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**MYANMARESE REFUGEES IN THAILAND:
THE NEED FOR EFFECTIVE PROTECTION**

By

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ABSTRACTS

This paper deals with the Thai government's policy on refugees with a special focus on refugees from Myanmar. It is designed to give suggestions to international human rights NGOs working in the Thai-Myanmar border areas for the protection of the human rights of Myanmarese refugees. Most international human rights NGOs in this region are lobbying for the Thai government to ratify the Refugee Convention or at the very least, take active steps towards the protection of refugees under customary international law.

This paper is, however, concerned by these NGOs' reliance on the ratification of the Convention as a solution to all the problems associated with refugee protection in the region. It is understandable that establishing a structured legal regime (positive law) is crucial. But, we are also in favor of the adoption of simultaneous measures, which, if successful, in the long-run will create an environment that is conducive to a law that is respected and effectively implemented.

This paper concludes that irrespective of when the law on refugee protection is brought into force in Thailand, the recommended non-legal measures will go a long way in setting the stage for the law to be implemented efficiently at some point in the future.

MYANMARESE REFUGEES IN THAILAND: THE NEED FOR EFFECTIVE PROTECTION

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BuhmSuk Baek & Gauri Subramaniam

I. INTRODUCTION

This paper deals with the Thai government's policy on refugees with a special focus on refugees from Myanmar. Thailand is an important host country in Asia granting refuge to people from neighboring countries like Laos, Myanmar and Cambodia.

Thailand has not ratified the United Nations Convention relating to the Status of Refugees (Refugee Convention) of 1951 or the Protocol of 1967 though it is a member of the Executive Committee of the United Nations High Commissioner for Refugees (UNHCR ExcCom).¹ ExcCom is a body which develops guidelines and prescribes standards for refugee protection worldwide. Thailand has no domestic legislation covering the treatment of refugees and the refugee status determination procedures in place are extremely weak.²

II. ISSUES

This paper is designed to give suggestions to international human rights NGOs working in the Thai-Myanmar border areas for the protection of the human rights of Myanmar refugees. For example, the most active one is the Thailand Burma Border Consortium, a consortium of NGOs in

¹ See Refugees International, *Thailand: Burmese Resettlement Offering New Opportunities and Creating Complications*, (May, 2007) <http://www.refugeesinternational.org/content/article/detail/10001> ; Human Rights First, *Refugee Report: Thailand*, (2002).

http://www.humanrightsfirst.org/refugees/reports/cntry_rev_02/Thailand.pdf

² *Ibid.*

the region which aims at protecting the legal rights of Myanmarese forced migrants. One of their primary functions is providing relief and medical assistance to the refugee communities along the Thai-Myanmar border.³ Due to the repressive regime in Myanmar, the widespread violence, and the persecution and lack of economic opportunity, Myanmarese citizens are being forced to flee and seek refuge. In Thailand, they have no legal status as *refugees*, often lack legal documentation and so are forced to hide in the forests. Occasionally, they take the odd jobs they can find.

Most international human rights NGOs in this region are lobbying for the Thai government to ratify the Refugee Convention or at the very least, take active steps towards the protection of refugees under customary international law.

This paper is, however, concerned by these NGOs' reliance on the ratification of the Convention as a solution to all the problems associated with refugee protection in the region. This research reveals that many developed countries do not further the objectives of the Convention even after they become parties to it.⁴ It is understandable that establishing a structured legal regime (positive law) is crucial. This paper is, however, hesitant to conclude that ratifying the Convention and enacting domestic legislation are the only ways to deal with the issue at hand. A fair and efficient system of implementation and the acceptance of Myanmarese migrants in Thai society are equally vital.

The core principle of refugee protection is the principle of *non-refoulement*, which provides that host countries should not return a refugee to any country where he or she is likely to face persecution on the grounds of race, religion, nationality, political opinion, or membership in a

³ See in general TBBC's website: <http://www.tbbc.org/aboutus.htm>

⁴ Statistics on Asylum Applications and Refugee Determination by Country of Asylum and Level in Procedure, 2006 <http://www.unhcr.org/statistics/STATISTICS/4676a71d4.pdf>

particular social group.⁵ In practice, this implies that states must put in place a fair screening mechanism to determine whether a person or group has a valid claim to refugee status, and to ensure that the rights and responsibilities of refugees and their host governments are acknowledged, respected and implemented.⁶

In Section III, this paper will locate the problem within its historical and current socio-economic context in both Thailand and Myanmar. In Section IV, a brief description of the legal framework and the legal issues involved will follow. Section V will identify the individuals, agencies and institutions involved and will examine their behaviors and the probable causes.⁷ Chapter VI will analyze the issues that were identified through the theoretical framework, and make recommendations for the effective protection of Myanmarese refugees in Thailand.

III. BACKGROUND

A. THE CURRENT CONTEXT IN THAILAND

Out of the estimated 400,000 refugees and asylum seekers living in Thailand, the largest concentration of forced migrants is found within the Myanmar-Thai border regions.⁸ There are nine refugee camps there, which represent the largest concentration of Myanmarese refugees in Thailand.⁹

⁵ See, Sir Elihu Lauterpacht & Daniel Bethlehem, *The Scope and Content of the Principle of Non-Refoulement: Opinion*, (2003) <http://www.unhcr.org/publ/PUBL/419c75ce4.pdf>

⁶ *Ibid.*

⁷ This paper does not fully apply the theoretical framework of Ann Seidman's ROCCIPI concept, but is meant to reflect the key actors involved and their problematic behaviors. See Ann Seidman et al., *Legislative Drafting for Democratic Social Change: A Manual for Drafters*, 86-99, 109-22, 182-86 (Kluwer Law International, 2001).

