

TABLE OF CONTENTS

Introduction	1
Arrest and detention	3
Conditions and ill-treatment in detention	6
Detention beyond the period of sentencing	8
Deportation to Myanmar	10
Forcible return of refugees	14
Refugees from the ethnic minority groups in Myanmar	16
Recommendations	17

THAILAND

@Burmese and other asylum-seekers at risk

Introduction

Amnesty International is concerned that the treatment of asylum-seekers in the Kingdom of Thailand does not meet minimum international standards, and that some refugees are subject to detention, ill-treatment and forcible return to countries where they may face serious risk of human rights violations. Forcible return of refugees directly contravenes the principle of *non-refoulement*, as stated in the 1951 Convention relating to the Status of Refugees:

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

Although Thailand has to date not acceded to the 1951 Convention or to its 1967 Protocol, the principle of *non-refoulement* is recognized as a norm of customary international law which applies to all states, whether or not they have acceded to the Convention.

Hundreds of thousands of refugees, mainly from Cambodia, Laos, Myanmar (Burma) and Viet Nam have sought refuge in Thailand in the last 40 years, as war and political repression forced people to flee their homelands. Thailand has allowed large numbers to stay within its borders for many years, but recently the treatment of asylum-seekers and refugees has become increasingly harsh. In particular those from Myanmar, who now form the largest single group of refugees in the country, are at risk of detention and forcible return.

Amnesty International is concerned that most asylum-seekers and refugees have no legal recognition of their special status in Thailand. The Government of Thailand has failed to establish any procedures for determining refugee status, and therefore asylum-seekers have no opportunity to have their claims for asylum examined by the authorities. Rather, many of them are prosecuted and detained under Thai law for "illegal immigration". Amnesty International is further concerned that court procedures associated with "illegal immigration" cases fall short of basic minimum international standards.

Refugees and asylum-seekers from many countries are routinely detained in Thailand, and charged with "illegal immigration". However, as Amnesty International stated in its report on Thailand in 1991,¹ this treatment is in contravention of international standards for the protection of refugees, including Conclusion 44 of the Executive Committee of the Programme of the United Nations High Commissioner for Refugees (UNHCR). This conclusion:

"Expressed the opinion that in view of the hardship which it involves, detention should normally be

¹ See [Thailand - Concerns about treatment of Burmese asylum-seekers](#), AI Index: ASA 39/15/91
AI Index: ASA 39/02/94 Amnesty International September 1994

Thailand: Burmese and other asylum-seekers at risk

avoided...Recognized the importance of fair and expeditious procedures for determining refugee status or granting asylum in protecting refugees and asylum-seekers from unjustified or unduly prolonged detention...Stressed that conditions of detention of refugees and asylum-seekers must be humane...and reaffirmed the fundamental importance of the observance of the principle of *non-refoulement*..."

Thailand is a member of the Executive Committee which adopted Conclusion 44 by consensus in 1986.

The operations of the UNHCR in Thailand are strictly limited by the Thai Government, and thus the full range of measures for the protection of refugees and asylum-seekers which the UNHCR can offer in many countries cannot be properly implemented in Thailand. The UNHCR in Thailand is able to register as "persons of concern" some of the people who are able to apply to the organization, and whose cases they accept. The Statute of the UNHCR states that such persons include anyone who:

"...owing to well-founded fear of being persecuted for reasons of race, religion, nationality or political opinion, is outside the country of his nationality and is unable or, owing to such fear...is unwilling to avail himself of the protection of that country..."

However, registration with the UNHCR in itself does not provide adequate protection against detention or harassment in Thailand.

In April and May 1994 Amnesty International conducted interviews with refugees and asylum-seekers who had been subject to ill-treatment and detention by the Thai authorities and, in some cases, forcible return to the country they had fled. Many had been detained at the Immigration Detention Centre (IDC) in Bangkok on more than one occasion, and all those who spoke to Amnesty International were concerned for their safety in Thailand. Out of concern for their personal security, Amnesty International has withheld any details which could lead to the identification of those who gave testimony reflected in the report.

Arrest and detention

The declared policy of the Thai Government since 1993 has been to enforce a "crackdown" on "illegal immigrants" within the country. Thailand does have large numbers of "illegal immigrants", many of whom come to the Kingdom seeking work. However, a proportion of people who enter the country "illegally", without documentation, are asylum-seekers and refugees, fleeing from human rights violations in their own countries. The current policy of the Thai Government does not make any allowance for the special situation of those who are asylum-seekers or refugees, and the majority of those arrested without adequate documentation are prosecuted and detained for "illegal immigration" regardless of their reason for being in the country. Once an asylum-seeker or refugee is arrested, and found not to be in possession of the appropriate documentation, then prosecution and detention for "illegal immigration" follows automatically, even if this person is a UNHCR-registered "person of concern". The only exception to this is when an individual is able to pay a bribe demanded by the local police, and avoid prosecution.

