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Present

***PUSHING PAST THE DEFINITIONS:
MIGRATION FROM BURMA TO THAILAND***

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Photo by Nic Dunlop

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TABLE OF CONTENTS

EXECUTIVE SUMMARY	1
MAP OF BURMA	6
INTRODUCTION	7
I. THAI GOVERNMENT CLASSIFICATION FOR PEOPLE FROM BURMA	
<i>Temporarily Displaced</i>	7
<i>Students and Political Dissidents</i>	10
<i>Migrants</i>	11
II. BRIEF PROFILE OF THE MIGRANTS FROM BURMA	13
III. REASONS FOR LEAVING BURMA	15
<i>Forced Relocations and Land Confiscation</i>	15
<i>Forced Labor and Portering</i>	18
<i>War and Political Oppression</i>	20
<i>Taxation and Loss of Livelihood</i>	24
<i>Economic Conditions</i>	25
IV. FEAR OF RETURN	27
V. RECEPTION CENTERS	31
VI. CONCLUSION AND RECOMMENDATIONS	34
<i>For Consideration by the State Peace and Development Council (SPDC)</i> <i>of Burma</i>	34
<i>For Consideration by the Royal Thai Government</i>	35
<i>For Consideration by the International Community</i>	36

EXECUTIVE SUMMARY

PUSHING PAST THE DEFINITIONS: MIGRATION FROM BURMA TO THAILAND

Recent estimates indicate that up to two million people from Burma currently reside in Thailand, reflecting one of the largest migration flows in Southeast Asia. Many factors contribute to this mass exodus, but the vast majority of people leaving Burma are clearly fleeing persecution, fear and human rights abuses. While the initial reasons for leaving may be expressed in economic terms, underlying causes surface that explain the realities of their lives in Burma and their vulnerabilities upon return. Accounts given in Thailand, whether it be in the border camps, towns, cities, factories or farms, describe instances of forced relocation and confiscation of land; forced labor and portering; taxation and loss of livelihood; war and political oppression in Burma. Many of those who have fled had lived as internally displaced persons in Burma before crossing the border into Thailand. For most, it is the inability to survive or find safety in their home country that causes them to leave.

Once in Thailand, both the Royal Thai Government (RTG) and the international community have taken to classifying the people from Burma under specific categories that are at best misleading, and in the worst instances, dangerous. These categories distort the grave circumstances surrounding this migration by failing to take into account the realities that have brought people across the border. They also dictate people's legal status within the country, the level of support and assistance that might be available to them and the degree of protection afforded them under international mechanisms. Consequently, most live in fear of deportation back into the hands of their persecutors or to the abusive environments from which they fled.

A close examination will reveal that the definitions used to classify the people from Burma in Thailand are not clear-cut, but in fact, often blur one into the other. Through interviews that spanned the course of over two years (May 2000 – September 2002), certain patterns emerged, depicting who the people are and why they left Burma. In actuality, there is an arbitrary line between the groups that the Thai government categorizes as “temporarily displaced,” “students and political dissidents” and “migrants.” These faulty distinctions often result in the vast majority of people being denied asylum and protection and the superficial identification of millions as simply economic migrants. Hence, untold numbers of people from Burma are placed at considerable risk while in Thailand and, if deported, are often delivered back into environments that are abusive and deny their most basic rights.

Operating on the assumption that the majority of those crossing into Thailand from Burma are doing so only to find employment, the Thai government has sought to register workers, arresting and deporting those who do not, or cannot, comply. As of March 2002, 362,082 migrants from Burma were registered to work in Thailand. The registration scheme includes those working in only eight labor sectors and does not include people working in the service industry (including massage or sex work); seasonal workers (those working with an employer less than one year); market vendors; child workers (less than 18 years of age); accompanying family members or those who could not pay the 4,450 baht (US\$100) registration fees. The RTG has begun to arrest and deport all migrants who are not registered and will officially return them to the Burmese authorities, State Peace and Development Council (SPDC).

The RTG and SPDC have officially agreed on a deportation plan with over 19,000 migrants from Burma arrested and deported between February and May 2002, of which 3,681 were sent directly to the SPDC reception center in Myawaddy, on the Burma side of the border. The reception center is operated by the Burmese Directorate of the Defense Service Intelligence (DSI) of the Ministry of Defense and immigrants are interviewed by various SPDC ministries and departments. In addition, all those repatriated were tested for HIV/AIDS, malaria, tuberculosis and sexually transmitted diseases. Twenty returnees have been identified as positive for HIV/AIDS and were separated from the others to be sent to a hospital in Rangoon. To date, no mechanisms are in place to guarantee protection or monitoring of those returned.

There is an urgent need for the governments involved and the international community to recognize the civil war and grave human rights abuses from which the majority of people from Burma have fled and to stop all deportations until proper mechanisms are in place to ensure that no individuals having a credible fear of persecution are returned involuntarily. Mandatory HIV testing of migrants is a human rights violation and any country or agency currently providing HIV testing kits should immediately withdraw their support until monitoring and proof of individual informed and voluntary consent is established.

This report examines the mixed migration of people from Burma into Thailand and the ever-blurring nexus between migration and asylum. It provides a discussion of the classifications assigned to this population by Thai authorities; a profile of the people; the reasons why they decide to leave Burma (including discussions on forced relocations and land confiscation, forced labor and portering, taxation and loss of livelihood, and war and political oppression and economic conditions); the violence and security issues they face; and the recent drive to officially return “illegal migrants” to established reception centers in Burma. The report concludes with the following recommendations for government authorities in Burma, the Royal Thai Government and the international community:

RECOMMENDATIONS

FOR CONSIDERATION BY THE STATE PEACE AND DEVELOPMENT COUNCIL (SPDC) OF BURMA:

- Implement the recommendations set forth in the April 2002 resolution of the UN Commission on Human Rights to ensure full respect for human rights and fundamental freedoms, including the freedoms of __expression, association, movement and assembly, the right to a fair trial by an independent and impartial judiciary and the protection of the rights of persons belonging to ethnic and religious group minorities; and to put an end to violations of the right to life and integrity of the human being, to the practices of torture, abuse of women, forced labor and forced relocations and to enforced disappearances and summary execution.
- Repeal SPDC's Law 367/120–(b) (1) that makes it illegal for Burmese citizens to go to Thailand, sentencing them to penalties of up to seven years in prison. In addition, amend the Immigration Act of 1947: (Act 3.2) that makes it illegal for citizens to enter their own country without a valid Union of Myanmar Passport or a certificate in lieu thereof, issued by a competent authority. Both these laws violate the fundamentals of the Human Rights Conventions.
- Stop mandatory HIV testing of returning migrants. Mandatory testing is a human rights abuse and against the UN HIV Principles and Guidelines adopted by member states (including Thailand and Burma).
- Conduct free and voluntary health checks in hospitals and clinics rather than in the reception centers. It is necessary to ensure that testing for HIV/AIDS is also provided with education and counseling in the migrant's language. Strategies should be put in place for addressing confidentiality, health care needs and issues of discrimination.
- Assure that any return to Reception Centers is voluntary and provides the opportunity for returnees to seek assistance and services.
- Accept voluntary returnees without discrimination by ethnicity or health status.
- Establish a presence and full access to international organizations to ensure protection mechanisms on both sides of the border are upheld.

FOR CONSIDERATION BY THE ROYAL THAI GOVERNMENT:

- In recognition of the civil war and grave human rights abuses in Burma, immediately halt deportations of Burmese pending the establishment of proper mechanisms to ensure that no individuals having a credible fear of persecution are returned involuntarily.

- Establish criteria by which people from Burma may be granted asylum to include not only those fleeing fighting, but also those fleeing the effects of civil war and human rights abuses inflicted by the Burmese regime.
- Create a task force with representation by governments and international and non-governmental organizations to examine ways in which protection mechanisms can be put into place prior to the return of Burmese to the reception centers.
- Facilitate full access by international organizations with a protection mandate to establish and ensure that protection mechanisms on both sides of the border are upheld.
- Withdraw the National Security Council's martial law declaring the northern Burma border areas off-limits to foreign reporters and NGO activists (issued on July 15, 2002).
- Allow for the establishment of camps inside Thailand for all ethnicities fleeing Burma, especially those from Shan State where the documentation of abuses has been extensive and the lack of options for asylum has made these individuals particularly vulnerable.
- Enhance and streamline the registration process for Burmese migrants in Thailand to guarantee basic rights and channels for redress. Provide information to migrants in their languages on the registration process and on services throughout Thailand, as well as Thai policy and implementation procedures.
- Establish channels for reporting non-compliance and abuses encountered at the work place by employers and Thai authorities, and security issues in general. Provide migrants with the same rights as Thai workers. This would ultimately ensure that the rights of both migrants and Thai workers are respected.
- Stop deporting migrants officially to the Burmese authorities with knowledge that they will be subjected to mandatory HIV testing.
- Ensure testing for HIV/AIDS is voluntary and that communication and counseling are made available in the migrant's language. Strategies should be put in place for addressing confidentiality, health care needs and issues of discrimination.
- Establish monitoring procedures to ensure that mandatory pregnancy testing is not used as a condition for registration of female migrants and ensure that employers do not dismiss pregnant females, but provide maternity leave and benefits according to Thai law.
- Honor the commitment of the Royal Thai Government to the Convention on the Rights of the Child to ensure the security and rights of children, including their right to protection, basic education and health care.

FOR CONSIDERATION BY THE INTERNATIONAL COMMUNITY:

- Advocate ending all arrests and deportations of people from Burma until proper mechanisms are in place to ensure that no individuals having a credible fear of persecution are returned involuntarily.
- In accordance with Goal 2, of UNHCR's *Agenda for Protection*, which aims at "[p]rotecting refugees within broader migration movements," UNHCR should immediately seek to improve its ability to identify people from Burma in Thailand in need of asylum and protection, recognizing that many among those referred to as "migrants" may have legitimate claims to refugee status.
- UNHCR should negotiate with the Royal Thai Government to allow the agency to carry out its protection mandate by expanding the agency's role in a status determination process and ensuring access to refugee camps for those from Burma with a well-founded fear of persecution.
- Call on the Thai government to grant asylum to those fleeing Burma, recognizing the denial of their civil and political rights and calling attention to the associated denials of their economic, social and cultural rights.
- Ensure that the protection and security for all those returned to Burma be a priority for any and all international and non-governmental organizations involved in the process. Donors should require such organizations to operate only with full transparency and unhindered access to these populations.
- Any country or agency currently providing HIV testing kits should immediately withdraw their support until there is proof that no mandatory testing is being conducted by the government of Burma, and access to monitoring can be guaranteed.
- Provide health services and education, including HIV/AIDS awareness, to the people from Burma in Thailand in languages and media that they can understand and access.