⁸ The International Rescue Committee and Jesuit Refugee Service, *Nowhere to turn: A report on conditions of Burmese asylum seekers in Thailand*, <http://www.reliefweb.int/library/documents/2005/jrs-tha-11jul.pdf>

⁹ See DARE Network Communities' information map, <http://www.darenetwork.com/networkcomm.htm>

The Thai government entered into Memorandums of Understandings (MOUs) with Laos (October, 2002), Myanmar (June, 2003) and Cambodia (May, 2003) which addressed the economic, social, and security concerns emerging from irregular migration. Current law bars new migrants entering Thailand from obtaining a work permit because they have not registered with the Ministry of Interior prior to 2004.¹⁰ Migrants may, however, work in Thailand under the terms of their respective countries' MOUs.

Despite the risk of persecution and the well-documented human rights violations committed by the government of Myanmar and its agents, the Thai government deports nearly 10,000 Myanmar citizens a month on grounds of illegal entry. The Thai government also supplies the government of Myanmar with information on the deportees according to a formal procedure stipulated in the MOU between Thailand and Myanmar.

As far as the public opinion in Thailand is concerned, there have been different kinds of public response toward Myanmar forced migrants, some based on their presence in Thailand and some based on their desire to be a part of the workplace. Thai entrepreneurs and business-owners have begun to welcome illegal migrant workers from Myanmar. The Thai economy has been growing since the 1980s and Thai business-owners need the large number of migrants (illegal or legal) from neighboring countries for jobs which constitute "dirty, dangerous, and difficult (3D)" work.¹¹ Additionally, these entrepreneurs pay extremely low wages to such workers.¹² Additionally, various business interest groups in Thailand have claimed that it is now very difficult to find Thai

¹⁰ International Bureau For Children's Rights, *Making Children's Rights Work: Country Profile on Thailand*, (2006) 5-8, http://ibcr.org/Publications/CRC/Draft_CP_Asia/ThailandPDF.pdf ; Migration News, *Malaysia, Singapore, Thailand*, Migration News Vol.12 No.2, (Apr, 2005) http://migration.ucdavis.edu/MN/more.php?id=3103_0_3_0

¹¹ Yongyuth Chalamwong, *Government Policies on International Migration: Illegal Workers in Thailand in International Migration in Southeast Asia* 352, 355 (Aris Ananta & Evi Nurvidya Arifin ed., 2004).

¹² *Ibid.*

workers for certain jobs in specific locations, especially in the fishery sector and rubber plantations located in the southern part of Thailand.¹³

The other reaction is from local Thai workers. There are increasing complaints and protests against accepting Myanmarese migrants and allowing illegal migrants to work legally in Thailand.¹⁴ In general, local Thai workers want the government to take a tougher position against Myanmarese migrants.

B. HISTORICAL BACKGROUND

In 1988, the State Law and Order Restoration Council (SLORC) seized power by force in Myanmar. This followed the collapse of the Communist Party of Burma (CPB) in the late 1980s and the military crackdown on the pro-democracy movement in 1988.¹⁵ The SLORC renamed itself the State Peace and Development Council (SPDC) and has since used a repressive military regime and the curbing of civil liberties as a strategy to maintain law and order.¹⁶ The SPDC used coercive tactics to gain complete control over the border regions by systematic forced relocations of villages.¹⁷ These repressive policies have contributed to a large extent to Myanmarese citizens' fleeing the country.

It is, however, necessary to point out that cross-border migration in the region is not a recent phenomenon. For instance, the Mae Hong Son province in north western Thailand has been a

¹³ *Ibid*, 358-359.

¹⁴ *Ibid*.

¹⁵ GlobalSecurity.org, *SLORC Coup in Burma*, <http://www.globalsecurity.org/military/world/war/slorc.htm>

¹⁶ See in general, Yan Nyein Aye, *Endeavours of the Myanmar Armed Forces Government for National Reconsolidation* (U Aung Zaw, 2000).

¹⁷ Curtis Lambrecht, *Destruction and Violation: Burma's Border Development Policies*, *Watershed* 5, no.2 (2000) 28-32. [http://www.terrapeer.org/pic_water/Watershed%205\(2\).pdf](http://www.terrapeer.org/pic_water/Watershed%205(2).pdf)

recipient of many migrants from Myanmar.¹⁸ There is also a clear distinction between migrants who entered Thailand in the 1960s and 70s and migrants who entered Thailand in the late 1980s. Earlier in the process, Thai administrative procedures were not as stringent and the chances of obtaining official Thai identification documents were higher, thus making Thailand a sought-after destination for migrants from Myanmar.¹⁹

Until the late 1980s, the Thai government had a liberal policy towards Myanmarese migrants since the focus at the time was on the refugees from Indochina, particularly Khmer refugees along the Thai-Cambodia border.²⁰ In the 1990s, with the increasing number of migrants, the Thai policy became stricter. The police began arresting illegal migrants and this was most often followed by deportation.²¹ Obtaining “legal” documents allowing refuge became more difficult. More recently, the Thai government has increasingly viewed Myanmarese migrants as “illegal” migrants, even in the Mae Hong Son province.²² Conditions near the Thai-Myanmar border have worsened because of the changes in Thai policy and also because of the repressive and violent political conditions in Myanmar.²³ It is not uncommon to find Myanmarese citizens making

¹⁸ See Kaise, Ryoko, *Tai Yai Migration in the Thai-Burma Border Area: The Settlement and Assimilation Process, 1962-1997*, Thesis. Program of Thai Studies, Chulalongkorn University, Thailand, 1999.

¹⁹ *Ibid.* Migrants in the 1960s and 70s could easily obtain various types of identification that guaranteed refuge in Thailand, which did not imply in any way that their status was as the same as that of Thai citizens but did provide them with greater security.

²⁰ See Supan Chantavanich & Reynolds E. Bruce, *Indochinese Refugees: Asylum and Resettlement*, Institute of Asian Studies (Chulalongkorn University, 1988).

²¹ Kaise, Ryoko, *supra note* 18.

