of the successful application, who then is referred to as a (recognised) refugee.

Appeal

If the EO is not satisfied that the applicant fulfils the criteria for inclusion, or the applicant is excluded from refugee protection, a rejection notice, called Notification for Reasons for Decision,⁴⁰ is drafted. The rejection notice will describe which material facts the EO has accepted, and which material facts have been rejected and the reason for why those facts were rejected. Once the negative result has been notified to the applicant, he/she has 30 days to file an appeal.

Typically, the majority of rejections will be grounded in credibility reasons – that the account presented by the applicant was inconsistent or incoherent. Examples of such inconsistencies or incoherence could be between the account the applicant presented during the interview and the written statement presented earlier, between two different applicants (for example between different family members) or between the account and country-of-origin information. Other reasons of rejection typically include that UNHCR believes that the applicant has an internal flight alternative; i.e. that the persecution can be

escaped by relocating to another part of the country. This is not relevant for Ahmadis, as the agent of persecution is the state. However, Christian Pakistanis have frequently been rejected on grounds that the applicant did not substantiate that the agent of persecution had the capability of targeting the applicant everywhere in the country.

The rejection notice will describe which material fact was not accepted, and give a summary reason for why that particular fact was rejected. For example, the rejection notice may reject the material fact that the applicant was arrested by the police, detained for three days, and beaten during questioning by referring to inconsistencies between the applicant's written statement and interview account on specific points – for example, that the account given during the interview and that when confronted, the inconsistency could not be reasonably explained. Thus, the rejection notice serves to indicate which portions of the decision the appeal should address when requesting that the decision be overturned.

The appeals process consists of a thorough review of the RSD file; including the RSD Interview, the RSD Assessment, the appeal itself, and any evidence submitted by the applicant in support of his application. The purpose is to conduct a thorough assessment of whether the first instance decision was based on a reasonable finding of fact and a correct application of the refugee criteria. The applicant may be granted an appeal interview; according to the Procedural Standards this must be conducted if credibility findings were not adequately addressed in the RSD Interview or RSD Assessment; relevant information was not adequately addressed in the RSD Assessment; or if a breach of procedural fairness occurred.⁴¹ However, a paper review – that is, a review of the file without

⁴⁰ A sample Notification of Reasons for Decision can be found in the Procedural Standards, Annex 6-1.

⁴¹ Procedural Standards, 7.4.2. (updated)



"Family shared bed - typical conditions for refugee family"



This Refugee cooks and provides food for other refugees in IDCs

any subsequent appeal interview – is accepted if the EO is satisfied that all the relevant information has been presented; the determination of facts are adequately supported by the RSD Interview and the RSD Assessment; and the negative first instance decision is based on clearly correct or incorrect application of the refugee criteria.

The assessment of the appeal will consider whether the credibility findings were reasonable; whether the criteria for inclusion were correctly applied; and whether a breach of procedural fairness occurred, before assessing whether an appeal interview is necessary. The Appeal Assessment then generally mirrors the RSD Assessment at first instance.

The appeal is a de novo-review. UNHCR may choose to overturn a negative decision if it finds that the applicant does meet the inclusion criteria for international protection, or the negative first instance decision may be maintained for either the same or different reasons as it was previously rejected on.

Once the EO has reached a decision on the appeal, the applicant will be notified of the result. Whether the appeal is accepted or rejected, the RSD process is concluded for the applicant. If the result is negative, the applicant will have his/her applicant card seized, and be issued a final rejection notice.

Reopening

A closed case may be reopened⁴² at a later time. However, for a reopening to be successful, a significant change in personal circumstances or the conditions in the home country may substantially affect eligibility; or reliable and material new evidence is presented which suggests that the case was improperly decided; or there is a serious reason to believe that the claim was improperly decided.

In contrast to RSD processing at first instance and appeal stages, the Procedural Standards provide no detailed procedural guidance for reopening cases, other than requiring that a screening process be put in place. This screening procedure is in place, although the timeline for getting a result on a reopening request can be very long. If a reopening is granted, the applicant will re-enter the process, although the result of the reopening may not be appealed.

Family Unity and Individual Assessment of Adults' Refugee Claims

Refugees have a right to family unity. Eligible family members may derive refugee status from the PA's refugee claim – they are said to have derivative status.⁴³ Eligibility is dependent on the existence of a close family relationship (for whom a relationship of social, emotional, or economic dependency is generally presumed), or other dependency. Close family members eligible for derivative status are spouses, including legally-married spouses in polygamous situations, a person engaged to be married to the PA, common-law spouses, or others in an enduring relationship (including same-sex couples and persons in customary marriages); unmarried children under the age of 18 (unless excluded, e.g. because they are citizens of the host country); the parents or primary legal or customary caregivers of a PA under the age of 18, and their dependants; and minor siblings of a PA under the age of 18.

For other family members other than close family members as described above, family unity requires that there exists a relationship of social, emotional, or economic dependency. There is no requirement for a complete dependency, or that the derivative applicant is dependent on the PA. The

⁴² Procedural Standards, 9.

⁴³ Procedural Standards, 5. (updated)

dependency may also be mutual. The Procedural Standards guide UNHCR to adopt a flexible approach which considers social and cultural norms. However, applications for family unity require the parties to clearly show that a state of dependency exists, and application of the criteria can sometimes be strict.

As family unity between children and parents is only possible insofar as the children were under the age of 18 at the time of recognition of the PA as a refugee, adult children are required to register in their own right and thus required to go through the RSD process. Family unity would in this case require that one of the parties depend on the other e.g. if the children are required to care for their old parents.

Exclusion

For every applicant that fulfils the inclusion criteria the EO must conduct an assessment of the exclusion criteria. According to the Refugee Convention, an applicant who is otherwise eligible for refugee status under Article 1(A) may be excluded from refugee protection if he/she has committed acts as defined by Article 1(F): having committed a crime against peace, a war crime, or a crime against humanity; a serious non-political crime outside the country of refuge; or guilty of acts contrary to the purposes and principles of the United Nations. The mandatory exclusion of these three groups has been framed as categorical provision to maintain the credibility of the Refugee Convention. Applicants who have been excluded under Article 1(F) may instead be protected by the principle of non-refoulement.

If an applicant has been excluded for refugee protection, he/she is also excluded for derivative refugee status. However, the excluded applicant's family members may be eligible for refugee status in their own right.

Observations

UNHCR registration and RSD interviews take place at an annex to the United Nations ESCAP building located at Ratchadamnoen Nok in the middle of Bangkok's government district. The building is dated and not purpose-built. Access to the building is for visitors with appointments only. After entering the building, a security check is conducted and electronic devices are handed over to UN security staff. After that, visitors are received by UNHCR staff in the waiting area. Interviews are conducted in small cubicles on either side of a narrow walkway. These cubicles are not enclosed – while the walls are made from sound-dampening material, they do not reach the ceiling. While ordinary conversations from other cubicles generally cannot be heard, loud noises carry over. This includes emotional outbursts, crying children, and phone conversations.

Interviews are conducted by the EO assigned to the case, and is normally attended by an interpreter unless the applicant has indicated that their wish is to have the interview in another language – typically English. UNHCR has from time to time had Hindi-speaking EOs who have been conducting interviews with Pakistani applicants. As Urdu and Hindi is mutually intelligible, the lack of a need of an interpreter greatly simplifies the interview process in particular. However, due to the historic relationship between Pakistan and India, rejected applicants in particular have often reasoned that their rejection must be due to an implicit bias on the part of the EO. For interviews conducted with Urdu-speaking applicants, similar sentiments have been expressed amongst rejected applicants where e.g. Muslim applicants had Christian interpreters during their interview and vice-versa. Applicants are informed of their right to request a different EO or interpreter if they so wish. However, in doing so,

their interview will be postponed. In practice, applicants do not request a change of interpreter and EO. There can be various reasons for this. Some consider it impolite to do so, or fear that such a request will lead to a negative impression of their refugee application. Others choose to continue simply because they have waited for a long time.

This reasoning was particularly prevalent amongst rejected Pakistani applicants, some of whom had waited three years or more to have their RSD Interview. After the RSD Interview, applicants could wait a year or more before their decision was handed down.

Credibility Assessment of Refugee Applications

Credibility reasons are one of the most common reasons of rejection of a refugee application. Because applicants will rarely be able to prove their cases conclusively with objective evidence, the oral account given during the interview will often be the most important evidence. The credibility assessment – the determination of which facts UNHCR should accept or reject – is thus of primary concern to the applicant.

The credibility assessment employed by UNHCR in Thailand relies heavily on the consistency and coherence of the applicant's account. That is to say, consistency and coherence between an applicant's earlier and later statements (both written and oral) as well as consistency and coherence between an applicant's statement, those of his/her family members and/or other applicants, and between the applicant and country of origin information. In some instances, there appears to be no allowance for any margin of error for the applicant. Omissions and discrepancies are often cited as a basis for adverse

credibility findings, even though UNHCR's own guidance on credibility⁴⁴ states that "memories of even the most important, traumatic, or recent life events can be difficult to retrieve and recall with any accuracy. Inconsistency, loss of detail, and gaps in recall are a natural phenomenon of the way a person records, stores, and retrieves memories."⁴⁵ In general, rejections seemingly make little reference to the numerous variables the human mind is subject to: the nature of the events the applicant has experienced, the psychological effects on the applicant, the applicant's educational level, sex, age, and cultural background, all these may affect the way memories are stored and recalled, yet a consistent and coherent account is still the strongest evidence for a valid claim – even if UNHCR's own guidance on credibility concedes that "[n]o two reformulations can be identical, meaning some inconsistency is inevitable."⁴⁶

Long processing times present an obvious problem for applicants. As memories decay and change over time, the account presented through the registration statement may have changed substantially by the time the RSD Interview is scheduled. For Pakistani cases in particular, who in some cases have waited years since registration before being allowed to present their case at the interview, the waiting period may have adversely affected their cases. Similarly, the long wait from the interview until the decision is handed down may have an adverse effect on the applicant's opportunity to effectively appeal his/her case, as cases that are rejected on credibility reasons usually rely heavily on the applicant's interview.

Procedural Safeguards: Individualised Reasons for

44 See UNHCR, 'Beyond Proof – Credibility Assessment in EU Asylum Systems', available at <https://www.unhcr.org/en-us/protection/operations/51a8a08a9/full-report-beyond-proof-credibility-assessment-eu-asylum-systems.html>.

45 Beyond Proof, 2.1.

46 Beyond Proof, 2.1.1.



Refugees being detained

79045

Rejection, Access to Counsel and Access to Evidence

The Procedural Standards, first issued internally in 2003, made provisions for rejected applicants to receive individualised reasons for rejection and have access to counsel. Previously, UNHCR in Bangkok did not provide rejected applicants with individualised reasons for rejection, but merely provided a form letter that would identify the general reason for why the claim was not successful (e.g. credibility). The access to counsel for applicants was gradually increased as well. Originally, UNHCR would not accept submissions from legal aid providers nor permit their presence during RSD Interviews.

Today, rejection notices make reference to the specific reasons as to why an application for refugee protection was denied. As well as identifying the fact that was not accepted, the letter will specify why the EO did not accept that fact.

UNHCR today permits legal representatives to provide submissions on behalf of their clients at any stage of the process, to attend their clients' interviews, and to review interview transcripts. However, the ability to attend interviews and provide submissions after an interview is only possible if the client has been identified prior to the interview being confirmed, and legal representatives are expected to periodically update their lists of clients whom they wish to accompany.

However, UNHCR does not disclose any evidence relied upon to either the applicant or the applicant's counsel. With regards to interview transcripts, only legal representatives are permitted to review them, and only at UNHCR's offices. No copies are provided to either the legal representative or the client.

Durable Solutions

Once a person has been recognised as a refugee, the next step is to identify a durable solution, if any. UNHCR considers three different types of durable solutions; voluntary repatriation, local integration, and resettlement.

Local Integration

Local Integration refers to the refugee integrating in the host country society. As Thailand does not legally recognise refugees as a distinct class of people, local integration is not possible.

Voluntary Repatriation

Voluntary repatriation involves the voluntary return of a recognised refugee to his or her country of origin. This option is primarily available to refugees who fled due to hostilities.

Obviously, for Ahmadi Muslims, whose persecution is legalised and state sanctioned, including being carried out by the State itself, such voluntary repatriation is not viable.

Resettlement

As neither local integration nor voluntary repatriation are possible for Ahmadi Muslims, the only durable solution remaining for this group is resettlement to a third country.

