Prevailing Constraints in the Search for Durable Solutions for Refugees in Displacement along the Thai-Myanmar Border[1]

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Abstract

The prolonged exile of multi-ethnic groups of displaced persons living along the Thai-Myanmar border caused by internal conflict within Myanmar started in 1984. The protracted refugee situation has festered for three decades under the encampment policy of the Royal Thai Government as asylum host state. There are prevailing constraints to a sustainable policy solution. Only two alternatives have been offered to the displaced persons: repatriation or resettlement. However these two possible solutions are determined by the policies and responses of international organizations, the UNHCR, conditions in both countries of origin and resettlement, as well as Thailand's asylum policy. This article examines how the structural

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political and institutional factors are shaping the policy implications and coordination structure for durable solutions in resettlement and repatriation. This article also examines how the existing mechanisms in the national, regional and international refugee regime should be applied in response to refugee rights protection and sustainable resolutions.

Introduction: Background on Myanmar Refugee Movements to Thailand

The phenomenon of forced migration and displacement within and across the Myanmar border is rooted in armed conflicts between ethnically designated separatist forces and the central government from the time of the post-colonial independence period starting in 1948. The ethnic conflicts increased the level of bloodshed and destruction that accompanied the simultaneous civil war between the socialist and communist political forces that battled for state power.[3] The Karen demand for the sovereignty to govern an independent Karen State sparked ethnic division and political exclusion, threatening protracted civil-war and a social and humanitarian crisis. The central government army has fought with Karen rebels for over six decades with counterinsurgency strategies directed to the target civilian population to minimize support for the rebellious groups. These strategies have also been applied to other ethnic armed opposition groups in Kachin and Northern Shan States, including ethnic Chin, Kachin, Kayah (Karenni), Rakhine (Arakan), Mon, and Pao, as well as other nationalities, such as the Paluang (Ta-ang) and Shan. Myanmar had a short-lived parliamentary period from 1948 to 1962, followed by Ne Win's power seizure and implementation of a socialist dictatorship from 1962 to 1988.[4] The dominant military governments – the ruling junta and the State Peace and Development

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[3] Taylor, "Do States Make Nations?", 261-286.
[4] Burma Centrum Nederland, "Access Denied".

Council (SPDC) – attempted to suppress the multiple ethnic and political insurgencies by restricting the ethnic minority delegation in government, boosting the Burman culture, and enhancing development projects, such as logging and hydroelectric dam construction, all enforced by the Burmese Armed Forces (Tatmadaw) in ethnic minority areas.

Myanmar/Burma has a history of human rights violations, ranging from suppression of pro-democracy groups, such as the National League for Democracy, restrictions of freedom of ethnic minority groups and crack-downs on student protests. In 1989, a ceasefire policy was instituted by the State Law and Order Restoration Council (SLORC) – subsequently known as State Peace and Development Council (SPDC) – following the general election in 1990. Nevertheless, the insurgent groups have continued their armed resistance in several border areas, creating a complex ethnic political situation in the conflict zones along the border with neighboring countries.[5]

Several cross-border sites between Thailand and Myanmar have been designated for refugee camps and temporary shelters for displaced persons, asylum seekers and refugees.[6] However, the refugee issue has only been a tiny part of Burmese history and has never been a priority agenda of the Myanmar government. The six decades of unrest has created refugee trauma, marginalization, forced relocation, forced labor, land confiscation, loss of relatives, extrajudicial killings, extortion, destruction of property and livelihood, and sexual violence.[7] A large numbers of rural Karen, Kachin, Mon, Karenni have become refugees and displaced persons in many countries such as India, China, Thailand and Malaysia.[8]

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[5] Burma Centrum Nederland, "Access Denied".

[6] Thailand Burma Border Consortium, *Protracted Displacement and Militarization*, 42.

[7] Physicians for Human Rights – PHR, *Bitter Wounds and Lost Dream.*

[8] Bowles, "From Village to Camp", 11-12.

