CHAPTER 20
The Situation of Refugees
20.1 Introduction

“Not the loss of specific rights, then, but the loss of a community willing and able to guarantee any rights whatsoever, has been the calamity that has befallen ever-increasing numbers of people. Man, it turns out, can lose all so-called Rights of Man without losing his essential quality as man, his human dignity. Only the loss of a polity itself expels him from humanity.”

- Hannah Arendt

Those who lose the protection of their state are denied not only specific rights but the protection “of a community willing and able to guarantee any rights whatsoever.” In a world where all such rights are tied to citizenship, no other state accepts responsibility for refugees. In this world, refugees are outcasts. They are, in Hannah Arendt's famous words, ‘the scum of the earth’. They represent to this day ‘the most symptomatic group in contemporary politics' as they embody the contradiction between the rights that all human life has in theory, and those that real people can actually claim.

Burma is one of the largest sources of refugees in the world. Most people leaving Burma have been displaced through the cumulative impact of various policies such as forced labour; extortion, land confiscation, and forced agricultural practices. Family incomes and food resources have been driven down until household economies have collapsed completely and people are left with no options for survival. Simultaneously, there have been many pull factors that have attracted migration. The governments of the four major host countries this chapter will discuss later have often used this notion when arguing for minimal support for refugees, for restrictions on employment and movement, when defending their decision to close the registration of new asylum seekers, or when arguing against the opening of a resettlement programme.

Who is a Refugee?

The 1951 UN Geneva Convention defines a Refugee as a person who has left their home country owing to “a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion.” This definition aims to differentiate between refugees and those who, on the other hand, leave their countries for economic reasons. Such definitions however, are bound to encounter difficulties, as the factors that push people to leave their country almost always stem from interlinked political and economic causes, making it extremely difficult to distinguish economic migrants from refugees. Although the determining reason may be a form of extreme poverty, the root causes of the displacement in the case of Burma particularly, are political and military. Furthermore, it is very common in the case of Burmese refugees for families to split up to diversify their livelihoods. Some members live inside and others outside refugee camps, further making a strict refugee/migrant categorisation untenable.

For many Burmese, 2008 was a year dominated by natural catastrophe-induced displacement. This was the case of the countless victims of tropical cyclone Nargis, and of those affected by the Mautam, the bamboo flowering induced food crisis in Chin State. Of course, even an ideal state would be unable to save its citizens from a natural disaster. The legitimacy of the state does not rest on its ability to control natural forces, but exclusively on its control of all those human actions that can shape what happens after such an event. The junta turned many survivors of Nargis into refugees the moment it decided not to allow any aid to reach them in the immediate aftermath of the cyclone and for several weeks following its impact. Sadly, registration of new asylum seekers by the UNHCR has been closed to most applicants in Thailand, the area closest to Nargis struck zones, and UNHCR

National Coalition Government of the Union of Burma (NCGUB)
is to this day not allowed to operate in the border regions of India, where most Chins fleeing food scarcity have found refuge. Even though in theory groups fleeing to these areas would mostly qualify for refugee status, in practice this has not been the case.

Another group of refugees which has been highly debated during the year of 2008 is the stateless Rohingya. Partly because of the belief that they were brought to Burma by the British and therefore do not originate from Burma, and partly for other reasons (for more information see Chapter 18: Ethnic Minority Rights), the Rohingyas do not enjoy most of the same rights that other groups (however much persecuted) still enjoy in Burma. They are a stateless people, which, according to some, is under the threat of extinction.8

The government has denied citizenship to the Rohingya, a predominantly Muslim ethnic group, who number approximately 800,000 in Burma. Without citizenship, Rohingyas face restrictions on their freedom of movement; refugees report that some are prevented from owning property, residing in certain areas, or attending state-run schools beyond the primary level. Since 1988, the government has permitted only three marriages per year per village in the predominantly Muslim parts of Rakhine state.9 Under the 1982 Citizenship Act, the Rohingyas are excluded from the 135 recognised ‘national races’, and are therefore stateless by law.10

For all these reasons the numbers of Rohingyas fleeing the country are extremely high. Most look for a home in Bangladesh, because of geographical proximity and because of the affinities shared with the population there, but many also try to reach Malaysia because of a common religion and the availability of jobs. Many others remain in Thailand. The internal political situation of the South East Asian host nations has contributed to the labelling of most Rohingyas as ‘economic migrants’. In most cases, this is clearly a misconception, and does not fully take into account the reasons that pushed these people into migratory practices.

**Customary International Law and the Legal Dimensions of Protection**

Out of the four countries that are dealt with in this chapter, Thailand, India, Bangladesh and Malaysia, none have ratified the 1951 Geneva Convention or its Protocols. This means that they are not legally bound by the definition of what constitutes a ‘refugee’ according to international law and by most of the provisions included therein. This is true only to a certain extent however, as there are several other treaties which the aforementioned countries have signed, and which can be used in addressing what those countries are legally required to concede to refugees or asylum seekers in their countries.

All four countries have signed the Convention on the Rights of the Child (CRC), and the Convention on the Elimination of Discrimination against Women (CEDAW). Bangladesh, India and Thailand have also signed the Convention Against Torture (CAT) as well as the International Covenant on Civil and Political Rights (ICCPR). To this day, Malaysia has still not signed these two treaties. All four treaties just mentioned are relevant to the protection of refugees in different ways. The CRC and the CEDAW cover specifically the rights of all women and all children. Most importantly however, all of them entail the illegality of *refoulement*.
The principle of *non-refoulement* is a cornerstone of international law and is set out in the 1951 Refugee Convention; article 33 (1) of which states that;

“No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his or her race, religion, nationality, membership of a particular social group or political opinion.”

Whereas the Geneva Convention itself is not relevant in the case of the countries under scrutiny in this chapter, as they have not signed it, the UN Human Rights Committee (UNHRC) and the European Court of Human Rights (ECHR) have interpreted the ban on refoulement as being inherent in all those articles that prohibit torture and inhuman and degrading treatment and punishment.

Most importantly however, the principle of non-refoulement is widely considered to be customary international law, which means that all states, no matter if they are or are not party to the relevant conventions or treaties, are obliged not to return any person to a country where their life would be seriously endangered.

**Sovereignty and the UNHCR Legal Mandate**

*Refoulment* is one issue that has continued to be of grave concern to Burmese refugees living in South East Asian host nations. This is, for example, the reason why many have decided to travel to Malaysia rather than settle in Thailand, which is closer geographically. If deported from Malaysia, Thailand would act as a sort of buffer zone that would prevent them from being sent back into Burma. Deportations occurred more or less constantly throughout 2008, and even though they clearly constituted breaches of international customary law, this did not mean that the international community could stop them from happening on a case by case scenario. Traditional notions of sovereignty meant that the UNHCR and other organisations operated on the soil of said countries only by concession of the host governments. Conflicts between such notions of sovereignty and the mandates under which international non-governmental organisations (INGOs) and international institutions such as the UN operated, meant that often it was only national pressure groups and civil society which had the legal authority to demand changes in the policy of host governments. A good example of this is the Malaysian governmental commission on human rights, SUHAKAM, with the strong potential for reform that it embodies.

Differences in government policy, coupled with the economic conditions that host nations found themselves in, meant that there was much disparity in the treatment of refugees in the four different countries examined in this chapter. Some countries, like India, limited geographically the areas where the UNCHR could operate. Other countries, such as Malaysia, did not allow the opening of any refugee camp facilities. The amount of authority and discretion that UNCHR could employ depended on what the countries’ governments allowed, and therefore indirectly on the UN mission’s political ability in securing such concessions.

Burmese refugees faced different problems according to the different countries they were seeking asylum in, and according to what ethnic group they belonged to. Some groups found cultural and religious affinities with the host country’s population, even though none of the countries offered much chance of a legal local integration. None offered total security from deportation, even though some performed better than others. All four countries offered some opportunity for resettlement, but those opportunities were widely disparate. The four countries will now be dealt with individually.
20.2 Burmese Refugees in Thailand

Demographics of Burmese Refugees and Asylum Seekers in Thailand

Thailand continued to be home to the largest population of Burmese refugees in the world in 2008. After witnessing the first large influx of Karen refugees in 1984 following an SPDC offensive in Karen State, Thailand again became a refuge for many following the 1988 uprising. New arrivals entered Thailand on a daily basis in 2008, in search of refuge, marking the 25th year that Thailand has offered sanctuary to Burmese refugees.

According to data from the US Committee for Refugees and Immigrants (USCRI), in 2008 nearly 145,700 refugees from Burma lived in camps on the Thai-Burma border, mostly ethnic Karen and Karenni, and about 50,000 other Burmese lived outside the camps. Thailand also continues to host around 200,000 ethnic Shan who have fled forced relocation and ethnic persecution, but the Royal Thai Government (RTG) continued with its refusal to recognise them as refugees. The ethnic Mon were faced by a similar situation, deemed by the Thai government not to be refugees, especially since the signing of the 1995 ceasefire agreement between the New Mon State Party (NMSP) and the ruling State Peace and Development Council (SPDC). Around 3,300 ethnic Rohingyas arrived in 2008 but the RTG deported many of them, and many others continued their journey to Malaysia.

It must be noted however, that there is an important disparity between the numbers of refugees as assessed by UNHCR when compared to the figures of those who have been fed by the Thai-Burma Border Consortium (TBBC). TBBC claims 135,282 people reside in the camps, whereas the UNCHR has registered only about 116,635. Further, the figures referring to Tak province exclude significant numbers of yet unverified names recently recorded in camp lists.

In direct violation of customary international law, in July 2008, soldiers of the Royal Thai Army (RTA) forcibly repatriated a group of over 50 Karen refugees from Mae La Oon refugee camp near Mae Hong Son back to Burma; returning them back into the very conditions that they had fled from. This photograph shows a number of RTA soldiers escorting the refugees back across the Salween River to an undisclosed location in Karen State. [Photo: © KWO]
At times, such great numbers of refugees inevitably sparked fears among the local population that it might be losing resources or jobs to the newcomers. However, it is a matter of fact that NGOs provided jobs for local staff, and that they also spent important sums of money in the country on various projects, food and office supplies, visas, transport, property rentals, and much more. To give an idea, the TBBC, which is the largest NGO on the Thai-Burma border in terms of operations, paid around 831 million Thai Baht (around US$27.7 million) to Thai suppliers in one year.  

Following Cyclone Nargis, the number of refugees fleeing to Thailand increased, though the influx was nowhere near as high as many had anticipated. This was because often the regime in Burma physically prevented them leaving. According to Burmese organisations helping victims of the disaster, the junta stepped up their restrictions on survivors trying to flee to Thailand. A member of the Back Pack Health Worker Teams explained that if anybody was found with documents identifying them as residents of the cyclone-devastated area they were sent back to their home towns by the authorities. Troops and police were stationed at the border to check travellers’ documents. A Myawaddy resident explained that the town’s monasteries had also been instructed to refuse shelter to anybody from the cyclone region.

Those who were able to reach Thailand were helped by several groups, among these the Emergency Assistance Team-Burma (EATB), which comprised the National Health and Education Committee (NHEC), Mae Tao clinic of Dr. Cynthia Maung, Human Rights Education Institute of Burma (HREIB), Burma Medical Association (BMA), the Karen Youth Organisation, the Burmese Women’s Union, and other volunteers and charity organisations. The groups tried to provide all the Nargis arrivals with 1,000 baht and a month’s ration of rice. Of those who arrived in Mae Sot, some came to collect donations to take back to their villages, whereas others came looking for jobs and a new home. As a 28-year-old Burmese cyclone survivor explained: “The aid sits at the compounds of the local township authorities,” she said. “We, the survivors, have received just a drop.”

In June two Thailand-based human rights groups, the Mekong Migration Network and Action Network for Migrants, issued a letter to the National Human Rights Commission of Thailand and the three ministries of the interior, labour and social development and human security, as a response to the influx in the post-Nargis period. In the letter, the organisations urged the Thai authorities to stop arresting and deporting Burmese workers for immigration offences for a period of 12 months, and they appealed to the Thai government to provide shelter, essential services and livelihoods to cyclone refugees crossing from Burma.

There are no exact figures, but in the seven months after Nargis struck, about 600 survivors had arrived in Mae Sot, according to local NGOs, although some eventually returned to Burma. About 60 percent of cyclone-affected people assisted by EAT were granted legal working status by the Thai authorities, according to the Emergency Assistance Team coordinator. Evidence showed however, that the early fears of a dramatic upsurge in migration in the wake of Nargis proved unfounded.
Thai Government Policy towards Refugees and Asylum Seekers

Thailand has historically accepted refugees within its borders, although it is not a signatory to the 1951 Convention relating to the Status of Refugees and is therefore not legally bound by it to comply with international law on the protection of refugees. Thailand continued to use the terms ‘persons fleeing from fighting’, ‘persons of concern (POC)’ and ‘temporarily displaced people’, to classify Burmese nationals who crossed the border seeking asylum. In a way, then, refugees and asylum seekers had no legal status distinct from other foreigners and, under the 1979 Immigration Act, the presence of the majority was illegal. The Act also gave the Minister of the Interior (MOI) authority, with Cabinet approval, to grant foreigners exemptions to stay in special cases. The RTG deemed that “persons fleeing fighting” could remain in Thailand as long as they stayed in the camps.

At the national level, competing paradigms of national security and economic development make the Thai policy on refugees and migrant workers variable, reflecting the quickly changing political environment itself. A major thread running through Thailand’s refugee policy is its concern for national security, which is an important factor in explaining why it is not a signatory to the Geneva Convention of 1951 concerning the Status of Refugees.

A report issued by the USCRI in June ranked Thailand as one of the 10 worst places for refugees.22

The UNHCR and the Refugee Status Determination Process

The Provincial Admission Boards (PABs) and Registration

Refugees were registered through Provincial Admissions Boards (PABs) in 2008, which determined refugees’ camp eligibility. This was done as a joint effort between the RTG and the UNHCR. Refugees received temporary ‘fleeing fighting’ status if they fled at the time of fighting or ‘displaced person’ status if they were fleeing persecution. Provincial Admission Boards (PABs) were originally set up by the Royal Thai Government in 1999 to handle the admission process of refugees from Burma seeking entry into the refugee camps. The PABs were in the subsequent years closed down and then resurrected according to Thai immigration policies. For many years the role of the UNHCR was limited to observer status, until 2004/5 when the PABs were used in a joint MOI/UNHCR re-registration drive. Throughout 2006, the UNHCR continued to accept statements, but was unable to register asylum seekers to be processed by the PABs. In 2007 the PABs, having processed the vast majority of 2004/2005 re-registration applicants, essentially ceased to function altogether.

The PAB had previously regularised the status of around 2,700 refugees but such screenings had slowed down in Mae Hong Son and Kanchanaburi provinces and they had completely ceased in Tak and Ratchaburi. In September 2008, the RTG allowed UNHCR to resume such registration, and to issue receipt slips to new arrivals even outside the camps, which was a process it had shut down in 2005. The MOI issued some 88,200 official identity cards to camp-based refugees over age 12, with UNHCR support. UNHCR issued documents with photographs to all asylum seekers and refugees who applied at its offices.23
Refugees in Camps

The RTG allowed UNHCR to monitor conditions in nine camps along the border but not to maintain a permanent presence in them. Thailand limited NGO access to camps to those the MOI approved, and journalists not registered with the MOI could not visit camps. Of the 9 official camps in Thailand, 3 did not meet UNHCR standards for minimum space per person and two were listed as ‘borderline.’

