

**INSECURE LEGAL STATUS OF REFUGEE: RIGHT TO
FREEDOM FROM ARBITRARY DETENTION AND FREEDOM
OF MOVEMENT - A CASE STUDY OF PAKISTANI AHMADI
REFUGEES IN THAILAND**

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Amit Kumar Singh

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ABSTRACT

The tussle between International human rights regime and State's sovereignty is apparent in the way governments arbitrarily arrest and restrict freedom of movement of refugees ignoring their International human rights obligations and International refugee protection standards. Against this backdrop, this research seeks to examine insecure lives of Pakistani Ahmadi Muslim refugees in relation to the freedom of movement and freedom from arbitrary arrest in Thailand.

This thesis has argued that harsh treatment of Pakistani Ahmadi refugees' is contrary to Thailand's human rights obligations. Extending this argument at a conceptual level the author suggests that state could provide more humane treatment to refugees if bail-out process is a regular part of Thai refugee's management practice.

This research applies qualitative methods specifically in-depth interviews, desk research and participatory observation to focus on inhuman treatments in detention, structural constraints, discrimination and deprivation of refugees' rights. In order to examine how insecurity of legal status affects lives of Ahmadi and reshapes their life experiences, a narrative analysis is conducted in the light of International human rights standards, refugee law, court verdict and experts group interview.

Findings of this research revealed that there is a cause-effect relation between legal status and refugee protection, and Thailand's feeble effort is not enough to provide legal security to Ahmadi refugees in Thailand.

KEY WORDS: INSECURITY/ REFUGE/ AHMADI/ DETENTION/ RIGHTS

111 pages

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LIST OF ABBREVIATIONS

AHRC	Asian Human Rights Commission
BPP	Border Police Petrol
CAT	The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CCSDPT	Committee for Coordination of Services to Displaced Persons in Thailand
CRC	The United Nations Convention on the Rights of the Child
CAP	Comprehensive Action Plan
CEDAW	Convention to Eliminate All Forms of Discrimination against Women
CERD	Convention on the Elimination of All Forms of Racial Discrimination
CIL	Customary International Law
HRC	Human Rights Committee
HRW	Human Rights Watch
IRIN	Integrated Regional Information Networks
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICCPR	International Covenant on Civil and Political Rights
IDC	Immigration Detention Center
JRS	Jesuit Refugee Services
MFA	Ministry of Foreign Affairs
MOI	Ministry of Interior
NHRC	National Human Rights Commission
NSC	National Security Council
OHCHR	United Nations Office of the High Commissioner on Human Rights

LIST OF ABBREVIATIONS (cont.)

PAB	Provincial Admission Board
PHRG	Parliamentarian Group on Human Rights
RSD	Refugee Status Determination
SDC	Special Detention Center
TCR	Thai Committee for Refugee Foundation
UDHR	Universal Declaration of Human Rights
UNCHR	United Nations Commission on Human Rights
USSD	US State Department

CHAPTER I

INTRODUCTION

This chapter provides a background and justification for this research on Pakistani Ahmadi refugees in Thailand. A statement of the problem and conceptual framework is discussed. In addition, objectives and methodology for this research have been laid out. This Chapter concludes by elucidating the significance of this research.

1.1 Background and justification

Due to its geographical position in South-East Asia, Thailand has drawn huge attention from various refugee groups. Thailand's neighbors like Myanmar, Laos, Cambodia, and Vietnam have produced refugee outflows most markedly since 1975. Later, refugees from Sri Lanka, Pakistan, Iran, and Somalia were also drawn to Thailand urban center such as Bangkok. Moreover, requirement of cheap labor for Thai industries attracted huge numbers of migrant workers to Thailand, mainly from Myanmar, Lao and Cambodia. Outcome of this situation is that 90 percent of foreign migrant workers in Thailand are working without regular legal status with tacit consent of the Thai government (Arnold and Hewison 2005, p. 320).

However, Thailand does not accept 1951 Refugee conventions' principles which are the key legal instruments governing the protection of refugees and does not have any asylum procedure legislation. In the absence of specific refugee legislation, Thailand makes no distinction among asylum seekers, refugees, and other migrants except those from Burma (UNHCR 2006, p. 15). Moreover, Thailand has no National Refugee Act to govern the refugees and asylum seekers, leaving them in a state of limbo. Certain refugee rights, provided under international human rights instruments, are quite often ignored by the Thai government.

Through time, Thailand's response to refugees has been complex and varied. From granting temporary stay to towing them into the high seas, Thai refugee policy makers tends to see refugee issues through the prism of national security, sovereignty and available international aid. Rogge (1985) believes that Thailand has committed itself to the human rights of granting temporary asylum to people feeling threatened and persecuted. However, at the same time, it has taken a firm and unequivocal position against any form of permanent settlement of refugees within Thailand. Officially, Thailand does not recognize refugee; rather, it prefers to call them "displaced person fleeing fighting" (Muntarbhorn 2004, p. 18). However, in practice, Lang (2002) claimed that "Thailand maintains a flexible approach that accommodates people safely in accord with the international refugee principles."

Still many of asylum seekers and refugees are being prosecuted, detained and deported under Thai Law on the basis of their illegal entry/presence in Thailand (Amnesty International, 1994). Deputy Chief of investigation at the Immigration Bureau Phongsakorn Nakhonsantiphap said in an interview to Bangkok Post on 13 June 2011 that "more illegal migrants will come to Thailand, if [they are] not arrested."

In this regard, detention of Pakistani Ahmadi refugees in Thailand has received considerable attention from the international community. Condition of Pakistani Ahmadi refugees and asylum seekers in Thailand is more precarious due to their lack of legal status. Their detention raised significant concern, both in relation to the fundamental rights to liberty/security of the person and in terms of the standard and quality of treatment in immigration detention center (White 2010, p. 6).

A widespread pattern particularly is daily harassment, constant fear of being arrested, and restriction on refugee's free movement. Due to the lack of legal documents, refugees and asylum seekers are unable to claim their rights and respond to mistreatment. Along with incorporation of International Human Rights Law into domestic Thai law, there is a need to change existing refugees' law and policy, especially increasing institutionalization of the detention practice.

In this study, rights of Pakistani Ahmadi refugees are almost not recognized in Thailand. For refugees in detention it's impossible to enjoy free movement and access other rights indispensable to live a dignified life. Once Ahmadi refugees were

bailed out, they were in a situation to access more rights particularly free movement and freedom from arbitrary arrest. For released refugees their boundary of rights was expanded while staying in the community center. The space (bail-out) created by state discretion has expanded the boundary of rights for Ahmadi refugees living in community home where treatments to Ahmadi refugees were more humane and dignified.

This thesis has argued that harsh treatment of Pakistani Ahmadi refugee is contrary to Thailand's human rights obligation. Indefinite detention and inhumane treatment in Immigration Detention Center (IDC) cannot be a solution for Pakistani Ahmadi refugees seeking a safe refuge in Thailand.

Findings of this thesis suggest for the legalization of status of Ahmadi refugees in Thailand in order to prevent arbitrary arrest and detention and to comply Thailand's obligation with international law. To accommodate refugees safely, bail out process can help state secure better treatment of refugees particularly their freedom of movement.

1.2 Rationale of the study

Refugees in Thailand do not enjoy refugee rights. According to Thai Immigration Act 1979, all illegal aliens including asylum seekers and refugees can be detained on criminal charges (Field 2006, p. 198). They can face a sentence of two months to two years of imprisonment. Illegal migrants are indefinitely detained until they are deported or self-deported (Immigration Act 1979, Sec.54). There is no independent or periodic review of the administrative detention decision and no right to appeal (Field 2006, p. 198). Along with arbitrary detention, refugees and asylum seekers suffer lack of freedom of movement and access to certain economic and social rights. They are not provided identity and travel documents (World Refugee Survey 2008 pp. 160-164).

Consequently, Thailand has been criticized by the Human Rights Committee for not being consistent in its approach to incorporate International Human Rights Law in domestic refugee policy (Concluding Observations 2005). As a state party of various human rights treaties, Thailand is obliged to ensure the rights of every

asylum seeker and refugee within Thai jurisdiction. Refugees without secure legal status and even people who do not meet the definition of refugee should be protected through the human rights instruments (Bailey 2004, p. 11). In addition, these human rights treaties require states that have ratified the treaties not only to refrain from action which violates the rights contained in the treaties but also to take positive measures to ensure full respect of those rights (Human Rights Watch 1994, p. 66). Even though Thai government has allowed UNHCR to conduct refugee status determination process for non-Burmese refugees such as Pakistani Ahmadi, identification documents issued by UNHCR for refugee protection are not effective in preventing their arrest (Lang 2002).

For these reasons, this study is focused on the situation of Pakistani Ahmadi asylum seekers and refugees in Thailand. This study aims to evaluate the situation of Pakistani Ahmadi refugees living without legal status. This study particularly focuses on two major interrelated aspects of their situation: rights to freedom from arbitrary detention and freedom of movement.

1.3 Statement of the problem

World Refugee Survey (2008 p. 8) has described Thailand as one of the unsafe places for refugees in the world. Therefore, one should not be surprised to know that Pakistani Ahmadi refugees are one of the most vulnerable groups in Thailand for their lack of legal status. Adding fuel to the fire, Pakistani Ahmadi's situation has become more complicated when their insecure legal status is the reason for infringement of their right for free movement in Thailand.

In these scenario cases of Pakistani Ahmadi depict a gloomy picture of refugees in Thailand. With no access to legal protection, they have little alternative but to hide from police. If detained, they have to spend indefinite period in the detention center or self-repatriate (White 2010, p. 6). In these circumstances, it has become important to analyze the situation of the Pakistani Ahmadi refugees in relation with their rights to freedom of movement and liberty, along with the Thai government's obligations to fulfill its commitment to international law.

1.4 Conceptual framework

State, on basis of sovereignty use migration and immigration law to control refugees, asylum seekers, and migrant workers within its jurisdiction. Treatment of refugees and asylum seekers accorded to domestic law of a country may result in expulsion, indefinite detention, and bailing out of refugees. This brings the attention on the arbitrary arrest and bail out of 96 Ahmadi asylum seekers in December 2010 in Bangkok. Arbitrary detention constitutes an inherent part of Thailand's refugee management practice, and it remains the nightmare of any refugee in Thailand.

However, treatment of refugees may be partially influenced by a country's human rights obligation, International human rights law, and pressure from international and civil society. In the case of 96 detained Ahmadi refugees, their bail out were possible due to various factors including international NGO's pressure, local civil society activism and the initiative from the Thai National Human Rights Commission and UNHCR.

While in detention Ahmadi refugees were forced to live in the immigration detention center where their basic human rights of free movement and dignified life were stripped away. However, bail out of Ahmadi refugees suddenly expanded their boundary of rights. Bailed out refugees have enjoyed more rights and could live a better life compared to their time in detention. Bail-out provided a ray of hope to released refugees and within the 'expanded boundary of rights' Pakistani Ahmadis felt safe and more secure from arbitrary arrest and felt greater freedom of movement.

The concept of boundary of rights comes from Arbel (2013 p. 65). Arbel while explaining 'boundary of rights' has criticized the decision of Canadian Court of Appeal that created a legal bind for refugees who wanted to claim their rights as a refugees in Canada. The lower court's judgment expanded the traditional definition of state border to allow refugees to claim their rights beyond Canadian territorial border, but the Court of Appeal changed this decision by limiting the definition of Canadian border in its traditional territorial sense limiting the boundary of rights for Canadian refugees.

However, in Ahmadi refugee's case in Thailand, refugees while in detention had restricted access to rights, but bail-out suddenly expanded their rights of

boundary. Bailed out Ahmadi refugees enjoyed more rights and could move freely within the expanded boundary of rights without fear of arbitrary arrest and official abuse.

1.4.1 State and sovereignty

The idea of the sovereignty has grown along with that of state system. Sovereignty strengthens and boosts the state system. Having sovereignty at its core, States have unchallenged control over its population, land and natural resources.

1.4.2 Migration control

Migration control is one of the tools being used by the states to propagate and display their authority over the control of movement of population. The prevailing notion of sovereignty (jurisdictional sovereignty) authorizes States to pass any laws within its jurisdiction and to control over the entry/exit of its citizen and non-citizens including refugees and asylum seekers. Tighter migration control has exacerbated the problems of asylum seekers and refugees; therefore cases of human rights violations such as detention and arbitrary arrest are on the rise. The power to control migration movements allows States to detain non-citizens especially refugees, asylum seekers, and undocumented migrant workers (Dauvergne 2004, p. 69).

1.4.3 Detention

Detention is part of the legal framework of the migration control used by the States to deter refugees from entering in their territories. Although use of detaining refugees and asylum seekers have been termed as illegal by UNHCR, States quite often use it without any consideration related to human rights violations such as curtailment of liberty and movement.

1.4.4 Asylum Seekers and Refugees

Asylum seekers and refugees are one of the outcomes of tumultuous situations (persecution, natural disaster, civil war, etc) in their countries of origin. When they are persecuted in their home country, refugees seek asylum in the country

where they think they would be safe. However, usually States' responses to such refugees' flow have been through detention and deportation.

1.4.5 Human Rights Law

Human rights law has emerged as a challenge to the State's absolute control over the treatment of aliens, refugee and asylum seekers within its jurisdiction. Human rights are universal, indivisible, and interdependent and human rights norms imposing an obligation upon States to respect, protect, promote, and fulfill the rights of everyone within its jurisdiction including those of refugees and asylum seekers.

1.5 Objectives of the research

1. To analyze the insecurity of legal status of Ahmadi refugees in relation to freedom from arbitrary detention and freedom of movement.
2. To analyze the human rights obligations of Thailand in relation with violations of freedom from detention and freedom of movement of Ahmadi refugee and asylum seekers.
3. To identify the gaps between refugee legal protection legislation and Thai government's refugee management practices.

1.6 Research questions

1. Why does insecurity of legal status of Pakistani Ahmadi refugees restrict their freedom of movement and expose them to arbitrary detention?
2. What are the human rights obligations of Thailand in relation to freedom from arbitrary arrest and freedom of movement of refugees and asylum seekers?
3. What are Thai regulations related to the protection of Pakistani Ahmadi refugees in Thailand?

1.7 Scope of the study

Ahmadi refugees are scattered all over Bangkok. However, the scope of this study was limited to refugees living in urban and semi-urban areas such as Rangsit, Priksa, Charan, Bankhe, and Suthisan. Research sites were identified through consultation with local NGOs and Ahmadi community leaders. Interviews with selected Ahmadi families were conducted. In addition, local civil society members, officers from National Human Rights Commission and Office of the United Nations Human Rights Commissioner on Refugees were also interviewed.

1.8 Methodology

This study has employed qualitative research methodologies tools such as in-depth interviews, semi-structured interviews and direct observations in order to fully understand and broaden the scope of understanding in refugees and asylum seekers' world views, thoughts and behavior. Respondents have been chosen from diverse backgrounds of occupation, education, region and sex (limited access to female respondents were granted).

1.8.1 Sources of information

Literary references (published and unpublished) were instrumental in understanding the issue. Various sources were used to collect the evidences.

1.8.1.1 Documentation

Documentary evidences have been gathered from various sources such as, letters, announcement, agenda, administrative documents, internal documents, and newspaper clippings. This set of documents was used in conjunction with other sources of information such as interviews and direct observation.

1.8.1.2 Documentary Research

Three major types of documents and subject matter was studied and analyzed in relation with the hypothesis:

1. Human rights principles and concepts, justifications and the issues of implementing and monitoring;

2. Thai domestic laws and legal framework in accordance with treaty obligations and the implementation in practice with regards to research questions;

3. Detention laws and guidelines in relation with freedom of movement and liberty.

1.8.1.3 Archival Records

Archival records such as survey data, personal records and maps of geographic places were used in conjunction with other source of information. Since archival records were produced for a 'specific purpose', this condition was appreciated in order to interpret the usefulness of any archival records.

1.8.1.4 Interviews

Given the personal nature of the issue, using interview as a research tool was convenient and flexible. The 'guide approach' was used ensuring that same general areas of information are collected from each respondent. Interviews were based on open-ended questions which are more of a conversational manner, but they have followed certain set of questions derived from the case study protocol (Yin 1994, p. 84). A total of 20 qualitative interviews with respondents were conducted at their residence. Participants were divided and interviewed into three categories: refugees without detention experience, refugee with detention experience, and expert group interview. Since interviews can be subject to common bias or poor recall, information obtained from interviews was corroborated with other sources.

The researcher sought additional information on the insecurity of Pakistani Ahmadi refugees and asylum seekers in Bangkok and adjacent area by interviewing local NGOs providing refugee services and legal aid, the National Human Rights Commission (Thailand), and the United Nations Office of the High Commissioner of Refugee (Thailand).

1.8.1.5 Direct Observation

Direct observation involved observations on meetings, living conditions, location, relevant behavior, environmental condition, and the likes of the subject. Observation ranged from formal to casual data collection. A formal observation would be where the observer made arrangements prior to observing.

1.8.2 Research Design

An initial plan for the field data research envisioned interviews with 10 Ahmadi refugee and asylum seekers from Pakistan living in area near to Bangkok such as Rangsit, Priksa, Charan, Bankhen, and Suthisan. Research sites were identified through consultation with local NGOs and Ahmadi community leader. Respondents mainly consist of male adult members. Typically, female members of the Ahmadi refugee families are not allowed to talk to the outsiders as it is inappropriate to their culture. However, in one case it was possible to interview a female Ahmadi refugee.

Eventually, five additional Pakistani Ahmadi refugees were interviewed in order to obtain more data to increase the consistency of findings and facilitate data validation. From this targeted number, half were those who were released from Suan Phlu Bangkok Immigration Detention Centre and half were refugees without any immigration detention experience. In addition, local civil society members, National Human Rights Commission, and the Office of the United Nations Human Rights Commissioner on Refugees were also interviewed.

List of respondents

- (A) 5 refugees (with detention experience).
- (B) 5 refugees (without detention experience).
- (C) 5 refugees (additional interview).
- (D) NHRC/UNHCR (one official from each organization)
- (E) Local NGOs (one person from each organization)

Access to targeted population was gained through facilitation and assistance from the director of the Thai Committee for Refugee Foundation (TCR) and local Ahmadi community leaders. Research topics and guidelines for the semi-structured in-depth interviews were developed in consultation with the thesis committee member and thesis advisor.

Initially, the researcher proposed three key topics with supplementary questions under each topic, namely refugee experience inside the immigration detention center, refugee life in Thailand with emphasis on free movement and fear of arrest, and opinion of civil society members regarding insecurity of Ahmadi refugees in Thailand. The first topic mainly includes questions on refugees' condition inside detention centers, such as lack of basic human rights standards, maltreatment to

refugee, miserable condition of refugees, and lack of basic amenities inside the immigration detention center (IDC). Another addition was a set of general questions on refugee life in general with the emphasis on fear of arbitrary arrest and restrictions on movement.

