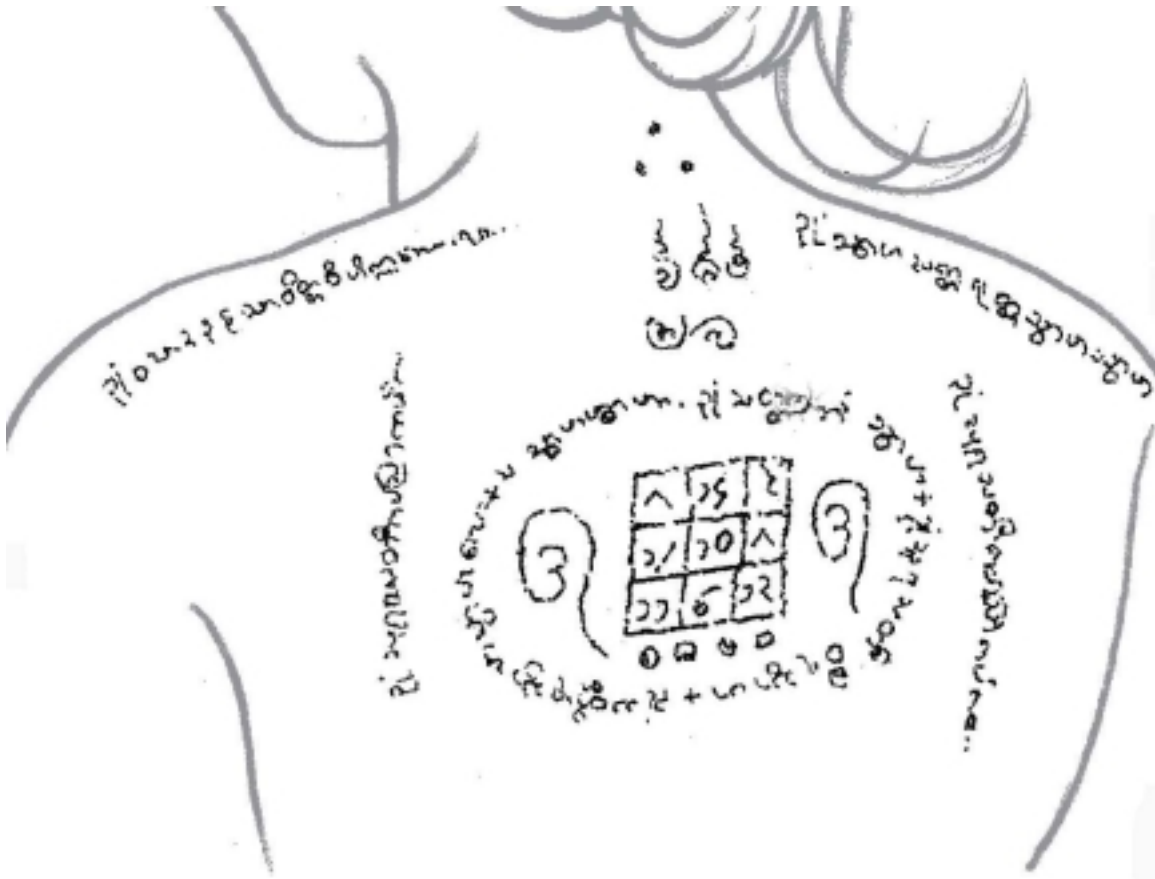


Shan Refugees: Dispelling the Myths



The Shan Women's Action Network
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Shan Refugees: Dispelling the Myths

Released by The Shan Women's Action Network (SWAN)

P O Box 120 Phrasing Post Office, Chiangmai 50200 Thailand

Email: kenneri@shanwomen.org

Website: www.shanwomen.org

SWAN is a network of Shan women active in Thailand and along the Thai-Burma border. Its mission is to work for gender equality and justice for Shan women in the struggle of social and political change in Burma through community based actions, research and advocacy. SWAN is a founding member of the Women's League of Burma (WLB), an umbrella women's organization comprising eleven women's groups from Burma.