Arrests of asylum-seekers and refugees in Bangkok often take the form of late night or early morning raids in residential areas. Such raids tend to affect asylum-seekers from Myanmar in particular, as many of them are young and living in over-crowded conditions, where they are easily traced. One young Burmese man described his arrest:

Amnesty International September 1994AI Index: ASA 39/02/94

Thailand: Burmese and other asylum-seekers at risk

"I was arrested in Lard Prao [a district in Bangkok] on 8 December 1993. We were sleeping, and the police arrived at six in the morning. There were seven people in my room, and upstairs there were four more people, so 11 were arrested from our apartment. I had only been in Bangkok for one week when it happened."

One of those arrested on 8 December told Amnesty International that he had not been able to register with UNHCR because, "I was arrested on the date of my UNHCR interview".

Another explained what happened to him after being arrested:

"When you are arrested, the police take you to the police station and open your case as an immigration case. You are kept behind bars. They ask your name and the names of your parents, then they write it down in Thai. You have to sign a paper written in Thai. I think it contains the information about the names."

When people are arrested and taken to police stations, no translation services are available. The majority of asylum-seekers arrested are unable to understand Thai, and therefore do not know what is happening to them. After spending one or two days in the police station in the locality of their arrests, all those arrested for "illegal immigration", including asylum-seekers and refugees, are usually transferred to the IDC, which is situated on Soi Suan Phlu, in Central Bangkok. At the IDC, an immigration officer takes over the case from the police, and the detainees are given illegal immigrant detention cards. There are interpreters available at the IDC for many languages, who are able to explain the legal process to detainees. Detainees are taken to court from the IDC. The court they are taken to is dependent upon the place of arrest. In court, the charges are read out in Thai, and no translation service is provided. One young Burmese man told Amnesty International:

"They read out the sentence. I did not say anything at the court, I had no lawyer. The hearing lasted about 15 minutes."

Another said:

"When you are in the court, if you try to explain your situation, the court authorities do not accept it. Thais say that if you have no passport and you are a foreigner, then you are an illegal immigrant under Thai law. Even if you are a UNHCR "person of concern", you still have to go through the same procedure at IDC."

During the court hearings, asylum-seekers are given no opportunity to state why they are in the country, or whether they are recognized as "persons of concern" by the UNHCR. Anyone without a passport and valid visa is regarded as an "illegal immigrant", and the purpose of the court hearing appears to be simply to pass sentence, rather than to weigh the evidence. Sentences for "illegal immigration" are standard: people arrested in central Bangkok are fined 70 baht² a day, for 60 days, making a fine of 4,200 baht, while those arrested outside the central area are fined 70 baht a day for 40 days, making a fine of 2,800 baht. Asylum-seekers who do not come from Myanmar are required to pay the fine and leave the country (at their own expense) or to serve the relevant sentence (40 or 60 days) and leave the country. It is ironic

²²⁵ Thai baht is approximately one US dollar.

Thailand: Burmese and other asylum-seekers at risk

that for many asylum-seekers and refugees, their main protection against forcible return to their country of origin is the fact that if they cannot pay for a ticket, they will not be sent back. Rather, they will remain in detention at the IDC, after the period of their sentence is served, often for many months.³

Asylum-seekers and refugees from Myanmar must pay the fine or serve the sentence and are deported to a so-called "safe area" of the Thai-Myanmar border, which is determined by the Thai authorities. However, there is another option for some refugees from Myanmar. Burmese students and political dissidents who have been involved in the pro-democracy movement in Myanmar since 1988, or whose cases have otherwise been accepted by the UNHCR as those of "persons of concern", may register with the Thai Ministry of the Interior for permission to remain in Thailand, at a safe area camp in Raatchaburi province. Those who are registered may be returned to the safe area camp on payment of the fine or at the end of their sentence. Conditions there are not unduly harsh, and refugees are able to obtain permission for leave of absence of up to one week a month, and are free to visit the local town during the daytime, while they are at the safe area camp. UNHCR are on site at the safe area camp for five days a week, and various voluntary agencies provide training programs and activities for the refugees. Any Burmese refugee wishing to obtain resettlement in a third country must be registered for the safe area camp and stay there, prior to moving to his/her country of asylum. But the option to go to the safe area camp is available only to certain categories of refugees from Myanmar who can register to do so. These are just one group of people who seek refuge in Thailand, and those who do not fall into this group are not able to go to the safe area camp, even if they would like to.

