



Abuse Without End:
Burmese Refugee Women and Children at Risk of
Trafficking

Women's Commission for Refugee Women and Children

January 2006



Women's Commission for Refugee Women and Children
122 East 42nd Street
New York, NY 10168-1289
tel. 212.551.3111
fax. 212.551.3180
wcrwc@womenscommission.org
www.womenscommission.org

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MISSION STATEMENT

The Women's Commission for Refugee Women and Children works to improve the lives and defend the rights of refugee and internally displaced women, children and adolescents. We advocate for their inclusion and participation in programs of humanitarian assistance and protection. We provide technical expertise and policy advice to donors and organizations that work with refugees and the displaced. We make recommendations to policymakers based on rigorous research and information gathered on fact-finding missions. We join with refugee women, children and adolescents to ensure that their voices are heard from the community level to the highest councils of government and international organizations. We do this in the conviction that their empowerment is the surest route to the greater well-being of all forcibly displaced people. Founded in 1989, the Women's Commission is an independent affiliate of the International Rescue Committee.

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The Women's Commission delegation included the following members: Jurate Kazickas, Vice Chair, Board of Directors, Women's Commission for Refugee Women and Children; Sandee Pyne, Research Fellow, Women's Commission; and Wendy Young, Director of External Relations, Women's Commission.

Wendy Young and Sandee Pyne authored this report. It was edited by Diana Quick, Director of Communications, and Megan McKenna, Senior Coordinator, Media and Communications, Women's Commission.

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Cover photo: Julia Matthews

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EXECUTIVE SUMMARY

Kaung¹, who was born in Thailand of Burmese parents, was ten years old when a trafficker paid his estranged father 1,000 baht (US\$25) for him while his mother was temporarily away from home. The trafficker then resold him to a gang that operated begging rings in Bangkok.

Kaung lived with two other boys and one girl while working in a begging gang. They were locked in the home of the traffickers, where they slept on the floor with no blankets or mosquito netting. Each day, the traffickers gave Kaung approximately one cup of ramen noodles, which he had to share with another boy. This was his only food, leaving him constantly hungry.

According to Kaung, the traffickers beat him with a metal rod, stuck him with needles and burnt him with cigarettes. He also witnessed severe abuses against the other children. The traffickers took one of the boys away one day. When he came back, he no longer had hands or feet. Kaung believes that the traffickers had severed his limbs to keep him from running away.

Hundreds of thousands of refugees from Burma, many of them women and children, have fled into neighboring Thailand in the course of the past two decades. Escaping armed conflict and rampant human rights violations in their homeland, these refugees often find that safety eludes them during and after crossing the Thai border. The failure of Thailand to offer them meaningful protection puts them at risk of continued human rights abuses, including trafficking. Women and children are particularly at risk of trafficking, and the sexual and physical exploitation and forced labor associated with it, as they desperately seek a way to support themselves and their families.

The international community has paid tremendous attention to the growing phenomenon of trafficking in recent years. In 2000, this focus resulted in the issuance of the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children to the UN Convention on Transnational Organized Crime. The purpose of the protocol is to prevent and combat trafficking in persons, with special attention to women and children; to protect and assist victims of trafficking, with respect for their human rights; and to promote cooperation among countries that have ratified the protocol in order to achieve those objectives. The protocol also explicitly acknowledges that the agreement does not supersede states' obligations under international humanitarian, human rights and refugee law, including the principle of non-return that is the core of the international refugee protection framework laid out in the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees.

Thailand is not, however, a party to the 1951 Convention. The Thai government characterizes refugees as “displaced people fleeing fighting,” a definition that does not comply with

¹ All names of refugees and trafficked persons have been changed throughout this report to protect the confidentiality of those interviewed.

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international law and excludes large numbers of refugees from Burma. It is also narrowly applied to people “fleeing *active* fighting,”² Refugee camps are referred to as “temporary shelters” although many refugees, such as the ethnic Karens and Karennis, have been warehoused in border camps for decades.³

The majority of Burmese⁴ who have not been designated as refugees under that narrow interpretation are deemed “illegal” by the Thai government, regardless of the person’s reason for entering Thailand. This includes hundreds of thousands of migrant workers.

However, when questioned about their motivation to come to Thailand, almost without fail migrant workers cite the political repression, armed conflict and economic devastation in Burma that has directly resulted from years of despotic rule. The Shan people, for example, despite fleeing from well-documented persecution by the Burmese military, are regarded as “illegal migrants” under Thai law and thus denied any protection. Clearly, labeling such individuals “illegal” and characterizing them as “migrant workers” is inaccurate, when in fact many—if not most—are people in refugee-like circumstances.

Regardless of their status, moreover, the vast majority of Burmese residing in Thailand have extremely limited means to support themselves and their families. They eke out a subsistence living, are marginalized in the Thai economy and exploited as a cheap source of labor. They often support not only themselves, but also family members who live with them in Thailand or who remain behind in Burma. They live in fear of detection by the Thai authorities, not only because they are vulnerable to deportation back to Burma but also because the authorities will often exploit their lack of status to extort bribes from them.

Refugees who live in refugee camps along the Thai-Burma border also face specific risks. While some NGOs put tremendous effort into creating income generation activities for women inside the camps, it is insufficient. As a result, despite Thai policy which requires prior written approval to enter or leave the camps, people leave surreptitiously to work on nearby farms for less than the wages paid to Thais; many simply abandon the camps permanently to seek relatively better wage labor in urban or semi-urban areas. Refugees who leave the camps are vulnerable to arrest, harassment, extortion and trafficking.

Forced into an underground existence by their lack of status and precarious living conditions, Burmese in Thailand are at strong risk of being trafficked. Such trafficking can occur at various points during the migration experience, including before the individual has crossed the border, during the border crossing or once present in Thailand itself. It may result from force, coercion or deception. After being trafficked, women and children may end up in a range of abusive situations, including forced prostitution, children forced to beg on the streets of Bangkok or other

² In addition to rejecting a comprehensive refugee definition, the Thai government has applied different policies at different times to refugees from Burma. See Human Rights Watch report, “Out of Sight, Out of Mind: Thai Policy toward Burmese Refugees” (February 2004).

³ According to the U.S. Committee for Refugees and Immigrants, there are more than 7 million refugees being “warehoused” for ten years or more around the world. “Warehousing” refers to the practice of “keeping refugees in camps or segregated settlements, deprived for years of the basic rights guaranteed in the UN Refugee Convention and without hope of a normal life” (World Refugee Survey 2004).

⁴ Throughout this paper use of the term “Burmese” refers to people of all ethnicities from Burma.

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urban areas, young women working as domestic servants or entire families working in substandard and dangerous labor conditions in textile factories, fishing or other industrial settings.

Sometimes, the trafficked person is not paid at all or is paid a wage far below that promised or allowed under Thai law. Consistently, labor conditions for trafficked persons are appalling, characterized by long hours and physical and sexual abuse. Some women working as domestic servants reported that their inability to speak Thai left them isolated, and the nature of their work, which often involves living in their employers' homes, left them profoundly vulnerable to abuse.

Moreover, the fear of deportation haunts people living without status. Even workers who were registered for employment with the Thai government stated that some employers held on to their registration cards despite Thai law stating the workers must keep the card with them at all times.⁵ They also spoke of instances in which police officers, despite being shown the worker registration card, still demanded a bribe. Women and children may be especially susceptible to maltreatment, and are reluctant to complain. As such, the capacity to report abuses they experience is an inseparable issue from their insecure status in Thailand. Such apprehensions are grounded both in the fear of persecution by the Burmese military if returned as well as the fear of stranding their families without economic support if they lose their source of income, as abusive as their employment situation might be.

Despite the fact that the vast majority of Burmese living in Thailand cannot safely return home, the solution for trafficked persons apprehended in Thailand is typically deportation. Burmese who are apprehended by the Thai authorities may be detained before being deported. Some are deported with prior notification to the Burmese government. Others who have been designated as refugees or "persons of concern" by the UN High Commissioner for Refugees (UNHCR) Regional Office for Thailand, Cambodia, Laos and Vietnam are rounded up, detained and informally deported to border areas without prior notification to the Burmese government.

This emphasis on repatriation is rarely challenged and sometimes supported by international agencies and nongovernmental organizations (NGOs) working with trafficked persons. Return is often viewed as necessary to deter and prevent future trafficking. It is also often characterized as harmless, because it is widely acknowledged that most deported Burmese return to Thailand at the earliest possible opportunity. This rationale for repatriation, however, is troublesome; by having to return to Thailand a second or sometimes multiple times, the refugee is at risk of either being identified and targeted by the Burmese military upon return to the homeland, or when migrating back to Thailand, of being swept up in the same cycle of violence and exploitation they experienced when trafficked the first time. Often the person returns to Thailand burdened with greater debt, either from having to bribe officials en route or as part of the costs of resettling in Thailand. The cycle of repatriation and return leaves people even more vulnerable to traffickers, and bolsters corrupt practices at the local level.

What is clearly missing in the dialogue on trafficking in Thailand is a holistic, rights-based approach that addresses the root causes of migration from Burma to Thailand. This new approach casts an analytical net wide enough to consider the unique vulnerabilities to trafficking

⁵ Interview with factory workers, Mae Sot, Thailand (April 18, 2004).

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as experienced by both recognized and unrecognized refugees in Thailand. New solutions must be sought that take into consideration the reality that for many Burmese nationals repatriation is neither a safe nor viable option. Trafficking of persons who are in refugee-like circumstances must be considered within the international refugee framework, which traditionally has promoted the durable solutions of local integration, third country resettlement or safe, dignified and voluntary return. Even in the absence of ratification of the Refugee Convention, Thailand—with the support of the international community—must abide by these principles.

BACKGROUND

THE WOMEN'S COMMISSION ASSESSMENT

The Women's Commission for Refugee Women and Children (Women's Commission) sent a fact-finding delegation to Thailand in April 2004 to assess the extent to which refugees and persons in refugee-like circumstances from Burma are vulnerable to trafficking. The purpose of the assessment was to evaluate the gaps in protection efforts on behalf of people in refugee-like circumstances that put such individuals at risk of trafficking. The evaluation builds on a preliminary assessment conducted by the Women's Commission in spring 2002 that verified that Burmese refugee women and girls are susceptible to trafficking.

The delegation conducted interviews with numerous international and local NGOs, UN agencies, academic experts, Thai government officials and U.S. Embassy representatives. It interviewed unregistered migrant workers, registered migrant workers and recognized refugees living in Thailand. It also visited two refugee camps, Umpiem Mai near Mae Sot and Camp 1 near Mae Hong Son, as well as both private and government shelters that house trafficked persons. In the course of its research, the delegation traveled to Bangkok, Mae Sot, Mae Hong Son and Chiang Mai.