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For further information see websites: www.shanwomen.org and www.shanland.org

Refugees without a Camp

The regime's soldiers advance.
They kill our animals, take our rice.
From our schools they take the learning and light.
They burn our villages and steal our minds.
We hear the soldiers' voice, and we are filled with fear and hate.
And we must run, run, run, until our legs break,
Refugees without a home, without a camp.

They dress our Buddhas in women's underwear.
We see our people floating bloated in the river.
We have land but cannot farm it, forced labour in our lot.
"peace, peace, peace", they say. Burma says we are at peace.
But we are not. We hear gunshots night and day.
And we must run, run, run, until our legs break,
Refugees without a home, without a camp.

Some Shan live in Thailand, work as servants or as slaves,
Some live in relocation camps, without money, food, or hope.
Some live in the jungle and hear their dying child's cries,
Mosquitoes on their limbs, and leeches in their eyes.
They dig a shallow grave and place the child inside,
And then they must run, run, run, until their legs break,
Refugees without a home, without a camp.

Original Shan language poem by Lenghsim (hsenhoe)

English adaptation by Bernice Koehler Johnson

SHAN REFUGEES: DISPELLING THE MYTHS

Introduction

Shan State was once an autonomous region in Burma. After Burma gained independence from the British in 1948, the Shans were promised the right to secede after ten years, but this promise was never kept as civil war between the ethnic nationalities and the ruling authorities broke out soon after independence. Instead, Burma has been ruled by a series of military regimes since 1962. Civil war between these regimes, dominated by the Burman majority, and the country's ethnic nationalities has inflicted suffering on the people of Burma for decades. This suffering has intensified under the State Peace and Development Council (SPDC), which seized power after a brutal crackdown on thousands of peaceful demonstrators in 1988. Elections were held in 1990 and the National League of Democracy won a landslide victory. However, the regime refused to honour the results of the elections and until today uses military force to maintain authoritarian rule over the country. The SPDC has authorized increased militarisation and anti-insurgency campaigns in Shan State and other ethnic areas¹, resulting in large numbers of internally displaced persons and an exodus of refugees to Thailand and other neighbouring countries.

Since 1992 the United Nations Commission on Human Rights (UNCHR) has passed resolutions condemning systematic violations of human rights in Shan State and elsewhere in Burma. In 1994, the UNCHR recommendation said, "The Government of Myanmar should take the necessary steps to bring the acts of soldiers, including privates and officers, in line with accepted international human rights and humanitarian standards so that they will not commit arbitrary killings, rapes and confiscations of property, or force persons into acts of labour, portering, relocation or otherwise treat persons without respect for their dignity as human beings." The Special Rapporteur on Burma's 2003 report contains similar recommendations. Yet, to date, the military regime continues to commit extreme human rights violations against the people of Burma.

Since 1996, the people of Shan State have been particularly targeted for persecution by the military regime in order to stop the resistance efforts of the Shan State Army and to secure control over the state's rich natural resources. Over 300,000 Shan and other ethnic people have been forced from their homes in central Shan State by the Burmese military, including from lands needed to build a large-scale hydropower dam on the Salween river.²

¹ The military regime in Burma actively implements the 'Four Cuts' policy, which aims to cut the supplies of food, funds, recruits and information to resistance groups by systematically terrorizing, controlling, and impoverishing the civilian population in resistance areas so that they have neither the opportunity nor the means to provide any form of support to the opposition. The main pillars of the Four Cuts Policy are: detention, torture and execution of villagers and village elders perceived as having any contact whatsoever with the resistance; systematic extortion and pillage of the villager's crops, food supplies, livestock, cash and valuables; forced labor to get the civilians working for the Army and deprive them of time to do anything else; and increasingly, forced relocation to sites and villages directly under the control of the SPDC military troops. (source: <http://www.db.idpproject.org/Sites/idpSurvey.nsf/wViewCountries/752A010E0C154C39C1256912004F9059>)

² Most of the power generated from the dam will be exported to Thailand. The Bangkok-based MDX Group signed an agreement with Burma's Department of Hydro-electric Power to build the dam in Shan State on 20 December 2002. The MDX Group will finance the 4600 megawatt project through its own resources and loans raised in Thailand. GMS Power, a subsidiary of the MDX Group, has been carrying out surveying for the dam. No compensation measures have been developed for the forced relocations associated with the dam.

