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RIGHTS  
WATCH

# Ad Hoc and Inadequate

Thailand's Treatment of Refugees and Asylum Seekers



# **Ad Hoc and Inadequate**

**Thailand's Treatment of Refugees and Asylum Seekers**

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## Acronyms

<b>ABSDF</b>	All Burma Student Democratic Front
<b>BRC</b>	Bangkok Refugee Center
<b>DKBA</b>	Democratic Karen Buddhist Army
<b>ECHO</b>	European Community Humanitarian Office/ Directorate General for Humanitarian Aid and Civil Protection
<b>HRW</b>	Human Rights Watch
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>IDC</b>	Immigration Detention Center
<b>IDP</b>	Internally Displaced Person
<b>IRC</b>	International Rescue Committee
<b>ISOC</b>	Internal Security Operations Command
<b>KnED</b>	Karenni Education Department
<b>KNLA</b>	Karen National Liberation Army
<b>KNPP</b>	Karenni National Progressive Party
<b>KnRC</b>	Karenni Refugee Committee
<b>KNU</b>	Karen National Union
<b>KNWO</b>	Karenni National Women Organization
<b>KRC</b>	Karen Refugee Committee
<b>KRCEE</b>	Karen Refugee Committee Education Entity
<b>KWO</b>	Karen Women Organization
<b>NGO</b>	Nongovernmental Organization
<b>NV</b>	Nationality Verification
<b><i>Or Sor</i></b>	Territorial Volunteer Defense Corps
<b>PU-AMI</b>	Premiere Urgence Aide Medicale Internationale
<b>RSD</b>	Refugee status determination

<b>RTA</b>	Royal Thai Army
<b>RTG</b>	Royal Thai Government
<b>SGBV</b>	Sexual and gender-based violence
<b>TBBC</b>	Thai-Burma Border Consortium
<b>UNHCR</b>	United Nations High Commissioner for Refugees
<b>ZOA</b>	The three letters, ZOA, are the abbreviation of the Dutch translation of South East Asia, the area where this Dutch NGO started its initial activities.



# Burmese Border Displaced Persons: June 2012

	TBBC			MOI/ UNHCR Population <sup>3</sup>
	Verified Caseload <sup>1</sup>		Feeding Figure <sup>2</sup>	
Province/Camp	Female	Male	Total	Total
<b>Chiangmai</b>				
Wieng Heng (Ethnic Shan)	297	287	584	
<b>Mae Hong Son</b>				
Ban Mai Nai Soi <sup>4</sup>	6,637	7,196	13,833	10,680
Ban Mae Surin	1,821	1,847	3,668	1,906
Mae La Oon	7,257	7,413	14,670	9,925
Mae Ra Ma Luang	8,229	8,205	16,434	9,886
Subtotal:	23,944	24,661	48,605	32,397
<b>Tak</b>				
Mae La	24,441	24,420	48,861	27,027
Umpiem Mai	8,656	9,131	17,787	10,762
Nu Po	7,896	7,870	15,766	8,708
Subtotal:	40,993	41,421	82,414	46,497
<b>Kanchanaburi</b>				
Ban Don Yang	1,987	1,846	3,833	2,724
<b>Ratchaburi</b>				
Tham Hin	3,794	3,548	7,342	4,258
<b>Total:</b>	<b>71,015</b>	<b>71,763</b>	<b>142,778</b>	<b>85,876</b>

IDP camps <sup>5</sup>	Female	Male	Total	Ethnicity <sup>6</sup>
Loi Kaw Wan	1,537	1,466	3,003	78.8% Karen
Loi Sam Sip	192	250	442	9.5% Karenni
Loi Lam	136	134	270	3.9% Buman
Loi Tai Lang	1,163	1,409	2,572	1.0% Mon
Ee Tu Hta	1,978	1,966	3,944	0.5% Shan
Halockhani	1,836	1,794	3,630	0.4% Rakhine
Bee Ree	1,767	1,816	3,583	0.4% Chin
<b>Total:</b>	<b>8,609</b>	<b>8,835</b>	<b>17,444</b>	0.3% Kachin 5.2% Other

## Notes:

1. The Verified caseload includes all persons verified as living in the camps and eligible for rations, registered or not (including students). It excludes all previously verified residents now permanently out of camp.
2. Rations are provided only to those personally attending distributions. The Feeding Figure is the actual number of beneficiaries recorded as having collected food rations this month.
3. MOI/UNHCR figures are registered refugees. Most new arrivals since 2005 are not registered. UNHCR records an additional 248 people who have been submitted to the Provincial Admission Boards (PABs).
4. Includes Kayan.
5. Population figures for IDP camps are derived from camp committees on a monthly or quarterly basis depending on accessibility.
6. From TBBC Population Database of verified caseload; IDP camps excluded.

Map and statistics reprinted with permission from the Thailand Burma Border Consortium.





## Summary

Despite decades of experience with hosting millions of refugees, Thailand's refugee policies remain fragmented, unpredictable, inadequate and ad hoc, leaving refugees unnecessarily vulnerable to arbitrary and abusive treatment. Thailand is not a party to the 1951 Convention Relating to the Status of Refugees (1951 Refugee Convention) or its 1967 Protocol. It has no refugee law or formalized asylum procedures. The lack of a legal framework leaves refugees and asylum seekers in a precarious state, making their stay in Thailand uncertain and their status unclear.

Burmese refugees in Thailand face a stark choice: they can stay in one of the refugee camps along the border with Burma and be relatively protected from arrest and summary removal to Burma but without freedom to move or work. Or, they can live and work outside the camps, but typically without recognized legal status of any kind, leaving them at risk of arrest and deportation. It is a choice refugees should not be compelled to make. Many of those who decide to live in the camps do so without being formally registered or recognized. And many of those living outside the camps find the process of applying for and gaining migrant worker status to be prohibitively expensive and out of reach, leaving them vulnerable to exploitation, arrest, and deportation.

This report looks at the lives both of refugees inside the camps on the Thai-Burma border as well as of Burmese living outside of the camps, many of whom are, in fact, refugees, even though they have not been officially recognized as such, in large part because they are precluded from lodging refugee claims with the government or with the United Nations High Commissioner for Refugees (UNHCR). This report also looks at the situation of refugees and asylum seekers from other nationalities and their difficulties in finding predictable and sufficient protection in Thailand. Finally, the report looks at the situation of all migrants in Thailand, including refugees and asylum seekers, in their encounters with police and other authorities, including when faced with being detained in Thailand's Immigration Detention Centers (IDCs) and with deportation or expulsion from the country. Starting in January 2004, the Thai government stopped allowing UNHCR to conduct refugee status determination interviews for Burmese refugees and directed that all Burmese refugees should live in the Thai-Burma border camps. The government has refused to

screen or register all but a small fraction of the new arrivals since 2004, leaving over a third of the camp residents unregistered, and thus regarded as illegal.

While these camps offer their residents relatively more protection than for Burmese living outside the camps, the Thai government imposes harsh restrictions on refugees' freedom of movement, prohibiting residents from leaving the camps, earning income, or their children from obtaining a good quality education. With few sources of income, refugees become dependent on aid agencies, subject over the past several years to the increasingly acute fatigue of the international donors who have been supporting Burmese refugees since the mid-1980s.

Most of the camps are in remote mountain locations, often distant from hospitals and towns, accessible only by dirt roads, and some are beyond reach of mobile phone network reception. Several of the camps are very overcrowded, and refugees in all of the camps have been enduring cuts in basic assistance, such as food and shelter.

A series of political changes in Burma beginning in 2011, including the signing of preliminary ceasefire agreements between the Burmese government and nearly all the ethnic armed groups, has raised the prospect that this protracted refugee situation could have an end in sight. The various actors—the Thai and Burmese governments, UNHCR, the donor community, ethnic groups, domestic and international nongovernmental organizations (NGOs), and the refugees themselves—are all considering the possibility of repatriation. However, enormous obstacles remain to a safe return and repatriation of refugees from the border camps. Among refugees interviewed by Human Rights Watch, uncertainty about the prospects for repatriation seems to prevail.

The signing of preliminary ceasefire agreements, as well as public calls by Burma's President Thein Sein for the return of exiles, has caused some key donors to shift aid away from humanitarian assistance for camp refugees toward promoting development of livelihoods. While such a shift would make sense both to prepare refugees for eventual repatriation and reintegration in Burma and to promote their greater self-sufficiency in Thailand, conditions in Burma are clearly not yet ready for safe and dignified return and the Thai policy of closed encampment means that donors' efforts to promote livelihoods are ineffective and do not benefit most refugees.

From 2005 to 2011, more than 76,000 Burmese refugees were resettled from the border camps to third countries, though the total number of camp residents has remained at about 140,000. Resettlement has had a negative impact on education, health care, and other social services in the camps because so many of the most capable refugee teachers, health workers, and other skilled and educated refugees have left for the United States, Canada, Australia, and other countries. With a reduced support network and fewer coping skills and after so many years with restrictions on movement, proscriptions on the right to work, and dependency on outside aid, many camp residents experience domestic abuse, depression, and other social and mental health problems.

The isolation of the refugee camps contributes to an environment ripe for abuse of power and impunity. Refugees in camps lack basic freedoms in Thailand, which renders them vulnerable to the predations of many, including some of the Thai government and security officials mandated with protecting the camps. Thai policies that define registered refugees as pending deportation and unregistered camp residents as illegal mean all of those living in camps are in a state of uncertainty and are unlikely to lodge complaints of abuse at the hands of Thai authorities.

Fear, uncertainty, and a feeling of powerlessness contribute to a fatalistic attitude among camp refugees about whether justice is available to them. “We are on Thai land so we have to be submissive,” said one. “We cannot speak out and we have to be patient and passive. If we speak out too much, the chains around us will be tightened.”

Refugees in the camps also find themselves subject to abuse and exploitation at the hands of other refugees. Refugees working as camp security as well as camp leaders and camp residents with hidden connections to ethnic armed groups inside Burma all wield power in the camps.

Although the Thai government has made an effort in recent years, and shown some progress, in providing better access for camp refugees to the Thai justice system, camp residents remain at a disadvantage when it comes to finding recourse to justice for the abuses they experience. While the camps are in Thai territory and should be under Thai law, camp justice has evolved over decades as a blend of ad hoc rules and laws applied by ethnic groups in Karen and Karenni States in eastern Burma, badly out of sync with both international and Thai law. Each of the nine recognized camps has a justice system

operated and managed by refugees and each refugee camp still has detention centers, small dirt-floor rooms with bamboo slats for bars. While stocks have been removed from most camps, some continue to use them to constrain prisoners by their wrists or ankles.

Camp refugees who venture out of the camps are regarded by the Thai government as illegal aliens and are subject to arrest. Thai police or paramilitaries regularly apprehend camp residents and either return them to camp if the refugees pay sufficient bribes, or send them to one of Thailand's Immigration Detention Centers and then deport them to Burma. A 33-year-old Karen man living in Mae La camp told Human Rights Watch about his experience when Thai police arrested him:

They asked for money.... I said, "I don't have money." Then one started to beat me here and then back here [on the back and shoulders] two times and then kicked me once.... They asked for 2,000 baht [about US\$60] and we didn't have that money. Then he looked in my bag and he saw my UNHCR ID card and he took it away.

Thailand has not accepted the idea that any refugees, Burmese and other, have the right to work, move, and contribute to the Thai economy or that foreigners who present themselves as workers might also have fled persecution or conflict and be fearful of return. That, however, is the reality for refugees in Thailand.

This is evident from the life story of an ethnic Burman man living illegally in Mae Sot, Thailand, a former student leader who survived five years as a political prisoner, where he spent 23 hours a day in a cell. He said that after his escape to Thailand, "I did not want to stay in a refugee camp. It is a kind of prison and I hate to be held. I stayed in prison enough for five years. I would not be allowed to go out and I would feel like a prisoner again. Just food is not enough."

This report documents the plight not only of Burmese refugees but of all refugees and asylum seekers living in Thailand and is intended to indicate to the Thai authorities that a refugee policy grounded in law with transparent standards and procedures that apply equally to asylum seekers from all nationalities would provide for fairer and more effective treatment of both refugees and migrant workers.

People in Thailand who have fled conditions of conflict or persecution are refugees in fact (de facto refugees) even if they have not registered asylum claims, been registered, or been officially recognized by Thai or UNHCR officials as refugees under the law. The absence of a legal framework for refugee-status recognition—or lack of access to procedures—does not mean that they are not, in fact, refugees with legitimate claims to assistance and protection from the UN and the Thai government.

Regardless of nationality and whether or not UNHCR accords them refugee status, refugees are not allowed to work in Thailand. They can only work if they do not present themselves as refugees to the authorities, but rather as migrant workers. And whether migrant workers in Thailand have work permits seems to depend almost entirely on their ability and willingness to pay bribes for the opportunity. A 28-year-old Burmese woman in Mae Sot said simply, “I’d like to get legal status here, but I could not spend the money for that. So I have to play hide and seek with the police.”

The lack of a legal framework that recognizes and provides documents for asylum seekers and refugees and that essentially treats them as illegal (unless they are registered Burmese refugees inside a camp) means that both de facto refugees and UNHCR-recognized refugees and asylum seekers are vulnerable to arrest on the street, in the workplace, and in their homes, often subject to intimidation and detention and sometimes forced return.

For Burmese, formal deportations between Thailand and Burma only occur when official crossing points are open, and the official crossing points are often closed. But significant numbers of “soft deportations” (those occurring unofficially) continue whether or not the crossing points are open. In 2010, there were 170,000 soft deportations to areas controlled by the Democratic Karen Buddhist Army (DKBA), an ethnic armed group that broke from the other Karen armed groups and transformed itself into border guards—Border Guard Force—for the Burmese armed forces. The 2,107-kilometer (1310-mile) Thai-Burma border is porous so that unless deportees are actually arrested upon return, there is little to prevent them from turning around and coming back into Thailand after being expelled at the border. Many pushed across the Moei River that separates Thailand and Burma say that they must pay bribes to “carriers” (*pway-za*) on the Burmese side of the border who did not appear to be actual officials, yet seem to be acting on behalf of and perhaps collaborating with the DKBA at the border. A 29-year old woman told Human Rights Watch of her fear upon return to Burma:

I don't know why I had to pay the money. I just know it is their [DKBA] area. If we don't pay, I didn't know what would happen. I just worried. It is the DKBA. I was so afraid. I didn't know what they would do. I'm afraid of them all: Burmese soldiers, Burmese police, DKBA soldiers.

Thai police apprehending improperly documented foreigners on the street generally demand a payment based on a sliding scale determined by the person's perceived ability to pay and where the arrest occurs. The police sometimes tell apprehended migrants that they can pay a smaller amount directly to the police to avoid the higher fines they would be required to pay if they were taken to court. In addition to spot checks on the street, the Thai police and immigration authorities also raid businesses and homes where they believe undocumented migrants are living.

Migrants of all nationalities without documentation (*irregular migrants*) swept up in raids or who are unable to pay fines or bribes when apprehended on the street are likely to be taken to Immigration Detention Centers (IDCs). Burmese nationals usually only spend a few days to a week in IDCs before they are taken to the border to be deported or otherwise released. Nationals from countries that do not border Thailand, however, can spend years in indefinite detention, being held essentially until they are able to pay for their own removal.

The IDCs are not designed for long-term detention, but many of the detainees are held there for years. The Thai authorities rarely deport people at the government's expense to countries that do not border Thailand, but rather hold them indefinitely until their family members can provide plane tickets for them to self-deport. Migrants without financial resources or refugees fearing persecution in their home countries are faced with very long periods of detention.

A Nepalese refugee in one IDC told Human Rights Watch that although UNHCR recognized him as a refugee, he had been detained for three years and nine months:

The Bible talks about hell. This is one part of hell. Why am I here? UNHCR says we are under the Thai government. If under them, why do they not open the door? I am in a 55-foot room, 40 feet wide with 80 people in the room, sometimes 150 people, three toilets. Always there are problems.



There are six or seven different nationalities in the room. If you get in a fight, the police don't do anything [to protect you]. If you don't follow the rules, you get handcuffed, one week, two weeks. I wrote a letter to the commander asking to go to another room. He never heard my plea. We have no telephone, no computer to get outside information. We also can't get hot water. We use a naked [electrical] wire to heat the water.

The Thai authorities have taken measures that sharply limit UNHCR's role in Thailand. They have not allowed the UN refugee agency to have an operational role in administering the camps. Except for the most serious cases, the vast majority of encamped refugees go without any direct protection from UNHCR. The agency has demonstrated little ability to counter the Thai government's ad hoc policies of containment and provides virtually no protection to Burmese asylum seekers outside of the camps.

The Thai authorities do not allow UNHCR to conduct refugee status determinations for Burmese, Lao Hmong, or North Koreans. UNHCR issues "Asylum Seeker Certificates" for asylum seekers and refugees from countries other than Burma, Laos, and North Korea that say the bearer is a "Person of Concern" to UNHCR. These certificates provide no employment authorization and little protection when police stop certificate holders on the street or in their homes. UNHCR gives asylum seekers and refugees emergency phone numbers to call in the event of arrest, but asylum seekers and refugees told Human Rights Watch that phone calls have gone unanswered.

The most common complaint regarding UNHCR among urban refugees and asylum seekers in Bangkok is the long waiting periods for UNHCR refugee status determination (RSD) interviews and for UNHCR to report back the results of the interviews and a similarly slow appeals process. The delays make asylum seekers vulnerable to police abuse and cause additional hardship.

Human Rights Watch calls on the Thai government to ratify the 1951 Refugee Convention and its 1967 Protocol and to pass implementing refugee laws and establish fair asylum procedures. It calls on the authorities to make refugee status open to all nationalities according to the same criteria, consistent with the international refugee definition, including complementary forms of protection for people fleeing conflict. It calls for the immediate release of UNHCR-recognized refugees detained in the IDCs and for an end to

the practice of holding detainees indefinitely to force their families to pay for their deportation.

Human Rights Watch finds no legal basis for distinguishing the Burmese living outside of camps from those living in the camps. Whether documented or undocumented, many of the Burmese Human Rights Watch interviewed who are living outside of the camps were de facto refugees who have chosen to risk detention and deportation in order to avoid the humiliations and dependency of camp life. While it is impossible to know how many of the 1.8 to 3 million Burmese living in Thailand outside of camps are de facto refugees, not all Burmese living outside of camps should be presumed to be presumed migrants with no refugee claims or need for protection.

We urge that Thailand consider an alternative to its current refugee policy that would provide Burmese and all other asylum seekers a fair chance to have their claims for asylum heard and allow refugees to move about and work. Such a policy would contribute to rule of law and reduce opportunities for corruption and exploitation. It would also enable refugees to contribute to Thailand's economy and sustain themselves with dignity, while developing skills they will need to successfully reintegrate after they do go home. Finally, such a policy would engender goodwill toward Thailand after the refugees return.

As a start, Thailand should establish, with the assistance of UNHCR, a fair and transparent refugee screening and registration system for unregistered people living in the refugee camps on the Thai-Burma border. The government should engage with the Refugee Camp Committees and other refugee organizations, NGOs, UNHCR, and donors for an orderly transition from a closed-camp humanitarian-assistance model to an open reception-and-accommodation model that empowers refugees to become self-sufficient and prepares them to successfully reintegrate in Burma when they are able to repatriate voluntarily in safety and dignity. A strategy aiming to build livelihoods can only work, however, if refugees are allowed to leave the camps to work.

Meanwhile, all responsible agencies need to continue to provide food and other humanitarian aid to refugees who are unable to support themselves or who need transitional help as they move toward self-sufficiency. Also, whatever the longer term prospects for self-sufficiency or return, the authorities should immediately ensure that all refugees, including those living in camps, have full access to the Thai justice system and

that police and other security officials who abuse their authority by extorting and abusing refugees, asylum seekers, and migrants will be appropriately disciplined or prosecuted.

# Key Recommendations

## To the Royal Thai Government

- Enact a law that establishes criteria and procedures for recognizing refugee status and providing asylum that meets international legal standards.
- Sign and ratify the 1951 Refugee Convention and its 1967 Protocol.
- Make refugee status open to all nationalities according to the same criteria, consistent with the international refugee definition, including complementary forms of protection for people fleeing conflict.
- Discipline or prosecute as appropriate police and other security officials who extort or otherwise abuse refugees, asylum seekers, and migrants.
- Establish with the assistance of UNHCR a fair and transparent refugee screening and registration system for unregistered people living in the refugee camps on the Thai-Burma border.
- Ensure that any repatriation program for refugees from the Burmese border camps will fully engage with the refugees themselves based on their informed consent for return in safety and dignity, will include the active participation of UNHCR and NGOs on both sides of the border, and will be in accordance with international refugee and human rights law.
- Immediately release all detainees in Immigration Detention Centers whom UNHCR has recognized as refugees and provide asylum seekers with alternatives to detention, such as supervised release, while their claims are pending.
- Never detain irregular migrants indefinitely for the purpose of forcing them or their families to pay for their own deportation.
- Keep channels open for Nationality Verification for as long as needed to allow migrant workers to enter the process, and make the process for obtaining a work permit simpler, more transparent, less dependent on employers, less costly, and available in every province.

## Methodology, Scope, and Terminology

Human Rights Watch conducted research on Thai refugee policy principally from June 5-25, 2011 and from December 19, 2011 to April 25, 2012. This was supplemented by interviews Human Rights Watch conducted with refugees, asylum seekers, and migrants in 2008, 2009, and in May and June of 2012. The interviews with urban refugees and migrants in Thailand took place in Bangkok, Chiang Mai, and Mae Sot, and in the following refugee camps on the Thai-Burma border: Nu Po, Umpiem, Mae La, Mae Ra Ma Luang, Site 2/Ban Mae Surin, and Site 1/Ban Mae Nai Soi. Human Rights Watch also visited the Hsaw Poe Kee camp for internally displaced persons in Karen State, Burma in June and December 2011.

Human Rights Watch researchers interviewed 120 migrants and asylum seekers in Thailand, including 49 in refugee camps, 3 in the Suan Phlu Immigration Detention Center in Bangkok, and 68 living in urban areas. Human Rights Watch also conducted nine individual interviews with internally displaced persons in Burma and one group interview with six displaced persons. Human Rights Watch researchers also conducted nine interviews of migrants, refugees, and asylum seekers in Thailand in 2008 and in early 2009, including two by telephone.

Interviews with migrants, refugees, asylum seekers and internally displaced persons were conducted in English or with interpreters. Among the ethnicities of the 100 Burmese who were interviewed in Thailand, 47 were Karen, 30 Burman, nine Shan, nine Karenni, six Arakan, four Rohingya, two Mon, one Chin, and one Pa'O. Among other nationalities interviewed were nine Sri Lankan Tamils, five Vietnamese, three Ahmadi Pakistanis, one Lao Hmong, one Nepali, and one Somali.

Human Rights Watch interviewed 85 males and 44 females. There were no boys under age 18 interviewed for this report. There were 17 men from 18 to 29; 31 men in their thirties, 20 in their forties, 13 in their fifties and four in their sixties. Female interviewees included two girls ages 16 and 17, eight in the age range 18 to 29, 26 in their thirties, seven in their forties, and one 57 year old.

Individual interviews averaged about 45 minutes. Outside of camps, local service providers and migrant community members helped to identify interview subjects. In camps,

interview subjects were chosen from among refugees who volunteered to be interviewed after an introduction to a group as well as by community members.

All interviews outside camps were conducted in complete privacy with no one present other than an interpreter. Where a family member was present, this is always indicated in the text. However, though we strived to keep the interviews as private as possible, such complete privacy was not possible in the refugee camps, where family members were frequently present. When a family member was present during a camp interview, therefore, this is not specifically noted in the text.

The Human Rights Watch researchers conducting interviews were male; although Human Rights Watch learned from community-based organizations and other secondary sources about trafficking and sexual and gender-based violence (SGBV), we gathered almost no first-hand accounts on these matters, possibly because of reticence to discuss such issues with male interviewers.

In all cases, Human Rights Watch told all interviewees that they would receive no personal service or benefit for their testimonies and that the interviews were completely voluntary and confidential. All names of migrant and refugee interviewees are withheld for their protection and that of their families. The notation used in this report uses a letter and a number for each interview; the letter indicates the person who conducted the interview and the number refers to the person being interviewed. All interviews are on file with Human Rights Watch.

Human Rights Watch also interviewed nongovernmental organization and community-based organization personnel, UNHCR officials, diplomats, journalists, and other experts. We requested meetings with the Thai Ministry of Interior, National Security Council, and Ministry of Foreign Affairs, but only the latter agreed to meet with us. Human Rights Watch was not granted official permission to enter the refugee camps. At the Suan Phlu Immigration Detention Center, Human Rights Watch was allowed to enter the area reserved for lawyers and to interview three detainees in the presence of a local service provider, but was not permitted to tour the rest of facility, including the living quarters. Human Rights Watch held an off-the-record interview with the IDC administrator at Suan Phlu. We also submitted written questions to the Thai Ministry of Interior and the Ministry of Foreign

Affairs, but did not receive a response. Human Rights Watch also submitted questions to the Bangkok-based Asia regional office and the Thailand country office of UNHCR as well as a draft of the report. UNHCR's responses to our questions and comments on the earlier draft are reflected in this report.

Although international law defines *migrant workers*, it does not define migrants per se.<sup>1</sup> For purposes of this report, the term *migrant* describes the wide range of people living in Thailand without proper travel documents. It is intended as an inclusive rather than an exclusive term. In other words, to call someone a migrant in this report does not exclude the possibility that he or she may be an asylum seeker or refugee.

A *refugee*, as defined under the 1951 Convention Relating to the Status of Refugees, is a person with a "well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion" who is outside their country of nationality and is unable or unwilling, because of that fear, to return.<sup>2</sup> In addition to the Refugee Convention's narrow "well-founded fear of being persecuted" standard, the international community is progressively recognizing the need for international protection for people fleeing conflict who face the risk of serious harm if returned.<sup>3</sup> An *asylum seeker* is a person who is seeking protection and, as such, is trying to be recognized as a refugee or to establish a claim for protection on other grounds.

This report also uses the term *de facto refugees* to characterize people in Thailand who have fled conditions of conflict or persecution even if they have not registered asylum claims, been registered, or been officially recognized by Thai or UNHCR officials as *de jure*

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<sup>1</sup> International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Migrant Workers Convention), adopted December 18, 1990, G.A. Res. 45/158, annex, 45 U.N. GAOR Supp. (No. 49A) at 262, U.N. Doc. A/45/49 (1990), entered into force July 1, 2003.

<sup>2</sup> Convention relating to the Status of Refugees (1951 Refugee Convention), 189 U.N.T.S 150, entered into force April 22, 1954. <http://www.unhcr.org/refworld/docid/3be01b964.html> (accessed July 14, 2009).

<sup>3</sup> For example, article 15 of the European Union's Council Directive 2004/83/EC provides subsidiary protection based, among other things, on a "serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict." "Council Directive of 29 April 2004 on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons who Otherwise Need International Protection and the Content of the Protection Granted," 2004/83/EC, Official Journal L 304/12, April 29, 2004, [http://eur-lex.europa.eu/LexUriServ/site/en/oj/2004/l\\_304/l\\_30420040930en00120023.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/oj/2004/l_304/l_30420040930en00120023.pdf) (accessed April 25, 2012).



refugees. The absence of a legal framework for refugee-status recognition—or lack of access to procedures—does not obviate the reality of being a refugee. Refugees, it should be remembered, are people who meet the refugee definition whether or not they have been formally recognized as such.

This report uses the term *Burmese* to refer to any of the peoples of Burma, regardless of ethnic group. *Burmans* refer specifically to members of the majority ethnic group, typically Buddhists who live in the country's lowland areas.

# I. Background

Since the mid-1980s when Thailand began establishing refugee camps on its border with Burma, it has been a reluctant host to hundreds of thousands of Burmese refugees, as it had previously hosted large numbers of Cambodian, Lao, and Vietnamese refugees in camps along its other borders. These were all protracted situations, but Thailand eventually closed the Cambodian, Lao, and Vietnamese camps and most of the camp residents were resettled outside the region or returned home. In late 2009, Thailand closed Huay Nam Khao, the last remaining non-Burmese refugee camp, and forcibly returned the Lao Hmong who had been living there.<sup>4</sup>

While the Burmese refugee camps hold about 140,000 people, far larger numbers of Burmese—certainly more than one million and perhaps as many as three million—live and work in Thailand outside the camps. Smaller numbers of asylum seekers and refugees from a wide variety of other nationalities also live precariously in Thailand, which despite its long history of engagement with refugees—or perhaps because of it—has never signed or ratified the 1951 Refugee Convention and has no law that recognizes refugee status.

Thai government officials have made no secret of their desire to close the Thai-Burma border camps and to end that protracted situation as they did with the Cambodian, Lao and Vietnamese camps. In April 2011, the chief of Thailand's National Security Council, Tawin Pleansri, said that the Thai government was engaged in discussions with the Burmese government on the closing of the camps and the return of the refugees to Burma. "I cannot say when we will close down the camps but we intend to do it," he said.<sup>5</sup>

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<sup>4</sup> The Thais permitted the remaining 525 Lao Hmong "persons of concern" (including 157 of the 158 Nong Khai IDC Hmong, who had been forced back to Laos and then returned to Thailand on their own) and their relatives and families who were living in Bangkok and Lopburi to resettle to third countries at the end of 2010. See Seth Mydans, "Thailand Begins Repatriation of Hmong to Laos," *New York Times*, December 29, 2009, p A4, <http://www.nytimes.com/2009/12/28/world/asia/28hmong.html> (accessed July 30, 2012). See also, "Lao Hmong: DCM stresses USG position on Hmong, Thai claim Lao willingness to coordinate closely," December 4, 2009, Wikileaks cable, #09Bangkok3074, <http://wikileaks.org/cable/2009/12/09BANGKOK3074.html#> (accessed July 30, 2012).

<sup>5</sup> Boonradom Chitradon, "Thailand wants to close Myanmar refugee camps," Agence France Presse (AFP), April 11, 2011, [http://www.google.com/hostednews/afp/article/ALeqM5jqADq45HJoToPFSSo\\_l7o1xevUiw](http://www.google.com/hostednews/afp/article/ALeqM5jqADq45HJoToPFSSo_l7o1xevUiw) (accessed August 29, 2011).

When Human Rights Watch met with officials in the Thai Ministry of Foreign Affairs in June 2011, Director-General Vijavat Isarabhakdi of the Department of International Organizations cautioned against reading too much into “misleading” and “alarmist” newspaper articles that he said take quotes about refugee repatriation out of context. “We are looking at a possible day in the future when people might go back,” he said. “Not next week, [not] next month.”<sup>6</sup> In preparation for that “possible day,” in March 2012 Thai authorities began conducting surveys in three of the border camps, asking refugees if they preferred to repatriate, resettle, or integrate locally.<sup>7</sup>

Burmese government officials, too, signaled their interest in having the refugee camps closed and for the refugees to return. In a May 2012 speech, Burmese President Thein Sein called on exiles “who have been abroad for various reasons to come back home.”<sup>8</sup> In April 2012, the Burmese government’s Railways Minister Aung Min visited Karenni National Progressive Party (KNPP) officials in Mae Hong Son and told them he hoped to begin the process of return for internally displaced people (IDPs) and refugees by the start of the rainy season in June.<sup>9</sup>

The Thai and Burmese governments’ pronouncements about repatriation have caused anxiety in the Burmese refugee camps and prompted an open discussion about the merits of the camps and the prospects for repatriation. (For the views of camp refugees on repatriation, see Chapter II, The Repatriation Option.) UNHCR’s regional representative in 2011, Jean-Noel Wetterwald, wrote an opinion piece for the *Bangkok Post* positing reasonable benchmarks for repatriation, saying, “The UN refugee agency is the first to say we would like to close the camps,” but adding that returns should be voluntary. This would happen, he said, as the “natural outcome...when conditions are right at home.” He added,

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<sup>6</sup> Human Rights Watch interview with Vijavat Isarabhakdi, director general, Department of International Organizations, Ministry of Foreign Affairs, Bangkok, June 20, 2011.

<sup>7</sup> Saw Yan Naing, “Thai Authorities Survey Refugees over Repatriation,” *The Irrawaddy*, April 24, 2012, <http://www.irrawaddy.org/archives/3016> (accessed April 25, 2012).

<sup>8</sup> President Thein Sein speech quoted in “Myanmar urges millions of exiles to return,” *channelnewsasia.com*, May 12, 2012, citing *New Light of Myanmar*, [http://www.channelnewsasia.com/stories/afp\\_asiapacific/view/1200821/1/.html](http://www.channelnewsasia.com/stories/afp_asiapacific/view/1200821/1/.html) (accessed June 1, 2012).

<sup>9</sup> Saw Yan Naing, “Government Wants to Start Repatriating Refugees: Minister,” *The Irrawaddy*, April 23, 2012, <http://www.irrawaddy.org/archives/2937> (accessed April 25, 2012).

“Only when refugees feel that Burma is truly safe, that they will not risk their lives by going back, will they want to go home.”<sup>10</sup>

Although the signing of ceasefire agreements and significant political changes in Burma lay the groundwork for future returns, formidable obstacles still remain, including the contamination of an estimated 47 townships in eastern border states from landmines,<sup>11</sup> the continued lack of access to the eastern border region for UNHCR and other international monitors and humanitarian service providers, and the absence of substantive political agreements that would ensure a sustainable peace in the border region.

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<sup>10</sup> Jean-Noel Wetterwald, “Conditions Must Be Right for Refugees To Go,” *Bangkok Post*, April 14, 2011, <http://m.bangkokpost.com/opinion/231873> (accessed August 29, 2011).

<sup>11</sup> Email from Yeshua Moser-Puangsuwan, researcher, Landmine Monitor, to Human Rights Watch, June 1, 2012.

## II. Refugees in Camps on the Thai-Burma Border

“It is so strict to live here. There is nothing to do. I am not allowed to go outside the camp. There is no job, no work. So much stress and depression. I feel that I am going to go crazy here.”

—Burmese refugee, Nu Po camp, Tak province, January 2012

Mired in Thailand’s policy of restrictive encampment, dependency on flagging humanitarian support programs, and a dysfunctional system for determining refugee status, residents of refugee camps in Thailand are living in a situation of protracted vulnerability and are at ongoing risk of exploitation and abuse.

The only recognized space for asylum in Thailand for Burmese refugees is in one of nine officially recognized camps along the country’s 2,107-kilometer (1310-mile) border with Burma.<sup>12</sup> While these camps offer their residents some element of protection, the Thai government imposes harsh restrictions on refugees’ freedom of movement, prohibiting residents from leaving the camps, earning income, or obtaining a good quality education. To the Thai government, those who leave the camps without permission forfeit their claim to asylum and become illegal immigrants subject to arrest, detention, and deportation.<sup>13</sup> Yet by remaining in the camps without any source of income, refugees become completely dependent on aid agencies, who are themselves subject to the donor fatigue of the

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<sup>12</sup> When large numbers of Burmese from various ethnic groups began seeking refuge in Thailand in the 1980s, the Thai government permitted them to settle in villages along the border and in urban areas, including Bangkok. However, over the years, space for asylum shrunk as Thailand shifted toward closer political and economic relations with the Burmese government and as Thai security officials sought to exert greater control over the refugee population on the border, in part due to cross-border attacks by the Burmese military and its proxy forces. Since 2004, the Thai government and UNHCR have ceased to recognize Burmese asylum seekers outside the camps. See UNHCR Regional Office for Thailand, Cambodia, Laos and Vietnam, “New UNHCR registration process for applications from Myanmar asylum-seekers as of 1 February 2004,” January 31, 2004. A small group of Shan refugees inhabit a tent camp on the border, and while this group receives humanitarian aid, neither the Thai government nor UNHCR recognize the camp’s presence or the claims to asylum among its residents.