During the first site visit, a pilot test of the research questions was conducted with two Ahmadi refugee families. Each interview and interpretation took approximately 45 minute for transcribing the interaction of questions and answers. As a consequence, some guide questions were modified and simplified in order to ensure a clear understanding and relevant answers. With the assistance of Ahmadi community leader, the socio-religion aspect of the Ahmadi group was made clear and comprehensible. Interviews with Pakistani Ahmadi refugees were semi-structured with some structured questions and many open ended questions. Interview lasted for approximately 25-30 minute per respondent.

Written notes taken during the interview were immediately transcribed into written research text. Nonetheless, expert group's interview were recorded and transcribed. Contents were categorized under various themes related to this research. Researcher attempted to remain as descriptive as possible and utilized sections of participant's narratives to verify the themes. Respondents consisted of businessmen, teachers, farmers, shop owners.

1.8.3 Data Analysis Procedure

The portion of data is presented in Chapter 5, Section: 5.2 Background research at Refugees Community and N.G.O.s, Section 5.4 prevalent themes in Ahmadi refugees (Non-arrested group) lives, and results and discussion chapter.

1.8.4 Units of analysis

Analysis of refugee management practices was conducted. The unit of analysis viewed through interviews with a group of refugee families in relation with their subject of treatment by Thai government is refugee's actual experience.

1.8.5 Linking data to preposition

This study has analyzed the known theories about the links between States sovereignty, insecurity of legal status, and human rights violations of asylum seekers and refugees such as detention, and restriction of movement. Along with testing the theoretical basis of refugees and asylum seekers' vulnerability, this study established these links through the revelations of refugees' sufferings in immigration detention centers and urban areas.

1.8.6 'Narratives' as an effective tool for social science research

The Researcher has examined the narratives of Pakistani Ahmadi refugees against the backdrop of their insecurity of illegal status in Thailand. Atkinson (2002) has suggested three methods to conduct narrative inquiry. Firstly, researcher should not judge the storyteller but instead focus on establishing connections and examining the personal relevance of each story. Secondly, the life story can stand independently in offering insights into human experience and thirdly, each life story reveals something about life.

Narration is one of the important human activities (Rubinstein 1995, p. 88). The act of 'story telling about something to someone else' serves many social and cultural purposes and viewed primarily as a way of relating individual experience to a larger explanatory or socio-cultural context (Brody 1987, cited in Rubinstein 1995, p. 77). Thus, stories represent an important mode by which people organize, display, and work through experience. Narratives contain people's perception and often contain their own interpretation of meaning derived from lived realities (Green Powell 1997; Lawler 2002; cited in Pavlish 2007, p. 29). Narratives offer data that have already been interpreted by narrator before researcher even reaches data analysis phase of the research process (Pavlish 2007, p. 29).

Riessman (1993, cited in Pavlish 2007) stressed that personal narratives are valued because they are rooted in time, place and personal experience. This was supported by Zagor (2011) "Indeed, storytelling is a tried and tested coping and memory mechanism for victims of abuses..." As for validity of narrative is concerned, Atkinson (2002) said, "People do not need to be under oath when they are telling their life stories...what they (interviewer) are getting is the story respondents want to tell. In

addition 'life story is not truth telling, it is not transparent renditions of reality but they call for interpretation (Bek and Montgomery 2006, cited in Eastmond 2007 p. 252).

In addition, refugees' story illustrates the relationship between bodily distresses, personal history and collective experience (Ken, Beyene and Becker 2000). These narratives reveal how refugees strive to create continuity in their lives under hostile circumstances. Embodied memories of terror and violence refract the world through a lens altered by fear and mistrust and by physical and emotional pain (Daniel and Knudsen 1995, cited in Ken, Beyene and Beck, 2000)

Narrative analyses were conducted. Process begun with a close reading of each interview for (1) repetition of specific words, phrases and general thought patterns, (2) structure of overall story and (3) topics that dominated participants interview. In addition, statements about the bodily distress and expressions of emotions were closely examined.

1.9 Ethical considerations

The security of respondents and their communities were of primary concern for researcher. Interview or any participation in research was taken only upon informed consent. Confidentiality of information and informants was maintained in order to ensure their safety. The researcher fully informed the respondents about the nature of the study and the risks involved. Real names and full identities were not revealed. In addition, the decision of the informants as to whether to answer any particular questions or not was respected. In some cases, when respondents showed unwillingness, tape recording was not done; instead, detailed notes were transcribed. Later, data concerning refugees' privacy and security will be destroyed.

1.10 Limitations of the Study

At least two limitations are noted. First, participants expressed fear about being audio tape. Thus, the researcher decided to take extensive notes in lieu of tape recording, although some researchers have stressed the importance of tape-recording narrative interview (Atkinson 1998, cited in Pavlish 2007, p. 33). The second

limitation of this study is that the results cannot be generalized to other refugee populations and situations. The contextual nature of presented narratives is applicable only in a specific time and from specific respondent's perspectives.

1.11 Significance of the study

This study looks into the situation of insecure legal status of Pakistani Ahmadi refugees in Thailand. It examines the current situation of one of the most vulnerable asylum seeker and refugee groups in Thailand. It also examines the compliance of Thailand to both international and national legal frameworks in fulfilling its obligations to Pakistani Ahmadi refugees within its jurisdiction. The outcome of this research should contribute to our knowledge about the current situation of Pakistani Ahmadi asylum seekers and refugees with regards to their legal status, their freedom from arbitrary detention, and liberty of movement. The research contributes to identifying necessary measures to enhance the protection of the Pakistani Ahmadi asylum seekers and refugees by the Thai government.

1.12 Operational definitions

- **Detention.** UNHCR (1999 p. 3) defines detention as confinement within a narrowly bounded or restricted location, including prisons, closed camps, detention, facilities or airport transit zones, where freedom of movement is substantially curtailed, and where the only opportunity to leave this limited area is to leave the territory. There is a qualitative difference between detention and other restrictions on freedom of movement. Persons who are subject to limitations on domicile and residency are not generally considered to be in detention.
- **Arbitrary Detention.** Absence of effective court review renders detention arbitrary (Field, 2006 p. 9). Arbitrariness must be interpreted

more broadly to include elements of inappropriateness, injustice and lack of predictability (UNHCR and Refugee Protection, 2006, p. 88).

- **Deprivation of Liberty.** Severe restrictions on movement may be considered a deprivation of liberty (HRC Case No. 456/1991). The difference between restrictions upon freedom of movement and arbitrary detention is 'merely by one of degree or intensity and not one of nature or substance (ECHR)'.
- **Asylum Seekers and Refugees.** The terms refugees and asylum-seekers in this research refer to the specific categories of persons as recognized under international law, which provide protection to persons fleeing persecution, conflict or human rights abuses.
- **Migration Control.** Migration control is the law which regulates the entry and stay of foreigners.

CHAPTER II

LITERATURE REVIEW

This chapter discusses available literature on State's sovereignty, human rights law, migration control, and immigration detention. Further, opinions of refugee and human rights scholars on treatment of refugee and asylum seekers are provided.

2.1 Sovereignty - the State's justification to control migration flow

Sovereignty provides States an unchallenged authority to regulate migration movement and control over land and its natural resources. Ideas of sovereignty boost the state system and help States justify restriction on refugee's human rights. On the basis of jurisdictional sovereignty, States detain and deport refugees and asylum seekers, through immigration law. As Dauvergne (2003) said: the sovereignty, contemporary migration law, and immigration control is embedded in essence of the nations. Thus, State's sovereignty is at the core of refugee problem. Solutions to refugee problems very much lie in States compromising its sovereignty to accommodate 'others' in their territory.

2.1.1 Concept of the sovereignty

Authority of the State to control movements of aliens within its jurisdiction derives its life and blood from well-established notion of sovereignty which constitutes main entity in subject of International Law. Concept of sovereignty emerged in the middle age but it was the treaty of Westphalia (1648) which made territorial state a cornerstone of modern state system (Morgenthau 1985, cited in Bagaric and Morss 2005, p. 28). However, Brand (2002, cited in Bagaric and Morss 2005, p. 28) stated that sovereignty in the middle age was an unthinkable thing when notion of singular Respublica Christianity (the pervasive unity of God) was prevalent. During the era of Reformation, the concept of supremacy of the God was superseded

by the absolute power of king, and their sovereignty became equated with the sovereignty of the State (Brand 2002, cited in Bagaric and Morss 2005, p. 29). Events that occurred during the Reformation Period were crystallized in unified structures of the State, which was an order based in spatial exclusivity (Goodhart 2005, p. 37). State's independence from any external and superior power which was the Prevailing idea in early modern period strengthened the notion of sovereignty (Goodhart, 2005, p. 41). State system increasingly expanded in nineteenth century and gained remarkable force during the anti-colonial self-determination movement during the period of 1945 to 1990 where number of States around the world doubled (Warbrick 2003, p. 205). And so is their immense power to control of aliens and non-aliens in their jurisdiction had increased. Benhabib (2004, p. 6) suggests that even though States were losing their sovereignty through the various actors of globalization (economic, military, technological change), States had become more assertive to keep the aliens, refugees, and asylum seekers out of their borders.

2.1.2 Sovereignty and migration control

Jurisdictional sovereignty allows States to pass immigration laws; and, it has been considered an essential sovereign act of State. Since development of the modern states from the fifteen century onwards, governments have regarded control over their borders as core of the sovereignty (Weiner 1997, cited in Bagaric and Morss 2005, p. 31). An essential characteristic of sovereignty is State's prerogative to regulate the stay and entry of people within their geographical border. Many countries put various kinds of limitations on non-citizens regarding their stay and entry in their territory. (Bagaric and Morss 2005, p. 26).

The authority of the State to control movement of aliens into its border has escalated problems of refugees and asylum seekers worldwide. Strict migration control has escalated problems of forced state confinement with possibility to continue in the future (Bagaric and Morss 2005, p. 27). Nevertheless, issue of migration control has been less debated and discussed among modern political thinkers except few exceptions. "It was mostly taken for granted that State sovereignty implied the right to control movements of person across borders, choice of residence within a state, and freedom to leave any state which had become accepted only after the Second World

War (Baubock 1995, p. 551)". The prerogative of States to control migration flow was affirmed in "1881 *Musgrove vs. Chun Teeong Toy*" decision by the Privy Council, and in 1892 "*Nishimura E vs. United States*" case where United States Supreme Court declared that "every sovereign nation has power as inherent in sovereignty to forbid or admit foreigners within its domination" (Plender 1972, p. 51). At the same time, The International Regulation on the Admission and Expulsion of Aliens (1892) called for limitation of State sovereignty in regards to migration flow. Regulation called upon states to extend rights and liberties to foreigners (Nafziger 1983, cited in Schindlmayr 2003, p. 111). However, States continue to assert on sovereignty issue while dealing with subject of migration (Martin 1997, cited in Schindlmayr 2003, p. 119). In current scenario, subjects of refugee law such as undocumented migrant workers and skilled migration are impinging upon sovereignty of the State. Therefore, States, in desperate attempt to assert its authority, uses migration as a tool to regulate movement of people (Dauvergne 2004, p. 588). Nonetheless, State sovereignty has hindered movements of asylum seekers and refugees. Most policies dealing with migration are nationally oriented and lacking a global approach and universally acceptable framework. (Schindlmayr 2003, p. 111).

2.1.3 Detention and migration control

Above discussions show reasons and causes as to why State authority controls entry-exit of every person within its jurisdiction. Using jurisdictional sovereignty concept, States control migration flows within their jurisdiction and punish people upon breach of their domestic laws. Consequently, breaking immigration laws usually results in detention of refugees and asylum seekers. Currently, States are using detention as a tool to deter refugees and asylum seekers from entering into their territories under the garb of national security threat and 'refugees pull factor'. Detention proponents focus on discouraging illegal immigration and removing aliens who commit crimes (Legomsky 1999, p. 1). They consider detention as a deterrent against illegal immigration. Contrastingly, some human rights activists and refugee scholars emphasize the liberty interest at stake, the cruelty of indefinite detention in inhumane condition, and the huge expenses spent on detention management (Kerwin and Wheeler 1998, cited in Legomsky 1999, p. 1). Thus,

migration control and punishment of refugees and asylum seekers go hand in hand. In fact, detention is a direct consequence of migration control policy of the state.

2.1.4 Emerging challenges in migration control and State sovereignty

Though in a colloquial term 'refugee' has existed since time immemorial; "the need for a strict refugee definition is the product of modern immigration law (Kagan 2005, p. 15)". Immigration laws came into existence mainly to weed out non-citizen, refugees, asylum seekers, and migrant workers primarily from poor countries.

Migration mechanism through immigration law regulates entry and stay of foreigners. Idea of controlling movement of people is facing strong challenges from contemporary phenomena of refugee flow and illegal migration. However, sovereignty, contemporary migration law, and immigration control is embedded in essence of the nations (Dauvergne 2004, p. 590). "This is apparent in the relationship of migration law and national identity in place of migration laws within liberal accounts of national community and in close linking between migration law provisions and sovereign powers" (Dauvergne 2004, p. 589). Contemporary migration laws are discriminatory and selective in weeding out immigrants by imposing who are family members under the family reunion and by admitting immigrants on their professional worth in order to cater the imminent needs of the country.

Michael Walzer (1983, p. 22) stresses the notion that "membership of the state is a primary good bestowed by liberal nation, and the issue of state membership must be addressed before any justice done." There is consensus among some scholars that rules for opening or closing border are the matter of national self interest. Waltzer (1983, p. 10) is in favor of a closed border but argues that those who share the same cultural homogeneity should be allowed to enter into the state. Galloway (1993, cited in Dauvergne 2004, p. 591) argues that needy persons, if morally responsible can be admitted into the State. Carens (1987, p. 251) suggests that in the interest of national self-preservation, state can admit non-citizens.

Furthermore, a number of scholars who have questioned the unchallenged supremacy of states (Ohmae 1995, p.11). Ohmae (1995, p. 34) is of opinion that nation states are losing their meaningful participation in global economy whereas Weiss (1998 cited Dauvergne 2004, p. 593) stressed that nation states will gain more

momentum in future. Meanwhile, Sassen (1996, p. 144) believes that “there is partial denationalizing of national territories that has affected the State’s sovereignty” Sassen’s analysis is based upon the fact that power of State’s decision making is diminishing in current international economic system. States are no longer free to take their decision without considering their economic ties with global institutions like World Bank and International Monetary Fund, who in turn, can interfere and influence domestic policies of the states in exchange with economic favor.

Benhabib (2004, p. 10) considers that State is “no longer the ultimate arbiter of fate of citizens and resident.” Furthermore, Benhabib said, “States behavior is constantly under the scrutiny of internationally recognized norms which forbid mass expulsion, genocide and enslavements.” Conversely, some scholars see nation states becoming more powerful whereas others think that decline in the state’s power are imminent due to globalization.

However, outcome of this debate is enough to substantiate the fact that human being is more important than they were in the past (Dauvergne 2004, p. 593). Nonetheless, people remain nationalized and are being controlled by States through means of passport, visa, residence permit and labor qualification (Ruggie 2003, pp. 187-211). While Hirst and Thomsons (1999, cited in Dauvergne 2004, p. 593) view question of immigration as still having vital place in the state system; Sassen (1996, p. 88), on contrary, thinks that international human rights now have more influence over national immigration decision-making.

Moreover, Martine (1989, p. 572) believes in the admittance of non-citizens into the state territory while Opeskin (2009, p. 7) stresses that states are obliged to admit its own nationals and refugees into their territory. States consider these emerging trends (admittance of citizen and refugee into its territory) as a challenge to their sovereignty and migration control.

2.1.5 Human rights and migration control

There has been opposite views expressed by various scholars on issue whether or not human rights have influenced migration laws and refugee discourses. The human rights doctrine emerged to counterbalance highly centralized and reinforced power of sovereign states (Coicaud, Doyle and Gardner 2003, p. 118).

Wong (2010, p.1) reckoned that wide consensus on core principles of human rights, intense propagation of the international laws, and establishment of human rights institutions represents emerging power of human rights discourse which had made fundamental changes in the way states control movement of people within its border. In like manner, Habibi (2004) announces that “States need to observe human rights and should subscribe the rule of law.” Supporting this view, Sassen (2002, p. 15) consider that states are responsible for mainstreaming human rights into their domestic law which can empower immigrants and refugees. Contrastingly, Schindlmayr (2003, p. 119) believes that human rights system was not intended to control the entry and existence of refugees.

Wong (2010, p. 1) deems that states are making strategic use of ‘human rights discourse’ exclusively to protect rights of their citizen and to exclude ‘others.’ Due to increased restrictive immigration policy, non-citizens, asylum seekers, and refugees are being detained and deported. Consequently, this situation has led to “human rights crisis.” Challenging this notion, Coicaud and Gardner (2003, p. 117) are of opinion that states cannot violate human rights of a person because the legitimacy of the sovereigns depends on respecting the human rights of a person. However, state’s sovereignty is being penetrated by the multinational giants influencing State’s absolute control over the increased migration flow. Sassen (2002, p. 16) has argued that state power is being limited by supranational organizations and international human rights treaty and laws; therefore, state is gradually losing its dominance to control the migration flow.

However, reality presents a different situation. Even though the discourse of human rights and refugee rights are gaining momentum, Wong noticed (2010, p. 18) that “for millions of asylum seekers and refugees, human rights regime [still] appears to remain inaccessible.” Wong (2010) is skeptical about the efficacy of human rights treaties because states are unwilling to rectify human rights instruments due to increased cross border movement of people. Schindlmayr (2003, p. 120) suggests that in order to deal with issue of cross border migration, States need to compromise their sovereignty, otherwise, problems of refugees and asylum seekers will remain unsolved. Edwards (2005, p. 9) further suggested that states need to respect legally

binding human rights treaties and avoid using sovereignty and migration control a reason in the curtailment of refugee rights.

While State is still important, its role is presently being redefined in the context of globalization and human rights discourse. States are not completely toothless under the emerging global forces. But States do not subscribe to an adaptive approach towards the impact of human rights discourse like states and multinational corporations, or refugees and asylum seekers may find themselves increasingly isolated in borderless world by the world community. For the purpose of solving migration issues, state needs to shed some of its sovereignty in rectifying international human rights instruments and in respecting its human rights obligation. On the basis of sovereignty, it cannot defend harsh measures against refugees and asylum seekers.

2.2. International Law

2.2.1 Refugee law 1951 Convention relating to the Status of Refugees and the 1967 Protocol to the Convention

The 1951 Refugee Convention (hereafter Refugee Convention) and its 1967 Protocol embodies core principles of refugee protection. This Convention has legal, ethical, and political significance (UNHCR 2003, p. 6). The Refugee Convention was drafted in 1951 and came into effect in 1954 with modification in 1967. Refugee Convention defines refugee as people fleeing persecution on the basis of one of the five grounds: race, religion, nationality, particular social group; and political opinion. Though not listed by United Nations in its compilation of major human rights documents, the Refugee Convention does not challenge notion of sovereignty in real sense. In fact commitment to sign the Convention is the matter of sovereign acts (Dauvergne 2004, p. 597).