Over the course of 2008, the TBBC funding crisis which had already started in 2007 did not get any better. As anticipated, the consortium was forced to make important cutbacks in all areas of its programme, starting within the organisation itself. This was largely due to the weakening of foreign currencies against the Thai baht. As this situation did not get any better during the year, the TBBC was forced to make a reduction in rations. The annual budget for the delivery of food in camps along the border was cut to US$6.8 million because of the decrease in the value of the US dollar, and the hike in world food prices. The TBBC funding crisis sparked new fears and uncertainty among the refugees. Shan, Karen and Karenni groups appealed to the international community to urgently grant much-needed funding for food provision.

In a public statement, the TBBC underlined the wider effects that such cuts in rations can have on the camp population;

“We could expect to see significant increases in malnutrition rates amongst the vulnerable population and increasing health problems relating to nutrition. The protective community structures afforded by the camps would be undermined and refugees forced to supplement their food by leaving the camps at considerable risk of abuse and exploitation.”

Inside the camps traditional justice systems operated independently of Thai law. The penalties included forced labour, fines, expropriation, detention, and expulsion. Some refugees complained that these did not protect weaker, less politically influential residents including women, the poor and ethnic minorities. Some of the more violent crimes were referred by camp leaders to representatives of ethnic opposition groups that acted as ad hoc appeal fora.

In February, Karen refugee camps on the border were placed on high alert amid rumours of a possible attack by SPDC troops and a Karen National Union breakaway group. A coordinator from the Karen Refugee Committee (KRC) explained that security had been tightened in response to rumours that SPDC troops might have been planning an attack along with the KNU Peace Council, a group led by former KNU Brigade 7 Commander Saw Htay Maung.

In March, authorities denied UNHCR and NGOs access to Ban Mae Surin refugee camp in Mae Hong Son Province explaining that they could not assure their safety. This followed fighting in Burma that spilled over the border resulting in the death of a Thai soldier. In April, the SPDC and its allied ceasefire groups nearby placed heavy machine guns on the hills just across the border facing Mae La camp in Tak Province. Five mortar shells landed in Thailand. In response, the Thai authorities moved hundreds of border patrol members to the area. Refugees were ordered to turn out all lights, generators, and candles at night, sparking fears of a cross-border incursion. During the same month authorities tightened security at the Ban Mae Lama Luang and Ban Mae La-Oon camps, in Mae Hong Son Province in anticipation of possible cross-border attacks. In December, authorities threatened to charge refugees for destroying property in response to the killing of a refugee in Ban Nai Soi Camp, Mae Hong Son province, but brought no charges against the Or Sor
In July, the Thai army sent soldiers from its Mae Sot-based 4th Infantry division to secure its border, while fighting between the KNLA and its breakaway group, the DKBA continued near Pob Phra District in Thailand’s Tak Province. As a result of the fighting, about 200 Karen villagers fled to the Thai side of the border and took refuge at a local school. In the 1990s, the DKBA had already killed hundreds of civilians in cross-border clashes. Also in July, 165 refugees from Shardaw and Phrusoe Townships in Karenni State fled to camps situated in Mae Hong Song District after being intimidated by the army. They were accused by the troops of having contact with insurgents, forced to relocate and forced into labour.

In August, Mrs Laura Bush, then first lady, took advantage of President Bush’s visit to Thailand and his meetings with Burmese activists to see firsthand the Burmese displaced by decades of repression and economic mismanagement. Mrs Bush made a trip to the Thai-Burma border, where she visited the Mae Tao Clinic in Mae Sot and then continued to Mae La refugee camp. As the chairperson of the Education Committee for Burmese Migrant Children said at the time of the visit, many hoped that Laura Bush’s visit to Mae Sot would bring improvements in health and educational assistance for Burmese children living in the border area. Unfortunately, in the short term, the visit of the US first lady only brought about an imposition of tighter security by Thai authorities, which led to more checkpoints, arrests and deportation of Burmese illegal migrants. According to a Thai News report, about 200 Burmese were arrested for immigration offences in the border province ahead of the US presidential visit to Thailand.

**Health**

Primary medical services to refugees continued to be provided by NGOs throughout 2008, though occasionally NGOs referred refugees to government services. Those who were able to register for the migrant labour programs were then eligible for certain public health services. Refugees were excluded however from anti-retroviral treatments with the exception of pregnant women. Doctors Without Borders (MSF) treated some HIV cases but the Thai government blocked foreign language broadcasting for information on HIV prevention labelling it a national security threat. In the summer, authorities mobilised 1,000 health workers and volunteers to deal with the entry in the four districts surrounding Mae Sot of migrants and refugees with cholera, and also to deal with around 500 cases of severe diarrhoea among migrants in Tak. The Mae Tao clinic in Mae Sot provided treatment to nearly 100,000 Burmese over the course of the year 2008 with international and local support.

**Refugees outside Camps**

As has already been said, it is simplistic to imagine two separate refugee groups, one inside and one outside the camps. In 2008 it continued to be common for Burmese refugee families on the Thai border to split up to diversify their livelihoods. One or more members of a family resided for certain periods of time outside the camps to work, and returned to camp to see family or during the occasional UNHCR headcounts. It was often the male family members who left the camp in search of work. In some families both parents worked outside the camp, leaving the children with grandparents. This family-splitting technique was the most efficient risk diversification strategy for displaced people, as it allowed the most vulnerable ones to remain inside the camps in order to minimise risks and to profit from food
and non-food rations. Given the fact that refugees were treated as ‘illegal migrants’ once they were outside camp, they were highly vulnerable to exploitation and were in no position to demand the minimum wage.\textsuperscript{37}

Even though officially refugees and asylum seekers could not work legally, as many as 40 percent of those registered in the camps sought employment outside. Of those in Mae Hong Son camps, the vast majority worked in agricultural pursuits nearby for between 41 and 60 baht ($1.30 and $1.90) per day. It has been widely reported that employers went directly to the camp guards to ask for workers, even though all refugees seeking employment outside the camp risked being arrested, usually while being transported to work, and police often demanded bribes for their release.\textsuperscript{38} Freedom of movement continued to be restricted for refugees and asylum seekers in Thailand, and these individuals needed written prior approval to enter or to leave the camps. Thai police frequently arrested refugees caught outside camps for illegal entry and deported them. Authorities restricted aid to camp residents and many participants in the migrant labour program were refugees and enjoyed limited mobility. No refugees were eligible for international travel documents except for those resettling.\textsuperscript{39}

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{mleaoon.jpg}
\caption{The Mae La Oon refugee camp in Mae Hong Son Province, Thailand. This camp, established in 2004 was home to approximately 16,000 refugees during 2008. [Photo: © Peter Salnikowski]}
\end{figure}

**Detained, Arrested and Deported Refugees**

In 2002 the Thai government agreed with the SPDC on a plan that resulted in the deportation of more than 19,000 Burmese over a four month period. A worrying number were sent by the RTG directly to the SPDC reception centre in Myawaddy, opposite Mae Sot on the Burma side of the border.\textsuperscript{40} Even though Thailand has taken some important steps forward since that time, deportation and *refoulement* continued to be a major problem for the Burmese living in Thailand, and this represented a grave breach of customary international law on behalf of the Thai government.

In 2008, nearly 25,400 Burmese - including about 100 camp-based refugees - were deported. Often they were dropped off at unofficial crossing points, where it was frequent that they would be handed over to members of the Democratic Karen Buddhist Army (DKBA) who then extorted bribes in order to release them. Thailand also deported thousands per year in more formal proceedings and gave the Burmese authorities lists of the deportees’ names in advance, as had been stipulated in the Memorandum of Understanding (MOU)
with the SPDC. The UNHCR reviewed the lists and in some cases was able to prevent the refoulement of those at risk of persecution. There was little UNHCR could do for those camp-based refugees whom the authorities caught outside the camps and repatriated informally.41

In March 2008, the RTG deported 133 Rohingyas to DKBA-controlled territory. After March, the Thai government carried out deportations directly from Ranong and other towns in southern Thailand but in July and August it also deported 150 Rohingya from Tak Province. In August, however, another group of 20 were deported to safer, ethnic Mon-inhabited areas of Burma in the south. This signalled a change in policy, as previously, authorities had briefly detained those arrested along the southern coast and then deported them informally to cease-fire zones near Mae Sot. There, it was common practice that brokers would take them to Malaysia for about US$700.42

In June, 250 Karen refugees attempted to cross the Salween River in two boats, but were prevented by Thai authorities from landing on the Thai side. The group included many sick women and children. They said they were fleeing attacks on their villages by Burmese soldiers, but Thai authorities reportedly did not believe the attack was still going on because they could not hear gunfire. In Mae Hong Son, authorities also refused entry to about 400 Karenni refugees in July, reasoning that they were fleeing forced relocation, and not fighting.

Thai paramilitary troops also forced more than 50 Karen refugees to leave two camps in Mae Hong Son Province, Mae La Oon and Mae Ra Ma Luang, and return to Burma, where they had fled military offensives in early 2008. As Brad Adams, the Asia director at Human Rights Watch (HRW) said in a statement “the Thai government has ignored its obligations to protect refugees fleeing violence in Burma.” 43 According to The Nation newspaper, the RTG did not disclose the exact location as to where the displaced Karen were being taken for fear that the Burmese soldiers would retaliate.44 What appeared to be a ‘nice gesture’ on official records, in reality equated to an outright admission by the Thai authorities that they were consciously violating customary international law. Those involved in this deportation publicly admitted that they were refouling bona fide refugees and asylum seekers, individuals worthy of international protection, likely to have fallen under the protection mandate of UNHCR if given the choice; people who would be at risk of persecution and violence if sent back to Burma. Remarkably, this event occurred on the first day of a major Buddhist holiday, the Asarnha Bucha Day.45

During the same month, ten members of the DKBA crossed the border in Tak Province and abducted a former Karen rebel, a naturalised Thai by marriage, and accused him of spying for the KNU. On the 14 February, Padoh Mahn Sha, the Karen National Union General Secretary, was murdered by unknown gunmen in his house in Mae Sot, and a fellow guerrilla suffered the same fate near the Mae La refugee camp. The same month authorities arrested more than 100 unregistered refugees in Mae La refugee camp in a raid carried out before dawn. They released some women and children but deported 20. Authorities in Ranong arrested and detained roughly 120 Rohingya refugees en route to Malaysia for illegal entry or trafficking in January and February. In March, police raided several homes in Mae Sot and arrested without charges nearly 600 Burmese, in order to prevent a demonstration against the SPDC.46
Changes in the Thai Government

Thaksin Shinawatra, the Prime Minister of Thailand from 2001 to 2006, was deposed by a military coup on charges of corruption and engaging in divisive politics on 19 September 2006. While Thaksin held power, the RTG approved the third-country resettlement of refugees in camps and began to implement policies allowing limited training, education and employment opportunities for migrant workers. In October 2006 interim Prime Minister General Surayud Chulanont promised an improvement of standards in the nine official refugee camps run by the Royal Thai Government. Surayud’s administration announced that it was planning to issue refugees with identity cards, allowing them to move freely outside the camps and to work legally among the Thai labour force. However, many of these policies were never implemented.

In 2008, political instability in Thailand resulted in the occupation of Bangkok’s international airport by opponents of the elected government. Following massive economic losses for the tourism industry and actual threats of yet another military coup, a new government was put in place, led by Abhisit Vejjajiva. The election came after Thailand’s constitutional court in early December forced former Prime Minister Somchai Wongsawat to resign. The former Prime Minister and his Peoples Power Party, along with two other parties, were charged with electoral fraud related to the previous year’s polls. After years of continuous changes in Thai policies towards Burma and towards its refugees living in Thailand, it seemed that what many had labelled as Thaksin’s ‘business-based diplomacy’ might be over. Burmese pro-democracy activists based in Thailand stated the new government would be more likely to take a pro-active role regarding Burma’s politics. Prime Minister Abhisit publicly declared that seeing change inside Burma is an interest that Thailand shares with Western nations, signalling perhaps a renewed interest in the fate of the country’s diaspora.

Third Country Resettlement

Whilst none of the large organisations or countries involved in resettlement has suggested that resettlement should be a primary option, many activists and human rights practitioners working on the Thai-Burma border have pointed to a perceived bias in the provision of information about resettlement. Many have claimed that the difficulties encountered by newly resettled refugees are not given adequate weight in the initial phases of information distribution, and that for this reason certain families have decided to resettle with unrealistic expectations, which, for a small number, has even resulted in regretting their decision to leave Thailand. Others have simply pointed to the fact that the information available is not enough, and is not always accessible to everyone.

As one 72 year old Karen woman explained:

“I am going to the USA because I have a son there and I want to see him, but I don’t know what will happen to me there. It was difficult for me to get information about resettlement. I don’t work, and I cannot read, so I cannot read the newsletters that the organisations give out in the camps. Normally I don’t go anywhere because I am old so I always stay in the house. I know there are photo boards around the camp but I don’t go there so I cannot get any information. I am going to the USA but I do not know the American way of life.”
The situation is very different for people working in NGOs or community based organisations (CBOs). As a 26 year old Burman man working for an NGO explained:

“I am not scared about going to America. I know it is difficult there but I want to go. I have a lot of information about the USA because my colleague is American and I could ask him many questions. Also, I already knew about America from my friends who had already resettled.” 

This difference in attitude points to a debate that has arisen out of the fact that the resettling population is not representative of the refugee population actually living in Thailand. In particular the Committee for the Coordination of Services to Displaced People in Thailand (CCSDPT) report on the Impact of Resettlement on the Remaining Camp Population has shown how the most educated refugees are those most interested in applying. As a consequence of this – more so than because of the third countries selection criteria – the more highly educated tend to depart in higher numbers on average. Averaged across 9 camps, only 2.4 percent of those with no formal education have departed for resettlement; while of those with a post-10 education over, 11.5 percent have departed. In certain political circles, resettlement has been seen as undermining the potential for change inside Burma. By removing people from the border areas, the resettlement program has, in the view of such groups, led to an exodus of the young and future leadership of the pro-democracy movement which has thereby stolen away the dream of return.

The unintended consequences that resettlement has had on the remaining camp population have not made things easier. The fact that a higher proportion of educated, skilled and experienced refugees tend to resettle first, meant that many of those who remained have experienced a loss of morale as their friends and family departed. Further, it has become increasingly difficult to find replacements within the existing population, and this fact has placed a strain on the population in the camps. Some have pointed to a ‘brain drain’ out of the camps. As the CCSDPT report explained “Refugees who will never resettle deserve the attention of practitioners and policymakers because their protection needs in the short and long term are even greater than those who resettle.” These facts, coupled with the delays and the organisational difficulties that the major organisations involved in the resettlement process have often encountered, mean that an anti-resettlement feeling has arisen among some groups on the Thai-Burma border. Many have also grown concerned regarding the actual ‘durability’ of the resettlement program. As many organisations have relocated to new offices in the Mae Hong Son area, and the resettlement screening process in camps in the Mae Sot area has slowed down, people have begun wondering for how long resettlement will be an option for Burmese refugees in Thailand, and in what numbers.