<sup>13</sup> According to the Thai Immigration Act of 1979, all those who enter the country illegally are subject to immediate deportation. However, section 17 of this law gives the Cabinet and the Minister of the Interior the power to stay this deportation and allow individuals to remain in Thailand temporarily. Burmese asylum seekers are allowed to seek refuge in Thailand temporarily as long as they stay within the confines of the camps.

international community, which has been supporting Burmese refugees since the mid-1980s. Additionally, the Thai government has all but halted its practice of status determination, leaving over a third of the 140,000 refugees and asylum seekers unregistered, and thus considered by the Thais to be illegal.<sup>14</sup>

Despite UNHCR having a presence on the Thai-Burma border since 1998, the Thai authorities have not allowed the UN refugee agency to have an operational role in administering the camps. Its role, therefore, is extremely limited. Except for the most serious cases, most encamped refugees go without any direct protection from UNHCR. The agency has demonstrated little ability to counter the Thai government's ad hoc policies of containment and provides virtually no protection to Burmese asylum seekers outside the camps. In the four camps in Mae Hong Son Province, UNHCR camp passes are contingent on the permission of district-level Ministry of Interior officials within the Thai government.

Most of the camps are isolated in the mountains and at the ends of dirt roads far from cities and towns, often at long distances from hospitals and sometimes without a mobile phone signal. Three of the camps—Mae La, Tham Hin, and Ban Don Yang—are overcrowded.<sup>15</sup> Many refugees have lived in these camps for decades; some adolescents were born in the camps and know no other place. After so many years with such restrictions on movement, proscriptions on the right to seek employment, and dependency on outside aid, it is not surprising that many camp residents experience domestic abuse, depression, and other social and mental health problems.<sup>16</sup>

A member of the Karen Refugee Committee, the primary coordinating body for the predominantly Karen refugee camps, told Human Rights Watch in March 2012:

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<sup>14</sup> Thai Burma Border Consortium, "Burmese Border Displaced Persons: February 2012," <http://www.tbtc.org/camps/2012-02-feb-map-tbbc-unhcr.pdf> (accessed April 26, 2012).

<sup>15</sup> UNHCR, in its *Handbook for Emergencies* (2000), states that, "the recommended minimum surface area is 45m<sup>2</sup> per person when planning a refugee camp." In Tham Hin there is 9m<sup>2</sup>/person, in Ban Don Yang, there is 31 m<sup>2</sup>/person, and Mae La has 39 m<sup>2</sup>/person (email correspondence with Sally Thompson, deputy director, Thailand-Burma Border Consortium (hereafter, TBBC), March 29, 2012).

<sup>16</sup> Human Rights Watch interview with Premiere Urgence Aide Medicale Internationale (PU-AMI), Mae Sot, March 5, 2012. In a 2006 study, PU-AMI found that 50 percent of adult camp residents suffer from mental health problems. Anti-depressants constitute one of the most common drug prescriptions for refugees.

My heart is heavy, especially for the young people who are growing up in the camp, like teenagers. When I walk through the camp and I see a lot of young people, especially students, I feel their need for rights; I feel for their futures. I think, “If I am that little girl, over the next 10 years how can I survive? How can I support myself?”<sup>17</sup>

## Registration, Refugee Screening, and Headcounts

The Thai government asserts that residents of refugee camps who are not screened are illegal in Thailand. However, it does not have an effective mechanism to consider the credibility of asylum claims and has never conducted refugee status determination (RSD) in a way that meets international standards.

The Ministry of Interior’s attempt to govern admission to the camps through the establishment of Provincial Admission Boards (PAB) has been partial and interrupted from its earliest iteration.<sup>18</sup> Between 1999 and 2001 the PABs screened asylum seekers based on the criteria of whether or not they left Burma “fleeing fighting and the consequences of civil war,” a standard that does not comport with the international refugee definition.<sup>19</sup> The boards then ceased comprehensive registration until 2005 at which point they adjusted the criteria to include those fleeing Burma for “political reasons.”<sup>20</sup> During that time, Thai authorities allowed UNHCR to participate as a voting member of the PABs, and allowed it to appeal rejected cases to an appeals board in Bangkok. Between late 2005 and the first

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<sup>17</sup> Human Rights Watch interview with Karen Refugee Committee, Mae Sot, March 7, 2012.

<sup>18</sup> The Thai government recognizes those who pass the PAB only as displaced people who are allowed to live in temporary shelters pending deportation, not as refugees. UNHCR, however, recognizes all of those who were registered by the PAB as refugees.

<sup>19</sup> Vitit Muntarbhorn, “Refugee Law and Practice in the Asia and Pacific Region: Thailand as a Case Study,” UNHCR (2005), p. 5. See also UNHCR “Developing a medium-term strategy for the refugee situation along the Thailand-Burma border: The Provincial Admission Board” February 14, 2008. UNHCR only became a member of the PAB in 2005. Prior to this, it served as an observer.

<sup>20</sup> The majority of those deemed to be “fleeing political persecution” are political activists or political prisoners, typically from urban areas in Burma. By and large, this category does not apply to the majority of persons coming from the ethnic minority regions of Burma.



quarter of 2009, this PAB process regularized the status of about 40,000 Burmese refugees.<sup>21</sup> However, since mid-2006, the PABs have registered almost no new cases.<sup>22</sup>

The Ministry of Interior reconstituted PABs in 2009 as a pilot program to “pre-screen” refugees in one camp in each of the four provinces where camps are located. The idea was to weed out people whose claims for protection were manifestly unfounded while waiting until some later date to conduct proper RSD for the screened in.

The PABs conducted individual interviews at Site 1, Nu Po, Ban Don Yang, and Tham Hin between July and September 2009. Nearly three years later there had still not been any official announcement of the results of the screenings. The pre-screening pilot was not implemented in any of the remaining five camps, and no action was taken as a result of the pre-screening (either by removing those screened out or further processing those who passed the pre-screening); in fact, none of the 11,000 pre-screened people became “registered” as a result of the process.<sup>23</sup>

Informally, the Ministry of Interior let it be known that in three of the four camps about 70 to 80 percent of the refugees were pre-screened in. However, in the two southernmost camps the opposite occurred; in Tham Hin, about 80 to 90 percent were pre-screened out, and Ban Don Yang, nearly everyone was screened out.<sup>24</sup> Although the demographic profile of Tham Hin residents differs little from those of the other camps, the PAB conducting the screening there appears to have used a cut-off date based on when fighting last occurred directly across the border from the camp, and to have interpreted “persons fleeing fighting” in an overly narrow manner that excluded people fleeing the effects of civil conflict.<sup>25</sup>

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<sup>21</sup> Email from UNHCR to Human Rights Watch, June 14, 2012.

<sup>22</sup> The PABs convened to consider the claims of those fleeing in the aftermath of the demonstrations that took place in Rangoon in late 2007. In Tak province, they also considered claims for family unity up until 2007.

<sup>23</sup> Email from UNHCR to Human Rights Watch, June 14, 2012. In February 2012, the Ministry of Interior formed a working group with UNHCR to draft pre-screening criteria, which would enable the Thai government’s subcommittee on displaced persons to decide whether and on what basis to review the 11,000 pre-screened cases and to begin more screenings, but as of mid-June 2012, the working group had not yet met.

<sup>24</sup> Human Rights Watch interview with Sally Thompson, deputy director, TBBC, Bangkok, June 8, 2011 and email from TBBC to Human Rights Watch, June 29, 2012.

<sup>25</sup> Human Rights Watch interview with Sally Thompson, June 8, 2011.

The Thai Army Ninth Division, which controls Tham Hin, initially told the NGOs working there that they could provide food rations only to refugees who had been registered or who had undergone pre-screening, thus excluding those who were rejected by the pre-screening process. At one point armed soldiers entered the camp to check off names against a list during food distribution. But because the government has made no final decision on the pre-screening exercise, and no one has been officially screened out, the Ninth Division allowed food distribution to resume.

Human Rights Watch visited two of the camps where pre-screening exercises took place, Nu Po and Site 1/Ban Mae Nai Soi. Most of those with whom Human Rights Watch spoke indicated that their pre-screening interview took place in a private environment and all said they had sufficient opportunity to explain to the ministry officials their reasons for leaving Burma and seeking refuge in the camps. However, one Karenni refugee in Site 1 told Human Rights Watch that her interview was not private, saying, “At one table was the interviewer, an interpreter, and me. There were a number of tables. ... If we listen carefully we can hear what is happening at the other tables.”<sup>26</sup>

Some refugees also expressed confusion regarding the pre-screening process, thinking that they were now protected from deportation. A refugee living in Nu Po said, “I feel that I am legally allowed to live here. I don’t know how long I’ll have to stay here to get resettlement in the US, but I know that after I had pre-screening I don’t have to be scared of anybody. I feel legal to live in the camp.”<sup>27</sup> However, the Thai government never approved those screened in as registered and in February 2012, the Thai government’s sub-committee on displaced persons directed the Ministry of Interior and UNHCR to draft new pre-screening criteria, signaling a rejection of the 2009 pre-screening process.<sup>28</sup>

The Thai government regards all those who entered the camps since November 2005 as unregistered and thus illegal camp residents, a group that has swelled in number to approximately 52,000 people as of February 2012, though the Thai Burma Border

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<sup>26</sup> Human Rights Watch interview, A30, Site 1, camp, Mae Hong Son province, January 26, 2012.

<sup>27</sup> Human Rights Watch interview, A22, Nu Po camp, Tak province, January 11, 2012.

<sup>28</sup> Email from UNHCR to Human Rights Watch, June 14, 2012.

Consortium (TBBC) believes the actual number is about 12,000 higher than that.<sup>29</sup> A resettlement program initiated in late 2005 has resulted in the departure of more than 78,000 registered Burmese refugees by mid-year 2012. As registered refugees have departed the camps through resettlement, new Burmese asylum seekers have continued to arrive and the proportion of unregistered people in the camps has grown, as shown by the graph below.<sup>30</sup> The graph also shows that despite the departure of the more than 78,000 Burmese refugees through resettlement, the overall camp population has remained at an almost constant 140,000 since resettlement began.

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<sup>29</sup> Thailand Burma Border Consortium, "Burmese Border Displaced Persons: February 2012," <http://www.tbbsc.org/camps/2012-02-feb-map-tbbc-unhcr.pdf> (accessed on April 11, 2012). According to Sally Thompson of the Thai-Burma Border Consortium, about 12,000 of the registered refugees do not actually live in the refugee camp, so the official figure of about 87,000 registered refugees should be about 75,000. Subtracting this figure from the TBBC verified caseload of about 139,000 people living in the camps, there would be approximately 64,000 unregistered camp residents, which is close to half of all camp residents. Email from Sally Thompson, TBBC, to Human Rights Watch June 30, 2012. See also, TBBC, "Monthly Population Report: February 2012" on file with Human Rights Watch.

<sup>30</sup> "UNHCR resettlement departures by origin and country of asylum, 1996-2005," *UNHCR Statistical Yearbook 2005*, p. 144. For 2006 through 2011 resettlement statistics:

Thailand Burma Border Consortium, "Programme Report July to December 2005," p. 2;

Thailand Burma Border Consortium, "Programme Report July to December 2006," p. 2;

Thailand Burma Border Consortium, "Programme Report July to December 2007," p. 2;

Thailand Burma Border Consortium, "Programme Report July to December 2008," p. 2;

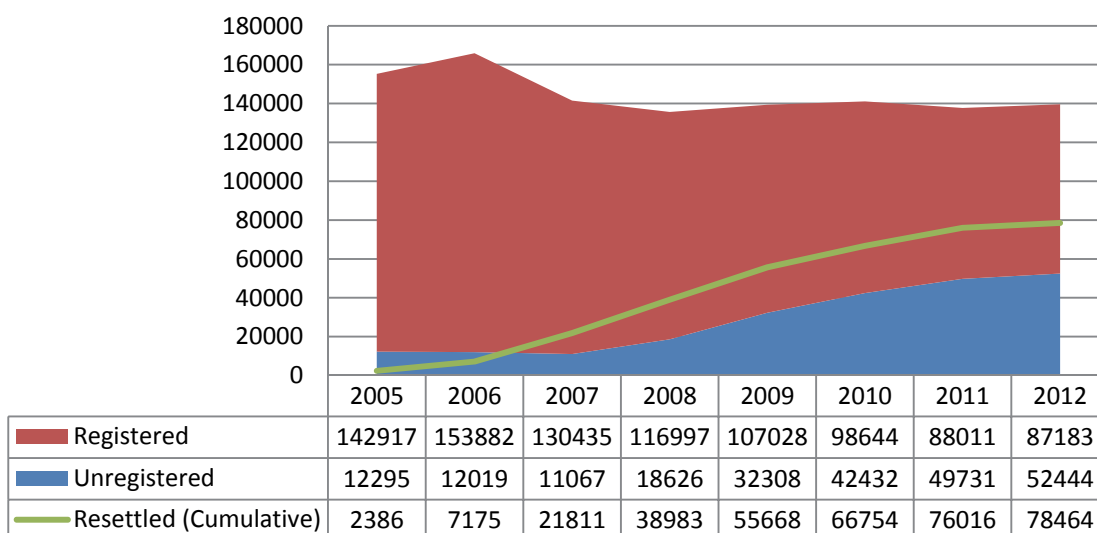
Thailand Burma Border Consortium, "Programme Report July to December 2009," p. 8;

Thailand Burma Border Consortium, "Programme Report July to December 2010," p. 2;

Thailand Burma Border Consortium, "Programme Report July to December 2011," p. 3.

<sup>31</sup> Statistics are from UNHCR and TBBC; Registration figures are not available for 2005 and 2006. The resettlement figures represent cumulative totals. See footnote 29, in which TBBC disputes the population of registered and unregistered in the camps. If TBBC is correct, the proportion of unregistered would track almost exactly the line showing the number of refugees resettled.

## Burmese Refugee Camp Population, Registered, Unregistered, and Resettled



In March 2012, the Thai government accepted a UNHCR proposal to start fast-track PAB screening for camp residents who have not been able to resettle with the rest of their family because of their unregistered status, who face serious threats to their safety inside the refugee camps, or who have health conditions that require treatment unavailable in Thailand.<sup>32</sup> As of mid-June 2012, however, the fast-track PABs had not started processing cases. While such a process is much needed for vulnerable cases, UNHCR is expected to refer approximately 4,500 of the current caseload of unregistered camp residents for fast-track PAB processing.<sup>33</sup> All others will remain unregistered.

One consequence of the Thai government's failure to register more than a third of the camp population has been that humanitarian agencies, the Thai government, and the refugees themselves have had to fashion various ad hoc approaches for determining who should receive food and aid.

<sup>32</sup> Email from UNHCR to Human Rights Watch, June 14, 2012.

<sup>33</sup> As of February 20, 2012, UNHCR had selected from the total population of unregistered residents 920 cases for submission to the fast-track PAB process.

Largely in response to donor governments' concerns about assistance to large numbers of unregistered people, the Thai-Burma Border Consortium (TBBC), the umbrella coalition representing the NGOs that provide food, non-food aid, and services to the camps, conducted a verification exercise over a three-year period to create a database of people living in the camps for determining who should get food rations. Refugees and asylum seekers are included in the TBBC "verified caseload" irrespective of whether or not they are registered by the Thai authorities.<sup>34</sup> As of February 2012 there were 139,627 verified camp residents, while UNHCR and the Ministry of Interior recognized only 87,183 refugees.<sup>35</sup>

Additionally, the Royal Thai Army and the local governments in each of the four provinces in which refugee camps are located—Mae Hong Son, Tak, Kanchanaburi, and Ratcharaburi—all differ in their methods of counting and regulating the camp population. Some differences even exist from one Thai district to another.

The Ministry of Interior-appointed camp commanders, or *palad* in Thai, order the Territorial Volunteer Defense Corps (known by its Thai acronym, *Or Sor*) to conduct headcounts of the camp populations. As recently as 2008, registered refugees who were absent during a headcount, whether they were out of the camp or merely away from their home, risked "de-registration." One woman who lived in Site 1 in Mae Hong Son province since 2003 told Human Rights Watch that in 2008 she was surprised to find that her name was on a list of de-registered persons. When she went to the camp commander's office to inquire, "[t]he person sitting there told me, 'It was because you went outside the camp and your name was deleted.'" However, she is sure that this could not be possible:

As I know, I am always at my workplace [at the camp hospital] and I do not go out so I don't understand why my name was deleted. I went to the clinic and I looked at the roster for that day and my signature was there. Maybe [*Or Sor*] went around the camp doing a headcount and I was at my workplace and not at home when they came by.<sup>36</sup>

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<sup>34</sup> Thailand Burma Border Consortium, "2010 Programme Report: January to June" (2010), p. 2.

<sup>35</sup> Thailand Burma Border Consortium, "Burmese Border Displaced Persons: February 2012," <http://www.tbbc.org/camps/2012-02-feb-map-tbbc-unhcr.pdf> (accessed on April 11, 2012).

<sup>36</sup> Human Rights Watch interview, A30, Site 1, camp, Mae Hong Son province, January 26, 2012.

With no avenue to appeal her de-registration, this woman lost her right to live in the camp and is at increased risk of being deported, though UNHCR reports that they do not delete the names of de-registered individuals from their database and still consider them refugees.<sup>37</sup>

The Thai army and its paramilitary border guard units, the Rangers (known as *Tahan Phran*, which translates literally to “hunter-soldiers”), and the Thai Border Police (BPP), or *Tor Chor Dor*, have also been known to conduct their own screenings, sometimes in collaboration with ethnic minority armed groups. As a Karenni commander in Mae Hong Son explained to Human Rights Watch in January 2012, “The new arrivals must pass through the border base of the Thai military before they enter into the camp.<sup>38</sup> Once we inform the Thai army of the number of people crossing, they won’t interfere with their entry.”<sup>39</sup> A refugee serving on the Site 1 camp committee, an advisory body that assists with the management of camp life, added:

It is a must that we have to show [new arrivals] to the Thai troops at the border base. Even if there is no interview there to assess the temporary stay or access to the refugee camp, passing the border police is a must. Even if you somehow enter the refugee camp [without being screened by the Thai military], to be able to access rations and to be accepted by the committee you have to go back to the border and get on the list and give the photo to show them that you passed through their post.<sup>40</sup>

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<sup>37</sup> Interview with UNHCR official, Mae Hong Son, February 14, 2012.

<sup>38</sup> The military unit on this part of the Thai-Burma border is the *Chor Kor Lor* 17, known as Taskforce 17. Also present are the Border Patrol Police, known in Thai as *Tor Chor Dor*.

<sup>39</sup> Human Rights Watch interview with commander (name withheld at his request), Karenni Army, Nai Soi village, Mae Hong Son province, January 26, 2012.

<sup>40</sup> Human Rights Watch interview, A32, Site 1 camp, Mae Hong Son province, January 26, 2012. While the respondent stated “police” in the interview, it is likely he was referring to the Royal Thai Army’s Taskforce 17. All other sources interviewed by Human Rights Watch note that while the Border Patrol Police is present on the border, refugees must be checked by the Thai Army.

Chi Pu, a 19-year-old Karenni man, arrived in Site 1 in April 2011 and noted that this screening process took place on both sides of the border; before he was able to cross into Thailand, Karenni officials assessed his asylum claims:

When I arrived at Nya Mu, we stayed in the barracks for eight days with the Karenni soldiers. One of the Karenni township officers came and took our picture and he went to meet with the Thai Army. He asked us our name, our village, why we came to the border to leave. I told him that in my village the Burmese Army forced us to porter and came to force us to join the army and so I decided to leave and I asked the Karenni soldiers to help me. He told me, “If you want to come with your people we can allow you to live in the refugee camp. As you cannot go back home, you can stay in this camp.”<sup>41</sup>

In 2008, refugees in Site 2, Ban Mae Surin, and Mae Ra Ma Luang told Human Rights Watch that *Tahan Phran* entered the camps and conducted brief interviews with them. A Karen woman living in Mae Ra Ma Luang said:

The time that [*Tahan Phran*] came with guns, they kept us in four groups. They asked, “Why did you come [to Thailand] and what happened?” We replied, “The Burmese soldiers troubled us.” As the Thai authorities were with guns, we dared not speak a lot. We were nervous and afraid and our bodies shook. I just stayed quiet and embraced my baby. We were scared and we did not even hear what they were talking about.<sup>42</sup>

Days later, the *Tahan Phran* forced this woman and dozens of other new arrivals from Mae Ra Ma Luang and Mae La Oon camps onto a boat and deported them to Ei Tu Hta IDP camp in Burma.<sup>43</sup>

After five years without a registration process, in 2011 the Karen Refugee Committee (KRC) and Karenni Refugee Committee (KnRC) developed their own screening system through the

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<sup>41</sup> Human Rights Watch interview, A43, Site 1, camp, Mae Hong Son province, February 16, 2012.

<sup>42</sup> Human Rights Watch interview, A104, Mae Ra Ma Luang camp, Mae Hong Son province, August 2, 2008.

<sup>43</sup> Human Rights Watch, “Thailand: Stop Forcible Returns of Karen Refugees to Burma,” July 18, 2008.



establishment of new arrival committees, with the support of TBBC. According to one staff member of the KRC's Camp Management Support Program, the work of the new arrivals committee "is not part of the MOI/UNHCR screening process," but at the same time said, "If you are not verified by the new arrivals committee, then you won't be eligible to get rations."<sup>44</sup> While KRC and KnRC set up the new arrivals committees as a way to screen beneficiaries for rations, the criteria they use and the questions they ask relate more to new arrivals' claims to asylum than to their need for food.<sup>45</sup> Instead of kicking new entrants who fail to meet the screening guidelines out of the camp, the committees prohibit them from receiving rations and housing materials, leaving them with little choice but to leave on their own.<sup>46</sup>

The numbers from the new arrival committees' 2011 records suggest that in some camps, especially Mae La, up to half of the people who enter the camps leave within a matter of weeks and do not show up for their interview with the committees. This group never receives rations. The committees accept most of those who remain, though the percentages seem to vary from camp to camp with the largest percentages rejected from Mae La (approximately 10 percent).<sup>47</sup>

## Cuts to Essential Services

With growing numbers of unregistered refugees in the camps, a number of donors say that there is no credible way to know who their beneficiaries are. Though there is no systematic quantitative evidence of new arrivals' motivation for entering the camps, some donors express concern that among the growing unregistered population there are many who may not qualify as refugees.<sup>48</sup> The 2012 funding statement for the Humanitarian Aid and Civil

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<sup>44</sup> Human Rights Watch interview with KRC-Camp Management Support Program, Mae Sot, March 7, 2012.

<sup>45</sup> "KRC and KnRC NAC guidelines," 2011, on file with Human Rights Watch; "New Arrivals Documenting and Verifying System," 2011, on file with Human Rights Watch.

<sup>46</sup> Human Rights Watch interview, A32, Site 1, January 26, 2012.

<sup>47</sup> "NA Verified List 2010-2011," Camp Management Support Program 2011, on file with Human Rights Watch.

<sup>48</sup> An EU Strategic Assessment cites a UNHCR/authorities survey of new arrivals in Tham Him camp in 2007, shortly after the United States began its major resettlement program out of the camps. "About half of all new entrants stated resettlement as their prime motive for entry/re-entry to the camp." "Strategic Assessment and Evaluation of Assistance to Thai-Burma Refugee Camps," AGRER Consortium, Delegation of the European

Protection department of the European Commission (ECHO) states, “As less people are fleeing fighting in Burma/Myanmar, the number of third-country ‘resettlement seekers,’ economic migrants or students residing in the camps appears to be on the increase.”<sup>49</sup> In 2012, in response to what it regarded as a decreasing beneficiary population—but without any credible data to back up its assertion—ECHO said it would target approximately 70 percent of camp residents as part of gradually phasing out assistance to encamped refugees. This signifies a 20 percent decrease, or €1.6 million, and comes after similar cuts in 2011 and others in 2010.<sup>50</sup> Between 2007 and 2012, ECHO has decreased funding from €9.5 million to €6.5 million,<sup>51</sup> reflecting an overall decrease in support for the same time period, border-wide.<sup>52</sup>

While the EU is shifting funding responsibility on the border from ECHO to EU-Aid to Uprooted People, ECHO will be redirecting its support towards humanitarian assistance inside Burma.<sup>53</sup> ECHO argues that the nature of aid on the Thai-Burma border increasingly prolongs conflict in eastern Burma and that the protracted nature of the camps means funding should be more development-focused.<sup>54</sup> EU-AUP funding is, in fact, directed more

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Commission, Thailand, Final Report, May 2008 (hereafter “Strategic Assessment and Evaluation”), p. 31, citing a UNHCR survey of 2,000 unregistered persons.

<sup>49</sup> ECHO, “Humanitarian implementation plan (HIP) Burma/Myanmar and Thailand” ECHO 2012 ECHO/-XA/BUD/2012/91000 (<http://ec.europa.eu/echo/files/funding/decisions/2012/HIPs/Myanmar-Thailand.pdf>). They note, “ECHO will continue gradually to reduce its humanitarian aid to the refugee camps,” p. 2.

<sup>50</sup> Ibid., p. 5.

<sup>51</sup> “COMMISSION DECISION on the financing of humanitarian operations from the general budget of the European Communities in South East Asia,” ECHO/-XA/BUD/2007/01000, European Commission – Humanitarian Aid and Civil Protection, November 6, 2007, [http://ec.europa.eu/echo/files/funding/decisions/2007/thailand\\_01000.pdf](http://ec.europa.eu/echo/files/funding/decisions/2007/thailand_01000.pdf) (accessed on April 20, 2012).

<sup>52</sup> Thailand Burma Border Consortium, “Programme Report, July to December 2011,” <http://tbcc.org/resources/resources.htm#tbcc> (accessed on April 20, 2012).

<sup>53</sup> “Humanitarian implementation plan (HIP) Burma/Myanmar and Thailand” ECHO, February 24, 2011 (<http://ec.europa.eu/echo/files/funding/decisions/2011/HIPs/burma-myanmar-thailand.pdf>). See also “Supporting document to the Commission Decision on the approval and financing of a GLOBAL PLAN for humanitarian Actions in Burma/Myanmar and Thailand from the general budget of the European Union,” ECHO/-XA/BUD/2010/01000, European Commission – Directorate General for Humanitarian Aid (December 2009). ECHO states, “Donors agree that it is imperative to move from hand-outs towards more long-term and sustainable solutions which include livelihood alternatives,” p. 8.

<sup>54</sup> Human Rights Watch interview with David Verboom, head of Regional Support Office, ECHO, Bangkok, June 22, 2011.

toward promoting livelihoods than to humanitarian aid, but the Thai policy of closed encampment means that donors' efforts to promote livelihoods are ineffective and do not benefit most refugees.

Though the US State Department's Bureau of Population, Refugees, and Migration has increased support to the camps (it appears, in part, to offset ECHO decreases), refugees in the camps are experiencing cuts in basic assistance, such as food and shelter, because of the combination of donor cuts, unfavorable exchange rates, and commodity price increases. As long as Thailand maintains its closed camp policy and forbids refugees from working legally outside the camps, the cutbacks in direct humanitarian assistance and reprogramming of aid toward promoting livelihoods are not likely to result in greater self-sufficiency, but rather to more destitution and increased reliance on risky, illegal employment outside the camps to make ends meet.

Another factor that has had a negative impact on education, health care, and other social services has been the loss of many of the most capable refugee teachers, health workers, and other skilled and educated refugees through resettlement. Sally Thompson, the deputy executive director of TBBC, has seen the negative consequences for the residual population living in the camps. "Teachers and health workers are less experienced. We have had to go to a more basic level of training and there has been a decline in services."<sup>55</sup>

### *Health Care*

Between 2010 and 2012, because of funding cuts from ECHO and unfavorable exchange rates, health organizations providing humanitarian assistance to the seven predominately Karen refugee camps had to drastically decrease their budgets. For example, in 2010, the French medical NGO, Premiere Urgence Aide Medicale Internationale (PU-AMI), which supports health care in three camps, underwent a 40 percent budget cut, forcing significant downsizing of their health outreach staff and scaling back of preventative and mental health care. PU-AMI notes that ECHO had been their primary donor prior to the

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<sup>55</sup> Human Rights Watch interview with Sally Thompson, deputy executive director, TBBC, Bangkok, June 9, 2011.

draconian cuts.<sup>56</sup> Other healthcare NGOs expressed similar budget-related concerns to Human Rights Watch, but did not want to be identified publicly.

While local Thai hospitals are willing to treat patients from camps, health-focused NGOs pay the bills.<sup>57</sup> Some of the NGOs facing such severe budget cuts must now make difficult decisions about how to allocate their care. One camp-based refugee health worker told Human Rights Watch that cuts in funding mean that “we’re only able to refer the most urgent cases.”<sup>58</sup>

### *Shelter Materials*

TBBC reported that donor cuts, inflation, exchange rates, and rising commodity prices have affected their ability to provide sufficient support to refugees.<sup>59</sup> In 2011, TBBC cut the provision of shelter materials to the camps by 50 percent.<sup>60</sup> Because the Thai government prohibits the construction of permanent homes and structures, the border camps are almost entirely made up of bamboo and teak leaf thatch, which have to be replaced every one or two years because of decay.<sup>61</sup>

The shortage in supply of shelter materials drives many refugees to purchase and sell goods traded on the black market or to sneak out of camp and break Thailand’s strict

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<sup>56</sup> Human Rights Watch interview with Premiere Urgence Aide Medicale Internationale (PU-AMI), Mae Sot, March 5, 2012. Another health and sanitation organization had to reduce its budget by 20 percent in 2012 after funding cuts. The NGO asked to remain anonymous. Human Rights Watch interview with staff from health NGO, Chiang Mai, April 26, 2012.

<sup>57</sup> The Thai hospitals that provide services to camp residents report significant deficits, which they assert come from their efforts to provide low-cost, albeit not free, assistance to refugees.

<sup>58</sup> Human Rights Watch phone interview with NGO worker focused on health, April 26, 2012.

<sup>59</sup> See TBBC announcement, December 15, 2011, [www.tbbsc.org](http://www.tbbsc.org) (accessed April 5, 2012). TBBC reported that their 2011 budget would be 56 million baht (US\$1.9 million) less than 2010. TBBC Program Report, Jan.-June 2011, p. 72.

<sup>60</sup> TBBC Program Report, Jan.-June 2011, p. 115. TBBC reports that cuts to the provision of shelter materials means that no new houses can be built and that community structures will go un-repaired.

<sup>61</sup> There are some small exceptions to the stipulation that refugee camps be made entirely out of temporary materials. Schools may be built with metal poles and galvanized steel roofs, though concrete is not permitted and the schools must be “easy to dismantle.” See Ministry of Interior, “Guidelines for Government and NGO Officials including Relevant Agencies on Providing Services to Displaced Persons from Burma in the Temporary Shelters for Displaced Persons from Burma in Kanchanaburi, Tak, Mae Hong Son and Ratchaburi: 2012,” sec. 7(1).

forestry laws.<sup>62</sup> Over the years, Thai government officials have blamed the depletion of Thai forests on refugees.<sup>63</sup> Camp residents caught in violation of Thailand's forestry laws face severe punishment.<sup>64</sup>

A 35-year-old Karen resident of Mae La explained the dilemma of not being provided bamboo and not being allowed to go out and cut it:

This year and last year we didn't get the housing material from TBBC. For me, I am very afraid to go to the mountainside to get the bamboo. [Thai authorities] don't allow us to cut the bamboo or collect the leaves. We keep trying to get those materials, but I'm afraid to go out now. I want to know why they don't give us the bamboo or leaves but they don't allow us to go and find those materials for ourselves.<sup>65</sup>

Most of the new arrivals with whom Human Rights Watch spoke said that family or friends helped them find a house to live in. One refugee who knew no one and could not afford to purchase a house in the camp described the challenge of building her own house in Umpiem Mai camp with so few materials:

I didn't have a place to go. Nobody knew me very well, so we went to the area where the two hills meet in section one. It is not a good place, but we had to go there. We didn't have any leaves to make a roof or bamboo to

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<sup>62</sup> Thai Forest Act B.E. 2484 (1941), revised 2006.

<sup>63</sup> "Don't Support Burmese Dissidents, Tak Governor Tells NGOs," *The Irrawaddy*, May 24, 2011. See also Naw Seng, "Deforestation Claims Denied," *The Irrawaddy*, September 6, 2002. Thai authorities began to prohibit refugees' cutting of bamboo in areas surrounding the camps on an ad hoc basis starting in the late 1990s, claiming the practice's disastrous environmental and social impact for neighboring communities. Thai Forest Act is more focused on the large-scale logging operations or the logging of valuable resources, such as teak; Thai authorities rarely rely on the Forest Act to punish the unlicensed cutting of bamboo, which is widespread. Instead Thai authorities typically charge refugees caught cutting bamboo in areas surrounding the camps with being in Thailand illegally, punishable with brief imprisonment and deportation.

<sup>64</sup> The Thai Forest Act B.E. 2484/2549 states that those convicted of illegally logging teak are subject to up to 20 years in prison (sec. 69). Illegally logging other wood, such as bamboo, can be punished by up to five years in prison (sec. 69).

<sup>65</sup> Human Rights Watch interview, A39, Mae La camp, Tak province, February 2, 2012.

make walls. So, we didn't have much and the house wasn't very nice, just an open hut with no doors.<sup>66</sup>

### *Education*

Cuts in assistance from donor countries have also affected education in the camps. For example, after decades of providing education assistance to refugees on the Thai-Burma border, the Dutch NGO ZOA experienced a nearly 50 percent drop in its budget in 2010 when its biggest donor pulled their funds.<sup>67</sup> Teachers in the camps lost half their stipends and ZOA could no longer adequately fund school materials or maintain school buildings.<sup>68</sup>

Without sufficient money to keep the camp schools running, the Karen Refugee Committee Education Entity (KRCEE) and the Karenni Education Department (KnED) increased school fees by about 100 percent from previous years.<sup>69</sup> According to one ZOA staff person, school fees like this lead to protection problems by compelling families to break Thai law by sneaking out of the camp to earn income.<sup>70</sup> As a 47-year-old Karen man in Mae La explained, not having income and needing to pay for his children's education places immense pressure on the family:

Now I don't have any official job and I'm just getting fed by TBBC. I would like to work for my family and children to get the nutritious food, to get the [school] supplies for my children but until now I don't have the right to go out or have a job. As parents we have to support our children for what they need, but when we cannot support them or give them what they need, we are

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<sup>66</sup> Human Rights Watch phone interview, A46, Umpiem Mai camp, Tak province, April 3, 2012.

<sup>67</sup> A ZOA-Thailand representative told Human Rights Watch that ZOA-NL changed its target to "fragile states," and considered that Thailand no longer met their criteria. ZOA-NL had previously donated 38 percent of ZOA-Thailand's budget. ZOA-Thailand had started a slow phase out of its work starting in 2008, but the 2010 funding cuts led to a sudden and precipitous drop in their budget.

<sup>68</sup> Human Rights Watch interview with ZOA staff, Mae Sot, March 13, 2012.

<sup>69</sup> School fees are on a scale according to grade level. Parents must pay 100 baht per year for each child in primary school, 150 baht for middle school students, 200 baht for students in grades 7-9, and 300 baht for grades 10-12. Previously, the highest fee was 120 baht.

<sup>70</sup> Human Rights Watch interview with ZOA staff, Mae Sot, March 13, 2012.

insufficient parents. Especially shoes and uniform for school, sometimes we cannot support them to get those. This makes us suffer a lot.<sup>71</sup>

Because of the low stipends for teachers, and to some extent as a result of resettlement, there is an extremely high turnover rate for teachers; many of the teachers in the border camps are young, inexperienced, and under-trained.<sup>72</sup> With such high turnover and because of budget cuts, new teachers, many of whom are recent high school graduates themselves, receive a one-month crash course before finding themselves in front of a class.<sup>73</sup>

Refugees, NGO workers, and representatives from KRCEE all recognize that resettlement has meant the loss of many qualified teachers and that high turnover has hurt the quality of education in the camps. A 50-year-old Mon man in Nu Po camp said, "The teachers' education is no longer so good. The people just quit their jobs to resettle or work with NGOs. Then they do a quick training [for newer teachers] and after that, they'll take their place."<sup>74</sup>

Cuts in assistance have also had an impact on camp boarding schools. Because years of conflict and government neglect have incapacitated the educational system in eastern Burma, unaccompanied youth seeking educational opportunities have entered the refugee camps in Thailand, where they live in cramped, dormitory-style shelters.<sup>75</sup> In the 2011 school year, 126 boarding houses accommodated 3,521 students in the nine camps.<sup>76</sup> In January

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<sup>71</sup> Human Rights Watch interview, A12, Mae La camp, Tak province, January 5, 2012.

