DISPLACED BURMESE IN THAILAND:
REFUGEE POLICIES AND IMPACT ON
ACCESS AND RIGHTS, 1988-2008

by

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Abstract

My thesis research centres on the question, how have refugee policy formation and ground level implementation impacted the conditions and experiences of displaced Burmese in Thailand from 1988 to 2008? I examine the effects of the production of subject categories through Thai national laws and practices, a bilateral agreement, and the United Nations Convention on the Status of Refugees, in order to uncover how official policies are used to manage refugees. This study addresses questions regarding policy formation and implementation toward Burmese who have fled political oppression in Burma (Myanmar) and identifies issues related to the recognition of difference and the allocation of rights in the cultural contexts of migration and integration of minority populations. The formulation and implementation of refugee policies has global implications since policy solutions in general are developed from a perspective that ignores the emergence and significance of displacement.
Acknowledgments

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Dedication

Dedicated to my late father who through example, passed on his love, enthusiasm and commitment for the people of Burma to me.
# Table of Contents

Abstract ........................................................................................................................ ii
Acknowledgments ........................................................................................................ iii
Dedication ..................................................................................................................... iv
Chapter 1: Introduction ................................................................................................. 1
Chapter 2: Analytical Frameworks ................................................................................ 9
  Conceptualizing the Minority Position of Displaced People .................................... 11
Chapter 3: Burmese Migration to Thailand Since 1988 .............................................. 15
  Politically Constructed Categories of Displaced People ........................................ 20
Chapter 4: Thai Burmese Relations ............................................................................ 32
  Historical Relations ................................................................................................. 32
  Relations from 1988 to 2008 .................................................................................. 35
Chapter 5: Method ....................................................................................................... 41
  Policy Archaeology as a Methodology ..................................................................... 41
  Thai Governmental Structure .................................................................................. 45
  Primary Sources of Data .......................................................................................... 46
  Limitations .............................................................................................................. 49
Chapter 6: Results ....................................................................................................... 50
  International Refugee Law ....................................................................................... 50
  National Refugee Policy ......................................................................................... 62
  Immigration Act 1979 ............................................................................................. 66
  Alien Work Act 2008 ............................................................................................... 70
  Nationality Act 2008 ............................................................................................... 72
  Memorandum of Understanding 2003 ................................................................... 76
Chapter 7: Discussion ................................................................................................. 79
  The Emergence of Refugees ..................................................................................... 79
  Language and Discourses ....................................................................................... 80
  Governmentality, the Law and Categorization ...................................................... 83
  Policy Solutions ..................................................................................................... 84
  Challenges to Policy Implementation ..................................................................... 87
  Policy Studies ....................................................................................................... 89
Chapter 8: Conclusion ................................................................................................................................. 91
Recommendations to the Royal Thai Government .................................................................................... 91
Recommendations to the International Community (Donor Governments & UNHCR) ......................................................................................................................... 92
Recommendations to Burmese Authorities ............................................................................................... 93
Future Directions ........................................................................................................................................ 93
References .................................................................................................................................................. 96
Policies Examined as Data ......................................................................................................................... 96
Other Sources ........................................................................................................................................... 96

List of Figures

Figure 1. This map of Southeast Asia shows the geographical location of Burma (Myanmar) and Thailand. (Map provided courtesy of the ReliefWeb Map Centre, UN Office for the Coordination of Humanitarian Affairs). ................................................................. 1

List of Appendices

Appendix A Acronyms ............................................................................................................................... 105
Appendix B Timeline of Major Events Relating to Displacement, 1988-2008 ............................................ 107
Appendix C Timeline of Refugee Policy Documents ............................................................................... 110
Appendix D Key Players in Refugee Policy in Thailand ......................................................................... 112
Appendix E Types of Legal Status for Displaced Persons: Policy and Practice ................................... 113
Appendix F Permission for Copyrighted Map ......................................................................................... 115
Chapter 1: Introduction

“Discourses” do categorize people, and sometimes the labels are denatured caricatures of what those people are or believe themselves to be.

(Edelman, 2002, p. 409)

Figure 1. This map of Southeast Asia shows the geographical location of Burma (Myanmar) and Thailand. Map provided courtesy of the ReliefWeb Map Centre, UN Office for the Coordination of Humanitarian Affairs.
My thesis research centres on the question, how have refugee policy formation and ground level implementation impacted the conditions and experiences of displaced Burmese in Thailand from 1988 to 2008? I examine the effects of the production of subject categories through Thai national laws and practices, a Thai-Burmese bilateral agreement, and the United Nations (UN) Convention on the Status of Refugees, in order to address questions regarding policy formation and implementation toward Burmese groups who have fled political oppression in Burma (Myanmar). Although I focus on the Burmese in Thailand, the implications of my research are generalizable to other parts of the world. Displacement is of global importance. According to the United Nations High Commissioner for Refugees (2009), there are 42 million people globally uprooted by conflict and persecution. This number includes 16 million refugees and asylum seekers, and 26 million internally displaced people. In this study, I identify issues related to the recognition of difference and the allocation of rights in the cultural contexts of migration and integration of minority populations. The effects on the application and implementation of refugee policies at both international and national levels indicate that policy solutions are sought from a perspective that ignores the reality and constructive nature of displacement. At the same time, the rise of immigration law as a means to govern and manage displaced populations is accepted as natural and is not questioned or identified as socially constructed. Global refugee policy orientations serve to maintain and restabilize the existing social order rather than challenge its existence. Language and discourses in legal codes are utilized in ways that mask social conflict, dissent and differences of populations and instead paint an image of universal public interest. Moreover the management of displaced populations is swayed by governmental politics and bilateral relations. I suggest that social justice for displaced groups throughout the world requires correcting inequality within the legal realm through a combination of redistribution of rights and resources, and the recognition of the differences of the subordinated from the dominant, attenuated through the construction of social categories. The combination of redistribution and recognition affirms the equitable outcomes of

1 The military regime changed the country’s name to Myanmar in 1989 but many people who are opposed to the junta (including the author) still refer to the nation as Burma.
social arrangements. This approach fosters the transformation of the underlying legislative, judiciary and other social structures that perpetuate the political, social and economic marginalization of certain identities around the world.

I begin chapter two by outlining key theorists and analytical concepts. I rely on a poststructuralist approach that examines the interplay of language, knowledge and power. I draw on Foucault’s (1972) study of the production of non-linear discourse governed through rules of exclusion since it allows me to interrogate how socially and politically constructed categories of displacement such as “refugee” and “migrant” come into common usage and function as technologies of inclusion and exclusion. The production of discourse, governed by rules of exclusion, determines what is prohibited and what is considered reasonable; it suggests control is exhibited through disciplinary institutions like the judicial and legislative systems. Foucault’s study of discourse is relevant for my analysis because it explains the emergence of classification, the construction of subject categories, and the discontinuity between how and when discourses on displacement are produced.

Appadurai’s (2006) *Fear of Small Numbers* further supports my examination of Thai-Burmese relations because it situates how majority populations cultivate attitudes and actions of intolerance toward political, ethnic or numerical minority populations through national ethos, social uncertainty and anxiety, which are exacerbated by increasing and intensifying flows of information and knowledge globally. Appadurai’s concept of the predatory identity is a reference to an anxiety that stems from the majority awareness that it is part of an incomplete national whole. On the other hand, Fraser’s (2003) analysis of social justice and identity politics provides an interpretive basis for understanding the majority Thai position of intolerance. This intolerance occurs through the majority’s misrecognition of its position of privilege and results in policy toward minority populations that is restrictive.

Next, in chapter three I contextualize the history of Thai policy development toward displaced Burmese civilians by describing how repressive measures under a military dictatorship in Burma have led to massive displacement and relocation to
Thailand since 1988. I identify various categories of displacement and deconstruct those that exist in Thailand. I question how certain ethnic Burmese in Thailand are constructed through legal codes as “displaced”, “aliens”, “illegal migrants”, and “asylum seekers”, and how this codification has impacted various groups’ access to rights to labour and social services such as education. I suggest that labels like refugee do not reflect the thousands of undocumented migrant workers and asylum seekers who fled Burma due to oppression but are not recognized as in need of protection. I do not propose that all individuals who have been labeled migrant workers should be considered displaced, as some genuinely move only for economic reasons rather than persecution. Instead, I highlight that in reality there is often a blurring of the boundaries of these groups. Lack of recognition of the need for protection has had significant effects on how migrant, asylum seeker and refugee populations have been treated and truncate a social justice that Fraser (2003) argues requires both recognition and redistribution.

My analysis highlights how identity formation is a gray and at times contradictory area, evident in constructions of Thai nationhood outlined in chapter four, which have historically used “us “versus” them logic to demonize the Burmese regime. The same reasoning is currently used by Thailand to forge friendship with the junta. This official friendship between the two nations, evident in increasingly closer economic relations and in Burma’s entry in 1997 into the Association of Southeast Asian Nations (ASEAN) has had detrimental effects on the displaced Burmese population in Thailand. Thus, the context of Thai-Burmese relations and discourses surrounding identity construction will be a backdrop to examine the effects of Thai laws and policy on displaced Burmese from 1988 to 2008.

Chapter five is a discussion of my methods. I use policy archaeology as a methodology to interrogate Thai national and international policies and bilateral agreements. This methodology examines the emergence of particular societal problems. It draws upon Foucault (1972) in asking how a discursive statement or a social problem is

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2 A military led government
made obvious, nameable and describable. Policy archaeology questions, for example, how some displaced people came to be constructed as migrant workers and in need of regulation, while other groups, through policy measures, became refugees in need of both protection and regulation. Thus, policy archaeology examines the social construction process of social problems while also identifying regularities, or the rules of norms across problems (Scheurich, 1994).

I use policy archaeology in my research rather than traditional methods of policy analysis that describe, offer and implement solutions to the “problem” of Burmese refugees in Thailand, because I aim to investigate the underlying rationalities of displacement instead of merely explaining its characteristics. One strength of policy archaeology is it allows me to ask questions that address the systemic barriers in Thailand facing Burmese who have fled their homes. Policy archaeology also asks how Burmese displacement in Thailand has become an obvious, nameable and describable social problem within the legislative system that welcomes certain policy solutions yet silences alternative options. It questions the emergence of problems and refuses to consider these events as natural. The policy archaeology framework, by repositioning social problems like displacement, allows for more imaginative policymaking by providing a forum for unrecognized voices. Broader and more inclusive definitions of refugees as well as policy solutions that have not gained prominence in international legal codes are brought to the forefront through policy archaeology. As such, it proves to be a powerful methodology for my analysis. Thus, my methodology of policy archaeology informs the analysis of my research.

International and national legal codes and a bilateral agreement are the policy I use as my data. The documents I analyze in chapter six include: the 1951 UN Refugee Convention and its 1967 Protocol, the Immigration Act (1979), the Alien Work Act (2008), and the Nationality Act (2008). Legal documents related directly to refugees do not exist in Thailand. The Immigration Act (1979) and Alien Work Act (2008) are significant documents that address the rights, liberties and regulations that affect displaced people residing in Thailand. The UN Refugee Convention is the most comprehensive instrument on refugee protection. Examination of the Nationality Act
(2008) allows for an inquiry into the long-term policy solutions for Burmese seeking refuge in Thailand. The last legal document I analyze is the Thai-Myanmar Memorandum of Understanding (MOU), a bilateral agreement between Burma and Thailand that charts the management of labour between the two nations. This document also highlights the interplay of economic and political relations between Thailand and Burma. I chose to examine these major policy documents rather than other legal instruments because they best capture the ways in which displaced groups are described, categorized and governed by states.

Chapter seven is a discussion of my findings. I outline the emergence of refugees in the global realm and Thailand, and situate how displaced persons have been made an obvious problem during periods of massive influx of particular groups. I discuss the discontinuity in how displacement and the principle of *refoulement* are defined and link them to the emergence and solution for refugees, as outlined in legal codes and connected with governmentality. Governmentality is a concept Foucault (1991) refers to as an authoritarian mentality that expands its influence into all aspects of the lives of its citizenry. Governmentality seeks to enforce public and social order and works jointly with the law to create a greater awareness for categories of difference. Governmentality provides a backdrop to discuss how third country resettlement has become the most readily available policy solution rather than citizenship by naturalization or voluntary repatriation. I examine challenges to implementing international frameworks at the national level. I suggest legal codes must be understood in the context of blurring of boundaries between asylum and other forms of migration and the difficulty in not having a universal definition of refugees. I discuss governmental politics, economic relations and international pressures influencing national refugee policy.

Finally, I outline my recommendations to the Royal Thai Government (RTG), the international community and the Burmese authorities in chapter eight. In making recommendations to the RTG, the international community and the Burmese regime, I recognize the tensions of working within and against the system. These policy recommendations work within a positivist tradition which does not address emergence issues connected with displacement. Nor does it address the rise of governmentality in
the management of refugees. Taking this tension into consideration, I draw on Fraser’s
(2003) two-dimensional model of social justice for displaced Burmese, which requires
correcting inequality within the legal realm through a combination of redistribution of
rights and resources, and the recognition of the differences of the subordinated from the
dominant attenuated through the constructiveness of categories. My aim is to bring
awareness to the effects that international, national and bilateral policy instruments have
on creating categories of difference for displaced Burmese populations in Thailand. I
conclude with future research and policy directions and implications for displaced
Burmese in Thailand.

My intellectual and methodological preparation for my research has been a
mixture of in-depth analysis of Foucault’s (1991) work on governmentality, knowledge,
power and language discourses, combined with Scheurich’s (1994) policy archaeology,
Appadurai’s (2006) analysis of majority-minority relations and Fraser’s (2003) thesis on
social justice and identity politics. Foucault (1991) and Scheurich (1994) have
influenced my work theoretically and methodologically. They have helped me
interrogate how certain policies toward displaced Burmese in Thailand have materialized
while other legal codes have not come become visible, while Appadurai’s (2006)
argument surrounding the cultivation of predatory identities has also been a key element
of my analysis.

I have expanded my knowledge of the scholarship on the current and historical
Thai context in which past policies have been formulated through reading the works of
the Thai scholar Chachavalpongpun (2005) who writes on historical and current Thai-
Burmese relations. I also turn to the scholar, Winichakul’s (1994), analysis of how
constructions of Thai nationhood play a role in nation building and its relations with other
minority groups. Anderson’s (1991) notion of “imagined communities” has also
highlighted important elements that intersect with national policy implementation. This
context along with critical methodological and theoretical frameworks is fundamental to
my analysis.
Finally, my personal and professional background led to the emergence of my thesis question. Grappling with my own identity as a Thai-Canadian and the daughter of an ethnic Rawang from Burma and my prior work experience in Thailand with non-governmental organizations (NGOs) that help Burmese migrants led me to many perplexing questions surrounding issues of displacement. It is my hope that by drawing on all these areas, my research will make significant contributions in the realm of minority integration and policy reform globally. I hope that my interrogation of policy will also raise questions and debates within national and international policymaking circles that have not been given a platform. From this standpoint of seeking greater equity and social justice grounded in both redistribution and recognition for displaced Burmese in Thailand and for displaced groups throughout the world, I hope to draw attention to the potential that exists to rethink and transform refugee policy frameworks.
Chapter 2:
Analytical Frameworks

In this chapter, I introduce key ideas and analytical frameworks and briefly outline their implications. An interrogation of policy related to displaced ethnic Burmese populations in Thailand requires an understanding of language and discourse, the tool that helps decode and make sense of the construction of refugee policy. Discourse, according to Foucault (1998b), refers to a group of statements and/or signs, related to objects and subjects, which belong to a single system of formation for which conditions of existence are definable; they constitute a network of rules, which are the preconditions for speech that establish what is meaningful. Discourses can appear or disappear, be retained or deconstructed within a culture through a series of rules known as archives.

Foucault (1972) explores the production of discourse, how it is controlled and organized to sustain relations of domination, as exemplified in discourses that manifest from rules of inclusion or exclusion. Rules of inclusion and exclusion are defined as systems that divide and reject reason versus folly, prohibit certain types of speech, rely on a will to truth and knowledge. Rules of exclusion determine what is prohibited and divide the types of knowledge discarded or kept; they do this through systems of control, described as disciplines. Knowledge is said to be a product of power relations, exercised through discourses that potentially exploit, divide and become the instrument and object of power.

Yet, discourses can operate at a number of levels and at the micro level discourses can contest dominant relations of power (Codd, 1988). This idea of contestation can be thought of in terms of grassroots advocacy that challenges structures and discourses of power. Discourse analysis, according to Foucault (1972), interrogates structures of power by asking the questions, how is it that certain statements appear rather than others, or how do certain policies become visible in the public sphere? It is concerned with the narrowness or singularity of statements, their limits, and establishes correlations with other statements as a way of showing what other forms of articulation it excludes.
Foucault (1998b) notes that discourses and discursive statements are produced throughout history in a non-linear, disjunctive pattern. He supports this idea by suggesting knowledge and reality are perspectival and postulates that there is a history to how we come to know ‘truth’ and ‘knowledge,’ and analyzes the discursive and practical conditions for the existence of truth and meaning (Foucault, 1998a). He detects a vertical discontinuity between how various social problems have been configured, labeled and treated in different times in history. Through reversing one’s steps, it is possible to see how discourses are non-continuous and instead have been constructed in a very particular fashion to appear continuous.

Foucault (1991) also outlines the history of governmentality, a term that references how to govern people and things through the apparatuses of security, sovereignty and discipline. Historically it evolved from a medieval state of justice to a modern administrative state with complex bureaucracies in the eighteenth century. Discourses on the governmentalization of the state found in Thai nationhood, for example, have become visible at particular moments in history when foreign domination threatened the national sovereignty of the Thai people. I propose that Foucault’s (1991) idea of governmentality draws attention to the historical rise of legal codes that regulate populations and prioritize national security above all. A deconstruction of the ruptures of discourse throughout history reveals the layers of how certain ideology is normalized. Foucault suggests that discontinuity can be useful analytically by breaking free of the notion of continuity, and states that unities must be questioned through discourse analysis. Rather than considering a genuine irruption of an event in the order of discourse, he suggests that we must interrogate these seemingly valid discourses.

I employ Foucault’s (1972) notion on disjunctive, non-linear discourses that are produced and governed through rules of exclusion to highlight the division and rejection of Burmese displaced populations in Thailand. Discourse analysis is a powerful tool for my research because it draws attention to the barriers that socially, politically, and economically strip the Burmese of rights and resources in Thailand. I also draw on this approach because it questions old unities and the validity of boundaries that delineate real
displacement and its suitable solutions. As a methodology, policy archaeology employs the same logic in interrogating the social construction of problems and their solutions. I used policy archaeology to examine what methods of dealing with the social problem of thousands of Burmese residing in Thailand are deemed reasonable and viable and what other propositions, like ratification of the 1951 Refugee Convention and its 1967 protocol, or integration and resettlement in Thailand, are deemed folly. Foucault suggests a deconstruction of the ruptures of discourse throughout history reveals the layers of how certain ideology is normalized. How have certain ideological options come into existence? Conceptualizing rules of exclusion through discourse analysis allows me to interrogate how socially and politically constructed categories and terms of displacement such as refugee versus asylum seeker come into common usage. These terms of speech are closely linked with policies that govern the wellbeing of the Burmese population in Thailand and have very real beneficial or detrimental effects. Finally, the use of discourse analysis in my research will be vital to challenge the legal codes and legislative structures that govern displaced Burmese. Showing the limits of rules of exclusion that govern certain statements allows for the articulation and formation of new and innovative ways of thinking about a host nation’s responsibility for displaced populations. In other words, discourse analysis allows for a realignment of how social justice for displaced groups is positioned, and for that reason it provides a compelling framework for my research.

Conceptualizing the Minority Position of Displaced People

While discourses frame how certain language, speech and policies become visible, Appadurai’s (2006) work provides an understanding of how majority and minority differences are produced and how attitudes of intolerance toward minorities develop and become cultivated within a majority culture like Thai society. Appadurai (2006) outlines how mainstream attitudes toward cultural, political or numerical minorities within a nation may turn intolerant, violent or even ethnocidal when national ethos, social uncertainty and anxiety are combined. This analysis is applicable to Thailand’s relationship with the thousands of displaced Burmese refugees and migrants who seek refuge in Thailand due to their political oppression in Burma. Thailand has
demonstrated increasing intolerance toward this population, as exemplified particularly in the case of ethnic Rohingya who were pushed out of Burma and were subsequently forcibly sent back out to sea by the Thai military in late 2008 (BBC News, 2009).

Appadurai (2006) states that the notion of national ethos is a dangerous concept as it is produced and made natural through war, sacrifice, educational and linguistic uniformity and the subordination of minority groups. Discourses surrounding national ethos have played a particularly important role in Thai historical constructions of Burma as the enemy and even its more recent friendship with the bordering nation, which will be addressed in the following section. What complicates these conceptions of national identity are the simultaneous reduction in power of the nation-state due to globalization and the increasing movement of people across borders resulting in the state’s diminished power to propagate notions of a singular and homogenous national identity.

The second concept, social uncertainty, is connected to the movement and migration of people across boundaries and exacerbated by intensifying speed and fortitude of global flows of knowledge and ideas. Social uncertainty creates doubts about “we” and “they” and produces intolerable anxiety about the relationship of the individual to state-provided goods such as health and housing. The mass migration of groups like Burmese refugees, migrants and asylum seekers to Thailand create unprecedented concern by the Thai majority over the availability of and access to “our” resources. The majority’s feelings of antagonism toward minority groups are amplified with social uncertainty. Appadurai (2006) identifies how a numerical majority can exhibit predatory identities and become ethnocidal toward “small numbers”, when the minority reminds the majority of the small gap which lies between the conditions for the majority and the horizon of the national whole. This condition is described as the anxiety of incompleteness. The erosion of social knowledge through both rumour and terror also fuels this anxiety. Globalization increases these negative sentiments toward minority populations through increased mass movement of people across borders. Social uncertainty, incomplete national identity, and the deformations of globalization have resulted in a surplus of rage. Appadurai further states all majority groups have the seeds for sowing genocidal ideology, due to notions of the singularity and unity of their
national ethos. The triggers for genocidal acts are the added factors of liberal thought and racist nationalist parties gaining power. While I do not suppose that ethnocidal acts are looming ahead for the Burmese in Thailand, I suggest instead that Appaduarai’s analysis highlights an antagonistic relationship where the Burmese minority group are scapegoated and blamed for some of Thailand’s problems due to fears of growing inequalities and scarcity of resources.

