

HUMAN
RIGHTS
WATCH

Isolated in Yunnan

Kachin Refugees from Burma in China's Yunnan Province

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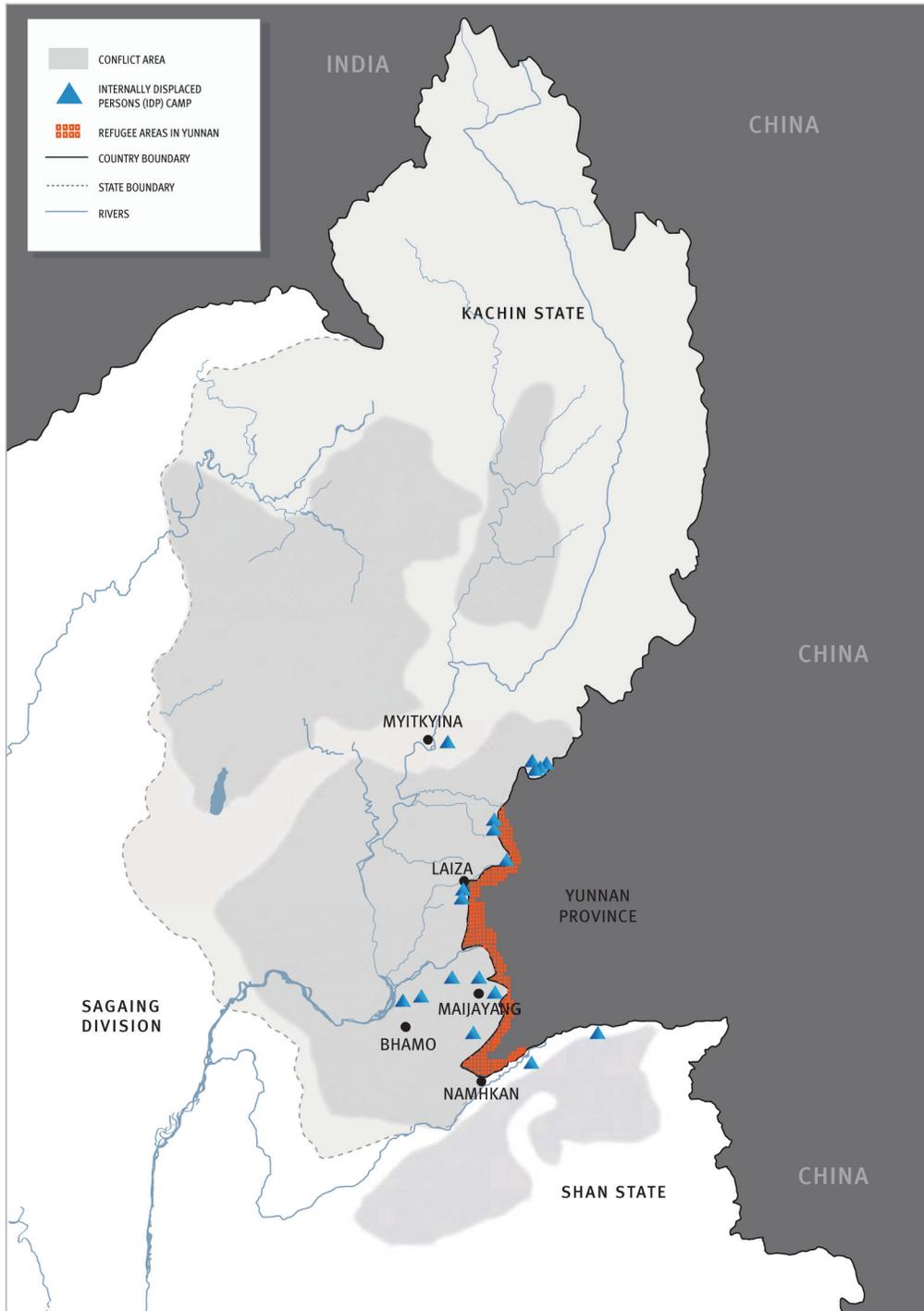
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Map of Kachin State, Burma



SUMMARY AND RECOMMENDATIONS



A Kachin boy outside an unrecognized refugee camp in Yunnan, China, in January 2012.
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ISOLATED IN YUNNAN

Kachin Refugees from Burma in China's Yunnan Province

“Most [of the Kachin from Burma] come to visit friends and relatives.... Through our channels, they have been able to be housed by their relatives. ... We have used a humanitarian approach based on the principle of good neighborliness. Our local government and border community have also provided necessary assistance.”

—YUNNAN PROVINCIAL SECURITY DEPARTMENT DIRECTOR MENG SUTIE, REFERRING TO KACHIN REFUGEES AS “BORDER RESIDENTS,” MARCH 10, 2012

“We were scared the Chinese authorities would chase us out. They didn’t provide us with anything at all.”

—KACHIN REFUGEE IN CHINA, AUGUST 2011

Since June 2011, renewed fighting between the Burmese military and the Kachin Independence Army (KIA) in northern Burma has driven an estimated 75,000 ethnic Kachin from their homes. Many have fled abuses by the Burmese army, including attacks on Kachin villages, killings and rape, and the use of abusive forced labor. About 65,000 have stayed inside Burma, where they remain at risk. At least another 7,000-10,000 have sought refuge across the border in Yunnan Province in southwestern China.





(above) Kachin refugee who gave birth in China's Yunnan Province, after being forced back to Burma by the Chinese authorities. "When the fighting started my entire village ran to the China side," she told Human Rights Watch. "I was pregnant and near giving birth. I fled on June 15 and on June 16 gave birth. There were around 10 Chinese soldiers that I saw [in the village]. They were patrolling everyday. They had guns.... One week after giving birth we heard from the villagers that we had to go back, so I came here [to a displaced persons' camp in Burma]." © 2012 Human Rights Watch



A March 2012 Human Rights Watch report¹ addressed wartime abuses in Burma's Kachin State; this report examines the difficult and sometimes dire conditions facing the thousands of Kachin who have sought refuge in China. The report is based on more than 100 interviews with Kachin refugees in Yunnan Province and displaced persons in Kachin State.

In the months immediately following the June 2011 outbreak of renewed hostilities between the Burmese army and the Kachin Independence Army (KIA), some displaced Kachin were denied entry into China or forcibly returned to Burma, which put them at great risk and created a pervasive fear of forced return among the Kachin refugees who remain in Yunnan. Despite Chinese government claims to the contrary, refugees in Yunnan told

*(above) An industrial site in Yunnan where bricks are made, and where Kachin refugees now pay rent to live.
© 2012 Human Rights Watch*

Human Rights Watch they had received no humanitarian assistance from the government and major humanitarian agencies have had no access to the refugees since they began arriving in June 2011. The refugees are scattered across more than a dozen makeshift settlements lacking adequate shelter, food, potable water, sanitation, and basic health care. Most children have no access to schools. Needing to work to provide for their families, they are vulnerable to abuses by local employers, and

¹ See Human Rights Watch, *Untold Miseries: Wartime Abuses and Forced Displacement in Burma's Kachin State*, <http://www.hrw.org/news/2012/03/20/burma-reforms-yet-reach-kachin-state> (accessed March 28, 2012).



have been subject to arbitrary drug testing and prolonged detention by the Chinese authorities.

All of the Kachin refugees with whom Human Rights Watch spoke expressed a desire to eventually return to Kachin State, but not before the conflict ends. Human Rights Watch uses the term “refugee” for Kachin who have entered China since June 2011 because all have fled armed conflict and rights abuses in Kachin State and would face serious threats to their lives if returned to Kachin State.

China is a party to the 1951 Refugee Conventions and its 1967 Protocol as well as other international human rights treaties that provide protections for refugees and asylum seekers. However, China has no law or procedure for determining refugee status and the United Nations High

(above) An improvised refugee site in Yunnan. Since the conflict began in June 2011, the Chinese authorities have not provided any aid for the 7,000 to 10,000 refugees known to have arrived in Yunnan. © 2012 Human Rights Watch

Commissioner for Refugees (UNHCR) has not been given access to conduct refugee status determinations; under international law, the lack of a formal recognition mechanism does not negate the fact that someone is a refugee.

The Chinese government has permitted most Kachin refugees to enter and remain in Yunnan, and has allowed a number of small local nongovernmental organizations to provide assistance. Local authorities have interviewed the refugees about their reasons for leaving Burma and gathered their basic biographical information. But the Chinese government has not fulfilled its obligations either

to provide government assistance or to allow UNHCR and other humanitarian agencies to reach the refugees and provide them food and other necessities.

While thousands of refugees remain in Yunnan, not all have been allowed to cross the border or stay in China. Human Rights Watch documented two instances—on June 17 and November 13, 2011—in which groups of Kachin asylum seekers were turned away at the Chinese border. In two other incidents in June, Chinese soldiers ordered Chinese village headmen to send about 300 refugees back to Burma, claiming the order came from Beijing. The headmen reluctantly carried out these orders, and the refugees had no choice but to return to Burma—Chinese soldiers reportedly returned three days later to ensure the refugees had left. Both the rejection of asylum seekers at the border and the forcible return of refugees violate the principle of nonrefoulement (“non-return”), which prohibits the return of refugees to a place where their lives or freedom are at risk.

While these forcible returns could be isolated instances, they nevertheless have contributed to widespread anxiety among the Kachin refugees in Yunnan. China’s unwillingness to provide these refugees formal status causes many to believe they do not have a right to asylum and makes them more susceptible to pressures to return.

Some Kachin refugee families have returned to Burma from Yunnan because of pressure from Chinese authorities or the lack of adequate humanitarian aid. There they are exposed to ongoing fighting, hostile Burmese army forces, and landmines that have been widely laid by both the Burmese army and the KIA. Human Rights Watch previously documented Burmese soldiers threatening and shooting at Kachin civilians who had recently returned to their villages.²

² Human Rights Watch, *Untold Miseries*, pp. 10, 37-39, 65-66.





(above) Kachin refugee children in a camp in Yunnan, where they lack access to education. Refugees told Human Rights Watch that when their children are unable to attend school, they have to watch them throughout the day and cannot work to earn money to live. © 2012 Leah Viens-Gordon



“When we go for a bath in the river, the Chinese authorities always harass us ... There is a water well at the [camp] but there are many people and it’s very crowded, so we have to go to the river to take a bath, and when we go the Chinese authorities always stop us and ask us questions. And they always follow us. They follow behind us and they yell things at us. So we do not feel very secure.”

—KACHIN REFUGEE (ABOVE) IN A SECURE LOCATION
IN YUNNAN



(above) Kachin refugees in Yunnan lack access to safe water and obtain water from wells and other sources that are not potable. "In the place we are staying now, some people drink from the well," said a 50-year-old Kachin refugee. "I also drink from the well. Some went to get clean water from another well. We have had high fevers, coughing, and diarrhea."
© 2012 Human Rights Watch

Human Rights Watch urges the Chinese government to establish a temporary protection regime for the Kachin refugees that allows them to remain and enjoy basic human rights in Yunnan until they can return in safety and dignity to Burma in accordance with international standards. Under no circumstances should refugees in Yunnan or asylum seekers at the border be forced back to face serious risks arising from conditions of armed conflict or a well-founded fear of persecution. China should also allow unhindered access to refugees by local and international organizations, including UNHCR, to provide protection and humanitarian assistance to the refugees.

To date, private Kachin aid networks operating in Yunnan have taken the lead in providing humanitarian assistance for the refugees. They have been supported by the Bur-



“On the concrete floor we have no mattress. When we sleep it’s very cold and not good for our health. Sometimes the floor is wet so we use plastic sheets for a mattress, and there are many mosquitos.”

—KACHIN REFUGEE, 25, IN YUNNAN



mese and Kachin community in China and abroad, Christian Kachin churches in Yunnan and in Burma, local aid organizations, and a few international organizations. But the funding and resources of these groups are very limited. The Chinese government has not permitted international humanitarian agencies to operate in Yunnan, so they have focused on delivering aid to the internally displaced person (IDP) population in Burma.

The Chinese government has a poor track record in recognizing and addressing the needs of most refugee populations, such as North Koreans. Its treatment of some refugees from Burma, namely ethnic-Chinese Kokang refugees who fled northern Shan State in Burma in August 2009, was a partial exception. While the Yunnan authorities did not formally recognize the Kokang as refugees or allow international access to them in Yunnan, they assisted them with shelter, food, and medical care.

On three occasions—in early December 2011, late March 2012, and early June 2012—Burmese authorities granted UN agencies access to IDPs in Kachin State conflict zones. While the UN convoys were only able to deliver a limited amount of aid to a fraction of the IDP population, permitting this access was a step in the right direction. The Chinese government has not allowed comparable access to the refugees in Yunnan Province, and should do so immediately.

So long as the armed conflict in Kachin State continues, the Kachin refugees in China will be unable to return to their homes. The need for humanitarian assistance and temporary protection is urgent. As one 25-year-old refugee in Yunnan told Human Rights Watch, “I don’t feel secure here at all because we are still on the border and too close to the Burma side. I worry as the fighting continues, if the Chinese don’t accept us, where will we go? Where can we live?”



(above) A footbridge to Yunnan Province, China, located outside Laiza, Kachin State, used by Kachin refugees. © 2012 Human Rights Watch

RECOMMENDATIONS

To the Government of China

- Institute a temporary protection regime for Kachin refugees in view of ongoing armed conflict and widespread human rights violations in northern Burma. The temporary protection regime should grant Kachin refugees a time-bound but renewable status that protects them against refoulement, allows them to remain in China, and permits them to work and to receive humanitarian assistance as needed. Chinese authorities should conduct periodic and transparent assessments of conditions in Burma and renew the temporary protection regime until conditions in Burma allow the Kachin to return to their homes in safety and dignity.
- Institute a temporary protection regime that takes into account the special protection needs of women and of children in the refugee population.
- Provide humanitarian assistance to meet the basic needs of the Kachin refugee population in Yunnan Province, including adequate shelter, food, potable water, sanitation, basic health care, and education for children.
- Allow unhindered access to nongovernmental and community-based organizations to provide humanitarian assistance to the refugee population in Yunnan Province.
- Allow the United Nations High Commissioner for Refugees full and unfettered access to all refugees in Yunnan Province.
- Investigate allegations of refoulement of Kachin refugees from Chinese territory and at the border back to Burma.
- Ensure that border and provincial police, and national and regional security and immigration officials act in full accordance with China's international legal obligations toward refugees and asylum seekers in Chinese territory and at the border. Take appropriate disciplinary or legal action against any security force personnel who violate the rights of refugees under international law.