Refugees in Thailand are, however, frequently being cautioned that this is unlikely to happen, by frequently stressing that less than 1% of the world's refugees are resettled. This number is inaccurate, however. Mid-2018, there were 19.9 million refugees under UNHCR's mandate.⁴⁷ During all of 2018, 55,680 refugees were resettled worldwide, equalling 0.28% of all UNHCR refugees worldwide. However, for some refugees local integration or voluntary repatriation may constitute durable solutions, and for that reason,

⁴⁷ UNHCR, Figures at a glance. Available at <https://www.unhcr.org/figures-at-a-glance.html>

UNHCR estimated the total number of persons in need of resettlement globally in 2018 is at 1,195,349. The refugee resettlement is governed by UNHCR's Resettlement Handbook⁴⁸ and is divided into the following categories:

- Legal and/or Physical Protection: Needs of the refugee in the country of refuge (this includes a threat of refoulment);
- Survivors of Torture and/or Violence: Where repatriation or the conditions of asylum could result in further traumatization and/or heightened risk; or where appropriate treatment is not available;
- Medical Needs: In particular life-saving treatment that is unavailable in the country of refuge;
- Women and Girls at Risk: Who have protection problems particular to their gender;
- Family Reunification: When resettlement is the only means to reunite refugee family members who, owing to refugee flight or displacement, are separated by borders or entire continents;
- Children and Adolescents at Risk: Where a best interests determination supports resettlement;
- Lack of Foreseeable Alternative Durable Solutions: which generally is relevant only when other solutions are not feasible in the foreseeable future, when resettlement can be used strategically, and/or when it can open possibilities for comprehensive solutions.⁴⁹

Refugees in Thailand that do not fall under any other category could be considered as lacking any foreseeable alternative durable solutions. However, resettlement is not a right and is wholly dependent on countries accepting refugees for resettlement. For that reason, the numbers of resettled refugees is very low: In July 2018, Thailand hosted 102,223 refugees (97,444 in nine refugee camps, as well as 4779 urban refugees, mainly in Bangkok),⁵⁰ while a total of 2,623 refugees departed as a part of resettlement through UNHCR.

Livelihoods

Refugees in Thailand are restricted from working legally by the country's labour laws. Many Pakistani refugees try to secure employment to have enough money to cover their basic family needs, however they engage in work that is often irregular, temporary, dangerous and even degrading. In addition, wages are much lower than Thai citizens. A number of refugees receive support from the local community, and from relatives who live in Pakistan or other overseas countries. This type of financial support is limited and irregular, with families struggling to have enough food and medicines.

The refugees shared concerns and fears about being arrested while travelling between home and their place of work; some refugees sleep at the place of work to avoid being caught. Others prepare food or have some small home business, like sewing clothes which they sold locally. In the absence of protections afforded by Thailand's Labor Protection Act, Pakistani refugees are often abused and exploited by employers, which is contrary to the ICESCR to which Thailand is party.

The Delegation is particularly concerned about the arbitrary arrests and indefinite detention of Pakistani refugees, their lack of access to livelihoods, labour protections, appropriate and affordable health care and education for refugee children.

Arbitrary arrests and indefinite detention

The 1979 Immigration Act criminalises those who enter or stay in Thailand without permission, including refugees who are subject to arrest and detention at any time. Thai

48 UNHCR, Resettlement Handbook. Available at <https://www.unhcr.org/protection/resettlement/4a2ccf4c6/unhcr-resettlement-handbook-country-chapters.html>.

49 Resettlement Handbook, Chapter 6.

50 <http://aprrn.info/wp-content/uploads/2018/09/APRRN-Country-Factsheet-Thailand-4-Sept-2018.pdf>.

authorities continue to treat urban refugees and asylum seekers, including those officially recognised by the UN as refugees, as illegal migrants subject to arrest, detention and deportation. On 10 January 2017, Thailand adopted Cabinet Resolution 10/01, B.E. 2560,⁵¹ which created a “Committee for the Management of Undocumented Migrants and Refugees” to develop policies to finalise and implement a national screening mechanism for undocumented immigrants and refugees. The UNHCR has been long advocating for such a mechanism, which it hoped would clearly establish the criteria and methodology for deciding who is and is not a refugee, and outline their rights and obligations in Thailand.⁵² This would potentially be a positive step towards providing domestic legal status and basic rights to refugee and asylum seekers as well as ensuring the right to asylum as guaranteed by Article 14 of the UDHR. However the national screening mechanism for asylum seekers is yet to be implemented.

Under Thai law, all migrants with irregular immigration status – including children, asylum seekers, and recognised refugees – can be arrested and detained for illegal entry. However, in January 2019, Thailand’s Deputy Prime Minister along with a number of government departments signed the Memorandum of Understanding on the Determination of Measures and Approaches Alternative to Detention of Children in IDCs,⁵³ towards ending the immigration detention of children. Further efforts are needed to protect the best interests of the child and to bring Thai policy and practice in line with basic international standards. The Memorandum of Understanding signifies the first formal step to fulfil a pledge by the Prime Minister who first promised to end child detention at a refugee summit in New York in 2016. The Memorandum of Understanding also acknowledges that children should only be detained as a measure of last resort and any detention period should be as brief as possible. It prioritises the best interests of the

child and affirms the government’s responsibility to ensure children remain under their family’s care.

Situation of Pakistani Refugees

Pakistani refugees are subject to arrest and arbitrary detention in IDCs and government run shelters. **Female Ahmadi refugees are particularly vulnerable due to their distinctive dress which means they can be easily identified and targeted by authorities.** RA said, “It’s very hard to even go to BRC because from where I live, it is around a 3 hours ride. And it is a risk every time, we are always scared of the police man. Because now the local policeman has the idea, with our dressing and our face”. The majority of Pakistani refugees interviewed by the Delegation expressed, “a constant worry about travelling”, whether travelling between their home to UNHCR, medical appointments, taking children to school or going to work. The fear of arrest while moving outside of their homes is extreme and severely restricts the mobility of some Pakistani refugees, especially where the refugees have to travel long distances (over three-hour journeys) and take multiple modes of transport (up to three buses). Distance, high costs and fear of arrest were cited as deterrents which prevent Pakistani refugees from accessing UNHCR and related support services such as the Bangkok Refugee Center (BRC). AA told the Delegation that, “It is not easy for me to go to the UNHCR physically – I am living very far from the UNHCR area (I live in the cheap area), and I am afraid I will be arrested also. And also, the transport fare to go to UNHCR”.

Both male and female refugees who were interviewed gave example after example where they had been arrested by police and asked for bribes to avoid being remanded in the IDC. One refugee, AM, was arrested by Thai police on two occasions: the first time, when he was 15-years-old, he paid a bribe to the police and was released. The second

51 https://www.fortifyrights.org/downloads/Joint_Statement_Thailand_Ensure_Refugee_Rights_and_Protections_Through_Refugee_Regulation_June_18_2018.pdf

52 https://www.unhcr.org/th/en/news/TH_refugee_screening_mechanism

53 <http://www.mfa.go.th/main/en/news3/6886/98779-Signing-Ceremony-of-the-Memorandum-of-Understandin.html>

time he was detained in the IDC for 6-7 months. AM is now fearful about going out. Another refugee, WZ, who came to Thailand in 2014 and was granted refugee status in 2016, was able to find occasional work in a restaurant and construction. He was arrested twice: the first time he paid the police a bribe and was released; the second time the police let him go once they had seen his UNHCR card. Despite this he feels constantly stressed out.

Another female refugee, MS, told us that, “Even though we have the refugee card and are recognised, if the Thai police find us on the streets, they will ask about the passport and visa. They do not accept the refugee card. The refugee card doesn’t help. We will be arrested by the Thai police. I can’t bring my son to school because amongst other things (like) security problem, financial problem, my biggest fear is of the detention centre and the fear of being arrested by Thai police”.

Raids

One source told the Delegation that there is little public support for refugee rights so public spending is directed to other priorities. The attitude towards immigrants is taken from the police with concerns that urban refugees are illegal migrants and according to the Thai State they are criminals; there is an implicit association that migrants are a national security threat.

Thai authorities regularly conduct raids to identify, arrest, detain and deport migrants in violation of Thailand’s immigration law. Pakistani refugees are among those who are arrested and detained. In August 2018, the government launched a nationwide crackdown on illegal migrants and arrested over 200 refugees and asylum seekers including from Pakistan. They were detained in squalid immigration

lockups with more than 50 children being separated from their parents. Refugees also described how their children become disturbed when they hear the police near around the apartment buildings. Parents instruct children to hide and also to stay silent. One refugee described how he would lock the apartment from the outside and flee so he could not be found.

On 9 October 2018, Thai immigration authorities carried out an early morning raid on a residential building in Bangkok in which 77 Pakistani refugees, including 43 children, were arrested and detained in Suan Phlu IDC. The detainees reportedly included several people with UNHCR refugee status which should by right give them protection from detention for visa-related violations. The previous day, the Deputy Prime Minister had reportedly ordered immigration authorities to arrest and deport all unauthorised migrants within a month.⁵⁴ Deputy Prime Minister Prawit Wongsuwan, responsible for overseeing security matters in Thailand, claimed that this crackdown was necessary in order to deal with transnational crime syndicates. In response, Head of the Immigration Bureau, Surachate Hakparn, promised a zero-tolerance policy on illegal immigrants. Pakistani asylum seekers have left rented apartments, moving with other members of their community to less conspicuous locations, with some seeking refuge with local churches. On 5 October 2018 alone, Immigration officers made 369 arrests for visa offences, with raids at 337 locations.⁵⁵

Over 2000 foreign nationals, including hundreds of Pakistani Christian asylum seekers, were arrested in a few months across Thailand in the immigration authorities’ ‘X-Ray Outlaw Foreigners’ operation. All former detainees released on bail had their bail cancelled, being required to return to detention centres, including UNHCR certified refugees.⁵⁶

⁵⁴ <https://www.fortifyrights.org/publication-20181012.html>

⁵⁵ <https://www.ucanews.com/news/pakistani-christian-families-put-into-bangkok-detention-center/83581>

⁵⁶ <https://www.ucanews.com/news/pakistani-catholic-refugees-in-thailand-plead-for-vatican-help/83642>

The Delegation was notified that during and since visiting Thailand, 7 Ahmadi refugees have been arrested who have been detained in the IDC.

Immigration Detention Centres

“The detention centre is the worst place. It is like a hell. Because some of the ladies from our community are already inside”.

Urban asylum seekers in Thailand live a precarious existence, at risk of exploitation and dependent on charity. Detained refugees from countries bordering Thailand are often deported, while those from other countries must remain in detention which could be indefinite. Pakistani asylum seekers detained in Bangkok must wait several months in the government-run IDCs while the UNHCR handles their requests for refugee status. Following this, it usually takes at least a year for resettlement to take place, in which approved refugees may obtain an 18-month release through paying a 50,000 Baht bail which is returned to them upon leaving the country. UNHCR officials reported that conditions were worse than Thai prisons. Local and international NGOs, including Human Rights Watch and Amnesty International, have reported on the appalling conditions within the IDCs in which cells hold over 100 detainees with the use of two to three toilets. There is rampant spread of disease and abuse is widespread.

One refugee told us about his father, AM, who left the house between 7 and 11pm on 22 April 2016 and was arrested and held in the IDC since then despite having UNHCR refugee status. During calls to his family he said the water supply had been stopped in the IDC and there were diseases and conditions, such as scabies and tuberculosis, which were spreading due to the unsanitary conditions and the proximity in which they were being held. AM himself had scabies and

hypertension and his mental condition has become poor.

While these facilities are designed for stays of up to 15 days, some refugees have been detained for several years. Access to basic needs such as clean water, adequate food, and medical care in the centres is limited.

On 27 May 2017, IM, a 36-year-old Christian Pakistani, had a heart attack at the IDC in Bangkok, where he had been detained for more than a year on an illegal entry charge. The UNHCR had rejected his refugee claim the day before. He died shortly after he was transferred to the Police General Hospital.⁵⁷

A female refugee said that her husband who was suffering from polio in his right leg in Pakistan was arrested in 2015 and placed in the IDC. She said, “He became very sick and had difficulties sitting and standing. While in IDC he fell down two times, he slipped in the toilet and suffered a head injury. UNHCR didn’t do anything so he took the decision to go back, deportation. He stayed in detention for 5 months, he cannot bear the pain, so he went back”.

Witnesses in IDCs reported fighting between detainees of different ethnic and religious groups, which result in severe punishments from guards such as beatings and refusal to provide food or medicine. Problematic inmates were reportedly sent to particular cells where they were severely beaten by other inmates, apparently under the guards’ instructions. Witnesses also reported that inmates had been beaten with leather belts and batons by the guards for smuggling mobile phones into the centre, and that detainees, including a Somali child, had died from untreated sickness. At least five Christians are reported to have died in IDCs in recent years.



Immigration Detention Centre

The centres are overcrowded and authorities are reluctant to take them to hospital in the case of sickness. Pakistani Christians reported that less than 5% of Pakistani Christians' applications to the UNHCR for refugee status were accepted, and that the only way out of these centres is purchasing a plane ticket and paying the travel fee to the airport.

Access to Education

Thailand's domestic laws guarantee the right of all children to quality and free basic education provided by the State for at least 12 years regardless of legal status. Refugee children are mostly unable to access schools due to restrictions on movement, language barriers, transport fees, the long distances and discrimination.⁵⁸

The majority of parents were very anxious about sending their children to school, fearful of the risks that they may be arrested going to and from schools but also concerned about discrimination. So many children were kept in small one-bedroom apartments with severely restricted movement and limited social interaction. There was a preference among Pakistani refugees to send their children to English speaking schools in the hope that they would get resettlement in an English speaking third country. Where this was not possible many children did not attend schools and were kept at home instead. Other parents send their children to Thai speaking schools and there were some positive accounts of the children integrating in those schools. English speaking schools and private schools were preferred options where parents could afford them.

