

BURMA/THAILAND

UNWANTED AND UNPROTECTED: BURMESE REFUGEES IN THAILAND

I. SUMMARY AND RECOMMENDATIONS	2
Recommendations.....	3
II. INTRODUCTION.....	6
The Thai Government.....	6
UNHCR.....	9
III. THAI-BURMA RELATIONS	11
IV. A PROFILE OF BURMESE REFUGEES IN THAILAND	16
The "Students".....	17
Thai government policy.....	17
Protection and the role of UNHCR.....	20
Refugee status determination procedures.....	25
The Ethnic Minorities	27
Reasons for flight.....	28
The Mon	29
The Karen	30
The Karenni	31
Refugees from Shan State.....	32
Thai policy towards ethnic minority refugees	34
The southern border.....	35
The central border region.....	38
The northern border region.....	42
Protection and the role of UNHCR.....	44
V. CONCLUSION.....	49

I. SUMMARY AND RECOMMENDATIONS

At almost no time since Burmese asylum seekers started arriving on Thai soil in 1984 has the need for protection of this group been greater.¹ Human rights violations inside Burma continue almost a decade after the State Law and Order Restoration Council (SLORC) seized power in Burma in September 1988. The announcement on November 15, 1997 that SLORC had been dissolved and replaced by the State Peace and Development Council (SPDC) has done nothing to improve the situation, and refugees continue to flow into Thailand. As of September 1998, there were over 110,000 refugees in camps along the Thai-Burmese border and hundreds of thousands more in Thailand who were unable or unwilling to stay within the refugee camps but who had suffered clear abuse at the hands of the Burmese government. Deportations of undocumented Burmese migrants, some of whom would have a clear claim to refugee status had they been permitted to make one, were also on the increase.

Thailand is not a party to the 1951 United Nations Convention on the Status of Refugees (Refugee Convention), the main international treaty for the protection of refugees, nor to its 1967 Protocol, despite being a member of the Executive Committee (ExCom) of the High Commissioner's Programme of the United Nations High Commissioner for Refugees (UNHCR) since 1979.² Thailand nevertheless has obligations towards refugees based in customary international law, the most important of which is the obligation not to send refugees back to any country where they are likely to face persecution; this is the principle of *non-refoulement*.

Over the past ten years, the Thai government has repeatedly violated this principle with respect to Burmese. Human Rights Watch is concerned that economic and political pressures caused by the continuing economic crisis in Thailand place refugees and asylum seekers in even greater danger of *refoulement* as the Thai government seeks to expel all undocumented migrants and often makes little distinction between migrants and refugees. UNHCR, the preeminent agency charged with the protection of refugees, has had an office in Bangkok since 1977 but, in the face of significant obstacles from the Thai government, is to a large degree failing to protect refugees from Burma. Only in February 1998 did the Thai government begin negotiations which would allow UNHCR a formal role on the Thai/ Burmese border. Although these negotiations were ongoing as this report went to press, indications were that they would result in a limited protection role for UNHCR, restricted to those refugees in camps on the border and with the primary aim of facilitating eventual repatriation to Burma.

This report, based on Human Rights Watch research since 1988, documents the history of the treatment of Burmese refugees in Thailand. It examines the factors affecting Thai government policy, including its experience with Indochinese refugees in the 1970s and '80s and the changing relations between Thailand and Burma. It then profiles the

¹Throughout this report "Burmese" refers to all the peoples of Burma. "Burman" refers to the major ethnic group in Burma.

² The Executive Committee of the High Commissioner's Programme (ExCom) is an advisory body comprising fifty-three member states which was established in 1958. It considers policy matters relating to refugees. Its decisions and "ExCom Conclusions" are not binding on states in themselves, although they are often drafted in language suggestive of standard setting and as they are adopted by consensus they carry persuasive authority as representing the views of the international community.

two major groups of refugees from Burma, the "students" — a catch-all phrase to denote the mostly urban students and professionals who took part in the 1988 uprising and subsequent political protests — and members of the different ethnic minority groups living close to the Thai-Burmese border who have fled armed conflict, forced displacement, forced labor, and other abuses.

The "students," who generally have better access to UNHCR's Bangkok office and constitute the overwhelming majority of those deemed to be "persons of concern to UNHCR," were told by the Thai government in 1992 to move to a site known as the "safe area" situated in Ratchaburi province or face deportation. In mid-1995 Thailand suddenly announced the closure of the "safe area" to new entrants, and UNHCR extended the use of its "border case" category, meaning that many of those who applied for protection in Bangkok and were recognized to be persons of concern must return to the border camps. Only if a person could show "secondary persecution" at the border camps would UNHCR provide assistance and protection in Bangkok for those waiting to enter the "safe area."

For the Burmese from ethnic minority groups, some of whom were allowed to establish camps on the Thai-Burmese border, the situation is often worse. At the time this report went to press, UNHCR had no presence in and only limited access to these camps, which since 1994 have been vulnerable to cross-border attacks by Burmese troops or breakaway factions of rebel groups. A generally benign *laissez faire* attitude on the part of Thai authorities toward the camps that was in effect from 1984 shifted to a much more hard-line stance around 1992, as relations between Rangoon and Bangkok warmed and Thai investors saw increasing economic opportunities in Burma. The Thai government also took the position that as SLORC concluded cease-fire agreements with various ethnic armies and the level of fighting decreased, ethnic minority refugees had nothing to fear by returning home. They ignored the pattern of systematic human rights violations, including forced labor, that had led many of the refugees to flee in the first place. As a result of the tougher stance toward refugees, however, there were repeated instances of refoulement by the Thai army. The camps are becoming increasingly closed, and many will not permit any new refugees to enter.

This report analyzes the difference in treatment that the two groups of refugees have received from the Thai government and UNHCR. It concludes with an analysis of why protection of Burmese refugees in Thailand has failed and makes the following recommendations to the parties involved.

Recommendations

To the Royal Thai Government:

- Thailand should ratify the 1951 United Nations Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees.
- Thailand must immediately cease the practice of closing its borders to new asylum seekers arriving from Burma. It must abide by its obligations under customary international law in relation to all refugees, including the obligation of non-refoulement, which applies to rejection at the frontier in addition to the forced return of those with a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group, or political opinion.
- Thailand must abandon its current position that only those fleeing direct fighting are entitled to temporary stay in Thailand, in favor of a position which recognizes the Refugee Convention definition of "refugee" and places greater emphasis on what the conditions in Burma must be before a voluntary repatriation of refugees can take place.
- Thailand should establish refugee status determination procedures by which asylum seekers can seek recognition as refugees in order to distinguish them from other migrants, thereby enabling Thailand to act consistently in accordance with its obligations under international law to provide refugees with international protection.

- Thailand must permit UNHCR to carry out its full mandate to protect and assist refugees and asylum-seekers from Burma. Thailand should allow unimpeded access by UNHCR to all refugees and asylum-seekers and a UNHCR presence in all places where refugees and asylum-seekers reside. It should allow unimpeded access by humanitarian nongovernmental organizations (NGOs) to all such areas, including the Ratchaburi safe area.
- Thailand should allow the establishment of refugee camps which are situated at a safe distance from the border with Burma in accordance with international standards. Those presently located so close to the border as to be vulnerable to cross-border attacks should be relocated to a safer distance inside Thailand. Pending such camp relocations, while it is recognized that a level of increased security within those camps aimed at increasing the protection of the refugees is to be welcomed, the nature of these camps should not be such as to amount to detention or detention-like conditions.
- Thailand should seek, by all available means, to encourage the government of Burma to respect human rights and in particular to cease those practices, such as forced labor and forced relocation or displacement, which result in refugee outflows. Thailand should seek assistance and support from the Association of South East Asian Nations to ensure that the Burmese government takes meaningful steps to promote the civil, political, social, economic, and cultural rights of all Burmese without restriction or discrimination.

To the Office of the United Nations High Commissioner for Refugees (UNHCR) :

- In its negotiations with the Royal Thai Government, UNHCR should insist on free and unimpeded access to *all* refugees and asylum seekers from Burma at all times, including those in the Karenni camps, those from Shan state and those in the migrant labor workforce with a genuine fear of persecution in Burma. All reports to date of discussions between UNHCR and the Royal Thai Government refer only to those refugees already in camps. It is imperative that any agreement must be comprehensive, including all refugees from Burma.
- UNHCR must address the question of how to protect refugees from Burma's Shan state, given the high level of suspicion on the part of the Thai government that any border crossers from Shan state are economic migrants or drug traffickers. If no other mechanism can be found, at the very least refugee camps for this group should be established so that the refugees are given the opportunity to receive assistance and protection.
- UNHCR must provide guarantees that its primary role with the Burmese refugees will be to monitor the protection and welfare of the refugees and will not be conditional on its involvement in a voluntary repatriation program. Repatriation to Burma should only be considered once the human rights conditions in the country are conducive to return. While forced relocations, forced labor, and other human rights abuses continue in Burma, UNHCR should neither endorse nor participate in the repatriation of the refugees.
- UNHCR should actively encourage the Thai government to move refugee camps to a safe distance from the border and out of range of attack from troops inside Burma. It must also ensure that new arrivals from Burma are provided ready access to the camps and protected from deportation back to Burma.
- UNHCR should insist that the Thai government not hold refugees and asylum-seekers from Burma in conditions amounting to detention, either in immigration detention centers, prisons, police lock-ups, or closed refugee camps. UNHCR has stated on several occasions that freedom from detention is a fundamental human right and that the use of detention is contrary to the principles of international refugee protection and, in many instances, is contrary to the norms and principles of international law. As a general rule, asylum seekers should therefore not be detained.
- Until the above recommendations are implemented, UNHCR should abandon the policy of "border cases," that is insisting that those determined to be refugees (or "persons of concern") must return to the refugee camps on

the border unless they can show secondary fear of persecution there.

- UNHCR should continue to press for a permanent presence in the "safe area" in Ratchaburi province.
- UNHCR should issue those recognized as refugees with documentation certifying refugee status in accordance with Conclusion No. 8 (1977) of the Executive Committee of the UNHCR program on determination of refugee status.
- UNHCR should actively encourage Thailand to establish its own refugee status determination procedures, particularly in view of Thailand's expressed intention to do so as early as 1977. In the absence of a state-run refugee status determination procedure which is open to all asylum-seekers, UNHCR should reaffirm that all those who cross into Thailand seeking refuge from persecution in Burma are considered to be prima facie refugees. UNHCR should avoid use of terminology such as "displaced persons" or "person of concern" in place of "refugees," given the legal protection, primarily protection against refoulement, that flows from being a refugee.
- UNHCR must thoroughly reassess aspects of its refugee status determination procedure with respect to Burmese who apply individually to its office in Bangkok. In particular:
 - (1) UNHCR should restate publicly that the criteria applied when determining whether an applicant from Burma is a refugee are those set out in the Refugee Convention. It should ensure that decisions are made in accordance with these criteria, using its own handbook as a guide. It must ensure that narrower criteria, particularly a tendency to focus just on those who have been politically active inside Burma, are not adopted.
 - (2) The transcript of the interviews conducted by UNHCR eligibility officers of each applicant in the course of the refugee status determination procedure should be read back to the applicant to enable correction of inaccuracies or inconsistencies. The applicant should be provided with a copy of the interview transcript.
 - (3) UNHCR should permit the applicant to be accompanied by a representative or adviser at the interview conducted by the UNHCR eligibility officers in the course of the refugee status determination procedure.
 - (4) UNHCR should set out in writing a reasoned decision in the case of the refusal of an application in order to allow a proper and meaningful appeal to be lodged and to improve the transparency of the decision-making process.
 - (5) Until such time as UNHCR abandons the category of "border case," it should allow a formal right of appeal against that categorization and tell applicants of the existence of that right of appeal in the letter informing them that he or she has been classified as a "border case."

To the government of Burma:

- All cross-border attacks on unarmed civilians in refugee camps in Thailand perpetrated by groups operating on Burmese soil and with the tacit consent of the State Peace and Development Council (SPDC) must immediately cease. Those responsible for such acts, which have resulted in deaths and abductions, must be prosecuted.
- The government must comply with the U.N. Commission on Human Rights resolution of April 20, 1998 (E/CN.4/1998/L.91/Rev.1). In particular, it must "end the enforced displacement of persons and other causes of refugee flows to neighboring countries and to create conditions conducive to their voluntary return and full reintegration in safety and dignity, including, where these are lacking, full rights of citizenship, in close cooperation with the Office of the United Nations High Commissioner for Refugees."

To the International Community:

- Governments with an interest in the region — notably Japan, the U.S., member states of ASEAN and the European Union (E.U.), Australia, and Canada — must press Thailand to accede to the Refugee Convention and its 1967 Protocol, and give support to UNHCR in its negotiations with the Thai government to ensure that the rights of the refugees will be adequately protected in any future agreement between the two bodies.
- All member states of the United Nations should press Burma to implement the 1997 U.N. General Assembly resolution.

II. INTRODUCTION

A refugee, under international law, is defined as any person 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 outside the country of his nationality and is unable or, owing to such fear, unwilling to avail himself of the protection of that country or who, not having a nationality and being outside the country of his former habitual residence ... is unable or, owing to such fear is unwilling to return to it.³

The cornerstone of refugee protection is the principle of *non-refoulement*, which provides that no refugee should be returned to any country where he or she is likely to face persecution on grounds of race, religion, nationality, political opinion, or membership of a particular social group.⁴ For this principle to have meaning in practice, states must have domestic legal regimes whereby the rights and responsibilities of refugees and their host governments are recognized and which establish a fair screening mechanism to determine whether a person or group has a valid claim to refugee status.

The Thai Government

The main obstacle to refugee protection in Thailand has been the Thai government, in part because of its relations with the SLORC and the SLORC's successor and in part because of its desire to avoid an internationalization of the refugee

³ Article 1 of the Refugee Convention. The 1967 Protocol removes the temporal restriction contained in the Refugee Convention (limited to refugees resulting from a pre-1951 event). The 1967 Protocol also broadens the protection offered by the Refugee Convention by extending its reach to cover non-European refugees as well as European refugees.

⁴ This obligation is contained in Article 33 of the Refugee Convention, and it is also widely accepted to be a norm of customary international law and therefore binding on all states. See Guy Goodwin-Gill, *The Refugee in International Law* (Oxford: Clarendon Press, 1996), p. 167-170.

problem as occurred after it became the reluctant host to over one million Indochinese refugees in the late 1970s. If it has lacked the political will to protect refugees, it has also lacked the tools: it has neither the requisite legal regime nor adequate screening procedures in place to afford real protection.

In Thailand, the legal regime to protect refugees is extremely weak. Like many other countries in the Asian region, Thailand has not signed the Refugee Convention, although it is — along with Bangladesh, India, and Pakistan — a member of the ExCom, a body which has been at the forefront of developing standards and guidelines to protect refugees. There is no regional refugee instrument in Asia, such as exist in Africa and Latin America and which go further than the Refugee Convention in providing specific legal standards for the treatment of refugees.⁵ In addition, Thailand has no domestic legislation covering the treatment of refugees. The 1979 Immigration Act (amended in 1980) is the only relevant piece of legislation, and under this law all undocumented asylum-seekers are considered "illegal immigrants" and liable to summary deportation.⁶ Appeals by asylum-seekers against deportation are rare since, although such appeals can generally be made to the Ministry of Interior, they are not allowed in the case of those without passports, equivalent identification documents, or visas. Even in cases of appeals against deportation made by asylum-seekers, the courts have rejected attempts to invoke the Refugee Convention.

⁵The Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa of September 10, 1969 and the Cartagena Declaration on Refugees of November 19-22, 1984.

⁶ Article 11 of the Immigration Law provides that all persons entering Thailand must do so via prescribed entrance points. Article 12 sets out various categories of people who are to be denied entry including (i) those without passports, equivalent identification documents or visas; (ii) those without means of support if they enter the Kingdom; (iii) those who are dangerous to society or to the peace and security of the Kingdom. Most asylum-seekers will fall in one or more of these categories. Under the law, any alien who enters Thailand without permission may be deported, imprisoned for a maximum term of two years and assessed a fine of up to 20,000 baht.

Thailand's obligations in refugee law terms therefore stem from the acceptance of non-refoulement as a part of customary international law as well as from international human rights treaties that it has ratified.⁷ Various conclusions of ExCom reaffirm that the principle of *non-refoulement* forms part of the obligations owed to refugees by the entire international community.⁸ Thailand has also ratified three of the six core multilateral human rights instruments.⁹ These are the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Rights of the Child (CRC) and the Convention on the Elimination of Discrimination Against Women (CEDAW).¹⁰ Thailand's obligations under these treaties extend to all those within its jurisdiction, without discrimination of any kind. Refugees are by definition people who have been denied basic human rights by their own government. They are entitled to the same fundamental rights and freedoms as the citizens of the host country and to protection of their rights by the host government.¹¹ It is important to note that these treaties require states parties not only to refrain from action which violates the rights contained in the conventions but also in some cases to take positive measures to ensure full respect of those rights.

If the legal regime for the protection of refugees in Thailand is weak, the refugee status determination procedures are almost non-existent. Thailand has not established any state-run system to determine if Burmese asylum seekers are refugees, although it has permitted UNHCR's office in Bangkok to run a limited determination process of its own to decide if Burmese who apply to its office in Bangkok in person are "of concern." Because of Thai sensitivities on the subject, it does not use the word "refugee," although it is presumed that UNHCR is using the term refugee and "person of concern" synonymously.¹² In the border areas, refugees who have been permitted by Thailand to establish camps or

⁷The importance of human rights standards in this context was highlighted in the Note on International Protection presented to the 47th session of ExCom in 1996, which stated "within the substantive content of protection frameworks, human rights standards have a central place ... the objective of protection is to secure for involuntarily displaced populations those fundamental rights and freedoms which a state should afford its citizens." ExCom 47th Session, Note on International Protection, July 1, 1996, paragraphs 20 and 23.

⁸ Conclusion No. 77 (XLVI) 1995; Conclusion No. 65 (XLII) 1991; Conclusion No. 50 (XXXIX) 1988; over fifteen years ago in 1982 ExCom stated in Conclusion No. 22 (XXXIII) that non-refoulement was acquiring the character of a peremptory norm of international law, that is, one from which states are not permitted to derogate and which can only be modified by a subsequent norm of general international law having the same character. It is important to note that all ExCom conclusions are passed by consensus and that Thailand was a member of ExCom when each of the above conclusions came into being.

⁹ The three core human rights treaties Thailand has not ratified are the International Covenant on Economic, Social and Cultural Rights of 16 December 1966, the International Convention on the Elimination of All Forms of Racial Discrimination of 21 December 1965, and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984.

¹⁰ Thailand acceded to the CRC in 1992, the ICCPR in 1996, and CEDAW in 1985. Thailand has made four interpretative declarations to the ICCPR but has not entered any reservation in relation to it. In relation to the CRC, it has entered reservations to three provisions: Article 7 concerning nationality, Article 22 concerning refugee children, and Article 29(c) concerning education. The text of the reservation states that the application of those articles "are subject to national laws, regulations and prevailing practices in Thailand." Many of the remaining provisions, however, are relevant and applicable to refugees and asylum seekers.

¹¹ CRC, Article 2(1); ICCPR, Article 2(1).

¹² "Person of concern" in UNHCR terminology refers usually to people who are outside the Refugee Convention definition but are nevertheless in need of international protection, such as the internally displaced. However, in the case of Thailand, which has not signed or ratified the Refugee Convention, the term is used misleadingly to refer to those who have been recognized as refugees under the terms of the convention after screening procedures have been carried out. Throughout this report such individuals are referred to as UNHCR-recognized refugees.

enter existing ones are recognized in Thai terminology only as "temporarily displaced" people fleeing fighting, to whom Thailand offers refuge as a humanitarian gesture until such time as the fighting ends and they can return to Burma. Thus, while they have been permitted to enter camps, these are not called "refugee camps," nor do the camps indicate recognition by Thailand that the inhabitants are *prima facie* refugees. As long as the Thai government does not formally acknowledge the existence of Burmese refugees within its borders, the UNHCR program will continue to be severely limited.

The lack of a formal refugee determination procedure does not give Thailand license to violate the principle of non-refoulement, as it has repeatedly done. Refugees must be protected regardless of whether they have formally been determined to be such. As the Note on International Protection presented to the 48th session of ExCom stated, "Preventing asylum seekers from finding safety, or from obtaining access to procedures, negates their fundamental rights, and may amount to refoulement in breach of international law."¹³ The principle of non-refoulement therefore must apply to asylum seekers as well as those determined to be refugees, at least during the period in which no comprehensive determination of refugee status exists.