**PUSHING PAST THE DEFINITIONS:
MIGRATION FROM BURMA TO THAILAND**

Recent estimates indicate that up to two million people from Burma currently reside in Thailand,¹ reflecting one of the largest migration flows in Southeast Asia. Both the Royal Thai Government and the international community have taken to classifying this population under specific categories that are at best misleading, and in the worst instances, dangerous. These categories gravely distort the situation by failing to take into account the underlying reasons behind this migration and to accurately reflect the realities that have brought so many people across the border. They also dictate people's legal status within the country, the level of support and assistance that might be available to them and the degree of protection afforded them under international mechanisms. Consequently, many people live in fear of deportation back into the hands of their persecutors or to the abusive environments from which they fled.

A close examination will reveal that the definitions used to classify the people from Burma in Thailand are not clear-cut, but in fact, often blur one into the other. Through interviews that spanned the course of over two years (May 2000 – September 2002), certain patterns emerged, illustrating who the people are and why they left Burma. Indeed, there is an arbitrary line between the groups that have been designated “temporarily displaced,” “students and political dissidents” and “migrants.” These faulty distinctions often result in the vast majority of these people being denied asylum and protection and the superficial identification of millions as simply migrants seeking work.

I. THAI GOVERNMENT CLASSIFICATIONS FOR PEOPLE FROM BURMA

Temporarily Displaced

Over 138,000 people currently reside in thirteen camps scattered along the Thai/Burma border.² Although commonly referred to as “refugees,” the government of Thailand prefers to officially identify them as “temporarily displaced.”³ Those allowed to enter the

¹ Broadmoor, T. (August –September 2001). “Labor Pains: The Thai Government’s Latest Resolution to Control the Growing Migrant Worker Population Lacks Resolve.” *The Irrawaddy*. Vol. 9. No. 7.

² Burmese Border Consortium. (2002). *Programme Report: July-December 2001*. Bangkok: Author.

³ Thailand is not a signatory to either the 1951 United Nations Convention Relating to the Status of Refugees or the subsequent 1967 Protocol Relating to the Status of Refugees. It therefore, does not use the term ‘refugee’ for those granted asylum in Thailand.

camps are primarily ethnic Karen and Karenni whom the Thais have determined were “fleeing fighting” when they left Burma. This narrow definition excludes many people of different ethnicities who also have been caught in the civil war and forced to leave their homeland as a result of human rights abuses and various other forms of persecution. As a result, large groups of asylum seekers remain on the Burma side of the border unable to gain access to the camps in Thailand, but also unable to return to their home villages. According to numerous reports by relief workers and other organizations, as many as 600,000 to 1,000,000 people are estimated to be internally displaced inside Burma. Many of those who have made their way into Thailand and have been interviewed through the Thai government screening process, have been denied access to the camps and are slated for deportation. Instances of ‘push-backs’ or forced returns of both those rejected by the screening process and those not yet interviewed by the screening board have been reported.⁴

The Thai government screening process is a relatively recent exercise – instituted only four years ago (1998) with the establishment of Provincial Admissions Boards. Previous to that, no standardized, formal status determination process existed and entry to the camps often depended upon the discretion of provincial and camp officials.⁵ Many of the camp residents were even allowed to work outside the camps in nearby towns and farms. As the Thai government has improved its relations with the Burmese generals in Rangoon, however, it has tightened its policy toward the displaced from Burma and has begun restricting movement in and out of the camps.⁶ It has also strictly adhered to its “fleeing from fighting” criteria for granting asylum, thereby severely limiting the number of those officially admitted to the country. From the period of May 1999 through December 2001, 29,067 persons applied for asylum in Thailand. Of those, 41 percent (11,718) were accepted and 35 percent (10,408) rejected. The remaining 24 percent (6,941) were still awaiting consideration by the Provincial Admissions Board.⁷ The process, for the most part, has ground to a halt, however, as the Provincial Admissions Board has not met for nearly a year.

In addition to the limitations imposed by its restrictive screening criteria, the RTG has continued its reluctance to consider among its pool of “temporarily displaced,” other ethnic populations beyond the Karen and Karenni. For example, despite the visible fighting along the Thai-Burma border during May and June 2002, with the arrival of at least 1,500 people from Shan State into Thailand,⁸ the plea of this population for aid and

⁴ For example, Thai authorities forcibly returned 115 people from the Don Yang border camp back to Burma in June 2001, an act that was publicly criticized by international organizations (JRS Dispatches: No. 73, June 19, 2001). In November 2001, sixty-three asylum seekers were sent back to Burma through the Mon ceasefire area at Halochonee (Burmese Border Consortium, 2002).

⁵ Caouette, T. , Archavanitkul, K. & Pyne, H.H. (2000). *Sexuality, Reproductive Health and Violence: Experiences of Migrants from Burma in Thailand*. Bangkok: Institute for Population and Social Research at Mahidol University.

⁶ U.S. Committee for Refugees. (2002). *World Refugee Survey 2002*. Washington, D.C.: Immigration and Refugee Services of America.

⁷ Burmese Border Consortium. (2002).

⁸ See Mydans, S. (June 5, 2002). “Myanmar: Border Offensive Planned.” *The New York Times*; Associated Press. (June 8, 2002). “Thailand: Shan Rebels Capture Base.” *The New York Times*; Reuters. (June 9,

protection has been ignored. The Shan, Akha, Lahu, Wa, Kachin and other minority populations have yet to be considered as “temporarily displaced” persons, leaving them no option but to be absorbed into the local communities and to seek work for their survival. This policy persists amidst continued reports of fighting, forced relocation, widespread rape as a weapon of war and other forms of torture and human rights abuses.⁹

Also in 1998, the Thai government invited the United Nations High Commissioner for Refugees (UNHCR) to establish offices in three provincial towns and to act as observers to the screening process and register those in the camps, marking the first time the UN agency would have a presence along the Thai-Burma border. It was hoped by many that a UNHCR presence would significantly enhance the protection of asylum seekers from Burma, both with regard to the granting of asylum and the issue of security in and around the camps. From the onset, however, the limited role allotted the UN agency by the Thai government raised concerns.

At the time UNHCR was allowed to set up its provincial offices, the agency and others believed that the Thai government was also agreeable to broadening its very limited criteria for granting asylum to include, not only those ‘fleeing fighting,’ but also those fleeing the ‘effects’ of fighting and civil war. To date, this change has not occurred. Maintaining this very restrictive admissions criterion has meant that thousands of asylum seekers have been denied admittance by the Provincial Admissions Board over the past five years. The relegation of UNHCR to “observer” status in the admissions screening has restricted the agency’s ability to significantly affect the process. UNHCR has appealed many cases and has had some limited success, but the decisions on the vast majority of cases deemed ineligible by the RTG have not been overturned.

With regard to its own status determination procedures, UNHCR faces a multitude of constraints. The agency does continue to conduct some interviews in Bangkok and issue letters indicating that an asylum seeker has been designated a “Person of Concern.” The reality is, however, that only a small fraction of those fleeing Burma because of persecution and abuse by the Burmese authorities has the opportunity to present their cases to UNHCR or to access protection by the agency.

2002). “Shan Army in Fierce Myanmar Fighting,” ABC Radio Australia News; and Head, J. (June 12, 2002). “Clashes Threaten Thai-Burmese Ties.”BBC.

⁹ See Shan Human Rights Foundation and Shan Women’s Action Network. (2002). *License to Rape: The Burmese Military Regime’s Use of Sexual Violence in the Ongoing War in Shan State*. Chiangmai: Authors; Lahu National Development Organisation. (2002). *Unsettling Moves: The Wa Forced Resettlement Program in Eastern Shan State*. Chiangmai: Author; Shan Human Rights Foundation. (1998). *Dispossessed: Forced Relocation and Extrajudicial Killings in Shan State*. Chiangmai: Author; and Amnesty International. (1998). *Myanmar: Atrocities in the Shan State*. London: Author.

Students and Political Dissidents

This category is reserved for students and political activists who fled Burma following the crackdown of the pro-democracy movement by the Burmese military in 1988. The majority of those accepted into this category were among the nearly ten thousand people who flooded into Thailand following the '88 uprisings, first to the jungles along the border and later making their way to Bangkok. The Thai government allowed UNHCR to register these individuals and provide them with some financial support. Because of political sensitivities, however, UNHCR used the term “Person of Concern” (POC) rather than “refugee” for the displaced students and dissidents, even though individual status determination procedures followed the traditional refugee criteria set by the agency.¹⁰ Only those who could prove that they were involved in the 1988 demonstrations and made their way to Bangkok were granted ‘Person of Concern’ status. Those who remained at the border or could not provide the required proof were denied any recognition of the need for asylum, leaving them technically illegal in Thailand and subject to intimidation, arrest and deportation.

In 1992, the Thai Ministry of Interior established a ‘safe area’ at the Maneeloy Center in Ratachaburi province to house all the ‘students.’ From the Center, students could apply for resettlement abroad. Many students and dissidents chose not to enter Maneeloy, either because they feared reprisals against them or family members inside Burma if they officially acknowledged their participation in the pro-democracy demonstrations or because they wanted to continue their lives and political activities freely in Thailand. Many also believed that the ‘safe area’ was merely a venue from which the Thai government could easily repatriate the students if and when it might be politically expedient.

Over the next several years, however, life became increasingly difficult for students in Bangkok and at the border. Although they did not originally intend to enter the labor force, many students and dissidents worked in a variety of jobs (such as in factories or at construction sites) in order to survive. All too often the students, including those who were registered with UNHCR and had ‘Person of Concern’ status, were treated no differently from migrant workers or tourists who had overstayed their visas. They could be arrested, sent to immigration detentions centers and/or deported with other illegal migrants.¹¹ Ironically, many students actually preferred not to identify themselves as POC when they were arrested because doing so would often lengthen their time in the detention centers. Whereas migrants were routinely deported to border sites where they

¹⁰ Lang, H. J. (2002). *Fear and Sanctuary: Burmese Refugees in Thailand*. Ithaca, New York: Southeast Asia Program Publications, Cornell University.