- Ensure that refugee children in Yunnan Province obtain free primary education as well as access to other education as provided in international law.
- Investigate allegations of labor abuses, arbitrary drug testing, arbitrary detention, and other violations of due process rights in Yunnan, and take appropriate action to end such practices.
- Investigate allegations that landlords and employers discriminate against refugees in Yunnan with regard to rents, wages, and conditions of housing and labor, and take necessary steps to end such practices.
- Ratify International Labour Organisation Convention No. 29 on forced or compulsory labor.
- Ensure that future returns of refugees to Burma take place in accordance with international standards on a voluntary basis with attention to the safety and dignity of the returning population.
- Regarding drug detention centers:
 - ▶ Immediately close all re-education through labor (RTL) centers.
 - ▶ Carry out prompt, independent, thorough investigations into allegations of cruel, inhuman, or degrading treatment or punishment and other human rights abuses and criminal acts in China's RTL centers. Take appropriate legal action against identified perpetrators of abuse.
 - ▶ Provide adequate compensation and medical care to current and former detainees for harm to their physical and mental health suffered while in detention.
 - ▶ Expand access to voluntary, community-based drug dependency treatment and ensure that such treatment is medically appropriate and comports with international standards.

To United Nations High Commissioner for Refugees

- Continue to press the Chinese government for access to the Kachin refugees in Yunnan and other refugee populations in China.
- Coordinate with relevant UN agencies in Burma with regard to humanitarian aid and protection for Kachin internally displaced persons (IDPs) in Burma and refugees in Yunnan, with special attention to the needs of women and children refugees and IDPs.

To United Nations Agencies and the Donor Community

- Continue to press the Chinese government to uphold its legal obligations to refugees under the 1951 Refugee Convention and its 1967 Protocol, including the creation of a temporary protection regime and humanitarian assistance for Kachin refugees, as detailed above.
- Support expanded assistance to Kachin IDPs and refugees via nongovernmental and local community-based organizations in China and Burma.
- Continue to press the Burmese and Chinese governments and ethnic armed groups to facilitate humanitarian access by impartial humanitarian agencies to the Kachin and other armed conflict-affected populations.
- Provide the necessary diplomatic and financial support for UNHCR to fulfill its mandate to assist Kachin refugees.
- Support the initiation of humanitarian mine clearance and mine risk education programs in Burma and provide expanded assistance to landmine survivors.
- Expand assistance via nongovernmental organizations to other refugees in need in China.

Methodology

Human Rights Watch conducted research for this report in Yunnan Province, China, and in the conflict zones of Kachin State, Burma, since 2011. It is based largely on 114 interviews and research conducted from July 2011 to May 2012.

In China, Human Rights Watch visited six informal refugee camps located in border towns and remote jungle areas in June, July, and November 2011. In Kachin State, Human Rights Watch visited small villages where Kachin refugees have sought refuge and nine internally displaced person (IDP) camps. Interviews were conducted with refugees and internally displaced persons, including 47 IDP and refugee women, and with humanitarian aid workers, Burmese army deserters, and representatives of the Kachin Independence Army (KIA). All children were interviewed in the presence of guardians.

Neither China nor Burma allow independent nongovernmental organizations to freely conduct research or monitor human rights issues inside their borders. As a result, obtaining and verifying credible information presents great challenges.

When possible, and in a majority of cases, interviews were conducted on a one-on-one basis. All of the 114 interviews referenced above were one-on-one interviews with Kachin refugees in China or displaced Kachin in Burma. In addition to those interviews, we conducted several informal group interviews with displaced persons and refugees, spoke by phone and in person with nine foreign aid workers and several other contacts in Burma, Thailand, and China who provided firsthand information about the conflict or conditions experienced by displaced populations. In preparing this report, Human Rights Watch also wrote to the Chinese government inviting it to respond to specific concerns raised here. As of this writing, we had received no response (copies of the letters are included as an appendix to this report).

We conducted interviews primarily in the Jinghpaw Kachin language or other Kachin dialects, with Kachin to English interpretation. In a few cases, we conducted interviews in English. In both the body of the report and in footnotes, we have generalized locations of interviews in Burma and China to provincial and state levels so that those interviewed and their families cannot be easily identified. We have used pseudonyms for all Kachin

civilians named in this report unless otherwise indicated, and interviews are cited with initials that do not reflect the actual initials of those interviewed; the initials are merely to enable the reader to distinguish between interviews. In some cases other identifying information has been withheld in the interest of confidentiality and security.

All those interviewed were informed of the purpose of the interview, its voluntary nature, and the ways in which the information would be used. All interviewees were told they could decline to answer questions or end the interview at any time. All provided oral consent to be interviewed. None received compensation.

Human Rights Watch confirmed with Kachin refugees in Yunnan and local Kachin aid workers that the Chinese authorities in Yunnan knew the location of every informal refugee camp visited by Human Rights Watch. Nevertheless, we have withheld the precise locations of the camps we visited while conducting our research to further safeguard the identity of interviewees.

In addition to the research described above, we drew on a number of secondary sources including United Nations reports, academic studies and other publications, previous Human Rights Watch reporting, and other nongovernmental organization reports.

As noted above, this report refers to the ethnic Kachin who fled to Yunnan from fighting and human rights abuses in Burma as refugees, although they have not been formally recognized as such by the Chinese authorities or by the UN High Commissioner for Refugees (UNHCR). Importantly, by declaring official refugee status, a state recognizes a person's need for protection and its obligation to respect that person's rights as a refugee. But a person does not become a refugee when the host state declares they meet the criteria—a positive recognition of formal refugee status simply affirms their preexisting status as a refugee. Human Rights Watch believes the Kachin who fled to Yunnan beginning in June 2011 are *prima facie* refugees based on the circumstances of armed conflict and abuse they fled in Kachin State and the serious risk of harm they would face if returned to Burma.

I. China, Burma, and Refugees

Burma-China Relations

In 1954, China and Burma established bilateral relations through a joint declaration that affirmed the Five Principles of Peaceful Coexistence—the conceptual foundations of what would come to be referred to as China’s “peaceful rise” or “peaceful development.”³ Between 1954 and 1962, the governments of China and Burma maintained close political and military relations. But those ties began to fray over Burma’s growing unease with what it perceived as the Chinese Communist Party’s interest in exporting revolution in Southeast Asia.

Following the 1962 military coup in Burma, Burma-China relations deteriorated. Beijing openly provided material support to the Communist Party of Burma (CPB) and eventually to the Kachin Independence Army (KIA) in their armed struggles against the Burmese military government. Following violent anti-Chinese riots in the Burmese capital, Rangoon, in 1967, among other events, bilateral relations soured further and Chinese support for the CPB redoubled.

The CPB eventually disbanded in a 1989 ceasefire with the Burmese government. Relations between Burma and China warmed considerably, evidenced by a progressive increase in military, political, and economic support from China to the Burmese central government. In more recent years, Beijing has been a stalwart political ally of Burma’s military government, using or threatening its veto power at the UN Security Council to weaken or block UN resolutions that might have led to international action in response to Burma’s human rights crises. At the same time, Chinese enterprises have mined the country’s abundant natural resources and increased bilateral trade. For years, Western-imposed economic sanctions against Burma, coupled with the reputational risks associated with investing in an abusive regime, prevented most Western firms from engaging in business activity.

³ These principles, which now define the political rhetoric surrounding China’s international relations, include mutual respect for sovereignty and territorial integrity, mutual non-aggression, non-interference in each other’s internal affairs, equality and mutual benefit, and peaceful coexistence in developing diplomatic relations and economic and cultural exchanges. Ministry of Foreign Affairs, People’s Republic of China, “China’s Initiation of the Five Principles of Peaceful Co-Existence,” November 17, 2000, <http://www.fmprc.gov.cn/eng/ziliao/3602/3604/t18053.htm> (accessed March 7, 2012).

China's foreign policy towards Burma is increasingly geared toward fueling economic and industrial development at home, particularly through the acquisition of natural resources and energy in order to expand Yunnan Province's economy. To that effect, China is now Burma's largest foreign direct investor, surpassing Thailand in 2011. In the 2011 fiscal year alone, China committed to invest US\$13.6 billion in Burma, primarily in energy and natural resource extraction projects, and bilateral trade between the countries amounted to US\$3.6 billion.⁴

Several sizable Chinese investments have been prominent fixtures in Burma-China relations and have factored into the armed conflict in Kachin State; some infrastructure projects are located at the geographic center of wartime abuses and forced displacement.⁵ For instance, the current conflict began in June 2011 when the Burmese army attempted to capture KIA-controlled areas surrounding the Taping hydropower dams No. 1 and No. 2, major Chinese-funded infrastructure projects.⁶ According to Burma's state-controlled media, the Burmese army's offensive in Kachin State was an effort to consolidate power in the area and provide security for the hydropower dam.⁷ The KIA denied that the dam was ever under threat.⁸

The Myitsone dam is the largest of seven multi-billion dollar dams planned on the Mali, N'Mai, and Irrawaddy Rivers in Kachin State. In 2010 and 2011 it became the focus of unprecedented public opposition in Burma.⁹ On March 16, 2011, the Kachin Independence

⁴ Aye Thidar Kyaw, "China firms trade position in Myanmar," *Myanmar Times*, vol. 31, no. 610, January 16 - 22, 2012.

⁵ Human Rights Watch, "Untold Miseries," pp. 29-33.

⁶ The fully functioning Taping No. 1 hydropower dam is on the Taping River in Burma, near the site of the planned Taping No. 2 hydropower dam, which is presently incomplete. Construction of the Taping dam No. 1 began in 2007 and it entered into production in February 2011, only to become inoperable in June 2011 due to the conflict. See Human Rights Watch, "Untold Miseries": p. 29-30; See also "Burma: Army Committing Abuses in Kachin State: Government Forces Pillage Villages, Use Forced Labor in Renewed Fighting," Human Rights Watch news release, October 18, 2011, <http://www.hrw.org/news/2011/10/18/burma-army-committing-abuses-kachin-state> (accessed March 7, 2012).

⁷ "Tatmadaw Columns Inevitably Counterattack KIA Troops for Their Threats and Armed Attacks," *New Light of Myanmar*, June 18, 2011. The article concludes, "The only objective of the Tatmadaw in launching attacks on KIA is just to protect its members and an important hydropower project of the nation without even a single intention of aggression or oppression."

⁸ "Burma: Army Committing Abuses in Kachin State: Government Forces Pillage Villages, Use Forced Labor in Renewed Fighting," Human Rights Watch news release, October 2011, <http://www.hrw.org/news/2011/10/18/burma-army-committing-abuses-kachin-state> (accessed March 7, 2012); Human Rights Watch, "Untold Miseries," pp. 29-30.

⁹ Leading up to Thein Sein's suspension of the dam, domestic opposition to the project came to a head. Environmental groups in Burma and in exile, media outlets in Burma and in exile, academics, analysts, pro-democracy leader Aung San Suu Kyi, parliamentarians, and others championed opposition to the dam. These actors, primarily in lowland Burma, rallied around the concept that the dam was contrary to the "national interest," and the issue received unprecedented attention in formerly restricted Burmese media outlets. See, for example, a series of unprecedented editorials to the article "Myitsone Dam Project will not Discarded anyhow Despite Objections from Any Sources," Eleven Media Group, September 14, 2011,

Organization (KIO) sent a letter to Chinese President Hu Jintao requesting that the Chinese authorities stop construction of the Myitsone dam because of social and environmental concerns. In the letter, the KIO warned of the possibility of renewed conflict in the area, writing that it had “informed the Military Government that KIO would not be responsible for the Civil War if the War broke out because of this Hydro Power Plant project and the Dam construction.”¹⁰ Less than three months later, the armed conflict broke out. Facing growing public resistance, President Thein Sein suspended the dam project on September 30, 2011.¹¹ This announcement was met with allegations that the project was continuing anyway. Nevertheless, neither the decision to suspend the dam nor the unprecedented public opposition to the dam in lowland Burma made mention of the Kachin conflict. But KIO officials had independently raised objections to the project and cited it as a potential spark for conflict.

Since June 2011, the armed conflict between the KIA and the Burmese government has spread to neighboring northern Shan State, where the Burmese and Chinese governments also have significant economic interests, including dual transnational oil and gas pipelines from western Burma to China. The projects are passing through territory historically and currently occupied by the KIA’s 4th Brigade, as well as other ethnic Shan militias.¹² The 500-mile long dual pipelines will help China expand its economy in landlocked Yunnan Province while generating billions in revenue for the government of Burma. The oil transport pipeline in particular will enable the Chinese government to import oil from Africa and the Middle East, bypassing the Straits of Malacca, an essential oil shipping lane that is vulnerable to security threats and, in theory, a potential blockade.¹³ Both projects reflect Burma’s location as increasingly geopolitically important.

<http://www.burmanet.org/news/2011/09/14/eleven-media-group-myitsone-dam-project-will-not-be-discarded-anyhow-despite-objections-from-any-sources-electric-power-minister-%E2%80%93-aung-khinmya/> (accessed March 7, 2012); see also “Time to Seize the Moment,” *Myanmar Times*, vol.31, no. 608, January 2 - 8, 2012, <http://www.mmtimes.com/2012/news/608/news60803.html> (accessed March 7, 2012); Human Rights Watch, “Untold Miseries,” pp. 30-31.

¹⁰ Letter to Chairman, Communist Party of China, People’s Republic of China, “Mali Nmai Confluence Dam Project,” by Chairman of the Central Committee, Kachin Independence Organization, March 16, 2011, p.3.

¹¹ See “Burma: Army Committing Abuses in Kachin State: Government Forces Pillage Villages, Use Forced Labor in Renewed Fighting,” Human Rights Watch news release, October 18, 2011, <http://www.hrw.org/news/2011/10/18/burma-army-committing-abuses-kachin-state> (accessed March 7, 2012).

¹² Renewed fighting between the Shan State Army-North and the Burmese army in northern Shan State began in 2011 after the SSA-N joined the SSA-South in its opposition to the Burmese government’s demand that the groups disarm or join a border guard force controlled by the Burmese army. The Burmese army also initiated attacks against the KIA 4th Brigade, located in northern Shan State in the areas which the pipelines will traverse.

¹³ The Associated Press reported on China’s concern that the lane was a shipping chokepoint that could threaten China’s oil imports, stating that “the U.S. is the only power with sufficient naval forces to enforce a blockade of the 900-kilometer waterway that borders Malaysia, Singapore and Indonesia.” “China Aims to Safeguard Its Oil Imports,” Associated Press, October 7, 2005.