Map 1: Internally Displaced Persons in South-East Myanmar
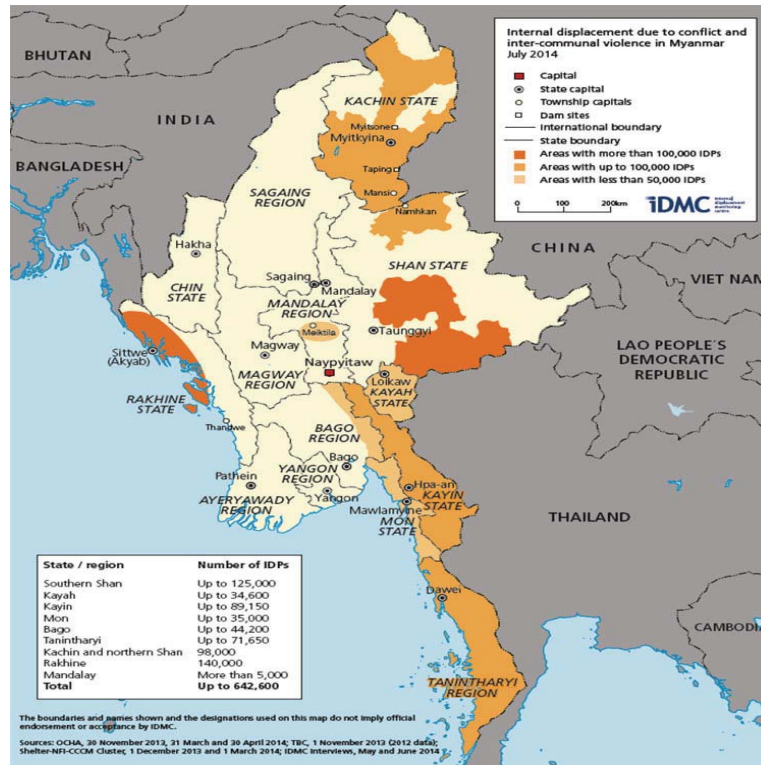
Source: Number of IDPs in South-East Myanmar (Southern Shan, Kayah, Kayin, and Mon State as well as Bago and Tanintharyi regions), Kachin and Northern Shan States, Rakhine State, and Mandalay region. Map from the Internal Displacement Monitoring Center, Norwegian Refugee Council, 2014.[9]

The size of the refugee population along the Thai-Myanmar border is reported differently between the registered refugees by UNHCR. An estimate, as verified by NGOs, is shown in Map 1 above. Local integration has never been a Thai policy, whereas resettlement has been regarded as the best solution, as well as a significant responsibility-sharing mechanism. The different number of registered and unregistered refugees has required a process of status determination and provision of access to related assistance. In most cases, unregistered refugees have not been able to apply for resettlement.

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[9] 5 Jan 2015 <http://www.internal-dispalcement.org/south-and-south-east-asia/ Myanmar/2014>.

Map 2: Refugee Population Along Thai-Myanmar Border
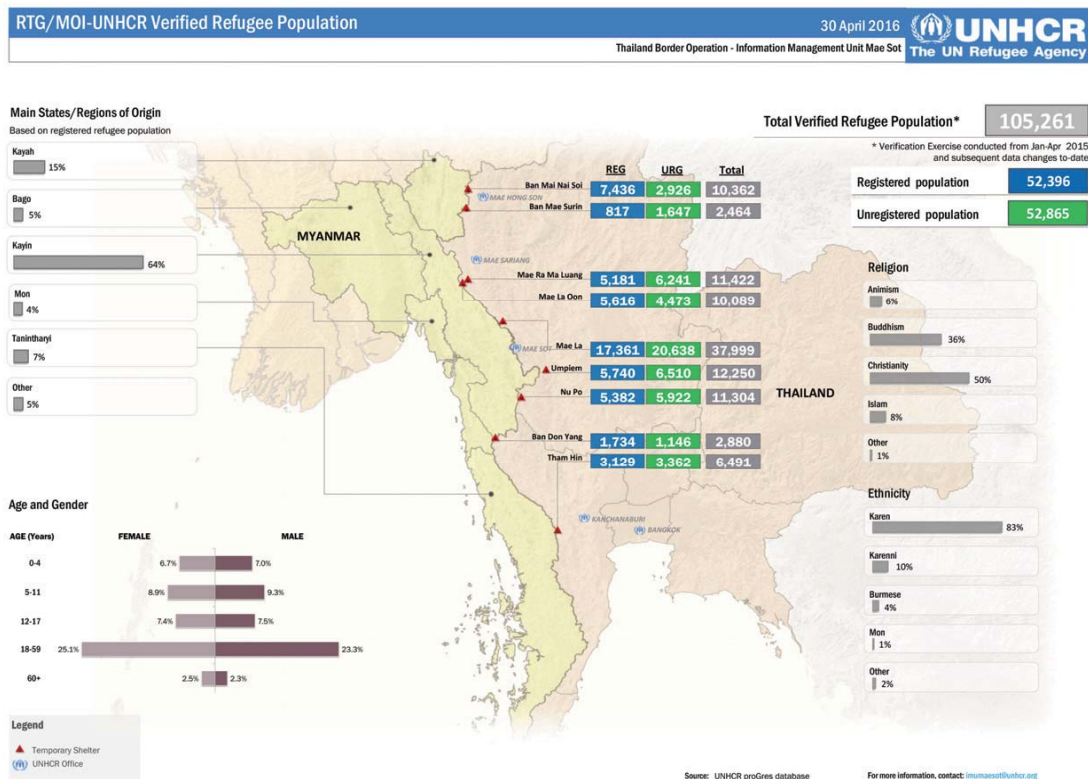
Source: RTG/MOI-UNHCR Verified Refugee Population, as of 30 April 2016. Published on 16 May 2016. The UN Refugee Agency. Thailand Border Operation – Information Management Unit Mae Sot. Courtesy of the Mae Sot Information Management Unit. [10]

