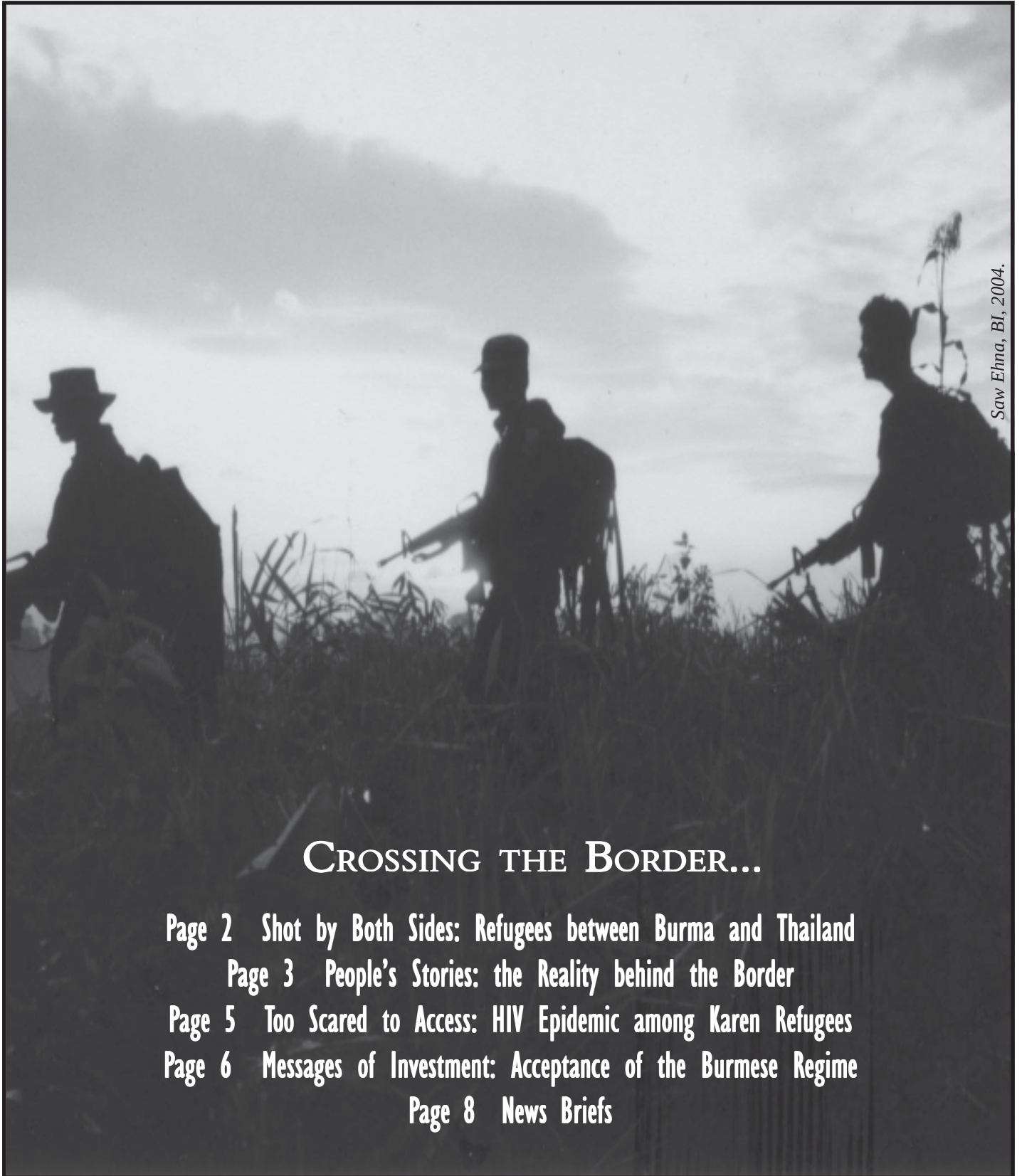




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SHOT BY BOTH SIDES: REFUGEES BETWEEN BURMA AND THAILAND

BY N. VIERNES

Borders can often take the form of transient legal boundaries that surround and follow the lives of refugees, who themselves are dehumanised and thrown into various "technical" classifications. For many individual persons fleeing war zones and other forms of repressive domination of the State Peace and Development Council (SPDC), the ruling military junta in Burma, such classifications fall into bureaucratic buzzwords such as 'persons of concern' (POC), refugee status of determination (RSD), and other tricky names often buried beneath the weight of bulky paperwork.