²² *Ibid.*

²³ For example, there are 173 incidents of rape and other forms of sexual violence, involving 625 girls and women, committed by Myanmarese army troops in the Thai-Myanmar border areas, mostly between 1996 and 2001. See Shan Human Rights Foundation (SHRF), *Dispossessed, Forced Relocations and Extra-Judicial Killings in Shan State*, (May, 2002). One researcher described violence against women and girls in these areas as “largely, dangerously, invisible.” Carolyn Nordstrom, *Girls and War Zones: Troubling Questions*, in *Engendering Forced Migration. Theory and Practice*, 63, 66 (Doreen Indra ed., 2000).

repeated attempts to cross the border and enter Thailand. This is reflected in an excerpt from an interview with a migrant:

I have nowhere else to go and I don't know where to go so I will just stay here in Mae Hong Son. If I am caught, I will be sent back to Burma maybe. This has happened to many people. When they are caught, they are sent back. But they just come again – over and over. Being chased by the Thai authorities is better than being chased by the Burmese military.²⁴

The issue that emerges is that the Thai government views Myanmarese “illegal” and “undocumented” migrants as both “a source of trouble” and “a source of cheap labor” simultaneously.²⁵

IV. LEGAL FRAMEWORK

The Thai government perceives the “displaced persons” entering Thailand as “problems” to be managed and contained in “temporary” camps with possibilities of repatriation in the future.²⁶ Since Thailand has not ratified the Refugee Convention of 1951 and the subsequent 1967 Protocol, the Thai government has limited legal obligations under international law regarding the treatment of Myanmarese forced migrants.²⁷

Nevertheless, Thailand has been a country of refuge for fleeing citizens from the neighboring countries of Indochina and Myanmar over the past three decades. During this period, the Thai government's treatment of refugees has not conformed to standards prescribed by

²⁴ Interview from Elaine Wong Siew Yin, *The Political Geography of Displacement in Mainland Southeast Asia: The Case of the Shans*, Department of Geography, National University of Singapore, 71-72 (2001).

²⁵ Carl Grundy-Warr, *The Silence and Violence of Forced Migration: The Myanmar-Thailand Border*, in *International Migration in Southeast Asia* 228, 245 (Aris Ananta & Evi Nurvidya Arifin ed., 2004).

²⁶ *Ibid*, 248.

²⁷ See Court W. Robinson, *Terms of Refuge: The Indochinese Exodus and the International Response* (1998); U.S. Committee for Refugees and Immigrants, *World Refugee Survey: Thailand (2007)*, <http://www.refugees.org/countryreports.aspx?id=2024>; The International Rescue Committee and Jesuit Refugee Service, *supra note 8*.

international refugee law or customary international law. The definitions of “displaced person,” “illegal immigrants” and “refugees” are controversial and the distinction between these categories is somewhat blurred.²⁸ The Thai authorities refer to people who are not migrant workers and have become refugees as “*phuu oppayop*”, “*chon platthin*” (displaced persons), or as “*chon klumnoy*” (minority people), or as “*chon klumnoy phuu raysanchaat*,” meaning “minority people without documents –nationality.”²⁹

The term “*phuu liiphay*” (refugee) is less frequently used, and the terms “displaced persons” and “undocumented minorities” are more widely used. The latter categories are people with a ‘temporary’ status. There is also a distinction between recent migrants and others who have resided in Thailand for generations.³⁰

Thai immigration laws include the Immigration Act of 1950 (amended in 1979 and 1992), the Alien Registration Acts of 1950, 1952 and 1954, the Nationality Act of 1965 (amended in 1992), the Alien Employment Act of 1978, the 1979 Law on the Categories of Work Not Permitted for Aliens, and the 1979 and 1985 Laws on Forms of Employment and Activities in Which Aliens Can Engage.³¹

²⁸ See more details International Law Association of Thailand (ILAT), *National Forum Report on Refugees and Displaced Persons in Thailand: Assistance and Durable Solutions* (Dec, 2001)

<http://www.refugees.org/uploadedFiles/Investigate/Anti-Warehousing/Countries/ILAT%20011212%20National%20Forum%20Report.pdf>

²⁹ Elaine Wong Siew Yin & Carl Grundy-Warr, *Geographies of Displacement: The Karenni and The Shan Across The Myanmar-Thailand Border*, 23 *Singapore Journal of Tropical Geography*, 93, 111 (Mar, 2002)

³⁰ Carl Grundy-Warr, *supra note 25*, 250.

³¹ Darunee Paisanpanichkul, *Burmese Migrant Workers in Thailand: Policy and Protection*, in 10 *Legal Issues on Burma Journal* (Burma Lawyers’ Council, Dec. 2001) <http://www.ibiblio.org/obl/docs/LIOB10-darunee.htm>

According to domestic law, an illegal alien is a person not having Thai citizenship who enters the Kingdom of Thailand thereby violating Section 12 of the Immigration Act of 1979.³² Thus, under Section 12, illegal Myanmarese migrants should be repatriated to Myanmar. The government, however, may use the exception under Section 17 of the Immigration Act to allow temporary employment. Section 17 provides that under special circumstances, the Ministry of Interior, with permission from the Cabinet, may authorize entry into the Kingdom subject to any

³² Section 12 stipulates that “No alien of the following characteristics shall be allowed entry into the Kingdom:

