



# Refugees from Myanmar

A Study by the  
International Commission of Jurists  
Geneva, Switzerland

October 1992

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## Abbreviations and Terms

### NAMES

#### *Current Name*

#### *Former Name*

Barmar  
Kayin  
Myanmar  
Yangon

Ethnic Burman  
Karen  
Burma  
Rangoon

### ABBREVIATIONS

ABSDF

All Burma Students' Democratic Front

BDGF

Burma Democratic Guerilla Front

ICJ

International Commission of Jurists

ICRC

International Committee of the Red Cross

IDC

Immigration Detention Centre

NLD

National League for Democracy

SLORC

State Law and Order Restoration Council

UNHCR

United Nations High Commission for  
Refugees

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## Preface

Myanmar (Burma), an isolated country for the last 29 years, became the focus of international attention in 1988. Demonstrations by students, monks and other citizens, calling for the end of one-party rule, the handing over of power to an interim government and the holding of elections, led to thousands of deaths.

In September 1988, General Saw Maung announced that the military had taken over power and a nineteen-member State Law and Order Restoration Council (SLORC) was formed which assumed all legislative, executive and judicial power. Curfew was imposed, gatherings of more than 5 people were prohibited, demonstrators were shot and streets cleared of all protestors and opposition. Thousands of persons fled to the borders while others sought refuge in neighbouring countries.

Although the citizens of Myanmar were denied the minimum freedom necessary for a free and fair election, the main opposition party, the National League for Democracy (NLD), scored an overwhelming victory in the elections of May 1990, winning 80% of the seats. However, power has not yet been transferred to the democratically elected representatives of the people.

People are forced to leave the country to avoid persecution. Thousands of Myanmar citizens, fleeing persecution, and now totalling about 360,000 are to be found in Bangladesh, China, India, Malaysia and Thailand. The ICJ sent a mission to Myanmar in January-February 1991 to study the human rights situation. The mission was undertaken by Mr. Makhdoom Ali Khan, a lawyer from Pakistan. A detailed report of the mission "The Burmese Way: To Where?" was published in December 1991. Mr. Khan met refugees from Myanmar in Thailand and also travelled to Myanmar. Most of the information contained in this report was obtained by Mr. Khan on his visit to Thailand. An update has been provided by the ICJ staff.

The ICJ wishes to thank all those who give it information. We also thank DANIDA (Denmark), EKD (Germany), NOVIB (Netherlands) and SIDA (Sweden) whose financial contributions enabled us to publish this report.

Geneva, October 1992

Adama Dieng  
Secretary General

# Refugees From Myanmar

Thousands of citizens of Myanmar<sup>1</sup>, fleeing persecution, have crossed the borders of neighbouring countries and are to be found in Bangladesh, China, India, Malaysia and Thailand<sup>2</sup>. Refugees<sup>3</sup> from Myanmar now total about 360,000 throughout Asia.

## Bangladesh

Bangladesh has not ratified the 1951 International Convention Relating to the Status of Refugees nor the 1967 Protocol Relating to the Status of Refugees. The United Nations High Commissioner for Refugees (UNHCR) has a representative in Dhaka and a large field presence in Cox's Bazaar.

Since late 1991 Muslims from the Rakhine (Arakan) State in North-Western Burma have been streaming into Bangladesh at the rate of several thousand a day with stories of rape, killings, slave labour and destruction of mosques and other acts of religious persecution.<sup>4</sup> Their persecution is only part of the legacy of 45 years of civil war and army rule, including four years of a brutal campaign by the ruling State Law and Order Restoration Council (SLORC) to crush Burma's democratic revolution.<sup>5</sup>

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<sup>1</sup> The name of the country was changed from Burma to Myanmar in 1989. The English spelling of many towns, divisions, states, rivers and nationalities was also changed.

<sup>2</sup> In February 1991, the ICJ wrote letters to the Governments of Bangladesh, China, India, Laos and Thailand informing them of an ICJ study on the human rights situation in Myanmar. The ICJ requested the Governments to allow the ICJ delegate, who undertook the mission to Myanmar, to visit the camps on their borders with Myanmar and to allow the delegate to meet officials in charge of the camps and detainees. The Thai Government replied that such camps do not exist. Till the date of publication of the report, the ICJ had not received replies from the Governments of Bangladesh, China, India and Laos. Also see the report of the ICJ mission to Myanmar: *The Burmese Way: to Where?* by Makhdoom Ali Khan. The ICJ has now received information that the UNHCR branch office in Malaysia has so far registered 3100 refugees from Myanmar.

<sup>3</sup> We use the term refugee in the broad meaning; that is, we include persons who "(1) having left their country, can, on a case-by-case basis, be determined to have a well-founded fear of persecution on certain specified grounds; and (2) those often large groups or categories of persons who, likewise having crossed an international frontier, can be determined or presumed to be without, or unable to avail themselves of, the protection of the government of their state of origin." Guy Goodwin-Gill. *The Refugee in International Law*, Oxford, Clarendon Press, 1983, p.11.

<sup>4</sup> Asiawatch, "Burma: Rape, Forced Labor and Religious Persecution in Northern Arakan", 7 May 1992

<sup>5</sup> *Far Eastern Economic Review*, "Bringing SLORC to Heel" by Thant Myint-U, 30 April 1992

At the 48th session of the United Nations Commission on Human Rights in March 1992, the Myanmar Government said that there were about 4,000 refugees in Bangladesh.<sup>6</sup> However, the Bangladesh delegation said that 1,000-2,000 persons were coming into Bangladesh daily and that the total number of refugees was 80,000.<sup>7</sup>

1978 was the last time Muslims fled in large numbers from Myanmar. In that year the Myanmar Government unleashed a campaign code-named 'Naga Min' or Dragon King, driving more than 200,000 Muslims from Arakan across the border into Bangladesh.<sup>8</sup>

The refugees who arrived in the 13 camps established across southeastern Bangladesh in 1978 told stories of killings, rape, pillage and arson committed by the Burmese army. Many produced citizenship papers to visiting journalists to prove they were not illegal immigrants, as Rangoon claimed, but bona fide Burmese citizens. That refugee crisis was eventually settled after rising concern in Muslim countries led to intervention by the UN.<sup>9</sup>

Rangoon is now carrying out a similar campaign against Arakan's Muslims - a minority known as Rohingya who insist they are different from both the Buddhist Arakanese and Bangladesh's majority Bengali population.<sup>10</sup>

The deputy chief of Myanmar's powerful military intelligence apparatus, Col. Than Tun, has denied press reports that his government has launched a deliberate campaign against the Muslim rebels. "We are only controlling unscrupulous black market activities along the border", he said.<sup>11</sup>

SLORC has deployed more than 75,000 troops along its border with Bangladesh. It has intensified its persecution of Muslims sending thousands more fleeing across the frontier, Bangladesh defence sources said on 19 January.<sup>12</sup>

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<sup>6</sup> See statement made by Ambassador U Tin Kyaw Hlaing at the 48th session of the Commission on Human Rights, 3 March 1992, p.2.