Conversely, the Refugee Convention has been ratified by 144 States indicating a higher consensus and acceptance among nations. Stressing the importance of the Refugee Convention, Hathaway (2005) maintains that “source for rights of refugees under international law must be found first in the *Refugee Convention* and

then in other international human rights treaties.” Interestingly, Goodwin-Gill (1998, p. 32) is of opinion that ‘an individual becomes a refugee as soon as one is forced to flee one’s country of origin due to persecution; thus, many asylum seekers may technically be classified as refugees.

In contrast, Opsekin (2009, pp. 8-9) wished that practical reach of refugee rights could have broaden if core obligations have passed into customary law and thus bind non-parties. However, the failure of 1951 Refugee Convention to deal with broader issue of asylum is a weakness in international refugee system. Dauvergne (2004, p. 598) criticizes Refugee Convention by suggesting that “Convention does not have capacity to disturb equation between migration and sovereignty.” In fact, refugee law is seen as a compromise between the State imperative of migration control and humanitarian concerns. Not to mention its (Refugee Convention) lack of complaints procedures and the failure of UNHCR to supervise individual refugees under refugee law, human rights law has marred efficacy of the Convention (Edwards 2005, p. 328-9).

Consequently, Convention does not suggest any method for determination of the refugee status. Decision to define an individual is often a political one. To determine refugee status implies that someone is being persecuted at the country of origin and this may badly affect relations between nations, especially the country of asylum and the country of origin. Therefore, the determination of refugee status may reflect more of a government’s foreign policy than plight of individuals (Feith, 1988).

There are inconsistencies among countries in the interpretation of the Convention. Some countries have allowed UNHCR to conduct the determination of the asylum seekers where some have given UNHCR representative an observer status only. In Australia, Canada, and many other countries, UNHCR representative is an observer to the determination procedure whereas in many other countries UNHCR is not even involved in the refugee determination process (Feith, 1988). Another major shortcoming of the Convention is that only few nations in Asia had signed it. Countries such as Thailand, Iran, India, and Malaysia have not signed it. And even though countries are signatories to the Convention, they just cannot be forced to abide by the agreements.

Nonetheless, the Convention establishes standards and principles regarding international obligations. Despite inadequacies of the 1951 Convention and changes in the world since its formulation, the definition of refugees is still accepted by most nations. It remains the most important standard around which the discussion of refugees is based. Part of its importance is due to its use by the most prominent international organization working with refugees, which is UNHCR (Feith, 1988). Hathaway (1990) summarizes refugee law (in relation to Refugee Convention 1951) as “Its purpose is not specifically to meet the needs of the refugees themselves but rather is to govern disruptions of regulated international migration in accordance with interest of states.” Therefore, there is a need to design a structure for implementation of the Convention’s rights that States should embrace.

2.2.2 UNHCR- Protection Mechanism of Refugees

The UNHCR was established in January 1951 with the objectives of protecting the rights of refugees and seeking durable solutions for their problems. Its mandates are to carry out humanitarian work for refugees as an entirely non-political body. UNHCR is mandated to impose Refugee Convention’s agreements to contracting States parties by various means such as requesting information about the condition of refugees and monitoring the implementation of the Convention’s law, regulations and decrees (UNHCR 2003, p. 618).

International protection of refugees is UNHCR’s core function (UNHCR Statute 1950, para 8). In its 2000 Note on Protection, UNHCR elaborates its functions: receiving asylum seekers and refugees, intervening with authorities, ensuring physical safety, promoting national legislation and asylum procedures, providing advice, and developing jurisprudence.

One of the most important duties of UNHCR is to conduct refugee status determination (RSD) process. The Refugee Status Determination recognizes individuals as refugees but it does not make people refugees (UNHCR, 2001). In situation where states show its inability to conduct RSD, UNHCR takes this responsibility under its mandate.

UNHCR plays major role in co-coordinating aid to refugees and work through local authorities of the countries concerned. In most refugee crises, UNHCR

works with local NGOs and collaborate with its local implementing partners such as Bangkok Refugee Center (BRC) in Bangkok, Thailand. The nature and degree of involvement vary from providing financial assistance to monitoring operations and negotiating with respective governments. However, UNHCR cannot work with particular groups of refugees unless invited by their host government. For example, the governments of Sri Lanka, India and Bangladesh have not invited UNHCR to work on their respective areas (Feith, 1988).

One of the reasons that UNHCR has been effective is its non-political mandate that enables it to work with most governments provided it is invited by the concerned government. It works with most Asian governments such as Thailand, Singapore, Pakistan, Laos, and Vietnam (Feith, 1988).

However, working with governments imposes limitations. For example, the project implementation of UNHCR in Bangkok largely depends upon the cooperation of the Thai government. To be able to carry out its mandate, UNHCR has to compromise with governments (Feith, 1988). Unfortunately, more rigorous implementation of immigration laws by Thai government in 2010 obstructs the UNHCR'S ability to intervene in preventing the detention of persons of concerns (UNHCR Global Report 2010, p. 281).

In sum, reviewed literature provided a different approach of scholars discussing issues of sovereignty; state, migration, detention, human rights and refugees. One group of scholar believes that the States are no longer sole arbitrator in deciding refugee's fate and States need to prioritize the human rights of refugees. However, other group of scholar considers states are powerful and has absolute right to control entry-exit and detention of refugees. Available literature on the issue of state, human rights standards, migration and refugees represents growing interest of world community.

CHAPTER III

REFUGEE MANAGEMENT PRACTICES IN THAILAND

This chapter provides a brief historical background of refugee movement in Thailand. Thailand's response to various refugee groups is analyzed. Thailand's refugee mechanisms are discussed along with Thailand's obligation under International and domestic law.

3.1 Historical Background of Migration in Thailand

Thailand has been constantly flooded by refugee and migrant flows; this scenario can be attributed to Thailand's strategic geographic location. In 1940s, Thailand allowed refugees mainly from Lao and Vietnam to settle in Northeastern Thailand. Sometimes, Chinese and Mon refugees were granted Thai nationalities (Muntarbhorn 2004, p. 5). However with the advent of military regime in 1949, Thailand attitude towards Vietnamese refugee changed. New Thai foreign policy was characterized by anti-Chinese, anti-communist and anti Vietnamese sentiments (Poole 1970, cited in Rogee, 1985, p. 9).

Due to the intense war and political ideological conflict in Indochina in 1960-70s, refugee influx from Cambodia, Lao and Vietnam increased. Thai concerns for national security continued to feature significantly in its refugee policy (Rogge 1985, p. 7). As Muntarbhorn (2004, p. 5) said, "Thai refugee policy became more narrowed and restrictive due to the factors of national security, foreign relations and demographic pressure."

Based on Thai response to refugee influx, four phases of national policy can be categorized: the preventive and retaliatory phase (1975-1979), the open door policy phase (1979-1980), the human deterrence phase (1980- 1988), and the swinging door phase (1989 onwards) (Public Affairs Institute 1989, p. 25).

During preventive policy phase (1975-1979), Ministry of Interior (hereafter MOI) established the policy of *refoulement* (i.e. to push refugee's boat onto

the Thailand's waters). The regime of Prime Minister Thanin Kraivichien (1977) formulated law stating that aiding illegal immigrants is a punishable offence (Thai Parliament Publication, 1981, cited in Public Affairs Institute, 1989, p. 27). Nonetheless, Thai government could not pursue this harsh policy due to international criticism after *refoulement* of 42,000 Khmer refugees.

During this period, national security was the greatest concern of Thailand. Thailand's underground Communist guerrilla was very active and links between Vietnamese and illegal Communist Party of Thailand had been discovered. In the wake of post-Vietnam War influx, 'spy rings' had allegedly been detected among Vietnamese refugee at Songkhla camp (Vander Kroaf, 1984 cited in Rogge 1985, p. 11). These concerns were readily recognizable in tight security conditions that prevailed throughout Thailand-Cambodian border area especially in those regions where Khmer 'illegal aliens' took temporary shelter (Rogge, 1985 p. 10).

In 1979, a tolerant policy towards asylum seekers through the open policy had been adopted through which temporary refuge was granted and refugees were not forcibly pushed back (Muntarbhorn 2004 p. 15). However, this open door policy did not last long due to the regime change.

Thailand's 'human deterrence' policy begun in 1981 to foreshadow Hong Kong's closed camp policy of 1982. Push backs of Vietnamese boats occurred in 1988 (Robinson 2004 p. 230). Plight of refugees (especially boat people) at the Thai border drew attention of the world community resulting in the Comprehensive Plan of Action (Feith 1988, p. 14). Comprehensive Plan of Action (1996) involved the establishment of procedures to determine the status of those seeking refuge (screening process) in Thailand. In 1988 due to agreement with UNHCR, Thai government also relaxed its harsh refugee policy. Refugees were given temporary refuge provided they will be resettled in third country or repatriate to their respective countries. Nonetheless, they were not allowed to settle permanently in Thailand (Statement of Y.Y. Kim 1988, Conference of the CCSDPT, cited in The Public Affairs Institute 1989, p. 28).

Mass refugee influx and reduced resettlement offer by Western countries has toughened the Thai policy to refugees. This hardening of attitude has in turn undone much of the progress achieved following the 1979 Conference on Indochinese refugees (Helton 1989, p. 26). Thailand policy of human deterrence has distorted the kind face of Thailand. Thailand's new refugee policy created an environment of

hopelessness for newly arrived refugees and discouraged other potential refugees from coming to Thailand (Rogge 1985, p. 11).

Uncertain and inconsistent, Thailand's refugee policy oscillates with time. From open door to human deterrence, Thai policy failed to make a stable system dealing with refugees. The swinging door policy was a policy which tends to differentiate between refugee groups. "The door being more open for some and closed for others (Muntarbhorn 1989, cited in Rogge 1990, p. 70)". This research has also confirmed this notion. For example, a large group of Pakistani Ahmadi refugees, seeking refuge in Thailand were arrested and later bailed out whereas other groups of refugees were kept in detention (Researched cases, 2011). Treatment to non-Indochinese refugees especially Myanmar refugees, and Rohingya is also point in the case.

A factor which strongly influences Thailand's refugee policy is apparent in acrimonious relation of local Thai with refugees near border. Large numbers of displaced Thai (citizen) population and strict security measure around Thai-Myanmar border have restricted free movement of local Thai citizens; this has annoyed some local Thais. Cost of resettlement of Thai villagers away from border area was paid by the Thai government. All these factors have negatively affected Thai refugee policy and directed its future course.

There emerged a growing concern on the legitimacy of refugee status. Indochinese refugees were mainly political refugees but among them also exist many economic migrants. Due to this reason, tough measures against Lao refugees were taken in August 1985. The accepted refugees were allowed to stay in the open-camp while those classified as illegal aliens were relocated in the human deterrence camp (Rogge 1985, p. 25).

Thailand's response to refugees is also related to resettlement issues. Thailand felt that the responsibility of resettlement of refugees is completely upon the western government. On the one hand, Thailand wanted more resettlements in order to draw down the residual refugee population. On the other hand, any significant increase in the resettlement opportunities will clearly have a magnetic effect on further potential refugee influx (Rogge 1985, p. 13).

Thai government has defended its harsh measures against refugees as a response to global 'compassion fatigue' and to antagonistic neighboring countries who

refused to take back its own citizens. Helton (1989, p. 45) believed that, "such policies of Thailand's 'human deterrence' are inimical to the human rights of 'asylum' the act of providing protection to those who are in need particularly pending a solution to the need." Physical security, dignified treatment, and freedom from arbitrary confinement are essential elements of such protection (Helton 1989, p. 45).

On other front, ethnic conflict and suppression of democratic movement in Burma led several influxes into Thailand from early 1980s. This posed main challenge facing Thai law and polices today and up to certain extent shaped Thai refugee policy. In response to this situation, a procedure to determine the status of refugee has been established by the Provincial Admission Board.

Thailand recognized Myanmar refugee as "person fleeing fighting and the consequence of war". Those refugees falling in the category would be allowed to stay into the camp near border; those falling outside the criterion would be subjected to deportation (Muntarbhorn, 2004, p. 7). There were other Myanmar refugees in urban centers. These were screened in by the UNHCR and are known as "Persons of Concerns" and were granted temporary refuge. Thailand has tried to avoid internationalizing the issues of Myanmar asylum seekers. However, Thailand approach to refugees varied with times and refugee groups.

In the absence of national refugee act or legislation, refugees in Thailand are regulated by Immigration law 1979 (section 17), which consider those who do not have valid documents as 'illegal immigrants' and are subject to detention and deportation (Muntarbhorn 2004, p. 19). Whether camp-based refugees (mainly from Myanmar) or urban, both groups do not have right to free movement (until permitted) and can be detained anytime. Although Thai Immigration law and nationality laws have been bended to accommodate these refugees (in allowing refugee to temporary stay), conversely there was still security concern in regards to the diplomatic relations with Myanmar (Muntarbhorn 2004, p. 14). Therefore, Thailand's refugee policy was conditioned by national security.

Thai policy makers tend to behave in ad hoc manner. In cases of urban refugee (except from Myanmar) such as Pakistani, Sri Lankan, or African, there is no specific policy to deal with them. Recent example includes arrest and bail out of Pakistani Ahmadi refugees in Bangkok (IRIN, June 6, 2011). Similarly, on October 2010, 136 Sri Lankan refugees were arbitrarily arrested (JRS, 2012). In addition, in

2011, Thailand's official pushed back boats carrying ethnic Rohingyas from Myanmar and Bangladesh despite allegations that such practices led to hundreds of deaths in 2008 and 2009 (HRW, 2012).

Usually refugees in Thailand faced two choices; either they have to self-deport or live indefinitely in immigration detention. Other non-Indochinese, Sri Lankans, Pakistanis, Afghans have been treated on a case basis.

Above discussion shows that Thailand's refugee policies fluctuated with times, was inconsistent, and responded differently to diverse groups of refugees. Their treatment depends upon surrounding circumstances including reactions of Western countries in relation with resettlement offer for refugees. During 1970-80s, refugee policy was to grant temporary refuge to Indochinese refugees depending on availability of resettlement places (Muntarbhorn 2004, p. 26). Temporary refuge was also given to refugees from Myanmar. However in 1989, this policy became more restrictive with the arrest of Myanmar students in Thailand due to their violent political activity. Overall, Thai policy makers tried to avoid internationalizing the Burmese issues and they have prevented international agencies from becoming involved (Muntarbhorn 2004, p. 26).

In addition, issue of voluntary repatriation rather than resettlement in third country was more dominant in determining policies towards refugees. Vitiit Muntarbhorn (2004) has argued that Thailand refugee policies intended to put pressure on resettlement countries in order to solve maximum case load. However, Helton (1989, p. 45) believed that, "a nation's obligation to provide humanitarian protection is in no respect dependent on another country's refugee or immigration policy including resettlement abroad. Rather it is an independent human rights principle (Helton, 1989)."

Reasons for refugee policy changes were mainly related with regime change and lack of response from international community. Correspondingly, debate over refugee issues in Thailand's political circle is always centered on national security and sovereignty which had been considered fundamental to States' survival (Beeson 2003 cited in Lee 2006, p. 5). Thai officials hardly showed any courage to solve less attractive issue of refugee as it did not offered opportunity to enhance their political career. Lee (2003, p. 6) stated, "Having a refugee policy may be a nightmare for a state leader, with the worst possible scenario of losing the power and governing

position (Lee 2003, p. 6). In the case of Thailand, refugee issues were sidelined from political agenda.

3.2 Thailand's refugee mechanism

Thai government never specifically provides any methods for obtaining a refugee status in Thailand, and refugees are technically considered illegal aliens. However, Thai government has used a provision in the Immigration Act 1979, sec.17, which provides a discretionary power to the Minister of Interior to allow an alien to stay in Thailand. Even if he or she is in violations of the Immigration Act, he or she can be given a temporary asylum as (i) displaced person fleeing fighting or persecution and (ii) person of concern to UNHCR. The criteria and process for obtaining such temporary status depend on refugee's nationality. Refugees from Myanmar must apply for temporary asylum to Provincial Admission Boards (hereafter PAB). For all other nationalities, UNHCR determines asylum seekers qualification as 'persons of concern' based on the criteria set forth in the 1951 Refugee Convention (Robinson 2004).

The presence of different groups of refugees in Thailand led Thai government to adopt different treatments to them. Thus, two different refugee status provision mechanisms came into existence.

3.2.1 Refugee Status Determination procedures for Indo-Chinese

In 1990s, Thai government established a procedure to determine status of Indo-Chinese refugees (mainly from Myanmar) who will be admitted into the border camps. Various Provincial Admission Boards consisting of members of the Thai Ministry of Interior and one UNHCR representative were responsible for the status determination procedure (Muntarbhorn 2004, p. 7). The criterion used for determination was "persons fleeing fighting and the consequences of civil war." Those screened into these categories were admitted in border camps and were granted temporary refuge; those who screened out were subjected to deportation (Muntarbhorn 2004, p. 7). Rejected applicants have a right to file an appeal to UNHCR within seven days of PABs' decision. The decision of Appeal Board is final.

There were however, numerous shortfalls in screening process including provincial and district procedural differences, long delays, and limitation of UNHCR involvement through an observer (World Refugee Survey 2002). For Myanmar refugees, UNHCR is no longer allowed to conduct individual interviews in Bangkok as it once did on a limited basis (Jacobson, Pynne and Green 2008, p. 31).

3.2.2 Refugee Status Determination procedures for non Indo-Chinese

UNHCR is responsible for urban refugee cases and conducts its own status determination procedures based on its own guidelines. Under the UNHCR mandate, the term 'refugee' applies to any person who has fled his or her country of origin because of well-founded fear of being persecuted for reasons of race, religion, membership of a particular social group, political opinion, and is unable or, owing to such fear, is unwilling to return to his/her country (UNHCR 2005). Nonetheless, nationals other than Indo-Chinese and Burmese who have sought refuge in Thailand such as Pakistani Ahmadi, Afghani, Sri Lankan, African and Iranian are recognized as "Persons of Concern" by the Thai government and are permitted to stay in Thailand on a discretionary basis until they are resettled in other country (Robinson 2004).

All denied applicants have a right to appeal in the first decision concerning their status within thirty days of the notification of the rejection. If applicant's appeal is denied, decision is final until new clarifying information is provided (Analysis of Gaps 2006). Refugees who stay despite having closed files are seen as illegal immigrants (Bailey 2004, p. 23).

3.2.3 Key Institutions involved with Refugees in Thailand

Refugee policy making and policy implementation involve many institutions. These include National Security Council, the Ministry of Interior, the Border Patrol Police, the Ministry of Foreign Affairs and Thai military. The National Security Council (hereafter NSC) is the most powerful civilian decision-making institution concerned with refugee policies. However, prior to 1992, Thai military played dominant role in refugee policy making (Wattanayagorn 1998, cited in Lang, 2002 p. 95). Currently, policy making regarding refugees tend to be adopted in an *ad hoc* manner in response to specific circumstances (Gaps of Analysis 2006).