Fraser (2003) offers a theoretical framework to understand relations of conflict that threaten and further marginalize subordinated identities and ethnicities. She states that social justice in the age of identity politics requires both redistribution and recognition. Redistribution refers to the necessity of reallocating individual liberties and rights that have been truncated based on economic differences, while recognition, related with identity politics, highlights the problem of status subordination that occurs due to cultural differences. At the same time, economic globalization, decentralization of nations and transcultural interaction has caused nations to shift their attention away from redistribution and focus on recognition. Fraser states that it is erroneous to subsume redistribution under recognition as the struggle for recognition tends to encourage group enclaves and intolerant attitudes; it immobilizes the antagonisms it means to aid, and excludes relevant social actors. In essence, recognition of some privileged groups over others is in actuality misrecognition because it ignores the distinctiveness of the subordinated from the dominant. For instance, claims for recognition and redistribution of displaced Burmese populations are subordinated by the project of nation-building in Thailand, which reifies the assimilationist Thai national identity and further marginalizes those who do not fit into its mold. Fraser (2003) suggests that using a two dimensional concept which attends to the distinction and simultaneous overlapping of redistribution and recognition and integrates both is essential to remedy injustice by, first, affirming the inequitable outcomes of social arrangements and, second, transforming and restructuring the generative framework through a process of deconstruction. Fraser identifies the socio-political and theoretical friction of identity politics that lead to what Appadurai (2006) describes as predatory identities, a concept that will be further elaborated in another section. She offers a framework of the requirements for institutionalizing democratic justice, a concept I will review in chapter three on politically constructed
categories of displacement. I turn now to the scholarly literature on the reasons for the mass migration of the Burmese to Thailand since 1988, the way various Burmese groups within Thailand have been constructed as refugees, migrants and asylum seekers. I also provide a brief review of historical and current Thai-Burmese relations to understand the specific Thai context of antagonism toward displaced Burmese.
Chapter 3: 
Burmese Migration to Thailand Since 1988

Burma, a nation that borders Thailand to the west and north, first became a state in 1057 under a monarchial system that lasted until the 19th century (BBC News, 2009a). From 1824 onward, and over a period of sixty years, the British gained control over parts of Burma through winning the Anglo-Burmese Wars. Complete colonization of the nation ended in 1886 and lasted for sixty-two years. Burma’s independence in 1948 was largely a result of the decline and disintegration of the British Empire in the post-World War II years.

The nation struggled as a democracy in its early years after independence under the leadership of Aung San and later U Nu. Silverstein (1997) states after independence most Burmese ethnic minority groups were given a degree of political autonomy if not full autonomy within the nation-state. For instance, the signing of the Panglong Agreement in 1947, which occurred before the British handed over independence, subsequently gave minorities certain rights and privileges except for the right to secession. On the other hand, Lang (2002) outlines how the newly independent state was ridden with ideological and ethno-political challenges that rapidly developed into civil war among some of the ethnic minority groups and the government. The diverse nation, composed of the Burman majority and various ethnic minority groups, was left in a volatile situation. This was due in part to the effects of colonial rule and in particular, the British handing control of the nation to the Burman majority. The weak civilian government, friction between the majority and minorities, and insurgencies challenging the state led to the armed forces’ emergence as a powerful centralized institution in the 1950s.

In 1962, General Ne Win staged a coup d'état and the country was swept into a downward spiral of economic mismanagement and political oppression. In 1974, a

\[3\] At the same time, the British promised an independent state to the Karen minority who had fought alongside them in World War II. This is one reason the Karen did not sign the Panglong Agreement.
con­sti­tu­tional change re­sulted in the birth of the So­cial­ist Repub­lic of the Uni­on of Burma that in­clud­ed a new pol­icy of ho­mo­gen­iz­ing di­ver­sity where all ci­vi­l­iz­es were to share a com­mon iden­ti­ty and loy­alty to the na­tion. By the mid 1970s, still un­der the mil­i­tary dic­ta­tor­ship of Gen­eral Ne Win, near­ly all eth­nic mi­nor­i­ty groups had formed armed re­sistance mo­ve­ments against the Burmese mil­i­tary gov­ern­ment in­clud­ing: the Karen, Shan, Karenni (Kayah), Kachin, Wa and Mon (Hynd­man, 2002; Silver­stein 1997).

Po­li­ti­cal con­flict and sys­tem­atic op­pres­sion un­der the mil­i­tary re­gime over the past de­cades have af­fected eth­nic mi­nor­i­ties and the Bur­man ma­jor­ity, and both groups have sub­se­quent­ly sought refu­ge in Thail­and. The Bur­man ma­jor­ity in­­vol­ved in pro­dem­o­cracy mo­ve­ments stag­ed in 1988 and 2007 were per­sec­uted for their po­li­ti­cal views and many had to flee Burma. For­ced mo­tion of Burmese eth­nic groups has oc­cur­red in the past twen­ty years due to: den­i­al of ci­vi­liza­tion rights, ar­med con­flict, forced la­bour, sys­tem­atic rape and forced re­lo­ca­tion (The Shan Hu­man Rights Fo­unda­tion and the Shan Women’s Ac­tion Net­work, 2002). In the early 1980s, the eth­nic Roh­ingya were de­nied ci­vi­liza­tion in Burma and in the 1990s pushed out of the coun­try by the re­gime (Silver­stein, 1997). The mil­i­tary’s tac­tics at sup­press­ing the eth­nic Karen Na­tion­al Lib­er­a­tion Army (KNLA), who have been fight­ing for an in­de­pen­dent Karen state since 1949, in­clud­ed a pro­gram of tar­get­ing Karen ci­vil­i­ans in Karen state through mass forced re­lo­ca­tion of their vil­lages to areas un­der the army’s con­trol. Sim­i­lar tac­tics have been used to con­trol oth­er re­gions in Shan and Karenni states where eth­nic insur­gen­cies ex­ist.

Over the past twen­ty years the op­pres­sive gov­ern­ment has for­ced thou­sands of indi­vid­u­als to flee their home­land in search of peace, safety and shel­ter in neigh­boring Thail­and (Lang, 2002). Cur­rent­ly, the po­li­ti­cal situ­a­tion in Burma re­mains bleak un­der Gen­eral Than Shwe, in­famous for gov­ern­ing the na­tion with an iron hand.

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4 The Karen fight for in­de­pen­dence be­gan in 1949 when they were re­fused an in­de­pen­dent state that they con­sidered eco­nom­i­cally viable and that in­clud­ed most of the Karen pop­u­la­tion.

5 By the mid 1990s, many of these armies re­ached cease­fes with the re­gime, but a few, in­clud­ing the Karen, con­tinue their strug­gle.
The starting place for my analysis was the first major exodus of Burmese refugees to Thailand. Forced mass migration to Thailand took place after the government, referred to at the time as State Law and Order Restoration Council (SLORC), brutally crushed the August 8, 1988 unarmed student and civilian pro-democracy uprising in Rangoon. Thousands of innocent civilians were shot dead or imprisoned by the military regime (BBC News, 2009a). This repression and other subsequent oppressive acts by the Burmese regime led to massive waves of displacement and migration from Burma to Thailand by the Burmese population, particularly pro-democracy student activists (see Appendix B). Then in 1989, SLORC put the National League for Democracy (NLD) leader and subsequent Nobel Peace Prize winner, Aung San Suu Kyi, under house arrest. In 1990, the regime held free elections for the first time in over twenty years and the opposition party, the NLD, won in a landslide victory and took 392 of the 485 seats in parliament (Hyndman, 2002). SLORC quickly annulled the results and many NLD leaders were imprisoned. As a result, by the early 1990s, more student leaders fled to Thailand.

Mass dislocation of the Rohingya, a Muslim ethnic minority of Northern Rakhine State (NRS), occurred in the early 1990s due to SLORC’s hardening policy toward a group it viewed as not “Burmese”. Repression of ethnic minorities is widespread in Burma and official policy toward the Rohingya in particular included denial of citizenship rights and classification as resident foreigners, tighter immigration checks and greater restriction over their movement within Burma, forced labour programs and the stationing of large numbers of additional military units in their part of the country. Subsequently, 250,000 Rohingyas fled to Bangladesh, many of whom were repatriated to

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6 The name of the capital was changed to Yangon by the military regime in 1989.

7 The Rohingya are also a religious minority since Muslims compose only 4% of the population in a nation where the predominant belief system is Buddhism. An additional 4% of the population are Christian and approximately 1% are animist (CIA WorldFact Book, 2009).

8 The Rohingya were stripped of citizenship rights in 1982. Other repressive measures like the enforcement of travel, marriage and religious restrictions have also placed them in an extremely vulnerable and precarious situation in Burma.
Burma but by the end of 1995 and 1996 new waves of refugees had returned to Bangladesh (Silverstein, 1997). 

Mass dislocation of other ethnic groups, particularly the Karen\(^9\), was in part a result of the Burmese government’s Four Cuts strategy, which was introduced in the 1960s as an attempt by the military to rid itself of ethnic insurgencies fighting for independence in various parts of Burma. By the 1980s, the Four Cuts program identified the ethnic army strongholds along the border zones as the most important targets. The counterinsurgency measure reshaped the map of Burma by applying the four cuts to food, funds, intelligence and recruits to ethnic insurgent groups, and drastically altered the demographic, settlement and community patterns in the black zones where rebels were deemed to reside and operate (Grundy-Warr & Wong, 2002). This caused massive displacement of civilians from these zones.

From 1992 onward, the Four Cuts program has caused forced mass relocation for thousands of ethnic minorities to army-controlled towns in areas where rebel armies existed, particularly in Shan, Karen, and Karenni states. Relocation has been used as a military measure to depopulate civilians from hard-to-control mountainous regions and to consolidate populations along the plains typically near army bases or near roads that the renamed regime, the State Peace and Development Council (SPDC), vehicles can access. In other words, it serves as a means of surveillance and regulation of ethnic populations in Burma. Those who have not complied with relocation orders have had their homes and villages burned down by the regime (Karen Human Rights Group, 2009). As a result, displacement due to relocation has caused great economic, social and emotional damage to civilian populations.

In 1996, the Burmese government launched a major civilian relocation program in Karenni and Shan States. Approximately 300,000 Shan and 20,000 Karenni were forced from their home villages to live in designated relocation sites under military control

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\(^9\) Although the Karen are one of the ethnic groups most affected by displacement due to the Karen National Liberation Army’s (KNLA) longstanding fight for independence from Burma, their struggle is not the focus of this paper.

A new phase of the Four Cuts program expanded attacks to women, children, the elderly, and civilians in general, by forcing them to serve as porters in battle zones or as landmine sweepers. The Shan Women’s Action Network (2002) documented rape as a tactic of warfare in its report, *License to Rape*. The military regime’s use of rape, warfare, forced labour and recruitment of civilian populations has pressured fifteen ethnic insurgent groups to accept cease-fires with the government (Silverstein, 1997).10

The use of force to crush dissent has been a fundamental characteristic of the SPDC. This is evident in the mass shooting, detention and imprisonment of thousands of people, following the peaceful pro-democracy protests by Buddhist monks in the capital from August to September 2007. Civilians have not been spared from the brutality in these acts of violent suppression but instead have become direct targets of the bloodshed since they are considered important components of warfare; their displacement has become a tactic or object of warfare rather than an unintended outcome of war (Sorensen, Van Hear & Engberg-Pedersen, 2002). This is exemplified in 2008, when fighting between rebels and the junta caused 50,000, mostly Karen civilians to flee to Thailand (United States Committee for Refugees and Immigrants, 2009).

The conflict in Burma has caused hundreds of thousands of people to be internally displaced. According to a report by a former UN Special Rapporteur on Burma, since 1988, over one million internally displaced people may have been forcibly relocated and moved (Grundy-Warr & Wong, 2002). The internal tensions in Burma have spilled over into Thailand as well. Over 111,000 United Nations High Commissioner for Refugees

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10 The Karen National Liberation Army is the only ethnic group still fighting the government for independence.
(UNHCR) recognized ethnic Burmese refugees, most of whom were Karen and Karenni, resided in nine camps in Thailand by the end of 2008 and an additional 50,000 were living outside of the camps (The United States Committee for Refugees and Immigrants, 2009). Another 350,000 Burmese in Thailand are in refugee-like circumstances but lack official status. One group that appears to be in this predicament is the Shan; approximately 75 percent of undocumented Shan migrant workers in Thailand cite forced labour and relocations as their main reason for leaving Shan state and moving to Thailand (Grundy-Warr & Wong, 2002).

I would like to acknowledge that while the problem of Burmese displacement as a whole is rooted in the patterns and consequences of war and political oppression in Burma, which was briefly summarized in the preceding pages, that is not the focus of my research. Instead, I would like to highlight an area that has received little attention, that is, Thailand’s response to the thousands of refugees who have sought refuge within its borders. I would like to identify the complexities of refugee policy implementation and the categorization of displaced groups which are implicit in its enforcement.

**Politically Constructed Categories of Displaced People**

A range of interconnected social, economic and political factors cause Burmese people to migrate to Thailand. There are no neat categories for displaced people in Thailand. Yet, this population is separated and labeled differently as refugees, economic migrants and asylum seekers. Grundy-Warr & Wong’s (2002) study of the displaced ethnic Shan and Karenni groups in Thailand identify differences in the circumstances and identity construction of the two groups in Thailand although both displaced groups were forced to relocate due to the Four Cuts program and conflict between rebel groups and the military. The Shan are perceived, constructed, and defined as economic migrants, while the Karen and Karenni are labeled and represented as refugees, by state and non-state agencies including the Royal Thai government, UNHCR, and other non-profits organizations. More than 200,000 Shan do not have access to formal international protection through refugee camps and refugee status although a small informal camp for Shan refugees operated by Jesuit Refugee Services (JRS) is in existence (Human Rights
Grundy-Warr & Wong’s (2002) analysis does not identify why the Thai government is reluctant to provide refugee status to the Shan despite high-level recognition of their plight in Burma, but states that the problem of thousands of hill-tribe people within Thailand who have difficulty obtaining Thai citizenship is a reason for the distinction of categories. A report by Human Rights Watch (2004) offers an alternative interpretation by stating the Thai government’s unwillingness to consider the Shan as potential refugees may be due in part to their perceived association with the production and trafficking of drugs in Shan State. Whether there is validity in this hypothesis is an area that requires further analysis.

The Shan are not alone in being unable to gain refugee status. The Rohingya are another ethnic group who have sought refuge in Thailand due to persecution in Burma highlighted in the previous section, but have openly been denied protection from the Thai Government. In late 2008, approximately 800 Rohingya who arrived on Thailand’s coast via boat were detained by Thai security forces, denied access to lawyers or refugee advocates, and then expelled back out to sea with little food and water. Subsequently, few Rohingya survived in the open sea (BBC News, 2009b). What factors are at play in barring this group from access to refugee protection and rights? Thai military and police officials stated that Rohingyas posed a greater security threat than other illegal immigrants because they are Muslim, they arrive in large numbers, and the majority are men. This comment is particularly poignant since Buddhism is the state religion in Thailand and the nation has had great trouble stemming insurgent separatist movements in its three Muslim dominated southernmost provinces (Reuters, 2009). Appadurai (2006) provides insight into the reason for statements like this by arguing that minorities are produced within nations as scapegoats, for majority groups to displace anxieties about the state and their own marginality in a globalizing world. Minorities like the Rohingya blur the boundaries of us versus them, and their movement is viewed as threatening to the policing of borders. In addition, their legally ambiguous status puts pressures on legal codes that regulate them.

The debacle with the ethnic Rohingya gave rise to an international outcry. The case illustrates how representation and categorization play an important role in certain
groups’ access to protection and rights. Grundy-Warr & Wong (2002) state that displaced people are represented as transgressors into the terrain of citizens and as threats to national security, nationality, citizenship and identity and that both refugees and migrants are labeled as non-citizens, stateless, or aliens. This statement is reaffirmed in how the Rohingya have recently been represented in the media as threats to national security in Thailand. This problematic terminology has implications for national level and international policy formation and implementation, immigration rights and procedures, rights of asylum and abode, citizenship and exclusion, and rights for selective minority groups. It illustrates how language has been an important tool in the exclusion of groups who do not fit into neat categories of hegemonic conceptions of the nation, while also demonstrating Foucault’s (1972) notion of the will to knowledge or the rules that determine which Burmese are excluded and in deciding where the divisive line is drawn. These rules of exclusion that divide, reject and prohibit certain speech, work in conjunction with systems of control, or disciplines. They are organized in procedural ways, which serve to sustain relations of domination over certain groups.

Specific criteria have been used to group the Burmese in particular ways. One significant method the Thai government has utilized to divide and slot Burmese into either the category of refugee or economic migrant has been its narrow definition of the term refugee, which in official statements translates as persons fleeing from fighting (Human Rights Watch, 2004).\(^{11}\) This definition excludes individuals escaping other types of persecution such as: forced labour, relocation due to destruction of villages and force, porterage and rape, to be further elaborated on in Chapter 6.\(^ {12}\)

\(^{11}\) Local officials in the Ministry of Interior (MOI) and the provincial admission boards apply this definition by primarily being responsible for refugee reception, status determination through interviews, and camp registration.

\(^{12}\) In Thailand, status refugees are divided into the subcategories of camp-based refugees and Persons of Concern (POC). UNHCR began assigning POC status in 1996. POCs refer loosely to political dissidents initially free to travel throughout the country. They were later placed in the Maneely Burmese Student Centre and with its closure in 2001, eventually transferred to camps along the border where the camp-based refugees are housed. Those who applied for asylum since January 2004 are also referred to as urban caseload (Banki, 2007).
On the other hand, UNHCR, whose mandate is to protect and support refugees makes distinctions between refugees and migrants through the cause of flight from one country to another, where individuals fleeing for reasons associated with various types of persecution are designated as refugee (Feller, 2005). UNHCR’s definition of refugee is much more accommodating than the Thai interpretation which merely encompasses individuals fleeing from fighting. UNHCR considers refugees as beneficiaries of internationally endorsed rights due to their precarious security situation and the absence of national protection in their own countries. UNHCR exercises its power to provide humanitarian aid and social support for displaced populations globally. But how can UNHCR apply these objectives when in a host country such as Thailand, there is a much narrower conception of refugees? UNHCR is at odds because it is obliged under its legal mandate to protect and assist persecuted individuals outside of their country of origin. Yet, UNHCR cannot provide adequate protection for asylum claimants or displaced people who become labeled as migrants. As a result, UNHCR faces significant dilemmas in trying to uphold and implement its policies. If national governments like Thailand choose to disregard international humanitarian and human rights laws and exploit migrants or asylum seekers in order to further economic gains, there is little the UNHCR can do or say since it does not want to jeopardize gaining or retaining access to displaced populations. This highlights how international and national policies at times are in conflict in their mandates for refugees. Yet, national policy takes precedence over international instruments in the management of refugees more often then not. The tension between national and international policy illustrates obstacles to policy implementation and may be an area of future inquiry.

The broader global migration debate within policy circles addresses the categories of refugee and migrant. Subsuming refugees under the umbrella of migrant is said to be problematic as it is detrimental to refugee protection. The UNHCR considers refugees as beneficiaries of internationally endorsed rights evident in the September 2000 UN Millennium Declaration, which is an attempt to revitalize refugee protection strategies by: strengthening implementation of the 1951 Convention on Refugees; providing better protection and security to refugees, particularly women and children; sharing the burden of hosting refugees more equitably, and building the capacity of host states that offer
asylum to refugees (Feller, 2005). Refugee policies are said to contrast with laws governing migrants in that restricting factors does not shape them. Migrants are a group considered requiring management over their movement. No emphasis is placed on defining and protecting migrant rights. Thus, distinctions between the two definitions place refugees as a group deserving of protection through rights and social services whereas migrants are considered a group in need of better management, particularly over their movement. While protection does not preclude management in the everyday treatment of refugees, the difference in how refugees and migrants are framed indicates that categories are implicated in relations of power and it highlights the way in which groups are governed through state policies. Categories are embedded in power relations, evident in the procedures and methods that allow for the exercise of specific and complex power through the use of security and disciplinary mechanisms. “Discipline was never more important or more valorized than at the moment when it became important to manage a population” (Foucault, 1991, p.102). Foucault’s words emphasize the triangular relationship between sovereignty, discipline and government, which use security to classify and govern populations.

Differing policies exist for displaced people depending on how they have been categorized and these various policies have particular effects. I now will be highlighting the practical application of policy with regards to educational provisions, access to employment, and movement across regions for the differing categories of displaced people (see Appendix E). I also examine how, in practice, these populations are being controlled through various mechanisms like registration, repatriation and deportation. In referring to the implications of policy I will be utilizing the same labels and language used by policymakers for the sake of clarity, but with full awareness that the boundaries between the different groups are blurry and overlap more often than not.

Burmese living in cramped refugee camps in Thailand are completely dependent on international aid for shelter and food. They manage limited health care, education services and food distribution. Recognized refugees’ dependence on non-governmental organizations (NGOs) for their basic needs contrasts with migrants who must be self-reliant. Dependency is not the optimal situation; many refugees would like to have the
opportunities for employment but are limited to jobs in camp-based NGOs if they have some form of educational background or work as day labourers on farms near the camps. Also, restrictions put in place by the Thai government confine refugee movement. Travel outside the camps through day passes is permitted albeit regulated through an approval process from Thai officials, but it may put them in vulnerable positions. Some camp-based refugees are detained and deported by local officials who ignore UNHCR refugee status cards and travel permits.