The forced evictions are in contravention of international human rights standards (Habitat Agenda, Commission on Human Rights resolution 1993/77, para. 1, Committee on Economic Social and Cultural Rights General Comments No. 4 and No.7. - States parties shall ensure, prior to carrying out any evictions, and particularly those involving large groups, that all feasible alternatives are explored in consultation with the affected persons, with a view to avoiding, or at least minimizing, the need to use force. States parties shall also see to it that all the individuals concerned have a right to adequate compensation for any property, both personal and real, which is affected.)

The United Nations High Commissioner for Refugees (UNHCR) has worked in Thailand, with the consent and cooperation of the government for over 28 years, during which time assistance has been provided to more than 1.3 million refugees. In recognition of the fact that many people from Burma have been forced to flee from armed conflicts they face in their country, Thailand has been providing refugee camps for people from Burma since 1984 and has allowed international NGOs to provide support to the refugees. Thailand has allowed the UNHCR to have a limited protection role in these camps since 1998.

The people of Shan State, unlike the Karen and Karenni from Burma, are not recognised as asylum seekers in Thailand and are not provided safe refuge and humanitarian assistance. As they are unable to seek refuge, the Shan people are forced to either live in hiding as illegal persons on the Thai-Burma border or seek work as migrant workers, in low-paid, low-skilled jobs such as construction workers, factory workers or domestic workers. The absence of refuge and services particularly impacts on the more vulnerable Shan asylum seekers such as pregnant women, children, elderly and disabled persons who are unable to fend for themselves in the jungle or on work sites. The Shan asylum seekers in Thailand live in precarious situations as they live in constant fear of being arrested and deported to Burma, where they face ongoing persecution in the forms of torture, rape and death on their return to Burma. This fear has increased after the implementation of an agreement between Thailand and Burma on the repatriation of migrant workers since August 2003.

Why is it that while asylum seekers from other Burmese ethnic groups have been recognised as refugees and been provided refuge in camps in Thailand, the Shan asylum seekers continue to not be accepted or supported in Thailand?

Among some representatives of the Thai government, the UNHCR, international NGOs, the media and the Thai public there are common misperceptions about the Shan people and their situation in Thailand, which are based on assumptions and which over time have turned into myths about the Shan people. Below are facts which clarify nine of the most common myths about Shan asylum seekers and provide a better understanding of the situation of the Shan people.

By increasing the awareness of the real situation of Shan asylum seekers, it is hoped that the Thai public, the Thai government, international NGOs and the UNHCR will amend their current policies and attitudes and finally give refuge and humanitarian assistance to the people of Shan State who have been trying to escape persecution, with no place to seek refuge, for years.

Myth # 1: Shans entering Thailand are all migrant workers.

The Shan have historically been coming to Thailand, as migrant workers, for many decades. Typically, they have been young men aged between 20-40 years, from all parts of Shan State, who came alone to work during the dry season (January – May). However, this is not the profile of the Shan asylum seekers who have been arriving in Thailand post-1996.

Since March 1996, the Burmese military regime has forcibly relocated over 1,400 villages throughout Central Shan State. Over 300,000 people have been ordered to move at gunpoint. This relocation intensified during 1997 and 1998. Associated with this there has been a high number of extrajudicial killings and systematic rape of Shan women and girls, which further escalated in 1997. During 1996 and 1997 it is estimated that over 80,000 Shan people fled to Thailand.