In August 2011, local sources from the pipeline area in northern Shan State told Human Rights Watch local authorities had visited the pipeline areas with Chinese businessmen, and that the authorities had already physically designated the area that the pipelines will traverse, planting red flags in the ground.¹⁴ Fighting in the area in August reportedly led villagers to flee.¹⁵

In September 2011, the Burmese army launched a major offensive in the area of the pipeline corridor in northern Shan State, heavily shelling and capturing areas formerly occupied by the KIA's 4th Brigade, including its headquarters in Loi Kang. Thousands of Kachin villagers fled from the area and many experienced abuses by the Burmese army.¹⁶

In January 2012, local sources told Human Rights Watch the Burmese army was reinforcing its troops in the northernmost areas of the pipeline projects and reports of fighting in the area continue to emerge.¹⁷

China and Refugees

China is a party to the 1951 Refugee Convention and its 1967 Protocol. However, the government commonly denies refugees official status—either by failing to undertake refugee status determinations or failing to initiate a temporary protection regime—which in turn denies refugees basic rights, such as the rights to work and to education. Estimates suggest that there are over 300,000 refugees in China—mostly long-term, well integrated refugees from Vietnam, but also refugees from Burma and North Korea. There are also smaller numbers of refugees from other countries in Southeast Asia, South Asia, the Middle East, and Africa.¹⁸ This figure includes very few persons formally recognized as refugees.¹⁹

¹⁴ See, for example, Human Rights Watch interview #58, Yunnan, China, August 2011: “They haven’t officially occupied the area yet, they just marked it with red flags where the pipeline will go. The Chinese people came for that and the Namhkan police took them around and gave them security. That was earlier this year.... Between Mandown and Namtu townships there is Maimo village and in that area there was fighting recently. The Kachin, Shan, and Burmese soldiers are all there and the pipeline will be going through that village. When they see each other they just shoot at each other. It started last month. All the villagers fled. About 100 fled and went to Namtu township.”

¹⁵ Ibid.

¹⁶ The accounts of several affected villagers are included in Human Rights Watch, “*Untold Miseries*,” pp. 34-59.

¹⁷ See also, “Troops Deployed to Guard Pipeline,” Democratic Voice of Burma, January 27, 2012, <http://www.dvb.no/news/troops-deployed-to-guard-china-pipeline/19961> (accessed March 4, 2012).

¹⁸ UNHCR claims there are 300,000 refugees from Vietnam in China, the only refugees recognized as such by the host government. The figure does not include refugees from Burma or North Korea, or others that are acknowledged by the Chinese government. UNHCR, 2012 Regional Operations Profile – East Asia and the Pacific, “Statistical Snapshot,” <http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e487cd6&submit=GO> (accessed March 4, 2012).

UNHCR presence in China is limited to Beijing and the agency generally cannot access refugee populations in Beijing or elsewhere in China. Chinese authorities routinely deny UNHCR and other humanitarian organizations access to assess protection needs or provide assistance to asylum seekers and persons in refugee-like situations. The Kachin refugees in Yunnan are no exception: Chinese authorities have not granted UNHCR and other international humanitarian agencies access to them since they first arrived in June.²⁰ The agency publicly acknowledges that it faces difficulties in exercising its mandate in China and attributes this to the government's "misunderstanding" of refugee issues generally.²¹

The Chinese government appears to treat distinct refugee communities differently. According to UNHCR, refugees from Vietnam in China are "well integrated and in practice [have] received protections from the Government of China."²² Numerous reports, however, suggest that refugees and asylum seekers from North Korea are routinely arrested and detained by the Chinese authorities, usually while en route to seek asylum in South Korea or other countries. Alleging they are "economic migrants," the Chinese authorities have repatriated thousands of asylum seekers back to North Korea, where they reportedly face persecution, including incarceration in highly abusive forced labor camps and, in some cases, execution for leaving their own country without permission.²³

For decades, people from Burma, including ethnic Kachin, have fled to Yunnan Province to escape armed conflict. By 1994 when a ceasefire agreement was signed between the

¹⁹ Regarding the 300,000 Vietnamese refugees, UNHCR claims "in practice [they] receive protection from the Government of China." Ibid.

²⁰ Human Rights Watch interviews with aid workers and Kachin refugees in Yunnan, July, August, November 2011, and March 2012.

²¹ UNHCR, 2012 Regional Operations Profile – East Asia and the Pacific, "Constraints," <http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e487cd6&submit=GO> (accessed March 4, 2012).

²² UNHCR, 2012 Regional Operations Profile – East Asia and the Pacific, "Statistical Snapshot," <http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e487cd6&submit=GO> (accessed March 4, 2012).

²³ North Korea criminalizes leaving the country without state permission. Those who leave face harsh punishment upon repatriation, including interrogation, torture, depending on North Korean authorities' assessments of what the returnee did while in China. Those suspected of simple commerce or other money-making schemes are usually sent to work in forced labor brigades. Others suspected of religious or political activities, including contact with South Koreans, are given lengthier terms in horrendous detention facilities or forced labor camps with chronic food and medicine shortages, harsh working conditions, and mistreatment by guards. Human Rights Watch, *World Report 2012* (New York: Human Rights Watch, 2012), North Korea chapter, <http://www.hrw.org/world-report-2012/world-report-2012-north-korea>. See also, Melanie Kirkpatrick, "China vs. North Korea's Refugees," *Wall Street Journal*, March 1, 2012, <http://online.wsj.com/article/SB10001424052970203986604577253521717740652.html> (accessed March 4, 2012); Choe Sang-hun, "China Should Not Repatriate Refugees, Seoul Says," *New York Times*, February 22, 2012, <http://www.nytimes.com/2012/02/23/world/asia/seoul-urges-china-to-not-return-north-korean-refugees.html> (accessed March 4, 2012).

Burmese government and the KIA, an estimated 20,000 Kachin had fled into China.²⁴ Then, as now, UNHCR had little or no access to Kachin refugees in Yunnan.

In 2009, authorities in Yunnan demonstrated a readiness to assist refugees from Burma by providing aid to ethnic Kokang refugees. In August 2009, an estimated 37,000 Kokang and Chinese civilians who lived and worked in Burma fled to Yunnan after the Burmese army attacked the Myanmar National Democratic Alliance Army, an official militia set up in accordance with a ceasefire agreement, in northern Shan State.²⁵ While the Yunnan authorities did not formally recognize the Kokang as refugees or allow international access, they assisted them with shelter, food, and medical care.²⁶

The Kokang fighting prompted a public rebuke from China, which said the Burmese government “harmed the rights and interests of Chinese citizens living there.”²⁷

In May 2012, a Chinese government spokesman referred to the Kachin refugees in Yunnan as “border residents” instead of refugees, claiming most “come to visit friends and relatives.”²⁸

Kachin Refugees’ Well-Founded Fear of Return

Since the conflict in Kachin State began in June 2011, the Burmese army has attacked Kachin villages, razed homes, pillaged properties, and caused the displacement of tens of thousands of people. Soldiers have threatened and tortured civilians during interrogations, raped women, and deliberately fired on civilians with small arms and mortars. The Burmese army and KIA have also used antipersonnel mines and unlawfully conscripted forced labor for deployment near the front lines.²⁹

²⁴ Ashley South, *Mon Nationalism and Civil War: The Golden Sheldrake* (New York: Routledge, 2005), p.167.

²⁵ Human Rights Watch, *World Report 2010* (New York: Human Rights Watch, 2010), Burma chapter, <http://www.hrw.org/world-report-2010/burma> (accessed March 5, 2012).

²⁶ See, for example, “Burma’s Ceasefires at Risk: Consequences of the Kokang Conflict for Peace and Democracy,” September 2009, Transnational Institute, <http://www.tni.org/briefing/burmas-cease-fires-risk>; “The Kokang Clashes: What Next?,” Euro Burma Office, September 2009, [euro-burma.eu/doc/EBO_Analysis_No_1_\(Kokang\).pdf](http://euro-burma.eu/doc/EBO_Analysis_No_1_(Kokang).pdf); “Tensions Easing Near China-Myanmar Border,” CNN, August 31, 2009, http://articles.cnn.com/2009-08-31/world/china.myanmar.refugees_1_myanmar-jiang-yu-border?_s=PM:WORLD (accessed March 4, 2012).

²⁷ Human Rights Watch, *World Report 2010* (New York: Human Rights Watch, 2010), Burma chapter, <http://www.hrw.org/world-report-2010/burma> (accessed March 6, 2012).

²⁸ Patrick Boehler, “Beijing Finally Admits to Kachin Refugees in China,” *The Irrawaddy*, March 19, 2012, <http://www.irrawaddy.org/archives/822> (accessed June 6, 2012).

²⁹ Human Rights Watch, “Untold Miseries,” pp.34-63.

Kachin refugees in Yunnan described to Human Rights Watch the intimidation, threats, and abuses they have endured from the Burmese army. Nearly all Kachin refugees in Yunnan interviewed by Human Rights Watch expressed a desire to return to Burma, but nearly all also said they feared returning while it was still unsafe.

A 29-year-old Kachin refugee told Human Rights Watch: “We all want to go back to the village. I can’t tell what will happen and when we will be able to go back. If we could return now, we would, but it’s unsafe.”³⁰

A Kachin woman from an area controlled by neither the Burmese army nor the KIA told Human Rights Watch:

We don’t want to die at the hands of the Burmese soldiers. Even if they said, “There are no problems, you can come back,” we won’t dare to go back.... We don’t dare go back until the KIO says it is safe. We would like to wait until that time, especially with my mother and my children. Traveling is very difficult and we are afraid.³¹

A Kachin village headman, 55, living as a refugee in Yunnan since June 2011, told Human Rights Watch:

When we were going back and forth [between the village and jungle hide-out] secretly, the Burmese soldiers saw us and told us the next time they saw us they were going to shoot. After that, no one went back.... When we lived in the jungle, we couldn’t survive very long, so we came to China. We could not go down to the lower part [of Kachin State], like Bhamo. The only way we could go is through China.³²

Another Kachin village headman, 50, now a refugee in Yunnan, said:

³⁰ Human Rights Watch interview I.C., Yunnan, China, November 2011.

³¹ Human Rights Watch interview E.J., Yunnan, China, August 2011.

³² Human Rights Watch interview E.G., Yunnan, China, August 2011.

I'm not sure what would happen if I went back to my village but we are afraid to go back. I am the village head. After I left for the China side, the authorities in Burma looked for me three times. Sometimes the Burmese [army] comes and asks many questions about the KIA to get information. I was really afraid that I would say something wrong. I don't want to face this kind of thing anymore. That is why I came to China. If I stayed in the village they would surely come and ask me many questions and they might beat me. I knew they looked for me three times because people who stayed in my village phoned to me to tell me the soldiers had come to them asking questions about my whereabouts.³³

Human Rights Watch learned through interviews with refugees, Chinese villagers, and Chinese village heads that fully armed and uniformed Burmese soldiers have on several occasions entered Chinese territory in areas surrounding two villages in Yunnan where several hundred Kachin civilians sought refuge from the Burmese army.³⁴ Since June 2011, three regional media outlets have carried stories that appear to corroborate allegations of a Burmese army presence in Chinese territory and of the Burmese army moving personnel and supplies through Chinese territory.³⁵ Chinese villagers and village heads also told Human Rights Watch that, since June 2011, vehicles carrying supplies have on numerous occasions arrived in their villages early in the morning; Burmese soldiers then collect the materials and return to Burma. The presence of these soldiers contributes to the refugees' fears and sense of vulnerability.

Yunnan authorities appear to be well informed about the refugees' fears of return and have in fact made concerted efforts to gather information regarding those who have arrived

³³ Human Rights Watch interview D.G., Yunnan, China, August 2011.

³⁴ See, for example, Human Rights Watch interviews #98, 87, 94, and 21. A Chinese farmer, 55, explained to Human Rights Watch: "Our village is five miles from the border. I saw them [the Burmese soldiers] enter the village but we don't speak Burmese, so we couldn't talk, and they had uniforms and guns, so we were afraid...If we went to talk, they might have shot us, so we were fearful." It appears that the Burmese soldiers were moving supplies through Chinese territory. We are not aware of any evidence that Burmese soldiers entered Chinese villages in fulfillment of a plot to attack the KIA from China, as some media speculated, or to target the refugees. We are also unaware of any evidence that the soldiers entered Yunnan as part of any official Chinese policy.

³⁵ Ba Kaung, "KIA Doubts Burmese Army Will Attack Through China," *The Irrawaddy*, June 28, 2011; Hseng Khio Fah, "Chinese Security: No Permission Given to Burmese Army to Attack KIA from Chinese Side," Shan Herald Agency for News, June 28, 2011; Kachin News Group, "China Transports Burmese Troops Inside its Border to Fight KIA," Kachin News Group, October 22, 2011; Kachin News Group, "China Sends Two Weapon-Laden Trucks to Burma Border," Kachin News Group, November 10, 2011; Ba Kaung, "Chinese and Burmese Army Chiefs Sign Defense Agreement," *The Irrawaddy*, November 30, 2011.

since June 2011, including inquiring about their needs. Nearly all of those interviewed by Human Rights Watch described some sort of interview or interaction with the local Yunnan authorities. If local or national authorities were to introduce a temporary protection regime, this information could prove instrumental.

A Chinese citizen in a Yunnan village where hundreds of Kachin refugees arrived in June told Human Rights Watch:

The [Chinese] soldiers asked the villagers why they left Burma. They asked questions like, “Where are you from?” and “How old are you? How many family members are you with? Why did you flee from the village?” The villagers told them that there is fighting and they said that the Burmese soldiers would kill the villagers and torture the villagers. They told the soldiers this when they first arrived and when they were doing registration.³⁶

One Kachin refugee described his experience, which echoed that of many others:

The authorities asked me questions like, “What is your family name and age?” They did the registration. They asked why we left the village and we told them and said we were afraid to go back to our village. They didn’t respond when we said that.³⁷

³⁶ Human Rights Watch interview D.E., Yunnan, China, August 2011. Although the word “registration” is used to describe the collecting of information from new arrivals, the authorities did not provide any documentation, direction, or assistance as part of this processing.

³⁷ Human Rights Watch interview D.F., Yunnan, China, August 2011.

II. Refugees and China's International Legal Obligations

China is a party to the 1951 Refugee Convention and its 1967 Protocol (together the Refugee Convention), as well as other international human rights treaties, which together set out fundamental rights that China is legally obligated to uphold and protect.³⁸ As a member of Executive Committee of the UN High Commissioner for Refugees, China has committed itself to showing a “demonstrated interest in and devotion to the solution of refugee problems.”³⁹

The Refugee Convention defines a refugee as a person outside his or her country, who, “owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is ... unable or, owing to such fear, is unwilling to avail himself of the protection of that country.”⁴⁰

Under international law, including the Refugee Convention, states are broadly entitled to control their borders and decide whether to admit or to deport non-citizens. In certain circumstances, the rights of non-citizens may be protected in relation to entry, such as with respect to non-discrimination, prohibition of inhuman treatment, and respect for family life.⁴¹ Refugees otherwise retain the human rights of nationals in a wide variety of matters.⁴²

The chief protection provided to refugees is that against refoulement. The Refugee Convention prohibits the forced return “in any manner whatsoever” of refugees to places where their “life or freedom” would be threatened on account of their race, religion,

³⁸ UN Convention relating to the Status of Refugees (1951 Refugee Convention), 189 U.N.T.S. 150, entered into force April 22, 1954, and its 1967 Protocol Relating to the Status of Refugees, 606 U.N.T.S. 267, entered into force October 4, 1967, http://www.unhcr.ch/html/menu3/b/o_c_ref.htm (accessed March 29, 2012).