<sup>72</sup> The Karen Refugee Committee Education Entity notes that starting in 2006, access to education suffered immensely under the strain of resettlement. For example, one former principal from a high school in Mae La told Human Rights Watch that at his high school 35 out of 40 teachers left for resettlement in 2007 alone. Decreasing stipends have also caused instability in the camp education system. See also IRIN, "Myanmar-Thailand: Refugee camps cope with brain drain," October 24, 2011.

<sup>73</sup> Interview with KRCEE, March 13, 2012 and Interview with ZOA, March 13, 2012. Teachers also receive two-month in-service trainings during the break between school years.

<sup>74</sup> Human Rights Watch interview, A23, Nu Po camp, Tak province, January 12, 2012.

<sup>75</sup> David Tolfree, "Situation Analysis Report: Strengthening Alternative Care Options for Refugee Children," UNICEF (December 2006), pp. 10-11. See also TBBC "Protracted Displacement and Chronic Poverty in Eastern Burma," (2010) p. 29; and Karen Human Rights Group "Grave Violations: Assessing abuses of child rights in Karen areas during 2009," (2009), p. 9, 12. KHRG reports that in conflict areas, children are sometimes prevented from attending school as a result of landmines and attacks nearby schools.

<sup>76</sup> "Program Report: January to June 2011," TBBC (2011), p. 61 and "Program Report: July to December 2011," TBBC (2012), p. 65.

2012, Human Rights Watch visited one of the boarding houses in Nu Po camp and observed children staying in narrow and overcrowded rooms. There were two caretakers for the 80 students living there. TBBC's 2011 program report echoes these findings, observing crowded conditions with "two people sleeping on half a mat" and suggesting that this could cause "potential health problems (such as skin diseases or respiratory tract infection)."<sup>77</sup>

Close to 90 percent of boarding house residents are unregistered in the camps. The Thai government created a separate "student" category that is ineligible for PAB registration because the government assumes that unaccompanied youth in the boarding houses are in the camps solely for the purpose of seeking education and are not legitimate asylum seekers. In 2010, ECHO took the same position and drastically decreased its support for the boarding house students, despite having limited concrete evidence about boarding house residents' backgrounds or protection needs.<sup>78</sup> While in a 2011 survey, the majority of boarding house residents did indeed say that they were in the camps for education, close to half said they would choose to stay in the camp after graduating from school; only 8 percent said they would return to Burma and less than 1 percent responded that they intended to apply for resettlement.<sup>79</sup>

### *Rations*

Refugees have often had to slip through the camps' fences in search of work, shelter materials, or to supplement their diet. Over the last decade, multiple studies reveal that some encamped refugees have suffered from chronic malnutrition, including anemia.<sup>80</sup> Recent cuts in rations only exacerbate these problems.

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<sup>77</sup> Ibid.

<sup>78</sup> Sally Thompson of TBBC said, "ECHO instructed us that none of their funds could be used for unregistered in the boarding houses which is 3,129 out of total 3,512, about 90 percent." Human Rights Watch interview with Sally Thompson, deputy executive director, TBBC, Bangkok, June 9, 2011.

<sup>79</sup> In a June 2011 survey, the Karen and Karenni Boarding House Committees found that 92 percent of boarding house residents state that education is their primary reason to be in a boarding house, while 3.4 percent came for protection. See "Program Report: January to June 2011," TBBC (2011), p. 61.

<sup>80</sup> See A. Gardner, "A Nutrition and Food Security Review: Protecting Nutritional Status and Saving Food Costs," TBBC, 2011. Gardner notes that reports from 2002 and annual nutrition surveys between 2003 and 2009 found significant stunting and chronic malnutrition in three camps (p. 24). While stunting rates are high, these have been constant for several years. She also notes that anemia appears to be on the rise in camps among children under five and pregnant women as a result of reductions in certain nutrient-rich rations (pg. 26-27).



Projecting a shortfall of 185 million baht (US \$6 million) in 2012, TBBC announced that it would not be able to meet the international nutritional standards for all of its beneficiaries, but plans instead to target the most vulnerable populations and cut off self-sufficient camp residents entirely.<sup>81</sup> “Before, that extra rice was used to supplement the diet, to sell for vegetables or some meat,” one former NGO worker told Human Rights Watch in 2012. “With the most recent wave of cuts, people are restricted to basic survival.”<sup>82</sup>

In each camp Human Rights Watch visited, refugees voiced distress about cuts to rations. In Nu Po camp, a single 39-year-old Pa’O woman said, “When they give the ration for charcoal, they give me just five kilograms. But it is not enough.” Because she is a single woman, she said, “I am afraid to work outside the camp and I am afraid to go find money. I cannot go to the forest.”<sup>83</sup> In Mae La camp, a 48-year-old married woman told Human Rights Watch that rations were not sufficient to feed her children. “I go to ask my friend for food. Sometimes we ask him and we beg him to give us rice.”<sup>84</sup>

Camp committees report that more women are going out of the camps to forage or earn income, leaving their children behind or pulling them out of school to take them along if there is nobody at home to provide care.<sup>85</sup> While many refugees get away with sneaking out of camp, this should not be considered a viable way for refugees to earn livelihoods or to secure the means for survival.<sup>86</sup> Rather, budget cuts and refugees’ increasing reliance

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<sup>81</sup> “TBBC Nutrition Programme-Budget Cuts Rationale,” November 16, 2011. TBBC states that 2012 cuts means that camp residents will receive rations “22% below the international minimum standard of 2,100 kcals.” While TBBC cut 130 million baht (US\$4.2 million) from the 2012 budget, they hope to gain 50 million baht from donors during the course of the year. TBBC also states that they will begin piloting community managed targeting of the most vulnerable for increased supply of rations.

<sup>82</sup> Human Rights Watch interview with former NGO worker, Mae Sot, March 13, 2012.

<sup>83</sup> Human Rights Watch interview, A24, Nu Po camp, Tak province, January 12, 2012.

<sup>84</sup> Human Rights Watch interview, A9, Mae La camp, Tak province, January 5, 2012.

<sup>85</sup> Human Rights Watch interview with Sally Thompson, TBBC, Bangkok, March 16, 2012.

<sup>86</sup> A 2011 survey of 4,369 refugees in all nine camps found that 61 percent were without any livelihood activity. For adults over 18 years, 50 percent of men and 35 percent of women had earned income in the month previous to the survey. Of those with livelihood activities, 17 percent earned income through stipends (as teachers, nurses, food disbursement workers, camp committees, etc.) and 11 percent did casual agricultural labor, which means sneaking out of camp. Numbers who earn incomes vary from camp to camp and income rates vary widely, with a few camp residents earning high incomes and many others hardly any. Those earning stipends,

on a means of survival that violates Thai law and exposes refugees to potential abuse by local officials and groups outside the camp only make camp residents more vulnerable and open to exploitation. According to Sally Thompson of TBBC:

You're lowering the protection bar significantly and in effect forcing people to find other coping strategies. Ration cuts are forcing people to take risks. Before, the people who went out were those who knew how to play the game, but as you cut the rations, others who don't speak Thai or who don't know the safe routes are taking risks they wouldn't have before.<sup>87</sup>

## Arrest, Detention, and Abuse of Refugees outside the Camps

Hser Ko fled to Thailand in early 2008 after the Burmese military tried to arrest him for an alleged connection to the KNU. At first, Hser Ko, his wife, Naw Bler Paw, and their three children, including a disabled boy and a toddler, lived with a friend in Mae La camp, but within a year Hser Ko built a house toward the back of the camp.

Months passed and the family never received rations. Naw Bler Paw said, "Because of that, my husband went to the jungle and went to work for food." For about a year, Hser Ko "would go out for one or two days and come back and then when the food would become less, he would go out and come back again...sometimes the neighbor or friend would give us something too."

All of this changed on January 2, 2010. "My husband went out at 8 a.m. one day," Naw Bler Paw said, "and the next morning a friend came back and said, 'He's dead.'"<sup>88</sup> Security guards found Hser Ko dead and partially buried, shot in the abdomen with his intestines protruding.

There were no known eyewitnesses to Hser Ko's death. Refugees who went to the crime scene to investigate believe he was shot while illegally transporting teak wood about 15

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such as teachers, are among the hardest hit by budget cuts. (TANGO International, Inc. "Baseline Livelihood Vulnerability Analysis of Refugee Camps along the Thailand-Burma Border," TBBC, 2011, pp. 54-60).

<sup>87</sup> Human Rights Watch interview with Sally Thompson, TBBC, Bangkok, March 16, 2012.

<sup>88</sup> Human Rights Watch interview, A8, Mae La camp, Tak province, January 4, 2012.

kilometers from the camp fence, but this cannot be verified. Security guard Saw Aung told Human Rights Watch, “This happened at night. He was breaking the law. After they killed him, they just buried his body really hastily so that the body was partly sticking out of the ground.”

Saw Aung said that when the refugees went to take the body back to the camp for a funeral, *Tahan Phran* rangers stopped them outside the camp and wouldn’t let them get to the body. “We had to apologize to the *Tahan Phran* and tell them that the wife and child would like to see the body.”<sup>89</sup>

Naw Bler Paw never found out who killed her husband.<sup>90</sup> Suddenly widowed, she also found herself without any source of income or food. “After he died we couldn’t earn money or survive,” she said. “My husband was the leader of this house and he took care of all of us and when he passed away, we were here with a broken heart.”<sup>91</sup>

While sneaking out of camp does not often precipitate such a grievous incident, Hser Ko’s experience demonstrates the risks involved in working informally outside the camp. In a 2006 survey in Mae La, Site 1 and Site 2 camps, a confidential NGO study found that 16 percent of a sample of 2,299 refugees had experienced forcible return to Burma, including deportation once arrested outside the camp.<sup>92</sup> A third of this sample had also experienced arrest, and 73 percent of those who had experienced arrest claimed it was for being caught outside of camp.<sup>93</sup> Another survey conducted in 2010, also confidential, reflects a possible decrease in arrest and abuse by Thai authorities in a number of camps.<sup>94</sup>

Some of the camps have more porous boundaries than others. Mae La camp lies 60 kilometers from Mae Sot, a border town with a booming garment industry, and 30 kilometers from the agricultural area around Mae Ramat. Site 1 in Mae Hong Son is an

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<sup>89</sup> Human Rights Watch interview, A6, Mae La camp, Tak province, January 4, 2012.

<sup>90</sup> The police conducted an investigation but never revealed the results to the family.

<sup>91</sup> Human Rights Watch interview, A8, Mae La camp, Tak province, January 4, 2012.

<sup>92</sup> Confidential NGO survey, 2006, (on file with Human Rights Watch).

<sup>93</sup> Ibid.

<sup>94</sup> Confidential NGO survey, 2012, on file with Human Rights Watch.

hour's walk from the village of Nai Soi, which links to a series of highland agricultural areas. Tham Hin camp is also quite porous, and refugees often find ways to sneak out of these camps to get to neighboring communities where they can seek employment or visit friends and relatives.

Thai police or paramilitaries regularly apprehend residents of these camps and either return them to camp if the refugees pay sufficient bribes, or send them to the Immigration Detention Center (either in Mae Sot or in Mae Hong Son) and then deport them to Burma.

Saw Bwa, a 39-year-old refugee from Mae La camp, described his arrest and deportation in late 2011 when he was going to visit his cousin in Mae Ta Lae. After being arrested, Saw Bwa said that he tried to explain to the police that he was a refugee from Mae La camp, but “they just told me to get into the car.” Instead of bringing him back to the camp, “They took us to Mae Tho [for one night] and then to Myawaddy...to the Burma side.”<sup>95</sup> Thai police transported Saw Bwa and the others from the detention center to the Moei River and sent them by boat across the border into Burma, an unofficial—or “soft”—deportation to the government-aligned Democratic Karen Buddhist Army (DKBA) instead of the Burmese government.

Once in the hands of the DKBA, Saw Bwa said, “They asked 1,000 baht from each person. If you cannot pay the money you have to work.” Saw Bwa did not have enough money to pay the bribe. He said that over the next 10 days “I had to work in the corn fields, cleaning the field and planting the corn” to pay for his freedom from the DKBA. Since managing to return to Thailand and the safety of Mae La camp, Saw Bwa said he was afraid to go outside.<sup>96</sup>

Other refugees described incidents where Thai authorities became physically abusive when they apprehended camp residents outside the camps. A 33-year-old Karen man living in Mae La camp told Human Rights Watch about his experience when Thai police arrested him in May 2008:

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<sup>95</sup> Human Rights Watch interview, A38, Mae La camp, Tak province, February 1, 2012.

<sup>96</sup> Human Rights Watch interview, A38, Mae La camp, Tak province, February 1, 2012.

They asked for money.... I said, “I don’t have money.” Then one started to beat me here and then back here [on the back and shoulders], two times and then kicked me once.... They started searching our bag for money. They asked for 2,000 baht and we didn’t have that money. Then he looked in my bag and he saw my UNHCR ID card and he took it away.<sup>97</sup>

The Thai authorities did not return this man’s ID, and at the time Human Rights Watch interviewed him, he was contemplating how he might approach UNHCR to request a new one.

Getting out of camp often requires refugees to elude the Thai checkpoints set up around the camps’ perimeters. Htoo Kay, 33, recalled that in May 2007, Thai security officials caught him and his friend trying to make their way around a checkpoint. He said:

The Thai authorities chased us, ran after us. I ran fast and I escaped, but one of my friends who could not run very fast was caught by the Thai authority and he was beaten with the handle of the gun and they broke two of his ribs. We got 600 baht [US\$18] from working [out of camp] and then that day the Thai authorities confiscated 400 baht [US\$12] when they caught my friend.<sup>98</sup>

In some cases, and often under the table, the camp commanders, the *palad*, organize refugee work crews with local Thai employers.<sup>99</sup> Even with such supposed authorization,

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<sup>97</sup> Human Rights Watch interview, A102, Mae La camp, Tak province, July 30, 2008. The Ministry of Interior, not UNHCR, issues the “ID card for Displaced Persons,” but refugees and asylum seekers commonly refer to the documents as UNHCR IDs.

<sup>98</sup> Human Rights Watch interview, A103, Mae La camp, Tak province, August 19, 2008.

<sup>99</sup> The EU Strategic Assessment reported: “The EU Camp residents met by the Assessment Team spoke freely of established systems of bribes and exploitative relationships entered into in order to circumvent rules and regulations. Some maintain that nearly anything is possible by bribing the right person and that all RTG [Royal Thai Government] officials, from the highest to the lowest in grade, will facilitate the activities of those refugees who pay for services received. Many contend that official refugee institutions also provide services in return for payments and that most of daily problems and administrative needs are met through payments to Camp Commanders or their deputies. For example, refugees can go in and out of the camps by paying a small fee to the guardians. This is also said to be the way to obtain approval for lists of newcomers and permissions

however, refugees caught working outside the camps can run afoul of the police and face arrest, detention, and deportation. Saw Lay Moo, a 52-year-old refugee living in Nu Po, was hired by a nearby village leader, picked up at the camp, and transported from the camp by a local boss. Even after border patrol police arrested him at the work site he thought he was safe because he was confident the village leader would vouch for him, but he was left unprotected:

When we were in jail, we showed them our UN card, but the police didn't care. They said, "With that card, you should be staying in the camp and you cannot go out anymore." The next morning they put us all into handcuffs and we were all locked together and they sent us to Mae Sot jail. We stayed there for 14 days. And then after that they sent us to Myawaddy [in Burma] where we faced some difficulties. It was the rainy season and it was difficult to move around and we didn't know the place either. The police from Thailand threw us to the other side... and then we tried to come back to the borderline by foot.<sup>100</sup>

"After that experience," Saw Lay Moo said, "I never go out like that. When they arrest you, there are no questions asked and there is no chance to explain to the police where we are from, what we are doing, what kind of reasons brought us here."

Pushed into the informal economy by Thai restrictions on movement, refugees sometimes rely on smugglers to help them find employment and transportation out of the camp, a practice that makes them vulnerable to traffickers and others engaged in unlawful activity. A confidential 2007 NGO research paper on trafficking states, "There is clearly high prevalence of trafficking from Mae La and other camps."<sup>101</sup> For a fee, agents present in the camp help residents organize travel to Chiang Mai, Bangkok, and other cities. The confidential paper alleges that leaders within the camps and local Thai authorities are complicit in the practice and notes that camp residents relying on agents sometimes find

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to travel and temporarily work outside the camps." AGRER Consortium, Delegation of the European Commission, "Strategic Assessment and Evaluation," May 2008, p. 21.

<sup>100</sup> Human Rights Watch interview, A20, Nu Po camp, Tak province, January 11, 2012.

<sup>101</sup> Confidential paper on potential trafficking from the camps, 2007; on file with Human Rights Watch.

themselves in a bonded labor situation, paid extremely low wages and working to pay off the debt from the cost of being smuggled.<sup>102</sup>

## Abuses by Camp Commanders and Security Officials

Refugees in camps in Thailand lack basic freedoms, which renders them vulnerable to the predations of many, including some Thai government and security officials mandated with protecting the camps. Thai policies that define registered refugees as pending deportation and unregistered camp residents as illegal mean all of those living in camps are in a state of uncertainty and are unlikely to lodge complaints for abuses at the hands of Thai authorities.<sup>103</sup>

A range of Thai authorities bear responsibility for security in and around the camps, including the district commander (*nai ampu*), the camp commander (*palad*), and the Volunteer Defense Corps (*Or Sor*), who function under the Ministry of Interior; the Royal Thai Army and its paramilitary proxy force, the *Tahan Phran* rangers; Thai police and immigration police; and the paramilitary Border Patrol police. The *Or Sor* and *palad*, the deputy-district chief, regulate the camps in terms of perimeter security, headcounts, and entry and exit while the *Tahan Phran*, Border Patrol police, and Army are responsible for Thai-Burma border security, including “the management of cross-border affairs” and counter-narcotics work.<sup>104</sup> The relationships between the security forces and the encamped refugees and their management committees vary. For example, while the *Tahan Phran*—formed as a special unit to combat narcotics trafficking and the communist insurgency of the 1980s—can be heavy-handed with the camp population, *Or Sor* are a poorly trained and underpaid force that often draws its ranks from local communities.<sup>105</sup> Those *Or Sor* units located near Mae La camp and Site 1 are notorious for corrupt and abusive practices.<sup>106</sup>

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<sup>102</sup> Ibid.

<sup>103</sup> Supra note 3

<sup>104</sup> See Desmond Ball, *The Boys in Black: The Thahan Phran (Rangers), Thailand's Paramilitary Border Guards* (Bangkok: White Lotus Press 2004), pp. 113-61. See also Desmond Ball and David Scott Mathieson, *Militia Redux: Or Sor and the Revival of Paramilitarism in Thailand* (Bangkok: White Lotus Press 2007), pp. 163-214.

<sup>105</sup> See Ball, *The Boys in Black*, p. 170 and Ball and Mathieson, *Militia Redux*, p. 291.

<sup>106</sup> Ball and Mathieson, *Militia Redux*, pp. 275, 291.

### *Camp Commander Abuses*

Officially charged with maintaining security in the camps and ensuring refugees' proper adherence to Thai laws, the *palad* are the supreme authority in the refugee camps. Governing a system in which refugees are often obliged to transgress the law in order to survive gives the *palad* immense power. When they abuse refugees, they frequently do so with utter impunity. Since officially refugees are not allowed to stay in the camp without permission from the *palad*—and are not allowed to be removed or expelled without the permission of the governor—camp residents, especially the unregistered, live under a cloud of doubt that heightens their vulnerability.<sup>107</sup>

Additionally, aid workers can only visit refugee camps with the express permission of the *palad* and, as of 2012, must submit applications to deliver aid up to 90 days in advance.<sup>108</sup> Some *palad* are particularly strict; in October and November 2011, one *palad* blocked the shipment of fish paste and rice to a camp because of trivial scheduling infractions.<sup>109</sup> A former NGO worker told Human Rights Watch that it is not uncommon for at least one *palad* to skim supplies and demand payments for the delivery of aid. As a result, suppliers have had to raise their prices in recent years. When one NGO refused to divulge the prices at which it buys food and other supplies in 2011, the *palad* blocked the delivery of aid to the camp. Between March and June 2011, the *palad* prevented the delivery of crucial shelter materials like bamboo and the aid organization lost its contract with the supplier.<sup>110</sup>

Naing Oo told Human Rights Watch that the *Palad* in her camp employed her cousin illegally as a domestic worker for about a year between 2009 and 2010, removing her from the camp and bringing her to his home. “I thought that once per week or once a month, she would come back to see us in the camp and she was supposed to get 2,000 baht per

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<sup>107</sup> In addition, the Thai government specifies that refugees are not allowed to leave the camps; seek employment outside the camp; use mobile phones; possess televisions; or rent, buy, or cultivate land outside the camp.

<sup>108</sup> “Ministry of Interior Guidelines for Government and NGO Officials including Relevant Agencies on Providing Services to Displaced Persons from Burma in the Temporary Shelters for Displaced Persons from Burma in Kanchanaburi, Tak, Mae Hong Son and Ratchaburi,” Ministry of Interior (2012).

<sup>109</sup> Human Rights Watch interview with former NGO worker, Mae Sot, March 13, 2012.

<sup>110</sup> Ibid.



month,” Naing Oo said.<sup>111</sup> Instead, the *palad* paid her cousin less than 1,000 baht per month, about US \$1 per day. According to Naing Oo, the *palad* also refused to give her cousin time off and imposed harsh restrictions:

She told me she’d only been allowed out once to go to the hospital when she was sick. We were not allowed to talk to her by phone. It had seemed like she would have a private room, but when I went there she was living next to the toilet and it seemed unsanitary.<sup>112</sup>

In 2011, a *palad* accused Swey Gher, an unregistered camp resident, of being a ringleader in a protest against the *palad’s* job-performance. Swey Gher told Human Rights Watch:

He said, “If you don’t agree that you did this, then tonight we will send you back to Burma and we will burn down your house.” He said, “In this camp, I am the leader here. Everything is on my word. If I say you can enter, then you can enter. If I say that you have to get out, then you have to get out.”<sup>113</sup>

Three weeks after his initial accusation, the *palad* ordered refugees working as camp security guards to arrest and detain Swey Gher in one of the camp’s detention facilities, a small room with bamboo bars and a dirt floor. This was a clear abuse of *the palad’s* power.<sup>114</sup> Swey Gher told Human Rights Watch she was alone in detention and that camp security guarded her during her stay. She asked her guards, refugees working for camp security, why she was being detained, but they only replied that if they didn’t detain her, they themselves would face detention.<sup>115</sup> She described the conditions during her 18-day detention:

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<sup>111</sup> Human Rights Watch interview, place and date withheld to protect confidentiality.

<sup>112</sup> Ibid.

<sup>113</sup> Ibid.

<sup>114</sup> Human Rights Watch visited detention facilities in Nu Po and Mae La camps. The facilities vary in size, but tend to be approximately 10’ x 10’ with low ceilings. Some have windows looking out onto the camp, while others only have a view of the inside of the camp security office. The detention facilities Human Rights Watch visited had rudimentary doors leading to a toilet. In Nu Po camp, Human Rights Watch could see that stocks were still in use, but not in Mae La.

<sup>115</sup> Human Rights Watch interview, place and date withheld to protect confidentiality.

If you want to go to the toilet, you have to shout at least three times before they'll come and get you. The first time you call they won't come and unlock the door, and then another five or ten minutes you shout again that you need to go to the toilet. The whole time I was there I didn't take a shower. I asked for just one bucket of water, saying it would be enough for me, but they didn't give that to me. They didn't give us food or water; it had to be provided by the family. But they didn't allow my mother or father; only one sister for five minutes a day.<sup>116</sup>

Although *palad* have powers of arrest and can have refugees detained in Thai jails pending appearance before a Thai judge, camp security and camp detention have no jurisdiction in any part of the Thai legal apparatus. The government has long tolerated camp detention, however, as a means of maintaining order in the camps. Nevertheless, when *palad* order camp security to detain camp residents in camp detention facilities, it is an abuse of power and an act of unlawful detention.

### *Or Sor Abuses*

Over the years, *Or Sor* guards in many camps have become notorious for abusing and exploiting the encamped population. In 2007, UNHCR compiled a list of protection incidents involving *Or Sor* guards in Mae Hong Son province for the previous year.<sup>117</sup> These included: physical abuse (in some cases requiring hospitalization), torture, sexual assault, exploitative sexual relationships, and corruption.<sup>118</sup> At the end of 2007, an *Or Sor* guard shot and killed a refugee child in Site 1 during a demonstration against the *Or Sor* unit's aggressive and harsh tactics in that camp. (See box, No Justice for the Killing of Saw Oo.) The killing was something of a watershed moment that enabled UNHCR and NGOs to work with the Ministry of Interior to curb *Or Sor* abuses by developing a code of conduct and improving training. An NGO worker engaged in protection told Human Rights Watch that reports of abuse by *Or Sor* guards currently seem to be less frequent. "Sexual abuse and

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<sup>116</sup> Human Rights Watch interview, place and date withheld to protect confidentiality.

<sup>117</sup> "Protection Incidents Involving the Or-Sor in Mae Hong Son (2006-2007)," UNHCR 2007.

<sup>118</sup> Ibid.

other serious abuse appear to have drastically dropped off in the last two years,” though he pointed out that minor incidents still take place.<sup>119</sup>

Bleh Doe, a 22-year-old refugee man in Mae La, told Human Rights Watch of an encounter late the night of January 11, 2012 when a drunken *Or Sor* guard came into his hut and harassed him. “He hit me again and again on the side of my head. He hit me with an open hand. At first, I didn’t feel anything but then immediately I started to feel so much pain,” Bleh Doe said. After the drunken guard began hitting him, Bleh Doe fled to the house of the camp security zone leader and spent the night there:

When the Or Sor saw me the first time after that fight, he said to me, “I want to fuck you up.” He wanted to fight again with me. I am still worried that he will do something bad to me or maybe the same thing again will happen in the future.<sup>120</sup>

### ***Forced Labor Imposed by Thai Authorities***

While the Thai government prohibits refugees from leaving camp and seeking employment, camp residents told Human Rights Watch that it is common for Thai security officials to require their labor on a regular basis. When *Or Sor* guards and *Tahan Phran* rangers catch refugees outside of camp who are unable to pay bribes, they sometimes administer a punishment of forced labor.

Mu Mu, a 42-year-old Karen woman in Mae La, told Human Rights Watch that *Or Sor* guards arrested her in 2006 when she went outside the camp “to collect the leaves for the roof.”<sup>121</sup> After a half-day detention, the *Or Sor* guards brought Mu Mu and other refugees caught outside the camp to the Ministry of Interior office where they demanded money. Because she couldn’t pay, they made her work for them for 10 days:

We had to chop, cut the bamboo and had to help building the building and had to put the cement and have to cut, clean up the bush. If you are slow in

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<sup>119</sup> Human Rights Watch interview with NGO worker in Bangkok, 21 March 2012.

<sup>120</sup> Human Rights Watch, A37, Mae La camp, Tak province, February 1, 2012.

<sup>121</sup> Human Rights Watch interview, A102, Mae La camp, Tak province, July 30, 2008.

your working, they shout at you and are not nice to you. If you don't do like they said, they will be angry.<sup>122</sup>

The *Or Sord* did not pay Mu Mu or the other refugees for this work.

Other refugees described a labor rotation in which Thai security officials such as the army, *Tahan Phran*, *Or Sor*, and police regularly draw on the camp population for free labor. A refugee working as camp security told Human Rights Watch how the system worked in early 2012:

The *Tahan Phran* or the army will give a request to the *palad* who will pass the request to the camp leader and then to the zone and then to the section selecting two people per section in a rotating shift. They require volunteers to go to work in the forest. It happens a few times each month. They work for free and get fed lunch.<sup>123</sup>

Human Rights Watch spoke with Htee Moo, a 39-year-old Karen man living in Mae La, who had numerous experiences performing forced, unpaid labor for Thai security officials: “If the section leader asks us to go on any day, then we have to go on that day,” he said. “We don’t have any chance to say no. There is no way.”<sup>124</sup> Htee Moo described one of the labor trips in late 2011; he said soldiers he could identify as Royal Thai Army troops carrying assault weapons gathered and transported about 15 workers in a truck and took them to carry teak wood from a nearby forest overlooking the border with Burma:

We brought back the wood from cut trees on the mountainside very close to the Moei River. It is very hard to walk as there are big rocks. We have to take care of ourselves very carefully so that we don’t get hurt. [The Thai soldiers] just follow us and guard us. We don’t go alone, there are more than 10 soldiers with us. They have M-16s [assault rifles].

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<sup>122</sup> Ibid.

<sup>123</sup> Human Rights Watch interview, A6, Mae La camp, Tak province, January 5, 2012.

<sup>124</sup> Human Rights Watch interview, A38, Mae La camp, Tak province, February 1, 2012.

Htee Moo told Human Rights Watch that *Tahan Phran* rangers made him collect rocks from the river outside of camp to repair roads. He said:

We have to put the rocks into a bag and then we bring the bags of rocks to the truck. It is so heavy but we have to carry it, like 20-30 kilograms [per bag]. We have to carry the rocks from the river to the truck until the truck is full and then we have to go to the worksite, fill in the holes in the road, and then back to the river again to get more. I get so tired.

When asked if he got paid for these days' labor, Htee Moo responded, "This is 'volunteer' work. There's no pay."<sup>125</sup>

## Abuses inside Camps

Refugees in Thai camps also find themselves subject to abuse and exploitation by members of their own community. Refugees working as camp security as well as camp leaders and camp residents with alleged connections to insurgent military groups inside Burma all wield power in the camps.

The level of control ethnic armed groups from Burma, such as the KNU and the KNPP, maintain in the camps is somewhat ambiguous.<sup>126</sup> It is evident that the Karen and Karenni Refugee Committees report to the political and military wings of the KNU and KNPP on

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<sup>125</sup> Ibid. He also told Human Rights Watch, "We don't have any chance to say no. There is no way."

<sup>126</sup> A 2006 analysis of barriers to protection in the Thai camps states, "Military elites from the ethnic armies and their families often control the social order, including access to judicial remedies," see "Assessment of Protection Issues, with a focus on Access to Justice and the Rule of Law," International Rescue Committee (2006), p. 60. During the same year, UNHCR reported incidents of "non-state entities" summarily executing alleged perpetrators of serious crimes, such as rape or espionage for the Burmese government; see "Protection Incidents in Refugee Camps on the Thai/Myanmar Border: Trends and Analysis," UNHCR (2006). However, in recent years, in part due to heavy pressure from donors and UNHCR, the Karen and Karenni Refugee Committees initiated significant structural changes in camp governance in an attempt to convey a civilian administration separate from the KNU. This includes the establishment of Camp Management Support Programs, Education Entities, and "Community Elders Advisory Boards," though it is commonly recognized that "elders" is a euphemism for KNU or KNPP officials. For more on this debate see Kirsten McConnachie, "Rethinking the 'Refugee Warrior': The Karen National Union and Refugee Protection on the Thai-Burma Border," *Journal of Human Rights Practice*, (March 2012) and Ashley South, "Burma's Longest War: Anatomy of a Conflict," Transnational Institute and Burma Center Netherlands (2011).

certain matters. A member of the Karenni Refugee Committee told Human Rights Watch that he is “half fish and half frog,” a metaphor for being partly involved in the political wing of the KNPP and partly responsible for managing the refugee communities in Site 1 and 2. He described the work of his committee “as a bridge between the KNPP and the camp committee, the NGOs, the Thai authorities, and UNHCR.”<sup>127</sup>

It also appears that some camp security officials have or had affiliation with ethnic armed groups from inside Burma. In Nu Po camp, Human Rights Watch spoke to one member of the camp security team who had fought for the KNLA “in the 7<sup>th</sup> brigade under the leader Htee Mah.” He referred to his current job as “Special Forces Security Group” in the camp; a position that he explained involves gathering intelligence on the camp population in coordination with KNU operatives in Burma.<sup>128</sup>

A paramount concern for security teams and ethnic armed groups is the suspicion that Burmese government spies infiltrate the camps. (See Chapter III, section on Refugees Who Have Left the Camps.) A Karenni general in Mae Hong Son explained that the Karenni military had to “protect from the enemy searching around and entering into the camps, to keep out spies and drug trafficking operations from the camps.”<sup>129</sup> A member of camp security in Nu Po explained his belief that Burmese military and their partners had already infiltrated the camp, “Not only DKBA, but also SPDC [government] soldiers stay here too. But if they don’t make a problem then it’s ok. If they rebel or make trouble then they will be punished.”<sup>130</sup>

The search for spies and the belief that the Burmese army has penetrated the refugee camps coincides with the increase of non-Karen and non-Karenni residents in the camps. It reflects the general wariness of the majority ethnic groups in the camps towards the camps’ minority ethnic groups. Whereas in the past the refugee camps were ethnically homogeneous, 10 to 15 percent of camp populations currently consist of ethnic Burmans,

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<sup>127</sup> Human Rights Watch interview, A29, Site 1, camp, Mae Hong Son province, January 25, 2012.

<sup>128</sup> Human Rights Watch interview, A18, Nu Po camp, Tak province January 11, 2012.

<sup>129</sup> Human Rights Watch interview with commander (name withheld at his request), Karenni Army, Nai Soi village, Mae Hong Son province, January 26, 2012.

<sup>130</sup> Human Rights Watch interview, A18, Nu Po camp, Tak province, January 11, 2012. The SPDC is the name of the former ruling military council, which handed power to the nominally civilian government in March 2011.

Kachins, Chins, and those who identify ethnically as Muslim.<sup>131</sup> A Karen section leader from Nu Po camp expressed his doubts about the other ethnic groups in the camp:

There are two groups. One is the Karen and the others are the groups like the Kachin, Chin, Muslim, and Burman nationalities. Most of them are not real refugees. The Karen are real refugees coming to Thailand because of trouble while the other groups often come just for resettlement or to do business.<sup>132</sup>

After a UNHCR-sponsored dialogue in Mae La camp in May 2011 that elicited the complaints of non-Karen refugees regarding discrimination and access to services, ethnic tension in Nu Po, Umpiem Mai, and Mae La camps was at a high. One dialogue participant from Umpiem Mai camp began to feel pressure from camp leadership:

When I got back to Umpiem Mai camp, the camp leader called all of us for a meeting. The camp leader said, “Now we are here in the camps and we have a Karen system and so you just have to bear it.” After that people started to be suspicious of us. Camp security was always keeping an eye on me.<sup>133</sup>

Another dialogue participant explained to Human Rights Watch that after he raised questions about camp management at the dialogue in front of camp leaders and UNHCR, he was forced out of his job as a camp-based staff member.<sup>134</sup>

As a result of Thai restrictions on the rights of unregistered asylum seekers, unregistered camp residents are excluded from camp management positions. This exacerbates the

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<sup>131</sup> About 80 percent of the encamped population are Karen, close to 10 percent are Karenni, and 10 percent are Chin, Kachin, Pa’O, Muslim, and Burman (see “Burmese Border Displaced Persons: April 2012,” TBBC 2012). Percentages vary by camp. For example, as of February 2012, Site 1 in Mae Hong Son was 93.4% Karenni; Mae Ra Ma Luang and Mae La Oon in Mae Hong Son were 99% Karen; Ban Don Yang and Tham Hin were also more than 95% Karen; Mae La was 84% Karen with 3% Burmans and 11% “other” which mostly refers to the Muslim population. Mae La registered 12% Muslim, and Umpiem Mae camp’s population was 20% Muslim (see TBBC, “Monthly Population Report: February 2012” on file with Human Rights Watch.)

<sup>132</sup> Human Rights Watch interview, A4, Hsa Poe Kee IDP camp, December 19, 2011.

<sup>133</sup> Human Rights Watch phone interview, A45, Umpiem Mai camp, Tak province, April 3, 2012.