The consistently high flows of Shan asylum seekers arriving in Fang district of northern Thailand between 1997 and 2002, ranging between 8,000 and 15,000 each year, are much higher than the usual influx of migrant workers into this district prior to 1996. Almost all the new arrivals post-1996 are from the twelve townships in Shan State where the Burmese military has conducted its mass

forced relocation programme and associated systematic human rights abuses (i.e. extrajudicial killings and rape). The monthly totals of incoming Shan people show that there is no seasonal pattern that would correlate to work opportunities in Thailand. 47% of the arrivals were under 18 years old or 45 years and older. Unlike migrant workers, these are entire families moving, many of whose members are not of working ages.³

This profile shows that these are not migrant workers, but asylum seekers who are fleeing persecution and systematic violations of human rights under the Burmese military regime.

Myth # 2: Shans are "relatives" of Thais and therefore Shan refugees/migrants can integrate easily into Thai society and therefore don't need refuge and support.

While in the past Shan people might have been accepted into Thailand, this has not been the experience of many of those who have fled to Thailand since 1996.

The need to find scapegoats for the increased unemployment rate in Thailand during and after the 1997 economic crisis, led to a change in the Thai government's policy towards migrant workers and ever since there have been increasing crackdowns on them. This has created a hostile environment for people from Shan State coming to Thailand, who were associated with migrant workers. The negative attitudes were fuelled by campaigns against migrant workers in the media.

In this climate, Shan asylum seekers have found it very hard to integrate. They are unable to move freely but forced to remain in hiding. To ensure they are not noticed by Thai officials who will deport them back to Burma, they have to immediately make efforts to give up their cultural identity. They struggle to learn the Thai language⁴, dress like Thais, and most women and girls cut their long hair as soon as they arrive.

The 1997 Thai Constitution guarantees that all people living in Thailand have the right to live in dignity⁵ – but this is not a reality for the Shan refugees in Thailand.

Shan asylum seekers include elderly men and women, young children, pregnant women, disabled persons and victims of torture, rape and other acts of sexual and gender based violence. They cannot work to support themselves and therefore urgently need safe refuge and humanitarian assistance, including basic health care and educational support.

Myth # 3: Thailand is not a signatory to the 1951 UN Convention Relating to the Status of Refugees and therefore has no obligation to protect Shan refugees.

While Thailand has not signed the 1951 Convention, it is still subject to international laws and humanitarian standards which it is failing to uphold in its treatment of Shan asylum seekers.

Firstly, the principle of non-refoulement (no forcible return of a person to a country where s/he could face persecution) has been recognised as a principle of customary law to be respected by all States, even if they have not signed the 1951 Convention. Under international law, Thailand has an obligation not to deport Shan people back to Burma who could face persecution and are unable to access government protection in Burma.

³ Shan Human Rights Foundation, *Charting the Exodus from Shan State: Patterns of refugee flows into Northern Chiang Mai Province of Thailand, 1997-2002*, 2003, Thailand.

⁴ The Shan language is similar to Thai, but Shan people do not automatically understand Thai. They need to spend time learning the Thai language in order to communicate.

⁵ General Provisions, Section 4, "The human dignity, right and liberty of the people shall be protected", Constitution of the Kingdom of Thailand (1997)

Further, Thailand has an obligation both under international law and under its own constitution to promote, protect and fulfill the human rights of all people in Thailand.⁶ Thailand is a signatory to the Convention on Civil and Political Rights, the Convention on Economic Social and Cultural Rights and the Convention on the Elimination of All Forms of Discrimination Against Women, and the Convention on the Rights of the Child. Under these conventions, the Universal Declaration of Human Rights and its own constitution, the Thai government is obligated to ensure people's rights are protected, respected and fulfilled (e.g. the right to non-discrimination, freedom of movement and freedom from violence, right to adequate housing, adequate health care, and education).⁷

Importantly, under the universal human rights principle of non-discrimination, Thailand should not discriminate against particular groups, but provide equal opportunities for all asylum seekers and refugees. The people from Shan State suffer the same persecution as other groups from Burma and so should be given equal access to refugee camps and support services.