Amnesty International is particularly concerned that in Thailand there are no processes by which asylum-seekers can gain legal protection, and there is no special recognition of their particularly vulnerable situation. UNHCR-registered "persons of concern" and others with a genuine fear of human rights violations should they be returned to their own country are not treated any differently under Thai law than a migrant worker who has been working in the country without a permit, or a tourist who has overstayed on a visa. As such, the legal position of asylum-seekers and refugees falls far short of international standards.

Amnesty International opposes the detention of refugees and asylum-seekers unless they have been charged with a recognizably criminal offence, or unless the authorities can demonstrate in an individual case that the detention is necessary, that it is on grounds prescribed by law, and that it is for one of the specified reasons which international standards recognize may be legitimate grounds for detaining asylum-seekers. International standards do not recognize "illegal entry" as a reason for which asylum-seekers may legitimately be detained. International standards also state that the detention of asylum-seekers or refugees should normally be avoided. In any cases where refugees and asylum-seekers are detained, governments have a duty to ensure that those detained are held in humane conditions which comply with international standards, and that they are not subjected to torture, or to cruel, inhuman or degrading treatment.

The Thai Government's policy of detaining asylum-seekers and refugees is in clear contravention of these standards. Moreover, it has a seriously detrimental effect on their ability to seek protection. For example, detention of UNHCR-registered "persons of concern" in Thailand prevents these individuals from making direct applications to embassies of countries which may be able to offer them asylum. Furthermore,

³UNHCR does submit applications for resettlement on behalf of non-Burmese and non-Indochinese asylum-seekers facing indefinite detention at IDC.

Thailand: Burmese and other asylum-seekers at risk

conditions of detention in Thailand are often so harsh that refugees sometimes are driven to abandon their efforts to seek asylum in a third country, and some even risk return to their country of origin, although they may face human rights violations in that country.

Conditions and ill-treatment in detention

Conditions of detention at the IDC in Bangkok fall far short of basic international minimum standards, and in some cases amount to cruel, inhuman or degrading treatment. Detainees are held in 10 rooms, two of which are reserved for women and children. Eight of the rooms each measure 16 metres by six metres (the two other rooms being smaller), and each has within it a small partitioned space, originally intended as a sleeping area, but usually occupied permanently by detainees who have been in the IDC for many months. There are two lavatories per room, and a bathroom space for showering and obtaining drinking water. Each of these rooms is occupied by over 100 people at a time, and often as many as 200 to 300 people are held in a room at one time. All the people who talked to Amnesty International spoke of overcrowding in these rooms. One said:

"When I arrived at the IDC they put me in room six. At that time there were 250 people there, but it increased later to 300...I could not stretch out to sleep, and the legs of the people on the opposite side were intertwined with our legs. We had to stay on the floor to sleep, without mats. I couldn't take any exercise and felt tired all the time, and weak."

Another said:

"I did not have my own space. When I was sitting somewhere, that was my space. If I went to the toilet, then someone else would take my space. To sleep, we were all next to each other curled up on the floor."

There is often chronic overcrowding in Bangkok IDC, to the point where the inmates cannot all lie down at the same time. At times, detainees have had to sit with their knees bent for several months at a time, and when they were finally released, they were unable to walk. There is no provision for exercise at all. Overcrowding leads to health problems, particularly fungal infections of the skin, which occur frequently, as it is difficult for the inmates to stay clean and dry in the hot and humid environment. Voluntary organizations attend the detainees in the IDC, and provide medical care as far as is possible, but many of the health problems experienced by the detainees would probably not arise if conditions were adequate.

Detainees are fed twice a day, but the food rations are inadequate, and all those who spoke to Amnesty International complained of hunger during their period of detention. One said "[the food] was not enough, and I was always hungry". Voluntary organizations try to provide food supplements to detainees, in order to maintain an adequate intake of nutrition. General low-level malnutrition is common amongst detainees who have been held for months. Amnesty International is particularly concerned that children who are detained in the IDC with their mothers are not provided with food rations. Under Thai law, children are not prosecuted for "illegal immigration", but charges are brought against the parent[s]. However, the children are detained with their mothers in one of the women's rooms at the IDC. They do not qualify for food rations as there are no charges against them, and consequently their mothers have to try to provide them with food from their own inadequate rations. Some voluntary agencies are attempting to alleviate this problem by providing food supplements. Children who have reached the age of four or five are able to leave the rooms to participate in a play program organized by a voluntary agency, but no provisions exist for children younger than this who are not able to leave their mothers, and consequently,

Thailand: Burmese and other asylum-seekers at risk

very young children get no fresh air or exercise, often for many months.