In 2008 a total of 17,172 individuals left for resettlement to the following countries: USA (14,280); Australia (1,562); Canada (637); Finland (283); Netherlands (144); Sweden (134); Norway (77); U.K (29); New Zealand (24); Denmark (1). In June, Burmese refugees were leaving Thailand for resettlement at an average rate of more than 300 a week, according to the UNHCR. Since January 2005 overall more than 30,000 Burmese refugees have left Thailand to begin new lives in third countries.

In January 2008, UNHCR accused the government of blocking the resettlement of 20 Padaung refugees for the past two years as tourists paid to see them confined in a ‘human zoo’. Mae Hong Son camp commander Wachira’s stated rationale was that they could not be refugees because regulations specified that refugees live in camps. The governor of Mae Hong Son Province, Thongchai Wongrianthong, claimed on the other hand that the Padaung people lived “like other refugees, under the protection of Thai laws,” according to the Bangkok Post. Just like other Burmese refugees, the Padaung fled the civil war in their country. Unfortunately powerful businessmen - who according to many have the support of local authorities - have taken Karennis from the refugee camps on the border and placed
their community in three separate villages in Mae Hong Son province, in northern Thailand. In 2008 about 300 foreign tourists visited each village daily. This has resulted in big profits for local Thai businessmen in the last 20 years, yet the economic condition of the Padaung community remained poor. Increasingly, women started to remove the rings from their necks in order to be able to attend schools or find jobs outside their villages, to avoid standing out to the Thai authorities who limited their freedom of movement. According to local sources, some Padaung girls have been forced to put the rings back on by local Thai businessmen. In July, 11 Padaung people disappeared from villages in northern Thailand, reportedly lured by a Korean businessman to work in a new tourist attraction in the south of Thailand. The deputy governor of Thailand’s Mae Hong Son province promised that if the investigation showed that the seven adults and four children had been taken away from their villages, human trafficking charges would be brought.

Recent reports from the Thai-Burma border claimed that brokers can be hired who then coach an applicant on how to establish a credible background story to feed to the UNHCR and how to answer questions on the required application forms. It was claimed that in some cases such brokers paid off people involved in the resettlement approval process, including camp based staff and UNHCR staff. Sources claimed that some pseudo-refugee families could get resettlement approval to the US or other countries without living one single day in a refugee camp. The prices charged by brokers varied from 50,000 baht ($1,500) to 100,000 baht ($3,000), according to refugee sources. According to a report published in a Burmese language newspaper based in Thailand, The New Era, one refugee who used a broker managed to resettle in the US after moving from Rangoon to the Nu Po camp in Umphang Province in Thailand. According to the paper, the whole process cost about 300,000 baht (US $9,000).
Situation of Women in Refugee Camps

In 2008 domestic violence, sexual exploitation and harassment, attempted rape and rape, together with other forms of violence continued to be central problems for the well-being of women living in camps on the Thai-Burma border. This trend impaired women’s capacity to be active members of their communities. Most positions in camp committees continued to be occupied by men, although the ratio has developed towards equality in recent years.

The Karen Women’s Organisation (KWO) is one of the main community-based organisations that deals with sexual and gender based violence (SGBV) in the camps. KWO established and continue to operate safe houses in the seven Karen refugee camps along the border since 2001, where food and non-food items and other services including counselling and medical referrals were provided. Sustainable funding is essential for the on-going care of safe house occupants who have yet to find permanent solutions to their situation, but until now KWO has not received any long-term funding for the maintenance and operation of its safe houses.63

NGO programs sometimes conflicted with the needs of refugee communities as reported by some CBOs. In 2007 the Karen Women’s Organisation and the Karenni Women’s Organisation had criticized the IRC for instituting a program to combat sexual abuse by NGO staff against women living in camps. The women’s groups called for NGOs to consult with CBOs before implementing programs. In response, the IRC pointed out that abuse by NGO staff is a global problem, and noted that victims may not understand the nature of exploitation.64

In October 2007, a group of female activists in Burma had sent a letter to the UN Security Council calling on them to protect the safety of all women living in fear and hiding. On the same day, the Security Council had urged all member nations, and its own offices, to include more women in decision-making processes, and to take specific steps to protect women from gender-based violence.65 The year 2008 has not seen a decrease of such violence. In September a 14 year old refugee girl was raped by a man at Umpiem Mai refugee camp. A source told Kaowao News that the man was later arrested by a camp security guard. Reportedly the convicted rapist paid THB 20,000 and did not serve a jail sentence.66

Situation of Children in Refugee Camps

UNHCR and COERR have recorded since 2005 a total of 8,839 unaccompanied and separated children (UASC) in all nine refugee camps. As of 30 September 2007, there were 4,102 girls and 4,737 boys. As of the end of 2008, more than 3,000 unaccompanied and separated children had not been officially registered as refugees, having no refugee registration numbers, but their presence in the camps was generally tolerated by the Thai camp authorities who allowed their education in refugee schools. Children reported a lack of adequate care, and sexual abuse of camp children has also been a problem in some camps. 70 percent of victims of rape and attempted rape in camps on the Thai-Burma border are children.67
Situation of Specific Ethnic Groups of the Refugee Population

Situation of Burmese Muslim Refugees

As mentioned earlier, Hannah Arendt famously described refugees as the ‘scum of the earth’, explaining that those who are expelled by their country are as a consequence automatically expelled from the whole of humanity. This definition continues to be very fitting for the Burmese Rohingyas.

In response to the continuous inflow of Rohingyas into Thailand, on 28 March 2008 the former Thai Prime Thai Prime Minister Samak Sundaravej said that Thailand would place Rohingyas on a deserted island. The Thai premier made the statement after emerging from a two-hour meeting of the National Security Council, stating that the navy was looking for a suitable island upon which to hold the Rohingya refugees living in Thailand. Then in December, in an incident that was widely reported in the international media, the Thai Navy was accused of causing the death of at least 550 Rohingya refugees. After photographs were released showing groups of Rohingya held on Koh Sai Daeng, an island near Phuket in Thailand, news started to emerge that an estimated 992 Rohingya who had made it to Thailand after rough sailing through the Andaman Sea had been arrested, brought to Koh Sai Daeng, an island near Phuket, and then forcibly expatriated. Abandoned in international waters, 550 of the refugees were thought at the time to have drowned, with the survivors found adrift near the Andaman Islands in India and off the coast of Aceh in Indonesia. Those who survived have claimed that they were pushed back to sea with insufficient supplies of water and fuel, and that many had their hands and feet tied up. The scandal that followed Thailand’s treatment of the Rohingya at least brought their plight some rare publicity. It also reminded Thailand and Burma’s other neighbours that the unending repression inside Burma affects them far more than anyone else, and that the situation of the Rohingya has become a regional problem which requires a concerted regional response. (Note that subsequent reports contested the initial numbers of 550 and suggested that in fact there may have been significantly fewer victims involved than was initially reported.)

It is a matter of fact that the estimated 20,000 Rohingya in Ranong, Phuket and other southern locations in Thailand find unskilled and low-status work in the agricultural, construction and tourism sectors to repay the smugglers and to support themselves and their further travel to Malaysia. However, as it was rightly pointed out in the *Irrawaddy* online magazine, repatriation to Burma is not an option at this point, so conditions have to be set up to protect the Rohingya and respect their human dignity and rights, no matter how their status is defined.

In the past, many made their way to Saudi Arabia, in search of work, as many Bangladeshis also had before them. It was relatively easy to obtain Bangladeshi passports, but heightened security concerns in Bangladesh and Saudi Arabia over Islamic extremism have made it more difficult for the stateless Rohingya to travel. Instead they have been making their way to Malaysia by boat. Inevitably some have landed in Thailand instead.

Situation of Mon Refugees

Like the Shan, the ethnic Mon are faced by a similar legal situation, deemed by the Thai government not to be refugees, especially since the signing of the 1995 ceasefire agreement between the The New Mon State Party (NMSP) and the SPDC. Some have been able, throughout the years, to secure Thai ID cards but overall, they remain under-represented in refugee statistics and therefore under-serviced.
Situation of Karen Refugees

Thousands of Burma’s ethnic Karen have been forced over the Thai border as a result of Tatmadaw (Burmese Army) offensives which have intensified in recent times. Although the Karen National Union (KNU) signed a ceasefire agreement with the SPDC in 2003, repeated violations by the regime, including a major offensive campaign beginning in 2006 that targeted civilian populations, have effectively nullified the agreement. Throughout 2008 the military regime continued its attempt to consolidate control over parts of Karen State. Human Rights Watch condemned the violence and called for an end to the attacks by the Tatmadaw and junta-aligned armed ethnic militias, both within Burma and across the Thai-Burma border into the predominantly Karen refugee camps.74

Situation of Karenni Refugees

The 2007 rainy season was particularly severe, with storms destroying some twenty houses and seriously injuring several people in two Karenni camps in Mae Hong Son province. However, the Thai government continued its policy of forbidding the use of permanent building materials in refugee camps, as it deemed the refugee population to be only temporarily displaced. This effectively limited any efforts to improve the quality of infrastructure and housing in the camps. In 2008 however, most problems in the Karenni Camps occurred in relations with the Thai administration. In December, members of the Or Sor militia operating under the authority of the Ministry of Interior shot and killed a 17-year-old ethnic Karenni refugee during a clash in Baan Nai Soi camp in Mae Hong Son Province. The night before, a student at a Sports Day dance had reportedly thrown a beer bottle at one of the Or Sor. The Or Sor then reportedly beat another refugee student who required 10 stitches. In retaliation refugees destroyed the Or Sor’s station, two trucks, and some motorcycles. Furthermore, groups of Karenni Padaung refugees were barred from resettlement by the Thai authorities.

Situation of Shan Refugees

Thailand continued to host around 200,000 ethnic Shan in 2008, but the RTG continued not to recognise them as refugees and has consequently not allowed them to set up refugee camps along the Thai-Burma border. The Shan have been therefore forced to enter Thailand’s unskilled labour market as migrant workers. Many lack legal status in Thailand, and were thus extremely vulnerable to exploitation and abuse. Despite this, Shan people continued to flee to Thailand to escape the regime’s systematic human rights abuses and repressive policies towards the people in Shan State. It is estimated that hundreds of thousands of Shan refugees continue to work as migrant workers throughout Thailand, particularly in the north.75

In 2008 Shan people continued to flee forced relocation accompanied by widespread abuses of civilians by the Burmese army, including rape, confiscation of land and property, torture, and extrajudicial executions. Rape and sexual violence by SPDC soldiers against ethnic women and girls has been used as a weapon of warfare to intimidate civilians. More recently, large infrastructure projects such as dams on the Salween River and joint projects between Thailand and the Burmese junta have resulted in increased Burmese militarisation of vast areas of Shan and Karen States, accompanied by widespread abuses of civilians which have displaced thousands more people.76

For people living in unofficial refugee camps inside Shan State, health services are almost non-existent, and health indicators such as maternal, infant, and child mortality rates in IDP communities more closely resemble those of Angola and Sierra Leone, rather than those of
other South East nations. Most deaths were from infectious diseases, particularly malaria.\(^77\)

Those who crossed the border into Thailand faced other challenges, like the limited access to humanitarian aid and the exploitation typically faced by migrant workers. The TBBC continued to supply food and shelter items to over 600 refugees in one small camp in Wieng Heng district of Chiang Mai province, most of whom fled fighting in May 2002, but this was limited to a small part of the Shan population. Most Shan in Thailand were classified as economic migrants and were forced to work, usually in agriculture, construction, domestic work, and the Thai sex industry.\(^78\)

A typical scene within one of the small marketplaces within Mae La refugee camp. Mae La was first established in 1984 when approximately 1,100 Karen refugees flooded across the Thai border following military attacks. According to the TBBC, which is responsible for administering the refugees’ food and shelter requirements, approximately 97 percent of the camp’s population is ethnic Karen. [Photo: © Dan Caspersz]

During the first half of 2008, the number of Shan refugees recorded as arriving in Fang district of Thailand averaged about 350 per month. Most of these refugees continued to be from areas of central and southern Shan State where the Shan State Army - South (SSA-S) remains active. During the May referendum in particular, refugees reported an increase in forced portering, which consisted of carrying supplies for SPDC military units deployed on a large scale to organise the voting at rural polling centres. There were also widespread reports of SPDC authorities demanding rice and cash donations from villagers, to buy tractors and oxen for Nargis victims and SPDC military authorities demanded cash ‘donations’ from all vehicles at military checkpoints along roads.\(^79\)

Well over 200,000 Shan refugees were believed to have arrived in Thailand from the areas of forced relocation since 1996. They mostly lived in farms, orchards and construction sites throughout northern Thailand. There were also five Shan camps for Internally Displaced Persons (IDPs) along the northern Thai border, housing about 5,900 IDPs, all sheltering near SSA-S resistance bases. These IDP camps mostly housed refugees who were either pushed back from Thailand, or who were too afraid to venture into Thailand in case of arrest. The security of these IDPs remained precarious, as there was a constant threat of attack by SPDC troops against the nearby SSA-S bases. Although there were no military offensives along the Shan-Thai border during the early part of 2008, the SPDC has continued improving road infrastructure along the border, which would facilitate troop deployment in the event of an attack.\(^80\)
20.3 Burmese Refugees in Bangladesh

Demographics of Burmese Refugees and Asylum Seekers in Bangladesh

Out of the 178,000 refugees that Bangladesh hosted in 2008, almost all were Muslim Rohingyas. In the campaign launched against the Rohingya in July 1991, approximately one-third of this minority fled from Burma, resulting in the establishment of 21 refugee camps in Bangladesh. Estimates of the unregistered refugee population ranged from 100,000 to 200,000; they lived outside the camps and without legal status in the Cox’s Bazaar district and the Bandarban sub-district of Chittagong. The Government allowed UNHCR to give temporary asylum on a case-by-case basis to those recognised in urban areas and to those 26,300 Rohingyas that it confined to two camps in the southern Cox’s Bazaar area. These were Nayapara, with about 16,000 refugees; and Kutupalong, with about 10,000.

Policy of the Bangladeshi Government

Bangladesh was not previously a signatory to the 1951 Convention relating to the Status of Refugees and had not enacted any national legislation on asylum and refugee matters. In 1991 some 250,000 Muslim Rohingyas were recognised as refugees on a prima facie basis by the government of Bangladesh. The vast majority however, were repatriated by the government of Bangladesh to Burma in the following years, leaving only two of the 20 refugee camps in existence. For the last 16 years, a residual number of approximately 27,000 Rohingyas have been living in two refugee camps in the southernmost tip of the country where they continue receive assistance from the Bangladeshi government and the UNHCR.

In 1992, the government of Bangladesh issued the camp refugees with one Family Book per household. This contained the names and other data of the family members and served as identity documents. UNHCR issued individual photo identity cards to all UNHCR-recognised non-camp refugees above the age of 12; children under 12 were included on their parents’ refugee identity cards. Police respected these cards throughout the country. UNHCR also granted letters equivalent to an Asylum Seeker Certificate to all those who applied with the agency and these letters were also recognised by the government. Since then, Bangladesh has acceded to several international rights conventions, and has adopted provisions within its Constitution that uphold the rights and duties within the UN Charter. The country has recognised a body of international law which can provide a framework for protecting refugees. These are significant developments, but the problems remain with regard to ensuring compliance in the standards of protection, especially when there is no domestic law regulating refugee status itself.