In highlighting the effects of policy for recognized camp-based refugees, I would specifically like to look at educational provisions. In policy, recognized refugees have had access to education through international NGOs since 1994. Prior to 1994, locally based organizations were responsible for organizing and certifying education in the camps since the Thai government thought that provision of educational assistance to recognized refugees would draw more people from Burma to Thailand (Representative from Thailand’s Ministry of Interior, Sawade, 2008, p. 5). There are limitations in how educational services provided by international NGOs are implemented. Zoa Refugee Care, a non-governmental organization responsible for overseeing education within the camps outlines one camp resident’s frustrations with the educational system: “I feel like I got an education, so no problem, but I would like if my certificate was legal” (Sawade, 2008, p.3). Educational certificates within the camps are not recognized by the Thai government or by Burma’s military government. While in recent years the Ministry of Education (MOE) has been working toward refugees receiving Thai certification for their studies, its not clear the purpose in this move since Thailand illustrates through its policies that it does not want its refugee population to be locally integrated but resettled in third countries. One hypothesis outlined by Zoa Refugee Care is that Thailand is increasingly trying to regulate its displaced populations (refugees and migrants) and outlines how the shift in educational provisions occurred at the same time the MOE was attempting to better manage Muslim schools in the conflict-ridden southern provinces of Thailand.

The political situation for asylum claimants who do not have recognized refugee status, referred to as illegal migrants frequently is worse than for registered camp-based
recognized refugees. Less than one-tenth of Burmese refugee claimants in Thailand have been able to access the camps (Green, Jacobsen & Pyne, 2008). Designated places of residence for refugees under the protection of UNHCR, or refugee camps, exclude particular minority groups, like the Shan, and the lack of a fair and fully functioning admissions board to screen and admit new arrivals from Burma puts claimants in a vulnerable position. Human Rights Watch (2004) cites the Thai government’s pressure on UNHCR to withhold screening of new asylum seekers in January 2004, putting thousands of people in legal limbo. Asylum claimants, particularly in urban centres, are asked to register with UNHCR, but this does not grant them legal status or any rights coverage. Their lack of rights contrasts with camp-based refugees who are protected under the umbrella of UNHCR. As a result, these claimants do not receive basic services from NGOs that service camp-based refugees. Many claimants do not have adequate shelter and food and work in exploitative jobs while also having to daily face the threat of arrest due to not possessing legal documents.

Displaced migrant children are especially at-risk to exploitation and abuse. These children live in the environmentally hazardous workplaces of their parents, or on their own, and face extreme poverty. It is common for displaced migrant children to also be employed full-time and work long, arduous hours and it is estimated that 100,000 are working (Bryant, 2005; International Labour Organization, 2008). Some have jobs as beggars controlled by mafia-type gang networks. Others sell flowers and trinkets in tourist areas working oftentimes all evening. Many children are trafficked into Thailand’s infamous sex trade. Furthermore, many of these children have no official status in their country of origin in addition to their lack of legal status in Thailand, especially if they were born in Thailand. Burma only allows its citizens to apply for legal status from the age of 15 onwards, which means many displaced Burmese migrant children living in Thailand have no official status. They are often without rights in either country and routinely face police harassment, detention and deportation. The vulnerable situation of migrant children, which puts them at risk of multiple types of exploitation, has been acknowledged to some degree by the Thai government since certain efforts have been made to include them in social programs and educational initiatives. However, migrant children are not addressed cohesively in Thai national initiatives.
Furthermore, limited and restricted movement across provinces is the reality of life in Thailand for those referred to as migrant workers. Migrants have little job prospects and those that do exist are assigned by the Thai government and include: factory work, construction, agriculture, fisheries, foundations/NGOs and the domestic sector. Many of these jobs are dangerous and exploitative and migrant workers in these types of workplaces often are not paid fair wages. In general, policies in Thailand affecting the approximate 1 to 1.5 million Burmese migrants tend to focus predominantly on national security and regulation (Arnold & Hewison, 2005). The Thai government regulates transborder migrant workers through labour codes, registration and the provision of worker permits. Other informal policy methods of regulation in certain provinces include prohibiting migrants from leaving their place of residence after certain hours or restricting the numbers that can assemble together.

The government recognizes a significant number of migrants working in Thailand who are not registered with the government and do not have legal documentation or rights. Since 2004, the government has tried to regulate their movement. According to the United Nations Children’s Fund (UNICEF), the Thai government allowed foreign workers to register themselves from July 1 to 30, 2004. During that period 1.12 million migrants from Burma, Cambodia and Laos registered in 2005; three-quarters of this number were from Burma and 93,082 were children under the age of fourteen (Bryant, 2005).

The situation for registered migrant workers contrasts with those who are not registered. Registration in some ways has benefited previously undocumented or illegal migrants who are then protected from detention or deportation and have legal access to employment, health and education services. However, one problem associated with registration is the high cost. As of 2008, the fee for registration is approximately 20,000 THB ($600 USD) depending on the status of the migrant worker’s identification card; a health examination fee ($18 USD), health insurance for one year ($38 USD) and a work permit application fee ($112 USD) are excluded from the registration fee (Alien Work
Act, 2008; PHAMIT, 2006). On the other hand, the Migrant Assistance Program (MAP (n.d.) states the cost of registration is 3,800 Baht or $115 USD. It is not clear why the fees vary, but perhaps it is related with whether the migrant worker has any prior identification card. Nonetheless, employers of migrants are supposed to cover these fees, but often do not have the capacity or do not want to pay for it. This puts the burden onto the migrants themselves who frequently do not have the funds to cover them and may be placed in situations of bonded labour (Arnold & Hewison, 2005).

Repatriation or deportation is a way Thailand is able to exert power by enforcing border controls on undocumented Burmese migrant workers. There have been several waves of repatriation of Burmese following the 1997 economic meltdown, the takeover of the Burmese Embassy by Burmese students in 1999, and the seizure of a hospital in Ratchaburi in 2000 by a Karen rebel group known as Karen God’s Army (Grundy-Warr & Wong, 2002). Crackdowns also happen at sporadic times due to corrupt local police officers looking for bribes from illegal Burmese to supplement their meager incomes.

Most recently, a Shan construction worker was accused of murdering a Thai university student at Mae Jo University, in early 2009, which snowballed into a widespread fear of migrants (Weng, 2009). Incidents like these lead into negative public opinion and increased regulation, policing, crackdowns and repatriation of migrant populations. Foucault’s concept of government lends itself to an analysis of the repatriation and deportation of migrants: “Government is defined as a right manner of disposing things so as to lead not to the form of the common good, as the jurists’ texts would have said, but to an end which is ‘convenient’ for each of the things that are to be governed” (Foucault, 1991, p.95). I interpret this to mean that, Thailand, a constitutional monarchy, has sought its own national interests in implementing refugee policy and managing displaced people through various governmental bodies. Governing agencies at

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13 The Cabinet Resolution on migrant labour passed on December 20, 2005, states that individuals with a TohRoh 38/1 card (non-Thai identification) from the 2004 registration, who do not have a work permit, will be obliged to pay 10,000 Baht bail bond per migrant labour whereas for those with no identification, 50,000 baht must be paid.
times manage displaced populations in ways that maintains sovereignty with little regard for the human rights of the subjects that are governed.

The lack of regard for human rights is evident particularly in Thailand’s treatment of one ethnic displaced group. The ethnic Padaung, commonly known as the long neck Karen, have settled in Thailand over the past twenty years due to poverty and political oppression in Burma (Aye Chan Myate, 2009). By 2005, approximately 200,000 Padaung fled Karenni State, Burma. The Padaung in Mae Hong Son Province, Thailand, are treated remarkably different from other displaced groups; they are regarded as a Thai spectacle and as a result blur the lines of categorization. The appearances of the women, who wear traditional coils on their neck to elongate it, make them a tourist attraction. Most tourists do not realize that this ethnic group is not native to Thailand and is actually from Burma. While the tourists who come to visit the Padaung bring in a much needed income for this impoverished group, the ethics of what some call a “human zoo” are questionable. The Padaung are eligible for refugee status determination and Thai authorities have given them a choice to either move into refugee camps and register for UNHCR refugee cards or get legal permits to stay in Thailand. It is not clear if these legal permits are migrant worker cards or if they are one of the various identification cards Thai hilltribes groups have that eventually make them eligible for citizenship (see Appendix E). There seems to be a lack of will to allow the Padaung to be resettled in third countries. In 2008, the Thai government denied 20 exit permits for Padaung who were offered resettlement opportunities in Finland and New Zealand. Their reluctance to provide the exit permits indicates the Padaung are not regarded in the same way other displaced groups are gazed upon and some observers accuse the government of keeping the Padaung to aid the tourist industry.

The differing treatment of displaced Burmese in Thailand indicates that there is a need for greater advocacy in the realm of recognition and redistribution as a means to tackle policy that does not search for the origin of the problem. Drawing on Fraser (2003), a two-dimensional model of social justice for displaced Burmese requires correcting inequality through the combination of the redistribution of rights and resources and the recognition of differences of the subordinated from the dominant. Simultaneously
her model promotes participatory parity, that is, the objective and intersubjective conditions that promote the marginalized population’s participation as peers relative to the majority mainstream. This approach fosters the transformation of the underlying social structures that perpetuate the marginalization of certain identities. Thai-Burmese relations could contribute to participatory parity through an awareness on the side of the Thai majority of their position of power relative to the Burmese minority and the minority’s need for protection and support. The displaced Burmese could contribute to participatory parity through advocacy work that draws attention to their marginalized position in policy and in reality and which has been perpetuated through the media and popular culture. Raising the profile of displaced Burmese who have positively contributed to Thai culture, society and economy would also help to transform current, negative stereotypes of Burmese. International NGOs and Burmese advocacy groups could also make more efforts to engage the Thai majority in the Burmese plight and the situation of political conflict and oppression in Burma through spotlighting it and lobbying the Thai government to end amicable economic relations with the Burmese regime.

In recent years, there has been a move toward greater advocacy for migrant rights through international and national organizations, including Thailand’s Human Rights Commission which works to create greater transparency, recognition for labour rights, and adherence to labour laws (Arnold & Hewison, 2005). A Thai Cabinet Resolution, passed on August 29, 2000, also establishes a clear policy to recognize the status of displaced persons with Burmese nationality and illustrates greater access to rights for migrants (Kanchanachittra Saisoonthorn, 2006). These developments highlight the fact that steps are being taken to acknowledge and address barriers that marginalize displaced Burmese populations. However, it appears that the trend for legislative codes in general leans more toward regulation than transformation. By regulation I mean policy that restricts the resources and rights available to displaced populations and redeﬁnes them as illegal immigrants. Transformation refers to policy that increases the opportunities, resources and rights made available to displaced populations in their country of refuge. This may be due to the friendship that has characterized Thai-Burmese relations within the past twenty years. Muntarbhorn (2004) states, “law does not always provide the
answer; it bends with policies and politics” (p. 13). He further cites an improvement in Thailand’s relations with the Burmese military government over the past twenty years (Muntarbhorn, 2004). The Thai government’s warming in its relationship with the Burmese regime through a policy of constructive engagement is key to understanding the recent trend in Thai policy toward displaced Burmese and it will be outlined in the following section.

What can be gleaned from this is that categories can be deconstructed and analyzed as tools that perpetuate inequities among marginalized groups. Labeling through policy and legislation is a politically powerful method to include and exclude certain groups of people. Fraser (2003) argues that social justice for disenfranchised groups like the displaced Burmese population in Thailand requires both recognition of their identity as a group fleeing from war, oppression and persecution, and redistribution of economic and educational resources. Therefore, more attention needs to be paid to how displaced Burmese in Thailand are constructed in subordinate ways and how this depiction affects their day-to-day lives.

Furthermore, assistance and protection should not be restricted to merely refugees and asylum seekers; human security and a rights-based approach should benefit all those in need of protection regardless of how they are categorized. Fraser’s (2003) notion of participatory parity suggests that all displaced Burmese in Thailand deserve rights and resources equal to that of Thai citizens. The question is will Burmese ever be given these rights? This question raises important points that are pertinent to policy formation. The following section, which outlines Thai-Burmese relations and their impact on displaced Burmese populations, does so by recognizing that certain migrants and asylum seekers also count as displaced and deserve full recognition and redistribution of rights and resources.
Chapter 4:
Thai Burmese Relations

Historical Relations

Constructions of nationhood have played a significant role in historical Thai–Burmese relations. According to Winichakul (1994), Siam became a nation-state when the colonial powers of Great Britain and France were carving out colonies in Southeast Asia. King Mongkut (1851-1868) was well aware of the fact that the British and French were justifying expansion of their empires through the logic of race. The French in particular used notions of racial identity to dismember Siam and unite Laotians and Cambodians (Khmer) under French rule (Keyes, 1997). This placed Siam in a vulnerable position as an indirect economic and political colony during this era. Thus, King Chulalongkorn (1868-1910), son of Mongkut, saw the need to transform constructions of national identity in Siam along the lines of ethnicity as a way to protect the kingdom from foreign encroachment.

Chachavalponpun (2005) argues that Siamese rulers also benefited from using an imagined national identity as a way of othering the Burmese and identifying them as enemy. Past conflicts including the conquering of Ayutthaya by the Burmese in 1569 and again in 1767 and subsequent incursions into Chiang Mai and Rachaburi provinces were not events in and of themselves that caused Burma to be named as “enemy” but became part of a process of backdating Thai history. He refers to backdating as the use of imagined constructions of nationhood in order to create a remade past of unique national, bounded identity where both images of Thai and Burmese were reconstructed. In 1592, the Luang Prasert Chronicle of Ayutthaya did not glorify the victory of Thai King Naresuan (1590-1605) over the Burmese crown prince Maha Uparacha, but in later years, during the Bangkok era Siamese rulers began to commemorate the defeat of the Burmese prince, and constructed Burma as the Kingdom’s number one enemy. Prince Damrong

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14 The name of the nation was changed to Thailand in 1939.
Rajanubhab, a historian and half brother of King Chulalongkorn who lived during this period, describes the relationship between Siam and Burma as two kingdoms encroaching on one another. The Siamese state publicized a negative image of the Burmese as “devil”, “demon” or “agent of dark forces” and stated they were bad Buddhists who had *adhamma*, the negative merit in Buddhism, whereas the Siamese were *dhamma*, or positive merit. The purpose of Thai rulers painting Burma as an enemy during the Mongkut/Chulalongkorn period was to solidify Thai nationhood when it was greatly needed to strengthen the political legitimacy of its leaders and to protect Siam from foreign invasion. The effects of negative depictions of the Burmese by Thailand have meant aloof relations between the two nations.

While the notion of backdating Thai history is a contentious one, Thai and foreign scholars agree that the Burmese have been depicted in ways that contrast with Thais both historically and currently. The stereotyping of Burmese leaders prior to World War II by emphasizing their negative characteristics was common in popular culture through television and drama. These images were nurtured even in recent years through the drama series produced in 1995 on the Thai wars with Burma: *Prasrisuriyothai, Nine Wars, Soldiers of King Taksin*, and *Nai Kanumthum* (Chongkittavorn, 2001). This series was a remake of a previous production that reinforced the notion that Thai-Burmese relations predominantly involved war and violence.

Foucault (1998b) argues that history is not linear but that it is series of ruptures and discontinuities. Chachavalpongpun’s (2005) depiction of the antagonistic backdating of the Thai-Burma relationship is one example of how historians can manipulate conflicts in history to further their own agenda. This means we must question the unities of history formerly assumed to be natural. How history is written speaks not only to the how the past is produced in a specific manner but also how the history of the present and is constructed and understood. Manipulating the production of discourse throughout history and in the present has particular effects for disenfranchised and marginalized groups that bear the brunt of the emergence of certain ideas and policies.
Chachavalpongpun (2005) states, “in order to certify Thainess, the otherness of the enemy must be apparent” (p.33). Winichakul (1994) describes how kwampenthai, or Thainess, which is meant to denote the national whole rather than ethnic characteristics, is an elusive concept, one that lacks coherence and historically has been defined by what it is not rather than by what it is. Notions of Thainess by othering the Burmese in the past have been a means for Thai rulers to legitimize and gain political power through propagating to the masses the need to defend the nation-state from intruders. The function of the enemy assists in the materialization of Thai nationhood, through the assumption that war makes nation (Chachavalpongpun, 2005). Anderson (1991) describes nations like Thailand as imagined communities and cultural constructs. Censuses and mapping have contributed to the carving out of what we now know as the spatial territory of the nation-state or the Thai geo-body and how certain groups of people think about their community in particular spatiotemporal ways (Winichakul, 1994). Foucault (1991) also points out the connection between national sovereignty and the geo-body by stating that sovereignty is not exercised on things but on a territory and the subjects who inhabit it.

Furthermore, Appadurai’s (2006) notion of predatory identities provides insight into why othering the Burmese, a fundamental task in Thai nation building, can potentially be a dangerous method of identification. He defines predatory identities as categories whose social construction and mobilization require the extinction of neighboring groups that threaten their own identity. Predatory identities are said to emerge out of pairs or groups of identities with histories of close contact and mutual stereotyping. Key characteristics of predatory identities are their emphasis on the differences between themselves and the other, and the threat posed by the other on them as a fragile majority. Appadurai (2006) regards these elements as fundamental to transforming benign identities into predatory identities. In the case of Thailand during the Mongkut/Chulalongkorn periods, the Thai predatory identity was a means to hide internal anxiety over their own vulnerable position within a region that was quickly being divided by French and British imperialist powers (Chachavalponpun, 2005). Thus, the
friction of an incomplete national identity amidst a shrinking national geo-body, due to ceding lands to France, resulted in an uncertain and incomplete national identity.

The effects of the historical Thai-Burmese relations are the creation of a sense of belonging to a common identity of sacred nationhood and the naturalized exclusion of others in the formation of Thailand. The natural nation adheres to exclusive rules that regulate what is deemed a “reasonable” identity for the nation and who is outside of the reasonable formation. The binary of inclusion and exclusion based on reasonable identity constructs has governed both the historical relationship between Thailand and Burma as well as the current Thai policies in relation to displaced Burmese populations in Thailand.

**Relations from 1988 to 2008**

In the past, notions of Thai-ness, through othering and identifying the Burmese as enemy have guided policy toward Burma as a political maneuver for Thai monarchs to use as a weapon against dissent and to gain or maintain their political power. Thai-Burmese relations until the 1980s were characterized by a mutual mistrust. From 1962, when General Ne Win took over Burma in a military coup, until the 1980s, top-level dialogue and bilateral relations were for the most part non-existent for the two nations. Ne Win was suspicious of the support and sanctuary Thailand provided to ethnic Karen fighting for independence from the Burmese regime (Rogge, 1985). At the same time, Burma’s self-enforced isolation meant severed contact with the outside world, not just Thailand (Chongkittavorn, 2001). Thailand and Burma maintained aloof relations until the early 1980s when the Burmese regime, aware of its dismal economic performance, loosened its grip over the economy and opened the country to bilateral trade. Increased border trade stimulated a more positive relationship between Burma and Thailand, which had a direct effect on displaced people.

From 1988 to 2008, Thai leaders have projected an image of Burma as a friend rather than foe in the interest of economic investment opportunities in Burma and, consequently, the improvement of the Thai national economy. Thai-Burmese relations under Thai Generals Chatichai Choonhavan (1988-1991) and Chavailit Yaongchaiyudh
(1996-1997), and Prime Minister Thaksin Shinawatra (2001-2006) have shifted from animosity to friendship, otherwise referred to as a policy of constructive engagement (Buszynski, 1998; Chachavalpongpun, 2005). Constructive engagement, according to Buszynski (1998), is a policy of cooperation. The Thai government’s stated intention was to promote and encourage political reform within Burma through natural evolution rather than force. In reality, Thai leaders were less interested in democratization of the regime than they were in securing economic and security aims.

The Thai-Burmese friendship is based on redefined notions of Thai nationhood, produced and imagined for the purpose of economic gain. Increasing transnational economic integration between the two countries has occurred as Thailand has sought Burma’s natural resources such as timber and natural gas. Thailand’s commander-in-chief and foreign minister, General Chavalit Yongchaiyudh’s visit to Burma on December 14, 1988, to secure timber and fishing deals for Thai companies in Burma illustrates the nations’ increasing economic integration. His visit occurred right after the Burmese regime’s crackdown on peaceful protesters, despite international condemnation (Chachavalpongpun, 2005).

According to Chachavalpongpun (2005) the only government to condemn Burma’s violations of democratic process during this time span was Thai Prime Minister Chuan Leekpai’s Democrat Party (1992-1995; 1997-2001), but even Chuan’s government began encouraging Burma’s prospective membership into ASEAN, which was granted in 1997 (Buszynski, 1998; Hyndman, 2002). ASEAN’s principle of non-interference in the internal affairs of states complemented Thailand’s foreign policy of constructive engagement with Burma (Maung Aung Myoe, 2002). By August 1994, Thailand was the largest ASEAN investor in Burma with projects valued at $211.14 million USD.¹⁵

¹⁵ This investment declined in 1995 due to relations souring slightly when the Burmese government accused Thailand of supporting dissidents, but by 1997, their bi-lateral trade was back on track (Buszynski, 1998).
Maung Aung Myoe (2002) argues the Thai policy of constructive engagement with Burma has not been without tensions in the past twenty years. His definition of constructive engagement differs from Buszynski (1998) in that it refers to non-interference in internal affairs rather than merely closer relations (Maung Aung Myoe, 2002). He further states that Thai policy at certain points has also shifted towards greater interventionism exemplified in 1998 when Thai Foreign Minister Surin Pitsuwan called on ASEAN member states to change traditional non-interventionist approaches to what he termed “constructive intervention”, since domestic policy was effecting regional stability. This position soon softened to one of “flexible engagement”. According to Maung Aung Myoe (2002), flexible engagement differs from constructive engagement in that it allows nations to comment on domestic issues that have regional implications. However, the Chuan government followed the policy of flexible engagement without officially subscribing to it, evident in its defense of Burma at international forums such as the Human Rights Commission. Thus, official foreign policy to date between Thailand and Burma has remained constructive engagement.