While Amnesty International welcomes reports that the new leadership team in charge of the Bangkok IDC is keen to improve conditions of detention, and is receptive to the suggestions made by voluntary agency personnel working with detainees, the organization remains gravely concerned at the practice of indefinite detention of refugees and asylum-seekers in very harsh conditions.

During times of extreme overcrowding at IDC, some refugees and asylum-seekers who have been convicted of "illegal immigration" have been detained in regular prisons in Bangkok. This practice is at variance with the spirit of UNHCR Executive Committee Conclusion 44, which states that "asylum-seekers should, whenever possible, not be accommodated with persons detained as common criminals". Amnesty International knows of at least two cases when UNHCR-registered "persons of concern" were detained in Rangsit prison, on the outskirts of Bangkok, where the other inmates were young Thai males, incarcerated for drug offences. One of the refugees described the conditions at the prison to Amnesty International:

"The prison is just one hall, with all the prisoners put in together. More than 400 people were in a room, the same size as two IDC rooms. We had to wear short trousers, and the floor was concrete, and we had to sit and sleep on the floor...there were four toilets, but no showers there. You had to have a shower outside."

While detained at the prison, the "persons of concern" were required to do penal work, assembling strip lights and making furniture. None of them received any remuneration for the work they did.

One UNHCR-registered "person of concern" reported ill-treatment during his detention at Rangsit prison. He told Amnesty International that:

"There was a problem, because when I took a shower I was not allowed to use soap. I told the authorities I had a skin problem and needed to use soap, and they said to me that I only needed water, and beat me. They beat me on the back with a stick five times, and kicked my chest three times. I suffered pain inside under my bones, and had a bruise on my back. And I was still not allowed to use soap to wash my skin. The prison doctor never came to see me, but the UNHCR doctor brought medicine to make my skin better."

Amnesty International has also received reports about beatings carried out by the Thai authorities at the IDC in Soi Suan Phlu. One refugee said:

"I was beaten by the police because I had no money. I was beaten on February 3 1994, kicked with boots, 10 times, by three policemen. This happened before they took me upstairs to the room [i.e. on the ground floor of the IDC, which is not used for accommodation]. I fell on the floor after the second kick, they then kicked me on the ground. For one week I had a pain in my chest, and nobody helped me. I was having an identity card made when they beat me."

Detention beyond the period of sentencing

For many refugees and asylum-seekers, a major problem they face is lack of money. Once they have been

Thailand: Burmese and other asylum-seekers at risk

detained and sentenced for "illegal immigration", they need money to pay their fine or must serve the 40-or-60 day sentence imposed on them. However, whichever option they choose - and for many without funds, there is no choice but to serve the sentence - they are still required to pay for their own travel costs to leave the country, and to find a country willing to accept them. Clearly, for those who have insufficient funds to pay their fine, the price of an air ticket out of the country is far beyond their resources. They are forced to remain in detention until a third country accepts them for resettlement, or until they find sufficient funds to leave the country themselves. Some refugees are able to secure resettlement in a third country, and once they are accepted the necessary financial arrangements are dealt with by the UNHCR and the new host country. However, refugees who are difficult to place, and whose cases are rejected by all the embassies approached, have to stay in the IDC or attempt to raise funds for a ticket out of Thailand. Amnesty International knows of at least two cases of UNHCR "persons of concern" who obtained the necessary funds for a ticket to Cambodia, and who are now under the protection of UNHCR in Phnom Penh. Cambodia has acceded to the 1951 Convention and its 1967 Protocol and these refugees are in less difficult circumstances in Cambodia than in Thailand, not least because the UNHCR in Phnom Penh is free to take all necessary actions on their behalf. Moreover, in Cambodia the refugees are not subject to detention.