3.2.3.1 National Security Council (NSC)

NSC is “central institution for coordinating and integrating development in border areas (Wattanayagorn 1998, cited in Lang, 2002, p. 95). Established in 1959, NSC advises the Prime Minister and Secretary Cabinet on national security policy and coordinates at the policy level among ministries on military, economic, internal, and foreign policies. NSC sub-committees regularly meet on matters concerning illegal workers and displaced persons fleeing fighting (Director NSC, Division 2, 10 March 1998 cited in Lang, 2002, p. 96). It consists of nine ex-officio member; headed in formal session by the Prime Minister (as Chairman), Deputy Prime Minister (Vice Chairman), Ministers of Defense, Finance, Transport, Interior, Foreign Affairs, the Supreme Commander of the Armed Forces, and the Secretary General, If required, senior government officials (at the Permanent Secretary Level) can also be invited to attend meetings (Lang 2002, p. 95). The office of the NSC comes under the Office of the Prime Minister and comprises the Office of the Secretary and Division 1-7, of which Division 2 has responsibility for refugees.

3.2.3.2 Ministry of Interior (MOI)

The Ministry of Interior (hereafter MOI) is responsible for policy implementation. It governs the departments of police, land and marine police, Border Patrol Police, the Immigration Division, provincial governors, and district officers who are responsible for refugee affairs in their jurisdictions (Lang 2002, p. 96). The MOI is authorized to administer security and administration issues of those refugee camps not close to the Thai border. In addition, MOI coordinates among various agencies on issues such as repatriations and relocation of camps (Lang 2002, p. 96). NGOs who are working for refugee affairs are accountable to the MOI.

3.2.3.3 Border Police Patrol (BPP)

The BPP serves as full-time policing elements of the MOI, particularly accountable for border patrol and various interdiction functions such as drugs, illegal migration and the periodic flow of refugees. They also perform intelligence gathering role. Established in 1953 with US-CIA assistance, BPP has developed into a powerful multipurpose force and is responsible for security of remote border regions of Thailand (Lobe and Morell 1978, cited in Lang 2002, p. 96).

3.2.3.4 The Ministry of Foreign Affairs (MFA)

The MFA coordinates with external players and international organizations. It does not influence refugee policy as much as other agencies. During

the period of mass influx of Indo-Chinese refugees, MFA was generally supportive towards refugees, for it was influenced by its international constituency and its need to garner international support for Thailand's handling of refugees (Jacobsen 1992, cited in Lang p. 97).

3.2.3.5 Provincial Admission Board (PAB)

PAB has been established to determine eligibility of persons seeking admission into border camps. PABs are comprised of eight members, one of which must be a UNHCR representative (Gaps Analysis 2006). PABs decisions are made by majority. Applicants deemed to be fleeing from fighting receive a "fleeing from fighting" status and those deemed to be fleeing from persecution are given "displaced person status". Both statuses are temporary.

3.2.3.6 National Human Rights Commission (NHRC)

NHRC Thailand is an emerging player in refugee policy advocacy. The Commission's main responsibilities includes advising and mapping out policies to promote and protect human rights as prescribed in the Thai Constitution, legislation and human rights treaties (Thailand Ministry of Foreign Affairs website, 2012). NHRC has been instrumental in the release of ninety six Ahmadi refugees from Immigration Detention Center, Bangkok (IRIN 6 June, 2011). Additionally, NHRC has collaborated with Thai Immigration Department and Thai NGO in running national campaign against the detention of children (TCR press release 27 January, 2012). Although NHRC is an independent agency, its functioning style however, has been deeply influenced by Thai government since government appoints NHRC members and financially controls it.

3.2.3.7 Immigration Detention Center (IDC)

Aliens without proper documents including refugees are subject to arrest and detention in Immigration Detention Centers (IDC). The IDC in Bangkok has a high turnover of detainees but there are also cases of prolonged detention. In 2001, there were around 20,000 persons including migrants, visa over-slayers, asylum seekers and refugees in IDCs (UNHCR 2006). IDC is visited by an on-site UNHCR Field officer responsible for detention issues and by the Jesuit Refugee Service (Working group on Detention UNHCR 2012). The refugee status determination process can be conducted in IDC.

3.2.3.8 Special Detention Center (SDC)

If a refugee is transferred to the Special Detention Center (located in Bang Kaen), he or she is not technically admitted to Thailand territory. The legal impact of being in Special Detention Center is that one can not apply for bail (UNHCR 2006, p. 198). Those who are detained at the airport or transit zone but failed to get their refugee status processed within one week are transferred to the SDC.

Nevertheless, while the NSC is the most powerful policy maker and coordinator at the policy level, the Thai Army play crucial role at ground level (Lang, 2002). Clearly, refugees and border areas are sensitive and highly prioritized matters for Thailand making the Army most important player in practice. Major decisions regarding relocations of refugee camps and repatriation are taken by the military (Interview, Boonpracong, W. Chief, Displaced Persons and Illegal Immigrants Affairs Subdivision, 9 March 1998, cited in Lang 2002, p. 97).

3.3 Thailand bail-out process

There is a possibility of bail out for a recognized refugee provided that bail amount has been paid to the immigration authorities with an undertaking signed by a Thai national or Thailand's registered NGO. Release is indefinite and at the discretion of the Immigration Commissioner (JRS, 2012). In the release of a detainee, medical record and criminal history are taken into consideration. Once approved for bail, refugees must report regularly to the local police about their place of stay.

A bailed-out refugee can be re-arrested. Prior to repatriation, a refugee has to spend two weeks in IDC for the processing of documents to be completed. In 2011, 385 persons were arrested and transferred to IDC in Bangkok. Of the 385 persons, only 177 were bailed out with the assistance of NGOs (JRS, 2012).

From above description, it is clear that there is no single clear cut available mechanism dealing in refugee policy. Rather, it is a complex interplay of local powerful institutions. It is possible to outline Thai refugee policy. However, it keeps changing with regime change and refugee groups. Although Thai policy makers may have drawn rules, implementation is totally dependent upon the attitude of local officials (Public Affair Institute, 1989, p. 22). Stratified and fragmented, refugee

mechanisms are built in to detain and deport refugees rather than to ease their life in Thailand.

3.4 State's responsibility and the protection of refugees' human rights

States are being made legally accountable to their human rights obligation through various human rights mechanisms, like general recommendations and general comments issued by human rights monitoring committees. The United Nations human rights machinery provides a number of complementary legal standards and remedial measures (in forms of complaints procedures, decisions, reports) which can be employed to improve refugee protection (Gorlick 2000, p. 52). In addition, UN human rights mechanisms also offer a rich source of international jurisprudence and country of origin information to safeguard the rights of refugees (Gorlick 2000, p. 51).

Plight of refugees have been highlighted and dire need to safeguard their rights have been stressed in various human rights forums. In general comment no. 3, Human Rights Committee (hereafter Committee) highlighted that States have legal responsibility to ensure the protection of all "individual within their jurisdiction" (Human Rights Committee, 1981). In addition, International Conventions prohibit *refoulement* of refugees particularly Article 33 of the 1951 Refugee Convention and Article 3 of the Convention against Torture which forbids the return of any individual who would face "torture or cruel ... treatment."

Many articles of the ICCPR are relevant to the protection of refugees. Article 7 says, "no one shall be subjected to torture or to cruel, inhumane or degrading treatment or punishment." This Article applies also to non-citizens including refugees. In addition, Article 9 provides the right to freedom from arbitrary arrest and detention. Article 10 ensures the humane and dignified treatment of refugees deprived of their freedom. Further, Article 12 guarantees the freedom of movement and right to choose residence for everyone lawfully within the jurisdiction of state. Article 13 entitles a person to appeal against expulsion and review by a competent authority. Finally, Article 2 obligates member nations to provide the rights to everyone within their jurisdiction, recognized under the Covenant.

Nevertheless, in respect to detention of asylum seekers, the Human Rights Committee has suggested that government (Sweden) should revise its legislations to limit the use of detention, and to provide a right to review in case of detention and expulsion (ICCPR/C/95/Add.4 and HRI/CORE/1/Add.4). While assessing Finland's fourth periodic report, the Committee recommended asylum seekers in need should be provided separate detention facilities (CCPR/95/Add.6).

3.5 Thailand's Obligation under International Law

Thailand lacks domestic refugee legislation. However, Thailand still has obligations under international law to protect the rights of refugees. Human rights treaties oblige State parties to implement international standards; in this regard, a key principle is non-discrimination. In addition, Thailand is bound by the principle of *non-refoulement*, a Customary International Law (CIL) and by international human rights treaties which caters to the rights of refugees. These treaties include the following: (a) the 1965 International Convention of the Elimination of All Forms of Racial Discrimination (CERD), (b) the 1976 International Covenant on Civil and Political Rights (ICCPR), (c) the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR), and (d) the 1989 Convention on the Rights of the Child (CRC). Thailand has ratified these treaties, but it has made various interpretive declarations or reservations to limit the scope of international obligations.

3.5.1 Customary International Law

The customary principle of *non-refoulement* is binding on all States regardless of a state's human rights obligations (Goodwin G 1996, p. 117-171). Article 33(1) of the 1951 Refugee Convention defines *non-refoulement* as the prohibition against threatening a refugee in any manner whatsoever to the frontiers of territories on account of his/her race, religion, nationality, membership of a particular social group or political opinion. The Customary principle of *non-refoulement* (hereafter CIL) usually consist of admittance of refugees at the borders and implies a duty for states to grant temporary shelter. *Non-refoulement* provision is also stated in CAT and ICCPR.

As per *non-refoulement principle*, Thailand has an obligation to provide temporary refuge and properly assess asylum claims which can prevent the forced repatriations of refugees and asylum seekers. Current system based on the Immigration Act 1979, is inadequate to ensure respect for *non-refoulement* since asylum seekers and refugees have no special status under Thai law. In order to establish status of a genuine refugee in need, a uniform and harmonized national system/procedure on the basis of non-discrimination must be implemented. A set of government regulations which should be in line with international standards, must be provided to immigration officials.

Certain principles of CIL help Thailand's ICCPR obligation toward refugees. In its Concluding Observation (CCPR/CO/84/THA), Human Rights Committee has recommended to Thailand to establish a mechanism to prohibit extradition, expulsion, deportation or forcible return of aliens and to respect the principle of *non-refoulement*.

However, Thailand has been reluctant in adopting CIL principles. The court decision in Sok Yuen case clarifies this point:

“...Even if there were international custom to protect refugees, it was not an obligation emerging from the Convention [1951 Refugee Convention] as claimed by the accused...” (Criminal Court judgment 2002, cited in Muntarbhorn 1992, p. 18).

3.5.2 International Covenant on Civil and Political Rights (ICCPR)

Although Thailand has signed the ICCPR, Thai domestic law does not incorporate ICCPR principles. Human Rights Committee in its Concluding Observation (to Thailand) has noted with concerns about the inhumane condition in detention centers such as lack of health care, adequate food, hygienic condition (CCPR/CO/84/THA 2005). Further, Committee noted with concern the “lack of a systematic adjudication procedure for asylum seekers.” In addition, Committee suggested Thailand to modify present screening and expulsion procedures of Thai government which does not comply with Article 7 (Right not to be Tortured) and Article 13 (Right not to forcefully repatriate) of the Covenant. Finally, Committee has recommended Thailand to review its policy regarding birth registration of children

belonging to asylum seekers and refugee so as to ensure the provision of birth certificates to all children born in Thailand (CCPR/CO/84/THA 2005).

3.5.2.1 Right to life and Right not to be tortured (Art. 6 and 7)

Article 6 of the ICCPR guarantees the right to life and Article 7 prohibits torture in any manner. The Human Rights Committee has interpreted Article 7 to include a right to *non-refoulement* (General Comment 20, 1986). The Committee on the Rights of the Child (Concluding Observation 2012) has suggested to Thailand not to refoule refugees and asylum seekers.

Above recommendations are enough to establish states' obligation not to force individuals to a place where they may be persecuted.

3.5.2.2 Right to Freedom from arbitrary arrest (Article 9)

Article 9 (1) of the ICCPR protects individuals against the arbitrary deprivations of liberty whereas article 12 applies to restrictions on movement short of deprivation of liberty. Expanding the scope of article 9, Human Rights Committee (General Comment No. 8, 1982) clarifies that deprivation of liberty covers "all deprivation of liberty including *immigration control*."

Furthermore, sub-articles of article 9 entitles a person to take proceedings before court in case of arbitrary arrest. In addition, the Human Rights Committee (HRC Case no. 560/1993, para. 9.2) in matter of arbitrary arrest has said that "prolonged detention may be arbitrary" and the "absence of effective court review renders detention arbitrary (UNHCR 2006, para. 30).

In *A vs Australia* case (HRC Case no. 560/1993, para. 9.2), the HRC confirmed that it is not *per se* arbitrary to detain individuals seeking asylum under article 9(1) if there is likelihood of absconding and lack of cooperation on the part of the individual. However, HRC stated that "without such factor, detention may be considered arbitrary, even if entry was illegal".

3.5.2.3 Right to Freedom of Movement (Article 12(1))

Article 12(1) of the ICCPR obliges member States to ensure freedom of movement and residence of a person lawfully living in the State. In order to determine 'lawfulness' elements, the Human Rights Committee (*Karker v France*, HRC case no. 833/1998) held that an alien who entered a State illegally, but whose status has been regularized, must be considered to be lawfully within the territory for the purpose of Article 12. Thus, recognized refugees are lawfully within the territory

for the purpose of the Article 12 and therefore enjoy its benefits (UNHCR 2006, p. 10). Furthermore, an individual is endowed with the rights contained in Covenant, once he/she is within the jurisdiction of a State (General Comments no. 15, 1986, para. 6).

Nonetheless, in Thailand, a UNHCR-recognized refugee is still considered 'illegal' by the government. If refugees attempt to exercise their right to freedom of movement, they face risk of arrest and detention. Detained refugees have to live in detention for indefinite period without access to Thai justice system (with no court review). This renders refugee detention arbitrary. The Committee on the Rights of the Child (2012) took serious note of arbitrary arrest of refugee in Thailand and has recommended "not to subject them [refugees and asylum seekers] to detention or deportation."

Unfortunately, Thailand has not accepted request made by the United Nations Office of the High Commissioner for Human Rights to conduct the country visit on the situation of the arbitrary arrest (Working Group on arbitrary arrest, pending request in 2008, HRC 2011).

3.5.3 Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment (CAT)

Article 3 of the CAT prohibits *refoulement* in cases of torture. Article 3 provides "No State party shall expel, return, or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture." There is no exception to this provision.

Human Rights Committee (Concluding Observations 2005, Thailand) has noted with concern about the rampant use of torture and cruelty, inhumane and degrading treatment of detainees by law enforcement official. Nonetheless, Thailand in its follow up reply (Working group on UPR 2011) to Human Rights Committee indicated that "measure had been enacted to monitor strict compliance to those [domestic legislation] regulations." Despite Thailand's assurance to HRC, many refugees and asylum seekers at the moment are languishing in Immigration Detention Center in Bangkok in inhumane condition tantamount to torture and cruel, inhumane or degrading treatment (Inter-Agency Working Task Force on Immigration detention, Bangkok 2011).

3.5.4 Convention on Rights on the Child (CRC)

A mechanism for considering asylum claims made by children is necessary to comply with Article 22 of the CRC. This provision requires State to take measures to protect the rights of a refugee child and to provide required safeguard set forth by the Convention.

Thailand has made two reservations (to limit the scope of the international obligation) in relation to the CRC, article 7 and article 22, which are right to birth registration and rights of refugee children which is tantamount to rejecting various rights linked with refugee children (Muntarbhorn 2004, p. 16). The Committee on the Rights of the Child (2012) recommended to Thailand to withdraw its reservation concerning article 22 of the Convention and to safeguard the rights of a refugee child. Committee also took serious note of the condition of children of refugees and asylum seekers in prison with their mothers.

Further, the Committee (2012) suggested Thailand to “ensure that all children enjoy all the rights enshrined in the Convention on the basis of non-discrimination.” The Committee also recommended for the birth registration of all children born on its territory especially those who are not registered due to the immigration status. Noteworthy in this connection, Thai Civil Registration Act 2008 does allow birth registration for all those born on Thai territory including refugees and asylum seekers’ children. Thai authorities, however, “have not been willing to grant such certificates to the children of asylum seekers (Muntarbhorn 2004, p. 22). The Committee (2012) thus recommend for the ratification of the 1951 Convention which relates to the Status of Refugees and its 1967 Protocol and for the establishment of a national legal institutional framework for refugees.

3.5.5 International Convention on the Elimination of All Forms of Racial Discrimination (CERD)

The Committee on the Elimination of Racial Discrimination (CERD) has suggested States (under Article 5) not to forcibly repatriate refugees and displaced person (General recommendation no. 22, 1996).

Some Thai refugee management practices are inherently discriminatory. In Thailand, an immigration detainee (non-citizen) has to pay the cost of his detention whereas other detainees including ordinary criminals are free from such obligation

(HRW 2012, P.117). Nonetheless, Thailand in its report submitted to the Committee on the Elimination of Racial Discrimination (2011), stated that “status of illegal immigrants and differentiation between persons with legal status and persons without illegal status are under control and bound by treatment in accordance with Thailand’s Immigration Act ... thus not discrimination in the form of racial discrimination.”

While the convention against racial discrimination, ICERD, provides for the possibility of differentiating between citizens and non-citizens (Article 1(2), the Committee on the Elimination of Racial Discrimination (CERD) in its General Recommendation No. 30 (2004, para. 2) on discrimination against noncitizens, notes that this provision “must be construed so as to avoid undermining the basic prohibition of discrimination” as set out in other human rights treaties such as the ICCPR and the ICESCR. Thus, while some political rights may be confined to citizens, States are under an obligation to guarantee equality between citizens and non-citizens as recognized under international law (Human Rights Watch 2010, p. 26).

3.5.6 International Covenant on Economic, Social and Cultural Rights (ICESCR)

ICESCR Article 6 ensures the right to work, Article 11 provides for the right to an adequate standard of living including food and housing. Article 12 deals with the right to health, further, Article 13 extends to the right to education. These provisions are similar to protections articulated in 1951 Refugee Convention but stating in a more comprehensive and direct language (Loper 2006, p. 13). Nonetheless, Covenant would apply to refugees in the territory of a state party. In practice, however, asylum seekers in Thailand do not enjoy any economic rights due to their lack of legal status (Muntarbhorn 1992, p. 16).

Thai approach till date has been unsystematic, non-transparent and noncommittal. Thus, there is a need to create a national legal framework based on international human rights laws interacting with national law, policy and practice. (Muntarbhorn 1992, p. 16).

3.6 Thai domestic law related to refugees and asylum seekers

Thailand does not provide specific legislation on refugees and lacks a permanent mechanism dealing with refugees and asylum seekers. Instead, various terms for refugees, such as displaced persons, evacuees, illegal immigrants, illegal entrants, those fleeing fighting and the consequences of the civil war have been used (Muntarbhorn, 2004, p. 18). However, it will be worthwhile to look into the Thai legal instruments for the purpose of this research.