Buszynski (1998) states that a major problem with Thai foreign policy has been the absence of effective coordination of priorities and interests. Fragile governments and coalition politics have permitted the military to dominate policy toward Burma, particularly in regards to business interests. A tight interweaving of military and economic relationships has impacted policymaking in Thailand, particularly the policy of constructive engagement, which has not been without opposition. The Thai press, academics and human rights groups have been very critical of this friendship between Burma and Thailand. The Nation, a leading English language newspaper, referred to this neo-colonial policy as a lethal blow to the democracy movement in Burma (Buszynski, 1998).

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16 In 1993, Thai Foreign Minister Prasong Soonsiri said that Thailand supported the release of political detainees and Daw Aung San Suu Kyi (Maung Aung Myoe, 2002). The Burmese army’s artillery shelling of ethnic insurgent groups along the border areas which landed on Thai soil was a source of deep tension between the two countries from 1992 to 1995.
Thai and other foreign investment in Burma has had detrimental effect on civilian populations within Burma. In 1995, the Petroleum Authority of Thailand and Myanmar Oil and Gas Enterprise struck the controversial $1.2 billion USD Yadana gas deal with the U.S. company, UNOCAL, and the French company, Total, to construct a 418 kilometer pipeline from Burma to Thailand’s Ratchaburi province in order to develop offshore natural gas fields (Buszynski, 1998). Human rights organizations hold these companies responsible for the use of forced labour in constructing the pipeline, the relocation of entire villages, and the ecological damage to the surrounding natural environment, despite the companies’ denial of their complicity (Hyndman, 2002).

The warming relationship between the two nations has also put displaced Burmese in Thailand in a precarious place; their situation has become more negotiable as reconstructions of the Thai geo-body and engagement with the Burmese regime have played a role in policies toward Burmese who have sought refuge in Thailand (Buszynski, 1998; Hyndman, 2001). In order to maintain the integrity of the Thai geo-body, Burmese fleeing persecution from the military dictatorship in Burma since 1988 have not been given a place within the Thai national community and, instead, have received the brunt of increasingly harsher stances. 17

Furthermore, Thailand began to cooperate with Burma to manage the Burmese ethnic groups by increasing security over the 2,400 km land border between the two countries. In February 1997, the Burmese military launched an offensive against the Karen insurgents along the border. This incident occurred right before Burma’s entry into ASEAN. Thai official, Chettha Thanajaro, met with Burmese army commander, Maung Aye, and pressed to repatriate 100,000 refugees who had fled the fighting and were now in temporary shelters in Thailand. Soon after, the Thai army enforced the repatriation of 3,000 Karen women and children (Buszynski, 1998).

17 Thailand forcefully repatriated 320 Burmese students who had fled to Thailand after the 1988 demonstrations since Burmese generals granted logging concessions for twenty Thai companies in late 1988 (Busynski, 1998).
In more recent years, Thai Prime Minister Thaksin Shinawatra also has demonstrated severe policies toward the displaced Burmese in Thailand as his government has grown closer with the Burmese regime. At the end of 2002, Thai authorities closed the Burmese opposition political offices in Sangklaburi and Mae Hong Son, near the Burma border. New visa regulations introduced around the same time increased the difficulty for Burmese activists seeking refuge in Thailand to obtain visa extensions (Human Rights Watch, 2004). In 2003, Burmese protestors, some of whom were registered refugees, demonstrated in front of the Burmese embassy in Bangkok after the May 30, 2003 attack on Aung San Suu Kyi. Thai police arrested 26 Burmese demonstrators, including 2 children. PM Thaksin stated, “The Burmese are entitled to stage protests against their government in camps we provide….But it is not right that they come to Bangkok and protest. We do not like any situation that we cannot control” (Human Rights Watch, 2004, p.9). A few days later, the Thai government announced plans to move all urban refugees to camps along the border.

This type of treatment of displaced populations is not new to Thailand. Vietnamese, Laotian and Cambodian refugees fled their nations in the 1960s, 1970s and 1980s due to the threat of Communism and persecution under oppressive regimes like Pol Pot’s Khmer Rouge, and sought refuge in Thailand. Hundreds of thousands of Cambodians and Laotians lived in camps along the Thai border for years but the majority of them were not granted permanent residence and some were forcibly repatriated (Keyes, 1997).18

The analysis of historical and contemporary Thai-Burmese relations reveals that official policies between nations, whether of friend or foe, have real effects on the citizens of these countries. The recent policy of constructive engagement has had detrimental effects on displaced Burmese as many have been forcibly repatriated to Burma, arrested and deported or increasingly managed through the enforcement of new

18 In 2008, 3,000 ethnic Hmong who fled persecution in Laos were forcibly repatriated by the Thai government (United States Committee for Refugees and Immigrants, 2009).
visa regulations. The historical and political context is important to understanding the development of Thai laws and policy and the layers of effects on displaced Burmese from 1988 to 2008.
Chapter 5:  
Method

Policy Archaeology as a Methodology

I use policy archaeology as a methodology to interrogate Thai national and international policies and a bilateral agreement in constructing categories of difference with regards to Burmese populations and in their implementation through allocation of rights and provision of socio-cultural and educational resources. This methodology draws upon Foucault’s (1998) concept of discourse analysis in asking how and why a particular discursive statement appeared, that is, how did it gain importance for the state, policymakers, and general society, and move from invisibility to visibility? It examines and questions the emergence of particular societal problems and refuses to consider these events as natural. It deconstructs the conditions that allow for the emergence of particular policy problem, analyzes the rules of formation of norms or social regularities that determine what is and what is not a social problem, and asks how these rules shape policy solutions and the regulation of policy studies itself (Gale, 2001; Scheurich, 1994).

Policy archaeology offers a radically different alternative to traditional positivist or post-positivist policy study orientations that treat social problems as social diseases that need either real or symbolic policy solutions. Positivists and post-positivists view the emergence of social problems as natural and do not identify the labeling of problems as socially constructed. They focus on four areas: descriptions of the problem, discussions of possible solutions, considerations of problems in implementing solutions and evaluation of particular policy implementations (Scheurich, 1994). These orientations function within the existing social order and maintain or restabilize it rather than challenge its very existence. Codd (1988) discusses how policy documents constituted within the official discourse of the state and policies produced by and for the state are examples where language serves a political purpose that mask social conflict and instead paint an image of universal public interest. These policy documents produce real social effects; they reproduce and maintain consent but this remains unrecognized by traditional forms of policy analysis.
I use policy archaeology in my research rather than traditional positivist or post-positivist methods of policy analysis that describe, offer and implement solutions to the problem of Burmese refugees in Thailand, because I aim to investigate the underlying rationalities of displacement instead of merely explaining its characteristics. I intend to understand the discourses or ideas mobilized to create policies impacting the Burmese in Thailand. I seek to question policies that are simplifying and limiting and do not factor in the blurring of boundaries of categorization that is the reality of the displaced in Thailand. Policy archaeology, in its refusal to accept social problems as natural occurrences, allows me to do this. It draws upon my analytical framework in its disturbance of traditionally accepted social problems by asking how a discursive statement or a social problem is made obvious, nameable and describable.

There are four arenas of policy archaeology. According to Scheurich (1994), the first arena of policy archaeology seeks to interrogate how one particular social problem appeared rather than another and what made it a social problem when it initially became visible. Foucault’s (1972) exploration of language and meaning provides insight into how and why certain policies become visible rather than others. Language and meaning are said to sustain relations of domination through rules of exclusion and inclusion that divide reasonable policy from fallacy.

Second, Scheurich (1994) emphasizes that archaeology can be used to identify and understand the intersection of grids of conditions and assumptions (or network of regularities) that make it possible for the social problem to arise and become visible as a problem and subsequently deem certain policy as viable to remedy this problem. He proposes that powerful networks of regularities, meaning a group of relations or factors, are foundational to the emergence, social construction, labeling and identification of a problem versus a non-problem.

Scheurich (1994) draws upon Foucault to identify key characteristics of social regularities. First, regularities are said to be unintentional in that no group or individual has conscious control over the creation of the social regularities that it seeks to identify through policy archaeology. This, however, does not mean individuals or groups do not
benefit from them. Second, social regularities do not determine social problems or policy solutions from the outside but instead comprise the set of conditions in conjunction with which a social problem emerges. This point refers to the fact that social regularities are not deterministic, as other less visible categories of thought do exist, although they usually occupy a marginal space within society. Third, regularities shift in their shape and formation throughout history and different societies. As a result, policy solutions for particular social problems also are not static but malleable and changeable with time. The characteristics of social regularities are important to understanding policy archaeology because they inform my analysis of international protocols, Thai national laws and bilateral agreements.

Scheurich identifies two more arenas of policy archaeology. The third arena seeks to analyze how the grid of social regularities produces a series of possible and impossible policy solutions. This shaping of policy solutions by social regularities is said to be unintentional or an unconscious activity. The fourth area examines the social functions of post-positivist of conventional policy studies within the larger social order. It suggests that these traditional policy disciplines are also constituted by social regularities and asks what this function is, how it occurs, and what the effects are.

Scheurich notes that the four arenas of policy archaeology have permeable boundaries. Their application is cyclical so that a particular policy axis repeatedly passes through all four areas. Also, these arenas are not considered sequential, that is, any ordering is possible. However, for the purpose of clarity I will apply the four arenas to my specific research in the same order in which I present them here.

**Policy Archaeology Applied to Displaced Burmese**

I use the first arena, the social construction process, to determine the emergence of the problem of refugees. I interrogate how international and national laws arose to address the problem of displacement and contextualize it within the history of migration that characterized global migration movements in the post-World War I and II, and Cold War eras. I examine the appearance of displacement in Thailand, pre and post 1975, and study policy that developed during those two periods. The year 1975 is significant
because it signals the onset of major waves of Indochinese refugees seeking refuge in Thailand. I ask what factors made discursive statements like displaced populations gain importance for the state, policymakers and society in general to move from invisibility to visibility. I also review language and meaning in the social construction process. I analyze definitions of key terms like refugee in legal documents. Definitions provide insight into what ideas surrounding the problem of displacement are considered acceptable and what notions are considered unacceptable. I examine why different definitions of the term refugee exist in Thai and UNHCR policies. I also look at the missing gaps between how other alternative legal instruments define the problem.

In the second arena I identify and focus my research on the social regularity governmentality. This regularity comprises the set of conditions in which the social problem of displaced persons and their regulation emerges. In chapter two, I outlined Foucault’s (1991) concept of governmentality, which refers to how people and things are managed through the apparatuses of security, sovereignty, discipline, and knowledge. Governmentality expands its influence into all aspects of the lives of its citizens; it refers to how governance of people and things through law and policy work to count, describe, define, and categorize. It identifies how prior to the 18th century, government had little concern for most aspects of the lives of its subjects. Governmentality helps to describe the appearance and regulation of displaced populations in the early twenty-first century through measures such as the introduction of the passport and the development of international refugee law. Through the governmentality lens I ask why concerns for national sovereignty and public order circumvent Thailand’s legal obligation to not forcibly return refugees. This question is important because it illustrate the conditions that determine how policy is described and problematized and how policy solutions are implemented. While it is beyond the scope of my research to highlight contrary minority viewpoints, it should be noted that governmentality is not deterministic; other views contrary to state policy do exist in Thailand.

The third arena is the study of the social construction of the range of acceptable policy solutions including: repatriation, resettlement, and assimilation of refugees into countries of asylum. I question why citizenship by naturalization has never been
considered a possible solution for policy makers despite Thailand’s history of assimilation and integration of migrants in earlier periods. What factors are at play in excluding citizenship by naturalization as an option in Thailand? I examine nationality law in order to determine long-term solutions to the refugee problem made available to displaced populations through policy. I question whether these policy solutions are addressing the complexities and effects of displacement including statelessness, which refers to a complete absence of legal status.

Fourth, in my discussion I examine the social functions of post-positivist/conventional policy studies within refugee policymaking. I ask how traditional policy disciplines are constituted by governmentality and ask how it occurs, and what are the effects? I look at governmentality as a regularity associated with legal codes that prioritize national sovereignty and security and premise how they are effecting the theorizing, application and implementation of refugee policy on an international level. While I spend considerable time analyzing the first three domains of policy archaeology for each law and policy, the fourth domain is addressed in chapter seven. The reason for this is since there are common themes and trends in the policies I look at, I wish to review them together in order to highlight their similar functions within post-positivist policy studies.

**Thai Governmental Structure**

A review of the Thai governmental structure allows me to identify the various bodies responsible for refugee policy formation and implementation. Under Thailand’s constitutional monarchy, there are three branches of government: the legislative, the judiciary and the executive (Thailand Law Forum, n.d.). The legislative branch is the law-making arm of the government, whose primary responsibility is the adoption of laws that govern Thai society. Also known as the National Assembly (composed of the House of Representatives and the Senate), it approves, amends or rejects proposed bills. The judiciary is composed of all the courts in Thailand. It interprets the law and determines consistency of the law through various court cases. The executive carries out governmental actions and establishes policy. It is exercised through the cabinet headed
by the Prime Minister. Fifteen ministries fall under the Executive, including the most important civilian body responsible for policy implementation, coordination and overseeing administration of refugee camps, the Ministry of Interior (MOI) (see Appendix D). Various agencies are under the MOI including the Provincial Admission Boards (PABs), which conduct refugee status determination and the Border Patrol Police (BPP), responsible for the policing and security of the border areas, including enforcing repatriation and deportation. UNHCR and twenty voluntary agencies also provide support and protection to refugees under the umbrella of the MOI.

**Primary Sources of Data**

My primary sources of data for my analysis were legal policy documents on international and Thai national policies, and a bilateral agreement, which have been put in place to protect and/or regulate Burmese displaced populations in Thailand. The five documents I examined as data include: the 1951 UN Refugee Convention and its 1967 Protocol, the Immigration Act of 1979, the Alien Work Act of 2008, the Nationality Act of 2008, and the Thai-Myanmar Memorandum of Understanding (MOU) of 2003. I chose the UN Refugee Convention because it provides a framework to understand the protection and regulation of displaced populations at the international level. It codifies the basic minimum standards for the treatment of refugees, safeguards against their expulsion and makes provisions for their documentation. The Immigration Act, the Alien Work Act, and the Nationality Act are Thai national legal documents considered major policy documents cited as noteworthy by scholarly literature due to the fact they specifically address aspects of forced migration. No national refugee law exists in Thailand so these Thai national legal instruments fall under the category of immigration and nationality law.\(^{19}\) The Immigration Act and Alien Work Act are significant documents that address the rights, liberties and regulations that affect displaced people residing in Thailand. Examination of the Nationality Act allows for an inquiry into the

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\(^{19}\) While these Acts are significant legal codes I want to highlight that law bends with governmental politics in Thailand and that some governments might enforce the documents more than others (Muntarabhorn, 1982).
long-term policy solutions for Burmese seeking refuge in Thailand. However, the level of enforcement of all three documents depends on the government in power. The last legal document, the MOU between Burma and Thailand, was chosen because it sheds light on the interplay of economic relations and political relations between the two nations.

I excluded Thai Cabinet Resolutions, falling under the executive branch of government, relating to displaced persons because these guiding policies do not carry the weight in implementation that official acts do. Other documents I ruled out include: the 1966 International Covenant on Civil and Political Rights (ICCPR), the 2003 Convention on all migrations and members of their families (ICMR), the 1975 Convention on the reduction of statelessness, the International Convention on the rights of a Child (CRC), the Thai Labour Protection Act (2008), the Thai Constitution (1997) and the Civil Registration Act (2008). While I briefly mention some of these documents in relation to the legal codes that I do examine, the majority I omit. Theses documents address statelessness and displacement but the information provided is not any more revealing that the documents I chose to examine which provide insights to how refugees are described and categorized. Also, due to an abundance of data I decided it best to do a detailed analysis of a few documents rather than a broader analysis of many documents.

I use policy archaeology as my methodology to study the emergence and social construction of the problem refugee as defined in my data listed above. This background information provides a framework to understand the circumstances under which policies on displaced populations where made obvious, nameable and describable. In other words, these documents highlight how refugee policy moved from invisibility to visibility both internationally and nationally. I then look at how policy is represented by analyzing the way policy documents define key terms such as refugee, alien and refoulement. Next, I identify governmentality as a social regularity across displaced populations. Then, I assess policy solutions that are offered through legal instruments and government policy within the context of displaced Burmese residing in Thailand. Finally I study the realm of policy studies itself. I place importance on articles and sections of legislation related
to the above-mentioned arenas and as a result, there are parts of the various documents I did not discuss in this analysis.

All the data are accessible online, with official translations available in English through the Mekong Migration Network (MMN), Thailand Law Forum, the Thai Immigration Bureau and Burma Library, a virtual library of texts and documents relating to Burma. The documents have been translated by certified, reputable translators knowledgeable in legal language. However, I acknowledge that nuances may not have been captured in the translation of the documents and differences may exist within the Thai and English documents, which I may have missed in my analysis.

I searched for additional policy documents by going to Chulalongkorn University’s library, a top research university located in Bangkok, Thailand. I chose Chulalongkorn University’s resources over other Thai university scholarly literature because of its unique research centre, the Asian Research Centre for Migration, which has literature pertinent to my study. While at Chulalongkorn University, I found many secondary articles relating to displacement and policy measures, which I cite throughout my analysis. During this trip, I was given a draft of an educational policy document for migrant and displaced populations, which unfortunately I can not use for the purpose of this research, since it has not yet been approved and enacted.

I spent a total of three weeks in Thailand from August to September 2009 conducting my research. Half my time was spent in Bangkok, the capital, and half was spent in Chiang Mai. I chose Bangkok because of its strategic location and access academic resources. I spent time in Chiang Mai because it has a significant Burmese migrant population and I hoped to get an on-the-ground understanding of the plight of the migrant population. While conversing with friends in Chiang Mai over dinner, the recent story of a stateless ethnic Shan boy in the media came up. While I was in both Chiang Mai and Bangkok I had many fruitful conversations on statelessness, displacement and refugee status determination. Although these conversations are not part of my research they definitely inform my perspective.
**Limitations**

I examined all the legal documents in English since my understanding of Thai legal language is very limited although I do speak and read Thai. I knew that I would not be able to provide an adequate analysis if I had reviewed the documents in Thai so I chose to examine all the documents in English instead. English is my mother tongue and I felt more comfortable examining legal documents in my native language. Although the translations of Thai legal documents were from credible sources, I do acknowledge the possibility of missing certain nuances or the possibility of a mistranslation of ideas, which may have been significant to an analysis that relies heavily on the use and interpretation of language and terminology.

I also recognize that my study has limits, evident in the specific policies I choose to interrogate, despite the fact that other policies on this topic do exist. Furthermore, before 1988 to 2008 other policies may have been shaped and formulated by social regularities in different ways than how I examined governmentality, and this needs to be acknowledged, although it is beyond the scope of my research. Nonetheless, I anticipate that my analysis will provide a forum to encourage Thai policy makers and reformers to seriously consider a repositioning of policy toward displaced Burmese. I hope policy makers will rethink the various ways they have constructed numerous displaced migrants and the effect their constructions has had on different communities.
Chapter 6:  
Results

In this chapter I use policy archaeology to examine the social construction of the problem of refugees at the global, national and bilateral level. My methodology provides the means to understand the circumstances that have enabled policies on displaced populations to be made obvious, namable and describable. I ask how has refugee policy moved from invisibility to visibility? I analyze how policy is represented through key terms and identify governmentality as a social regularity connected to the emergence and policy solutions for refugees. The context of the displaced Burmese in Thailand provides a case study in which I access policy solutions made available to this population through legal instruments and examine their implementation at the ground level.

International Refugee Law

I begin my analysis by highlighting the circumstances allowing for the unique emergence of refugee in the post-World War I and II periods that led to the development of the 1951 UN Refugee Convention and its 1967 Protocol. Drawing upon Foucault (1998b) and Scheurich (1994), I also ask how and why this Convention appeared, gained importance for policymakers, and moved from invisibility to visibility. The UN Refugee Convention is considered by international policy studies scholars to be the most developed framework that protects and provides rights to all displaced populations at the international level. It codifies the basic minimum standards for the treatment of refugees, safeguards against their expulsion and makes provisions for their documentation. Policy archaeology applied to the convention and its mandate begins with the first arena, the social construction of refugees. Refugee movements existed since ancient times, but prior to the 20th century refugees were not distinguished from other types of migrants and were not visible to official structures. Refugee movements since the turn of the century differed in three ways: the size of the displaced populations in Europe exceeded those seen before, nations became more conscious of their territory and sovereignty as nation-states evolved, and the duration of displacements surpassed earlier periods (Gallagher, 1989).
Furthermore, there was need for a legal framework to deal with refugees after World War I, with the advent of the collapse of tsarism and the Bolshevik Revolution in Russia, the breakdown of the Austro-Hungarian Empire, and the genocide of Armenian Christians within the Ottoman Empire (Gallagher, 1989). Initiatives were taken at the intergovernmental level to address massive waves of displaced people. Political boundaries were redrawn and the transfer of populations was negotiated. In 1921, the High Commissioner on Refugees was established by the League of Nations. As national affiliation was becoming increasingly important, actions to facilitate human movement to areas were they would be allowed to settle and integrate became important. The Nansen passport\textsuperscript{20} issued by the High Commissioner in 1942 became the first tangible symbol of the international community’s responsibility for the legal protection of refugees.