¹³See paragraph 14, Note on International Protection, submitted to the 48th session of the Executive Committee of the High Commissioner's Programme, 2 July 1997

Although Thailand has provided temporary protection to over 100,000 refugees in camps along part of the Thai-Burmese border since 1984, it has also sporadically engaged in large-scale pushbacks, rejected new arrivals at the border, and deported individuals who have good reason to fear for their lives and safety should they be returned to Burma.¹⁴ Many of those who fear persecution in Burma face an impossible choice. If they are found outside established refugee camps, they face arrest and deportation under Thailand's Immigration Act. But to apply to UNHCR to become a "person of concern," they have to travel to Bangkok, putting themselves at risk by leaving the camps. In some areas, such as Chiang Mai and Chiang Rai provinces, Thailand has not permitted any refugee camps to be set up, despite large numbers of people from Burma's Shan state entering this province to escape continued forced relocations and associated severe human rights abuses.¹⁵

UNHCR

For its part, UNHCR has been less forceful than it might have been in trying to challenge Thai government actions. UNHCR has had a presence in Thailand since 1977, when, in an agreement known as an *accord de siege*, the office of the UNHCR regional representative was established in Bangkok. The agreement was amended in 1983 when the office was downgraded from a regional to a branch office; in 1997, it was changed back through an exchange of letters to a regional office. In none of these documents (none of which is publicly available), was there any limitation on the scope of UNHCR's work, in terms of its mandate or geographic focus. Nevertheless, at the beginning of 1998 the Thai government continued to insist that UNHCR's mandate was limited to work on behalf of the Cambodians, Vietnamese, and Laotians who flooded into Thailand in the aftermath of the Vietnam War and not the Burmese.

The experience with the Indochinese refugees had a major impact on both UNHCR and the Thai government. In the aftermath of the Vietnam War, many Western states were willing to advocate protection for, and to resettle, Indochinese refugees. In this context, UNHCR considered all Laotians coming into Thailand as *prima facie* refugees until 1985; it considered all Vietnamese as *prima facie* refugees until 1989. In both cases, the Thai government allowed UNHCR to provide limited assistance with screening and resettlement in third countries. Particularly with regard to the Hmong refugees from Laos, however, Thai authorities saw UNHCR assistance as providing a pull factor, drawing more and more people into Thailand.

Cambodians constituted the largest group of the Indochinese refugees in Thailand in the late 1970s and 1980s. UNHCR had been allowed to assist new Cambodian arrivals beginning in November 1979, after international outrage at several incidents of mass pushbacks by Thailand which resulted in the deaths of thousands of refugees in heavily mined war zones. After 1982, humanitarian assistance was taken over by a new ad hoc agency created for the purpose, the United Nations Border Relief Operation or UNBRO, but UNHCR continued to play a protection role. In July 1989, the U.N. secretary general designated UNHCR as the lead agency for the repatriation of Cambodian refugees within the context of the Paris Agreements of 1991 on the Comprehensive Political Settlement of the Cambodian Conflict. Refugee repatriation formed an integral part of these accords and implementing memoranda that followed. They included acknowledgment that UNHCR and other international agencies would have access to the refugees in the country of refuge as well as to the returnees in the country of origin; that UNHCR would have a monitoring function both in Cambodia and Thailand (by having an uninterrupted and enhanced presence in all camps in Thailand); that UNHCR would disseminate information on an ongoing basis to the refugees throughout the repatriation process; and that short-term repatriation assistance would be provided to returnees.¹⁶

¹⁴ See Human Rights Watch/Asia, "Burma/Thailand: No Safety in Burma, No Sanctuary in Thailand," *A Human Rights Watch Short Report*, vol. 9, no. 6(C), July 1997 (hereinafter "No Safety ..."); Human Rights Watch/Asia, "The Mon: Persecuted in Burma, Forced Back from Thailand," *A Human Rights Watch Short Report*, vol. 6, no. 14, December 1994 (hereinafter, "The Mon...").

¹⁵ See Shan Human Rights Foundation, *Uprooting the Shan: SLORC's Forced Relocation Program in Central Shan State* (Thailand: Shan Human Rights Foundation, December 1996); Human Rights Watch/Asia, "No Safety ...," pp. 20-24.

¹⁶ See Asia Watch (Now Asia Division of Human Rights Watch), *Political Control, Human Rights and the*

The main lesson learned by Thai officials from the Indochina experience was to avoid internationalizing a refugee issue at all costs, because in their view, it only made it harder to persuade the refugees to go back. For UNHCR, one of the main lessons was that large, closed camps that denied refugees any opportunity to control their own future were far from ideal. It was also clear that while Cambodia was at the center of Asian regional politics from 1979 onwards, and given the international and regional will for a solution, UNHCR in that instance had more room to maneuver vis-a-vis the Thai government. Burma's refugees may have lost out by not being strategically important. As a result, UNHCR and the international community failed to react when protection of the refugees, both from cross-border raids and refoulement by Thailand, started to become a real and pressing issue from 1994 onwards.

As in all countries, the presence of UNHCR in Thailand has depended on its relations with representatives of its host government. In the Thai case, this has included both officials in Bangkok and, sometimes more importantly, local civilian and military officials on the border. The Thai government has been more concerned with preventing a massive influx of refugees, stemming the flow of migrant workers, maintaining good relations with the Burmese government, protecting its international image, and balancing relations between civilian and military parts of the government than with protecting refugees. UNHCR's institutional priorities have been to fulfill its mandate of protecting refugees and ending the refugee crisis in the region, but also to maintain a presence in Thailand. Too often, this has led the agency to compromise and capitulate under government pressure, leaving the Thai army, the National Security Council, and other parts of the government as the sole arbiters of the refugees' fate.

UN Mission in Cambodia, (New York: Human Rights Watch, September 1992), p. 7.

The Bangkok office of UNHCR has also tended to adopt an overly narrow interpretation of the refugee definition, contrary to the intentions of the drafters of the Refugee Convention and to subsequent UNHCR guidelines and commentaries on the matter. As UNHCR stated in the 1994 Note on International Protection, it has always been understood that “the basic definition of refugee was meant to have an inclusive meaning, rather than a restrictive one, in accordance with the fundamental objective of providing international protection to all who need it.”¹⁷ This inclusive approach was reflected in the Organization of African Unity’s 1969 refugee convention, which expanded on the 1951 refugee definition, stating that, “the term refugee shall apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.”¹⁸ Over the years, this definition has come to be favored in other regions of the world by governments, by refugee organizations, and by UNHCR, as it places more attention on objective conditions in the country of origin and less on proof of individual fear of persecution.¹⁹ The use of a very narrow refugee definition by the UNHCR Bangkok office, which at times has been taken to mean only those with a well-founded fear of persecution owing to their political beliefs, has meant that many Burmese who face serious threats to their lives and liberty and have a valid fear of persecution are not recognized as refugees and receive no protection, either from the Thai government or from UNHCR.

Finally, UNHCR has generally, and perhaps too willingly, followed the Thai government’s broad general distinction between two groups of Burmese, the “students” who fled urban areas of Burma after the 1988 uprising and whose claims of political persecution were not contested, and the ethnic minority refugees who were regarded as “temporarily displaced.” The distinction between the two groups has not been absolute, and there have been further distinctions among the ethnic minorities (those from Shan state, for example, are treated with much more suspicion than those coming from Karen and Mon areas, because of the extensive narcotics trafficking in Shan state). The result has been a multi-tiered protection system, with the ethnic minorities receiving even less protection than the “students.”

As a result of these policies by both the Thai government and UNHCR, refugees from Burma remain largely unrecognized and unprotected at a time when there is an urgent need to differentiate between those deserving of asylum and those who have entered Thailand in order to find work and do not have a well-founded fear of persecution in Burma. Thailand is host to over one million illegal migrant workers, about 75 percent of whom are Burmese. For many years these workers, who undertake the most dangerous, dirtiest, and worst-paid jobs in Thailand’s construction, fisheries, and agricultural sectors, were welcomed by the Thai business community and the government. However, the continuing economic crisis which struck Thailand in July 1997 resulted in mass unemployment and the development of new government policy aimed at freeing up as many jobs for Thai nationals as possible. In January 1998 the government announced its intention to deport Thailand’s entire foreign illegal-immigrant workforce by the end of 1999. Under the plan, four repatriation centers were to be established to facilitate this deportation process in provinces bordering Burma — Tak, Kanchanaburi, Chiang Rai, and Ranong — although by July 1998 none of these had been

¹⁷Paragraph 25, Note on International Protection submitted to 45th session of the Executive Committee of the High Commissioner’s Programme, 7 September 1994

¹⁸Article 1, 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa.

¹⁹See UNHCR *The State of the World’s Refugees, 1997-98*, Oxford University Press, Oxford:1997, p. 52

built. Roundups and deportations of illegal immigrants occurred in January 1998 in the Mae Sot area, where a number of large refugee camps are situated. Since then, while accurate figures are not available, there has been a steady rise in deportations as procedures have been speeded up. There is a real danger that without any system by which individuals can assert a claim to refugee status and have that claim assessed, many of those deported under this new policy will in fact be refugees. People unable to enter the refugee camps that have been closed to new arrivals, those on their way to or from Bangkok to try and register with UNHCR, or those who come from an area where no refugee camps exist, such as in Chiang Mai province, may be among those rounded up and deported.

III. THAI-BURMA RELATIONS

One of the most important factors in the international failure to protect Burmese refugees lies in the nature of Thai-Burmese relations. The treatment of the refugees cannot be understood without an awareness of the political, economic and strategic factors governing the relationship and how they have changed over the past fourteen years.

Burma and Thailand are similar in many respects: they are about the same size geographically, although Thailand is much more densely populated, with a population of fifty-seven million, as opposed to Burma's forty-five million. They are both predominantly Theravada Buddhist countries, and both have significant ethnic and religious minorities, though Burma's population is more diverse. They share a 2,400-kilometer border, much of which has not been officially demarcated and some of which is in dispute, with both sides posting large military forces to defend their claims.²⁰

Politically and economically, however, they are very different. While Thailand developed into a free-market, increasingly democratic state, Burma remained the highly centralized military state that it has been since General Ne Win took power in 1962, although a series of economic reforms announced in 1988 changed it from an isolationist economy to one increasingly open to foreign investment.

²⁰ Hill 491 near Doi Lang in Thailand's Mae Hong Son province, the border between the Burmese town of Myawaddy and Thailand's Mae Sot, and three small islands at the mouth of the Pakchan River near Thailand's Victoria Point, are but three areas under dispute.

Following independence from Britain in 1948, Burma experienced a brief period of parliamentary democracy, during which time ethnic rebellions against the central government flared, although there were many parliamentarians and ministers of state from the ethnic minority groups. The Karen were the first minority to take up arms, almost immediately after independence. Like the other ethnic groups who subsequently did the same, the Karen wanted autonomy and a right to secede from the union.²¹ Relations between the central government and the ethnic minority areas never healed, and by 1974, virtually all major ethnic minority groups were represented by organizations who had taken up arms against the Burmese military.

Between 1962 and 1988, the Thai army had more direct relations with the ethnic insurgents along the border than with the government in Rangoon. As far as Thailand was concerned, the ethnic minority armies were "a cheap and efficient light infantry supplement to the thinly-spread Thai Army," which prevented direct clashes with Burmese forces, while at the same time could be called upon during the 1970s to help in the fight against the Communist Party of Thailand.²² In 1988, however, everything changed. Burma's students led what became a nationwide pro-democracy uprising, protesting the twenty-six years of military rule and in particular the November 1987 demonetization that sent most families crashing into a financial crisis. On August 8, 1988, the country came to a standstill with a student-organized national strike, and tens of thousands of people took to the streets in all of Burma's cities and towns. As increasing numbers of public officials joined the protesters, the army felt its control slipping away. On September 18, it reestablished military rule in a bloody show of power that left an estimated 3,000 unarmed protesters dead. Thousands of students and protesters fled to ethnic minority-held areas in Burma's frontier regions, mostly on the border with Thailand. The newly formed State Law and Order Restoration Council (SLORC) promised it would only hold power until such time as elections could be held and a civilian government installed. Crucially, the SLORC also announced an end to economic isolationism and the dawn of a free market economy.

Thailand's Gen. Chavalit Yongchaiyudh, then commander-in-chief of the army and foreign minister, was the first foreign leader to meet with the new government when he flew to Rangoon on December 14, 1988. The main reason for his trip was the negotiation of lucrative timber and fishing deals for Thai companies in Burma. In exchange, Chavalit gave the SLORC a commitment to repatriate student dissidents who had crossed into Thailand.²³ Some of the forests

²¹ By 1988 these claims to secession had been dropped by all the ethnic armies, except the Karenni National Progressive Party. Since then, the ethnic minorities have called for equal rights under a federal constitution.

²² Bertil Lintner, "Thailand: Building New Bridges with a Former Foe," and Robert Karniol, "Thailand Ends Backing for Rebel Groups," *Jane's Defence Weekly*, September 9, 1995.

²³ The timber deals were especially important, since a seemingly unlimited supply of wood in Burma

Chavalit discussed in 1989 were still in rebel-held areas at the time, a clear sign that for the Thai army at least, the future of its relationship with Burma lay with the SLORC in Rangoon, no longer with the ethnic armies.

Chavalit's visit to Burma set the tone for the Thai attitude towards Burma: the country was seen as a potentially lucrative source of natural resources and opportunities for Thai companies (especially those linked to the Thai military) as Burma opened up to foreign investment and tourism. However, control of Burma-Thai relations was not a simple matter in Thailand. While the army and those politicians closely connected to it saw their future with a stable, if abusive, military government in Burma, civilian politicians and a growing number of concerned individuals were keen to support democratic reform. These tensions became more apparent following the May 1990 general election in Burma, which was overwhelmingly won by the opposition National League for Democracy (NLD) led by their detained general secretary, Aung San Suu Kyi. Months after the election, it became clear that the SLORC was not going to convene the parliament and hand over power to the elected representatives. A new wave of refugees fled to Thailand after a failed attempt by NLD parliamentarians to convene a parliament resulted in the arrest of over sixty parliamentarians and scores of NLD members, as well as over one hundred Buddhist monks. Ten parliamentarians who escaped arrest and arrived in Thailand in November 1990 formed the National Coalition Government of the Union of Burma (NCGUB). Given the extent of support for the NLD in Burma (they had taken 82 percent of the seats in the election), Thai policy was more equivocal, offering tacit support and assistance to the NCGUB and others in case of a democratic victory in Burma.

enabled Thailand to impose a moratorium on the felling of its own hardwood trees. There was strong domestic pressure in Thailand at the time to cease logging because of the severe flooding caused by excessive deforestation. The possibility of deals with the SLORC, which would far surpass those already existing between Thai companies and the ethnic armies, was an opportunity not to be missed to keep Thailand's timber mills working. In addition, given that the SLORC was desperate for foreign exchange, due to the international aid embargo on the country since the 1988 killings, Chavalit was able to secure extremely good terms for Thai companies. In fact the deals were so good that by 1993 the SLORC had revoked all licenses to Thai companies, complaining not only of the cheap rate they were getting for the logs but also that the companies were taking more than their concessions allowed. For the SLORC, the deals were worth US\$112 million annually, according to Bertil Lintner in *Burma in Revolt: Opium and Insurgency Since 1948* (Colorado: Westview Press) 1995, p. 290. Lintner quotes Burmese government sources from February 1989.

For the first few years after the SLORC assumed power, this ambiguous policy seemed to work well for Thailand: it won international support for its protection of key Burmese dissidents, while at the same time it was able to forge closer economic links with Rangoon. In January 1993 the two countries formed a new "Thai-Burma Joint Commission" in a ceremony held in Rangoon by the two countries' foreign ministers. The commission would not deal with military matters — these were already handled by the longstanding Regional Border Commission — but with commercial and political concerns, such as the opening of border crossings.²⁴ This move was an important step towards realizing Thailand's new self-image as the central focus of a trade circle involving all its developing neighbors — Burma, Laos, Vietnam, and Cambodia — and the "Golden Square Highway Network," a trade route that would link China and Thailand through Burma and Laos.²⁵ But it was somewhat offset by a visit to Thailand in February 1993 by eight Nobel Peace Laureates in support of fellow laureate Aung San Suu Kyi. The laureates, who included the Dalai Lama and Archbishop Desmond Tutu of South Africa, were not granted permission to visit Aung San Suu Kyi in Burma and instead met with Burmese dissidents and refugees in Thailand and made heartfelt press statements calling for sanctions against Burma.

The SLORC was outraged by Thailand's agreement to the visit, and for a while relations cooled. Perhaps as a conciliatory gesture, Thailand began to clamp down on the political activities of the Burmese dissidents, particularly the NCGUB government in exile and the main student group, the All Burma Student Democratic Front (ABSDF).²⁶

²⁴"Burmese Foreign Minister Due to Sign Accord," *The Nation*, January 19, 1993.

²⁵ On June 28, 1993, Burma, China, and Thailand approved the Burma section of two four-lane highways, connecting Chiang Rai in Thailand to Ta Lua in China, via Kengtung. The second was to go from Chiang Khong in Thailand to Migong in China via Huey Sai in Laos.

²⁶ On June 16, 1993 an NCGUB minister, U Hla Pe, disappeared after leaving a political meeting. His body was found by the Thai police some months later. He had been shot in the head. No one was ever charged for his murder, although the NCGUB blamed SLORC intelligence. In December 1993 Thailand refused re-entry to a delegation of political dissidents from Burma, including the prime minister of NCGUB, Dr. Sein Win. They were forced to remain in the United States, where they had been lobbying at the United Nations General Assembly. To explain their actions, the National Security Council (NSC) chairman Charan Kulawanijaya said, according to a Reuters dispatch of December 16, 1993, "Thailand is supporting the Burmese government plan for national reconciliation. To issue visas to these people means to encourage them to continue fighting." Five years later, no members of this group have been permitted to return to Thailand.

Over this period, new SLORC policies towards the ethnic minority armies also affected Thailand's attitude towards the refugees from their areas. In April 1992, the SLORC chairman was replaced by a new military leader, Gen. Than Shwe, who had made moves to present a more acceptable international image.²⁷ Most significantly, under Than Shwe, the SLORC began to recognize the importance of the ethnic minority areas to the development of the nation.²⁸ As early as April 1989, when the Communist Party of Burma (CPB) was collapsing in northern Shan state, the SLORC, fearing that disaffected CPB soldiers (who numbered around 10,000) might join forces with other ethnic minority groups, sought to negotiate cease-fire agreements with the different ethnic armies that emerged. The former CPB soldiers were given recognized territories within which they could continue to hold arms and were promised economic development in their areas and the chance to enter mainland Burma's economic system.²⁹ These agreements proved a useful model for other parts of the country, where a military solution to the ethnic insurgencies was no longer seen as a viable option.

From September 1989, when the Shan State Army signed an agreement, until June 1995, when the New Mon State Army announced their cease-fire, a total of fourteen ethnic minority armies had entered into peace deals with the SLORC. By July 1998, the only groups which had not yet concluded cease-fire agreements with the Burmese government were the Karen National Union, various Shan groups that emerged after the surrender of drug warlord Khun Sa in January 1996, the Rohingya Solidarity Organization, and the Chin National Front on the Bangladesh-India border. Where cease-fires existed, however, there were no further moves for a political settlement. Each cease-fire was negotiated on its own terms and depending on the strength of the army involved. Territory was allocated to the groups, with varying rights of access to those areas by the Tatmadaw, the Burmese army. Each group was also permitted to engage in business, including tourism, cross-border trade, and joint ventures with Burmese and in some cases even foreign companies, although again the terms on which these deals were made varied enormously. In addition, the SLORC had established a Ministry of National Races and Border Areas Development in 1993 whose responsibility it was to oversee development projects in the new cease-fire areas.

