

## SUBMISSION 39<sup>th</sup> session UNIVERSAL PERIODIC REVIEW 2021 – Thailand



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### **Ahmadi refugees in Thailand**

#### **I. Introduction**

1. The **International Human Rights Committee (IHRC)** is a human rights organisation which monitors and focuses freedom of religion or belief issues. The IHRC has expertise on the human rights abuses and violations against Ahmadi Muslims. The IHRC works closely with other human rights organisations, civil society organisations and individuals working on such issues both within Thailand and outside of Thailand. The IHRC conducted a fact-finding report<sup>1</sup> in 2017 on the situation of refugees in Thailand and Malaysia. This was the first comprehensive report produced on the situation of Ahmadi refugees.
2. **Coordination des Associations et des Particuliers pour la Liberté de Conscience (CAP Freedom of Conscience)**  
CAP Freedom of Conscience is a secular European NGO with United Nations Consultative Status, created in 1995 and dedicated to protect the

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<sup>1</sup> [http://hrcommittee.org/wp-content/uploads/2019/08/HRC-Report-2019\\_web-edition.pdf](http://hrcommittee.org/wp-content/uploads/2019/08/HRC-Report-2019_web-edition.pdf)

Right of Freedom of Religion and Belief.

CAP Freedom of Conscience combats all forms of discrimination based on religion or belief by alerting European and International bodies.

CAP Freedom of Conscience collects testimonies of discrimination and human rights violations affecting religious or belief communities in order to disseminate them to international bodies, and in order to raise awareness and inform them as well as to generate debate on the protection of Freedom of Religion and Belief.

3. It is well documented that Ahmadis have fled from Pakistan where they face multiple forms of persecution from the State and non-state actors. As we know, realities can differ dramatically from normative standards. The situation of the Ahmadiyya Muslim Community is a case in question. In Pakistan, Ahmadis suffer discrimination in all spheres of life, from education to employment, from family life to political participation, from physical safety to access to official documents. Their persecution is systematic, orchestrated by state agencies and militant groups, which frequently cooperate. Criminal law provisions specifically targeting Ahmadis forbid them from manifesting their religious self-understanding while forcing upon them a religious label that they reject. No wonder that many Ahmadis flee from the country, in which they cannot feel safe and at home.
4. Thailand is not a signatory to the 1951 UN Refugee Convention relating to the Status of Refugees (“Refugee Convention”) or its 1967 Protocol. Thailand lacks a national asylum policy. Without a legal status, refugees are vulnerable to arrest, indefinite detention, deportation and possible “refoulement” in contravention of the principles with the UN Convention. Living conditions of refugees are generally poor, with large families often living in one room only.
5. There are approximately 1,000 Ahmadi refugees in Thailand. Many of these individuals face harrowing circumstances in their home country (Pakistan)

simply for claiming their religious identity, exercising or manifesting their faith. This includes serious threats to life, liberty and physical integrity, leading them no choice but to flee their homes, towns, or countries, with or without their families, to countries where they think they could seek protection. Moreover, once in their new country these victims can also find themselves strangers in a new land troubled by familiar aspects of their persecution, including daily racism, xenophobia and discrimination. Hence, these victims of religious persecution are trapped in a vicious cycle of unfair treatment simply for laying claim to their identities.

6. Most of the refugees arrived after the Lahore attacks<sup>2</sup> in 2010 and have been in Thailand for at least five years but many have been living in these countries for longer periods with no end in sight. Numbers coming into these countries have dramatically been reduced in the past few years. UNHCR is aware of this. The issue is to deal with those currently in these countries who are in no better condition than Pakistan. The argument that dealing with the current backlog of Ahmadi cases will lead to more Ahmadis entering Thailand is not credible.
7. Non-refoulement – Ahmadis cannot be returned to Pakistan where they would face torture, cruel, inhuman or degrading treatment or punishment and other irreparable harm. This is simply not an option. **There is no real durable solution for Ahmadis in Thailand.** The resettlement of Ahmadi Muslims to third countries should be prioritised particularly given the current situation in Pakistan.