¹¹ See Human Rights Watch. (1998). *Unwanted and Unprotected: Burmese Refugees in Thailand*, New York: Author; and Human Rights Watch. (1997). *Burma/Thailand: No Safety in Burma, No Sanctuary in Thailand*. New York: Author.

could bribe officials and make their way back into Bangkok, POCs were often subject to prolonged detention while immigration authorities considered how to handle their cases.¹²

By the late 1990s, many more political dissidents (including former students) began to register with UNHCR in an effort to gain at least the minimal recognition of ‘Person of Concern’ status and enter Maneeloy Center to explore the option of resettling in a third country. As of 1998, 2,231 students were registered with UNHCR, and of those 1,641 were resettled overseas.¹³ In addition, a growing number of recently released political prisoners from inside Burma began arriving in Thailand seeking refuge from harassment and fear of further persecution for their political beliefs. Despite having suffered this most extreme form of persecution, however, only one former political prisoner is known to have been accepted by UNHCR as a ‘Person of Concern’ at the time of the writing of this report.¹⁴

After a group of Burmese students seized the Burmese Embassy in Bangkok in October 1999, the Thai government demanded that any students remaining outside of Maneeloy report to the Center immediately and actively sought to facilitate their resettlement abroad. By December of that year, 2,905 students had registered and entered Maneeloy. Due to the increasing difficulties of ‘living-at-large’ in Thailand, hundreds more went to live in Maneeloy ‘illegally,’ without having registered with UNHCR or the Ministry of Interior. Almost all registered residents were resettled in third countries by the time Maneeloy closed in December 2001. The nearly 400 registered persons who remained were transferred to Tham Hin camp closer to the Thai/Burma border. The fate of those in the Center who were not registered at the time of its closing is less apparent. It is assumed, however, that most of them filtered back to Bangkok or border towns, once again becoming part of the gray pool of illegal migrants.

Still to date, the only way for political dissidents to seek asylum in Thailand is to apply in person at UNHCR offices and wait, sometimes for months, for an interview and the status determination procedure to play out. Throughout this process, most are left to join the masses of migrant workers from Burma throughout Thailand in order to survive. Often even those who are accepted as ‘Persons of Concern’ must continue working along with other migrants to cover their daily living expenses.

Migrants

“Migrants” is the category used to identify an estimated two million people from Burma currently on Thai soil. A number of factors have contributed to this massive influx of people, including ongoing civil war, political upheaval and brutal repression that followed the 1988 democracy demonstrations. This occurred at the same time Thailand was experiencing the economic boom of the late 1980s and found itself in dire need of unskilled labor, which the people from Burma could provide. Pressure from the business

¹² Lang. (2002).

¹³ Caouette, T., Archavanitkul, K. & Pyne, H.H. (2000).

¹⁴ Reported by the Assistance Association for Political Prisoners (AAPP) on July 12, 2002.

community moved the Thai government to pass a series of four Cabinet resolutions between 1992 and 1999 that temporarily allowed employment of migrants in various sectors of the economy.

The 1992 Cabinet Resolution was the first step in expanding the foreign migrant labor force by allowing the employment of displaced persons or illegal migrants from Burma. Restricted to migrants in only nine border provinces and requiring a 5,000 baht¹⁵ fee from the potential employers, the registration that followed the resolution was completely unsuccessful (only 706 aliens registered). Employers chose instead to continue hiring illegal workers by paying off local officials.¹⁶

A subsequent resolution in 1996 expanded the pool of workers by allowing migrants from Burma, Laos and Cambodia to be registered. It also expanded the number of provinces where they could work from nine to forty-three,¹⁷ but limited the types of industries that could employ migrants to eight. Most importantly, the resolution lowered the fee required from employers to register their workers. As a result, between September 1, 1996 and May 22, 1997, a total of 303,088 migrants were granted work permits. Of these, 263,782 (87 percent) were from Burma.¹⁸

In response to the Asian economic crisis in 1997 and the rampant unemployment that followed, the Thai government decided that jobs held by foreign migrants should go to Thai workers. Under the April 1998 Cabinet Resolution, 300,000 Thais were to be hired in place of migrant workers. This backfired, however, as few Thai workers wanted the jobs that the migrants had previously held. Subsequently, the Royal Thai Government passed a resolution in May that allowed a limited number of migrants (158,253) to work for one year.¹⁹

As work permits issued in 1998 were about to expire, the Cabinet passed a new resolution in August of 1999 that allowed migrants to be employed in areas of the workforce where Thai replacements were not available. A significant policy change within this resolution was that each province could determine for itself in which sectors the migrant labor was needed. It was during this period too – particularly after Burmese students seized the Burmese Embassy in Bangkok on October 1, 1999 – that the Thai government beefed up its deportations of people from Burma without documentation. In the month that followed the registration deadline set out in this resolution, a massive crackdown led to a series of deportations. From November 1, 1999 through December 6, 1999, 75,315 migrants were deported, of whom 70,835 were from Burma.²⁰

¹⁵ *Baht* is the currency of Thailand. The rate of exchange at the time this report was written was 42 *baht* = US\$1.

¹⁶ Caouette, T., Archavanitkul, K. & Pyne, H.H. (2000).

¹⁷ Thailand had seventy-six provinces in 1996.

¹⁸ Caouette, T., Archavanitkul, K. & Pyne, H.H. (2000).

¹⁹ *Ibid.*

²⁰ *Ibid.*

The most recent Thai government initiative, from October to November 2001, resulted in 447,093 persons being registered in ten labor sectors.²¹ The majority were workers in agriculture (99,149), fishing (77,714), and domestic services (59,873), with an additional 19,600 “laborers without employer.” The registration scheme did not include migrants working in many other sectors, such as the service industry (including massage or sex work), seasonal workers (those working with an employer less than one year), market vendors, child workers (less than 18 years of age), other family members or those who could not pay the 4,450 baht (US\$100) registration fees. Many migrants failed to register because they were not informed (or were ill-informed), could not travel to the registration sites, had become confused by the various work permits and processes introduced or their employers refused to participate.²² As will be discussed later, for the majority of migrants, the registration process increased their dependence on their employer not only to register, but also to maintain their “legal status.” In addition, it is reported that employers consistently keep their workers’ registration cards, limiting migrants’ autonomy and ability to prove their legal status.

The October–November 2001 registration was valid for six months, with an additional six-month extension contingent on migrants obtaining and passing a health check-up. Health tests were given until March 2002. A total of 448,480 registered migrants underwent the health tests, of whom 62,082 were from Burma. A total of 5,305 foreign migrants were found with at least one of eight diseases tested and will be deported back to Burma.²³ The majority of migrants were brought to the health centers by their employers and many, fearing the repercussions, did not return to obtain their results.

II. BRIEF PROFILE OF THE MIGRANTS FROM BURMA

Mobility and cross-border migration within and from Burma into neighboring countries has been increasing rapidly over the past decade.²⁴ The number of people moving into Thailand has been growing consistently since 1988 with only a temporary decrease recorded in 1999, following Thai government crackdowns, arrests and deportations of undocumented migrants back to Burma.²⁵ By the year 2000, the number of migrants recognized by Thai Government officials reached two million, nearly double its 1998 estimates.²⁶

The majority of those identified as migrants entering Thailand from Burma are fleeing civil war, political persecution and/or social, economic and cultural abuses.²⁷ For most,

²¹ The original registration provided permits for six months pending a health check-up prior to renewal for an additional six months.

²² NGO discussions and recommendations to the Ministry of Labor and Social Welfare Department in Thailand on worker registration.

²³ Associated Press. (26 July 2002). “Thailand Faces Rising Number of Diseases from Foreign Laborers.” *Bangkok Post*.

²⁴ Chantavanich, S., Beesey, A. & Shakti, P. (2000). *Mobility and HIV/AIDS in the Greater Mekong Subregion*. Bangkok: Asian Development Bank and United Nations Development Programme (UNDP).

²⁵ Asia Pacific Forum on Women, Law and Development. (2000). *Dignity Denied*. Chiangmai: Author.

²⁶ Federation of Trade Unions-Burma (FTUB). (2001). *Migration from Burma*. Bangkok: Author.

²⁷ Caouette, T., Archavanitkul, K. & Pyne, H.H. (2000).

the various types of human rights violations are intertwined and impossible to separate. Often times, the first move for those facing abuses at home is to relocate within Burma and stay nearby their home and farmland. However, many find it impossible to survive on the limited available resources while facing ongoing harassment and denial of their basic rights. Finally, often as a last resort or in desperation, the decision is made to cross the border into Thailand.²⁸ A clear example of this is the well-documented, massive forced relocations of Shan villages since 1996, involving over 300,000 people which continues to date amidst new waves of forced resettlement involving nearly 126,000 people from Wa-controlled areas along the China border to the Eastern Shan State.²⁹

The people from Burma in Thailand not only come from Thai border areas, but also from the Delta region of Central Burma and as far away as Northern Shan and Kachin States (bordering China) and Arakan and Rakhine States (along the borders of Bangladesh and India).³⁰ The migrants, who are from ethnically diverse groups, often do not have a common culture and are unable to communicate in a common language among themselves or with Thai nationals. Though there is no known data on the ethnic breakdown of migrants from Burma in Thailand, the majority are Bamar, Shan, Karen, Karenni and Mon. The majority of migrants have limited or no formal education and, although they can speak several languages they are often illiterate. The illiteracy rate is particularly high for female and young migrants.³¹

Migrants from Burma in Thailand are of all ages and family compositions. Employed migrants are typically between the ages of 14 and 40. There is a greater demand for adolescent and young adult migrants and, increasingly, for female workers.³² Families often send a young family member to Thailand or deeper into the country (from the border areas) to find work and support the family. Not only are the migrants undocumented and thus considered illegal,³³ but much of the work they find is itself considered illegal such as sex work, begging, logging and trafficking in drugs or humans. For example, it is estimated that nearly 350,000 young children from Burma have been recruited as workers, predominantly into begging rackets in urban areas of Thailand.³⁴

All people from Burma in Thailand live in fear of arrest, detention and deportation back across the border. At the time of writing this report, even registered migrants are awaiting news of the Thai government's decision to extend their work permits (which expire on

²⁸ Human Rights Documentation Unit and Burmese Women's Union. (2000). *Cycle of Suffering: A Report on the Situation for Migrant Women Workers from Burma in Thailand and Violations of Their Human Rights*. Bangkok: Authors.

²⁹ See Shan Human Rights Foundation. (1998); and Lahu National Development Organisation. (2002).

³⁰ Human Rights Documentation Unit and Burmese Women's Union. (2000).

³¹ Chantavanich, S., Shakti, P., Wangsiripaisal, P., Suwannachot, P., Amaraphibal, A. & Beesey, A. (2000). *Cross-border Migration and HIV Vulnerability in the Thai-Myanmar Border: Sangkhlaburi and Ranong*. Bangkok: Asian Research Center for Migration, Chulalongkorn University.

³² Caouette, T. (2001). *Small Dreams Beyond Reach: The Lives of Migrant Children and Youth Along the Borders of China, Myanmar and Thailand*. Bangkok: Save the Children UK.