³⁹ UNHCR, “How to Apply for ExCom Membership,” <http://www.unhcr.org/pages/49dca6506.html> (accessed Feb. 5, 2012).

⁴⁰ 1951 Refugee Convention, art. 1.

⁴¹ UN Human Rights Committee, General Comment 15, The Position of Aliens Under the Covenant (Twenty-seventh session, 1986), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc. HRI/GEN/1/Rev.1, p. 18 (1994), para. 5.

⁴² ExCom Conclusion No. 80, 1996, encourages “the adoption of protection-based comprehensive approaches to particular problems of displacement, and identifies, as the principal elements of such approaches: ... the protection of all human rights, including the right to life, liberty and the security of person, as well as to freedom from torture or other cruel, inhuman or degrading treatment or punishment; the right to leave one’s own country and to return; the principle of non-discrimination, including the protection of minorities; and the right to a nationality.” See also, Guy Goodwin-Gill, *The Refugee in International Law* (Oxford: Oxford Univ. Press, 2d ed., 1996), pp. 298-99.

nationality, membership of a particular social or political opinion."⁴³ Nonrefoulement is the cornerstone of refugee protection. It is foundational to China's legal obligations toward refugees.

Refugee status is declaratory, meaning that it is based on the nature of one's predicament, rather than a formal determination of status.⁴⁴ Thus, the fundamental principles of refugee protection apply to asylum seekers who have not been formally recognized as refugees. UNHCR's Executive Committee (ExCom) has reiterated that the nonrefoulement obligation prohibits the expulsion and return of refugees "whether or not they have formally been granted refugee status."⁴⁵

In addition to establishing certain rights for refugees, article 35 of the 1951 Refugee Convention and article II of the 1967 Protocol obligate states to cooperate with UNHCR in the exercise of its functions and to help UNHCR supervise the implementation of the provisions in the Refugee Convention. China affirmed its legal obligation to cooperate with UNHCR in its December 1, 1995 agreement with the UN refugee agency, saying that "UNHCR personnel may at all times have unimpeded access to refugees and to the sites of UNHCR projects in order to monitor all phases of their implementation."⁴⁶

Despite its obligations under international law, particularly as a party to the Refugee Convention, there are no special provisions in Chinese law to recognize refugees or asylum seekers within China's borders, let alone to guarantee their protection or that they receive assistance. Refugees in China, even those recognized under UNHCR's mandate, have no legal standing in China and cannot use Chinese courts to pursue their rights, unless they have an official visa or residence permit. China's immigration laws do not presently distinguish between undocumented migrants and refugees.⁴⁷

⁴³ Refugee 1951 Convention, art. 33.

⁴⁴ UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, reedited January 1992, Geneva, para. 28. See text at footnote 1.

⁴⁵ UNHCR Conclusion 79 (XLVII), "General Conclusion on International Protection," October 11, 1996, <http://www.unhcr.org/excom/EXCOM/3ae68c430.html> (accessed October 17, 2006), para. (j).

⁴⁶ United Nations (United Nations High Commissioner for Refugees) and China Agreement on the upgrading of the UNHCR Mission in the People's Republic of China to UNHCR branch office in the People's Republic of China, December 1, 1995. http://www.seoultrain.com/content/resources/95_treaty-english-antd.pdf (accessed April 16, 2012).

⁴⁷ See "Law of the People's Republic of China on the Control of Foreigners Entering and Leaving the Country," Adopted November 22, 1985 at the 13th Session of the Standing Committee of the 6th National People's Congress, http://www.novexcn.com/foreign_enter_leave.html; see also "China Plans Draft Immigration Law," *People's Daily*, May 22, 2010, http://www.chinadaily.com.cn/china/2010-05/22/content_9881622.htm (accessed March 6, 2012).

Under Chinese law, the government can arrest, detain, and deport any asylum seeker, refugee, or economic migrant.⁴⁸ Detention centers in China are not subject to independent monitoring, and refugees or asylum seekers have no legal right to challenge their detention in court.⁴⁹

However, as a party to the International Covenant on Economic, Social and Cultural Rights,⁵⁰ China should not bar access to such rights on the ground of nationality. Rights under the Covenant apply to everyone, including refugees and asylum seekers.⁵¹ These rights include the right to education, access to adequate food and health care, and the opportunity to earn a living.⁵²

Some Kachin refugees in China have sought and found work in China, even though Chinese law prohibits employers from recruiting “illegal” foreigners—with no exception for refugees—and contravention carries with it a fine of 26,000 Yuan (US\$4,110).⁵³ Foreign workers in China are required to possess employment visas or foreign resident certificates. China’s constitution limits the rights to “own lawfully earned income, savings, houses and other lawful property” to Chinese citizens.⁵⁴

The Yunnan provincial government has special procedures in place for “foreign related emergencies,” which require provincial authorities to grade the emergency on a scale of one to four, and to promptly take “emergency response measures” in order to “rapidly control the situation.”⁵⁵ The procedures involve contacting “the appropriate agency to understand the requirements and conditions for the foreign issues to be negotiated.”⁵⁶ It is unclear if these procedures have been invoked with respect to the Kachin refugees, or with respect to the Kokang refugees who fled to Yunnan in 2009.

⁴⁸ See, US Committee for Refugees and Immigrants, *World Refugee Survey 2009: China*, 2009, “Detention/Access to Courts,” <http://www.refugees.org/resources/refugee-warehousing/archived-world-refugee-surveys/2009-wrs-country-updates/china.html> (accessed March 30, 2012).

⁴⁹ *Ibid.*

⁵⁰ International Covenant on Economic, Social and Cultural Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, *entered into force* Jan. 3, 1976.

⁵¹ International Committee on Economic, Social and Cultural Rights, General Comment No. 20, Non-Discrimination in Economic, Social and Cultural Rights (art. 2, para. 2) U.N. Doc. E/C.12/GC/20 (2009), para. 30.

⁵² See ICESCR, arts. 6, 11, 12 and 13.

⁵³ US Committee for Refugees and Immigrants, *World Refugee Survey 2009: China*, 2009.

⁵⁴ *Ibid.*

⁵⁵ “Summary of Emergency Pre-Plan of Provincial Response to Sudden Foreign Affairs,” Yunnan Provincial Government website, April 30, 2008, http://xxgk.yn.gov.cn/bgt_Model1/newsview.aspx?id=236900 (accessed March 12).

⁵⁶ *Ibid.*

III. Refoulement

[Chinese soldiers] came and told me to force the villagers back to the Burma side.

–Chinese village head, Yunnan Province, China, August, 2011

Chinese central government and Yunnan provincial authorities have generally allowed Kachin refugees to enter and stay in China. However, some Kachin have been refused entry at the border and others have been forced back by local officials under the direction of central authorities.

Refoulement at the Border

Chinese authorities have rejected Kachin asylum seekers at the border. A Kachin mother of two young children said that Chinese authorities turned her away at the border on June 17, 2011, but that she and her children eventually entered China through a different route. She told Human Rights Watch:

We were shocked [when the fighting approached our village]. During the night we heard many guns and bombs.... My husband and I woke up and packed belongings. It was raining a lot. We walked to the border. It is far away. We left in the morning and arrived in Loi Je at 3 a.m. We had never been to China and when we arrived there were many Chinese police guards at the border cross[ing]. We were very sad that we couldn't go to China. We arrived at 3 a.m. but couldn't pass into China.

An ethnic Lisu-Kachin mother of two children living in a warehouse in China told Human Rights Watch how members of her family were unable to join her in China on November 13:

My aunt in Namhka tried to enter the China side in Nawngtaw and she was not allowed to enter. She and her group were forced to turn back. That was last Sunday [November 13]. I got a phone call from her. Since the last call, we weren't able to contact her. Maybe they had to flee to the forest and don't have the power to recharge their battery.... They all had passports but

were turned away. They had a motorcar too. My aunt was on a small tractor to carry some things. They had three tractors and one motorcar and had to turn back. They told them they are Burmese citizens and because of that they couldn't enter. The fighting was right in her village.

These may have been isolated cases of refoulement, but their occurrence at different locations (Loi Je and Nawngtaw) and at different times (in June and November) suggests that border pushbacks may have been more widespread, at least in the initial months of the conflict in Kachin State.

The principle of nonrefoulement applies not only to refugees within the territory of a state, but also to rejection of asylum seekers at the frontiers. UNHCR's ExCom Conclusion No. 99 calls on governments to ensure "full respect for the fundamental principle of nonrefoulement, *including non-rejection at frontiers* without access to fair and effective procedures for determining status and protection needs."⁵⁷ The Conclusion not only explicitly notes that the nonrefoulement obligation applies to rejection at borders, but also calls for fair and effective procedures for determining status and protection needs, which are also lacking for arrivals at China's border.⁵⁸

ExCom has also called on governments to permit refuge at least on a temporary basis in the event of situations of "large-scale influx" to asylum seekers fleeing widespread human rights abuses and armed conflict.⁵⁹ This would apply to ethnic Kachin arriving at the Chinese border to escape the fighting in Kachin State.

⁵⁷ UNHCR, ExCom Conclusion No. 99 (LV), "General Conclusion on International Protection," October 8, 2004, <http://www.unhcr.org/excom/EXCOM/41750ef74.html> (accessed FIX, para. (l) (emphasis added).

⁵⁸ ExCom Conclusion No. 99 was the last in a long series of conclusions, starting with ExCom Conclusion No. 6 in 1977, which "[r]eaffirms the fundamental importance of the observance of the principle of nonrefoulement—both *at the border* and within the territory of a State..." (emphasis added). UNHCR, ExCom Conclusion No. 6 (XXVIII), "Non-Refoulement," October 12, 1977, <http://www.unhcr.org/excom/EXCOM/3ae68c43ac.html> (accessed FIX), para. (c).

⁵⁹ ExCom Conclusion No. 22 of 1981 on the Protection of Asylum Seekers in Situations of Large-scale Influx states: "In situations of large-scale influx, asylum seekers should be admitted to the State in which they first seek refuge and if that State is unable to admit them on a durable basis, it should always admit them at least on a temporary basis...They should be admitted without any discrimination as to race, religion, political opinion, nationality, country of origin or physical incapacity. In all cases the fundamental principle of nonrefoulement—*including non-rejection at the frontier*—must be scrupulously observed" (emphasis added).

Although international refugee law does not formally provide an asylum seeker the right to enter, the *refoulement* prohibition provides little latitude when asylum seekers appear at a land border directly fleeing persecution in their home state.

Refoulement from within China

Human Rights Watch documented two instances, involving an estimated 300 people, of Chinese authorities ordering Kachin refugees to return to Burma in June 2011.

On June 15, 2011, local Chinese authorities entered a village in Yunnan (place name withheld for security purposes) that was providing refuge to approximately 100 Kachin refugees. A Chinese village leader told Human Rights Watch that about 80 refugees arrived on June 12 and that his village provided them with rice. He said, “It was raining heavily and I saw that babies and children and old people were coming through in the rain, carrying as much as they could.” He said that three days later Chinese provincial authorities came and told him that the Kachin from Burma “have to return [to Burma] quickly.” He said that he argued with the authorities, pleading the case for the refugees, but that they ordered him to force them back to Burma:

We had a little bit of a fight with the authorities. “How can we force the children and old women to leave in this difficult situation?” I was communicating with the Chinese government officers. The officer told the soldiers and the soldiers came. There were four soldiers who later came to talk to me about this. They came and told me to force the villagers back to the Burma side.⁶⁰

This village leader said he told the refugees they had to return to Burma—that they had no other options—and that they followed the order.

Other Chinese from the same village, who declined to be formally interviewed by Human Rights Watch because of security concerns, confirmed that the Chinese authorities ordered them and the village head to tell the refugees to return to Burma. They said that Chinese

⁶⁰ Human Rights Watch interview D.E., Yunnan, China, August 2011.

soldiers returned to their village repeatedly to ensure the refugees had followed their orders to return to Burma. The man quoted above told Human Rights Watch:

After they said the villagers had to return to Burma, the soldiers came again and checked to make sure the villagers left. We replied by saying they went back.... Now, everyone has gone back to Burma. Mostly they went back to the village and some went back to the [IDP] camps in Burma. It was after two or three days that the soldiers returned to make sure the villagers were going back. The villagers first arrived June 12, and the Chinese allowed us to support them until June 15. That is when they came and said they had to return.⁶¹

A 48-year-old Kachin woman said she returned to Burma from the above village in Yunnan when the Chinese village head told her she had to leave. She told Human Rights Watch:

The one who said we had to go back was a Kachin from China. He communicated with the Chinese soldiers. After they came and talked [and told us to go back to Burma], the next day we all went back.⁶²

From the same village in Yunnan, another Kachin refugee, a 21-year-old woman, said Chinese villagers told her she had to return to Burma just days after she gave birth. She told Human Rights Watch:

When the fighting started my entire village ran to the China side. I was pregnant and near giving birth. I fled on June 15 and on June 16 gave birth. There were around 10 Chinese soldiers that I saw [in the village]. They were patrolling every day. They had guns.... One week after giving birth we heard from the villagers that we had to go back, so I came here [to an IDP camp in Burma].⁶³

A local Chinese villager said the mother and newborn were allowed to stay longer than others, but were eventually required to return to the conflict zone. He said:

⁶¹ Ibid.

⁶² Human Rights Watch interview B.A., Kachin State, Burma, August 2011.

⁶³ Human Rights Watch interview B.C., Kachin State, Burma, August 2011.

When the baby was born the soldiers saw it and reported to the government officer that a baby was born.... They said to me that the mother and baby could stay longer [but the others had to return to Burma]. The baby was born at a villager's house.⁶⁴

Human Rights Watch found the mother and her baby in a makeshift IDP camp in eastern Kachin State—a camp which, at the time, had yet to receive any international aid due to the Burmese government's failure to authorize access to UN agencies. She told Human Rights Watch she was fearful to return to her village. She said that after being expelled from China she sought refuge in one of several IDP camps in Maijyang.

A Chinese village headman from another village in Yunnan told Human Rights Watch a similar account of Chinese authorities, whom he described as immigration police, ordering him in June 2011 to force an estimated 200 newly arrived refugees to back to Burma:

When the Kachin from Burma arrived in our village, the authorities came and said that the fighting is not on the border, that it is far from the border, and that we had to make them go back.⁶⁵

The village headman said that he then told the estimated 200 refugees that they had to leave. Like the other village headman who expelled refugees, he also expressed reluctance and sympathy:

We feel very bad about the Kachin on the Burma side who are having trouble. But after the authorities told us [the refugees had to return to Burma], then everybody went back. They said it softly, they didn't physically push anyone back, but they explained to us [the refugees had to return] and then we explained to the villagers [refugees]. The villagers went back the way they came.⁶⁶

⁶⁴ Human Rights Watch interview D.E., Yunnan, China, August 2011.