Even though Thailand has not signed the 1951 Refugee Convention it has taken an active role in facilitating humanitarian assistance for refugees. The Thai government has chosen to provide refuge to other asylum seekers from Burma. There are currently nine camps along the Thai Burma border, and 139,761 refugees in the camps. The Thailand's Ministry of Interior has only registered 112,369 of these refugees.⁸ Thailand is also a sitting member of the Executive Committee of the UNHCR, which demonstrates its interest in wanting to uphold international law standards in relation to asylum seekers and refugees.

Yet the Thai government persists in not treating the people of Shan State equally with other asylum seekers in Thailand by denying them refuge, camps and access to humanitarian assistance and deporting them in violation of their obligation of non-refoulement.

Myth # 4: Advocating for the protection of Shan refugees will prompt a crackdown by Thai authorities on the Shan refugees and therefore make remaining in Thailand more difficult for them.

Recent evidence shows that advocacy can help protect Shan refugees and prevent them being deported back to Burma.

In May 2002, following heavy fighting on the Shan-Thai border, about 600 Shan refugees fled into northern Chiang Mai province of Thailand. Various Thai and regional human rights organisations appealed to the Thai government to provide safe refuge and humanitarian assistance to these refugees. As a result, these refugees have been allowed to stay in temporary shelters on Thai soil to this day.⁹ This is an unprecedented move by the Thai authorities and a welcome indication of a change in policy towards Shan refugees.

⁶ The Human Rights Commission of Thailand has argued that where the Thai Constitution makes reference to "the people", as opposed to the "Thai people" (e.g. Section 4) it raises a duty on the Thai State to "respect and protect the human dignity, right and liberty" of *all* people in Thailand. The Human Rights Commission has used this argument to justify examining the situation of asylum seekers and migrant workers from Burma who are residing in Thailand.

⁷ Constitution of the Kingdom of Thailand (1997): Chapter III outlines these rights: Section 30 – non discrimination; Section 31 – right to life; Section 35 – right to housing; Section 36 – freedom of movement; Section 43 – right to education; Section 52 – right to health services; Section 53 – freedom from violence. Chapter V: Directive Principles of Fundamental State Policies, Section 80 also states, "The State shall protect and develop children and the youth, promote the equality between women and men... provide aids to the elderly, the indigent, the disabled or handicapped and the underprivileged...".

⁸ *Burmese Border Refugee Sites with Population Figures – July 2003*, Burmese Border Consortium. There are also people who are recognised by UNHCR as "persons of concern to UNCHR", which means they have been assessed by UNHCR and meet the international legal definition of a refugee, and have been allowed to remain in Thailand.

⁹ Providing visibility to human rights defenders in some situations is a mechanism and strategy of protection. (Consultation for Women Human Rights Defenders, with the UN Special Representative on Human Rights Defenders, April 2003).

Myth # 5: Shan refugees bring drugs, crime and disease into Thailand

The drug problem is inextricably linked to the lack of political settlement to the ethnic issue in Burma. Instead of entering into political negotiations with ethnic resistance forces, the regime has simply made ceasefire agreements with selected groups, giving them free rein to do business, including drug production. Drug output has therefore soared since 1988, and the regime itself has profited directly from the drug trade. Villagers in some areas of Shan State have fled to Thailand to avoid being forced by the Burmese military to grow opium. Equally importantly, the Thai army and anti-narcotic agency admit publicly that the production and trafficking of methamphetamine, which is regarded as the most serious drug threat to Thailand on the Thai-Burmese border, are controlled and operated by SPDC troops and their allies, including the United Wa State Army (UWSA). On 20 August 2003 Prime Minister Thaksin Shinawatra said Thailand would take tough measures against the UWSA and traffickers under its control if Burma did not step in to help.