As the cease-fires took effect through 1994, Burma-Thai relations and bilateral trade improved, only to decline rapidly in 1995 as the Burmese government repeatedly accused Thailand of harboring dissidents and members of those ethnic groups which refused to sign cease-fires, particularly the Karen National Union (KNU).³⁰ Thus, while agreements were made to develop new border crossings at Victoria Point (Burma)/Ranong (Thailand), Myawaddy/Mae Sot, and Tachilek/Mae Sai, these crossings were frequently closed by the Burmese, often without prior warning, whenever the

²⁷ On coming to power, Than Shwe announced the release of all political prisoners not considered a threat to the state. Under his leadership, the SLORC also made renewed efforts to encourage foreign investment and opened up new sectors to privatization, including the financial sector.

²⁸ Much of Burma's natural resources, from gems to oil to teak, are located in ethnic minority areas, some parts of which were under rebel control. In addition, the SLORC needed free and permanent access to border crossings to capitalize on international trade. In 1988, many of these crossings, to Bangladesh, India, and China, as well as Thailand, were in the control of rebel armies, which relied on the taxation raised through what were black market trade routes; by 1998 all of them were in the control of the Tatmadaw (the Burmese army).

²⁹ For details on the collapse of the CPB see Bertil Lintner, *Burma in Revolt*, chapter 9. The groups which signed cease-fires were: the United Wa State Army, led by Chao Ngi Lai; CPB "101 zone" led by Ting Ying, which became the New Democratic Army; the Kokang led by the Pheung Kya-shin and Pheung Kya-fu, who formed the Myanmar National Democratic Alliance Army (MNDAA); and CPB "815 zone," led by Lin Minqian, which became the MNDAA (eastern Shan state). All of these groups were, by July 1998, major producers and traffickers of narcotics including heroin and amphetamines.

³⁰ At a press conference on May 9, 1995, SLORC spokesman Col. Kyaw Win stated that the border problems with Thailand were "a direct consequence of Thailand harboring and cooperating" with groups opposed to Rangoon. He warned that "continued harbouring of such elements will precipitate similar problems." See "Burma Border Problems Laid at Thailand's Door," *Bangkok Post*, May 10, 1995.

SLORC or local authorities were angered by Thai actions, not just over the issue of harboring rebels but over outstanding border and trade disputes as well.

During 1995, after the Burmese army launched a major offensive against the KNU army that led to the fall of the KNU headquarters at Manerplaw, Thai-Burmese relations on the border deteriorated to an all-time low. Cross-border raids by a breakaway faction of the KNU called the Democratic Karen Buddhist Army (see below), on both refugees and Thai nationals, the arrest and sometimes even killing of Thai fishermen illegally fishing in Burmese waters, and the killing of Thais illegally hunting in Burma, did nothing to dampen Thailand's desire for good relations with Burma.³¹ Border trade declined sharply, especially after June 1995 when a boycott of Thai goods was ordered in many Burmese towns, especially those bordering Thailand. Thai trucks and goods in Burma were confiscated, and Burmese traders were not permitted to import any Thai goods.³² At the same time, Thai companies found that they were no longer so welcome in Burma, and the economic deals between the two countries declined. While Thailand had been the largest investor in Burma among the countries belonging to the Association of Southeast Asian Nations (ASEAN) in August 1994, with projects worth US\$211.14 million, by the end of 1995 it had been overtaken by Singaporean and Malaysian investors.

As a direct result of these measures by Burma, which were in part intended to force Thailand to cease giving temporary asylum to ethnic minority refugees, Thailand's policy towards this group changed dramatically. Thai authorities pressed the ethnic minority armies into accepting cease-fire deals with the SLORC, and the refugees became pawns used by all sides in the negotiations. Thai authorities had periodically refouled Mon refugees, but once the Mon army had signed its agreement with the SLORC in June 1995, they repatriated the Mon en masse, ostensibly because the lower level of actual fighting meant the area was now "safe." When camps housing Karen refugees were attacked in 1996, Thailand did little to provide security and refused to move the camps out of the reach of the raiders. Then, as a major offensive began against the remaining KNU troops in southern Burma in February 1997, refugees fleeing the fighting were repeatedly refouled. From June 1997 onwards a new policy was implemented by the Thai army to permanently close the border to all new arrivals, thus effectively denying asylum to all those fleeing Burma.

In addition, Thailand also offered support to the SLORC in the international arena, by assisting in its attempts to join ASEAN from 1993 onwards. These efforts succeeded in July 1997, when Burma was admitted as a full member. But

³¹ In March 1994 it was reported in the Thai press that some 200 Thai fisherman had been killed by the Burmese navy in a three-month period, most of whom died when their boats sank under fire. Similar killings continued throughout the next year, and at the end of 1995 it was reported that over 500 Thai fishermen were in Burmese jails.

³² Reuters, "Thai Products Face Burmese Boycott Call," June 20, 1995; Reuters, "Burma punishes traders defying boycott Thai call," July 20, 1995, which reported that Burmese selling Thai goods in a Burmese market were sent to do forced labor.

by then, the looming Asian financial crisis had begun to break in Thailand and quickly spread to all ASEAN countries. Suddenly Burma was no longer the golden investment opportunity for expanding ASEAN companies but an economic and political liability that needed to be taken in hand.³³

³³ This was reflected in the decision by two ASEAN member states to meet with Aung San Suu Kyi during state visits to Rangoon. The first, Foreign Secretary Domingo Saizon of the Philippines, met Daw Suu on October 23, 1997; Malaysian Foreign Minister Abdullah Badawi met with Daw Suu on March 13, 1998. In April 1998, no ASEAN states assisted Burma in advocating a weakened resolution at the U.N. Human Rights Commission in Geneva, nor did they object when a strongly worded condemnation of Burma's human rights practices was tabled and passed the commission without a vote on April 21.

By November 1997, both Thailand and Burma had new governments. In Thailand, the SLORC's ally, Gen. Chavalit Yongchaiyudh, was replaced as Prime Minister by Chuan Leekpai after a no-confidence vote in Chavalit brought about by the economic crisis.³⁴ Chuan headed a coalition which expressed support for human rights and a determination to forge a closer relationship with the army, in which the civilian leadership of the democratic government would have the upper hand. In Burma, the SLORC was unexpectedly replaced by the new State Peace and Development Council (SPDC). Although the top four positions in the SPDC remained the same as in the SLORC, fourteen government ministers were sacked and replaced by younger army officers.³⁵ The move indicated that the government considered that since law and order had been restored — ignoring the SLORC's pledge to transfer power to an elected civilian government once that objective had been achieved — the new government was committed to forging peace and development in the country. Soon after, several former ministers, including the ministers for tourism and forestry, were placed under house arrest for excessive corruption.

The new Chuan administration, with Foreign Minister Surin Pitsuwan, took a new attitude towards the Burmese government and towards the refugees on Thai soil.³⁶ In February 1998, the government invited UNHCR to give a presentation on its work with a view to considering a UNHCR presence on the Thai/Burma border. When refugee camps were attacked in March, the government immediately responded with *démarches* to the Burmese embassy. In April, the two governments agreed to begin border demarcations to finally settle the disputed areas.³⁷ The Thai government nevertheless took no steps to prevent the Thai army, often a power unto itself, from carrying out its own policy of keeping the border closed to new arrivals. It also became clear in further discussions with UNHCR in May that whatever role UNHCR would finally be permitted, it would be very narrowly defined and restricted to include only those persons who fell within the Thai definition of "temporarily displaced persons," that is, those already in established camps who had fled direct fighting.

IV. A PROFILE OF BURMESE REFUGEES IN THAILAND

Since 1988, the Thai government and UNHCR have divided Burmese refugees into two groups, "students" and ethnic minorities, corresponding roughly to the location of the refugees in urban and rural areas respectively. The students are politically active dissidents who took part in the 1988 uprising in Burma and then fled across the border, most of them eventually making their way to Bangkok. The ethnic minorities are villagers living near the Thai-Burmese border who at different times have been caught up in fighting between the Burmese military and armed rebel groups belonging to ethnically-based insurgencies such as the Karen National Union (KNU). They either settled in camps just over the border, or, in cases where the Thai government did not permit such camps to be established, sought work illegally in Thailand.

The essentially arbitrary classification of the refugees into these two groups has caused significant protection problems. Burmese who faced persecution for political activities after 1988 fell outside the first category, for example, and villagers fleeing forced relocation rather than fighting fell outside the second. More importantly, however, the two-tier system for dealing with Burmese refugees was and continues to be inherently unfair, since many in both groups have a valid fear of persecution if returned to Burma, but the Thai government and UNHCR have given more, if still

³⁴ Chuan had been prime minister from 1993 to 1995 and was not then known for taking a strong position to assist refugees. In part this was because of the power of the Thai military at the time, whose influence on the border had been greatly reduced by 1998.

³⁵ For an analysis of the implications of the cabinet changes, see Bertil Lintner, "Velvet Glove," *The Far Eastern Economic Review*, May 7, 1998.

³⁶ See Kavi Chongkittavorn, "Reinventing Ties with Burma," *The Nation*, April 13, 1998.

³⁷ "Efforts to Map out Burmese Border Begin to Take Shape," *Bangkok Post*, April 9, 1998.

insufficient, weight to the claims of the "students."

The "Students"

The Thai government and UNHCR have used the word "students" as shorthand for the some 8,000 to 10,000 political dissidents who sought asylum in Thailand after the Burmese military reassumed power in September 1988. Most were ethnic Burmans, many were young men, and while many were students, there were also graduates, doctors, workers, teachers, and other professionals among their ranks. They had all been involved in the pro-democracy struggle in Burma, and they made their way to the Thai-Burmese border where, in November 1988, they formed the All Burma Students' Democratic Front (ABSDF) to carry on the fight against the SLORC by armed rebellion. Most students joined the ABSDF and undertook military training, though it was unclear whether the ABSDF would be able to join or work with the ethnic armies, many of whose members treated them with suspicion as possible Burmese military intelligence agents.³⁸ Many found that joining the ABSDF was the only way to get humanitarian support, and those who did not were unable to support themselves. Hundreds became ill with malaria and other diseases unknown in the cities they had fled.

The Thai government, after many twists and turns and hundreds of forced repatriations, eventually recognized that many "students" involved in the 1988 uprising had a valid fear of persecution, but it would not recognize them as refugees. Instead, it allowed UNHCR to register and provide services to students who made their way from the border to Bangkok. The Thai government's increasing intolerance of the political activities of Burmese students in Bangkok eventually led to the establishment of a holding center called the "safe area" outside Bangkok in 1992. Students could either go to the "safe area," where they would continue to receive UNHCR assistance and be eligible for third-country resettlement, or be deported. Controversy over how safe the "safe area" really was continued for the next several years. Equally controversial were the criteria that UNHCR used to determine refugee status. At first virtually all students who applied were recognized by UNHCR as refugees, but as the years wore on and the numbers seeking asylum increased, the criteria for selection became increasingly stringent. By June 1995 students and dissidents had to prove they had played a major leadership or public role either in Burma in 1988 or in Thailand since then in order to be recognized as refugees. Those who had been foot soldiers in the ABSDF, or had no hard evidence of their involvement in 1988 and beyond, were rejected by UNHCR. These extremely restrictive criteria were later reviewed and widened, but for at least six months, many with valid claims were rejected and forced to become migrant laborers in Thailand's then still booming construction industry.

Thai government policy

Thai government policy and practice toward the student asylum seekers was inconsistent and contradictory from the

³⁸ The lack of trust was not helped by an earlier generation of political dissidents who had set themselves up on the Thai border in the early 1970s and had left bad memories with the KNU in particular. In 1969 the former Prime Minister U Nu had formed the Parliamentary Democracy Party, which sought to work with key ethnic minority groups and establish its own military wing in order to bring down the Revolutionary Council of Gen. Ne Win. While U Nu initially received substantial funding, mainly from the United States, and was able to use this to forge alliances with some of the ethnic armies, much of the aid "disappeared." When U Nu went into retirement in 1973 the PDP began to collapse with internal divisions and was eventually finished off by its old ally the KNU in 1978. See Martin Smith, *Burma: Insurgency and the Politics of Ethnicity* (London: Zed Press) 1991. pp. 275-291.

outset. The Thai Foreign Ministry initially termed the first Burmese students to arrive "war refugees" but changed within days to calling them "temporarily displaced persons" and rejected any role for UNHCR in assisting them. Under pressure from Burma to return the students, Thailand repatriated 135 students on October 8, 1988, removing them from a Buddhist monastery in Mae Sot to a KNU military base inside Burma. On October 17, the SLORC announced that twenty-seven reception centers along the Thai-Burmese border were to be established and that amnesty would be offered to all students who returned to Burma by November 18. Despite the fact that no international agency had interviewed the students and no monitoring mechanisms were in place on the Burmese side, the Thai government began sending hundreds back.

On November 22, the Thai cabinet decided to offer asylum to those Burmese students who wished to stay. On December 21, however, following a one-day visit to Burma the week before by Gen. Chavalit, the Thai government opened a repatriation center at the provincial airport in Tak Province, to be jointly administered by the Thai and Burmese Red Cross societies. No role for UNHCR was permitted. The SLORC had asked Chavalit to repatriate the students and had reportedly given him assurances that the safety of the returnees would be guaranteed.³⁹ At the same time, the SLORC announced that the deadline for students to return under the amnesty would be extended until January 31, 1989.⁴⁰

Five days after the Tak Repatriation Center opened, eighty-two Burmese students were flown to Rangoon on two passenger airplanes sent to Tak to collect them. A spokesperson from the SLORC's Defense Ministry told a press conference at the Rangoon Military Command's reception center that the background of all returnees would be checked and "actions" taken against those with criminal records.⁴¹ Further repatriations took place from the Tak Repatriation Center through January to March, although the numbers decreased from February onwards, despite an announcement on January 10 by the Thai government that those who did not return by March 31 would face charges of illegal entry into Thailand. At least twenty-six students who had been on hunger strike in Tak to protest the repatriation were suddenly flown home on January 7. There was no way to follow up on what happened to those returned.⁴² By the time the center closed on March 31, 1989 under intense international pressure, 387 Burmese had been repatriated through it. Neither UNHCR nor any other international observers were present at these repatriations, and there was considerable concern that the Thai army had forced the students back. Human Rights Watch received reports that although most returnees had initially been allowed to return to their families, many were subsequently called to local police stations for questioning and had then "disappeared."

The closure of Tak did not mean either an end to repatriations or an end to inconsistency in Thai policy, as the Thai government continued to sway back and forth between international demands to respect refugee rights and its own desire for better ties to Burma.⁴³ Forced repatriations of students continued from Ranong in Thailand to Victoria Point

³⁹ "Army Sets Up Center to Return Burma Students," *Bangkok Post*, December 22, 1988.

⁴⁰ Even after the January 31, 1989 deadline had passed, SLORC representatives stated that the twenty-seven reception centers remained open and that students would be welcomed back "like our own sons and daughters." "Rangoon Extends Return Deadline," *Bangkok Post*, February 28, 1989.

⁴¹ "Burmese Return Home To An Uncertain Future," *The Nation*, December 27, 1988. Three months earlier, new draconian laws promulgated by the SLORC made such things as more than five people gathering in the street a criminal offense (SLORC Order 2/88).

⁴² On January 18, forty-six foreign journalists were invited by the SLORC to meet with returned students in Rangoon, Loikaw, Taunggyi, Meiktila, and Pagan, but this two-day visit in no way replaced the need for monitoring.

⁴³ On April 11, the Thai deputy foreign minister, Prapas Limpabandhu, visited Rangoon on a four-day trade mission during which the SLORC Chairman Gen. Saw Maung offered Thailand a "priority trade reward."

in Burma, with some 870 Burmese, including students, repatriated via this route between September 8 and 18, 1989.⁴⁴ Repatriations also continued throughout 1989 all along the border, particularly to camps in areas held by ethnic insurgents inside Burma. In addition, thousands of students decided to return secretly to Burma by themselves, fearing repatriation directly into the hands of the SLORC. By the end of 1989, the student population on the border had dwindled to some 3,000.

At the same time, the international outcry over Tak Repatriation Center and activism by Burmese students forced Thailand into accepting a role for UNHCR, with whom an agreement was reached in mid-1989. UNHCR officials conducted missions to the border to encourage students to register with them in Bangkok, and students started to do so throughout the second half of 1989. The ABSDF considered students who left for Bangkok to be giving up the struggle and rejected them as members. While this weakened the student movement at the border, it also created a new and politically active student population in Bangkok.

The Thai government, while closely monitoring the students and unhappy with their frequent demonstrations and other activities, did not attempt to restrict their movement in and around Bangkok; indeed, despite the fact that they were recognized as refugees by UNHCR, the students were all too often treated no differently than migrant workers or tourists who had overstayed their visas and deported along with illegal immigrants.

⁴⁴ The U.S. Committee for Refugees, "The War is Growing Worse and Worse: Refugees and Displaced Persons on the Thai-Burma Border," Issue Brief, May 1990, p. 4.

This situation changed after December 1989, when two Burmese students registered with UNHCR hijacked a Myanmar International Airways airplane from Kawthaung to Rangoon, forcing it to land at Bangkok military airport. The students, Ye Thi Ha (San Naing) and Ye Yint, were sentenced to five years in a Thai jail, but the impact of their action was felt by all students.⁴⁵ In July 1991, partly in response to a perception that the students were a growing security threat, Thailand's National Security Council recommended to the cabinet that a "safe area" be established to house Burmese students and dissidents. The secretary general of the NSC, Suvit Suthanukul, said that the students would receive education and training "while awaiting future repatriation when the situation in Burma ensures their safe return."⁴⁶ On September 24, 1991, the Thai cabinet accepted this proposal and authorized the interior minister to exercise his power to grant such a temporary stay under Article 17 of the 1979 Immigration Act. The Ministry of the Interior said that the center would be based at a site known as Suan Phung Camp in Ratchaburi province, near the Burmese border, which had previously been a border patrol police camp and could house around 500 people.⁴⁷ Since, by the end of 1991, UNHCR had recognized 1,864 Burmese asylum seekers in Bangkok as refugees, it was clear that some further screening process would have to take place, and to the consternation of refugee and human rights advocates as well as the students themselves, that screening was left in the hands of the Thai Ministry of the Interior.

The students were opposed to the idea of a "safe area" from the outset, fearing that it would become another repatriation center similar to the one in Tak in 1988-89. After all, Suan Phung was just a few kilometers from the Burma border and far enough from Bangkok to be out of international view. They were also concerned that there was no adequate protection mechanism within the camp, that their names would be handed over to the Burmese authorities, and that their families could face persecution as a result. Finally, they wanted to be able carry on their political work.⁴⁸ Aid agencies and western officials shared many of these concerns, but UNHCR officials supported the proposal, claiming it to be an improvement on the prevailing situation and therefore a "positive development," despite the fact that UNHCR was to have no permanent access to the camp.⁴⁹

⁴⁵ A second hijacking occurred in November 1990, when two students hijacked a Thai Airways plane from Bangkok to India. In this case, the two were granted political asylum in India.

⁴⁶Yindee Lertcharoenchok, "NSC speeds up moves to set up 'safe area' for Burmese Students," *The Nation*, July 16, 1991.

⁴⁷ This was later increased, see below. The safe area was renamed the Burmese Center in 1997.

⁴⁸ As long as their political activity is non-violent and does not violate the laws of the host country, refugees are entitled under international human rights law, as all individuals are, to express their political beliefs.

⁴⁹ The Thai government announced that UNHCR would have to request permission to visit the safe area on a case by case basis. "Safety or Detention," *Bangkok Post*, March 8, 1992.

The plans for the "safe area" went ahead, helped, perhaps, by a waning of international support for the students. From 1992 onwards there were reports that some of those registered as refugees had set themselves up to assist in the writing of applications to UNHCR, giving rise to similar life histories and creating a great deal of suspicion by UNHCR towards all claimants. International sympathy for the students took a further plunge when, in February 1992, the ABSDF in Burma's northern Kachin state executed fifteen colleagues whom they accused of being SLORC spies.⁵⁰ Some of these urban refugees also fell victim to drug pushers, using their UNHCR stipends to buy cheap drugs, and many became addicts.

Despite ongoing concerns about screening procedures and lack of adequate protection, UNHCR announced in November 1992 that from January 1993 it would only make assistance payments for registered students via the "safe area" and not in Bangkok.⁵¹ This policy, reiterated in December, amounted to a cut-off of UNHCR aid to those who refused to go to the "safe area."