The resettlement option has some constraints. Most of the resettlement countries' quotas for acceptance of refugees are modest. For example, Australia hosted just 0.22% of the world refugees and received just 0.53% of asylum applications in 2009. Australia received 9.85% of the refugees resettled in the same year, with only 1.1% of the refugees under the mandate of UNHCR.[11]

Globally, resettlement benefits a small number of refugees. In 2009, only one percent of the world's refugees directly benefited from resettlement.[12] In the case of displaced persons from Myanmar, repatriation is not a viable option. Continuing armed conflict in the

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[10] 17 Jan 2015 <www.commonservice.info>.

[11] Refugee Council of Australia, *Australia's Refugee and Humanitarian Program*, 3.

[12] UNHCR, *Framework for Durable Solutions*.

eastern side of Myanmar has forced many migrants to seek sanctuary in Thailand. The refugee population in the existing nine temporary shelters would prefer that Thai policy shift to a more durable solution by integrating them into the local community in order to pursue their livelihoods. However, the Thai government cites national security concerns as the reason for refusing integration of the refugees. Although resettlement to a third country is another potential solution, that option would not be preferable for everyone.

Possible Durable Solutions and Thai Government Policies

Thailand has permitted the establishment of camps/temporary shelters on a semi-permanent basis for the displaced persons from Myanmar since 1984. The Thai Government has never defined the persons in the camps to be "refugees", but considers them displaced persons fleeing fighting and residing in temporary shelters. The Thai program for refugees is currently administered by the National Security Council (NSC), and the NSC has never changed its policy since the Indochinese refugee crisis in 1975. Thai policy declarations and resolutions on displaced persons rely upon the recognition of the refugee problem as a national security threat. However, the Thai government has allowed international humanitarian organizations to provide assistance and protection to the displaced persons to promote self-reliance, livelihood development, occupational training, and education, among other services.[13]

Ever since the bilateral ceasefire agreements between the Myanmar Government and most armed ethnic groups in 2012, Thailand began to seriously consider a policy of repatriation. During the first term of General Prayuth Chan O-Cha, Thailand began preparations for repatriation of nearly 130,000 displaced persons living in the nine temporary shelters. There were formal and informal meetings and discussions on the repatriation plan with the military authorities from Myanmar, profiling surveys of the refugee population, and preparation of border economic development plans. In July 2014, the Thai government reached an agreement with Myanmar

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[13] Loescher, *Protracted Refugee Situations*, 307.

to conduct a joint effort in the repatriation of tens of thousands of refugees living along Thai-Myanmar border.[14] Partners in this agreement include the Internal Security Operations Command (ISOC), and representatives of UNHCR and NGOs. However, the Thai government currently has no time frame for repatriation.

Thailand's policy for the return of displaced persons is based on safe repatriation. However, the majority of displaced persons have given no indication that they agree to be repatriated due to safety concerns and the feeling of distrust and insecurity in the peace process that might be disrupted at any time. What is more, Thailand is being pressured to act by the steady decline in donor funding for refugee support. The pattern of traditional donor-recipient relations between Thailand and the European Commission has shifted towards a partnership for development.[15] Donors are shifting foreign aid from direct support to policy consultation, technical assistance, and capacity building. Funding for UNHCR from UN member countries has declined as has EC funding for international humanitarian NGOs.[16]

Thailand has not ratified the Geneva Convention and Protocol on Refugee Status in 1951 and 1967, respectively. The three viable long-term solutions – resettlement, repatriation and local integration – are mandatory options under the UNHCR's conceptual framework,[17] with voluntary repatriation being the preferred solution when it is safe to do so.