- (1) not in possession of passport or other passport substitute document and that which is still valid or in possession of passport or other passport substitute document, but visa has not been stamped or seen by the Thai Embassy or Consulate in foreign countries or from the Ministry of Foreign Affairs with the exception of the special case that no visa is required for certain category of alien;
- (2) not in possession of a means of subsistence which normally entails for entering the Kingdom;
- (3) entering the Kingdom for the purpose of being worker or seeking manual labor job without the use of special knowledge or technical skills or seeking other employment contravening the law governing the employment of alien;
- (4) having unsound mind or afflicted with any one of the diseases prescribed in the Ministerial Regulations;
- (5) have not been inoculated against small pox or vaccinated or complied with the medical requirements for prevention of communicable disease according to the law governing such disease and resisting the demand for medical examination by immigration medical officer;
- (6) having been sentenced to imprisonment by the decision of Thai Court or by legal order the judgment of the court of foreign government with the exception of petty offense or offense committed by reckless or those offenses exempted in the Ministerial Regulations;
- (7) having behaved in the manner that is believed to be detrimental to the society or cause disturbances to peace and security of the public or threat to national security or being fugitive wanted by a foreign government;
- (8) having behaved in the manner that is believed to have engaged in prostitution, girl or child;
- (9) being a penniless person or having no guarantee as prescribed by the Minister pursuant to Section 14;
- (10) being a person unauthorized to enter the Kingdom by the Minister pursuant to Section 16;
- (11) having been a person deported by Thai Government or foreign government or a person whose resident permit has been once revoked in the Kingdom or in foreign country or having been expelled by the competent officer at the expense of the Thai Government expect the special exemption granted by the Minister.”

See *Thailander.com, Thailand's Immigration Regulations & Procedures*,
www.thailander.com/aboutthailand/immigration/index.html

condition or exempt any alien from compliance with this Act.³³ In reality, implementing Section 17 has been unsuccessful because fewer than 1,000 foreign workers were eventually registered.³⁴

V. KEY ACTORS

A. FORCED MIGRANTS

An estimated 1.5 million Myanmarese live in Thailand,³⁵ of whom about 125,000 refugees live in camps monitored by the United Nations High Commissioner for Refugees (UNHCR) along the Myanmar-Thailand border.³⁶ More than 300,000 migrants have not entered the refugee camps and lack any and all protection. The Thai government's policy to treat this category of individuals as "economic migrants" ensures that they have no official status as registered displaced persons. In addition, the Thai government deports nearly 10,000 Myanmarese migrants a month on the grounds of illegal entry.³⁷ Former UN Special Rapporteur on Myanmar, Mr. Rajsmmor Lallah estimated that there were over one million people who had been "forcibly relocated, without compensation to towns, villages or relocation camps in which they were essentially detained."³⁸ The Burma Ethnic Research Group (BERG) estimated that approximately 30% of the 480,000 total rural population of Eastern Burma was currently displaced, a figure that included both internally displaced persons and refugees.³⁹

³³ *Ibid.*

³⁴ Darunee Paisanpanichkul, *supra note 31*.

³⁵ The International Rescue Committee and Jesuit Refugee Service, *supra note 8*.

³⁶ U.S. Committee for Refugees and Immigrants, *supra note 27*.

³⁷ *Ibid.* Estimates of numbers of internally displaced persons inside Myanmar are more than 600,000 in the border areas alone. See also United Nations General Assembly, *Report to the General Assembly of the Special Rapporteur on Myanmar*, (Aug, 2001) UN Doc A/56/312.

³⁸ United Nations Economic and Social Council, *Situation of Human Rights in Myanmar: Report of the Special Rapporteur*, (Feb, 1997) UN Doc E/CN.4/1997/64.

³⁹ Burma Ethnic Research Group (BERG), *Forgotten Victims of a Hidden War: Internally Displaced Karen in Burma* (Chiang Mai: Nopburee Press 1998).

There are many different groups of migrants along the Thai-Myanmar border.⁴⁰ The first group includes people who migrated to Thailand generations ago and possess Thai citizenship but who belong to the “minority” communities. The second group includes people who migrated to Thailand generations ago, constitute “minority” communities, but have no Thai citizenship. The third group consists of relatively recent migrants who are officially considered “displaced” minorities from Myanmar and who are confined to refugee camps along the border. The final group consists of recent migrants who are considered “irregular.” They are mostly illegal migrants who are found in thousands in Thailand today.

Different criteria and rules apply to each group along with the (at times) arbitrary distinction drawn between being a “refugee” and being an “irregular” migrant. A unifying factor among the different Myanmar migrant groups is that most have either been compelled to migrate by dire economic circumstances, military rule, fear of persecution and being a victim of forced displacement as a result of on-going military strategies within Myanmar.

Furthermore, many irregular and undocumented migrants are hesitant to escape from their “irregular” status even if they are eligible for refugee status under the Refugee Convention, asylum or other forms of humanitarian assistance. This is because many of these illegal migrants are confined to the refugee camps near the border regions and need to travel to Bangkok where the UNHCR office is located. The illegal migrants fear arrests and deportation while walking this trip and prefer to live in the camps, instead. What is problematic here is that these forced migrants are willing to compromise on their status within the country by working on a temporary work permit for a few years. This makes them susceptible to being deported as soon as their permit expires.⁴¹

⁴⁰ Carl Grundy-Warr, *supra note 25*, 233.

⁴¹ *Ibid*, 245.

B. MYANMAR GOVERNMENT

The SPDC treats Myanmar citizens living in Thailand as armed insurgents or the families of armed insurgents.⁴² The state-run newspaper, *The New Light of Myanmar*, has accused Myanmar migrants in refugee camps of using Thai resources to launch attacks against the Myanmar military regime from those camps.⁴³ Similarly the military regime in Myanmar has accused the Thai government of allowing the Myanmar access to bases on the Thai side of the border to launch attacks against Myanmar forces.⁴⁴ The government of Myanmar views the refugee camps as “a safe haven or shelter for insurgents when it appears that they are going to be crushed by Myanmar’s armed forces.”⁴⁵

Furthermore, the SPDC is highly suspicious of the role played by western NGOs. The military regime in Myanmar has made consistent attempts to keep international human rights NGOs away from the Thai-Myanmar border where massive forced relocations of the civilian population have taken place.

C. THAILAND GOVERNMENT - INSTITUTIONS

There are several institutions responsible for formulating, interpreting and implementing immigration law and policy in Thailand.⁴⁶ Prior to 1992, the Royal Thai Armed Forces and the Border Patrol Police (BPP) were the most important agencies dealing with issues of immigration.