³³ Under the Thai Immigration Act of 1979 as amended in 1980, illegal entry into Thailand is a criminal act, punishable by detention of up to two years or fines of up to 20,000 baht.

³⁴ Pol. Gen. Sanit Sarutanon, Deputy National Police Chief. (June 21, 2000). *Bangkok Post*.

August 28, 2002), under what conditions and if their employers will be willing to re-register them.

Most migrants from Burma are willing to pay large sums in bribes to Thai officials to avoid arrest, detention and deportation. Their fear, however, has been heightened with the agreement between the Thai and Burmese authorities to begin official repatriations of migrants directly to recently established Burmese government-run reception centers just across the border. The reception centers run by Burma's Ministry of Defense require migrants to provide detailed background information to various ministries and departments of the State Peace and Development Council (SPDC). Migrants fear this process will result in their persecution, given the laws and decrees in Burma to arrest and detain those who illegally leave the country, as well as potentially mark them as a dissident. The reception centers also demand health check-ups for all returnees that include testing for HIV/AIDS. To date, twenty migrants, who tested HIV positive, were separated from others and said to have been taken to a hospital in Rangoon. In addition to the government requirements at the reception centers, there are the ongoing fears of persecution and human rights abuses from which many originally fled.

III. REASONS FOR LEAVING BURMA

Although once in Thailand, people from Burma are classified under one of the categories discussed earlier, the majority will have entered Thailand for remarkably similar reasons. Interviews with the 'temporarily displaced', 'students and political dissidents,' and 'migrants' reveal that regardless of their classifications in Thailand, the vast majority has experienced a life of persecution, fear and abuse in Burma. While the initial reason for leaving may be expressed in economic terms, underlying causes surface that further explain their realities while living in Burma and their vulnerabilities upon return. Accounts given in the border camps, in towns and cities, factories and farms in Thailand, describe instances of forced relocation and confiscation of land; forced labor and portering; taxation and loss of livelihood; war and political oppression in Burma. For most, it is the inability to survive in Burma that causes them to come to Thailand.

Forced Relocations and Land Confiscation

A significant portion of the migrant population in Thailand comes from inside Shan State. The Shan, like many other ethnic groups, are categorically regarded by the Thai government as illegal migrants. They can be found working in various sectors of the Thai economy, but primarily in agriculture, fishing, construction, domestic and factory work.

The year 1996 marked the beginning of a systematic program of forced relocations in Shan State carried out by the Burmese authorities in an attempt to cut off support to the Shan resistance. In a six-month period alone (March–September 1996), over 450 villages in the area between Namsan-Kurng and Heng-Mong Nai had been forced into relocation

sites, affecting an estimated 80,000. Forced relocations continued in 1997 in other areas of Shan state. Many who had been relocated the year before were once again forced to move. By 1998, over 300,000 people had been affected by the relocations.³⁵ The numbers fleeing into Thailand have only increased since then and include not only Shan, but many other smaller minority populations dispersed among them. It is now estimated that some 425,000 people from Shan State have been uprooted and have fled to Thailand.³⁶

In December 1996, there were over 60 households in my former village and we all had to move. People had fired bombs into the village. The villagers scattered. My family left our paddy in the field when it was ripe enough to harvest, just leaving it all behind. When we moved we took only a few clothes and walked three days on foot. Then we walked two more days to another township and stayed there. We worked for whoever employed us. There we stayed with other people, but we had to have something to eat. The employer didn't tell us how much he would pay us, he just gave us some rice to eat. If there was work to do, we had to do until it was done. We stayed there for two years, before returning to our former villager in Eastern Shan State.

When we returned to our village, it was like we had come to a new place. Coming back to the village, we worked for others on our own farms. It was really difficult to earn a living. I stayed for four years until I came to Thailand yesterday.

A 40-year-old Shan male interviewed on April 20, 2002, the day after arriving at the Thai border in Chiangmai Province.

I came to Thailand because there was no money for planting or for our daily living expenses. It is difficult to work in our village because the Burmese military expels us to the towns. We didn't move to the town, but hid in the jungle instead. Our plants were ready to harvest and all our livestock was there. The government military burned down our houses and whenever they saw a cow or buffalo they would shoot it. There was nothing left. They even burned my sewing machine. We had to ask for dishes from other people. We moved back and forth from my village to the town because we were not allowed to work on our land. If other people employed us, I could eat. We kept trying to sneak back to our farms to work, but we had to be very careful the military didn't see us. Sometimes we starved for two or three days when we went back because we were afraid to cook. We were afraid the military would see the smoke. We tried to cook at noon when the sun was very bright.

A 22-year-old Shan female interviewed on March 24, 2002, one week after arriving at the Thai border in Chiangmai Province.

On May 5, 2002, eighteen other villagers and myself had to construct a fence for the military outpost stationed three miles from my home. Each person was ordered to bring with them two bamboo poles from the village to the outpost as well as their own food. They had to work from 7am to 4pm with only a break for

³⁵ Human Rights Watch. (1998).

³⁶ See Shan Human Rights Foundation. (1998); and Lahu National Development Organization. (2002).

lunch. At the outpost, we met about 20 others from another village with many as young as 13 years old among them. No one was paid.

Later the same month, the village chairman was told the village had to move one mile away. The place we were to move to was a small plot of land about 80 x 40 feet. Many other villagers were also forced to relocate to this area. Many more were still moving to the new site when I left for Thailand on May 27, 2002. There is no way I can feed my family on this land and the military issued an order that anyone seen on their old land would be shot to death.

A 23-year-old Karen female interviewed along the Thai border on May 29, 2002.

For many, the relocations were just the beginning of a cycle of moving from place to place, living in forest and jungles, scavenging for whatever food they could find or grow. They then become part of Burma's estimated two million internally displaced persons (IDPs).³⁷ Having no other viable option, these people cross the border and assume the new mantle of "illegal migrant." For example, between 1996 and mid-2001, an estimated 120,000 Shan are believed to have entered Thailand.³⁸

... We were relocated from our village about three years ago, because we were accused of helping the resistance. For the first year we had permission to go back to our village to plant rice. The following year we could only do it if we gave half our crop to the Burmese. This year the little bit we could harvest was not enough and we were not allowed to go foraging. We couldn't survive, so we left....

A 35-year-old Shan man interviewed on June 30, 2002, upon arrival at the Thai border in Chiangrai Province.

People in Shan State are also being displaced as large numbers of ethnic Wa are being moved from the northern Wa area adjacent to the border with China to the Thai border area opposite the towns of Chiang Rai and Chiang Mai. Up to 250,000 Wa are supposedly slated to be resettled there with the blessing of the Burmese central government³⁹ and as many as 50,000 to 100,000 have already moved.⁴⁰ Many of those who have been uprooted from their land by the Wa resettlement scheme are making their way into Thailand.

In May, 2000, *Refugees International* interviewed several migrant families who had recently come from Shan State and were living in villages outside of Chiang Doi, Thailand. Even then, the Wa resettlements were driving people from Burma.

... We are from a village in Myo Maw Az township in southern Shan State. There we were farmers and owned land. Then the Burmese began selling land to the Wa. On February 9 [2000], our land was taken....

³⁷ Smith, M. (2002). *Burma (Myanmar): The Time for Change*. United Kingdom: Minority Rights Group International

³⁸ Burmese Border Consortium. (2002).

³⁹ Burmese Border Consortium. (2002).

⁴⁰ Lahu National Development Organisation. (2002).

A 39-year-old Lahu man interviewed in May 2000, working on a farm along the northern Thai border.

More recently, a Shan man described the harassment currently being inflicted by the Burmese military as well as by the Wa and other groups:

The Muser [Lahu] and Wa who have taken up guns are making trouble for people. If they wanted us do something for them, they said that the Burmese military ordered us to do it. If we didn't do it for them they complained to the Burmese military and the military found fault with us. We were not only tortured by the Burmese, but we were also tortured by the Musers and Wa. The situation now is like this.

A 40-year-old Shan man interviewed in April 2002, a day after he arrived along the border in Chiangmai Province, Thailand.

Victims of forced relocations and land confiscation are not exclusive to Shan State or to those who are labeled as 'migrants' once in Thailand. During interviews with the 'temporarily displaced,' such as the ethnic Karen residents of Mae La camp along the Thai-Burma border, numerous accounts of losing one's land or being forced from one's village emerged. Like the Shan, many of the Karen had been internally displaced before making their way to Thailand.

...I am a farmer. Our land was confiscated in 1992. They [the Burmese army] wanted porter fees and other things too. Then I went to Thi Khe [a camp for the internally displaced on the Burma side of the border]. I was there when [the Burmese army] attacked the camp. Seventy households crossed into Thailand...

A Karen man interviewed in Mae La camp in May 2000, along the border in Tak Province, Thailand.

My village is located in Karen State. One day, the Burmese military came and burnt down our village. My family had to run to a village on the Thai side of the border. We don't want to be refugees. We don't want to leave our house but we have no choice. My father is now working on a Thai farm and now my mother is sick. So I had to find a job in a factory in Mae Sot. My family always wants to go back to Burma, but we don't know where to go back as our village is not there anymore.

A 17-year-old Karen female interviewed on December 17, 2001, after recently arriving at the Thai border.

Forced Labor and Portering

Perhaps no other human rights abuse inflicted upon the people of Burma has been as thoroughly documented as that of forced labor. International bodies such as the International Labour Organization (ILO), the United Nations High Commissioner for Human Rights (UNHCHR) and the International Confederation of Free Trade Unions (ICFTU), as well as numerous human rights groups, have gathered hundreds of pages of testimony from the victims of this systemic practice. The ILO has taken action

unprecedented in its eighty-year history to sanction the Burmese authorities for its continued use of forced labor.

Just as the experience of forced labor and portering cuts across ethnic lines, it also cuts across the various classifications of people as defined by the Thai government. Forced labor has been experienced by thousands, if not hundreds of thousands, of those now living in Thailand.

Accounts taken from various ethnic groups throughout Thailand attest to the prevalence of forced labor and portering carried out by the Burmese military in Burma. Excerpts from some of the most recent interviews confirm that the practice is continuing:

I and four others from my village had to work for the military for three days in January 2002. We had to construct a fence for the military camp. In April 2002, I had to go again, this time with 28 other villagers, six of whom were the same age as me. If we did not go we had to pay a fine of 500 kyat⁴¹ each. Both times we were not given any food, water or wages. There was no water in the area and we had not only to carry water for ourselves, but some of the villagers also had to carry water for the soldiers. There were also prisoner porters who had to carry things for the soldiers when they went for operations.