<sup>134</sup> Human Rights Watch phone interview, A46, place and date withheld to protect confidentiality.

sentiment among newer arrivals of being unprotected and disenfranchised.<sup>135</sup> A Muslim woman who tried to set up a women's organization to meet the particular needs of the Muslim women's community in her section said that the camp committee refused to recognize her group:

The section leader came and closed down the office. I informed the Camp Committee and UNHCR, but then a camp [authority] began threatening us. He said, "Why did you inform the UN? If you do that again, you will have to leave. Don't make any mess in the camp [or] it will be a big problem for you."<sup>136</sup>

### *Abuses by Refugee Leadership and Camp Security*

The growing internal tensions, the murky affiliations of camp security, and the isolated nature of the refugee camps contribute to an environment ripe for abuse of power and impunity. Until 2007, camp leaders administered their own form of justice unhindered.<sup>137</sup> While the camps are in Thai territory and should therefore be under Thai law, camp justice is more a blend of Thai and international law, and what refugee committees refer to as "customary law" or "*Kaw Thoo Lei*" law, referring to local laws applied in Karen State.<sup>138</sup> While the International Rescue Committee (IRC) and UNHCR have worked since 2006 to bring this judicial system more into line with Thai legal standards, refugees still report a number of abuses committed in the name of camp justice, including detention without due process and cruel and degrading treatment while in detention.<sup>139</sup> Each of the nine recognized camps has a justice system operated and managed by refugees and each section in the refugee camps still has detention centers, small dirt-floor rooms with bamboo slats for bars and some with stocks for detaining prisoners by their wrists or

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<sup>135</sup> Human Rights Watch interview with Muslim Women's Organization, 1 February 2012, name of camp withheld to protect the safety of the respondent.

<sup>136</sup> Ibid.

<sup>137</sup> Since 2006, the International Rescue Committee and UNHCR have worked to reform the justice system in the camps. However, this has been a slow process with drafts of guidelines to replace "camp law" still only in draft form years after initiating the process.

<sup>138</sup> *Kaw Thoo Lei* refers to the Sgaw Karen language term for Karen State. It translates literally to "The land with no evil."

<sup>139</sup> Refugees working as judges are adjudicating offenses that should technically be handled by Thai officials.



ankles.<sup>140</sup> Camp security guards patrol throughout the camps and enforce the blend of rules, laws, and guidelines that they refer to as “camp law.”<sup>141</sup>

Po Dler, a young Karen man, told Human Rights Watch that camp security members severely beat him in late 2011 as punishment for drinking alcohol inside the camp, a violation of camp rules:

They told me that I was not allowed to drink and so they took me. They grabbed me here [by the shirt]. I apologized to camp security and I told them that I wasn’t doing anything wrong. But they didn’t care and they took me to their office. When I entered the office they tied my legs and my hands. They put me into the camp detention. They tied my hands behind my back and then my legs were tied also. Like lying down on my back. My legs were in the stocks but my hands were tied behind my back. And the leader started hitting me. They just asked me, “Why were you drinking?” And then they started hitting me and I was begging them to stop. And other guards were involved in beating me. They hit me here, in my stomach and then on my whole body. The leader was kicking me in the stomach and head with steel toe boots on the back of my head. It lasted just 10-15 minutes, but it involved so many people. Four or five men, but I can’t say how many people. I felt so much pain but nobody cared and they left me overnight in the detention center. In the morning I told them that it was too painful but the camp security told me not to make things up. They kept me the whole day. The pain was so bad that they untied me and took me out of the stocks. My wife came to see me and the security guards allowed her to pass me food and water but I was in too much pain to eat or drink anything. I was in too

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<sup>140</sup> The removal of stocks from camp detention facilities has become a UNHCR and IRC priority in recent years, both of which argue that stocks constitute cruel and inhumane treatment. Mae La camp in Tak province and Site one and two in Mae Hong Son have already removed stocks from their camp detention facilities. IRC believes Umpiem Mai camp is likely to do this as well. Human Rights Watch observed the stocks in one detention facility in Nu Po camp. Camp management staff told Human Rights Watch that such detention implements were necessary given the flimsy bamboo walls securing prisoners.

<sup>141</sup> Human Rights Watch interview, A29, Nai Soi, January 25, 2012.

much pain and then I told them that I couldn't bear it anymore and they allowed me to go to the hospital in the camp.<sup>142</sup>

Khin Sen, a Burman Muslim woman in Mae La camp told Human Rights Watch that she had been detained with her children, ages 4 and 6, in October 2011 for disrupting camp justice proceedings involving her husband.<sup>143</sup> Khin Sen recalled camp security telling her that she would be in detention only until her husband's hearing was over. Instead, they took her to the women's detention facility in her zone. After Khin Sen's first night, her children joined her in detention since there was nobody at home to provide child care. Security held her for three days. She said:

I was so embarrassed and humiliated to be in detention. It was just one room, like an office room and then there was a little bamboo room in there and there was a toilet and if you want to take a shower then you had to go down to the stream. They didn't provide me with any food, so my home had to send me food. The drinking water came also from my home.<sup>144</sup>

Because of her experience in detention, Khin Sen told Human Rights Watch, "I don't feel safe now in [the camp]. If the leaders abuse their power, refugees will continue to have problems."<sup>145</sup>

## Access to Justice for Refugees

Fear, uncertainty, and a feeling of powerlessness contribute to a fatalistic attitude among camp refugees about whether justice is available to them. "We are on Thai land so we have

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<sup>142</sup> Human Rights Watch interview, place and date withheld to protect confidentiality.

<sup>143</sup> In Khin Sen's account, it is not clear whether the judge referred to is an official camp judge connected to the overall camp management structure, a religious judge, which is prevalent in the Muslim community and reflective of a somewhat parallel justice system operating in the camps, or an individual merely performing the role of adjudicator; see "Assessment of Protection Issues, with a focus on Access to Justice and the Rule of Law," International Rescue Committee (2006), pp. 69-71; see also "Three Sides to Every Story: A Profile of Muslim Communities in the Refugee Camps on the Thailand Burma Border," TBBC (July 2010), pp. 50-51.

<sup>144</sup> Human Rights Watch interview, place and date withheld to protect confidentiality.

<sup>145</sup> Human Rights Watch interview, place and date withheld to protect confidentiality.

to be submissive,” said one. “We cannot speak out and we have to be patient and passive. If we speak out too much, the chains around us will be tightened.”<sup>146</sup>

Given the positions of power in the camp for Thai officials and refugee leaders, camp residents are at a disadvantage when it comes to finding recourse to justice for the abuses they experience. Ambiguity over laws, rules, and punishments in the camps compounds the challenge of accessing justice. Camp justice has evolved for decades as a blend of ad hoc rules and laws applied by the ethnic groups in Karen and Karenni States in eastern Burma, which were not in sync with either international or Thai law.<sup>147</sup> While interventions by UNHCR and the IRC over the last five years have led to some reforms in camp-based mechanisms to handle conflicts and crimes, stakeholders still do not agree on exactly how cases are to be handled.<sup>148</sup> Further, these interventions have taken place primarily in only three of the nine camps (Mae La, Site 1, and Site 2) with new projects recently started in an additional two: Umpiem and Nu Po. In the remaining camps, UNHCR only facilitates access to the Thai justice system for the most serious crimes.

Where Legal Assistance Centers (LACs) are present, responsibility for the investigation and adjudication of cases increasingly falls to the Thai justice system, while the camp committees’ justice sub-committees slowly cede the authority to sentence and detain suspects and perpetrators.<sup>149</sup> Instead of imprisonment, the LACs encourage camp committees to usher those convicted of violations of camps rules through rehabilitation

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<sup>146</sup> Human Rights Watch interview, A6, Mae La camp, Tak province, January 4, 2012.

<sup>147</sup> “Assessment of Protection Issues, with a focus on Access to Justice and the Rule of Law,” International Rescue Committee (2006), p. 16-17.

<sup>148</sup> IRC’s Legal Assistance Center, UNHCR, and the Karen and Karenni Refugee Committees have been negotiating the guidelines for handling conflicts and crimes in the camps for years. Refugee leaders often express frustration at the pace of reform of camp rules and regulations. In November 2011, the Karen Women’s Organization wrote, “For many years the camp justice system was a combination of brief KRC rules, *Kaw Thoo Lei*/law written down in Burmese, customary law, and scattered knowledge of Thai law, human rights documents and other international sources. Now in November 2011, there is not a standard, detailed set of rules/laws/punishments/procedures for the Karen refugee camp communities to use.” (document on file with Human Rights Watch).

<sup>149</sup> For decades, the Thai government was content to leave the adjudication of all but the most serious legal matters up to the refugee camp committees and “camp law.” The Thai justice system typically handled murder cases and any case involving Thai citizens or government and security officials, but until recently did not normally accept sexual assault cases. UNHCR and the IRC helped to make camp rules adhere more closely to Thai laws while pushing to downgrade camp “laws” to “guidelines” and to refer more crimes to the Thai justice system.

programs, though some members of camp leadership express concern that this leaves them powerless to deal with social problems in the camp.<sup>150</sup>

While it is appropriate for camp committees to recognize that the camps unquestionably fall under Thai law, it remains challenging to involve Thai authorities in managing the cases that take place inside the camps; this leads to protection gaps. “Anybody is allowed to access services if they’re on Thai soil,” one NGO worker explained to Human Rights Watch, “but it is not always easy. It is still tough to get Thai police involved.”<sup>151</sup> Staff from the Karen Women Organization told Human Rights Watch:

Sometimes Thai police will be harsh with victims, frighten victims or intimidate them; they may not care as much about refugee victims. Police sometimes interview children victims with many different people in the room, like other villagers. We know of many occasions when the accused perpetrator and the victim were taken out of camp in the same car by Thai officials and then interviewed by police in the same room as each other.<sup>152</sup>

Unregistered refugees find it even more difficult to access the Thai legal system; they cannot get an official camp pass to get to town and express fear at the possibility of being arrested outside the camp. With the camp committee’s power to administer justice and lack of access and fair treatment in the Thai legal system, refugees often contend with the likelihood they will not get justice for abuses they experience.

In particular, those refugees abused by Thai security officials often find themselves at a severe disadvantage in the Thai legal system.<sup>153</sup> One refugee told Human Rights Watch what happened when he went to the supervisor of the *Or Sor* who physically assaulted him: “The leader said, ‘It is up to that *Or Sor* and we don’t want to make a big deal out of it.’ He told me to just leave it.”<sup>154</sup>

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<sup>150</sup> Human Rights Watch interview with Karenni Refugee Committee, Nai Soi, January 25, 2012; Human Rights Watch interview with Karen Women Organization, Mae Sariang, March 1, 2012.

<sup>151</sup> Human Rights Watch interview with NGO worker, Mae Sot, January 20, 2012.

<sup>152</sup> Human Rights Watch interview with Karen Women Organization, March 1, 2012.

<sup>153</sup> Human Rights Watch interview with Karen Women Organization, Mae Sariang, March 1, 2012.

<sup>154</sup> Human Rights Watch interview, A37, Mae La camp, Tak province, February 1, 2012.

### **No Justice for the Killing of Saw Oo**

In perhaps the most serious case known to Human Rights Watch of abuse of refugees by Thai security officials, an Or Sor guard shot and killed Saw Oo, a camp resident in Site 1 in the evening of December 15, 2007, during a protest by camp residents against the local Or Sor unit's aggressive behavior. As refugee protesters attempted to march across the camp to the Or Sor base, Or Sor guards armed with M-16 rifles took up position on a rise overlooking the protesters. At least one guard fired his weapon, killing 18-year-old Saw Oo. In response, refugees stormed the Or Sor base, poured sand into the gas tanks of Ministry of Interior cars and motorbikes and destroyed significant parts of the base. An investigation by Thai authorities focused on whether the Or Sor guard had shot Saw Oo in self-defense as refugees overtook the fence surrounding the Or Sor base or whether the guard had simply fired into a crowd of protesters.

Yaowalak Anuphan, the Thai attorney who represented the victim's family, told Human Rights Watch that the case was flawed from the very beginning as the Ministry of Interior and Ministry of Justice impeded her access to witnesses in the camp. "If it was a Thai national who was killed, it would have been easier to investigate." Yaowalak also noted that the Ministry of Interior—under which Or Sor work—prevented the police from conducting an independent investigation. Instead the district chief created "his own investigative team with district officials," said Yaowalak. "I sent off a letter saying this team shouldn't have power in this case because it would be a conflict of interest," but the case moved forward regardless.

"According to the evidence," Yaowalak said, "the forensic police said that it was clear the marchers hadn't gotten to the base yet, by examining where the blood stain on the pavement was...I was quite confident with my evidence." At the final stage of the hearing, she said, a new judge took over the proceedings: "The new judge directly asked a witness, 'Did they burn the picture of the king? Did they burn the Thai flag?' The head judge said, 'The refugees come to Thailand to our land and destroy our assets, our property.' When I heard that I felt bad and I kind of knew how things would end. That judge was less concerned with the evidence and more about refugees' presence in Thailand. After that the court concluded that the refugees invaded the Or Sor base and the Or Sor guard shot back in self-defense."

From the court, the case file moved on and in March 2010 the Attorney General's office dismissed the case, saying the Or Sor guard acted in self-defense because the refugees were trying to use "a long weapon" (a rifle) to attack the Or Sor. "I don't have any idea where that notion of a 'long-weapon' came from!" said Yaowalak. "I don't recall ever hearing about that

weapon before. The evidence was very clear. Looking at the evidence the case shouldn't have been dismissed so it seems there was bias. There was no blood spot on the Or Sor's base, just down a bit on the road 22 meters from the shooter."

Yaowalak concluded, "The quality of justice is different between the Thai official and the refugee. I personally don't think that the Or Sor guard was a bad guy, just poorly trained. It is clear the Ministry of Interior has the power."

Refugees become acutely aware of the inequality of the justice system and so do not even make an effort to seek redress for the abuses against them. Naw Bler Paw told Human Rights Watch that after her husband was killed while working outside the camp in early 2010, she had been unwilling to pursue the case beyond an initial investigation. "My heart is broken," she said, "but there's nothing to do or say. Because Thailand is not our country, we cannot complain. We don't have a right to complain. I don't complain. I am afraid."<sup>155</sup>

### *Sexual and Gender-Based Violence Response Mechanisms*

Overcrowded, isolated, and constricted, the refugee camps have long struggled with sexual and gender-based violence (SGBV). In the past, camp committees often handled rape cases with a 2,000 baht fine (US \$60), allowing those who paid to go free and sometimes encouraging victims to marry the perpetrators of the crime. In recent years, however, the camp administrators have more regularly referred sexual assault cases to the Thai justice system.<sup>156</sup> While there are currently no clear records of how prevalent SGBV is in the camps,<sup>157</sup> the Karen Women Organization (KWO) points out anecdotally that more women are stepping forward to file complaints of sexual assault and domestic violence; they note that this could be a product of outreach programs or a sign of an increase in abuse, or both.<sup>158</sup>

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<sup>155</sup> Human Rights Watch interview, A8, Mae La camp, Tak province, January 4, 2012.

<sup>156</sup> Human Rights Watch interview with the Karen Refugee Committee, Mae Sot, March 7, 2012.

<sup>157</sup> In fact, multiple organizations working on gender-based violence issues keep their own records and each KWO office in each of the seven camps where they operate maintains lists of such incidents, however these records have not been harmonized, making it impossible to get clear gender-based violence rates.

<sup>158</sup> Human Rights Watch interview with Karen Women Organization, Mae Sariang, March 1, 2012.

“A lot of men still believe it is ok to hit their wives, and the neighbors and surrounding community tend to allow for that to happen,” a KWO staff member told Human Rights Watch.<sup>159</sup> In Nu Po camp, a 39-year-old Pa’O woman whose husband had already departed for resettlement said, “To be alone as a woman in the refugee camp is so difficult.”<sup>160</sup> Though she would not elaborate, she pointed out that she is one of the only camp residents in her section with a lock on her front door.

The response mechanism for SGBV varies to some extent from camp to camp, particularly between the seven predominately Karen camps and the two predominantly Karenni camps in Mae Hong Son province. In all camps those victims of SGBV who report an incident commonly do so first to a section leader. However, women’s organizations, international NGOs, and UNHCR are working to systematically ensure more options.<sup>161</sup> In Site 1, the Karenni National Women Organization (KNWO) states that when a victim gets abused, they report to the section leader or the camp committee who then must report to KNWO, though there are times when the section leaders will just adjudicate the issue on their own.<sup>162</sup> They note that instances of domestic violence are often handled using customary laws—the ad hoc system that developed over time in the camps—and, as a result, according to KNWO, women are at a disadvantage.

The lack of confidentiality in handling domestic cases, the role of an untrained community member in adjudication, and widespread perceptions of gender roles means that women in the camp who decide to pursue official justice must often deal with stigma that portrays them as promiscuous and deserving of abuse. According to KWO staff, some community leaders who interview rape victims have prejudicial attitudes towards them.<sup>163</sup> And the

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<sup>159</sup> Ibid.

<sup>160</sup> Human Rights Watch interview, A24, Nu Po camp, Tak province, January 12, 2012. In interviews with Karen Women Organization, staff stated that widows and divorced women are more likely to be subject to sexual harassment and abuse.

<sup>161</sup> “Draft of ARM (Automated Response Mechanism): What to do in case of sexual violence for refugee women in camp,” Karen Women Organization and Service Support Organizations (May 2011). This draft notes that victims of SGBV can report incidents to women’s organizations, “camp responsible persons,” camp security guards, or section leaders, p. 2.

<sup>162</sup> Human Rights Watch interview with Karenni National Women Organization, Nai Soi, February 2, 2012.

<sup>163</sup> Human Rights Watch interview with Karen Women Organization, Mae Sariang, March 1, 2012.

constricted and stagnant nature of the camps means that when perpetrators of gender-based violence are released from camp detention or Thai detention and return to their homes in the camp, they are often in close proximity to their victims.<sup>164</sup>

## Prospects for Repatriation

A series of political changes in Burma beginning in 2011, including the signing of preliminary ceasefire agreements between nearly all the ethnic armed groups and the Burmese government,<sup>165</sup> has raised the prospect that this protracted refugee situation may come to an end. The various actors—the Thai and Burmese governments, UNHCR, the donor community, ethnic groups, domestic and international NGOs, and the refugees themselves—are all considering the possibility of repatriation. However, both Burmese and Thai officials have made contradictory statements about their positions on repatriation,<sup>166</sup> and enormous obstacles to a safe return remain. Uncertainty about the prospects for repatriation seems to prevail among refugees interviewed by Human Rights Watch.

As recently as 2011, Burmese officials have stigmatized refugees as subversives and characterized the camps as guerrilla bases. In March 2011, the Information Minister, Kyaw Hsan, said:

There are base camps which they call refugee camps.... Insurgents use those camps as their base and launch guerilla attacks on the army, which is the reason that exchange of fires are still occurring in Kayin [Karen] State. In

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<sup>164</sup> Ibid.

<sup>165</sup> The changes include the release of more than 650 political prisoners (although hundreds remained imprisoned), electoral reforms that allowed Aung San Suu Kyi's opposition National League for Democracy to run and win in the April 2012 parliamentary by-elections (the party overwhelmingly won the limited number of contested seats, gaining a marginal place in parliament), a new labor law that allows the formation of trade unions, a law on public demonstrations, an agreement with the International Labor Organization and adoption of a joint action plan to end the use of forced labor in all parts of the country by 2015, and the softening of censorship of printed and on-line materials. See International Crisis Group, "Reform in Myanmar: One Year On," Update Briefing, April 11, 2012. On the signing of preliminary ceasefires, see p. 5 and Annex B, p. 18. See also, "Burma: Ban Should Press for Lasting Reforms: Secretary-General's Visit Should Highlight Political Prisoners, Conflict Abuses," Human Rights Watch news release, April 28, 2012, <http://www.hrw.org/news/2012/04/28/burma-ban-should-press-lasting-reforms>.

<sup>166</sup> See for example, *Bangkok Post*, "Army wants refugees sent home," May 29, 2012.



fact, those remaining insurgents manage to be alive with the assistance of some certain super powers and INGOs.<sup>167</sup>

However, by May 2011, Burmese President Thein Sein issued a welcome, asking exiles “who have been abroad for various reasons to come back home.”<sup>168</sup>

In June 2012, UNHCR finalized its discussion paper on “Framework for Voluntary Repatriation,” a set of standards and principles to guide the possible return of Burmese refugees.<sup>169</sup> With input and approval from the Thai government, the framework calls for all stakeholders to ensure that repatriation be voluntary.<sup>170</sup> Benchmarks include durable ceasefires, transparency among warring parties about the location of landmines, effective management of public health concerns in areas of return, and “investment in creating the socio-economic conditions in the areas of refugee and IDP return.”<sup>171</sup> At the same time UNHCR circulated this framework, it began a profiling exercise in the nine camps to assess all residents’ preferred durable solutions, and for those seeking repatriation, where they would like to return. From its counseling sessions with camp refugees, as well as its discussion with camp committees and community-based organizations, UNHCR informed Human Rights Watch of its preliminary assessment of the mood among the refugees in camps along the Burma border:

While the majority of the refugees do retain a strong desire and intention to return home, the current mood is one of uncertainty and resulting anxiety. Many are understandably nervous about repatriation and some have cited

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<sup>167</sup> *New Light of Myanmar*, March 22, 2011, p.6, [http://www.myanmararchives.com/newspapers/The-New-Light-of-Myanmar/2011/03\\_Mar/22-03-2011.pdf](http://www.myanmararchives.com/newspapers/The-New-Light-of-Myanmar/2011/03_Mar/22-03-2011.pdf) (accessed June 1, 2012).

<sup>168</sup> President Thein Sein speech quoted in “Myanmar urges millions of exiles to return,” *channelnewsasia.com*, May 12, 2012, citing *New Light of Myanmar*, [http://www.channelnewsasia.com/storeies/afp\\_asiapacific/view/1200821/1/.html](http://www.channelnewsasia.com/storeies/afp_asiapacific/view/1200821/1/.html) (accessed June 1, 2012).

<sup>169</sup> “Framework for voluntary repatriation: Refugees from Myanmar in Thailand,” UNHCR discussion paper (June 1, 2012), on file with Human Rights Watch. Importantly, UNHCR recognizes in this framework that repatriation must be available not only to residents of the nine recognized refugee camps, but also for others who are of concern to UNHCR and who live as migrants outside the camps.

<sup>170</sup> “Framework for voluntary repatriation,” p. 3.

<sup>171</sup> “Framework for voluntary repatriation,” p. 4.

false rumours circulating in the camps that they will be involuntarily returned to Myanmar.<sup>172</sup>

UNHCR recognizes that IDPs and refugees are likely to want to return to their places of origin, but points out that this will be challenging because locations are now under a variety of administrative zones including areas totally or partially controlled by various non-state armed groups, contested areas where both Burmese and insurgent militaries are present, government-controlled areas, and relocation sites.<sup>173</sup> In the framework, UNHCR indicates support for return to places of origin, but notes that this may not be possible in all cases, though UNHCR makes it clear it will not support the settlement of refugees and IDPs into pre-identified sites on the border and in government-controlled areas.<sup>174</sup> UNHCR also notes that it still has no significant field presence in areas where return of refugees and IDPs will take place.<sup>175</sup>

In mid-2012, the Norwegian government announced its plans to work together with both the Burmese government and non-state actors to implement a US \$66 million pilot project to facilitate return for small groups of IDPs and to rehabilitate areas of possible return that have been subject to decades of conflict.<sup>176</sup> The “Norwegian Peace Support Initiative” includes de-mining activities and funding the Burmese government to begin a process of issuing ID cards to IDPs.<sup>177</sup> As an initial step, officials from the Burmese government, the Karen National Union (KNU), and the Norwegian deputy minister of foreign affairs met in Kyaukkyi town in Pegu Division, Karen State on May 28, 2012 to issue Burmese government ID cards to about 30 IDPs. By the end of June 2012, the Norwegian Refugee Council and the Burmese government’s Immigration Department had issued 27,000 ID

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<sup>172</sup> Email from UNHCR to Human Rights Watch, June 14, 2012.

<sup>173</sup> “Relocation sites” refers to the Burmese government’s practice of forcibly removing villagers from areas where insurgent groups were active, a strategy to destroy the latter’s support base.

<sup>174</sup> “Framework for voluntary repatriation,” p. 9.

<sup>175</sup> Ibid, p. 1.

<sup>176</sup> Charlie Campbell, “Norway says IDPs will not be forced home,” *Irrawaddy*, May 30, 2012; see also Francis Wade, “Norway outlines ‘Burma peace initiative,’” May 21, 2012.

<sup>177</sup> Saw Yan Naing, “Karen IDPs granted ID cards,” *Irrawaddy*, May 29, 2012.

cards to residents of eastern Burma, primarily in Hlaingbwe and Kawkaik townships.<sup>178</sup> Democratic Voice of Burma quoted the Norwegian deputy minister saying, “It’s a delicate and long-term process and this is the first phase. It’s about testing out the way,” amidst criticism by cross-border aid groups that the initiative was premature.<sup>179</sup> Karen and Shan civil society groups issued statements in June insisting that rehabilitation of conflict areas and return and reintegration for IDPs must be in consultation with the community-based organizations that have played a key role in providing humanitarian assistance over the last several decades.<sup>180</sup>

The Karen Refugee Committee, camp committees from the seven predominately Karen camps, UNHCR, and TBBC met in June 2012 to discuss initial preparation among camp leadership for repatriation.<sup>181</sup> These plans included designs for a repatriation committee to represent refugee voices in any policy-level discussion of return as well as information centers in all camps to ensure that residents can easily access updates on the development of the repatriation process. Human Rights Watch spoke with a refugee camp leader in Mae La camp, who said, “The Burmese government needs to treat us like returnees with rights, like the right to citizenship, and access to services related to health, education, and the rule of law.” He noted the obstacles to re-integration that will have to be surmounted:

The most complicated issue may be the repatriation environment. There’s no infrastructure for water and sanitation there, for example. Villages with so few resources will have to share with new returnees in a context of weak security. Who’s going to take care of such services? The camp management bodies may not be recognized. Will the Burmese government do it? Will they

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<sup>178</sup> The identification cards issued as part of this process are known as “Citizen Scrutiny Cards” and are considered to be equivalent to Burmese national identification cards. By the end of July 2012, the Norwegian Refugee Council and the Burmese government’s Immigration Department had issued about 13,000 ID cards to IDPs and former IDPs in Karen State in eastern Burma.

<sup>179</sup> Hana Hindstrom, “Norway Defends Controversial Peace Initiative,” *Democratic Voice of Burma*, May 31, 2012.

<sup>180</sup> See “Statement on the current peace process and implementation of mega-development projects in Karen areas of Burma,” Karen People’s Forum, June 11, 2012. See also “Joint Statement on current political situation and peace processes by community-based organizations from Shan State, Burma,” June 12, 2012.

<sup>181</sup> Saw Yan Naing, “Burmese Refugees Conduct Repatriation Workshop,” *Irrawaddy*, May 31, 2012, <http://www.irrawaddy.org/archives/5518> (accessed June 11, 2012).

ensure equal access to basic services? Will they build such infrastructure the way they have in the past, with forced labor and heavy taxing?<sup>182</sup>

Despite seeing more progress toward peace in the past year than in previous decades, some Burmese refugees continued to question whether Burma is truly safe for return. Obstacles to repatriation also include many refugees' lack of legal status in Burma, the fact that so many camp residents in Thailand are unregistered, and the continued presence of the Burmese military in parts of Karen State from which they were supposed to withdraw under the conditions of the ceasefire.<sup>183</sup>

Reservations about repatriation, particularly for refugees who have been away for a long time reflect, in part, a belief that there is nothing for them to return to. "I used to have a village where I was coming from but my village now has been relocated," said a 42-year-old Karenni woman in Site 1. "The original village has turned into forest already. If I was sent back, I'd have no place and no village to go back to."<sup>184</sup> A 39-year-old Karen man in Mae La expressed a similar sentiment: "I am afraid to go there [to my village]. There is nobody in my village. Now it is only the DKBA [pro-government Karen force] and the SPDC [government] army there."<sup>185</sup>

Saw Bway Hter, 38, explained that even if he wanted to return to his hometown of Kyauk Kyi township in Karen State, the land now belongs to the state:

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<sup>182</sup> Human Rights Watch interview with refugee leader, Mae La camp, Tak province, June 8, 2012. Name withheld for this person's protection.

<sup>183</sup> See Amnesty International, "Myanmar," in *Annual Report 2011: The State of the World's Human Rights* (Amnesty International, 2012). See also Philip Thornton, "Development Drive Sees Ethnic Groups Displaced by Land Grabs," *Bangkok Post*, April 22, 2012, <http://www.bangkokpost.com/news/od%ainvestigation/289867/development-drive-sees-ethnic-groups-displaced-by-land-grabs> (accessed April 26, 2012). The large number of unregistered residents of the refugee camps translates to a lack of information on these residents' places of origin and their protection needs upon return. While the Norwegian Peace Support Initiative has collaborated with Burmese authorities to issue national IDs to IDPs, at the time of writing only a few dozen IDs have been issued. See also Francis Wade "Norway outlines Burma 'peace initiative,'" *Democratic Voice of Burma*, May 21, 2012.

<sup>184</sup> Human Rights Watch interview, A30, Site 1 camp, Mae Hong Son province, January 26, 2012.

<sup>185</sup> Human Rights Watch interview, A38, Mae La camp, Tak province, February 1, 2012.

We were the mountain people and the SPDC relocated our village to the lowland area in the 1980s. Light Infantry Battalion 351 occupied our land and made a base. The SPDC required us to get passes to go out of our village and to cross to our old farms. If they caught us without the pass, there would be a problem. Before I came here in 2006, I had two friends and we went to pick betel nut leaf. One friend was in the front of me, and my other friend was behind. When we were on the way, the SPDC crossed our path and stopped us. They shouted, “Who’s there?” and they shot my friend dead, directly. The two of us ran back to the village. I left to come here after that. I hear from my old neighbor from that village that things are a bit looser in our area now and that the people can go back and forth to their fields with a little more freedom, but my village on the mountain is still occupied by the Burmese army. I have no hope to return there.<sup>186</sup>

Other refugees, even those living in Thailand for many years, have kept in touch with contacts that stayed behind in their villages, who keep them informed about the prospects for repatriation. “My mother and father are still in Ohn Daw village,” Naw Hser Pler, 34, told Human Rights Watch, “and we talk sometimes.” She said, “My mother told me that nothing has changed.” In 2010, Naw Hser Pler’s brother found himself in trouble with the DKBA in Ohn Daw village. The DKBA soldiers there decided to punish her father:

The DKBA soldiers caught my father and beat him. They tied his arms behind his back and then poured the red ants all over him to bite him. They told him to pay them money, but we didn’t have money so we had to sell our land to them. My mother says it is the same now and she just stays quiet. I don’t want to go back and see my land in the hands of somebody else.<sup>187</sup>

From the same village as Naw Hser Pler, Swey Kyaw, 46, who fled after being kicked off his land in 2000, keeps in touch with his brother who lives in a nearby village. He described to Human Rights Watch the reports from his brother about the situation back home:

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<sup>186</sup> Human Rights Watch interview, A107, Mae La camp, Tak province, June 8, 2012.

<sup>187</sup> Human Rights Watch interview, A57, Mae La camp, Tak province, June 8, 2012.

He told me it is still not good to come back because the situation is the same. Right now my brother is afraid; he's worried for the land and for his security. Even as the owner, I can't go back to check on my land right now. The DKBA built their large houses on our land. If I go to check on my land and they see me, they have the power and I'm afraid they would just take me out and kill me. If we go and it is safe, that's ok. But there's no place to live, no money to buy the house even if we got our land, no way to send our kids to school. I can't say anything about the future. I'm staying in the camp until they tell me to go back and then I'll go.<sup>188</sup>

While many of the camp residents with whom Human Rights Watch spoke had been displaced from their land as a result of conflict or abuse by armed groups, forced evictions and land grabbing also constitute an obstacle to return. "We were away, but our brother called us when we were in Myawaddy to tell us that our land had been taken," a 42-year-old Karen woman told Human Rights Watch. She continued:

Before when we stayed there, the company was there and little by little they took the land of other villagers to plant rubber trees. They came with soldiers and made people leave. Then in February this year, we lost our land. We feel so sad because the company didn't ask to buy the land or anything. They just took the land and nobody paid us. If we went back where would we go? Would we get our land back?<sup>189</sup>

The absence of villages and land to return to is matched by the prevalence of landmines in border areas and in refugees' hometowns. Landmines, primarily antipersonnel mines, contaminate 47 townships in Kachin, Karen, Karenni, Mon, Rakhine, and Shan States, as well as in Pegu and Tenasserim Divisions.<sup>190</sup> Saw Bway Hter, mentioned above, told Human Rights Watch:

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<sup>188</sup> Human Rights Watch interview, A58, Mae La camp, Tak province, June 8, 2012.

<sup>189</sup> Human Rights Watch interview, A56, Mae La camp, Tak province, June 8, 2012.

<sup>190</sup> Email from Yeshua Moser-Puangsuwan, researcher, Landmine Monitor, to Human Rights Watch, June 1, 2012. The most recent map is available at the UN MIMU site in Rangoon, <http://www.themimu.info/State-Region/index.php> (accessed August 9, 2012).

Most of my friends from home are dead or wounded by landmines laid by Light Infantry Battalion 351. Tha Kya Ki, Pler Ler Klo, Moe Kay Ko, Saw Mee Loo, and Htee Wa Kee—all these villages are not safe. I know about these villages because my friend has been back and forth between Mae La and there two or three times. He's there right now. There are still landmines in those areas and the Burmese army still treats people very badly, preventing the people from accessing their farms on the mountain and accusing them of helping the KNU.<sup>191</sup>

A Karenni military commander added: “At BP10 [a border crossing checkpoint between Karenni State and Thailand] there are still many landmines. Ngar Mu base is the most common place for refugees to pass through, but there are still landmines there.”<sup>192</sup>

Saw Bwa, a 39-year-old refugee who was forcibly returned after being caught outside Mae La camp, told Human Rights Watch about the suspicion that particularly attaches to refugees who have lived in the camps or who have UNHCR certificates or similar documents:

The DKBA was waiting for us on the other side. In Myawaddy, they asked me where I was from and what I was doing and I had to explain that I am working on the Thai side nearby there. I was afraid to say I was from Mae La. If you have the UNHCR ID on the Burma side, they will do the bad thing to you, the very bad thing. It would be big trouble.<sup>193</sup>

A Burmese woman who lives in Mae Sot, outside the camps, expressed a similar fear about authorities finding papers identifying her with supposedly subversive institutions in Thailand:

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<sup>191</sup> Human Rights Watch interview, A55, Mae La camp, Tak province, June 8, 2012.

<sup>192</sup> Human Rights Watch interview with lieutenant general (name withheld at his request), Karenni Army, Nai Soi village, Mae Hong Son province, January 26, 2012.

<sup>193</sup> Human Rights Watch interview, A38, Mae La camp, Tak province, February 1, 2012.

I have my relatives on the other side of Mae Sot. I want to visit them but can't.... I am so scared to bring back even a sheet of paper from this side. I have experiences from before. They exaggerate everything and trouble you. Once a man from our village had to be in prison for no reason. I cannot imagine what would happen if they see the letter of recommendation from Mae Tao clinic. For them, Mae Tao Clinic and the organizations here are no good.<sup>194</sup>

Given a free choice, however, voluntary repatriation may occur spontaneously once refugees in the camps are confident not only that it is safe to return but that they will have some ability to resume livelihoods and normal lives there. It is likely that refugees in Thailand will be keeping a close eye on the estimated 400,000 internally displaced people in eastern Burma, and will have an added incentive to repatriate as IDPs return to villages and start reclaiming abandoned land and properties.

Expressing a common sentiment, a 63-year-old Karen man in Nu Po made it clear to Human Rights Watch that he had no interest in remaining in a refugee camp any longer than necessary and would happily go home as soon as he was convinced it would truly be safe and he could enjoy a life in Burma in freedom and dignity: "If the SPDC and the other military groups signed the peace treaty and gave us freedom, I wouldn't even be here one hour, I would go to my village."<sup>195</sup>

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<sup>194</sup> Human Rights Watch interview, AC28, March 15, 2011.

<sup>195</sup> Human Rights Watch interview, A18, Nu Po camp, Tak province, January 11, 2012.



### III. Burmese Living Outside Camps

The 140,000 Burmese refugees living in Thai border camps are a small fraction of the estimated total of Burmese living in Thailand, which ranges from 1.8 million to as many as 3 million.<sup>196</sup> Although the Thai government initiated a new migrant worker registration system in 2010, the majority of Burmese living in Thailand are believed to remain undocumented. To ensure that their rights are respected, it is important to understand what essentially distinguishes the Burmese living outside of camps from those living in the camps. Whether documented or undocumented, are they simply economic migrants with no refugee claims or need for protection, as the Thai government claims? If at least some of them are refugees in fact, if not in law, why have they decided not to live in the camps, but rather to live outside camps where they may be subject to arrest and deportation? Finally, if there are de facto refugees living outside the camps, do they present a possible model for Thailand to consider as an alternative to its current refugee policy, which, simply put, treats all Burmese living outside camps presumptively as economic migrants.