<sup>7</sup> See the statement made by the Bangladesh delegation on 3 March 1992 at the 48th session of the Human Rights Commission and Resolution No. E/CN.4/1992/L.25/Rev.1. A UNHCR update on Bangladesh on 3 March 1992 says that "Between 5,000 and 7,000 new refugees are streaming across the border from Myanmar daily...Official government estimates put the number of refugees at over 90,000 and rising."

<sup>8</sup> *Far Eastern Economic Review*, "Diversions Tactics" by Bertil Lintner, 29 August 1991

<sup>9</sup> Ibid

<sup>10</sup> Ibid

<sup>11</sup> *Dawn/ The New York Times Special Features Service in Jane's Defence Weekly*, November 1991

<sup>12</sup> *Bangkok Post*, 20 January 1992

The six ASEAN countries (Brunei, Indonesia, Malaysia, Philippines, Singapore and Thailand) have made public statements calling on Myanmar to show restraint. Malaysia and Indonesia, both Muslim majority nations, warned Burma that its actions were unacceptable and threatened regional stability. Singapore and Thailand, two of Myanmar's major trading partners, urged Myanmar to allow Burmese refugees to return home safely.<sup>13</sup>

Responding to the growing refugee crisis on the Burma-Bangladesh border, the UN Secretary-General Dr. Boutros Boutros-Ghali on 6 March called on SLORC to "take all necessary action to ratify the causes of this tragic situation which, if not addressed urgently, would threaten the stability of the region and increase human suffering." As the number of Rohingya Myanmar Muslim refugees fleeing persecution by SLORC rose to over 200,000 Bangladesh appealed for international attention. Initially, Bangladesh had approached China which has close ties with both Myanmar and Bangladesh to mediate the problem. China, however, is SLORC's major arms supplier (worth over US\$ 1 billion) and has a thriving border trade with Myanmar. Peking, therefore, advised Dhaka to settle the matter bilaterally and declined to intercede on Bangladesh's behalf. Bangladesh Prime Minister Begum Khalida Zia visited the U.S.A. from 17 to 21 March and Myanmar was at the top of her agenda during her meeting with US President George Bush. She also met with the UN Secretary-General who later told a press conference that he would send a special envoy to Myanmar and Bangladesh to help resolve the problem.<sup>14</sup>

In April the United Nations Under Secretary-General for Humanitarian Affairs, Jan Eliasson (Sweden), visited Myanmar and the refugee camps in Bangladesh.

In May, Rangoon conditionally agreed to allow some 250,000 Rohingya refugees in Bangladesh to come home but the refugees are afraid to return without protection. Talks have stalled in part because SLORC rejects UN supervision. Myanmar Foreign Minister Ohn Gyaw says that the United Nations, "should not be a busybody organization" .<sup>15</sup>

The UNHCR, calling it "one of the world's worst refugee crises" has begun to help the refugees in Bangladesh but a more permanent solution is being sought.<sup>16</sup> The Governments of Bangladesh and Myanmar signed a Joint Communique in late April 1992 for "safe and voluntary" return of the refugees from 15 May.

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<sup>13</sup> *International Herald Tribune*, 31 March 1992

<sup>14</sup> *Burma Alert* (Published by The Associates to Develop Democratic Burma), No.4, Vol.3, April 1992

<sup>15</sup> *Newsweek*, 8 June 1992

<sup>16</sup> *Burma Alert*, Vol.3, March 1992

The UNHCR is concerned that although the Joint Communiqué signed by the two governments calls for safe and voluntary repatriation, there is no mechanism in the agreement to ensure that the repatriation is voluntary. There is also no provision for monitoring the safety of refugees upon their return.

The UNHCR spokesperson was critical of an agreement signed by the two countries on details of the repatriation. The spokesperson said that the time frame for the repatriation - 5000 refugees a day every other day beginning six days after 21 May was "faster than we at the UNHCR normally like to go".<sup>17</sup> This is very fast for proper arrangements to be made for a voluntary and safe return. There is also reference in the agreement to the participation of UNHCR which was not discussed with UNHCR.

Owing to these problems no date was fixed to start the repatriation and talks are continuing.

The total number of Myanmar refugees in Bangladesh is now 264,916. They have taken shelter in 19 camps in Cox's Bazaar and nearby districts. In some camps they live without adequate shelter and with little food and clothing. A large number of them have died of malnutrition and disease and morbidity rates remain high with approximately 17% of the population visiting clinics each week. Relations between the refugees and the camp authorities are tense with a shooting incident at Haludiapalong on 18 August 1992 resulting in the death of three refugees after shots were fired by camp security personnel.

On 22 September 1992, 49 refugees were repatriated to Myanmar without the knowledge of UNHCR. This was the first group to be deported since Dhaka and Yangon signed the agreement in April. After this incident thousands of refugees held demonstrations, protesting against the repatriation.

The refugees fear that returning home means torture and starvation. "We are afraid of going home. We can foresee only more torture and death without food once we are deported from Bangladesh," said one refugee. He said reports filtering through from his home in Arakan - the only Muslim majority state in mostly Buddhist Myanmar - suggested Muslims there were still living a "nightmare". Like others at Rangikhali camp, the 60 year old man asked not to be identified.<sup>18</sup>

On 25 September 1992, five refugees were killed and more than 100 injured in a clash with police and troops at Dhuapalong camp. Bangladesh

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<sup>17</sup> *Bangkok Post*, 9 May 1992

<sup>18</sup> *Bangkok Post*, 29 September 1992



blamed the violence on Myanmar Muslim rebels who they said infiltrated the camp and attacked the police.<sup>19</sup>

On 27 September 1992, ten refugees were injured when rival groups fought a brief, pitched battle at Nayapara camp near the border town of Teknaf. Officials at the police station in Teknaf said the clashes erupted soon after a group of refugees families came forward to volunteer for repatriation. "Most of the refugees who have left behind homes and relatives in Burma want to go back, but a handful of militants are trying to exploit the situation and threaten those willing to volunteer for repatriation", said Bangladesh's Secretary for Home Affairs, Manzurul Karim. Many refugees however say that they will not return until the United Nations is given a supervisory and monitoring role.<sup>20</sup>

## China

China has ratified the 1951 Convention on Refugees. There is an office of UNHCR, Charge de Mission, in China. The ICJ has received information that there are about 20,000 refugees in camps in Yunan Province and that no international organisation has access to them.