As 1993 dawned, however, only a handful of students had entered the "safe area." By October 1993, the number of residents stood at 135, by early 1995 at 180. In January 1995, a violent clash between students and security guards at the "safe area" led to the detention of sixty-eight students and a determination by the Thai government that all Burmese recognized as refugees would have to go through the "safe area" as a first step to any permanent resettlement. The government began cracking down on students who refused to go to the "safe area," arresting them as illegal immigrants. UNHCR reinforced this policy by announcing that as of July 1, 1995, all assistance to students or others recognized as refugees would be cut off unless they were in the "safe area." By this time it was clear that, whatever Thailand's original intentions in setting up the "safe area," its main concern now was to prevent the students from undertaking political activities directed against both the Thai and Burmese governments. On January 20, Thailand's Deputy Prime Minister Banyat Bantadtan complained in *The Nation* newspaper that the Burmese students were troublesome for Thailand, which was criticized for human rights violations if it adopted harsh policies towards the exiled group. He said that the students could not have full rights comparable to Thai citizens "as Burma and Thailand are neighboring countries and Rangoon could become suspicious of any Thai support for the dissident group."

Many chose to fend for themselves in Bangkok instead, finding jobs to survive while living in often appalling and overcrowded conditions. In the meantime, the "safe area" became filled to capacity with the influx of refugees from the border after the January 1995 fall of Manerplaw, headquarters of the Karen National Union, to the Burmese army, and was closed to new arrivals after February 1996. UNHCR then resumed assistance to those who had registered to go to the "safe area" but who were not admitted; the "safe area" remained closed to new arrivals as of May 1998.

Protection and the role of UNHCR

If Thailand eventually allowed UNHCR to assist the students, it denied the agency any real opportunity to protect them. The failings of the protection system stemmed from the way UNHCR defined who was a refugee; the system of

⁵⁰ Others, also accused of being spies, were held in squalid conditions in ABSDF camps near the Thai border. A video was made of the "trial" and of the confessions of Ne Win Aung and Soe Lwin by a western NGO, Southeast Asian Information Network. Although intended to "prove" the guilt of the pair, the video clearly showed that both men had been beaten and were extremely frightened.

⁵¹ UNHCR Bangkok Press Release, "UNHCR Position on Safe Area for Burmese in Thailand," November 30, 1992.

documentation provided or lack thereof; the inability to prevent deportations; and the extent of Thai government interference in the procedures of UNHCR.

UNHCR only reached an agreement with the Thai government on assistance to Burmese in mid-1989 after the Thai army had sent at least 387 Burmese students back to Burma from the Tak Repatriation Center, many of them apparently against their will. After the agency was allowed to encourage students at the border to register at the UNHCR office in Bangkok, it interviewed asylum applicants to determine if they were students who had directly participated in the 1988 demonstrations and fled to Thailand immediately afterwards. If they had, they were recognized as "persons of concern to UNHCR." Anyone who left Burma later than 1988 or was from an ethnic minority group was rejected. It meant, for example, that a student who had stayed in hiding in Rangoon into 1989 before finally deciding to leave, or a villager whose brother had joined an ethnic rebel army and who had been persecuted in his brother's stead by the Tatmadaw, would be ineligible for refugee status.

From mid-1989 until November 1989, UNHCR provided successful applicants with a letter identifying them as persons of concern. Each "person of concern" also received assistance in the form of 3,000 Baht a month, which was the standard amount given to recognized refugees of any nationality;⁵² medical assistance; some educational classes; and social services at the offices of the Foundation In Support of Refugee Assistance Programs in Thailand (FISRAPT), a Thai NGO through which UNHCR administers refugee assistance, in Bangkok.

In November 1989, after coming under pressure from the Thai Ministry of the Interior and the National Security Council, UNHCR stopped issuing any documents to recognized refugees from Burma. UNHCR also agreed to provide to the Thai government lists of those identified as refugees, although there were no guarantees that the lists would not be passed on to the SLORC. In an attempt to give some kind of documentation, from August 1990 UNHCR required those identified as refugees to sign an undertaking to abide by Thai law and UNHCR principles. The signed paper was to be kept with them at all times, but it was no longer given out after November 1990, when two Burmese registered with UNHCR hijacked a Thai Airways plane bound for India.

With no documentation and no measures taken by the Thai government to protect them, the refugees faced the same risk of arrest and deportation as all illegal immigrants in Thailand. Indeed, many felt that refugee status, which marked them out as political dissidents, actually increased the danger of indefinite detention if they were not deported back to Burma, and certainly increased the likelihood that they would be exploited by corrupt Thai police and immigration officials, who were well aware of the amount of money they received from UNHCR and the day of the month on which they received it. Paying off the police or paying their way out of immigration detention soon became routine for the refugees.⁵³ As a result, in 1991 a number of applicants to UNHCR withdrew their applications, believing they would be better protected by taking their own chances as illegal migrants in Thailand.

⁵² Unlike other nationals, however, the stipend to Burmese was cut to 2,500 Baht on June 6, 1991. In 1998, following the devaluation of the Thai Baht, a 20 percent increase in the stipends to persons of concern was announced. By July, non-Burmese refugees registered with UNHCR received 3,600 Baht, while Burmese received 3,000.

⁵³ See Amnesty International, "Thailand: Concerns about treatment of Burmese refugees", (London: Amnesty International) ASA 39/15/91, August 1991.

“Persons of concern” detained as illegal immigrants could not rely on UNHCR to prevent deportations, despite the fact that UNHCR had a local representative working in an office in the Immigration Detention Center (IDC) in Bangkok whose job it was to seek out and assist detained refugees.⁵⁴ Restricted by Thai immigration law and the government's failure to make provision for the recognition and protection of refugees and asylum seekers, the only steps UNHCR could take to protect the refugees was to insist that they remain in indefinitely in the IDC, where overcrowding and inhumane treatment by guards and cell leaders made life intolerable. In April 1991 a group of forty-one persons who had been recognized as refugees by UNHCR but were detained in Bangkok's IDC were forcibly deported to Burma by Thai immigration officials via Ranong. Two months later, in June, some 300 people were reported to have been returned to Burma via Ranong, including thirteen Burmese students recognized as refugees by UNHCR. Sometimes the UNHCR representative from the IDC accompanied the trucks carrying the students to Ranong. He was unable, however, to prevent the deportations. That same month, thirty-eight Burmese refugees, recognized as such by UNHCR, were arrested for staging a sit-in at Bangkok's IDC demanding that the Thai authorities recognize them as refugees and halt repatriations.⁵⁵ This was followed by an instruction from Bangkok Deputy Police Commissioner Maj. Gen. Chaisit Karnvanakit to police to take "stringent action" against Burmese asylum seekers. Just how stringent soon became clear when, on July 31, Min Thein (also known as Moe Gyi), a twenty-four-year-old student whom UNHCR had recognized as a refugee the previous February, was shot in the back while attempting to run away from Thai immigration officers in Bangkok.⁵⁶

For those deported by Thai authorities, the final destination in some cases was jail. The Burmese state radio station announced in July 1991 that returnees from Thailand were being sentenced to six months' imprisonment for leaving the country illegally unless they paid a 1,500 kyat fine.⁵⁷ At least four students who were deported during this period were sentenced to thirteen years' imprisonment with hard labor, under the immigration law and the 1975 Unlawful Associations Act, section 17(1). Human Rights Watch later learned that some of the returnees who could not pay the fine were taken to work on forced labor projects.

After the “safe area” was established, the key protection issues related to the screening process for entry, which was administered by the Thai Ministry of the Interior and not UNHCR, and the lack of adequate protection measures within the camp when it first opened. When students refused to enter the “safe area,” in part because of these concerns and in part because they wished to continue their political activities in Thailand, the Thai government used arrest and the threat of indefinite detention or deportation as illegal immigrants to force them into the camp. There was no distinction in practice between those recognized as refugees by UNHCR and those who had been rejected or had never applied for asylum. In addition, no provisions were made to ensure that family units could stay together, resulting in many fathers who were allowed to enter the safe area being separated from their wives and children.

⁵⁴ Students complained at the time that one of the main tasks of the UNHCR officer was to ensure that the arrested refugees had their stipends reduced to 600 Bhat per week for the period of their detention.

⁵⁵ This group of thirty-eight UNHCR-recognized refugees were later transferred to Bangkok's Special Detention Center (SDC), otherwise known as the Police Academy. Others from the IDC were also transferred to the SDC, so that by the end of 1991 a total of ninety-eight students were being held in incommunicado detention and beyond the end of their sentences.

⁵⁶ He had been arrested on July 29 on charges of illegal entry. On November 4, 1991, Ye Soe Aung, an eighteen-year-old student who was a UNHCR-recognized refugee, was reportedly beaten, stabbed, and shot dead by Thai police in Nat Ein Daung. The Thai police denied this account, saying he had been killed by a village headman. No one was charged with this murder. Amnesty International, Urgent Action, August 5, 1991, AI Index: ASA 39/14/91.

⁵⁷"84 Jailed For Fleeing To Thailand," *Bangkok Post*, July 5, 1991. The case in question involved some 400 people who had been deported via Ranong the previous month.

On February 12, 1992, the Interior Ministry announced that all Burmese students should report for an initial registration leading to eventual entry to the "safe area" between February 17 and May 15, indicating that the group that would be allowed into the "safe area" would be a smaller pool than that of UNHCR-recognized refugees. It was again reiterated that the Ministry of the Interior would be the sole administrator of the "safe area" and responsible for "screening procedures."⁵⁸ No official criteria for screening were published by the ministry.

⁵⁸Press release of the Royal Thai Consulate General, No 2/1992, March 24, 1992.

By September, no students had entered the "safe area," and 512 students were ordered to report there between September 14 to 18. They had been selected by the Interior Ministry out of 1,333 applications.⁵⁹ Some 90 percent of these had previously been interviewed by the UNHCR and determined to be refugees, but so had almost 1,300 others, with an average of one hundred applying to the UNHCR for protection every month.⁶⁰ It was not clear who the other 10 percent were, but they had been cleared directly by the ministry. Still concerned about Thailand's intentions for the "safe area" population, none of the 512 reported as ordered. The minister of the interior extended the deadline to November 30 and stated that after that date anyone who failed to turn up at the "safe area" would be arrested, charged, and deported.⁶¹

In November 1992 UNHCR announced in a press release that "the Safe Area concept cannot be justly criticized by the UNHCR as long as the students are provided with adequate security, protection, shelter, food and medical care and access to education and training with access to the Safe Area by NGOs and UNHCR." That these conditions would be in place, however, was far from clear — at that stage UNHCR was still negotiating its own access arrangements.⁶²

⁵⁹ *Bangkok Post*, September 3, 1992. The initial announcement was made first in July by the Interior Ministry that 515 had been accepted as registered. It was also announced at that time that those rejected had ninety days to lodge an appeal. It would appear that few, if any, such appeals were successful. "Burmese Students Given 90 Days to Register," *The Nation*, July 22, 1992.

⁶⁰"Burmese Students Given 90 Days to Register," *The Nation*, July 22, 1992.

⁶¹ *The Nation*, November 1, 1992.

⁶²"UN: Camp is a Safer Place for Burmese," *The Nation*, January 29, 1993. When this position was reiterated in an UNHCR statement issued on December 14, 1992, Human Rights Watch issued a press release expressing its concern that this amounted to unacceptable coercion on the part of the UNHCR. Guy Ouellet, the deputy representative of UNHCR in Bangkok, responded by restating that UNHCR was continuing to provide help to persons of concern whether or not they went to the "safe area," although assistance to those who were registered to go to the "safe area" had been transferred there.

As 1993 dawned only a handful of people had entered the "safe area." Thai authorities, rapidly losing patience with the students, stepped up the pressure in their own way. In the final two weeks of 1992 an estimated fifty students, most of whom had been registered with the Ministry of the Interior to go to the "safe area," were arrested and detained at the IDC in Bangkok. Such arrests continued through 1993. Of those arrested, many students who were politically active and seen as troublemakers were sent to the Special Detention Center (SDC).⁶³ As arrests continued during 1993, those detained were told that all those who were UNHCR-recognized refugees, not just those registered with the Interior Ministry, would have to go to the "safe area" after serving forty days at Bangkok's IDC and paying a 2,800-Baht fine.

⁶³Burma Information Group (BIG), "Update situation of Burmese asylum-seekers in Thailand," March 18, 1993; BIG, "Arrest of Burmese Asylum-seekers in Bangkok," April 11, 1993; "24 Burmese students held while staging protest at embassy," *The Nation*, August 9, 1993. In one incident, on April 9, 1993, police raided the FISRAPT office, entering classrooms in order to arrest Burmese among the one hundred or so refugees there. One of the thirteen who were caught, Ko Htay Linn, was in poor health, but despite protests from his friends he was taken with the others to the IDC, where he died from heart failure on April 24. Neither FISRAPT staff nor UNHCR intervened to get Htay Linn released to hospital, despite the fact that he had been receiving medical care through FISRAPT for some time. FISRAPT did, however, manage to secure the release of two others who worked at the FISRAPT office. The remainder were all charged as illegal immigrants.

In the "safe area" itself, the numbers of residents remained low, with 135 in residence in mid-October 1993. UNHCR was able to have daily access to the camp and established an office there, although it had no overnight access or presence. An NGO, the Catholic Office for Emergency Relief and Refugees (COERR), had one staff person in the camp who provided some educational assistance to the residents, but there was little for the Burmese to do. Boredom and frustration often erupted into arguments, and in September the UNHCR office was broken into.⁶⁴ Complaints from the residents centered on restrictive curfews, travel restrictions, security guards' violent behavior towards residents, guards' sexual harassment of female residents, and tensions with local Thai villagers.⁶⁵ A government official announced in response that they had "strictly enforced measures to ensure that the Burmese students will not contact NGOs to complain. This must be done to uphold the country's image."⁶⁶

In January 1995 tensions in the "safe area" came to a head, resulting in 150 of the by then 180 residents marching out of the camp after violent clashes with camp security guards in which two students and nine security guards were injured. Blocked from marching to Bangkok, over half of them agreed to return, but those who did not were transferred to the SDC in Bangkok. These students, considered troublemakers, were kept at the SDC, where access to them was extremely limited. They were gradually released in small groups, most back to the "safe area," starting from June 1995 and extending into 1996, after lengthy periods of detention, which left many of them in poor health, and one later died.⁶⁷

By the end of July 1995 the "safe area" was more than full: the recreation room had been converted into a dormitory and three additional shelters, two of which were temporary bamboo sheds, had been constructed to house others. In these

⁶⁴ During the break-in, official documents were burned and a death threat to the UNHCR staff person was daubed on the wall. In response, concerned for the safety of its staff, UNHCR withdrew altogether from the "safe area" and as a punishment terminated aid to all residents. After an arrest was made in connection with the incident, the UNHCR returned to the "safe area" on November 8 after an absence of nearly two months.

⁶⁵BIG, "Recent Violence in Safe Area for Burmese 'persons of concern' in Thailand," June 7, 1994.

⁶⁶"Interior moves to end feud at Burma students' camp," *The Nation*, June 14, 1994.

⁶⁷ One of the Burmese students detained at SDC, twenty-five-year-old Zaw Zaw, died on June 13 after being hospitalized on June 11. He was diagnosed as having cerebral thrombosis. Others within SDC were reported by a FISRAPT medical mobile team as having respiratory tract infections, anxiety problems, and general weakness.

new shelters all the residents had to sleep on one long, raised wooden platform, separated only by their mosquito nets. There was concern about privacy, especially of single women and young families, and hygiene. At the same time, new restrictions were imposed in the “safe area.” The freedom of the refugees to be able to travel out of the “safe area” was stopped.⁶⁸

When the “safe area” was finally closed to all new residents in July 1996, protection of and assistance to those recognized as refugees by UNHCR continued to be a major problem. While the Thai government had decreed that no refugees could have access to the camp, no provisions were made to differentiate and protect from detention and deportation those who would otherwise have entered the camp. When Thailand closed the “safe area” in February 1996 there were 911 residents, of whom 750 were not registered with the Thai Ministry of the Interior. By this time UNHCR's entire Burmese caseload, which then stood at 3,256 people recognized as refugees, had been cut off from receiving UNHCR assistance in Bangkok, although over 350 who were registered with the ministry to enter the “safe area” were still waiting to be admitted and were effectively stranded in the capital. UNHCR requested and was permitted to resume assistance to these people, although by July 1998 the camp was still closed, and Burmese asylum-seekers thus remained once again vulnerable to arrest, detention and deportation as illegal immigrants. In May 1998 those who were illegally in the camp, that is, registered only with UNHCR but not with the Ministry of the Interior, were given a deadline of June 3 to leave. Over 300 people, mainly women and children, left at night to avoid arrest once outside the camp, and most of them made their way to Bangkok. Unable to receive assistance, and with their spouses still in the camp, by the end of July 1998 it was unclear how these refugees were surviving.

Refugee status determination procedures

⁶⁸ Previously, those who had been through the Interior Ministry registration procedure were given cards acknowledging them as temporary residents in Thailand, and with these, once they had sought prior permission, they could travel to Bangkok for such things as meetings at embassies if they were seeking third-country resettlement, or hospital appointments. These cards were issued after the applicant, already in the “safe area,” had attended a court hearing in Ratchaburi which cleared him or her of illegal-entry charges. All residents had to pay off the 2,000 Baht fine for illegal entry, which was deducted from their UNHCR monthly allowance over four months.

Throughout, there were concerns about the procedures employed by UNHCR in determining who was a refugee. Although there is no specific regulation as to how refugee status determination should be conducted, either by UNHCR or states, UNHCR has issued a *Handbook on Procedures and Criteria for Determining Refugee Status*,⁶⁹ and ExCom has recommended that such procedures should satisfy certain basic requirements.⁷⁰ In order to register with UNHCR in Bangkok, applicants had to personally attend the office to submit four photographs and a written statement of their case. They also had to submit any documents relevant to their application. Applicants from Burma were given a card bearing an "NI" (meaning non-Indochinese) number and a date for an interview. Interviews by an eligibility officer would normally take place two weeks after the initial application had been lodged, although at times this period was far longer when staff shortages made it impossible to keep up with the number of applications lodged. If an application was rejected, a letter would be sent to the applicant informing him or her of this. No reasons for the rejection would be given in the letter, making it difficult to exercise an effective right of appeal. UNHCR staff in Bangkok informed Human Rights Watch that reasons were not given in refusal letters because it would facilitate more sophisticated fabrication of applications, as people would know what they needed to say in their applications in order to succeed.⁷¹ It is significant that in its Training Module on Determination of Refugee Status UNHCR states that where it is conducting refugee status determination, "rejected applicants should be told the reasons for rejection."⁷²

An outright rejection decision could be appealed within one month. After June 1995, however, there was no longer an automatic second interview as part of the appeal process, and the appeal decision was made solely on the basis of further written evidence and submissions only. Refugees were not permitted to be accompanied by legal representatives to UNHCR interviews, either as part of the initial application or the appeal, although NGOs were available to assist in the preparation of appeals.

In addition, there was no formal right of appeal against the decision to classify an applicant as a "border case," as this was considered to be a positive recognition decision. A "border case" was someone recognized as having a legitimate fear of persecution in Burma but who faced no threat of "secondary persecution" at the border and could therefore be sent to one of the camps there. The term (and the policy) initially applied to ethnic minority applicants, and even those who classified as "border cases" were given the option of going to the "safe area" rather than being returned to the border.

⁶⁹UNHCR, Geneva, January 1992.

⁷⁰ExCom, Conclusion No. 8 (XXVIII) on Determination of Refugee Status, 1977.

⁷¹ Interview with UNHCR, Bangkok, June 1996.

⁷²UNHCR Training Service, Determination of Refugee Status (RLD 2), Geneva 1989.

The denial of appeal to those classified as "border cases" became a major problem after mid-1995 when the policy was extended to all Burmese, not just minority applicants. All applicants then had to go through two stages of screening: the first was to determine whether the individual had a well-founded fear of persecution in Burma, in which case he or she would be categorized as a "person of concern." The second stage was to determine if the applicant also had a fear of persecution at the border, or, in UNHCR terms, a fear of "secondary persecution." It was not clear what the criteria were for secondary persecution, for although the UNHCR office in Bangkok had drafted an internal memorandum setting out the criteria for determination of the second stage of this assessment, this had not been made public.⁷³ If a person passed the first stage but failed the second, he or she was given a letter stating that protection and assistance were available at the border. By this time the "safe area" was nearly full, and "border cases" no longer had the option of going there.