In June 2001, and twice in April 2002, my father had to go be a porter for the Burmese soldiers. Two times he had to carry shells for the troops and another time a sack of rice transporting a wounded Burmese soldier on his return. Each time he went for two days bringing his own food and water and sleeping in the jungle without any means of protection.

A 13-year-old Karen girl interviewed on May 22, 2002, along the Thai border.

We had to clear the road to our village for the government. It was last year but I don't remember which month. It is still going on. We have to work for the government but without pay. Once there was a road to be built near my village and my father had to go to work with his own lunch and paying his own traveling expenses. If we cannot work as a porter, we have to pay 1,000 kyat to someone else to go in our place. That is for one day. They feed people rice and water only, no curry. I had to work as a porter once and did not get paid anything.

An unemployed 22-year-old Chin male who arrived in Thailand's Tak Province in January 2002, and was interviewed ten days later.

I couldn't do any personal work because I had to do forced labor for many months. I had to take my own pots and food with me too. We built a road. They forced me to carry rocks and sand. The people who had an oxcart and car used them to carry rocks and sand. For me, I just carried rocks and sand into the car for them. I didn't have time to earn a living or work personally for my family. If

⁴¹ Kyat is the currency of Burma. At the time this report was written the black market exchange rate was approximately 900-1,000 kyat = US\$1, while the official exchange rate was 6.9 kyat = US\$1.

there were two persons in a family, one person had to go. If there were four persons in a family, two persons had to go.

A 30-year-old Shan male who had arrived in Thailand on March 25, 2002, and was interviewed the following day in Chiangmai Province.

In January 2002, while I was driving our family's ox cart after selling some produce, I was stopped at the gate of my village by Burmese soldiers. They told me to carry stones and sand or pay 300 kyats. I did not have enough money, so I quickly borrowed some from my relatives and gave it to the soldiers. Only then did they set me free with my ox cart.

In April the soldiers returned requesting 100 persons from our village to go to work for them or pay 500 kkyat each. The place was an hour and a half from the village each way and everyone had to carry their own food and water. There is no end to this so my family left for Thailand.

A 17-year-old Karen female interviewed on May 15, 2002, along the Thai border.

Since my turn of portering was coming soon, I prepared for it. I paid them 6,000 kyats then I packed my clothes and came to Thailand right away.

A 40-year-old Shan male arriving at the Thai border on April 19, 2002, and interviewed two days later.

We had to volunteer last year to build a road located about a two hour walk each way from our village. Every household had to provide one person and we had to go with our own meal. My husband went to work to make good deed.

A 52-year-old Pa-O female interviewed in December 2002, after having arrived in Thailand's Tak Province five days earlier.

War and Political Oppression

Civil war and brutal suppression of political dissent have forced migration from Burma for many decades. The realities of the civil war and extensive use of weapons and landmines by all sides are detailed in the *Landmine Monitor: Burma (Myanmar)*, by the International Campaign to Ban Landmines. Often the various militant groups are not distinguishable to the civilian population and, in addition, the violence often extends to involve groups protecting their own interests (such as logging and drug trafficking). The report consistently points out that the most vulnerable victims are civilians caught in conflict-ridden areas (primarily ethnic minority communities).⁴² Since 2000, several thousand people have crossed into Thailand from Shan State fleeing the fighting between the Shan State Army, the United Wa State Army and the SPDC. In May and June 2002 alone, over 600 people crossed into Thailand as a result of the fighting.⁴³ None of these

⁴² International Campaign to Ban Landmines. (2001). *Landmine Monitor: Burma (Myanmar)*. Washington, D.C.: Author. Available electronically at: www.icbl.org.

⁴³ Burmese Border Consortium. (2002)

people have been considered anything but undocumented migrants except by a handful of small non-government organizations who provide limited emergency assistance.

Women are particularly vulnerable to violence and physical abuse in these situations. Rape as a weapon of war is widespread.

Burmese soldiers raped my sister and tried to rape me while we were collecting firewood near their base. After that the soldiers told my father that he disgraces them because of his daughters. The headman of our village was beaten by the commander for not solving the case – but it was the Burmese commander who raped my sister. After the rape my husband blamed me too. He said, ‘Why didn’t you call a man to go with you? Because you are only women you suffer like this. Because of this the soldiers come and beat me often.’ My husband was taken to do forced labor more than other men. It is so many times, I lost count. He has been badly beaten nine or ten times. So we decided to leave.

Within a year’s time, a soldier from the battalion that raped my sister came and shot her dead while she was in the paddy field. We do not know why, but we believe it was because of the rape.

A 33-year-old Karenni woman interviewed on September 21, 2002 in a refugee camp (where she lives with her husband and children), having arrived in Thailand in March 1999.

I arrived in Thailand in March of 2002 with my husband and three children. I had been wanting to leave Burma for a long time. My husband and I suffered abuse and forced labor by the Burmese army while living in our small village. Soldiers from the army battalion stationed near my village would come twice a month and recruit my husband for forced labor. They also recruited women to carry their supplies. Both men and women were beaten by the soldiers while on forced labor duty. While I was four months pregnant, the soldiers asked all villagers, including me, to carry supplies. Although I have done forced labor often, I refused this time because I was pregnant. Because of this the soldiers beat me.

The soldiers were very cruel. One time they asked a 13-year-old to be their guide. Once they were in the woods outside the village, the soldiers raped her. When she tried to run away, they shot her. I did not see this, but a soldier later reported this to the villagers.

The reason that we made plans to leave was because of the time they tortured my husband. As a result of this beating and torture, my husband suffers pain to his back and he became crazy. He is terrified that the soldiers will come to torture him again. He is never at peace. I worried that I would be tortured next so we decided to leave the village and come to Thailand.

We really did not want to come to Thailand. I heard that we would not be welcome and that the trip was dangerous.

A 29-year-old Karen woman interviewed in a refugee camp on September 14, 2002 where she resides illegally with her sister’s family.

The majority of victims from Burma's civil war and political repression have fled to Thailand where they face life as 'illegal migrants' without any means of seeking protection. Living in a society that represses any form of political dissent, members of opposition parties and political activists have faced arrest, imprisonment and death in Burma. While fleeing to Thailand has often been the only option available to them in order to escape such consequences, these individuals do not necessarily experience the protection and refuge they had hope to find.

Reports of arrest and deportation of people from Burma highlight the dangers of returning migrants without screening procedures and protection mechanisms in place:

On December 4, 2000, following an invitation to a two-day religious ceremony at a local church in Bangkok to commemorate the 6th anniversary of the church, over 150 Burmese from different areas of Bangkok attended. The church offered those who lived far away accommodation for the night. At 11pm that night 20 Thai police arrived and arrested 105 people from Burma. Following interrogations, 65 were sent to the Wan Toon Lan police station and 32 were sent to the Chook Chai Si police station. All were charged as 'illegal immigrants.' On December 5, all were sent to the Bangkok Immigration Detention Center and the following day sent to the Mae Sot detention center. On the morning of December 7th all were sent to Myawaddy by boat. The Burmese Military Intelligence met the boat and immediately identified three political activists: Khaing Kaung Sann, the chairman of the Rakhine Patriotic Literature Club; Ko That Naing, a member of the Labor Union of Arakan and Ko Hla Thein Tun, a member of the Arakan League for Democracy.

Reported by the Assistance Association for Political Prisoners (AAPP) in an interview on July 12, 2002.⁴⁴

Even those who have been recognized as 'Persons of Concern' by the UNHCR are often not safe.

*My friend, Saw Htoo Aung [a political activist] had just received UNHCR refugee status in Bangkok before he was arrested on October 27, 2002. When he showed his UNHCR certificate, the people would not recognize it. He called me from the police station asking me to help pay money to the police. I had no money to pay for him. I tried to look for money and also to inform UNHCR's Burmese section. The officials for that section told me not to worry. Before I could do anything, he was deported to Mae Sot on October 29, 2002. He was sent directly to the Burmese authorities where he was immediately arrested and had no way to escape back to Thailand. The Thai immigration officers were just watching. He was arrested with his biography and the UNHCR letter and photos of his friends. **A former Burmese student interviewed in Bangkok on October 30, 2002.***

Those who are not deported still live in a state of constant fear and anxiety and are subjected to harassment and exploitation.

⁴⁴ Full reference of this case is noted in the *Human Rights Yearbook 2000* published by Human Rights Documentation Unit of the National Coalition Government of the Union of Burma (NCGUB) in October 2001.

Late June 2002, five Burmese 'political student activists' were having dinner at a small restaurant in Chiangmai, Thailand. At the same time and place, about five off-duty police men were also having dinner. The police overheard the conversation and realized they were political refugees from Burma. The police called an additional five off-duty police officers (all in their off-duty uniforms) and attacked the Burmese as they left the restaurant. The Burmese called other Thai intelligence contacts. Upon arrival the students were taken aside and the intelligence officer negotiated for the return of their belongings (which were taken earlier). The students realized that 9,000 baht (US\$250) was missing from their belongings. However, they were told not to pursue the problem as there really is nothing that can be done without risk of their arrest and deportation. Those from Burma agreed not to try and recover the stolen money, realizing their situation and the severe consequences.

Two Bamar males involved in the incident who were interviewed on September 4, 2002 in Chiangmai.

Police in Kanchanaburi's Sangkhlaburi district arrested 31 Burmese nationals on Tuesday [August 20, 2002], claiming they were illegal workers and pushed them back over the border. Forum Asia, the human rights group, identified at least 14 of the Burmese as members of dissident groups.... At least three activists were carrying ID cards issued by the UNHCR.... Thailand has always been a land of refuge for people of all creeds fleeing peril. Now, under the guise of a crackdown on illegal labor, the government will undo decades of good will....⁴⁵

In addition to the many Thai citizens who are concerned about such actions, Aung San Suu Kyi has spoken out on the issue of treating political dissidents and pro-democracy activities as illegal migrants.

It is not appropriate to crackdown on dissidents and pro-democracy activists who do not break the laws [in their host countries].⁴⁶

Taxation and Loss of Livelihood

People who have left Burma cite instances of heavy taxes levied in what appear to be arbitrary and unexplained ways. These 'taxes' are not only monetary in nature, but often take the form of a percentage of one's harvest or livestock.

It was really hard to earn a living. I am only a woman and had to look after three children too. I couldn't really work on the farm. I worked if anyone employed me. If there was no job, I couldn't eat anything. I really suffered. Sometimes the Burmese military asked for something and I had to find it for them. If the government forced me to do duties, I couldn't refuse. If I couldn't go, I had to hire someone else in the amount of 300 kyat to go in my place. I could not afford to

⁴⁵ Editorial. (August 23, 2002). "We Risk our Good Name for Compassion." *Bangkok Post*.