To comprehensively address the drug issues on the Thai-Burma border requires dealing with the root cause, which is the perpetuation of the military regime in Burma, and not scapegoating the people from Shan State. The Shan refugees who may be driven to drugs and crime are a small proportion of the overall Shan asylum seeking community. If Thailand provided refuge and humanitarian assistance, this would ensure that Shan asylum seekers' basic needs for food and shelter are met, and ensure they are not forced to drugs and crime to meet these needs.

Common illnesses among Shan communities arise mainly from malnutrition, unhygienic living conditions and lack of basic health education. These problems are best addressed by allowing Shan refugees to live in camps where they can be given adequate food, health care, education, and counseling. Contagious diseases, when they do occur, are best contained by giving proper immunisation and treatment to refugees in camps.

Myth # 6 Recognising Shan refugees will open the flood gates for large numbers of refugees from Shan State.

The current widespread and systematic human rights violations and economic devastation of the people of Shan State in Burma are the reasons they are fleeing to Thailand. To stop this influx of asylum seekers, Thailand needs to join with the international community in pressuring the Burmese military regime to cease the violations and initiate tri-partite dialogue with the representatives of non-Burman ethnic nationalities and the Burman opposition on re-establishing peace and democracy in Burma. This pressure can be placed through political isolation and economic sanctions.

By denying people refuge and humanitarian assistance, the Thai government is avoiding the problem that lies at its doorstep, rather than addressing it in a planned and organised manner.

It is important for the Thai government to recognise the benefits of providing refugee camps for the Shan. By recognising Shan refugees and providing camps, the Thai government will be able to regulate Shan asylum seekers. Through the camps the government can provide proper health care and education to the Shan people. The development of camps, which are commonly set up in more remote areas, contribute to the development of local infrastructure and economies where the camp is located. The camps will provide an organised basis for repatriation after peace and democracy have been satisfactorily negotiated in Burma. Thailand will also be fulfilling its constitutional and international obligations by providing humanitarian assistance.

Myth # 7: Thailand will have to bear the cost of providing camps and humanitarian assistance to Shan refugees.

The costs of the existing refugee camps in Thailand are borne primarily by international donors. In 2002, the Burmese Border Consortium provided 581,037,966 baht (approximately USD13 million) for the provision of rice, other basic foods and relief supplies such as charcoal, shelter, mosquito nets etc. for refugees along the Thai-Burma border. Over 85% of this amount was covered by the governments of Australia, Canada, Denmark, European Union, Great Britain, Ireland, Norway, Sweden, Switzerland and United States of America. The remaining 15% was covered by international NGOs.¹⁰

Thailand only bears a small proportion of the costs, which include camp personnel, security and administration costs.¹¹ Further, catering for the camp residents and associated international organisations provides a market for local economies (e.g. rice distribution), which benefits Thai rural communities.

Myth # 8: Refugee camps destroy the environment.

Research has found that among existing refugee camps, refugees, with guidance from local villagers, have regulated their collection of forest products for shelter, supplementary food and fuel in a sustainable manner. This balance is threatened where camps have been consolidated into single, overcrowded camps that lack space for housing and gardens and have inadequate water and sanitation.

The research further found that the majority of forest degradation near refugee camps has been caused primarily by commercial agriculture, forestry production and degraded forms of subsistence agriculture which are undertaken by Thai businesses.¹²

Myth # 9: The camps will be used by non-State groups to perpetuate the armed conflict in Burma.

Civil war has been continuing in Shan State for over four decades. Even without Shan refugee camps in Thailand, the conflict has been continuing and human rights violations against civilians have worsened. Therefore the presence of refugee camps is not a determinant of the conflict continuing.

On the contrary, the lack of refuge and assistance in Thailand simply drives Shan asylum seekers back into the conflict zones, where they re-enter the cycle of violence, and once more become targets of the regime's scorched earth tactics. Thus, denying refuge to the Shan asylum seekers is in itself perpetuating the conflict and perpetuating the suffering of the Shan people.