In 2006, the government agreed to allow UNHCR to construct new shelters for refugees in both camps and they are expected to have new accommodation facilities by end of 2009. In March 2008, Bangladesh applied to UNHCR for status as a donor nation pledging a minimal amount, around US$2,000, to participate in formulating policies pertaining to the encamped Rohingyas. Bangladesh also requested to join the UNHCR ExComm; entry into which is reserved for those countries that have showed an interest in the solution of refugee problems.

Refugees and asylum seekers did not have the legal rights to work, to engage in business, or to own any property. The authorities however did not punish any for engaging in such activities during the year. In April, however, the authorities used loudspeakers in Teknaf to encourage citizens to evict any refugees from housing they may be renting and not to lease any rickshaws to them. Furthermore, refugees continued to have no legal employment
rights, leaving them vulnerable to abuse and economic exploitation in the informal job sector. Authorities generally tolerated refugees' informal, low-skilled labour in agriculture or fishing industries, but when refugees were entering or leaving the camps, the Mahjees and the village leaders imposed fees and arbitrary taxes on their wages. In May, however, the Office of the Refugee and Repatriation Commissioner (RRRC) formally agreed with UNHCR to abolish the practice. There have also been widespread claims that local officials were using Rohingyas as labour in illegal logging operations.88

Among the larger, self-settled population, half lived in extreme poverty, three-quarters of children under the age of 5 were underweight, and literacy was between 17 and 22 percent. Since the government stopped registering new refugees in 1992, some 5,000 more entered or were born and they were not eligible for World Food Program rations. The government offered no aid and restricted humanitarian access to refugees. In April, it was reported that Teknaf Hospital refused assistance to at least one six-year-old refugee boy hit by a vehicle, who subsequently died from his injuries. As an indication of the dire health situation experienced by refugees in the camps, it is sufficient to say that the daily number of medical examinations per doctor was four times the maximum of international standards. In June, 18 Burmese refugee children died of tropical diseases in Kutupalong refugee camp.89 Reportedly, hospitals run by the Ministry of Health and Family Welfare denied medications to refugees from the camps and the government restricted their access to hospitals run by Medecins Sans Frontieres (MSF) Holland, resulting in several refugee deaths.90

Formal education was not allowed by the Bangladeshi government, whether in camps or otherwise. Some informal education was provided by refugee volunteers based on the Burmese curriculum in eight schools in each camp. Instruction was in Burmese and English. Independent madrassas, however, did offer some instruction in Bangla. Secondary education was altogether prohibited by the Bangladeshi government. According to USCRI, the UNHCR gave subsistence allowances, basic medical services, and education only to a few of those refugees it recognised in Dhaka. In July, UNHCR increased the allowances to 120 Taka (about $1.75) per day from 90 Taka (about $1.32) to compensate for increases in the prices of commodities and other services.91

An unofficial Burmese refugee camp in Bangladesh. This camp, like other unofficial camps in Bangladesh is grossly inadequate and lacks even the most basic of facilities. [Photo: © Narinjara News]
Unofficial Rohingya Refugees

Many Rohingyas are labelled as economic migrants, but this has nothing to do with their actual reasons for leaving Burma, and certainly has nothing to do with their eligibility for inclusion in the UNHCR’s protection mandate. Even though many took up work in foreign countries, therefore becoming migrant workers, defining the Rohingya as economic migrants is a misconception which does not take into account the reasons that pushed these people to migrate. The media coverage of their migration has added to the misperception that they are, in fact, economic migrants. As Surin Pitsuwan, the Thai general-secretary of the Association of Southeast Asian Nations, told reporters from Aljazeera: “This is not an issue for a particular country. It is a regional issue. It is also an issue for the international community.” As one refugee stated, “As long as human rights abuses continue in Burma, we cannot go back. We are caught between a crocodile and a snake. Where can we go?” Another added, “The Bangladeshi authorities say we are from Burma. The Burmese regime says we are Bengali. Where should we go?”

Refugees caught outside of camps continued to be subject to arrest, detention, beatings, withholding of rations and extortion by Bangladeshi security forces. Unrecognised Rohingyas residing outside of camps continued to be denied the right to citizenship, documentation, employment, and marriage by the Bangladeshi government. In addition, the authorities limited the UNHCR and other aid groups’ access to refugee populations. In the words of Brad Adams, Asia Director of Human Rights Watch,

“the Rohingya have been caught between a hammer and an anvil for over a decade in desperate circumstance, with Bangladesh making it difficult for them to seek refuge and Burma continuing to abuse the rights of the Muslim minority in Arakan state.”

In July, at least five Burmese refugees belonging to the unofficial Leda camp died of starvation. Due to incessant heavy rain over two weeks, refugees faced severe food shortages because they were unable to go out and work to support their families. In 2008 Leda camp hosted 1,972 families, and plans were made to extend the camp to host 2,000 more families in the future. Following these events, relief material from Muslim Aid of UK and Islamic Relief Organisation (IRO) was distributed in the camp. In a positive development during the month of July, the 7,500 refugees who had been living at the makeshift camp outside of Teknaf for years without legal status were finally allowed to move to a new refugee camp located in Nila Township between Cox’s Bazaar and Teknaf Highway. Reportedly the majority of camp residents were given recognition as refugees by the UNHCR as they arrived. Also in the month of July, a non-governmental organisation from Turkey started an aid campaign for Burmese Muslim refugees in the Teknaf area of Bangladesh. The iHH says nearly 12,000 refugees from Burma’s Arakan region risk starving to death as their food supply is close to being depleted. The refugees have also been badly hit by the global rise in food prices.
Rohingya Refugees in Nayapara and Kutupalong Refugee Camps

In 2008 there were 13,316 people were officially registered as living in Nayapara camp, and 8,905 were living in Kutupalong camp. Officially registered refugees received food rations. In addition, there were unregistered refugees surrounding these camps, known as Project Profile Registration (PPR) refugees. In Nayapara there were 3,293 PPR refugees, and in Kutupalong there were 1,744 PPR refugees. These refugees received no rations at all. There were a further 15,000 refugees living in a makeshift camp outside Kutupalong camp. They previously lived among Bangladeshis in local villages, but left the villages during the voting registration in early 2008 for fear of eviction. The UNHCR issued identity cards to all Nayapara camp residents over five years of age.

In April, clashes broke out in Nayapara camp when MSF terminated its operations in the refugee camp. Scores of refugees obstructed MSF officials from leaving the camp, and when the police intervened, clashes occurred. Police filed cases against 50 to 60 Rohingyas in connection with the violence. In the same months, five diplomats from the United Kingdom, European Union, Netherlands, Switzerland and Italy accompanied by country representatives of UNHCR, Dhaka and field-level staff of the UNHCR visited the Nayapara Burmese refugee camp. Even more important was the visit in May of the United Nations High Commissioner for Refugees António Guterres, who visited Kutupalong camp accompanied by 10 other representatives. This was his first visit to Bangladesh as High Commissioner. Guterres discussed with the government the long-standing plight of the Rohingya refugees as part of his initiative to place a spotlight on the issue and to resolve one of the world’s most protracted refugee situations. The same day Guterres also visited Cox's Bazaar. “Our intention is to re-establish the trilateral mechanism among Bangladesh, UNHCR and Burma, to create a condition for voluntary repatriation of the Rohingya refugees to Burma,” Antonio Guterres told reporters after a meeting with Bangladesh Foreign Adviser Dr. Iftekhar Ahmed Chowdhury. In another positive development, in May the government of Australia donated US$ 1.4 million for constructing new sheds for refugees of the Kutupalong camp.

Bangladesh does not allow refugees to leave the camps without permission, which is only granted for medical referrals, court appointments and some family visits between different camps. Leaving the camps illegally was still possible however, due to the lack of fencing. The government restricted all humanitarian aid from the World Food Programme (WFP) to refugees registered in the two official camps. The non-camp refugees UNHCR recognised under its mandate were not eligible for any public relief. According to the UNHCR, recognised non-camp refugees could travel quite freely throughout the country and reside wherever they chose. Due to the fact that Bangladesh has no law, regulation, or formal policy regulating the confinement of refugees and asylum seekers, authorities continued to restrict movement in an arbitrary fashion in 2008.

Already in 2007, Bangladeshi authorities had responded to pressures from international organisations and had relaxed some restrictions on refugees inside the camps. The government agreed to allow limited vocational training facilities to be set up by NGOs, the construction of a new official camp, and the continued facilitation of resettlement, albeit in very limited numbers. In December however, Bangladeshi police destroyed an unofficial refugee camp surrounding the Kutupalong refugee camp on the allegation that the refugees had set up tents in forest department land. Authorities destroyed more than 80 huts as well as some of the refugees' belongings like plates and kitchenware. According to UNHCR, camp authorities stopped using corporal punishment, fines, and the systematic withholding of food as punishment. In January, however, it was reported that camp police tortured to death a young Rohingya refugee after another refugee involved in a personal dispute with him claimed he was a terrorist.
Rohingya Refugees in Dum Dum Meah

In 2008, diarrhoea continued to afflict hundreds of people. In the months of June, over 150 refugees in the makeshift camp in Dum Dum Meah were affected, and reportedly two children died. On the whole in 2008 there was a steady increase in cases of severe diarrhoea and 88 refugees were admitted at the clinic of the IRO. Skin diseases, pneumonia, and common cold also spread among refugees. In March, the Kuwait Joint Relief Community (KDRC) distributed food items in the camp. It distributed the items to 2,800 families in the camp but 200-families were left out because of shortage of relief material.

As of 6 July, many unofficial Rohingya refugees from the makeshift camp were transferred to a new camp in Leda. At the same time, it was reported that around 250 refugee families were expelled from it. Authorities explained that these families had been excluded as they had entered the makeshift camps earlier. Local sources subsequently reported that in July and on 29 August, unregistered Rohingya refugees died in the Leda camp due to a lack of proper treatment. In the words of a local refugee, “We used to get enough medical treatment from MSF when we were in Dum Dum Meah camp. But we do not get proper treatment in Leda camp. So, deaths by diseases have increased in the camp.” Poverty in these areas was severe. One event in September was particularly significant in underlining the poverty that afflicted most people living in these areas, refugees and locals alike. A truck on the way to Leda refugee camp was attacked by local villagers while it was trying to deliver rice to Leda refugee camp residents. A clash ensued in which twelve refugees sustained injuries after being attacked with weapons by local village residents.

Arakanese Refugees in Bangladesh

The Rakhine (Arakanese) people face less overt targeted discrimination than the Rohingyas, and are treated as full citizens of Burma, but nevertheless suffer human rights violations regularly. These include forced labour, rape, forced marriage, and the forcible recruitment of child soldiers. Forced conscription into the Burma Army and NaSaKa, the SPDC’s border security force, is widespread. Interviews recently carried out by Christian Solidarity Worldwide (CSW) with three NaSaKa soldiers who defected and fled to Bangladesh in August 2008 confirmed that extortion is widely used by this force, and is specifically targeted at Rohingyas. The defectors importantly gave accounts of forced conscription, forced labour, arbitrary arrest and torture. The three men are now sheltering in Bangladesh and are preparing to apply as refugees with the UNHCR office there. According to their testimony, “the monthly salary is only 21,000 kyat for a Nasaka man, but in Maungdaw, the price of ordinary rice is 25,000 kyat a [50-kilogram] sack. All private NaSaKa men are facing hunger due to their salary being inadequate for their daily survival.”

Former Arakan Army members have highlighted that nearly a dozen Arakanese revolutionaries continued to languish in Bangladeshi prisons because they were unable to return to Burma. A former Arakan Army member who was recently released from prison in Bangladesh said,

“Three Arakanese revolutionaries who have served their terms are still in Cox’s Bazaar prison, while others are in Chittagong and Bandarban prisons. They could have been released from prison in the last five years but had not chance to because they have no homeland to return to.”
The Situation of Women in Camps

According to UNHCR, restrictions on movement and livelihoods contributed to "illegal activity, corruption, abuse and domestic violence," work exploitation, and survival sex.” In 2008 Bangladeshi citizens reportedly raped at least four camp-based Rohingya women in separate incidents: two of the cases were gang rapes and in one of those cases, the survivor was 15 years old. In May, Rohingya religious leaders issued a fatwa subjecting a refugee woman to 100 lashes for an alleged illicit relationship with another refugee.

Sexual violence was difficult to punish in the camps, as the perpetrators were very often security personnel, camp leaders and other camp personnel, as well as the police. The UNHCR, the RRRC, camp personnel, and the Mahjees governed arbitration mechanisms in the camps. According to UNHCR, corruption among camp officials and refugee leaders was ‘pervasive’. Moreover, the lack of adequate health facilities continued to represent an important obstacle for women’s health and well-being. This was particularly the case with pregnancies, which continued to be carried out at high risk for women. On 11 August, a Rohingya refugee woman and her baby died during delivery because of a lack of proper health care facilities in the Leda undocumented Rohingya refugee camp.

UNHCR Disengagement and Forced Repatriation

Before the May Referendum, the Burmese Army was deployed on the Burma-Bangladesh border, as information had been received about joint Rakhine and Rohingya armed groups aiming to penetrate Arakan State to disrupt the forthcoming national constitutional referendum. According to sources close to the Bangladesh Rifles (BDR), the Bangladeshi Army was also deployed on the same border to counter the Burmese deployment.

According to the USCRI, there were no reports of refoulement of UNHCR-registered refugees or asylum seekers. In late December, however, authorities forced some 14 Rohingyas back over the border, and at least several hundred left for other countries, such as Malaysia. In January, the BDR sealed the border to prevent entry of about 1,000 Rohingyas across the Naf River fleeing communal violence in Arakan State.

On 16 February, 19 Burmese nationals were pushed back into Burma. They had entered Bangladesh illegally two days earlier for medical treatment and to visit their relatives. On 26 February, the BDR pushed back seven Burmese nationals to Burma from an entry point in Shapuri Dip by Teknaf, a border town in Bangladesh. On the 3 April 2008, 53 Burmese nationals were pushed back to Burma by BDR, as they were entering Bangladesh territory on board boats via the Naff River to seek refuge. The Second Commander of Teknaf Rifles 42nd Battalion told the reporters that they planned to push back all illegal migrants from Burma as they had a duty to protect the land of Bangladesh for security. On 30 June, it was reported that the BDR sent back four Rohingyas through the transit point of Shapuri Dip of Teknaf Union. The same week, 21 more Rohingyas were sent back to Burma through the same transit points.
Burmese Refugees in Bangladeshi Prisons

The 1946 Foreigner’s Act empowered the Government to arrest, detain, and confine foreigners (including refugees) for security reasons. Detention was limited to no longer than six months. During the year, authorities arrested at least 200 Burmese for illegal entry. Most were ethnic Rohingya, although more than twenty were Buddhist monks fleeing the September crackdown. Many among them were seeking to travel onwards to Malaysia for fear of persecution. From June onwards, police ceased charging refugees that they arrested outside camps under the Foreigner’s Act. According to UNHCR, however, authorities falsely accused many camp-based refugees of crimes and jailed many refugees for over a year for charges with maximum sentences of three months. An amendment to the Criminal Procedure Code adopted in November separated judges from the executive. As a consequence, courts acquitted 42 refugees. Throughout the year, 94 refugees were released on bail, some following UNHCR’s referrals to lawyers from BLAST, the Bangladesh Legal Assistance Services Trust, while others arranged bail on their own. At the end of the year, 84 UNHCR-registered refugees, all men, remained in jail on various criminal and immigration charges. With prior notice, authorities allowed UNHCR to visit detained refugees and asylum seekers. The government permitted detainees’ access to counsel and legal representation in court and, in some cases, UNHCR provided lawyers.