⁴⁶ Ko Thet. (August 20, 2002). "Democracy Activists Arrested: Suu Kyi Speaks Out." *The Irrawaddy*.

hire someone else, because I didn't even have any money. If we gave rice to the government for our taxes instead of 10,000 kyat, we had to give 300 or 400 basins per year. I didn't have this either. I couldn't bear it. I arrived in Thailand ten days ago with my children. Now I have a debt of 5,000 baht to pay the transportation fees for all of us.

A 30-year-old Shan female interviewed on March 26, 2002, just after her arrival along the Thai border in Chiangmai Province.

I moved to Thailand because I can work and make money. When living in Shan State, we just barely survived and couldn't save any money. Sometimes we had to give a half basin of rice to the Burmese military each time they asked. We couldn't refuse. If we didn't give it, they would come and find fault with the headman. Then he would ask us to give the rice. If we didn't have it, we had to sell some of our property to buy rice to give.

A 27-year-old Shan female interviewed on March 23, 2002, three days after arriving on the Thai border in Chiangmai Province.

When I stayed in Burma, I worked on both a rice and a poppy farm. I worked on the rice farm part of the year, then after harvesting the rice, I worked on the poppy farm. The Burmese military came and forced us, the villagers, to grow poppy crops. We were not able to refuse them. After harvesting it, they forced us to sell it to them. We divided the harvest into three parts. The military took two parts and gave us only one part. Our earnings were not sufficient to live on.

A 30-year-old Shan male interviewed on March 26, 2002, one day after arriving along the Thai border in Chiangmai Province.

...There is a daily opium fee of 10 'kyat-thar' [approximately 150 grams]. If you don't grow opium you have to pay in cash. We had to sell off our rice to get the cash. I don't know why, but they demanded it.

An ethnic Lahu man interviewed in June 2000, working on a farm along the Thai border.

A family's crops and animals might also be destroyed by the Burmese military as a form of harassment and intimidation, leaving no way for families to survive.

... I am a farmer, but there is danger in my home village. The army columns destroyed our rice paddy, let their donkeys eat our harvest, and destroyed the left-over rice. When a column arrives we flee to the forest and when they leave we return...but now there are landmines in our rice fields. I have six children, including twin infants, four months old. Their mother's milk was not enough, so we decided to go...

A 39-year-old Karen man interviewed in May 2000, in Mae La camp along the Thai border.

Economic Conditions

The economic struggles in Burma are severe and documented in detail in the 1999 World Bank report: Myanmar: An Economic and Social Assessment. As the report details, the economic climate and policies of the Burmese government suggest dire consequences for the people:

*... If present policies are maintained, the people of Myanmar are unlikely to benefit substantially from a resumption of growth in the region, the domestic agricultural and private sectors will be unable to fulfill their potential, and the pressure on living standards will continue. Continuing lackluster economic performance that fails to improve living standards for the majority of the population could have devastating consequences for poverty, human development and social cohesion in Myanmar.*⁴⁷

Given this forecast and the sense of hopelessness that fundamental political and economic changes will not come soon to Burma, people see no other option but to go abroad.

We have been forced to leave our village twice because of the war. It is not because I just wanted to stay here peacefully that I came. How can I just leave my parents behind? So, I will go back, but I don't know yet when to go. If I can work and make some money, I will go back. The Thai government doesn't need to push me back. But right now the little money I borrowed to come here is used up, so I will have to make money first.

A 29-year-old Shan female interviewed on April 12, 2002, ten days after arriving in Chiangmai Province, Thailand.

Farming was our livelihood in Burma. My parents owned seven acres of land and we cultivated rainy season paddy regularly. By the order of the government, the past four years we have also had to cultivate dry season paddy during the summer. We always go in debt with the dry season paddy. Last year, our rainy season crop failed also and we got only 40 percent of our usual harvest, but we still had to give the government the same quota as every year. To fulfill our quota we had to mortgage our fields for a loan at the interest rate of 15% to purchase the paddy needed to meet our quota. This year the government has ordered that dry season paddy must be planted and those who fail to do so will have their land confiscated. We have so much debt, I had to come to Thailand.

A 25-year-old Tavoyan woman interviewed on February 13, 2002, just after she arrived along the Southern Thai border.⁴⁸

People come to Thailand because of the economy in Burma. No one can survive with the terrible economic problems and high prices for basic commodities. People's income and spending can never be balanced. One must earn at least 6,000 to 15,000 kyat a day to feed a family. But, a laborer earns only about 200 kyat each day. You cannot eat for a day on this. In addition, we have to pay taxes

⁴⁷ World Bank. (1999). *Myanmar: An Economic and Social Assessment*. Washington D.C.: Author.

⁴⁸ This information was collected during interviews conducted by the Tannensarim Area Workers of the Federation of Trade Unions-Burma.

whether we worked the land or had a good harvest. We had to pay or they would put us in jail. So we often have to borrow money from others and then become heavily in debt. Because of these debts, many people leave Burma to find work in other countries. I would say about 75 percent of young people, 18 to 40 years of age, go abroad. You rarely see young people in the streets of Burma now.

It doesn't mean that I really wanted to come [to Thailand], it was just too hard to earn a living. It is not because I just want happiness and wealth. If I could work and make some money, I would go back immediately, because my parents and relatives are still all there.

A 42-year-old Bamar male interviewed in Tak Province one week after his arrival in January 2002.

In Burma, no one's income is enough and people always need to borrow money from somewhere. Ordinary workers' income is about 400 or 500 kyat (25 baht) a day. I worked as a conductor part time while I was studying in grade 10. My father and mother worked full time. Our household's daily expenses would be 1,000 kyat a day or sometimes even more. But, if you have a tenth grade student in your house, that would cost at least 20,000 kyat a month. My parents must spend that much money for me only. Therefore, I had to quit school. I decided to come to Thailand to get a job. All my friends already went abroad. I think if the government can control the prices of commodities, and if they reduce or cut all the taxes people will not go to other countries. For now, we have to pay so many different kinds of tax and everything becomes so expensive.

A 23-year-old Bamar who arrived in Thailand in January 2002, and was interviewed the following month along the border in Tak Province.

IV. FEAR OF RETURN

The violence and abuses encountered in Burma not only fuel the exodus, but also result in migrants' willingness to tolerate extensive human rights abuses in Thailand, fearing their deportation back home as even more threatening.

Those interviewed repeatedly voiced their reticence about returning:

I don't have any plans. I don't want to go back. If we go back, we will surely suffer.

A 30-year-old Shan female interviewed on March 26, 2002, after just arriving along the Thai border in Chiangmai Province.

Everything will be the same if I go back. So who wants to go back? When I work here if I earn one baht, it will be mine instantly. But in Burma, if they don't leave us alone, we cannot eat at all. If we work three parts, we have to give them two,

leaving only one for our survival. Here, there is no forced labor. If the owner forced us to work, he pays us too. In our country, we worked very hard, but it still was not enough. So think about this! We had to pay 100-200 kyats for the tax per acre. If we sold to other people, the price was 750 kyat for two kilos of paddy. If we didn't pay the tax, they forced us to sell to them the price of 250 kyats for two kilos of paddy . . . What could we do, but cool down and give them what they want.

A 29-year-old Shan female interviewed on April 22, 2002, after arriving along the Thai border of Chiangmai Province ten days earlier.

I am afraid to be sent back. Even if the Thai authorities put me on an airplane to go back, I will find a way to return here again. I don't want to talk about going back any more. For me going back is like going to meet tigers and lions only. I never think about wanting to be well-off. If I stayed in our country and could work independently, moreover, without being tortured, I would not want to leave my hometown at all.

An unemployed 40-year-old Shan male interviewed on April 21, 2002, the day after arriving at the Thai border in Chiangmai Province.

In addition to the fears migrants experienced as the victims of human rights violations in Burma before they fled, they also harbor fears of arrest, detention and/or hefty fines should they return. According to Burma's Immigration Act of 1947:

No citizen of the Union of Myanmar shall enter the Union of Myanmar without a valid Union of Myanmar Passport or a certificate in lieu thereof, issued by a competent authority (Act 3.2).⁴⁹

The billboard hanging at the Kawthong Immigration Gate reminds those leaving or returning to Burma of this law and its penalty.

SPDC's Law 367/120 –(b) (1) Burmese citizens who illegally want to go and work in Thailand will be sentenced to a seven-year prison term.⁵⁰

To implement this policy the Immigration Department of Myanmar chose 22 divisions and formed a team for the Prevention of Illegal Immigrants.⁵¹ However, the laws have been applied arbitrarily and there are constant reports of extortion and lack of any legal proceedings in their implementation. For example:

On October 5, 2001, the Tenasserim Division's General Administration Department notified all police stations, immigration departments and township-level authorities of the new law whereby 'sentencing is divided into three sections

⁴⁹ Article 19. (1996). *Burma: Beyond the Law*. London: Author.

⁵⁰ Translated in the *New Era Magazine*. (March-April 2002).

⁵¹ Maung Maung Oo. (October 9, 2001). "Burma Tries to Curb Flow." *The Irrawaddy*.

*depending on one's age and residence.... If the fines can be paid the subjects will reportedly be returned to their homes and have their movements restricted.*⁵²

Since the mid-nineties the regional command of Eastern Shan State implemented measures to restrict women under the age of 25 traveling into Thailand with the aim of controlling trafficking.⁵³

As one young man recounted:

Recently, all the Burmese government checkpoints stop young people, especially women and girls from going to border towns. They also dragged me out from the bus at a checkpoint along with many other young girls. We had to pay 1,000 kyat each. Then, they allowed us to continue on the same bus.

A 17-year-old Bamar male interviewed in January 2002, after arriving along the Thai border in Tak Province earlier the same month.

The fear of returning home to Burma is most visible when witnessing the extent of abuses and hardships undocumented migrants from Burma endure in order to stay in Thailand. The ongoing violations encountered by migrants from Burma, come from many quarters including other migrants, employers, government officials (on both sides of the border), local community members and other stakeholders.⁵⁴

I left home one month ago. When we got here we met Thai soldiers at the checkpoint. I lost over 20,000 baht to them. They met us when we came here then they asked to check our clothes and bodies. But I left my money with my elder sister, because she had a Thai ID card. So, I thought there was no problem. When they searched my body, they didn't get or see anything. Then they called me to their hut and said that if I didn't give them any money, they would put me in jail. They ignored whatever I said. Any way they had to get some money from us because they saw the money with my sister. I had sold all my properties at my house to get some money. When I met this problem I didn't have anything left. I feel depressed and down-hearted now.