China is granting temporary refuge to Myanmar refugees who are streaming across the border to escape fighting between Rangoon troops and separatist guerrillas. The official New China News Agency said, "Due to the fighting between the government troops of Myanmar and the Kachin Independent Army, a large number of refugees from Myanmar have spontaneously entered China". It quoted a Foreign Ministry spokesman as saying, "Out of humanitarian consideration, the Chinese government has accorded temporary settlement to those refugees". The agency did not say how many Burmese refugees were already in China. The Kachins are one of several ethnic minorities in Myanmar seeking independence from Rangoon.<sup>21</sup>

The Chinese law regarding the Entry and Exit of Aliens provides that aliens who seek asylum for political reasons shall be permitted to reside in China upon approval of the competent Chinese Government officials. However, an alien who enters or resides illegally in China may be detained for examination and/or subjected to resident surveillance or deportation by a public security body. Illegal aliens can be detained for ten days and fined and can also be expelled from the country.

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<sup>19</sup> Ibid

<sup>20</sup> Ibid

<sup>21</sup> *Bangkok Post*, 20 April 1992

## India

India has not ratified the International Convention on Refugees nor the Protocol. India's applicable law, The Foreigner's Act of 1946, makes no provision for refugees. Therefore, a refugee who crosses the Indian border without the permission of the immigrant authorities is considered an illegal immigrant and can be prosecuted and punished with imprisonment for up to five years and is also liable to a fine. <sup>22</sup>

There were about 323 refugees from Myanmar in India between 1987 and 1989, and recent figures put the number as high as 2,000. Refugees from Myanmar in India fall into two categories: those who belong to ethnic minorities which live on both sides of the border and who, due to lack of economic and welfare opportunities in Myanmar, choose to resettle on the Indian side. The other category consists of those who have fled from Burma because of the political situation. India has granted asylum to scores of Burmese refugees, including three candidates of the National League for Democracy (NLD) who crossed into Mizoram and Manipur.<sup>23</sup>

Myanmar refugees in India are to be found mainly in the three northeastern states of Manipur, Mizoram and Nagaland. There is one camp in Manipur and one in Mizoram. There are 42 individuals in the camp at Chandel, Manipur. There are two qualified doctors and an artist amongst them and the remainder are students who belong to the Burma Democratic Guerilla Front (BDGF).<sup>24</sup>

The procedure for being accepted as a refugee is that one is required to report to the local police station. This is a very uncertain and most dangerous process. The local police authorities in India have an understanding with their counterparts across the border in Myanmar. In some cases the Manipur Police has itself handed over reporting individuals to the Myanmar police. Two of the friends of the existing group faced this in 1990 end. They were handed over to the Myanmar police and were never heard of again. <sup>25</sup>

The police are officially expected to report details of each individual to the District Commissioner, who, after necessary formalities, with the Home and other departments, gives permission for entry into the camp.<sup>26</sup>

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<sup>22</sup> Section 14, Foreigners Act of 1946

<sup>23</sup> *Far Eastern Economic Review*, 28 February 1991.

<sup>24</sup> Exploratory Study on Refugees from Burma in North-Eastern States of India, Sponsored by SWISSAID in India, January 1992.

<sup>25</sup> Ibid

<sup>26</sup> Ibid

The camp at Chandel technically comes under the supervision of Assam Rifles, the army unit based in Chandel. The refugees are permitted to make their own arrangements for stay in the local areas, subject to constant reporting to the authorities. They are meant to be given shelter, food and Rs.2 per person per day but this provision is subject to a lot of irregularities at local levels. Shelter is normally provided by the local people. For food and sustenance, the refugees undertake any locally available work such as wood cutting or other odd jobs. The authorities do not object to movements in the locality, such as upto Imphal (the capital of Manipur) or a day or so of being away but anything beyond that is subject to objection.<sup>27</sup>

The group at Aizawl in Mizoram consists of 35 individuals. Four of the group are elected members of Parliament. The members of the group take up potential employment opportunities in hotels, garages and other establishments. The Government of Mizoram has provided ration cards for them for the supply of rations from the Government.<sup>28</sup>

On 28 January 1992, the Government of Nagaland instructed refugees to apply for temporary permits for 15 days stay.<sup>29</sup>

The Government of India has no official refugee policy, but it provides protection to certain groups of refugees, including the citizens of Myanmar. Each case is examined on its own merit. The Government of India has given assurances that the refugees from Myanmar will not be repatriated. Nonetheless, on 8 July 1989, five refugees from Myanmar were arrested in Shillong. They were placed in Leikun Camp on 4 September 1989. They were later arrested by local police and put in the Manipur Central Jail. On 17 February 1990, they were deported under the orders of the State Government. Since then, however, instructions have been issued to the State Governments to consult the Ministry of Home Affairs before future deportations.

The UNHCR has an office of the Chargé de Mission in New Dehli. It has not been invited to take any responsibility for the refugees from Myanmar. However, when approximately a dozen activist refugees who did not wish to be deported approached UNHCR, they were given recognition by UNHCR. This decision has been respected by the Government of India. These persons possess UNHCR identity cards and receive a subsistence allowance from UNHCR. The two citizens of Myanmar who were arrested after they hijacked a plane to India in November 1990 are being prosecuted under the Indian law.