⁶⁵ Human Rights Watch interview H.G., Yunnan, China, November 2011.

⁶⁶ Ibid.

The facts of this incident were likewise corroborated by other Chinese villagers who declined to be formally interviewed by Human Rights Watch due to security concerns and by several local humanitarian aid workers providing aid in the IDP camps in eastern Kachin State.⁶⁷

Even though Chinese authorities have tolerated the presence of many Kachin refugees, these known incidents of refoulement send a message to the remaining refugees that their stay in China is precarious and that they could be ordered to leave at any time. A number of refugees told Human Rights Watch about their fear of refoulement by the Chinese authorities. One 25-year-old refugee in Yunnan from Zinlum told Human Rights Watch:

I don't feel secure here at all because we are still on the border and too close to the Burma side. I worry as the fighting continues, if the Chinese don't accept us, where will we go? Where can we live? We don't know answers to these questions and it makes me worry."⁶⁸

⁶⁷ The names, dates, and locations of group and one-on-one interviews have been withheld for security purposes.

⁶⁸ Human Rights Watch interview D.H., Yunnan, China, August 2011.

IV. Assistance and Protection

There are an estimated 7,000-10,000 Kachin refugees in Yunnan province, according to local aid networks. This figure does not fully account for the unknown number of refugees who are not staying in camps or other communal settings, and whose data has not been collected. Kachin refugees in Yunnan Province face continuing hardships and fears they will be pushed back to the conflict zone in Burma, a situation exacerbated by the unwillingness of the Chinese government to provide them temporary protected status or the assistance to which they are entitled.

On June 16, 2011, soon after the armed conflict began in Kachin State, Chinese Foreign Ministry spokesman Hong Lei acknowledged the fighting and the presence of Kachin from Burma in China. Speaking at a press conference, he said:

We follow closely the development of the situation in Myanmar and call on conflicting parties to exert calmness and restraint so as to avoid escalating the situation and to dissolve differences through peaceful negotiation. Since the conflict broke out, some residents [of Burma] living in the border area have come to China to live with their friends and relatives temporarily. China provides them with necessary assistance in conformity with common practices on the basis of humanitarianism.⁶⁹

Despite Chinese government claims to be providing “necessary assistance,” Human Rights Watch found no evidence that Chinese authorities have provided any assistance to Kachin refugees in Yunnan Province. Many refugees remain in dire need of shelter, food, safe water and sanitation, non-food items, and health care. Their children have no access to education. None of the Kachin refugees and aid workers we interviewed said they had received any material humanitarian assistance from Chinese authorities; at the same time, Chinese authorities continue to deny UNHCR and other major international humanitarian agencies access to the populations at risk.

⁶⁹ Chinese Foreign Ministry Spokesperson Hong Lei's Regular Press Conference on June 16, 2011, <http://www.fmprc.gov.cn/eng/xwfw/s2510/2511/t832130.htm> (accessed March 7, 2012).

Kachin refugees in Yunnan have received limited aid from the Burmese and Kachin community in China and abroad, churches in Yunnan and in Burma, local aid organizations, and a few small international organizations, including Partners Relief and Development and others. The Kachin-led organization Wunpawng Ninghtoi, an ad hoc network formed when the conflict began, has been a principal humanitarian actor for the Kachin refugees in Yunnan. When resources have been available, the network has delivered aid installments to refugees every 15 days, consisting of basic food items including rice and salt, medicine as needed, and basic non-food items, such as tarpaulins, blankets, and other household items—none of which have been provided by the Chinese government.

Refugees and local aid workers told Human Rights Watch the aid that has been delivered in Yunnan has been inadequate to meet overall needs. They have expressed concerns that international aid efforts have focused on displaced Kachin in Burma, and even there the aid has been negligible. In March 2012, a Kachin aid worker in Yunnan told Human Rights Watch:

The problem is that it is difficult to get funds for the refugees on the China side of the border. All of the INGOs [international nongovernmental organizations] that are coming from Rangoon do not provide funds for the refugees in China. Their aid is only for the IDPs on the Burma side. The refugees in Yunnan are not included in their aid; they don't get aid from them. It has been very difficult to get funds for the refugees in China. There is no aid coming through China either.⁷⁰

Another Kachin aid worker in Yunnan told Human Rights Watch:

We are facing problems in supporting the needs of the refugees. We are nearly out of money to buy food and medicine.... We have supported them for nine months already with the support of the Kachin community, some communities from Burma, and faith groups. Over the last nine months, we got very limited funds from INGOs. Now local people have limited money to support them again.⁷¹

⁷⁰ Human Rights Watch interview with Kachin aid worker, Yunnan Province, March 30, 2012.

⁷¹ Human Rights Watch interview with Kachin aid worker, Yunnan Province, March 20, 2012.

Some refugees in Yunnan have returned to Burma, despite the risk of encountering Burmese army forces, because of food shortages and other hardships worsened by lack of aid. One returnee, a 33-year-old Kachin woman from Kawngrazup, told Human Rights Watch that she felt compelled to return to her home—the site of intense fighting—because of the lack of food to feed her family in Yunnan: “What money we had brought [to Yunnan], we had already spent, and we were at a relative’s house and it is not good to stay a long time. It was difficult, so we had to come back to Burma.”⁷²

Inadequate Shelter, Clothes, and Fuel

Human Rights Watch visited a total of six refugee settlements in China. This included one makeshift “jungle camp”—a settlement constructed by the refugees in the forest—along a remote stretch of the Burma-China border where an estimated 5,100 refugees were living as of January 2012. It also included five refugee “sites”—preexisting structures that the refugees have inhabited since June—located in or around Chinese border towns, where approximately 5,000 refugees were living as of January 2012, according to local Kachin humanitarian networks.⁷³

In the jungle camp, the refugees we saw were living in makeshift shelters that they constructed from bamboo and plastic tarps. At the town sites, most refugees pay rent to private Chinese businessmen for a space in a variety of squalid, open-air structures that are predominantly industrial spaces or abandoned, dilapidated apartment complexes.

Some Kachin refugees are living in former timber warehouses. The structures in the gated compound include concrete garage storage spaces and traditional warehouses with high rafter ceilings. The larger spaces are open-air and lack a wall on one side, by design, making them particularly cold in winter months and vulnerable to wetness during the monsoon season, which begins annually in May.

Human Rights Watch first visited the warehouse camp compound in August 2011 when it was providing shelter for approximately 200 refugees. In a subsequent visit in November 2011, the number had increased to 500. The larger number of inhabitants meant that the

⁷² Human Rights Watch interview B.B., Kachin State, Burma, August 2011.

⁷³ Population estimates were provided to Human Rights Watch by local Kachin humanitarian workers, the principal aid deliverers in Yunnan.

refugees living in the site had to sleep on the ground, side-by-side, with little space between them. Families constructed makeshift curtains with string and plastic sheets to separate their sleeping area from others located alongside them.

Refugees described to Human Rights Watch the difficult conditions in the compound. In August, the camp headman told Human Rights Watch, “It is difficult here. We are living on the concrete ground that is dirty and unclean.”⁷⁴ A Kachin man, 25, from Momauk Township said, “Living conditions here for the children are difficult. We’re living in this very close, crowded area, and with the children this is difficult. We are now spending the money we brought and we don’t know how long it will last.”⁷⁵

By November, nearly five months since the first refugees arrived at the warehouse camp, some community members obtained plywood sheets from an international donor to cover the cold concrete floor.⁷⁶

As of November, there were approximately 19 families from Winhkam, Kachin State, living in a small Chinese village near the Burma-China border in a rundown brick factory. The shelter conditions were harsh, particularly in the cold winter months. A 25-year-old farmer who fled his village on June 15 told Human Rights Watch:

We are living in an area where bricks are made. There are walls but it is a very old building. Sometimes dust falls from the ceiling. There is a doorway but no door. It has windows but no glass.... Living conditions are really bad. On the concrete floor we have no mattress, when we sleep it’s very cold and not good for our health. Sometimes the floor is wet so we use plastic sheets for a mattress, and there are many mosquitos.⁷⁷

⁷⁴ Human Rights Watch interview D.G., Yunnan, China, August 2011.

⁷⁵ Human Rights Watch interview D.H., Yunnan, China, August 2011.

⁷⁶ The materials were provided clandestinely in a one-time donation by a foundation presently unauthorized by the Chinese or Burmese governments to provide aid to the Kachin. The most sustained humanitarian relief reaching these communities of refugees was, at the time of research, from Wunpawng Ninghtoi and Partners Relief and Development. Local families, churches, and others also made considerable contributions.

⁷⁷ Human Rights Watch interview E.E., Yunnan, China, August 2011.

Other refugees explained how their numbers are continually rising despite the shelters already being overcrowded. A 60-year-old Kachin man living in another brick factory told Human Rights Watch in November:

Yesterday around 30 more people arrived and we don't know where to put them. We found one building that can hold 40 families. If they stay in that building, though, it will be very expensive and we can't afford it.⁷⁸

Other sites in towns visited by Human Rights Watch comprised abandoned, single-story rows of concrete apartments. The dilapidated structures lack windowpanes, doors, and any furniture that might provide shelter from the elements.

A 38-year-old mother of four children told Human Rights Watch:

The place we are staying in is an old building.... All the windows are broken. We sleep on the concrete floor and it makes our bodies ache.... There are 18 families staying where we are staying. There are 58 households who fled from our village. Eighteen came together.⁷⁹

Kachin refugees living in a warehouse told Human Rights Watch that their most difficult challenge living in Yunnan is paying rent. They said that from June through July 2011, the Chinese owner had increased the monthly rent by more than half, from 200 Yuan (US\$32) per building to 500 Yuan (US\$80) per building. In some locations, Kachin refugees in Yunnan are “squatting”—occupying abandoned or unoccupied space without paying rent.

A 36-year-old Kachin mother of six children explained the risks of eviction:

We are running out of money. It will be difficult. We really want to go back [to Burma] but we can't because of the situation. We have paid for this month already but the Chinese ask for the money every 15 days. We pay

⁷⁸ Human Rights Watch interview A.J.F., Yunnan, China, November 2011.

⁷⁹ Human Rights Watch interview E.B., Yunnan, China, August 2011.

twice a month. Our money is almost gone and we are going to ask the Chinese owner if we can postpone our next payment.⁸⁰

Another group of refugees sought refuge in similarly small, squalid, open-air concrete rooms. They paid rent to a private Chinese owner in amounts they found difficult to afford. A Kachin teacher, 54, told Human Rights Watch how she and over 20 others fled their village in Zinlum on June 15, crossing into China on the same day to seek refuge from the conflict. They all share two small rooms:

When we arrived we rented a room at the border. It was a small room. We rented two rooms for eight families. All the women stayed in one room and all the men in the other. We have to pay 200 Yuan (US\$50) per month. That is where I am staying now. It has been almost two months.... The problem is that we are living in two rooms. It is a concrete floor and it is not healthy. We don't have floor mattresses and [the money] we brought we have already used. It is difficult for us to live.⁸¹

Hkawng San, 36, is a mother of six children who fled to China with nine family members on June 13. She described the difficulties many female-headed refugee families face:

I am really sad we had to come here. In the village we can look for all kinds of food. We can go to the forest and collect vegetables and go to the market. Here we can't find any jobs, and because we have babies and kids we can't work. We have no income here.

In addition to their problems with shelter, Kachin refugees in China have lacked non-food items, such as warm clothing, blankets, plastic tarps, firewood, wood for bedding, and other items.

Some refugees have briefly returned to their villages in Kachin State, braving Burmese army forces and landmines, to bring back basic necessities.⁸² A 25-year-old carpenter with

⁸⁰ Human Rights Watch interview D.F., Yunnan, China, August 2011.

⁸¹ Human Rights Watch interview E.D., Yunnan, China, August 2011.

⁸² Human Rights Watch has previously documented how the shortfall of humanitarian aid for the internally displaced population in Kachin State pressured families to return to insecure villages to gather belongings or tend to animals and fields,

three children said, “When we left our house [in Burma] we didn’t bring many things. When we arrived here we needed clothes and pots. I went back after three days to get things from the house.”⁸³

A farmer with three children from Kawngnan who had been staying in an open-air warehouse in Yunnan, told Human Rights Watch in November:

The weather is very cold now. We need warm clothes. We need blankets. We have some but it is not enough. We would also like to cover the wall with plastic because at night the cold air comes in. We need warm clothes for the children and shoes. The kids are very cold.⁸⁴

Firewood for heat and cooking is particularly important, especially during the cold months, but is in short supply. Kachin refugees in multiple locations told Human Rights Watch their Chinese landlords forbade them from collecting wood on the property and they cannot afford to purchase wood locally.⁸⁵ In a former logging warehouse, one refugee told Human Rights Watch: “We don’t have any wood to cut or to use. We think they don’t want us here.”⁸⁶

Food Shortages

Kachin refugees in Yunnan have had difficulty acquiring adequate food for themselves and their families. They say they have received limited food aid from nongovernmental sources, as mentioned above, and have received no food assistance from Chinese authorities.

Local Kachin aid workers and refugees said that some families returned to Burma because of difficulties obtaining food in Yunnan. In August 2011, at the height of the fighting, a 24-year-old Kachin mother of four children from Zinlum explained, “There are seven families

risking encounters with hostile Burmese army forces and exposing them to landmines. Burmese army soldiers have fired upon civilians, including children, threatened them, and abducted them for abusive forced labor. Many villagers have returned home only to find that the army had destroyed or confiscated their property and belongings. See Human Rights Watch, “Untold Miseries,” pp. 10-11.

⁸³ Human Rights Watch interview D.H., Yunnan, China, August 2011.

⁸⁴ Human Rights Watch interview I.G., Yunnan, China, November 2011.

⁸⁵ Human Rights Watch interviews, Yunnan, China, November 2011.

⁸⁶ Human Rights Watch interview I.G., Yunnan, China, November 2011.

staying where I am. Some lived here for just two weeks and had nothing to eat, so they returned to their village.”⁸⁷

A 51-year-old ethnic Lisu-Kachin mother of two children told Human Rights Watch:

As soon as we arrived [in China] there was no food so we just shared the little we had. Later the Wunpawng Ninghtoi came and gave us some food.... The war will last a long time and make things very difficult for us. We are far away from the village and we cannot get food. Living here is a very difficult situation.⁸⁸

Other refugees told Human Rights Watch they received food aid from Kachin groups, but that it was inadequate. A refugee father of three children told Human Rights Watch in November: “For most families it is not enough, so we need more support.”⁸⁹

Water and Sanitation

Many Kachin refugees we spoke with in Yunnan said they lacked access to safe water and had to obtain water from wells and other sources that were not potable. Displaced communities, deprived of their everyday social support structures and means of subsistence, are at particular risk from poor water and sanitation.