It would seem that the criteria for determining secondary persecution were highly subjective. In one case a Karen man interviewed by Human Rights Watch at the "safe area" in November 1995 said he had applied to UNHCR in June 1995 and was at first told that he was a border case, despite being a member of the KNU whose name was on a list of those wanted by the Democratic Karen Buddhist Army, a group that at the time was attacking refugee camps and abducting key KNU members. Two weeks later, feeling desperate and unable to go back to the border, he telephoned to UNHCR again to plead with them to allow him into the "safe area." He was given a verbal agreement and immediately went to the UNHCR office with the required photographs and was able to enter the "safe area" on August 28. In his case, his wife and two young children were permitted to enter with him.

Indeed, this case highlights the fact that the border case policy was extended by UNHCR just at the time when the border was becoming an increasingly dangerous place for refugees. From February 1995 onwards there had been numerous attacks on refugee camps in which ethnic minority refugees were abducted or killed, their shelters razed, and threats were continually made against them. For Burman applicants, return to the border was simply not an option. The student camps, all on the Burma side of the border, had largely been overrun, and the refugee camps, which were run by committees established by the armed ethnic groups, often did not accept the students. In addition, students were sometimes arrested by the Thai military or border police as they tried to enter the camps. In one example highlighting their particular vulnerability, ten Burmese students were arrested by the Thai military in Tham Hin refugee camp on July 9, 1997, having already been arrested and detained in April on their way to seek refuge in Bo Wi refugee camp.⁷⁴

In its December 1997 revised Policy on Refugees in Urban Areas, UNHCR states the general principle that "UNHCR's obligations in respect of international protection are not affected by either the location of the refugees or the nature of the movement to that location. Whatever the nature of the movement or legal status of a person of concern to UNHCR in an urban area, the over-riding priority remains to ensure protection, and in particular, non-refoulement and treatment

⁷³ Communication from the UNHCR protection office in Bangkok to an NGO assisting asylum seekers in Bangkok, October 1, 1996, which stated that while a memorandum existed, it was not for external distribution. In the letter, the protection officer also noted that "the border case category was created as a result of increasing numbers of border populations arriving in Bangkok and because of increasing numbers at the border."

⁷⁴ ABSDF Press Release, "Thai Army Arrest 10 Burmese Students at Tham Hin Refugee Camp," July 12, 1997.

in accordance with recognized basic human standards.”⁷⁵ Furthermore, the policy continues, “Freedom of movement is the rule under international law and restrictions should be the exception, though some restrictions—such as the location of refugees away from the border— respond to protection concerns.”

UNHCR’s policies in Thailand have clearly not complied with these basic principles. The “border case” policies, aimed at containing Burmese refugees in camps at the border and returning those refugees who sought asylum in urban areas to the camps, often severely compromised the right to freedom of movement and the protection of the refugees. Camps at the border were becoming increasingly closed and offered minimal or no protection to the refugees, either from cross-border attacks or from refoulement to Burma, and respect for the refugees’ most basic human rights often could not be guaranteed.

The Ethnic Minorities

If the Thai government was willing to acknowledge that politically active students from Burma might have a valid fear of persecution, it was totally unwilling to treat Burma’s ethnic minority refugees as anything other than “temporarily displaced” people. Only those forced to flee fighting between ethnic rebels and the Burmese army in states near the Thai border were permitted access to Thailand on the understanding that they should return to Burma once fighting had died down.

As noted above, nearly all the ethnic minority groups of Burma had formed armed fronts by 1974. The major ethnic groups represented by one or more rebel armies whose members periodically have sought refuge in Thailand include the Karen, Shan, Karenni, and Mon.

- The Karen, like all the minority groups, live on both sides of the border. They are one of the largest ethnic minority groups in Burma, with an estimated population of between three and four million, although it must be noted that there has been no accurate population census in Burma since 1939. Since 1968, the Karen have been mainly represented by the KNU and its armed wing, the Karen National Liberation Army (KNLA), which at its peak in the early 1980s could raise an estimated 10,000 soldiers. The KNU also held significant territory in Burma and operated along a 500-kilometer stretch of the Thai border, from Papun in the north to Tenasserim division in the south. Since 1984, when significant numbers of Karen refugees first crossed into Thailand, they have been assisted by the Karen Relief Committee, linked to the KNU. In December 1994 a group of around 400 Karen soldiers broke away from the KNLA and formed the Democratic Karen Buddhist Army (DKBA). They cited persecution of Buddhist troops by senior KNLA Christian commanders and the intransigence of the KNU leadership in cease-fire talks with the Burmese army as reasons for the split. Since then the DKBA has mounted attacks on Karen camps inside the Thai border, sometimes in conjunction with Burmese military forces.
- The Mon, numbering about two million, are descended from the ancient Mon-Khmer civilization. They first took up arms in 1948 and have been represented by the New Mon State Party (NMSP) and its armed wing, the Mon National Liberation Army, since 1958. When Mon refugees first arrived in Thailand, the NMSP followed the KNU example and formed their own Mon National Relief Committee to organize the refugees and coordinate assistance. In June 1995 the NMSP signed a cease-fire agreement with the SLORC, which allowed them to retain their arms in small pockets of territory in Mon state. The agreement also included the repatriation of Mon refugees in Thailand which was completed a year later, though since the refugees did not feel safe to return to their homes and instead established camps in NMSP-controlled areas, as of July 1998 they remained internally displaced in Burma.
- Karenni state, which is relatively small and underpopulated, was home to four armed groups in 1989. Two of

⁷⁵UNHCR Policy on Refugees in Urban Areas, December 12, 1997.

these signed cease-fires with the Burmese government in the early 1990s, leaving the two largest armed groups, the Karenni Nationalities People's Liberation Front (KNPLF) and the Karenni National Progressive Party (KNPP) still fighting the government. Following mass forced relocations in their area in 1992, the KNPLF signed a cease-fire with the SLORC in 1994, though as they were given little territory and the situation was still insecure, few of the refugees returned home. In March 1995, the KNPP also signed a cease-fire, though by June it had been torn up as SLORC troops violated the agreement. The following year a massive forced relocation program was launched in areas where the population was thought to be sympathetic to the KNPP, and by the end of March 1998 there were 12,500 Karenni refugees in Thailand.

- Shan state is a territory of great ethnic diversity and has become notorious as the place where most of the world's opium is grown. The largest ethnic minority state in Burma, Shan state is also home to more men under arms than any other area, all of whom have some interest in the cultivation, production, or distribution of narcotics. For decades the most notorious drug warlord of them all, Khun Sa, had operated from bases in Thailand or just on the Thai-Burma border and was known to have close contacts with some officials within the Thai army.⁷⁶ The majority ethnic group, the Shan, are ethnically close to the Thais in language and culture, and thus for many Shan, finding seasonal work in Thailand when fighting or other factors made it impossible for them to subsist at home had by the 1980s become routine. At the same time, the pervasive presence of drugs, which tainted everyone from the state, meant that Thailand refused to recognize members of this group even as "temporarily displaced" and instead labeled them as economic migrants. Following the surrender of Khun Sa to the SLORC in January 1996, this lack of recognition for refugees from Shan state resulted in a serious protection problem as tens of thousands were forced to flee a relocation program, targeting remnant Shan armies, which by 1998 had affected over 300,000 villagers.

Reasons for flight

Members of these four groups have streamed into Thailand in waves, often coinciding with Burmese military offensives against the rebel armies but also in response to human rights abuses, including forced relocations of entire communities in an effort to break up civilian support for the insurgencies. Since 1984, the offensives, launched in the dry season and usually halted during the rainy season, have often taken place in response to failed peace talks or in an effort to force the ethnic minority armies to the negotiating table. They invariably have been accompanied by the Burmese military's notorious "four cuts" strategy, in which civilian populations are targeted in order to cut off food, funds, intelligence, and recruits to the ethnic forces.

In the 1988-89 period, as the international community remained focused on the activities of the pro-democracy forces both within Burma and in Thailand, the Burmese military launched a major offensive against the combined ethnic and student forces in Karen- and Mon-held territory. The government apparently hoped that a display of military force against the ethnic minority armies would convince people of the need for a strong army to save the country from imminent disintegration. The SLORC vastly expanded the size of the army (from around 180,000 men under arms in 1988 to 340,000 in late 1993), and in 1990 purchased new weapons from China in a \$1.2 billion deal that included jet fighters, tanks, and naval patrol boats. The strengthened armed forces, assisted by thousands of civilians forced to work as porters (usually two porters for every soldier), launched major offensives against the armed ethnic opposition every year from 1989 onwards, even at times crossing into Thailand to attack from the rear.⁷⁷

⁷⁶ Bertil Lintner, *Opium and Insurgency*, Chapter 10.

⁷⁷ On May 20, 1989, 400 Burmese soldiers crossed into Thailand and attacked the KNU position at Wangkha from the rear. In the course of this operation, they razed the Thai village of Ban Wang Kaew, which later

As the ethnic minority armies lost increasing amounts of territory each year and their ability to find the funds to support and supply their forces declined as lucrative trade routes and logging areas fell to the SLORC, the government switched the focus of its campaign to the civilians in or near rebel-held territory. From 1992 onwards, tens of thousands of ethnic minority villagers in areas all along the Thai border were forced to relocate to Tatmadaw-controlled towns. Often, they were also used to provide forced labor on road-building projects designed to secure newly acquired territory for the SLORC and facilitate cross-border trade. In addition, the internally displaced became a ready source of porters to carry the supplies and munitions of Tatmadaw troops during major offensives or, increasingly, as they went on routine patrols and established new barracks in former rebel-held villages. Thus, in many areas direct fighting was no longer the main cause of flight, yet the Thai government continued to maintain its position that only those fleeing direct fighting would be granted temporary leave to stay in Thailand.

The increased capacity of the Burmese armed forces, the concerted push by the SLORC for cease-fire agreements with the rebel armies and its determination to bring recalcitrant rebels to the negotiating table by force, its vision of a Burman, Buddhist state in which minorities were second-class citizens, and the persistent human rights violations by both military and civilian authorities in Burma all contributed to refugee flight and to the danger of persecution when or if they returned.

The Mon

The first Mon refugees crossed into Thailand in December 1984, when the Burmese army attacked trade routes near Three Pagodas Pass. The refugee population gradually increased to 12,000 in 1991.

became Huay Kaloke refugee camp. Wangkha finally fell to Burmese forces in March 1995.

While military offensives were the major cause of Mon refugee outflows in the 1980s, by 1992 — when the NMSP had already lost much of its former territory — forced labor, forced relocations, arbitrary taxation, and the extrajudicial execution of villagers suspected of assisting Mon soldiers were the main causes of flight. The SLORC set about developing the Mon state and Tenasserim division peninsular, embarking on a massive program of road and railroad construction and clearing economically important areas of people who might support the Mon and Karen ethnic armies. The single most common reason for flight over the next five years was the construction of the railroad between Ye and Tavoy (a distance of 160 kilometers). In late 1993 the SLORC started rounding up villagers in Mon state to provide labor to build the railroad, and as of May 1998 the use of forced labor on this project was continuing. Over this period of time, thousands of Mon, Karen, and Tavoyan villagers were forced to work at the site for up to two weeks per month, sometimes more. As in other forced labor projects, the villagers were forced to find their own transportation to the site, take with them their own tools and food for the duration of their stay, and work without pay until their allotted section of work was complete. Villages nearest the site were targeted first, but as the project continued, people from further afield were used. The work was overseen by Tatmadaw soldiers, who often beat people considered not to be working hard enough, and there were few safety precautions, so that laborers sometimes died in accidents and landslides. After months of such work, during which time they were no longer able to tend their fields, villagers lost the ability to sustain themselves and had no option but to flee to Thailand.⁷⁸

The Burmese government's use of forced labor has been well documented in many places, and in March 1997 the International Labour Organisation, after annual complaints to the Burmese government since 1957 concerning implementation of ILO Convention No. 29 on forced labor, undertook its strongest sanction against Burma by launching a commission of inquiry. The commission's report, published on August 20, 1998, found that the objective of suppressing forced labor was ignored by the Burmese government with total disregard for human dignity, safety, and health, as well as the basic needs of the people. It cited the Burmese government's "flagrant and persistent failure" to comply with the Forced Labor Convention and urged it to take concrete steps to end the practice immediately.⁷⁹ On this scale, forced labor amounts to persecution as it is generally interpreted under the Refugee Convention, since it is outlawed under Article 8 (3 a) of the ICCPR and also is a sustained and systematic violation of a person's basic human rights, such as the freedom from arbitrary detention and from cruel and inhuman treatment.⁸⁰

The other major development project that affected the Mon was the gas pipeline that was to be built to carry natural gas from the Gulf of Martaban across Burma and into Thailand (see below). The original route was to have taken the pipeline to Three Pagodas Pass, though a shorter land route coming out further south at Nat Ei Daung was finally agreed upon. Nevertheless, in preparation for the pipeline, which would be vulnerable to attack by ethnic minority forces, Mon and Karen villages were forced to relocate, and in 1995, the SLORC created a new army command position, the Tenasserim Coastal Military Command, whose headquarters were in Tavoy. The increase in Tatmadaw soldiers in the area led to an immediate increase in the forced recruitment of civilians as porters and as laborers to build new army barracks in the region, and this contributed to refugee outflows from 1994 onwards.

The Karen

⁷⁸ For more details on this project, see Human Rights Watch/Asia, "The Mon..."

⁷⁹ ILO Press Release, ILO 98/32, August 20, 1998.

⁸⁰ Article 8 (3 a) states that "No one shall be required to perform forced or compulsory labor."

Between 1984 and 1992, the Burmese armed forces launched yearly dry-season offensives against the Karen National Liberation Army, and the number of Karen refugees in Thailand rose accordingly. They fled not only the hostilities but also the human rights abuses that inevitably accompanied them, including the Burmese army's practice of forcing civilians into service as porters of goods and ammunition during the offensives. Some 9,000 Karen arrived in Thailand in January 1984, in the midst of a major offensive against the KNU and other members of the coalition of ethnic groups called the National Democratic Front (NDF).⁸¹ By the end of 1985, there were 16,000 Karen refugees; by the end of 1987, there were over 20,000. Initially it was possible for the refugees to return to their villages in Burma during the rainy season when fighting generally ceased, though they would invariably be forced to flee to Thailand once the dry-season offensives commenced. However, from 1988 onwards, as the SLORC won increasing areas of KNU territory and, using civilians as forced laborers to build roads into these areas, were able to maintain their positions during the rains, such seasonal migrations were no longer possible, and the refugees became a permanent feature in Thailand. An April 1992 attack on Sleeping Dog Mountain, the largest ever offensive against the KNU, brought the total number of refugees in Thailand to over 70,000.

After the April attack and the failure to capture the KNU's headquarters, the Burmese commander of the offensives against the KNU announced a unilateral cessation of operations.⁸² However, while there was reduced fighting in this period, the army embarked on a program of forced relocations of Karen villages in Karen, Karenni, and Mon states. Where skirmishes did take place between the Tatmadaw and the armed opposition, civilians in nearby villages were targeted for retaliatory attacks that often included extrajudicial executions.⁸³ These attacks coincided with increased use, from 1993 onwards, of the "four cuts" strategy in the Karen townships of Hlaingbwe, Pa-an, and Papun and in Tenasserim division as the army attempted to cut off enough support to the KNU to make them more disposed towards a cease-fire. The result was a dramatic rise in the number of Karen seeking refuge in Thailand.

Near the end of 1994 the SLORC broke this cease-fire and launched new offensives against the KNU, even as informal talks to pave the way for KNU - SLORC cease-fire negotiations were underway. In January 1995 the main KNU headquarters at Manerplaw fell to the Tatmadaw, assisted by the newly formed Democratic Karen Buddhist Army (DKBA); it was closely followed by other major KNU bases along the border. Over 9,000 Karen civilians were evacuated to Thailand, but once there they found no sanctuary, as the DKBA and SLORC forces launched a series of raids across the border in pursuit of the refugees (see below).

In November 1996, another round of talks between the KNU and the SLORC held in the Mon state capital, Moulmein, broke down with no progress having been made. Then in January 1997 the KNU hosted an "ethnic nationalities

⁸¹ For further details on the peace talks between the government and the Kachin Independence Organization and the Communist Party of Burma in 1981, see Martin Smith, *Burma: Insurgency and the Politics of Ethnicity* (London: Zed Press), 1991.

⁸² Maj. Gen. Maung Hla, the commander in question, was a member of the SLORC and was promoted to a lieutenant general and made minister of immigration and population in May 1996. He is not a member of the SPDC.

⁸³ See Human Rights Watch/Asia, "The Mon..."; "Abuses Since the Fall of Manerplaw..."; "No Safety in Burma..."

seminar" that produced a ten-point "Mae Tha Raw Hta Agreement." The agreement was said to have been signed by fifteen ethnic opposition groups, though some of those named in the agreement later said they were not present when the final document was produced. The agreement called for a "federal union of national states having the full rights of national equality and self-determination" and for tripartite dialogue, including the National League for Democracy, the ethnic nationalities and "the SLORC military clique."

As a result of the KNU's involvement in this agreement, which was seen as a direct challenge to the SLORC and possibly the end of all negotiations, in February 1997 the SLORC commenced a major offensive against those areas in Tenasserim division and southern Karen state still under the control of the KNU. The Tatmadaw sent an estimated 40,000 troops to the area, a force that far outnumbered the KNU, whose soldiers abandoned their positions rather than enter into a hopeless fight. By the end of March, virtually the whole river valley of the Tenasserim River was occupied by the Tatmadaw. In advance of the SLORC troops, some 10,000 new refugees fled and attempted to cross the border between Umphang and Sangaklaburi in Thailand. Since then, while both sides have made some positive noises about talks, there has been no further direct contact.

Trickles of new arrivals also continued to enter the Karen camps further north throughout 1997 and up until the present. These newcomers reported mass forced relocations, especially in Papun and Mergui townships and Tenasserim division, and brutal retaliations against villagers after KNLA ambushes of Tatmadaw troops as being the main reasons for their decision to seek refuge in Thailand.

The Karenni

By the end of 1990 there were some 4,000 Karenni refugees in Thailand, in small camps near the Thai town of Mae Hong Son. All had fled Burmese military offensives against rebel armies that had refused to conclude a cease-fire agreement. Being close to the headquarters of drug lord Khun Sa's Mong Tai Army (MTA) at Ho Mong, then a major trafficking point for narcotics, the Karenni refugees got a frosty reception from Thai authorities; they were permitted to set up camps, but all the camps were close to the Burmese border, and access to the camps by the NGOs was strictly limited.

The camp populations remained fairly stable until March 1992, when the Tatmadaw launched a massive forced relocation program in southern and central Karenni state. The relocations, which at the time were the largest to have taken place in one area, were, as in other cases, intended to cut off support to the KNPLF and KNPP. They also provided forced laborers to work on a major infrastructural project, the Loikaw-Aungban railway. Over a period of four months, some 20,000 people were moved from villages around the towns of Deemawso, Pruso, and Mawchi into those towns or along the site of the railway, which was already under construction. During the year an additional 2,000 refugees who had been able to escape the camps entered Thailand, bringing the population there to over 6,000 by the middle of 1993. Those from the Mawchi area and other parts of KNPLF-controlled territory fled to a camp further south, just north of the Karen camps, where they experienced less interference from the Thai authorities. Inside Karenni state, many of those who had been forced to relocate to the towns, where they were given no assistance and where water and other provisions were scarce, were able to gradually trickle back to their former villages after nearly a year spent in the relocation sites. By the end of 1993, nearly all were reported to have returned.

During 1994 heavy fighting continued in Karenni state, especially against the KNPLF in the south. By the middle of the year the KNPLF had signed a cease-fire agreement with the SLORC. With only one armed group left in the area, the offensive against the KNPP was stepped up during the 1994-95 dry season, and the KNPP had also entered talks. The KNPP signed a cease-fire agreement at a ceremony in Loikaw on March 21, 1995, making it the fourth and final armed group in the Karenni state to do so.

But on June 28, the KNPP issued a statement claiming that the SLORC had broken the terms of the agreement by sending in an additional 2,000 troops into its territory and continuing to take porters from the area.⁸⁴ Two days later,

⁸⁴ The Government of Karenni, "Statement Regarding SLORC's Military Activities in Karenni Following

fighting broke out after the SLORC launched an attack on the KNPP headquarters near the Thai border. The SLORC insisted that the offensive was launched in order to chase away illegal Thai loggers and to secure a route through the KNPP territory to that of drug warlord Khun Sa. In later addresses, the SLORC also claimed that it had positioned so many troops in the area, close to the Thai border, because of possible threats to national security during the time of the general election in Thailand.