Local Integration

UNHCR has promoted local integration as one of the durable solutions to the protracted refugee situation in the host society by the host government. Local integration is a complex and gradual asylum procedure which is structurally related to legal, economic, social and cultural dimensions to support refugees to achieve self-sufficiency and self-reliance in the receiving society. UNHCR estimates that, during

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[14] UNHCR, "UNHCR Concerned About Thai Repatriation of Myanmar Refugees", 3.
[15] Thailand-European Community, *Strategy Paper*, 3.
[16] Thailand-European Community, *Strategy Paper*, 3.
[17] UNHCR, *Framework for Durable Solutions*.

the past decade, 1.1 million refugees around the world became citizens in their country of asylum.[18]

During the Cold War, permanent asylum and local integration were widely practiced, particularly in the asylum countries in the West. In contrast, most refugees in developing countries have hardly become conventional refugees because the host governments tend to view refugees living in border zones as *prima facie* refugees. Since the end of the Cold War, the host governments have more tightly restricted applicants in search of local integration.[19] Although there is no specific European Union (EU) integration policy instrument, the EU Member States have placed integration high on the policy and political agenda, particularly since the mid-1990s.[20] The number of asylum applications in EU Member States has increased 25 per cent in 2014 compared to the same period in the previous year. A quarter of applicants are of Afghan, Eritrean or Syrian origin. All of the countries of Central Europe have ratified the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and numerous other international and regional human rights treaties. These countries have implemented the integration of refugees through legislative provisions and by specific programmes.[21]

The Thai policy has not encouraged the implementation of local integration for the displaced persons in the temporary shelters as a durable solution. Evidently, the policy has prohibited the displaced persons in the temporary shelters from conducting any sustainable activity that might lead to self-sufficiency and permanent settlement. For example, the shelter occupants have no access to legal employment, and have no freedom of movement. The displaced persons remain dependent on subsistence-level humanitarian

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[18] UNHCR, *Local Integration*.
[19] Jacobsen, *The Forgotten Solution*, 2-3.
[20] UNHCR, *A New Beginning Refugee Integration in Europe*, 10.
[21] UNHCR, Bureau for Europe, *Integration Rights and Practices*, ix.

assistance, and they are at risk of adverse mental health consequences and depleted life potential.[22]

In the politics of Thai asylum, local integration is resisted not only because of concern about the potential for conflict with the surrounding community, but also because of the fear of having to take on full responsibility for the displaced persons from Myanmar without burden sharing from developed countries. In addition, the rate of resettlement in the third countries has been decreasing, whereas the peace process in Myanmar has not been fully realized.[23]

Currently, beside the almost 140,000 displaced persons living in temporary shelters, Thailand also hosts over two million migrant workers. Many of these migrant workers were fleeing the fighting in Myanmar and lack of economic opportunity, and they prefer employment rather than residing in the temporary shelters as displaced persons. In addition, approximately 1,000 asylum seekers are residing in urban areas, and there are over 200,000 ethnic Shan and other groups fleeing ethnic persecution, forced relocation, and violence near the Thai-Myanmar border. Many of the persons in the camps go out for shorter or longer periods in order to find jobs elsewhere in Thailand, and this represents a small degree of local integration. Given that 2-3 million migrant workers from Myanmar are now working in Thailand, integrating those displaced persons who so choose to enter the labour force would not be difficult.

The Thai government has recently permitted humanitarian organizations and NGOs to expand more vocational training programmes and improved self-reliance projects for displaced persons. However, local integration has not yet been formally accepted, and Thailand has not promulgated national refugee legislation. Various factors have influenced Thai asylum policy. The factors include concerns for security issues and crime, resistance from the local Thai communities, responsibility for refugees, economic and environmental burdens, negative public attitudes, the relationship with Myanmar, and the potential for an increase in more asylum seekers

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[22] CCSDPT; *Analysis of Gaps*.
[23] Aungkana, "Issues in the Thai Government's Policies".