The need for water of any standard, safe or otherwise, has led some refugees to venture out of their camps and sites. A 19-year-old Kachin refugee in a town told Human Rights Watch:

When we go for a bath in the river, the Chinese authorities always harass us. There is a water-well at the [camp] but there are many people and it’s very crowded, so we have to go to the river to take a bath, and when we go the Chinese authorities always stop us and ask us questions. And they always follow us. They follow behind us and they yell things at us. So we do not feel very secure.⁹⁰

⁸⁷ Human Rights Watch interview E.C., Yunnan, China, August 2011.

⁸⁸ Human Rights Watch interview E.A., Yunnan, China, August 2011.

⁸⁹ Human Rights Watch interview I.G., Yunnan, China, November 2011. He said that the Burmese army had burned down his village in 1980, contributing to his fears of returning home during times of conflict.

⁹⁰ Human Rights Watch interview I.J., Yunnan, China, November 2011.

A father of three children from Kawngnan told Human Rights Watch he and his family fled to Yunnan in mid-June and found shelter in a warehouse. He said:

We don't have clean water. We have a well that we use for washing and drinking, but it is not clean. The living conditions are very messy. We all drink from the well. We know we have to boil it, but we don't have much firewood, so sometimes we just drink it from the well.⁹¹

A 25-year-old farmer said, "The water in the well isn't clean. It smells and we boil it and leave it for a while. If it is clear, then we drink it."⁹²

Several refugees described the health effects of relying on dirty water sources. A 50-year-old woman from Hkawngnan told Human Rights Watch:

In the place we are staying now, some people drink from the well. I also drink from the well. Some went to get clean water from another well. We have had high fevers, coughing, and diarrhea.⁹³

A 24-year-old mother of four children from Mungdung told Human Rights Watch:

The water is pumped from the well and costs [the Chinese landowner] money for electricity. We have many kids and the kids had diarrhea and we had to wash clothes a lot, so the owner turned off the water. Now we have to wash far away.⁹⁴

Sanitation also poses a public health concern for Kachin refugee populations in China. In some locations, the refugees urinate and defecate in makeshift, on-site toilets they construct themselves. The toilets are simply holes in the ground of unknown depth. One camp had one toilet for 300 refugees. The camp head told Human Rights Watch, "We dug

⁹¹ Human Rights Watch interview I.G., Yunnan, China, November 2011.

⁹² Human Rights Watch interview E.E., Yunnan, China, August 2011.

⁹³ Human Rights Watch interview E.J., Yunnan, China, August 2011.

⁹⁴ Human Rights Watch interview E.C., Yunnan, China, August 2011.

one toilet hole with four stalls for the whole camp, and now the hole is full, so it smells very bad. There are 300 people here.”⁹⁵

Health

Kachin refugees in Yunnan have a number of health concerns. Refugees said they were unable to afford health care and medicine in Yunnan.

Kachin refugees in Yunnan who fled from their homes between June and August 2011 did so during the rainy season, in some cases walking long distances through rugged mountain terrain. This appears to have had adverse health impacts. The most common illnesses resulting from the displacement, as reported to Human Rights Watch, were fever and diarrhea. In July, a 48-year-old displaced farmer from Bandawng told Human Rights Watch:

We hid in the jungle for over one month.... A lot of people have suffered from dysentery and malaria since we went into the jungle. We didn't have medicine in the jungle. We treated the sick people using very traditional methods. No one has died yet.... Almost 20 have minor illnesses, like cough or cold, and many others have dengue fever, malaria, dysentery. Some of the children have a skin rash, a puss rash on their skin, but they are ok. Most of the sicknesses started when we fled and hid in the jungle.⁹⁶

Refugees also told Human Rights Watch they have developed sicknesses since they have been in Yunnan. A farmer from Kawngnan village told Human Rights Watch:

Our health has changed since we fled. Now we live in a group, side by side, so sicknesses spread quickly. I never had health problems before, but now I always feel weak and tired, and something is wrong with my stomach. I had to go to the doctor but I couldn't go to the hospital because I don't have money.... If one child gets sick, every child gets sick, and we don't have any medicines. The children have diarrhea and colds constantly.⁹⁷

⁹⁵ Human Rights Watch interview I.G., Yunnan, China, November 2011.

⁹⁶ Human Rights Watch interview J.A., Kachin State, Burma July 2011.

⁹⁷ Human Rights Watch interview I.G., Yunnan, China, November 2011.

A 29-year-old carpenter from Zinlum told Human Rights Watch that existing health services in Yunnan were unaffordable and to see a doctor they had to return to Burma. He said:

There are many difficult things we are dealing with. We have health problems. Wungpawng Ninghtoi gave us some food and some medicine, but we have to go to Maijayang [where we can afford] to see the doctor.... I have an old mother and she's ill often.⁹⁸

In one camp, Human Rights Watch interviewed a woman whose 14-year-old son was killed and whose husband suffered brain damage in a motorbike accident in Yunnan in November. The man was not responsive and was laid out on the ground of the unofficial refugee site with a makeshift intravenous drip provided by a nurse from Burma. The wife said her family spent 14,000 Yuan (US\$2,200) for initial treatment at a local hospital in Yunnan but more was needed:

He is never awake. The hospital said it would cost 50,000 Yuan [US\$7,900] to keep him alive, but they said he will never walk again.... He can swallow soup. When they scanned his head they said his brain was damaged. The money we gave to the hospital we borrowed from others. The hospital wouldn't let him go until they got payment. Once we paid, then they let him go. For 50,000 Yuan they said they would operate on his brain. There is blood on his brain, they said.⁹⁹

A woman, 50, from Hkawngnan, told Human Rights Watch her family has been sick with diarrhea, fevers, and bouts of coughing since they arrived in Yunnan. She said, "My mother is very sick right now. She has problems breathing and is coughing a lot. She can't stop coughing."¹⁰⁰

Some refugees described being subjected to compulsory blood testing for an unexplained purpose by Chinese soldiers and health workers after their arrival in Yunnan in June. For instance a 36-year-old woman from Hka Ya who fled to Yunnan on June 15 said, "The health

⁹⁸ Human Rights Watch interview I.C., Yunnan, China, November 2011.

⁹⁹ Human Rights Watch interview with G.W., Yunnan Province, November 2012.

¹⁰⁰ Human Rights Watch interview E.J., Yunnan, China, August 2011.

workers came and tested our blood. For some, they tested in the hands and for some in the ear. For me they took blood from my ear. For kids, they take from the finger.”¹⁰¹

Several speculated that the authorities were concerned with determining whether they were carrying communicable diseases that could affect Chinese citizens.¹⁰² The authorities told some of the refugees that if their blood tested positive for “viruses,” they would not be allowed to stay in China.¹⁰³

Other refugees told Human Rights Watch it was not explained to them why their blood was being tested, nor did they give their consent to be tested. A 48-year-old woman from Kawngrazup told Human Rights Watch:

There were Chinese soldiers there and they checked us a lot. They checked all our belongings and the next day they did some medical checks. They checked our blood.... The Chinese soldiers didn’t say anything to us. They just came and took our blood. They did not tell us why they were taking our blood.... I was very afraid when they were testing the blood, because we didn’t know what they were doing.¹⁰⁴

The right to health under the International Covenant on Economic, Social and Cultural Rights includes “the right to be free from ... non-consensual medical treatment and experimentation.”¹⁰⁵ Informed consent for medical procedures envisions the provision of treatment.¹⁰⁶ A state’s obligation to refrain from applying coercive medical treatments may be relaxed on an exceptional basis, including for the prevention and control of

¹⁰¹ Human Rights Watch interview D.I., Yunnan, China, August 2011.

¹⁰² See, for example, Human Rights Watch interview I.J., Yunnan, China, November 2011; Human Rights Watch interview D.E., Yunnan, China, August 2011.

¹⁰³ Human Rights Watch interview H.I., Yunnan, China, November 2011. “The Chinese authorities came once and tested our blood [at the refugee camp]. They tested everyone—men, women, and children. They told us that if we had a virus or some other sickness, we would not be allowed to stay in China.”

¹⁰⁴ Human Rights Watch interview B.A., Kachin State, Burma, August 2011.

¹⁰⁵ ICESCR, art. 12. Seen UN Committee on Economic, Cultural and Social Rights (CESCR), in General Comment No. 14, on the right to the highest attainable standard of health, November 8, 2000, para. 8.

¹⁰⁶ See CESCR, General Comment No. 14, para. 34. The Special Rapporteur on the Right to Health has stated that: “Informed consent is not mere acceptance of a medical intervention, but a voluntary and sufficiently informed decision, protecting the right of the patient to be involved in medical decision-making, and assigning associated duties and obligations to health-care providers. Its ethical and legal normative justifications stem from its promotion of patient autonomy, self-determination, bodily integrity and well-being.” Special Rapporteur on the right to health, “Report to the General Assembly, August 10, 2009,” A/64/272, para 9.

communicable diseases.¹⁰⁷ However, such exceptional cases should be subject to specific and restrictive conditions, respecting best practices and applicable international standards. The World Health Organization and UN Office on Drugs and Crime emphasize in their “Principles of Drug Dependence Treatment” that compulsory treatment should be mandated “only in exceptional crisis situations of high risk to self or others” and only for “specific conditions and periods of time as specified by ... law.”¹⁰⁸

Education

The Kachin who fled to Yunnan since June 2011 include many children in need of education.

Children who are undocumented refugees maintain their right to education. The Convention on the Rights of the Child, to which China is party, ensures that primary education is “free and compulsory for all,” including for refugee children.¹⁰⁹ The Refugee Convention requires governments to “accord to refugees the same treatment as is accorded to nationals with respect to elementary education.”¹¹⁰ Thus the Chinese government is primarily responsible for ensuring Kachin refugee children in Yunnan have access to education, including free and compulsory primary education.

Some Kachin refugee communities established informal schools in Yunnan, employing refugee teachers to hold classes for school-aged children. However, members of the refugee communities Human Rights Watch visited said they were unable to afford the fees requested by refugee teachers and the informal schooling came to an end. The Kachin camp head at the former logging warehouse, one of the larger camps in Yunnan, told Human Rights Watch:

¹⁰⁷ CESCR, General Comment No. 14, para. 34.

¹⁰⁸ See World Health Organization/UN Office on Drugs and Crime, “Principles of Drug Dependence Treatment,” March 2008, p. 9, www.who.int/substance_abuse/publications/principles_drug_dependence_treatment.pdf.

¹⁰⁹ Convention on the Rights of the Child, G.A. res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), *entered into force* Sept. 2, 1990, arts. 22 and 28. Article 22 provides that “States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.”

¹¹⁰ The 1951 Refugee Convention, in article 22, states: “The Contracting States shall accord to refugees the same treatment as is accorded to nationals with respect to elementary education.” It also adds: “The Contracting States shall accord to refugees treatment as favourable as possible, and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, with respect to education other than elementary education and, in particular, as regards access to studies, the recognition of foreign school certificates, diplomas and degrees, the remission of fees and charges and the award of scholarships.”

Initially, we could give a small salary to the [Kachin] teacher, but now we can't. We want our children to be educated. The teacher costs 200 Yuan [US\$32] per month and even that was too much. We first got two teachers, then one, and now it is completely stopped. There are 20 nursery school-aged children here. We don't have supplies for the kids or things for them to play with.... If there is no nursery school, every parent has to watch their kids closely.... When we need to watch our children all day, we can't go work.¹¹¹

A Kachin woman from Maru currently living in a large industrial space in Yunnan said, "Many children had to stop attending school. If families have money, they can send their kids to school, but for us, we have to stop sending them to school."¹¹² Other refugees told Human Rights Watch that informal schools they had started, including one operated by a Kachin Roman Catholic priest, had since closed due to a lack of financial support.¹¹³

Labor Protections

In the absence of a system that recognizes refugees and authorizes them to work, refugees are vulnerable to labor exploitation. Refugees from Burma living in Yunnan told Human Rights Watch they face low or withheld wages, long hours of work with few breaks, and other mistreatment from Chinese employers. They believe that many of these practices stem from their unauthorized status.

The Refugee Convention calls on state parties to give "sympathetic consideration to assimilating the rights of all refugees with regard to wage-earning employment to those of nationals."¹¹⁴

A Kachin aid worker explained to Human Rights Watch his concerns regarding refugee day laborers in China:

It is very risky. We don't know Chinese law. We don't know if there is a law to guarantee the safety of the migrant workers or refugees. The local

¹¹¹ Human Rights Watch interview I.G., Yunnan, China, November 2011.

¹¹² Human Rights Watch interview A.J.E., Yunnan, China, November 2011.

¹¹³ See Human Rights Watch interview D.F., Yunnan, China, August 2011.

¹¹⁴ 1951 Refugee Convention, art. 17. Articles 18 and 19 also provide for labor protections.

[refugees] don't speak Chinese. They don't know Chinese law, and they don't know immigration law.... If they break the Chinese law they'll be in prison with no one to advocate for them. There are no Chinese lawyers to advocate on their behalf.¹¹⁵

A Kachin woman, 35, from Zupra Edin, told Human Rights Watch:

The business owners here know we are displaced and in need. They think that many laborers are now available, so they cut the wages in half from what they used to pay. They know there are many laborers. We never worked for others before, only on our own farm. I don't feel secure here.¹¹⁶

Some Kachin refugees in Yunnan said they work on plantations, many of which use chemical pesticides that might be hazardous. A 50-year-old Kachin refugee who worked at a sugar cane farm once or twice per week, told Human Rights Watch:

We have to spray the pesticide and plow the soil.... No, we don't have to wear any special equipment [when we spray pesticides]. No one has had any problems with the pesticide. But the smell is very bad. We don't have any other work to choose. That is why we work there.¹¹⁷

A 16-year-old boy who was tortured and forced to porter for the Burmese army for four days in October 2011 before escaping to Yunnan, told Human Rights Watch:

I stay in China now, making coal. The job is ok for me. It is a Chinese guy who owns the business. I stay with family. I am thinking of continuing my education.... I am paid 40 Yuan per day [US\$6]. It is not bad but it is tiring. There is one other kid of the same age and the rest are older.¹¹⁸

¹¹⁵ Fix cite

¹¹⁶ Human Rights Watch interview I.H., Yunnan, China, November 2011.

¹¹⁷ Human Rights Watch interview D.G., Yunnan, China, August 2011.

¹¹⁸ Human Rights Watch interview F.C., Yunnan, China, November 2011.