Asylum-seekers and refugees from Myanmar are also not immune from long stays in the IDC beyond the end of their sentence. Anyone convicted of "illegal immigration" is obliged to pay the costs of their own travel out of the country, and this applies to asylum-seekers from Myanmar who are deported to the Thai-Myanmar border. Asylum-seekers without the money to pay the transport costs will not be deported, even after the period of their sentence has expired. Thus, the only protection that refugees from Myanmar have against deportation, if they do not fall into the category of students who are registered with the UNHCR as "persons of concern", and with the Thai Ministry of the Interior, to go to the safe area camp, is if they are unable to pay the costs of their own expulsion. Amnesty International knows of tens of cases where people have been detained in the IDC, often for months after their sentence had been served in full. When a large number of people are in this position, concerned voluntary agencies working with detainees sometimes raise the money for the transport costs themselves, in an effort to get people away from the IDC, and the ill-effects it has on the physical and mental well-being of its inmates. Refugees and asylum-seekers face a dilemma in such situations, as it is better for their health to leave the IDC, but they are often frightened to return to the Myanmar border, as they fear human rights violations if they are forced to return to their country.

One case of detention beyond the period of sentencing is of particular concern to Amnesty International. On 3 December 1993, 13 Burmese students were arrested in a Bangkok suburb while attending a seminar on non-violent action for change, arranged by three Thai organizations. On 6 December, all 13 were convicted of "illegal immigration", and sentenced to the standard 40 days' imprisonment at the IDC or a fine of 2,800 baht. However, the Thai authorities announced a week later that 10 of the students were to be sent to a Special Detention Centre (SDC) at Bangkhen in Bangkok, where the Police Training Academy is situated. Seven of the students were released, but the remaining six were transferred to this SDC on 4 February 1994. Four of these six students were UNHCR-registered "persons of concern" who had also been registered for the safe area camp. The UNHCR was informed that three of the students were to be held for an extra month beyond their sentence for "illegal immigration" as punishment for breaching the rules for leave of absence from the safe area camp on more than two occasions. A UNHCR doctor was allowed access to the students at the SDC once a week, but they were denied any other visitors or correspondence for a month. The students went on hunger strike for five days to draw attention to their

Thailand: Burmese and other asylum-seekers at risk

situation. On 20 July 1994, seven and a half months after they were arrested, and six months after their 40-day sentence had been served, two of the UNHCR "persons of concern" left Thailand for Australia, having been in detention since 3 December. A third student has been accepted for resettlement in Canada and is expected to leave soon. However, the fourth UNHCR "person of concern" in the SDC has not been accepted for resettlement by any of the embassies approached and, with the two other students not registered with the UNHCR, is still detained in the SDC. Amnesty International is calling on the Thai Government to allow these students, who have been held for five times the length of their sentence for "illegal immigration", to go to the safe area camp in Raatchaburii province, or to release them.

Deportation to Myanmar

Some refugees and asylum-seekers from Myanmar who have a genuine fear of human rights violations there are deported from Thailand. These include people from ethnic minority groups in Myanmar.⁴ Burmese students and dissidents who have not been able to register with UNHCR and the Thai Ministry of Interior, often because they have been in Thailand for a very short time prior to their arrest, or because they are not sufficiently familiar with the correct procedures, are also deported.

The deportation procedure leaves people vulnerable to extortion and ill-treatment. When the fine for "illegal immigration" has been paid, or the sentence of 40 or 60 days' detention has been served, asylum-seekers from Myanmar convicted of "illegal immigration" are normally taken to what the Thai authorities consider to be a "safe area" of the Thai border with Myanmar. The majority are taken to Halockhanie, a refugee camp which straddles the border with the Mon state in Myanmar. The usual procedure is that a list of names is read out in the IDC in Bangkok on the Thursday evening, prior to transfer to a regional IDC on the Friday. Everyone being deported is required by Thai Immigration Law to pay the "fare" for their transportation, which is usually 200 baht. Those unable to pay are crossed off the list, and remain in detention in the Bangkok IDC. Early the following morning, all those who are to be deported are handcuffed together and taken by bus to Kanchanaburi, a journey which usually takes three to four hours. At Kanchanaburi, the deportees are taken to a police lock-up which serves as an IDC.

All those who spoke to Amnesty International about the Kanchanaburi IDC stated that conditions there were even worse than in the Bangkok IDC, and complained about their treatment on arrival. Although there are two rooms upstairs at the Kanchanaburi IDC to accommodate the detainees (one for men, one for women) all of them are initially placed in a downstairs room. One former detainee told Amnesty International:

"Downstairs it is very crowded, worse than upstairs. There is no water and the toilet is very bad. If you give the police 100 baht then you get moved upstairs. If not then you have to stay downstairs.