and internally displaced persons from Myanmar with other immigration issues. This has led to problems in the administration of the displaced persons. These non-Thais are seen as a national security threat and are treated as illegal immigrants. Within the condition of encampment policy, these displaced persons are severely restricted in terms of developing self-reliance in accordance with international standards.[24]

Resettlement to a Third Country
Overall, the trend of resettlement as a sustainable solution remains a positive response for most resettlement host countries. The extension of resettlement countries participating in the UNHCR resettlement program has increased from 14 in 2005 to 26 in 2012, with eleven new UNHCR programs launched since 2007. Other resettlement countries include Bulgaria, the Czech Republic, France, Germany, Hungary, Japan, Paraguay, Spain, Romania, and Uruguay,[25] in addition to the 3rd country destinations of Argentina, Australia, Brazil, Bulgaria, Canada, Chili, Denmark, Finland, Iceland, Ireland, The Netherlands, New Zealand, Norway, Portugal, Sweden, United Kingdom, and United States of America. But many of the new resettlement programs remain limited in number and have a loosely institutionalized structure, and traditional resettlement countries still tend to focus on UNHCR-sponsored refugees.[26]

In 2011, the UNHCR resettlement program facilitated 92,300 refugees for resettlement in the 3rd countries including those from Myanmar (21,300), Iraq (20,000), Somalia (15,700) and Bhutan (13,000). Ten percent of all submissions were from women and girls at risk, with an increasing percentage of these in the last six year.[27]

In general, the potential growth of recent newly-announced resettlement programs of 3rd countries, such as Belgium, Switzerland and Japan, seemingly reflects the effective response of global capacity to the resettlement need. However, a number of countries have offered

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[24] Premjai, "Humanitarian Assistance for Displaced Persons From Myanmar", 33-45.
[25] Nicholson, "Refugee Resettlement".
[26] Nicholson, "Refugee Resettlement".
[27] UNHCR, *Resettlement*.

resettlement on an ad hoc basis. For example, Australia offered to double the number of the resettlement vacancies temporarily during July 2012 to June 2013.[28]

UNHCR has contributed much effort in monitoring the resettlement processing capacity and submission levels to increase the resettlement hosts. The number of submissions increased from 75,080 in 2012 to 93,226 in 2013. This resettlement has included the admission for up to 30,000 of the most vulnerable Syrian refugees by the end of 2014, and for an additional 100,000 Syrian refugees through 2016.[29] However, the dwindling number of large-scale resettlement from Nepal and Thailand has mirrored the opposite trend of reducing submissions during 2010-2012. The main reason is the trend of increasing submissions for Afghan, Colombian and Congolese refugees; the adoption of simplified processing methodologies, such as group resettlement from Rwanda, and increased deployment of resettlement and child protection experts.[30] On the other hand, the funding support for development projects and programs has tended to move from receiving countries such as Thailand to the country of origin such as Myanmar.

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[28] Executive Committee of the High Commissioner's Program, *Progress Report*.
[29] Executive Committee of the High Commissioner's Program, *Progress Report*.
[30] Executive Committee of the High Commissioner's Program, *Progress Report*, 4.

Table 1: Preference for the Resettlement Option By Profile

Factors	Total = 135	
	Yes (N)=87	No (N)=48
Age		
14-28 years	34.8	21.5
29-49 years	29.6	14.1
Ethnicity		
Karen (Pwo)	5.2	5.2
Karen (S'gaw)	55.6	28.1
Burman	1.5	2.2
Karenni		0
Marital status		
Single	17.8	13.3
Married	44.4	20
Not married but living as a couple	0.7	0
Widowed	1.5	0.7
Divorced/Separated	0	1.5
Family with Children		
No	20	14.8
Yes	44.4	20.7
Occupation		
Employed	8.9	3.0
Self-employed	0.7	0
Housewife	25.9	10.4
Unemployed	11.9	7.4
Others	17	14.8
Length of stay		
1-8 years	16.3	31.9
9-16 years	28.9	2.2
17-24 years	18.5	1.5
25-32 years	0.7	0
Camp		
Mae La	26.7	10.4
Mae Ra Ma Luang & Mae La Oon	37.8	25.2

Source: Aungkana Kmonpetch, 2013.