One positive development was that in 2008 the UNHCR began training the BDR on the difference between asylum seekers and migrants. Usually asylum seekers are treated as illegal entrants and often detained, and are generally released by the BDR upon payment of bribes. According to UNHCR, camp officials used arbitrary arrest and detention to force compliance in regard to disputes, as well as to remove fathers and husbands from homes in order to more easily sexually abuse their female family members, including through forced marriages.

In January, police arrested and detained one unregistered refugee on trafficking charges, but released him upon payment of a 20,000 Taka (about US$300) bribe. Also in January, authorities arrested 13 refugees from Nayapara camp for carrying firewood, beat them, and extorted 500 Taka (about $7.30) each from them. Later that month police arrested 4 refugees at a Teknaf jetty as they were travelling and 25 others attempting to enter the country. In February, five Burmese people were arrested and many fled in a police raid in Cox’s Bazaar on boatmen who were preparing to travel illegally to Malaysia, according to a Burmese Muslim refugee in Cox’s Bazaar. In March, authorities arrested two refugees in Nayapara camp after finding a gun in one’s residence. In late May, authorities arrested a refugee leader for allegedly issuing a fatwa but other refugees claimed that the charges were false and that the authorities wanted to punish him for leading a strike and a demonstration against forcible repatriation from Kutupalong camp in 2004. A UNHCR recognised Burmese refugee died at the Chittagong prison hospital on the 17 June after spending over three years in detention at the prison without any trial.

In March, the BDR in Shapuri Dip in Teknaf union seized a boat and arrested 15 people from the coast of the Bay of Bengal. 30 boat-people were preparing to leave in a boat from the Bay of Bengal from near Shapuri Dip to go to Malaysia. A trader from Maungdaw Township said that “Burmese authorities are happy to see Rohingya people fleeing because it shores up their policy of ethnic cleansing.”

In July, in Kutupalong camp, authorities arrested another leader of anti-forced-repatriation demonstrations of 1992, on arms charges dating from that same year. Eleven Burmese nationals were still languishing in prison after finishing their jail term in Ragamati jail, because the Burmese junta did accept their return. This continues to be a very common phenomenon, and sources claim that there are around 300 released prisoners waiting in
other jails in Bangladesh for their return home, if the Burmese junta decides to take them back. Overall the Bangladeshi government kept more than 400 Burmese in jail beyond their sentences—on charges ranging from drug smuggling to illegal entry—citing their countries’ refusal to accept their repatriation. According to UNHCR “violence and mistreatment of refugees in detention is widespread.” The Dhaka Central Jail, with a capacity for 2,700 prisoners, held about 9,000 and the Cox’s Bazaar jail had an 800-detainee capacity, but held 3,600.

In a positive development on June 28, the UNHCR managed to take about 150 refugees from Nayapara and Kutupalong camps to Cox’s Bazaar jail to their detained relatives who have been languishing in prison for a long time.

A photograph of the front gate of Dhaka Central Prison. Bangladeshi authorities arrested over 200 Burmese for illegal entry during 2008, most of whom were Rohingya fleeing persecution in their native Arakan State, although, this number also reportedly included more than 20 Burmese monks who were fleeing persecution for their involvement in the September 2007 Saffron Revolution protests. [Photo: © Narinjara News]

**Third Country Resettlement**

Both the government of Bangladesh and UNHCR consider repatriation the most durable solution; it is also the long-term goal of most refugees. A resettlement programme to Canada was established in 2005, but remained an option for only a very limited few. In 2008, the country offered resettlement to around 80 Rohingyas. In April, during the visit of a delegation of European envoys, about 40 Burmese refugees in Cox’s Bazaar gathered in front of the entrance gate to the UNHCR office to appeal for the resettlement of urban refugees.

On 30 June the first batch of 23 Burmese refugees from five families, including men, women and children reached New Zealand. About 34 refugees from Nayapara and Kutupalong Rohingya refugee camps left Dhaka for resettlement in England on 7 December, according to a local camp resident.
20.4 Burmese Refugees in India

Demographics of Burmese Refugees and Asylum Seekers in India

India continued to host the most diverse refugee population in South East Asia. Among these are many Burmese, mostly of Chin ethnicity. In 2008 around 75,000 Chin lived in the eastern state of Mizoram along the Indo-Burma border. A smaller number continued the journey to New Delhi, hoping to gain access to UNHCR protection there. Both locations provided little protection for Chin refugees and daily existence was fraught with difficulties and hardships.

Government Policy towards Refugees and Asylum Seekers

India is not a signatory to the 1951 Convention Relating to the Status of Refugees and had no procedural mechanism for providing official protection to refugees living in the country. UNHCR, however, continued to register, recognise and resettle Chin refugees in 2008. The Indian Constitution prohibits discrimination based on race, religion, place of birth, and other grounds, it extends to all persons equality before the law and the equal protection of the law, grants protection of life and liberty, and protects against unlawful detention. The Foreigners Act makes illegal entry into the country a crime punishable by up to five years in prison, making no exception for refugees or asylum seekers. The Foreigners Act also gives the government the power to force all foreigners, including refugees and asylum seekers, to reside in a particular place, to impose any type restrictions on their movements, and to prosecute criminally anyone helping in their escape.

India has signed the CAT and has also ratified the ICCPR and the CRC. As a party to ICCPR, India was prohibited from expelling persons from its territory without due process. Further, the prohibition of refoulement implicit in the CAT meant that India could not legally deport any Burmese refugees. Those whom India did return to Burma were regularly punished for leaving the country without permission and were often accused of having contacts with the ethnic opposition groups based in Mizoram, such as the Chin National Front (CNF). The CRC which India has also signed protects children from forced return under articles 6, 22, and 37 of the CRC where “there is a real risk of irreparable harm to the child.” Considering that “Chin children in Burma are subject to extrajudicial killings, arbitrary arrest, imprisonment, torture, forced labour and portering, and conscription into military trainings by the Tatmadaw,” it seems reasonable that CRC stipulations would be applicable to this group. Further, like other countries India was bound by customary international law to respect the principle of non-refoulement. The Indian government continued to violate this principle by failing to prevent Mizoram authorities and voluntary associations operating in the region from forcibly returning thousands of Chin in Mizoram to Burma without any assessment of the risks they might face once refouled.

Significantly, in 1996 India’s Supreme Court ruled that guarantees of life and personal liberty in the 1950 Constitution protected refugees from refoulement. Moreover, in April the National Human Rights Commission appointed a working group of jurists who drafted the 2006 Refugee and Asylum Seekers Protection Bill, adapted from a 1977 model law. Such a bill is of symbolic importance and could hopefully pave the way for an eventual complete halt to deportations. Further, as country signatory to the ICCPR, to the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the CRC, India is prohibited from discriminating against people on the basis of language, national or social origin, property, birth or other status.
The Indian government does not allow refugees recognised by UNHCR to access legal employment, therefore refugees often worked in the informal sector. Many worked as street vendors, which exposed them to extortion from the police. India has no social security system, but NGOs in cooperation with the UNHCR attempted to supervise their working conditions, intervening with employers in cases of exploitation. In 2005 India adopted an amendment to the Constitution providing “free and compulsory education to all children” between the ages of six to 14. In reality, the Chin are unable to afford the costs and meet the documentation requirements for admission, and are denied entrance to government schools.

The UNHCR and the Refugee Status Determination Process

The UNHCR continued to have no formal status in the country throughout 2008, and India barred it from operating in the North Eastern border region. The agency recognised 11,400 refugees under its mandate, mostly Afghan and Burmese, and issued them documentation, which the Government generally respected. Refugees had to travel to the UNHCR Office in New Delhi in order to register, a process that can take years. Out of the 1,800 Chin living in Delhi, 1,000 have been granted refugee status by the UNHCR. In 2006, the UNHCR also began resettling Chins to third countries. Obtaining refugee status through UNHCR, however, has become increasingly difficult for the Chin community. Although many of the Chin who flee Burma would qualify as refugees, the UNHCR is barred from accessing the Chin population living along the border; therefore, only those who make the 2,460 kilometre trek to UNHCR’s office in Delhi can file their claims. Once registered, they are required by law to remain in Delhi, where it is difficult to make a living and to integrate. Further limiting the accessibility of refugee status for the Chin, UNHCR recently announced the closure of general registration in September 2007. Only ‘priority’ cases or those considered especially vulnerable, such as pregnant women, the elderly and the infirm, are now eligible for registration. ‘Non-priority’ cases have to wait until the general registration process re-opens, which is unlikely to happen any time soon.

The Mautam Food Crisis in Chin State

Throughout 2008 Chin State experienced a severe food crisis which was caused by the flowering of bamboo plants, an event occurring every fifty years or so. The bamboo flowering began on the Indo-Burma border in late 2006 leading to a plague of rats which fed on the flowers in the region. The rats gradually invaded the farmlands and destroyed crops such as paddy and maize which are the main staple foods of Chin state. The Burmese regime claimed that it had provided rat poison to farmers, and that it had distributed around 1000 bags of rice to the areas most affected in Chin state. The locals from the affected areas in Chin State however denied that they had received any aid from local authorities. According to local reports, hundreds of people entered Mizoram in 2008, either anticipating the affects of the Mautam in Chin State or after they directly suffered its effects. (For more information see Chapter 18: Ethnic Minority Rights)

This natural disaster also affected parts of India, whose government took preventive steps to counter its effects on the population. In Burma however, the food crisis was made into a human tragedy by the ruling junta. Most people in Chin State relied on local food production for their subsistence, which was usually enough for basic dietary requirements. However, human rights violations and increased militarization of Chin State in recent years caused harvests and food production to decline significantly. Forced labour and portering demands of the regime removed farmers from the fields for significant periods of time, and this in turn meant they were unable to harvest a sufficient yield to support themselves and their families.
Those migrating because of the Mautam should not be considered economic migrants; they are at the very least, in the words of a Project Maje report, “hunger migrants,” but more than anything they are refugees. The regime’s unwillingness to provide any kind of support during the famine and the well-documented attempts at hindering and seizing any private aid reaching Chin State makes it clear that all such people are refugees. As a consequence, they are worthy of international protection and should fall under the mandate of the UNCHR. Activists worried that such an inflow would cause even greater tensions in Mizoram which now has its own resources strained by the Mautam famine, and expected to see an increase in the outflow of Chin people to other countries such as Malaysia.

In August the food shortages killed 44 children after they were afflicted by malnutrition and diarrhoea, according to Chin National Council’s secretary Pu Ralhnin. Faced with starvation around 2,000 people have fled to India from Paletwa Township, one of the worst affected areas in Chin state. “I heard that around 2000 Khumi people from Paletwa region had arrived in some areas in Mizoram close to the Indo-Burma border because they are facing food shortage and there is nobody to help them,” the coordinator of Chin Famine Emergency and Relief Committee based in Mizoram said. Many travelled to Mizoram state just to buy food to bring back to their villages. This was the case of a man and a woman from Ngafaipee village in Thangtlang Township, Chin State, who died from hunger and exhaustion in September after carrying food supplies back to their village.

According to the CHRO, in June a delegation made up of three Chin and one British photographer who had slipped across the India-Burma border into the affected areas in Chin State made a visit to the UK, raising awareness on the food crisis and also on other issues affecting the Chin people such as forced labour, refugees, child soldiers and rape victims. The team called on the British government and international organisations to take immediate action.

**Conditions of Burmese Refugees in Delhi**

Freedom of movement was severely restricted for Burmese refugees in India. This affected greatly those living in Delhi, as they had to ask for written permission from local immigration offices to travel in specific periods. Those refugees who only possessed UNHCR papers were not legally allowed to leave New Delhi, as UNHCR’s mandate only protected them in the capital.

While refugees were not eligible for government services, some could attend municipal schools in New Delhi, even though the UNHCR and its NGO partners developed a network of social services and some financial support. This included a short-term subsistence allowance for newly recognised refugees. In 2003, however, UNHCR cut this amount by half, and in 2004 eliminated it completely. This shift in policy was highly criticised by most activists in the region, as they claimed it failed to account for the realities of refugee life in Delhi, where self-reliance is not feasible for most of the refugee population. A salary top-up scheme was also in place under which UNHCR supplemented the refugees’ salaries to bring them up to the official Delhi poverty line. However, since August 2007, no new applicants have been accepted into this programme. Furthermore, as activists report, this top-up scheme has in effect created a situation where employers have started paying lower wages for refugee workers.

A third form of assistance was provided by the Young Men’s Christian Association (YMCA) to cover the educational expenses of school-aged refugee children. These subsidies were insufficient to cover the cost of private schools because they were calculated based on the cost of attending government schools, where it was almost impossible for refugee children to
meet the admissions criteria. Another programme run by the Voluntary Health Association of Delhi (VHAD) had been responsible for providing basic health-care services to refugees in Delhi. However, in early 2007, the VHAD closed its doors due to a lack of funding. Medical care is now unaffordable for Chin refugees living in Delhi. In general, refugees living in Delhi reported constant harassment and cases of extortion. In June for example, it was reported that a 17-year-old Chin refugee girl was kidnapped in western New Delhi by her employer and handed over to three men who held her until late that night. The girl’s parents reported the kidnappers at a police station but the police took no action against them.

In September, a 28-year-old Burmese Buddhist monk, Ashin Pannasiri, escaped from Lantai Prison in Chin State and arrived in Delhi, India, after 13 days. The monk explained that during the trip he avoided local residents around Mizoram, fearing arrest. Burmese authorities began searching for Ashin Pannasiri in late 2007 because of his close relationship with leading pro-democracy monks. As of October 2008 Ashin Pannasiri was staying with friends in Delhi, and had plans to keep on struggling for freedom and peace in Burma while in exile.

**Conditions of Burmese Refugees in Mizoram**

Many Chin feared the dangers associated with crossing into India because of substantial militarisation along the Indian border. Despite the distance involved therefore, Malaysia has become a destination for very large numbers of Chin refugees. This journey is significantly longer, and involves a great deal of danger. In December 2007 for example, a small boat carrying 99 Chin sank by the southernmost border between Burma and Thailand after colliding with a fishing boat. On that occasion 45 Chin nationals died at sea in the worst maritime tragedy in Chin history.

Despite Mizos and Chin sharing common ancestry, discrimination continued to be widespread. In the past, the Young Mizo Association (YMA), an extremely powerful nationalist group in Mizoram that has strong influence over the state government, targeted the Chin, leading to several crackdowns against them. An example of this took place in 2003 when the YMA refouled thousands of Chin back to Burma. In October 2007 the Mizo demonstrated alongside the Chin in their calls for change in Burma, and some saw this as a hopeful easing of tension between the Mizo and Chin. Nevertheless the Chin continued to fear evictions and deportations by the Mizo in 2008. Further, Chin refugees had to obtain letters from both the local government and the YMA to rent an apartment legally. The YMA conducted inspections to make sure Chins had such letters, and often deported those it found without them. Chin caught without such documentation had to pay bribes of 200 to 500 rupees ($4.50 to $11) to avoid deportation. Deportations and arrests remained common in 2008. In September, Mizoram police detained six vendors as part of their regular sweeps against refugees. According to the USCRI, India forced at least two refugees back to their countries of origin but one was able to return. Refugees also reported harassment and sexual and gender based violence. In June, for example, unknown assailants murdered a Burmese woman at the house where she worked in Mizoram.