⁴ More than 70,000 refugees from ethnic minority groups in Myanmar live in camps along the Thai-Myanmar border. The Thai authorities allow voluntary agencies access to these camps, in order to provide relief supplies, but the UNHCR has never been officially permitted to operate in these camps. While an informal understanding exists whereby UNHCR staff are able to monitor the situation in the border camps, there is no permanent UNHCR presence on the border, and the UNHCR has no written undertaking from the Thai Government allowing the organization to operate freely there. Refugees from the ethnic minority groups who attempt to register with the UNHCR in Bangkok may do so, but the UNHCR does not pay a living allowance to such refugees if they stay in Bangkok, on the grounds that they will be safer in the camps along the border where they can live. Thus refugees from ethnic minorities, who do not qualify for registration as do Burmese students or dissidents, and who may wish to seek resettlement in a third country, find themselves in a much more difficult position than other refugees because the assistance usually available from UNHCR is not readily available to them.

Thailand: Burmese and other asylum-seekers at risk

Downstairs there are two toilets, and you are not allowed to have a shower."

Another said:

"We were put in the downstairs rooms at Kanchanaburi IDC behind bars. The police threw water from a hose on people because they did not give them money. We were soaking wet and could not sleep. After one night the police came to ask for money again, we bargained with them, and gave what we could. I was then allowed upstairs which was better."

When Amnesty International consulted with the UNHCR about this practice, it became apparent that UNHCR staff were not shown this room on their regular inspections of police lock-ups which serve as temporary IDCs.

Most deportees spend one month and five days in the Kanchanaburi IDC, before being taken in trucks to the border, beyond the small town of Songklaburi. A further charge is made for this journey, usually 100 baht. Each truck holds 125 people, who are forced to stand in extremely hot and cramped conditions for the whole journey, which can take as long as eight hours. At the border there is a Thai police checkpoint where the deportees get off the trucks. They then have to walk to the refugee camps, escorted by Thai police in cars, with guns. According to reports, these same policemen will often escort the asylum-seekers back to Bangkok for a bribe. Those who talked to Amnesty International claimed to have paid between 1,500 and 3,000 baht to be allowed back into Thailand. One said, "I had to come back, as I need to apply to UNHCR, and I cannot do that in the jungle".

Amnesty International is concerned not only that refugees and asylum-seekers are being deported to the Burmese border, which contravenes international standards laid down for their protection, but also that the area to which they are being returned, far from being the "safe area" that the Thai authorities claim, is in fact a place where people are at serious risk from soldiers of the Burmese army, the *tatmadaw*. In 1994 refugees from the Mon state in Myanmar (most of whom are ethnic Mons fleeing from forced portering and labour at the hands of the *tatmadaw*) were forced by the Thai authorities to relocate to Halockhanie camp which is situated in a disputed area, and straddles the border between Thailand and Myanmar. Prior to this, since April 1992, their principal place of refuge was Loh Loe camp which was located in Thailand, in an area of jungle several kilometres from the border with Myanmar. In spite of protests about the relocation sent to the Thai National Security Council by the Mon National Relief Committee (the organization responsible for the operation of the camp), and reservations expressed by international voluntary organizations who provide relief supplies to the refugees, the relocation was carried out during March and April 1994.

On 21 July 1994, 360 soldiers from the 62nd Infantry Battalion of the *tatmadaw* entered Plat Hon Pai section of Halockhanie refugee camp, which is in Myanmar. The troops called a meeting of the 500 residents, and later in the day attempted to enter the main section of the camp. Amnesty International has received reports that some of the refugees were forced to walk in front of the troops as they advanced. The *tatmadaw* soldiers were driven back from the main section of Halockhanie camp by troops from the armed wing of the New Mon State Party who had arrived in the area on hearing of the *tatmadaw* presence in the camp. The *tatmadaw* soldiers then returned to Plat Hon Pai section, and torched half of the 120 houses there. They left, taking with them 16 men, eight of whom were handcuffed. Over 2,000 refugees then fled and took refuge on the Thai side of the border, at the Thai border police checkpoint. The Thai

Thailand: Burmese and other asylum-seekers at risk

9th Army, which is in charge of the area, told the refugees that they must return to the Myanmar side of the border. When the refugees refused to go, the 9th Army sealed off their makeshift shelters, refusing to allow access to aid workers, except doctors from one voluntary organization. A UNHCR delegation which arrived at Halockhanie on 17 August was required to obtain military permission to have access to the refugees. A permit was eventually obtained, but too late to enable the visit to take place. Soldiers from the 9th Army visited the camp on 18 August, and told the refugees to return to Myanmar, but did not attempt to send them back by the use of force.