The ultimate purpose of such classifications, decided upon by administrative officials who are geographically removed from the conflict, is to "officially" determine who is a refugee fleeing fighting and, often, without regard for personal safety, to ultimately decide the future fate of each refugee applicant. This past January the fate of many refugees were placed amid bureaucratic infighting between the Thai government and the United Nations High Commissioner for Refugees (UNHCR) when Thai authorities suspended the applications of thousands of refugees from Burma. The UNHCR, which has often stated that their office is "responsible for protecting refugees and promoting lasting solutions to their plight,"¹ has recently butted heads with the Thai government, who's Provincial Admissions Boards will now control who constitutes a refugee and who does not.

There are two primary categories: those fleeing fighting and those who are "illegal immigrants".

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The latter category represents those who will be deported back to Burma, regardless of whether there is a significant threat to their safety. This constitutes a major setback in the determination process, predominantly because recent ceasefire agreements between military factions in Burma have signified an end of an ongoing civil war—a mere "appearance" that fighting has stopped, when the reality of military repression and violent clashes between the military and innocent civilians continues to be well-documented.

"The refugee issue is a human rights issue...the states to which [refugees] turn for asylum have a continuing obligation to provide the protection they need." Many people fleeing fighting have turned to Thailand, who share a 2400 kilometre border with Burma. With over 10,000 war-related deaths each year for the past 40 years², and hundreds of thousands of people subjected to human rights abuses such as forced labour, relocation, military conscription, rape by the military, and other forms of systematic violence, refugees fleeing Burma should not be subjected to such legal boundaries in addition to already difficult geographic realities of civil war.

The Journey to Thailand

Masses of refugees continue to cross over into Thailand in their attempts to flee repression in the ethnic regions of eastern Burma. Between 1994 and 1998 there were 90,000 externally displaced persons fleeing Burma. Thousands continue to be displaced due to sporadic periods of fighting, forced relocation, and other attempts by the SPDC to undercut the means of survival—predominantly in many ethnic areas. A non-signatory to the 1951 Convention Relating to the Status of Refugees, the main international treaty for protecting refugees, the Thai government is not legally-bound to comply with minimal human rights standards. The UNHCR, the main international body claiming responsibility for refugees, therefore operates in Thailand in accordance with the official permission of the Royal Thai government.

A Thai-Burma Economic Partnership

As the documentation of human rights violations in Burma continues to surface, Thai-Burmese business partnerships guide strategic political moves. Since 1999, Thai export policy has indicated a greater potential in regional economic cooperation.³ At the high levels of both governments there are strong economic interests that range from logging contracts to transnational investment deals involving numerous other countries. The infra-

structure used to facilitate such deals demonstrates ways in which human rights abuses are exacerbated. Roads and transport networks, for instance, have increased more in the one year between 2002-2003 than in the previous five years combined. Available documentation suggests that these areas constitute the majority of forced labor violations and human rights abuses.

Since 1996, over 300,000 people in Shan state in Northern Burma have been forcibly moved from their homes by the military due to their proximity to planned development project sites. One such project to build a large-scale hydro-electric power dam along the Salween River is being bankrolled by the Bangkok-based MDX Group, who negotiated the contract with Burma's Department of Hydro-electric Power on 20 December 2002. The funds supporting the project originate through its own resources and through loans generated in Thailand. Furthermore, the power generated from the project will be predominantly exported to Thailand. There has been no compensation for the displaced villagers.⁴

Thailand and the UNHCR

In a nutshell, the UNHCR cannot operate authoritatively according to its principles in terms of asylum and repatriation. Thailand, through an increasingly "Thaksinian" tactical approach (neighbourly in business), interprets any attempts to do so as a violation of Thai sovereignty—and so they have often based judgments concerning immigration and repatriation in accordance with the wishes of the Burmese junta.