Refugees from Myanmar have spent most of their life in exile in temporary shelters. Thousands of refugees from Myanmar would prefer to leave the protracted refugee situation in the shelters and opt for resettlement. Most of these are Karen (S'gaw) with 55.6 per cent (See Table 1). From the survey conducted by the author in 2012 for PhD research in Mae La Temporary Shelter (in Mae Sot District, Tak

Province) and Mae Ra Ma Luang and Mae La Oon (in Mae Hong Son Province) with 135 respondents, the main factor influencing refugees to apply to the resettlement program is the policy implication of the stalled PAB registration process. Therefore, length of stay in the temporary shelters has had some impact on options for resettlement (see Table 1). There is a very distinct bifurcation of resettlement options for refugees who had stayed in the shelters for 1-8 years and those who had stayed a longer period of time. The resettlement preference did display a linear temporal progression, steadily increasing over time, and the distinct split occurring at the eight year time frame is apparently due to the stalled registration process within the shelters. Very few status determinations have been made by the Provincial Admission Board since the 2005 MOI/UNHCR registration process, and this has had a clear impact on resettlement preference with only 16.3 percent of those who had arrived in the shelters during the last eight years before the beginning of resettlement program in 2006. This is the most significant bottleneck to the resettlement program, with the result that a large number of the population within the shelters is simply ineligible for resettlement, whether they are interested in applying or not. Information from focus group discussions shows that refugees want to see a policy shift. Two respondents with the PAB status stated:

> …I lived with my uncle in Mae La after my parents died. I came to Bangkok to earn some money. During my work in Bangkok, I was absent in the registration process. I have got only PAB status. Now I want to go to work in a resettlement country. But I cannot apply with PAB status…' (Focus Group Interview, Mae La, 21 Nov 2012).

> …I and my daughter are registered refugees. I don't want to stay here because I want to see my daughter have a good future in a resettlement country, especially in the US. My husband is not registered because he was absent during the registration process. He wants to go back home to Myanmar, but we have no home, no land, no relatives, and I don't trust the government of Myanmar.

We agree that going abroad would be better for the future of our family. I will apply to the US and hope the US will allow my husband to stay with us together…' (Focus Group Interview, Mae La Oon, 28 Nov 2012).

Preference for the Resettlement Option

The resettlement program for refugees from Myanmar is operated cooperatively by the UNHCR, the International Organization for Migration (IOM), the International Rescue Committee (IRC) and third countries. The program was approved by the Thai government in 2005, and has reduced crowding in all nine shelters. But the influx of new refugees continues. The number of refugees from Myanmar in forced displacement has fluctuated over the past decade because of the increasing number applying for resettlement in the third countries, mixed with an influx of newcomers. Overall, the population in the shelters has remained relatively constant. The ongoing clashes between the Myanmar army and the non-state groups in Kachin and northern Shan state still cause movement of refugees across the border.[31]

The resettlement program still remains a challenge not only in terms of the inadequacy of physical preparation, but also in the dimensions of language and cultural orientation, livelihood adjustment, adapting to new environment in the resettlement countries, and duration of time for preparedness of refugees and their dependents. There are also psychological factors which affect resettlement. While the physical challenges might have arisen from the internal and external threats, each individual has their own traumatic experiences related to their legal status determination, concern on integration in the resettlement countries, nostalgia for their homeland and families, stress of family separation, ethnicity and nationality, among many other factors.

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[31] UNHCR, *2015 UNHCR Country Operations Profile*.

Repatriation Challenge for the UNHCR in Pursuing a Sustainable Solution

The domestic condition of the country of origin (i.e., disruption between the Myanmar government and ethnic leaders) has been one of the major challenges for the UNHCR in promoting any plan for voluntary repatriation. The prospects of political and economic reforms in Myanmar are juxtaposed with the opportunistic tendencies for mobilization of resources to repatriate verified and registered Burmese refugees, totaling 110,094 and 73,729 persons respectively.[32] The imperatives of the peace process and reconciliation with the armed ethnic groups in the Myanmar constitution, including the new electoral process in 2015, are major obstacles to repatriation and reintegration.

UNHCR monitors the Myanmar government through the Special Rapporteur, who engages different divisions at all levels government, representatives of the community, religious leaders, civil society and human rights victims in achieving democratization, national reconciliation and development.[33] UNHCR's engagement in Myanmar has expanded considerably, but the repatriation program has still not been implemented at the policy level. Meanwhile, UNHCR in Thailand confirmed that some preparations for repatriation are underway for Burmese refugees who wish to return. UNHCR's initiatives for a sustainable solution in the creation of the Information Management Common Services (IMCS) in the on-line Cross-Border Web Portal provides significant information for refugee decision-making, including voluntary repatriation. This initiative also includes a pilot project to systematically assess spontaneous returns – a process different from voluntary repatriation – in the verified return villages and refugee villages of origin in Mon, Kayah, Kayin, and Tanintharyi States in the southeast region of Myanmar.[34]

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[32] UNHCR Thailand Border Operation, "UNHCR Concerned About Thai Repatriation".