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<sup>27</sup> Ibid

<sup>28</sup> Ibid

<sup>29</sup> Ibid

## Thailand

Thailand has not ratified the International Convention on Refugees nor the Protocol. The number of citizens from Myanmar presently in Thailand (excluding those seeking job opportunities in Thailand) is estimated to be around 70,000. Most of them live in about 27 border camps in Thailand and about 3000 live in Bangkok. All these people lack proper travel documents. They are considered illegal immigrants, subject to arrest, detention, fine and deportation. In 1984, the Government of Thailand asked several NGOs to provide assistance to refugees from Myanmar since it did not want the International Committee of the Red Cross (ICRC) or UNHCR to get involved (UNHCR has a full branch office in Bangkok). A network of private relief agencies serves the refugees in the camps, but it has no authority to serve the new arrivals or the students. The activities of these private relief agencies are, strictly speaking, illegal.

Citizens of Myanmar crossing the Thai border illegally is not a new phenomenon. For decades, people from Myanmar have been coming to Thailand in search of better jobs and living conditions. The economy of certain Thai provinces, such as Ranong and Tak, is dependent on the cheap labour supplied by these illegal immigrants.

In fact, in Tak, Mae Sot and Ranong provinces, where the services of the illegal immigrants are required for cheap labour, cards are issued to the illegal immigrants to allow them to work. However, they need permission from the Governor to move to another province. In Mae Sot and Ranong, a list of illegal workers is prepared by the District Officers at the request of the Chamber of Commerce. It is clearly understood that these illegal immigrants will not be arrested.

In other places as well, the illegal workers are looked after by the employer in terms of protection from the police. The police generally do not raid factories or shops where there are workers or shop assistants of Myanmar origin working. The main brunt of police efficiency in maintaining a policy of excluding citizens of Myanmar from Thailand is borne by those seeking refuge from political persecution.

Illegal job seekers and political refugees living in camps do not seek UNHCR protection. A large number of these persons belong to tribes living on both sides of the Thai-Myanmar border. These refugees prefer to live in camps near the border and with the Thai members of their tribe. This group generally receives better treatment at the hands of Thai officials than other groups, such as the Barmars<sup>30</sup> and students. Illegal workers

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<sup>30</sup> Two-thirds of the population of Myanmar are Barmar (ethnic Burmans) and live primarily in central Myanmar. The ethnic minorities include the Shan, the Rakhine (Arakanese), the Kayin (Karen), the Mon, the Kachin and the Chin. Smaller minority groups include the Karenni (also known as Kayah) and Pa-o.

are protected by their employers and the administration generally looks the other way as economic interests take precedence of a strict immigration policy.

### Thai-UNHCR Relations: Persons of Concern

Others, however, have to live under the constant fear of being picked up by the police. Many of the students and Barmars, and particularly the political activists among them, go to Bangkok. A number of them apply to UNHCR for refugee status. Most of the people seeking help are young, having fled Myanmar after the military crack-down on the pro-democracy movement of 1988. Since Thailand has not ratified the 1951 Convention Relating to the Status of Refugees, the UNHCR does not operate in Thailand under the authority of any treaty. UNHCR functions under its general mandate. This means that even when it recognises someone as a refugee, it cannot confer "refugee" status on that person.

A person recognised by UNHCR but unable to be given official refugee status is called a "person of concern" to UNHCR. According to the UNHCR mandate, as set out in its Statute, a person of concern to UNHCR is one, who:

"...owing to well-founded fear of being persecuted for reasons of race, religion, national 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..."

Till November 1990, UNHCR was permitted to issue letters to students and other citizens of Myanmar identifying them as "persons of concern". About 40% of the applicants received by UNHCR for this status are rejected. The reasons for the rejection of applicants are generally either the lack of documentary evidence or the failure to submit evidence regarded as credible. What constitutes credible evidence has not been stated by UNHCR. In the view of some asylum seekers and those representing them before UNHCR it leaves a lot of unfettered discretion to the official dealing with a case. Lawyers dealing with UNHCR say that acceptance or rejection quite often depends not on the evidence available but the UNHCR official dealing with the case. The same evidence may be accepted by one and rejected by another. UNHCR officials point out that they are working under constant pressure from the Thai Government to deal more strictly with these applicants and not to recognise these people as being of concern to UNHCR.

The successful applicant is issued a certificate stating that the person is a person of concern to UNHCR. Those deemed to be of concern received 3000 Baht per month from UNHCR.

The Thais, recognising that helpful treatment may bring even more citizens of Myanmar into Thailand, have exerted pressure on relief agencies and foreign governments, as well as UNHCR, not to recognise these refugees and not to provide aid to them. Western diplomats state that they have at times succeeded in putting pressure on the Thais to show restraint. On other occasions, however, the diplomats have been warned that recognising the citizens of Myanmar as refugees would compel the Thais to treat them more harshly; thousands may have to be deported to save Thailand from being overrun. The Thai officials argue that Thailand has been remarkably tolerant in its dealings with the refugees, even to the point of placing its friendly relations with the Government of Myanmar in jeopardy. Officials state that they have not acceded to Myanmar's request to deport all its citizens from Thailand.

"We have done little harm to them and looked the other way", a senior Thai official said. "But we have 300,000 Cambodians here already, and thousands of Vietnamese and Laotians. We have some Vietnamese here from 1954 and even Nationalist Chinese. Are we to shelter everybody?"<sup>31</sup>

Even within UNHCR, officials are divided over how to deal with the Thai Government. One group believes that UNHCR must protect the refugees regardless of the views of the Thai Government. Others believe that a confrontation with Thai authorities must be avoided as it will not produce any positive results.

The Thai Government also takes exception to the amount of the stipend provided by UNHCR. It is argued that this amount exceeds the minimum Thai wage and thus a UNHCR person of concern receives more money than the average Thai worker.

In general, the Thai Government does not want UNHCR to provide assistance to these refugees since the assistance makes it financially attractive for these persons to remain in Thailand. The continued presence of these persons of concern, it is feared, may bring pressure on the Thai Government to eventually recognise these people as refugees.

At times even persons in possession of UNHCR cards have been picked up by the police. On such occasions UNHCR would contact the police and other authorities. Sometimes the police would immediately release the person. At other times, the person would be sent to the Immigration Detention Centre (IDC). When this happened, UNHCR would pursue the matter with the authorities. UNHCR officials would visit the IDC where the person was detained. Access to the IDC by UNHCR officials is at times quite free and at other times restricted, depending on the policy of the Government and the mood of the authorities.

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<sup>31</sup> Steven Erlanger, "Burmese Crowd Into Thailand", *International Herald Tribune*, 20 April 1990.