⁴² *Ibid*, 247.

⁴³ The New Light of Myanmar, Regular press conference: Questions and Answers (May, 14, 2006) http://www.myanmar.com/press_conference/2006/14-5c.html ; This also implies that the repressive regime in Myanmar has placed restrictions on the freedom of the press. The media clearly is not an independent entity in Myanmar society and has no power or freedom to protest against the repressive regime.

⁴⁴ The New Lights of Myanmar, Press conference (Nov, 2, 2006) <http://www.myanmar.com/pressconference/02-11-06a.html>

⁴⁵ Maung Aung Myoe, *Neither Friend Nor Foe. Myanmar’s Relations with Thailand since 1988. A View from Yangon*, Institute of Defence and Strategic Studies of Singapore, IDSS Monograph no.1. (2002), 83.

⁴⁶ Yongyuth Chalamwong, *supra note* 11, 360-364.

Recently, the National Security Council (NSC) has begun to play a more significant role in defining border policy and in influencing broad approaches towards displaced persons from Myanmar.⁴⁷

1. The National Security Council (NSC)

The NSC is a “central institution for coordinating and integrating development in the border areas”⁴⁸ and one of the main national organizations under the Prime Minister’s Office dealing with migration issues that have implications for national security.⁴⁹ Since 1990, the NSC has shifted its focus from Khmer war refugees to economic migrants as the numbers of Myanmar illegal migrants entering Thailand increased rapidly.⁵⁰

2. The Ministry of Interior (MOI)

The MOI is the highest ministerial authority dealing with immigration matters. The Immigration Office under the Police Department serves as the main agency responsible for dealing with the entry into and exit of persons from Thailand.⁵¹ The MOI controls aliens by granting both short-term permits and permanent residence. It has set up rules and regulations that permit the hiring of illegal migrant workers while they are “waiting to be repatriated” under Section 17 of the Immigration Act.⁵²

3. The Border Patrol Police (BPP) and the Royal Thai Armed Forces

The BPP has a very broad policing role and deals with a variety of issues, such as drug smuggling, border crime, trafficking, illegal immigration and intelligence gathering.⁵³ The Royal

⁴⁷ Carl Grundy-Warr, *supra note* 25, 249.

⁴⁸ *Ibid.*

⁴⁹ Yongyuth Chalamwong, *supra note* 11, 361.

⁵⁰ *Ibid.*

⁵¹ *Ibid.*

⁵² Darunee Paisanpanichkul, *supra note* 31.

⁵³ Hazel J. Lang, *Fear and Sanctuary. Burmese Refugees in Thailand*, 96 (Cornell University Southeast Asia Program, 2002).

Thai Armed Forces are ultimately in charge of the relocations of refugee camps and repatriation on the ground.⁵⁴ There have been, however, continuous efforts in Thailand to enhance the role of civilian institutions and the military no longer determines the central policy on immigrations.⁵⁵ While both institutions are separate organs of implementation within the Thai government, they are all involved with the protection of Thailand's territorial sovereignty. These institutions regularly turn away Myanmarese forced migrants, if their entry is deemed to be a security threat, in order to maintain territorial sovereignty.

4. The Ministry of Labour and Social Welfare

The Thai government established this Ministry in 1993 to cope with an expanding labor force and increasing illegal migration. It proposed measures which permitted existing illegal migrants to stay on and work by issuing them temporary work permits.⁵⁶ It thus temporarily legalized employment of illegal migrants, but still retained their illegal status. Thus, the government could deport them when their permits expired.

This policy shows the Thai government's intention to stop the influx of illegal migrants from Myanmar at the border and at the same time to utilize the nearly one million illegal migrants to solve Thailand's labor shortage problem.⁵⁷ For example, the Ministry of Labour and Social Welfare announced in 2000 that the government hoped to keep the number of illegal migrant workers below 200,000.⁵⁸ This is a disturbing aspect of the Thai government policy where the influx of illegal migrants is not completely stopped, not all such migrants who are arrested are

⁵⁴ *Ibid.*

⁵⁵ *Ibid.*, 97.

⁵⁶ Yongyuth Chalamwong, *supra note* 11, 362.

⁵⁷ *Ibid.*

⁵⁸ *Ibid.*, 364.

deported and calculated attempts are made to retain a certain number of migrants in the country at all times as a source of cheap labor.⁵⁹

5. Office of the Administrative Commission on Irregular Workers (OAW)

In 2001, the NSC established the OAW to deal more effectively with the problems of irregular workers. This Commission consists of 29 representatives from various related government institutions dealing with illegal migrants. The Commission established networks for the management of foreign labor in Thailand and is continuing to develop legislation and regulations to foster cooperation and seek help from other countries and international organizations.⁶⁰

D. THAI WORKERS

Thai workers in Thailand are also an important player in this situation. Of late, there have been reports of increasing antagonism towards Myanmarese forced migrants mainly because of loss of jobs by Thai workers.⁶¹

E. INTERNATIONAL ORGANIZATIONS

For a long time, the Thai government was reluctant to let the United Nations High Commissioner for Refugees (UNHCR) play a role in dealing with Myanmarese refugees. During the mid-1990s however, with the rapid increase in the number of Myanmarese forced migrants, the government and local authorities realized that they were unable to cope with the situation without international support.⁶² In July 1998, the Thai government invited the UNHCR to play an enhanced role as an advisor to the government for the establishment of standards relating to “refugee status

⁵⁹ *Ibid.*

⁶⁰ *Ibid.*

⁶¹ *Ibid.*, 358-359.