3.6.1 The Thai Constitution 2007

Chapter 3 of the Constitution provides certain rights to Thai nationals, such as freedom of religion, freedom of movement, the right to process of justice, the right to receive public health services and the right to education. However, the Constitution is silent in conferring those rights specifically to asylum seekers or refugees (Constitution of Thailand, 2007, art. 26-68). Sections 32 and 43 apply to persons generally, without discriminating between Thai nationals and persons within Thai jurisdiction. Par. 3 provides rights and liberties of an individual. Section 32 of the 2007 Constitution provides that:

“A person shall enjoy the rights and liberty in his life and person. A torture, brutal act or punishment by a cruel or inhumane means shall not be made; provided that punishment under judgments of the Courts or by virtue of the law shall not be deemed the punishment by a cruel or inhumane means under this paragraph. Arrest and detention of person shall not be made except by order or warrant issued by the Courts or if there is a ground provided by law.”

However, The Thai Constitution of 2007 has no specific provision for asylum seekers or refugee's (World Refugee Survey, 2007, p. 162).

3.6.2 Immigration Act (as amended by the Immigration Act of 1954 and the Immigration of 1979).

In the absence of national refugee laws, all asylum-seekers and refugees in Thailand are governed by the Immigration Act, which considers all non-Thai nationals

entering Thailand without permission to be illegal aliens and, therefore, subject to arrest, detention and deportation (Immigration Act 1979). Thai immigration law prohibits entrance into Thailand through an unauthorized check-point without a valid travel document and visa.

The Immigration Act 1979 defines an alien as any person who is not a Thai national and it classifies eleven categories of person who are not permitted to enter Thailand (Immigration Act, Section 2, 1979), such as aliens without appropriate means of living in Thailand, aliens who have been deported from Thailand, persons who remain within Thailand after the expiration of a valid passport or visa, etc.. Anyone who falls within this classified category is subject to arrest, detention and deportation (Immigration Act, 1979). According to Thai Immigration Act, B.E. 2522 (1979):

Section 62: “Whoever fails to comply with provisions of Section 11 (entrance through an authorized checkpoint)... shall be punished by imprisonment not exceeding two years and a fine not exceeding 20,000 Baht”.

Section 81: “Any alien who stays in the Kingdom without permission or with permission expired or revoked shall be punished with imprisonment not exceeding two years or a fine not exceeding 20,000 Baht or both”.

Appeals of the deportation decisions are rare although such appeal can generally be made to the Ministry of Interior. Appeals are not allowed in the case of [aliens] without passport, equivalent documentations or visa (Human Rights Watch 1998, p. 31).

3.6.3 Nationality and Employment Act

The Nationality Act of 1965 (as amended in 1992), the Alien Employment Act of 1978, the 1979 Law on the Categories of Work Not Permitted for Aliens, and the 1979 and 1985 Laws on Forms of Employment and Activities in Which Aliens Can Engage, are laws supposed to protect non-citizens. However, none of these laws directly govern the status or the protection of refugees and asylum seekers.

3.6.4 Civil Registration Act 2008

Following the amendment in 2008 to Thailand’s Civil Registration Act of 1991, all children born in Thailand are entitled to birth registration and government-

issued birth certificates, regardless of their parent's legal status (Section 16). A birth certificate 'Tor Ror 3' is issued to child without Thai nationality. However, the authorities have not been willing to grant such certificate to the children of those who are illegally residing in Thailand, including the children of asylum seekers (Muntarbhorn 2004, p. 22). This is compounded by Thailand's reservation to the CRC in regard to Article 7 which obliges states parties to register births and, by implication, to issue official birth certificates.

According to UN Children's Fund (UNICEF), approximately five percent of the children born in Thailand, or around forty thousand babies primarily from ethnic minorities or migrants, are not registered at birth. With no proof of identity, those without birth certificates are vulnerable to abuse, exploitation and trafficking. In addition, they cannot access health care and education.

3.6.5 Deportation Act 1956 (as amended) until Act 1978

Section 5:

When it appears necessary in the interests of public peace and order and morals, the Minister shall have the power to order the deportation of aliens from the Kingdom for such period as may be found proper. Moreover, when the circumstances have changed, the Minister may withdraw a deportation order. The provision of the first paragraph shall not apply to those who have held Thai nationality by birth.

Section 6:

Upon issuance of a deportation order, the Minister or officer delegated by the Minister shall order the arrest and detention at any place of the person to be deported until the arrangements are made to carry out the deportation order...

Section 7:

No person under a deportation order may be deported from the Kingdom before the expiration of fifteen days from the date notice of the deportation order has been given to the person to be deported. In the event of an appeal under Section 8, deportation shall be suspended until President of the Council of Minister has acted on the appeal."

Deportation of refugee takes on daily basis. Those refugees from neighboring countries such as Myanmar, usually dropped at 'informal crossing points' and in some cases are handed over directly to Myanmar authorities (Analysis of Gaps

2006, p.12). However, non-Indochinese refugees and asylum seekers are kept in detention indefinitely because of the high cost of removing them until they self-deport.

3.7 Is a refugee protected under Thai law?

On closer look, it is apparent that Thai law does not offer solace to refugees. No wonder Thailand performance has been below average in refugee protection (World Refugee Survey 2009). Nevertheless, refugees do enjoy minimum protection of some rights granted to them out of human rights concern and as a humanitarian gesture. For the purpose of this study it will be necessary to analyze the rights a refugee supposed to enjoy within Thai jurisdiction.

3.7.1 Freedom from *Refoulement*/Physical protection

The principle of *non-refoulement* provides refugees right not to turn back to the place where he/she can be persecuted on the basis of race, religion, nationality, political opinion or membership of a particular social group (1951 Refugee Convention, Art.33). To implement this principle, States must have specific legal and administrative provision to protect refugee rights. As discussed above, Thailand does not offer such protection. Arguments have been made that protection from *refoulement* should be binding upon Thailand as it has become a norm of customary law; however, Thai courts do not consider it legally binding. (Muntarbhorn 2004, p. 14).

As mentioned above, an alien is considered illegal once his/her visa expires and therefore can be deported or detained. Thus, deportation of refugees who enter Thailand illegally takes place regularly. US Committee for Refugees (report card on refugees' rights 2009) rated Thailand lowest in category of *refoulement*. A dispatch of about 4,000 Hmong including 158 UN-recognized refugees back to Laos represents this fact (Thailand Human Development Report 2009).

3.7.2 Freedom from arbitrary detention

Thai Constitution 2007 accords some constitutional rights (that might be applicable to refugees) in protection from detention by virtue of law. Under rights and liberty of an Individual, Section 32 of the 2007 Constitution entitles a person to

freedom from torture and right to life and liberty. A person cannot be arrested except by warrant issued by the Courts or if there is a ground as provided by law. Section 32 also provides for the redress of the grievance of the victims if one's constitutional rights of life and liberty are violated. While chapter three of Thailand's constitution on fundamental rights is entitled "Rights and Liberties of Thai People", most of the provisions of that chapter applied on Thai nationals.

In Thailand, refugee and asylum seekers do not enjoy their freedom from arbitrary detention. The risk of arrest and detention is constantly equal for urban and camp-based refugees. Refugees from Myanmar, Cambodia and Laos have the option being detained or being voluntarily deported (Analysis of Gaps 2006). Urban refugees are routinely detained in the Immigration Detention Center (IDC). Even refugees who voluntarily repatriate or were approved for resettlement are still illegal immigrants under the Thai law and they must pay an overstay fine of up to 20,000 THB (around US \$ 500), or spend time in immigration detention (Asylum Access, Boat People and Conscience Foundation report 2009).

Most refugees' lives are under constant fear of being arrested. They cannot go out to work or send their children to school. If detained, they are given two choices: either live indefinitely in abysmal condition in immigration detention center or self deport (US Committee for Refugees 2002). Nevertheless, detained refugees in Bangkok from non-bordering countries can request UNHCR's intervention with the authorities. Once in IDC, it is more difficult to be released as the authorities will allow only a certain number of refugees to be released on bail at a given time, and bail is conditional on a reasonable prospect of resettlement in the near future (World Refugee Survey 2007).

However, Thai government is reported to avoid prolonged detention thus illegal immigrants are sent back to their country of origin (Human Rights First, 2002). Nonetheless, Thai government in its diplomatic note to UN Office (cited in Human Rights First, 2002) said, 'Illegal migrants whom UNHCR has recognized as 'person of concerns' will not be deported.

In practice, Thai government continues to arrest asylum seekers (UNHCR-recognized refugees have not been spared). In this connection, on 14 December 2010, eighty five Pakistani Ahmadi refugees have been arrested by Thai immigration (Bangkok Post 2011). They were categorized as illegal migrants because

they had overstayed in Thailand. Over-staying was caused by their waiting for refugee status (Bangkok Post 2011). Ironically, there is no independent review of the administrative detention decision. If criminal charges have been brought against asylum seekers for illegal entry, they may be sentenced to two years of imprisonment. If offence of illegal entry is combined with other offences such as falsification of documents, term may be longer (Human Rights First, 2002). Interestingly, more rigorous implementation of Immigration Law in 2010 has obstructed the UNHCR's ability to intervene to prevent refugees and asylum seekers from being detained (UNHCR Global report 2010).

As of 30 January 2012, there were 44 refugees in IDC Bangkok including nine children (below 18 years) and 53 asylum seekers including 15 children (below 18 years) (Inter-Agency Working Task Force on Immigration detention, Bangkok 2011). The Human Rights Committee (2005 para. 16) was concerned about the poor general conditions of IDC specifically the overcrowding and lack of rights of detainees to access lawyers in Thailand.

Generally, Thai government employs the policy of detention to discourage refugees from entering Thailand ostensibly and to counter human trafficking (Interview of Deputy Chief Immigration Bureau, Bangkok Post 2011). Contrary to popular belief, this policy does not deter arrival of persons desperately in need of refuge. For the last five years (2007-2011,) a relatively steady number of refugee and asylum seekers have come to Thailand despite the prospect of arrest and detention. On the contrary, detention may even provide additional grounds for substantiating their applications for refugee status and can attract more to come.

3.7.3 Freedom of Movement and Residence

Currently, laws in Thailand do not provide the right to freedom of movement to refugees and asylum seekers. Refugees residing in border camps are not allowed to go out. In emergency, they are allowed to visit families, to buy medicine, and to work (Analysis of Gaps 2006). If a refugee is caught outside of camp, he/she will be deported. However, refugees and asylum seekers living in urban areas are more vulnerable to arbitrary arrest and deportation (Analysis of Gaps 2006). Their lives are more miserable than those in the camps since they cannot go out of their homes

without the risk of being arrested. They cannot access any public service or move freely (See- Chapter 5 on Refugee Interview).

3.7.4 Right to access to Justice

Thai law (Thai Constitution 2007 Section 32, 43) on the basis of the non-discrimination provides that anyone can seek justice to the Thai court. Criminal and Civil Codes, and related Procedural Codes cover all persons. Thus, a refugee may seek redress under these laws (Muntarbhorn 2004, p. 19). However, in reality, it is almost impossible to access the justice system given numerous obstacles they face due to their legal status. Refugees in border camps mainly are governed by their ethnic traditional justice system primarily through male camp committee few of whom had legal training (World Refugee Survey 2007). According to World Refugee Survey 2007, these justice committees operate independently from Thai laws and often marginalize other ethnic or political groups. Furthermore, surveys reported that from 2003 to 2006, there was no final justice in eighty percent of serious refugee rights violations cases due to lack of evidence.

In 2006, UNHCR implemented an Administration of Justice Program which has established a basic legal framework to ensure that all serious crimes are referred to the Thai justice system (Analysis of Gaps 2006, p. 35). As far as refugees in detention is concerned, there is no state-funded free legal aid. They are often unrepresented by state-appointed lawyers and without assistance of interpreter (Jesuit Refugee Service 2001). According to Jesuit Refugee Service (2001), Thai stand is that those who have overstayed had taken the risk of waiving their legal representation. This reflects the cases of various refugee families who had spent years in detention in Thailand since there is no limit on the period of detention (JRS 2001). Only one NGO has been allowed to provide legal aid once in a week at the Bangkok Immigration Center (UNHCR Working group on Detention 2012).

3.7.5 Right to Earn Livelihood

Thai law does not allow refugee and asylum seekers to work. Part 6 of Rights and Liberties in Occupation, Section 43 of the Thai Constitution 2007 restrict non-Thai to engage in gainful employment citing the reasons of the security of State economy and safeguarding the public order.

Thai Constitution does not offer liberty to engage in an occupation to refugees and asylum seekers. They are not entitled to work (either within or outside the camps), to obtain business license, and to hold title or transfer business premise (World refugee survey 2009). Furthermore, World Refugee survey (2009) elaborated that due to labor shortage, Thai government occasionally has allowed migrant workers to work in generally low-wage, dirty and dangerous sectors. Unfortunately, these workers could not register as refugees. Nevertheless, refugees if caught working will be prosecuted since they lack legal status in Thailand.

Thailand needs a comprehensive and systematic refugee policy and this policy should include implementation of a uniform legal framework that provides a uniform refugee status determination mechanism and basic protection for refugees. The most efficient way to safeguard refugee rights and to execute international obligations for refugees is to pass national asylum law that incorporates the provision of the international treaty. Failing to adopt any asylum legislation does not free a country for its obligations under treaties to which it is Party or, indeed, under customary international law. States cannot use national legislation to reduce their human right obligations.

Human rights should be granted to all asylum seekers particularly right to freedom from arbitrary arrest and free movement. Various aspects of Child rights need to be promoted (e.g. to birth registration, right to education). Asylum seekers must be allowed to work. Thai Immigration act should be in harmony with the international human rights standards to offer enough protection to refugees and asylum seekers.

CHAPTER IV

CASE STUDY OF PAKISTANI AHMADI REFUGEES

This chapter presents the information gathered from the interviews. Discussion and analysis are outlined integrating the data gathered from various stakeholders' point of views. Findings of this study emphasize the eminent need for a legalized status of Pakistani Ahmadi refugees in Thailand.

4.1 General situation of Ahmadi Muslims in Pakistan

4.1.1 Background

The Ahmadi sect was founded by Mirza Ghulam Ahmad in Qaudiyan, Punjab province of British India in 1889. He aroused hostility among Sunnis Muslims mainly because of his own claim to prophet hood. Encyclopaedia website (2012) illustrates about Ghulam Ahmad, "His definition of jihad is concerned with "cleansing of souls," rather than with military struggle, and his intellectual proximity to sufistic teaching brought him many followers as well as rivals. According to Encyclopedia website (2012), his followers split into two branches in 1914. Majority remained in Qaudiyan and recognized Ghulam Ahmad as prophet. Other branch of followers known as Lahori Ahmadiyya Movement operated mainly in Rabwah, Pakistan.

Same source stated that the son of Gulam Ahmad, Hadhrat Mirza Bashir ad-Din Mahmud Ahmad (1889-1965) shaped the movement to operate after 1947 in the city of Rabwah in Pakistan (including Qaudiyani Ahmadiya). According to Encyclopaedia.com (cited in Country of Origin Information report UK Home Office 2010):

“Orthodox Islam has never accepted Ghulam Ahmad's visions and Ahmadi in Pakistan have faced religious and political attacks to the extent that they have been declared apostate and non-Muslim by Pakistani's religious and political elite. In 1984,

Pakistani government decree banned the use of Islamic forms of worship by Ahmadi and fourth Khalifatul-Masih, an Ahmadi leader, went into exile in London until his death in 2003.”

The US State Department International Religious Freedom Report (USSD IRF Report) 2009, stated:

“... Pakistan is an Islamic republic. Islam is the state religion and the Constitution requires that laws be consistent with Islam. The Constitution states that ‘subject to law, public order, and morality, every citizen shall have right to profess, practice, and propagate his religion; in practice the ... [but] serious problems remained. Specific laws that discriminate against religious minorities include anti-Ahmadi blasphemy laws that provide death penalty for those defiling Islam or its prophets. Pakistani Ahmadi community continued to face governmental and societal discrimination and legally barred the practice of its religious beliefs.”

4.1.2 Blasphemy laws Article 295(C): A tool of persecution for Ahmadi Muslims

Article 295(C) made the use of any derogatory language about Prophet Muhammad an offense punishable by life imprisonment or death. In 1991, Article 295(C) was amended to make death penalty mandatory for individuals convicted of making derogatory remarks about prophet (Freedom House Report 2010).

The USSD IRF Report 2010 stated the following:

“A 1974 constitutional amendment declares that Ahmadi are non-Muslims. Section 295(c), commonly referred to as the ‘anti-Ahmadi laws,’ prohibits Ahmadi from calling themselves Muslims, from referring to their religious beliefs as Islam, from preaching or propagating their religious beliefs inviting others to accept Ahmadi teachings and from insulting religious feelings of Muslims. Punishment for violation of section 295 (c) is imprisonment for up to three years and a fine...” Furthermore, same report illustrated that officials often accused converts of Ahmadi community of blasphemy, violations of anti-Ahmadi laws, and other crimes. The Government has used anti-Ahmadi laws to target and harass the Ahmadis.”

4.1.3 A reign of terror

Asian Human Rights Commission (hereafter AHRC) reported (March 12, 2012) that persecution against Ahmadi since they were declared non-Muslims by the Pakistani Government in 1971, is overt and blatant. The Government punishes Ahmadi through imprisonment, fines, penalties and even death; killing them is considered a great honor for Muslim fundamentalists. Further, AHRC stated, “Hundreds of Ahmadi have been killed in two separate instances alone in May 2010. In addition, the Express Tribune (4 March 2012) reported that in month of April 2012 a raging 5,000 -strong mob surrounded Ahmadi mosques and warned them not to pray there. Now Punjab state government (in Pakistan) requires National Database and Registration Authority to insert a ‘Quadiani’ entry in online forms exposing Quadiani Ahmedi to public persecution (The Express Tribune 4 March 2012).

Consequently, Ahmadi children are expelled from schools; Ahmadi academics, doctors, businessmen, engineers have been killed or kidnapped (AHRC 12 March, 2012). According to Human Rights Watch (2011) the number of Ahmadiya followers worldwide is around 10 million, mostly living in India and Pakistan. Other groups of Ahmadi Muslims are scattered in Bangladesh, Indonesia, Ghana, Burkina Faso, Gambia, Europe and North America. In Indonesia in 2011, a mob beat to death three Ahmadis while police officers watched as mute spectators. In 2008, Indonesian Ahmadi women had faced human rights abuses, while Bangladesh has not treated them kindly either. According to the U.S. State Department’s 2012 International Religious Freedom Report, Pakistan’s minority Ahmadi sect has become the target of rising sectarian violence, with its burial grounds, mosques, and homes coming under assault. Authorities have done little to stem the attacks, with the government still refusing to grant the community equal status.

USSD IRF Report (2010) informed that Ahmadis have been prohibited from public conferences, from holding their annual conference, and from publishing their works on public sale in Pakistan. Haunted by extremist Muslim and persecuted by Pakistani government, Ahmadi have no choice but to seek a safe asylum in a foreign country.