[33] UN General Assembly, *Report of Special Rapporteur.*

[34] UNHCR, *Myanmar SE Operation.*

The issue of border refugee ethnicity is inextricably linked to social and humanitarian concerns. The protracted civil war and internal conflict has impoverished Myanmar. Myanmar is one of the world's poorest countries and is confronted with population displacement, drug-related problems, malnutrition, and high infectious disease rates, especially in the ethnic population borderlands.[35] Thus, at present, repatriation is not the preferred solution for most of the Burmese refugees. UNHCR is well-prepared for the process of repatriation, but voluntary repatriation is not yet of great importance for the Myanmar government and absolutely not for displaced persons in the temporary shelters, especially the younger refugees.

As the size of the resettlement challenge grew, so did the scope of UNHCR's involvement in resettlement and integration. UNHCR estimates the global resettlement need for 2011 at 172,307 and, in the following year, at 805,535.[36] In the case of the resettlement of Myanmar refugees from the temporary shelters in Thailand, during 2005-2014, the number of submissions was 138,127 and the number of departures was 94,350. Although the resettlement program could release population pressure in the temporary shelters, new entrants of refugees has not declined over time. UNHCR is still confronted with the limited number of resettlement countries and some resettlement criteria – of the estimated number of 805,535 vacancies in resettlement countries, only 10 per cent have been filled.[37]

UNHCR has the responsibility for coordinating the humanitarian protection and assistance in Myanmar amidst the dwindling resources for protection activities. UNHCR's role as the lead agency is criticized as inadequate as in the case of several past complex emergencies, e.g., the Indochinese refugee crisis,[38] and Bosnia and Herzegovina.[39] To be fair, UNHCR was left to manage the crisis on its own, which was beyond its capacity. The contribution of the Department of Humanitarian

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[35] Burma Centrum Nederland, "Burma in 2010".

[36] Refugee Council of Australia - RCOA, *Australia's Refugee and Humanitarian Program 2011-2012*.

[37] Booher, "From Burma to Dallas".

[38] Robinson, *Terms of Refuge*. 72-73.

[39] Pugh, "The UNHCR as Lead Agency".

Affairs (DHA), as a coordination function, did not relieve the burden of UNHCR. In addition, UNHCR's effort did not incorporate political initiatives to solve the crisis through principles of conflict resolution. UNHCR was expected to continue its mandated operations without a determined timeframe.[40]

The UN humanitarian reform initiative mechanism is pointing in the direction of the new inter-agency coordination model in non-refugee emergencies. The new approach uses 'clusters' which coordinate resources among UN agencies and the international community in a more integrated manner at the country level.[41] Therefore, the three clusters in which UNHCR has assumed responsibility include protection, camp management and coordination, and emergency shelter. The result is short-term stop-gap measures rather than the pursuit of long-term, sustainable solutions for displaced persons. Strategies need to be developed for solving the protracted refugee situation in both the country of asylum and the country of origin.[42]

Imposed Repatriation

During the post-Cold War period, the doctrine of voluntary repatriation was accepted, as stated in the 1951 Conventions Relating to the Status of Refugees. However, this ideal solution has diminished in importance as the political and economic circumstances of most asylum countries are contributing to their preference for involuntary repatriation. This evolution of policy is also attributable to the declining resources from the North which is less inclined to share responsibility for refugee resolution. Consequently, a policy of imposed repatriation threatens to replace the concept of voluntary repatriation.[43] Chimni argued that the withdrawal of burden-sharing among global partners has inadvertently led to involuntary repatriation as the only viable solution to the global refugee problem.[44]

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[40] Donor Humanitarian Agencies - Working Group, Meeting Notes.

[41] Slaughter, *Surrogate State?*.

[42] Slaughter, *Surrogate State?*.

[43] Chimni, *Post-Conflict Peace Building and the Return of Refugees*.

[44] Chimni, *Post-Conflict Peace Building and the Return of Refugees*, 55.