The urgency of the refugee problem became particularly acute prior to and during World War II, and in the early days of the Cold War to resolve the problem of millions of refugees in Europe displaced by war, fascism and Nazi persecution (Martin, 2005). Massive waves of displacement caused by the Holocaust in particular, led to a proliferation of new organizations concerned with refugee issues. By late 1942, the United Nations Relief and Rehabilitation Agency (UNRRA), was established to provide aid to displaced populations.\textsuperscript{21} UNRRA worked closely with governments, military authorities and voluntary agencies to provide relief but was criticized as failing to assist and protect refugees and transpired in 1947. The International Refugee Organization (IRO) took its place in 1947; its primary goal was not relief, rehabilitation, and repatriation, but instead, resettlement. IRO completed its mandate in 1951. In 1950, UNHCR was established and in 1951 the Convention relating to the Status of Refugees was approved. UNHCR’s initial temporary mandate was legal protection, but in 1956, an uprising in Hungary occurred that led to thousands displaced so it shifted its mandate to provide relief.

\textsuperscript{20} Named after High Commissioner Fridtjof Nansen.

\textsuperscript{21} 44 nations were signatories to the agreement (Gallagher, 1989).
Citing events of the post-war periods helps to contextualize the 1951 Convention, which was an attempt to define categories of people within larger displacements who should receive special attention and protection (Gallagher, 1989). Displacement due to armed conflict was not included in the definition since it was assumed that international rules that governed their treatment were or could be incorporated into other human right articles. The applicability of the 1951 Convention was considered both geographically and circumstantially limited since the convention was developed and intended to protect only post-World War II/Cold War refugees from Europe. Yet, in the early 1960s refugee problems were spreading to other parts of the world. In 1964, UNHCR’s Executive Committee recommended deleting the time limitation clause of the Refugee Convention that it made it applicable only to post-World War II refugees. Restrictions in the Convention were lifted with the 1967 Protocol Relating to the Status of Refugees. The 1967 Protocol made provisions for all subsequent displaced populations who did not fall within the scope of the Convention such as displaced people from post-colonial nations in Africa, Asia and South America.

I now turn to an analysis of the Convention/Protocol itself. I begin first with identifying the definition of refugee as stated in the 1951 Convention/Protocol as a way to trace the construction process of how the term refugee was made manifest, nameable and describable. The 1951 Convention/Protocol defines refugees as:

Owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it. (Article 1, Section A)

Fundamental to this definition is the notion that refugees gained the gaze of the world through racial, religious, ethnic and political persecution, leading to forced migration outside the boundaries and protection of their country of nationality. The idea of persecution outlined in the convention was developed during the post-World War I and II periods and excludes massive movements of people due to armed conflict, since they are considered protected under other human right instruments. As a result, the focus on
persecution rather than war and civil strife limits its applicability and the policy solutions it offers. The definition is restrictive intentionally in order to keep numbers down and to provide aid and protection to only displaced people who required special attention and legal protection since not all of the large displaced population in Europe could be accommodated at the time (Gallagher, 1989). Kuhlman (1991) notes that the definition has shifted over time as interpretations of an individual’s fear of persecution have changed from the 1951 definition of persecution, interpreted as an individual’s well-founded fear of persecution whenever a violation of human rights occurred. Current interpretations of persecution are diverse across nations and much more limited as receiving states have become more restrictive in providing asylum to individuals from third world nations from the 1970s onward. Since receiving states interpret the term persecution in different ways, a person considered a refugee in one country might not be one in another nation. As a result, the majority of refugees in the 1950s and 1960s would have not been granted asylum with today’s notions, which preclude an individual’s perception of persecution. For instance, in the Netherlands only evidence of actual persecution is proof that the refugee’s fear is well-founded. This signifies that the management of refugees is greatly effected by changes in interpretations of persecution over time, which are more restrictive than they were a few decades ago. Kulman (1991) argues that current practices in Western countries are designed to keep refugees from the third world out of the wealthier nations.

There are other international legal instruments and agreements that broaden the definition of refugees and their policy solutions: The Convention Governing the Specific Aspects of Refugee Problems in Africa, adopted by the 1969 Organization of African Unity (OAU) is one of them (Martin, 2005). This treaty protects people who flee their country of origin or nationality due to external aggression, occupation, foreign domination or events seriously disturbing public order in their country. The OAU also outlines flight caused by persecution. However, it is thought to be somewhat limited in that it does not clearly state that violation of human rights is sufficient reason to flee (Kuhlman, 1991). The 1984 Cartagena Declaration on Refugees also expands the definition of protected refugees in Latin America by adding protection to those who have fled their country because their safety, freedom and lives have been threatened by human
rights violations, internal conflicts and generalized violence. There is no similar Asian convention on refugees or human rights that exists for the protection of refugees and it is not clear why. However, the UN Convention on Territorial Asylum, drafted in 1979, included articles relating to persecution for reasons of “the struggle against colonialism and apartheid, foreign occupation, alien domination and all forms of racism” (Gallagher, 1989, p. 46). This Convention incorporated elements of the 1967 Declaration on Territorial Asylum but it never was passed.

I refer to Foucault’s (1972) rules of inclusion and exclusion in order to understand why broader definitions of refugees and their policy solutions have not been included in the 1951 Refugee Convention and its Protocol. Since knowledge is said to be a product of power relations, rules of exclusion and inclusion work within this framework to exploit, divide and be used as instruments and objects of power. Thus, the types of speech or definitions that are prohibited are those that fall outside these systems of control or those that cannot easily be managed. In highlighting how other legal instruments have expanded the term refugee, I illustrate the rules of exclusion that are manifested in the UN Refugee Convention which limit its classification of lawful refugees but also draw attention to the potential for broader definitions of refugees.

On the other hand, some legal instruments offer a similar description of refugee as found in the UN Refugee Convention but expand articles relating to protection and the cause of flight. The Asian-African Legal Consultative Committee (AALCC), which Thailand participates in, adopted a collection of principles concerning treatment of refugees in 1966 (Muntarbhorn, 1992). AALCC includes a principle on non-rejection of refugees at the frontier rather than merely within the territory of the country seeking refuge. The AALCC also seeks to establish the responsibility and the accountability of the state causing the outflow of refugees by giving refugees the right to compensation from the state they have left. However, Muntarbhorn (1992) states that in practice the AALCC Principles have not been very influential in invoking action from states. He does not explain why, but I suggest the state’s notions of its sovereignty, which it believes supercedes rights to protection and asylum for refugees, may result in AALCC Principles being overridden.
In order to further explore the term refugee I would like to ask who is not protected under the Refugee Convention? I utilize Scheurich’s methodology of questioning how the social problem is made nameable and describable to discover the type of individuals who are not considered refugees. Article 1 Section C outlines non-refugees: people who voluntarily repatriate to their country of nationality, regain their nationality, acquire a new one, or those individuals for whom the conditions causing displacement have ceased to exist. What constitutes voluntary repatriation cited above in section C (1)? Section C (5) excludes individuals from refugee protection when the circumstances that caused them to be refugees cease to exist, but how is this determined? These are definitional and legal issues that are difficult to resolve. Article 1 Section F states,

The provision of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that: (a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes; (b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee, (c) he has been guilty of acts contrary to the purposes and principles of the United Nations.

How can part (a) be reconciled in nations where any form of contestation is considered a crime against peace? The fact that the definition of displaced persons excludes those whose freedom and lives have been threatened by human rights violations, internal conflicts, war and generalized violence in effect works to limit those who are protected as refugees.

However, an important term outlined by the 1951 Convention serves to protect displaced people in their country of asylum and is referred to as the principle of non-refoulement.

No contracting state shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of
the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country. (Article 33, 1, 2)

Non-refoulement refers to the legal obligation of states party to the Convention/Protocol to abstain from forcibly returning refugees to countries where they would face persecution. Countries that have not acceded the Convention/Protocol are also bound to it by customary international law. This clause on forcible repatriation excludes human rights violators and serious criminals but does not specifically define what crimes constitute a threat to the security of a community or country. Are refugees who participate in political protests in their host country excluded from non-refoulement? I ask this question to draw attention to the limits of non-refoulement. I also want to highlight the language used in Article 33 is ambiguous. It is not clear who is excluded and who is included or how security threats are defined. What is evident is national security is linked to who is entitled the right to non-refoulement since individuals who endanger the security of the nation are not privy to its protection.

The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country. (Article 33, 2)

The articles on expulsion and refoulement illustrate that the interplay between displacement and national security are fundamental components to the social construction of refugees. In 1967, the UN General Assembly passed a Declaration on Territorial Asylum which included a provision that states, “No [person exercising his right to seek asylum] shall be subjected to measures such as rejection at the frontier, or, if he has already entered the territory in which he seeks asylum, expulsion or compulsory return to any state where he may be subjected to persecution” (Article 3). This declaration was drafted into a Convention in 1979 but was not passed (Gallagher, 1989). It highlights a gap in the Refugee Convention, which provides rights to seek asylum for displaced individuals but no parallel obligations for nation-states to grant asylum or heed the principle of non-refoulement.
Many of the 42 million globally uprooted people have been displaced for years living in limbo within their own countries or in receiving states with no chance to return to their homes (United Nations High Commissioner for Refugees, 2009). There has been an increase in the numbers of forced migrants since the UNHCR, the main UN body dealing with refugee issues, was created. What are the deeper issues connected with why displacement is such a significant problem in our world today? In my second arena of analysis I take into consideration the identification of a network or grid of social regularities that constitute the problems and policy solutions for displaced populations as a way to address why displacement is so prevalent in this particular period in time.

Governmentality is a social regularity key to the emergence of the problem and solutions for displaced populations. In chapter six, I reviewed how Foucault coined the term governmentality as a reference to how people and things are governed through the apparatuses of security, sovereignty, discipline and knowledge. Governmentality highlights how people are managed through law and policy in a way that not only defines and describes their existence but also categorizes them and increasingly regulates their rights and access to resources. It draws attention to the conditions that determine how policy is problematized and the solutions that are sought and implemented in response. For example, Article 2 of the 1951 Convention/Protocol obliges refugees to conform to the laws and regulations of the country of refuge and Article 31(1) outlines the protocol for refugees unlawfully in the country of refuge. Articles 9, 28, 32, 33 also cite national security and public order as a safeguard in the State taking provisional measures to house refugees. “The contracting States shall not expel a refugee lawfully in their territory save on grounds of national security or public order” (Article 32, 1). What constitutes conditions calling for national security and public order? Is it war, terrorism or something else? This notion of national sovereignty necessary for the protection of a country will be considered in the following chapter.

The third arena of policy archaeology is the study of the social construction of the range of acceptable policy solutions. The Convention references voluntary repatriation, resettlement, assimilation and naturalization of refugees into countries of asylum as
solutions. Article 34 of the 1951 Convention/Protocol highlights the policy solution of naturalization by stating, “The Contracting states shall as far as possible facilitate the assimilation and naturalization of refugees.” While this article highlights the importance that displaced populations be assimilated and given permanent legal status in host nations, it ignores the constructedness of the term refugee. Refugees emerged as a problematic area in the post-war/cold war era during a period when national security was in flux and thus great emphasis is put on issues revolving around national sovereignty and security. Furthermore, according to Article 42, any State may make reservations to this article.

The Convention/Protocol describes associated fundamental rights of refugees such as the right of individuals to freedom of religion, rights of association and access to courts (Articles 4, 15, 16). These rights are linked to policy solutions because they ascribe what refugees can and should expect from their host countries. For the purpose of my research, I will focus on the manifestation of rights to education and employment and will analyze articles that relate to these two rights. Education provides for an interesting area of analysis because Thailand has developed a policy and framework for action on Education for All (EFA) in its 1992 National Education Scheme, in compliance with the World Conference on Education For All (WCEFA), evident specifically in its extension of compulsory basic education. The provisions on education from the 1997 revised constitution, specifically, Section 43, states that all individuals have the right to basic, free quality education for twelve years, which reflect the goals of WCEFA (Constitution of Thailand, 1997). Access to free, quality education is said to allow displaced people to improve their quality of life and have the opportunity to be lifted out of situations of desperation. Most of this curriculum is developed locally and is aligned with educational curriculum from Burma.

Article 22(1) accords elementary education as a right of refugees equal to that of nationals. Article 22(2) states that refugees are to be accorded treatment as favourable as possible and not less favourable than that given to aliens, particularly with regard to access to schooling, the recognition of foreign certificates, diplomas and degrees, the remission of fees and awarding of scholarships. I would like to refer to Article 22(1, 2)
to examine their implications for displaced Burmese in Thailand. In chapter three I outlined that recognized camp-based refugees and migrants can access schooling but cannot certify their education, which limits opportunities for higher education. Since 2005, the National Security Council (NSC) has urged the MOE to become more involved in the administration and curriculum of refugee and migrant education including facilitating the certification of their education. However, some observers note increasing regulation over refugee and migrant education since 2005 have been catapulted by concern over Muslim schools in Southern Thailand where conflict between Muslim separatists and Thai military forces ensues (Sawade, 2008). In July 2005, a Thai cabinet resolution was passed to provide access to public education for all children including displaced children in Thailand (International Labour Organization, 2008). More recently, there have been proposals from the MOE that refugee and migrant schools include 70% Thai curriculum and 30% local content (Sawade, 2008). There are mixed views over these changes in educational policy as some feel this will mean increasingly regulatory education for displaced people. Top-down control over finances and curriculum in schools may mean more rules, limits to the incorporation of Burmese curriculum and Burmese instructors, while increasing Thai curriculum and Thai instructors in refugee migrant schools. Others see this as the first step toward integration and possibly local resettlement. For instance, since Thai language will be required in schools, fluency in Thai will be encouraged. Individuals who are fluent in Thai may have better prospects at finding employment and adapting to Thailand. Thus, incorporating the Burmese into Thai society may possibly lead to future opportunities for citizenship. However, I question this second interpretation of educational policy changes in refugee and migrant education since Thailand has been quite vocal that it is not a country of resettlement but one of temporary stay. Yet, only time can tell what the implications of policy change will mean for displaced populations.

On the other hand, the right to employment is a fascinating area of study because policies on employment for displaced people differ according to whether they are categorized as refugees or migrants. Employment allows individuals to gainfully contribute to the economy and their own livelihood, but since work is treated differently
for recognized refugees and migrant workers, I choose to examine the implications of this right.

The contracting State shall accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country in the same circumstances, as regards the right to engage in wage-earning employment. Restrictive measures imposed on aliens or the employment of aliens for the protection of the national labour market shall not be applied to a refugee who was already exempt from them at the date of entry into force of this Convention for the Contracting State concerned, or who fulfills one of the following conditions...The Contracting States shall give sympathetic consideration to assimilating the rights of all refugees with regard to wage-earning employment to those of nationals, and in particular of those refugees who have entered their territory pursuant to programmes of labour recruitment or under immigration schemes. Article 17 (1, 2, 3)

Rights to gainful employment are given to refugees. Restrictive measures imposed on aliens, otherwise known as migrant workers, for the protection of the national labour market is said to not apply to refugees. Furthermore the right to wage-earning employment is said to be similar to that of nationals. Self-employment, through agriculture, industry, handicrafts and commerce, outlined in Article 18 is also a right of refugees. What protection exists for displaced persons categorized as aliens who fled their country due to reasons of persecution? This question will be assessed in the following section on the application of Thai legal policy toward displaced populations.

What is the range of acceptable policy measures? Article 39 of the Convention addresses signature, ratification and accession. As of August 2007, 147 State Parties acceded to one or both of these instruments; Thailand was not one of these nations (United Nations High Commissioner for Refugees, 2007). Thailand is a member of UNHCR’s Executive Committee (ExCom) and codifies the general principle in international law that a State has a duty to protect non-nationals present within its territory, even if they are stateless (Helton, 1989). Thailand accepts the principle of non-refoulement and is bound to it by customary international law. Furthermore, the 1951 Refugee Convention criteria involving well-founded fear of persecution influences the screening procedure for refugee status determination in Thailand, adopted through the 1989 Comprehensive Plan of Action. The tension between accession and the codification
of international principles suggests that Thailand prefers to exert its national sovereignty in deciding which aspects of international law to heed and which to ignore. Muntarbhorn (1992) outlines how there is a reluctance to accede to all international instruments concerned with human rights, not just the 1951 Refugee Convention and its 1967 Protocol. He states, “Dominant in the minds of Asian states is the national security factor and the fear that accession of these instruments would oblige them to accept an unlimited number of refugees for long-term settlement” (Muntarbhorn, 1992, p.33). His words illustrate the two arguments used to explain Thailand’s resistances to accession are national sovereignty and national security. Other viewpoints suggest the standards of the Refugee Convention are too high and unrealistic and that non-accession actually allows for greater flexibility in national responses to persons seeking refuge (Lang, 2002). On a smaller scale, Thailand’s policy of constructive engagement with Burma is also a deterrent from accession to the 1951 Convention/Protocol, as Burma may see this action as an unfriendly act (Muntarbhorn, 2004). Thus, the current official position is still impervious to accession.

Foucault’s concept of governmentality also provides insight into the reservations Thailand has with acceding the Refugee Convention. Governmentality draws attention to Thailand’s preference for legal codes that regulate its displaced populations and limit their rights. The 1951 Refugee Convention and its 1967 Protocol perhaps impede Thailand’s ability to fully regulate and manage its refugee population through its commitment to non-refoulement. Also, since Thailand has not ratified the Refugee convention, it is not bound to the same definition of refugee found in the UN instrument. Thailand’s definition of refugee is much more limited and this will be discussed in detail in the following sections. Thailand has greater flexibility in interpreting and deciding who is considered a refugee through non-accession, and this has implications for who is protected and how they are treated. This illustrates how the definitions, labeling and descriptions of displaced people are linked to efforts to manage and regulate their movement and access to rights and resources.

In my analysis of the UN Refugee Convention I hope to draw attention to governmentality as a regularity connected to the description and labeling of displaced
people. Legal codes use governmentality to enable easier management of refugees. I also highlight the emergence of refugees in the post-World War I and I and Cold War eras that led to the social construction of displacement as a real problem. I examine policy solutions deemed reasonable for refugees including integration and resettlement in countries of asylum. This also includes analyzing rights afforded to refugees, particularly, rights to education and employment, and I discuss their implications.

**National Refugee Policy**

I have situated the emergence of the global problem of refugees in the previous section on international refugee law. I would now like to apply the first arena of policy archaeology to trace the social construction of forced migration and corresponding national policy development in Thailand that predates Burmese migration since 1988. I highlight the circumstances allowing for the unique emergence of displacement prior to and post 1975, and the shifts that have occurred in national refugee policy from 1975 onward. That particular year was a turning point with regards to Thai policy because it signaled the onset of major waves of Indochinese refugees seeking refuge in Thailand. Factors surrounding governmentality are connected with changes in national refugee policy since 1975, and have impacted the policy solutions applied to subsequent displaced populations.

Prior to 1975, there was no concrete policy on displaced persons in Thailand since it was not considered a significant problem and most refugees were treated liberally and with leniency through policy. Displaced persons seeking refuge in Thailand fell mainly into the categories, Chinese Nationalists, ethnic Burmese, Malays and Vietnamese. They were treated on a case-by-case basis, and were managed with tolerance. After the Communist victory in China, approximately 11,270 members of the Chinese Nationalist Army forced from China were located in camps in Northern Thailand (Muntarbhorn, 1982). The Thai government allowed for the status of these Chinese to change from military to civilian refugees by issuing resident permits and this group was assimilated into Thai society and received Thai nationality (Rogge, 1985). Ethnic Karen from Burma also sought refuge in Thailand from 1959 onward. They were resistance fighters in
conflict with the Burmese regime and numbered a little under 30,000 and spread out across various provinces in Thailand. These Burmese-Karen were easily integrated in 

Thailand. This was partly due to the fact the Karen were already considered an established tribe in Thailand, so it was easy for the Burmese-Karen to be incorporated within the Thai-Karen community. In addition, Malay Communists fled to Thailand in the 1950s after their defeat in Malaysia and remained in Thailand. A small number of Vietnamese sought refuge until approximately World War II. All of these individuals became Thai subjects, were integrated into Thai society and became Thai citizens. Some of the Vietnamese that sought refuge in Thailand after World War II until 1975 were repatriated while others remained, but for the most part they were treated favourably in comparison with refugees who arrived in Thailand after 1975.

UNHCR was allowed a presence in Thailand in 1975 and from then until approximately a decade later, the main displaced groups included the Vietnamese, Laotians and Cambodians (Muntarbhorn, 1992). From 1975 to 1985, approximately a million Indochinese refugees sought refuge in Thailand (Banki, 2007). Thailand was a destination country for asylum seekers because of its proximity bordering the Indochinese nations of Laos and Cambodia. In addition, it was the only mainland Southeast Asian nation politically stable at the time. Burma, under General Ne Win’s dictatorship, was facing its own problems and isolated itself from its neighbors. The flight of the Indochinese refugees to Thailand was due to the Vietnam War and Communist takeover in Vietnam, the Viet Cong in Laos and the Pol Pot regime/Khmer Rouge in Cambodia. By the end of 1979, a total of 374,773 had fled to Thailand illustrating a massive expansion of the displaced population seeking refuge in Thailand (Muntarbhorn, 1982).

From 1975 until 1979, Thai policy focused on preventing displaced persons from entering Thailand and ejecting individuals who reached Thai soil. A Cabinet decision of June 3, 1975 proposed to drive out displaced persons from Thailand as swiftly as possible and if that was not possible, to detain them in camps where they were to report to relevant authorities under the Ministry of Interior (MOI) (Muntarbhorn, 1989). A Cabinet decision of August 17, 1977 reinforced the prevention and retaliatory policy by
publicizing that Thais who aided the entry of illegal immigrants into Thailand would be breaching the 1950 Immigration Act and expelling displaced persons irregardless of whether the repatriation was voluntarily or non-voluntary. Massive waves of Cambodians still managed to reach Thailand but many were deported in 1979, which led to an international outcry.