The intent of these regional and economically-strategic immigration policies have also been recently applied to countries such as Laos, where 16 political dissidents were recently quietly repatriated demonstrating neglect of the serious threats to their safety.⁵ The following question emerges: does national sovereignty (in terms of turning back and deporting people fleeing war zones), always trump international law? In the case of Thailand, is it even in their interest to become signatory to things like The Convention Relating to the Status of Refugees? In other words, what international mechanisms are binding enough to motivate states to act according to humanitarian objectives?

The short answer is "none". The longer answer is that "sovereignty seems to trump all". However, is sovereignty a demonstration of political authority connoted by the term? If so, then many oppressive regimes, irregardless of their atrocious human rights records, qualify (i.e., Chile under Pinochet, Afghanistan under the Taliban, Iraq under Saddam, etc.). Thailand, apart from the regimes previously mentioned, however, might be characterised as the greatest beacon of democracy in the region, and therefore its compliance or non-compliance to humanitarian tenets of interna-

tional law will likely send ripples to its surrounding neighbours.

Traditionally, international law has been linked to the principle of "voluntarism" described by legal scholar Hugo Grotius during the seventeenth century. According to this ideal sovereign states can't be forced to obey international conventions because, if they did, they no longer would be considered truly "sovereign." This diplomatic tention is reflected in several confrontations between the Thai government and the UNHCR.

However, since it is in the interest of all states to secure order, security, stability, and predictability (especially in the interest of trade), states will likely comply because refusal to do so would release all states from that voluntary obligation and the results would be disastrous for all. Unfortunately, the chair pulled from underneath unlawful governments by means of sanctions (such as those presently imposed against Burma) is sometimes replaced by the imposition of another chair by means of regional cooperation (such as business partnerships between ASEAN countries that hold to a principle of non-interference in a country internal affairs, for example).

Meanwhile, the situation for over 130,000 refugees who occupy camps along the Thai-Burmese border and additional hundreds of thousands who can't be subsumed under the correct "government approved" definition of refugee, are increasingly less safe due to the slow process of bureaucratic infighting, and the quasi-modern process of regional development, rather than reputable humanitarian concerns. Perhaps it is the personal testimonies emerging amid the transient borders between Burma and Thailand that better articulate the term "refugee." Their situation is a matter of human beings and individuals who have been dealt a lot they have not chosen.



Endnotes

- 1 UNHCR. 1995. *The State of the World's Refugees: In Search of Solutions*. New York: Oxford University Press. 15.
- 2 Skidmore, Monique. 2003 'Medical Assistance and refugee safety in contemporary conflicts', *The Lancet* 362. 352.
- 3 'Thai Exports Look for New Markets', *The Nation*. 24 December 1999.
- 4 The Shan Women's Action Network. September 2003. 'Shan Refugees: Dispelling the Myths' 4.
- 5 'Laos Dissidents Secretly Repatriated from Thailand.' *US Newswire* press release. 7 July 2004. To Thailand's credit a fair and just Thai judicial system ruled twice in defense of keeping the Lao dissidents from being sent back to face charges before the ruling Pathet Lao regime. Ignoring these rulings, the forced repatriation of the 16 dissidents follows the conclusion of recent talks between the Thai and Lao cabinets known as the "Black List Agreement." Such moves shed light on future constricting agreements between neighboring countries which either supercede or ignore completely the established national court ruling, regarding the stifling of political freedoms and democratic opposition.

CROSSING THE LINE: THE REALITY BEHIND THE BORDER BY C. GUINARD

For thousands of people affected by the long-standing civil war in Burma, crossing the Thai-Burma border to ask for refugee status or to work illegally inside Thailand is the only way to survive.

During the 1990s, the SPDC's (State Peace and Development Council) armed forces launched continuous military offensives against insurgent groups fighting in ethnic areas along the Thai border. Little by little, territory was lost to the benefit of the Burmese army. For decades, villagers have been forced to flee their home and are unable to come back because of the deadly and massive presence of landmines. Thus, the only choice many villagers are facing is to hide in the jungle and become internally displaced people (IDP) or to start the perilous journey through rugged mountains and across an international border in pursuit of shelter.

Crossing a territorial border to flee oppression and human rights violations may be coupled with relief. However, when crossing the border, the shared feeling of those persecuted persons is mainly fear and the sadness of leaving their country behind.