The Thai authorities routinely transport 250 to 500 people a week to Halockhanie where they are forced to walk across the border into Myanmar, and the deportations have continued in spite of the attack on the camp. Four trucks, carrying about 500 people altogether, went to Halockhanie on 17 August, and more than 400 people were deported the week before. Amnesty International believes that Halockhanie cannot be described as a "safe area" of the Thai border with Myanmar, and that deportations to Halockhanie should cease immediately.

Forcible return of refugees

In March 1994 refugees from Myanmar, from the Pa-o, Lisu and Lahu ethnic minorities, were forced back across the border by the authorities in the north of Thailand, and on 11 March a forced return of some Shan refugees took place. Amnesty International is informed that dozens of people were forced back across the border in these operations. The Thai authorities reportedly moved into the area where the refugees were sheltering at six in the morning, and set fire to their huts. The area where these forced returns took place is a restricted access zone in the far north of the country controlled by the Thai military, which makes it difficult for voluntary organizations and independent monitors to investigate.

In late May 1994, hundreds of Burmese refugees who had taken refuge in Wat Wianghom, a Buddhist temple, were forcibly returned to the Shan State of Myanmar by the Thai authorities in Mae Sai, Chiang Rai Province. The refugees had fled across the border into Thailand to avoid being abducted as porters by the *tatmadaw*, who at that time were engaged in an offensive against the Muang Tai Army, an armed opposition group headed by Khun Sa. Amnesty International has many first hand testimonies from Burmese civilians forced to act as porters for the *tatmadaw*. All of those taken are at risk of torture and other ill-treatment by the soldiers, and many have been summarily killed.

In spite of the risks faced by the refugees, the Thai authorities in the region, including the border patrol police and troops from Army Region Three, forced the refugees back to the Mae Sai River, which marks the border between the two countries. On 26 May 1994, Amnesty International called upon the Thai authorities to cease the forcible return of these refugees to Myanmar immediately.

Earlier in 1994 a large-scale forcible return of Cambodian refugees took place. Between 25,000 and 30,000 Cambodians fled to Thailand in March 1994, to escape fighting in western Cambodia between the Royal Cambodian Armed Forces and the armed opposition group the National Army of Democratic Kampuchea (NADK), commonly known as the Khmer Rouge. On 25 March the Thai authorities began returning the refugees, who were mainly women and children, from the village of Ban Phakkat in Chanthaburi Province to an area of Cambodia controlled by the NADK. A spokesman for the Thai National Security Council said at the time that there was no need for Thailand to wait for an end to the fighting before returning the refugees. The refugees were loaded onto trucks and driven to the border, where they were forced to walk across. In contrast to the large-scale repatriation of Cambodian refugees organized by the United Nations Transitional Authority in Cambodia (UNTAC), which took place during 1992 and 1993, the refugees had no opportunity to choose to which area of Cambodia they should be repatriated, and all of them were returned to an area under the control of the NADK. According to reports the operation was carried out by the Chanthaburi-Trat Border Task Force, and the 563rd Company of Thai Marine Rangers.

The forced return drew a very strong response from the UN High Commissioner for Refugees, Sadako Ogata, who sent a letter to the Thai Foreign Minister to protest that the decision to return the Cambodians was taken before arrangements for a repatriation in safety and dignity could be made. The High Commissioner said that she feared the 25,000 to 30,000 Cambodian civilians could be exposed to fighting and their lives might be at risk. UNHCR and other international organizations did not have access to the area to which the refugees had been returned. The High Commissioner complained to the Thai authorities that the forced return was carried out while the Bangkok office of the UNHCR was consulting with the Royal Thai Government in order to provide assistance to the refugees, and to arrange an orderly

Thailand: Burmese and other asylum-seekers at risk

repatriation, in keeping with "internationally accepted principles and practices". The forced return of the Cambodian refugees also prompted a strong protest from the Cambodian Foreign Minister, who stated that the UNHCR should be able to supervise such operations, in order to ensure the safety of those involved.