The fighting died down during the rainy season in August and September, though skirmishes were still reported. A new offensive started in January 1996, involving Swiss-made Pilatus aircraft, which were reportedly used to strafe bomb KNPP positions and civilian villages. The SLORC also targeted positions close to the Thai border and the refugee camps.

Inside Burma, as the fighting again died down with the start of the rains, the SLORC switched tactics to target the civilian population more directly. Some 25,000 people were reported to have been forcibly relocated by the end of the year. Most of the relocations took place during the rainy season, compounding the difficulties for families forced to walk for days to reach the new sites. Once there, they had to find whatever shelter they could, and when the schools and churches were full, people had to built makeshift shelters. At the new locations, villagers were given enough food for ten days but nothing else. Some 8,000 people fled to Thailand, bringing the total number of Karenni refugees in Thailand to 11,000. The new arrivals reported that as many as 150 people, mainly children, had died in Shadaw from malnutrition-related diseases. At least two men were killed for refusing to leave their village.

During 1997 more refugees continued to arrive, as the program of forced relocations continued and was extended to Mawchi, site of some of the 1992 relocations. Conditions in the relocation sites remained dire, with the lack of sanitation, food and medical care leading to scores of deaths from malaria and other diseases. Villagers sent to the camps were forced to build fences around the periphery, turning the camps into virtual prisons. In July, eleven additional villages were forcibly relocated to Laikha district, bringing the total of internally displaced in Karenni state to over 32,000. By May 1998 the internally displaced had not been permitted to return to their homes. Trickle of people who had been able to get out of Burma were continuing to arrive in the refugee camps, the population of which by then totaled 12,520 people, with an average of 500 people arriving each month. With no access to the area by any international organizations, including United Nations agencies which in other countries had developed programs for the assistance of displaced populations, it was impossible to know how these people were managing to survive.

Refugees from Shan State

After the 1989 cease-fires between the government and the Kokang, Wa, and Shan State Army, opium production rose each year and fighting for the control of the opium routes increased in keeping with the profits and numbers of men under arms. These new groups started actively working in and trafficking through areas of the Shan state under the control of Khun Sa's Mong Tai Army (MTA). Chief among them were the Wa, who forged an alliance with the ethnic Lahu in southern Shan state, making it possible for them to seek access to the Thai border, and thus challenge Khun Sa's dominant position in this area. From 1992 through 1996 a succession of "opium wars" erupted in northern, southern and eastern Shan state, as the SLORC used and at times assisted its new allies to attack Khun Sa. The civilians in these areas were caught between opposing forces, having to provide each army with porters, recruits — often boys as young as thirteen — and information as well as food and their opium crop. In early 1993 several hundred Shan were reported to have been killed in southern Shan state in attacks by the MTA that were intended as a warning to other villagers to remain loyal to Khun Sa.⁸⁵

the Cease-fire Agreement," June 28, 1995.

⁸⁵ Bertil Lintner, "A Fatal Overdose," *Far Eastern Economic Review*, June 3, 1993.

During this period, despite the severity of human rights abuses in the area, those who made their way to Thailand when the situation deteriorated found work there to support their families at home and were able to return once things had improved. There were several incidents when direct fighting in border villages forced groups of up to 300 or more refugees over the border. All were in need of protection as the Tatmadaw had taken control of their villages and thus they could not safely return, but these people were not permitted to stay in Thailand. For others, getting work was no problem, as Thailand's booming economy created thousands of jobs in the construction industry especially, jobs that many Thais were reluctant to take. Thus, without any visible presence, there were effectively no refugees.

At the end of 1993 the SLORC announced that it was launching a final military offensive against Khun Sa, and tens of thousands of Burmese troops were brought into Shan state. From 1994 onwards, as fighting and associated abuses intensified, there was a marked increase in the numbers of Shan seeking work in Thailand.⁸⁶ Many did not leave in a planned way to seek work but were forced to seek refuge in Thailand and required assistance and protection.⁸⁷

Then, in a surprise move, the SLORC announced on January 7, 1996 that Khun Sa had surrendered. Top SLORC officials, including Lt. Gen. Khin Nyunt, flew into the MTA headquarters at Ho Mong to seal the deal and celebrate "peace." For the first time ever, Tatmadaw troops had access to the southern Shan state and to the Thai border, and they celebrated with a rampage. Hundreds of people reportedly fled the area around Ho Mong as the troops looted property, harassed women and requisitioned people's homes to convert into temporary barracks.⁸⁸ While many fled to safer places within Burma, over 1,000 were reported to have crossed the border into Thailand and "hundreds more...were hiding out just inside Burma, waiting for an opportunity to cross into Thailand."⁸⁹ As the year wore on, it became clear that Khun Sa's surrender was not going to bring peace in Shan state: in fact quite the opposite was true.

Some 8,000 of Khun Sa's estimated 13,000 troops refused to surrender and revived the old Shan United Revolutionary Army (SURA). Already in August 1995, some MTA soldiers in the northernmost part of Khun Sa's territory had split off to form the Shan State National Army (SSNA), denouncing Khun Sa's betrayal of the Shan nationalist cause. The SSNA quickly sought a cease-fire with the SLORC, and though no formal cease-fire was announced they formed a "gentlemen's agreement" by November 1995. In February 1996 SURA was reported to have requested cease-fire talks with the SLORC, a request that was flatly refused.

From early March 1996 onwards, as the SURA troops attempted to move north to join the SSNA, the Tatmadaw began

⁸⁶ "Shans Cross into Greener Thai Pastures," *The Nation*, March 14, 1994.

⁸⁷ Niti Sithiseth, "Voices From the Void: Refugees fleeing Shan state tell of terrible ordeals at the hands of Slorc Soldiers, but they are unwelcome in Thailand," *Bangkok Post*, May 14, 1994.

⁸⁸ Reuter, "Hundreds Said Fleeing Tatmadaw Harassment," January 22, 1996. The article included an interview with a man who said that a woman had been raped and killed. "Shan Civilians Cross Border to Escape Burmese Army Abuses," *Bangkok Post*, February 14, 1996.

⁸⁹ Reuter, "Hundreds Said Fleeing Tatmadaw Harassment," January 22, 1996.

a massive and brutal “four cuts” program designed to cut off support for the SURA. By September 1996 over 450 villages in the area between Namsan - Kung Heng - Mong Nai had been forced to move to sites along main roads or near army garrison towns. Over 80,000 people were affected. None of them received any food or financial help in the new areas, and those relocated near roads were forced to work with no pay to widen and improve the roads. As many as 20,000 people were reported to have fled to Thailand, where they were refused permission to seek asylum and instead sought employment as illegal migrant workers.

In the course of the relocations many other egregious abuses were also committed. Refugees interviewed by Human Rights Watch in November 1996 reported the deaths of fellow villagers who refused or were physically unable to leave their homes before they were razed by the Tatmadaw. The villagers came from a particularly wealthy part of Shan state, where the annual rice crop was enough to feed most of the state. Many feared that their land would be given to ethnic Burman settlers by the army, preventing them from ever returning. Entire families, often with three or even four generations, had left, taking with them as much as they could carry, though most was confiscated by Burmese and Thai soldiers as they made their way to a safe place.

In early 1997 further relocations occurred, both of settlements relocated the year before and in new areas of Shan state. As in the previous year, the internally displaced were not provided with any humanitarian assistance, and in April 1998 Amnesty International reported gross violations by the Tatmadaw, including the killing of over forty people in a thirteen-month period in revenge killings and of those who had tried to return to their homes in search of food.⁹⁰ In total, at least 300,000 people were affected by the relocations.

Towards the end of 1997, the three Shan opposition armies, the SSA, SSNA and SURA, were reported to have come together to form the Shan States Army (SSsA), and under this common banner they approached the SPDC for cease-fire talks. According to the SSsA, the offer was rejected and the SPDC “vowed to crush the Shan.”⁹¹ In early 1998 fighting broke out between the new group and the Tatmadaw in the southernmost part of Shan state, near the Thai border. By the end of April 1998 it was estimated that 80,000 Shan had entered Thailand.⁹²

Thai policy towards ethnic minority refugees

Thai policy towards the refugees from Burma has varied across the southern, central, and northern regions of the Thai-Burmese border. It has also varied over time. From 1984 to about 1992, the ethnic minority refugees were seen by Thai officials in a relatively benign light. When the first group of Karen refugees crossed the border in 1984 and began to establish refugee camps, neither the central Thai government nor the local authorities were particularly alarmed. They permitted the KNU to organize the camps, assisted by its Karen Relief Committee (KRC), with additional help from February 1984 onwards from a consortium of largely Christian nongovernmental organizations (NGOs) in Bangkok that were already involved with Indochinese refugees on Thailand's northern and eastern borders. This group of NGOs became known as the Burma Border Consortium, or “the Consortium” for short. The KNU was seen as providing an

⁹⁰ Amnesty International, “Myanmar: Atrocities in the Shan State”, (London: Amnesty International) ASA 16/05/98, April 15, 1998.

⁹¹ Shan Human Rights Foundation, *Dispossessed: Forced Relocation and Extrajudicial Killings in Shan State* (Thailand: Shan Human Rights Foundation, April 1998), p. 4.

⁹²Ibid, p. 4.

effective buffer zone between Thailand and the Burmese government. It held significant territory inside Burma adjacent to the border and controlled valuable logging concessions there as well as all cross-border trade in the region. In addition, the Karen provided valuable intelligence to the Thai military about what was happening in Burma. From an economic and strategic point of view, then, the Thai military had an interest in maintaining good relations with the Karen.

The refugees were able to move into and out of the camps and to freely cross back into Karen- or Mon-held territory in Burma, where, during the rainy season and up until the dry-season offensives began, they were able to live in their home villages or with relatives in "safe areas." Educational activities were permitted in the camps, and the Thai officials generally turned a blind eye to refugees leaving the camps to work during the day. With no Thai presence in the camps—though there were often Border Patrol Police posts nearby— access to the camps by new arrivals, NGOs and journalists was unrestricted, and there were no concerns for the refugees' safety. The open village-style camps allowed the refugees to maintain a degree of integration with Karen communities across the border in Burma, and the lack of international scrutiny of the camps suited not only the Thai authorities but also the KNU and many of the Karen in the camps.

The official Thai attitude toward the refugees grew noticeably harsher after 1992 as Thai-Burmese relations improved. It continued to deteriorate until November 1997 when, after pressure for democratic reforms in Thailand, Chuan Leekpai became prime minister. The Thai government then began to take a more positive attitude towards the refugees and initiated new discussions about UNHCR access to the border camps. By July 1998, however, little substantive change had occurred. The government's policy towards Burmese refugees continued to reflect the strong influence of the army and the National Security Council in maintaining the policy that had been in place, with some variation, since 1992. Key elements of that policy included:

- allowing Burmese to cross into Thailand only to flee active fighting, and denying entry to or forcibly repatriating those fleeing human rights abuses;
- keeping camps perilously close to the border;
- restricting the role of UNHCR; and
- encouraging cease-fire agreements between the ethnic insurgents and the Burmese government.

With those elements in mind, an analysis of the regional variations in Thai policy follows.

The southern border

In the area south from Three Pagodas Pass, refugee policy appears to have been made almost entirely at the discretion of the Thai First Army's Ninth Infantry Division (hereafter Ninth Division) and was the most abusive of anywhere in Thailand. Mon, Burman, and Tavoyan refugees, and from 1997 onwards Karen as well, were systematically harassed, forcibly repatriated, and denied entry into Thailand. While the refugees were permitted to establish camps from 1989 onwards, since 1993 all new camps were located either on the border or just inside Burma, and those already in existence were forced to move to new locations in Mon-held territory in Burma. Even though the Consortium had permission to give humanitarian assistance, there were many occasions when the Ninth Division denied aid workers access to camps or delayed trucks carrying rice. Since camps were frequently forced to move during the rainy season when access was difficult to begin with, it was often impossible to get food and medical aid through, or a whole season's supplies had to be delivered and stored in areas that were not safe from attacks by the Burmese military. By June 1997 all Mon refugees had been forcibly repatriated, with no international monitoring and with no substantive changes in the situation in Burma that had forced them to leave.

The appalling treatment of the refugees in this region appears to be linked to the construction of a natural gas pipeline which was completed on both sides of the border in August 1998. Although not yet carrying gas, it stretches from the

Yadana oil field in the Gulf of Martaban across Burma into Thailand, where the gas will be processed. In addition, a Thai company won a contract to build a major deep sea port in the Burmese town of Ye, which, combined with a new road to be built linking Ye to Thailand, would dramatically cut the time and costs of sending and receiving goods by sea freight to the west, avoiding the long sea voyage around Malaysia and Singapore. Thai concern over the presence of armed insurgents in the camps of the southern region may have also have been a factor; in May 1993 the Consortium was told that the Ninth Division had searched some Mon camps and found weapons. The army then claimed these camps were housing armed rebels and that the repatriation of all residents was therefore justified. Since there had been no attacks on Thai citizens, and Mon army leaders were not only permitted to travel freely within Thailand but also able to negotiate logging and other economic deals with Thai businessmen, the concern may have been less related to security than to maintaining good diplomatic relations with Burma.

Thailand's economic interests began to affect the refugees from 1991 onwards. The Mon refugees were housed in five camps in the mountainous region to the northwest of the Thai town of Sangklaburi, to which access was virtually impossible in the rainy season. As in other areas along the border, the camps were administered by the Mon themselves, with humanitarian assistance provided by international NGOs who were members of the Consortium. In March 1991, the Ninth Division suddenly forced the largest camp, Day Bung (with 2,462 refugees), to move to a new location inside Thailand. The action was reportedly in response to a February attack by the Mon army on a Thai logging company's truck after the company had violated a contract with the NMSP and began bringing out logs from Mon state. In addition to forcing Day Bung camp to move, the Ninth Division also cut off all supplies of food and medicine to all other camps, setting a precedent for a series of camp relocations.

All of the refugee camps in this region were situated right in the line of the proposed Yadana pipeline.⁹³ By the middle of 1992 the three camps closest to Nat Ei Daung, where the pipeline was to enter Thailand, were forced by the Ninth Division to relocate to a single camp at Hla Brad. This camp, renamed Loh Loe, became the largest refugee camp on the Thai-Burmese border, with over 8,000 residents.

This was not the end for the refugees. Between January 1993 and April 1994, the Ninth Division forced all of them to move again to Halockhani, a village on a disputed part of the border and less than one hour's walk from the nearest SLORC army base. In one incident in April 1993, 545 Mon were forced to move when the army came in and simply razed their shelters. While the MNRC and the Consortium insisted that the camp was inside Burma and therefore the move would amount to a forced repatriation to an insecure area, local Thai authorities stated that it "straddled" the

⁹³ In July 1992, the French oil company Total signed a contract with the state-owned Myanmar Oil and Gas Enterprise (MOGE) to appraise and develop the Yadana oil field. In early 1993 the commercial viability of the field was established, and the U.S. company Unocal joined the joint-venture contract. From early 1992, negotiations were held between MOGE and the Thai national PTT oil company to ship any gas discovered directly to Thailand, via a pipeline which would enter Thailand at Nat Ei Daung (Ban I-tong). The pipeline was completed, on time, on July 1, 1998, and the Petroleum Authority of Thailand will pay US\$400 million a year for the delivery of 15.8 million cubic liters of natural gas a day once final construction of a gas turbine in Thailand is completed. See "Yadana Test Flows Delayed Two Weeks," *The Bangkok Post*, June 30, 1998.

border and that somehow this made it safe. By April 1994, Halockhani camp had a population of 6,072; thousands were believed to be hiding in the jungle in fear of both the Burmese and the Thai armies.⁹⁴

⁹⁴ Minutes of the CCSDPT meeting, Bangkok May 13, 1993. See also James Fahn, "Burma Refugees Make Way for Pipeline?" *The Nation*, May 4, 1993.

Three months later the worst fears of the MNRC and nongovernmental organizations were realized when on July 21, 1994 one hundred Tatmadaw troops marched into a section of Halockhani camp, looting huts, razing one area, and abducting sixteen men.⁹⁵ They were prevented from going further only by a joint attack of armed Karen and Mon rebels. Speaking at a press conference on August 27, the commander of the Ninth Division explained that the incident occurred because of an attack by Mon rebels on the Tatmadaw in which one soldier was killed. The sixteen men were taken away because, he said, "They also needed some porters."⁹⁶ The attack caused many of the refugees to flee back into Thailand, but by September 9, through a series of harsh measures that included blockage of humanitarian assistance, the Ninth Division forced the refugees to return to Halockhani. Neither Thailand nor UNHCR accepted that the forced return amounted to refoulement, and the question of the camp's location—in Burma or in Thailand—remained in dispute. The refugees' return coincided with the final signing of an agreement among Thai, Burmese, French, and American companies to build the pipeline.⁹⁷

Since early 1993 the NMSP had been under pressure from influential Thais to enter into a cease-fire, which would pacify the area and allow them unhindered access to Burma; to be acceptable to the SLORC, the cease-fire had to include the repatriation of refugees. Even as Thai pressure stepped up, increasing numbers of Mon villagers sought refuge in Thailand, most of them fleeing forced labor and arbitrary taxation rather than fighting. New arrivals went to the sites at Pa Yaw, just on the border, and Bee Ree, just over it on the Burmese side. By 1995 the two camps housed some 6,000 refugees, including some who had moved from Halokhani. All received assistance from the Consortium with the blessing of the Thai authorities.

A cease-fire agreement was reached between the NMSP and the SLORC on June 29, 1995. The NMSP was given until April 30, 1996 to repatriate all refugees and wrote a letter to the Thai government asking for assistance. Shortly afterwards the Mon National Relief Committee wrote a contradictory letter saying that the NMSP had been forced, through threats and other means, to sign the repatriation letter, which they said had been drafted by an adviser to the Thai National Security Council. They maintained that the refugees were not willing to return without international monitoring and an ongoing monitoring presence in Burma. Since many of the refugees had left because of human rights abuses, not fighting, a cease-fire did not significantly change the situation for them in Burma. The repatriation went ahead anyway, without force. It seemed that the example of Halokhani was enough to convince the refugees that since they would be forced to return in the end, it was better to go quietly.

As of May 1998, none of these Mon refugees had been reintegrated into their former homes, as these areas were under SLORC control. By this time the total number of internally displaced Mon in the area was nearly 9,000, and they were still living in territory controlled by the NMSP under the terms of the cease-fire agreement. With the consent of the Thai authorities (and presumably the Burmese as well), they continued to receive cross-border aid from NGOs in Thailand.

In June 1997, the Ninth Division repatriated another group of 400 Mon to Burma from Prachuap Kiri Khan province in Thailand. They were part of an initial group of 800 civilians attached to a small armed group, the Mon Army Mergui District, which had split from the NMSP when the cease-fire was announced, and who had fled into Thailand in April 1997 after coming under heavy attack from the Tatmadaw. They were permitted to stay just on the Thai side of the border but were not allowed to build raised shelters, despite it being the rainy season. Half of the refugees returned

⁹⁵ In its response to questions from the U.N. special rapporteur to Burma, published by the U.N. on November 2 (A/49/594/Addendum 1), the SLORC claimed that Kwan Saya was not part of Halockhani camp but a base for Mon rebels and their families.

⁹⁶ Maj. Gen. Chalong Chotikakham, quoted in "Army denies Mon fleeing rights abuse," *The Nation*, August 27, 1994.

⁹⁷ Paul Sherer, "Pact is signed for \$1 billion Burma pipeline," *The Wall Street Journal*, September 12, 1994.

voluntarily after the Mon Army Mergui District was reported to have surrendered to the Tatmadaw on May 25. On May 30, the camp housing the 400 remaining refugees was visited by the Ninth Division, and by Burmese officers. Days later a man claiming to be the camp leader wrote a letter to the commander in chief of the Thai army, stating that the refugees wished to voluntarily return. On June 6, the Ninth Division handed this group over to the Tatmadaw. One month later all 400 fled back into Thailand, saying they had been forced to build army bases and work as porters for the army. Some 200 of them were immediately arrested in Thailand and forcibly repatriated by the Ninth Division. The rest dispersed. It is not known what has happened to either group since then.