When interviewed about his first experience crossing the Thai-Burma border, Saw Wha, a Karen NGO worker now in his thirties, explained, "it was in 1995. I was only 22 years old. I was with another friend. We walked in mountains for days before reaching the border. We crossed the border at around 7.00pm at night. We used torch lights. We had to walk through the bush near a Thai military gate. I was very afraid because it was hot season at that time, so there were not so many bushes and it was easy to see us". Thanks to a smuggler who was waiting for them on the other side in Thailand, they succeeded to make their way through the different Thai police checkpoints.

When you cross the border in Thailand, you have two choices. On one hand, people can ask for refugee status and benefits from international aid organisations, but are then geographically bound to refugee camps. The other alternative, as Saw Wha pursued, is to cross over the border without registering with Thai authorities, which then assigns them to the risky category of "illegal migrant". To be able to make a living or to join an organisation promoting Burmese democracy from Thailand, most people choose the second option.

However, this second alternative puts the life of those people in graver danger. After the massive

offensive launched by SPDC troops in 1997 in southeastern Karen State, thousands Karen fled towards Thailand. Nearly eight years later, Saw Eh, now a Karen journalist, remembers "when I crossed the border in 1997, I was very scared because I didn't cross it as a refugee but as an illegal migrant. I could be arrested at any time. I was alone and have to find my contact-person in Thailand on my own. I was also very sad because I left behind my home. It was a very sad moment for me".

"After crossing the border, I went to Bangkok for two months. At the beginning I didn't go out and felt homesick. Finally, I visit parks and department stores. I was very excited. In my mind I thought I will never see a car. Seeing Bangkok was like a dream."
Saw Wha, Karen NGO worker, 2004.

Even for "protection" or "activism", there is nothing exciting about crossing a border. Whether refugees or illegal migrants, both lose their homeland and remain stateless.

Furthermore, after the offensive of 1997, most people crossing the Thai border knew that everything in the region had been destroyed by the Burmese military. Saw Wha who voluntarily came back inside Burma in February 1997 to fight along the KNU (Karen National Union), recalls "when we had to retreat because of the violence of the offensive and cross again across the Thai-Burma border, I was very sad. Everything had been destroyed. All the schools and villages had been burnt down by SPDC troops. We were fleeing SPDC troops and we were lost in the jungle. We finally crossed the border after one night on the run". At that time he confessed that the greatest personal difficulty for him had been to witness the destruction of everything around him. To flee knowing that he will never see his village again made him feel more homeless than ever before.

Once in Thailand, illegal migrants face the continuous fear of being arrested by Thai authorities. According to their testimonies, the common way to get out of such a situation is to bribe the local officer, by paying up to 3000 bath. In many cases, it is impossible for those in question to afford such a large sum of money. Thus, after couple of days in the Thai detention center, they are sent back inside Burma. Such constraints placed on both refugees and "illegal immigrants" lend to the creation of a vicious circle. Illegal workers often repeatedly cross the border to return to Thailand. But for Burmese or ethnic human rights activists, being deported back to Burmese authorities has placed their life at greater risk.

TOO SCARED TO ACCESS HIV EPIDEMIC AMONG KAREN REFUGEES

BY SAW EHNA

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Doctors Without Borders (MSF) fears a secret HIV epidemic among one million Karen refugees along the Thai-Burma border.

Speaking to Burma Issues at the 15th International AIDS Conference in Bangkok, Dr. Nicolas Durier, MSF's Medical Coordinator-Thailand said, "in Tham Hin refugee camp, there is a lot of stigma and taboo around HIV." Tham Hin, which is located to the west of Bangkok in Ratchaburi province, accommodates about 9000 Karen refugees. Dr. Durier noted that in the camp only a few people voluntarily come to be tested. The rest are too scared because of the surrounding stigma.

A refugee leader, who did not want to be named, indicated that most people discover they are HIV positive only when they donate blood, not through voluntary testing. On one occasion, he furthered, 12 people donated blood and two were found to be positive. Because no statistics are made public, most refugees are not aware of the extent of the problem.