#### Refugee Claims among Burmese Living outside Camps

When asked why they left Burma, Burmese living outside the camps who do not self-identify as refugees often express reasons for leaving that relate to fighting and the consequences of fighting—the informal Thai refugee determination criteria—or to more severe forms of persecution, including having spent years as political prisoners or having been pressed into forced labor for the Burmese army. A November 2011 Tufts University Feinstein International Center survey of nearly 800 Burmese and Thais living in Mae Sot found that while 62 percent of migrants said they came to Thailand for economic reasons, 14 percent cited specific conflict and persecution-related reasons for leaving, including violence, forced labor or portering, and persecution based on ethnicity, religion, or political opinion.<sup>197</sup> Human Rights Watch interviews provide qualitative support for these

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<sup>196</sup> Philip Martin, *The Contribution of Migrant Workers to Thailand: Towards Policy Development* (Bangkok: International Labour Office, 2007), p. xi and Rosalia Sciortina and Sureeporn Punpuing, International Organization for Migration, *International Migration in Thailand 2009*.

<sup>197</sup> Feinstein International Center, *Developing a Profiling Methodology for Displaced People in Urban Areas: Case Study: Mae Sot, Thailand*, Tufts University, November 2011, p. 26

quantitative findings, showing that some Burmese who said they left for economic reasons, in fact, left for conflict-related reasons. For example a female farmer told Human Rights Watch, “Sometimes, when they [government soldiers] are there, we are not allowed to go out to work in our farms.... We have to let our cows eat our crops as we could not go out to gather our crops. We have to come to work in Thailand and send back money for the fee for [avoiding] portering.”<sup>198</sup> Whether the changes currently underway in Burma are fundamental and durable is still a question in the minds of many Burmese, which is underscored by the experiences that caused them to flee the country and left them with a deep distrust of the army and the authorities.

A typical account of a young migrant worker is that of a 22-year-old Burman man from Mane in Kyawk Kyi township, Pegu Division, who told Human Rights Watch that he came to Thailand because of economic hardship and to find work, but who also said:

Three times a year Battalion 599 comes to our village to take us for forced labor.... They take 120 porters divided into three groups of 40 each with 10 soldiers. Sometimes there is fighting and land mines. I did it two times, the last time, last winter, January 2010. Some people lost a foot. Some died. I saw one person step on a mine. He was my cousin’s husband.<sup>199</sup>

Other undocumented people living outside the camps have clear political profiles in Burma that have marked them for persecution. Nyo Lwin, a 32-year-old Burman man from Bago town near Rangoon told Human Rights Watch his life story, which included his experience as an organizer of a student union and five years as a political prisoner, where he spent 23 hours a day in a cell. He was arrested twice after his release in 2005, not allowed to resume his studies, and blacklisted from most work. Although having a strong refugee profile, Nyo Lwin had no interest in presenting himself to the authorities as a refugee if that meant living in a refugee camp:

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<http://sites.tufts.edu/feinstein/files/2012/01/Developing-a-Profiling-Methodology-MaeSot.pdf> (accessed June 30, 2012).

<sup>198</sup> Human Rights Watch interview, A-28, March 15, 2011

<sup>199</sup> Human Rights Watch interview B-7, Mae Sot, June 11, 2011.

I did not want to stay in a refugee camp. It is a kind of prison and I hate to be held. I stayed in prison enough for five years. I would not be allowed to go out and I would feel like a prisoner again. Just food is not enough.<sup>200</sup>

Nyo Lwin was undocumented from his arrival in Thailand in April 2006 until sometime in 2010. As part of the Nationality Verification (NV) process, he was able to obtain a temporary Burmese passport—not by going back himself, but by obtaining a passport through a friend—and to get registered as a migrant worker. But he maintained that he was a refugee, not a migrant worker.<sup>201</sup>

By the end of 2011, 932,255 migrant workers had registered with the Thai authorities, about two-thirds of whom had completed the NV procedures and had work authorization.<sup>202</sup> Many if not most of these are indeed economic migrants, but there are also a sizeable number of Burmese migrant workers who have mixed motives for going to Thailand stemming from repression and conflict in Burma.

Some migrant workers who have strong refugee profiles accept the stark choice presented to them by the authorities and do not recognize their own obvious claims for refugee status. A middle-aged man who participated as a student in the 1988 uprising and joined the protests again at the time of the September 2007 “Saffron Revolution”<sup>203</sup> told Human Rights Watch how his wife was arrested and imprisoned and how he had to flee his home and hide inside Burma for a year before crossing into Thailand. Yet he insisted that he was not a refugee, as he understood the term:

I have never applied for refugee status. I don’t want to stay here. I don’t want resettlement. I only want to go back to Burma. I am not a refugee. I

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<sup>200</sup> Human Rights Watch interview B-21, Mae Sot, June 14, 2011.

<sup>201</sup> Human Rights Watch interview B-21, Mae Sot, June 14, 2011.

<sup>202</sup> Office of Foreign Workers Administration, Department of Employment, Ministry of Labor, Thailand, “Migrant Information Note,” Issue # 14 – February 2012, International Organization for Migration, p.5, [http://www.burmalibrary.org/docs13/IOM-Migrant\\_Info\\_Note\\_No\\_14\(en\)-red.pdf](http://www.burmalibrary.org/docs13/IOM-Migrant_Info_Note_No_14(en)-red.pdf) (accessed April 25, 2012). 631,773 had completed NV, as of December 2011, and 300,482 had yet to complete NV.

<sup>203</sup> See Human Rights Watch, *The Resistance of the Monks: Buddhism and Activism in Burma*, September 23, 2009, <http://www.hrw.org/reports/2009/09/22/resistance-monks-o>.

don't want to go to a camp. It is safer to be in a camp, but out of camp I can work. I am not a refugee because refugees want assistance from others. I can stand by myself. I can support myself and help my people.<sup>204</sup>

A 54-year-old Karen man living in Mae Sot, a friend of the previous interview subject with a similar background of political activism in Burma, said, "I am a refugee without refugee status."<sup>205</sup>

Because Shan are linguistically the closest Burmese ethnic group to the Thai and so more easily able to integrate into the Thai workforce than other Burmese ethnic groups, they are precluded from registering as refugees. Consequently despite intensifying fighting in Shan State in 2011, Shan fleeing fighting were not able to be protected and assisted in official refugee camps. A 47-year-old Shan man who lives and works on a construction site near Chiang Mai described his life in Shan State in terms that would indicate that he would qualify as a refugee according to the Thai government's criteria as a "person fleeing fighting" if the Thai government did not preclude him from lodging a refugee claim:

It is very hard to live in Burma. The Shan army was fighting the Burmese army and there was fighting near our village so I had to leave. I was afraid they would make me a porter. I had been a porter in 2007 for 15 days when there was fighting by the Burmese army against the Pa-O and Shan army. The Burmese army arrested me to make me a porter. They came to our village and took about 200 of us. Others ran away.

I had to carry a very heavy weapon. I had no water and could only eat what I could pick in the forest. I had to carry the weapon into the mountains. The soldiers would beat and hit any who would not carry the heavy weapons. They did not beat me, but beat my friend who got caught in deep mud. The Burmese army asked us, Shan porters, "Where is the Shan army?" They threatened to kill me if I did not tell them where the Shan army was in the

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<sup>204</sup> Human Rights Watch interview B4, Mae Sot, June 9, 2011.

<sup>205</sup> Human Rights Watch interview B3, Mae Sot, June 9, 2011.

forest. We said we didn't know. They said if the Shan army attacks us, we will kill you. I was a porter seven times.<sup>206</sup>

The Shan interviewed by Human Rights Watch seemed largely content with their status as migrant workers and had made no refugee claim, saying only that they came to Thailand to work and earn money and will return to Burma. A Shan couple living as part of a construction workers encampment outside Chiang Mai told Human Rights Watch:

We were farmers. We did not have enough income.... We would like to go back to our home but we don't have the money and don't have work there. We will send money back to our children in Burma.<sup>207</sup>

But in an extended interview with the same couple, a more complex story emerged:

We suffered. The military came to our village and ordered the villagers to give them money. They did this two or three times a month. The Burmese army and other armed groups ordered the villagers to pay 500 Kyat or 2,000 Kyat [about 50 US cents or \$2 at unofficial exchange rates]. The Burmese soldiers made us work for free, to clean their place and to cook for them using our own food. Each house had to provide one porter. My younger brother carried things for three days and then was just left by the border and had to find his own way home.<sup>208</sup>

## Refugees Who Have Left the Camps

Some Burmese refugees have lived for some time in the Thai camps, but have decided to leave the camps, even at the risk of being arrested and deported. The reasons for leaving the camps vary widely and often involve uniquely personal circumstances, but common

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<sup>206</sup> Human Rights Watch interview B36, Chiang Mai, June 17, 2011.

<sup>207</sup> Human Rights Watch interview B34 and B35 (husband and wife together), Chiang Mai, June 17, 2011. Although the interview took place in their hut, it was not completely private, as two or three others came and left during the interview.

<sup>208</sup> Human Rights Watch interview B34 and B35 (husband and wife together), Chiang Mai, June 17, 2011. Although the interview took place in their hut, it was not completely private, as two or three others came and left during the interview.

reasons include the desire for free movement and being able to work and earn a living, but also the requirement to pay for huts, and, for some of the ethnicities who are minorities in the predominantly Karen and Karenni camps, a feeling of being unwelcome.

A 44-year-old Burman man whom Human Rights Watch interviewed in Mae Sot said that he lives and works outside the camp, though he is still registered in Nu Po camp, where his children continue to live and where he presents himself to collect food rations. His wife is in Insein prison in Burma and his father-in-law in Burma is paralyzed and dependent on him for financial support:

I am the head of the family. I have to work but I have no work permit. I just do odd jobs. I earn money to send to my father-in-law and to feed my children. They only get rice, salt, fish paste, and oil from the camp. Whenever I am stopped by the police I have to negotiate not to send me to the other side. Each time I am caught I contact friends who pay me out. It has happened three times. They come to the police box, never to the IDC, and pay at least 1,500 Baht [about US\$45] each time.<sup>209</sup>

Some have left the camps because of problems with camp leadership or other conflicts. For example, an ethnic Arakan man who told Human Rights Watch that he was among those who organized the Saffron Revolution at its point of origin in Arakan State, started out at the Nu Po camp, section 16A, the section for non-Karen ethnicities. After a couple of weeks there, his life took a dangerous turn:

The section leader arrested me and accused me of being a spy for the Burmese army. They sent me before the Camp Committee. They handcuffed and interrogated me. “What are you doing here? Why are you here? Why did you leave your village? Do you know anyone in this camp? What do you do for the Burmese army?” I told them the Burmese army is my enemy and that UNHCR told me to go to Nu Po.... I answered all their questions.... The Karen Refugee Committee cleared me, but the Section 16A leader sold the house where I was staying to a new family. I think he sold the house where I was

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<sup>209</sup> Human Rights Watch interview B16, Mae Sot, June 13, 2011.

staying because of suspicion of me. Living in the camp, I had to stay and eat with the others. I couldn't go out to work for money, so I decided to leave the camp and go to Mae Sot. I decided not to go back to the camp again and to live here. I have no hope of going to a third country and I worry that the Thai authorities will arrest me and deport me to Burma.<sup>210</sup>

Relatively few Rohingya, who predominantly live in western Burma, have attempted to live in the Thai-Burma border refugee camps, perhaps because many of those who have tried have not been able to gain a foothold in the camps. A 54-year-old Rohingya man told Human Rights Watch about his short-lived experience in one of the camps:

You must buy a house to live in the camp. It costs 30,000 to 100,000 baht [about US\$900 to \$3,000]. That was two years ago. Now it costs even more. Rohingya people don't have money for food, let alone shelter. We don't get a food ration. Nothing. We tried to live in Mae La. We worked picking up garbage. I was living in the Burman section of the camp. I did not have money to buy a house. I asked [the section leader], "Can you give me food?" He said, "I cannot give you anything." He said, "You need to pay for a house." I said, "This is a UNHCR camp for refugees, for living and eating." Somebody told me to go to the mountains and collect bamboo to build your own house, but that didn't happen. You need to buy a house.<sup>211</sup>

Money is charged not only for a house, but for applying for camp residence as well. Another Rohingya man, 22, living in Mae Sot, said that he went to Umpiem Mai camp, but that he could not afford the cost of staying there and left after four days:

Some section leaders and other leaders who can write an application for you asked for money, but I didn't have money to pay. You have to write an application to the *palad*, but this is not possible without any money. They said the money was for the *palad*, but I thought it was for them.<sup>212</sup>

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<sup>210</sup> Human Rights Watch interview B17, Mae Sot, June 13, 2011.

<sup>211</sup> Human Rights Watch interview B54, Bangkok, June 24, 2011.

<sup>212</sup> Human Rights Watch interview, A109, Mae Sot, August 17, 2008.

### Thai Policy toward Rohingya Boat Migrants

Each year between November and April, when the seas are relatively mild, undocumented Rohingya pay smugglers to take them by boat from Burma, where they endure government abuses, discrimination, and dire poverty, primarily to Bangladesh, where new arrivals have no possibility for asylum or humanitarian assistance.<sup>213</sup> The Rohingya, a Muslim minority from northern Arakan State in western Burma, have been systematically persecuted by the Burmese authorities for more than 30 years. Government and military authorities in Arakan State regularly apply severe restrictions on Rohingyas' freedom of movement, assembly and association, levy demands for forced labor, engage in religious persecution, and confiscate land and resources. Unlike the other ethnic minorities with which the government has been in conflict, the Burmese government does not regard the Rohingya as Burmese citizens.<sup>214</sup>

Most Rohingya refugees and migrants live in squalid conditions in Bangladesh, which borders Arakan State. About 30,000 recognized refugees live in two official camps and another estimated 200,000 undocumented migrants live mostly in eastern Bangladesh, some in makeshift camps.

The stateless stigma is attached to Rohingya who reside in Thailand as well. Because the Burmese government does not recognize Rohingya as Burmese nationals and refuses to provide them temporary passports, Rohingya in Thailand are unable to avail themselves of Thailand's Nationality Verification process and are not able to legalize their status as migrant workers. Not only do they remain stateless and undocumented in the eyes of both their own government and the Thai government, other Burmese ethnic minorities often disregard their claims to Burmese citizenship as well.

The Thai government does not allow UNHCR to conduct refugee status determinations or statelessness assessments for Rohingya (see Chapter IV). But the Thai government itself has not acceded to either of the statelessness conventions and takes no responsibility for assessing their nationality claims, so neither the state nor UNHCR provide any help for Rohingya from Burma who seek asylum or resolution of their nationality status.

For a time in 2006, Rohingya apprehended upon arrival in Thailand were transferred to Mae Sot

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<sup>213</sup> Human Rights Watch, *Perilous Plight: Burma's Rohingya Take to the Seas*, May 26, 2009, <http://www.hrw.org/reports/2009/05/26/perilous-plight-o>.

<sup>214</sup> Under Burma's 1982 Citizenship Law, Rohingya were declared "non-nationals."



and then deported to Burma. Human Rights Watch interviewed a 22-year-old Rohingya man who had arrived on a boat with about 200 others in 2006 after about 45 days at sea who was immediately arrested in Ranong, in southern Thailand, transferred to Mae Sot, and deported to Burma. He spent the next two years doing hard labor in a Burmese prison. Human Rights Watch spoke to him a month after he had crossed back to Thailand:

When I was arrested, I felt very weak because there was a long time of starvation at sea. The Thai police beat us. They did not understand us, so they beat us. I was beaten on my leg and my hand and on my back [he shows scars]. When I was in Ranong prison, they just brought us rice. It wasn't really clean food. The guards there beat us and some of the prisoners who were big bosses of the gang beat many people.

I just appealed to the Thai authorities not to push us back, not to deport us. We all said that, gathering the same voice, but they didn't listen. After the police station, they took us to a court. The judge spoke, but we didn't understand. They took us directly to Mae Sot, where they put us on a boat to cross the river [to Burma], where the [Burmese] authorities sentenced us to two years.<sup>215</sup>

In some cases, there appear to have been ties between Thai immigration or security authorities and people smugglers involved in organizing the transport of Rohingya boat migrants to Malaysia and beyond. Jashim is a 22-year-old Rohingya man whose boat with 70 Rohingya onboard was stopped in Ranong after a 15-day journey from Bangladesh. He was deported to Koh Ton, in Thailand, where he appears to have been turned over to traffickers rather than to Burmese authorities. Now in Mae Sot, he told Human Rights Watch:

Ranong immigration sold us to the human traffickers. The human traffickers took us from immigration and then they contacted our relatives to free us. We were freed from the government but we were not actually free and we had to face the traffickers where we had to pay 18,000 to 25,000 baht [about US\$540 to \$750] to enter to Malaysia. This is another hell. Those gangsters beat us and two of our companions died. When we saw this kind of torture, we really felt very fearful about what would happen to us, so many of our companions called and contacted our relatives living in Thailand, Malaysia, or Burma. Regarding

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<sup>215</sup> Human Rights Watch interview A107, Mae Sot, July 31, 2008.

myself, I called my mother in Arakan and my relatives collected the money to release me from this hell. I then went to Malaysia. I was arrested there and they deported me to Thailand, and now I am here.<sup>216</sup>

Thai policy toward Rohingya boat migrants was to push them back to sea in 2009 and 2010, and then, in 2011, as noted above, was either to hand them over to people smugglers or to direct their boats onward. In January 2009, then-Prime Minister Abhisit Vejjajiva chaired a meeting of Thailand's National Security Council that authorized the navy to intercept incoming Rohingya boats and detain the passengers in off-shore holding centers.<sup>217</sup> Later that year, Thai security forces were captured on video towing boats with Rohingya out to sea, which the government initially denied. Prime Minister Abhisit later stated in a media interview: "It's not exactly clear whose work it is. All the authorities say it's not their policy, but I have reason to believe some instances of this happened, but if I can have the evidence as to who exactly did this I will certainly bring them to account."<sup>218</sup>

The January 2009 incident was highly publicized, in large part due to the presence of foreign tourists who photographed scores of emaciated Rohingya boat migrants laid out on a beach in southern Thailand under the watchful eyes of armed Thai security forces.<sup>219</sup> In part because of the negative publicity, when another boat carrying 78 Rohingya landed in Thailand later that same month, they were taken ashore and provided with medical care. But, as one commentator said, after "the media parade," they were "incarcerated in Ranong immigration detention centre, in conditions so appalling that two survivors, including a 15-year-old, died in custody."<sup>220</sup> After 28 of the group were determined to be Bangladeshi and deported, the remainder were still detained at the Suan Phlu IDC in Bangkok at the time of Human Rights Watch's June 2011 visit to Thailand. Shortly thereafter, this group agreed to voluntarily depart

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<sup>216</sup> Human Rights Watch interview A109, Mae Sot, August 17, 2008.

<sup>217</sup> Usa Pichai, "Rights group concerned over Thai policy on refugees, migrants," Mizzima News, January 22, 2010, <http://www.mizzima.com/news/regional/3418-rights-group-concerned-over-thai-policy-on-refugees-migrants-.html> (accessed on April 25, 2012).

<sup>218</sup> Dan Rivers, "Thai PM admits boat people pushed out to sea," CNN, February 12, 2009, [http://articles.cnn.com/2009-02-12/world/thailand.refugees.admission\\_1\\_myanmar-border-refugee-agency-abhisit-vejjajiva?\\_s=PM:WORLD](http://articles.cnn.com/2009-02-12/world/thailand.refugees.admission_1_myanmar-border-refugee-agency-abhisit-vejjajiva?_s=PM:WORLD) (accessed on April 25, 2012).

<sup>219</sup> See Human Rights Watch, *Perilous Plight*.

<sup>220</sup> Chris Lewa, "The Rohingya: Between the Devil and the Deep Blue Sea," *Servir*, Jesuit Refugee Service, Issue 49, March 2010 [http://www.jrsusa.org/Publications\\_List.cfm?ID=7](http://www.jrsusa.org/Publications_List.cfm?ID=7) (accessed June 4, 2012), p. 16.

Thailand in a soft-deportation in Ranong (which is close to the border with southern Burma), and went missing.

On January 22, 2011, a boat carrying 91 Rohingya landed in Trang province, in southern Thailand. Later, passengers from that boat landed in India's Andaman and Nicobar islands, more than 700 kilometers away, in another boat that the BBC reported did not have a motor. The distance traveled without a motor suggested that they had been towed.<sup>221</sup>

During a talk at the Foreign Correspondents Club of Thailand in March 2011, then-Prime Minister Abhisit was asked about allegations that the Thai navy had towed boats carrying Rohingya migrants out to sea. His response acknowledged that the push-backs were Thai government policy:

For this year, the accounts given to me, the evidence is very mixed about what actually took place but certainly after 2009 when we investigated, it was clear that the instructions are that if these people are turned away, they must be supplied with food and water and I think that's the operating procedures that we pursue.

I have to make a couple of points: First, we have to take the right view of these people. They are often portrayed as refugees. But they are in fact very much like economic migrants. You will notice that all of them are young men and actually, they are all looking for jobs, mostly down maybe in Malaysia down South. And every country has a right to turn people away.

We just have these operating standard procedures to make sure that they have food and water. I can't say about whether their engines were damaged or not. Clearly, there's no intention for them to just be pushed out without chances of survival. But we have every right just as European countries and other

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<sup>221</sup> “*Thailand: Investigate Departure of Rohingya ‘Boat People: Motorless Vessel with 91 Migrants Turns Up 700 Kilometers Away*,” Human Rights Watch news release, February 21, 2011, <http://www.hrw.org/news/2011/02/21/thailand-investigate-departure-rohingya-boat-people>.

countries have pushed back these people, these kinds of people trying to enter the country.<sup>222</sup>

In March 2012, Col. Manat Kongpan, commander of Thailand's Internal Security Operations Command (ISOC), fourth region, briefed the Thai media on apprehensions of Rohingya boat migrants by ISOC, the Royal Thai Navy, Marine Police, and paramilitary along the coasts of Ranong and Phang Nga. He said that Thai forces had apprehended nearly 5,000 Rohingya boat migrants since November 2011, making this the largest number apprehended since the 2007-2008 sailing season.<sup>223</sup>

Colonel Manat reported that 2,409 Rohingya from 32 boats were arrested as illegal migrants after landing on the coast and that another 25 boats were interdicted at sea, carrying 2,522 people. He said the boats stopped at sea were "helped on" to other destinations beyond Thailand. *Phuket Wan Tourism News* reported, "Those intercepted at sea were interviewed, told that if they do not continue they would face arrest, and where necessary given support to sail on in the form of fuel, medical assistance and food and water for 15 days."<sup>224</sup>

## Work Permits for Burmese Living outside Camps

Refugees are not allowed to work in Thailand, and de facto refugees from Burma, Cambodia, or Laos can only work if they do not present themselves as refugees to the authorities, but rather as migrant workers.

Whether migrant workers in Thailand have work permits seems to depend almost entirely on their ability and willingness to pay.<sup>225</sup> For the latest registration of migrant workers in

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<sup>222</sup> Prime Minister Abhisit Vejjajiva response to question by Inter Press Service journalist Marwaan Macan-Markar at Foreign Correspondents Club of Thailand annual dinner on March 22, 2011, Inter-Continental Hotel, Bangkok, unpublished transcript of tape recording, on file with Human Rights Watch.

<sup>223</sup> Chutima Sidasathian and Alan Morison, "Thailand Lists Boatpeople Arrested of Assisted Along Phuket Holiday Coast," *Phuket Wan Tourism News*, March 18, 2012, <http://phuketwan.com/tourism/thailand-lists-boatpeople-arrested-assisted-along-phuket-holiday-coast-15685/> (accessed April 25, 2012).

<sup>224</sup> Chutima Sidasathian and Alan Morison, "Thailand Lists Boatpeople Arrested of Assisted Along Phuket Holiday Coast," *Phuket Wan Tourism News*, March 18, 2012, <http://phuketwan.com/tourism/thailand-lists-boatpeople-arrested-assisted-along-phuket-holiday-coast-15685/> (accessed April 25, 2012).

<sup>225</sup> See Human Rights Watch, *From the Tiger to the Crocodile: Abuse of Migrant Workers in Thailand*, February 24, 2010. <http://www.hrw.org/reports/2010/02/23/tiger-crocodile>.

2011, the total official fees ranged from 2,980 to 3,880 baht (about US\$90 to \$116), which is beyond the capacity of many irregular migrants—those without documentation—trying to get a foothold in the labor market.<sup>226</sup> Added on to the official fees are fees from brokers that many migrants feel compelled to turn to in order to navigate the system. A 28-year-old Burmese woman in Mae Sot said simply, “I’d like to get legal status here, but I could not spend the money for that. So I have to play hide and seek with the police.”<sup>227</sup>

In 2009, the Thai government began to institute a new system of registering migrant workers. The system requires undocumented migrants from Cambodia, Laos, and Burma to undergo a Nationality Verification (NV) process with their own governments, to receive temporary passports, and then apply for work visas to allow them to work for two years in Thailand, renewable once, after which they will be required to return to their home countries for a period of three years. The particular advantage of temporary passports over the previous work permits is that they enable migrants holding them to travel freely throughout Thailand.

From the start, Cambodian and Laotian migrants were not required to return to their home countries for nationality verification, but Burmese migrants had to go back to Burma to do so. During the first year of the registration process, Burmese registration lagged far behind registration by members of the other two nationalities. However, after eight locations for national verification were established in Thailand, the number of Burmese migrants registering grew significantly.<sup>228</sup> As of February 2012, 932,255 migrants had registered for the NV process, of whom the vast majority, 812,984, were Burmese.<sup>229</sup>

Many Burmese migrants remain undocumented, and many others still carry a variety of documents in order to show police that they have Thai employers or other Thai connections, such as being indigenous hill people. Not all of these documents have actual legal validity. A Shan man living in Chiang Mai since 1997 explained the various identity

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<sup>226</sup> “The Registration of Migrant Workers 2011,” International Organization for Migration, p. 4.

<sup>227</sup> Human Rights Watch interview A28, Mae Sot, March 15, 2011.

<sup>228</sup> The eight NV locations for Burmese in Thailand are Bangkok, Samut Prakarn, Samut Sakhorn, Chiang Mai, Surat Thani, Tak, Chiang Rai, and Ranong.

<sup>229</sup> Migrant Information Note, Issue # 14 – February 2012, International Organization for Migration, p. 5, [http://www.burmalibrary.org/docs13/IOM-Migrant\\_Info\\_Note\\_No\\_14\(en\)-red.pdf](http://www.burmalibrary.org/docs13/IOM-Migrant_Info_Note_No_14(en)-red.pdf) (accessed April 25, 2012).

documents he was carrying at the time Human Rights Watch interviewed him in June 2011, as well as commenting on the costs of documents, fraudulent documents, and corruption:

Some of us have a 10-year card, so we can't apply for a temporary passport. According to Thai law, a person with a temporary passport can stay four years and then must go back for three years. With a 10-year card we are considered like Thai hill people and we can stay longer. I have two cards. I have an annual work permit with a temporary passport that I got not using my real name, but I also have a ten-year card, which I got when I registered in another township. It is very corrupt. I had to pay 10,000 baht [about US\$300] for it. Last year, they said everyone with a ten-year card has to make a new registration, and we are being told we will have to pay 30,000 baht [about US\$900] this time. With the ten-year card, I can only work and travel within the township and can't get a driver's license. With a temporary passport, I can travel anywhere in Thailand and get a driver's license.<sup>230</sup>

Some of the cards are locally issued and are only valid within those same localities, thus barring the bearer's movement within Thailand. In fact, migrant worker ID cards issued by the Ministry of Labor bar the bearer from traveling outside the province where the migrant worker is registered without the permission of the governor or for work that specifically requires travel. In some cases, employers and community-based organizations create their own ID cards for migrant workers to carry, which migrants also use when stopped by the police.<sup>231</sup>

A 35-year-old Arakan man who worked as a fisherman in Pattani told Human Rights Watch about his employer taking him to an office where both police and Immigration officials were present to get his card. "I had to pay 500 baht [about US\$15] each time the card was done. The card would be good for three months and then it had to be renewed. The employer paid for it, and then deducted it from my salary."<sup>232</sup> He said that the police

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<sup>230</sup> Human Rights Watch interview B32, Chiang Mai, June 17, 2011.

<sup>231</sup> See Human Rights Watch, *From the Tiger to the Crocodile*, pp. 81-87.

<sup>232</sup> Human Rights Watch interview P4, Mahachai, Samut Sakhon, January 21, 2009.

frequently stopped him when he carried the card, but that they always released him without any problem.

A 33-year-old Burman man in Mae Tao tried to explain his locally issued ID card and the protection it provides, as well as the sliding scale of bribes/fines for an expired card depending on how much money the police think he can pay:

It is not a work permit. With this card I can go freely in this area but cannot go to Mae Sot. I have to pay 200 baht [about US\$6] for that. This card can be used for five or six months and it is just an ID card that says we are living in this place and we came to visit this place. Some police are nice and they would explain that the card cannot be used because it has expired and we will have to get another card, and then they release us. But some police say we cannot use this card anymore and they arrest us. When they arrest us on the road, sometimes they ask 200 baht [about US\$6], but sometimes they will ask for 500 baht [about US\$15] or 1,000 baht [about US\$30]. If we cannot pay this amount they will arrest us. When we wear old clothes they ask for less, but when we wear beautiful clothes they ask for more money.<sup>233</sup>

Migrant workers with locally issued informal work permits or 10-year permits rather than temporary passports are not allowed to move freely in Thailand and are usually prevented from venturing outside the immediate municipal area where they are authorized to work. A 37-year-old Burman woman working in Mae Sot told Human Rights Watch, “I have never traveled outside Mae Sot town. If I travel outside the town, I know that I will be arrested by the police. Everyone knows there are checkpoints outside Mae Sot and we are not allowed to pass those checkpoints.”<sup>234</sup>

A Rohingya street peddler who sells *roti* bread on the sidewalks of Bangkok explained the relationship between the employer and the informal work authorization and the very limited benefits of the card he carries, which does not prevent the police still from collecting money from him when they catch him selling *roti* or taking him for deportation:

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<sup>233</sup> Human Rights Watch interview AB7, Mae Tao, February 3, 2011.

<sup>234</sup> Human Rights Watch interview P3, Mae Sot, December 15, 2008.

I pay the Thai boss for a work permit one year at a time. It only allows me to sell *roti* and only for that employer. If the police catch me selling *roti*, they will arrest me. I need to pay different levels. I pay 500 baht [about US\$15] to the street police, another 500 baht if the street policeman takes me to the police station, 5,000 [about US\$150] if I am sent to the IDC, and 15,000 [about US\$450] if I am sent to the border. I have been sent to the IDC four times. The first time, I was sent to the border crossing at Ranong. The second time, I spent one year and two months at the IDC in Bangkok and they sent me to Mae Sot. I did jobs in the IDC, like cleaning and translating for the police because I speak Thai. The third time, I spent one month in the Mae Sot IDC, and the fourth time, I also spent a month in the Mae Sot IDC.<sup>235</sup>

Rohingya cannot obtain temporary passports from Burma because their government refuses to recognize them as citizens, so getting work authorization through Nationality Verification is not an option. So, they overwhelmingly remain stateless and undocumented. A 54-year-old Rohingya man explained how the NV process did not help him or his fellow Rohingya:

I did not get NV. The police take my money again and again. I have no work permit. To get the NV, Rohingya people need to pay a company to take us to the border. We pay the company money but we do not get a passport because we are Rohingya. We are rejected as Myanmar people. I said, “We are born in Myanmar.” We need freedom. I never believed in Myanmar. They want to kill our people. My life is finished.<sup>236</sup>

## Burmese Urban Refugees

Starting in January 2004, the Thai government disallowed UNHCR to conduct refugee status determination interviews for Burmese refugees and directed that all Burmese refugees should live in the Thai-Burma border camps (with the notable exception of the ethnic Shan, who are precluded from consideration as refugees at all). Burmese refugees living in urban centers would no longer be eligible for UNHCR assistance and no new Burmese refugees would be referred for third country resettlement unless they applied from within the

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<sup>235</sup> Human Rights Watch interview B55, Bangkok, June 24, 2011.

<sup>236</sup> Human Rights Watch interview B54, Bangkok, June 24, 2011.



camps.<sup>237</sup> At that point UNHCR stopped issuing Person of Concern certificates to urban refugees from Burma and started issuing them “registration slips” that ask the Thai authorities to allow the bearer safe passage to a temporary shelter (refugee camp).<sup>238</sup>

Despite the intention that all Burmese refugees in urban centers in 2004 would either be resettled to third countries or go to camps and that all future Burmese refugees would go directly to the camps, some Burmese refugees from before 2004 have stayed in urban centers and others have continued to be drawn to the cities. Some urban refugees insist that they never understood the directives to go to the camps, and therefore stayed where they were. A 32-year-old Burman in Bangkok, who said that he receives no assistance from UNHCR and has no legal status or work permit, carries a UNHCR registration slip from 2005. Although the text of the registration slip says he should go to a camp, he told Human Rights Watch that UNHCR never directed him where to go or offered to take him to a camp:

[UNHCR] never called me. If they want to send me to a camp, I will go. Right now I am illegal. If the police stop me, I pay 1,500 or 2,000 baht [about US\$45 or \$60] under the table. The last time, I had no money and they sent me to the IDC. I was there for six days, and they deported me at Mae Sot. That was in June 2008. But I never crossed the river into Burma. My wife sent money and they took me out. It cost 3,000 baht [about US\$90]. They took me close to the DKBA gate, but didn’t turn me over to the DKBA. If they had, I would have been killed. I made a lot of demonstrations in front of the Burmese embassy and they took pictures of me and would remember me.<sup>239</sup>

Other long-term resident Burmese urban refugees hold steady jobs and live quiet lives, though their legal status is precarious. A 43-year-old Burmese army deserter who has been

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<sup>237</sup> Thailand permitted UNHCR to refer 4,000 Burmese urban refugees for third country resettlement from its then-existing caseload. See Human Rights Watch, *Out of Sight, Out of Mind: Thai Policy toward Burmese Refugees*, Vol. 16, No. 2(c), February 25, 2004, <http://www.hrw.org/reports/2004/02/24/out-sight-out-mind-o>, p. 3.

<sup>238</sup> During the transitional period, UNHCR and NGO partners disseminated information on the camp transfer procedures to refugee committees. UNHCR instructed its implementing partners, IRC and JRS, to contact all their clients to explain the camp transfer procedure.

<sup>239</sup> Human Rights Watch interview B60, Bangkok, June 25, 2011.

living in Mae Sot since 2001 has never lived in a camp. He carries a one-year work permit that he gets through his employer and renews every year for 3,900 baht (about US\$117):

I have never had any problem with the police. I have tried my best to live low without problems. I feel safe and secure as long as I work from 8 a.m. to 5 p.m. every day, seven days a week. The pay is not that fair. My Thai language is low. I only speak it in the workplace, basic. But I would stay here. I would take Thai citizenship. I want to forget the past.<sup>240</sup>

Human Rights Watch met a 38-year-old Burman in Bangkok who had spent four years as a political prisoner in Burma and then got into trouble in Thailand, where he served a three-year prison sentence, which rendered him ineligible for US resettlement. His case may be unique and does reflect a criminal conviction, but he represents an urban refugee, still fearful of being persecuted if returned to Burma, who has no future prospects, and no place at present where he can feel safe and secure:

I have no work permit, just my UNHCR refugee certificate. After I was rejected by the United States, I asked UNHCR to let me enter a camp, but UNHCR said the Thai military would not let me enter. I've been trying to enter since 2009. My major concern is that I want resettlement, but they only resettle refugees from the camps, not urban refugees. The police say there are no urban refugees. I don't think I can stay here a long time.<sup>241</sup>

A 33-year-old Arakan man with a UNHCR registration slip dated May 2008 told Human Rights Watch that he was worried about being deported to Burma, but that so far pay-offs to the police and the UNHCR registration slip have helped to avoid that happening. He said, "I try to avoid the police." But he added, "Sometimes the police stop me and I show my UNHCR document and pay 100 or 500 baht [about US\$3 or \$15]. This has happened three times. I can't say whether the payment is fair or unfair. I get 75 or 80 baht [a day for work, about US\$2.25 or \$2.40]."<sup>242</sup>

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<sup>240</sup> Human Rights Watch interview B27, Mae Sot, June 14, 2011.