A 35-year-old Shan female interviewed on March 25, 2002, after arriving on the Thai border in Chiangmai Province.

I am afraid. If we stay here, we don't have any ID card. If we go back, it is difficult to earn a living there and not starve. So, who wants to go back? We already know what happens there. But here, even if the police catch us, they just ask for money. I think they won't beat us up or kill us like in Burma.

⁵² Ibid.

⁵³ Annuska Derks. (2000). *Combating Trafficking in South-East Asia: A Review of Policy and Programme Responses*. Geneva: International Organization for Migration (IOM).

⁵⁴ See National Coalition Government of the Union of Burma (NCGUB). (2001). *Human Rights Yearbook 2000: Burma(Myanmar)*. Washington D.C. and Bangkok: Human Rights Documentation Project of NCGUB; and Asia Pacific Forum on Women, Law and Development. (2000). *Dignity Denied*. Chiangmai: Author.

A 30-year-old Shan male interviewed on March 26, 2002, after arriving the day before along the Thai border in Chiangmai Province.

Undocumented migrants seek work not only for the income, but also for protection. Migrant workers rely on their employers for most every aspect of their lives. It is the employers who determine their living and working arrangements, access to services and their protection from arrest and deportation by Thai authorities.⁵⁵ Employers often operate with impunity; they will report undocumented workers they have hired to Thai authorities when they are no longer needed or wanted, deny them access to health services and/or violate a wide range of their basic rights, for which the workers have no recourse.

The suffering here is not the same as in Burma. If an employer makes us work, he gives us the wages too. If the police catch us, he will not kill us and also feed us food. But in our country, we not only worked for the military, they also asked us for more.... If there is something wrong, they don't listen to our excuse. They kill us right away. If a letter written in black came, we couldn't say anything. We had to do as the letter said. They held guns and we have only hands. The lives of the Shan people have been terrible so far. I couldn't put up with it and so I came.

A 40-year-old Shan male interviewed on April 21, 2002, after arriving at the Thai border in Chiangmai Province the previous day.

The people from Burma who come to Thailand say that the suffering here is comfortable. We can get 80 baht per day [half the Thai minimum wage]. It is not used up after buying food. We can even save some. When I worked with my employer I can eat till I am full and sleep soundly unlike in our country. I know I have to be careful all the time about the Thai police. If we see them coming into the farm, we have to run away quickly. If it happens I don't know what to do. For me I may get away from them, but my children may not because they are too young. In my opinion, doing this kind of work is not really suffering. After working, the employer gives me the wages. We can eat what we want to eat. It is very comfortable.

A 28-year-old Shan female interviewed on April 21, 2002, after arriving at the Thai border five days earlier.

As noted earlier, the recent efforts of the Thai government to register migrants from Burma has reinforced workers' dependence on their employers. Those who registered with a specific employer were given permits to work with that employer for only one year. Should their work with that employer be terminated, so too would their legal work status in Thailand.⁵⁶ In addition, the high cost of the registration process leaves most workers only able to register if their employers are willing to advance the expenses and deduct that amount from their earnings. Finally, employers typically keep the work permit, giving the worker only a photocopy, if any documentation at all.⁵⁷ Consequently,

⁵⁵ The Thai Labour Act of 1975 only applies to Thai Nationals and does not provide any labor rights to migrant workers.

⁵⁶ The registration plan states that if the migrant worker is returned to immigration authorities after the permit expires, the employer is reimbursed for the 1,000 *baht* repatriation fee included in the registration costs.

⁵⁷ Employers who helped pay to register migrant employees are keeping the cards until all the registration costs have been repaid by the worker. Interviews found that few registered migrants have possession of

even registered migrant workers remain in fear of harassment and arrest as a result of their inability to prove their legal status.

Registration did not end the problems faced by foreign workers. The refusal of employers to provide work permits to immigrant workers has exposed the latter to police harassment. Some employers kept the work permits of their employees for fear that the workers would escape and they would lose their guarantee money. Workers are only given copies of their work permits, which are not acceptable to the police. NGOs have urged the government to ask employers to provide the permits to their workers. Another criticism is the regulation that prohibits workers from changing employment for a period of one year. This prevents workers whose contracts were terminated from finding a new job.⁵⁸

Many families have become separated as a consequence of the registration. Children under the age of 18 are not allowed to register and most families only register one member due to the high costs of registration and the fear of large debts. There have been reports of employers no longer allowing undocumented family members to reside with the registered employee or be associated with the business due to fear of repercussions by the government for harboring an illegal migrant. Consequently, many family members report sending their children to work at other sites that are willing to accept unregistered children, rather than send them back to Burma.⁵⁹

The Thai government initiated a crackdown on undocumented migrants and given those registered until March 24, 2002 to complete their health checks and re-register.⁶⁰ Migrants who did not complete their health check-up and re-registration or failed to pass the health tests were to be arrested and deported back to Burma. In February 2002, the Thai government announced that female migrants found to be pregnant would not be allowed to pass the health exam and, therefore, would not be allowed to extend their legal work permit.⁶¹ However, after much protest the announcement was rescinded.

Officially, the purpose of the health check-up is to test for eight serious public health diseases. Positive test results for any one of the diseases results in the denial of a work permit extension. Although Thai officials have said that HIV testing would not be part of the health exam, a BBC report quoted Thailand's Foreign Minister Surakiart Sathirathai as stating:

Burma and Thailand have agreed on a plan to repatriate more than 500,000 Burmese illegal immigrants currently resident in Thailand.... The Burmese government asked

their registration cards and must ask for them from their employer if they need it to go to the hospital. Federation of Trade Unions / Burma (FTUB). (January 25, 2002).

⁵⁸ Onnucha H. (January 30, 2002). "Paperless Foreign Workers Facing Police Harassment" *Bangkok Post*.

⁵⁹ Federation of Trade Unions / Burma. (2001). Situation Report: *Migrant Workers from Burma in Thailand*. Bangkok: Author.

⁶⁰ Network Media Group. (February 10, 2002). "More than 200 Burmese Illegal Workers Sent Back to Myawaddy," in Network Media Group, Chiangmai.

⁶¹ The Nation/Asia News Network. (January 18, 2002). "Thai Pregnancy Ban on Foreign Workers Sparks Abortion Fears." *The Straits Times*.

Thailand to screen all returning refugees for HIV/AIDS and Thailand agreed.... Mr. Sathirathai [The Thai Minister of Foreign Affairs] said those who were diagnosed as HIV positive would be separated from the other illegal immigrants and would be treated as part of a special repatriation scheme....⁶²

This report raises serious concern. The Thai Ministry of Public Health has so far refused to implement the HIV/AIDS testing of migrants, but, government-to-government deportations have taken place with the knowledge that those returning to Burma will be systematically and forcibly tested for HIV/AIDS. In addition, there has been no mention of strategies for ensuring confidentiality, communication and counseling, or for combating discrimination that is inevitable on both sides of the border.⁶³

V. RECEPTION CENTERS

Subsequent to the registration of migrant workers in October and November 2001, Thai and Burmese government authorities entered into discussions on the return of undocumented workers to Burma. At the meeting of the Thai-Burmese Joint Committee held in Phuket, Thailand in January 2002, Burma's SPDC Foreign Minister Win Aung was reported to have "agreed in principle" to take back all Burmese working illegally in Thailand.⁶⁴ The plans for return included the establishment of reception or holding centers to be located inside Burma. It was originally proposed that a center be set up near the Burmese border town of Myawaddy, opposite Mae Sot in the Thai province of Tak.⁶⁵ Thai authorities subsequently requested that additional centers be built. Paisarn Pretiporn, the secretary-general of the Office of the Administrative Commission on Irregular Immigrant Workers, said that Thailand had suggested that the towns of Phaya Thongsu (opposite Kanchanaburi) and Kawthaung (opposite Ranong) be considered as possible sites.⁶⁶

Following his three-day official visit to Burma in early February 2002, Thai Foreign Minister Surakiart Sathirathai noted that Rangoon had agreed to the return of thousands of illegal workers and had "assured [him] they will not be prosecuted." According to Foreign Minister Surakiart, "the two countries have agreed to set up a holding center at Myawaddy and it is possible it could be expanded to other towns to accommodate

⁶² Jagan, L. (April 8, 2002). "Burmese Migrants Face HIV Test." BBC.

⁶³ Fernandez, I. (2000). *HIV Vulnerability of Migrant Workers: The Realities*. Paper presented at the Regional Summit on Pre Departure, Post Arrival and Reintegration Programs for Migrant Workers. Malaysia: UNDP, Canadian Human Rights Foundation, IOM and UNAIDS.

⁶⁴ Pathan, D. (January 10, 2002). "Differences Linger Over Refugees." *The Nation*.

⁶⁵ Ashayagachat, A. (January 8, 2002). "Junta Agrees to Take Back Illegal Workers." *Bangkok Post*.

⁶⁶ Chagensuthipan, P. (January 23, 2002). "Rangoon Urged to Arrange Sites for Returnees." *Bangkok Post*.

them.”⁶⁷ In March, the two sides also discussed the opening of two other holding centers on the Burma side of Ranong-Kawthaung and the Mae Sai-Taichelek border areas.⁶⁸

According to numerous press reports, the Thai government has been actively seeking the involvement of at least one international organization in the return of migrants to Burma. Earlier this year, the International Organization for Migration (IOM) was approached to facilitate the process by establishing vocational centers inside Burma.⁶⁹ As far back as July 2001, IOM Director General Brunson McKinley traveled to Burma to meet with government officials there and discuss the idea of moving IOM projects that were being conducted in Thailand to the Burma side of the border. Mr. McKinley was quoted as saying that Burmese authorities believed that “IOM can help end their isolation from the international community.”⁷⁰ He also urged the Burmese to apply for observer status to the organization and assured them that there would be no preconditions to the country’s entry. McKinley was quoted as saying, “the role of IOM is not to talk about politics or human rights,” although he added that it is concerned with the improvement of human rights protection for migrants.⁷¹

The Thai government has been quite enthusiastic about IOM’s potential role, not only with regard to migrants, but also those in the refugee camps along the Thai–Burma border. Foreign Minister Surakiart has reportedly proposed that IOM establish an office in Rangoon to facilitate the return of Burmese refugees. IOM, in turn, is seeking help from the Thais to get Burma’s support for a micro-financing scheme for the refugees. Foreign Minister Surakiart was quoted as saying: “Burma should trust the IOM since they are neutral, professional and non-political.”⁷²

From February 2002 to May 2002, over 19,000 migrants from Burma were repatriated.⁷³ Of those deported, 3,681 people were received at the reception center in Myawaddy.⁷⁴ The reception center is operated by the Directorate of the Defense Service Intelligence (DSI) of the Ministry of Defense. The immigrants were interviewed by various SPDC ministries and departments, including immigration, police, labor, social welfare and health. Each office conducted its own registration and screening for criminal records and citizenship.⁷⁵ In addition, all those repatriated were tested for HIV/AIDS, malaria, tuberculosis and sexually transmitted diseases.⁷⁶ As noted earlier, twenty of those repatriated were identified as positive for HIV/AIDS and were separated from the others

⁶⁷ AFP. (February 8, 2002). “Myanmar to Accept Return of Illegal Workers, Thailand Says.” *Bangkok Post*.