Dr. Durier remarked that Doctors Without Borders is currently giving anti-retroviral drugs (ARVs) to five people living with HIV/AIDS in Tham Hin. He believed that many more are affected. "If people are not well informed about HIV and they are scared to speak about it, they will risk getting the virus", said Dr. Durier. "Our health workers are also a little bit shy to speak about HIV."

MSF is also working in Mae La refugee camp. It is the most populous camp on the north-west border of Thailand and the stigma is not as bad as it is in Tham Hin, because of stronger HIV activists and prevention advocacy. According to MSF, voluntary testing in Mae La has found that 50 people are HIV positive. Of those who tested positive 20 are currently on ARV treatment.

Most HIV positive people work outside the refugee camps to earn extra money in order to support themselves. In the camps there are no jobs for extra income and people live on basic rice, yellow beans, salt and oil provided by NGOs.

Naw Jacqueline, Secretary of Karen HIV/AIDS Education Working Group (KEWG), which does voluntary testing and provides HIV counseling in Karen camps, concurred that many people are still reluctant to pursue testing. KEWG is currently working for HIV/AIDS education and has also laid the groundwork for MSF to bring in an HIV/AIDS

treatment service. According to KEWG, initially resistance to HIV/AIDS education was strong, especially among conservative Christian and community leaders. It even resulted in displays of dogmatism, such as the burning of condoms and education materials.

A female pastor, Mu Mu Wah, whose view of the matter mirrors other more traditional concerns, stated, "some religious leaders don't accept the idea of educating people to use condoms, because it is not our culture. It will not lead people, especially younger people, to the right way. I agree with them".



Poster campaign from Raks Thai Foundation, 2004.

Commenting on sex education, Thera Moo Heh, a religious leader from Umphium Mai refugee camp, asserted, "some religious leaders say that when children learn about safe sex they know more about it and they start to misconduct themselves. Many have to leave school".

Even the younger generation of refugee youth share concerns about the stigmatised environment of sex education. Nay Roh, 21, observed this environment, noting, "we young people are shy to talk about sex, because it is embarrassing. Dirty talk is not appropriate". Thoolei Paw Win, 24, a female refugee from Tham Hin said parents complain about condom education among teenagers in the camp. But she feels it is important for both young and married people.

"Access For All" was the theme of the 15th International AIDS Conference, but for Karen refugees who are still too scared to discuss HIV/AIDS and sex due to related cultural stigmas, access to information is not yet a priority.

HIV/AIDS statistics among the Karen refugees have not been included in the *Global Report on HIV/AIDS* because of their statelessness and external displacement. A spokesperson for UNAIDS for South East Asia and Pacific, confirmed that the report does not contain any refugee statistics for any country in the world. Accordingly, a seemingly invisible situation could potentially escape the awareness of those most capable of combating it: the refugee population themselves. However, in order to confront and address HIV/AIDS awareness, the stigmas and cultural taboos must give way to more immediate realities.

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MESSAGES OF INVESTMENT: ACCEPTANCE OF THE BURMESE REGIME BY Z. BRAKE

Burma is a very attractive investment package. Not only is it beautiful, but rich in natural resources as well. It has vast cultivable land, long coast line, abundant forests, complex river system, and plentiful minerals and gems. But what Burma needs to reap the benefits of such resources is capital and technology.

And while it may seem like an investors dream come true, there is a catch. Whilst this country is well endowed with resources – it is also endowed with one of the worst oppressive, military-ruled regimes in history. Consequently some countries have taken moral objections to the SPDC (the self-proclaimed Burmese government), and have enforced sanctions.

But while the US in particular, is trying to economically isolate Burma, other countries are looking towards it as a beacon of bright economic light. India and China have just signed trade deals in an effort to tap into the undeveloped economic wealth that has lay dormant in Burma since 1962.

And they are not the only ones. Earlier this year the members of the Bangladesh-Indian-Myanmar-Sri Lanka-Thailand-Economic-Cooperation-Forum (BIMST-EC), which also includes Nepal and Bhutan, signed a free-trade agreement committed to opening their markets to each other by 2017¹.