## **II General situation in Pakistan for Ahmadi Muslim**

1. Ahmadis are under constant persecution in Pakistan, most notably, from two sources i) state persecution and ii) persecution from private individuals and groups which has direct or indirect state support.

This situation has escalated since the Lahore mosque attacks in 2010.

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<sup>2</sup> <https://www.hrw.org/news/2010/06/01/pakistan-massacre-minority-ahmadis>

2. Under the first kind of persecution Pakistani laws<sup>3</sup> are being used to persecute Ahmadis as set out below:

a. 2nd amendment to the constitution whereby Section 260(3) was added to the constitution and Ahmadis were declared to be non-Muslims despite their own belief and thought. Ahmadis believe that they are Muslims but still the national assembly of Pakistan on the basis of sheer majority declared them non-Muslims. This amendment hits at the very core of the ICCPR which recognizes some fundamental and basic rights to conscience, thought and religion. The first part of this right has no qualifications and is absolute in terms and that is the right to believe in some religion and thought and to express that belief. The Ahmadis are deprived of this absolute and inviolable right in Pakistan. By virtue of Ordinance XX of 1984, it is an offense if an Ahmadi believe and express his/her true belief that he is a Muslim. Any express or implied expression by Ahmadis that they are Muslims will amount to an offense under the aforementioned Ordinance. Even if an Ahmadi greets a Muslim with usual Islamic greetings i.e. Assalamo Alaikum (God bless you) he may be liable to 3 years' imprisonment for posing to be a Muslim.

b. Relevant extract of the Ordinance XX which added Sections 298-B and 298-C to the Pakistan Penal Code:

"298-C Any person of the Qadiani group or Lahori Group (who call themselves 'Ahmadis' or by any other name) who, directly or indirectly, poses himself as Muslim, or calls, or refers to, is faith as Islam, **or preaches or propagates his faith, or invites others to accept his faith, by words, either spoken or written, or by**

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<sup>3</sup> Ordinance XX 1984

**visible representations, or in any manner whatsoever outrages the religious feelings of Muslims,** shall be punished with either description for a term which may extend to three years and shall also be liable to fine."

3. It can clearly be seen from above provisions that Ahmadis are expressly prohibited from expressing their true faith as Muslims. They are also barred for communicating about their faith to others as it will most certainly constitute propagating their faith or inviting others to their faith.
4. The general security situation for Ahmadi Muslims in Pakistan is dire. The Blasphemy legislation and Ahmadi-specific repressive laws are implemented on a daily basis at political, economic, social and educational level affecting Ahmadis from all sectors of society and of all ages. This repressive legislation and state endorsed compliance has had traumatic consequences for all Ahmadis as they continue to live in fear of daily persecution by the state, the judiciary, the police, religious vigilantes, media and the general public, thus effectively denying them their most basic fundamental entitlements of religious freedom and human rights.
5. Further even Pakistani courts are at best silent towards and at worst supporting the persecution of Ahmadis. Most judges are scared to take any decision protecting Ahmadis. In some cases (at least 3 at High Court level) even after announcing decisions in favour of Ahmadis, judges were forced to change them back under pressure from clerics and lawyers representing the hardline religious groups. This deprives Ahmadis of their sole hope of any sort of justice from the law in Pakistan.

6. In the fact finding report<sup>4</sup> the previous UN Special Rapporteur for Religious Freedom or Belief, Heiner Bielefeldt stated:

*“The community has suffered numerous acts of harassment, discrimination, intimidation and violence committed by State agencies or non-State actors or a combination of both. Such acts inter alia include the dissemination of hate propaganda through public media; attempts to alienate Ahmadi children from their families, for instance in the context of school education; administrative stipulations employed to prevent people from defining their religious identities freely and openly; threats of draconian blasphemy laws, partially explicitly targeting the Ahmadiyya Muslim community; systematic discrimination in all sectors of society, including education, the labour market and access to health care; destruction of houses of worship and vandalism of cemeteries; targeted killings in a climate of impunity; denial of asylum on religious grounds. Violation of freedom of religion or belief of Ahmadis typically goes hand in hand with other human rights abuses.*