Human Rights Watch called on the Indian government to protect Chin asylum-seekers and refugees, and to give UNHCR access to Mizoram state to register them. On 2 December 2008, Mizoram state elections resulted in a sweeping victory for the Indian National Congress, the country’s governing party, which has not been in power there for a decade. In the past, members of Mizoram’s Indian National Congress have called for action against Chin migrants and the party has been even less sympathetic than the previous state government to the plight of those fleeing human rights abuses in Burma.
In October, the YMA announced it would expel all illegal Burmese nationals living in their area. This announcement was made a week after a fight had broken out between local youths and four Burmese nationals. The Mizoram based Human Rights and Law Network (HRLN) Officer-in-charge said, “They should be satisfied with punishing those who committed immoral acts rather than punishing all Burmese nationals by expelling all of them. This is violation of human rights.”

Already in 2003, many Burmese nationals had been expelled from the state after a Burmese raped a local woman.

In the Manipur border areas, refugees reported similar problems. Around 200 Burmese refugee children had no access to education, and young girls resorted to prostitution to support their families. Most children there suffered from malnutrition, malaria, and gastrointestinal diseases. In the city of Moreh during the month of August police imposed curfew and restricted people from moving freely between 4:00 pm and 7:00 am following the arrests of 15 Burmese Rohingyas whom some authorities suspected of links to Al Qaeda.

**Crackdown on Burmese Opposition Groups**

A Memorandum of Understanding (MoU) was signed by India and Burma’s junta in October 2004, concerned with maintaining peace along the border, as well as economic development of the border areas. However, the year 2007 witnessed tensions at the Indo-Burma border. The Indian Government used meetings between the Foreign Minister, Union Home Secretary or Prime Minister, and the Burmese Prime Minister, to pressure the SPDC to provide “all possible assistance” to flush out Indian insurgent groups operating from its territory. In January 2007, the SPDC armed forces led a crackdown on Indian rebel groups operating in North Western Burma, while the Government of India took similar action against resistance fighters from Burma based in India.

In March 2007, India proposed the fencing of the India-Burma border. This proposal came after a series of abductions, bomb blasts and killings in the border area, particularly at the Moreh-Tamu border. In March, around 400 Kukis were arrested and taken to Namunta village in Tamu Township in Burma by a group consisting of the United National Liberation Front (UNLF), Manipuri militants and Burmese soldiers. On 25 May 2007, a bomb blast at Namphalong market killed one person. This led the SPDC to sealing the Burma side of the border. Again, on 9 June 2007 in Moreh, 11 people were killed, triggering fear and sending people fleeing the border town for refuge in Burma.

**Legal Cases Involving Burmese in India**

In September the lawyer for 34 Burmese rebels who have been detained in India since 1998 on charges of gunrunning said he expected them to be freed early in 2009 when their trial ends. The rebels, all members of the National Unity Party of Arakan and the Karen National Union, were arrested for allegedly smuggling weapons by Indian security forces in Operation Leech on the Andaman and Nicobar islands in February 1998. They are currently being held in Kolkata prison, but have not been convicted of any crime to this day. If they are released, normal court procedures would require them to be sent back to Burma. A member of the defence team told Democratic Voice of Burma (DVB) that the group should not be returned to Burma because of their activities against the Burmese government, and that they have approached UNHCR to ensure that they can either stay in India or resettle in a third country.
Also in September, fifteen Burmese nationals were released after spending a year in jail in Manipur, India, were sent to a refugee camp in Chendel district to await a decision on whether they would be deported back to Burma.\textsuperscript{174} The discovery of foreign currency in their possession led the paramilitary forces to suspect that they had links with the terrorist group Al-Qaeda, but subsequent interrogations yielded no evidence of this.\textsuperscript{175} The same month, thirty five Burmese nationals, including 20 children, were arrested at the border between India and Pakistan by the Indian Border Security Force (BSF) when they were trying to cross the international border from Indian side to Pakistan at Bikhiwind village.\textsuperscript{176}

Sprawling over several hillsides, and with an approximate population of 37,000 refugees, Mae La refugee camp is by far the largest Burmese refugee camp in Thailand. Of this number, approximately 97 percent are ethnic Karen. [Photo: © Dan Caspersz]

An image of an unknown Burmese refugee camp in Bangladesh. While Bangladesh hosted approximately 178,000 refugees during 2008, the vast majority of whom were ethnic Rohingya from Burma, the two official refugee camps housed a total population of only 22,000 officially recognised refugees. [Photo: © Narinjara News]
20.5 Burmese Refugees in Malaysia

Demographics of Burmese Refugees and Asylum Seekers in Malaysia

According to the USCRI, in 2008 Malaysia hosted nearly 70,000 refugees from Burma, of which at least 25,000 were ethnic Chin, 20,000 were Mon, and 12,000 were Rohingya, as well as other minorities. According to the Chinland Guardian, the number of Chins is at least 30,000. Out of the total Chin population, four thousand were women and more than two thousand were children under 15 years of age. According to the Chin Refugee Committee (CRC), two thirds of the Chin refugee population in Malaysia is not yet registered. According to the Chairman of the Mon Refugee Organisation (MRO), the number of Mon refugees is close to 30,000, and most of them are not registered by the UNHCR office. There were also over 2,000 Kachin refugees, out of which more than 600 had been registered as asylum seekers with the UNHCR and nearly 300 have received UNHCR ID cards. Overall, many of the refugees in Malaysia were people who, for geographical reasons, would have more easily reached Thailand but who decided to continue towards Malaysia fearing deportations from Thailand back into Burma.

Malaysian Government Policy towards Refugees and Asylum Seekers

Malaysia is not a signatory to the 1951 Geneva Convention or any of its protocols. The country is however signatory to the CEDAW and also to the CRC, even though it maintained eight important reservations. Among these were concerns regarding:

1. Article 28a, which makes primary education free and compulsory for all, and
2. Article 37, which prohibits torture or other cruel inhumane or degrading treatment or punishment, as well as arbitrary detention.

In 2008 the Internal Security Act (ISA) and the Emergency Ordinance continued to undermine people’s fundamental rights and liberties such as freedom of assembly, expression, and the right to due process. Introduced under the national emergencies in the 1960s and 1970s, these laws have been retained long after the said emergencies were resolved. Central in the Malaysian context is the existence of the Rela (People's Volunteer Corps or Ikatan Relawan Rakyat), an untrained paramilitary force made up of over half a million individuals that throughout the years has been strengthened and given sweeping new powers to arrest and detain undocumented migrants and criminal suspects.

In 2008 many refugees continued to work as undocumented migrants in the informal sector, without any legal protection and in unsafe conditions. In January, for example, a Chin refugee fell to his death on a construction site, but migrants continued to be denied access to any compensation. Medical treatment for on the job injuries furthermore, was only available at the discretion of the employer.

The Malaysian government did not provide any education or free health services to most refugee children or asylum seekers, not even those who were born in Malaysia. Registration of new births actually led to arrests in some instances. The USCRI reported on two occasions in late February and early March when Rela forces detained three refugee infants and five adults when the parents tried to register the births. Refugees with UNHCR documents were often able to receive medical services at half price, even though in many instances they were turned back by hospital staff. Refugees and asylum seekers with HIV/AIDS received free treatment from the public health service, but nothing more than allowing a few independent humanitarian agencies to assist them.
A national election was held in Malaysia on 8 March 2008. Unexpectedly, opposition parties made unprecedented gains in parliament, although the ruling party has been able to secure just enough parliamentary seats to form the government. During the election campaign ‘safety’ and ‘security’ were keywords, with ‘illegal immigration’ tied into those issues through association with crime. Although Prime Minister Abdullah Badawi’s administration has been openly critical of Burma’s junta, it has taken no steps to protect asylum seekers and workers from Burma who are seeking refuge in Malaysia, and has so far ignored pleas to control Rela forces. Refugee leaders and commentators have compared and contrasted this attitude with that of Thailand’s government, which although it openly remains in friendly relations with the SPDC generals, at least grants a legitimised status to many workers from Burma through a work permit program and has allowed the creation of ten large refugee camps for people to find shelter.\textsuperscript{187}

The UNHCR and Refugee Status Determination

The Malaysian government has no procedure for granting asylum or registering refugees, so UNHCR handled all refugee status determinations and issued plastic, tamperproof cards to those it recognised as refugees. According to the USCRI, the UNHCR gave Burmese Rohingyas temporary protection as a group, and according to refugees the UNHCR also fast-tracked the applications of Burmese Chin individuals who did not undergo full interviews like members of other ethnic groups.\textsuperscript{188} As UNHCR had no presence at the border, most asylum seekers had to travel to Kuala Lumpur for determinations, which increased their chances of being arrested by the authorities. At times the UNHCR conducted mobile registration exercises in areas with very high concentrations of refugees, but these were greatly insufficient and did not meet the actual needs of the communities involved.\textsuperscript{189}

According to a Project Maje report released in 2008, refugees in Malaysia reported that UNHCR executives, although well-meaning, seem to be out of touch with the real situation in Malaysia and rely on unmotivated local Malaysian staff. Increasingly, refugee status seems only to be granted to people who are defined as extremely vulnerable: usually women at risk or people who are seriously ill. According to the report, refugees told stories of people taking extreme measures to seek UNHCR status; for example, deliberately seeking tuberculosis infection in order to get registered.\textsuperscript{190}

Urban Refugees and Jungle Refugees

In 2008 the government of Malaysia continued not to allow any refugee camps or formal places of shelter within its borders, so throughout the years refugees largely had to fend for themselves. There are few NGOs working with Burmese groups, and most of the support comes from within the refugee communities themselves. Burmese refugees in Malaysia have found shelter in the cities as well as in the jungles. In the case of Kuala Lumpur, there was a divide between those who shared flats in the city and those who remained in informal hideouts in the jungle areas surrounding the city. In the city centre, the fear of arrest continued to be constant. People lived confined to their tiny windowless flats, afraid to go out for fear of being arrested by Rela or by thugs. Children were taken care of by volunteers from the refugee communities who have throughout the years started many informal schools in rented flats. Such schools operated on very little funding originating from individuals and at times from some civil society groups, but this it was not enough to cover their needs. There were some instances where Malaysians learned about the plight of migrants and decided to help them, but these were rare and on a very small scale.\textsuperscript{191}
People took shelter in the jungles surrounding Kuala Lumpur because the urban areas are notoriously subject to night-time raids. From time to time however, such hideouts were also raided by Rela forces, and periodically burned down. Often these places of shelter were located in the jungle areas outside Kuala Lumpur, or in the proximity of factories where large numbers of unregistered Burmese continue to be employed. Often the presence of refugees in the areas was tolerated as they provided cheap labour, but this depended largely on the location of the camps. According to the Chin Human Rights Organisation CHRO, one camp found in Putra Jaya was raided three times by Rela over the course of four years. In January 2008, one such camp in Putra Jaya was burned down by Rela forces, and at least 75 Chin refugees and asylum seekers were made homeless. They also lost most material possessions including plastic material used for shelter, pots and pans for cooking, clothing, food and their Christian Bibles.192

Many unregistered Mon refugees also live in similar jungle hideouts. According to the Chairman of the MRO “They look for any edible leaves nearby but they also dare not go out during the day, fearing arrest by the police.” As another community leader said. “We have no food and no jobs. Some UNHCR officers came here to see Mon orphaned boys, with a Mon interpreter, and we told them about our situation,” said the community leader.193

**Detention and Arrest of Burmese Refugees in Malaysia**

The life of Burmese refugees in Malaysia is effectively summed up in one simple comment made by a refugee living in Kuala Lumpur, “I am afraid of arrest wherever I go.”194 As Malaysia makes no distinction between migrant workers, asylum seekers and refugees, all non-nationals without proper documentation are subject to arrest and often deportation. According to the USCRI report, at any given time an average of 730 refugees and asylum seekers were in immigration detention centres in Malaysia. RELA conducted as many as 40 raids a night during the year, and up until November it had detained more than 30,000 purportedly illegal immigrants. UNHCR managed to win the release of nearly 1,200 refugees and asylum seekers by the end of July.195

The People’s Volunteer Corps, known as ‘RELA’, is a volunteer paramilitary force whose members now number more than half a million. Originally established in 1966 to help maintain public order, RELA’s continued existence and enhanced powers rest on the enactment of the Emergency Act 1979 and the Essential Regulations 2005.196 Since 2005, RELA’s primary task has been to assist in controlling illegal migration to Malaysia. Should a suspect refuse to answer questions, produce requested identification, comply with reasonable requests, or make a statement or produce a document that the RELA member believes may be false, RELA personnel have the power to arrest them without any warrant. Malaysian law also provides legal immunity to RELA members so that they cannot be prosecuted for any act carried out in their capacity as a RELA official.197

Refugees with UNHCR cards were usually safe from arrest by regular police, but RELA still detained cardholders. Refugees were subject to prosecution under the 1959 Immigration Act, which makes no distinction between refugees and illegal immigrants. Amendments to the Immigration Act in 2002 provided for up to five years’ imprisonment and a whipping of up to six strokes, and fines of up to 10,000 Malaysian ringgit ($3,020) for violations. The Federal Constitution extended its protections for individual liberty to all persons, but created an exception whereby the 24 hours allowed authorities to bring a detainee before a magistrate became two weeks in the case of an alien detained under the immigration laws.198
In November, the Government announced it was transferring control of the immigration detention centres back to the Immigration Department and that RELA members would be staffing them until it could train full-time staff, perhaps for as long as two years. Independent agencies visiting the detention centres said access became more difficult since RELA personnel took over. They also reported deterioration in the centre conditions – more overcrowding, more complaints by detainees of maltreatment, poor food, insufficient water, and insufficient access to medical care. This decision came under attack by many NGOs and numerous civil society organisations. Numerous organisations described the management of the Immigration Detention Centres as a large failure on behalf of RELA forces, pointing to problems of severe overcrowding, unhygienic living conditions, prolonged and indefinite detention, outbreak of diseases, and no access to medical treatment.

In 2007, following numerous reports on RELA members’ abuse of power and brutality in enforcement raids, the Malaysian Bar Council intervened to ask for the government to disband the group. Speaking to Malaysia Today, the chairman of the Malaysian Bar Council Law Reform and Special Areas explained that RELA members were not sufficiently trained for their job and by allowing them to carry out raids their members only perpetuated human rights abuses, suggesting that the government would do better to employ more immigration officers to carry out the job. The chairman questioned how Rela members can “become law enforcers when they undergo only two weeks of training? That is OK if their role is confined to directing traffic, but not conducting raids as they are doing now.”

Speaking after a state-level celebration at the RELA training centre in Tuaran, Malaysian Home Minister Datuk Seri Syed Hamid Albar said “people should not dismiss it as an unprofessional body just because of a few bad apples.” Although he did not deny some of the allegations of abuse by RELA officers, he said the ‘bad apples’ did not reflect the 500,000-strong movement serving as a support unit for the various enforcement agencies. As pointed out by Malaysiakini, a large problem lies with the Chief of RELA, who seems to be unable or unwilling to recognise those among the force who abuse its powers when they are pointed out to his authority. The article claimed that the RELA Chief has been more intent on trying to convince people that “the apples are in fact very good. When that happens, it is time not just to pick out the bad apples, but to change the custodian of the apple barrel.”