⁶² UNHCR Washington, *Fact Sheet: Questions and Answers on Resettlement from Thailand*, <http://www.usaforunhcr.org/usaforunhcr/uploadedfiles/Thaifct05.pdf>

determination procedures” and recognizing certain groups of “displaced persons.”⁶³ It appears that this invitation was aimed at distinguishing Myanmarese forced migrants from other neighboring countries’ illegal migrants. The UNHCR was also entrusted with the responsibility of registering and supervising the refugee camps along the Thai-Myanmar border and of facilitating the organization of voluntary repatriation.⁶⁴

F. HUMAN RIGHTS NGOS

The Thailand Burma Border Consortium (TBBC) coordinates various human rights NGOs under its auspices. The consortium aims at protecting the legal rights of the Myanmarese forced migrants and supplying relief and medical assistance to the refugee camps along the Thai-Myanmar border. The refugee camps are the primary locations for assistance activities, but these NGOs also engage with displaced people outside of the camps, in the border areas.⁶⁵ They have also actively been lobbying the Thai government to ratify the Refugee Convention so that forced migrants enjoy greater protection in Thailand.

VI. ANALYSIS AND RECOMMENDATIONS

A. LEGAL CULTURE IN THAILAND

This paper is concerned that the legal culture in Thailand may not be conducive to the implementation of the Refugee Convention. The implementation of local immigration laws appears

⁶³ Sawatsawan Nussara, *Ogata Accepts Invitation*, Bangkok Post, July 25, 1998.

⁶⁴ UNHCR Washington, *supra note 62*.

⁶⁵ TBBC’s website, *supra note 3*. Recent member NGOs include Caritas (Switzerland), Christian Aid (UK), Church World Service (USA), DanChurchAid (Denmark), Diakonia (Sweden), the Church of Christ in Thailand, the Thailand Baptist Missionary Fellowship, Refugee Care Netherlands (RCN), International Rescue Committee (USA), the Jesuit Relief Service (USA), Aide Medical International (AMI), and ZOA Refugee Care (Netherlands).

to be arbitrary.⁶⁶ This, combined with the apathy of government policies and resentful public opinion which is not receptive to forced migrants in Thailand, may nullify the impact of ratifying the Refugee Convention.

1. Government Policy

In the 1990s, before the Thaksin Shinawatra administration, the Thai government favored a more “flexible” approach with respect to Myanmar. This approach was characterized by permitting an increasing number of undocumented migrants to enter Thailand and at times putting pressure on the Myanmar military regime by openly discussing Myanmar’s internal political problems.⁶⁷

In 2001, the Thaksin administration switched to a so-called “constructive engagement” approach. The Association of Southeast Asian Nations (ASEAN) favored and encouraged this approach which leaves little scope for open criticism of the Myanmar military regime.⁶⁸ This government also affirmed its support for “national reconciliation” inside Myanmar in compliance with ASEAN’s position on Myanmar in order to turn “the common border into a border of friendship, harmony and prosperity which will contribute to peace, stability and development.”⁶⁹ As a result, the Thai government has maintained a tougher stance against Myanmar forced migrants by denying them entry into Thailand and arresting illegal migrants for deportation, in spite of huge criticism against this policy.⁷⁰

In September 2006, after a coup, Surayud Chulanont was appointed Prime Minister. This administration is still to openly adopt a clear policy towards Myanmar and the Myanmar forced migrants. The only thing that is certain is that thousands of Myanmar forced migrants are still

⁶⁶ The International Rescue Committee and Jesuit Refugee Service, *supra note* 8.

⁶⁷ Carl Grundy-Warr, *supra note* 25, 252-53.

⁶⁸ *Ibid.*

⁶⁹ *Junta working hard toward reconciliation* Bangkok Post, September 6, 2001.

⁷⁰ *Outcry over arrest of Burmese*, Bangkok Post August 22, 2002; *Senator strikes a different chord*, Bangkok Post, August 14, 2005.

living with great uncertainty in legal and political limbo, subject to sudden changes in Thai policy in the absence of enforceable positive law.

2. Public Opinion

There are at least four types of public response toward the Myanmarese forced migrants in Thailand. Two of these have been discussed earlier and relate to the attitudes of Thai business-owners and the resentment of the local Thai workers. Another frequently raised and reported issue by the Thai media is the threat of cross-border attacks involving the Myanmar army or ethnic minority armies in the border areas of the refugee camps.⁷¹

The last concerns Thai public health. There have been widespread reports regarding the spread of diseases and damage to the environment as a result of illegal woodcutting and the stress of the refugee camps on local environmental resources.⁷² There is, however, extensive counter-evidence to suggest that by far the biggest health risks are to Myanmarese women and children and not to Thai nationals themselves.⁷³

B. ANALYSIS AND RECOMMENDATIONS

1. Positive, Formal Law

International human rights NGOs have generally been very firm in their demand for *a positive, formal law*. More specifically they want Thailand to ratify the Refugee Convention and also enact domestic legislation that provides for an effective locally administered refugee determination procedure. This paper agrees with them to the extent that this positive law by itself

⁷¹ See Images Asia and Borderline Video, *A Question of Security: A Retrospective on Cross-border Attacks on Thailand's Refugee and Civilian Communities along the Burmese Border Since 1995*, (Images Asia, 1998)

⁷² See Supamart Kasem, *Refugees Seen as a Menace*, Bangkok Post, May 26, 2000; Ashayagachat Achara, *Karenni Being Seen as a Threat to Forest*, Bangkok Post, March, 11, 2000.

⁷³ See Therese Caouette, Kritaya Archavanitkul and Hnin Hnin Pyne, *Sexuality, Reproductive Health and Violence: Experiences of Migrants from Burma and Thailand*, Institute for Population and Social Research, (Mahidol University, 2000)

could stand for a lot with regard to the protection of Myanmarese refugees especially since there has not been any domestic law relating to refugee protection before. This paper is, however, concerned by the magnitude of resistance that any such law may potentially face in Thailand.