<sup>241</sup> Human Rights Watch interview, B59, Bangkok, June 25, 2011.

<sup>242</sup> Human Rights Watch interview B17, Mae Sot, June 13, 2011.

A politically active 42-year-old Burman (formerly a member of the opposition All Burma Student Democratic Front, ABSDF) said he arrived in Thailand in 1996 and has been living in the country for 15 years without legal status. He told Human Rights Watch that he is frequently stopped by the police and shows them his 2004 UNHCR registration slip, but lacks Person-of-Concern status:

I've had a lot of problems with the Thai police. All I have is my UNHCR Registration Slip from 2004. Once in 2002 the riot police arrested me as part of a drug sweep and held me at a special police place in Ratchaburi where they questioned me for four days. I got to see UNHCR but UNHCR could do nothing for me. They told me I was not a Person of Concern. They would not help. I had an interview in 1999 and was rejected. I have been sent to the IDC three times for being illegal. I was once sent to the border but didn't have money to pay a bribe so had to work cleaning floors and toilets.<sup>243</sup>

Nine years after the Thai authorities decided that Burmese refugees should no longer be allowed to live in urban centers but rather be confined to camps, it's time for the Thai government to reassess that decision. It should do so in the light of a less static situation in Burma and the years many Burmese urban refugees have already lived in Thailand. A new policy should acknowledge the benefits of allowing refugees in Thailand to be self-sufficient without making them vulnerable to exploitation, arrest, and deportation.

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<sup>243</sup> Human Rights Watch interview B61, Bangkok, June 26, 2011

## IV. UN High Commissioner for Refugees

The role of the United Nations High Commissioner for Refugees has been marginalized in Thailand and its Bangkok office appears to have little influence with the Thai authorities. The Thai government does not allow UNHCR to provide assistance to the nine Burmese refugee camps on the Thai-Burma border or to register refugees or asylum seekers in the camps; assistance is provided by NGOs who also conduct their own registration and verification exercises to ensure proper ration distributions. The Thai authorities denied UNHCR access to the Lao Hmong held in Huay Nam Khao camp in Petchabun province before they were forcibly returned to Laos.

A senior UNHCR official in Thailand told Human Rights Watch that UNHCR is not allowed to conduct refugee status determinations for Burmese, Lao Hmong, or North Koreans. He said, “It is not that we do not want to exercise our mandate: we cannot exercise our mandate.”<sup>244</sup> In the case of North Koreans, the official said “our role is very passive,” limited to referring North Korean asylum seekers to the South Korean embassy. “The Thais do not want us to deal with the North Koreans,” he said.<sup>245</sup>

For asylum seekers and refugees other than Burmese, Lao Hmong, and North Koreans, UNHCR issues “Asylum Seeker Certificates” that say the bearer is a “Person of Concern” to UNHCR. These certificates are of limited value, providing no employment authorization and carrying no legal weight when police stop certificate holders on the street or in their homes.

Dinh Lap, a 54-year-old Vietnamese man who said he had been a political prisoner for 20 years in Vietnam, was registered with UNHCR but when he was interviewed by Human Rights Watch he was still waiting for his full RSD interview. He was carrying a UNHCR Asylum Seeker Certificate. Dinh Lap said UNHCR gave him a phone number to call if he was in trouble, but when he called it, nobody answered. Having been at the Bangkok Refugee Center (BRC) when the Immigration Police made arrests just outside the building (see Arrests at Bangkok Refugee Center), he said he was too afraid to leave his apartment. “I

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<sup>244</sup> Human Rights Watch interview with UNHCR, Bangkok, June 20, 2011.

<sup>245</sup> Ibid.

don't know why asylum seekers and refugees are not protected. The Asylum Seeker Certificate is meaningless. It provides no protection against being returned to Vietnam.”<sup>246</sup>

Another Vietnamese asylum seeker, a 33-year-old pregnant woman who came into the room with a five-year-old boy at the end of Dinh Lap's interview, listened to what he said and added, “Please make it so with a UNHCR certificate you can't get arrested. It means nothing to the police.”<sup>247</sup>

UNHCR's access to Immigration Detention Centers is limited (see Chapter VI). Its access to IDCs outside Bangkok is “conditional” for visits only and not for purposes of registration or conducting Refugee Status Determinations, and must be preceded by an official request. At Bangkok's Suan Phlu IDC, UNHCR is only allowed to conduct registration and RSD interviews for asylum seekers who are not Burmese, Lao Hmong, or North Korean, and only based on a prior written request and permission from the immigration authorities.<sup>248</sup>

While the Thai authorities have taken measures to sharply limit UNHCR's role, the UNHCR office in Bangkok has often seemed to be unwilling or unable to act quickly or assertively to monitor and intervene during push-backs and deportations at land and water borders and has been slow or unresponsive to specific refugees and asylum seekers in need of protection whether living in camps, urban centers, or in detention.

This unresponsiveness was evident in UNHCR's unhelpful response in the case of Thein Aung, a Burman asylum seeker whom Human Rights Watch met in June 2011 shortly after his arrival in Mae Sot. We spoke to him several days later when he was in hiding and fearful. He was too afraid to leave the place where he and his family were staying to go out and buy food and was confused about what steps he should take for protection. He told Human Rights Watch about his interactions with UNHCR:

UNHCR did not make a detailed interview, only asked general questions and gave a contact number in case we are stopped or arrested by the police.

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<sup>246</sup> Human Rights Watch interview B57, Bangkok, June 25, 2011.

<sup>247</sup> Not a numbered Human Rights Watch interview, but name and details recorded in Human Rights Watch researcher's notebook, page 282, between interviews B57 and B58, Bangkok, June 24, 2011.

<sup>248</sup> Email from UNHCR to Human Rights Watch, June 14, 2012.

It was not a detailed interview, not as much as we are having right now. UNHCR did not give us a letter [to produce for the police], only a UNHCR business card and phone number. UNHCR didn't encourage us to go to a camp or to stay here. They didn't give pros and cons of the camp or the town. [The UNHCR protection officer] didn't tell us anything and gave us no indication what they could do for us.<sup>249</sup>

In other countries that do not have functioning asylum procedures and where there is a risk that asylum seekers will be arrested, it is UNHCR's common practice to provide asylum seekers who approach the office with a letter or other document that identifies the bearer as an asylum seeker in case the person is stopped by the police. It is also common practice for UNHCR to advise asylum seekers on their options for safe accommodations, particularly in countries where refugee camps are available. UNHCR's failure to do so not only put Thein Aung in a state of great anxiety, but also left him without the barest protection in the event that he should encounter a problem as an undocumented person in Thailand.

In response to a draft version of this report, UNHCR said:

UNHCR provides protection counseling to Myanmar nationals approaching its Field Offices for international protection in Thailand, where they are informed of the RTG's policy that the displaced people from Myanmar need to undergo screening by the PAB in the refugee hosting provinces.... Whether UNHCR issues documents to asylum seekers or not depends on the asylum mechanism in the country. UNHCR normally does not issue documents in the countries where national asylum mechanisms exist.<sup>250</sup>

In 2008, Human Rights Watch interviewed Soe Zaw, 51, a Burman de facto refugee in Mae Sot, who told a similar story of frustration with UNHCR, confusion about whether he would be allowed into a camp, and non-response by UNHCR when he was arrested by the Thai authorities. Soe Zaw had spent nine years as a political prisoner in Burma and arrived as one of the cohort of refugees who entered Thailand after the Saffron Revolution. Thai

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<sup>249</sup> Human Rights Watch interview B5, Mae Sot, June 11, 2011.

<sup>250</sup> Email from UNHCR to Human Rights Watch, July 12, 2012.

Police Border Patrol (*Tor Chor Doi*) authorities arrested him in his home in Mae Sot in July 2008. Threatening him and his family with batons, the border police forced him, his wife, and two daughters into a pickup truck and drove them to a military base near the Mae Sot airport. Soe Zaw paid them 900 baht (about US\$27) and he and his family were released, but he said others who were picked up at the same time were deported.

UNHCR had formally interviewed Soe Zaw, given him a document, known as an N-I, and provided him with an emergency number to call in the event of arrest. Soe Zaw told Human Rights Watch what happened when he called the number:

They [UNHCR] just asked me my name, my N-I number, and nothing at all after that. They never called to see if we were released or not, they never inquired about that. They only told me that it is outside of the working hours and there is no staff to handle this.<sup>251</sup>

Several months later, Soe Zaw sent an email message to Human Rights Watch saying that UNHCR had told him and his family to go to a camp, but had provided no transportation, accommodation, or other help to do so and that when he arrived at the camp the Thai police guarding the camp would not let him enter, but instead arrested him. In broken English, Soe Zaw asked Human Rights Watch for help and advice after UNHCR had failed him:

We have to go to the camp according to the instruction of UNHCR. But they won't help for shelter, food, and transportation. So we (14 persons) were arrested by the Thai police when we went to the camp. Although we all show our N-I certificate from UNHCR, Thai police did not allow to pass from their gate. When we contact with UNHCR on phone, they allowed to go back [not to go to camp]. Some of the refugees paid 300 baht [about US\$9] for each person to pass through this gate. I can't pay for my family (6 persons). Therefore our family haven't gone to the camp yet. Although UNHCR knows this condition, they don't do anything for us. If we go to the camp, where place do we stay? I can't think how to solve or how to do this problem.<sup>252</sup>

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<sup>251</sup> Human Rights Watch interview A100, Mae Sot, July 29, 2008

<sup>252</sup> Email from interviewee A-100 to Human Rights Watch, November 16, 2008.

A 54-year-old Rohingya man said that a friend advised him to go to UNHCR as a way to get into a camp. He went to UNHCR in Bangkok and had, according to his account, the following experience of being bounced from one UNHCR office to another in 2010 and 2011, each giving him contradictory directions. He said that UNHCR in Bangkok told him to go to a refugee camp near Mae Sot and the UNHCR field office in Mae Sot told him he should not go to the camp but should return to Bangkok. He told Human Rights Watch:

UNHCR [in Bangkok] told me to go to a refugee camp in Mae Sot. I went to the UNHCR office in Mae Sot and spoke to \_\_\_\_\_. She interviewed me for three hours. She said, “You cannot get into a camp. It would not be good for you. They will threaten you.” She told me to go back to Bangkok. I went back to UNHCR Bangkok with \_\_\_\_\_, a lawyer from the JRS [Jesuit Refugee Service] office. Later, I called the UNHCR office and talked to a Burmese person. He said he didn’t want to talk to me, but only to an English or Thai person. He did not give me another person to talk to. UNHCR Bangkok told me to go to Mae Sot and UNHCR Mae Sot told me to go to Bangkok.<sup>253</sup>

UNHCR informed Human Rights Watch that when it is approached by Rohingya asylum seekers it “counsels them to seek registration with any of the PABs [Provincial Admission Boards] in the refugee-hosting provinces.” However, UNHCR also told Human Rights Watch that Rohingya “in theory” have access to the Provincial Admission Boards and that “UNHCR has advocated for PAB access for the Muslim residents of northern Rakhine state with the RTG [Royal Thai Government].”<sup>254</sup> The result is a policy, in effect, of sending Rohingya into a dead-end, since UNHCR knows that the PABs will not register Rohingya.

A long-term resident Rohingya de facto refugee, the holder of a UNHCR “registration slip,” told Human Rights Watch how he finally gave up seeking help from UNHCR. In 2005 UNHCR sent him a letter informing him that urban refugees would no longer be assisted and that he would need to go to a camp. From that point on, however, UNHCR never made it clear to him what steps to take to avail himself of protection or assistance. He told Human Rights Watch:

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<sup>253</sup> Human Rights Watch interview B54, Bangkok, June 24, 2011.

<sup>254</sup> Email from UNHCR to Human Rights Watch, June 14, 2012.



I got [the UNHCR] letter in 2005 telling me to go to a camp, but I waited for a phone call to tell me what camp to go to. They never called. I went to UNHCR five times, but then UNHCR told me my case was closed and just to go. They didn't tell me to go to a camp or anywhere else. One time two years ago, I went to UNHCR. I told them that I couldn't go alone to the camp. I asked them to give me a paper to take to the camp. They wouldn't give me any paper.<sup>255</sup>

In these accounts, Burmese asylum seekers who approached UNHCR not only seeking protection from arrest and refoulement, but also just basic advice and assistance to find shelter and accommodation, had been left to fend for themselves. Other NGOs have reported similar problems for other nationality groups. A 2009 report published by three Thailand NGOs included the account of a Khmer Krom asylum seeker from Vietnam who went to register with UNHCR: "They took my name, documents, and evidence and told me to go home. They said they would call me again, but they never did. I wasn't given an asylum seeker certificate and don't know if I am registered."<sup>256</sup> The person expressed a fear of going on the street without any UNHCR document and being caught by the police.

UNHCR provides asylum seekers and refugees with emergency phone numbers to call in the event of arrest. Asylum seekers and refugees told Human Rights Watch that the phone calls sometimes go unanswered. This appears to have been the case on June 15, 2011 when Thai Immigration authorities arrested 13 asylum seekers/refugees outside the Bangkok Refugee Center (see Chapter V box, June 15 Arrests outside the Bangkok Refugee Center). A 16-year-old Sri Lankan girl who was there at the time said, "UNHCR gave us a phone number if we are arrested, but on that Wednesday every Sri Lankan called UNHCR, but they didn't answer the phone."<sup>257</sup> In commenting on an earlier draft of this report, UNHCR said that it took several calls from refugees and asylum seekers that day and contacted the police for their release "to no avail."<sup>258</sup>

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<sup>255</sup> Human Rights Watch interview B55, Bangkok, June 24, 2011.

<sup>256</sup> Asylum Access, Boat People SOS, and Conscience Foundation, "UNHCR Protection Challenges for Urban Refugees in Thailand: Report and Recommendations," April 2009, p. 4.

<sup>257</sup> Human Rights Watch interview B-43, Bangkok, June 23, 2011.

<sup>258</sup> Email from UNHCR to Human Rights Watch, July 12, 2012.

Even when someone at UNHCR answers the emergency hotline, the response is not necessarily helpful. When police stopped Aziz Ghulam Ahmed, a 32-year-old Ahmadi from Pakistan, on the street and demanded to see his papers, he said, “I showed [the police] my UNHCR letter. They said they don’t recognize that.” The officers said they would take him to the IDC, but instead put him in a van where they searched his pockets and demanded bribes (see Street Arrests, Chapter V). While in the van, Ahmed managed to call UNHCR, but “UNHCR said we can’t help unless an FIR [a police First Information Report] is lodged.”<sup>259</sup> UNHCR contests this account, saying that FIRs are only used in Pakistan, not Thailand, and that whenever a call is received “either through the office landline or the hotline, an intervention with the police/arresting authority is made immediately to advocate for and negotiate their release.”<sup>260</sup> The likely explanation for this discrepancy is that Ahmed was never taken to a police station and formally arrested, but only called from the van. And that when he called from the van, a UNHCR staffer may have told him that they would not be able to help until he was taken to a police station, which Ahmed expressed using the common Pakistani abbreviation for a police intake report. In any case, Ahmed told Human Rights Watch he was living in fear. “My sisters are school age, but here they do no study, they don’t leave the house even to go to school. We do not leave our house unless we need to buy food.”<sup>261</sup>

## Refugee Status Determination Interviews for Non-Burmese Urban Asylum Seekers

Refugees, asylum seekers, and the nongovernmental organizations working with them all complained of poor communication with the UNHCR offices in Thailand. Refugee legal service providers in Bangkok told Human Rights Watch that this failure to communicate makes it difficult for them to advise and represent their clients. “Communication between UNHCR in Thailand and local legal service providers is sometimes strained,” said Anoop Sukumaran, coordinator of the Asia Pacific Human Rights Network. “Legal aid providers are

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<sup>259</sup> Human Rights Watch interview, B40, Bangkok, June 23, 2011.

<sup>260</sup> Email from UNHCR to Human Rights Watch, July 12, 2012.

<sup>261</sup> Human Rights Watch interview, B40, Bangkok, June 23, 2011.

not allowed to be present during UNHCR's RSD procedures and often don't know what is happening with their clients' cases."<sup>262</sup>

In commenting on an earlier draft of this report, UNHCR said, "UNHCR has been informed by the authorities that since UNHCR conducting of RSD is merely tolerated, other entities cannot be allowed in this process."<sup>263</sup>

The most common complaint regarding UNHCR among urban refugees and asylum seekers in Bangkok is the long waiting periods for UNHCR Refugee Status Determination (RSD) interviews and for UNHCR to report back the results of the interviews, and a similarly slow appeals process. Asylum seekers consistently say that the process is delayed, that communication by and from the office is very poor, and that they remain extremely vulnerable while waiting for UNHCR to make and report decisions on their cases.<sup>264</sup> In mid-2012, the average waiting time for the first-instance RSD interview with UNHCR was 112 days, and another 203 days to receive the decision for that interview. Average appeals took another 113 days for the interview (for those who were interviewed) and 236 days for a decision.<sup>265</sup> Although these are still long waiting periods, the average waiting times were much longer in calendar year 2011: 212 days from registration to the first interview; 210 days from the first interview to a decision; and another 223 from appeal request to appeal decision.<sup>266</sup> Resettlement waits for urban refugees from UNHCR referral to departure took an average of 401 days in 2010 and an average of 918 days in 2011.<sup>267</sup>

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<sup>262</sup> Email from Anoop Sukumaran, coordinator, Asia Pacific Human Rights Network, to Human Rights Watch, June 12, 2012.

<sup>263</sup> Email from UNHCR to Human Rights Watch, July 12, 2012.

<sup>264</sup> According to UNHCR, the agency systematically records every inquiry and call received. In 2011, UNHCR received 3,846 calls of which 1,845 pertained to RSD results. To protect confidentiality, UNHCR said that it provides RSD results only in person, and not via phone. Email from UNHCR to Human Rights Watch, July 12, 2012.

<sup>265</sup> Email from UNHCR to Human Rights Watch, June 14, 2012. Processing times are slowest for nationals of the People's Republic of China.

<sup>266</sup> UNHCR, Refugee Status Determination (RSD), 1<sup>st</sup> January-31<sup>st</sup> December 2011, in "Registration, Protection, Resettlement & Community Services for Urban Refugees 2011 Overview," UNHCR, March 2012, Slide Number 6. UNHCR informed Human Rights Watch that the long delays in 2011 were, among others, due to UN security restrictions and lack of qualified interpreters for certain languages. Email from UNHCR to Human Rights Watch, July 12, 2012.

<sup>267</sup> Email from UNHCR to Human Rights Watch, June 14, 2012.

Human Rights Watch talked to people who said they have waited twice as long as these reported average waits at various stages of the process. An Ahmadi man from Pakistan in his early twenties who arrived in Thailand in April 2010, told Human Rights Watch that he has been waiting for his first interview with UNHCR for 14 months and that UNHCR had postponed it many times.<sup>268</sup> Postponements seem to be common. A 43-year-old former political prisoner in Vietnam who has been in Thailand since February 18, 2011 told Human Rights Watch in mid-June 2011 that UNHCR had already postponed his first interview four times. He said that it was rescheduled for August 31, about five months since first approaching UNHCR, “but there is no guarantee.”

Others experience even longer delays after the RSD interview. Aziz Ghulam Ahmed, the 32-year-old Ahmadi former prisoner from Pakistan whose case is discussed above, arrived in Thailand in December 2008. He spoke about his vulnerability while waiting for the results of his UNHCR interview:

The first time I went to UNHCR, two months after my arrival in Thailand, I submitted my documents. After nine months, they interviewed me and gave me a slip saying they would give the interview results in three months. Now it is one year and eight months since my first interview and there is still no result. I have only had one interview, and I call every week and they say it is still pending. Yesterday I called UNHCR and asked to meet with an officer to tell me why no result. They would not talk to me. We are between life and death, mentally depressed and desperate. We are always afraid we will be caught and sent to the IDC.<sup>269</sup>

A lawyer working for Jesuit Refugee Service said that frequent UNHCR postponement of interviews causes problems in the capacity of organizations such as hers to sustain people while their claims are pending with humanitarian assistance, but also exposes them to arrest:

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<sup>268</sup> Human Rights Watch interview B41, Bangkok, June 23, 2011.

<sup>269</sup> Human Rights Watch interview, B40, Bangkok, June 23, 2011.

I currently have 11 clients whose interviews have been postponed. One of those was a Pakistani who was arrested in December. He went back in January. UNHCR has postponed the interview for another of my Pakistani clients five times. Despite regular correspondence with UNHCR, the postponements continue. My client was finally arrested last week and is now in detention. My clients ask me for an explanation for UNHCR's postponements. But we get no explanation, we don't know why.<sup>270</sup>

Delays in appeals of negative decisions also cause suffering. A 33-year-old Sri Lankan Tamil woman with four children, whose husband was still in Sri Lanka, said that she went straight to UNHCR upon her arrival in Thailand two years ago. She said that she had to wait two months for her RSD interview and 19 months for the result, which was negative. She made an appeal and has had no interview and no more information from UNHCR three months after lodging the appeal. She told Human Rights Watch:

I don't know how to tell about my suffering. I have no support. No news of my husband. I can't wait any longer and I have no financial support from anywhere. How can I live?<sup>271</sup>

UNHCR says that detainees at Suan Phlu are processed for RSD on an expedited basis. Even so, Human Rights Watch met a detainee released on bail, Priya Anand, a Tamil woman from Sri Lanka, who said that UNHCR interviewed her husband in November 2009, nearly a year before his arrest, and that he had been detained at Suan Phlu IDC for eight months at the time we met with her. UNHCR had not yet given him the result of his RSD at the time we talked with her in June 2011, 19 months after his interview, despite his detention. Priya Anand's own refugee claim with UNHCR was still pending when we met her. She said that every three months when she went to renew her bail the Thai officials frightened her by asking why she was not yet recognized as a refugee. In the meantime, Priya Anand was supporting two small children and trying to bring food to her husband in

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<sup>270</sup> Human Rights Watch interview with Valeria Rach, Legal officer, Jesuit Refugee Service, Bangkok, June 23, 2011.

<sup>271</sup> Human Rights Watch interview, B45, Bangkok, June 23, 2011.

detention; she received no humanitarian assistance and, like all other asylum seekers and refugees, was not authorized to work.<sup>272</sup>

The delays cause particular hardships for physically disabled and otherwise extremely vulnerable people who are not able to get needed humanitarian assistance until being recognized as refugees. Human Rights Watch met a 37-year-old Tamil woman, T. Sankavi, living with severe disabilities. She had an amputated leg and another badly damaged leg from an artillery shell that hit her in Sri Lanka. She had her RSD interview about four months after lodging her claim with UNHCR and was still waiting for the results of that interview when she spoke with Human Rights Watch about five months later. The lack of a decision for nine months left her feeling frightened and vulnerable. “Every day I fear the police,” she said. She also said it prevented her from getting help with prosthetics and other medical assistance she needed:

I went to the BRC [Bangkok Refugee Center—UNHCR’s implementing partner for assistance] and asked them to help me with my artificial leg. When I came here I had medicine. But it’s used up. They said they can only help if you are recognized as a refugee. If you are only an asylum seeker they cannot help. Nobody is giving money. Nothing from UNHCR, nothing from the BRC, only a little money from relatives in Sri Lanka, which is not enough.<sup>273</sup>

In commenting on a draft of this report, UNHCR said, “Asylum seekers have access to general health services offered through the BRC. In terms of cash assistance for asylum-seekers, JRS or other urban NGOs provide cash and food assistance for at least three months. For asylum seekers with physical disabilities or other special needs/concerns, UNHCR provides cash assistance (albeit it being limited and time-bound) on a case-by-case basis and subject to the availability of funds.”<sup>274</sup>

T. Sankavi’s financial hardship, fear of arrest, and the lack of support for her health and physical disability caused her to have problems that were not only physical:

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<sup>272</sup> Human Rights Watch interview B48, Bangkok, June 23, 2011.

<sup>273</sup> Human Rights Watch interview B44, Bangkok, June 23, 2011.

<sup>274</sup> Email from UNHCR to Human rights Watch, July 12, 2012. .

We need financial support. We need to pay for rent, food. The children do not go to school. It is very difficult to stay in this room 24 hours. The children are afraid to play outside. I get angry with my children. We have grown mentally disturbed.<sup>275</sup>

Beyond delays in the processing of refugee claims, UNHCR Bangkok's RSD procedures do not conform with UNHCR's own guidelines. For example, UNHCR's *Procedural Standards for Refugee Status Determination under UNHCR's Mandate* state, "The legal representative will have the opportunity to make brief submissions at the end of the RSD interview...and should promote complete and reliable disclosure of the Applicant's claim."<sup>276</sup> However, Michael Timmins, Legal Services manager at Asylum Access, told Human Rights Watch, "Legal representatives are not permitted to attend [RSD] interviews with claimants."<sup>277</sup>

UNHCR's *Procedural Standards* further instruct its offices that applicants whose claims are rejected should, wherever possible, be informed in writing of the reasons for the rejections, and specify that "notifications should permit rejected Applicants to make an informed decision about whether an appeal is appropriate and to focus appeal submissions on relevant facts and issues."<sup>278</sup> Yet, Timmins, who represents such applicants, said, "There is no available record of the interview questions, rejected applicants receive limited reasons for rejection making it difficult to appeal, and UNHCR will often not disclose to a rejected claimant the evidence used to reject."<sup>279</sup>

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<sup>275</sup> Human Rights Watch interview B44, Bangkok, June 23, 2011.

<sup>276</sup> UNHCR, *Procedural Standards for Refugee Status Determination under UNHCR's Mandate*, section 4.3.3.

<sup>277</sup> Email from Michael Timmins, legal services manager, Asylum Access, to Human Rights Watch, May 17, 2012. His statement is confirmed by Jesuit Refugee Service, which said that "attempts to be present during interviews have failed." JRS, "The Search: Protection Space in Malaysia, Thailand, Indonesia, Cambodia and the Philippines," JRS Asia Pacific (2012), p. 45. [http://www.jrs.net/news\\_detail?TN=NEWS-20120429110609\\_a](http://www.jrs.net/news_detail?TN=NEWS-20120429110609_a) (accessed July 5, 2012). UNHCR's response is that the Thai authorities do not allow other entities in the RSD process.

<sup>278</sup> UNHCR, *Procedural Standards for Refugee Status Determination under UNHCR's Mandate*, section 6.2.

<sup>279</sup> Email from Michael Timmins, legal services manager, Asylum Access, to Human Rights Watch, May 17, 2012.

## V. Arrests and Extortion of Refugees and Migrants

The lack of a legal framework in Thailand that recognizes and provides documents for asylum seekers and refugees means that both de facto and UNHCR-recognized refugees are vulnerable to arrest on the street, in the workplace, and in their homes. It also makes them subject to intimidation and detention by the authorities, and sometimes to refoulement. Vijavat Isarabhakdi from the Ministry of Foreign Affairs told Human Rights Watch that the large number of urban refugees is “a big problem for us,” and suggested that law enforcement officers have little flexibility in dealing with it because the legal regime doesn’t allow for urban refugees and essentially treats them as illegal.

The Thai Immigration Act of 1979 (B.E. 2522) makes no exception for refugees when it says anyone who enters Thailand without authorization “shall be punished by an imprisonment not exceeding two years and a fine not exceeding 20,000 Baht [about US\$600]” (section 62), and that any foreigner who “stays in the Kingdom without permission or with permission expired or revoked shall be punished with imprisonment not exceeding two years or a fine not exceeding 20,000 Baht or both” (section 81).<sup>280</sup>

Vijavat Isarabhakdi said, “The authorities feel that they have to abide by the immigration law. They need to carry out arrests. Otherwise they would be neglecting their duties.”<sup>281</sup> Thai policymakers’ unwillingness to accept responsibility for recognizing and protecting refugees has grave consequences at the local level when de facto refugees and asylum seekers encounter the police.

### Street Arrests

While most de facto refugees and migrants living outside of refugee camps said that they had been stopped on the street by the Thai police and made to pay fines/bribes, often in

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<sup>280</sup> Immigration Act, B.E. 2522 (1979) [Thailand], May 30, 1979, available at: <http://www.unhcr.org/refworld/docid/46b2f9f42.html> (accessed July 5, 2012). Legal entry is defined as entering at immigration check points, designated landing, stations or areas, and in accordance to the prescribed time (Section 11).

<sup>281</sup> Human Rights Watch interview with Vijavat Isarabhakdi, director general, Department of International Organizations, Ministry of Foreign Affairs, Bangkok, June 20, 2011.



intimidating ways, relatively few of those interviewed by Human Rights Watch reported more serious police abuses, such as beatings. Police apprehending improperly documented Burmese on the street usually demand payments in a broad range of several hundred baht up to 1,000 baht (about US\$30) or more. A person unable to pay on the street and taken to a police station will normally pay in the high hundreds to be released, with wide variation that can go into the low thousands.<sup>282</sup> If they are taken to an Immigration Detention Center (IDC) or to the border, the payment normally rises to 1,000 to 4,000 baht (about US\$30 to \$120), but can go considerably higher depending on the perceived ability of the person to pay.<sup>283</sup>

The payments seem to involve sliding scales depending on where people are apprehended and their perceived ability to pay. They are higher in Bangkok than in border towns and appear to be higher for people who look like they can afford to pay higher amounts, including based on how they are dressed, but also depending on the times and places where they are encountered; the price goes up when migrants are likely to be carrying more money, such as at the end of a work day or at the end of harvest season when migrants or camp residents are on their way back home from the fields. The police sometimes tell apprehended migrants that they can pay a smaller amount directly to the police to avoid higher fines they would be required to pay if they were taken to court. A typical account about encounters with the Thai police in Mae Sot came from a 44-year-old former political prisoner from Burma:

I don't have a work permit. I just work. If I am stopped by the police I have to negotiate not to send me to the other side, to Myawaddy [in Burma]. This happened to me three times. Each time, I contacted friends to follow me and pay me out. I have only been taken to the police box, never to the IDC. I paid at least 1,500 baht [about US\$45] each time. The police never hit me, they just asked for money.<sup>283</sup>

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<sup>282</sup> These payment ranges come from the interviews conducted with many migrants as well as with local NGO service providers. See Human Rights Watch, *From the Tiger to the Crocodile*, pages 68-74.

<sup>283</sup> Human Rights Watch interview B16, Mae Sot, June 13, 2011.

Some accounts of street arrests reveal petty harassment by the police. A 20-year-old Burman man said that one time the police arrested him on the street in Mae Sot when he had no money, hit and harassed him, and then sent him on his way:

At the checkpoint, the police asked me for money and I told them that I don't have it. So the police got angry and they hit me on the back and told me to do push-ups 50 times. When I was doing the push-ups, some of them came and kicked me. Then he let me go and I went to the place where I was going.<sup>284</sup>

A Burman woman stopped by the police on the Asia Highway near the border with Burma in September 2007 told Human Rights watch how she negotiated the amount to pay the police before being allowed on her way:

Seven policemen were there. They put me in a pickup truck and asked me for money, but I told them I didn't have any, that I just wanted to go home. They said to me, "If you really want to go home you must pay 1,000 baht [about US\$30]. If you don't have that, 500 baht [about US\$15]. There are a lot of policemen here, you see." They spoke very good Burmese. I was afraid so I gave them 200 baht [about \$6] and they let me go.<sup>285</sup>

The amounts demanded rise in Bangkok. Aziz Ghulam Ahmed, the 32-year-old Ahmadi man from Pakistan whose case is described above, said that the police first demanded that he pay them 50,000 baht (about US\$1,500), but after searching his pockets, threatening him in a van, and taking him back to his apartment to collect the bribe, settled for 1,000 (about US\$30):

I was sitting outside my apartment on a bench with three friends after Friday prayers. The immigration police approached and asked to see our passports. They demanded 50,000 baht. I begged them to reduce the amount. They searched my pockets for money, but I had nothing. They put us in a police

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<sup>284</sup> Human Rights Watch interview AB21, Mae Sot, February 14, 2011.

<sup>285</sup> Human Rights Watch interview D3, Mae Sot, August 25, 2008.

van and took us to a vacant lot. They talked hard, rubbish language to us. I told him we would have to go to an NGO for money, and that he could shoot me here and now before I would go back to Pakistan. Finally, he took us back to our apartment where we paid 1,000 baht per person.<sup>286</sup>

## Raids by Immigration Officials and Police

In addition to spot checks on the street, the Thai police and immigration authorities also raid businesses and homes where they believe undocumented migrants are working and living. While some people who witnessed or were apprehended during such raids told Human Rights Watch of being robbed and beaten by police, others said police only hit people trying to escape, and some said that police and immigration officials acted correctly even when migrants resisted arrest.

### *Workplace and Work Camp Raids*

Sometimes immigration officials and police raid work sites and migrant worker encampments searching for people who are working without work permits. A headman of a Shan construction workers camp near Chiang Mai told Human Rights Watch that the police usually conduct one major raid per year on his camp. He described the most recent raid:

The police came at 3 a.m. We were all asleep. At first they arrested everybody. Those caught trying to run away were kicked and beaten. Everyone was told to sit quietly. If you did not, you were beaten. The police did not steal anything. Then we had to show ID cards. Some they believed, some not. Those without permits or who they didn't believe were taken to jail. Our employer brought out documents to the police and a list of employees. I had to follow up with my sister. I paid 8,000 baht [about US\$240] and the police did not deport her. Those who did not have money were deported. At the time the police deported eight people. They didn't come back and I never heard anything more from them.<sup>287</sup>

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<sup>286</sup> Human Rights Watch interview B40, Bangkok, June 23, 2011.

<sup>287</sup> Human Rights Watch interview B33, Chiang Mai, June 17, 2011.

### June 15, 2011 Arrests outside the Bangkok Refugee Center

With the government's knowledge, UNHCR has supported the Bangkok Refugee Center (BRC) as its implementing partner to provide a safe place for refugees and asylum seekers to find social assistance, take classes, and receive counseling. On June 15, 2011, Thai immigration authorities and police arrested 13 refugees and asylum seekers just outside the BRC, including eight children, causing panic among refugees and asylum seekers in and around the center. As a result, that trust of refugees and asylum seekers' that they would be safe at the BRC was badly shaken. After the arrests, many children whose only form of education had been at the BRC stayed at home with no educational opportunities. UNHCR said that classes were not suspended as a result of this incident, but only because it was the summer holiday. UNHCR said after classes resumed some parents stopped sending their children to the BRC classes for fear of arrest, but that normal attendance resumed two weeks after the reopening of classes.<sup>288</sup>

Human Rights Watch interviewed several people who were at the BRC when the incident occurred. The accounts differ according to where individuals were as the raid unfolded. A 37-year-old Tamil man from Sri Lanka said that he was coming out of the BRC at 3 p.m. on June 15 when a Lao-looking man stopped him about 20 meters from the BRC door. He told Human Rights Watch:

I thought he was a refugee. He said, "I am immigration," and caught me. I asked him to show me his ID, but he didn't. He just took me. I didn't know if he was lying, so I just pushed him away. If he had showed me his ID card I would not have pushed him away. Then I saw about 150 meters away other officers. They were arresting others. All the ones arrested were going to the BRC office that day. Both my wife and I escaped. He [the Laotian-looking immigration officer] was just one man, so he couldn't manage us. A lot of us ran and hid. The BRC

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<sup>288</sup> Email from UNHCR to Human Rights Watch, July 12, 2012.

manager just locked the door. He wouldn't allow us inside. Now I will not send my children to the BRC to study.<sup>289</sup>

His 16-year-old daughter, who had acted as an English interpreter for her father's interview, then added, "That was my safety place. I have no way to study now. We just stay at home."<sup>290</sup>

A 54-year-old Vietnamese man was inside the BRC that day with his wife, who cuts hair there, and his son. He said:

More people than usual were there at that time because they were passing out soap. A lot of people were at the bus stop. The police must have known. The altercation started when the police grabbed one guy and he tried to escape. People were pushing and hitting the police.

The police did not hit or use force, except pushing and pulling people. They were immigration police in uniform with yellow helmets. They brought a huge truck. A little boy ran into the BRC saying that they had arrested his mother. People were really panicked. The police filled the truck with a bunch of people. Then they brought a second truck and filled that one too. They handcuffed people. Some people ran into the BRC. The police didn't come into the BRC. They were at the entrance gate. The BRC managers were talking to the police. I couldn't understand what they said to the police. The staff are all Thai.