Social Welfare of Asylum seekers and Refugees in Thailand

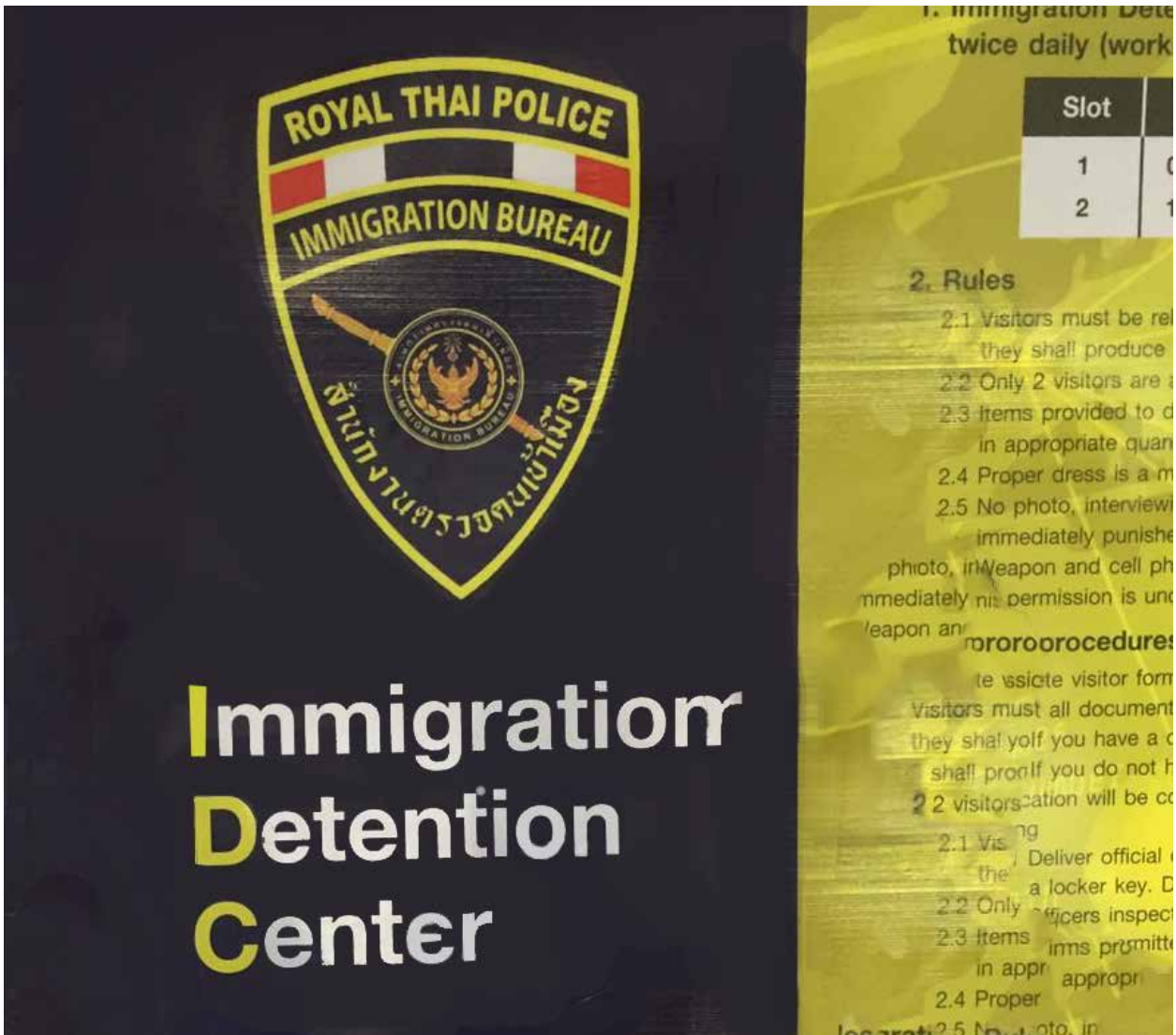
Thailand has ratified the International Covenant on Economic, Social, Cultural Rights without any reservation. Article 9

of General Comment Nr. 20 states: all children within a State, including those with an undocumented status, have a right to receive education and access to adequate food and affordable health care. The International Covenant on Economic, Social and Cultural rights apply to everyone including non-nationals, such as refugees, asylum-seekers, stateless persons regardless of legal status and documentation.



⁵⁸ <https://www.hrw.org/news/2017/07/06/thailand-implement-commitments-protect-refugee-rights>

“ The detention centre is the worst place. It is like a hell. Because some of the ladies from our community are already inside. ”



Case Study Accounts from Fact-Finding Mission: Thailand

SA – Lone mother with 4 children

SA:

“My name is SA. I am an Ahmadi Muslim from Pakistan. I have two sons and two daughters:

SA (eldest son 24), ZA (second son 22), FK (elder daughter 20), NA (youngest daughter 15).

We arrived in Thailand 6 years ago in 2016 with my husband AM. We were recognised as refugees the same year in Oct 2016 but our application for resettlement was rejected by US Embassy. My son SA got his status in Dec 2016. The rest of the family got it around 2 months before him in Oct 2016.

My husband AM was taken into the IDC in Apr 2016. My husband left the house to get snacks from the 7-11 when he got caught by immigration officials. My husband, the children’s father is still in IDC three years later although he is a recognised refugee.

My daughter FK’s stress is disturbing, her hormone levels fluctuate so she would not have periods for 6 months and sometimes she’d have it for continuously for 2 months. She is the most stressed and depressed out of all the children. Because of the hormones, and irregular periods, her body is swelling up and she is getting fat. She was very eager in her studies and education but since she’s come here she can not get an education so she will get aggressive and fight and blame me as the mother saying, why are we here we have no chance of studying here.”

SA’s eldest son, SA:

“Father used to mention the water supply stopping in IDC in his phone calls to the family. There is scabies and TB in IDC now. We went and requested RSC to request DHS for some reply, because it has been 8 months now.

Father fainted in IDC and had a fall. They just said okay we will try, we will ask DHS. Father has a mental health problem, hypertension and scabies. There is another disease in IDC because they are living so close together, it is contagious. It is – you have big blisters on your body in different places and it gets really itchy because it is unsanitary in there. His mental condition is so bad that he can’t remember things anymore.

They used to say a doctor will come once a week in IDC but he just gives basic medicine. But now even that doctor has stopped coming. I do not get to see my father. I met him during the medical on 8 August, but not since then.”

SA, the mother:

“We did not choose to apply to USA for resettlement. We have no relatives in the USA. We have neighbours who used to live here in Thailand with us, who are now in USA. UNHCR put our file forward to the US Embassy. There was an “objection letter” from the US Embassy but they did not really explain anything about why they won’t take us although my husband and we were all recognised as refugees by UNHCR.”

SA, the son continued, *“UNHCR has not contacted us with anything relating to my father’s stay in IDC since he was*

arrested. I suppose they think that if they do this for one person they must do so for everyone else in there as well. So they probably try to stay away from it. When our case got rejected from US embassy, we called UNHCR but they have not helped us with anything about it. When we got the objection, we had the option to appeal. We talked to a lawyer in BRC. The lawyer said we only have one chance to appeal – don't waste it.

I think my father is the only person whose resettlement case has been rejected after getting refugee status. They just said they aren't satisfied, but without an interview. The main case was my father's. So once they rejected his case, they rejected the whole family's case. They think that the objection was because of my father's mental condition because he is very depressed in IDC, he doesn't know what he is hearing or saying. He was confused during the interview. That's why they said we are not satisfied with the interview. His condition is so bad that when we talk to him by phone, all he does is immediately start crying.

They give you an objection letter. UNHCR accepted us as Refugee. How can, at the last step, the country say you are not eligible for refugee status? So they are questioning the decision of UNHCR? They were not satisfied with the answers. They don't give copies of the American interview notes. You have to remember whatever you said.

They gave us time, around 120 days for the answer on the appeal, the people in RSC said weekends are not counted in that time. They said we will get the answer for the appeal in 120 days, but it has been 8 months now. We have not received the answer yet. DHS has the objection they sent us the objection letter through RSC. So the RSC is the middle person between them and DHS. They give a Notice of Receipt and a request for review (RFR) of notice of ineligibility.

There was a friend who helped to fill out the appeal because our English is not good. The lawyer, the BRC UNHCR lawyer just told us to write our own appeal letter.

They just said that your case is running on the fast track because your father is in IDC, but we have been waiting for the outcome for 8 months now. They took his interview (and all together the whole family) around 1 year ago, now his medical will be almost expired. It will be almost 1 year next month.

The problem was basically with my father, we did not have enough information. My parents never used to discuss the problems they faced back home. They did not feel right discussing it with the kids. But DHS questioned us children a lot about from him and his siblings about who was harming our father. But obviously we were just kids and our father didn't feel comfortable telling all the information to us; so we couldn't answer it.

When I tried to explain this the DHS got angry and said he is interviewing me, not me interviewing him. So I needed to answer. I was 23 at the time of the interview.

We were so disturbed for the next few months, we did not know what to do or who to talk to. The lawyers in BRC are so rude to you. They do not realise the words they are saying to you. We are already so disheartened. The body language and tone was so rude.

We don't have anyone who helps us.

My mother has been sewing clothes for people the past 6 years we have been here, because we do not have any other help. Her eyesight is really bad. Her feet and body is always swollen because she has to sit a lot while doing it. She has an infection in her kidneys. She went to BRC about her kidney infection but they said her disease is not that serious. If someone has lung cancer or TB, then they can do something. They tell people that your disease is not life-threat-

ening so we are not going to entertain you.

We came here as teenagers, now we are in our early 20's. My youngest sister was 9 when she came here, now she is 15. She has not been going to school at all. My other sister she dreams a lot about her education. But we are all locked in one small room, we have no freedom to go out. My mother and all four of us grown children are sharing one room and one bed. Two of us brothers sleep on the floor. If my mother stitches in there, it is also our living/dining/cooking/sleeping room. Mother's sewing is paying for everything for us all here.

For help here we are supposed to go to JRS (Jesuit Refugee Services) as asylum-seekers and BRC (Bangkok Refugee Centre) for recognised refugees. For medical bills, they ask us to go Tzu Chi Clinic (Taiwanese organisation) instead. They have a free medical camp every 4th Sunday of the month. They take care of the expenses if you go to hospital too. Some people say they keep giving the same medicine with no adjustments so maybe there is a problem with the translation.

Thai police recognise us from our clothes and the style of dress. So they ask for our passport, which I didn't have. They said I had ten minutes to bring the money. They demanded 5,000 Baht not to put me in IDC. I did not have that much so they finally agreed on 2,000 Baht.

We are really stressed and depressed. We just want to get out of here as soon as possible. Or at least get some advice so we know what to do. If US is not taking us, we wish somebody would tell us, so we know what next steps we need to take."

SA, the mother:

"My husband's job, before he came here, was working in

the printing press machine in Lahore. My husband he did not have any assigned role in the Jamaat although he was a devout member. He had death threats and I was also attacked. He was the only Ahmadi in the place he was working. When people did not know, everything was fine. As soon as the co-workers found out, they started making announcements in the mosque with his name, saying he is an infidel, do not eat with him, talk to him, and stop any association with him. It was a daily routine. They would make this announcement almost daily. Then my husband decided to file a report in the police station. Instead of helping him the police turned on him and put him into jail instead because he is an Ahmadi. Then the person he was working for, he found out in the morning, he got him bailed out.

His boss was a helpful person. He said you should go back to your kids because these people are not going to leave you alive. So he left everything and came back. I did not know what else to do. He could not find any other job. I did stitching there. But we had four kids so it was hard to manage. I did not earn a lot. I got really depressed. I went to talk to my sister. When we were coming back from the doctor, a man came and attacked us. They were hiding behind a wall and as soon as we walked out of the doctors, they hit us with the stick. They hit us so hard that we fainted. It was winter. This was 2013.

We left Pakistan end-2013 around one month after the incident. It took one month because we didn't have passports. The process of getting passports and visas took one month."

SA, the son:

"I was just starting college. I used to tell my parents I need to move abroad for my studies. Because of the incidents,

they told me to just study there in Remba. The first 2 months were fine, but when they found out I was an Ahmadi, the professors took me out of the class and beat me a couple of times. They blamed me for things I did not do. I used to come home and tell my parents but they could not do anything about it. They just said to let it go. Nobody wants to leave their home country like that. But you have to leave when it comes to your own family. I finished 10th grade and was going to 11 grade. At the time, I wanted to be a mechanical engineer.

In 2013, I was around 17. So my studies have stopped since 17. Because all of this was going on, my father was attacked, and my mother was attacked I could not focus so I failed those exams so I could not continue. Then we moved here to Thailand. **We have gone from the frying pan into the fire.”**

Living Conditions of Refugee Family



Malaysia

Geo Political Context

Malaysia is a country situated in Southeast Asia consisting of two regions separated by the South China Sea, the Malay Peninsular sharing a land border with Thailand and East Malaysia occupying the northern part of the island Kalimantan (Borneo). It thus shares borders with Thailand, Borneo and Brunei. It consists of thirteen states and three federal territories.

Its diverse population of 31,809,660⁵⁹ is unevenly distributed with 80% residing within the Malay peninsular and is composed of the following ethnic groups⁶⁰: Bumiputera 62% (Malays and indigenous peoples, including Orang Asli, Dayak, Anak Negeri), Chinese 20.6%, Indian 5.7%, other 0.8%, non-citizens 10.3%.

The main official language is Bahasa Malaysia with a variety of other languages which reflect the cultural assemblage such as English, Chinese (Cantonese, Mandarin, Hokkien, Hakka, Hainan, Foochow), Tamil, Telugu, Malayalam, Panjabi and Thai. Similarly, the religious diversity is an eclectic mixture with a predominantly Sunni Islamic basis as the official religion with 61.3%, Buddhist 19.8%, Christian 9.2%, Hindu 6.3%, Confucianism, Taoism, other traditional Chinese religions 1.3%, other 0.4%, none 0.8%, unspecified 1%.