*What makes the case of the Ahmadiyyah Muslim Community special is that the numerous manifestations of extreme disrespect directly affect a core element of freedom of religion or belief, i.e. everyone’s freedom to define themselves in matters of faith and to communicate their self-understandings free from discrimination and free from fear. In some countries, Ahmadis experience that this freedom is not only factually encroached but also even conceptually denied to them. In the face of ongoing abuses and the systematic persecution suffered by this community, the international community has a responsibility*

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<sup>4</sup> Fact Finding Report by International Human Rights Committee and Asian Human Rights Commission on the persecution of Ahmadis 2015.

*to clearly and loudly speak out against and deal with the violations of freedom of religion or belief of members of the Ahmadiyyah Muslim Community wherever they occur.”*

7. The law clearly states that Ahmadi Muslims cannot preach or propagate their faith. This is beyond doubt and dispute. This makes the Ahmadiyya Muslim Community unique in Pakistan as being the only religious community in Pakistan to be targeted by the state simply on grounds of faith. This legislation not only prohibits preaching and other forms of proselytizing but also in practice restricts other elements of manifesting religious belief, such as holding open discourse about religion with non-Ahmadis, even where these do not amount to proselytizing.

### **III THAILAND**

8. All foreigners are subject to immigration regulations. As Thai law makes no provisions for the legal entry or stay for asylum-seekers, most enter Thailand with a tourist visa. Tourist visas are easy to obtain and available with proof of funds available, as well as a confirmed flight ticket and hotel reservation. Current regulations also call for showing one year of bank statements.
9. Some refugees may be able to secure non-immigrant visas. These are available in several categories, such as education, work, or for retirees. While most non-immigrant visas require sponsors in the form of educational institutions, businesses, or family, the retirement visa, often referred to as a non-immigrant OA visa, is available to foreigners who fulfil the requirements. However, particularly the financial requirement, being able to show proof of funds makes it difficult to obtain. Further, this requirement must be satisfied every year, and as such is rarely a

secure, long-term solution for a refugee in Thailand.

10. The practical result of the Thai immigration system is that the vast majority of urban refugees in Thailand are overstaying their visas. Previously, this was less of a problem than what it is today. Since the military coup in 2014, the government has initiated several measures in order to combat visa overstay and foreign criminals. This has led to the arrest and indefinite detention of a large number of refugees, even if their only offence is overstaying their visa. Refugees were previously eligible for bail in return for reporting their whereabouts twice a month.
11. However, in the past two years bail has not been possible, and refugees already out on bail have had their bail revoked. The result has been a swell in numbers of detainees in Thai IDCs, particularly in Bangkok. These detention facilities are meant as a short-term solution pending the foreigner making the necessary arrangements to leave Thailand, but as Thailand does not practice deportation of most foreigners, refugees have generally not been forced out of IDCs. The result is severe overcrowding, coupled with the almost total lack of healthcare, a situation which has persisted for years for some refugee detainees. As bail is no longer an option for refugees, they stay in the IDC until they make arrangements for returning to the country they fled from, or resettlement to a third country.
12. Refugees in Thailand are restricted from working legally by the country's labour laws. Many Pakistani refugees try to secure employment to have enough money to cover their basic family needs, however they engage in work that is often irregular, temporary, dangerous and even degrading. In addition, wages are much lower than Thai citizens.
13. Pakistani refugees are subject to arrest and arbitrary detention in IDCs and government run shelters. Female Ahmadi refugees are particularly vulnerable due to their distinctive dress which means they can be easily



identified and targeted by authorities.