In response to the international condemnation, the 1979 Geneva Conference on Indochinese Refugees established a burden-sharing system, which allowed for third country resettlement (Banki, 2007). The Geneva Conference used resettlement as a solution for Thailand’s refugee problem and set a precedent in relieving Thailand from the responsibility of integration as a durable solution. Prime Minister Chomanan announced that Thailand would take appropriate measures in conformity with Thai humanitarian principles, national sovereignty, national security and the welfare of the State (Muntarbhorn, 1989). Since Thailand was assured of its position as a location for mere temporary settlement, it rolled out an open door policy which exhibited greater leniency toward displaced populations than the previous one, particularly in its emphasis of non-refoulement.

In 1980, a new government headed by General Prem Tinsulanonda took power. Government policy toward displaced persons from 1980 to 1989 shifted to a human deterrence model (Rogge, 1985; Muntarbhorn, 1992). According to this policy, Thailand was willing to accept individuals fleeing fighting on a temporary basis but in practice it demonstrated a rigid attitude by closing the border to new arrivals, and confining displaced persons to detention camps for illegal immigrants. The Thai government also stopped resettlement of new Indochinese arrivals and provided minimum standard in treatment, services and protection for these displaced populations. In essence, it created conditions of hardship that were meant to deter future displaced persons from choosing Thailand as their destination country. Central to these policies was a belief that new asylum seekers were seeking economic opportunities in Thailand rather than motivated by a fear of persecution (Banki, 2007). They were socially constructed as illegal immigrants threatening the country rather than genuine refugees needing assistance.
In later years human deterrence policy was not adhered to as strictly. Nonetheless, what can be gleaned from the Indochinese caseload is that Thailand used complex and inconsistent policy for its displaced population dependent on factors such as country of origin and ethnicity of asylum seekers, their time of entry and the size of their population. The policy was inconsistent and complex because it shifted with changes in government and was strongly influenced by governmental politics. Local integration was excluded as a durable policy solution and the intent and motivation of the refugee population was considered suspicious by Thai officials, particularly as time passed and numbers grew. Complications with policy was evident in a screening process for asylum seekers eventually introduced in Thailand through the Comprehensive Plan of Action (CPA) on March 14, 1989, which used both national legislation and internationally accepted practice (Muntarbhorn, 1992). This process for refugee status determination was time-specific and differed for individuals who came before or after it was enacted.

In the above section I outlined the recent history of the appearance of refugee policy for displaced populations in Thailand. An examination of the appearance of the problem of displacement in Thailand, pre and post 1975 reveals an oscillation in the social construction of refugees in the post 1975 period. Refugees have moved from invisibility in the pre-Vietnam war period to visibility post 1975. At certain moments they have been perceived as illegal migrant workers seeking to gain economic opportunities in Thailand, whereas in other moments there has been genuine concern for persons fleeing fighting. The implications are that complex and inconsistent policy is very much tied to changes in government and bilateral relations. Refugee policy is heavily influenced by governmental parties in power and their relation with neighboring nations, particularly those nations producing displacement and forced migration.

I now use the same policy archaeology framework to highlight the emergence of the Immigration Act (1979), the Alien Work Act (2008), the Nationality Act (2008), and a Memorandum of Understanding Between Burma and Thailand (2003). I refer to key terminology that provides insight into what ideas surrounding the problem of displacement are considered acceptable and what notions are considered fallacy. I examine why variant definitions of the term refugee exist in Thai law and the 1951
Refugee Convention and its 1967 Protocol. I also look at the gaps in order to determine what information is missing from these legal instruments. I identify governmentality as a social regularity contributing to the emergence of displacement and the ensuing solutions offered in not only international refugee policy but also in national legislation. I also note the complex and co-dependent relationship between law and governmental policy, which affects implementation and as a result, the day-to-day experiences of displaced Burmese in Thailand.

**Immigration Act 1979**

Thailand’s immigration law arose out of a need to protect its citizenry during the colonial era when it had to cede territories to the British and the French. Immigration law was needed to enhance jurisdiction over national boundaries and to provide protection to individuals classified as nationals (Muntarbhorn, 1992). The Immigration Act of 1979 (B.E. 2522) became law after the end of the Vietnam War when Thailand was still facing the threat of communism and a surge of displaced Indochinese were seeking refuge in Thailand. It was also enacted when the Geneva Convention established a burden-sharing system for Indochinese refugees (Appendix C). The Act consolidated earlier Immigration Acts of 1950 (B.E. 2493) and 1954 (B.E. 2497), and was amended in 1980. The Minister of Interior (MOI) is the executive of this Act and appoints officials to implement it and issues regulations and fees to carry it out (see Appendix D).

Employing Scheurich’s (1994) methodology, I ask how the social problem of refugees is made apparent, nameable, and describable. In other words, who is and who is not a displaced person under Thai national legislation? There is no reference to the word refugee in Thai immigration law or in the 1979 Immigration Act since it would imply Thailand’s affiliation with the 1951 Convention and 1967 Protocol. Thailand is not party to either, so by avoiding the word refugee it is released from legal implications surrounding this word (Muntarbhorn, 1982). Instead, the word used in official Thai discourse is *Pou Opayop* which refers to an individual, “who escapes from dangers due to an uprising, fighting or war, and enters the Kingdom in breach of the Immigration Act” (Clause 3, Regulations concerning displaced persons from neighboring countries,
Ministry of Interior, as cited in Muntarbhorn, 1982, p. 8). This definition of refugee is much narrower than the 1951 Convention/Protocol’s characterization, which includes persons fleeing other types of persecution, not just war and fighting. The use of different terminology has implications for who exactly is protected and how they are treated.

The Immigration Act (1979) divides displaced individuals into two categories: those entering on their own volition and those whose governments did not ask for prior official permission for them to enter Thailand. Displaced persons within the Act are classified through immigration terminology as illegal immigrants since they do not have proper identity documents. They are also referred to as alien, defined as “any person who is not of Thai nationality” (Section 4). Under Section 57, individuals who cannot prove their Thai nationality also fall under the category of alien until he/she can prove otherwise. The guidelines for acceptance as Thai entitled to citizenship include: Thai fluency, a name similar to a Thai name with Thai spelling and loyalty to Thailand and the crown (Muntarbhorn, 1992). The criteria illustrate that integration of minorities is conditional upon internalization of the Thai identity. This conditional internalization of identity is best understood through Appadurai’s (2006) concept of the anxiety of incompleteness. The Thai majority feels an unprecedented concern over the current diversity within the nation due to the presence of the Burmese minority and other groups. The desire for Kwampenthai, or thainess, for the homogenous national whole is impossible with the current state of heterogeneity in language, culture and customs. As a result, friction develops between the majority and minority due to the majority’s aspiration for a homogenous Thai nation but its simultaneous awareness that this is impossible with the nation’s current state of diversity.

Muntarbhorn (2004) states that in practice application of the Immigration Act (1979) is attenuated by national policies that exempt those seeking refuge. If displaced people notify the authorities of their status then asylum seekers are placed in refugee camps as long as they abide and respect law and order. The exception provided to refugees is outlined below.
Under special circumstances, the Minister [of Interior], by the consent of the Cabinet, may authorize an entry into the Kingdom subject to any condition or exempt any alien from compliance with the Act. (Section 17)

Section 17 is said to provide flexibility on authorizing aliens entry into Thailand (Muntarbhorn, 2004). Broad and ambiguous terminology is not only found in the Immigration Act but is characteristic of Thai national legislation in general. For example, the 1997 Constitution refers to the rights and freedoms of the Thai people but does not indicate whether the reference is to ethnicity or citizenship. Other parts of the constitution do not distinguish between Thais and non-Thais and by doing so create uncertainty about which individuals can benefit from its protection. This can be understood as willful avoidance of the recognition deserving of the minority displaced Burmese population. It also has repercussions on whether and how resources are redistributed to this group. How can minorities benefit from the protection and aid they deserve if they are unnamable and invisible in the law?

According to Section 11, people who enter or depart from Thailand must do so through official immigration check points or designated landing stations or areas as prescribed by the Minister. Section 12 (1 to 6) prohibits the entry of individuals without passports, identification documents or visas, who do not have means of support to enter Thailand, are not vaccinated or people who are considered a danger to the nation. Asylum-seekers from neighboring nations fall within one or more of the above provisions or the following:

- Having behavior which would indicate possible danger to the public or likelihood of being a nuisance or constituting any violence to the peace or safety of the public or to the security of the public or to the security of the nation, or being under warrant of arrest by competent officials of foreign governments. (Section 12, 7)

The focus on national security and public order is comparable with the Refugee Convention. In the same way, governmentality emerges as a social regularity that constitutes the problem of displacement in Thailand. Governmentality is connected with the rise of legal codes that regulate populations and prioritize national security above all. The concept of governmentality may be connected with the appearance of civil
registration and identity cards which began in Thailand in 1976 and continues today through the Immigration Act (Kanchanachittra Saisooonthorn, 2006).

The construction of displaced persons as aliens and illegal immigrants through the Immigration Act has resulted in policy solutions that have a similar regulatory undertone. Section 81 prescribes penalties to include up to two years of imprisonment and a maximum fine of 20,000 Baht or $600 USD for individuals who stay in Thailand without permission. Deportation of illegal aliens is held as the discretion of authorities under Article 54 of the Immigration Act. Section 22 stipulates that appeals are possible to the MOI except in cases of illegal immigrants without passports or identification documents. Thus, displaced persons are omitted from being able to file an appeal.

However, immigration law is not self-contained and the application of the Immigration Act is very much tied to governmental policy. Muntarbhorn states, “the degree of implementation of this Act depends on the correlation between law and national policy; the more lenient the attitude towards displaced persons, the less one has to enforce the Immigration law concerned” (1982, p. 11). A national policy of human deterrence results in more rigid measures whereas an open door model based on humanitarian grounds has the effect of alleviating legal excesses detrimental to displaced persons. The co-dependence of law and national policy is further conditioned by three factors: the time of arrival, the ethnicity of the group and the size of the population. Indochinese refugees arriving in Thailand before March 14, 1989, did not undergo compulsory screening to determine refugee status while those screened after that date were required to undergo compulsory screening. Resettlement was only made available to cases that were deemed proven refugees (Muntarbhorn, 1992). The language used to describe displaced persons as illegal immigrant or refugee is reliant on time of arrival. The law is also applied in different ways to various ethnic groups, evident in the variant treatment of Chinese Nationalists in comparison with the Burmese. Finally, the numbers arriving also influence the measure of flexibility in the application of the law, since the larger the population the less accommodating national policy becomes.
Alien Work Act 2008

The Alien Work Act of 2008 repealed the first Alien Work Act of 1978 and the second Alien Work Act of 2001. The Alien Work Act first became legislation a year before the Immigration Act, in the post-Vietnam War period. The amended Alien Work Act of 2001 and the most recent 2008 version appears at a time when Thailand attempts to manage its approximate 1 to 1.5 million migrant workers, the majority of whom are from Burma (Arnold and Hewison, 2005). The Act contains provisions in relation to the rights and liberties of these individuals living and working in Thailand. The most significant changes in the Act (2008) are the increase in fees for issuing work permits and the extension of the validity of the work permit for two years rather than one year as in the previous Act.

In my use of policy archaeology, I begin first with an exploration of terminology utilized in the Alien Work Act (2008). Similar to the Immigration Act (1979), an alien refers to a person who is not of Thai nationality (Section 5). As a result, displaced persons fall under the umbrella of alien. The nuances of displaced aliens are highlighted in the phrase, “Any alien is prohibited to engage in any work other than as prescribed in Section 7 and granted by the Registrar a permit to engage in any work, except that an alien entering the Kingdom for temporary stay under the law on immigration in order to engage in the work which is of necessity and urgency” (Section 9). Asylum seekers fall under the category, temporary stay aliens. Thus, individuals seeking refuge can come forward and be registered for work even though they many have breached immigration law in entering the country. The irony is while displaced persons who seek sanctuary in refugee camps are not allowed to work, those who enter as illegal aliens are increasingly allowed to work, especially if they register with the authorities (Muntarbhorn, 2004).

Section 4 outlines that the Act is not applicable to the following: diplomats, members of consular missions, representatives and officials of international organizations and governments or to individuals who perform missions related to arts, culture and education. Work is defined as the engagement in effort by exerting energy or knowledge regardless of wages or other benefits and permit is reference to a work permit (Section 5).
The Act does not outline which industries migrant workers can seek employment. However, according to Arnold and Hewison (2005), migrants are permitted to work in the following sectors: fisheries and related industries, manufacturing, domestic work, farming, plantations, rice mills, labour for shipping businesses and construction work if no Thais can fill these positions (see Appendix E).

I would like to highlight that the language used in this legal code serves to manage and regulate. Section 21 states that work permits issued under this Act shall be valid for two years from the date of issue. Section 23 allows for a renewal of an additional two years but the permitted working period should not exceed four consecutive years except as proscribed by the Cabinet. Initial work permit fees and renewals are 20,000 Baht or $600 USD (Alien Work Act, 2008). Any changes to the permit cost 5,000 Baht or $150 USD. On the other hand, the Migrant Assistance Program (MAP) (n.d.) cites the cost of registration in 2007 as 3,800 Baht or $115 USD. The discrepancy between the two costs quotes is steep and it is not clear why the fees are different. What is apparent is in reality most aliens cover the cost of registration rather than their employers. In 2003, the number of workers registering declined due, in large part, to the high cost of registration that the employers were not shouldering (Arnold and Hewison, 2005). The fee is high considering the minimum wage per day for an alien is between 148 to 203 THB or $4 to $6 USD (MAP Foundation, 2008). According to Arnold and Hewison (2005), migrant workers in Mae Sot earned between 50 to 70 baht per day or $1.5 to $2 USD in 2004, despite the fact the official minimum wage is much higher. This illustrates the large discrepancy in official policy and the practical reality for individuals employed in low-skilled labour in Thailand.

The policy solutions for displaced persons regarded as aliens and illegal immigrants have a regulatory undertone similar to that of the Immigration Act (1979). Section 51 outlines that any alien engaging in work without permission shall be subject to imprisonment not exceeding five years or a fine between 2,000 to 100,000 Baht ($60 to $3000 USD).
The Alien Work Act (2008) appears to work in conjunction with the Immigration Act (1979) through the similar use of language and its regulatory framework. Despite the fact that the Alien Work Act has been amended two times, my impression is that the language, content and overarching framework of the document have not altered a great deal which explains its compatibility with the Immigration Act.

Nationality Act 2008

According to Kanchanachittra Saisoonthorn (2006), the concept of Thai nationality did not exist until Thai society was exposed to the western world. Nationality law first appeared with the Nationality Act B.E. 1913 (2456), which was enacted by King Rama VI on April 10, 1913. Citizenship since the Sukhothai period, when the Thai State was established, was based on the principle of *jus sanguinis*, which literally is a reference to nationality based on bloodlines. Acquiring citizenship by naturalization was made possible with the Naturalization Act Ros Sor 130 in 1911 whereby the stipulations for an alien to acquire citizenship included full assimilation into Thai society, social contribution to the nation, and parentage or a husband who had received nationality by naturalization (Kanchanachittra Saisoonthorn, 2006). This Act was a mechanism to naturalize the family members of aliens.

The current Nationality Act first emerged in 1965 and was amended in 1992 and most recently in 2008. In my examination of this Nationality Act, I would like to apply policy archaeology to the second arena and the third arenas, the emergence of governmentality and the construction of the range of acceptable policy solutions for displaced Burmese. I also ask whether assimilation and citizenship are considered viable options.

The Nationality Act (2008) stipulates who can acquire Thai nationality by birth.

The following persons acquire Thai nationality by birth: (1) A person born of a father or a mother of Thai nationality, whether within or outside the Thai Kingdom; (2) A person born within the Thai Kingdom except the person under Section 7 *bis* paragraph one. (Section 7)
Under the current Nationality Act (2008), Thai nationality by birth is not granted to children of illegal asylum seekers born in Thailand, unless the Ministry of Interior exercises discretion in granting nationality. This has been done on certain occasions in the past. In 1990, the Ministry of Interior granted Thai nationality to several thousand grandchildren of displaced persons from Vietnam who came to Thailand in the 1950s, but still citizenship was not granted to the children of the refugees (Muntarbhorn, 1992). Here we see that the discretion applied in granting nationality to displaced persons is unsystematic and realistically it is not an option for the majority of this population. Hundreds of thousands of displaced people have sought refuge in Thailand since 1975 but very few have been offered citizenship. This differs from policy in place from 1913 to 1952, which granted Thai nationality to children born in Thailand to alien parents regardless of whether they entered the nation legally or not.

Furthermore, according to Section 12 of the Nationality Act (2008), it is possible to acquire Thai nationality by completing an application for naturalization with a competent official in conformance with Ministerial Regulations. This is similar to the original Nationality Act (1913), in force between 1913 to 1952, which states that Thai nationality could be granted to a person who was “eligible for naturalization under the Naturalization Act Ror Sor 130” (Kanchanachittra Saisoonthorn, 2006, p.42). The later Nationality Act (1952), which was in effect until 1965 also provided an opportunity for aliens born outside of Thailand to request Thai nationality by naturalization.

Displaced persons fall under the category of “a person who does not have Thai nationality” (Section 4). They are defined in similar terms to the Immigration act. The Nationality Act also states under which conditions a displaced person or alien cannot acquire Thai nationality.

A person born within the Thai Kingdom of alien parents does not acquire Thai nationality if at the time of his birth, his lawful father or his father who did not marry his mother, or his mother was: (1) the person having been given leniency for temporary residence in Kingdom as a special case; (2) the person having been permitted to stay temporarily in the Kingdom; (3) the person having entered and resided in the Thai Kingdom without permission under the law of immigration...The person who is born within the Kingdom of Thailand and has not acquired Thai nationality under
paragraph one shall reside in the Kingdom of Thailand under conditions stated in the Ministerial Regulation, but principles of national security and human rights have to be considered as well. This person shall still be deemed to have entered and resided in the Kingdom of Thailand without permission under the law on immigration when there is no such Ministerial Regulation. (Section 7. *bis*)

Displaced persons fall under subcategory one, those that have been given temporary residence as special cases. The MOI’s discretion on the granting on residency is directly linked with issues of national security. In other words, the MOI’s perception of the individual’s behaviour is connected with his or her ability to remain in Thailand. This notion of good or bad conduct can be linked to Foucault’s (1972) rules of inclusion and exclusion in which disciplines or ruling bodies determine what types of actions are deemed reasonable and which are not. Conduct that stabilizes public order is genuinely considered acceptable whereas those actions that challenge or contest it are thought to be unacceptable.

Currently, citizenship for aliens is subject to the discretion of Ministerial Regulations. Section 10 outlines that individuals with the following can apply for naturalization: good behaviour, regular occupation, residence in Thailand for a consecutive period of five years and having knowledge of the Thai language. Refusal to grant permission for naturalization is also the discretion of the Minister of Interior.

According to the UN Convention on the Rights of a Child (CRC), which Thailand is party to, all people have the right to birth registration and the right to nationality, including the children of stateless people, refugees and asylum seekers (Article 7 and 22, CRC). There has been considerable reservation to both articles and Thailand has commented that the application of Article 7, “Shall be subject to the national laws, regulations and prevailing practices in Thailand” (UNESCO, 2004, as cited in Huguet & Punpuing, 2005, p. 135). Thailand is also party to the International Covenant on Civil and Political Rights, which states that children have the right to be registered after birth, to receive a name and acquire a citizenship. The Thai 2008 Civil Registration Act outlines the process whereby non-Thais are guaranteed birth certificates under the discretion of the director of central registration, although this is not a guarantee for
citizenship (Section 20, 28). Birth certificates indicate the assurance of legal recognition of identity, which has implications for long-term solutions sought. In practice barriers exist to registration of births of displaced and stateless children. There is fear from Thai governmental bodies that certificates could be used to pressure authorities to grant Thai nationality to displaced, stateless people (Muntarbhorn, 2004).

According to Kanchanachittra Saisoonthorn (2006) the current nationality law is more rigid than the past two periods mentioned. She further states that Regulation of Revolutionary Party no.337 (Por Wor 337), was introduced due to widespread fear of communism in Southeast Asia, and has resulted in many cases of statelessness since its enactment on December 14, 1972. This regulation in conjunction with Section 11 of the Nationality Act (1992) states that aliens born in Thailand are illegal immigrants. The regulation revokes Thai nationality of persons who are of alien parentage born in Thailand before December 14, 1972 of an alien father or mother with non-permanent residence. It does not grant nationality to individuals born from that period until February 25, 1992. Por Wor 337 essentially withdrew Thai nationality granted to children of aliens already integrated into Thai society. This regulation highlights the unsystematic and impractical nature of Thai policy on citizenship, which has the ability to take away citizenship in an unjust manner. The result is many individuals have been placed in precarious situations where they have no protection and access to rights due to their statelessness.

The Thai Government attempted to resolve the negative impact of statelessness by establishing policy with the Cabinet to recognize the status of lawful immigrants and the right to residence of stateless minorities who immigrated and assimilated into Thai society. Thailand has demonstrated its will, albeit not without impediments, to the issues of statelessness through a Cabinet Resolution passed on January 18, 2005, which issues proper identity documents to every stateless person in Thailand and registers them in a civil registry (Kanchanachittra Saisoonthorn, 2006).