On an average, 500-700 citizens of Myanmar go through the IDC every month. UNHCR submits the lists of persons of concern to the Commander of the IDC and requests that these persons not be deported against their will and not be handed over to the authorities in Myanmar. UNHCR officials say that they have no evidence of any person of their concern ever having been handed over to the authorities in Myanmar. These persons are generally taken to the border at the Three Pagodas Pass and released. Most of them turn around and return to Thailand.

Initially, the Three Pagodas Pass was under Kayin (Karen) and Mon control. Thus, the persons who were left at the Pass had no problem in turning around and returning to Bangkok. Now that the Pass has been over run by the Myanmar army and is under its control, it is far more dangerous for these persons to return. The Thai authorities are aware of this situation, but they still continue the process of detention, fine and deportation as the Thai law does not recognise refugees.

The policy of the Government of Thailand with respect to refugees has changed frequently and continues to change. On 22 November 1988, after the military crackdown in Myanmar, the Thai Cabinet decided to offer temporary asylum to students from Myanmar. Barely a month later, however, after a visit to Myanmar by General Chaowalit Yongchaiyut (then Commander-in-Chief of the Thai army), the Thai Government agreed with the Government of Myanmar to establish a repatriation centre.

The Repatriation Centre was established at Tak. It was staffed jointly by the Red Cross of Thailand and the Red Cross of Myanmar. It may be pointed out that in Myanmar the Red Cross is staffed by the army. The Centre was opened on 21 December 1988. On 26 December 1988, a group of 82 students was sent to Myanmar in a Myanmar Air Force plane. On 6 January 1989, the US Committee for Refugees reported that on 5 January 1989, it had received information from a source in Thailand that 150 students had been repatriated via the Tak Centre. Most of the students had been deported against their will. By the end of January 1989, nearly 300 students had been sent back to Yangon (Rangoon). In February and March about 80 students were returned to Yangon. The Tak Repatriation Centre has been closed down, but refugees have been returned to Myanmar from other border posts as well.

Towards the end of 1988, according to one NGO, about 2000 refugees from Myanmar were detained in Mae Sot. Out of these, while about a 1000 managed to get out, the rest were returned to Myanmar. Between October 1988 and January 1989, according to ABSDF reports, about 200 students were sent back to Victoria Point in Myanmar. According to some students and NGO persons, the Thai police paid fishermen at Ranong to transport the refugees and drop them on the docks at Victoria Point. Some of the refugees bribed the fishermen to turn the boat around and drop them back

on Thai soil. There are no reports of these persons being handed over to the Myanmar authorities but the fact that a garrison of the Myanmar army is stationed at Victoria Point leaves little doubt about the intention.

During the above period, in addition to the repatriation centre at Tak about 20 other reception centres were set up. Some refugees went back voluntarily. The border population dropped from 8000 to about 3000. Many were pushed back against their will as well. According to some NGO officials, once a person was in a reception centre he had to go, he had no choice. The UNHCR was denied access to all these reception centres.

The regime in Myanmar set up military tribunals in July 1989. Consequently, thousands of students and other refugees fled across the border to Thailand to avoid persecution. Thailand again began deporting refugees in large numbers. Thai officials deported 871 civilians, including students, between 8 and 28 September 1989. On 21 September 1989, 200 civilians from Myanmar, including 90 students, were deported from Mae Sot (in Thailand) to Myawaddy (in Myanmar).<sup>32</sup> On 7 November 1989, five persons of concern to UNHCR, who had UNHCR documents with them, were arrested from Mae Sot and deported. On 28 December 1989, 200 civilians from Myanmar, including women and children, were deported from Mae Sot and handed over to the authorities in Myawaddy. It is reported that the men were forced by the army into portering and the women and children were detained.<sup>33</sup>

On 10 March 1990, 400 civilians were "repatriated" from Mae Sot to Myawaddy.<sup>34</sup> On 14 March 1990, fourteen students were taken from the Suan Phalu immigration jail in Bangkok and forced across the border between Minthamee and the Three Pagodas Pass. On the same day, 168 persons were sent by boat to Victoria Point.<sup>35</sup> On 17 March 1990, between 600 and 800 civilians were sent to Victoria Point.

On 12 April 1990, about 1000 Kayins crossed the Thai-Myanmar border fleeing the Myanmar military operation.<sup>36</sup> On 4 May 1990, Thai Authorities removed 65 citizens of Myanmar from the Suan Phalu Immigration Detention Centre in Bangkok and transported them to Ranong. In this group were 37 students, 33 of whom were of concern to UNHCR. These students were able to bribe Thai fishermen and returned to Thailand.<sup>37</sup>

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<sup>32</sup> *The Nation*, 22 September 1989.

<sup>33</sup> The U.S. Committee for Refugees, "The War is Growing Worse and Worse", May 1990. p.8.

<sup>34</sup> *Bangkok Post*, 11 March 1990.

<sup>35</sup> *Bangkok Post*, 15 March 1990.

<sup>36</sup> *Bangkok Post*, 12 April 1990; *The Nation*, 12 April 1990.

<sup>37</sup> News from The U.S. Committee for Refugees, 7 November 1990.



On 7 June 1990, a Thai border patrol and police unit rounded up more than 1,100 persons living in the vicinity of Mae Sot. These persons were forced back to Myawaddy, a town controlled by the Myanmar army. An officer of the Myanmar army confirmed that 766 of these persons had been detained for interrogation. About 300 persons escaped to Thailand, some of whom reported that at least 4 Kayin women were raped, 12 persons were arrested and dozens of men were forced into portering.<sup>38</sup>

On 5 July 1990, a group of 45 men and women detained in Kanchanaburi Prison in Thailand were handed over to the Myanmar army at the Three Pagodas Pass. They were interrogated and forced into portering.<sup>39</sup> Also in the month of July, twenty mution porters fled to Thailand and all were pushed back.<sup>40</sup> On 10 August 1990, the police arrested 92 citizens of Myanmar from Bangkok <sup>41</sup> out of whom 24 were registered with UNHCR. They were all placed in IDC.