⁶⁸ Ashayagachat, A. (March 5, 2002). “Repatriation of Workers to be Discussed.” *Bangkok Post*.

⁶⁹ *Bangkok Post*. (February 9, 2002). “Khin Nyunt Talks to Include Labour Issues.” *Bangkok Post*.

⁷⁰ *The Nation*. (July 14, 2001). “IOM to Move into Burma.” *The Nation*.

⁷¹ *Ibid*.

⁷² *Bangkok Post*. (April 14, 2001). “Burma’s Support for Scheme Sought.” *Bangkok Post*.

⁷³ Charoensuthiphan, C. (June 3, 2002). “New Inquiry into Permit Renewals.” *Bangkok Post*.

⁷⁴ *New Light of Myanmar*. (June 23, 2002).

⁷⁵ *New Light of Myanmar*. (April 21, 2002).

⁷⁶ *New Light of Myanmar*. (May 9, 2002).

to be sent to a hospital in Yangon.⁷⁷ To date, no mechanisms are in place to guarantee protection or monitoring of those returned.

The continuation of sending hundreds of thousands of people back to Burma is wrought with potential problems and concerns, even with the use of the proposed reception centers. Burmese authorities have already indicated that they will require Thailand to first submit names, home addresses in Burma, photos, and identity cards for verification before accepting returnees.⁷⁸ Inevitably, issues will arise for those who are members of ethnic minorities and make up the bulk of the migrant population in Thailand. According to Tej Bunnag, the Thai Foreign Ministry's Permanent Secretary to the United Nations, "if all of them hold Burmese nationality, they should have house registration documents. But if they are ethnic minorities, they will be investigated and reports will be sent to Burma."⁷⁹

Issues of citizenship and Burmese registration are sure to loom large during such a process. One example is that of birth registration. In Burma, a child's birth must be registered within one month and a birth certificate must be issued. The baby's name is then added to the house registration document. This document is needed in order to register a child for school, access health services or apply for travel permits. At the age of twelve, a child can apply for an ID card with these forms. Without them, the child is not officially recognized as a citizen of Burma.⁸⁰ Within Burma, many people are unable to access this process and many more are becoming stateless as a result of their migration to Thailand where children of migrants are born without birth registration or documentation.

Fighting along the Thai-Burma border resulted in a temporary closure of the border by the SPDC on May 21, 2002 and a reprieve from the repatriation efforts. The Thai government, however, moved swiftly to resolve conflicts with the SPDC, seeking to negotiate compromises in order to resume border trade as quickly as possible.⁸¹ The reopening of the border on October 16, 2002 could result in a resumption of round-ups and deportations as the six-month extension of work permits expires. In the meantime, those fleeing the fighting and human rights abuses continue to enter Thailand. With no opportunities for asylum or protection, they are left with no other option than to join the millions of 'migrants' from Burma who live in fear of arrest, detention and deportation.

VI. CONCLUSION AND RECOMMENDATIONS

⁷⁷ Migrant Action Program. (June 30, 2002). Press Release: "Deportations of Burmese Migrants and HIV Testing." [PLACE: Author.]

⁷⁸ Ashayagachat, A. (March 5, 2002). "Repatriation of Workers to be Discussed." *Bangkok Post*.

⁷⁹ Tansubhapol, B. (February 9, 2002). "Rangoon to Verify Status of Migrants." *Bangkok Post*.

⁸⁰ Nang Lao Liang Won. (1999). *Guidelines on Strategies and Responses to the Needs of Burmese Migrant Women in Thailand*. Chiangmai: Asia Pacific Forum on Women, Law and Development (APWLD).

⁸¹ The Thai government estimates that the border closure has resulted in a daily loss in trade revenue of US\$3.3 million. See *The Irrawaddy*. (May, 2002). "Big Business Buffered from Border Tensions." *The Irrawaddy*.

People from Burma in Thailand represent a broad migration movement that encompasses many who have experienced war, forced relocations, forced labor, loss of their homes and livelihoods, and political persecution. Within the blurry nexus of migration and asylum, people currently labeled as ‘migrants’, who have been and will be deported from Thailand, inevitably include those described in this report who have fled Burma because of human rights abuses and the systemic practices of the Burmese military. Many will have reasonable fears of persecution upon their return. They have been or will be sent directly to SPDC military officials operating the reception centers, in effect, being turned over to the same authorities responsible for inflicting such abuses. For the thousands who have been caught in the civil war or were among the internally displaced before coming to Thailand, the question exists as to whether there is a ‘home’ to which they can return.

Without proper safeguards and systems in place that can guarantee security and protection by internationally accepted standards, these deportations and reception centers could prove to be a hasty and perilous solution for hundreds of thousands of people from Burma.

RECOMMENDATIONS

FOR CONSIDERATION BY THE STATE PEACE AND DEVELOPMENT COUNCIL (SPDC) OF BURMA:

- Implement the recommendations set forth in the April 2002 resolution of the UN Commission on Human Rights to ensure full respect for human rights and fundamental freedoms, including the freedoms of __expression, association, movement and assembly, the right to a fair trial by an independent and impartial judiciary and the protection of the rights of persons belonging to ethnic and religious group minorities; and to put an end to violations of the right to life and integrity of the human being, to the practices of torture, abuse of women, forced labor and forced relocations and to enforced disappearances and summary execution.
- Repeal SPDC’s Law 367/120–(b) (1) that makes it illegal for Burmese citizens to go to Thailand, sentencing them to penalties of up to seven years in prison. In addition, amend the Immigration Act of 1947: (Act 3.2) that makes it illegal for citizens to enter their own country without a valid Union of Myanmar Passport or a certificate in lieu thereof, issued by a competent authority. Both these laws violate the fundamentals of the Human Rights Conventions.
- Stop mandatory HIV testing of returning migrants. Mandatory testing is a human rights abuse and against the UN HIV Principles and Guidelines adopted by member states (including Thailand and Burma).
- Conduct free and voluntary health checks in hospitals and clinics rather than in the reception centers. It is necessary to ensure that testing for HIV/AIDS is also provided

with education and counseling in the migrant's language. Strategies should be put in place for addressing confidentiality, health care needs and issues of discrimination.

- Assure that any return to Reception Centers is voluntary and provides the opportunity for returnees to seek assistance and services.
- Accept all voluntary returnees without discrimination by ethnicity or health status.
- Establish a presence and full access to international organizations to ensure protection mechanisms on both sides of the border are upheld.

FOR CONSIDERATION BY THE ROYAL THAI GOVERNMENT:

- In recognition of the civil war and grave human rights abuses in Burma, immediately halt deportations of Burmese pending the establishment of proper mechanisms to ensure that no individuals having a credible fear of persecution are returned involuntarily.
- Establish criteria by which people from Burma may be granted asylum to include not only those fleeing fighting, but also those fleeing the effects of civil war and human rights abuses inflicted by the Burmese regime.
- Create a task force with representation by governments and international and non-governmental organizations to examine ways in which protection mechanisms can be put into place prior to the return of Burmese to the reception centers.
- Facilitate full access by international organizations to establish and ensure protection mechanisms on both sides of the border are upheld.
- Withdraw the National Security Council's martial law declaring the northern Burma border areas off-limits to foreign reporters and NGO activists (issued on July 15, 2002).⁸²
- Allow for the establishment of camps inside Thailand for all ethnicities fleeing into Thailand, especially those from Shan State where the documentation of abuses has been extensive and lack of options for asylum has made these individuals particularly vulnerable.
- Enhance and streamline the registration process for Burmese migrants in Thailand to guarantee basic rights and channels for redress. Provide information to migrants in their languages on the registration process and on services throughout Thailand, as well as Thai policy and implementation procedures.
- Establish channels for reporting non-compliance and abuses encountered at the work place by employers and Thai authorities, and security issues in general. Provide migrants

⁸² Post Reporters. (July 16, 2002). "Foreign Press, NGOs Barred from Border." *Bangkok Post*.

with the same rights as Thai workers. This would ultimately ensure that the rights of both migrants and Thai workers are respected.

- Stop deporting migrants officially to the Burmese authorities with knowledge that they will be subjected to mandatory HIV testing.
- Ensure testing for HIV/AIDS is voluntary and that communication and counseling are made available in the migrant's language. Strategies should be put in place for addressing confidentiality, health care needs and issues of discrimination.
- Establish monitoring procedures to ensure that mandatory pregnancy testing is not used as a condition for registration of female migrants and ensure that employers do not dismiss pregnant females, but provide maternity leave and benefits according to Thai law.
- Honor the commitment of the Royal Thai Government to the Convention on the Rights of the Child to ensure the security and rights of children, including their right to protection, basic education and health care.

FOR CONSIDERATION BY THE INTERNATIONAL COMMUNITY:

- Advocate for a stop to all arrests and deportations of people from Burma until proper mechanisms are in place to ensure that no individuals having a credible fear of persecution are returned involuntarily.
- In accordance with Goal 2 of UNHCR's *Agenda for Protection*, which aims at "Protecting refugees within broader migration movements," UNHCR should immediately seek to improve its ability to identify individuals from Burma in Thailand in need of asylum and protection, recognizing that many among those referred to as "migrants" may have legitimate claims to refugee status.
- UNHCR should negotiate with the Royal Thai Government to allow the agency to carry out its protection mandate by expanding UNHCR's role in the status determination process and ensuring access to refugee camps for those from Burma with a well-founded fear of persecution.
- Call on the Thai government to grant refugee status to those fleeing Burma, recognizing the persecution of their civil and political rights and calling attention to the associated denials of their economic, social and cultural rights.
- Ensure that the protection and security of all those returned to Burma be a priority of any and all international organizations involved in the process. Donors should require such organizations to operate only with full transparency and unhindered access to these populations.

- Immediately withdraw support for HIV testing kits until there is proof that no mandatory testing is being conducted by the government of Burma, and access to monitoring can be guaranteed.
 - Provide health services and education, including HIV/AIDS awareness, to the people from Burma in Thailand in languages and media that they can understand and access.
-