Thailand has made efforts to recognize and address statelessness in its educational provisions. In July 2005, a Thai cabinet resolution was passed to provide access to public
education for all children including displaced children in Thailand. However, according to a study done by the International Labour Organization (ILO) (2008), this policy is not being implemented on a large scale, a fact which illustrates that implementing a policy does not translate into widespread application. Discrimination has been a key factor deterring unregistered parents from accessing government services, including public education for their children, even after the passing of the cabinet resolution, because their lack of legal documentation has created the fear of deportation. Although registered migrants do not have to worry about deportation, they often do not know their rights or why their children are refused admission to schools by the school management (Bryant, 2005). What is evident from the literature is that discrimination persists as a factor that prohibits stateless children from accessing educational opportunities despite progressive policies like the 2005 Cabinet Resolution. Although the International Labour Organization (ILO) and local NGOs are taking small steps to educate and sensitize the public to the issue of migrant children’s education, it is not clear how they are doing this, on what scale this is occurring and whether this is a local or national effort.

Memorandum of Understanding 2003

An MOU in the employment of workers was signed on June 21, 2003 between the government of the Kingdom of Thailand and the government of the Union of Myanmar. The MOU falls under the authority of the Ministry of Labour in both nations. This MOU was created due to Thailand and Burma’s concern over the negative social and economic impacts caused by illegal employment and their desire to enhance mutually beneficial cooperation between the nations (Preamble, 2003).

According to the Thai-Burmese MOU, the objective and scope of the agreement are to ensure the following:

1) Proper procedures for employment of workers; 2) Effective repatriation of workers, who have completed terms and conditions of employment or are deported by relevant authorities of the other Party, before completion of terms and conditions of employment to their permanent addresses; 3) Due protection of workers to ensure that there is no loss of the rights and protection of workers and that they receive the rights they are entitled to;
4) Prevention of, and effective action against, illegal border crossings, trafficking of illegal workers and illegal employment of workers. (Article 1)

The objectives of this MOU are meant to be reciprocal but in reality they serve to manage unidirectional migration flows of human labour from Burma to Thailand. The MOU allows Thailand to send names of migrant workers to Burma in order to verify identities and nationalities (Muntarbhorn, 2004). Article three describes how the two nations “shall work together for the establishment of procedures to integrate illegal workers”. I interpret this to mean the two nations are cooperating to increasingly regulate and govern migrant populations. This government rationality calls attention to the role of the social regularity, governmentality, in the way in which forced migrants are governed, counted, described, defined, and categorized. Governmentality is also highlighted in that security is a pillar of ASEAN, of which Thailand and Burma are members. As a result, regulation of migrant recruitment is a vital component of this MOU.

The language used in this document differs remarkably from the Immigration Act and the Nationality Act. Rather than using the terms alien or immigrant, the word “worker” is used to describe the movement of human labour across the Thai-Burma border for purposes of employment. There is no reference to displaced persons throughout this document since the document is meant to outline the administration of economic migrants. In chapter three I argued the constructed nature of categories of displacement, which delineate who receives certain labels. The nature of labeling means that some populations fall under the category, economic migrant or worker.

The MOU does not outline employment sectors where individuals can pursue work within the two nations (see Appendix E) but does state the terms and conditions of employment shall not exceed two years, extendable for another two year period but not to exceed four years which is similarly outlined in the Alien Work Act (Article 9). After a three year break a worker may then re-apply for employment. What can be gleaned is Burmese workers are meant to fill temporary jobs and are not supposed to settle in Thailand. The four year maximum limit on residence indicates Thailand is taking measured action to ensure that unskilled Burmese labour remains in Thailand temporarily
rather than as long-stayers. The exertion of legal pressure so that migrant workers stay only temporarily is not only unique to Thailand. A similar system exists with Canada’s temporary labour program, which seeks workers in the agricultural and domestic sector to fill its own labour shortages. Thus, increased suppression of illegal migration, employment and a closer monitoring of the return of migrant workers once their term of work has expired, is both a local and global problem.

The registration of migrants has become increasingly important in policy circles in recent years and this serves to increasingly regulate refugee populations. This MOU systematizes registration to be implemented at the local levels. In 2004, Thailand began a new round of migrant worker registration for workers from Burma. This illustrates Thailand’s commitment to implementing the MOU soon after it was enacted. Under this agreement Burma is responsible for verifying each worker’s citizenship and issuing travel documents (Arnold & Hewison, 2005). However, there are many obstacles to this process. First, it may take Burma years to verify citizenship. Second, there is the concern over human rights since many displaced people employed as migrant workers in Thailand worry the military junta will use their registration and identity data information to keep tabs on their political actions in Thailand. Third, in Thailand, there is a lack of information on this complicated registration process and on Thai labour laws in general. Often NGOs are left with translating registration material for migrant workers rather than the government taking responsibility for this task.

My examination of this MOU illustrates the conditions that determine how bilateral agreements describe, problematize and find policy solutions for displaced migrants are problematic. Agreements such as these are often enacted in order to manage and regulate populations, which highlight the interconnection between MOUs and governmentality. Very little attention is paid to the real barriers that constitute the problem and solution of migration flows to and from nations. There are consequences to not paying attention to the real issues that comprise the problem and solution to migration. Since policy is formulated and implemented in ways that do not address the emergence and conditions surrounding displacement, many refugees are left in marginalized positions without rights and protection.
Chapter 7: Discussion

The Emergence of Refugees

My policy archaeology framework began first with an examination of the emergence of the problem of refugees in the context of the 1951 UN Refugee Convention and its 1967 Protocol. Three factors were important in tracing how the Convention appeared and gained importance: the numbers of refugee movements exceeded those seen before, the heightened national consciousness of territory and sovereignty, and the duration of displacements extended beyond earlier periods. Our current conception of refugee is only made possible with an understanding that refugees only become labeled as such if they cross national boundaries, since otherwise they are labeled Internally Displaced People (IDPs). Anderson (1991) describes the clearly bounded spatial territories as imagined communities and cultural constructs. In the modern age, censuses, mapping and identity documents have contributed to the carving out of territories in particular ways; this indicates there is a connection between how national sovereignty is exercised on territories and the subjects who inhabit these spaces (Foucault, 1991). The introduction of permanent passports in the post-World War I period illustrates the finite borders of nations (Gallagher, 1989). What can be gleaned from the rise of censuses, mapping and identity documents is that refugees were constructed at a time when importance was placed on a delineation of national borders and national sovereignty.

Tracing forced migration movements into Thailand led to similar insights. Displaced persons in Thailand prior to 1975 were treated liberally; they only became an obvious problem after 1975 due to the massive influx of Indochinese refugees from Vietnam, Laos and Cambodia. The Indochinese refugees became describable, nameable and obvious due to their large numbers, their ethnicities, and their time of arrival in Thailand. The time element and its correlation with government politics played an important role in three trends that have been adopted toward displaced populations: a restrictive closed door policy, the more liberating open door policy, and the moderate swinging door policy. The closed door or human deterrence policy has been
characterized by forcible repatriations of displaced groups. The open door policy has meant more accommodating practices and access to resources for displaced groups whereas the swinging door policy has combined elements of human deterrence and accommodating practices. All three of these policies have guided measures toward the Burmese caseload as well.

**Language and Discourses**

There are several implications of discourses, statements and terminology used which via policy implementation become visible. Since Thailand is not party to the most important and developed framework on refugee protection, the 1951 UN Refugee Convention and its 1967 Protocol, it is not bound to the same definition of refugees that is found in the UN instrument. The UN definition covers all forms of persecution whereas the Thai definition refers to only individuals fleeing fighting (Convention and Protocol Relating to the Status of Refugees, 1967; Ministry of Interior, as cited in Muntarbhorn, 1982). While the UN definition is still considered limited in that it does not cover human rights abuses, foreign domination and other forms of oppression, it still refers to refugees in much broader terms (Gallagher, 1989). What this signifies is the very construction of the term refugee in various contexts implicitly serves to produce categories of difference and this has implications for who exactly is protected and how they are treated (see Appendix E). For example, currently individuals fleeing from forced porterage and other types of human rights violations are not regarded as refugees in Thailand but are instead perceived, constructed, and defined as economic migrants. Foucault (1998b) notes vertical discontinuity in how problems are defined, described and labeled throughout history. Reconsidering my question in chapter three about the ethnic Shan exclusion from refugee protection, I hypothesize that perhaps one motivation behind the Thai government’s actions is in fact their interpretation of displacement.

Refugees in Thailand are not considered a visible problem within the scope of the law. In fact, national refugee law does not even exist in Thailand. All the documents that address the protection and access to rights for displaced persons are covered within the framework of immigration law, which utilizes the terms, alien and illegal immigrant, to
refer to displaced persons. This indicates that within national legal codes, refugees are not a named, describable and apparent problem. Instead, low-skilled economic migrants emerge as a societal problem that requires a strong legal framework to regulate the terms of their residency in Thailand. However, the Refugee Convention influences the screening procedure for refugee status determination in Thailand adopted through the CPA. Although this screening procedure is ad-hoc rather than systematic, it is nonetheless worthwhile to explore how Thailand chooses to adopt certain international practices and disregard others.

Thailand accepts the principle of non-refoulement, the legal obligation to abstain from forcibly returning refugees to countries where they could face persecution outlined in the Refugee Convention, and is bound to it by international customary law (United Nations High Commissioner for Refugees, 2007). Yet, the Refugee Convention excludes individuals who are considered human rights violators and serious criminals who constitute a threat to the security of the country. National security is linked to who is entitled to the right to non-refoulement and individuals who threaten the security of the nation are not privy to it. This ideology is connected to constructions of nationhood outlined in Chapter four. In historical periods, notions surrounding strengthening the Thai geo-body were politically motivated; it was used as a tactic to strengthen the legitimacy of rulers. What I seek to draw attention to is the idea that national security must be interrogated for its constructedness and the effects it has on displaced people.

In reality Thailand has forcibly repatriated ordinary individuals seeking refuge in Thailand, while using its concern for security as justification for its action. This is evident in the case of the 800 ethnic Rohingyas from Burma who sought refuge in Thailand in 2008 but were detained by Thai security forces, denied access to lawyers, then expelled back out to sea with little food and water (BBC News, 2009). The Thai government and security forces stated that expulsion was necessary due to the greater security threat that the illegal immigrant Muslim men caused, but were unable to prove in what ways these Rohingya posed grave security concerns for the nation (BBC News, 2009b). It is not only the ethnic Muslim Rohingyas that pose a so-called security threat in Thailand. The Muslim dominated southern provinces of Thailand are also painted in
the media as breeding ground for Islamic extremists, insurgent and separatist movements (Reuters, 2009). I suggest that Appadurai’s (2006) argument that minorities are produced within nations as scapegoats for majority groups to displace anxieties about the state and their own marginality in a globalizing world is relevant to an analysis of the application of forced repatriation. Minorities like the Rohingya and Thai Muslims in a predominantly Buddhist nation blur the boundaries of us versus them, and their movement is viewed as threatening to the policing of borders. In addition, the legally ambiguous status of displaced people in particular, caused by a lack of national refugee legislation and a narrow definition of displacement, excludes certain minorities, and puts pressures on legal codes that regulate them. I do not mean by this that all minorities are demonized because that is certainly untrue. The Chinese Nationalists fleeing Communist China in the post-World War II years were easily integrated into Thai society and culture and were granted citizenship (Rogge, 1985). Their ability to integrate in Thailand is connected with factors relating to their numbers, ethnicity and the time period in which they came to Thailand. These factors demonstrate that Thailand’s obligation to the principle of non-refoulement is compromised by the above issues, as well as linked to Thai bilateral political and economic relations with surrounding nations.

Thai bilateral relations with Burma have played an important role in the principle of non-refoulement. In the past twenty years, Thailand’s official policy toward Burma has been one of constructive engagement. Constructive engagement in reality has meant increasing transnational economic integration between the two countries, resulting in harsher stances toward displaced Burmese in Thailand. Their situation has become more negotiable as reconstructions of the Thai geo-body and engagement with the Burmese regime have played a role in policies toward Burmese who have sought refuge in Thailand. Under Prime Minister Thaksin, visa regulations introduced in 2002 increased the difficulty for Burmese activists seeking refuge in Thailand to obtain visa extensions (Human Rights Watch, 2004). The objectives of the MOU between Thailand and Burma, signed in 2003, also illustrate how the two nations cooperate to manage and regulate migration flows through formal language and legal codes.
Governmentality, the Law and Categorization

I suggest governmentality is a contributing social regularity to the emergence of the problem and solutions for displaced persons. Governmentality is a reference to what Foucault describes as a governance mentality that expands its influence into all aspects of the lives of its citizens. It refers to the way in which people and things are governed, counted, described, defined, and categorized. Governmentality acutely gained visibility with the initiation of the passport during World War I in Europe, introduced for the purpose of national security. It reinforces the social order and equates the wellbeing, happiness and productivity of its citizenry as being directly connected to governmental rationality and security. Foucault (1991) states that the law and sovereignty are absolutely inseparable and identifies how government employs the law as a tactic to achieve certain end results. He identifies how governmentality is critical to the emergence, naming, describing and treatment of problems like refugees.

Governmentality plays a role in enforcing public and social order. The 1951 Refugee Convention embodies a compromise between humanitarianism and state sovereignty since its emphasis on national security and public order takes precedence over provisional measures to house refugees (Article 32, 1). The Immigration Act (1979) and the Alien Work Act (2008) also echo the Refugee Convention in prioritizing national security and their reinforcement of public order. The governmentality lens helps to explain why these national legal instruments choose to use an immigration framework to describe displaced persons as temporary stay aliens. It situates the problem of displacement as constituted by a disciplinary grid that increasingly regulates and manages refugee populations. For instance, the relocation of refugees referred to as Persons of Concern (POC), from urban areas to rural refugee camps is said to have occurred because management of refugees is easier in rural areas rather than in urban ones. This is because refugees are limited in their capacity to travel outside the perimeters of rural camps. The MOU signed by Thailand and Burma in 2003 also points to this regulatory framework in its emphasis on identifying and registering migrant workers through official channels. While I do recognize the positive benefits to migrants’ association with registration
including access to health care in Thailand, what I attempt to illustrate in my points above are the conditions that determine how displaced people are described and problematized.

Notions surrounding Thai national identity discussed in chapter four are also connected to governmentality and the traces it has on international, bilateral and national legal codes. The Thai national ethos was constructed during the colonial period in Southeast Asia as a method to ward off foreign encroachment and to strengthen the Thai nation-state. Rhetoric was used to create a sense of belonging to a common identity of sacred nationhood and naturalized exclusion of others in Thailand. Thus, exclusive rules regulating what is deemed a reasonable identity construct have governed both the historical relationship between Thailand and Burma as well as the current Thai policies in relation to displaced Burmese populations in Thailand. This indicates that governmentality has been a vital component of the defining, categorizing and regulating of various groups in Thailand under the logic of reasonable and unreasonable identity constructions.

Governmentality works jointly with the law to create a greater awareness for categories of difference. Displaced Burmese are described in Thai legal codes as persons fleeing fighting, persons of concern, aliens, illegal immigrants and migrant workers. Categories of displaced persons further allow the nation-state to reaffirm territorial sovereignty and national integrity and a coherent domestic community from which the state draws legitimacy and authority (Grundy-Warr & Wong, 2002). Categories are implicated in relations of power and the way in which groups are governed through state policies. Categories are embedded in power relations, evident in the procedures and methods that allow for the exercise of complex power through the use of security and disciplinary mechanisms (Foucault, 1991).

**Policy Solutions**

Regardless of Thailand’s reservations with the UN Refugee Convention, in general, and more specifically its broader definition of refugees, the nation has accepted a large influx of Burmese refugees over the past twenty years. Despite Thailand’s lack of national refugee policy, the nation has allowed for a process of refugee status
determination since 1989. Thailand has also allowed UNHCR to have an official presence in Thailand since 1998 and oversee nine refugee camps along the Thai-Burma border. Application of the Immigration Act (1979), the Alien Work Act (2008), the Nationality Act (2008) and the MOU between Thailand and Burma (2003) are also attenuated by national policies that exempt those seeking refuge. If displaced persons notify the local Provincial Admission Boards (PABs) responsible for the screening of refugee applicants, successful applicants are placed in refugee camps as long as they respect law and order (see Appendix D).

Overwhelmingly, the long-term durable policy solution to the refugee problem as visible through Thai law and policy is third-country resettlement, cemented with the Geneva Convention in 1989 that established a burden-sharing system and allowed Thailand to remain a place of temporary refuge. This has become the long-term durable policy solution because the political conflict in Burma has not receded but instead, it has intensified and as a result, more and more individuals have fled Burma and sought refuge in Thailand. While an alternative solution exists, that is voluntary repatriation, it has not been a viable option for displaced Burmese due to the longstanding turmoil in Burma, which has yet to improve. The long-term policy solution made available to recent waves of displaced Burmese contrasts with the post-World War II period when Thailand liberally integrated and gave citizenship to Chinese Nationalists fleeing Communist China, and waves of Vietnamese who also migrated to Thailand. What this indicates is that Thai history is a series of ruptures; tracing forced migration movements and their policy solutions depends on a variety of factors including: numbers, ethnicity, the time period and governmental policy.

Little prospects exist for voluntary repatriation due to the nature of the political conflict, subjugation of ethnic groups and widespread oppression in Burma. Burma has been governed by repressive military rulers for more than four decades and the situation continues to deteriorate. In the aftermath of the 1989 uprising, many Burmese students fled to Burma’s jungles and joined ethnic struggles against the army or the Tatmadaw. The 1990s was a decade when Burmese army utilized the Four Cuts program to gain control of border regions. This military campaign led to human rights violations against
ethnic Rohingya, Karen, Karenni and Shan who were forcibly relocated and forced to flee their homeland. By the late 1990s more than 100,000 refugees were in camps in Thailand (International Human Rights Clinic at Harvard Law School, 2009). In 2007, the military used violence to suppress the protest Buddhist monks were peacefully staging against the regime during the Saffron Revolution. After Cyclone Nargis hit Burma in May 2008, and an estimated 134,000 were dead, the regime held a referendum for a new constitution that would institutionalize its power and exclude the possibility for real democratic participation. Political suppression continues today in Burma with Aung San Suu Kyi still under house arrest and the number of political prisoners in the country doubling to over 2,100 between June 2007 and November 2008.

As a result, Thailand focuses on promoting resettlement for displaced Burmese since voluntary repatriation is not a viable choice. However, in reality thousands of displaced people have been living in refugee camps in Thailand for twenty years. Some individuals were born in the camps and have never experienced life outside of them. Third country resettlement is a limited and restricted option for refugees. For instance, Canada, a receiving nation, grants refuge to approximately 22,000 refugees annually from across the global (Citizenship and Immigration Canada, 2009). While it may seem Canada accepts a large number of refugees I would again like to highlight there are over 16 million refugees globally (United Nations High Commissioner for Refugees, 2009). Keeping in mind the scale of displacement which has uprooted millions around the world, I question whether third country resettlement is really a practical option for the majority of displaced Burmese in Thailand?

On the other hand, integration and citizenship are limited options for displaced Burmese in Thailand, evident in my analysis of the Nationality Act (2008), which describes the application of citizenship by naturalization as subject to Ministerial relations. My examination of the Immigration Act (1979) points to an internalization of the Thai identity as a prerequisite to integration of minority groups. Thai fluency and the adoption of Thai names with Thai spelling are conditions attached to Thai nationality. While it is not clear whether this is something that displaced Burmese aspire to, what is evident is the internalization of the Thai identity leads to easier and faster integration of
minority groups. This is exemplified in the Chinese, who are well integrated into Thai culture and society. The limits of this practice are a loss of traditional values, culture, traditions and the recognition of difference.

Statelessness is a problem for displaced populations. Stateless people are not protected by their country of origin or Thailand (Huguet & Punpuing, 2005). They are not officially recognized by the Burmese government and have difficulty obtaining Burmese citizenship for their children born in Thailand, even when they hold valid Thai birth certificates. Mong Thongdee, a 12 year old boy of Shan ethnicity, is one such example. Mong recently became the centre of media attention. In 2009, Mong hoped to compete in a Japan-sponsored paper plane competition on Thailand’s behalf but was initially denied foreign travel rights by the MOI due to his lack of Thai citizenship (Pongsudhirak, 2009). His story illustrates that displaced persons and/or economic migrants and their offspring are a significant and growing population in Thailand but are ignored in Thai law, and in practice have little opportunity for advancement and integration in Thai society.\textsuperscript{22} The reality of the situation is that even though Thailand would like to consider itself as a country of temporary stay, in truth, many displaced Burmese are born, raised and live most their lives in Thailand. The need for permanent residency status tied to a specific timeline and claims to citizenry in Thailand are areas that need to be not only reviewed but also require interrogation.

\textbf{Challenges to Policy Implementation}

Problems of implementing international frameworks at the national level must understood in the context of a blurring of boundaries between asylum and other forms of migration. Part of the difficulty is not having a universal definition for refugee: “No international treaty provides for a right to asylum—only a right to seek asylum. Determining who is a refugee, as compared to economic migrant, can be an extremely difficult task, particularly when individuals migrate for a complex variety of reasons”

\textsuperscript{22} The article further cites more that there are more than two million Burmese migrant labourers working in Thailand, and they compose 10% of the labour force.
(Martin, 2005, p.24). Thailand, confronted with massive influxes of undesirable asylum seekers has chosen to ignore international refugee law and instead use local immigration law and terminology to constrain the influx (Muntarbhorn, 1992). Although screening of asylum seekers exists, no formal procedure for determining refugee status has been developed by the Provincial Admission Boards (PABs) that oversee and implement the screening. Since Thailand is not party to the UN Refugee Convention it determines refugee status based on persons fleeing fighting and the consequences of civil war rather than referring to persecution as criteria. The lack of an implemented formal procedure means the criterion is applied differently in different border provinces. Some PABs take a literal, narrow interpretation and state displaced persons must be fleeing direct conflict. Other PABs interpret refugees as individuals fleeing the consequences of armed conflict (Muntarbhorn, 2004). In 2002, PABs were not meeting consistently to process cases. In some instances, decision-making by the boards was considered restrictive by UNHCR. The absence of a functioning procedure meant by the end of 2003, approximately 19,000 non-registered cases that had not yet been processed were living illegally in the border camps. At the implementation level, a lack of coordinated and systemic effort impedes refugee status determination and access to camps.