Major urban areas are the capital where a population stands at 7.564 million in Kuala Lumpur, 983,000 in Johor Bahru and 786,000 in Ipoh according to 2018 estimates.

Along with nine other ASEAN members, Malaysia established the ASEAN Economic Community in 2015, which aims to advance regional economic integration.

A former colony of the UK it gained independence on 31 August 1957 and is a federal constitutional elective monarchy. Malaysia has a dual judicial hierarchy of civil and religious (Shariah) courts.

The highest in the civil court structure is the Federal Court and, in the hierarchy, the subordinate courts are the Court of Appeal; High Court; Sessions Court; Magistrates' Court. Running parallel to this judicial system is the Shariah Court system which applies Shariah law to Muslims in the domains of family and religious matters.

There is ongoing debate between those who promote a secular interpretation of the federal constitution and those who believe Shariah courts and Islamic law should have supremacy. The trend towards Islamisation of society, known as *dakwah*, is considered to be an effort to resist western influences. The Malay elite promote secularism who welcome the shared goals of industrial development. Muslims however regard this as an invasion of western culture. The dominance of Islam and its gradual spread onto every aspect of day to day life is seen as a worrying trend by non-Muslims.

59 July 2018 estimates - <https://www.cia.gov/library/publications/the-world-factbook/geos/my.html>
60 2017 estimates - <https://www.cia.gov/library/publications/the-world-factbook/geos/my.html>

Fact-Finding Mission's visit to Kuala Lumpur

According to UNHCR officials in Kuala Lumpur, there are over 170,000 refugees and asylum seekers in Malaysia, with numbers increasing. Of these, 150,000 are from ethnic populations from Myanmar, including about 90,000 Rohingyas. Refugees from Pakistan number about 6000 at the present time. The Delegation focused mainly on the plight of Ahmadi Muslims from Pakistan, but also interviewed Christian refugees at a civil society assistance facility. Over the course of the research visit in Malaysia, the Delegation had contact with several hundred men, women and children, some of whom provided in-depth interviews. The Delegation also met with the Human Rights Commission (SUHAKAM); with leading officials in UNHCR/Malaysia; with the British Ambassador; with a prominent lawyer; with a leading member of the Malaysian Parliament; and visited a detainee in a local prison in Kuala Lumpur.

Anecdotal accounts received by the Delegation reveal that most Pakistani Ahmadi Muslims who have fled to Malaysia have done so because they or their close relatives have been murdered, imprisoned and ill-treated by official structures, attacked by mobs of religious extremists, threatened with violence, and/or subjected to discrimination in employment and education. As the IHRC has documented in previous reports, Ahmadi Muslims in Pakistan face an existential threat. Most have fled to Malaysia out of fear. They have



been ready to give up their citizenship, social and familial bonds, professions, and their social security benefits to avoid threats to their lives, and in the hope of enjoying religious freedom. Many have used all or most of their wealth to finance their exodus. While some Ahmadi refugees believe that their position in Malaysia was “worse than in Pakistan,” from a group of about 75 men, no one said they regretted leaving Pakistan. Some women, however, said they would not have come to Malaysia had they been informed about the absence of government support, the inability of UNHCR to assist them, and threats to their security.

Regrettably, Ahmadi Muslim refugees in Malaysia have found themselves not only bereft of any government social support or means to support themselves and their families, but also again facing legal religious discrimination, religious prejudice, and threats to their physical safety. Some refugees, both Ahmadi Muslims and Christians, are at risk of deportation back to Pakistan. Many risk statelessness if their legal situation is not resolved.

The reasons for this critical situation lie in: (1) discriminatory and lethal policies toward religious minorities of the Pakistani government, making Pakistan a major global source of refugees; (2) major human and social rights deficits in the Malaysian legal system, which increasingly resembles the Sunni Muslim extremism of Pakistani authorities; (3) the limited capacity of UNHCR and other humanitarian organisations to address the wide-ranging and acute humanitarian needs of the refugees; and (4) the failure of members of the international community to convince both Pakistan and Malaysia to protect members of religious minorities, and offer adequate resettlement possibilities to asylum seekers.

The Malaysian legal framework provides refugees with no social services, and no legal means to support themselves, which has led to a humanitarian crisis.

Legal Framework

Malaysia is not a signatory to the 1951 Refugee Convention, and has no laws that regulate the status and rights of refugees. Refugees in Malaysia have no legal access to free public health, education, and other social rights, and are not legally entitled to work. Ahmadi and other refugees in Malaysia live “in the shadows, in a grey zone” according to a local UNHCR official. The necessities of survival require families to live outside the law; Ahmadi refugees face growing religious persecution and discrimination, and prospects for integration and citizenship are bleak. The chances of resettlement in countries that guarantee religious freedom and where economic security can be achieved are miniscule.

The near-term prospects for legislation to address the plight of refugees in Malaysia are evidently extremely poor.

In the political community, local legislation is considered a higher priority than signing the Convention. But it is feared that legislation providing economic and social rights to refugees would constitute a “pull factor,” resulting in increased refugee flows. There is no positive dynamic pointing toward even long-term relief for the refugees.

Many have used all or most of their wealth to finance their exodus. While some Ahmadi refugees believe that their position in Malaysia was “worse than in Pakistan....”

Employment

Refugees can only work illegally. They, thus, have no job security and are routinely exploited by employers who fail to pay wages with total impunity. Ahmadis reported substandard wages, workplace harassment, under-employment and a complete lack of employment security. But with no other source of financial support, Ahmadis are forced into illegal employment, violating their community's commitment to abiding by the law, and subjecting themselves to the threat of deportation. A labour shortage in the country, where there are 3-5 million undocumented migrants (according to UNHCR), would seem to have created a "buyer's market" where employers can freely exploit illegal workers, and where employers resist legislation that would regularise employment of refugees.

Arbitrary arrest, harassment, and detention conditions

Refugees possessing only a letter from UNHCR are frequently arbitrarily detained in an IDC while their UNHCR status is verified, a process that often takes weeks or even months, and release depends on cumbersome procedures involving the physical participation of UNHCR personnel. Even those with refugee cards issued by UNHCR are detained and checked. Some reported physical and psychological abuse by police while in detention, including sexual abuse.

Conditions in IDCs are "deplorable," according to a UNHCR official and confirmed by numerous informants who had had first-hand experience. Access to health care is limited. The Delegation received reports of detainees suffering from scabies, ringworm, tuberculosis, and other diseases. Detainees often had no other sources of water than toilets

or water polluted with rat urine. There is severe overcrowd

ing. Children and babies are detained with parents, while minors (12-16) are detained with unrelated adults, leading to abuse. There is no provision for bail for refugees in IDCs.

Many Ahmadi refugees reported crimes against them by other refugees or Malaysian citizens that were met with indifference by local law enforcement officials, and they feel they have no access to justice. Having left Pakistan in the face of threats to their security, they have found themselves in an environment that also poses significant security threats.

The Work of UNHCR in Malaysia

UNHCR Malaysia copes with formidable obstacles: massive refugee flows that overburden staff and resources; Malaysia's failure to ratify the Refugee Convention, to promulgate refugee and asylum legislation and to provide basic services; and misinformation and misguided expectations on the part of refugees about the role and possibilities of UNHCR. Under UNHCR's mandate, the agency cannot address the refugees' dire needs for social services. But the agency faces challenges that far exceed its ability to fulfil its limited mandate, leading to widespread and frequent, unequal and uneven treatment, and delays and bureaucratic malfunctions that make life worse for refugees.

UNHCR has operated in Malaysia for 45 years with no legal or formal relationship with the government, but said relations with the government have nevertheless been cooperative, although there is no data-sharing agreement. UNHCR advocates for policies that would give refugees

the right to work and health and education entitlements, seeing this as having priority over ratifying the Refugee Convention.

At some point after their arrival in Malaysia, refugees are interviewed and subsequently issued a letter confirming that they are in the process of obtaining refugee status. At a later date they should be interviewed again, and issued a formal UNHCR card confirming their status as refugees. In-depth interviews with about 100 refugees, and information from many more, indicate that waiting times before and between these contacts vary greatly. Many wait in limbo for years after receiving the letter; one family interviewed had a letter from 2014 and no subsequent contact. A young Ahmadi woman who fled to Malaysia in 2011 from Karachi after being threatened and bullied in school was issued a UNHCR card but has had no subsequent information. When refugees go to the UNHCR office they are told to wait to be contacted.

As noted above, possession of only a letter places refugees in danger of trouble with Malaysian authorities. The letters can be easily damaged, and forged. Police officers reportedly extort refugees with threats to tear up the letters. UNHCR said its processes are being reviewed. UNHCR/Malaysia does not have sufficient capacity to fully assess the refugee population to identify vulnerable individuals for possible resettlement, but the number of places available is woefully inadequate to meet resettlement needs. It has been reduced in recent years. The United States offers the most places among a list of receiving countries that includes the UK, Canada, Japan, Korea, and Australia.

UNHCR told the Delegation that anything that threatens refugees is within their remit, but UNHCR cannot provide

for their humanitarian needs. The Delegation repeatedly heard that the refugees were “waiting for UNHCR” and expectations of assistance from UNHCR are generally very unrealistic. More communication of the facts is clearly needed.

Religious discrimination in Malaysian law and society

The situation of Ahmadi refugees in Malaysia is especially dire because the Malaysian government increasingly violates the religious freedom not only of refugee Ahmadis but also of Malaysian Ahmadi citizens, of whom there are about 4,000. In recent years, Malaysian politics and policies have been moving more and more under the influence of Sunni Muslim Wahhabism. Ahmadi Muslims in Malaysia are experiencing some of the same forms of persecution that have driven Pakistani Ahmadis to seek refuge there.

The Malaysian legal system provides a framework for interference in religious life, and for empowering rising Salafism. Malaysian law is highly ambiguous and contradictory on matters of the basic human rights to freedom of religion. Malaysia is not a party to the International Covenant on Civil and Political Rights (“ICCPR”), the main international human rights treaty that seeks to protect individuals from infringements on basic freedoms. This means that dialogue with Malaysian authorities in such forums as the UN Human Rights Council, and the Universal Periodic Review process, cannot take place on the basis of an international legal obligation to protect the rights of religious minorities, which is guaranteed by Article 27 of ICCPR. Malaysia has staked out a position of cultural relativism with respect to universal human rights standard along a model adopted by numerous Islamic governments.

Malaysia is a multi-ethnic and religiously pluralistic society of about 31 million people, of whom 61 percent are Muslim, about 20 percent Buddhist, about 9 percent Christian, and about 6 percent Hindu, whilst home to members of many smaller faiths. According to Article 3 of the Constitution, however, “Islam is the religion of the Federation,” although “other religions may be practiced in peace and harmony in any part of the Federation.” In 2001, then and current Prime Minister Mahathir Mohammad declared Malaysia to be an Islamic state.

The Constitution guarantees freedom of religion under Article 11(1): “Every person has the right to profess and practise his religion and, subject to Clause (4), to propagate it.” Clause 4 states that, “State law and in respect of the Federal Territories of Kuala Lumpur, Labuan and Putrajaya, federal law may control or restrict the propagation of any religious doctrine or belief among persons professing the religion of Islam.”

This reflects Malaysia’s dual or parallel legal system which includes the common law, applicable to all citizens, and locally administered Islamic law, which is inconsistently regulated by Islamic Councils at the level of federal territories. The International Commission of Jurists has concluded that:

“jurisdictional disputes affecting the adjudication of matters relating to religion and belief – between civil courts, which apply federal and state laws, and Syariah courts, which apply Islamic laws – have become a main arena of contestation. Exacerbated by a lack of clarity in existing jurisprudence and law about this dual jurisdictional regime, the scope of matters heard by Syariah courts has expanded, resulting in diminished access to civil remedies.”⁶¹

The events of the past decades confirm that Malaysia’s constitutional guarantees of religious freedom provide only a weak line of defence in the face of the rulings of local Islamic tribunals.

Assaults upon the Malaysian Ahmadi Community and other religious minorities

The dangers to religious freedom posed by Malaysia’s inadequate constitutional and legislative framework have threatened, and continue to threaten, the human rights and security of all Ahmadis in the country. For decades, Ahmadis have been persecuted and prosecuted at the behest of Islamic authorities, and according to interpretations of Malaysian law, often on charges of preaching to Muslims by distributing religious literature.

A 1975 fatwah by the Selangor Fatwah Council found Ahmadis to be non-Muslims, and included an opinion that Ahmadis should be killed if they do not repent. Selangor, and the most populous and wealthy in Malaysia, is a politically influential state. Ahmadis have been officially declared “apostates” in a subsequent 1998 fatwa from the Mufti of Selangor.

In April 2009, the Ahmadi Community was banned from offering Friday prayers at their main mosque on the grounds that their faith was not Islamic. The Selangor Islamic Religious Council issued the ruling, violation of which made Ahmadis punishable with prison terms and fines. A sign was installed outside the mosque claiming that the faith followed by “Qadiani” (a pejorative term for Ahmadis) “is not an Islamic Religion.”

⁶¹ <https://static1.squarespace.com/static/5bbb229a29f2cc31b47fa99c/t/5c862a2053450a49a40c191d/1552296484138/Malaysia-Freedom-of-religion-brief-Advocacy-Analysis-brief-2019-ENG.pdf>

The Selangor State Islamic Religious Department (JAIS) raided an Ahmadi mosque in 2014, arresting 41 people. The action was aimed at halting Friday prayers, based on the fatwa asserting that Ahmadis are not Muslims. Among those arrested were eight Pakistani asylum seekers. A legal challenge to the action was rejected by a court of appeal, which affirmed that JAIS had the right to investigate members of the Community and call them before the State's Shariah Court on the grounds that they had been identified as Muslims on national registration identifications cards. In 2018, however, the Shah Alam High Court ruled that JAIS had no authority over Ahmadi Muslims since they had been declared non-Muslims by the above-referenced fatwas.