4.1.4 Are Pakistani Ahmadi genuine refugees?

UNHCR (14 May 2012) in its guidelines for assessing international protection needs of members of religious minorities from Pakistan have underscored dire need of protecting Ahmadi. Ahmadi who have been prosecuted under blasphemy law in Pakistan or targeted by Islamic extremist are likely to be in need of international refugee protection on account of their religion depending on the individual circumstances of the case (UNHCR, 28 April 2004, paras. 14-18).

Similarly, various foreign tribunals and courts decisions have stated that Ahmadi are genuine refugee and have rights to safe asylum. The Australian Tribunal (RRTA 165, 12 May 2008) have confirmed Ahmadi Muslims are not safe in Pakistan and the applicant's [an Pakistani Ahmadi] fear of harm in Pakistan is well founded. Furthermore, in case no. 0802462(2008) RRTA 254 (25 June 2008), tribunal decision also went into favor of an Ahmadi refugee seeking asylum in Australia. Moreover, in February 2010 the UK Parliamentary Human Rights Group (PHRG) also endorsed that the Ahmadis are not safe even in Pakistan or in the area where they are in majority such as Rabwah, in the Chiniot district of Punjab province.

4.1.5 Why Pakistani Ahmadis seek refuge in Thailand

Above sections has shown that lack of protection from Pakistani government and prevailing insecurity in country of origin have prompted Ahmadis to seek safe refuge in foreign shores. Thailand, therefore, due to its relaxed visa regulation and geographical proximity to the country of origin, has become an easy and natural hub for Pakistani Ahmadi refugees (Ahmadi interview June 21, 2011). Since 2009, nearly 456 Pakistani Ahmadi have taken shelter in Bangkok (Jesuit Refugee Report 11 January 2011). Other dominant reason for Ahmadi to come to Thailand is available network of their community members and possibility of resettlement into third country with UNHCR assistance (Ahmadi interview June 21, 2011). Many of interviewed Ahmadi admitted that they chose to come to Thailand in a hope to seek protection under UNHCR office which is located in the capital of the Thailand.

4.2 Pakistani Ahmadi refugees in Thailand

On 14 December 2010, 85 Pakistani Ahmadi asylum seekers and UNHCR recognized refugees were arbitrarily arrested which included babies, children, pregnant women, the sick and the elderly; no reason has been given for their detention (Asian Human Rights Commission, December 2010). They were later bailed out from Immigration detention center on 6th June 2011, together with 9 other Pakistani Ahmadi asylum seekers and refugees, through the combined efforts of National Human Rights Commission, Thailand, international and local civil society (UNHCR Bangkok 2011). However, another series of arrests of Pakistani Ahmadi refugees occurred on 7th, 9th, and 15th June 2011 (The Nation Bangkok, June 2011).

Extremely long Refugee Determination Process (6 months-1 year) aggravate the vulnerability of Pakistani Ahmadi refugees to arbitrary arrest and indefinite detention. While Pakistani Ahmadi refugees wait desperately for UNHCR to recognize them as refugees and facilitate their resettlements to another country, they are forced to live in fear and uncertainty. Thai government arbitrarily arrests UNHCR recognized/registered refugee and asylum seekers violating their rights to freedom from arbitrary arrest and freedom of liberty and security of the person.

In the context of arbitrary arrest of Pakistani Ahmadi refugees in Thailand, there is limited body of knowledge. At the moment, there is lack of literature, statistics and reports on this subject. To fill this lacuna, there is a pressing need to conduct qualitative research on Pakistani Ahmadi refugee population in Bangkok. This research aimed to evaluate, through narratives of refugees, the situation of Ahmadi refugees living without legal status in Thailand. This study particularly focused on two major interrelated aspects of their situation- right to freedom from arbitrary arrest and freedom of movement in Bangkok and its neighboring provinces.

4.3 Background research at Refugees' Community and NGOs

While volunteering with Asylum Access (Bangkok based refugee NGO providing legal aid), researcher got ample opportunity to interact with Pakistani Ahmadi refugees and asylum seeker who were seeking asylum in Thailand. Besides observing mock refugee status determination of Pakistani Ahmadi refugee at NGO,

researcher had the chance to know and interact with their community leaders, which facilitated the coordination for the two phases of interview with the primary respondents (refugees).

The first phase of the interview dealt with refugees who have detention experience. There were 5 respondents on this group. The second phase of the interview focused on a group of 5 refugees without detention experience. Most of them are living in the suburbs of Bangkok (Charan and Suthisan).

Aside from Pakistani Ahmadi refugees, 1 UNHCR official, 1 member of National Human Rights Commission of Thailand and officers of local NGOs (Asylum Access, JRS, Thai Committee for Refugee) were interviewed concerning situation of Pakistani Ahmadi asylum seekers and refugees in Thailand. Main purpose of interview was to obtain their opinion on Thailand's refugee policies related to the freedom of movement and freedom from arbitrary arrest and detention.

4.4 The Plight of Detained Pakistani Ahmadi Refugees

This section explores narratives of detainees' experiences inside Bangkok Immigration detention center, which provides necessary context for objectives of this research. This group of refugees who mainly came from Jhang, district Lahore, Punjab province, Pakistan were arrested on December 14, 2010 during a police raid at their apartments and was later bailed out on June 6, 2011. They are assigned as D1, D2, D3, D4, and D5 in this study.

Focus of interview was guided by two broad questions: how did Pakistani Ahmadi refugee experience detention? And, how is Thailand responsible for their current plight? All respondents are male except one female; all of whom spent 6 months in Immigration Detention Center.

They were interviewed at their residence using Urdu language, a language by which the researcher is also familiar. During the interview, the community leader helped the researcher understand socio-cultural context and integrate socio-cultural considerations to the respondents. Individual interviews for the 5 ex-detainee refugees lasted 25-30 minutes. A follow up interview (through email and phone) was conducted

eight months after the interview. By the time of follow up interview (July 2012) the majority of ex-detainee (only recognized refugee) were resettled in third country.

4.4.1 Narratives of Ex-detainees

The detainees' own accounts made their points in a vivid way. The following are excerpts of the interview:

(D1): “I left Pakistan in 2010. I came to Thailand in a hope that UNCHR will help me get resettled into other country. I wanted to get refugee status from UN. I was arrested and mistreated here. The raid was most terrifying thing for us...They raided our home around 6 a.m. in the morning. They arrested everyone [Ahmadi]. They arrested our wife and children...I asked [police] what was going on they said “we are going to take you to the police station.”- I thought we were going to be deported. It was terrifying, people were shouting, crying, and begging police not to arrest them. Police arrested eighty five Ahmadi together. When Ahmadi arrested that time they brought to IDC [Immigration detention center] and then to court. Nobody stayed in Jail rather went to IDC. We had no clue what is going to happen next. We were afraid. Everything looked very uncertain, dark and gloomy. You know-situation in detention is not good, it's not safe. I felt very insecure inside detention center. I thought my life is doomed. Food was terrible inside detention center. I felt hopeless there. Sometimes I did not take shower for days and could not eat tasteless food. An NGO has helped us to get out of detention center. Now my life is much better. At least I have freedom of movement and I am no longer afraid of police. I can do what I want (Age 38, Business owner, arrived in Bangkok since 2009, Recognized refugee, detained six months)”.

(D2): “We came to Thailand in 2010. We are recognized refugee. But police still arrested me and my wife. It was a real shock for us...we were not prepared for this [arrest]... Immigration [center] name was Suan Phulu Immigration Detention. People I met in detention told me about the process, whole story to get help from NGOs. They put me in the room and my wife in other cell. My

family was split up because men and women cannot stay in same room. That time was really tough and difficult. There were some children in detention center. I met other refugees inside the detention center. Their stories were really scary. Our room was extremely crowded, dirty, no fresh air. There was just one water tap. We were using same water for drinking, washing and bathing. There were more than 100 detainees in my room. Food served was awful. Sometimes, we received food from NGOs and friends. I was not expecting this treatment in Thailand. I hoped that time just pass by. I lost everything in Pakistan. Government has destroyed everything. In Thailand I was treated like a criminal and detained in a jail. But I do not want to go back to Pakistan. Going back to Pakistan is equals doing suicide. After we were bailed out, our lives changed to some extent. I live with other released Ahmadi refugees. I can freely go out of home, can travel in public places and seek medical assistance without fear of police (Age 25, Teacher, arrived in Bangkok in January 2010, detained six months, recognized refugee)".

(D3): "It was a horrific experience in detention center. There was not enough space to sleep. We were more than one hundred fifty people in the room...and this room was meant to accommodate only forty people. In my room there were all sorts of people, Sri Lankan refugee, Burmese, criminals and smugglers may be. The experience was really scary. It was not safe to stay in detention. Toilet [room] was always dirty. I had to wait in long queue to use the toilet, sometimes whole day...once in a week, we were taken into open space [inside the detention center] to do exercise for one hour and this is the time we meet other detainees and share information. We were given two options either to do exercise in one hour or to buy necessary goods [shop inside detention center]...food stuff was three time expensive [than normal rate]. Detention officials were rude to us especially the one who used to serve food. Food was not nutritious at all, unsuitable to my religion and inferior to quality. We were served chicken claws, we cannot eat that, I disliked [chicken claw] it most. There was a doctor in detention center who always gave same pills to everyone. He did not seem to be a qualified doctor. Condition of my room was

unhygienic. There was no sunlight in our room. I slept on floor which was extremely congested [due to many people]...no fresh air...I was not allowed to make phone calls and sometimes our relatives and friends were not allowed to meet me. There was no freedom of movement. We are human beings and should not be treated like this and a refugee is not a criminal. Bail out brought some changes in my life. Now I do not feel like I am a criminal. I am not mistreated by police (Age 33, Contractor, arrived in Bangkok in December 2008, detained six month, recognized refugee)".

(D4): "Never in my dream had I thought I would be treated like this in Thailand. I was persecuted in Pakistan that's why I seek safe refugee in Thailand. But I got arrested by Thai police and suffered in detention center. Food was of inferior quality, sometimes I do not know what I am eating, and we were served pork and chicken claw which we cannot eat. Food was not suitable to my religion. I was kept in a very crowded cell. Some one hundred forty people were living in same room. I was worried about my children, there were not enough space for them [children] to play and sleep...there was acute shortage of space. We had to sleep in different time slots. Sometimes I had to spend night while standing due to the lack of space. There was no privacy in room. There was just one toilet for all of us [140 people], it was filthy. There was no clean drinking water. We were forced to use same dirty water for bathing and drinking, if someone complained about serious health problem officials might create trouble for complaining a person by shifting to other cell...you cannot get medical attention until you get seriously ill. It was up to police to decide severity of medical condition to refer detainee to the hospital. When we were bailed out by NGO, I felt relief. I thought I got my freedom. Though this freedom came late but now I feel safe (Age 23, Student, arrived in Bangkok in January 2009, Recognized refugee, detained six month)".

(D5): "Situation in Pakistan compelled to leave me for Thailand. I came here in 2010 from Punjab province in Pakistan. Before coming to Thailand I thought I would be safe here. I thought UN would help me to resettle in other country.

UN refugee certificate could not help me from being arrested. Detention was living hell. In detention center I had to share my room with another one hundred fifty people, room was filthy, overcrowded, and there was no privacy. There were other groups of refugee. Shower facility was very bad. Food was not according to our religion. There was acute of lack of space...I could not even stretch my leg; I could not sleep with my leg stretched. UNHCR lawyer has helped me to get my refugee status while I was in detention. I was not allowed to use phone but once in a week I could meet my relatives and friends inside detention center. I was not allowed to meet my wife and children who were kept in separate cell at the same detention center. When my child was sick he was not treated properly. There is a need to respect our human rights. A refugee cannot be treated like a criminal and refugee rights must be protected. Bail out brought some hope in our life. Life is tough but no one going to kill me here. Now I think I can enjoy some of my human rights without being afraid of police (Age 35, Painter, arrived in Bangkok in August 2010, Recognized refugee, spent six months in detention)".

4.4.2 Emerging themes from the narratives of Ex-detainees

In narratives of ex-detainees, a pattern has emerged which confirmed and recognized their miseries in Immigration detention center. Emerged pattern in narratives has been classified under various themes-

4.4.2.1 Overcrowding/Lack of Space

This group of Pakistani Ahmadi refugees looked shaken and horrified, mainly due to their experience in Immigration Detention Center. Most of them complained about overcrowding and lack of space in detention center. Many refugees reported of lack of bed and lack of space to sleep. Some refugees reported that they have to sleep in different time-slots due to space limitations. Many refugees expressed dismay over the small size of their room where more than one hundred people forced to stay together, a room meant to accommodate only forty people. Few of them were worried over how their children would play and sleep in such a small space. All refugees complained that they do not have privacy inside the detention

center and they had to share their room with all sorts of person including criminals and smugglers.

4.4.2.2 Unhygienic Condition

All refugees complained about extremely unhygienic condition inside detention center. They complained about the dirty and overflowing toilet. In order to use toilet they had to wait in long queue. There were just two toilet rooms to serve the needs of one hundred fifty people. Some of them complained about the lack of fresh air and sunlight since their room was not properly ventilated. There was just one window. Many refugees complained that they were forced to live in an extreme unhygienic condition.

4.4.2.3 Maltreatment and Corruption

Few of them were mistreated by detention officials. Some interviewed Pakistani Ahmadi refugees reported that they were constantly humiliated by some officials inside detention center. They further stated that they have to bribe immigration officials in order to buy necessary food items from outside the detention center. Many refugees are of opinion that Immigration officials took undue advantages of their vulnerable situation. "Those who pay bribe [Officials] could get anything inside detention center and/or can avail mobile phone" reported one refugee. Many refugees complained about rude behavior of immigration official. Some refugees were mistreated when they asked medical help thus detainees' basic rights were disregarded.

4.4.2.4 Lack of health care facilities

Many refugees reported lack of medical facility. Immigration authorities were callous and indifferent toward the health condition of detainees. Asking help from officials is antagonizing them. Doctor's visit to detention center was limited. Nearly all detainees complained about pathetic condition of health care facilities. Detainee cannot ask for medical attention unless one gets seriously ill. However, one local NGO was allowed to provide limited medical facility at the immigration detention center. Nonetheless, tuberculosis, skin disease and digestion - related health problems were common among interviewed refugees.

4.4.2.5 Severe restrictions on freedom of movement.

Some refugees reported that they were allowed to go into open space in the detention center only once in a week and for one hour in order to do exercise. They were given choices either to do exercise in one hour or to buy food items at grocery shop. Their freedom of movement was severely curtailed. Most of detainees felt that they were not treated like human beings. No wonder one refugee vented his anger and frustration, “a refugee should not be treated like a criminal...refugee rights must be respected.”

4.4.2.6 Unsuitable Food/Unsafe Drinking Water

Many refugees talked about non-nutritive and religiously unsuitable food being served in IDC. Some refugees complained that they were served chicken claw which is against their religion and they cannot eat that. Usually they were provided inferior quality of food. Food items sold at the shop inside the detention center were three times more expensive. In addition, many refugees reported that they were compelled to use dirty water for bathing and drinking and this turned out to be a cause of water-borne diseases among them.

4.4.2.7 Separation of Families

In some cases, children were separated from their parents and kept in the cell with other convicts. Some refugees complained that they were not allowed to meet their wife and children who were kept inside the same detention center. Many refugees were worried over the safety of their detained family particularly future of their children.

4.4.2.8 Restricted access to friends/relatives and mobile phone

Some refugees reported that they were not allowed to make phone calls. In some cases refugees were stopped to meet their friends and relatives who came to see them at the detention center. However, in one case a refugee was allowed to use mobile phone once in a week and could meet his friends and relatives inside detention center. Overall, there were high degree of restrictions on using phone inside the detention center and meeting friends/relatives.

4.4.2.9 Memory of traumatic detention experience

Interviewed refugees also discussed about their traumatic detention experience in detail but kept their minds on future. Seeking more control

over their lives, participants yearned to live a dignified life where future of their children is safe. Most refugees described their condition in Immigration detention center ‘inhuman’ and demanded that they should not be treated like criminal. Most of them complained that they were treated in an inhumane manner and deserved to be treated in a dignified manner. Memories of their traumatic experience in detention center kept haunting them.

4.4.2.10 Bail out- a ray of hope

Nearly all interviewed Ahmadi refugees felt safe after they were bailed out in the custody of a local Thai NGO. Some of them stressed that they have enjoyed more rights after bail out particularly their freedom of movement has significantly increased. Many refugees talked about how their fear from authorities has been reduced and they can travel in public places, can access public and private services. Most of them experienced a sense of security and were not mistreated by authorities.

4.4.3 Personal Observations

This group of refugee participants was hesitant to share their experiences. All of them were between 23 to 58 years old; they were mostly businessman, teacher, land holders and farmers in their country of origin. Most of them were arrested in a police raid on 14th December 2010, later bailed out on 6th June 2011. They were reluctant to tell their names to researcher. They appear terrified and reserved. Researcher faced difficulty to access them since refugees were bailed out and released into the custody of a local NGO, who by and large, controlled their movement and activity. However, bailed out refugees enjoyed relatively more freedom of movement and security from arbitrary arrest.

Researcher was granted permission to interview them after several attempts. Respondents were living in a house rented by a Thai NGO. Suffering from unemployment and social isolation, Pakistani Ahmadi refugees relied on their social network for help. During interview, refugees constantly chanted name of their religious master. It seemed their religious orientation provided them a meaning and hope among prevailing insecurity and uncertainty in their life. Fear of authority and

powerlessness characterized their situation. They also voiced their concerns over ongoing persecution of Ahmadi community in their country of origin.

Prior to their arrest, Pakistani Ahmadi refugees lived in Thanyaburi District, Pathumthani Province. Most of them lived in dingy places where they hardly venture out unless they have to buy food or life saving drugs. Their rooms were often without window and very small for a family of three. They live in close proximity to their Ahmadi neighbors and rely on their emotional and social support. Some of Pakistani Ahmadi refugees received financial assistance from their relatives abroad. In addition, they have received social and moral support from local resident Ahmadi Muslims living in Bangkok. However, role of local mosque in the lives of Pakistani Ahmadi refugees is not covered in this research. Most of Pakistani Ahmadi were former businessmen and skilled laborer in Pakistan. They speak Urdu and Sindhi. Some of them could speak English and have higher education.

At least two limitations are noted. First, participants expressed fear about being audio taped. Thus, researcher decided to take extensive notes in lieu of tape recording. Second, results of this study cannot be generalized to other refugee populations and situations. The contextual nature of presented narratives is applicable only in a specific time and from specific respondent's perspectives.

Incarcerating refugees' amounts to various human rights violations which include: illegal detention, inhumane treatment of refugees, restricted movement and lack of basic facilities to name a few. Detainee's treatment in immigration detention center is tantamount to disrespecting dignity of Pakistani Ahmadi refugee and certainly does not meet up the international standards for detention centers.

The UN Standard Minimum Rules for the Treatment of Prisoners (1977) lay down the international benchmark for minimum acceptable conditions for detention which include set standards for the treatment of men, women, and children, minimum set standards of hygiene, provisioning of food, access to natural light, fresh air, and recreation. These narratives of ex-detainees clearly illustrated the poor standard of Thailand's immigration detention center and the possible breach of Thailand in its human rights obligations.