The same treatment was meted out to Karen fleeing the 1997 military offensive against the KNU in Mergui district. As more and more refugees arrived, the Ninth Division either denied them entry or, if they had already crossed the border, forcibly sent them back, often directly into areas where fighting was continuing. Between February and July 1997 it is estimated that over 8,500 were refouled by Thailand.⁹⁸ After an international outcry at these violations of the principle of non-refoulement, the Thai central government attempted to take control of the situation from the Ninth Division and permitted refugees to remain in two makeshift camps, though these were dangerously close to the border.

On March 10, 1997, some one hundred villagers crossed the border into Thailand in the area adjacent to Pranburi but were forced back five days later. They joined approximately 300 others who had congregated on the Burma side of the border. This group was eventually moved to Huay Satu, an isolated site a six-hour walk from the last border checkpoint inside Thailand. At the end of May 1997, this site housed some 1,548 refugees on the Thai side of the border. On June 20, 1997, the Ninth Division destroyed the shelters they had built and forced them to cross back into Burma. They have been shunted back and forth across the border since that time, subject to the pressures of the Ninth Division and the Tatmadaw on their respective sides. In mid-March 1998, 340 refugees from this site were moved to Ban Don Yang refugee camp, with the remainder returning once more to Burma. As NGOs have no access to the area and UNHCR has not recently visited, there are no further details of what has happened to this group and the circumstances of their return.

At the beginning of June 1997, Thailand announced that as fighting had subsided, no one could cross the border, and all camps were therefore closed to new arrivals. In November 1997 a group of some 1,000 Karen who had newly arrived in Thailand but had been refused permission to enter the camps at Nu Pho were forcibly repatriated by the Thai army. In the course of the repatriation, a sixty-five-year-old man and a twenty-year-old woman were wounded when the Ninth Division fired over the heads of a group of refugees seeking to enter Nu Pho camp.

Human Rights Watch wrote to the new Thai prime minister, Chuan Leekpai, to protest the use of force and Thailand's violation of the principle of non-refoulement and its obligations under the ICCPR. In response, the Thai ambassador to the U.K., Vidhya Rayananonda, defended the action of the Thai army and stated, "It is not our policy to give shelter to those who flee Myanmar due to human rights violations. Thailand only provides temporary shelter to Burmese displaced persons who have fled from fighting."⁹⁹ The letter went on to say, "There is always a UNHCR representative present at the repatriation of displaced persons," despite the fact that in this case, while UNHCR was granted permission by Thai Ministry of the Interior to visit the area, it was not until five days after the events took place that its roving protection officer was allowed by the Ninth Division to visit the site.

By the end of 1997 Thailand seemed to have somewhat relaxed its policy towards new arrivals, and a number of persons were allowed into the refugee camps of Nu Pho and Tham Him. However, by April 1998 a group of over 3,200 people who had gathered at a point on the Burma side of the border known as Htee Wah Doh, deeper inside

⁹⁸For a detailed analysis of instances of repatriation during the first half of 1997 see Human Rights Watch/Asia, "No Safety ..."

⁹⁹ Letter from H.E. Vidhya Rayananonda to Sidney Jones, Human Rights Watch, December 11, 1997 (ref:03/C2596/2540).

Burma from the Mon camp at Halockhani, continued to be refused permission to enter Thailand. Such instances of rejection at the frontier also amount to refoulement.

The central border region

Thai policy towards refugees, mainly ethnic Karen villagers, in this region from Mae Sot to Mae Sariang, was motivated by a set of complicated factors which changed over time, and it was never entirely clear which Thai authorities (Ministry of Foreign Affairs, Ministry of the Interior, National Security Council, the army, the local governor, or Border Patrol Police) were responsible for making or implementing decisions. The lack of clarity in decision-making meant that for the groups providing assistance in the camps, including the Karen Relief Committee and the Consortium, it was always difficult to know what the policy was at any one time. It also made it hard for the international community and UNHCR to know whom to hold accountable and whom to negotiate with to ensure the protection of refugees.

Overall the Karen refugees were treated well by Thailand, until about 1993. In part this was due to the longstanding ties between the KNU and local Thai authorities and also to the high international profile of the Karen refugees in comparison to other groups. But as Thai economic ties to the SLORC increased and as the Karen grew weaker as a military force, especially after the fall of the KNU headquarters at Manerplaw in January 1995, relations deteriorated.

Even then, Thai authorities made no effort to push back or deny entry to Karen refugees on this part of the border as they did with the Mon in the southern region. The decision initiated by the Ninth Division in the southern region in June 1997 to close the border to new arrivals spread northward, however, and since then all new arrivals have been denied entry into Thailand. At the same time, civilian officials in Bangkok still claimed that Thai policy continued to be to allow temporary protection to those fleeing direct fighting, though this had long since ceased to be the case. By May 1998 the Consortium reported that it was providing assistance to some 3,000 refugees in six locations who were living outside refugee camps, most of whom had been denied entry to the camps.

The shift in policy began after 1993 when the SLORC first made overtures to the KNU for a cease-fire and when Thai commercial interests in Burma were well on their way to being more concerned with direct negotiations with the central government. Thai companies had their eye on a number of projects that involved KNU territory. Several important roads linking Thailand and Burma were planned through KNU areas. Projects to encourage tourism in the region also began, including a million-hectare "biosphere" in the Myinmolekat Nature Reserve. The Thai government's change in attitude was not reflected in repatriations and direct harassment of the refugees but in a failure to protect them from cross-border attacks.

As noted above, a breakaway faction of the KNU called the Democratic Karen Buddhist Army (DKBA) was formed in December 1994 and joined the Burmese military in a series of attacks on the KNU that began at Manerplaw in January 1995 and eventually extended to camps of Karen refugees inside Thailand.¹⁰⁰ Some 9,000 Karen civilians were

¹⁰⁰ In mid-January the DKBA assisted a planned SLORC attack on the KNU headquarters at Manerplaw on the banks of the Moei river. In the first week of February Human Rights Watch interviewed escaped porters who had worked for the Tatmadaw during the offensive, and most of them said they had been taken from villages, towns, trains, and cinema halls during October and early November 1994, a clear indication that the attack had been planned well before the DKBA was formed. (See Human Rights Watch/Asia, "Abuses Since the Fall of Manerplaw," March 1995.) In the years that followed, the Burmese government frequently denied any direct relationship with the DKBA, despite ample evidence to the contrary. In 1995 Lt. Gen. Tin Oo, secretary-2 of the SLORC (a position he retains in the SPDC), met twice with the leaders of the DKBA at their headquarters in Myaing-gyi-gnu. On each occasion, the first in February, the second on May 14, Tin Oo was quoted in the Burmese government press as stating his support for the DKBA in their "efforts to bring about peace in Karen state and propagate Buddhism" and "the return of refugees from Thailand." (*Voice of Myanmar Radio*, February 15, 1995, May 14, 1995.) In addition, refugees from the Myaing-gyi-gnu area reported in late 1995 that the SLORC was providing rice and financial support to all those who had moved, voluntarily or not, to the area to join the DKBA. In the attacks against refugees, no members of the Tatmadaw have ever been caught—at least Thailand has not reported any captures—but at times

evacuated to Thailand after the fall of Manerplaw, but they found no sanctuary from the combined DKBA and SLORC forces once there. On February 9, the DKBA launched the first of what was to be many raids across the border, kidnapping three senior KNU officials from a refugee camp. During the next year there were over sixty attacks on refugee camps and Thai villages near the border. Ten refugees, five Thai civilians and six Thai policemen were killed in the raids, and thousands of refugee shelters were razed.¹⁰¹ In addition, scores of refugees were abducted by the DKBA and have not been heard from since. The peak of the attacks came in April 1995 when, over a four-day period, Mae Ra Ma Luang camp, housing 4,583 refugees, Kamaw Lay Khlo camp, housing over 4,000 refugees, Mae Tha Wah camp, which housed 6,400 refugees, Shoklo camp, and Kler Ko camp, which housed 3,726 refugees, were all attacked. Whole sections of these camps were razed, and Kler Ko and Kamaw Lay Klo were entirely destroyed.

Burmese troops have operated alongside the DKBA. Refugees have frequently reported that the soldiers spoke no Karen or that they were wearing SLORC uniforms. At times even senior Thai army officers, who have no interest in blaming the SPDC directly for the attacks, have made off-the-record comments that, at the very least, the DKBA would not be able to launch the attacks without the support of the Tatmadaw. See "Thais Accuse Burma of Complicity in Border Raids," Reuter, February 8, 1996. It may well be the case that at times the Tatmadaw has been unable to control every action taken by the DKBA, but the two clearly have an informal agreement to assist each other.

¹⁰¹ "Intruders Killed Fourteen in Attacks Within Six Months," *Bangkok Post*, May 7, 1996. This article noted details of forty-four raids during the period October 1995 - April 1996.

The Thai army responded to the April attacks with helicopter gun ships that patrolled the border for two days. But there were no moves to permanently improve security, nor any decision to move the camps further from the border where they could be better protected. With different positions being taken by Thai authorities, the only concrete decision taken was that some of the smallest camps would be consolidated at a site in Mae La.¹⁰² By June thirteen camps were moved there, bringing the population of Mae La to over 20,000, by far the largest camp on the border. For the first time, the Ministry of the Interior established a presence in this refugee camp, in the form of a small office with two staff. While a larger camp was seen as being easier to protect, Mae La was right on the bank of the Moei river, marking the border with Burma, and had been one of those attacked earlier in the year. A small Thai army post was also established in the camp, but it was not always manned. It was also decided that seven camps further north would be consolidated, but this did not occur until over a year later. None of the camps was moved further from the border.

During 1996 security remained a concern in all the Karen refugee camps. There were constant threats against the refugees as well as aid workers. Despite these threats, aid continued to be delivered to the camps, and the Consortium took the position that the camps should not be moved, concerned that a move away from the border could mean the creation of closed camps, like those which had existed on the Cambodian border, where the refugees would become completely dependent on international aid. In retrospect, this was clearly a mistake, as the refugees had little protection where they were.

The consequences of the failure to move the camps became apparent in early 1998, when the DKBA launched new attacks. On March 11, 1998, Huay Kaloke, a camp housing over 10,000 Karen refugees, was attacked by DKBA. Five people were killed or later died from injuries received, and 85 percent of the dwellings in the camp were razed. Four days later, Mae La camp — which by then housed 30,000 refugees — was shelled from the Burma side of the border. On March 23, 1998, the DKBA attacked a third camp, Mawker, in Tak Province which housed over 8,500 refugees, torching several shelters and later shelling the area. Nearly 300 refugees were left homeless.

By May 1998, the refugees from Huay Kaloke and Mawker were still living in makeshift shelters near the camp sites, but none of the promised moves had taken place, although Thai officials told the Consortium that they were looking for a permanent site, which would reportedly be further from the border. On July 5 a Foreign Ministry spokesman was reported in the Thai press as saying that Thailand would approach UNHCR to assist in relocating the Huay Kaloke refugees to Mae La camp. Days later this plan was reported to have been scrapped in favor of moving both the Huay Kaloke and Mawker refugees to a new site in the Phop Phra National Forest Reserve along the Mae Sot-Umphang Highway. However, there was no indication of when this might happen.¹⁰³

Just as the March attacks were taking place, local authorities began to enforce the order to deny entry to all new refugees from Burma in this part of Thailand. In June 1998 the Consortium reported that they were having to give assistance to some 3,000 people denied permission to enter Thailand or otherwise living outside the designated refugee camps.¹⁰⁴

Further north, in the Salween National Park near Mae Sariang, camp relocations did take place in 1998, but these moves were not motivated out of concern for refugee safety. They were rather a direct result of the Salween logging

¹⁰² On April 28, the Thai interior minister, Maj. Gen. Sanan Khachonprasat, told reporters that he agreed with the Thai Third Army's proposal to relocate the refugee camps further inside Thailand. However, the very next day Thai Army Commander Gen. Chettha Thanajaro was reported in *The Nation* newspaper as saying that the best solution to the Karen refugee problem was to "push them all back to Burma."

¹⁰³ "Karens to Move to Safer Refugee Camp," *Bangkok Post*, July 5, 1998 and "Karen to be Moved to Degraded Forest Area," *Bangkok Post*, July 11, 1998.

¹⁰⁴ BBC Update #15/1998, June 11, 1998.

scandal, and the move was designed to prevent illegal logging.¹⁰⁵

The northern border region

¹⁰⁵ The scandal, which was exposed in February when a Thai forestry official received a five-million-Baht bribe to turn a blind eye to the logging, concerned the illegal felling of trees from the Thai Salween National Park, on the Burmese border, which were then shipped out of the area with stamps asserting them to be from Burma. A ten-year-old ban on logging in Thailand was in place at this time. It was said to involve people at the very top of the Thai government, including the former foreign minister and friend of the SLORC, Gen. Chavalit. (There have been numerous articles in the Thai press with details of the scandal. See, for example, "Army Insists it had no Role in Illegal Logging Operation," *Bangkok Post*, March 2, 1998; "Chavalit Approved Border Pass Opening, Says Interior," *Bangkok Post*, March 10, 1998; "Breaking the Vicious Circle," *Bangkok Post Perspective*, April 19, 1998.) The Karen refugees who lived in camps in the area were reported to have worked in the illegal logging mills, though it is thought that their involvement went much deeper than that. As a government-appointed committee of inquiry was investigating the scandal — a great step in the movement against corruption in Thailand — a key player in the logging activities, KNU Forestry Minister Padoh Aung San, who had been based in the Salween area, defected to Burma, as reported in the April 9, 1998 edition of the *Bangkok Post*. With him went 200 KNU soldiers and their families, as information came out that he had been secretly working with the DKBA to remove the logs. Despite initial refugee resistance, encouraged by the KNU leadership in the area, the four camps in the park, housing over 10,000 refugees, were consolidated to Mae Ra Ma Luang camp, which had been subjected to attacks by the DKBA in April 1995. However, only some 1,500 out of 8,500 refugees actually moved to Mae Ra Ma Luang. Nearly 3,500 voluntarily moved themselves into other nearby camps, leaving over 4,000 unaccounted for. It is assumed that some returned to Burma, while others left to find work as migrant laborers in Thailand.

As noted above, the Karenni and Shan refugees who entered Thailand in the area between Mae Hong Son and Mae Sai were all regarded with suspicion because of the production of drugs in Shan state. In this area, the key Thai policymaker appears to have been the local district governor, backed by the central government policy to cut down on drug trafficking, and policy was implemented by a combination of Thai Rangers, a unit of the Thai military, and the Thai army. The importance of a local official may reflect the fact that the region is farthest from the central government, and traditional power structures prevail. Policy in the extreme north is also likely to have been influenced by the experience from 1975 onwards with refugee camps established to house some 360,000 Hmong refugees from Laos, an experience which no Thai official wants to see repeated.¹⁰⁶ The Lao camps, administered by UNHCR, had been, it was felt, a "pull factor" in attracting refugees across the border, and at a time when these camps were finally winding down, new camps for refugees from the Shan state were simply not considered an option.

Refugees from the Karenni state had fewer problems, possibly because their numbers were small; nevertheless, they were only given asylum with great reluctance. There was an additional commercial reason for the acceptance of the Karenni: the "long-necked women" who became a major tourist attraction in the area. In the nearest Tai town, Mae Hong Son, dozens of small trekking companies sprang up to take tourists to visit Padaung "villages" on both the Thai and Burmese sides of the border to see the women.¹⁰⁷ There were few instances of refoulement, and even after much of the border further south was closed to new arrivals from June 1997 onwards, refugees from Karenni state continued to be permitted into the camps as late as May 1998, when 567 new refugees arrived, bringing the total camp population to over 13,000. It was not clear how long new arrivals would be permitted, however.

¹⁰⁶ As noted above, Thai authorities believed the UNHCR presence had constituted a pull factor, drawing more and more Hmong refugees into Thailand. UNHCR was involved in the resettlement of 324,000 of these refugees in third countries, although by 1997 1,500 remained in a camp in northern Thailand.

¹⁰⁷ A sub-group of the Karenni, the Padaung, are the famous "long-necked women," who attach a series of brass rings around their necks from puberty onwards, forcing down their shoulders and elongating their necks. Thai businessmen were quick to exploit the Padaung, and Padaung women and their families were separated from other refugees and lived in a small, enclosed camp on the road to the other camps, where they could be viewed by tourists. Some of the trekking companies even made visits to ABSDF camps across the border, so that tourists could meet "rebel soldiers."

While Karenni refugees were not forcibly repatriated at any time, the position of the camps so close to the border was a serious concern for many years. Little protection for the camps was provided by Thailand, and each time there was fighting close to the camps refugees would attempt to move deeper into Thailand only to be pushed back by the Thai army. On January 29, 1996, 2,000 refugees fled from Camp 1 when villages on the Burma side just hours away were attacked. The refugees set up a new camp six kilometers from the border, but on March 25 Thai soldiers entered the camp and forced the entire population, many of whom were relatives of KNPP soldiers, back to the old site, right on the Burma border. A KNPP commander, interviewed by the Thai press, said the camp was moved at the request of the SLORC: "The Burmese soldiers accused Thailand of sheltering guerrillas in the old camp and they threatened to fire at it if the Thai authorities did not allow them to search it."¹⁰⁸

There were no direct attacks on the camps themselves until January 1997 when, during a renewed offensive against the KNPP, an armed group from Burma, probably the Tatmadaw, attacked Karenni Camp 2, killing three refugees and injuring ten others.¹⁰⁹ The part of the camp attacked, on the border, was very close to an armed Burmese student post, though the students did not appear to be the target. The attack took place in the early hours of the morning, when the Tatmadaw first shelled the area, then sent soldiers into the camp, chasing the residents out. The main part of the camp was six kilometers from the border, and there was a Thai Border Patrol post just in front of the entrance to the camp from the Burma side, but the three police there were taken by surprise and were unable to even raise the alarm. Following the attack the refugees, who had fled to the hills, to other sections of the camp, or even back to Burma, were afraid for weeks to return. The Thai Foreign Ministry sent a *démarche* to the Burmese ambassador following the attack, and the Thai army commander in chief, Gen. Chettha Thanajaro, said he had ordered his soldiers to fight back immediately if they were attacked.¹¹⁰ Security in the area was stepped up, with an additional Border Patrol post set up, but requests from NGOs that the camp be moved were refused.

Further north, refugees from the Shan state fared less well. Unlike all other refugee groups, refugees from the Shan state have never been permitted to establish refugee camps in Thailand, nor even to receive temporary asylum. There were in effect two different groups of Shan refugees: those groups of up to 300 people who periodically fled direct fighting from villages near the Thai border, and the thousands who fled the forced relocation programs started by the Tatmadaw from March 1996. Though the causes of flight were different, both groups needed protection, especially from refolement. But the Thai policy towards them was the same: even those who fled direct fighting were not called "displaced persons" in Thai terminology but were known only as "illegal migrants." It would seem that in this part of the border alone, Thailand was especially careful not to give any cause to Burmese accusations of harboring rebel armies among the refugee camps — since in this case the rebels were drug lords. This was especially true after the SLORC launched a major offensive against the best-known drug lord, Khun Sa, in 1993, and from then onwards Thai Rangers essentially sealed the border from Mae Hong Son to Mae Sai, preventing refugees from entering Thailand or pushing back those who somehow got through.

In March 1994 a group of nearly one hundred refugees from Muang Khoo, a small town that had been taken by SLORC forces, was forced back to Burma by Thai soldiers, who took them across the border in three military trucks, right into the hands of the SLORC.¹¹¹ In May hundreds of people from Shan state who had taken refuge in a Buddhist

¹⁰⁸ "Burmese Refugees Living in Fear after Forced Move," Reuter, March 26, 1996, quoting Gen. Aung Myat.

¹⁰⁹ Reports at the time said the attacks may have been by a breakaway Karenni faction, the Karenni National Democratic Army (KNDA), as uniforms bearing the insignia of this group were found. The KNDA, a group formed in 1996, are a small army of less than 200 men backed by the SLORC. It is likely that the KNDA uniforms were deliberately left behind to exonerate the SLORC of involvement in this attack.

¹¹⁰ "Envoy to be Summoned over Border Incursion," *Thailand Times*, January 5, 1997.

¹¹¹ Niti Sithiseth, "Voices From...," *Bangkok Post*, May 14, 1994.

temple in Mae Sai, Chiang Rai province were repatriated after being there for less than a week.¹¹² Many of those who had fled had been taken as porters, or fled before being taken, during a SLORC offensive against the MTA.