Christian preachers in Malaysia are also threatened by the same legislation. A prominent Christian pastor, Raymond Koh, was abducted while driving in Petaling Jaya on 17 February 2017. He had been accused of preaching to Muslims. The Human Rights Commission (SUHAKAM) investigated the case and concluded that Malaysian security forces had been responsible not only for the disappearance of Koh, but for another Christian pastor, Amri Che Mat as well, who disappeared in 2016. The Delegation inquired about this case with those familiar with Malaysian politics; the general consensus is that Koh has been murdered. The Prime Minister has promised a fresh investigation.

The United Nations Special Rapporteur on cultural rights in 2017 warned of "increasing attempts at Islamisation spreading in many areas of society which could lead to cultural engineering: changing how people dress, in particular women, and girls in schools, and altering the arts, cultural practices, religious beliefs, and even the historical narrative of the country."⁶²

What is most menacing to the Ahmadis of Malaysia, however, both citizens and refugees, is the danger posed by their religious practice having been effectively criminalised by religious courts, which makes them vulnerable to charges of blasphemy and apostasy.⁶³ The Delegation can confirm that Pakistani Ahmadi refugees in Malaysia have overwhelmingly been driven into the deprivation they now suffer by violence in Pakistan sanctioned by Pakistan's notorious Penal Code articles 295-298A, laws under which convictions for blasphemy can carry the death penalty – laws that have led to the murder with impunity of scores of people. With the palpable trend toward hard-line interpretations by Shariah courts, and refugee status essentially a recipe for living in limbo, the situation of the Ahmadis in Malaysia is becoming increasingly precarious.



What is most menacing to the Ahmadis of Malaysia, however, both citizens and refugees, is the danger posed by their religious practice having been effectively criminalised by religious courts, which makes them vulnerable to charges of blasphemy and apostasy



62 <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22121&LangID=E>

63 <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22121&LangID=E>

Anti Ahmadiyya sign outside Ahmadi Mosque Kuala Lumpur, Malaysia

“Qadiani (Derogatory term for Ahmadi Muslims) **is not a sect of Islam”**

**QADIANI BUKAN
AGAMA ISLAM**



مجلس سelayang سelayang
Majlis Perbandaran Selayang



***Living Conditions of Refugee Family -
Children spending most of their day in a single room***



Living Conditions of Refugee Family

Case Study Accounts from Fact-Finding Mission: Malaysia

The Delegation met a number of individuals who had found themselves in IDC in Malaysia.

Of some considerable worry was the fact that those who were “of concern” to UNHCR and thus ostensibly under the protection of UNHCR were no more protected from indefinite detention and refoulement.

A handful of examples of the many to illustrate the problem faced by asylum seekers and refugees in Malaysia living a precarious life follow:

IA – born in 1993 (now aged 26 years) first came to Malaysia in 2016.

IA found himself detained on no less than three occasions since his arrival (within three years) since 2016. When he first came and registered with UNHCR within two months of arrival for the first two years all IA had by way of evidence that he was “of concern” to UNHCR was a small blue appointment card.

On 26 July 2018 he was still an asylum seeker. By this date he now had an actual UNHCR letter stating that he is a person of concern.

Police special squad in civilian clothes came to his home on 26 July 2018 and detained him as he stepped out of his house. He was hand cuffed and taken to a petrol station. He was not told why he was being arrested. They took his

wallet and pulled out the UN letter. They did not believe the UNHCR letter had any value or conferred any status on him. They demanded 1500 ringgits if he wished to be released and did not wish the UNHCR letter to be torn up. They took the 70 ringgits he had in his wallet. He offered the 400 ringgits he possessed in total. They then took him to the Police station and beat him up. For the first 9 days of detention his family had no idea where he was. He was beaten up on a daily basis with a stick and suffered torture. They even threw a chair at him which hit him on his shoulder. He was fed just once a day.

He was told that UNHCR had no record of him. On 15th day he was released from detention on payment of 2000 ringgits.

He now has a new UNHCR letter which renewed his last appointment with the UNHCR as the appointment was pushed back and remains without assessment of his refugee status. He has relatives in Canada (a paternal aunt and cousin). He still awaits UNHCR processing of his RSD.

Other former detainees spoken to related the following information including the detention of minors. The Delegation gathered that although a child might initially be detained with his parent as soon as for example a boy reaches the age of about 10 years old he would be expected to be transferred to immigration detention with unrelated adult men in what could be for an indefinite period:

RA – Detained for 5 months between October 2015 to Feb 2016 and his son AH - was detained for 3 months (son detained between Feb 2016 and May 2016) now they are Refugees (Asylum seekers at the time of detention)



Basic Kitchen of Refugee Family

Nephew of RA was also picked up at same time - FA who was an asylum-seeker at the time was detained for 3 months He was also detained as a refugee twice in 2017 (for 1 month) and in 2018 (for 3 months). Back in 2015 when he was first detained FA was only a minor aged 16 years old at the time. He and his other cousin who was also 16 were detained for 3 to 4 months with unrelated adults of about 30 to 40 people in the room.

Those detained include:

ZA – 14 days – 2018 R - (Refugee at time of detention).

JDU – 99 days – 2017 AS - (Asylum-seeker at time of detention).

ARW – 14 days – 2019 R - (Refugee at time of detention).

AS – 13 days - 2017 R - (Refugee at time of detention).

LA – 4 months (between 11.8.2014 to 10.11.2014) - 2014 R - (Refugee at time of detention).

AA – 21 days - 2019 R - (Refugee at time of detention).

SB – 15 days - 2019 R - (Refugee at time of detention). Also detained in 2015 for 15 days when he was an Asylum seeker.

LA – one and a half months - 2016 AS - (Asylum-seeker at time of detention). Now refugee.

MA - 11 days - 2017 R - (Refugee at time of detention).

AA - 100 days - 2017/2018 R - (Refugee at time of detention) / 15 days - Feb 2019 R - (Refugee at time of detention) / 8 days - 2015 AS - (Asylum-seeker at time of detention) (Brother Q detained for 20 days - 2019 R – (Refugee at time of detention) / 8 days - 2015 AS - (Asylum-seeker at time of detention) 5500 ringgits paid to police to release first time after 8 days).

HA - 7 days (29.11.18 to 4.12.18) – 2018 AS – (Asylum-seeker at time of detention).

Medical Assessment by Psychologist, Trainer and Movement Specialist

Thailand and Malaysia

Healthcare

Ahmadi Muslims forcibly displaced are at particular risk given the health challenges they face throughout their displacement. At the pre-departure stage, the health issues have been instigated by exposure to violence, prosecution, and psychological trauma they have endured. Many Ahmadi refugees were injured as a result of gunfire, attack by a mob or a mosque attack and are still dealing with the emotional consequences of their persecution and assaults. On top of that, asylum procedures in Thailand and Malaysia are extremely cumbersome, complicated and stressful, with the continual fear of deportation. This process leads to exacerbation of their psychological distress, causing anxiety, depression and drifting them into poverty and marginalization.

The Delegation interviewed numerous Ahmadi refugees facing life-threatening health challenges, with no means to arrange needed medical tests, treatment, or medications. Many suffered from diabetes, high blood pressure, kidney ailments, skin and other infections, arthritis, and other ailments, including mental health conditions, such as depression, anxiety and suicidal thoughts. Only a handful had access to counselling sessions.

Providing the forcibly displaced with mental health counselling, promoting mental health programs and psychosocial support activities for children and

affected families is crucial. Special attention should be given to developing motor skills; proprioception (the awareness of one's posture, movement, balance based on sensations) and the vestibular sense (movement and balance sense) as children and youth have been confined to a small, shared room.

Mental health counselling sessions should be made available to asylum seekers and refugees detained in the IDCs who have been exposed to prolonged stress and emotional trauma and are more vulnerable to developing emotional and mental issues.

Unfortunately, the majority of those spoken to were not receiving any medication for their health issues. They mentioned high transport fees and long distance to the medical health facilities as the main reason for not having access to medical services, even when they were working.

Health Status of Children

Childhood is a time for playfulness, curiosity, developing social skills through interactions and growth. For Ahmadi refugee children their childhood put them at heightened development risk as they have been enduring malnutrition, lack of social interaction and freedom of movement. Most of them were dealing with stunted growth and delayed motor development.

At the community centre, the Delegation met many children who were dealing with developmental milestones such as vision, hearing and speech milestones without any access to treatment and therapies.

There was also a high prevalence of skin allergies and Childhood Adverse Experiences (“ADEs”) related diseases such as asthma, chronic pulmonary disease, and bronchitis.

Non-communicable diseases (NCDs)

Non-Communicable Diseases are the main cause of mortality worldwide. Forcibly displaced and asylum seekers who have been exposed to poor diet, hazardous living conditions, substandard living and working conditions have heightened risk of developing NCDs.

A significant proportion of forcibly displaced and refugee Ahmadi in Thailand and Malaysia are dealing with hypertension, chronic kidney diseases, cardiovascular diseases, dengue fever, anaemia and chronic migraine.

There is also a high incidence of anaemia, diabetes, and hypertension in Ahmadi displaced women.

Communicable Diseases

The most common reported communicable diseases among Ahmadi refugees and asylum-seekers interviewed were Tuberculosis, Hepatitis B and C. The high prevalence of these infectious diseases among refugees and asylum-seekers can largely be attributed to poor living conditions during and after migration. Asylum seekers and refugees face an increased risk of TB infection and poor treatment response as unsanitary living conditions, uncertain legal status and lack of access to health services all play a

significant role.

Tuberculosis was mentioned to be present among refugees detained in the Bangkok IDC. In case of delayed diagnosis or interrupted treatment, the emergence of Multidrug-resistant TB can become a major public health concern. This was the case with the detained Ahmadi refugees who had no access to medical health care facilities in the IDCs. One of the detainees in the IDC spoken to mentioned: **“Only when we are about to die they will take us to a doctor.”**

Scabies was also prevalent among Ahmadi refugees in Thailand. Several women said that they or their children have had scabies and showed us their rash. Scabies also seems prevalent among detainees in the IDC since the disease is mainly seen in crowded living conditions, group homes, or prisons. Being accommodated in overcrowded shelters for extended time periods and a lack of access to water also increase the risk of spread of the disease.

Reproductive Health Care

Lack of sexual health and reproductive care was prominent among Ahmadi women. A lot of Ahmadi women reported they have menstrual irregularity and uterine bleeding, without any access to reproductive health care facilities. There is also a high prevalence of preterm birth among Ahmadi children.

A women who was working illegally, said she could not afford to take a half a day off to visit a doctor due to a lack of financial resources. Even though her medical issue (abnormal uterine bleeding) could indicate something life-threatening.

Mental Health

Prolonged states of severe distress and exposure to traumatic experience (such as physical assault, death threats, and political persecution) have been associated with severe mental disorders among Ahmadi asylum-seekers and refugees. A number of youth and asylum-seekers the Delegation interviewed at a health facility were dealing with psychosis, post-traumatic stress syndrome and psychogenic amnesia.

Ahmadi asylum-seekers and refugees were barely receiving any mental health counselling to regain a sense of control and improve their mental health.

Thailand

Some of the asylum-seekers are single mothers who had to leave their children behind, while some single mothers have their children with them but are deprived of any opportunity to be able to provide their family with basic security and necessities in Thailand. Not having enough money to obtain food, cover health expenses, send their children to school and pay the rent are extremely common concerns among Ahmadi families living in Bangkok. **Most of the Ahmadi families live in a single room that serves as a bedroom, kitchen and a living room for the entire family.**

This protracted nature of the living conditions of refugees in Bangkok has resulted in mental illnesses, psychological pressure and a myriad of health issues among the Ahmadi refugees community. Refugees and asylum-seekers are not included in the Thai national health plans. Out of the fear of arrest and inability to pay for transportation fees and medical fees, they are unable to visit doctors or health care facilities. As a result they mainly rely on NGOs to provide basic health services. In some cases, UNHCR has reimbursed the treatment of life-threatening diseases.

Until 2014, the Bangkok Refugee Centre (BRC), the UNHCR implementing partner has provided Ahmadi families with medical health and advice. As a result of immigration laws in Thailand and an influx of refugees fleeing from conflicts, the underfunded BRC health facility became overwhelmed and was forced to shut down in 2014. The asylum-seekers and refugees residing in Bangkok have been left with reduced access to health care. Currently, the Buddhist Tzu Chi Foundation (BTCF) fills this gap and addresses the basic medical needs and mental health of Ahmadi refugees and asylum-seekers.

Many of the Ahmadi asylum-seekers suffer dire health conditions and are in need of urgent health services, but cannot have access to health facilities due to legal and protection issues, and the inability to afford the transportation and the fees. This has significant consequences for the Ahmadi refugees, asylum-seekers as well as the host community given the emergence of resistant preventable diseases. One of them said: "Every night I wake up in the middle of the night and I start crying for my children. They do not go to school. We have nothing to eat. I feel helpless and want to commit suicide. I approached the UNHCR many times and asked them for mental health counselling. Yet they told me they don't have any resources to support me. The BRC would reimburse half of the mental counselling fees. But even 100 Baht can make a difference of life or death to us. I cannot afford that amount."