In December, an outcry by civil society followed the arrest of a RELA member alongside 11 other suspects for being part of a notorious armed gang which robbed, injured and raped their victims. The RELA member was accused of masterminding the gang. Malaysian police seized a total of RM 500,000 worth of stolen goods including jewellery, motorcycles, a LCD television, mobile phones, cash and a revolver with six bullets. The authorities revealed that the gang was responsible for at least 39 robberies.

According to The New York Times, RELA’s director-general, Zaidon Asmuni, dismissed in an interview the concerns of human rights groups, saying that the nation’s security was at stake, and demanded an aggressive defense. “We have no more Communists at the moment, but we are now facing illegal immigrants,” he said. “As you know, in Malaysia illegal immigrants are enemy No. 2;” enemy No. 1, he said, was drugs.

In late February and early March, Malaysia detained three refugee infants and five adults when the parents tried to register the births of the children. In late March, authorities released a group of 25 refugees and asylum seekers, including 6 infants less than two months old and their mothers. In April, RELA raided a market in Kuala Lumpur and detained 33 refugees and asylum seekers from Burma for illegal entry or lack of documentation; although upon UNHCR’s intervention, they released 2 mothers who were nursing infants on the same day. Then at 2:00 am on 25 June 2008, RELA launched a raid against the offices of the Chin Refugee Centre and two neighbourhoods where Chin refugees lived, arresting nearly 230 people. Among the detainees were 30 children, 10 refugees slated for resettlement to the
United States the next day, 5 pregnant women, and a Chin refugee leader. Malaysia released the Chin leader and the 10 refugees slated for resettlement, but transferred the rest to the Semenyih detention centre. In early August, Malaysian authorities detained 300 Rohingya refugees, including at least 150 recognised by UNHCR. In October, Malaysian authorities arrested 8 Chin women and 13 children after the vehicle they were travelling in was involved in an accident. According to the Chinland Guardian, the number of Chin refugees being arrested in Malaysia overall increased dramatically in the second half of 2008.

It was widely reported that detention centres were overcrowded with poor sanitation, insufficient food and health services, and abusive guards. Detainees reported that cells designed for 4 people held between 15 to 20 people and that staff gave them contaminated drinking water. UNHCR was usually able to access detention centres, and made several visits during the year. The Human Rights Commission of Malaysia was able to visit detention centres but needed government approval. The government however did not generally permit the International Committee of the Red Cross, NGOs or the media to visit the prisons or monitor conditions. Refugees could challenge their detention if they had legal representation. UNHCR provided refugees with volunteer lawyers but they rarely won, as Malaysia had not ratified most relevant human rights accords. Detainees were not allowed to make phone calls when arrested, so they generally had to bribe a police officer to be able to inform anyone of their arrest.

Incident at Lenggeng Immigration Detention Centre

On the 21 April 2008, an incident occurred at Lenggeng Immigration Detention Centre where tensions between RELA guards and refugees and migrants detained there escalated and resulted in an administration building being burned down. The mainstream press claimed that the riots were started by 60 Burmese detainees after they were told that their applications for resettlement to a third country had been rejected by the UNHCR. Fourteen detainees were arrested under Sections 148 (possession of dangerous weapons) and 438 (committing mischief by fire or use of an explosive substance) of the Malaysian Penal Code. They were held at Ibu Pejabat Polis Daerah (IPPD) in Seremban. However, in a press statement, the UNHCR was very clear in denying any rejection of applications and claimed that the applications of those Burmese accused of setting the fire were still being processed. Through an investigation carried out by Malaysian NGO Suaram, and thanks to interviews with several migrants, it became clear that the actual event differed vastly from the reports found in the mainstream press. Suaram claimed such reports were misleading and aimed at painting a negative image of refugees. Investigations revealed that only three of the arrested were actually Burmese refugees registered with the UNHCR, and moreover raised questions regarding the role of RELA officers in an incident of cigarette smuggling into the detention centre which apparently had caused the tensions in the first place.

The incident at Lenggeng camp reflects the conditions in the detention centres; conditions that are unbearable and inhuman. The abuse, violence and different forms of mistreatment of the detainees, as well as the mismanagement of the centres require serious, independent investigations. More than anything, the political will to bring about drastic changes and reforms is urgently needed. Malaysian civil society has for a long time put their faith in SUHAKAM, which is the human rights institution established by the Malaysian Parliament using the Human Rights Commission of Malaysia Act 1999, Act 597. As the government instituted body which aims to promote and protect human rights in the country, SUHAKAM is responsible for ensuring justice is done to those unjustly treated and it must make accountable the officers responsible for the continuous deterioration of conditions in the camps and the intense violations of human rights.
Trials, Deportation and Trafficking

Malaysia has not ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, which supplements the UN Convention Against Transnational Crime, nor the Protocol Against the Smuggling of Migrants by Land, Sea and Air.216

In 2008 Malaysian authorities deported nearly 2,300 refugees and asylum seekers to Thailand, at least 14 of whom were officially deported back to Burma by Thai authorities. Three of these deportees were arrested upon their arrival. It has been widely reported by refugees, refugee organisations and NGOs that in deportations to Thailand, Malaysian officials often gave advance notice to traffickers who kidnapped the deportees or bought them directly from immigration officials. Refugees provided testimonies of immigration officials receiving 900 Malaysian ringgit (about US$272), per person from the traffickers. If they could afford it, deportees could bribe the traffickers to return them to Malaysia and one individual reported paying as much as 1,800 ringgit (about $543). Those who were not able to pay were often sold to Thai fishing boats, in the case of men, or brothels, in the case of women. The government said these deportations were voluntary, but the harsh conditions in Malaysia’s detention facilities made it likely that many were involuntary.217

Many activists and NGO workers based in Malaysia have for a long time pointed to the involvement of Malaysian immigration and police officials as well as members of RELA in trafficking practices, but so far it has not been politically feasible to open any sort of enquiry into the matter. It is especially risky for the UNHCR to openly pursue an enquiry, as their status in Malaysia is already precarious, and a similar action might entail great political losses for the mission there, which would result in losses for the refugee community in turn. In a very recent development, the US Senate decided to review claims of human trafficking in the area, but it remains to be seen how this will impact the reality on the Thai-Malaysian border. It is hoped that such an enquiry will bring criminal practices to a halt in 2009.
Third Country Resettlement

In Malaysia, most people equated registration to resettlement. Due to the fact that arrest and deportation both occur on a large scale with or without UNHCR refugee cards, resettlement was the only tool of protection that was effectively open to the refugee population. The context in which the resettlement program operated in Malaysia was therefore very different to that of Thailand. It was not one of the options available for refugees, but the only option; refugees lived in constant fear for their physical safety and not even their homes could provide them with freedom from arrest. The vast majority of the refugee population in Malaysia wants to resettle, with very few exceptions. Among these exceptions, were some Rohingya individuals who have been living in Malaysia for decades, and even though they remained illegal before Malaysian law and are still subject to continuous deportations, they have to an extent integrated in Malaysian society.

The UNHCR office in Kuala Lumpur claimed to be at full capacity and to be struggling to keep up with its workload, one of the largest in the world for an urban mission. Once Burmese asylum seekers were recognised as refugees, they were immediately scheduled for a resettlement interview, which would then assess their suitability for the countries offering resettlement. Unfortunately this whole process can take a very long time, often several years, during which refugees fear for their physical safety, and have no refugee camp to find shelter in.

Such a long waiting period has had important consequences for people’s psychological well-being, especially when they encountered problems in including family members in their resettlement applications. In June 2008 for example, a Burmese refugee in Malaysia died following a period of depression after the UNHCR office in Kuala Lumpur informed him that his application for family inclusion had been rejected. The man had made a request to UNHCR that his wife be included in his refugee file. Between making the appeal and up until the day he died, the man had been queuing outside the UNHCR office for 34 days, waiting for his application for family inclusion to be processed, according to another Burmese refugee in Malaysia.218

Situation of Specific Refugee Groups

Recently some refugee leaders appeared to have been working towards forming an umbrella group for the various ethnic refugee organisations, similar in their function to consulates for their respective populations in Malaysia. Not included in this proposed alliance were the Burmans or the Rohingyas. The Burmans were perceived by other ethnic groups as likely to have been infiltrated by SPDC spies, and the Rohingyas continued to be subject to the discrimination they experienced in Burma.219

According to some refugees living in Malaysia, the resettlement process has caused some tensions among the various ethnic groups seeking refuge there. Some have claimed that certain groups received preferential treatment compared to others. Partly due to the UNHCR’s lack of total transparency in the procedures and criteria governing its work, it has been hard for independent monitors to verify whether such claims are baseless or not. Due to the fact that in Malaysia gaining access to registration was equal to, in most cases, gaining a resettlement interview, the two things were inextricably linked. As registration has been officially closed for several years, the only chance certain groups had was when Refugee Community Organisations or occasionally NGOs could highlight the plight of extremely vulnerable individuals living in precarious conditions. In such instances, mobile registration brought renewed hope, but only to a handful of people. This depended largely
on the networks of contacts that refugee community organisations could develop among themselves and with UNCHR officers.\textsuperscript{220}

In 2008, the Mon community was particularly vocal in their claims that compared to other ethnic groups, few Mon had been able to resettle in third countries.\textsuperscript{221}

**Rohingya Refugees**

Rohingya refugees have been living in Malaysia for decades and – even though they remain illegal and continue to be subject to constant deportations – they have to an extent integrated in Malaysian society. It was not uncommon for inter-marriage to take place, or for Malaysian nationals to formally adopt small refugee children in order to guarantee them citizenship. For this and other reasons, including the low popularity of Muslim refugees in the post-9/11 context, the UNHCR office in Kuala Lumpur submits only a handful of Rohingya cases every year for resettlement.

The UNHCR mission in Kuala Lumpur has for years been advocating together with numerous civil society groups for the Malaysian government to recognize such *de facto* integration and to grant the Rohingyas IMM13 working permits. IMM13 are temporary working permits that have different conditions attached to them according to provisions given by the Immigration Minister. Years of talks between the Malaysian government, Rohingya community leaders, civil society groups, NGOs and the UNHCR failed abruptly in 2006, after a process of registration which was initiated for approximately 12,000 Rohingyas, was halted due to allegations of corruption among individuals involved in the process.\textsuperscript{222} (For more information, see Chapter 21: The Situation of Migrant). In 2008 the option of granting such permits still seemed appealing for Rohingyas in Malaysia, but whilst this possibility would surely entail many important benefits for the individuals involved, it still relegated them to the status of economic migrants; thereby not taking into account the true reasons that pushed the Rohingya people to leave Burma in the first place. Moreover, even the Rohingya refugees that UNHCR recognised *prima facie* were still not eligible for resettlement. If the authorities arrested and detained them, UNHCR gave them full interviews and those that passed were eligible.\textsuperscript{223} Such a policy evidently created many instances where refugees pretended to have been arrested or to have been victims of violence, with reported cases of people inflicting self-injury in order to become eligible for resettlement.\textsuperscript{224}
20.6 Burmese Refugees in Other Locations

Third Country Resettlement

UNHCR presents three durable solutions to the refugee cycle.

1. Return to the home country;
2. Integration in the current country of stay; or
3. Resettlement to a third country.

Return to Burma and integration into the four countries discussed in this chapter continued to be unfeasible.

Resettlement may be defined as the transfer of refugees from a state in which they have initially sought protection to a third state that has agreed to admit them with permanent-residence status. Its first – and traditional – role is as a tool of international protection for individual refugees. Second, it may serve as a durable solution. This reflects acknowledgement that resettlement can be used alongside other durable solutions as part of a comprehensive strategy to overcome protracted refugee situations. Finally, resettlement may be an expression of international solidarity. Resettlement by third states represents a commitment to a more equitable sharing of responsibility for protection with the developing countries that host the majority of the world’s refugees. Every year, some 70,000 refugees are accepted for resettlement worldwide. In 2008 the Czech Republic became the first former Eastern Bloc country to join the ranks of 19 countries that open their doors annually to refugees through formal resettlement programmes, and is the eighth European Union country to have established such a programme.

Integration

Through forced migration, refugee groups are often required to “reshape and redefine their concepts of work, gender and class based on past, present, and future histories and experience.” Refugees are usually unable to enter the best labour markets when they arrive in their new countries. ‘Labour queues’ tend to favour refugees only when they need cheap labour and low skill sets. This can represent an enormous change, especially for former middle-class refugees who, forced to take up low-paid jobs, experience an important change in their identity. This being said Burmese refugees in the US, which is the largest receiving country in worldwide resettlement programs, tend to have twice the concentration in white-collar jobs that other Southeast Asians have, and the least amount employed in service sector work. Likewise, Burmese refugees earned approximately twice what other Southeast Asian refugees made according to US national statistics.

With specific reference to refugee women, the development of numerous female intensive industries has meant that women were able to enter the labour market with relative ease. Refugee women are usually compelled to enter the work force in order to support their families and typically worked at higher rates and on a more regular basis than refugee men. Thus, refugee women often replaced men as the family provider and breadwinner. Furthermore, because of traditional roles occupied by women in the household, they often ended up being responsible for both the paid and the unpaid work. Women were usually employed in only one of a few industries, including textile, electronic, and domestic service jobs. Since refugee women held more jobs in low-skill service sector industries “female ghettos of employment” became most prominent among Southeast Asian refugees.
Certain aspects of identity are derived through one’s work experience; this is especially true for class identity, as a person’s type of work is an important source of self-definition in Western society. This, coupled with the dual role that women often take on, adds to the cultural shock that male refugees experience in their new countries. With women taking on larger roles in the family leadership, and children learning the new language quicker than the adults, men often experience periods of very low self-esteem.231

Pursuing further education is a big driving factor for people who decide to move to a third country, be this for themselves or their children. In practice however, a very low percentage manages to secure further qualifications. This varies greatly between the resettlement countries. In the USA higher education is difficult to afford, whereas in Scandinavian countries it is more widely available. Mostly it is money constraints that hinder further education, especially for newly resettled refugees, who struggle to deal with their new lives’ expenses. The lack of previous qualifications often caused problems too, even though these were sometimes overcome. Such was the case of a 35-year-old Burmese dissident who encountered problems when applying for his master degree at the University of California (UC) Berkeley in 2008. The fact was, the man had never finished high school, as he had been kicked out of high school in Burma in 1988 for his political involvement against the military junta. UC Berkeley showed its grace to him: and endorsed by five professors at the university, the applicant was eventually accepted as a graduate student.232

Australia

Australia was a large recipient of Burmese refugees taking part in the resettlement program. From 2005 to the end of 2007, Australia received 2,154 Burmese refugees from camps in Thailand. However, much of the news in 2007 concerned Australia’s ‘Pacific Solution’ policy, under which migrants and refugees attempting to enter by boat were to be detained on outlying islands. Amnesty International Australia alleged that the policy severely restricted and in some cases prevented asylum seekers from accessing basic needs and rights. On 18 July 2007, the Australian government agreed for the first time to consider visa applications from the asylum seekers. Then on 27 July 2007, in a ground-breaking decision, the government dropped its opposition to a case involving a group of Rohingyas, recognising them as asylum seekers.233