Conclusion

For many centuries, there has been a saying in Thailand that says, "those who suffer hardship are welcome to take refuge in Thailand and will be protected by the King of Thailand". It is due to this merit that Thailand has been the land where people from Cambodia, Vietnam and other parts of Burma have sought refuge. So why will not Thailand provide refuge for the people of Shan State, who are in so many ways Thailand's closest brothers and sisters?

¹⁰ Source: BBC Relief Programme, July to December 2002

¹¹ Information about the budgetary allocation for these costs was not available.

¹² *Taking Shelter: Refugee Protection and Sustainable Forest Management*, Friends Without Borders, 2001.

Recommendations

It is recommended that the international community address the reasons for the influx of Shan asylum seekers to Thailand by pressuring the Burmese military regime to:

- respect their obligations under international humanitarian law, including Article 3 of the 1949 Geneva Conventions, to halt the use of weapons against the civilian population, to protect all civilians, including children, women and persons belonging to ethnic or religious minorities from violations of humanitarian law
- begin tri-partite dialogue with representatives of non-Burman ethnic nationalities and the democratic opposition to re-establish peace and democracy in Burma.

It is recommended that the Thai government meet its obligations to the Shan asylum seekers in Thailand by:

- Giving protection to Shan civilians along the Thai-Shan border by allowing them to cross the border into Thailand, provide adequate documents for Shan asylum seekers, and access to refugee camps and the UNHCR;
- Allowing Shan asylum seekers access to humanitarian aid agencies based in Thailand;
- Not deporting Shan asylum seekers, particularly women, into the hands of the Burmese military.
- Signing the 1951 refugee Convention
- Ensuring all refugee camps provide adequate health care and counseling for victims of sexual and gender based violence;
- Reviewing its security directive and stopping the crackdowns against pro-democracy and human rights groups working on Burma issues;

Continuing to fully support the Thai Senate Study Committee of Foreign Affairs' *Study on Ethnic Groups and Thai-Burma Border Security Issues*, which has a special focus on the situation of Shan asylum seekers in Thailand and making every effort to urgently and comprehensively implement the study's recommendations in 2004.

Recommendations to UNHCR

It is recommended that the Executive Committee Meeting of the UNHCR and the international community address the reasons for the influx of Shan asylum seekers to Thailand by pressuring the Burmese military regime to:

- respect their obligations under international humanitarian law, including Article 3 of the 1949 Geneva Conventions, to halt the use of weapons against the civilian population, to protect all civilians, including children, women and persons belonging to ethnic or religious minorities from violations of humanitarian law;
- begin tri-partite dialogue with representatives of non-Burman ethnic nationalities and the Burman opposition to re-establish peace and democracy in Burma.

It is recommended that the Executive Committee Meeting of the UNHCR and the international community urge the Thai government to meet its obligations to the Shan asylum seekers in Thailand by:

- Giving protection to Shan civilians along the Thai-Shan border by allowing them to cross the border into Thailand, provide adequate documents for Shan asylum seekers, and access to refugee camps and the UNHCR;
- Allowing Shan asylum seekers access to humanitarian aid agencies based in Thailand;
- Not deporting Shan asylum seekers, particularly women, into the hands of the Burmese military;
- Ratifying the 1951 Refugee Convention;
- Ensuring all refugee camps provide adequate health care and counseling for victims of sexual and gender based violence;
- Reviewing its security directives and stopping the crackdowns against pro-democracy and human rights groups working on Burma issues;
- Continuing to fully support the Thai Senate Study Committee of Foreign Affairs' *Study on Ethnic Groups and Thai-Burma Border Security Issues*, which has a special focus on the situation of Shan asylum seekers in Thailand and making every effort to urgently and comprehensively implement the study's recommendations in 2004.

It is recommended that the Executive Committee Meeting of the UNHCR and the international community accept Conclusion 1 of the Niebla Declaration which states (a) States should apply the Convention definition broadly and generously; and (b) The United Nations should establish a set of principles that will protect and assist all people who feel compelled to leave the country of origin for reasons of inadequate life conditions or widespread violence.

September 2003

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