This assessment is part of a global study by the Women's Commission to explore the nexus between refugee protection and trafficking. This report specifically discusses the vulnerabilities to trafficking of refugees or people in refugee-like circumstances, rather than covering broadly all issues prominent on the vast terrain of trafficking. The assessment offers concrete recommendations to policymakers on how to prevent and respond to trafficking in refugee populations, taking into account the needs and rights of trafficked persons who have fled persecution or armed conflict in their homelands.

INTERNATIONAL REFUGEE LAW

After World War II, the international community joined together to establish international standards for the protection of refugees. This effort resulted in a treaty known as the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol (the Refugee Convention).⁶

The Refugee Convention imposes on countries the obligation to protect any individual found to have a well-founded fear of persecution on account of race, religion, nationality, political opinion or membership in a particular social group.⁷ It also prohibits the expulsion or return of refugees to a country where their lives or freedom would be threatened on the basis of these five criteria. This is known as the principle of *non-refoulement*.⁸

⁶ United Nations Convention Relating to the Status of Refugees, 189 UN Treaty Series 137 (opened for signature July 28, 1951); United Nations Protocol Relating to the Status of Refugees, 606 UN Treaty Series 267 (opened for signature January 31, 1967) (hereinafter Refugee Convention).

⁷ Refugee Convention, art. 1.

⁸ Refugee Convention, art. 33.

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The Refugee Convention has been widely ratified, with 145 states party to either or both the Convention and the Protocol as of February 1, 2004.⁹ The office of the UN High Commissioner for Refugees (UNHCR), as well as other refugee experts, consider the principle of *non-refoulement* to be customary international law, and thus binding on all countries even if they are not a party to the treaty.¹⁰

Refugee protection is generally interpreted in the context of human rights law. As human rights standards have evolved over the years, the refugee definition has often been interpreted to cover violations of such rights. This has been true, for example, in cases involving gender- or age-related persecution.¹¹

A similar trend has occurred in terms of trafficking as a human rights violation. Some countries have granted asylum to trafficked persons, an important acknowledgment of this growing human rights violation.¹² UNHCR has also taken the position that trafficking may constitute a form of persecution that merits refugee protection if the country of origin is unable or unwilling to offer protection against such harm.¹³

INTERNATIONAL ANTI-TRAFFICKING LAW

In November 2000, the UN General Assembly adopted the Protocol to Suppress and Punish Trafficking in Persons, Especially Women and Children, to the Convention Against Transnational Crime (the Trafficking Protocol).¹⁴ As delineated in Article 2, the purpose of the Trafficking Protocol is to prevent and combat trafficking in persons, with special attention to women and children; to protect and assist victims of trafficking, with full respect for their human rights; and to promote cooperation among countries that have ratified the protocol in order to achieve those objectives.

The Trafficking Protocol lays out the first internationally accepted definition of trafficking as:

⁹ www.unhcr.org

¹⁰ See UNHCR, Agenda for Protection, Document a/AC.96/965/add.1 (endorsed by UNHCR Executive Committee, October 2002) (noting that the applicability of the principle of *non-refoulement* is embedded in international law); see also Conclusion No. 25, Executive Committee, UNHCR (1982) (noting that the principle of *non-refoulement* is progressively acquiring the character of a peremptory rule of international law); Summary Conclusions, Global Consultations Expert Roundtable, UNHCR and Lauterpacht Research Centre for International Law (July 2001) (concluding that *non-refoulement* is a principle of customary international law and applies to refugees irrespective of their formal recognition), found in Erika Feller, Volker Turk, and Frances Nicholson, *Refugee Protection in International Law* (2003).

¹¹ Alice Edwards, "Age and Gender Dimensions in International Refugee Law," found in Erika Feller, Volker Turk and Frances Nicholson, *Refugee Protection in International Law* (2003).

¹² See, e.g., *In the Matter of J-M-*, Executive Office for Immigration Review (1996) (granting Chinese trafficked person asylum); Immigration and Refugee Board of Canada, Case V5-02904 (1997) (noting that international refugee protection would be a hollow concept if it did not offer protection to a Ukrainian trafficked person).

¹³ UNHCR, Guidelines on International Protection: Gender-Related Persecution (2002).

¹⁴ UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, adopted by UN General Assembly (November 15, 2000, entered into force, December 25, 2003) (hereinafter Trafficking Protocol).

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“...the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purposes of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.”¹⁵

Furthermore, the Protocol clarifies that the consent of a person to trafficking is irrelevant if threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power, abuse of a position of vulnerability or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person is used.¹⁶ It also states that the recruitment, transportation, transfer, harboring or receipt of a child under age 18 for exploitation is trafficking even if it does not involve any of the means defined.¹⁷

The Trafficking Protocol requires that countries facilitate and accept the return of their trafficked nationals and residents with due regard for their safety.¹⁸ It also requires the receiving country that is returning a trafficked person to do so with due regard for the safety of the trafficked person and the status of any relevant legal proceeding related to the trafficking; the protocol further notes that such returns “shall preferably be voluntary.”¹⁹ The protocol mandates that governments, to the extent possible, strengthen border controls to detect and prevent trafficking.²⁰ This includes training immigration and other law enforcement officials to prevent trafficking, prosecute traffickers and protect the rights of trafficked persons.²¹

Human rights organizations and experts have criticized the Trafficking Protocol for its relatively weak language on the human rights and assistance needs of trafficking victims.²² For example, article 6 of the protocol requires a state party to protect the confidentiality of trafficked persons “in appropriate cases and to the extent possible under its domestic laws.” It urges a state party “to consider” implementing programs to address the physical, psychological and social recovery of victims, especially provision of appropriate housing, counseling, medical care, material assistance and employment, educational and training opportunities. Finally, it encourages a state “to endeavor” to address the physical safety of victims, and “to consider” adopting measures to permit victims to remain temporarily or permanently in their territories.

This language is nonbinding rather than mandatory in nature. This weakness in part reflects the fact that the protocol was negotiated under the auspices of the UN Crime Commission, a body

¹⁵ Trafficking Protocol, art. 3(a).

¹⁶ Trafficking Protocol, art. 3(b).

¹⁷ Trafficking Protocol, art. 3(c)-3(d).

¹⁸ Trafficking Protocol, art. 8.

¹⁹ Ibid.

²⁰ Trafficking Protocol, art. 11.

²¹ Trafficking Protocol, art. 10.

²² See, e.g., Ann D. Jordan, International Human Rights Law Group, The Annotated Guide to the Complete UN Trafficking Protocol (May 2002); Anne Gallagher, “Trafficking, Smuggling, and Human Rights: Tricks and Treaties,” Forced Migration Review (January 2002); also, Women’s Commission interview with Bandana Pattanaik, Global Alliance Against Trafficking in Women (April 26, 2004).

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whose mandate is grounded in law enforcement rather than human rights.²³ However, regardless of whether or not they are a party to the Trafficking Protocol, countries are obligated under international human rights instruments to protect the rights of trafficked persons. Article 14 of the Trafficking Protocol, moreover, contains a savings clause that notes that the protocol should not be interpreted to undermine state obligations under human rights, humanitarian or refugee law, including the principle of *non-refoulement*.

ARMED CONFLICT AND HUMAN RIGHTS ABUSES IN BURMA

After Burma gained independence from British rule in January 1948, parliamentary democratic rule prevailed. In 1962, the military staged a coup d'état, and in 1974 the military government drafted a new constitution to legitimate its single-party rule. This government took an isolationist stance, withdrew engagement with the international community and ushered in decades of economic malaise and stagnation.²⁴

In August 1988, the military leaders responded to student demonstrations and general nationwide strikes demanding democratic elections with violent suppression. Several thousand civilians were reported to have been killed, and even more were harassed and arbitrarily imprisoned.

After two years of rule by decree and martial law, the government held multi-party elections in May 1990. The National League for Democracy (NLD), led by Daw Aung San Suu Kyi, won with an overwhelming majority despite the military placing her under house arrest prior to the election. The military ignored these election results, however, and refused to transfer power. Soon after, it announced the creation of an “interim” governing body, the State Law and Order Restoration Council (SLORC) that would rule by martial law and oversee the process of writing a new constitution. In 1997, SLORC refashioned itself into the State Peace and Development Council (SPDC).

Burma is an ethnically heterogeneous country of 50 million people.²⁵ Since independence a prolonged internal civil war has been waged between the central government in Rangoon and various ethno-political organizations, such as those representing the Karens, Shans and Karennis.

In recent years, the military responded to the decades-long movements for ethnic autonomy by implementing a harsh counter-insurgency policy that has deeply penetrated civilian life. The SPDC implemented the Four Cuts Policy that effectively cut supplies of food, funds, contact and information in areas where there was perceived resistance to the regime. The strategies of the policy include detention, torture and execution of villagers who are accused of having contact with the insurgents; systematic extortion and plunder of the villagers' crops, food supplies, livestock, cash and valuables; forced labor in which villagers are “recruited” to work for the

²³ Ann D. Jordan, International Human Rights Law Group, The Annotated Guide to the Complete UN Trafficking Protocol (May 2002).

²⁴ Economist Country Profile, 2000.

²⁵ There are eight primary ethnic groups: Kachin, Kayah, Kayin, Chin, Bama, Mon, Yakhine and Shan, as well as many smaller groups.

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army without pay; and, increasingly, forced relocation of villagers to sites directly under the control of the SPDC military troops. In 1996, the SPDC razed as many as 2,500 villages and forcibly relocated 370,000 Karen, Karenni and Shan to 180 relocation sites.²⁶ This policy terrorized and impoverished civilian populations, and exerted great pressure on the armed ethnic resistance movements. It has largely overwhelmed many of the ethnic armies, many of which have now signed ceasefire agreements with the SPDC.

In Burma today political repression continues. Forced labor practices and forced relocation of villagers, affecting hundreds of thousands of people, occur with impunity. Women continue to report systematic rape, “forced marriages,” murder and harassment by military personnel in all ethnic states and Central Burma, in both ceasefire and “non-conflict” areas.²⁷

THAILAND’S TREATMENT OF REFUGEES FROM BURMA

Since the mid-1980s, hundreds of thousands of Burmese refugees have fled to Thailand. The U.S. Committee for Refugees and Immigrants (USCRI) estimated that over 400,000 Burmese refugees were living in Thailand at the end of 2003.²⁸ Approximately 2 million additional Burmese were living in undocumented status in Thailand, of whom USCRI estimated 260,000 had fled human rights abuses but remained unrecognized as refugees.²⁹ This included approximately 200,000 Shan refugees fleeing forced relocations and labor in Shan State, who are not acknowledged by the Thai authorities and are generally deemed “illegal” migrant workers.³⁰

Thailand has never ratified the 1951 Convention, the international treaty that defines refugees as persons who have a well-founded fear of persecution on the basis of race, religion, nationality, political opinion or membership in a particular social group. It has instead adopted its own definition of a refugee as a “person fleeing fighting,” and even this limited definition has been applied narrowly only to those fleeing active fighting.³¹

This approach disregards the political reality for many Burmese, especially those who are members of ethnic minority groups. Human rights abuses, including political imprisonment, torture, extra-judicial murders, forced relocation, forced labor, recruitment of children into fighting forces and crop destruction, are prevalent.³² In addition, Burmese organizations have documented the widespread use of rape and other forms of sexual violence as a weapon of war.³³

²⁶ Veronika Martin, “Myanmarese Refugees in Thailand: No Freedom, No Choices,” World Refugee Survey (2004).