On 18 August 1990 the Nation newspaper reported that the office of the UNHCR in Bangkok had been asked by Thai officials to stop issuing and renewing letters of concern. The Thai Government, it was reported, was unhappy with these certificates being granted by UNHCR as it desired better relations with the military regime in Myanmar and considered the issuance of such certificates an obstacle in that regard. As a result of closer contacts Thai companies had obtained several concessions in Myanmar and the Thai Government wanted to please the Myanmar military regime by banning the issuance of UNHCR certificates.<sup>42</sup>

On 21 August 1990, the Nation reported that UNHCR had agreed to stop issuing official papers for "exiled illegal Burmese" in exchange for the continuation of its Burma assistance programme. This agreement was the result of a meeting between UNHCR officials and then Deputy Permanent Secretary of the Ministry of Interior, Chamnarn Pojana. He said the UNHCR can continue to pay the 3000 Baht allowance until the Thai Government finished building the camp which was likely to take 4 to 5 months. During the meeting the UNHCR was also requested to supply a list of the Myanmar students and to finance the camp project. Chamnarn also threatened action against the employers of illegal immigrants as well as non-governmental organisations aiding the refugees.

In September 1990, more than 850 citizens of Myanmar detained at the IDC were deported from Ranong. Those deported included 24 persons of concern to UNHCR. On 5 November 1990, 30 monks and students from

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<sup>38</sup> The U.S. Committee for Refugees, "Burmese Refugees in Thailand", 7 November 1990, p.2.

<sup>39</sup> Ibid

<sup>40</sup> *The Nation*, 24 July 1990

<sup>41</sup> *The Nation*, 11 August 1990

<sup>42</sup> *The Nation*, 18 August 1990

Myanmar were arrested, but they managed to escape. Two of the escapees were re-arrested.

On 7 November 1990, the ABSDF office in Mae Sot was raided by Thais. Sixteen persons were arrested, five of whom were "repatriated".<sup>43</sup>

On 10 November 1990, three students from Myanmar, demanded an end to the military regime in their country, seized a Thai jetliner and hijacked it to Calcutta.<sup>44</sup> The hijackers were arrested and the plane was returned. This incident provided an excuse for the Thai authorities to step up their activities against the refugees from Myanmar. On 13 November 1990, the *Nation* reported that the Interior Ministry of Thailand was drawing up stringent measures to halt "political activity by dissident Burmese students and is accelerating its plan to establish a border holding centre in the wake of Sunday's hijacking of a Thai plane by two Burmese students."

On 14 November 1990, the Chief of the National Security Council of Thailand threatened to take legal action against any student from Myanmar involved in political activity.<sup>45</sup> He said that there was "a general guideline on dealing with the Burmese students and that was to confine them to a holding centre."

It was reported in the press that Chamnarn Pojana threatened international aid workers and UNHCR officials with arrest and deportation if they did not cease supporting the Burmese students.<sup>46</sup> He also said that "all Burmese students seeking asylum in Thailand will be placed in a holding camp. They would be issued with identification and would be required to seek official permission to come and go to the camp. Special living quarters would also be proposed to house Burmese monks".

On 17 November 1990, the information director of the armed forces Lt. General Narudol Detpradijuth stated that the Myanmar students in Thailand were illegal immigrants and action should be taken against them.<sup>47</sup> On 18 November 1990, the police arrested 14 students in Bangkok despite the fact that they had UNHCR documents on them <sup>48</sup>. However they were released the following day.

On 19 November 1990, it was reported that under Section 17 of the Immigration Act, the Ministry of Interior was likely to set up a holding centre to confine all Burmese dissidents. It was stated that a ban would

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<sup>43</sup> News from The US Committee of Refugees, 7 November 1990.

<sup>44</sup> *The Nation*, 11 November 1990.

<sup>45</sup> *The Nation*, 15 November 1990.

<sup>46</sup> *Bangkok Post*, 17 November 1990 and *The Nation*, 17 November 1990

<sup>47</sup> *Bangkok Post*, 18 November 1990

<sup>48</sup> *The Nation*, 19 November 1990

be imposed on their political activities and they would be required to report to the authorities.<sup>49</sup> The army, however, opposed the setting up of such a camp on the ground that Thailand should not bear the burden of establishing such a place as the citizens were illegal immigrants and ought to be dealt with accordingly.<sup>50</sup>

On 20 November 1990, UNHCR stopped issuing official papers for exiled Myanmar students.<sup>51</sup> The Thai Government, however, refused the request to extradite dissidents to Myanmar and the aid ban on the refugees was also relaxed by the Ministry of Interior.<sup>52</sup> UNHCR continues to interview students and other asylum seekers and those deemed to be persons of concern receive an allowance of Baht 2,500 per month.

The Interior Ministry of Thailand stated on 1 January 1991 that after a border camp was set up by the Thai authorities for the Myanmar refugees, UNHCR assistance to them must stop.<sup>53</sup> Virtually everyone interviewed by the ICJ, including citizens of Myanmar in Thailand, diplomats and various NGOs, was opposed to the idea of the camp. They all said that people would never go to the camp of their own free will. It was argued that many would flee across the borders to find refuge with the rebels rather than live in camps from which they could easily be forced across the border or handed over to the Myanmar authorities.

41 Myanmar asylum-seekers, after having been detained for over five months at the immigration detention centre in Bangkok, were deported to Myanmar on 25 April 1991 by the Thai police. All of the 41 asylum-seekers had been recognised by UNHCR as persons of concern. The asylum-seekers were taken by bus from Bangkok to the southwest town of Ranong. According to a relief worker, some of the people were handcuffed on the bus. When they reached Ranong, the asylum-seekers were placed on boats. In an effort to escape before being handed over to Myanmar authorities, a number of them jumped into the water. According to reports received, two students who remained on the boat were arrested by the Myanmar authorities. Most of the others who made their way back to Thailand were re-arrested and risked re-deportation to Myanmar.<sup>54</sup>

Min Thein, recognised as a person of concern by UNHCR, was arrested for "illegal immigration" on 29 July 1991. He was held at the IDC. On 31 July 1991, with a number of other refugees from Myanmar, he was taken to a court in Minburi, on the outskirts of Bangkok. Reportedly because they feared that Thai authorities might force them to return to Myanmar, Min

<sup>49</sup> *The Nation*, 20 November 1990

<sup>50</sup> *The Nation*, 30 November 1990

<sup>51</sup> *The Nation*, 21 November 1990

<sup>52</sup> *Bangkok Post*, 21 November 1990

<sup>53</sup> *The Nation*, 1 January 1991.

<sup>54</sup> Amnesty International Urgent Action, 1 May 1991; *Bangkok Post* 12 May 1991; *The Nation*, 12 May 1991.