¹¹²Amnesty International, "Burmese Asylum-Seekers at Risk," AI Index ASA 39/02/94, September 1994.

The fighting between Khun Sa and SLORC continued through 1995, and several incidents of refoulement occurred.¹¹³ By September there were over 2,000 refugees living in makeshift camps on the Burmese side of the border, and no NGOs were permitted to provide aid to them. An NGO based in Chiang Mai came with rice and other supplies in trucks to assist these people but was turned away. With no assistance and in very precarious positions close to newly acquired SLORC bases, the refugees dispersed within a month. It is not known what happened to them.

Even after the surrender of Khun Sa, Shan villagers seeking asylum in Thailand continued to be denied entry or denied recognition as refugees. Tens of thousands of Shan crossed into Thailand following the mass relocation program in central and eastern Shan state, only to have to find work and a precarious existence on construction sites and large farms as Thailand refused to consider any of them as refugees.

Further repatriations also took place in areas where there were outbreaks of fighting between the Tatmadaw and breakaway Shan groups. In late May 1997, 430 people from four villages in Shan state who had fled into Mae Hong Son province in Thailand were repatriated by a group of 150 Border Patrol police, armed Rangers, and officials from the provincial office.¹¹⁴ They had fled because SLORC troops had come into their villages and accused them of harboring rebels. Some villagers were beaten, others were taken by the army to act as porters. Thai authorities, however, having decided that they were not fleeing fighting, forcibly repatriated the entire group. Again in February 1998, over 450 Shan, Pa-O and Palung ethnic minority refugees fled renewed fighting to Ban Mapha District of Mae Hong Son. This group set up a temporary camp some two kilometers inside Thailand, but Thai authorities refused to allow access to the camp by NGOs or the delivery of any assistance. Some Tatmadaw troops entered Thailand in three different places in pursuit of the refugees. At the end of March some 250 people in the group were permitted to move to Karenni Camp 2, the first time refugees from the Shan state had been permitted to enter an established refugee camp. The remainder of the group dispersed, and it is not known where they went.

In May 1998, there remained thousands of Shan with potentially valid claims to refugee status living precariously in Thailand. They were still not permitted to enter refugee camps, despite a valid fear of persecution. Human Rights Watch recognizes that the establishment of camps is not always the most desirable option for refugees, but with no status determination procedures in place and an economic crisis that is leading to the mass deportation of illegal migrants, only residency in a camp provides refugees with de facto recognition of refugee status and any chance of protection.

Protection and the role of UNHCR

¹¹³ On March 20, 1995, over 1,000 Shan refugees fled heavy fighting in the Burmese border town of Tachilek. After three days, the Thai military pushed back all but 300 of them. By the end of April, the rest were also forced to return to Burma. Two other sites housing a total of 906 people were created at Xai Long and Ai Tee, both of which were former MTA bases just inside Burma. A third site opposite the Thai village of Ban Hin Taek housed 1,200 people. Thai Rangers and Border Patrol police were posted close to each of these sites, and the asylum seekers were refused permission to cross.

¹¹⁴ Human Rights Watch/Asia, "No Safety ..." p. 24; Amnesty International, "Kingdom of Thailand: Erosion of Refugee Rights," AI Index 39/03/97 September 1997, p. 5.

As noted earlier, until July 1998, UNHCR was not permitted to have any official role in the border camps. Negotiations to establish a formal role for UNHCR in the border camps were ongoing at the time of the writing of this report. As the only international agency mandated to protect refugees, UNHCR has a responsibility to seek access to refugees and protest against violations of their rights. In Thailand, however, UNHCR has often failed to respond adequately to reported abuses and was not as active as it could have been in raising concerns about refugee protection with the Thai authorities or seeking assistance from the international community to use appropriate leverage when these concerns or requests were not met.¹¹⁵

Despite the presence of Burmese ethnic minority refugees in Thailand since 1984, it was not until 1992 that the UNHCR office in Bangkok finally sent a team to the border to assess the camps and the status of those living there. This time lag was important, as in the intervening years—particularly after 1989 when UNHCR had secured a role with respect to Burmese students — UNHCR's apparent lack of interest in the border refugees was interpreted by the Thai government as confirmation that the ethnic minorities were not really refugees, and the Thai classification, "temporarily displaced," went unchallenged. Even after UNHCR did visit the camps in April 1992, it was not until June 1993 that it made an official declaration that the Burmese ethnic minorities in camps along the border were *prima facie* refugees.¹¹⁶

Since June 1995, when UNHCR finally won an informal agreement to have a "roving protection officer" on the border — a Thai national whom UNHCR was permitted to hire only as a consultant — the office has been much more proactive with regards to the border. During the repatriation of the Mon refugees to Halokhani (the camp that Thailand said was on the border and NGOs claimed was inside Burma) and subsequent attack on the camp by the Tatmadaw, the UNHCR resident representative applied for but was refused permission to visit the area. He then made a press statement saying, "We are very worried about the safety of these refugees."¹¹⁷ However, when the negotiations to move the

¹¹⁵ UNHCR staff have often maintained that they have little or no leverage in Thailand with which to persuade the Thai government to change its policies. At the same time, however, despite the great interest taken in the protection of the Burmese refugees by the international community — especially the U.S., European Union, Canada, and Australia — providing funds for the Consortium and sending frequent embassy and parliamentary delegations to visit refugee camps, UNHCR only rarely asked these governments for assistance in pressing Thailand to improve refugee protection.

¹¹⁶ This came in a press statement by the newly appointed representative, Ruprecht von Arnim, after he visited the border in June 1993.

¹¹⁷ "UNHCR seeks halt to planned expulsion of Mon refugees," *The Nation*, August 10, 1994.

refugees to Halockhani began, UNHCR did not intervene and instead accepted the Thai government's position on the location of the camp. When the Ninth Army prevented supplies from reaching the camps in order to force the refugees back, the resident representative did manage to reach the area and protested the Thai action.

During the repatriation of the Mon in 1995, UNHCR again visited the area and spoke to local Thai officials, the Burmese army and some Mon leaders. In this case, it was decided that the letter from the NMSP to the Thai army, and an absence of protest from the leaders he met with, were enough evidence of voluntariness, despite the clear opposition of the Mon in charge of the refugees, the Mon National Relief Committee.¹¹⁸ Indeed, UNHCR officials in Bangkok stated that due to a disagreement within the Mon community, it was not possible to protest the repatriation. UNHCR did approach the Burmese government to request that they be permitted to assist in the reintegration of the refugees in Burma, but the SLORC did not respond.

In June 1997, when the 400 refugees in the Mon Army Mergui District (MAMD) area were repatriated, UNHCR was invited by the Ninth Division and the Thai Ministry of the Interior to send its roving protection officer to observe the repatriation. Members of the Thai press, including a TV station, were also present. There were no individual interviews to ascertain if people were willing to return, but an announcement was made over a loudspeaker as people were being loaded into trucks that anyone who wished to remain in Thailand should step aside. The announcement was reported by UNHCR to have been in Thai and Mon. UNHCR did not make a public report of its observations during this repatriation, giving rise to the impression that UNHCR endorsed it.

Human Rights Watch, together with Refugees International, the U.S. Committee for Refugees, Christian Aid, and the Jesuit Refugee Service (USA), wrote to UNHCR to express concern over the repatriation and UNHCR's decision to observe the event. In his reply, the director of the Asia and the Pacific Bureau, François Fouinat, disputed many of the facts as reported by the four organizations and wrote, "While it is clear that there was no individual declaration on the part of refugees to return, the refugee leader had explicitly requested the Thai authorities to authorize the return...when questioned by UNHCR, all the heads of families indicated their desire to return and to abide by the decision of their leader in this regard...it was not a refoulement in any sense." UNHCR did not accept that the refugees could have been coerced, by both the Thai Army and the refugee "leaders," in such a way as to give the refugees the feeling that they had no other option but to return. The presence of the Thai army in the camp for the three days before the repatriation took place would indicate that such coercion could have occurred before the UNHCR representative was present.

¹¹⁸ On the other hand, in an interview with the British Broadcasting Company (BBC), Ruprecht von Arnim said that he did find "some remorse with the head of the NMSP, who felt somewhat cheated, and he was not sure whether he could carry the responsibility of doing what he did to advise his people to return now in these circumstances. He was not happy, and he insisted very strongly that UNHCR be involved." (BBC East Asia Today, October 31, 1995).

Most worryingly, Fouinat stated approvingly that the Thai government had in place safeguards against forced repatriations: "All repatriations of refugees can now take place only upon the written request of the refugees themselves and with the explicit authorization of the Commander in Chief of the Royal Thai Army."¹¹⁹ Human Rights Watch wrote back, pointing out that a letter to the military commander of a host country signed by purported representatives of refugees cannot, by any standards, be accepted as evidence of voluntariness.

This group of refugees returned to Thailand one month after the repatriation. The UNHCR consultant was again permitted to meet with them, prior to the second pushback by the Thai army. He was reportedly not told that the people he interviewed had been part of the June repatriation, and again UNHCR made no public statements about the situation of these people.¹²⁰

¹¹⁹ August 25, 1997 (UNHCR Code PRL23-AQ/0183/97). Fouinat's letter concluded that "while the return of the 400 Mon did not fulfill all the internationally-accepted standards in this domain, notably in regard to the lack of access to the returnees in Mon state, and the inability of this Office to ascertain the voluntariness of return on an individual basis, it was not a refolement in any sense."

¹²⁰ Burma Issues, *Anticipating Repatriation* (Bangkok, Burma Issues, 1998), p.27.

In the central border region UNHCR was more proactive in seeking protection for the refugees, especially after the attacks on the camps by DKBA and SLORC soldiers from February 1995 onwards. Up until this time there had been few protection concerns for the Karen refugees, and when difficulties in access to camps by aid agencies arose, they were dealt with by the Consortium. When the attacks on the Karen camps were at their height during 1995 and 1996, UNHCR in Bangkok was vociferous in its condemnation of the lack of security for refugees in the area and made frequent public statements calling on the Thai government to move the camps further from the border where protection could be better provided. The office also called for an international presence to be established in the camps.¹²¹ During this period, UNHCR protection officers as well as the roving protection officer made more frequent trips to the camps. When attacks by the DKBA resumed in 1998, UNHCR, whose protection officer was by chance in Mae Sot at the time of the first attacks, visited the affected camps and the Bangkok office made public statements condemning the lack of security for the refugees. These statements, together with other international protests, were sufficient to move the new Chuan administration to seriously consider a role for UNHCR on the border.

In the northern region, UNHCR made only very infrequent trips to the camps housing Karenni refugees, despite some security concerns, though when needed they were able to intervene successfully with the Thai Interior Ministry. For example, on March 26, 1996, UNHCR attempted to visit Karenni Camp 1. This was just a day after Thai soldiers had forced the residents of this camp back to an old site right on the Burmese border two months after an attack on that site by the SLORC. The UNHCR team were told by the Thai army that the road to the new section was not safe for them to travel. Arguing that if they were not safe, how could the refugees be safe, UNHCR successfully negotiated with the Interior Ministry and Thai army officers to allow the refugees to return from the border site. However, this progress was short-lived, as in 1997 the refugees were back on the border.

The refugees from the Shan state were mostly ignored by UNHCR until late 1996. When the fighting between Khun Sa and the SLORC was at its peak in 1994 and 1995, UNHCR made its first trip to the Shan area, getting as far as Mae Sai in April 1995. They were prevented from seeing any refugees at Doi Tung but did meet with some Shan in monasteries in Mae Sai and Chiang Mai.

From early 1996, as huge numbers of Shan refugees began arriving in Thailand fleeing the forced relocations and associated abuses, the absence of Khun Sa following his surrender meant that UNHCR was finally willing to investigate the circumstances of the refugees' departure and assess provisions for their protection in Thailand. After many months and much pressure from NGOs assisting the Shan, in October 1996 the Thai consultant to UNHCR met with some Shan asylum seekers in monasteries and work sites in Chiang Mai. His brief was mainly to assess whether or not they were prima facie refugees and therefore entitled to protection and to ask whether or not they wanted to move to a refugee camp, which in Thailand would be the only means of securing recognition and assistance. He reported back to the office in Bangkok that the majority of refugees did not want to be housed in camps but preferred to be able to earn their keep on construction sites and in the agriculture sector, despite the fact that the vast majority had dependent-aged relatives or young children with them who had no additional support facilities. By early 1998, the economic crash in Thailand really began to be felt, and many of the Shan workers, who now numbered an estimated 80,000, had not been paid for their work for months or had been dismissed from their jobs and threatened with deportation. Nevertheless, there was still no move by UNHCR to press the case with Thailand for these people to be properly assessed for refugee status and provided assistance and protection from refoulement by the creation of refugee camps or other measures whereby they could be identified and recognized by the Thai authorities.

The final stage in UNHCR's relations with the Thai government began in February 1998 when it responded promptly to Thai requests for a discussion of a possible UNHCR role in the border region. The Thai government requested the UNHCR office in Bangkok to hold a seminar for representatives of the prime minister's office, the National Security Council (NSC), the Ministry of the Interior, the Ministry of Foreign Affairs, and the Supreme Command of the Thai

¹²¹ For example, UNHCR statement quoted in "UN Offers Aid to Thailand as Karen Refugees Attacked," Agence France-Presse, April 26, 1995.

army in order to explain its mandate and operational procedures. There was reportedly no direct discussion of what kind of role UNHCR might play on the Thai-Burmese border during this seminar. On March 24, the Thai cabinet announced a decision to allow UNHCR a role "in caring for the refugees." On April 9, the NSC also agreed to a role for UNHCR, and the Supreme Command of the Thai army stated that UNHCR would "work jointly with Thailand in relocating the refugees to safer areas inside Thailand's borders."¹²² On the same day, the deputy foreign minister, returning from a trip to Burma, said the SPDC had agreed to "accept the voluntary return of refugees and workers."¹²³

¹²²"UNHCR to Get Greater Role in Refugee Issues," *The Nation*, April 10, 1998.

¹²³ Ibid.

On May 15 UNHCR and representatives of the Thai government met again to discuss in more detail a possible agreement. Both sides attended the meeting with prepared "non-papers" which set out what each of them wanted or expected from an agreement. These non-papers were confidential, and members of the Consortium and other NGOs were not consulted for their opinion either prior to or following the discussions. In a briefing given by the UNHCR representative to NGOs and concerned embassies on May 22, it appeared that it was the Thai non-paper, rather than UNHCR's, that would form the basis of the agreement.¹²⁴ It also became clear that the agreement would not take the form of a formal memorandum of understanding but would be based on an exchange of letters between UNHCR and the Thai Ministry of Foreign Affairs.

During May there was much press speculation and quotes from Thai governmental sources that an agreement had been reached and UNHCR would establish a presence on the border by June.¹²⁵ By July, however, there had been no official announcement by either side. Human Rights Watch was, nevertheless, apprised of the content of the non-papers and raised its serious concerns about the contents of the Thai government's paper in a series of letters to UNHCR and Prime Minister Chuan.

The main concerns raised by Human Rights Watch included the following:

- that UNHCR be allowed to establish a permanent presence on the Thai-Burmese border and to have full and unimpeded access to all the Burmese refugees, including those in the Karenni camps, those from Shan state and others in the migrant labor force with a genuine fear of persecution in Burma;
- that the agreement should be comprehensive, ensuring protection to all Burmese refugees, including those groups described above;
- that UNHCR be able to screen newly arrived persons to determine refugee status;
- that UNHCR's role in registration not be limited to facilitating repatriation but would have a broader protection function;
- that the agreement include sufficient safeguards to ensure that any repatriation would be truly voluntary, that it would only take place once the human rights conditions in Burma are conducive to return, and that UNHCR would be given access to monitor repatriation on a case-by-case basis;

¹²⁴ Human Rights Watch was apprised of the contents of this briefing by several of the NGOs and embassy staff who attended it.

¹²⁵ For example, "'Transparent' Solution for Burmese Refugees," *The Nation*, May 16, 1998. This article began, "Thailand and the United Nations High Commissioner for Refugees (UNHCR) agreed yesterday to establish a mechanism to deal with Burmese refugees which would ensure more transparency in accepting displaced people and the repatriation of those already in Thailand"; "UN Backs Thai Approach to Dealing with Burmese Refugees," *Bangkok Post*, May 17, 1998; "Details of UNHCR Role on Burma Border Worked Out," *Bangkok Post*, May 26, 1998.

- that refugee camps be relocated to a safe but accessible distance away from the border and that refugees continue to be provided with adequate assistance and protection both during and after relocation.

Despite numerous attempts by Human Rights Watch to seek clarification from UNHCR regarding these concerns and the exact nature of its role on the Thai/ Burmese border, by the end of July 1998 no further information had been provided and UNHCR's response to Human Rights Watch continued to be that negotiations were ongoing and thus confidential. However, Human Rights Watch later learned that in fact UNHCR had already replied to a June 25 letter from the Thai Ministry of Foreign Affairs requesting UNHCR's assistance with Burmese refugees. Human Rights Watch understood that this exchange of letters represented a statement of intent by both sides, if not an agreement, and that details of the exact role UNHCR would have were still being negotiated.

It thus remains unclear both whether a final agreement has been reached and what the nature of that agreement may be. Human Rights Watch remains deeply concerned at the lack of transparency surrounding the discussions between Thailand and UNHCR, and UNHCR's unwillingness to engage in cooperative discussion regarding substantive issues of concern to NGOs. Neither augurs well for the contents of the agreement itself or for the practical implementation of that agreement and the effect it will have on the protection of refugees. If the agreement is indeed based on the Thai government's non-paper, it does not change the existing role which UNHCR plays on the border, except in one significant respect: UNHCR will be able to register Burmese in the camps, with a view to a future repatriation of those refugees.

V. CONCLUSION

As this report has highlighted, protection for Burmese refugees in Thailand over the past fourteen years has been inconsistent and all too often non-existent, due largely to the policies of the Thai government and UNHCR. In almost no way can Thai policy be said to comply with international refugee norms and standards, and in many respects UNHCR's policies in Thailand do not even comply with its own guidelines and policies. Burmese refugees in Thailand have suffered needlessly as a result.

The reasons for the lack of protection have been outlined in detail. Strategic and economic interests, lessons learned from experience with Indochinese refugees, and a lack of an adequate legal framework explain much of the Thai government's actions. The UNHCR, constrained by its need to maintain relations with Thailand as the host government, nevertheless has been unnecessarily weak in its efforts to challenge Thai policies that undermine refugee protection. Its perpetuation of an essentially discriminatory system of refugee status determination and its excessively narrow interpretation of the definition of "refugee" have both worked against refugee interests.

The change in the economic situation in Thailand and the installation of the Chuan Leekpai administration in November 1997 all point to a new Thai perspective on relations with Burma. The new administration has made commitments to human rights and has supported calls for a reevaluation of ASEAN policy towards Burma.¹²⁶ This could lead to an improvement in the treatment of refugees.

Unfortunately, an important opportunity for UNHCR to strengthen its protection role, particularly with regard to the refugees in the border camps, appears to have been missed in the current negotiations with the Thai government on a role for UNHCR in the border region. All indications at the time this report went to press suggested that UNHCR's "new" role worked out with Thailand would be little changed from its current one. It apparently did not obtain sufficient safeguards that it would have full and unimpeded access to all Burmese refugees, that it would be allowed to

¹²⁶ BBC World Service, Thai Foreign Minister Surin in an interview with the East Asia Today program, July 9, 1998.

conduct screening of new arrivals for refugee determination purposes, that eventual repatriation would only take place when the human rights conditions in Burma were conducive to return, or that UNHCR would be allowed to monitor the voluntariness of repatriation on a case by case basis. UNHCR also appeared to have made little public effort to pressure the Thai government to relocate camps to a safe but accessible distance from the border.

The exact details of the negotiations and resulting agreement remain unclear. The lack of transparency with which UNHCR has conducted its affairs with the Thai government and its unwillingness to engage in an open and constructive dialogue with NGOs regarding refugee protection in Thailand has not inspired confidence, either among the refugees themselves or among NGO partners.

The opportunity still exists for UNHCR to press the Chuan administration for the best possible agreement which would enable the office to effectively carry out its protection mandate in relation to Burmese refugees. It remains to be seen whether it will do so.

*Human Rights Watch
Asia Division*

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