²⁷ See Women’s League of Burma report “System of Impunity” (Sept 2004); Karen Women’s Organization (KWO)’s “Shattering Silences” (April 2004); Shan Women’s Action Network (SWAN)’s “License to Rape” (2002).

²⁸ Veronika Martin, “Myanmarese Refugees in Thailand: No Freedom, No Choices,” World Refugee Survey (2004).

²⁹ U.S. Committee for Refugees and Immigrants, Southeast Asia Regional Summary, World Refugee Survey (2004).

³⁰ Thailand Burma Border Consortium Relief Programme (July-December 2003).

³¹ U.S. Committee for Refugees and Immigrants, World Refugee Survey (2004).

³² See Human Rights Watch, *Out of Sight, Out of Mind: Thai Policy toward Burmese refugees* (February 2004); Amnesty International, *Annual Report 2003* (2003).

³³ Karen Women’s Organization, “Shattering Silences” (April 2004); Shan Human Rights Foundation and Shan Women’s Action Network, “License to Rape” (May 2002).

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If Thailand were to embrace the internationally accepted definition of refugee, these rights violations would clearly fall within the five grounds meriting protection.³⁴

According to U.S. embassy officials and UNHCR, the Thai government has signaled that it may expand its definition of refugees to correspond more closely with that contained in the Refugee Convention. Thailand has continued to apply a more restrictive definition of refugee than that contained in international law.

The Thailand Burma Border Consortium (TBBC), the lead agency providing humanitarian assistance to registered Burmese refugees in Thailand, reported that as of June 2003, 38,088 Burmese had applied for asylum with the Thai authorities under the narrow definition of refugee adopted by the government.³⁵ As of August 2004, the total figure for refugees in camps in Thailand was 142,022, of whom 119,794 were registered and 22,228 were unregistered. The unregistered were either awaiting consideration or had been considered and rejected but were still residing in the camps.³⁶ Most camp-based refugees are ethnic Karen, with smaller numbers of other minority groups represented, including the Karenni and Mon, as well as people from the Tenasserim region of Burma.

In 2001, the Thai government adopted a policy of “no new arrivals,” which has resulted in thousands of unregistered refugees living in the camps surreptitiously.³⁷ The unregistered refugees living in the camps, often with registered members of their families, further strain available resources and provisions. The Thai government has also increasingly applied restrictions on the mobility of camp-based refugees, who are not supposed to leave the premises of the camp for any reason, including for work. UNHCR has a limited presence in the camps due to security restrictions imposed by the Thai government and due to its limited resources for protection activities.

UNHCR has registered approximately 4,000 urban-based refugees and asylum seekers in Bangkok and Mae Sot. This population includes political dissidents, students who fled the Burmese government crackdown on pro-democracy demonstrators in 1988, as well as some ethnic Karen refugees who do not feel safe in the camps.³⁸

Until January 2004, the Thai government permitted UNHCR to conduct refugee status determinations for urban-based asylum seekers, a process under which UNHCR applied the international definition of refugee rather than the Thai government’s more restrictive definition. If UNHCR found the individual to be a refugee, he or she was issued a refugee certificate that provided some nominal protection from deportation. Pending asylum, applicants were also certified by UNHCR as under its protection. However, in January 2004, UNHCR stopped such

³⁴ Indeed, it is interesting to note that the asylum grant rate for Burmese refugees who seek protection in other asylum countries is typically quite high. For example, 2003 statistics from the Office of Planning and Analysis, Executive Office for Immigration Review, U.S. Department of Justice, indicate that asylum claims from Burmese are granted at 41 percent.

³⁵ Ibid.

³⁶ Sally Thompson, TBBC, via email correspondence, Oct. 2004.

³⁷ Ibid. Human Rights Watch estimates that as many as 30,000 unregistered refugees are living in the camps. Human Rights Watch, “Out of Sight, Out of Mind: Thai Policy toward Burmese Refugees” (February 2004).

³⁸ Human Rights Watch, “Out of Sight, Out of Mind: Thai Policy toward Burmese Refugees” (February 2004).

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screenings after being pressured by the Thai government, leaving thousands of potential refugees in limbo.³⁹

The following month, however, the Thai government permitted UNHCR to move forward with a new registration program for asylum seekers. In contrast to past practice, this system did not include refugee status determinations but UNHCR only registers and refers the cases to Provincial Admissions Boards.⁴⁰ Provincial admissions boards are going to perform refugee status determinations in the near future; the criteria of a refugee include “fleeing fighting” and “political persecution.”⁴¹

Around the same time, the United States launched an initiative in cooperation with UNHCR and the Thai government to resettle approximately 4,000 urban-based Burmese refugees from Thailand to the United States. This program was expanded in August 2005 to resettle camp-based refugees as well. UNHCR also continued to conduct refugee status determinations for family reunification cases and high profile protection cases.⁴²

THAILAND’S TREATMENT OF “MIGRANT WORKERS”

As precarious as the situation is for refugees in Thailand who have either been registered or recognized by UNHCR under the programs outlined above, the situation of Burmese deemed “migrant workers” by the Thai government is even more troubling. These so-called migrant workers are often in fact people in refugee-like circumstances who cite similar reasons for coming to Thailand as those who are recognized refugees, that is, to escape armed conflict and human rights problems in their homeland.

The U.S. Embassy estimates that there are 800,000 to 2,000,000 migrant workers residing in Thailand, and that 80 percent of these workers are Burmese. NGOs working with Burmese migrants report a noticeable increase in the past four years in the number of unaccompanied Burmese children arriving in Thailand in search of jobs; they estimate the average age range to be 10-13 years old.⁴³

The Thai government initiated a process in October 2001 to register all migrant workers from Burma, Lao People’s Democratic Republic (Lao PDR) and Cambodia. This effort was only partially successful as the worker had to be sponsored by an employer to qualify for registration. The Thai government initially registered 580,000 workers, and under this program, workers were required to re-register each year. Only half of those originally registered, however, complied with this requirement.⁴⁴

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ Email correspondence with UNHCR (Sept. 23, 2005).

⁴² Ibid.

⁴³ Interview with Dr. Cynthia Maung, Mae Tao Clinic (April 18, 2004).

⁴⁴ Interview with Tim Sherer, U.S. Embassy (April 15, 2004).

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A second registration effort began in July 2004 to register migrant workers from Burma, Cambodia and Lao PDR who were living without documentation in Thailand. This latest initiative required the worker to pay 600 baht (US\$14) for medical fees, 1,300 baht (US\$32) for medical insurance and an additional 1,900 baht (US\$47) for the work permit once they find employment.

This month-long registration process offered amnesty to undocumented people and stipulated that migrant workers were to receive labor protection under Thai law. It also allowed migrants without employment or who have accompanied family members across the border to register for the first time. Employers of these workers also had to register with the government.⁴⁵

Conversely, the Thai government will more strictly enforce laws against workers who remain unregistered; they can be arrested and held for up to three months and/or fined 5,000 baht (US\$122). The employers of unregistered migrants can also be arrested and held for up to three years and/or fined 60,000 baht (US\$1,469). This is just one part of a broader effort in the region to implement the Memorandum of Understanding (MOU) established bilaterally between Thailand and the neighboring countries of Burma, Lao PDR and Cambodia. One component of the MOUs will be to organize recruitment of migrants in their home countries prior to legal migration to Thailand for work. These MOUs will be implemented in phases, a process that is likely to take several years.⁴⁶

During the registration process in July 2004, some workers expressed concerns that their personal information would be shared with the Burmese government and imperil their family members remaining in Burma.⁴⁷ Moreover, some employers did not initially cooperate with the registration process because it was generally cheaper to pay off local authorities to turn a blind eye to unfair labor practices, such as paying workers a wage below the legal minimum, than it was to comply with the registration process.⁴⁸ Immigration officials also often collude with factory owners; if migrant workers demand better wages or conditions, for example, the factory owner may alert immigration officers resulting in the arrest and deportation of workers.

The pool of migrant workers is thus ever available, and as one U.S. embassy official reported, “The whole system is based on a large pool of desperate Burmese women.”⁴⁹ If the Thai government is to advance meaningful solutions in keeping with Prime Minister Thaksin Shinawatra’s recent statement that trafficking is a national priority, it must enforce strict anti-corruption laws as they apply to immigration authorities and police officials, and labor laws as they apply to factory owners and contractors. While it remains difficult for migrant workers to complain or seek redress for abusive labor conditions, recent court cases and arbitration efforts in Thailand offer possibilities for workers to seek redress and to counter exploitative and coercive

⁴⁵ The Nation, Aug. 1, 2004.

⁴⁶ Interview with representative from the Federation Trade Union of Burma (FTUB), July 2004.

⁴⁷ Pranom Somwong, Migrant Assistance Program (MAP), cited in BurmaNet News, July 2004.

⁴⁸ *Ibid.*

⁴⁹ Interview with Tim Sherer, U.S. Embassy (April 15, 2004). In April 2004, however, a group of factory workers was attempting to sue their employers for back wages. This case may serve as an important legal precedent that recognizes the rights of migrant workers.

situations.⁵⁰ Efforts underway to allow Burmese migrants to join Thai unions may also be another meaningful mechanism for protection and arbitration.⁵¹

AT RISK OF DEPORTATION

FORMAL DEPORTATIONS

Despite their need for protection, unregistered migrant workers are at constant risk of deportation by the Thai authorities, who informally deport thousands of Burmese back across the border each month. Others are deported formally through an agreement between the Thai government and the SPDC. Under this agreement, each month up to 400 Burmese nationals who are detained at the Immigration Detention Center in Bangkok and Mae Sot are deported to a transit center in Burma run by the Burmese government. Their identity is shared with the Burmese intelligence forces.⁵² There appears to be little or no follow-up conducted to monitor and assess the safety of such returnees.⁵³

Furthermore, the organization in Burma responsible for the returnees has been criticized for not giving appropriate attention to the rights and privacy of trafficking victims. The Myanmar Women's Affairs Federation (MWAFF), which oversees the resettlement of trafficking victims, has, according to a women's organization at the border, shown little regard for the privacy or rights of the trafficked victims upon return.⁵⁴ MWAFF's autonomy from the military government is also in question, and membership in the MWAFF is mandatory for women aged 18 in eastern Shan State.