Assuming for the time being that the Convention will be ratified and a domestic law will be enacted, some important changes that this paper would advocate with respect to *laws* dealing with refugee protection⁷⁴ are discussed below.

a. Assurance of not being deported

One of the biggest fears that refugees face is the threat of being arrested and deported. Therefore, they choose not to avail themselves of even the limited determination procedures in place. The refugees prefer to work as illegal migrants on paltry wages than register officially. The law therefore needs to introduce a more flexible registration system to allay the refugees' fear of being deported.

b. Basic human rights of refugees

Since the refugees are wary of official procedures, many prefer not to enter the camps where they will be retained as captives. Consequently, they hide in forests or in big cities trying to obtain work for abysmally low wages to feed themselves and their families. The enormous obstacles the refugees face in setting up alternative *safe* homes within refugee camps or around the Thai-Myanmar border regions and the blatant violations of their human rights (right to food, water, shelter, livelihood and healthcare) appear to be created by the stringent Thai immigration law. This paper argues that a less rigorous law which gave refugees legal status and therefore rights, in as non-threatening a way as possible, may help alleviate their present conditions.

⁷⁴ This refers not only to immigration laws, which may directly influence refugee protection, but also to labor legislation, which is an important cause for exploitation.

c. Labor Legislation

One of the most important reasons why Myanmarese refugees in Thailand suffer maltreatment are the existing migration management policies, which aim at maximizing the economic contributions of migrant workers. This paper maintains that a law dealing with minimum wages which includes migrant workers within the ambit of its protection will contribute towards refugees feeling of more security in Thailand.⁷⁵ There needs to be a minimum wage, assured to workers irrespective of nationality or immigration status to prevent exploitation of vulnerable sections of the population like refugees. Deprived of food, money and health services, as discussed above, many migrants are welcomed by Thai business-owners and are made to perform dirty, dangerous, and difficult work. Enforcing a minimum wage will ensure that refugees who are in desperate need of work do not get exploited by Thai business owners.

d. Greater funding from the central government to the local government

Greater funding from the central government to local governments, especially those of the border provinces, may help improve and better regulate the conditions in the refugee camps. This funding may be extended to NGOs in case governmental agencies are under-staffed or not equipped to deal with issues emerging from large refugee populations residing in the area.

e. Coordination with developed countries

⁷⁵ The Minimum Wage Act was enforced under ministerial declaration by the Ministry of Interior in 1972. Subsequently, it was transferred to be enforced under ministerial declaration by the Ministry of Labour and Social Welfare in 1972. This legislation does not cover migrant workers. In addition, while the Labour Protection Act was legislated in 1998, it only covers migrant workers who have permanent legal status. See Warangana Imudom, *The Role of Minimum Wage in Thailand*, Bank of Thailand <http://unpan1.un.org/intradoc/groups/public/documents/APCITY/UNPAN005384.pdf> ; Darunee Paisanpanichkul, *Burmese Migrant Workers in Thailand: Policy and Protection*, Burma Lawyers' Council (2001) <http://www.ibiblio.org/obl/docs/LIOB10-darunee.htm>

It is imperative that there is greater cooperation with other developed countries especially those already party to the Refugee Convention. Other parties to the Convention could consider increasing their quotas of Myanmarese refugees thereby easing the burden on Thailand, since it is one of the developed nations in the Asian region and hence an important host country. This is, however, clearly a matter influenced by the international environment and may not be a welcome suggestion although it is a crucial determining factor.

2. Implementation

In terms of *implementation*, there needs to be increased coordination and cooperation between various government agencies. There are various government institutions involved both at the policy formulation stage as well as the implementation stage. Thus, it is important to have a greater coordination and awareness of each other's actions between these agencies.

Overall, this is clearly an inverse pyramid where ratifying the Refugee Convention is at the top-most level. Followed by this is national legislation, and local refugee determination procedures. These local determination procedures not only need to be strengthened but also accompanied by an assurance that the migrants will not be deported if they, in good faith, try to avail themselves of the benefits under the system in place. The third layer in the pyramid is comprised of the implementation agencies and the individuals within those agencies, who bring to their work environments certain attitudes and perceptions. Implementation cannot be expected to suddenly be effective since the individuals within the agencies responsible may not perceive the problem in the same way as legislators or the people working within the NGOs do. This issue is addressed in a later section of this paper.

The problem, however, is that for a law to work it needs at the very least political will, dedicated implementation agencies, and public support and cooperation. As it stands now, government policy remains undetermined and there is an immense public resistance.⁷⁶ This paper therefore proposes a bottom-up solution instead, where perhaps creating *an enabling environment* may help in bringing about the change in attitudes and behaviors of the implementing agencies and the general public.

There will clearly be a fair amount of resistance to laws which aim at changing behaviors and common perceptions of Thai citizens with respect to Myanmarese refugees. It is unrealistic to expect that the refugees will be welcomed with compassion and respect when a law is enacted and at the same time not be exploited as a source of cheap labour. Thus, not only an enactment of a positive law on refugees, but also the systemic reform through education of local enforcement officials and legal professionals needs to be undertaken. Such education and training can *create an enabling environment*⁷⁷ so that brutality can be reduced and refugees will be treated with compassion and respect.

Since no such law exists, and in this particular case, even if it existed, it is highly unlikely that it would work given the massive negative public attitude to the Myanmarese migrants, the education of the implementation agencies and local communities can be used as an instrument to achieve partially or fully one of the functions of the law in this case, i.e. predictability and norm building.

This paper recommends to international human rights NGOs that while they should continue lobbying for the laws that they wish to have in place, they should not ignore the

⁷⁶ Yongyuth Chalamwong, *supra note* 11, 358-359.

⁷⁷ This paper applied the theoretical lenses of Honadle's *enabling environment* concept as an alternative implementation strategy. See George Honadle, *How Context Matters*, 29 (Kumarian Press, 1999).

importance of creating a *suitable environment* for a law such as this to be implemented. Just because certain measures may not have an immediate impact they should not be ignored. International human rights NGOs are encouraged to shift their focus a bit, continue lobbying for the ratification of the Convention and domestic legislation and at the same time set the stage in Thai society for the law to be successfully implemented.