Thein and two other prisoners tried to escape when the truck transporting them reached the court. Min Thein and a woman prisoner, Ma Thet, managed to climb a wall and momentarily escape. Two local policemen on a motorcycle chased them. At a construction site, Min Thein was shot and suffered wounds from which he subsequently died. According to a police spokesman statement of 2 August, the policeman who shot Min Thein was acting in self-defence. However, Ma Thet was reported as saying that Min Thein was shot in the back while attempting to escape. Ma Thet and the other person who attempted to escape were reportedly sentenced to four months imprisonment for "illegal immigration."<sup>55</sup>

Ye Soe Aung was brutally beaten, stabbed and then shot twice by Thai police on 4 November 1991. His body was recovered on 10 November approximately 10 Kms. from the place of arrest.<sup>56</sup> UNHCR is pursuing the case with the competent Thai Government authorities who have started an investigation, the results of which are, as yet, unknown.

In February 1992 the Ministry of Interior of Thailand announced that the Myanmar students in Thailand would have to report to Thailand's holding centre which will be set up at Ban Maniloy in Pak Tho District of Ratchaburi, at the site of a former border patrol police station about 90 Kms. from the Myanmar border.

UNHCR is required to request visits to the holding centre on a case-by-case basis. "We would be more comfortable with uninterrupted access", a UNHCR official said, suggesting the issue of a permanent pass. The UNHCR stipend of Baht 2500 per month will be terminated on the students' entry to the camp. At a briefing by Thai authorities to officials of UNHCR, some NGOs and Western Embassies it was stated that the Interior Ministry would provide three meals a day and some educational activities and health services. Students would be allowed to leave the centre for periods of upto seven days if they wished on the approval of the provincial governor. In the initial period of three to six months, the Interior Ministry would organise an assessment of the educational level of each student in order to arrange an appropriate programme. Language teaching would also be provided in English, French and Thai. <sup>57</sup>

As of 3 June 1992, 1300 persons had registered with the Ministry of Interior for the safe camp. On registering students get a 'white card' which formally identifies the holder as a student from Myanmar and states that he/she has been granted temporary stay in the country. Thai authorities have made it clear that it is not a detention centre or a refugee camp but a practical means of dealing with students so that they

<sup>55</sup> Amnesty International; Thailand, Concern about treatment of Burmese Refugees, August 1991.

<sup>56</sup> Asiawatch, Abuses Against Burmese Refugees in Thailand, Vol. No.4, Issue No.7, 20 March 1992

<sup>57</sup> *Bangkok Post*, 8 March 1992

are not subjected to detention and deportation. The reservation of aid agencies and western officials is matched by that of Myanmar students who cite violent encounters with the police as justification for their lack of trust in Thai officialdom. At present it is unclear whether UNHCR will have a permanent presence at the centre.

Of 511 Myanmar students who had passed the screening, only a few turned up at the ministry to enter the holding centre during the set period of 14 to 21 September. Thai Interior Deputy Permanent Secretary Chaiwat Hutacharpen told a press conference on 25 September 1992 that those who had passed screening processes and had been granted the status of asylum-seekers would be allowed until 31 October to report to the Ministry. He dismissed fears that those sent to the centre would face deportation and would not be allowed free movement in and out of the centre. Those housed at the centre were eligible to continue their studies outside, he said. He added that those who did not enter the centre could face arrest and repatriation.<sup>58</sup>

#### Thailand's Immigration Act

Thailand is not a party to the 1951 Convention and the 1979 Immigration Act of Thailand does not recognise refugees.

Section 4 of the Immigration Act defines an "alien" as a "natural person who is not of Thai nationality." Section 12 of the Act stipulates that no "alien" shall be admitted into Thailand if that person does not have a valid passport or travel documents or a visa. In addition, persons shall be excluded from entry into Thailand who do not have means of support, who have not been vaccinated, or who are dangerous to society or to the peace and security of the country. Persons fleeing persecution by their government in another country will inevitably be in violation of one or more of these conditions. They would, therefore, be illegal immigrants under Thai law and subject to prosecution by the Thai authorities. As a consequence of Thailand's lack of recognition of refugees, all displaced persons are illegal immigrants since they enter Thailand in violation of the 1979 Immigration Act. Apparently, the executive branch of the Thai Government has complete discretion in determining the legal status of displaced persons in Thailand. After it has decided to treat a displaced person as an illegal immigrant, the executive has discretion in deciding whether or not to enforce its immigration law.

Under Section 57 of the Immigration Act, a person who cannot prove his Thai nationality is considered to be an alien. Unless an alien can show that he has entered the country legally, he is considered an illegal immigrant. Once a person is found to be an illegal immigrant, the authorities, under Section 54 of the Immigration Act, can exercise their

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<sup>58</sup> *The Nation*, 26 September 1992

discretion in deporting the person from Thailand. Under Section 63, penalties other than deportation include imprisonment for up to two years, a maximum fine of 20,000 Baht or both. Persons who are placed in a confined area like a camp or detention centre can be punished with imprisonment for two years, fined 2000 Baht or both. Under Article 72 of the Immigration Act, those who aid or abet illegal immigrants can be punished with imprisonment of up to two years and fined 2000 Baht.

The extent to which the law is enforced depends on the policy of the Government. Immediately after the 1988 crack-down in Myanmar, the Thai authorities acted liberally towards the refugees. This attitude changed, however, after the Commander-in-Chief of the Thai army visited Myanmar. Economic relations between the two countries improved; Thai companies were granted logging, fishing, and other concessions in Myanmar. Refugee and rebel groups were regarded as a nuisance since they created tensions in the relations between the two countries and because the insurgents extorted money from Thai businesses operating in Myanmar.

Cooperation with the Thai military - including possibly even supplies - enabled the Myanmar army to remove the Kayin and Mon insurgents from their fortified bases along the Thai border. For the first time in 40 years, the Myanmar army was able to maintain a presence in captured territory and the Kayins and Mons lost control of forests, land and black market trading posts.