INFORMAL DEPORTATIONS

UNHCR has access to the Immigration Detention Center to monitor the deportation process. Those individuals who have been recognized as refugees or registered as asylum seekers are identified and removed from the list of cases slated for formal deportations. Anyone wishing to raise a new asylum claim is also permitted to do so and is removed from the list. However, this does not mean that the person is prevented from being deported. Instead, they are subject to informal deportation.⁵⁵

If informally deported, the person is bussed to a part of the Thai-Burma border where there is little Burmese military presence. In addition, the Burmese authorities are not notified of the return or of the person's identity.⁵⁶

⁵⁰ Interview with Dr. Saisuree Chutikul, Committee on Combatting Trafficking in Children and Women (April 24, 2004).

⁵¹ Federation Trade Unions of Burma (FTUB).

⁵² Interview with UNHCR (April 26, 2004).

⁵³ Human Rights Watch, "Out of Sight, Out of Mind: Thai Policy toward Burmese Refugees" (February 2004).

⁵⁴ MWAFF and the Burmese government organized a public ceremony in which they required a returnee to participate and publicly receive a sewing machine for income-generation purposes. SWAN, Oct. 2004

⁵⁵ Interview with UNHCR (April 26, 2004).

⁵⁶ Ibid.

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It is widely acknowledged that a person who is informally deported is likely to attempt to return to Thailand. One senior UN official noted, “Everyone knows the person comes right back.”⁵⁷ An NGO representative agreed, observing, “It’s a life cycle. The migrants are sent back to Burma, and then they come back to Thailand.”⁵⁸ However, the person is at risk of being detected by the Burmese authorities and also is at risk of abuses such as trafficking if they attempt to re-cross the border back into Thailand.

Moreover, as a UN official conceded off-the-record, “Technically, informal deportations do violate the principle of *non-refoulement*.” UNHCR reported that occasionally its office hears of reports of the Burmese military committing atrocities against returnees.⁵⁹ One official noted off-the-record: “We don’t agree with the process. It violates every human rights tenet imaginable. It’s horrible.”

VULNERABILITY OF BURMESE MIGRANTS TO TRAFFICKING

Thousands of refugees from Burma cross the border into Thailand each month to escape the civil unrest and human rights violations that have plagued their homeland for decades.⁶⁰ Some refugees reported that they were first internally displaced inside Burma before they crossed the border into Thailand. They report that they cannot survive alone in Thailand, and therefore organize with other internally displaced persons and move across the border as a group.⁶¹

The Burmese often cross the border without documentation, although documentation that permits short-term entrance into Thailand is available. Such passes are valid for one to two days for a small fee, and are designed to facilitate trade and commerce along the border. Some interviewees reported that they obtained a day pass for purposes of entering Thailand and then overstayed the period for which the pass was valid.

Burmese who cross the border without documents are sometimes able to cross the border undetected. At other times, they bribe Thai border officials in order to cross. There are numerous checkpoints along and inside the border, where such bribery is prevalent. NGOs report that Thai authorities posted at the checkpoints will also often steal a person’s belongings after they are stopped.⁶²

Fear of the Thai authorities compels many people to seek assistance in crossing the border. Sometimes family or community members offer such help. At other times, people pay “carriers,” who may or may not be people they know, to help them cross the border undetected. Such transportation is sometimes accompanied by an offer of employment. Such carriers operate

⁵⁷ Interview, Bangkok (April 14, 2004).

⁵⁸ Interview with SWAN, Chiang Mai (April 22, 2004).

⁵⁹ Interview with UNHCR (April 26, 2004).

⁶⁰ U.S. Committee for Refugees and Immigrants, Southeast Asia Regional Summary, World Refugee Survey (2004) (reporting that over 2,500 Burmese refugees flee to Thailand each month).

⁶¹ Interview with SWAN (April 22, 2004).

⁶² Interview with Karen Women’s Organization, Mae Sot (April 17, 2004).

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through informal networks, and Burmese often access them through friends and community contacts.⁶³

Often, Burmese who wish to enter Thailand do not have enough money when they arrive at the border to pay a carrier and may wait in the border area anywhere from a few days to months before crossing. NGOs that work with the Burmese report that trafficking often occurs during this vulnerable time.⁶⁴

While crossing the border is a risky and dangerous step, Burmese migrants are often desperate to escape conditions in Burma. As one senior UN official reported: “You have to consider trafficking from the point of view of why the Burmese are crossing into Thailand to begin with. They are fleeing to escape forced labor, forced relocation, rape and economic deprivation. They first have to flee for safety, and then sort out their situation. They need to eat and have to find work, and that’s where the vulnerability comes in, because there is no safe place for them.”

The carriers themselves are in fact frequently engaged in trafficking. A local NGO reported that the carriers often tell the relatives of a woman or child that life is better in Thailand. The woman or child is then forced to work without pay. The Karen Women’s Organization, for example, reported that a woman who was forced to work as a domestic servant in Bangkok came to the organization for help after she escaped her captors. She reportedly had been recruited while still living in Rangoon. The traffickers took all of her money and never paid her for her work in Bangkok. The Karen Women’s Organization observed, “They are lucky if they escape the traffickers, but they also don’t want to go back to Burma.”⁶⁵

It is also widely acknowledged that Thai officials themselves are sometimes involved in trafficking. One senior UN official reported, “Local level officials are definitely involved. We haven’t seen effective human rights training or prosecution, or even an inclination to address this aspect of the problem.”⁶⁶ He observed: “Almost all transport involves some official. It’s the only way to get through the checkpoints.”

For example, he noted that Thai immigration officials are actively trafficking women in Mae Sot, a town located on the northwestern border with Burma. He reported that the officers often force trafficked women to have sex with them and then sell the women to serve as sex workers in the karaoke bars. He observed, “Because of this, immigration police consider a post in Mae Sot as the most desirable.” He concluded: “The Thais have to create an anti-corruption force and break some heads. They have to arrest, jail, and strip officers of their rank. The graft is just too significant otherwise.”⁶⁷

Nwe, a 38-year-old domestic worker, who is now caught in debt bondage as she tries to pay off the fee charged to her by a Thai carrier who facilitated her border crossing, reported:

⁶³ Interview with Amalee McCoy, ECPAT (April 16, 2004); Interview with Tim Sherer, U.S. Embassy (April 15, 2004).

⁶⁴ Interview with SWAN (April 22, 2004).

⁶⁵ Interview with Karen Women’s Organization (April 17, 2004).

⁶⁶ Interview, Bangkok (April 14, 2004).

⁶⁷ Ibid.

“I was taken by car for four hours. At night, I slept in a plantation; there were five men and two other women there too. We were dropped near the bottom of a mountain, and more people arrived to join our group. There were 35 of us, including me, but I couldn’t keep up with the walking. The Thai guides warned me that if I couldn’t walk, they would kill me. A 40-year-old woman and her nephew and niece were left behind because the woman couldn’t walk. On the trip, there were young girls who were taken by the guides. They were raped. The guides didn’t bother me because I am old.

“It was a very hard journey. We were only given one small meal a day; we were given very little rice stuffed inside a bamboo and only some canned tuna. We walked for about four days [when] we were finally allowed to rest at another plantation for a day. We were then taken to Bangkok by bus.

“I now make 2,500 baht (US\$61) a month. I watch my employer’s two children; they are three and seven years old. I work from about five in the morning to ten at night. I also sometimes help out at my employer’s health clinic, but when we do, we don’t return home until midnight or one in the morning. It is not a very good situation.”⁶⁸

VULNERABILITY OF CHILDREN TO TRAFFICKING

According to NGOs that work with the Burmese refugee community, the number of children who arrive alone in Thailand has increased in the past four years. They also report that families are often separated once in Thailand. In other cases, children may be left alone while their parents are at work. Children who are alone are more vulnerable to abuses such as trafficking.

Children do not have access to Thai schools, which exacerbates this vulnerability. Even if children were permitted to enroll in school, other barriers exist that would inhibit their attendance, such as the cost of school uniforms, language barriers, sports fees and a lack of transportation. The Burmese community at the border has established its own school programs for children, but these programs are unrecognized and unregulated. The demand is also very high; enrollment reportedly increases by 20 to 25 percent a year.⁶⁹

A local NGO, Social Action for Women (SAW), operates a safe house for women and children in the Mae Sot area. Many of the women are in need of temporary shelter, and the children who seek shelter with them have been abandoned or their parents can no longer afford to care for them. The children range in age from newborns to ten years old. A non-formal school located on the fringes of a migrant worker settlement offers education to children in a rudimentary building. The one-room school serves 150 Burmese children of all ethnicities. Some of the older children attending this school had previously been trafficked.

⁶⁸ Interview, Bangkok (April 12, 2004).

⁶⁹ Interview with Dr. Cynthia Maung, Mae Tao Clinic (April 18, 2004).

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The principal of this school⁷⁰ reported that in his experience some children are trafficked from inside Burma across the border into Thailand. The traffickers then collect a large group of children in Mae Sot, directly across the border and transport the children to Bangkok. The traffickers lie to the children's parents, telling them that the children will live "an easy, better life."

Once they arrive in Bangkok, the traffickers force the children to communicate to their parents that they are well cared for. Gradually, however, the traffickers will tell the parents that the children are misbehaving, that they are not working hard enough, and that the children are forgetting them. Therefore, when the child does not send money back to the parents, the parents assume it is because the child is not working hard enough or is no longer gainfully employed. This is to drive a wedge between the children and their parents in order to sever the child's familial ties. If the parents continue to insist that they want to see their children, the trafficker may send the child back in order to avoid trouble and unwanted attention. In most cases, however, the parents are unable to investigate the whereabouts of their child and thus are forced to give up finding them, at which point the trafficker may sell the child to someone else. These children report that they feel abandoned by their parents.

A common strategy is to force the children to sell flowers or trinkets or to beg on the streets of Bangkok. If the child does not make the required amount of money each day, they are deprived of food, beaten or forced to stay on the street.⁷¹

⁷⁰ Interview April 18, 2004.

⁷¹ Interview with Dr. Cynthia Maung, Mae Tao Clinic (April 18, 2004).

Kaung was born in Thailand, although his parents are Muslims from Burma. He remains unrecognized and stateless.

Kaung reported that he was ten years old when a trafficker paid his estranged father 1,000 baht (US\$25) for him while his mother was temporarily away from home. He was residing in Mae Sot at the time, a Thai border town close to the Burmese border. The trafficker who bought him resold him to a gang that operated begging rings in Bangkok.

Kaung reported that he lived with two other boys and one girl while working in a begging gang. They were locked in the home of the traffickers, where they slept on the floor with no blankets or mosquito netting. Each day, the traffickers gave Kaung approximately one cup of ramen noodles, which he had to share with another boy. This was his only food, leaving him constantly hungry.