According to Berman and Greiner, the law has four functions: 1) Dispute Resolution, 2) Certainty or Predictability, 3) Education (to mold and remold the moral and legal conceptions), and 4) Establishing and Protecting Rights.⁷⁸ This theory envisages formal law as an essential prerequisite for these functions to be performed. Given that in the current situation there is no positive law which can be expected to perform such functions this paper is looking at alternative entities non-legal which can be used to perform the functions of the law.

a. Radio

The radio as a means of public communication can be used by NGOs working in the region to communicate important information in a non-threatening way to Thai citizens, people in the refugee camps and migrants in hiding. The radio can be an effective means of providing information and a certain amount of certainty or predictability to refugees with regard to how they will be protected. This paper contends that the radio is a more widely accessible means of communication, especially to those in hiding in villages or camps, and that integrating popular culture with information dissemination can prove a helpful tool since it is presented in a non-threatening and non-invasive manner.

b. Education

⁷⁸ See in general Harold J. Berman & William R. Greiner, *The Nature and Functions of Law*, 4th ed., 25-37 (The Foundation Press, 1980).

The education of both the general public and the individuals working within the implementing agencies is crucial. It should be used to facilitate a voluntary shift in attitudes and behaviors to ensure that Myanmarese refugees are accepted in Thai society without coercion. It should encourage people to treat refugees with compassion and respect. While acknowledging the importance of education, this paper is skeptical that such education can be provided in the current formal school system. It may be possible in the temple education system,⁷⁹ which has been credited with many social functions such as village hostelry, village news, employment, information dissemination, and the setting up of schools, hospitals, dispensaries and community centers. Interestingly the impact of religion can also be gauged from the fact that Thai civil servants routinely take sabbaticals and join the 'monk-hood'.⁸⁰

The significance of this system has been demonstrated earlier with literacy rates. Before Thailand introduced universal education, the high literacy rates were always attributed to the temple education system.⁸¹

Buddhist monks are extremely well-respected in society and frequently looked up to as catalysts of change, spiritual guides and repositories of knowledge.⁸² Between 90-95% of the Thai population are practicing Buddhists and Buddhism is the official religion of Thailand. According to

⁷⁹ As the Thai government has struggled to push all children through the process of compulsory formal education, the Ministry of Education, as well as a rapidly increasing number of people, called for non-formal education like a Temple Pre-school Centre, a Buddhist Sunday School, etc. For example, in order to prepare children for school and provide the socially disadvantaged with the chance to be literate, the Ministry of Education initiated Temple Pre-school Centers in 1963. See Pataraporn Sirikanchana, *Buddhism and Education: The Thai Experience*, The Indira Gandhi National Center for the Arts (IGNCA) http://www.ignca.nic.in/cd_06017.htm

⁸⁰ The Thai government allows civil servants to take leave, on full pay, to enter the 'monk-hood' for 3 months. See UNESCO, *Development of Education in Thailand* (2000) <http://www.ibe.unesco.org/international/ice/natrap/Thailand.pdf>

⁸¹ Pataraporn Sirikanchana, *supra note 79*.

⁸² Asian Studies Center, *Windows on Asia: Religions of Thailand*, Michigan State University, <http://asia.msu.edu/seasia/Thailand/religion.html>

the Thai Constitution, the king must be a Buddhist and is the upholder of the religion. One reason for Buddhism's widespread influence is that almost all Thai families send at least one male member to a temple to study Buddha's teachings. This has been a custom for Buddhist males over 21 in Thailand for centuries.⁸³ Religion is clearly a semi-autonomous social field here and not only exercises an enormous amount of influence on the public but performs the educative function of law.⁸⁴

c. Role of NGOs

NGOs in the region need to focus more on providing people with accurate information about refugee determination procedures, set up hotlines where people can call and receive guidance and counseling, and perhaps provide weekly transport to Bangkok (where the UNHCR office is located). This needs to be accompanied by more collaboration in the NGO sector where local NGOs working at the grassroots level can work with international NGOs towards protecting the human rights of Myanmarese refugees.

d. Inspections

Incentives, such as tax deductions or discounts in purchasing capital assets, can be provided to Thai business-owners who willingly open up their factories and industries for inspection of worker status and minimum wage compliance. This may reduce economic exploitation of hapless migrants who are willing to perform dangerous tasks for much less than the minimum wage.

VII. CONCLUSION

⁸³ *Ibid.*

⁸⁴ This paper applied the theoretical framework of Sally Falk Moore's *reglementation* concept. See Sally Falk Moore, *Law as Process: An Anthropological Approach*, 13-30 (Routledge, 1978).

This paper has suggested that the fundamental problem of Myanmarese refugees and displaced persons in Thailand is that the Thai legal system does not afford them the opportunity to seek legal refuge and set up an alternative home or work without being exploited. International human rights NGOs have consistently maintained that their concern is the basic human rights of these refugees and how the fear of deportation, lack of documentation and willingness to work for pitifully low wages contribute to exploitation and inhuman treatment.

Myanmarese refugees and displaced persons, who are not in camps, are literally living in jungle hideouts or in detention centers, or in the squalor of big-city slums surviving on a day-to-day basis away from the scrutiny of Thai authorities.

This paper is concerned about the international human rights NGOs' complete faith in the ratification of the Refugee Convention as a solution to the above discussed problems. The law in this case was initially regarded as the panacea to all problems and the fact that external factors such as political will and government policy, both domestic and foreign, can influence the decision to ratify an international instrument, were ignored. This paper is not willing to totally disregard the law and accepts that establishing such a structured legal regime is crucial. It is, however, also in favor of the adoption of simultaneous measures, which, if successful, in the long-run will create an environment that is conducive to a law that is respected and effectively implemented.

This paper concludes that irrespective of when the law on refugee protection is brought into force in Thailand, the recommended non-legal measures will go a long way in setting the stage for the law to be implemented efficiently at some point in the future.