A lot has changed since the junta opened Burma's doors to the world in 1988. And Thailand has always been there since the beginning, from when it received logging concessions to the present day. Currently Thailand invests nearly one-fifth of Burma's foreign investment. As of February 2004, Thai investors were involved in 49 projects within Burma, with funding reaching US \$ 1290 million. Only Singapore and the UK invest more, with US \$ 1572 million and US \$ 1404 million respectively².

But while Thailand is only the third largest investor in Burma, it has an added advantage – proximity. The shared border makes trade and investment between Thailand and Burma even

easier, especially when border check points can be opened and shut to aid investors. And this has happened. In April the Thai government announced it would open four more custom check points along the Thai-Burma border to assist Thais investing in development projects in Burma³.

Whilst most people believe that development projects are beneficial and offer substantial improvements to the area, the picture in Burma is dramatically different. Development projects are solely associated with financial gains. Exploiting natural, non-renewable resources, flooding thousands of homes for hydro-electricity and causing irreversible environmental damage, are classed as development projects, if they bring in a dollar. The human-angle is rarely considered by developers, or investors. The detrimental effects these so called development projects have

on the people in Burma is awful. Some villagers are forcibly relocated to less prosperous land, without compensation, others are used as forced labour. With development projects come roads, military bases and higher observation and restrictions for citizens. So while development projects do generate income, the not so beneficial consequences have to be



Logging in Karen State, Karen Human Rights Group, 1994.

taken into consideration.

These development projects in Burma attract a larger percentage of Thai investment dollars. But the projects do not just benefit the junta; Thai investors also reap the rewards. Both countries have a vested interest in the Salween Hydro-electric power project. It will provide hydro-power to electricity-starved Burma and Thailand will not have concerned itself with the environmental impact of generating it's own electricity. It will also make the investors rich.⁴

Indeed, the proposed Salween Dam is a joint venture between Thailand and Burma. A joint venture is necessary because whilst Burma welcomes foreign investment, full foreign ownership of companies operating in Burma is forbidden. All large investments projects have to be carried out through joint ventures with local businesses, which are predominately associated with the military-junta.

A side effect of joint projects is that it brings a sense of international acceptance to the people, industry and country that it is associated with. In Burma, foreign investment offers a degree of international respectability to the regime, especially when the junta, or its close associates, are directly involved in joint projects with the investors.

However, the effects of foreign investment are not confined to the country receiving the money, investing in Burma also impacts on Thailand. The most important consequence is that foreign investment tends to become a factor in the formation of government policy. The greater the stakes held by Thai companies and investors, the less likely the government will take a strong stance against the oppressive regime. This is particularly true when the country's leader, Prime Minister Thaksin Shinawatra, has investment interests in Burma himself.⁷

A spokesperson for Forum Asia, a Bangkok-based human rights group, Sunai Phasuk believes that Thailand's Prime Minister Thaksin's soft approach to Rangoon is influenced by economics. In an interview with *The Irrawaddy* newspaper last year, he said the relationship between the two bordering nations did not follow "any common sense"⁵.

"So far the cooperation between Thailand has been conditional, but the conditions have been set by the SPDC, not by Thailand."

"The signals are clear. The Thaksin administration is so eager to establish friendship with the SPDC at all costs. That reveals a weak position at the negotiation table and makes Thailand vulnerable to any pressure from the SPDC - and it is one-sided pressure."

It begs the question, is it possible for people forming policy, whom have vested interests, to be objective?

Unfortunately not. The desire for financial ties with Burma does influence the Thai government's policy. One example is the political events that followed the 1994 ceasefire agreement between the New Mon State Party (NMSP) and the Burmese junta. The verbal ceasefire, which the NMSP did agree to and is still holding today, was a politically pressurized agreement in the name of money. An area of land controlled by the NMSP was required to build the Yadana gas pipeline, a development project which turned out to be extremely lucrative for its investors, the Thai government, the junta, and gas companies UNOCAL and TOTAL. Allegations from the NMSP that Thai authorities offered to negotiate a ceasefire have always been refuted by the Thai National Security Council. But following the ceasefire, Thailand altered their policy of accepting Burmese refugees

and forcibly repatriated Mon refugees back into Burma. Consequently more than 10,000 Mon refugees were "offered" to the junta as free labour for the construction of the Yadana gas pipeline⁶. The Thai government considered how much money it could make more important than the welfare of thousands of refugees. Economics influenced Thailand's policy back-flip.