Kaung reported that the traffickers beat him with a metal rod, stuck him with needles and burnt him with cigarettes. He also shared that he witnessed severe abuses against the other children. The traffickers took one of the boys away one day. When he came back, he no longer had hands or feet. Kaung believes that the traffickers had severed his limbs to keep him from running away.

Kaung also reported that the traffickers accused the girl of speaking with the police one day. They beat her with a metal rod, and injected her tongue with some substance that prevented her from speaking. Kaung called it “mute medicine,” because the girl could not speak the next day. He reported that she was frothing at the mouth the next morning.

Kaung said that after that he secretly found a way to contact the police. When the police arrived at the traffickers’ home, the traffickers had run away. The police held him at the police station for approximately one month, an experience he described as OK because the police gave him food. The police then dropped him at the border near Mae Sot, where he found his way back to his mother who had been looking for him.

Kaung reported that his mother was furious when she found out that his father had sold him to the traffickers. She took Kaung back to Burma out of concern but eventually returned to Mae Sot. Kaung has been approached since his return by a trafficker who asked him if he would like to work again; Kaung resisted and the trafficker told him that he seemed like too much trouble anyway. Kaung currently attends one of the non-formal schools organized along the border by the Burmese migrant/unrecognized refugee community.

VULNERABILITY OF CAMP-BASED REFUGEES TO TRAFFICKING

Registered refugees who live in camps in Thailand are generally not allowed to leave the camp premises. Those who do must apply for permission from the elected camp committees in order to obtain a one-day pass, which the Thai authorities must then review and approve. However, the rules dictating the issuance of passes to leave the camps are inconsistently implemented; as one NGO observed, “There’s the law, and then there’s what is accepted that day.”⁷²

Camps are gated and fenced, and Thai police, who are charged with camp security, guard the camp entrances. One camp leader observed: “It’s not easy. It is like we are in prison.”⁷³ A local NGO said: “The Thais don’t want to make life easy for the refugees, because they don’t want the refugees to forget about going back to their country... There is no freedom here or in Burma.”⁷⁴ Visitors must also apply for permission to enter the camps from the local Thai authorities.

Local NGOs reported that it is also becoming more difficult for refugees to obtain permission to leave the camp premises. The Thai government views the camp residents as creating competition with local Thais for jobs. At the same time, the Thai government is reluctant to allow income generation projects in the camps because it does not want to encourage the idea that the refugees may remain indefinitely or permanently in Thailand. In fact, the government refers to the camps as “temporary shelters,” despite the fact that some residents have lived in the camps for almost two decades.⁷⁵

Employment opportunities in the camps are thus limited. More educated refugees, including women, can teach or work for an international NGO. Uneducated women, on the other hand, may only be able to sell things such as baked goods that they make themselves. Otherwise, they must seek a means to support themselves and their families outside the camps.

Moreover, wages for those who are able to work in the camps are often less than those that can be made outside the camps working in agriculture. One refugee camp leader reported that the average monthly wage as a teacher was 500 baht (US\$12) and with an international NGO was 1,100 baht (US\$27), whereas the average monthly wage as a day laborer working for a local farm is 900-2,400 baht (US\$22-59), with women making lower wages than men.⁷⁶

Refugees complain that neither the wages inside nor outside the camps are adequate. A camp leader in Camp 1 near Mae Hong Son explained: “No way is 50 baht (US\$1.22) a day enough. Besides, the agricultural work is seasonal, and there is nothing to do in the seasons in between

⁷² Interview with International Rescue Committee (April 21, 2004).

⁷³ Interview with Umpiem Mai camp committee (April 19, 2004).

⁷⁴ Interview with WEAVE (April 20, 2004).

⁷⁵ Ibid.

⁷⁶ Interview with Karen Women’s Organization, Umpiem Mai camp (April 19, 2004); Interview with WEAVE (April 20, 2004); Interview with camp committee leaders, Camp 1 (April 21, 2004); Interview with Karenni Women’s Organization (April 21, 2004).

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planting and harvesting.” She noted: “Some people therefore leave the camp, and don’t come back. Some are stolen, trafficked.”⁷⁷

Local NGOs report that an additional source of pressure on camp-based refugees to seek employment outside the camp is the fact that assistance agencies are only able to provide camp residents with basic supplies. This includes oil, rice, beans and fortified blended food with enhanced nutritional value. Assistance agencies do not provide other necessary food items such as vegetables, nor is there adequate space inside the camp for residents to grow much of their own. To be able to purchase such commodities, residents must have a source of income. Furthermore, many unregistered refugees are living in the camps, often with registered members of their families, further straining available resources and provisions.

Camp residents do in fact regularly leave the camp without permission in order to find work. As one camp committee leader put it, “There is no work here, and even if you are educated, it doesn’t take you anywhere.”⁷⁸ As refugees languish for years in camps, younger people in camps look to life outside the camps. Once they leave the camp, the fact that they are registered with the Thai authorities as recognized refugees does little to protect them; if the Thai police apprehend them outside the confines of the camp, they are at risk of arrest or deportation. The camp committees, who serve as the elected representatives of the refugee community, will intervene to try to assist a person who is apprehended outside the camp but only if the person had asked for prior permission to leave.⁷⁹

Because of the clandestine nature of the movement in and out of the camps, it is difficult to ascertain exact figures tracking such movement. Evaluating the extent to which camp-based refugees are at risk of trafficking is further complicated by the fact that coercive or exploitative situations can occur at different junctures in the process of migrating from camps to urban or semi-urban areas. Those individuals who have been elected to camp leadership positions are also reluctant to discuss the frequency with which refugees leave or return to camps. Families are also disinclined to report if relatives leave camp as it may mean fewer provisions provided to reflect the decrease in family members and fear of repercussions from Thai authorities. An NGO representative who works with the camp residents also noted that families are reluctant to talk about family members who are trafficked because they are ashamed; she recalled one case in which two girls were trafficked, and the father of one of the girls told her that she might as well kill herself.⁸⁰

One NGO representative whose organization is very active in the camps observed, “We really don’t know how pervasive trafficking is in the camps.” She went on to note that it would be difficult for international NGOs to track the extent of trafficking in the camps, and that local NGOs are better positioned to monitor and evaluate the problem. She also emphasized that prevention would be the preferable solution. The Thai authorities are reluctant to enforce Thai laws inside the camps and laws addressing crimes against women generally, and relying on the

⁷⁷ Interview with Camp 1 committee (April 21, 2004).

⁷⁸ Ibid.

⁷⁹ Interview with Umpiem Mai camp committee (April 19, 2004).

⁸⁰ Interview with Thailand Burma Border Consortium (April 26, 2004).

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judicial systems established by the camp committees for internal governance of the camps has brought mixed results.⁸¹

However, it was widely acknowledged that trafficking has occurred in and around the camps. A local NGO reported that there have been incidences in which traffickers actually entered the camp and took women and children away by trucks; however, they reported that the camp residents were able to intervene and rescue the victims.⁸²

An international NGO reported that it was aware of five girls who had been trafficked out of the camps four or five years ago. The girls were forced to do domestic work. It reported that the family for whom she was forced to work murdered one of the girls. Two other girls ran away. The girls reported that they worked 17-hour days and were only fed twice a day.

When the NGO brought the girls to the police to report the trafficking, the authorities kept asking for additional information. However, it took two months to get permission from the Thai Ministry of the Interior for the girls to leave the camp premises, and each time they were asked to produce more evidence. After the third time, the girls asked them to stop the process because they were discouraged. As a result, there were no prosecutions in the case. The NGO concluded: "In Thailand, it doesn't matter how good the law is. Law enforcement doesn't enforce it....The lack of concern and awareness leads to a lack of implementation."⁸³

At the beginning of 2004, a 17-year-old girl left the camp premises. She was approached by an acquaintance who asked if she needed work. The woman then sold her to a group of men. The men took her to a guesthouse where she was raped. The girl was able to run away, return to the camp and report the situation. UNHCR took her to a safe house and was arranging legal representation for her. The Thai police arrested the woman who trafficked her.⁸⁴ As of April 2004, the girl was still living in the safe house pending the conclusion of the proceedings. A local NGO indicated that without UNHCR's assistance, the community would have had no way to help her.⁸⁵

The refugee camp committee that oversees the Umpiem Mai camp near Mae Sot explained that the camp committee has established rules against trafficking in the camp. If a camp resident engages in trafficking, they will be warned up to three times. After the third incident, the perpetrator will be put in the camp jail for two weeks to one month.

The committee, however, believes that trafficking is not common, and noted that they have only issued a few warnings. They believe that when trafficking occurs, it happens outside the camp when refugees seek out the services of a carrier. Often, it is a family member who refers the refugee to the carrier. They reported that when a refugee gets caught up in trafficking, typically

⁸¹ Ibid.

⁸² Interview with Karen Women's Organization (April 17, 2004).

⁸³ Interview with International Justice Mission (April 17, 2004).

⁸⁴ Interview with Safe House administrator (April 23, 2004). The Women's Commission has chosen not to reveal the name of the center in order to protect the victim.

⁸⁵ Interview with Karenni Women's Organization (April 21, 2004).

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the person does not return to the camp. They concluded, “But we do hear about it when it happens.”⁸⁶

Often, residents who leave the camp seek employment in Bangkok. To do so, they must pass numerous checkpoints along the way that are manned by the Thai authorities. Carriers assist them through this process, charging 5,000 baht (US\$122) or more for their services. The refugee must then pay back this debt, turning over as much as half her monthly wages to the carrier.

Refugee camp committee members gave conflicting information regarding which camp residents are most vulnerable to trafficking. Male members of the camp committee suggested that men were more at risk as they looked for employment outside the camps.⁸⁷ A woman leader interviewed separately, however, suggested that girls in their mid-teens were most vulnerable. She observed, “Girls who are 14 or 15 are at an attractive age for trafficking.”⁸⁸ (This statistic would be borne out by the international profile of trafficked persons; the vast majority are women and children.)

She also noted that reports of trafficking in the Umpiem Mai camp are rare. Prior to the camp being moved in recent years to another location, the woman leader noted that in the old camp, which is no longer used, two girls had disappeared and the refugee community believed that they were trafficked. The parents of one victim subsequently returned to Burma. The other parents now reside in Umpiem Mai, and she observed, “They always cry.”⁸⁹

Khin is a 13-year-old Muslim girl who lives in a refugee camp near Mae Sot with her mother and three siblings. Khin reported that her father and stepmother took her to Bangkok, where for approximately a year she was forced to sell tissues on the street. If she did not make at least 200 baht (US\$ 5) a day, she was beaten. Her father and stepmother then forced her to go back out to the streets until she brought the required amount of profits home.