Refugees from the ethnic minority groups in Myanmar

Ethnic minority groups in Myanmar have been fighting against the central government authorities for many years. Some of them have been engaged in warfare since 1948, when Burma, as it was then known, became an independent state. Offensives by the *tatmadaw* since 1984 have forced large numbers of people to flee their homes because of human rights violations, and 70,000 refugees from ethnic minority groups are currently living in refugee camps on the Thai border. The refugees are provided with food and medical assistance by a consortium of international voluntary agencies, with the permission of the Thai authorities. However, the Thai authorities have consistently refused to allow the UNHCR to become involved in the border protection effort. This failure by the Thai authorities to provide UNHCR with full scope in carrying out its proper protection role on the Myanmar border places at risk the lives and well-being of thousands of refugees fleeing from human rights violations in Myanmar. Because of this, it is much more difficult for refugees from the ethnic minority groups to register with the UNHCR, or to seek resettlement in a third country, should they wish to do so. The majority of the refugees are farmers and day labourers who fled from human rights violations committed by the *tatmadaw*, but who would like to return to their homes as soon as it becomes safe for them to do so. However, there are also people living in these camps who, if they returned home, would be at risk of human rights violations by the Myanmar authorities, because of their political beliefs and activities, even if fighting between the Government and armed opposition groups had ceased. These people may wish to seek resettlement in a third country, and at present, because it is difficult for them to gain access to UNHCR, or to make representations to embassies in Bangkok, it is extremely difficult for them to leave the border areas.

Amnesty International is particularly concerned about the fate of the refugees from Burmese ethnic minority groups because the Thai Government has stated that refugees on the border will be returned to Myanmar as soon as ceasefire agreements are in place between the armed opposition groups and the Myanmar Government. Most of the armed opposition groups which have been fighting for independence from the Myanmar Government have now concluded ceasefire accords, and the others are under pressure to do so. However, despite such accords Amnesty International knows of many cases where refugees have fled to Thailand, having been taken to perform forced labour, often in very harsh conditions, by the *tatmadaw*. Aid workers on the Myanmar border report a steady number of new arrivals throughout 1994, and Amnesty International interviewed over 60 new arrivals during three days in May alone, who had fled from forced labour and forced portering in Myanmar. A ceasefire agreement in itself cannot provide protection against such human rights violations, and Amnesty International is concerned to ensure that reliable guarantees for the safety of returning civilians are obtained from the Myanmar Government before any repatriation program commences.

In June 1994, UNHCR declared that any repatriation of these refugees should be voluntary, and conducted under conditions "of safety and dignity". UNHCR also stated that it would be willing "to both monitor and assist" in any such program.⁵ Independent international monitoring of the human rights situation in Myanmar, now and after the refugees return home, and the involvement of the UNHCR is

⁵The UNHCR is currently involved in a repatriation program of Lao refugees in Thailand back to their homeland.
Amnesty International September 1994AI Index: ASA 39/02/94

Thailand: Burmese and other asylum-seekers at risk

essential if the refugees are to be able to go home with confidence.

Recommendations

Amnesty International calls on the Royal Government of Thailand to:

- 1. Ensure that it acts in conformity with the principle of *non-refoulement*, which is a recognized norm of customary international law, binding on all states, by halting the forcible return to Myanmar of Burmese asylum-seekers and refugees.**
- 2. Accede to the 1951 Convention relating to the Status of Refugees and to its 1967 Protocol, in order to better ensure the protection of refugees and asylum-seekers in Thailand. Under Article 35 of the Convention, states parties undertake to cooperate with UNHCR in carrying out its mandate for the protection of asylum-seekers and refugees.**
- 3. Establish a fair and adequate procedure by which asylum-seekers can present their reasons for fearing to return to a particular country, and ensure that all asylum-seekers who seek protection in Thailand have effective access to that procedure.**
- 4. Ensure that refugees from Cambodia and Myanmar fleeing human rights violations and fighting in their respective countries are not forced back across the borders by the Thai authorities. In cases where voluntary repatriation to such countries is appropriate, arrangements should be made in consultation with UNHCR and the refugees themselves for repatriation in safety and dignity, at a suitable time and place.**
- 5. Comply with the provisions of international standards dealing with the detention of asylum-seekers and refugees, notably UNHCR Executive Committee Conclusion 44, which states that detention of asylum-seekers and refugees should normally be avoided, should be used only where necessary, and should only be used for certain specific reasons; according to international standards, "Illegal immigration" is not a legitimate ground for the detention of refugees and asylum-seekers.**
- 6. Provide any refugees who are detained with an opportunity to have the legality of their detention reviewed by means of a prompt, fair individual hearing before a judicial or similar authority whose status and tenure afford the strongest possible guarantees of impartiality and independence, and ensure that such judicial procedures meet international standards, including effective access to legal counsel and the services of a competent interpreter.**
- 7. Ensure that in the event that asylum-seekers are detained, the conditions are humane, and in conformity with international standards.**
- 8. Ensure that ill-treatment of detainees in the Bangkok IDC, police lock-ups and all other places of detention ceases, and that independent inquiries are held into any allegations of ill-treatment. The results of any such inquiries should be made public and any police or other authorities found responsible for ill-treatment should be brought to justice.**