Exposure to prolonged stress, lack of legal status, living in overcrowded shared rooms, poor housing and having no access to adequate nutrition and safe physical space are associated with a wide range of health conditions, including scabies, respiratory infections, asthma, Tuberculosis, Non-Communicable Diseases, deteriorating

mental health and motor skills impairment among Ahmadi children.

Children were living in overcrowded rooms which they had to share with their siblings and parents. All of them have endured adverse effects of malnutrition, lack of sanitation and lack of free physical space. Most of children are suffering from stunted growth, not able to make or maintain eye contact and have motor skills problems.

A number of children met were suffering from Polio. It is possible that Ahmadi children have an increased risk to acquire vaccine preventable diseases, as they don't have equitable access to immunization and recommended childhood vaccines.

All these problems are exacerbated by the absence of adequate psychological support. There was basically no program or activity to enhance the emotional resilience of children and families. The lack of safety and the fear of getting arrested by the immigration police is the reason for the absence of psychosocial support activities.

In the last decades as a result of a large influx of migrants from its neighboring country providing education for migrants' children has become a national priority. The government of Thailand has adopted a policy providing free and compulsory education for every child within its territory.⁶⁴ Thailand's domestic legislation guarantees that all children have a right to quality and free basic education for the duration of at least 12 years regardless of their legal status. Notwithstanding this for most of Ahmadi children, access to school and especially tertiary education is out of their reach. One of the practical issues which parents referred to is the language barrier which meant children were not attending Thai schools. Transport fees,

long distances and fear of getting arrested were other key factors why refugee children in general are not able to attend public schools.

The BRC has been offering informal education to refugees once a week and some children were able to attend. Most of the parents expressed the fear of getting arrested by the police as the main impediment to sending their children to school. For many parents the long distance and transportation fees was the main barrier. In reality this means that refugee children do not have access to tertiary education. Students and young asylum-seekers/refugees who had completed their secondary school level (high school) expressed their concern about the lack of opportunities to continue their education.

Malaysia

Refugees holding UNHCR cards are entitled to a 50% discount on health services, but costs are still prohibitive given the destitute financial situation the vast majority are facing. A significant proportion of the refugees have not been issued such cards, even after numerous years.

Only a small proportion of Ahmadi refugees and asylum-seekers had had access to medical interventions provided by ACTS (A Call to Serve) and Tzu Chi Foundation. The majority of them were not receiving any medical assistance. The issue of affordability was another common key barrier in accessing health care facilities. Some of the refugees were provided with medication sent through their relatives and friends residing in Pakistan. This medication was prescribed to them many years ago.

Long waiting lists for appointments in order to get the necessary medical intervention were common among Ahmadi asylum-seekers and refugees, even in the case of

⁶⁴ Migration, Gender and Social Justice: Perspectives on Human Insecurity, Vol 9 edited by Thanh-Dam Truong, Des Gasper, Jeff Handmaker, Sylvia I. Bergh

life-threatening complications. Two heart patients who were in urgent need of angioplasty had to wait 6 months to get an appointment. According to UNHCR Malaysia, there are several hundreds of HIV-Aids infected asylum-seekers or refugees in Malaysia. It has been suggested that due to stigmatization and out of fear of getting rejected in the resettlement process, HIV infected asylum-seekers and refugees from Pakistan neither seek help nor notify their partners about the consequences of any sexual contact.

Mental health issues are a particular problem. According to a local doctor working at a health facility provided by the community centre, 60 to 70 percent of children are suffering from depression and anxiety, as they need social contact and comfort. Psychosocial support programs and activities for children, women, and men are basically non-existent due to the risk of arrest and lack of freedom of movement.

A high number of youth and Asylum-seekers interviewed at the health facility of the community centre were dealing with psychosis, post-traumatic stress syndrome and psychogenic amnesia. They were barely receiving any mental health counselling to regain a sense of control and improve their mental health.

Spending time in IDCs in Malaysia can be a matter of life and death. According to data provided by the Malaysian Human Rights Commission (SUHAKAM), in 2015 and 2016 more than 100 persons have passed away in IDCs in Malaysia. Many of the deaths in these centres attributed to chronic health conditions such as Tuberculosis, cardiovascular disease, Pneumonia (lung infection) and blood poisoning. All Ahmadi asylum-seekers and refugees

spoken to have developed major health, psychological disorders that jeopardize their well-being, development and drift them into more vulnerability and poverty during the course of their lives.

A man who was arrested and taken to the IDC for 48 days had developed severe post-traumatic trauma syndrome during his detention. He emphasized the water he was given to drink was so dirty and smelling so bad that even animals would not have drunk it. The quality of food was poor, and there were no proper toilets or access to water or clean sanitation. "Everything smelled bad, was dirty and filthy," he said.

He was harassed and intimidated by officials daily. The officials would threaten him and told him to go away from Malaysia until he was released by UNHCR. During his time in the IDC, he developed anxiety disorders and flashbacks. Now he has developed severe kidney disease (infection) with bleeding without any access to a treatment or health facility.

Another family spoken to was detained at the IDC for six months. They had 4 children while detained in the IDC. One of their children was born in the IDC. Whenever she was crying, she would be slapped by a female jail official. Their eldest child reported witnessing other prisoners being beaten up. "They were full of blood and injuries that made them unable to walk," they said. That is why they developed the habit of laying down on the floor the whole time, without saying a word or becoming noticeable for fear of being beaten up by officials. A third son was in the IDC with his mother until the age of ten, after that age, he was separated and brought to his father in the

male part of the IDC. Four years after their time in the IDC, they still have trouble falling or staying asleep and loss of appetite. They are unable to express themselves clearly and hold themselves up due to pain in their knees. They all suffered from chronic muscle pain and ache. The fourth child who has spent the first half year in the prison is totally speechless, has weak and underdeveloped muscles, avoids eye contact and participating in a new activity. He is always attached to his mother. They had only one checkup (without any blood test) and just one mental counselling session. Under Malaysia's education policy, asylum-seekers and refugee children are not allowed to enrol in government schools. Children mainly receive education through less formal education provided by the UNHCR and community-

based learning centers. A number of children are unable to enrol in informal education settings due to the high transportation fees or long distance. Some parents were concerned about the lack of a recognized certificate, as informal schools are not authorized to provide children with any certification of competences. There is no education provided for children with special needs, they are totally deprived of their right to education. **Ahmadi students and young adults face barriers to accessing higher education as they are excluded from higher education and universities in Malaysia.**



//

Ahmadi asylum-seekers and refugees were barely receiving any mental health counselling to regain a sense of control and improve their mental health.

//

Refugee Child studying at a informal community centre in Malaysia

Conclusions

THAILAND

Thailand has not ratified the 1951 Refugee Convention and does not recognise the status of refugees. Thailand has ratified the International Covenant on Economic, Social, Cultural Rights without any reservation. Paragraph 30 of General Comment 20 states: 'all children within a State, including those with an undocumented status, have a right to receive education and access to adequate food and affordable health care.' The International Covenant on Economic, Social and Cultural Rights apply to everyone including non-nationals, such as refugees, asylum-seekers, stateless persons regardless of legal status and documentation. The actual situation of refugees and their children is in breach of this Treaty.

Ahmadi refugees and asylum-seekers in Thailand are trapped in an extremely vulnerable situation and urgently need practical, sustainable solutions. The migration process, language barriers, poor housing conditions, lack of adequate nutritious food and sanitation, poor legal protection and exposure to prolonged stress jeopardise their health, well-being and future prospects.

Many Ahmadi asylum-seekers are in dire health conditions and in urgent need of health services, but do not have access to health facilities due to legal issues and the inability to pay for medical fees and the cost of transportation. This has significant consequences for Ahmadi refugees and asylum-seekers as well as the host community.

Ahmadi refugees in IDCs are deprived of hygienic conditions, access to clean water, health care facilities, adequate food and physical space. Some asylum-seekers and detainees

have been detained for many years, with limited access to legal advice and psychological support. Some detained refugees reiterated their need for legal advice, hygienic conditions, medical services and access to nutritious food and clean water in the IDC.

Many Ahmadi refugees and asylum-seekers have endured psychological trauma due to violence, Adverse Childhood Experiences, isolation, lack of freedom of movement and physical security. Many of them show signs of depression, anxiety, suicidal thoughts and aches and pains that do not have an obvious physical cause.

UNHCR is faced with the high expectations of asylum-seekers and refugees. Often refugees expect more support and services from UNHCR and a right to resettlement in a third country. Resettlement is only an option for a very small group.

Ahmadi refugees in Thailand are prohibited from working legally. This leaves them no other option than to seek employment in the informal sector where they are vulnerable to exploitation, arrest and detention.

MALAYSIA

Malaysia has not ratified the 1951 Refugee Convention and does not recognise the status of refugees. Malaysia has no laws that regulate the status and rights of refugees, which means that refugees have to survive outside the law, in a 'grey zone' as a local UNHCR official told the Delegation.

Ahmadi refugees and asylum-seekers in Malaysia face religious discrimination and persecution because they are considered non-Muslim and are not allowed to practise their belief. As a result of this, they run the risk of arrest and detention while performing Friday prayers, which happened to 39 Ahmadis who were arrested in 2014.

The Malaysian government suggested in its manifesto that it would become a party to the 1951 Refugee Convention but no steps in that direction have been taken. It has also suggested that it would give refugees the right to work but, again, there has been no progress on this; refugees can only work illegally.

Many of the Ahmadi asylum-seekers in Malaysia are in dire health conditions and urgently in need of health services. Health services are supplied with a 50% discount to refugees holding a UNHCR refugee card, but even then costs are still very high. A significant proportion have not been issued a UNHCR refugee card.

Refugee children are denied access to public education. Some refugee children enjoy primary and secondary education provided by the Ahmadi community and NGOs. Nonetheless, many children still cannot go to school because of the distance they have to travel and the travel

expenses involved and/or other deprivations.

Ahmadi refugees in Malaysia are prohibited from working legally. This leaves them no other option than to seek employment in the informal sector where they are vulnerable to exploitation, arrest and detention.

Ahmadi refugees in IDCs are deprived of hygienic conditions, access to clean water, health care facilities, adequate food and physical space. Some asylum-seekers and detainees have been detained for many years, with limited access to legal advice and psychological support. Some detained refugees reiterated their need for legal advice, hygienic conditions, medical services and access to nutritious food and clean water in the IDCs.

Many Ahmadi refugees and asylum-seekers have endured psychological trauma due to violence, Adverse Childhood Experience, isolation, lack of freedom of movement and lack of physical security. Many of them show signs of depression, anxiety, suicidal thoughts and aches and pains that do not have an obvious physical cause.

UNHCR is faced with the high expectations of asylum-seekers and refugees. Often refugees expect more support and services from UNHCR and a right to resettlement in a third country. Resettlement is only an option for a very small number.

RECEIVING COUNTRIES AND THE INTERNATIONAL COMMUNITY

We call upon those states party to the UN Convention on the Status of Refugees 1951 and its 1967 protocol to respect the rights of asylum seekers and refugees by encouraging, promoting and facilitating the reception of displaced persons in host countries via direct dialogue and action as well as via UNHCR in order to guarantee their dignity, safety, liberty and human rights throughout their time in their host countries.

The efficient processing and determination of refugee status by UNHCR officials on the ground should be supported and backed up with prompt and adequate offers to resettle in sufficient numbers to alleviate prolonged suffering in dangerous conditions of persons of concern to UNHCR.

The UNHCR Resettlement Submission Categories are for those with Legal and/or physical protection needs in the country of refuge for example:

- Survivors of violence and/or torture
- Medical needs
- Women and girls at risk
- Family reunification
- Children and adolescents at risk
- Lack of foreseeable alternative durable solutions

In relation to the resettlement submission categories:

- Legal/physical protection needs: in country of refuge there exists at least one of the following: risk of immediate

or long-term threat of return to country of origin; threat of arbitrary arrest, detention or imprisonment; threat to physical safety or human rights rendering asylum untenable;

- Survivors of violence/torture: experienced torture/ violence in country of origin or country of asylum; and, may have lingering physical or psychological effect; and, could face further traumatisation/heightened risk due to the conditions of asylum; and, may require medical or psychological care, support or counselling unavailable in country of asylum; and, requires resettlement to meet specific needs;

- Family reunification: four conditions must be met: (1) at least one person within the family unit to be reunited is a refugee or person of concern to UNHCR; (2) individuals to be reunited are family members under UNHCR's inclusive definition; (3) individuals are reuniting with a member of the family already in a resettlement country; and, (4) availability and accessibility of other family reunification or migration options have been reviewed and resettlement determined to be most appropriate given resettlement needs and protection implications for family member; and

- Lack of foreseeable alternative durable solutions: UNHCR recognises three durable solutions for refugees: voluntary repatriation; local integration; and, resettlement. Resettlement appropriate where there is an on-going, not urgent, need for resettlement, particularly useful in addressing protracted refugee situations. Considerations include: legal protection in country of asylum, prospect of voluntary repatriation or local integration, conditions

of asylum, socio-economic and psychosocial situation, priorities of resettlement States and possible adverse effects.

State parties to the Convention and the international community should recognise that Ahmadi Muslims do not have a foreseeable alternative durable solution. They often qualify for resettlement on some other basis. Regrettably many are languishing in the most deplorable conditions either in IDCs in worse conditions than those that they fled in the countries visited by the Delegation or their lives are fraught with risk to their well-being and health so as to be unsafe and living conditions of vulnerable groups that a sense of urgency is required to ensure they are resettled since the risks are no less significant than for those who are in camps within conflict zones.