We were hiding in a classroom. People were locked in the room crying. I have never seen people so scared. People were climbing onto the roof, ready to try to jump to the next building, if necessary. They were ready to jump off the roof. From that day [the interview

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<sup>289</sup> Human Rights Watch interview B42, Bangkok, June 23, 2011.

<sup>290</sup> Human Rights Watch interview B43, Bangkok, June 23, 2011.

occurred 10 days after the incident] we are afraid to leave our flat. We would not go back to the BRC. We are out of food.”<sup>291</sup>

In commenting on a draft of this report, UNHCR said, “There was no raid by the immigration authorities on the BRC itself and no arrests were made inside the BRC, nor were big trucks placed in front of the entrance of the BRC on 15 June 2011.”<sup>292</sup>

A 43-year-old Vietnamese man, who was there at the time, spoke about continuing rumors and fear in the aftermath of the arrests. He said, “Just this past Wednesday [one week after the arrests], we heard that they arrested more people across the street from the BRC. We are told not to send our kids to the school, that it is closed at least until the end of June.”<sup>293</sup>

The BRC is an implementing partner for UNHCR and provides essential social services, including classes for children, and a place that asylum seekers and refugees had regarded as safe. The harassment of individuals in the immediate vicinity of the BRC added greatly to the anxiety of Bangkok’s urban refugee community.

UNHCR said that more than 30 refugees and asylum seekers were arrested in four different locations during a two-week period that included the arrests outside the BRC. UNHCR’s regional representative Jean-Noel Wetterwald issued a press statement on June 20, saying, “We are deeply concerned about these arrests, which just increase the sense of insecurity that refugees and asylum-seekers already feel.”<sup>294</sup> UNHCR said that there have been no reports or arrests near or at the BRC since June 20, 2011.<sup>295</sup>

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<sup>291</sup> Human Rights Watch interview B57, Bangkok, June 25, 2011.

<sup>292</sup> Email from UNHCR to Human Rights Watch, July 12, 2012.

<sup>293</sup> Human Rights Watch interview B58, Bangkok, June 25, 2011.

<sup>294</sup> Jean-Noel Wetterwald, quoted in “International refugee agency slams arrests in Thailand,” *McClatchy-Tribune Business News*, June 21, 2011.

<sup>295</sup> Email from UNHCR to Human Rights Watch, July 12, 2012.

## *Home Raids*

Police conduct raids and arrests of migrants in their homes, often violating rights in the process. A Tufts University/Feinstein International Center survey of nearly 800 Burmese living in Mae Sot found that 20 percent of the migrant respondents had been evicted from their homes.<sup>296</sup> Although the police are not always involved in evictions, the study quotes a Burmese school teacher in his 50s who related how the Border Patrol Police came to his home in 2008, ignored documents he presented from his school and from UNHCR, and “pushed me, my wife, and two daughters out of the house and two children were left inside the house.” They were taken to a nearby military base where he was told “you are not allowed to live here.” He said that he gave the police 900 baht [about US\$27] and that night moved to a friend’s house.<sup>297</sup>

Human Rights Watch interviewed an Arakanese brother and sister, Oo Tha Hla, 22, and Moe Moe, 28, who arrived in Thailand in mid-May 2011 looking for work. They had 8,000 baht (about US\$240) upon arrival, but said that the Thai police raided the house they were living in and stole their money:

Oo Tha Hla: The police raided our house, our room, and took all our money and all our belongings. The money was just taken from us. It was not a fine. It was stolen. Eight of us were arrested....

Moe Moe: We don’t have money. We came here to work to get money to go home. They took the money from my pocket. They asked for my mobile phone. I said I didn’t have one. They slapped my face with their hands twice. They told me to open my shirt and searched my underwear with their hands for a mobile phone. They took me alone in a room. First it was only one police man. He was wearing a white T-shirt and no uniform, long trousers and a pistol. He made a call and a police truck came and took us to the IDC. The plainclothes police man touched me, he stole my money. Then, another

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<sup>296</sup> Feinstein International Center, *Developing a Profiling Methodology for Displaced People in Urban Areas: Case Study: Mae Sot, Thailand*, Tufts University, November 2011, <http://sites.tufts.edu/feinstein/files/2012/01/Developing-a-Profiling-Methodology-MaeSot.pdf> (accessed June 30, 2012), p. 37.

<sup>297</sup> Ibid.

policeman came and a translator who could speak Burmese. The one who spoke Burmese did not have a gun. When we got to the IDC, they slapped my face many times.

Oo Tha Hla: They kicked me. There was no punching, no stick, but they kicked many times.

Moe Moe: They slapped me and threatened us with a gun. I was the only woman. The other seven were men. There were no children.<sup>298</sup>

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<sup>298</sup> Human Rights Watch interviews B25 and B26, Mae Sot, June 14, 2011.



## VI. Immigration Detention Centers

Irregular migrants in Thailand swept up in raids or who are unable to pay fines/bribes when apprehended on the street by the authorities are likely to be taken to Immigration Detention Centers (IDCs). Burmese nationals usually only spend a few days to a week in IDCs before they are taken to the border to be deported or otherwise released. Nationals from countries that do not border Thailand, however, can spend years in indefinite detention, being held essentially until they are able to pay for their own removal.<sup>299</sup> Jesuit Refugee Service, which provides legal services to refugee and asylum seeker detainees in Bangkok, informed Human Rights Watch that some of the Sri Lankan refugees in the Suan Phlu detention center at the time of Human Rights Watch's June 2011 visit had been detained there for four to five years.<sup>300</sup>

Although Human Rights Watch was not allowed sufficient access to the Suan Phlu IDC to assess conditions of detention and was not able to enter any other IDCs to make a first-hand assessment, detainees, and former detainees gave consistent accounts of overcrowded and unhygienic conditions. An important reason for these poor conditions is suggested in Thailand's immigration law, which states that "the expense of detention shall be charged to the alien's account."<sup>301</sup> This indicates that it is the detainees' responsibility, rather than the government's, to provide for their basic needs in detention. Vijavat Isarabhakdi, director general of the Department of International Organizations in the Thai Ministry of Foreign Affairs, told Human Rights Watch: "We acknowledge that the IDCs were not built to house such large numbers."<sup>302</sup>

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<sup>299</sup> Immigration Act, B.E. 2522 (1979) [Thailand], May 30, 1979, section 55 states that "the alien...will have to pay the expense of deportation," available at: <http://www.unhcr.org/refworld/docid/46b2f9f42.html> (accessed July 5, 2012).

<sup>300</sup> Human Rights Watch interview, JRS staff, Bangkok, June 23, 2011.

<sup>301</sup> Immigration Act, B.E. 2522 (1979) [Thailand], May 30, 1979, section 54, available at: <http://www.unhcr.org/refworld/docid/46b2f9f42.html> (accessed July 5, 2012).

<sup>302</sup> Human Rights Watch interview with Vijavat Isarabhakdi, director general, Department of International Organizations, Ministry of Foreign Affairs, Bangkok, June 20, 2011.

## Mae Sot IDC

Oo Tha Hla and Moe Moe, the Arakanese brother and sister whose home was raided in Mae Sot, were taken to the IDC in Mae Sot after their arrest. The two, interviewed together, told Human Rights Watch that the IDC officials in Mae Sot demanded a payment of 800 baht (about US\$24) each for their release, but that they had no money after the arresting police had stolen their money. They remained in the IDC for seven days until Moe Moe's husband was able to raise the money, pay the authorities, and get them released. According to Moe Moe, the only way to get released was to pay: "Those who returned home got money from their families."

Moe Moe said that after the slaps upon arrival, "There was no more hitting during the seven days" she spent in detention. But the conditions she described were inhuman and degrading in contravention of international standards on detention:<sup>303</sup>

In the IDC there is no separate room for men and women; it is just men on one side, women on the other. We used the same toilet, men and women, and there were holes in the wall of the toilet so someone could see through the holes. There were about 60 people in a room of about 4 by 12 meters, about 40 men and 20 women. We had to share a few blankets and mattresses, not enough for all the people. We spent seven days in the cell. There was no air, only slats on two walls, but not enough. The IDC had a very bad smell from the toilet that made the room smell bad. Even if the police didn't tell us to clean the place, I would have cleaned it. But they provided no cleaning supplies, no soap.

The Thai police provided no food, no water for seven days. There was only water for the toilet. The police would not let my husband bring drinking water for me. Some good-hearted police would let food in, but rude police would stop food. In seven days, my husband could only send rice to me one time. There was a Burmese woman who sold food to the prisoners, but we didn't have any money.

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<sup>303</sup> See generally, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, G.A. res. 43/173, annex, 43 U.N. GAOR Supp. (No. 49) at 298, U.N. Doc. A/43/49 (1988).

We were never taken to a court or a judge. We had no visitors from UNHCR or NGOs. After seven days, we paid money and they released us. They didn't take us to the border. We paid money for our release. When we were released they didn't give us any kind of document or paper but marked an X on our wrist. We could be arrested any time as soon as the X wore off.<sup>304</sup>

A 28-year-old Karen man, Maung Aye, told Human Rights Watch of his experiences with demands for bribes and forced labor when he was detained at the Mae Sot IDC in 2006. He did not deal directly with Thai guards, but rather with Karen “trustees,” long-term detainees who work for the guards. He said the trustees “are already released, but stay there and take money and sell drugs.” Maung Aye was arrested in a factory raid and first spent 48 days in the Bangmor Prison in Bangkok, before being sent to the Mae Sot IDC. Upon arrival, he said that a trustee told him to pay him a bribe or he would have to work. “I told him, ‘I’m just out of prison,’ but he made me clean toilets. On the second day, I refused, but the trustee said, ‘If you don’t work, you will stay here forever.’”<sup>305</sup> After a few days, the authorities took Maung Aye to the “999 gate” border crossing with Burma, where he was turned over to the Democratic Karen Buddhist Army (DKBA) 333 brigade, paid a 1,000 baht (about US\$30) bribe, and returned to Thailand.

## Suan Phlu IDC, Bangkok

The largest IDC is on Suan Phlu Street in Bangkok. Human Rights Watch had a limited visit to the Suan Phlu IDC, which included an off-the-record conversation with the facility administrator, access to the lawyer visitation area, and interviews with a few of the detainees in which no guards or other detainees were present, but in which Human Rights Watch was accompanying a local NGO service provider.

Although Human Rights Watch was not able to observe conditions in the living quarters of the Suan Phlu IDC firsthand, we spoke with detainees and former detainees, who spoke of lack of ventilation, lack of recreation, mixing of children and adults, poor food, and abusive treatment by guards. A 30-year-old Burman told Human Rights Watch about his harsh reception when he arrived in the facility in 2008:

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<sup>304</sup> Human Rights Watch interview B26, Mae Sot, June 14, 2011.

<sup>305</sup> Human Rights Watch interview B11, Mae Sot, June 12, 2011.

When they took my fingerprints, I couldn't stop my fingers from moving and the police were getting angry. They punched me on my left jaw, a little hard, not too hard. The police didn't say anything. I was angry and afraid, but I couldn't say anything or next time he would get me.... I was sent to IDC, back to Mae Sot, then DKBA in Burma.<sup>306</sup>

A lawyer who represents many detained clients from the IDC told Human Rights Watch, "They are only allowed out of their cells twice a week. The medical facilities are limited and counselors from the Bangkok Refugee Center are only allowed in twice a month to provide psycho-social counseling."<sup>307</sup> She said that the conditions in the women's room were particularly bad. A released 31-year-old Tamil woman who was pregnant at the time of her detention, as well as having another small child with her, told Human Rights Watch about her experience:

I was eight months' pregnant. I had spent one-and-a-half months in the IDC. I couldn't eat the Thai food. I was really suffering. I slept on the floor with no blanket. It was the room for women and children. There were 200 people in that room. There was no space. I couldn't sleep for four or five days. There were only two toilets for 200 people. It was not clean. We were only allowed two hours in the courtyard every three days.

One of the detainees beat my daughter. He was crazy. There was no guard, no police to help us. She was not injured.

UNHCR didn't help. They said, "We are not involved in the IDC." I paid myself to get out of the IDC. I paid all the money I had for bail.<sup>308</sup>

Jeya, a 33-year-old Tamil woman, described not only lack of privacy and severe overcrowding in the women's section, but said that from what she saw the male guards were having sexual relations with female detainees:

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<sup>306</sup> Human Rights Watch interview D8, Mae Sot, October 25, 2008.

<sup>307</sup> Human Rights Watch interview with Kiran Chahal, legal officer, Jesuit Refugee Service, Bangkok, June 23, 2011.

<sup>308</sup> Human Rights Watch interview, B48, Bangkok, June 23, 2011.

That room was only for 20 people, but we had 80 to 100 in there. We slept foot to head with the others. During that time in the IDC, we didn't have a toilet door. It was just open. If you take showers, people can see your whole body. For our culture, it is not okay to shower with other women or when people are looking at us. Also, in the jail it was just for women, but the guards were all men. They'd come at improper times. The policemen would come at night. They would come to the IDC and hug closely the women who were dressed in barely any clothes. The police were also close with some of the prisoner women there. They'd come to talk with the other prisoner women and make relationships with them, like husband and wife. I felt like we couldn't be in that situation any more. We didn't understand the language, but we would see what was going on and guess.<sup>309</sup>

Jeya also described intolerable sanitary conditions in the IDC, including garbage cans that were hardly ever emptied and toilets that were constantly blocked and overflowing with excrement:

If you put water in [to the toilet] everything would just overflow and come out again. I couldn't go to the toilet because the smell was so bad. So I didn't eat anything because if I ate then I'd have to go to the toilet. It was an evil place.<sup>310</sup>

Jeya opted for self-deportation—to produce her own ticket to send her home—rather than remain in such conditions indefinitely (see Coerced “Voluntary Self-Deportations of Non-Burmese Nationals” in Chapter VII). “Because the IDC was so bad, I thought it would be better for me to go home and die rather than to stay in the IDC.”<sup>311</sup>

Human Rights Watch also met with a group of 60 Ahmadis from Pakistan who had recently been released from the Suan Phlu IDC on bail arranged by the Thai Committee for Refugees. Their release had garnered a great deal of publicity, and they appeared to be very guarded about saying anything critical of anyone in Thailand, but rather to express their gratitude to

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<sup>309</sup> Human Rights Watch interview A57, Bangkok, June 28, 2012.

<sup>310</sup> Ibid.

<sup>311</sup> Ibid.

all for their treatment. Even so, with respect to the Suan Phlu IDC where they spent six months from December 14, 2010 until June 6, 2011, one of their leaders, a 35-year-old man with three children, commented:

It was painful for us to be separated from our wives and children. Our family life was destroyed by this. I decided to keep the two older boys with me and the youngest stayed with my wife. Inside the IDC there were more than 100 people per cell. We had no privacy for the toilet or anything. Cleanliness was the responsibility of the people inside. JRS provided soap, but it was not enough for a whole month.<sup>312</sup>

According to the man, UNHCR recognized him as a refugee while he was in detention, but told him that they would not be able to get him released from the IDC, but would try to expedite his case for resettlement. Aside from the separation from his wife and child, what most troubled him during his detention was not knowing when it would end, its arbitrary and indefinite character. “There was no timeframe in detention. We could be there forever until someone would take us for third country resettlement.”<sup>313</sup>

UNHCR reported that as of June 12, 2012 there were 68 persons of concern to UNHCR detained at Suan Phlu, mostly from Sri Lanka and Vietnam, of whom 22 were recognized refugees.<sup>314</sup> The IDC is not designed for long-term detention, but the reality is that many of the detainees are held there for years. UNHCR told Human Rights Watch that the average length of stay for persons of concern to UNHCR, excluding those who were bailed out, was 298 days between the years 2008 to 2012.<sup>315</sup> This, of course, does not include migrants who do not make asylum claims.

The Thai authorities rarely deport people at the government’s expense to countries that do not border Thailand, but rather hold them indefinitely until their family members or friends

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<sup>312</sup> Human Rights Watch interview B39, Bangkok, June 21, 2011.

<sup>313</sup> Human Rights Watch interview B39, Bangkok, June 21, 2011.

<sup>314</sup> Email from UNHCR to Human Rights Watch, June 14, 2012. In 2009, UNHCR registered 206 refugees and 60 asylum seekers in the Suan Phlu IDC; in 2010, 109 refugees and 102 asylum seekers; in 2011, 46 refugees and 55 asylum seekers.

<sup>315</sup> Email from UNHCR to Human Rights Watch, June 14, 2012.

can provide plane tickets for them to self-deport. Migrants without financial resources or refugees fearing persecution in their home countries face very long periods of detention.

Human Rights Watch met a Nepalese refugee in the IDC who had been detained for three years and nine months. Although UNHCR recognized him as a refugee, he said, “UNHCR is very slow.” The man commented on his long confinement:

The Bible talks about hell. This is one part of hell. Why am I here? UNHCR says we are under the Thai government. If under them, why do they not open the door? I am in a 55 foot room, 40 feet wide with 80 people in the room, sometimes 150 people, three toilets. Always there are problems. There are six or seven different nationalities in the room. If you get in a fight, the police don’t do anything [to protect you]. If you don’t follow the rules, you get handcuffed, one week, two weeks. I wrote a letter to the commander asking to go to another room. He never heard my plea.

We have no telephone, no computer to get outside information. We also can’t get hot water. We use a naked [electrical] wire to heat the water.<sup>316</sup>

Human Rights Watch also met a Somali refugee who had been detained for two years and eight months. His wife was detained in the women’s section of the IDC. They have two children. He keeps the three-year-old boy with him and the child of less than two years stays with his mother. The man expressed particular concern about the impact of detention on his children:

The room has 50 occupants at the moment, most of whom are smokers. The conditions are not hygienic for the boy. The room is hot and dirty which has caused the boy to be sick frequently. The diet for the boy consists of the same rice that everybody else eats. He needs fruits which are neither provided nor available for purchase. He bathes in the same water as the rest of us in the room and sometimes there is no water at all. It is absolutely difficult for a boy of three years old to grow up amidst 50 plus grown-up

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<sup>316</sup> Human Rights Watch interview B51, Phlu Suan IDC, Bangkok, June 24, 2011. Interviewed in the presence of a local NGO service provider.

men in a locked room and only allowed to go out for a short period of less than two hours in the sunshine after three days.<sup>317</sup>

UNHCR recognized the Somali detainee as a refugee in January 2009 and the United States approved him for resettlement in November 2010, but as of June 2011 he and his family remained in detention. He said, “It is unfortunate that innocent children should be denied a reasonable upbringing to which they are entitled. They neither comprehend the circumstances nor had any choice to make.”<sup>318</sup>

## Nong Khai IDC

The Nong Khai IDC is best known as the site where a group of 158 Lao Hmong recognized by the UNHCR as “persons of concern” were held for three years before being deported to Laos in December 2009. Although this group of Lao Hmong was offered refugee resettlement in third countries, and despite diplomatic and other interventions on their behalf, the Thai authorities insisted on detaining them as illegal migrants and ultimately forcibly returned them to Laos on December 28, 2009 over the objections of UNHCR, the UN secretary-general, and various foreign ministers.<sup>319</sup>

Human Rights Watch interviewed one of the Lao Hmong detainees in September 2008:

We stay in two rooms that are very small. One is for the men and one is for the women. There is not enough place to sleep. It is not comfortable to sleep. They release us [from the room] two hours per day and detain us for 22 hours.... It is very hot. Some of us have to take off our clothes.... If the water is working, we drink from the water pipe in the toilet. If it is broken, the officials bring us water from the outside. This water is not very clean

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<sup>317</sup> Handwritten note and Human Rights Watch interview B53, Phlu Suan IDC, Bangkok, June 24, 2011 (note on file with Human Rights Watch). Interviewed in the presence of a local NGO service provider.

<sup>318</sup> Ibid.

<sup>319</sup> After being refouled to Laos, the returnees were allowed to resettle in third countries outside the region. See Ben Doherty, “Thailand begins deportation of more than 4,000 Hmong asylum seekers amid secrecy: Thai troops move into camp to deport Hmong refugees who say they face persecution in Laos,” *The Guardian*, December 28, 2009, <http://www.guardian.co.uk/world/2009/dec/28/thailand-deportation-hmong-laos> (accessed June 5, 2012). See also, Seth Mydans, “Thailand Begins Repatriation of Hmong to Laos,” *New York Times*, December 27, 2009, <http://www.nytimes.com/2009/12/28/world/asia/28hmong.html> (accessed June 5, 2012).



and people get sick. [He goes into great detail about the water, how it is intermittently available, yellow colored, and not available between 5 p.m. and 8 a.m.] ... So we have no choice, we have to stay in the darkness and we cannot use the toilet for many hours because of the very bad smell and the heat inside.<sup>320</sup>

Several detainees at Nong Khai in 2009 got information to Human Rights Watch that their rooms had no windows, no light, and no beds, and that rice rations were meager and of poor quality, supplemented by local residents who brought or sold them food. They said that during the first month after their arrival in 2006 they were not allowed outside at all, and that many fell ill because of dirty conditions and the lack of sun and fresh air.<sup>321</sup>

Long periods of detention are particularly hard on families. Officially, sex is prohibited in the IDCs, but babies are born among the long-term detainees despite the segregation of men and women. The Lao Hmong interviewee said that after the sixth baby was born in the Nong Khai IDC, the authorities made threats and demanded the use of birth control:

The authorities force us to use birth control. If anybody gets pregnant, they must be jailed. They will put us in the prison of Nong Khai town. They will arrest the father and send him to prison. This has not happened yet. Since they threatened us like that in February 2008, nobody has gotten pregnant. They told us, "Everybody must be careful to not have babies and must use condoms and medicine." If we have new babies, the officials will have some problems because nobody is allowed to have sex in the IDC. If there is a pregnancy, then it means the officials did not do well. "If you cannot keep the rule, you will be sent to Laos," they said to us after six people had babies inside.<sup>322</sup>

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<sup>320</sup> Human Rights Watch telephone interview, A101, Nong Khai IDC, September 4, 2008.

<sup>321</sup> Email to Human Rights Watch (source and date omitted for reasons of confidentiality).

<sup>322</sup> Human Rights Watch telephone interview, A101, Nong Khai IDC, September 4, 2008.

## International Standards on Detention

The International Covenant on Civil and Political Rights (ICCPR), to which Thailand is a state party, provides: “No one shall be subjected to arbitrary arrest or detention.”<sup>323</sup> The UN Human Rights Committee, the expert international body that monitors compliance with the ICCPR, has emphasized that the concept of arbitrariness should not be equated with “against the law” but must also include such elements as “inappropriateness and injustice.” It says that to avoid being arbitrary, detention should not continue beyond the period for which a state can provide appropriate justification. It also points out that detention could be considered arbitrary if “it is not necessary in all the circumstances,” for example to prevent flight, and that “the element of proportionality becomes relevant in this context.”<sup>324</sup>

Thailand’s practice of detaining refugees indefinitely, often for long periods, until a third country is able to resettle them or to hold migrants indefinitely until they or someone else can pay for their plane tickets is arbitrary detention because no appropriate legal justification exists.<sup>325</sup>

As no other detainees in Thailand, including ordinary criminals, are required to bear the costs of their detention, forcing immigration detainees, who by definition are non-Thai citizens, to do so is tantamount to discriminatory treatment. The committee which oversees the Convention for the Elimination of All Forms of Racial Discrimination, a treaty

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<sup>323</sup> International Covenant on Civil and Political Rights (ICCPR), G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976, art. 9(1). Thailand ratified the ICCPR in 1996.

<sup>324</sup> *A v. Australia*, Communication No. 560/1993, U.N. Doc. CCPR/C/59/D/560/1993, April 30, 1997, <http://www.unhchr.ch/tbs/doc.nsf/o/30c417539ddd944380256713005e80d3?Opendocument> (accessed June 11, 2012) para. 9.2.

<sup>325</sup> In its Conclusion No. 44 of 1986, the UNHCR Executive Committee noted that with respect to refugees and asylum seekers, “detention should normally be avoided.” It stated that “If necessary, detention may be resorted to only on grounds prescribed by law to verify identity; to determine the elements on which the claim to refugee status or asylum is based; to deal with cases where refugees or asylum-seekers have destroyed their travel and/or identity documents or have used fraudulent documents in order to mislead the authorities of the State in which they intend to claim asylum; or to protect national security or public order.” The committee “[r]ecognized the importance of fair and expeditious procedures for determining refugee status or granting asylum in protecting refugees and asylum-seekers from unjustified or unduly prolonged detention.” UNHCR, Detention of Refugees and Asylum-Seekers, October 13, 1986, Conclusion No. 44, (XXXVII) - 1986, available at: <http://www.unhcr.org/refworld/docid/3ae68c43co.html> (accessed 18 June 2012), paras. b and c. Thailand is a member of the UNHCR Executive Committee even though it is not a party to the Refugee Convention.

to which Thailand is a party, notes that “any differential treatment based on citizenship or immigration status will constitute discrimination if the criteria for such differentiation, judged in the light of the objectives and purposes of the Convention, are not applied pursuant to a legitimate aim, and are not proportional to the achievement of this aim.”<sup>326</sup> Under this test, singling out immigration detainees as the sole detainees who have to bear the costs of incarceration constitutes unlawful discrimination.<sup>327</sup>

The ICCPR provides that “[a]ll persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”<sup>328</sup> The UN Standard Minimum Rules for the Treatment of Prisoners set the international standard for minimally acceptable conditions for detention, which include basic standards of hygiene, provision of food, the separation of men and women, and children and adults, access to natural light and fresh air, and recreation.<sup>329</sup> Conditions in Thailand’s IDCs fall well short of these standards.<sup>330</sup>

The Convention on the Rights of the Child, to which Thailand is a state party, states in article 37(b) that detention of children should only be used as a measure of last resort and for the shortest appropriate period of time. The Committee on the Rights of the Child, in General Comment 76, says that children should not be detained as a matter of routine and

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<sup>326</sup> General Recommendation No. 30: Discrimination against Non Citizens, from January 10, 2004. International Convention on the Elimination of All Forms of Racial Discrimination, General Assembly resolution 2106 (XX), December 21, 1965, entered into force January 4, 1969, acceded to by Thailand on January 28, 2003.

<sup>327</sup> The 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, reflects the consensus that differential treatment for migrants in detention is not acceptable. The Convention provides that: “Migrant workers and members of their families who are subjected to any form of detention or imprisonment in accordance with the law in force in the State of employment or in the State of transit shall enjoy the same rights as nationals of those States who are in the same situation”; and “if a migrant worker or a member of his or her family is detained for the purpose of verifying any infraction of provisions related to migration, he or she shall not bear any costs arising there from”, article 17 (7) and (8).

<sup>328</sup> ICCPR, art. 10(1).

<sup>329</sup> United Nations Standard Minimum Rules for the Treatment of Prisoners, adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolution 663 C (XXIV) of July 31, 1957, and 2076 (LXII) of May 13, 1977.

<sup>330</sup> The UNHCR Executive Committee has concluded that “detention measures taken in respect of refugees and asylum-seekers should be subject to judicial or administrative review; ... conditions of detention of refugees and asylum seekers must be humane; [and] refugees and asylum-seekers who are detained be provided with the opportunity to contact the Office of the United Nations High Commissioner for Refugees.” UNHCR Executive Committee Conclusion No. 44, paras. e, f and g.

that their migratory status must not be the sole reason for their detention and should, in general, be separated from other detained adults except for parents.<sup>331</sup> As has been shown, Thailand not only routinely detains children, sometimes for extended periods of time, but also with unrelated adults.

Finally, although Thailand is not a party to the 1951 Refugee Convention or its 1967 Protocol and is not bound by those documents, it is a member of UNHCR's Executive Committee, which is open to states "with a demonstrated interest in, and devotion to, the solution of the refugee problem."<sup>332</sup> As such, it should demonstrate respect for the Convention and UNHCR guidelines. Article 31 of the 1951 Refugee Convention states that governments "shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened... enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence."<sup>333</sup> Furthermore, the government "shall not apply to the movements of such refugees restrictions other than those which are necessary." Thailand's detention of asylum seekers goes well beyond what is "necessary." Since recognition of refugee status does not make one a refugee, but rather is an acknowledgement of the person's well-founded fear of being persecuted, asylum seekers whose claims to be refugees have not yet been decided are protected by article 31 as well.

UNHCR's Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers clarify these provisions with regard to those who are seeking asylum by reaffirming the basic human right to seek and enjoy asylum, and by stating as an explicit guideline that "[a]s a general rule, asylum seekers should not be detained."<sup>334</sup> The

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<sup>331</sup> Committee on the Rights of the Child, General Comment No. 6, Treatment of Unaccompanied and Separated Children Outside Their Country of Origin, U.N. Doc. CRC/GC/2005/6, (2005), <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G05/438/05/PDF/G0543805.pdf?OpenElement> (accessed June 11, 2012), paras. 61-63).

<sup>332</sup> United Nations Economic and Social Council, "Establishment of the Executive Committee of the Programme of the United Nations High Commissioner for Refugees," E/RES/672 (XXV) (1958), <http://www.unhcr.org/3ae69eccc.html> (accessed June 11, 2012).

<sup>333</sup> 1951 Refugee Convention, art. 31.

<sup>334</sup> UNHCR, "UNHCR Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers," February 1999, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G05/438/05/PDF/G0543805.pdf?OpenElement> (accessed June 11, 2012).

Guidelines also note that detention should not be used as a punitive or disciplinary measure or as a means of discouraging refugees from applying for asylum.

In fact, Thailand not only detains asylum seekers, often for extended periods of time but also continues to detain refugees after UNHCR has recognized their status and even after they have been offered resettlement by other countries up until the point they are ready to board a plane. Not only does Thailand continue to detain refugees, but because Thailand has no provision for recognizing urban refugees and regards even UNHCR-recognized refugees as illegal migrants pending deportation, the Thai government takes to court refugees who have been accepted for third country resettlement and requires them to pay a fine of 20,000 baht (about US\$600) before they are allowed to leave the country under formal programs.<sup>335</sup>

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<sup>335</sup> This occurs according to sections 62 and 81 of the Immigration Act, B.E. 2522 (1979) [Thailand], May 30, 1979, available at: <http://www.unhcr.org/refworld/docid/46b2f9f42.html> (accessed July 5, 2012). The practice was confirmed in a Human Rights Watch interview with International Organization for Migration staff, Bangkok, June 20, 2012 and in an email exchange with the US Department of State, Bureau for Population, Refugees, and Migration, June 1, 2012 (on file with Human Rights Watch). See also Asylum Access, Boat People SOS, and the Conscience Foundation, “UNHCR Protection Challenges for Urban Refugees in Thailand: Report and Recommendations,” April 2009. The fine does not apply to refugees resettled from the camps but only to urban refugees.

## VII. Deportations

Deportations from Thailand need to be distinguished in four ways: 1) “soft deportations” of individuals or small groups of Burmese along the border with Burma, in which deportees are not turned over to Burmese central authorities but rather to ethnic armed groups allied with the central authorities, such as the Democratic Karen Buddhist Army (DKBA); 2) deportations at official border checkpoints with Burma, all of which were closed at the time of Human Rights Watch’s June 2011 visit to Thailand, but have since reopened; 3) mass deportations of the type conducted in December 2009 when the last of the Hmong residents of the Petchabun camp were forcibly returned to Laos along with the Hmong detained at the Nongkhai IDC; and 4) deportations of nationals of non-bordering states by airplane, though the far more common occurrence is so-called voluntary self-deportations of foreigners held indefinitely in Immigration Detention Centers until their families are able to pay the costs of tickets home.

### “Soft Deportations”

At the time of Human Rights Watch’s June 2011 visit to Thailand, there were no official deportations between Thailand and Burma because all of the official crossing points were closed, but there were significant numbers of soft deportations. In 2010 there were approximately 205,500 soft deportations to DKBA-controlled checkpoints, in 2011 approximately 143,000, and in the first five months of 2012, approximately 96,400, according to a source close to the government.<sup>336</sup> The Thai-Burma border is very porous so that unless a deportee is actually arrested upon return, there is little to prevent them from returning to Thailand after being expelled at the border. Many of those interviewed by Human Rights Watch about their deportation experiences said that they had returned to Thailand within a day or two of being deported.<sup>337</sup>

In Tak Province, Thai immigration officials generally turn deportees over to DKBA officials at the border. At this point, the DKBA or people whose activities appear to be condoned by

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<sup>336</sup> Human Rights Watch communication with informed source who requested anonymity, June 2012.

<sup>337</sup> Those interviewed about deportation only included people who returned to Thailand. People who are deported to Burma and remain could not be interviewed, so Human Rights Watch cannot say whether they simply go home or encounter arrest or other difficulties.

local authorities, routinely shake down the deportees for bribes (not to be turned over to authorities who could arrest them) and payments (to facilitate returns to Thailand).<sup>338</sup>

A 30-year-old Burman laborer told Human Rights Watch that he was arrested in a workplace raid on August 20, 2008 and imprisoned at the Baan Bor Saam jail and Pathum Thani prison as punishment for working illegally. He was then detained at the IDC for two days until his court-ordered deportation on October 21, 2008. Then he was taken to DKBA Gate 10:

There were about 200 people that they sent. At the DKBA side we had to write our biography. They wanted to know where we worked, our parents' jobs, what job we had, how much money we sent home to Burma. Then we were told to pay 1,300 baht [about US\$39], or if we waited until the next day, 1,400 baht [about US\$42]. The DKBA told us, "It's for our meat [food]." I called my friend to borrow the money. Some people had no money, so the DKBA told them to contact their native towns to ask for money. It's not justice getting arrested in Thailand and sent back to Burma without money. It is not DKBA business, but they get involved to get money. They have lots of guns, but they don't make us feel afraid. I was released from the DKBA on October 23 and came back to Mae Sot [in Thailand] on October 24.<sup>339</sup>

A 31-year-old Karen man living in Mae Sot was apprehended at a military checkpoint in May 2011 and taken the Phop Phra IDC, held there for two nights, and then transferred to the Mae Sot IDC. Of Phop Phra, he said, "We just stayed there. There was no harassment." He arrived at the Mae Sot IDC at 7 a.m. and was deported at the 999 checkpoint at 7 p.m. the same day. He was turned over to the DKBA. "We each had to pay 2,000 baht [about US\$60]. My friend picked me up and brought me to Mae Sot."<sup>340</sup>

A 29-year-old Burman woman who was arrested in January 2009 in Bangkok told Human Rights Watch about the money shakedown to which she was subjected after being deported to DKBA crossing points. After a night in the Bam Bhor police station, the police took her to the Suan Phlu IDC where she spent a week. Then the police took her and about

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<sup>338</sup> See Human Rights Watch, *From the Tiger to the Crocodile*, pages 77-80.

<sup>339</sup> Human Rights Watch interview D8, Mae Sot, October 25, 2008.

<sup>340</sup> Human Rights Watch interview B15, Mae Sot, June 13, 2011.

150 other Burmese to the IDC in Mae Sot, where they spent another week. The police took 107 people in two trucks to the 999 Gate controlled by the DKBA, and put her on a boat to send her across. She said:

When I got there I didn't see any soldiers, just the *pway-za* ["carriers"].<sup>341</sup> There were over 10 carriers. They were Karen mostly, some Mon. The carrier asked my name and for our Burmese ID.... [and for money]. We didn't have to ask what the money was for. If we didn't pay we would end up in a Burmese prison cell. I fear that if I got sent back to Burmese immigration I would go to jail there. They even charged me 50 baht [about US\$1.50] for the phone call and fed us rice and a fried egg and made us pay 50 baht for that as well. My sister in Bangkok had to transfer the money, 3,470 baht [about US\$104] for all the charges for me and my friend. The money was transferred to a bank account in Mae Sot, and then one of the carrier's people called him from Mae Sot to Myawaddy and told him the money had arrived into his Mae Sot bank account. On that day, I was allowed to go. I paid an inner tube under the bridge 20 baht [about 6 US cents] to take me across [to Thailand].<sup>342</sup>

This woman's account is noteworthy, in part, because the "carriers" on the Burmese side of the border did not appear to be officials, yet apparently had some form of authorization, likely from the DKBA. They also did not actually bring her back to Thailand after taking a substantial sum of her money; rather her payment was to avoid arrest by the real authorities

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<sup>341</sup> *Pway-za* is sometimes translated as *trafficker*, but that term, or the word *smuggler*, have meanings under international law that would not apply at least with respect to their actions in this case. So the more generic term, *carrier*, which is also used by interpreters locally as a translation of *pway-za* is used here. For definitions of trafficking and smuggling under international law, see The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, G.A. Res. 25, annex II, U.N. GAOR, 55th Sess., Supp. No. 49, at 60, U.N. Doc. A/55/49 (Vol. I) (2001), entered into force Dec. 25, 2003, available at: <http://www1.umn.edu/humanrts/instree/trafficking.html> (accessed August 9, 2012), and The Protocol Against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention Against Transnational Crime, G.A. Res. 55/25, annex III, U.N. GAOR, 55th Sess., Supp. No. 49, at 65, U.N. Doc. A/45/49 (Vol. I) (2001), entered into force Jan. 28, 2004, available at: <http://www1.umn.edu/humanrts/instree/smuggling.html> (accessed August 9, 2012).