Eventually, Khin was picked up by the Thai police and taken to a government-run shelter for trafficking victims. Later the police returned her to the border near Mae Sot where she was reunited with her mother and siblings. At that point, a local NGO asked the refugee community in the camp to take in Khin, her mother and her siblings and care for them, because her mother had few means of generating income. This had been a contributing factor that had compelled Khin to live with her father and, while her mother was unaware of the abuses, nonetheless left Khin vulnerable to being trafficked. Khin still surreptitiously leaves the camp and stays at a school organized by the migrant/refugee community in town, often for an extended period. When asked why she leaves the camp she explains that she doesn't like living in the camp despite her mother and siblings being there and describes being bored and treated differently due to her ethnic and religious background.

⁸⁶ Interview with Umpiem Mai camp committee (April 19, 2004).

⁸⁷ Ibid.

⁸⁸ Interview with Karen Women's Organization, Umpiem Mai camp (April 19, 2004).

⁸⁹ Ibid.

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Some local NGOs are conducting trafficking awareness activities in the camps. For example, the Karen Women's Organization distributes educational leaflets to camp residents warning them about the dangers of trafficking.

International NGOs working with the refugee camp population are also beginning to focus on the problem of trafficking. The International Rescue Committee was exploring the implementation of a program to educate refugees about trafficking and to develop psychosocial programs to assist trafficked persons. It planned to focus on responses to trafficking that have as their core the best interests of the survivor, working in coordination with local NGOs.

THAILAND'S RESPONSE TO TRAFFICKING

Thailand serves as a source, transit and destination country for trafficking. Economic and political problems in countries that border Thailand—as well as poverty in Thailand itself—fuel trafficking in the region. Thai people, in particular those from poorer or rural regions, are themselves trafficked within Thailand or to other countries through highly organized international criminal rings. Hill tribe peoples who reside in northern Thailand, and almost half of whom are denied citizenship status, are extremely vulnerable to internal trafficking.⁹⁰ Thailand receives cross-border trafficking victims from Cambodia, China and Lao PDR, as well as Burma.

Thailand has not yet ratified the Trafficking Protocol, although it did sign both it and the Transnational Convention, thus signaling its intent to ratify eventually. Experts believe that ratification by Thailand is only a matter of time.⁹¹

Thailand has in the past enacted domestic legislation that partially addresses the trafficking problem. This includes the Prostitution Prevention and Suppression Act of 1997, which decriminalizes prostitution and penalizes traffickers through fines and possible imprisonment. It also includes the Prevention and Suppression of Trafficking in Women and Children Act of 1997, which further criminalizes trafficking and allows for the provision of temporary shelter and other services to trafficked persons.

In April 2004, the Child Protection Act of 2003 took effect, a comprehensive new law designed to enhance protection of children in Thailand under age 18 regardless of nationality. This law states that any action involving a child shall give primary importance to the best interests of the child and no discrimination shall be allowed. It forbids abandonment, neglect, abuse or torture of a child. It also forbids guardians from forcing, threatening, inducing or encouraging children to become beggars, live on the streets, commit crimes or engage in any acts that would harm a

⁹⁰ Interviews with Dr. David Feingold, Coordinator Trafficking HIV/AIDS Programs UNESCO; Tim Sherer, U.S. Embassy (April 15, 2004); International Justice Mission, "The Justice Briefing," (2004) (noting that nearly 400,000 of Thailand's almost 1 million hill tribe people do not hold official citizenship).

⁹¹ Interview with Dr. Saisuree Chutikul (April 24, 2004).

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child's growth or development.⁹² While the new law does not explicitly mention trafficking, these prohibitions may be interpreted as covering trafficked children and the exploitation they experience.

Thailand has also engaged neighboring countries in bilateral cooperative agreements to address trafficking. For example, it recently entered into a memorandum of understanding with Cambodia to combat trafficking in women and children and to assist victims of trafficking.⁹³ Using the Cambodian MOU as a model, it began a dialogue with other regional governments to pursue similar arrangements. In October 2004, the Coordinated Mekong Ministerial Initiative Against Trafficking (COMMIT) was officially signed by representatives from Thailand, Cambodia, China, Lao PDR, Burma and Vietnam. Accordingly, a regional Plan of Action based on this regional framework will be ratified by early next year.

By taking the lead in negotiating such bilateral and multilateral agreements, Thailand in some ways has served as a model in the Mekong region.⁹⁴ However, some experts are dubious about the impact of such agreements, noting that implementation has been difficult and many Thai officials do not view the MOUs as binding.⁹⁵

Thailand has also initiated training programs to support law enforcement measures to prevent, deter and combat trafficking. These initiatives target officials involved in law enforcement and criminal justice, including border officials, local police, attorneys and judges. The government has also committed to pursuing a multi-sectoral approach to anti-trafficking efforts, and has thus sought to educate and sensitize medical personnel and social workers on how to identify and work with trafficked persons. Thailand has also cooperated with NGOs working in the trafficking arena.

One senior official pointed out, however, that "a multi-sectoral approach is easy to say, but hard to do." For example, the standard procedure of rotating police officers among offices disrupts actual implementation after multi-sectoral training has occurred in a particular site.⁹⁶ Some NGOs believe that the training has been ineffective, because the training sessions are too short and target too many law enforcement officers at one time.⁹⁷ Others argue that training has too often targeted higher-ranking officers who, upon return to their workplaces, do not widely circulate the information acquired during the training workshops.⁹⁸

What remains a challenge in Thailand, therefore, is the actual implementation of anti-trafficking laws and policies. Enforcement is lax, due to a lack of awareness among law enforcement agencies, a lack of resources, a relatively weak judiciary and an emphasis on prosecution of drug

⁹² The Child Protection Act of 2003 (English language version available from UNICEF Office for Thailand, March 2004).

⁹³ Interview with Dr. Saisuree Chutikul (April 24, 2004).

⁹⁴ Interview with Tim Sherer, U.S. Embassy (April 15, 2004).

⁹⁵ Interview with Amalee McCoy, ECPAT (April 16, 2004).

⁹⁶ Interview with Dr. Saisuree Chutikul (April 24, 2004).

⁹⁷ Interview with the Asia Foundation (April 26, 2004).

⁹⁸ Interview with Dr. Saisuree Chutikul (April 24, 2004).

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traffickers rather than human traffickers. Moreover, Thai law enforcement agencies typically view crimes against women and children as soft crimes and therefore less of a priority.⁹⁹

Several agencies within the Thai government share responsibility for enforcing anti-trafficking laws, which also creates confusion and makes accountability difficult.¹⁰⁰ As one senior UN official put it, “It’s not a problem with Thai law; it’s about the political will to do it. It’s all about the political will.”¹⁰¹

Moreover, corruption is prevalent among Thai law enforcement personnel, who are often implicated in trafficking schemes. Following the Asian financial crisis in 1997, Thailand adopted a new constitution that explicitly provides a legal mandate to combat official corruption. Since then, the problem is widely talked about, but little has been done to actually resolve it. A U.S. embassy official observed, “There has been a brightening in the sky, but the effect hasn’t trickled down.”¹⁰²

The U.S. Department of State, which ranks the performance of countries around the world in their efforts to respond to trafficking, designated Thailand in 2005 as a “Tier 2” country out of three possible tiers. The U.S. Trafficking Victims Protection Act of 2000 reserves Tier 2 placement for “countries whose governments do not fully comply with the Act’s minimum standards but are making significant efforts to bring themselves into compliance with those standards.”¹⁰³ These minimum standards require the country under review to: 1) prohibit trafficking and punish acts of trafficking; 2) prescribe punishment commensurate with that for grave crimes, such as forcible sexual assault, for the knowing commission of trafficking in some of its most reprehensible forms (trafficking for sexual purposes, involving rape or kidnapping, or that causes death); 3) prescribe punishment that is sufficiently stringent to deter and that adequately reflects the offense’s heinous nature for the knowing commission of any act of trafficking; and 4) make serious and sustained efforts to eliminate trafficking.¹⁰⁴

In 2004, amendments were added to the fourth minimum standard such that there are now ten rather than seven criteria for consideration. The additional criteria stipulate the necessity of governments to monitor and assess their anti-trafficking efforts and make clear their commitment to anti-corruption measures by the number of prosecutions, convictions and sentences of officials who are involved in trafficking of persons. The country rankings are also determined by whether there has been discernable and “appreciable progress” made in the past year, and considerations of the percentage of people who are non-citizens who have been found suffering severe forms of trafficking in that country.

In 2004 a Special Watch List was created and added to the Tier 2 rankings. The list includes countries that moved from Tier 2 to 1 and from Tier 3 to 2 over the course of the past year. It also lists countries where the total number of trafficking victims is substantial and/or increasing,

⁹⁹ Ibid.; Interview with Khun Janejindajinda Pawadee, International Justice Mission (April 22, 2004).

¹⁰⁰ Interview with Tim Sherer, U.S. Embassy (April 15, 2004).

¹⁰¹ Interview, Bangkok (April 14, 2004).

¹⁰² Interview with Tim Sherer, U.S. Embassy (April 15, 2004).

¹⁰³ U.S. Department of State, Trafficking in Persons Report (June 11, 2003).

¹⁰⁴ Ibid.

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and where there is inadequate disclosure and evidence to suggest increased anti-trafficking efforts, such as conducting more investigations, prosecutions and convictions of people involved in trafficking, having diminishing indications that officials are not in fact involved in the trafficking trade and providing more assistance to victims of trafficking.

In 2004, Thailand was designated as a Tier 2 Watch List country by the U.S. Department of State. According to the Trafficking in Persons Report (2004), it had been placed on the Watch List because it failed to produce evidence that it had effectively addressed the protection needs of trafficking victims, in particular the protection of the Cambodian victims of trafficking who were caught up in the Thai government's efforts to remove street children in preparation for the APEC summit in October 2003. Over 200 additional Cambodian women and children were also deported in March 2004. In both instances, the deportations occurred without the protections required by the MOU.¹⁰⁵

The 2005 Trafficking in Persons report took Thailand off the Watch List and designated it as a Tier 2 country because, despite making considerable efforts, the Thai government still “does not fully comply with the minimum standards for the elimination of trafficking.”¹⁰⁶ Much of the Thai government's efforts in the past year have focused on applying more law enforcement measures and screening undocumented migrant workers to identify trafficking victims. The report also notes that the Thai government has made modest progress in addressing corruption among law enforcement authorities and members of the judiciary.

The Thai government has recognized for years that trafficking in persons is a problem, but the issue did not necessarily translate into a national priority. Concerned Thai officials in the past few years, however, have made inroads by increasing the government's regional and bilateral initiatives, although abiding by these regional initiatives will have to be significant to foster continued cooperation. The Thai government has also recently proposed new legislative and budgetary commitments to combat trafficking. In August 2004, Prime Minister Thaksin proposed new legislation, as yet unsigned into law, designed to improve protection for trafficking victims, foster better local and international coordination, tackle corruption among police and politicians, as well as establish a special police force. Thaksin also stated the need to better define human trafficking and address laws which, due to their harsh treatment of witnesses, provide little incentive for trafficking victims to testify.¹⁰⁷ He further announced an allocation of 500 million baht (US\$12,238,564) to care for and treat trafficking victims. The implementation and consequences of these policy statements will be more apparent in the coming years.