Some of the Kachin refugees who work on plantations are required to stay on the work premises night and day for a month or longer. A Kachin refugee, 19, who fled to China when the Burmese army shelled his village, told Human Rights Watch:

We have to go to work for one month or longer periods of time, and they only give us money in one lump sum at the end. I worked in China cutting trees on the mountain for a plantation. I learned about it from friends. I had to sleep there. We had to wake up very early in the morning when it was still dark. We had to cook food and when the light came, we'd start work. We were able to rest at around 1 p.m. and then work until it was dark. Usually we'd rest for only 30 minute rests but sometimes it was one hour. The owner is Chinese. He wasn't very mean but not so nice. We were paid 500 Yuan [US\$80] per month. It should definitely be more [according to the going rate].¹¹⁹

Available information suggests that Kachin refugees are being paid lower than the prevailing minimum wage. A Kachin refugee, 25, says that when she is paid at all for her work picking coffee beans, she is paid 25 Yuan per day, well below China's minimum wage of 40 Yuan per day, and she works 11-hour days. She told Human Rights Watch her work day begins at 6:30 a.m.:

We work until about 5:30 p.m. We have to stand the whole day picking coffee beans. We take a rest for about 30 minutes per day. We are paid 25 Yuan [US\$4] per day. Payment differs from place to place. In other places its 40 or 35 Yuan [US\$6].¹²⁰

She explained that her Chinese employer promised to pay workers every two days, "and then it changed and he said we'd be paid every six days." She continued:

When we asked for our wage last night, we didn't get our wages. The Chinese guy was very angry with us. I don't understand Chinese but his

¹¹⁹ Human Rights Watch interview I.J., Yunnan, China, November 2011. Minimum wages in Yunnan Province's three-tier system are 1,100, 980 and 830 yuan per month and 10, 9 and 8 yuan per hour, respectively. It is one of the lowest average rates in the country. The rate in the rural border area where Kachin refugees are seeking labor would be in the lowest tier.

¹²⁰ Ibid.

tone is harsh. We got our payment last Monday for the previous four days' work, but now it's been a week since we were paid."¹²¹

The ICESCR obliges governments to ensure that workers are paid “fair wages and equal remuneration for work of equal value without distinction of any kind.”¹²² The Chinese government appears to be allowing local employers to discriminate against Kachin refugees based on their nationality or lack of status. These practices underscore the need for a system that provides work authorization for refugees in Yunnan.

¹²¹ Ibid.

¹²² ICESCR, art. 7.

V. Arbitrary Drug Testing and Detention

Local Chinese authorities in Yunnan, including soldiers, appear to routinely give impromptu urine tests to Kachin men to determine illicit drug use. The testing infringes individual rights and, Kachin refugees say, is often accompanied by attempts at extortion by the officers administering the tests. Those who test positive can end up arbitrarily detained in Chinese “reeducation through labor” (RTL) centers, without due process or judicial oversight, for up to two years, beginning on the day of the drug test.

Seven Kachin refugees in Yunnan who were interviewed by Human Rights Watch said that local police had stopped them as they traveled to and from their camps and tested them for drug use without explanation. The testing is particularly humiliating: the refugees reported being forced to urinate into a plastic cup in the presence of soldiers. In many cases, the testing appears to be a means of extorting money from the refugees. One Kachin refugee described being tested and fined 2000 Yuan (US\$315) on the spot; others reported negotiating roadside payments to drug enforcement officials. In other cases, those whose urine supposedly tested positive for the presence of drugs have been sent to drug detention centers.

China “treats” those apprehended for drug use through a form of administrative detention that provides the alleged drug user fewer rights than a criminal suspect. Two Kachin men interviewed by Human Rights Watch were detained, tested, and sentenced to two years in a RTL center. In detention, they were forced to work and were subject to cruel, inhuman, and degrading treatment if their work was deemed inadequate—physical punishments including the requirement to balance on one leg for extended periods of time. In both cases, their families bought their release after approximately four months in detention. Several other community members with firsthand knowledge described testing, roadside cash payments to officials, and incarcerations.

In June 2008, China’s first comprehensive law on narcotics control, the Anti-Drug Law of the People’s Republic of China, took effect, calling for the rehabilitation of illicit drug

users.¹²³ Human Rights Watch has since reported on the adverse human rights impacts of the enforcement of China’s drug law, documenting abusive conditions under which suspected drug users are tested and then incarcerated in cruel, inhuman, and degrading conditions in drug treatment centers without due process.¹²⁴ Under national law, drug users in China are subject to administrative—not criminal—penalties, but Human Rights Watch found that since 2008 the Chinese government has routinely incarcerated individuals suspected of drug use for up to six years in drug detention centers without trial or judicial oversight.¹²⁵

RTL centers in China are not a new phenomenon and not unique to the Kachin refugee population—hundreds of thousands of Chinese citizens are in RTL centers throughout the country. Those facilities have been criticized for their violence, use of unpaid forced prison labor, high HIV transmission rates, and lack of drug treatment. The UN Special Rapporteur on Torture has characterized forced re-education through labor in China as a form of inhuman or degrading treatment, if not mental torture, and recommended that RTL centers be abolished.¹²⁶ The UN Committee on Economic, Social and Cultural Rights has expressed concern about the use of forced labor in RTL centers “without charge, trial or review,” recommended that its use be ended, and urged that China ratify International Labour Organization Convention No. 29 on forced or compulsory labor.¹²⁷ In March 2012, 12 UN entities issued a joint statement calling for the closure of compulsory drug detention and rehabilitation centers wherever they exist, citing health and human rights concerns.¹²⁸

Roadside Urine Testing and Arbitrary Fines

Ambiguous language in China’s Anti-Drug Law gives local authorities wide scope to deal with suspected drug users. Local police are empowered to detain people for the purpose of

¹²³ Anti-Drug Law of the People’s Republic of China (“Anti-Drug Law”), No. 79 of 2008. This is an unofficial translation of the Anti-Drug Law circulated among nongovernmental organizations and crosschecked by Human Rights Watch for accuracy.

¹²⁴ Human Rights Watch, *China: Where Darkness Knows No Bounds*, 2010; Human Rights Watch, *China: Unbreakable Cycle*, 2008.

¹²⁵ *Ibid.*

¹²⁶ UN Economic and Social Council, “Civil and Political Rights, Including the Question of Torture and Detention: Report of the Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, Mission to China,” E/CN.4/2006/6/Add.6, March 10, 2006, para. 64.

¹²⁷ UN CESCR, “Consideration of Reports Submitted by States Parties Under Articles 16 and 17 of the Covenant,” E/C/12/1/Add.107, May 2005, paras. 22 and 51.

¹²⁸ “Joint Statement: Compulsory Drug Detention and Rehabilitation Centers,” March 8, 2012, <http://www.unaids.org/en/resources/presscentre/featurestories/2012/march/20120308adetentioncenters/> (accessed April 30, 2012).

conducting compulsory urine tests without a reasonable suspicion of drug use.¹²⁹ A person sentenced under the law is permitted to appeal,¹³⁰ but no process for appeals is articulated in the law. Due process rights—such as to contest one’s detention before a court and be represented by legal counsel—are still routinely denied.

The seven Kachin refugees we spoke with who alleged that they were tested for drugs said that Chinese police stopped them without any reason to think they were using drugs. Refugees in border towns said they regarded the drug testing as a daily threat due to the frequency with which it is occurring; they fear that they could be taken off the street and forced to undergo a urine test on the spot.

A Kachin refugee, 19, whom the police drug-tested in November 2011, told Human Rights Watch:

I have had to pee in a cup for the Chinese. It was two weeks ago. When I was going to the market, they called me over to come to them, and that’s when they tested me. “Are you using drugs,” they said. I said no. After that, they tested my urine. There were eight Chinese soldiers and they made me pee in a cup in front of them. Six of us were tested.... That was the only question they asked me—do I use drugs. One Chinese officer could speak Kachin and he told me they found my urine was clean, so they let me go. I don’t know about the others.¹³¹

An ethnic Kachin headman at one of the larger refugee camps in Yunnan told Human Rights Watch:

We were tested but not in the camp, on the street. Most of the men [in the camp] have been tested. It was the beginning of the month. I was taken from the market and told to pee. When I was buying food, the soldier grabbed my arm and told me to come with him. I had to pee in front of the

¹²⁹ Anti-Drug Law, chapter IV, art. 32. Public security organs are entitled to conduct tests on, and detain, persons suspected of using narcotic drugs.

¹³⁰ Anti-Drug Law, chapter IV, art. 40. Persons dissatisfied with the public security organ’s decision are entitled to apply for administrative reconsideration and bring the case to court.

¹³¹ Human Rights Watch interview I.J., Yunnan, China, November 2011.

soldiers. There were eight of them. Two men from this camp who were tested for drugs were sent to prison.¹³²

Another Kachin refugee camp headman said:

When a man goes out on the street, the [drug enforcement officials] just takes us and tests our urine. If they see you, they test you. They came in here [to the camp] to take urine tests. They have tested every man here, and one guy was tested four times.¹³³

Refugees told Human Rights Watch that they believe the authorities will fine them or lock them up regardless of the results of the roadside urine-tests.¹³⁴ The camp headman quoted above told Human Rights Watch, “We aren’t using drugs, and even if our test is clear, we could be taken away.”¹³⁵

A 22-year-old farmer who was sentenced to two years in an RTL center said, “The test results sometimes show drug use when there was no drug use. I am proof of that. I have never used drugs.”¹³⁶

A Kachin human rights advocate said: “Sometimes they test wrong. I’m nervous to take motion sickness pills in case we get stopped and I get tested.”¹³⁷

Several Kachin refugees explained to Human Rights Watch how Kachin refugees have been forced to pay steep fines to the authorities, imposed on the spot, for supposedly testing positive for drug use. A Kachin man who had been tested said:

A young man, an old man, and five others were tested [in my group of roadside detainees]. One man had to pay 2,000 Yuan (US\$320), and another

¹³² Human Rights Watch interview I.G., Yunnan, China, November 2011.

¹³³ Human Rights Watch interview A.J.J., Yunnan, China, November 2011.

¹³⁴ This is consistent with allegations in Human Rights Watch reports regarding drug enforcement in Guangxi and Yunnan Provinces in 2008 and 2010. Human Rights Watch, *China: Where Darkness Knows No Bounds*, 2010; Human Rights Watch, *China: Unbreakable Cycle*, 2008.

¹³⁵ Human Rights Watch interview A.J.J., Yunnan, China, November 2011.

¹³⁶ Human Rights Watch interview A.J.B., Yunnan, China, November 2011.

¹³⁷ Human Rights Watch interview H.H., Yunnan, China, November 2011.

couldn't speak Chinese. He was sent to [the nearby RTL center], and he is there now. One person in our group was fined 2,000 Yuan (US\$320) on the same day I was tested. I know he wasn't using any drugs.¹³⁸

A 27-year-old refugee from Kawngnan said that after a roadside urine test on November 3, he was told he tested positive for drug use and was forced to pay 2,000 Yuan or spend two years in "prison." He told Human Rights Watch:

They asked me again and again, "Are you a KIA soldier?" Many other [Kachin refugees] were handcuffed [on the side of the road]. I asked a Chinese guy in uniform not to ask for money, explaining that I am very poor and that I don't have money to give. The Chinese guy said, "No, we won't let you go, if you don't give 2,000 Yuan quickly, we will put you in prison." They were preparing the handcuffs.... They told me I would spend two years in prison.¹³⁹

Under duress, he was able to secure the money on loan and with the help of his brother.

Corruption appears to be a major element in the process. One refugee said that by making a payment to the authorities immediately, the urine test could be avoided altogether. He said, "If you can give money right away, they let you go free."¹⁴⁰

A 54-year-old Kachin refugee from Zinlum told Human Rights Watch how she negotiated the release of two male Kachin refugees on the roadside who allegedly tested negative for drug use by paying a bribe:

I helped to negotiate their case with the authorities [on the side of the road]. I saw the two men already handcuffed. The police asked questions like, "Are you a KIA soldier?" They said no. I told the police these people are coming from the fighting area and that they have kids and are struggling with many difficulties. They charged us 2,000 per person. If we gave them that, the police said they would be released. They asked if we could pay now. I asked

¹³⁸ Human Rights Watch interview I.G., Yunnan, China, November 2011.

¹³⁹ Human Rights Watch interview H.I., Yunnan, China, November 2011.

¹⁴⁰ Human Rights Watch interview A.J.J., Yunnan, China, November 2011.

them to wait for a half hour and we tried to find the money and we only found 2,000. We had to explain we only had 2,000 and couldn't find 4,000. They were arrested near where they are staying.... One was 20 years old and the other is older, around 28. We handed the money to the police directly. After we paid the 2,000 Yuan they released the handcuffs and let them go. They had them at the side of the road. That day they arrested seven people [for allegedly testing negative for drug use]. We paid for the release of two of them. The rest were taken to prison. I applied for the release of one who was sent to prison but they said I had to pay 5,000 Yuan (US\$800). That is the official amount. But in the street we can pay the bribe.¹⁴¹

Local advocates and aid workers assert that people who supposedly “look” like drug users are profiled, regardless of country of origin. A Kachin woman providing humanitarian relief to Kachin refugees in Yunnan told Human Rights Watch:

They look for the face color, and if it looks like a person is a drug user, they make you pee and they test it right then and there. If you test negative, they ask for money, and if you don't pay or cannot pay, they put you in jail. Sometimes they give you one month to call family from jail and raise money. You cannot have a lawyer.¹⁴²

Another local Kachin advocate from Burma explained to Human Rights Watch how the practice works:

The Chinese authorities test your urine, and if you test positive they send you to jail. They test for heroin and opium, I think. They usually stop buses filled with people, and they go through crowds on the street, picking people out. They'll sentence you for two years in prison, starting that day. There's no trial, no lawyer, nothing like that. This is a dictatorship.¹⁴³

¹⁴¹ Human Rights Watch interview E.D., Yunnan, China, August 2011.

¹⁴² Human Rights Watch interview (group setting) H.H., Yunnan, China, November 2011.

¹⁴³ Ibid.

Case Study: Detention in a Re-Education Through Labor (RTL) Center

According to Human Rights Watch research from 2008 and 2010, police in China's Yunnan and Guangxi Provinces have arrested people who allegedly use drugs to fulfill departmental arrest quota targets and to keep RTL centers full, where inmates are commonly used as a forced and uncompensated labor pool.¹⁴⁴

Human Rights Watch interviewed two Kachin refugees who underwent a roadside urine test, were told they tested positive for drug use and on the same day were sentenced by an administrative authority without due process or judicial oversight to two years in an RTL center in Yunnan. Human Rights Watch interviewed the men in a refugee camp in Yunnan after their families paid a total of 15,000 Yuan (US\$2,300) to the authorities to secure their release, indebting themselves to lenders. The men had spent three months in the RTL center and been subject to cruel, inhuman, and degrading treatment.

The two men estimated there were approximately 1,000 inmates in the RTL center, roughly 500 of whom were ethnic Kachin from Burma, and roughly 300 of whom were ethnic Shan from Burma. Human Rights Watch was unable to independently verify the claim.

They said that many inmates were enduring harsh treatment while being forced to work without pay, cutting jade stones and sewing clothing.