Apart from the general quota each country has to resettle refugees, countries also have separate schemes for resettlement. By way of example the UK has the Mandate Programme which provides for the resettlement of those with a family connection in the receiving country where the refugee may be accommodated. This is not limited in number. Another is the Gateway Programme which makes provision for a limited number of refugees on a quota basis (750 per annum for the UK) to be resettled. Special programmes also exist for situations of prolonged conflict such as the Syrian programme for some 20,000 individuals.

More of these types of programmes and alternative pathways should be made available to resettle refugees and existing programmes should not be rigid but be flexible and practical.



We call upon the State parties to the Convention to expand these programmes to enable these persons who lack any alternative durable solution to be resettled as swiftly as possible.



ANNEX 1

UN General Assembly, New York Declaration for Refugees and Migrants: resolution / adopted by the General Assembly, 3 October 2016, A/RES/71/1

Article 11 of the resolution states as follows:

“We acknowledge a shared responsibility to manage large movements of refugees and migrants in a humane, sensitive, compassionate and people-centred manner. We will do so through international cooperation, while recognizing that there are varying capacities and resources to respond to these movements. International cooperation and, in particular, cooperation among countries of origin or nationality, transit and destination, has never been more important; “win-win” cooperation in this area has profound benefits for humanity. Large movements of refugees and migrants must have comprehensive policy support, assistance and protection, consistent with States’ obligations under international law. We also recall our obligations to fully respect their human rights and fundamental freedoms, and we stress their need to live their lives in safety and dignity.”

Articles 32 and 33 of the resolution stated thus in relation to the rights of refugee children:

“ 32. We will protect the human rights and fundamental freedoms of all refugee and migrant children, regardless of their status, and giving primary consideration at all times to the best interests of the child. This will apply particularly to unaccompanied children and those separated from their families; we will refer their care to the relevant national child protection authorities and other relevant authorities. We will comply with our obligations under the Convention on the Rights of the Child. We will work to provide for basic health, education and psychosocial development and for the registration of all births on our territories. We are determined to ensure that all children are receiving education within a few months of arrival, and we will prioritize budgetary provision to facilitate this, including support for host countries as required. We will strive to provide refugee and migrant children with a nurturing environment for the full realization of their rights and capabilities.

33. Reaffirming that all individuals who have crossed or are seeking to cross international borders are entitled to due process in the assessment of their legal status, entry and stay, we will consider reviewing policies that criminalize cross-border movements. We will also pursue alternatives to detention while these assessments are under way. Furthermore, recognizing that detention for the purposes of determining migration status is seldom, if ever, in the best interest of the child, we will use it only as a measure of last resort, in the least restrictive setting, for the shortest possible period of time, under conditions that respect their human rights and in a manner that takes into account, as a primary consideration, the best interest of the child, and we will work towards the ending of this practice.”

With regard to returns, the resolution stated as follows at Article 58:

“ 58. ... Any type of return, whether voluntary or otherwise, must be consistent with our obligations under international human rights law and in compliance with the principle of non-refoulement. It should also respect the rules of international law and must in addition be conducted in keeping with the best interests of children and with due process...”

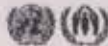
On the position of vulnerable children, women and girls it resolved:

“59. We reaffirm our commitment to protect the human rights of migrant children, given their vulnerability, particularly unaccompanied migrant children, and to provide access to basic health, education and psychosocial services, ensuring that the best interests of the child is a primary consideration in all relevant policies.

60. We recognize the need to address the special situation and vulnerability of migrant women and girls by, inter alia, incorporating a gender perspective into migration policies and strengthening national laws, institutions and programmes to combat gender-based violence, including trafficking in persons and discrimination against women and girls.”

ANNEX 2

UNHCR Verification Letter


UNHCR
 United Nations High Commissioner for Refugees
 Haut Commissariat des Nations Unies pour les Réfugiés

UNHCR Representation in Malaysia
 570 Jalan Bukit Pelangi Tel: (+603) 21 18-4800
 P.O. Box 10161 Fax: (+603) 2141-4262
 50708 Kuala Lumpur, Malaysia Email: malaysia@unhcr.org

Name/Our Code: 1SR/L/6435/MNK

CONFIDENTIAL

2 August 2018

Dear Sir,

Re: Verification and request for the release of UNHCR persons of concern.


In reply to your letter dated today, reference no: Selayang Rpt. 15715/18, about the case of [REDACTED], UNHCR File Number: [REDACTED]

We would like to inform you that this person is registered with UNHCR and thus, is of concern to our office. In case the aforementioned person is solely held for immigration-related offences, we would be grateful if he could be released from detention.

Note: The Office wishes to encourage various agencies of the Government of Malaysia to self-verify the status of UNHCR document holder using the following methods:

1. For new UNHCR cards with QR codes: Download the UNHCR Verify-MY smartphone application for free on Android Play Store or Apple App Store and scan the card to verify (see attached pamphlet on using the app).
2. For old UNHCR cards without the QR codes: Go to <https://verification.unhcr.org.my/>, which is the UNHCR Malaysia Card Verification System (CVS) website (see attached pamphlet on using CVS).

We remain at your disposal for any further queries or additional information.


 UNHCR Representation in Malaysia
 UNHCR
 Haut Commissariat des Nations Unies pour les Réfugiés
 UNHCR Malaysia

Attn: Sarjan Mohd Razlan bin Omar (142777)
 Penolong Pegawai Penyiasat Jenayah
 IPD Gombak
 Tel. 03-61262222 / 012-3521778 Fax: 03-61775049

ANNEX 3

UNHCR confirmation of Asylum Seeker



ANNEX 4

Example of Resettlement Agreement

RESETTLEMENT SUPPORT CENTER
RSC EAST ASIA

RESETTLEMENT SUPPORT CENTER
 Regional Office for East Asia
 579 Jalan Bukit Pelangi
 50400 Kuala Lumpur, Malaysia
 Tel: +60 (0)3 2141 5548 E-Mail: KL.RegOffice@rescusa.org

RESETTLEMENT AGREEMENT

Note: Completed at Pre-screening, day of DHS interview, and the first day of Cultural Orientation – a copy given to applicant.

Check one:

I have provided the RSC/IRC with correct contact information for my relatives or friends in the United States.

I have provided the RSC/IRC with names of my relatives or friends in the United States, but I do not have any contact information for them.

I do not have any relatives or friends in the United States.

I have provided names and contact information if available for my relatives or friends in the United States but do not want to be resettled with or near them.

Initial each statement to indicate that you understand and agree:

NAJ I understand my case will not take longer to process simply because I ask to be placed in a location with or without family, and that I am encouraged to provide information about relatives or friends that I would like to join in the United States as early in my processing as possible.

NAJ I understand that if the resettlement agency is not able to locate my relatives or friends using the contact information I provided, I will be placed in any appropriate location in the United States.

NAJ I understand that my relatives or friends are not required to pay any money to the resettlement agency in the United States.

NAJ I understand that my relatives or friends are not required to provide funding for my housing or any other assistance, but agencies will ask if relatives or friends are able to assist in any way.

NAJ I understand that the U.S. resettlement program will not be able to honor any requests to redirect my travel or may not be able to transfer my case once I arrive in the United States.

NAJ Should I choose to travel to a city other than the location selected for me, I will be unable to receive some US Government-funded services normally provided to newly arriving refugees and all transportation will be at my own expense.

NAJ I understand that I should update information regarding my relatives or friends in the United States within 90 days of my DHS interview, or before 03 JUN 2016 (date).

NAJ I understand that my last opportunity to provide information about friends or relatives in the United States will be at Cultural Orientation (CO) class. Any information provided after Cultural Orientation will not be considered unless there are urgent factors that will be evaluated on a case by case basis.

NAJ I understand that unless I am joining immediate family (spouses, parents, children, grandparents), I may be placed in another location best suited to my needs.

By signing below, I am confirming my understanding of the U.S. resettlement program's policies and procedures regarding information for my relative(s) as


[Redacted Signature]

17 NOV 2015
 Pre-screening date
03 MAR 2016

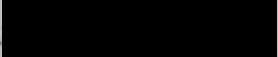
ANNEX 5

Notice of Eligibility for Resettlement - USA

U.S. Citizenship and Immigration Services
Refugee Affairs Division
Washington, DC 20525-2290

 U.S. Citizenship
and Immigration
Services

NOTICE OF ELIGIBILITY FOR RESETTLEMENT


Re: 

Your application for refugee status in the United States has been conditionally approved under §207(a) of the United States Immigration and Nationality Act. Final approval is conditioned upon successful completion of any remaining clearances that are required in the screening process. These clearances may include medical examination by a U.S. approved panel physician, completion of security clearance procedures, verification of family relationships, and receipt of a sponsorship assurance from a voluntary resettlement agency in the United States.

In addition, those dependents (spouse and unmarried children under 21 years of age) who are included in your application, and who are designated by the A-file numbers listed above, are also conditionally approved for derivative refugee status. If any dependent child included in your case marries prior to admission to the United States, the derivative refugee status will no longer be available and he or she will be disqualified from traveling to the United States as a derivative refugee. Should any dependent child marry prior to travel to the United States and fail to disclose the marriage at the time of admission to the United States, he or she may be subject to termination of refugee status and removal from the United States. In addition, DHS will not approve a following-to-join petition (form I-730) should such a dependent child seek to sponsor a spouse married prior to admission to the United States.

Every refugee applicant must complete a medical examination. Some health conditions are grounds for exclusion from resettlement to the United States, but may be waived by DHS for humanitarian purposes, in the public interest, or for family unity on an exceptional basis. The medical exam is free of charge. The examining physician will explain to you the medical tests that are required subject to your consent. Failure to comply with or consent to the requirements for medical exams may jeopardize your application for refugee status and resettlement. You will be contacted by one of the U.S. Refugee Program participating organizations to arrange for your medical exam.

Prior to travel, you must be issued a Travel Packet, which is prepared by the Resettlement Support Center (RSC) that assisted you in preparing your application. It is estimated that a minimum of four months from the date of this letter is required to complete all of the procedures before your departure to the United States. Please notify the RSC office if you have any changes in your family composition. The International Organization for Migration (IOM) will assist in arranging for your departure to the United States and provide you with an interest free travel loan for your airfare.



Refugee Affairs Division
U.S. Citizenship and Immigration Services

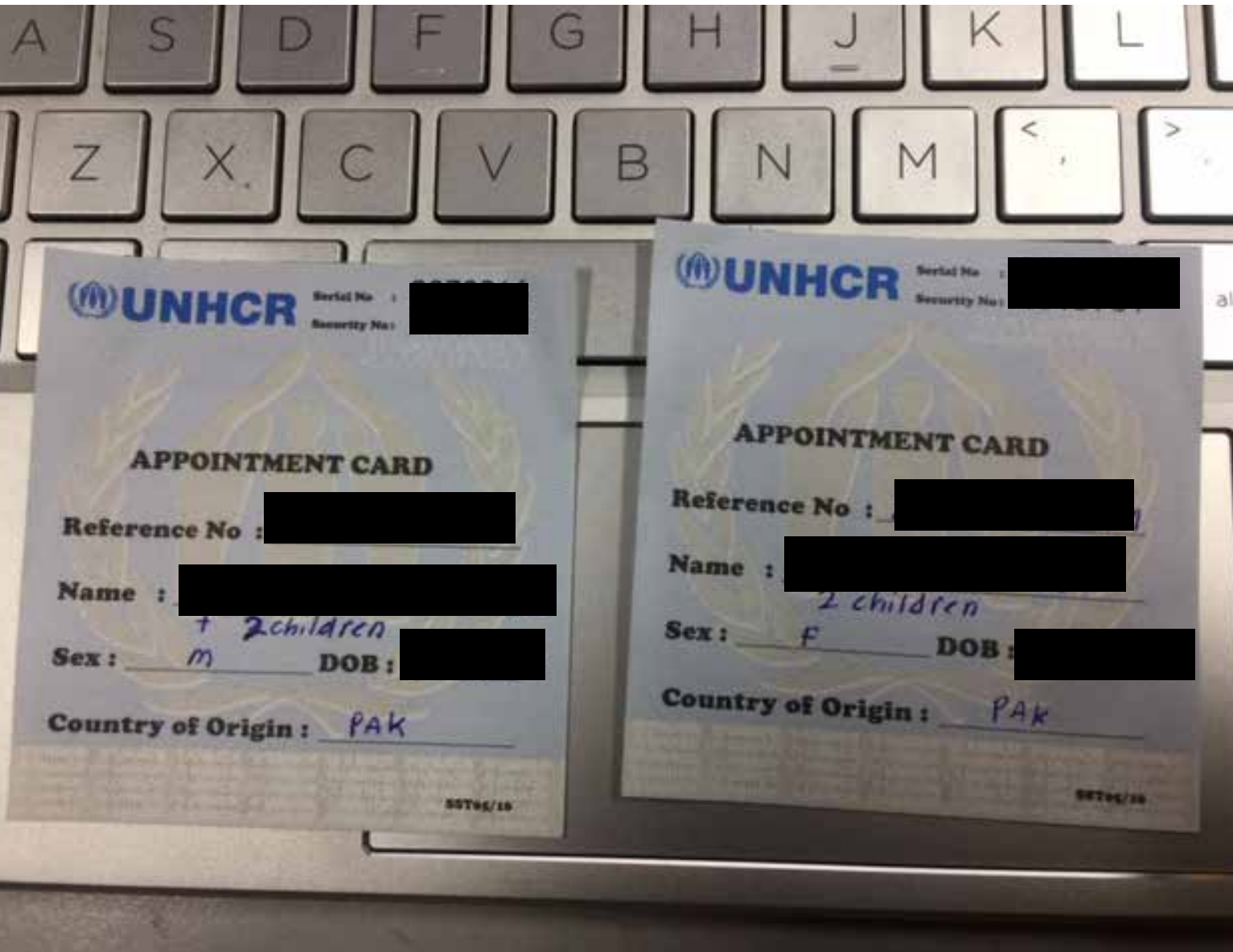
ANNEX 6

UNHCR Person of Concern Documentation



ANNEX 7

UNHCR Appointment Card



ANNEX 8

UNHCR Malaysia - RSD Factsheet



UNHCR Malaysia Refugee Status Determination Factsheet

What is Refugee Status Determination?