But the use of forced labour to build the Yadana gas pipeline, which is currently being tried in the United States and France as a Human Rights violation case, is nothing new according to a London-based non-government organisation. The Burma Campaign UK said companies that deal with the junta are likely to use forced labour. "In developing infrastructure for both the tourism and petroleum industries, the junta has extensively used forced labour under extremely harsh conditions."

It is because of such human rights violations and the lack of democratic reforms that the United States has recently continued their sanctions against Burma. In the recently passed "Burma Freedom and Democracy Act" the US has frozen the assets of the junta's senior officials, prohibited the remittances of those people to the US and banned the import of all products from Burma. Hence not only does Burma look at Thailand as a foreign investor, but also as a market for imports and exports. According to *The Business Tank*, a publication by a business consultancy group in Burma, The Business Information Group, in the 2003-2004 fiscal year, Burma exported over US \$1,057,401,733 to Thailand and imported US \$98,844,075. That is approximately half of all trade that passed through Burma last year, which a sizable portion by any measure.

Obviously the message is clear. When you invest in Burma you are saying welcome to the international community. In Thailand, as the third largest investor in Burma and its closest neighbour, this message is extremely important. Through Thai investment it says that the freedom and democracy that Thais hold dear, is a principle that is confined within a country's borders, not one that should be afforded to all people.

Endnotes

- 1 'Asian nations agree to sign free trade deal, drop tariffs by 2017', *Agence France Presse*, February 8 2004
- 2 'Burma Liberalise economy to attract investment, says experts', *Asian Labour News*, 11 February 2004
- 3 'Four Border Checkpoints to Open', *The Irrawaddy*, 4 April 2004
- 4 'Hydro-powering the Regime', *The Irrawaddy*, June 2004
- 5 'An Interview with Sunai Phasuk: Thailand as a Mediating Force', *The Irrawaddy*, January 2003
- 6 'Negotiating Cease-fire: The Art of Disillusion in Mon State', *Burma Issues Newsletter*, December 2003
- 7 'Can't with'em, can't live without'em', *The Irrawaddy*, June 2004

news briefs

No Return Date set for National Convention: Burma's national convention aimed at helping draft a new constitution went into recess. The break could last three months. The convention, billed by the junta as the first step in its "roadmap to democracy", will likely resume in October. Lieutenant General Thein Sein, the convention's top official, told delegates that no return date had been set.

Border Countries Donate over US\$100 million to Burma: Thailand has agreed to grant neighbouring Burma a loan of US\$98 million for road and infrastructure improvements. Separately, a Chinese corporation has given Burma a US\$20 million loan to buy machinery for a hydropower plant. Under the 12-year export financing loan, Burma will buy Thai goods and services for road and infrastructure improvements.

Ceasefire talks between KNU and junta to continue: The Karen National Union (KNU) will resume ceasefire negotiations with the Burmese military, according to one of the group's leaders. KNU foreign affairs committee head David Taw said the two sides would meet in the third week of August for the fourth round of negotiations. He did not give a specific date or location.

Rewards for the arrest of illegal workers: The Thai government will offer cash rewards for the arrest of alien workers who failed to register with labour authorities by the July 31 deadline. Deputy Prime Minister Wan Muhamad Nor Matha would meet with relevant agencies in August to discuss the employment of non-registered alien workers and what measures would be taken against them. They will also discuss the size of cash rewards to be offered to those providing information on non-registered workers. Police officers involved in the arrests would also be rewarded.

More aid for HIV/Aids in Burma: Despite its economic sanctions against Rangoon, the United States is considering doubling its aid to help HIV/Aids victims in Burma to \$2 million in the fiscal year that begins on October 1. US officials say the aid would be delivered through non-governmental organisations working in Burma rather than through the military government.

US Senators want Burma envoy to be asked to leave: Two US senators, Mitch McConnell and Dianne Feinstein, have asked Secretary of State Colin Powell to downgrade diplomatic ties with military-ruled Burma by expelling its envoy to Washington. The

Senators requested that "the United States downgrade its diplomatic relationship with the illegitimate military junta" in Burma by requiring Linn Myaing "to immediately return" to Rangoon.

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