The Australian government came under much criticism for an April 2007 agreement with the United States to trade refugees housed at Guantanamo Bay for those held on Nauru. Human Rights Watch criticised both governments, saying that “Refugees are human beings, not products that countries can broker and trade. The United States and Australia have signed a deal that bargains with lives and flouts international law.” Under the deal 90 Sri Lankan and Burmese refugees held on Nauru would be sent to the United States, and up to an additional 200 refugees could be sent each year. In return Australia agreed to take up to 200 Cuban and Haitian refugees held at the US Navy base at Guantanamo Bay, Cuba.234

In 2008, several Burmese refugees in Australia attempted to draw attention to a major problem encountered by newly resettled refugees. They claimed that the government support agency Centrelink had been denying refugees full welfare assistance. According to an Australian social security law released on 3 November 2008;

“A refugee is granted automatic exemption [from the “Job Network” demands] for up to 13 weeks after arriving in Australia. This exemption cannot be extended, except where the person is undertaking the Special Preparatory Program part of the Adult Migrant English Program (AMEP).”235
It means that there should not be any pressure for new arrival refugees within their first 13 weeks in Australia whether they are studying or not, as they are entitled to receive welfare payments without any demands to undertake the normal job-seeking activities. However, Centrelink had forced some refugees to sign up to the Job Network which meant they must then apply for a certain number of jobs each week to maintain welfare benefits.236

Canada

Between 2005 and December 2007, Canada received 2,132 Burmese refugees from camps in Thailand. In 2006 Canada also began accepting groups of Rohingya refugees from Bangladesh. A group of 9 Rohingya refugees, who were part of the 23 originally accepted for resettlement in 2006, arrived in Canada in late April 2007. On 13 November 2007, 20 more Rohingya men, women and children arrived in Canada for resettlement. The fourth batch of 24 Rohingya refugees reached Canada on 24 November 2007, bringing to 66 the total number of Rohingyas accepted by Canada.237

In 2006 the Canadian government resettled the first group of approximately 800 Karen refugees from camps in Thailand. On 9 February 2007, the Canadian Minister of Citizenship and Immigration announced plans to resettle an additional 2,000 Karen refugees over the next two years. Canada also hosted a number of Burmese Mon, who founded the Mon Canadian Society (MCS) to assist the Mon community in Canada and provide humanitarian assistance to persons in Burma. The first Mon Association in Canada was founded in Toronto during Christmas of 1995, and was followed by similar groups in Ontario, British Columbia, and Alberta as more Mon refugees arrived in Canada. The majority of the Mon resettled in Canada lived in Calgary, Alberta due to the province’s booming economy. A Mon Buddhist Temple and Mon Women’s Organisation were also formed to administer community services.238

In 2008, Canada accepted 55 more Rohingya refugees from Bangladeshi camps, and announced it will admit 145 more in 2009.239

Japan

Japan signed the UN Convention Relating to the Status of Refugees in 1981, but the country has been particularly reluctant to accommodate refugees under the convention. The country gave refugee status to a total of 451 people through 2007, an extremely small number compared with European countries and the United States. Moreover, many of the applicants have been forced to lead impoverished lives in Japan while waiting for their asylum decisions, because they were banned from working and were not eligible for public assistance, according to sources from the Japan Association for Refugees. In 2007 816 individuals applied for refugee status. In 2008 about twice as many asylum seekers were expected to apply. This figure was nearly 60 per cent higher than the previous all-time high of 954 in 2006, according to the Justice Ministry.240

In February 2008, Japan announced it would consider accepting a small number of the refugees from Burma now sheltering in Thailand, a rare move for a country known for keeping its gates tightly closed to asylum seekers. Accepting refugees from a third country may deflect criticism of Japan for what activists say are overly strict assessments of asylum cases.241 Japan said it planned to start this project in the 2010 fiscal year and had not yet decided where the refugees would live or how to support them. Japan has been for a long time a major donor to the UN refugee agency but has also come under criticism for not offering more non-financial support.242 In December 2008, the Japanese Prime Minister confirmed during a cabinet meeting that Japan will in fact accept 30 Burmese refugees in the fiscal year 2010.243
In the past, Japanese government policy has generally been unfavourable towards refugees and asylum seekers. During 2006 Japan accepted only 34 foreigners as political refugees out of 954 applications, although more than 80 percent of those accepted were from Burma. Local immigrant rights groups complained about holding facilities being overcrowded and there being inadequate access to healthcare. There were also serious concerns about the heavy-handedness of staff at the detention centres. In a UNHCR-commissioned report Professor Meryll Dean of Britain’s Oxford Brookes University noted that the general lack of transparency in the appeals process extended to the selection of counsellors, who are appointed by the Ministry of Justice and therefore likely to be “sympathetic to the bureaucracy and restrained in their criticism of the Ministry of Justice refugee determination procedure.”

In January 2007, a Japanese high court had upheld a ruling striking down a deportation order against a Burmese Rohingya political refugee. The man, who had been involved in the pro-democracy movement, fled to Japan on a fake passport in June 1992 fearing reprisals by the military regime in Burma. In February 2007, the Nagoya Regional Immigration Bureau granted the refugee and his wife, a Philippine national, special permission to remain in Japan. In September 2007, it was reported that the Tokyo District Court had revoked the deportation order of a 63 year-old Burmese woman. The court confirmed her refugee status, with the presiding judge noting that the woman was at high risk for political persecution by SPDC authorities on account of her pro-democracy activities. In October 2007 eight Burmese nationals applied for refugee status in Japan, citing fear of persecution after the junta’s crackdown on pro-democracy protesters. In early 2007 a Burmese national, a former resident of Nagoya, who was arrested in March 2006 and was awaiting a decision at the West Japan Immigration Detention Centre, estimated that 200 to 300 Burmese lived in and around Nagoya’s Aichi Prefecture, most of them illegally.

In September 2008, Burmese political activists in Japan began a hunger strike to demand the release of detained pro-democracy leader Aung San Suu Kyi and to call on the United Nations and Japan to take action on Burma, according to the Joint Action Committee of the Burmese Community in Japan (JAC). Members of Japan-based Burmese organisations began a 72-hour hunger strike on 8 September at 6 p.m. in front of the UN office in Tokyo. In December, on the 60th anniversary of the Universal Declaration of Human Rights, around 350 demonstrators took part in a rally calling for job security and freedom for Aung San Suu Kyi.

Burmese refugees undergoing a cultural orientation program in Mae La refugee camp in Thailand. The participants had been asked to draw a tree which symbolized the different aspects of their lives in the camp. [Photo: © Mizzima News]
South Korea

In September 2008, South Korea’s Supreme Court upheld a lower court ruling granting refugee status to eight asylum seekers from Burma. The Burmese citizens entered South Korea in 1990s and helped form a Korean unit of Suu Kyi’s party in 1999. Since then, they have led rallies condemning their country’s military junta. The eight filed asylum applications in 2000, fearing persecution from Burma’s military junta if they were forcibly sent back to their country. In 2005 South Korea’s Justice Ministry refused to grant them refugee status, then in 2006 a lower court ruled in the asylum seekers’ favor, against which the Justice Ministry filed an appeal. The Supreme Court finally upheld the ruling of 2006 granting refugee status to all eight asylum seekers.250 One of the plaintiffs was quoted by Yonhap news agency as saying: “I am so glad, except for the fact that some of my friends had to leave because the ruling came too late. The man said one of the eight left Korea before Thursday’s decision in hopes of better luck in another country.”251 Overall, South Korea still does not have a good record when it comes to granting asylum. The country became a signatory of the UN Refugee Convention in 1992, but according to the civic group that aided the plaintiffs, South Korea has so far granted refugee status to only 76 asylum seekers out of a total of more than 1,950 applicants.252

Karen refugees preparing to embark on the third country resettlement program from Mae La refugee camp in Thailand during 2008. This photograph was taken as they were leaving the refugee camp for the nearby town of Mae Sot where they would catch along distance bus to Bangkok. Upon arrival in Bangkok, they would board a flight to the United States. [Photo: © UNHCR/U. Furukawa]

The Czech Republic

In 2008, the Czech Republic started a Resettlement Pilot Program for Burmese Refugees living in Malaysia. While the Czechs have a history of receiving refugees, this was the first time a resettlement programme was formalised where the Czech government selected refugees to start a new life in the country. The Czech pilot programme was aimed at helping the most vulnerable refugees, so top consideration was given to survivors of trauma, refugees with serious medical problems, or special protection needs.253 Furthermore, in December the Czech Republic – together with East Timor – agreed in principle to offer asylum to 34 Burmese ethnic rebels, who were lodged in Kolkata’s presidency jail in India and facing trial for alleged gun-running. The two countries agreed to offer asylum to them if
the individuals were found not guilty under the Indian law. At the time of publication, the situation was under debate, and any offer of resettlement will have to be in any case preceded by a UNHCR interview and recognition of the individuals as refugees under the 1951 Convention.254

**The United Kingdom**

About 34 refugees from Nayapara and Kutupalong Rohingya refugee camps left Dhaka for resettlement in England on 7 December 2008.255

**The United States**

Almost 70 percent of Burmese refugees resettled in the period 2005-2008 went to the USA.266 The US accepted more Burmese refugees than all other participating countries combined, but communities have to an extent started wondering if the services available for them in their new home are enough, and have raised questions about just how many people a country can welcome while at the same time providing sufficient services to those newly arrived. Growing numbers of Burmese refugees have preferred to resettle to other countries, but in most cases have not been able to do this as the waiting times for other countries are much longer.257

The US remains the country that applies the least selection criteria for admission for resettlement. On 28 April 2006, the U.S. Department of Homeland Security announced that it would waive the restrictions under the Patriot Act that barred entry to foreign nationals who had provided ‘material support’ to armed resistance groups. This policy shift removed a major barrier to the resettlement of Burmese refugees, and since the waiver, thousands of Burmese were accepted to the U.S. However, not all Burmese refugees were eligible for resettlement in the United States. Restrictions still applied to KNU combatants who had received military training, despite the U.S. Department of State’s characterisation of the KNU as “the de facto civilian government of the Karen people in the areas it controlled, resisting the repression of and seeking autonomy from the Burmese regime.”258 According to the US State Department spokesman Sean McCormack,

> “anybody who might be a combatant or a member of the Karen National Union would not be eligible for resettlement in the United States, even under this waiver authority…. However, as a State Department fact sheet released the same day explained, Karen former fighters are still allowed to take part in resettlement to the United States if it can be determined that these refugees ‘pose no danger to the safety and security of the United States.’” 259

In May 2007, the U.S. government signed a waiver specifically targeted at exempting Chin refugees residing in India, Thailand and Malaysia from the provisions of the Patriot Act that had restricted their resettlement in the U.S. The move was expected to increase the number of Chin refugees moving to the U.S., which already hosts over 1,000 members of that ethnic group. The U.S. had previously exempted members of several ethnic resistance groups in Burma, including the Karen National Union and its military wing the Karen National Liberation Army; the Chin National Front and its armed faction the Chin National Army; the Chin National League for Democracy; Kayan New Land Party; Arakan Liberation Party; and the Karenni National Progressive Party.260
Endnotes

2 Source: Ibid.
3 Source: The role of coercive measures in forced migration/internal displacement in Burma/Myanmar, Andrew Bosson, iDMC, 17 March 2008.
6 Source: Ibid.
12 Source: *International Covenant on Civil and Political Rights (ICCPR)*, 1966, entered into force March 23 1976. See also article 7; European Court of Human Rights, article 3.
15 Source: Burmese border refugee sites with population figures, TBBC-UNHCR, January 2009.
40 Source: Documenting the need for international protection for Burmese invisible in Thailand, IRC, 2008.
41 Source: Ibid.
46 Source: Ibid.
50 Source: Interview with 26 year old Burman man employed for an NGO from Mae La Camp, Mae Pa Processing Center, May 2008.

51 Source: Interview with 26 year old Karen woman from Mae La Camp, Mae Pa Processing Center, May 2008.


53 Source: Interview with 72 year old Karen woman from Mae La Camp, Mae Pa Processing Center, May 2008.


55 Source: Interview with Ngo workers in Mae Sot.


64 Source: “We’ll Put Rohingya on Desert Island”: Thai PM,” Irrawaddy, May 2008.


68 Source: “We'll Put Rohingya on Desert Island”: Thai PM,” Irrawaddy, May 2008.

69 Source: “Rohingyas and refugee status in Bangladesh,” Pia Prytz Phiri, Forced Migration Review, April 2008

70 Source: “We will put Rohingya on Desert Island,” Irrawaddy, 1 April 2008.


78 Source: “Rohingyas and refugee status in Bangladesh,” Pia Prytz Phiri, Forced Migration Review, April 2008


85 Source: “Rohingyas and refugee status in Bangladesh,” Pia Prytz Phiri, Forced Migration Review, April 2008


90 Source: “We will put Rohingya on Desert Island,” Irrawaddy, 1 April 2008.


Comment No. 20 interprets this prohibition to protect individuals from extradition, expulsion, or refoulement to a country where they would in danger of torture or cruel, inhuman or degrading treatment or punishment.


197 Source: Ibid.
198 Source: Ibid.
199 Source: Ibid.
202 Source: *Malaysia Today Online*, accessed at [https://mt.m2day.org/2008/content/view/15717/84/](https://mt.m2day.org/2008/content/view/15717/84/), on 13 February 2009.
207 Source: *Desperate Conditions: Update on Malaysia: A follow-up to We Built This City*, Project Maje, March 2008.
209 Source: *Desperate Conditions: Update on Malaysia: A follow-up to We Built This City*, Project Maje, March 2008.
214 Source: Ibid.
215 Source: Ibid.
219 Source: *Desperate Conditions: Update on Malaysia: A follow-up to We Built This City*, Project Maje, March 2008.
220 Source: Interviews with Burmese, Chin, Karen and Burman refugees in Malaysia, October and November 2007.
224 Source: Interviews with Burmese refugees in Malaysia.
228 Source: Ibid.
229 Source: Ibid.
230 Source: Ibid.
231 Source: Interview with a US based resettlement case worker.
236 Source: Ibid.
The Human Rights Documentation Unit (HRDU) is the research and documentation division of Burma’s government in exile; the National Coalition Government of the Union of Burma (NCGUB). The HRDU was formed in 1994 to document the human rights crisis confronting the many and varied peoples of Burma, and to defend and promote those internationally recognised human rights that are inherent and inalienable for all persons irrespective of race, colour, creed, ethnicity or religion. To this end, the HRDU published the first Burma Human Rights Yearbook in 1995 to comprehensively document the systematic and egregious nature of the human rights abuses being perpetrated in Burma throughout the previous year. This report, the Burma Human Rights Yearbook 2008, represents the 15th annual edition of the Burma Human Rights Yearbook, which, combined with all previous editions collectively comprise well over 10,000 pages of documentation and provide an unbroken historical record spanning the past one and a half decades.

All editions of the Burma Human Rights Yearbook and all other reports published by the HRDU can be viewed online on the NCGUB website at http://www.ncgub.net as well as on the Online Burma Library at http://www.buralibrary.org. Any questions, comments or requests for further information can be forwarded to the HRDU via email at enquiries.hrdu@gmail.com.

Human Rights Documentation Unit
NATIONAL COALITION GOVERNMENT OF THE UNION OF BURMA