4.5 The Lives of Pakistani Ahmadi refugees (non-arrested)

4.5.1 Narratives of non-arrested Pakistani Ahmadi refugees

Five refugees from this group were interviewed. Focus of the interview was guided by two broad questions: how did Pakistani Ahmadi refugees experience their life in Bangkok? And second, how is Thailand responsible for their current plight? Most of Ahmadi refugees, aged between 20 and 60, came from Rabwah, a city in Chiniot District of Punjab Province, Pakistan. Most of them were teacher, shop-owner, farmer and student. All of them have encountered Thai police but managed to escape their arrest either by bribing or negotiating. In their follow up interview (July 2012), it came out that Thai police were ignoring arrest of Pakistani Ahmadi refugees.

This group of refugees is recognized as a S1, S2, S3, S4, and S5. Following are the narratives of refugees living a hidden life in Bangkok.

(S1): “I arrived in Bangkok in June 2010, hoping to get a safe asylum in Thailand but now I lost hope. I did not get refugee status even after waiting for 15 months. We can be arrested anytime. I fear arrest and this is my main concern. I am afraid to go to public place due to [the] fear of arrest. Government [Thailand] should not treat us like a criminal. We deserve protection. We need security. I worry about my two children. I cannot go out with them [to send them school] because of fear of arrest. I am worried about my children’s future...future is so uncertain. I do not get enough help from NGO. Monetary help is very limited. I have changed my location three times (to avoid arrest). I cannot work because I am illegal. Life is too difficult here and I cannot go back to my country (Age-38, Carpenter, arrived in Bangkok in June 2010, Asylum Seeker)”.

(S2): “I was arrested two times. It was very terrible experience. I had to pay them [Police] Bhat 5000 each time. Police do not miss any chance to earn money from refugees. I am living in Bangkok with my wife and two children. It’s been more than year since I have applied for refugee status but no news yet. My family face big problem in Bangkok. Our Thai neighbors do not like smell of our food [while cooking] and have warned us to inform police. Finding home is

a big challenge. Without valid visa we cannot rent a room. I have changed my home six times in two years. We cannot work...we spend all day at home doing nothing that makes me mentally ill. House owner do not return 'deposit money and we cannot complain to police because our status in Thailand is illegal. Our children's are not allowed to cry or shout or play inside. Home owner [house] does not like this...often threaten us to complain to police. We are always afraid of police. Fear is always there. We have no idea where will we go? Why there is no law to protect refugees in Thailand? Why are we treated like criminals? Thailand should sign refugee convention (1951 Refugee Convention). (Age 31, Teacher, arrived in Bangkok December 2010, asylum seeker) ”.

(S3): “My family was killed in Pakistan so I fled to Thailand to save my life. I was hoping to get resettled in other country with the help of UNHCR. But UNHCR failed to assure my security. I was arrested but I had a valid visa so police had let me go after giving warning to leave Thailand. I have spent months hiding in locked room. My refugee status is rejected for first time but I still have hope [after appeal]. I cannot go out without taking risk of arrest. Because of my illegal status I cannot work. NGOs and friends have helped me financially but I cannot keep asking money from them. I do not want to depend upon others for my needs. I feel helpless and insecure. I have changed my room [home] many times to avoid police arrest. Once I witnessed incidence where police broke door to arrest Ahmadi refugee hiding in his room. I live in fear. Now I suffer from insomnia and depression because of my situation. They [Thai police] treat [us] as a criminal. There is no dignity being a refugee in Thailand. There should be awareness among police and government authorities that these people [refugee] are not criminals (Age 24, Tailor, arrived in Bangkok in August 2009, rejected asylum seeker)”.

(S4): “Immigration police that caught me then were tourist police. They secretly demanded THB 5000 which I paid and I was released. Second time tourist police arrested me from my apartment, thank God, we were released because of one Thai Ahmadi Muslim ensured police on our behalf and gave them

enough information about Ahmadi in Pakistan and it worked. We are having tough time [in Thailand]. We do not have freedom. We have to ask money from others. Sometime I do not have money to buy milk for my children...my children cannot go out freely. I am spending time at home. Staying at home has made us mentally and physically ill. Language is another problem. We cannot explain address [in Thai]. I always fear of arrest. Now bail-out is an option, but if arrested, securing money is a big issue. It's not easy to go to the IDC (to meet detained relatives and friends). [I] always tried to avoid police. My life is difficult here but I have to face it. Every knock on our door terrifies our heart. We are even afraid to visit to doctor. We cannot open bank account because we do not have legal documents (valid visa) so we face great difficulty in receiving money. It is very difficult to find accommodation without legal papers. Home owner can be punished for helping Ahmadi refugee. Nobody wants to accommodate us due to fear of police. I have freedom of religion [in Thailand] but not freedom of movement. We do not have any rights in Thailand and we are treated here as criminals. There is no dignity and no respect for us (Age 39, small time businessman, arrived in Bangkok in July 2010, asylum seeker)".

- (S5):** We are widely persecuted and discriminated in Pakistan. Ahmadiyat is not safe in Pakistan. This is reason I came to Thailand. I encountered police three times but they did not arrest me but I still fear of police if I get caught then I have to stay for long time in Immigration detention center... what if they deport me I do not want to go back. I am afraid to go to NGOs to take food. Because of fear of police I have to shift my home again and again. I am unemployed and I cannot work. UNHCR works [processing of RSD] very slow and it [delay] causing me depression. UNHCR is responsible for making our situation worse. You never know when it's [Refugee Status Determination] going to be completed. We cannot stand at bus stand for long [fear of police]. I go out only on Sunday to buy necessary food because chance of being arrested is slim. I do not go out in working hours. Help from NGOs is not enough. I received some help from local Ahmadi. How long I am going to survive like this I do not

know? Asylum seeker and refugees are not treated alike and they must be treated alike. Why Thai government does not care for refugees? I would never have come to Thailand had I knew that I would be treated in such a disgusting manner (Age 22, Student, arrived in Bangkok in March 2010, asylum seeker).

4.5.2 Emerging themes from narratives of non-arrested group

4.5.2.1 Constant fear of being arrested

All interviewed Pakistani Ahmadi refugees talked about fear of arrest and fear of authority. Fear of arrest is so pervasive in refugees' lives that they fear private security guards whose uniform is similar to Thai police. Most of them voiced their concern over sudden arrest while going out of home. Many of them complained that they are afraid to go to NGOs to collect food because of fear of police. Some refugees described their experience of hiding in self-locked room in order to avoid police arrest.

One refugee described how every knock on their door generated terror in their heart. He talked about how he has been living under constant threat of police raid on his residence. Security of their family, a primary concern was an issue echoed by all respondents except those who were single. Some of them said that they cannot visit doctor and could not accompany their children to school due to fear of police. Few refugees reported that they cannot wait and stay in public places for long due to fear of police.

For Ahmadi refugees, fear from arbitrary arrest and detention seemed to affect many aspects of their life; family, future, security and dignity of their selves. All refugees experienced fear whenever they hear arrest of other refugee. Some refugee said they would never have come to Thailand had they knew about disgusting treatment meted out to refugees.

4.5.2.2. Inability to move freely

Many of the respondents have described their helplessness to move freely in the city due to fear of arrest. Most refugees avoid leaving their residences. Some of them preferred going out on Sunday only just to buy food. They also talked about police raid on Bangkok Refugee Center (B.R.C., Bangkok based NGO) where 15-20 Pakistani Ahmadi refugees were arrested while collecting food.

Many refugees informed that they were arrested while travelling in Bangkok but released after paying bribe to police. Few refugees reported they avoid travelling in taxi due to fear of arrest. They expressed fear of using public transport or going out in public area. Some prefer to go out with their wife and children hoping that they can avoid arrest because of having family. Refugees believe that police will unlikely arrest them if they are with a female member of their family. However, this myth was shattered when police arrested some of refugee couples who were with their children.

4.5.2.3 Uncertainty over future

Many refugees were worried about the uncertain future of their family. Worrying about their children was very prevalent among respondents. They constantly talked about future of their children particularly lack of quality education for their children. They expressed their dismay and despondency over uncertainty caused by long delays during the refugee determination process. Some explained that their insecurity [in Thailand] is due to their illegal status.

Many respondents have physical and psychological health problems resulting from trauma they experienced in their home countries worsened by their difficult living conditions in Bangkok. They blamed their poor health condition as outcome of their depression over uncertain future. In addition, their vulnerability is aggravated by the procedural delays in UNCHR and the Thai government's apathy towards refugee.

4.5.2.4 Inability to access public/private services

Many refugees narrated their helplessness in accessing public utilities. For example, refugees frequently described 'difficulty of accessing banking services', since many refugees depend on financial assistance from their friends and relatives abroad. Due to lack of legal documents (valid visa), refugees are denied from opening bank accounts making it difficult for them to receive money from abroad. They also cannot access medical services and medical assistance provided by NGOs are not enough. Respondents further reported the difficulty and risks in travelling especially long distance. They complained that due to lack of valid papers they faced immense difficulty in renting accommodation. An inability to possess legal documents is the major cause of the limitations faced by refugees in accessing public and private services.

4.5.2.5 Lack of support

All refugees described the lack of support from Thai government and UNHCR. They complained that UNHCR support is very limited and not enough for their room rent and food for their children. Most asylum seekers sadly lamented that they do not get any subsistence allowance from UNHCR; however they get limited help from local NGOs. Nonetheless, humanitarian assistance for asylum seekers (unlike recognized refugee) is provided in an organized way by only a couple of NGOs in Bangkok but this help is insufficient to cover their basic needs.

UNHCR recognized refugee is privilege comparatively to asylum seekers. Asylum seekers are person whose application for refugee status is in process but their refugee status is not confirmed yet. Asylum seekers do not get any support from UNHCR; have no opportunity to resettle in third country, and cannot get any subsistence allowance from NGOs. Asylum seekers' children can go to NGO-run school only once in week whereas a UNHCR recognized refugee children are able to attend classes five days a week. UNHCR gives THB 2500 to a male refugee, THB 1300 to a female refugee and THB 1000 to a refugee child per month. One refugee stated, "Maximum amount a family can get is seven thousand eight hundred baht per month which is not enough to survive in Bangkok." Further he said, "NGOs do not provide any help [except very limited medical help] to asylum seekers.

4.5.2.6 Inability to Work Legally

Respondents also complained that due to their illegal status they cannot work legally, thus, they are vulnerable to police arrest. Most refugees suffer with unemployment. Some of them blamed their joblessness as the cause of their physical and mental illness. Unable to work legally, their lives are dependent upon the charity of their friends, relatives, and NGOs. Many refugees felt frustrated and mentally ill by sitting idle at home.

4.5.2.7 Ineffective UNCHR Protection

Most refugees complained that UNHCR refugee certificate was unable to save them from police arrest. This fact was confirmed with many other refugees who met the same incidence. Some of them complained that UNHCR failed to protect them. They seemed more critical to UNHCR than Thai government.

UNHCR procedural delays and inability to protect refugees from arbitrary arrest were dominant theme that emerged during the interview.

4.5.2.8 Bribery and Police harassment

Thai police hardly missed any opportunity to extract money from refugees. Many refugees complained about the corrupt police official. Some refugees reported that police free them after paying bribe. Few refugees complained how they were coerced to pay bribe by Immigration and tourist official. In order to avoid going into IDC, refugees paid bribe because once in IDC, they cannot be released until they are bailed out. Many refugees reported that they were able to get freedom by greasing palm of Thai police. Other respondents expressed the same sentiments against Thai police.

4.5.2.9 Indefinite Waiting

Long and uncertain waiting period to obtain refugee status, coupled with lack of legal documents and fear of police have pushed Pakistani Ahmadi refugees into a situation where they are constantly under threat of sudden arrest. Some refugees complained that UNHCR's Refugee Determination Process is very slow and this generates insecurity among them. Many refugees held UNHCR accountable for their uncertain situation in Thailand. They also complained about long waiting period to get refugee status. One refugee reported that he has been waiting for one and a half year since he has applied for refugee status but have not heard any news from UNHCR.

4.5.2.10 Hostile neighbor and House Owner

One refugee informed that they (refugees) won't allow their children to cry and they avoid cooking Pakistani food which has strong smell as these may disturb their Thai neighbor who often threatened to inform police about their (refugees) whereabouts. Their landlords/landladies refused to return their rental deposits and refugees cannot complain about this. Otherwise, they will be reported to the police.

4.5.2.11 Constantly on Move

Most interviewed refugees frequently changed their residences due to the fear of authority. One refugee reported that he has changed his residence six times in order to avoid police arrest. Some refugees informed that after hearing or

witnessing arrest of refugees they changed their residence. They reported that local people were reluctant to rent them accommodation since adding a refugee is a punishable offence in Thailand. Not only refugees faced difficulty in finding accommodation, but also, home owners in many instances did not return rental deposit.

4.5.3 Personal observations

Researcher received full cooperation from this group of respondents; was able to establish good rapport with them, mainly because researcher could speak their language and have good connection with their community leader. Schweitzer, Robert and Steel, (2008) P.15) has stressed the importance to establish good relationship with respondents. Respondents shared their opinion without any hesitation and went extra length to explain.

Respondents usually live in groups with other Pakistani Ahmadi refugees. Residing far from the city center, their normal lives usually revolve among themselves. Majority of them lived in cramped and self-locked rooms with other family members. They often live in isolation from outside the normal social life. Their lives have been greatly affected by police regulations like the prohibition for house owners to rent their houses to persons without legal documents.

Their daily lives revolved around their social network (Ahmadi community in Bangkok). During emergency, Pakistani Ahmadi refugee asks help from other community members. These refugees freely practice their religion, and in many cases helped by local Thai people. In order to comfort their psyche, they rely on their traditional legends and spiritual guru. They constantly chant their names hoping to invoke on them the mythical powers of their spirits.

Adding salt to refugees' wounds, Immigration Bureau has urged public to call 1178 if they have information about illegal immigrants in their neighborhood; housing agents, operators of home or car rental services were also warned against helping immigrants. People who provide accommodation to illegal immigrants could face up to 10 years in jail or a fine of THB 100,000, while those providing them with transport risk five years in prison or a fine of up to THB 50,000 (Bangkok Post, 13 June 2011).

In order to avoid police detection, they do not wait or stand in a place for long (i.e. waiting for public transportation). Neither they could send their children to school nor could they go to hospital without fear of being arrested. Even travelling to NGOs office to collect food and subsistence allowance could put their freedom in jeopardy. Many refugees faced difficult situation due to language barrier since they cannot speak Thai language. Their sufferings do not end here. Due to lack of valid documents, Ahmadi refugees are unable to open bank account thus faces great difficulty receiving money- all due to lack of legal status. Nonetheless, most Pakistani Ahmadi refugees received social, financial and moral support for their local and international network from Ahmadi. Nearly all Pakistani Ahmadi refugees were reluctant to go back to Pakistan.

4.6 State Practice

Refugees and asylum seekers in Thailand without a valid visa-regardless whether they are documented by UNHCR are considered 'illegal entrants.' Thai government do not recognize 'refugee certificate' issued by UNHCR nor provide legal aid to detained refugee. Without any possibility of judicial review, refugees have to suffer indefinite period of agony in Immigration Detention Center.

Thai refugee management practices towards Pakistani Ahmadi refugees have been clear cut. Pakistani Ahmadi refugees have been arbitrarily arrested, detained and if fortunate, can be bailed out (Bangkok Post, 13 June 2011). 96 Ahmadi refugees were bailed out on 6 June 2011 and released into the custody of local NGO. Bailed out refugees enjoyed freedom of movement and were secured from arbitrary arrest. Their treatment was relatively more humane and dignified.

On 14 December, 2010 Thai immigration arrested 85 Ahmadi asylum seekers and refugees; they were prosecuted in Thai court for violating Thai Immigration law and were later sent to Bangkok Immigration Detention Center (Jesuit Refugee 11 January 2011). In addition, on June 7, 2011 (The Nation June 21, 2011) Thai police arrested thirty-two asylum seekers and refugees including Pakistani Ahmadi refugee with three children; they were also sent to immigration detention

center in Bangkok. Same source informed: Two days later, on June 9, 2011 nine Pakistani Ahmadi asylum seekers including two children were arrested in Ayutthaya.

In response to these arrests, Thai Foreign Ministry official Thai Thongpakdi said, "Thailand is ready to cooperate with international organizations (UNHCR), as far as children are concerned. It is an established policy not to separate them from their parents. Thus, children have to stay with their parents in detention center (The Nation, 2011)." Nonetheless, Thai refugee policy changes according to ruling party in nation. Among various ministries and departments, it is Ministry of Interior and Military who call the shots in refugee decision making. Nevertheless, refugee policy is centered on in denying refugees rights which is manifested in above discussed cases of arbitrary arrest and detention.

4.7 Discussion

The case discussed in the previous subchapters depicts the real situation of Pakistani Ahmadi refugees in Thailand. Pakistani Ahmadi have gained refugee status in various countries; their refugee rights have been respected by accepting their refugee claim. In Thailand, however, they have different status. Pakistani Ahmadi refugees in Thailand are in constant fear of arrest and detention because of non-refugee status. Even having certificate from UNHCR does not give them ample protection from arbitrary arrest and does not guarantee freedom of movement.

Excerpts from the interview with refugees elaborated the harsh conditions that refugees are encountering in Thailand. Major themes evolved: maltreatment and corruption, illegal detention, constant fear of being arrested, restricted movement and freedom, and uncertain future. To understand the plight of Pakistani Ahmadi refugees, and the policies governing them, in-depth interview to some officials of UNHCR, National Human Rights Commission and local NGOs were conducted.

Based from the respondent from UNCHR (interview, June 2011), main reason of the insecurity of refugees in Thailand is the lack of legal status, since Thailand is non-signatory to the 1951 Refugee Convention and its 1967 protocol. Therefore, Thai government does not provide any legal protection to refugees. Same opinions have been voiced by local NGOs such as Thai Committee for Refugee

Foundation (T.C.R.) and Asylum Access including National Human Rights Commission (hereafter NHRC), Thailand.

UNHCR and NHRC are of opinion that refugees should not be indefinitely detained and their rights must be protected. In order to avoid refugees from arbitrary arrest, UNHCR and Asylum Access has suggested (interview, June 2011) a special category of visa for refugees while on a temporary stay in Thailand whereas NHRC has recommended (Interview, July 2011) that 'Immigration law' must be inclusive to accommodate refugees and Thailand must respect its human rights obligations. Asylum Access view that refugees should not be placed in detention. Detaining refugees not only violates human rights law but also put extra burden on the government exchequer. Furthermore, Asylum Access reasoned that detention hinders education of a refugee's children.

In addition, NHRC stated, "lack of specific policy on refugees, lack of will to solve refugee issue by Thai government, and insensitive attitude of officials have aggravated vulnerability of Pakistani Ahmadi refugees in Thailand.