As a result of the cooperation between the Thai military and the Myanmar army, the army used Thai territory to attack to rebels from the rear. In many cases, the Thai army evacuated Thai villagers from the areas that were used for the attacks. On 29 December 1989, Myanmar troops captured the last Kayin base near the Mae Sot-Myawaddy border crossing. The Three Pagodas Pass was captured by Myanmar troops on 9 February 1990.<sup>59</sup>

The attitude of the Thai authorities toward the refugees hardened and the policy became more strict after the hijacking of the Thai plane in 1990, the attempted scuttling of a Thai trawler on 3 January 1991, the failure to pay a 5 million Baht ransom by the owner of Narong Canning Co., and the blowing up of a truck belonging to a Thai logging company.

#### Thailand's Obligations under International Law

The fluctuations in national policy re-inforce the discretion of the authorities to deal with the refugees as they please. However, although

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<sup>59</sup> Hamish McDonald, "Selling Out Old Friends", *Far Eastern Economic Review*, 22 February 1990.

the national law of Thailand seems to give a free hand to the Thai Government, Thailand is constrained by its international obligations to treat the refugees fairly.

In this regard, one of the main questions which arises is whether the refugees from Myanmar in Thailand have any rights. If these persons were classified as refugees, they would be regarded as having a specific set of rights under international law. Minimum standards have been set by the 1951 Convention. These rights include the right to religion, education and social security.

In addition, and most relevant to the refugees from Myanmar, Article 33 of the Convention states:

"No Contracting State shall expel or return a refugee in any manner whatsoever to the frontiers or 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."

*The non-refoulement* of refugees has developed over time into a norm of customary international law.<sup>60</sup> Thus, the principle of *non-refoulement* binds the international community of states, including those who have not ratified the 1951 Convention, such as Thailand. As Richard Plender says: "There is a remarkable degree of congruence in the practice of States with respect to persons eligible to receive asylum. Even those which are not parties to the Geneva Convention or New York Protocol generally recognize that a person who has a well-founded fear of persecution at the hands of a foreign State is eligible to receive asylum, at least when that persecution is actuated by political considerations."<sup>61</sup>

Even when a person cannot be classified as a refugee, or falls within the definition of an illegal immigrant under municipal law, that person has certain fundamental human rights. A person cannot be denied those rights simply because he has crossed an international boundary in violation of a national immigration law.

Some of these rights are set out in the 1948 Universal Declaration of Human Rights which was passed with no dissenting votes.

<sup>60</sup> "The right to enjoy asylum entails, principally, the duty to refrain from *refoulement*. This is accepted by so many States, parties and non-parties to the Geneva Convention, that it may properly be regarded as a general principle of international law." Richard Plender. The Right to Asylum. Hague Academy of International Law, Center for Studies and Research in International Law and International Relations, Dordrecht, Martinus Nijhoff Publishers, 1989, p.96. For the principle of *non-refoulement* as part of customary international law, see also: Guy Goodwin-Gill. The Refugee in International Law, Oxford, Clarendon Press, 1983, pp. 97-98 and *Brief Amicus Curiae* of the United Nations High Commissioner for Refugees in Support of the Haitian Refugee Center, Inc., et al., United States Court of Appeals for the District of Columbia Circuit, No. 85-5258, p.8.

<sup>61</sup> Plender. op.cit. pp.95-96.

Article 3 of the Declaration guarantees the right to life, liberty and security of person to all. Articles 13 and 14 specify these rights in terms of displaced persons. These read:

"Article 13

1. Everyone has the right to freedom of movement and residence within the borders of each state.
2. Everyone has the right to leave any country, including his own, and to return to his country.

Article 14

1. Everyone has the right to seek and to enjoy in other countries asylum from persecution.
2. This right may not be evoked in the case of prosecutions genuinely arising from non-political crime or from acts contrary to the purposes and principles of the United Nations."<sup>62</sup>

These rights are universal rights and are to be enjoyed by displaced persons irrespective of how they are classified by local law. Dr. Paul Weis stated: "it would seem to me that the meaning of the Declaration is that while asylum is still granted in the exercise of sovereignty, it should not be exercised in such a way as to refuse a person admission, at least temporary admission, if such action would subject him to persecution."<sup>63</sup>

Furthermore, under international standards for the protection of refugees, such as those set forth in Conclusion 44 of the Executive Committee of the Programme to the UNHCR passed in 1986 at the XXXVIIth session, "illegal immigration" is not in itself a legitimate reason for the detention of refugees. Thailand was a member of this Executive Committee which passed Conclusion 44 by consensus.

The treatment of refugees from Myanmar by the Government of Thailand does not conform to international standards. Even if it is argued that some of the standards set forth by international law are not mandatory but only persuasive, they still provide a context for judging Thailand's behaviour in terms of its respect for international law and

<sup>62</sup> For the relation between asylum and the Universal Declaration, see Prince Sadruddin Aga Khan. "Asylum - Article 14 of the Universal Declaration of Human Rights." Journal of the International Commission of Jurists, Vol. VII, no.2, December 1967, pp. 2-8.

<sup>63</sup> Dr. Paul Weis. "Human Rights and Refugees", Lecture at Yale University Law School, Interpreter Releases, Vol. 45, no. 11, March 18, 1968, p. 76.



human rights. The frequent detention, incarceration and expulsion of the Myanmar refugees who have come to Thailand to flee persecution are *prima facie* violations of the obligations of Thailand under international law.<sup>64</sup>

## Recommendations

The Governments of Bangladesh, the People's Republic of China, India and Thailand should grant asylum to the refugees fleeing persecution in Myanmar. These governments should allow the United Nations High Commission for Refugees to provide protection to these refugees. The International Community should provide economic assistance to the refugees.

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<sup>64</sup> For the legal position of refugees in Thai law, the ICJ has drawn from: Refugees in Thailand. Prospects for Longstayers, Public Affairs Institute, Bangkok. Notes of an ICJ interview with Professor Vitit Muntarbhorn in February 1991; Vitit Muntarbhorn, "Displaced Persons in Thailand: Legal and National Policy Issues in Perspective", Chulalongkorn Law Review, Vol. 1, N° 5, 1982; Vitit Muntarbhorn, "Protection and Assistance of Refugees in Armed Conflicts and Internal Disturbances: A Re-Appraisal of the Institutional Competence of the Red Cross and the Office of the United Nations High Commissioner for Refugees", Chulalongkorn Law Review, Vol. 2, no. 1, 1983; Vitit Muntarbhorn, "Refugees: Law and National Policy Concerning Displaced Persons and Illegal Immigrants in Thailand", Thammasat Law Journal, Vol. 1, 1986.