“Brang Maw” (a pseudonym), 22, is a fruit and rice farmer from a small village in Kachin State. He and his family fled to China in June when the armed conflict began, fearing the fighting and Burmese army abuses. He told Human Rights Watch:

I was tested on August 5, 2011 on the street near the border. They asked me, “Where are you from?” I said I was from Burma. One person was wearing a police uniform, but there were about 10 people total. They had one car and one motorbike. They asked me if I was using drugs. I said no, I wasn't. They made me pee in a small cup in front of them, and then they put something in the cup and said, “This says you use drugs.” Then

¹⁴⁴ Human Rights Watch, *China: Where Darkness Knows No Bounds*, 2010, pp. 17, 28; Human Rights Watch, *China: Unbreakable Cycle*, 2008, pp. 20, 25.

they said, “You have to eradicate the drugs from yourself. You will go to prison.” Then they sent me to prison.¹⁴⁵

Within a matter of hours and with no judicial oversight, Brang Maw was processed at a police station and formally sentenced to two years in an RTL center—a place he was told was a prison by the authorities who tested his urine. He said:

They took me in a police car to the police station. When we arrived there, they asked if I had any family members. I had to stamp my thumbprint and also my whole hand. And then they said I had to go to prison for two years. I speak only a little Chinese. They used a translator, a Kachin man from China. After they told me my two-year sentence, there was no time for me to talk or to ask anything because the translator left immediately after they took my palm print. On that day, they took me to the prison. It was still in the morning.¹⁴⁶

In the RTL center, Brang Maw said, inmates were denied all personal effects, followed a daily regimen, and often physically fought with each other. He said the inmates in his block would awake at 6 a.m. and work from 8 a.m. to 5 p.m., with two meals during the day. He said, “Most fighting was because there wasn’t enough food and because the Chinese [detainees] took it first and didn’t leave any for us.”¹⁴⁷

Brang Maw was forced to work every day without pay. He said, “I had to sew women’s clothes all day, every day, but not with a machine, with my hands. They taught us how to sew.”¹⁴⁸

Brang Maw said he believed that the RTL center was geared more toward economic production for the state and its partners than drug rehabilitation. “This is a business deal,” he said. “No one ever came and talked to me about using drugs.”¹⁴⁹

“Sumlut Nan,” 30, a Kachin farmer, was tested and sentenced to two years in an RTL

¹⁴⁵ Human Rights Watch interview A.O.B., Yunnan, China, November 2011.

¹⁴⁶ Ibid.

¹⁴⁷ Ibid.

¹⁴⁸ Ibid.

¹⁴⁹ Ibid.

center on the same day as Brang Maw. He told Human Rights Watch he was not given the opportunity to pay a 2,000 Yuan (US\$320) fine and was sentenced to prison immediately. He said, “After they tested my urine, I asked if I could call my family members and they said no.”¹⁵⁰

Like Brang Maw, Sumlut Nan told Human Rights Watch no one in the RTL center ever spoke to him about using drugs.¹⁵¹

He told Human Rights Watch how his time was split between the room in which they ate and slept, and the room in which they worked:

My [friend Brang Maw] got to go to the dining room to eat but we didn’t have a dining room. We had a food carrier and the food carrier never changed. There was one carrier for rice and one for curry. They would bring the food to our room and we would eat there. We never were allowed to go outside [except to use the toilet].... We had to sleep in one room, and it was the same room where we would take a bath and eat.¹⁵²

Sumlut Nan told Human Rights Watch his block of inmates worked from 8 a.m. to 5 p.m. every day. He was forced to cut jade stones. He said:

I had to cut jade into the shape they wanted. They were very small pieces, like pieces of rice. The first day we had to do 50 pieces, and the next day we had to increase, and so on, and when we couldn’t increase anymore we were punished.¹⁵³

Sumlut Nan said if he or any of his fellow inmates accidentally damaged a piece of jade, they were physically punished. He said:

When we didn’t do the work perfectly or did something they didn’t like, we had to do pushups on the ground or other punishments, like balancing on

¹⁵⁰ Human Rights Watch interview A.O.C., Yunnan, China, November 2011.

¹⁵¹ This allegation is consistent with previous Human Rights Watch research into drug enforcement in China and RTL centers. See Human Rights Watch, *China: Where Darkness Knows No Bounds*, 2010, and Human Rights Watch, *China: Unbreakable Cycle*, 2008.

¹⁵² Human Rights Watch interview A.O.C., Yunnan, China, November 2011.

¹⁵³ Ibid.

one leg. We would have to stand on one foot, sometimes for half an hour and sometimes for one hour.... The leader from the prison would punch us and kick us and slap us.... As other punishments, sometimes we had to lie face down on the floor and sometimes they'd give us small amounts of food [relative to standard portions].¹⁵⁴

Sumlut Nan told Human Rights Watch he was denied adequate exposure to sunlight, except for when he was allowed to use the toilet twice daily. He said:

The toilets were outside. We couldn't go to the toilet any other time but the scheduled times.... We could only use the toilet twice a day, when they said we could. Everyone would go at the same time and we only had a few minutes. There was no way to go to the bathroom any other time.¹⁵⁵

Brang Maw said similarly:

We had four minutes of fresh air every day. That was for toilet time. We all had to go to the toilet at the same time. That was at ten in the morning and four in the afternoon. We could only go to the toilet when they said we could. Lunchtime is one and a half-hours. That was all indoors too. We could not go outside.¹⁵⁶

Sumlut Nan and Brang Maw said they met numerous inmates who were repeat "offenders," many of whom had previously been forced to work in facilities near the border and in Kunming, Yunnan's provincial capital, where they were forced to work in construction and manufacturing.

The detention of drug users or suspected drug users without charge or trial violates basic principles of international law.¹⁵⁷ The right to health includes the principle of treatment following informed consent.¹⁵⁸

¹⁵⁴ Ibid.

¹⁵⁵ Ibid.

¹⁵⁶ Human Rights Watch interview A.O.B., Yunnan, China, November 2011.

¹⁵⁷ The Universal Declaration of Human Rights, provides that no one shall be subjected to arbitrary arrest or detention, and that "[e]veryone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him." Universal Declaration of Human Rights,

As noted above, the World Health Organisation (WHO) and the United Nations Office on Drugs and Crime (UNODC) have emphasized that compulsory treatment should be mandated “only in exceptional crisis situations of high risk to self or others,” and only for “specific conditions and periods of time as specified by ... law.”¹⁵⁹ Compulsory treatment in such exceptional circumstances can only be legally justified if the treatment provided is scientifically and medically appropriate. Absent such conditions—as in China’s RTL system—there is no justification for compulsory treatment.

The UN Committee on Economic, Social and Cultural Rights has expressed concern about the use of forced labor in RTL centers “without charge, trial or review” and recommended that its use be ended. It has also urged China to ratify International Labour Organisation Convention No. 29 on forced or compulsory labor.¹⁶⁰

G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948). The UN Human Rights Committee, which monitors compliance with the International Covenant on Civil and Political Rights (ICCPR), has interpreted a similar provision in the ICCPR to apply “to all deprivations of liberty, whether in criminal cases or in other cases such as, for example, mental illness, vagrancy, drug addiction, educational purposes, immigration control, etc.” UN Human Rights Committee, General Comment 8, (Sixteenth session, 1982), *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*; U.N. Doc. HRI/GEN/1/Rev.1(8), 1994, art. 9. The UN Body of Principles for the Protection of All Persons Under Any Form of Detention similarly provides that persons “not be kept in detention without being given effective opportunity to be heard promptly by a judicial or other authority. A detained person shall have the right to defend himself or to be assisted by counsel as prescribed by law.” *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Body of Principles)*, adopted December 9, 1988, G.A. Res. 43/173, annex, 43 U.N. GAOR Supp. (No. 49) at 298, U.N. Doc. A/43/49 (1988) <http://www1.umn.edu/humanrts/instreet/g3bppdi.htm> (accessed Apr. 11, 2012).

¹⁵⁸ See footnote 107, above.

¹⁵⁹ See WHO/UNODC, “Principles of Drug Dependence Treatment,” March 2008, p. 9, www.who.int/substance_abuse/publications/principles_drug_dependence_treatment.pdf.

¹⁶⁰ UN CESCR, “Consideration of Reports Submitted by States Parties Under Articles 16 and 17 of the Covenant,” E/C/12/1/Add.107, May 2005, paras. 22 and 51.

Acknowledgments

This report was researched and written by Matthew F. Smith, consultant to Human Rights Watch. It was edited by Sophie Richardson, China director; Elaine Pearson, deputy Asia director; and David Mathieson, senior Asia researcher. Gerry Simpson, Refugee Program senior researcher/advocate; Bill Frelick, Refugee Program director; James Ross, legal and policy director; and Joseph Saunders, deputy program director, reviewed the full report. Portions of the report were also reviewed by the following: Steve Goose, Arms Division director; Mary Wareham, Arms Division senior advisor; Mark Hiznay, Arms Division senior researcher; Bede Sheppard, Children’s Rights Division senior researcher; Jo Becker, Children’s Rights Division advocacy director; Richard Pearshouse, senior researcher in the Health and Human Rights Division; and Aruna Kashyap, Women’s Rights Division researcher. Layout and production assistance was provided by Jake Scobey-Thal, Asia Division associate and Kathy Mills, publications specialist.

Special thanks to all those individuals and organizations who aided in this research and who generously shared their time, energy, and experiences with Human Rights Watch.

Appendix

This letter was sent to China's Foreign Affairs Minister, Public Security Minister, and the Chief of Staff of the People's Liberation Army on May 30, 2012. At the time of writing, no reply had been received:

May 30, 2012

Yang Jiechi
Minister of Foreign Affairs
No. 2, Chaoyangmen Nandajie
Chaoyang District
Beijing, 100701 China
Fax: (86-10) 6855-1125



www.hrw.org

Dear Yang Jiechi,

Human Rights Watch is a nongovernmental organization based in New York that monitors violations of human rights by states and non-state actors in more than 80 countries around the world.

Human Rights Watch is preparing a report regarding the legal status and well-being of ethnic Kachin refugees who since June 2011 have fled armed conflict in Kachin and Shan states in Burma and crossed into Yunnan province in China. Our report explores the reasons why the Kachin fled their homes, the treatment they have received in Burma and in China, and the conditions in which they are living in China.

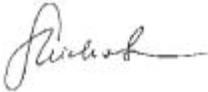
We are writing to ensure that our report properly reflects the views, policies, and practices of the People's Republic of China regarding Kachin refugees in Yunnan province.

Human Rights Watch is committed to producing material that is well informed and objective. We hope you or your staff will respond to the attached questions so that your views are accurately reflected in our reporting. In order for us to take your answers into account in our forthcoming report, we would appreciate a written response by June 15, 2012. We would also be happy to provide you with an advance copy of our report, once it is finalized.

Please do not hesitate to include any other materials, statistics, and government actions regarding Kachin refugees from Burma in Yunnan province that you think might be relevant.

We look forward to strengthening our dialogue with the national and provincial governments of China. Thank you for your time in addressing these urgent matters.

Sincerely,

A handwritten signature in black ink, appearing to read 'Sophie Richardson', with a long horizontal flourish extending to the right.

Sophie Richardson
China Director
Human Rights Watch

May 30, 2012

Meng Jianzhu
Minister for Public Security
Dong Chang'anjie
Beijing 100741 China
Fax: (8610) 63070900



www.hrw.org

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Sophie Richardson
China Director
Human Rights Watch

May 30, 2012

Chen Bingde
Chief of General Staff
People's Liberation Army
Fax: (8610) 63070900



www.hrw.org

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We are writing to ensure that our report properly reflects the views, policies, and practices of the People's Republic of China regarding Kachin refugees in Yunnan province.

Human Rights Watch is committed to producing material that is well informed and objective. We hope you or your staff will respond to the attached questions so that your views are accurately reflected in our reporting. In order for us to take your answers into account in our forthcoming report, we would appreciate a written response by June 15, 2012. We would also be happy to provide you with an advance copy of our report, once it is finalized.

Please do not hesitate to include any other materials, statistics, and government actions regarding Kachin refugees from Burma in Yunnan province that you think might be relevant.

We look forward to strengthening our dialogue with the national and provincial governments of China. Thank you for your time in addressing these urgent matters.

Sincerely,

A handwritten signature in black ink, appearing to read "Sophie Richardson".

Sophie Richardson
China Director
Human Rights Watch

HUMAN RIGHTS WATCH

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May 30, 2012

Yang Jiechi
Minister of Foreign Affairs
No. 2, Chaoyangmen Nandajie
Chaoyang District
Beijing, 100701
China
Fax: (86-10) 6855-1125

Dear Yang Jiechi,

Human Rights Watch is a nongovernmental organization based in New York that monitors violations of human rights by states and non-state actors in more than 80 countries around the world.

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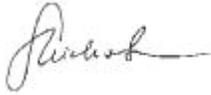
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HRW.org

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Sincerely,

A handwritten signature in black ink, appearing to read 'Sophie Richardson', with a long horizontal flourish extending to the right.

Sophie Richardson
China Director
Human Rights Watch

Questions for the Government of the People's Republic of China regarding Kachin refugees from Burma in Yunnan Province

1. How many Kachin refugees from Burma have come to Yunnan province since the armed conflict in Kachin state began in June 2011?
2. Please explain in detail what procedures and systems the authorities in China currently use to determine claims regarding refugee status.
3. Please provide details of the pending national immigration law with respect to the processing of refugee and asylum claims, and the rights of refugee.
4. Under what law, regulation, or policy have Kachin who were attempting to cross into Yunnan province been prevented from entering?
5. Under what law, regulation, or policy were Kachin who crossed into Yunnan province returned to Burma?
6. How many Kachin from Burma have been returned from Yunnan province to Burma since June 2011? What were the reasons for their return?
7. Has the Yunnan provincial government taken steps to prevent or investigate reports of unlawful returns of Kachin to Burma?
8. What are the biggest challenges the national and local authorities face in dealing with the Kachin refugee population in Yunnan province, and how are those challenges being overcome?
9. What type of humanitarian assistance, if any, have national or local Yunnan authorities provided to Kachin refugees who have arrived since June 2011? When and where were services provided, at what cost to the beneficiary, and by which government agency or agencies?
10. Where are the locations of existing camps of Kachin refugees in Yunnan province? What are the living conditions of the Kachin refugee population with respect to shelter, access to adequate food, water, medicine, and non-food items?
11. Please explain in detail the activities of drug enforcement officials in Yunnan province with respect to random drug testing, law enforcement, and sentencing of suspected drug users.
12. Please explain in detail the conditions in "re-education through labor" (RTL) centers in Yunnan province with respect to the labor of inmates, their daily schedules, and any drug rehabilitation or counseling that takes place.
13. Please explain in detail the process by which foreign nationals who test positive for drug use can avoid incarceration in an RTL center. Is this different for Chinese nationals?
14. Are conditions in RTL centers independently monitored? What is the nature of the monitoring? If they are not monitored, should they be, and why?