14. Thai authorities regularly conduct raids to identify, arrest, detain and deport migrants in violation of Thailand's immigration law. Pakistani refugees are among those who are arrested and detained. In August 2018, the government launched a nationwide crackdown on illegal migrants and arrested over 200 refugees and asylum seekers including from Pakistan. They were detained in squalid immigration lockups with more than 50 children being separated from their parents.
15. Thailand's domestic laws guarantee the right of all children to quality and free basic education provided by the State for at least 12 years regardless of legal status. Refugee children are mostly unable to access schools due to restrictions on movement, language barriers, transport fees, the long distances and discrimination.
16. Exposure to prolonged stress, lack of legal status, living in overcrowded shared rooms, poor housing and having no access to adequate nutrition and safe physical space are associated with a wide range of health conditions, including scabies, respiratory infections, asthma, Tuberculosis, Non-Communicable Diseases, deteriorating mental health and motor skills impairment among Ahmadi children.
17. As Thailand does not legally recognise refugees as a distinct class of people, local integration is not possible.
18. Thailand has not ratified the 1951 Refugee Convention and does not recognise the status of refugees. Thailand has ratified the International Covenant on Economic, Social, Cultural Rights without any reservation. Paragraph 30 of General Comment 20 states: 'all children within a State, including those with an undocumented status, have a right to receive education and access to adequate food and affordable health care.' The International Covenant on Economic, Social and Cultural Rights apply to everyone including non-nationals, such as refugees, asylum- seekers, stateless persons regardless of legal status

and documentation. The actual situation of refugees and their children is in breach of this Treaty.

19. Ahmadi refugees and asylum-seekers in Thailand are trapped in an extremely vulnerable situation and urgently need practical, sustainable solutions. The migration process, language barriers, poor housing conditions, lack of adequate nutritious food and sanitation, poor legal protection and exposure to prolonged stress jeopardise their health, well-being and future prospects.
20. Many Ahmadi asylum-seekers are in dire health conditions and in urgent need of health services, but do not have access to health facilities due to legal issues and the inability to pay for medical fees and the cost of transportation. This has significant consequences for Ahmadi refugees and asylum-seekers as well as the host community.
21. Ahmadi refugees in IDCs are deprived of hygienic conditions, access to clean water, health care facilities, adequate food and physical space. Some asylum-seekers and detainees have been detained for many years, with limited access to legal advice and psychological support. Some detained refugees reiterated their need for legal advice, hygienic conditions, medical services and access to nutritious food and clean water in the IDC.
22. Many Ahmadi refugees and asylum-seekers have endured psychological trauma due to violence, Adverse Childhood Experiences, isolation, lack of freedom of movement and physical security. Many of them show signs of depression, anxiety, suicidal thoughts and aches and pains that do not have an obvious physical cause.
23. Ahmadi refugees in Thailand are prohibited from working legally. This leaves them no other option than to seek employment in the informal sector where they are vulnerable to exploitation, arrest and detention.

#### **IV RECOMMENDATIONS**

24. Thailand should immediately release from Immigration Detention Centers (IDCs) any person that UNHCR has declared an asylum seeker or refugee and who UNHCR raised concerns about.
25. Immediately conduct a review of detention conditions in IDCs and implement changes to improve the inhumane and degrading conditions faced by detainees in line with the United Nations Standard Minimum Rules for the Treatment of detainees and prisoners.
26. Implement an immediate plan of action to provide proper healthcare facilities and sanitation to asylum seekers and refugees in IDCs and address overcrowding in IDCs.
27. Withdraw Thailand's reservation to Article 22 of the Convention on the Rights of the Child and guarantee that education in Thailand is accessible for forcibly displaced Ahmadi and other asylum seeking and refugee children.
28. Implement structures to enable Thailand to sign and ratify the 1951 Refugee Convention, its 1967 Protocol and recognize the status of refugees.
29. End the detention of parents and minor children.
30. Implement systematic data collection to identify the needs, risks and vulnerabilities of Ahmadi Muslim asylum seekers and refugees residing in Thailand.
31. Ensure medical costs for asylum seekers and refugees are brought in line with those paid by Thai nationals.
32. Work with UNHCR and the international community to resettle Ahmadis in Thailand.