The U.S. embassy in Thailand funds a number of NGOs to address the trafficking issue, including training of government officials. However, this training does not include information regarding refugee protection.¹⁰⁸ Furthermore, a senior Thai official active on the trafficking issue believes that the U.S. government has advanced a prosecutorial response to trafficking in exclusion of a more victim-centered approach, a bias which she believes influences the rating of

¹⁰⁵ Trafficking in Persons Report, 2004, U.S. Department of State.

¹⁰⁶ Ibid.

¹⁰⁷ AFP, Bangkok, August 6, 2004 and Bangkok Post, Aug. 7, 2004.

¹⁰⁸ Interview with Tim Sherer, U.S. Embassy (April 15, 2004).

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countries in the annual State Department trafficking report. She described the U.S. government as “being like a horse with blinders on.”¹⁰⁹

A senior Thai official pointed to the creative responses to trafficking by Thai authorities that she believes the U.S. government has largely ignored. For example, a group of Laotian children who had been trafficked into factory work were rescued and, following mediation, the factory owner consented to paying the children Bt 20,000 (US\$490) before they were returned to Lao PDR. The factory owner was also threatened with a higher fine if he was caught trafficking again.¹¹⁰

The Thai government operates a shelter for vulnerable women and children, of whom about half are trafficked persons.¹¹¹ The shelter is located in the suburbs of Bangkok, approximately 2.5 hours from the center of the city on an island in the Chao Phrya River. Trafficked persons are held at the facility until the completion of the criminal proceedings against the traffickers involved in the case. The trafficked person is held indefinitely in order to act as a witness against the traffickers. The average length of stay in the facility is three to six months while the proceedings are pending. If the trafficked person refuses to testify against the traffickers, she is subject to immediate deportation. Family tracing procedures are conducted for children before repatriation takes place.¹¹²

Conditions at the government shelter are pleasant. The facility offers health care, counseling, life skills classes and recreational activities. Women and children are housed in dormitory settings. The infrastructure is also organized so mothers and their children can remain together at the shelter. Childcare support is also available.

However, residents are not allowed to leave the premises and the dormitories are locked. At the time of the Women’s Commission visit, approximately one-third of the 310 residents were Burmese women and children.¹¹³ No interpreters are available on site at the facility, but the shelter administrators try to find one if needed. A social worker acknowledged, however, that this is not always possible.¹¹⁴ While the staff appears committed to providing social services and support to these women and children, a staff member admitted that additional resources and staff are needed.¹¹⁵

In contrast to the immigration detention centers, there is no system in place at the government shelters to explore whether trafficked persons held at the shelter have potential claims to refugee status before they are deported. The International Organization for Migration conducts the deportation. Once the person is returned to Burma, Save the Children U.K. and World Vision

¹⁰⁹ The U.S. State Department’s rating of Thailand as a Tier 2 country in 2003 and its placement of Thailand on a trafficking watch list in 2004, did, however, generate a response from the Thai government. This is partly because under the U.S. trafficking laws, countries can be subject to sanctions if they are found to be inadequately responding to the trafficking problem.

¹¹⁰ Interview with Dr. Saisuree Chutikul (April 24, 2004).

¹¹¹ The other residents are generally victims of domestic violence.

¹¹² Email correspondence with UNHCR (Sept. 23, 2005).

¹¹³ Interview with staff at Baan Kretagang (April 24, 2004).

¹¹⁴ Ibid.

¹¹⁵ Ibid.

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monitor the returns through home studies.¹¹⁶ The success of this process, however, has been questioned by some NGOs, as they have seen many cases of women who were deported to Burma returning to Thailand. A staff member at the government shelter spoke of some cases in which women were returned to the shelter after having been previously repatriated to Burma.¹¹⁷

UN RESPONSE TO TRAFFICKING IN THAILAND

Virtually every UN agency that has a presence in Thailand is addressing some aspect of the trafficking issue. UN agencies have also made efforts to share information and coordinate their responses to trafficking through regular meetings.

UNHCR assists the Thai government with refugee status determinations. It also has a limited presence in the refugee camps, although some refugees complain the agency has limited visibility and is not playing a strong leadership or coordination role. One NGO observed off the record, “UNHCR has less presence in the Thai camps than anywhere else I’ve seen in other refugee settings.” Because Thailand is not a party to the Refugee Convention, however, UNHCR is limited in its capacity to aggressively push for more access to the refugees and to the camps.

UNICEF is just beginning to focus on refugee and migrant children in Thailand. In April 2004, it was in the process of launching a situational analysis to identify child protection problems, including HIV/AIDS, street children abuses and trafficking. It plans to develop psychosocial programs to respond to such problems, and is also hoping to develop a presence in the refugee camps as well as along the Thai-Burma border.¹¹⁸

UNICEF is also trying to work with the Thai government to build a system of child protection systems at the provincial level. It has begun this process in Chiang Mai, and hopes to expand to Mae Hong Son. These systems are designed to take a multi-sectoral approach to child protection. This focus complements the new child protection law enacted by the Thai government, which does not distinguish between Thai children and foreign-born children (see above). However, UNICEF noted that it would have to work with the Thai government to ensure proper application of the law.¹¹⁹

UNICEF has only recently begun to tackle the lack of birth registration for children whose parents are unregistered refugees. In 2003, MOI instructed medical service providers, including NGOs, to issue delivery certificates. This applies for new births to parents who were registered in the camps during the 1999 registration exercise.¹²⁰ Only children of registered refugees receive birth registrations from the Thai Ministry of the Interior. Other children are only informally registered through NGOs such as the International Rescue Committee or the Mae Tao

¹¹⁶ Interview with Tim Sherer, U.S. Embassy (April 15, 2004).

¹¹⁷ Interview with staff at Baan Kretagang (April 24, 2004).

¹¹⁸ Interview with Elsa Lauren, UNICEF (April 16, 2004).

¹¹⁹ Ibid.

¹²⁰ Email correspondence with UNHCR (Sept. 23, 2005).

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Clinic.¹²¹ Without adequate registration, children are rendered virtually stateless, putting them at greater risk of abuses and forcible deportation.

UNESCO continues to take a leading role in registering Highland or Hill tribe peoples for citizenship, as without it they are vulnerable to trafficking and other abuses. In addition, they are denied basic rights to education, health services, land ownership, political participation and the right to travel freely. Agencies and experts working on the phenomenon of trafficking in Thailand widely acknowledge the lack of reliable or verifiable estimates on this front. As a U.S. Embassy official pointed out, “By nature, it’s a hidden population.”¹²² UNESCO’s Trafficking Project responds to this need for more accurate data by conducting a Geographic Information System-linked, village-based system to better ascertain the scale and geographic distribution of trafficked persons from the Upper Mekong region into Thailand.¹²³

In 1999, the UN Foundation provided funding to coordinate the activities of these and other UN agencies. The UN Inter-agency Project on Human Trafficking in the Mekong Sub Region (UNIAP) coordinates both regional and national meetings that take place on a quarterly basis. The governments of Cambodia, China, Lao PDR, Burma, Thailand and Vietnam participate in the project along with 13 UN agencies, eight NGOs and one international organization. Participating agencies include UNHCR, UNICEF, the United Nations Development Program (UNDP), the United Nations Population Fund (UNFPA), the International Organization for Migration (IOM), Save the Children Alliance and End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes (ECPAT).

In regard to the nexus between birth registration and trafficking, in complementing UNHCR’s joint efforts with key NGOs to improve the birth registration system in the camps on the border, in August 2004, the UNHCR Regional Office—through UNIAP—spearheaded an initiative: a letter signed by all UN and NGO members of UNIAP’s working group on the subject of birth registration of children born in Thailand. Addressed to the Foreign Minister, the letter spelled out the links between the lack of birth registration and vulnerability to trafficking, and encouraged the government to register all children of non-citizens and ethnic minorities born in Thailand. The letter was sent to coincide with a Thai government national meeting on trafficking in an effort to harness the political will on the “war on trafficking” in a positive direction behind this issue.

S of the UN agencies also participate in the monthly meetings of the Committee for Coordination of Services to Displaced Persons in Thailand (CCSDPT). CCSDPT is organized by a core group of NGOs working inside the refugee camps. Organizations participating in CCSDPT include UNHCR, WHO, the Thailand Burma Border Consortium, the International Rescue Committee, the Jesuit Refugee Service, Médecins Sans Frontières, and Aide Médicale Internationale (AMI).

¹²¹ Interview with Elsa Lauren, UNICEF (April 16, 2004); Dr. Cynthia Maung, Mae Tao Clinic (April 18, 2004).

¹²² Interview with Tim Sherer, U.S. Embassy (April 15, 2004).

¹²³ Interview Dr. David Feingold, Coordinator Trafficking HIV/AIDS Programs, UNESCO (April 23, 2004).

TRAFFICKING AND THE SEX INDUSTRY

Thailand has for many decades been the site of a thriving sex industry. In recent years, there has been much discussion about the links between prostitution and trafficking in the region. Some experts argue that the anti-prostitution policy discussion has become conflated with anti-trafficking initiatives. Some also believe that this link is sometimes misunderstood and perhaps overemphasized, as not all trafficked persons end up working as sex workers and not all sex workers have been trafficked. A U.S. Embassy official observed, “The sex industry gets all the attention, but a significant percentage of trafficked persons are actually in factory work. If I had to guess, I would say it’s probably a 50/50 split.”¹²⁴ The policy discussion on combating trafficking has on occasion devolved into polarized positions on what constitutes choice in sex work and whether by extension all sex work is victimization.

One NGO involved in raids on brothels in collaboration with local authorities to find trafficking victims observed that trafficked persons are reluctant to share information because they typically do not want to return home to Burma. She commented: “About a half of the victims do not want to go home. They are afraid that the Burmese government will punish them if they return, and that it is unsafe in Burma. Others do not want to return because they have no money.”¹²⁵

In addition to the lack of legal residence and employment options, trafficked persons who are removed from the brothels are not screened for refugee status. One NGO representative noted: “There are some words we can’t bring up [with the Thai government]. ‘Asylum’ and ‘refugees’ are two of them. It rubs them the wrong way and brings flashbacks of Cambodia,”¹²⁶ referring to the refugee crisis of the 1970s when Thailand received large numbers of refugees. He concluded: “If the victims cooperate, they go back. If they don’t cooperate, they go back. If they cooperate, they get stuck in the shelters, so it’s actually a disincentive to cooperate. I wouldn’t if I were them.” He also noted that there is no witness protection in Thailand and if the trafficked person presents testimony, they are at risk of retaliation.¹²⁷

NGOs both involved in and observing the law enforcement process also commented that the prosecutions that are supposed to result from the brothel raids are often unsuccessful. Many of the perpetrators disappear, sometimes before the raids, because Thai officials have tipped them off, and at other times after arrest, because they are eligible for bond under Thai law.¹²⁸ An international NGO involved in the raids commented, “We know that there is corruption and that the brothels are tipped off, but the sex trade is a serious problem, so the Thai authorities just have to do their job.”¹²⁹

The prosecution effort is also primarily aimed at actors who are only minor figures in the trafficking networks, such as the pimps and brothel owners. Criminals at the “top of the

¹²⁴ Interview with Tim Sherer, U.S. Embassy (April 15, 2004).