As UNHCR stressed, "respecting human rights of refugees is a big challenge for Thai government". Thai officials do not respect UNHCR refugee certificate ignoring the fact that person seeking refuge is indeed a genuine refugee and not an economic migrant. The release of an arrested refugee completely depends on the negotiating skills of UNHCR official. In addition, attitude of official and bribing capacity of refugees plays vital role in the release of refugees. Thus, NHRC has recommended Thai government to modify immigration law and sensitize government officials on refugee's human rights.

NHRC and TCR mentioned that 'negative images' of refugees in Thailand have fueled discrimination against them. Refugees have been perceived as threat to national security, cause of spreading disease, and strong competitors of locals in job placements. Media and Political leader has added fire to the fuel by begetting the hatred against refugee and asylum seekers (HRW, 2012).

In this issue, NHRC and TCR have considered Pakistani Ahmadis as genuine refugees thus, they must be offered protection and they should have freedom of movement within Thai jurisdiction.

However, refugee protection policy of NHRC, UNHCR and local civil society depends upon prevailing government attitude towards refugees. As UNHCR stated, “the [local refugee management] practice of UNHCR develops in a reaction to current government policy...even a new appointment of the immigration chief could make big difference to the situation, which can make UNHCR’s job difficult [to predict the future of Thai refugee policy]”. In addition, UNHCR has admitted that ‘so far, fruits of negotiation [with government] have failed to reach to vulnerable refugees. Nevertheless, UNHCR efforts were able to reduce fearful atmosphere of arbitrary arrest of refugee compared to previous years’. There are a high number of Pakistani Ahmadi asylum seekers who got refugee status (UNHCR interview, 12 June 2011). Furthermore, UNHCR has been performing a balancing act between government and refugees interest to protect Ahmadi refugees from arbitrary arrest.

Thai government has sheltered various groups of refugees (including non-conventional refugees), a fact appreciated by local NGOs and Thai scholars including Prof. Vitit Muntarbhorn. Nevertheless, so far, Thai ‘humanitarian gesture’ has failed to consolidate this into concrete legal form. Under the ‘burden sharing concept’ Thai government has tried to shift its responsibility (towards refugees) to third countries. Refugees in Thailand cannot be bailed out or released until Thai government gets assurance of resettlement (or repatriation) of refugees in third country closing the possibility of local integration for refugees. Therefore, refugees and asylum seekers, officially, deserved to be detained indefinitely until a resettlement is obtained from other countries.

This exactly is the prevailing situation in Thailand where Pakistani Ahmadi refugees and asylum seekers are victims. As detainees, they lived in an inhumane condition in immigration detention center without ‘possibility of appeal.’ They could not respond to their mistreatment; they cannot access to justice system (nearly impossible).

In this study, bail-out provided a ray of hope for released Pakistani Ahmadi refugees, where they enjoyed more freedom. With this new found freedom, their boundary of rights has expanded. Bailed out Ahmadi were no longer miserable unlike those Ahmadi refugees who were living under the constant fear of being arrested. Nonetheless, their bail out was possible due to the efforts of Asia Pacific

Refugee Rights Network and NHRC. Also, pressure from international arena played vital role in their release. Till date (26 May 2013), most Ahmadis with approved refugee status were now resettled in USA, Australia and Canada.

A refugee is always in-transit in Thailand. If arrested, he has to live in detention centers indefinitely or self-deport or have to live in constant fear of being arrested. There is neither solace nor safe refuge. UNHCR has showed its concern regarding inhumane condition in detention center in Thailand. Thai government in its 'humanitarian gesture,' has allowed NGOs to provide legal aid once in a week to detained refugees. Worth mentioning is the fact that among hundred of detained asylum seekers in immigration detention center, only two-third of asylum seekers can be provided legal aid at a time.

This chapter has analyzed data (narratives of refugee), findings of this research and presented in a specific context. In addition, opinions of various stake holders in Thai refugee politics have been analyzed. Next chapter presents a summary of chapters. Conclusion has been drawn in relation with specific research questions.

CHAPTER V

CONCLUSION

This chapter presents a summary of findings discussed in this research. Conclusion has been drawn in relation with the specific research questions followed by analysis.

5.1 Summary of Findings

5.1.1 Refugee Management Practices in Thailand

This chapter looks into the history of refugees in Thailand and Thailand's management and treatment towards them. Thailand has sheltered millions of refugees, but Thailand still lacks a consistent approach that deals with refugee issues. Most decisions are taken on ad-hoc basis and oscillate with regime change; thus, it is difficult to predict the future of refugees in Thailand. Elements of national security, state's sovereignty, and resettlement offered by western country, more or less decide Thai refugee policy. However, refugees have never been prioritized in political agenda in Thailand. In the absence of national refugee act or legislation, refugees in Thailand are regulated by Immigration law 1979 (section 17) which consider those who do not have valid documents as 'illegal immigrants' and are subject to detention and deportation. Camp-based and urban refugees lack right to free movement and are thus exposed to arbitrary arrest and official abuse.

There is absence of uniform procedure to deal with refugee cases. Thailand's domestic legal approaches vary from time to time among groups of refugees and treat all refugees as illegal aliens. Two different refugee determination mechanisms treats refugees differently; this leaves scope of discrimination. Furthermore, non-recognition of UNCHR-issued refugee certificates by Thailand has

aggravated vulnerability of refugees. So far, Thai government has been unwilling to provide legal protection to refugees and asylum seekers.

Thai refugee mechanism constitutes many powerful government departments who decide fate of refugees. These government organizations work in a non-coherent manner and take decision on an ad hoc basis resulting to a deficient pragmatic approach to refugee issues. Refugee policy developed as a response to a specific situation, lacks unified and consistent approach in tackling refugee issues.

United Nations' human rights machinery is increasingly being used to protect and enforce refugee rights. This is even more relevant in the case where state is not party to the 1951 Refugee Convention such as Thailand. Thailand is a party of major human rights treaty and Convention thus owes legal responsibility to protect human rights of a person within its jurisdiction irrespective of their legal status. However, researched case study of Pakistani Ahmadi refugee has proved beyond doubt that Thai government is not sincere enough to respect refugees' rights particularly, their right to freedom of movement and freedom from arbitrary arrest. Thai refugee policy discourages the influx of refugee in Thailand; thus, government does not provide legal status to refugees, which in turn, exposes them to arbitrary arrest and indefinite detention.

UN human rights monitoring committee has been critical to Thailand for disregarding its human rights obligations to refugees and asylum seekers in IDC. The Committee on the Rights of the Child (2012) suggests Thailand to ratify 1951 Refugee convention and its 1967 Protocol and establish a national legal institutional framework for the protection of refugees.

To offer better protection to refugees, Thailand must have a comprehensive and systematic refugee policy and mechanism. Thai refugee policy should provide a mechanism for implementation of uniform legal framework which in turn should offer a uniform refugee status determination mechanism and basic protection for refugees and asylum seekers. Rights of refugees and asylum seekers especially freedom of movement and freedom from arbitrary arrest, and right to work should be provided. Rights of a refugee child particularly their access to education and birth registration must be respected. Along with these, Thai domestic law concerning Immigration and detention regulations must be in line with international standards.

5.1.2 The Plight of Pakistani Ahmadi Refugees in Thailand

This research finds a pattern of misery and agony emerging from narratives of Pakistani Ahmadi refugees detained in IDC and Pakistani Ahmadi refugees who are on constant move in different parts of the country. Constant fear of being arrested and despondent view of an uncertain future are the common grievances of refugees on run. They cannot move freely and have difficulty accessing public and private services. They cannot work legally, lacks formal support, and have limited access to physical and mental health services. Due to the lack of legal document/legal status, Ahmadi refugees face difficulty in renting home and travelling long distances.

Those Pakistani Ahmadi Refugees who were detained complained about the inhumane conditions in immigration center, maltreatment and corruption, and lack of health care facilities. However, they enjoyed more freedom of movement and were free from arbitrary arrest and police harassment compared to those who are on run.

Seemingly, all refugee stakeholders were of opinion that refugees should not be indefinitely detained and should be provided enough protection. The National Human Rights Commission of Thailand is of opinion that 'negative image' of refugees in Thailand have fueled discrimination against them. Refugees have been perceived as threat to the national security and state sovereignty. They also have been blamed for causes of spreading disease and stealing jobs from the locals. In the absence of a stable refugee policy, stakeholders assume that the prevailing government attitude likely to decides the fate of refugees in Thailand. Finally, National Human Rights Commission, Thailand and local NGOs consider Pakistani Ahmadis, as genuine refugees and thus, should be offered protection from arbitrary arrest and should have right to freedom of movement.

The bail-out of Pakistani Ahmadi refugees is a welcome change which has helped few refugees to live a secure life in Thailand until they are resettled in third country. To mollify the worsening situation of refugees in Thailand, changes in Immigration law that will provide security of legal status of refugees are necessary. As suggested by refugee stakeholders, the government officials with direct jurisdiction on refugees and asylum seekers must undergo accountability and sensitivity training towards people seeking refuge in Thailand. Thus, a drastic modification is recommended in current Thai refugee management practice.

5.2 Conclusions

This research has produced a considerable volume of data. The data presented showed a dismal and depressing picture of Pakistani Ahmadi refugees living in Bangkok. They got stuck in legal limbo. Their situation is partially caused by the State's apathy towards their human rights. Research showed that Pakistani Ahmadi refugees were not protected by the State which is party of many international human rights instruments. In addition, insecurity of refugees and their rights violations are imbedded in Thai government's refugee management. In the absence of specific laws on refugees, refugees and other aliens including economic migrants are treated alike.

However conclusion of this research needs to be limited to the discussion of how these data reflect on the research questions. With regards to emerging human rights regime against the absolute authority of the State, an effort has been made to provide the relevant literature and set of human rights law. Following questions should be examined in consonance with the conceptual framework presented in chapter 1.

5.2.1 Insecurity of legal status

Why does insecurity of legal status of Pakistani Ahmadi refugees restrict their freedom of movement and exposes them to arbitrary detention? This question was researched primarily through the narratives of Ahmadi refugees. The research findings illustrated that fear of arbitrary arrest originating from the lack of legal status hinder Pakistani Ahmadi refugee's free movement in Thailand. It pushes their lives in uncertainty and exposes them to arbitrary arrest and indefinite detention.

Thailand is non-signatory to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol; thus, Thailand provides no specific refugee law or regulation to protect refugee rights. Difficulty lies in ensuring compliance and sustainability in the standards of protection when there is no law regulating refugee status itself. In the absence of specific refugee laws, refugee and asylum seekers together with other aliens and economic migrants, are considered 'illegal entrant' rendering refugee's status 'illegal'. Provisions in the Immigration Act 1979 do not make distinction between an ordinary tourist and a person seeking asylum desperately in Thailand. Under the Thai immigration law of 1979, refugees (classified as illegal migrants) can be arbitrarily arrested and indefinitely detained. Situation of Pakistani

Ahmadi refugees in Thailand demonstrate challenges in providing an ad hoc, arbitrary and discretionary system.

5.2.2 State's Obligation

The second question researched was: What are the human rights obligations of Thailand regarding freedom from arbitrary arrest and freedom of movement? Significantly, Thailand has acceded to several existing international human rights Covenants and Conventions and has provisions within its Constitution that uphold the rights and duties within the UN Charter and further safeguard the legal protection of non-citizens within its territory. Consequently, it recognizes a body of international law and monitoring committee which provides framework for protecting refugees. Thailand has ratified the International Conventions on the Civil and Political Rights (ICCPR) together with, ICESCR, CERD, CRC and CEDAW. Thus, Thailand has legal obligation to respect human rights of Pakistani Ahmadi refugees particularly- their right to freedom from arbitrary arrest and freedom of movement.

The ICCPR and CRC general principles must be taken into account in the application of all kinds of rights including non-discrimination, freedom from arbitrary arrest, and restriction of the free movement of refugees, asylum seekers and their children. In ratifying these Conventions, Thailand is obliged to create an environment that fulfills these principles. In addition, Thailand has explicit obligations to harmonize its domestic law in par with these principles (human rights standards).

Discussed case studies have shown that Thailand has arbitrarily arrested Pakistani Ahmadi refugees, incarcerated them into inhumane condition of indefinite detention without possibility of judicial review; thus, it is in breach of its human rights obligation. Narratives of Pakistani Ahmadi refugees clearly confirming their unjust treatment at the hands of Thai official is enough to substantiate the fact that Thailand is complicit in disregarding International refugee protection standards and has ignored its human rights obligation to Pakistani Ahmadi refugees.

5.2.3 Protection measures

The third question researched was: what are the Thai regulations related to protection of Pakistani Ahmadi refugees? This question is answered by researching

Thai legal documents. Findings of this research demonstrate that refugees are not adequately protected by Thai law. All refugees and asylum seekers are subject to the provisions of the Immigration Act 1979 which deems all non-Thai entering Thailand without permission to be illegal aliens; therefore, they are subject to arrest, detention and deportation. With no specific law for refugees and asylum seekers, Thailand treats refugees and asylum seekers similarly with other migrants.

Thai Constitution of 2007 has no specific provision for asylum seekers and refugees; there is no uniform legal framework that provides a uniform refugee status determination mechanism and basis for refugee protection. In addition, the various executive bodies with jurisdiction over refugee issues decide and adopt policies in an ad hoc, inconsistent, and non-transparent manner.

Nonetheless, National Human Rights Commission of Thailand which is mandated to protect human rights has recently been vocal to refugee rights which resulted in the release of 96 Pakistani Ahmadi refugees from Bangkok Immigration Center. In addition, implementation of 2008 Civil Registration Act has paved the way for birth registration for all children born in Thailand, including refugee and asylum seekers though some irregularities in implementation are still reported.

In sum, it can be said that lack of legal status, along with the concomitant problem of arbitrary arrest, restrictions on free movement, and police harassment are vital factors in generating insecurity among Pakistani Ahmadi refugees and asylum seekers. By denying basic human rights of Pakistani Ahmadi refugees, Thailand overtly is in breach of its international human rights obligation though some progressive steps have been taken. However, profound problem of refugee's insecurity remains, mainly due to the lack of specific refugee law and regulation.

5.3 Analysis

Conceptual analysis reveals how States through immigration control regulates movement of refugees and asylum seekers within its jurisdiction. This case study about Pakistani Ahmadi refugee shows how Thailand refugee policy responds to a specific situation, which, most of the time is inconsistent and insincere. This lack of

sincerity is apparent in the absence of a safeguard mechanism for refugees who cannot move freely without taking the risk of being arrested.

Case studies of Ahmadi refugees has reflected upon the root cause of their 'insecurity' in Thailand and explained why States functions in a certain manner. Thailand does not allow refugee to integrate permanently on Thai soil; rather, a refugee in Thailand is always in transit.

Capturing above phenomenon into conceptualization explains more clearly as why state (Thailand in this case) behaves in a particular manner when dealing with Immigration and refugee issues and how and why refugee policy takes certain dimension. Sovereignty is at the core of the state system on the basis of which the state (regulates migration laws) decides entry and stay of person including asylum seekers, refugees, and stateless people in its border and detain them if immigration law has been violated. State's response to refugees is based upon ad hoc decision influenced by national security, International human rights discourse, and response to resettlement offer. Usually, ad hoc decisions can either result to harsh treatments of refugees or in bail-out of refugees.

Thailand offers no legal safeguard to refugees. If arrested, a refugee is incarcerated in a detention center with limited access to freedom of movement and right of personal liberty and security. Bail-out is possible only upon assurance from NHRC of resettlement of these refugees to third country.

Consequently, bail-out expands Ahmadi refugee's 'rights of boundary'. After bail-out, Ahmadi refugees lived in the custody of a local NGO, where they enjoyed more freedom of movement, security and could access various rights. More importantly, Thai government has recognized Ahmadi refugees legal existence and their rights though with some restrictions and limitations. However, this temporary 'bailed out status' of Ahmadi still meant to control and regulate their lives through their reporting obligation to police on a monthly basis.

Arbel (2013) has argued, as how refugees 'rights of boundary' gets affected due to the conflicting decision of Canadian court of Appeal and Lower court. However, in this case study, rights of boundary of bailed-out Ahmadi refugees did get expanded. After bailed out, they were no longer in miserable situation. The bailing out process produced an expanded boundary of rights which provided Ahmadi refugees a

ray of hope in the midst of dark clouds of insecurity in Thailand. This ‘boundary of right’ has become an area where treatment to Ahmadi refugees was humane and they could live a more dignified life.

Findings of this research reveal that Thailand is in breach of its human rights obligations violating Pakistani Ahmadi refugees’ human rights. State should make bail-out process a norm easily accessible and affordable to refugees, rather than an event happened by chance. Bail-out could be a viable option to ease the hardship of indefinitely detained refugees in Thailand. Researched case has reflected that bail-out process could help Thailand to accommodate refugees safely within its jurisdiction without affecting Thai national security and sovereignty and respecting refugee’s human rights.

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APPENDIX

Interview Guidelines for Refugees

Note: Open Interviews will be conducted. Thus, follow-up questions may arise during the interview.

1. Personal Profiles (will be kept confidential)

- Name
- Age
- Educational Background
- Profession
- Civil Status

2. Push and Pull Factors

- What encouraged you to take refuge in Thailand?

3. Migration process

- What is the process of your migration to Thailand?

4. Refugee Life in Thailand (**Bailed out Refugees**)

- When did you arrive and got arrested in Thailand?
- Did you offered free legal advice /representation?
- How many hours do you have to work in detention center per week?
- Were you allowed to move freely inside the detention center?
- Were you accommodated separately from convicted criminals?
- Did you get the opportunity to receive medical treatment/psychological counseling?
- Were you beaten or mistreated in detention center?
- Did you get enough food and clothing inside the detention center?
- Did you get the opportunity to exercise your religion and to receive a diet in keeping with your religion?
- Did you get the opportunity to make regular contact/ receive visit friends /relatives?
- Did you get enough space in detention center to sleep? Were you allowed to do exercise?
- Did you have access to basic necessities, such as bed, shower facilities, basic toilets?
- Did you enjoy freedom of movement when you have bailed out?

- How's your life after release from Immigration detention center?
- Did you feel safe after release?

5. Refugee Life in Thailand (in general)

- Do you have any family members living with you in Thailand?
- What do you do during your free time? Who do you spend it with?
- Have you find difficulty to arrange accommodation?
- Are you afraid while travelling to public places?
- How and how often do you access public services?
- Do you want to go back to Pakistan? For how long do you want to stay here?
- Has any of your family members arrested in Thailand? Who and when was that?
- What do your parents/spouse/children think of living as a refugees/asylum seekers in Thailand?
- Do you feel safe in Thailand?
- Do you work here? How much you earn and what kinds of work you do?

6. Perceptions and Opinions

- What were your expectations before coming to Thailand? Did it meet your expectations? Why or why not?
- What are the problems that you experiences as a refugee and asylum seeker? Can you share to me stories about these problems?
- How do you deal with these problems?
- Are you familiar (or do you know and understand) with your rights as a (1) refugee in Thailand?
- Are you satisfied with your life in Thailand?

BIOGRAPHY

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