Furthermore, refugee policy is influenced by governmental politics, particularly its economic relations with Burma, and international pressure. Three particular trends have been adopted toward displaced populations: an open door and a closed-door also referred to as human deterrence policy, and finally a swinging door. Thai policy toward displaced persons oscillates with time. In certain instances it has followed the human deterrence model and in other circumstances it has had an open door policy. Thailand’s recent forcible repatriation of the ethnic Hmong from Laos who have sought asylum at Huai Nam Khao Camp in Petchabun Province since 2004 exemplifies implementation of the human deterrence policy (Irin, 2008). In July 2008, more than 800 Hmong who originally fled harassment and persecution in their homeland were forcibly returned to Laos by the Thai military. On the other hand, Thailand has illustrated attempts at the open door policy in the very fact it has hosted more than 1.2 million refugees over the past thirty years (The Nation, 2006). What is evident in its fluctuating treatment of displaced populations is the door is more open for some numerically smaller and distinct
groups than for others. Furthermore, there is a connection between the size, the length of stay and ethnicity of displaced groups and the policy Thailand employs on them. Also, bilateral governmental and economic Thai-Burma relations play an influential role in determining the nature of policy implementation.

Policy and practice have a complex relationship and are often quite divergent; that means restrictions at the ministerial or policy level may in practice be more relaxed at the administrative local levels or vice versa. In reality, enforcement often depends on the actions of local provisional officials (Lang, 2002). Corruption also plays a role and creates difficulties in implementing policy at the local level. Also, internal pressures within Thailand like current economic difficulties take precedent over displaced persons who are considered an external problem, particularly since the Burmese are not considered high profile like the Vietnamese, Laotian and Cambodian caseload.

Policy Studies

What is the social function of post-positivist/conventional refugee policy studies (the fourth arena of policy archaeology) within the larger social order? It appears that traditional policy disciplines are constituted by governmentality and this has occurred due to the rise of the nation-state, liberal democracies, and modern bureaucratic institutions like the judiciary and legislative systems. Governmentality expands its influence on all aspects of the lives of its citizens through counting (censuses), describing (mapping), and defining via language and various discourses. Governmentality reinforces the social order and links the wellbeing of its citizenry with government rationality and security. Foucault (1991) states that the law and sovereignty are inseparable. Thus, governmentality is associated with legal codes that prioritize national sovereignty, security and public order. As a result, discourses on refugee protection, management and regulation are formulated within this grid of intersecting rules.

The effects on the theorizing, application and implementation of refugee policy on an international and a national level means that policy solutions are sought from a perspective that ignores the emergence and constructiveness of displacement. At the same time, the rise of immigration law as a means to govern displaced populations is
accepted as natural and is not questioned or identified as socially constructed. These orientations, according to Scheurich (1994), serve to maintain and restabilize the social order rather than challenge its existence. Language in legal codes is utilized in ways that mask social conflict and instead paint an image of universal public interest. For example, all the legal instruments I examined used national security as a measure to preclude a guarantee of sanctuary for displaced populations. This notion that certain individuals threaten the security of the nation is a label easy to attach in an ad-hoc manner when it serves the interest of the state. However, in the case of the Rohingyas pushed back to sea in 2008, what is evident is this demonization is not questioned, problematized or identified as socially constructed. Furthermore, it excludes innocent people from the rights, protection, redistribution and reintegration they deserve.
Chapter 8:  
Conclusion

Examination of the national, bilateral and international legal document coupled with my discussion in the previous section leads to the following recommendations.

Recommendations to the Royal Thai Government

1. The RTG should change current policy that only entitles persons fleeing fighting from protection and temporary stay in Thailand.

2. The criteria for screening in asylum seekers should be based upon the broader international refugee definition. While it too is restrictive, it still encompasses a broader notion of refugee than the current Thai definition, which is limited to individuals fleeing fighting and the consequences of war.

3. Thailand should provide a more systematic procedure for determining status of asylum seekers. This procedure should be two-tiered, with a possibility for an appeal, or a review process. It should be transparent and open to international monitoring and scrutiny, particularly from UNHCR.

4. The RTG should guarantee proper screening and status determination of refugees. Granting of admission to refuge camps should apply to anyone or group regardless of their background or ethnicity and asylum claims should be made on a case-by-case basis.

5. Currently there is no policy that allows asylum seekers and status refugees to seek employment although it often takes place informally/unofficially. There needs to be opportunities for employment and this should be attached to employment or labour law.

6. Greater sharing of responsibility needs to be advocated between first, second and third asylum countries. Solutions such as local resettlement should not be omitted as viable options.
7. The RTG should respect its obligation under customary international law not to *refoule* asylum seekers or refugees from Burma. This means also ensure no Burmese recognized as a refugee by UNHCR is deported to Burma on grounds that he/she is an illegal migrant.

8. The RTG should provide opportunities for integration and citizenship by naturalization for long-staying displaced persons, particularly for the children of these refugees who are born in Thailand.

**Recommendations to the International Community (Donor Governments & UNHCR)**

1. The international community should pressure the Thai government to change its current policy that only those fleeing armed conflict are entitled to protection and temporary stay in Thailand.

2. The international community should advocate at the highest governmental level to ensure the Thai government establishes procedures in accordance with international refugee law to determine the claims of all asylum seekers from Burma.

3. It should advocate for the highest standards of protection for all Burmese refugees, and in particular, the Shan and Rohingya who have been denied entry into refugee camps.

4. The international community should ensure the Thai government does not deport and *refoule* Burmese asylum seekers or refugees by enhancing UNHCR’s protection presence in the border areas through monitoring immigration detention centres and holding camps for migrants.

5. It should fund protection and assistance programs in the refugee camps and for the urban caseload and increase assistance for protection, housing, food, education and medical assistance to asylum seekers and refugees.
Recommendations to Burmese Authorities

1. The Burmese regime should end the abuse that has forced thousands of people to flee to Thailand.

2. The Burmese regime should establish rule of law and respect the human rights for all the people of Burma, including ethnic minorities.

3. The regime should release all political prisoners who have been sentenced to prison terms for peacefully expressing their views and end torture and ill treatment of detainees. Restrictions on free speech, assembly and association should also be lifted by the government.

4. The regime should cease the widespread use of forced labour by the military, including forcing locals to work without pay in infrastructure, agriculture and as porters in army camps.

Future Directions

I hope to bring awareness through this study to the effects of international, national and bilateral legal instruments on creating categories of difference for displaced Burmese populations in Thailand. The effects on the application and implementation of refugee policy at both international and national levels means that policy solutions are sought from a perspective that ignores the emergence and constructiveness of displacement. At the same time, the rise of immigration law as a means to govern and manage displaced populations is accepted as natural and is not questioned or identified as socially constructed. These orientations serve to maintain and restabilize the existing social order rather than challenge its existence. Language and discourses in legal codes are utilized in ways that mask social conflict, dissent, differences and instead paint an image of universal public interest. Moreover the management of displaced populations, which lacks systemization and procedure, is swayed by governmental politics and bilateral relations.
Should I therefore be advocating for more systematized procedures for refugee status determination and the standardization of refugee laws and terminology to ensure a more equitable outcome for displaced populations who constructed in particular ways are denied certain rights? In grappling with this question I would like to consider Brown (1995) who asks what it means for politicized identities (or displaced populations for that matter) to use rights claims within the social order? According to Brown (1995), rights vary, are inconstant and contradictory across typologies of powers like race, class ethnicity and gender. They operate to paradoxically emancipate and dominate or protect and regulate. I too would like to acknowledge that legal recognition of displaced populations has the potential for positive change but it also has the ability to resubordinate and renaturalize those very same identities. In making recommendations to the Thai government and the international community I recognize the tensions of working within and against the system. These policy recommendations work within the positivist tradition which does not address emergence issues connected with displacement. Nor does it address the rise of governmentality in the management of refugees. I continue to grapple with how one goes about seeking positive change in the rights and resources made available to displaced people. Can be done through policy reform or is an upheaval of the whole system necessary? Which is the most realistic expectation?

In view of the tension between working within and against traditional policy studies and taking into consideration the double-edged nature of legal reform, I would like to again draw on Fraser’s (2003) two-dimensional model of social justice for displaced Burmese which requires correcting inequality within the legal realm through a combination of redistribution of rights and resources, and the recognition of the differences of the subordinated from the dominant which is attenuated through the constructiveness of categories. In my perspective, correcting inequality through redistribution of rights and resources is an easier to implement reformatory policy measure, and it is one that I address in my recommendations on the previous pages. The second point, the recognition of differences, is a much more difficult practice to execute. Recognition of difference not only highlights the dangers in constructions of categories but also implicates a need for an overhaul in worldviews that depict displaced people in specific and detrimental ways. Yet, the two combined, affirm the inequitable outcomes
of social arrangements and transform and restructure the generative framework through the process of deconstruction. This approach fosters the transformation of the underlying legislative, judiciary and other social structures that perpetuate the control and marginalization of certain identities.

What does this two-dimensional model of social justice mean in reality and is it feasible given the current situation? The political situation in Burma has not become any better in the past twenty years. Some might argue that life in Burma has become worse and that as the regime has become more repressive so too have the struggles of the populace become more severe. Is there any hope for integration and long-term resettlement in Thailand? While this not an option currently due to the current legislation, challenges to implementation, and social attitudes that impede this, there are small glimmers of hope for change in the future. An increasing awareness of the situation of statelessness and international pressure from human rights groups in Thailand has drawn considerable media attention. One positive result has been a clause in the Civil Registration Act (2008) that outlines the process whereby non-Thais are guaranteed birth certificates. While this does not signify a guarantee for citizenship, it does indicate progressive steps are being taken. Also, the incorporation of Thai curriculum into refugee camp education and the current drafting of new education legislation on stateless persons provide hope for some that perhaps Thailand is coming to terms with the fact that the large displaced Burmese population in Thailand will not just go away and instead needs to be accepted and incorporated into the Thai fold.
References

Policies Examined as Data


Other Sources


United Nations High Commissioner for Refugees. (1967). *UN General Assembly, Declaration on Territorial Asylum*. Retrieved from [http://www.unhcr.org/refworld/docid/3b00f05a2c.html](http://www.unhcr.org/refworld/docid/3b00f05a2c.html)


Appendix A
Acronyms

AALCC  Asian-African Legal Consultative Committee
BPP    Border Patrol Police
CCSDPT Committee for Coordination of Services to Displaced Persons
CPA    Comprehensive Plan of Action
EFA    Education for All
EXCOM Executive Committee of the High Commissioner’s Program (United Nations High Commissioner for Refugees)
IDP    Internally Displaced People
ILO    International Labour Organization
IRO    International Refugee Organization
KNLA   Karen National Liberation Army
MAP    Migrant Assistance Program
MOE    Ministry of Education
MOI    Ministry of Interior
MOU    Memorandum of Understanding
NGO    Non-governmental Organization
NLD    National League for Democracy
<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
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<tbody>
<tr>
<td>NSC</td>
<td>National Security Council</td>
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<tr>
<td>OAU</td>
<td>Organization of African Unity</td>
</tr>
<tr>
<td>PAB</td>
<td>Provincial Admission Boards</td>
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<tr>
<td>RTG</td>
<td>Royal Thai Government</td>
</tr>
<tr>
<td>SLORC</td>
<td>State Law and Order Restoration Council (Burma’s military regime from 1988 to 1997. Its name was then changed to State Peace and Development Council).</td>
</tr>
<tr>
<td>SPDC</td>
<td>State Peace and Development Council</td>
</tr>
<tr>
<td>SWAN</td>
<td>Shan Women’s Action Network</td>
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<tr>
<td>TBBC</td>
<td>Thai Burma Border Consortium</td>
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<tr>
<td>UNHCR</td>
<td>United Nations High Commission for Refugees</td>
</tr>
<tr>
<td>UNRRA</td>
<td>United Nations Relief and Rehabilitation Agency</td>
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<tr>
<td>WCEFA</td>
<td>World Conference on Education for All</td>
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</table>
Appendix B
Timeline of Major Events Relating to Displacement, 1988-2008

1988 Aug  Burmese military suppression of pro-democracy riots in Rangoon kills thousands. State Law and Order Restoration Council (SLORC) formed.


1989  UNHCR given official role in registering Burmese exiles in Thailand.

1990  Burmese military ignores opposition party, National League for Democracy’s (NLD), landslide victory in general election.

1995-1996 Wave of ethnic Muslim Rohingya refugees from Burma flee to Bangladesh.

1996  Burmese military launch civilian relocation in Shan and Karenni states resulting in 300,000 ethnic Shan and 20,000 ethnic Karenni displaced.

1997 Feb  Burmese army launch offensive against the ethnic Karen rebels before its admittance into ASEAN.

1997  Burma admitted to ASEAN; SLORC renamed State Peace and Development Council (SPCD).

1997  Thailand repatriates 3,000 civilian Karen women and children.

1998  Thousands of migrant workers in Thailand are sent back to their countries of origin, under the leadership of PM Chuan Leekpai (1997-2001).

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23 This timeline of events relating to Burmese displaced is not exhaustive and other events exist which may not have been mentioned in this list. This timeline merely highlights key incidents that relate to my study.
1998
Thai government authorizes UNHCR to establish three permanent field offices along the Thai-Burma border to protect refugees. UNHCR has no role in determining admission to the camps, administering or providing humanitarian assistance.

2000 Mar-Jun
100,000 civilians relocated by Burmese military to towns in eastern Shan State.

2001 Feb
Burmese army and Shan rebels clash on Thai border and Thai PM, Thaksin Shinawatra (2001-2006), visits Burma soon after to get Thai-Burmese relations back on track.

2002 May-Oct
Thai-Burma border closes after Thai army fires shells into Burma during battle between Burma army and ethnic Shan rebels.

2002 Dec
A new regulation requires Burmese passport holders to have a visa to enter Thailand.

2003
New wave of Shan migrate to Thailand due to landlessness, forced recruitment for SPDC and forced relocation of villages due to military clashes with ethnic Shan rebels.

2004 Jan
UNHCR suspends screening of new Burmese asylum seekers under pressure from the Thai government.

2004 Feb
UNHCR given permission by the Thai government to screen new applicants for asylum.

2006-2008
Relocation in Northern Karen state causes massive displacement.

2007 Aug-Sept
Fuel price hikes a wave of public dissent and dozens arrested. Burmese Buddhist monks hold series of anti-government protests and military cracks down on protestors.
2008 50,000 civilians (mostly ethnic Karen) displaced due to fighting between Burmese junta and rebels.

2008 July 52 Karen women and children refugees repatriated to Burma from two refugee camps in Thailand.

2008 Aug Thai-Burma labour ministers sign a Memorandum of Understanding (MOU) to reduce visa fees for people holding work permits from 2000 Baht ($58 USD) to 500 Baht ($15USD).

2008 Aug Amendment to Civil Registration Act grants stateless children the right to birth certificates.

2008 Dec Cabinet authorizes the interior ministry to issue migrant workers from Burma two year extendible passports/work permits if their nationalities are verified and they submit to other inspection.

2008 Dec Thailand expels hundreds of Burma’s ethnic Rohingya.
Appendix C

Timeline of Refugee Policy Documents

1951  The Convention Relating to the Status of Refugees is introduced by
UNHCR. Applicability is limited to post World War II/Cold War refugees
from Europe.

1965  The Thai Nationality Act, amended in 1992 and 2008, determines
conditions of those eligible for citizenship using immigration terminology.
(No national refugee legislation exists in Thailand).

1967  The Protocol Relating to the Status of Refugees introduced by UNHCR’s
Executive Committee lifts restrictions of the 1951 Convention. It makes
provisions for all displaced populations who do not fall under scope of the
Convention. (Thailand has not acceded the 1951 Convention or the 1967
Protocol).

1978  The Thai Alien Work Act, amended in 2001 and 2008, outlines
employment, rights and liberties of displaced persons using immigration
terminology.

1979  The Immigration Act consolidates earlier Immigration Acts of 1950 and
1954, and is amended in 1980. It uses immigration terminology to
stipulate conditions for dwelling, employment and repatriation of
displaced persons.

1979  The Geneva conference on Indochinese refugees allows for a burden
sharing system for countries of asylum and for resettlement to third
countries.

1989 Mar  A screening process for Indochinese asylum seekers is introduced in
Thailand through UNHCR’s Comprehensive Plan of Action, which
utilizes national legislation and internationally accepted practice. It is
later used as a framework for the displaced Burmese caseload.
1991 The Thai Civil Registration Act, amended in 2008, outlines rights and freedoms afforded to individuals without Thai nationality.

2003 June A memorandum of Understanding (MOU) between Thailand and Burma is signed, on the cooperation in the employment of migrant labourers.

2007 Feb A declaration on the protection and promotion of the rights of migrant workers is adopted by the Association of Southeast Asian Nations (ASEAN) and signed by Thailand and Burma.
Appendix D

Key Players in Refugee Policy in Thailand

Civilian Agencies

National Security Council (NSC)
Highest and most powerful civilian decision-making body directly concerned with refugee policy
Since 1992 NSC coordinates and integrates development in the border areas
Advisor to the PM and cabinet on national security policy (council members head of ministries and high ranking military)

Ministry of Interior (MOI) Operations Centre for Displaced Persons (OCDP)
Civilian ministry responsible for policy implementation
Coordinates with various agencies including UNHCR on the repatriations/relocation of refugee camps
Oversees administration and security of refugee camps carried out by the following:

Ministry of Foreign Affairs
Liaise and coordinates with external players and international organizations
Less direct influence or impact on refugee affairs

Ministry of Foreign Affairs

UNHCR
Provides protection to 3 field offices in Mae Hong Son, Mae Sot and Kanchanaburi
Acts as an observer to MOI/PABs in refugee status determination (since 1998).

Provincial Admission Boards (PABs)
Representatives of MOI at provincial level conduct status determination of refugees (refugee defined as persons fleeing fighting and consequences of civil war)

Border Patrol Police (BPP)
Policing element of MOI responsible for border control and security (e.g. smuggling, drugs, illegal immigration, refugees, intelligence gathering)

Military

Royal Thai Armed Forces
Most important coordinator on refugee issues in practice
In charge of relocation of refugee camps and repatriation on the ground
Special task forces operate as deployable combat forces along the border; military intelligence and Special Forces also conduct specialized operations along the border

Committee for Coordination of Services to Displaced Persons (CCSDPT)
Coordinates primary health/sanitation, education, and food/shelter, distributed by 20 voluntary organizations (as of 2007)

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Adapted from Lang (2002); United Nations High Commissioner for Refugees (2007); Muntarbhorn (2004)
## Appendix E

### Types of Legal Status for Displaced Persons: Policy and Practice

<table>
<thead>
<tr>
<th>Legal status</th>
<th>Population</th>
<th>Ethnicity</th>
<th>Policy on travel</th>
<th>Policy on education</th>
<th>Policy on employment</th>
<th>Practice</th>
<th>Additional notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Camp-based refugees</td>
<td>111,785 to 133, 187</td>
<td>61% Karen; 17% Karenni; 7% Tenasserim; 6% Pegu; 5% Mon; 4% Other</td>
<td>Need camp pass to travel</td>
<td>Access education from NGOs</td>
<td>Can not seek employment</td>
<td>Some leave without passes to seek work</td>
<td>Strict control of the camps is difficult. Certification for education is difficult.</td>
</tr>
<tr>
<td>Persons of Concern (POCs)/ Urban Caseload</td>
<td>2700</td>
<td>Burman</td>
<td>Need camp pass to travel</td>
<td>Access education from NGOs</td>
<td>Can not seek employment</td>
<td>Some leave without passes to seek work</td>
<td>In early 2005 POCs moved to camps at request of RTG</td>
</tr>
<tr>
<td>Registered migrants</td>
<td>900,000 Burman/Shan (majority)</td>
<td>Restricted to certain provinces for duration of permit</td>
<td>Can access basic education through migrant schools</td>
<td>Restricted to: factory, construction, agriculture, seafarer, foundation/NGO, domestic work</td>
<td>Registered migrants with employer can travel throughout the country.</td>
<td>Registration open certain periods only; the cost of registration is high. Also, they can access healthcare</td>
<td></td>
</tr>
<tr>
<td>Legal status</td>
<td>Population</td>
<td>Ethnicity</td>
<td>Policy on travel</td>
<td>Policy on education</td>
<td>Policy on employment</td>
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<tr>
<td>Illegal migrants/asylum seekers</td>
<td>1 to 1.5 million</td>
<td>Mostly Shan</td>
<td>Can not travel</td>
<td>Can access basic education (July 5, 2005 Cabinet Resolution)</td>
<td>Can not work</td>
<td>Work illegally in various sectors</td>
<td>Certification for education difficult.</td>
</tr>
<tr>
<td>Colour ID holders (over 20 colours)</td>
<td>500,000</td>
<td>Karen, Akha, Lahu, Lisu, Hmong, and other recognized hill tribes</td>
<td>Permitted to reside and travel within designated provinces</td>
<td>Can access education</td>
<td>Can seek employment</td>
<td>n/a</td>
<td>Light blue ID cardholders eligible for citizenship. Shan mainly hold green ID (requires yearly renewal).</td>
</tr>
</tbody>
</table>

*Note. The lower camp figure is based on UNHCR statistics (includes registered refugees, pending cases and excludes new arrivals) and the higher one is from Thai Burma Border Consortium (TBBC) (includes all the people in the camp, registered or not, excludes persons temporarily/permanently outside of camps) as of August 2009. Adapted from Banki (2007); Huguet & Punpuing (2005); Thai Burma Border Consortium (2008), Kanchanachitra Saisoonthorn (2006).*
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