<sup>342</sup> Human Rights Watch interview D10, Mae Sot, February 12, 2009.



in Burma. She then had to pay a much smaller sum for someone to take her across the river in an inner tube (something Human Rights Watch watched happening openly in broad daylight under the closed Friendship Bridge spanning the Moei River between Mae Sot and Myawaddy with uniformed officials on both sides of the river looking on).

Reflecting on the money she paid the carriers, the woman said:

I don't know why I had to pay the money. I just know it is their [DKBA] area. If we don't pay, I didn't know what would happen. I just worried. It is the DKBA. I was so afraid. I didn't know what they would do. I'm afraid of them all: Burmese soldiers, Burmese police, DKBA soldiers. All those people [from the 107 deported together from the IDC] would have to pay. Sometimes the DKBA charge only 500 baht [about US\$15]. When the truck left the IDC, a car followed us the whole way to the gate. They were DKBA. The IDC, the DKBA, the *pway-za* work together. Money makes everything.<sup>343</sup>

This woman's belief that the money she was forced to pay was divided among officials on both sides of the border and carriers is widely shared. The UN Special Rapporteur on Trafficking in Persons, Especially Women and Children, following her August 2011 visit to Thailand, issued a report that included a comment on credible reports of corrupt dealings among individuals on both sides of the border, including Thai immigration officials:

The Special Rapporteur was particularly concerned about numerous reports that trafficked persons from Myanmar are often deported through informal checkpoints at the Thailand-Myanmar border to an area controlled by the Democratic Karen Buddhist Army (DKBA). It is reported that the DKBA demand money from the deportees, which reportedly varies between 1,000 and 2,000 baht (\$32-\$64). Persons unable to pay are subjected to violence and forced labour at the hands of the DKBA, or sold to unscrupulous brokers for re trafficking back to Thailand. Credible reports suggest that corrupt Thai immigration officials are implicated in this process and that

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<sup>343</sup> Human Rights Watch interview D10, Mae Sot, February 12, 2009.

the proceeds collected from the deportees are shared among the brokers, the DKBA and the Thai immigration officials.<sup>344</sup>

UNHCR recorded soft deportations of 108 Burmese persons of concern in 2010; 138 in 2011; and 37 through the end of May 2012.<sup>345</sup> These figures are incomplete because UNHCR does not learn of all soft deportations of refugees arrested outside the camps and forcibly returned to Burma. In some cases the refugees decide not to reveal to the authorities that they are camp residents. Thai immigration officials may also fail to inform UNHCR of all the refugees they arrest and deport.

UNHCR told Human Rights Watch that “in most deportation cases, individuals were returned without official notification to the Myanmar government, and are able to and often reenter Thailand.”<sup>346</sup> Moreover, “UNHCR considers deportation of both the registered and unregistered camp residents to Myanmar as *refoulement*.”<sup>347</sup> In most cases, the agency said, once immigration officials identify refugees caught outside the camps as camp residents they contact UNHCR to arrange their return to the camps.

## Official Deportations

In 2011 there were no official border crossing points operating between Burma and Thailand, so no official deportations to Burma were taking place. Since the closure of the Mae Sot Friendship Bridge in mid-2010 through the time of the writing of this report, in July 2012, no official deportations had occurred via the Friendship Bridge, even though cross border traffic on the bridge resumed.<sup>348</sup> When official deportations have occurred, Burmese immigration officials commonly questioned returnees about their biographical background, photograph the returnees, and take blood samples. They asked where they were in Thailand and what they were doing. Some deportees also report that Burmese government officials demanded money from them. Deportees who had been residents of refugee camps told Human Rights Watch that they were too afraid to tell the Burmese officials that

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<sup>344</sup> Report of the Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo, Mission to Thailand, Human Rights Council, A/HRC/20/18/Add.2, May 2, 2012.

<sup>345</sup> Email from UNHCR to Human Rights Watch, June 14, 2012.

<sup>346</sup> Email from UNHCR to Human Rights Watch, June 14, 2012.

<sup>347</sup> Ibid.

<sup>348</sup> Email from UNHCR to Human Rights Watch, July 12, 2012.

they had lived in the refugee camps, and claimed to have been migrant workers. Kyaw Soe, a 22-year-old Karen man who was living in Mae La camp, was deported officially in 2007 after being caught gathering leaves outside the camp. He explained why he lied to Burmese officials upon being returned:

They asked us where we worked and where we were from and what did we do. I told them I worked on the Thai farm because I worried that they will cause a problem like put you in their big detention center or torture or even kill us because they hate the refugee camp. They used to try to destroy it totally. That's why we are afraid to say we are from the refugee camp.<sup>349</sup>

After being held briefly, where he said he was well treated, Kyaw Soe was allowed to return to his home in Pa'an, in Karen State. Others did not fare so well. A 22-year-old Rohingya man told Human Rights of his experience in 2006, when as part of a large group of Rohingya boat people who were arrested upon arrival in Ranong and transferred to and deported from Mae Sot, he was turned over to Burmese officials in Myawaddy. He said that he was brought before a court and sentenced to two years of hard labor at the prison in Pa'an. He told Human Rights Watch:

From 6 a.m. to 5 p.m. was hard labor breaking the stones with only little food. The rice they provided had insects, maggots, very dirty. The only break was to eat the food, and if we were too weak or unable, we would be beaten.<sup>350</sup>

Another Rohingya man, Mohammed, 38, told Human Rights Watch what happened to him after Thai immigration authorities turned him over to Burmese authorities at the bridge that crosses from Mae Sot to Myawaddy in 2006. Mohammed had been arrested in Ranong, spent about two weeks in detention there and another three-and-a-half months in the Immigration Detention Center in Bangkok, before being transferred to Mae Sot and deported. When Human Rights Watch asked him if he had sought asylum, he responded, "What is asylum?" He said that the Burmese immigration authorities separated the 33

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<sup>349</sup> Human Rights Watch interview, A108, Mae La camp, Tak Province, August 18, 2008.

<sup>350</sup> Human Rights Watch interview A106, Mae Sot, July 31, 2008.

Rohingya from about 45 members of other ethnic groups deported at the same time. The authorities held them for three days demanding that they pay a million-and-a-half Burmese Kyat (about US \$1,500 at unofficial exchange rates) to be released to their relatives, but only 13 of the 33 Rohingya were able to pay. Mohammed described the immigration detention center in Myawaddy:

They [the Burmese authorities] provided us with very limited food, only a little fish paste, and they tortured us using a stick from a green tree, asking us for money. They made us stand in ones and twos and they beat us, and then they called another group and told them to stand, and beat them and asked them for money. The Burmese immigration, they called us one by one and asked us in front of everyone, “Do you have a phone number? Do you have someone who can pay 1.5 million Kyat? Otherwise why do you come here?” They kicked a man from a standing position until he was on the ground. I saw it. It was really pitiful. One beat him with a stick, and one was kicking. They beat him until he couldn’t wake up. They just dragged him to another place. Then, they took another one.<sup>351</sup>

After three days, the Burmese authorities sent Mohammed and the other 19 Rohingya who could not pay to the DKBA where they spent more than a month performing forced labor. He said:

We had to work like slaves, loading and unloading from a big truck. Some days they took about five or six people to the forest to carry big logs. They didn’t provide enough food. With not enough food, we were weak and feeble. One of our colleagues, he was unable to carry any more. So they just grabbed him, and stabbed him in the back, once with a long knife, and just kicked him away. At that time, I felt I should run away, but I was unable. And that log was just thrown away, and they said, “Just walk.”<sup>352</sup>

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<sup>351</sup> Human Rights Watch interview A105, Mae Sot, August 19, 2008.

<sup>352</sup> Ibid.

Official deportations, at times constituting refoulement, also occur at Thailand's borders with Laos and Cambodia. One instance of refoulement occurred on December 17, 2011 when the Thai authorities deported a Lao Hmong refugee, Ka Yang, to Laos from the Bangkok IDC.<sup>353</sup> Ka Yang had previously been deported as part of the mass deportation of Lao Hmong from the Nong Khai IDC in December 2009 (see Mass Deportations), had been recognized as a refugee by UNHCR, and accepted by the United States for resettlement.

UNHCR recorded 220 instances of refoulement of non-Burmese urban refugees in 2009 (159 Lao Hmong, 55 Vietnamese, 4 Cambodians, and 2 Sri Lankans); 3 instances in 2010 (all from Laos); and 9 in 2011 (8 Vietnamese and a Lao Hmong).<sup>354</sup>

#### **December 2010 Burmese Refugee Influx and Forced Returns**

In November and December 2010, more than 20,000 Burmese fled across several points along the border with Thailand, the largest single exodus of Burmese refugees into Thailand in 25 years. Within hours or days of arriving in Thailand, however, many of those refugees had returned to Burma, sparking debate about what had happened.

The debate focused fundamentally on whether the returns were forced or voluntary. This also raised the question about the role of Thai civilian leaders, the military and police in the returns and whether in this instance Thailand applied its overly narrow application of the definition of refugees as "persons fleeing fighting." There were allegations that the authorities blocked new arrivals from entering the refugee camps or otherwise lodging claims for protection and that the authorities did not allow humanitarian agencies full access to the asylum seekers. The handling of the late December 2010 influx is significant not only because it was the largest arrival of Burmese asylum seekers in years, but also because of the implications of these returns for future arrivals at Thailand's borders.

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<sup>353</sup> See "Open letter to the Prime Minister of Thailand, Yingluck Shinawatra," from 17 NGO members of the Asia Pacific Refugee Rights Network, December 27, 2011, <http://refugeerightsasiapacific.org/2011/12/27/open-letter-to-the-prime-minister-of-thailand-yingluck-shinawatra/> (accessed June 13, 2012).

<sup>354</sup> Email from UNHCR to Human Rights Watch, June 14, 2012.

The mass exodus began on November 7, 2010, the day of national elections in Burma. On that day, a breakaway faction of the Democratic Karen Buddhist Army (DKBA) attacked and briefly seized the town of Myawaddy directly across the river border from Mae Sot. The Burmese army responded with indiscriminate shelling and sweeps very close to the border, with responding fire from breakaway DKBA soldiers, sometimes causing mortar, rifle-propelled grenade, and small-arms fire to strike inside Thailand. Refugees fled in several waves, with an estimated 20,000 people seeking shelter at the Border Patrol Police based three kilometers from the border.

According to local and international organizations, the Thai military claimed it was safe for the asylum seekers to go home and forced most of them to return to Burma on November 10 and 11. In so doing, the military ignored Tak provincial governor Samart Liifah, who stated publicly that “it’s very likely the fighting will be prolonged.”<sup>355</sup> Despite continued sporadic outbreaks of fighting around Myawaddy throughout November 2011, the Thai authorities repeatedly forced several hundred Burman and Karen civilians back to Burma at more than 16 points along a 100-kilometer stretch south of Myawaddy.<sup>356</sup>

Refugees who fled to Thailand on November 27 after intense fighting were only permitted to stay in Thailand for one night before being compelled to return to Burma the next day. Amidst intensified fighting on November 29, some fled back to Thailand a second time. One day later, the Thai authorities again sent them back to Burma. When fighting flared again on November 30, the cycle occurred a third time, a brief stay followed by forced return to Burma.<sup>357</sup>

The pattern of renewed fighting, refugee flight into Thailand, very brief stays of hours or days, and forced return continued in December 2010. On December 7-8, Thai

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<sup>355</sup> “New Wave of Refugees Flees Burma,” *Bangkok Post*, December 6, 2010.

<sup>356</sup> Committee for the Coordination of Services to Displaced People in Thailand (CCSDPT), “Recent Thailand-Myanmar Border Displacement, 2010”, CCSDPT SitRep Four, 19 November – 06 December, 2010, Bangkok, December 6, 2010. Copy on file with Human Rights Watch.

<sup>357</sup> See “Burma: Eyewitness Accounts of Abuses in Eastern Fighting,” Human Rights Watch news release, December 4, 2010.

authorities in the town of Mae Khon Kaen in Mae Sot district sent more than 1,200 Burmese, including Karen and Burmans, back across the border to the town of Palu and surrounding villages in Burma, despite continued heavy fighting there. On December 8, Thai security forces in Waw Lay also sent back to Burma an unknown number of Burmese.

UNHCR said that it “continuously expressed its concern to the Royal Thai Government over the hasty manner in which some returns had taken place and advocated for its adherence to the principle of voluntary return in safety and with dignity.”<sup>358</sup> UNHCR issued a press release to express its concern about the return of 166 Burmese nationals from Pob Phra on December 25, 2012.<sup>359</sup>

Refugees interviewed by Human Rights Watch in Thailand at the time expressed fears of being caught in the crossfire, as much as by the fighting taking place in populated towns. In some areas—including Palu, Waw Lay, and Phayathonzu (Three Pagodas Pass)—it appeared that troops on both sides were indiscriminately firing mortars at civilian houses. Some refugees expressed fears that the Burmese army would force them to work as porters. Others expressed similar concerns about the breakaway DKBA and the Karen National Liberation Army (KNLA), which also entered into the late 2010 fighting in some places. Civilians also said they feared being used to guide troops through terrain, being forced to act as “human minesweepers,” a practice previously used by the Burmese army.<sup>360</sup>

Human Rights Watch interviewed a 25-year-old farmer from Palu in Karen State shortly after his arrival. He said:

The mortar shells landed everywhere [during fighting on November 30], very close to my house. I was hiding under a tree. Both sides [the

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<sup>358</sup> Email from UNHCR to Human Rights Watch, June 14, 2012.

<sup>359</sup> “UNHCR Urges Thailand against Forced Returns to Myanmar,” UNHCR press release, December 28, 2012, <http://www.unhcr.org/4d19d6469.html> (accessed June 16, 2012).

<sup>360</sup> See Human Rights Watch, *Dead Men Walking: Convict Porters on the Front Lines in Eastern Burma*, July 13, 2011, <http://www.hrw.org/reports/2011/07/12/dead-men-walking-o>, pp. 38-40.

Burmese army and DKBA] were shooting; the fighting was right in the town [Palu]. Most of the Burmese mortar shells landed in the village, even though the DKBA were hiding at the edge of the village at the temple. The fighting has happened so many times lately. Last week I was taken as a porter by the DKBA for one day, but they let me go and told me to flee with my family because the Burmese were coming. I have never been taken as a porter by the Burmese army; I always run away. Yesterday the Burmese came to the area to take porters, and as we were running away from them they shot at us. One man was killed, and another was shot in the leg. All the people ran away. The Burmese want to control everyone and everything.<sup>361</sup>

Burmese who fled the fighting said that the Thai army forced them back across the border despite their having told the soldiers they were afraid to return. A 65-year-old woman from Palu made it clear not only that her return was not voluntary, but that refugees were being forced back multiple times over short periods of time according to the ebb and flow of artillery and gunfire on the Burmese side of the border:

The day before we were sent back the first time, we told the Thai [army] we were too afraid to go back, but they sent us back. As soon as we arrived [back in Palu in Burma], the fighting started again and we fled back to Thailand. I don't know why they are doing this, sending us back and forth again and again.<sup>362</sup>

While some refugees gave compelling accounts of being forcibly returned, others may have returned voluntarily. A Western aid worker who was present at the time said that many were anxious to return to their fields because of the November harvest:

Many literally were staying on the river. You could throw a stone back to their fields. November is a critical harvest time. They had to go

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<sup>361</sup> Human Rights Watch interview D3, Mae Khon Kaen, Tak province, December 2, 2010.

<sup>362</sup> Human Rights Watch interview D2, Mae Khon Kaen, Tak province, December 2, 2010.



back for the annual sweet corn harvest or they would be ruined. Some were willing to walk through landmines. By no means were they pushed back. They were going back and forth.<sup>363</sup>

Newly arriving refugees told aid agencies that in the second and third weeks of November the Thai military prevented other Burmese asylum seekers from entering Thailand by refusing them entry or closing key crossing points. Some said they were allowed to cross into Thailand only when fighting was audible or visible from the border, but that when the sound of fighting ended the Thai authorities and soldiers told them they had to go back because it was safe for them to return home.<sup>364</sup>

Others said that the Thai authorities told them they could come back to Thailand if there was renewed fighting, but that in the meantime they should stay in Burma. According to some asylum seekers in a number of locations around Mae Sot, armed Thai soldiers approached them during that four-week period and told them it was safe to return to Burma. The soldiers also said that if they remained in Thailand they risked being arrested as unregistered migrant workers.<sup>365</sup>

Human Rights Watch visited a camp for internally displaced persons in Karen State in Burma in June 2011 to talk with people who had fled the November fighting, sought asylum in Thailand, and returned to Burma to assess the voluntariness of the returns. Older men who represented the camp leadership said that most of the camp residents did not actually flee to Thailand because they thought they would be forced back if they did, and they believed that they also would not be allowed to enter the refugee camps in Thailand.<sup>366</sup> Several women described staying in a makeshift encampment in Klaw Htaw village in Thailand, near the river, for about one month. One of the women, a 32-year-old Karen who had crossed into Thailand with

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<sup>363</sup> Human Rights Watch interview with Western aid worker, Mae Sot, June 14, 2011. Name and organization withheld at the aid worker's request.

<sup>364</sup> Human Rights Watch interview DE2, Mae Khon Kaen, Tak province, December 2, 2010.

<sup>365</sup> Human Rights Watch interviews with displaced Karen villagers, Mae Khon Kaen, Waw Lay, and Mae Sot, Tak province, November 2010.

<sup>366</sup> Human Rights Watch interview with camp elders, Hsaw Poe Kee IDP camp, Karen State, June 15, 2011.

her husband who had lost a leg from a landmine, and their two children, said:

The village headman did not force us back directly. But he got on a loudspeaker and said, “There are people staying here taking our electricity and water.” So, we knew we were not welcome. We were not forced back by the Thai military or police, but as we heard the announcement from the village head, we are not naïve. We know he was telling us to go back to our country.<sup>367</sup>

She said that she had received no humanitarian aid from any NGO when she was in Thailand and never saw UNHCR. By the time she left Thailand, she had no food and no money for food. “It would have been very difficult to build a shelter in a refugee camp there [in Thailand]. Here there is plenty of bamboo and we can have a house and support each other.”<sup>368</sup>

Another woman in the IDP camp, a 21-year old widow with an infant in her arms, told Human Rights Watch about her husband’s death and why she was living in an IDP camp in Burma rather than a refugee camp in Thailand. Despite still feeling insecure in the IDP camp in Burma, and being extremely vulnerable as a single mother, the main reason she expressed for not seeking asylum in a refugee camp in Thailand was because she could not afford the cost of buying a shelter to live in one of the Thai refugee camps:

My husband went back to his field. While he was going back to his field hut the Burmese Army met him and shot and killed him. I don’t know why they killed him. They also killed my cousin. He wanted to get his gun to go hunting, but he never got there. He went into the field in ordinary clothes. He did not have a gun when he was shot.

I don’t feel secure, but I prefer to stay here rather than go to a camp in

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<sup>367</sup> Human Rights Watch interview B29, Hsaw Poe Kee IDP Camp, Karen State, June 15, 2011.

<sup>368</sup> Human Rights Watch interview B29, Hsaw Poe Kee IDP Camp, Karen State, June 15, 2011.

Thailand. I have no money. I couldn't afford a hut there. I can't go back to my village because the Burmese Army is there.

I have had to run away since I was small until now, and now my husband is dead. I ran out of my village four or five times in my life, so I won't go back. I've had enough. I don't want to run again.<sup>369</sup>

## Mass Deportations

Part of the reason Burmese camp residents and their supporters fear Thai government officials' statements about closing the Thai-Burma border camps is because the closure of the Huay Nam Khao camp in Petchabun Province in late 2009 directly and immediately resulted in the mass forced repatriation of more than 4,000 Hmong residents who had resided in that camp since 2005.<sup>370</sup> Another 158 Hmong recognized refugees who had been held in abysmal conditions for three years at Nong Khai immigration detention center were forcibly returned at the same time. For the four years that the Thai Army detained the Hmong in the closed Huay Nam Khao camp, army officials never allowed UNHCR to interview or assess their refugee claims.

The Thai Army's own screening process, based on criteria never made public, found hundreds of the Hmong had legitimate protection concerns but ultimately never provided any additional protections. The Thai government continued to maintain that all the Hmong were "economic migrants" but refused any fair determination process to assess that claim. When their massed, forcible return was imminent, the Thai authorities continued to deny UNHCR access to the Hmong residents in Huay Nam Khao, barred journalists from the area, and shut down the mobile phone towers closest to the camps to keep camp residents from reporting what was happening.

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<sup>369</sup> Human Rights Watch interview B30, Hsaw Poe Kee IDP camp, Karen State, June 15, 2011.

<sup>370</sup> "UNHCR seeking access to returned Lao Hmong," UNHCR, December 29, 2009, <http://www.unhcr.org/4b3a38469.html> (accessed June 5, 2012).

## Coerced “Voluntary” Self-Deportations of Non-Burmese Nationals

Thailand rarely officially deports nationals from countries other than neighboring countries of Burma, Cambodia, and Laos. In general, Thai practice is to detain migrants until they pay for their own airplane tickets.<sup>371</sup> This is even true for Vietnamese, who are required to pay for their own deportation or endure indefinite detention.

The Thai Immigration Act of 1979 (B.E. 2522) says that the cost of deportation is to be paid by the carrier who brought the person being deported into the country, and that when no such carrier can be identified, the deportees themselves “will have to pay the expense of deportation.”<sup>372</sup>

Jesuit Refugee Service (JRS) officials told Human Rights that 359 migrant detainees (including 91 Nigerians, 59 Sri Lankans, and 43 Vietnamese) were released from detention in 2010 only after having paid for their own return. For destitute long-term detainees stuck in indefinite detention, JRS itself sometimes pays for the plane tickets. Father Bernard H. Aruthasamy of JRS told Human Rights Watch:

It is an expensive program, but we have been doing it since the late 1980s. And we did it as recently as December last year, when we paid to send the Rohingya to Bangladesh; we paid for everything. [See box, Thai Policy on Rohingya Boat Migrants.] We try in principle to help those with no refugee claim who have been held in detention longer than six months.<sup>373</sup>

JRS told Human Rights Watch that it verified that the 28 Rohingya detainees it assisted to return were all, in fact, Bangladeshi nationals, and that their return was voluntary. JRS paid for their one-way tickets and facilitated the procurement of travel documents with the Bangladeshi authorities.

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<sup>371</sup> Human Rights Watch interview with UNHCR, Bangkok, June 20, 2011 and with JRS, Bangkok, June 23, 2011

<sup>372</sup> Immigration Act, B.E. 2522 (1979) [Thailand], 30 May 1979, section 55, available at: <http://www.unhcr.org/refworld/docid/46b2f9f42.html> (accessed July 5, 2012).

<sup>373</sup> Human Rights Watch interview with Father Bernard H. Aruthasamy, regional director, Jesuit Refugee Service. Bangkok, June 23, 2011.

Indefinite detention is inherently coercive, calling into question the voluntariness of self-paid returns. For example, Jeya, a 33-year-old Tamil woman from Sri Lanka whose refugee claim UNHCR had previously rejected, opted to pay for the return ticket after experiencing overcrowding, lack of privacy, and dirty conditions (see Jeya's account in Suan Phlu IDC Bangkok section of chapter VI) and seeing no alternatives to long-term, indefinite detention:

All the people at the IDC told me if we are rejected from the UN, the UN won't care about you. The UN never came to ask about me or see how I was doing. Also, the Sri Lankan women there with me told me that the UN never came to see them either. So, I felt some pressure. The people told me the UN would never come to see me. I would just stay there without end.<sup>374</sup>

Together with a large group of Sri Lankan Tamils who had been held in the IDC for a long time, Jeya showed the guards the plane ticket that a friend had purchased for her. She said the police from the IDC took the Sri Lankans to the airport. "The police stayed with us until we boarded the plane."

Upon her return, Sri Lankan officials questioned her at the airport for 10 hours. She was not able to return to her original home, but went to a relative's home where police began harassing her:

I can't go into what I faced because I need a woman interpreter... They had guns. When they came, I was so scared. I don't even fully remember what they were wearing or what they said because they forced me to do a lot of things. Finally, I just came here for my daughter. At the moment in Sri Lanka it happens a lot for women to be raped and go missing.<sup>375</sup>

Jeya has returned to Thailand, where she is undocumented, unrecognized as a refugee, and fearful of being arrested, sent back to indefinite detention in inhumane conditions in the IDC, and compelled to scrape money together for another ticket to send her back to face persecution in Sri Lanka.

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<sup>374</sup> Human Rights Watch interview A57, Bangkok, June 28, 2012.

<sup>375</sup> Human Rights Watch interview A57, Bangkok, June 28, 2012.

## Recommendations

### To the Royal Thai Government

#### With Respect to all Refugees and Asylum Seekers:

- Enact a law that establishes criteria and procedures for recognizing refugee status and providing asylum that meets international legal standards.
- Sign and ratify the 1951 Refugee Convention and its 1967 Protocol.
- Do not summarily deport foreigners at land and sea borders without due process and the opportunity to lodge claims for protection; strictly adhere to Thailand's obligations as a state party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment not to return anyone to a place where they would be at risk of torture.
- Make refugee status open to all nationalities according to the same criteria, consistent with the international refugee definition, including complementary forms of protection for people fleeing conflict.
- In particular, immediately make refugee status available to ethnic Shan and Rohingya from Burma, who have been systematically excluded from protection.
- Until a refugee law is enacted, provide authorization for refugees to stay in Thailand under article 17 of the Immigration Act, which grants the minister of foreign affairs the power, subject to Cabinet approval, to allow individuals or groups of individuals who have irregularly entered Thailand under certain conditions.
- Ensure that recognized refugees of all nationalities have the right to freedom of movement and provide renewable multi-year work authorization as long as they maintain their refugee status.
- Allow asylum seekers who are rejected after a fair and transparent procedure to apply for migrant worker status on the same basis as other migrant workers, based on the Nationality Verification and temporary passport system.
- Ensure that all refugees, including those living in camps, have full access to the Thai justice system, including when they allege wrongs by Thai officials or other Thai citizens.
- Ensure that immigration officials and police respect the protection provided by UNHCR's implementing partner, the Bangkok Refugee Center, and cease conducting raids or harassment of refugees seeking its services.

- Ensure that police and immigration officials respect UNHCR certificates and discipline any officials who confiscate or destroy UNHCR documents.

#### **With Respect to Refugees and Asylum Seekers in Thai-Burma Border Camps:**

- Establish with the assistance of UNHCR a fair and transparent refugee screening and registration system for unregistered people living in the refugee camps on the Thai-Burma border.
- Engage with the Refugee Camp Committees and other refugee organizations, NGOs, UNHCR, and donors for an orderly transition from a closed-camp humanitarian-assistance model to an open reception-and-accommodation model that empowers refugees to become more self-sufficient and prepares them to successfully reintegrate in Burma when they are able to repatriate voluntarily in safety and dignity. Continue to facilitate donor provision of humanitarian aid, including food and shelter, to refugees who are unable to support themselves or who need transitional help as they move toward self-sufficiency.
- Ensure that any repatriation program for refugees from the Burmese border camps will fully engage with the refugees themselves based on their informed consent for return in safety and dignity, will include the active participation of UNHCR and NGOs on both sides of the border, and will be in accordance with international refugee and human rights law.
- Give UNHCR full and unfettered access to all refugee camps.
- Ensure that army, police, and Ministry of Interior forces do not subject refugees to forced labor either as punishment for being caught outside the camps or as part of labor battalions drawn from the camp populations.
- Investigate corrupt and abusive practices by Interior Ministry-appointed camp commanders (*palad*), such as organizing forced and exploitative refugee labor, demanding bribes for delivery of food and aid, and arbitrarily detaining refugees for exercising their rights to free expression and association.

#### **With Respect to All Migrants in Thailand:**

- Discipline or prosecute as appropriate police and other security officials who extort or otherwise abuse refugees, asylum seekers and migrants.

- Immediately release all detainees in Immigration Detention Centers who UNHCR has recognized as refugees and provide asylum seekers with alternatives to detention, such as supervised release, while their claims are pending.
- Do not detain children except when necessary for exceptional cases as a matter of last resort and for the shortest possible time. Provide families with children and unaccompanied children with reception conditions appropriate to their needs.
- Bring conditions of detention in Immigration Detention Centers in line with international standards, including by separating unrelated men and women and adults and children, providing adequate food, water, soap, blankets and mattresses, and ensuring that facilities are clean, well ventilated, and not overcrowded.
- Do not require migrant detainees to pay the costs of their detention.
- Take responsibility, including by paying the costs, for deporting irregular migrants without delay who do not have protection or other claims for remaining or who have been rejected after a due process assessment of those claims, and ensure that deportees are not subjected to extortion and other abuses in the course of their removal.
- Never detain irregular migrants indefinitely for the purpose of forcing them or their families to pay for their own deportation.
- Give UNHCR full and unfettered access to all Immigration Detention Centers, and to all migrants interdicted at sea or arriving irregularly by boat in Thailand so they will have the opportunity to lodge protection claims.
- Keep channels open for Nationality Verification for as long as needed to allow migrant workers to enter the process, make the process for obtaining a work permit simpler, more transparent, less dependent on employers, less costly, and available in every province.
- Waive the Nationality Verification process for stateless persons, such as the Rohingya, and grant them work authorization on the same basis as other migrant workers.
- Ensure that all children, regardless of migration status, have equal access to an appropriate education.
- Train and supervise police and Interior Ministry personnel involved in the apprehension and detention of migrant women not to commit sexual harassment or other abuse, ensure proper privacy for women in detention, and direct that searches of women be conducted only by female personnel. Ensure that there are sufficient female police and Interior Ministry personnel to meet fulfill these tasks.



## To Donor and Resettlement Governments

- Strongly promote and facilitate the development of refugee law and refugee protection in Thailand.
- Work with the Thai government, the refugee leadership, NGOs, and UNHCR for an orderly transition from a closed-camp humanitarian-assistance model for the camps on the Thai-Burma border to an open reception-and-accommodation model that empowers Burmese refugees to become self-sufficient and prepares them to successfully reintegrate in Burma when they are able to repatriate voluntarily in safety and dignity.
- Continue to support the provision of food, shelter, health services, and other humanitarian aid to refugees who are unable to support themselves or who need transitional help as they move toward greater self-sufficiency.
- Recognize the importance of education for refugee children and support their education in the camps or wherever they can best be educated.
- Accord the highest priority for resettlement to refugees held in inhuman and degrading conditions of indefinite detention in Thai Immigration Detention Centers.
- Call on the Thai government to cease detaining refugees with UNHCR documents.

## To the UN High Commissioner for Refugees

- Issue letters or other documents to any asylum seeker from any nationality who approaches the office while their claims are pending—even if the Thai authorities do not allow UNHCR to conduct refugee status determinations on their behalf—saying that the bearer of the document is a person of concern to UNHCR and that UNHCR should be contacted in the event of arrest.
- Urgently speed up the very slow processing of refugee claims in Thailand, if necessary by increasing the number of UNHCR protection officers, interpreters, and support staff.
- Promote fair practice standards in UNHCR's refugee status determination process by permitting asylum seekers full legal representation and by improving transparency, including by providing applicants clearly articulated reasons for rejection and access to evidence.
- In the absence of Thai refugee law or asylum procedures, insist to the Thai authorities that UNHCR be allowed to exercise its mandate to protect refugees of all

nationalities, including nationalities for whom UNHCR has been prevented from conducting refugee status determinations: Burmese (including Rohingya), Lao (including Hmong), and North Koreans.

- Escort Burmese refugees who want to live in refugee camps to those camps, and ensure that they are accepted by Refugee Camp Committees.
- Immediately improve staffing and responsiveness for UNHCR's hot-line so that UNHCR officials intervene promptly when refugees and asylum seekers are arrested.

## **To the Burmese Government**

- Ensure that returns of displaced persons and refugees take place in accordance with international standards, on a voluntary basis with attention to the safety and dignity of the returning population.
- Provide all United Nations agencies, international nongovernmental humanitarian and development agencies, and Burmese community-based organizations with safe, sustained, and unhindered access to all areas from which civilian populations have been displaced and to which refugees and internally displaced people may be returning, and permit them to continuously monitor and publicly comment on developments in those areas that could affect possible returns.
- Allow individual refugees and internally displaced persons the freedom to choose to return to their places of origin or to other locations.
- Cooperate with UN and humanitarian and development agencies to ensure the safe and dignified return and reintegration of refugees and internally displaced persons at the appropriate time and to whatever areas to which they return.
- Ensure that refugees and exiles will not be arrested or prosecuted after return for their engagement in peaceful activities that originally caused them to flee the country, such as membership in banned organizations.
- Establish accountability, including prosecution, for members of state security forces and others implicated in abuses. Create a domestic mechanism to provide prompt and adequate compensation for harm to persons and property to all victims of violations of international human rights and humanitarian law by state security forces.
- Initiate humanitarian mine-clearance programs and provide expanded assistance to landmine survivors. Establish urgently programs for mine-risk education, marking and fencing of mine contaminated areas to ensure the effective exclusion

of civilians, and humanitarian demining. Provide expanded assistance to landmine survivors.

- Immediately recognize or grant citizenship to persons of Rohingya ethnicity on the same basis as others with genuine and effective links to Burma by reasons such as birth, residency, or descent and treat them as equal citizens under international and Burmese law. End restrictions on the rights to freedom of movement, to work, and to marriage and family, and other discriminatory restrictions on Muslims in Arakan State.
- Ensure that deportees returned either at official border crossing points or to areas controlled by the DKBA or other Border Guard Forces are treated with dignity, respect, and in full accord of their basic human rights. Discipline or prosecute as appropriate any officials or state agents who extort, threaten, or harm deportees.

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# Ad Hoc and Inadequate

## Thailand's Treatment of Refugees and Asylum Seekers

Thailand has hosted millions of refugees over the course of more than three decades, yet its refugee policies remain fragmented, unpredictable, inadequate, and ad hoc, leaving refugees unnecessarily vulnerable to arbitrary and abusive treatment. All refugee groups in Thailand strive for survival in a country without a refugee policy grounded in law, where asylum seekers face differing standards and procedures depending on their nationality and abuses by Thai officials go unpunished.

*Ad Hoc and Inadequate* focuses on the plight of Burmese refugees, the largest current refugee group in Thailand. It examines the lives both of Burmese refugees inside the camps on the Thai-Burma border and of Burmese asylum seekers living outside of the camps, who are not officially recognized as refugees. Regardless of their nationality and whether they obtain refugee status from the United Nations refugee agency, refugees in Thailand are not allowed to work. Urban refugees have little protection against arrest, and often are compelled to pay bribes to avoid immigration detention. Irregular migrants—including refugees—who are unable to pay fines or bribes are likely to be detained, sometimes for years.

Political changes in Burma since 2011 have raised the prospect that the protracted Burmese refugee situation could have an end in sight. However, enormous obstacles remain to a safe return and repatriation of refugees from the border camps and uncertainty among refugees about their prospects for repatriation prevails.

Human Rights Watch urges Thailand to consider an alternative to its current refugee policy, one that would provide all asylum seekers an opportunity to have their claims for asylum heard fairly and would respect the rights of refugees to freedom of movement and to work. Such a policy would contribute to the rule of law in Thailand and reduce opportunities for corruption and exploitation.



*Burmese refugees at the Mae La refugee camp near Mae Sot, Thailand, one of nine refugee camps along the Thai-Burma border, June 2012.*

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