¹²⁵ Interview with Khun Janejinda Pawadee, International Justice Mission (April 22, 2004).

¹²⁶ Interview with Ben Svasti, TrafCoord (April 22, 2004).

¹²⁷ Ibid.

¹²⁸ Interview with Khun Janejinda Pawadee, International Justice Mission (April 22, 2004); interview with Ben Svasti, TrafCoord (April 22, 2004).

¹²⁹ Interview with Khun Janejinda Pawadee, International Justice Mission (April 22, 2004).

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pyramid” are not adequately targeted, an oversight that some NGOs involved in the raids are trying to correct. They do believe, however, that the Thai authorities are demonstrating an increasing commitment to addressing the problem.¹³⁰

In the mean time, the trafficking victims may be held at the shelters indefinitely, waiting to testify in the proceedings; under Thai law, the accused must be present in the courtroom during any testimony presented against them. After testifying, the victims are deported, including those under age 18.

NGOs report that some trafficked women have run away from the shelters. An NGO involved in the brothel raids attributes this to boredom in the shelter and believes that conditions in the facility are satisfactory.¹³¹ Other NGOs, however, attribute the runaways to the fact that the women are held without their consent, and that the shelter in fact constitutes a form of detention.¹³² Also, the women know that they will be deported once the proceeding is complete. A representative from an NGO involved in the rescues conceded, “Very few of the women are happy to be rescued.”¹³³ He also commented: “Most of the women from Burma feel that they have no choice but to work as sex workers. But they prefer sex work to Burma, because life in Burma is intolerable.” He also noted, “If they are victims of political persecution in Burma, we’re not geared up to help them.”¹³⁴

He also noted that most of the women return to Thailand after being deported to Burma. They are then liable to go back to sex work as they need to make money for debt accrued as part of the migration process. This puts them back at the beginning of the cycle of abuse. Some women have been rescued as many as three times. He concluded, “It’s just a token to send them back. We need to make life better in Burma. Until we do that, we can’t blame the victim for coming [to Thailand].”¹³⁵

One NGO leader working with the sex workers observed, “Rescue is just another risk that Burmese sex workers now face.” She believes that it would be preferable to focus more on improving human rights conditions in Burma.¹³⁶ Local NGOs also point out that these so-called “rescues” focus exclusively on the sex industry, and ignore trafficked persons who are caught in other forms of labor, such as domestic servitude.¹³⁷

In fact, the greater necessity may be to clearly establish instances of coercion or abuse across the spectrum of labor, be it sex or factory work. Regardless of the nature and type of work, it is essential for the Thai government, in collaboration with NGOs, to unambiguously establish and standardize procedures based on international refugee law that provides protection to all people for whom repatriation is not a safe or viable option. Legal residence and right to employment should be available for trafficking victims. Such benefits in turn may act as incentives for victims

¹³⁰ Interview with Ben Svasti, TrafCoord (April 22, 2004).

¹³¹ Interview with Khun Janejinda Pawadee, International Justice Mission (April 22, 2004).

¹³² Interview with Liz Hilton, Empower, Chiang Mai (April 22, 2004).

¹³³ Interview with Ben Svasti, TrafCoord (April 22, 2004).

¹³⁴ Ibid.

¹³⁵ Ibid.

¹³⁶ Interview with Liz Hilton, Empower (April 22, 2004).

¹³⁷ Interview with SWAN (April 22, 2004).

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to cooperate with the authorities to prosecute traffickers, as the safer the person is, the more likely it is that they will feel comfortable cooperating with law enforcement agencies. The right to remain in Thailand and to engage in lawful employment may also help thwart the cyclical pattern of migration, detention, repatriation and return to Thailand.

CONCLUSIONS AND RECOMMENDATIONS

The global discourse on trafficking, including that in Thailand, too often ignores the underlying reasons, whether economic or political, that motivate people to migrate even at the risk of abusive and exploitative working conditions. Policymakers tend to emphasize law enforcement and migration control measures to combat trafficking without giving adequate consideration to the rights and needs of victims. This narrow approach not only puts the victim at risk of further human rights abuses, it also undermines the effectiveness of the law enforcement approach.

- There is an urgent necessity for a holistic, rights-based approach that addresses the root causes of migration from Burma to Thailand. The protection and empowerment of trafficked persons must be at the center of all policy considerations.
- A rights-based approach casts an analytical net wide enough to consider the unique vulnerabilities to trafficking as experienced by both recognized and unrecognized refugees in Thailand. Furthermore, trafficking of people in refugee-like circumstances must be considered within the international refugee framework, a framework that promotes the durable solutions of local integration, third country resettlement or safe, dignified and voluntary return.

Policymakers often view return as necessary to deter and prevent future trafficking, but evidence shows otherwise. The reality for many Burmese migrants residing in Thailand is that repatriation is neither a safe nor viable option, and many forcibly repatriated Burmese will return to Thailand as soon as possible. By having to return a second or multiple times back to Thailand, the individual is swept up in the same cycle of violence and exploitation. Often the person returns to Thailand burdened with greater debt, either from having to bribe officials en route or as part of the costs of resettling in Thailand. The cycle of repatriation leaves people even more vulnerable to traffickers, and bolsters corrupt practices on the local level.

- Thailand, in cooperation with UN agencies and NGOs, must develop and implement a system to identify trafficked persons who cannot return home safely.
- Alternatives to repatriation must be implemented through programs that allow a trafficked person who cannot return safely to remain in Thailand either temporarily or permanently.
- Building on the model of refugee resettlement, third countries such as the United States should consider resettlement of trafficked persons for whom return or local integration are not viable. Given the dangers that trafficked persons face, such resettlement must take place expeditiously.

Thailand has made some efforts to address trafficking through the enactment of anti-trafficking laws, regional agreements on trafficking, training of law enforcement officials

and the use of shelters to protect trafficked women and children. While these efforts are commendable and necessary, law enforcement efforts must be accompanied by an equal emphasis on victim protection efforts.

- The efforts that Thai authorities have made to prevent, deter and address trafficking should be fully recognized and supported by the international community.
- The Thai government should ratify the Trafficking Protocol.

The immigration status of an individual significantly affects her vulnerability to trafficking. The need for Burmese migrants to enter Thailand undetected forces them to rely heavily on the services of “carriers,” some of whom are engaged in trafficking.

- The government of Thailand should ratify the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol, which would obligate it to refrain from returning asylum seekers and refugees who cross its borders.
- The government of Thailand must at a minimum embrace the international definition of a refugee as a person who has a well-founded fear of persecution and undertake refugee status determinations that are fair and generous.
- The government of Thailand must take steps to address the status of Burmese migrants to ensure that they are not vulnerable to exploitation by those who would take advantage of their unlawful status.

Restrictions placed on the mobility of camp-based refugees and the inability of refugees to obtain adequate assistance or a means to support themselves and their families compel many refugees to leave the camps without permission. Camp-based refugees, in particular the youth, are inclined to leave the camp for employment. The long-term stay of refugees in camps exposes an at-risk population to further exploitation, be it on farms near the camps, in factories in border towns or other forms of labor. Traffickers take advantage of the lack of viable income generation options for refugees in the camps.

- Sources of sustainable income generation for camp-based refugees must be developed and facilitated.
- The reality that refugees do in fact leave the camps without permission must be recognized and the mobility of refugees facilitated, so that refugees do not have to fear that reporting any abuses against them will result in retribution.

Refugee and migrant children, especially girls, are particularly vulnerable to trafficking. Their lack of status, and their parents’ lack of status, as well as their lack of access to education, exacerbates this vulnerability.

- Children born in Thailand to foreign-born parents must be provided birth registration.

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- Unaccompanied and separated children must receive protection and assistance that adequately considers their unique vulnerability and addresses their best interests.
- Education services must be provided to all children residing in Thailand, regardless of immigration status, as it is a critical form of protection and a fundamental human right.
- The protection needs of children whose parents or primary caregivers are undocumented must be addressed, as many such children are left on their own while their parents work unlawfully.

A coordinated multi-sectoral approach is an essential element for any response to trafficking to be effective. This includes all levels of law enforcement, migration control, the judiciary, health care, social services and education.

- The government of Thailand and UN agencies should support cross-sectoral training of professionals on how to identify, support, and protect trafficking victims. Such trainings should be conducted regularly both to reach new staff in all sectors and to ensure follow-up training.
- Law enforcement and migration officials and members of the judiciary should be held accountable for enforcement of anti-trafficking laws and policies. This includes immediate and appropriate disciplinary measures and criminal prosecution when such officials are found themselves to be engaged in trafficking.

Some programs implemented by the Thai government and NGOs in the region focus exclusively on the commercial sex industry. This approach ignores the fact that trafficked persons are exploited in many different ways, including through forced begging, domestic servitude, and employment in the agriculture, fishing and manufacturing sectors that involve debt-bondage or forced labor.

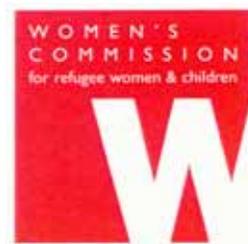
- Any steps to address trafficking must be grounded in a recognition that trafficking takes many forms and is not exclusive to commercial sex work.
- Efforts to combat sex trafficking must be carefully and narrowly crafted to identify and assist those who have been trafficked without attempting to address the complex issue of prostitution overall.

UN agencies with a presence in Thailand have adopted a unique inter-agency approach to trafficking. The UN Inter-agency Project on Human Trafficking in the Mekong Sub Region (UNIAP) has served as a useful venue for information sharing and coordination. The Committee for Coordination of Services to Displaced Persons in Thailand (CCSDPT) has played a similar role in the migration context.

- The UNIAP should be sustained with an emphasis on the development of inter-agency action plans to combat trafficking.

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- The CCSDPT should expand to address the linkages between refugee protection and trafficking victim protection.
- An NGO that has expertise in refugee protection and trafficking and a presence in the refugee camps should be funded by UNHCR or a donor state to implement programs to deter, prevent, and address trafficking in camp-base refugees.



Women's Commission
for Refugee Women and Children
122 East 42nd Street
New York, NY 10168-1289
tel. 212.551.3088 or 3111
fax. 212.551.3180
wcrwc@womenscommission.org
www.womenscommission.org