Refugee status determination (RSD) pursuant to UNHCR's mandate is a core UNHCR protection function.

UNHCR's responsibility in refugee status determination is defined by the 1950 Statute of the Office of the United Nations High Commissioner for Refugees, as well as through subsequent UN General Assembly and Economic and Social Council (ECOSOC) resolutions.

The purpose of mandate RSD is to permit UNHCR to determine whether asylum seekers fall within the criteria for international refugee protection.

The determination of refugee status has potentially profound implications for the life and security of the individuals concerned. It also defines the obligations of UNHCR towards the individuals, and may also determine the obligations and responsibilities of governments and other actors with whom UNHCR cooperates to protect refugees. The effectiveness of mandate RSD as a protection function depends upon the fairness and integrity of UNHCR RSD procedures and the quality of UNHCR RSD decisions.

In Malaysia, UNHCR carries out refugee status determination procedures under the purview of its Statute. UNHCR procedures to determine eligibility for mandate refugee status on individual basis takes place through the examination of individual claims.

Refugee status determination procedures require that asylum applicants go through individual interviews, and a decision is taken on their eligibility for refugee status.

Procedural fairness requires that applicants are given a chance to present their case in person, in the language they are comfortable, their data are kept confidential, and rejected asylum seekers have a chance to appeal to their negative decision, if they wish to do so.

The decision making process involves examination of the oral testimony and, if available, documentary evidence, of the applicant; research on the conditions in country of origin; and legal assessment. Decisions go through a review, and registered in a central database to ensure integrity of the system.

Who is a Refugee?

As defined by 1951 Convention Relating to the Status of Refugees, as well as UNHCR Statute:

A refugee is a person who has a well-founded fear of persecution because of race, religion, nationality, membership of a particular social group, or political opinion; and because of that fear is outside of his or her country of nationality, or if stateless, is outside of his or her country of habitual residence; and who because of that fear is unwilling or unable to return to his or her country of origin or habitual residence.

UNHCR's mandate refugee definition is also extended through UN General Assembly and Economic and Social Council resolutions to a person who is outside of his or her country of origin or habitual residence and unable or unwilling to return there owing to serious and indiscriminate threats to life, physical integrity or freedom resulting from generalized violence or events seriously disturbing public order.

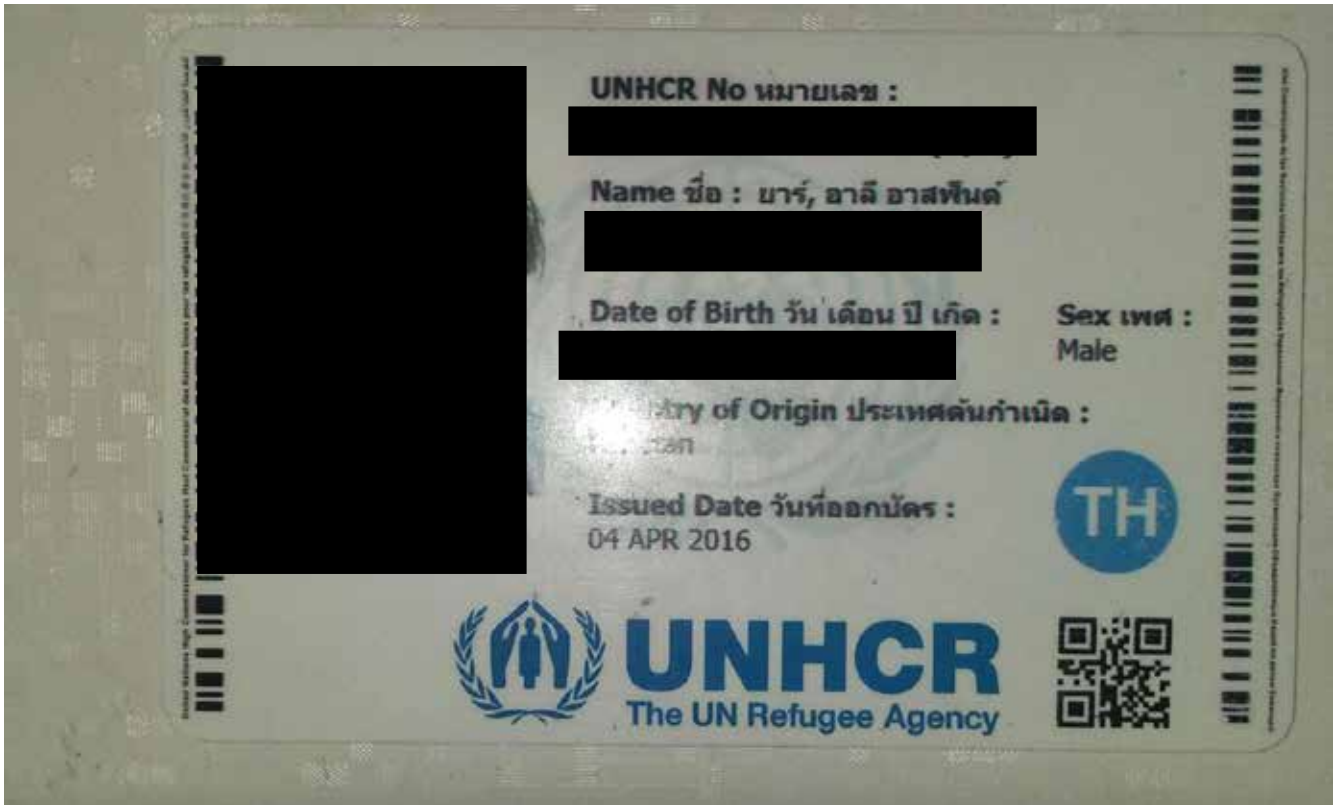
Who is an Asylum Seeker?

An asylum seeker is a person whose international protection claim is still under consideration, and regarding whom a final decision has not been taken yet.

According to international norms, asylum seekers should not be returned to their countries of origin, until a final decision has been taken on their application.

ANNEX 9

UNHCR Refugee Card



ANNEX 10

Fact-Finding Mission's visit to Bangkok IDC

Some members of the Delegation visited the IDC at Bangkok in Thung Maha Mek on 14 May 2019.

On arrival members of the Delegation were seated in a waiting area with about 20 other visitors until an official eventually came and distributed forms that required completion stating the name and room number of the detainee. Anyone who stood up to request a form was curtly dismissed back to their seats.

As the Delegation waited, members noted a small blond girl in the company of her mother. Curiosity made the members strike up a conversation and subsequently it was learned that this girl was the daughter of an American lady who was a volunteer with an NGO called Life-Raft which did excellent work by bringing supplies on a regular basis to detainees on a Christian charitable basis. The Delegation also spoke with an Australian father who was waiting to visit his son who was due to be removed from the country following the end of a custodial sentence. With the benefit of family resources his time in IDC would presumably be limited unlike the many hundreds living in indefinite detention behind the doors.

Large metallic sliding doors were eventually flung open and the Delegation hurriedly made its way inside and was then ushered through a doorway into a large hall of about 30 metres long and 10 metres wide with a gap or corridor of about a metre and a half in between. Two makeshift parallel metallic fences ran along the length of the hall. On the visitors' side were about one hundred people crowding around trying to reach the front of the fence. Across the divide on the further side of the detainees' fence there were around one hundred orange T shirt clad detainees equally desperate to reach the front of the fence to be seen and to be heard amongst the tumultuous din.

Three members of the Delegation were to visit three detainees, two of whom were women. As the Delegation had no idea what they looked like when three ladies donning hijabs were spotted, members of the Delegation bellowed across, "Are you N?" "Are you S?" As they could not hear the question and the members had no hope of being heard the members tried to move further down along the right-hand side of the fence. As the members reached the front of the fence through the holes the members could see the anguish imprinted on the women's faces. A younger woman in a hijab appeared behind them and it became apparent that she spoke some English.

The members then indicated to her to meet on the outer edge of the left-hand side of the fence. As the members and detainees each looked across the sides of the fence struggling to be within earshot of each other amidst the cacophony she shouted across to the members eagerly and anxiously with her eyes darting to the side as she was very conscious of the presence of the guard to her right watching and listening from about five feet away. Noting that she was anxious not to be seen to be critical of the conditions the members tried to engage the services of another Ahmadi man who had his two adult children aged in their twenties behind the detainee fence to act as an Urdu interpreter so that the responses could be translated into English in a less obvious way. The pair smiled politely across at us when the Ahmadi man pointed the members out to them.

The young woman communicated to the members that the daily offering of “cucumber soup” had recently improved slightly, that there were two functioning toilets to about 80 people in her room, and that the one water pipe they used for washing and drinking between the same number of people was also used to wash after their toileting needs. The Delegation learnt that they could not lie down properly to sleep and that many have skin diseases, depression and other conditions but would need to be “dying” (deemed life-threatening) before they would get any medical care. The stench and fetid atmosphere in the visitor gallery was telling of the pestilence within. They had not spoken to anyone from UNHCR.

The young woman stressed that what they lacked most was “legal advice”. Given that she was obviously constrained in describing the conditions they were living in and the allocated 45 minutes was over all too soon the members of the Delegation were ushered out. The members noted that the orange, relatively well-kempt T shirts were removed by the detainees and piled in baskets with the guards as they stepped away from the fence wondering whether behind the walls they would be suffering further indignity of living in bare torsos or worse.

After the Delegation stepped out on to the forecourt the members were met by a small group of Ahmadi Muslims outside the doorway to the building who were desperate to be heard. One woman explained that her husband had been in IDC for several months and that the only way their small son aged about nine years could see his father was when he appeared at the balcony on his way down whilst the son waved to him from outside the building.

Some explained that their loved ones were taken during a raid and others stated that it was when they went grocery shopping. The fact that they were in possession of UNHCR documents declaring them to be either asylum-seekers or even recognised refugees and thus of concern to UNHCR neither prevented nor assisted in their release although months had gone by since the initial detention. Where the individual had been detained following revocation of bail there was no prospect of ever coming out. This is because once someone is bailed (bail is now no longer possible for any males) on payment of a 50,000 Baht surety (roughly the equivalent of £1250 which was unaffordable to most) the UNHCR has three years during which to process their departure from the territory, failing which bail is revoked and there is then no further opportunity for bail. Thus the individual would remain in indefinite detention until such time as he elected to leave “voluntarily” or UNHCR secured resettlement for them elsewhere. Thus the situation of individuals whose bail had been revoked was particularly urgent.

IDC Detention conditions

The Delegation also spoke with a number of former detainees in IDCs from Thailand. They all reported deplorable conditions where the levels of insanitation, miasma and over-crowding were extreme with as many as 150 to 200 detainees in one space. Scabies, tuberculosis and many other communicable and non-communicable disease were rife. There were regular water shortages and drinking water contaminated with rat urine also led to other diseases. The access to medical care was severely limited and the deterioration of a detainee’s health condition would need to be life threatening before any attention was given. Detainees have no privacy when attending to their toileting needs and showering, drinking and washing after toileting were all from one tap. It was impossible to lie down completely as the over-crowding was so severe. There was no outdoor or physical exercise or access to any nutritious food. Detention in IDC could be indefinite and some elected to make “voluntary” departures to their countries of persecution than live in a permanent state of purgatory. Mental illness and depression was common place under such conditions. There were children in detention in such conditions until recently and although there were no known cases of children still being held the child could be separated from its mother or father or main carer who could be detained where some other party was available to care for the child outside. Previously whilst children were detained a child who reached a certain age could be separated from its mother and detained with unrelated adults.



Refugee Child looking for a brighter and safer future



Elderly male refugee in Thailand struggling with conditions of day to day life



Refugee Child remaining positive and hoping for a brighter and safer future



Image of a classroom wall in a Community led primary school for refugees in Malaysia



© International Human Rights Committee 2019

Material from this publication may be reproduced for teaching or for other non-commercial purposes. No part of it may be reproduced in any form for commercial purposes without the prior express permission of the copyright holder. For further information please contact the International Human Rights Committee at secretariat@humanrightscommittee.org.uk.



“At least in Pakistan *we die from a bullet* but in Thailand *it is a slow death*” (testimony from Ahmadi Refugee)

Fact Finding Mission to Thailand and Malaysia

From Persecution to Desperation

EMAIL: SECRETARIAT@HUMANRIGHTSCOMMITTEE.ORG.UK

WEBSITE: WWW.HRCOMMITTEE.ORG

TEL: + 00 44 7584 100659

22 DEER PARK, ROAD, LONDON, SW19 3TL

@IHUMANRIGHTSC