The notion of imposed return is relevant to the idea of safe return which became part of the discourse on solutions in the context of temporary protection programs established by Western Europe since 1993.[45] This means that legitimization of safe return has undermined the standard of voluntary repatriation. This could also adversely impact repatriation and aid for returnees if a certain level of development does not prevail.[46] Imposed return neglects the aspiration of the refugee population by assuming that they want repatriation.

The strategy of imposed return was developed for the resolution of the Indochinese boat people crisis in 1989 as one of the five main objectives in the Comprehensive Plan of Action (CPA). An agreement was reached to repatriate the large residual number of Vietnamese from Thailand to Viet Nam, with guarantees from the Vietnamese government that the returnees would not be discriminated against, and with project support and monitoring carried out by the EU and international community. A key principle of this strategy is voluntary repatriation. It is emphasized that:

> …In the first instance, every effort will be made to encourage the voluntary return of such persons…If, after the passage of reasonable time, it becomes clear that voluntary repatriation is not making sufficient progress towards the desired objectives, alternatives recognized as being acceptable under international practices would be examined…[47]

Since the 1990s, refugee repatriation has been advocated as the preferred solution by UNHCR, even when the refugees are reluctant to go home.[48] A number of scholars have expressed great concern about forced repatriation.[49] In particular, the younger generation of refugees

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[45] Chimni, *Post-Conflict Peace Building and the Return of Refugees.*
[46] Pugh, "The UNHCR as Lead Agency".
[47] Robinson, *Terms of Refuge,* 188-189.
[48] Robinson, *Terms of Refuge,* 188-189.
[49] Harrell-Bond, "Repatriation: Under What Conditions", 43; Sepulveda, "Challenging the Assumptions of Repatriation", 12-13; Chimni, "From Resettlement to Voluntary Repatriation", 61.

who were born in the refugee camps have no nostalgia to return to their parents' homeland. This often also applies to the Diaspora of refugees (e.g., Iranian refugees in Sweden).

Currently, UNHCR is ready to provide assistance for refugees who want to return. The 1951 Convention, which was drafted based on a Eurocentric experience, did not prioritize the various parameters of repatriation; it merely requires that the state parties ensure safe return for the refugees who voluntarily decide to return home and for other non-nationals who have not claimed international protections.[50] As argued, "it is wishful legal thinking to suggest that a voluntariness requirement can be superimposed on the text of the Refugee Convention once a receiving State determines that protection in the country of origin is viable, it is entitled to withdraw the refugee status."[51] The notion of voluntariness was promoted in the Statute, not in the Convention, and imposed return is discussed by many authors, such as Chimni. This phenomenon has hampered the evolution of the international refugee response since the Cold War up to the present in which humanitarian conditions have not always been inconsistent with the refugee policies of the dominant states in the international system.[52]

The policy of the Myanmar government in development of potential border sanctuaries in the northern area of Shan in Mon State and other ethnic minority areas, especially in southeast Myanmar in Kayin State, has become a key strategy for social stability and economic development of the country.[53] But this development plan has not been able to gain the trust and confidence of most of the refugees. The situation has seemingly intensified the emergence of imposed return especially by the host state. Therefore, imposed return threatens the implementation of a durable solution, with all the relevant issue in human insecurity and social exclusion.

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[50] Goodwin-Gill, *The Refugee in International Law*, 275-276.

[51] Chimni, *Post-Conflict Peace Building*, 203.

[52] Chimni, "From Resettlement to Voluntary Repatriation".

[53] Premjai, "Humanitarian Assistance for Displaced Persons From Myanmar".

Conclusion

The UNHCR has already documented UNHCR Provisional Guidance to identify the main parameters concerning humanitarian support, including the principles, standards and verification process, both in the pre-departure and post-return for refugees and spontaneous returnees who plan to return from Thailand to southeast Myanmar (where most of refugees in Thailand originated from). This process also includes the establishment of an assistance program provided by some non-governmental humanitarian organization, such as the Danish Refugee Council (DRC) and the Norwegian Refugee Council (NRC), in addressing the displacement issues and repatriation from Thailand. However, the viability of returning to Myanmar has remained a challenge. The main reason is that the negotiations for a ceasefire agreement have not been fully realized. The continuing armed conflict between government forces and various armed non-state groups and recent ethnic clashes have continued to cause large-scale internal and cross-border displacement. The political issues also complicate the decision of refugees to repatriate and has impeded the development of a sustainable solution. Many refugees believe that the Myanmar army has no intention to withdraw their troops and prefer to re-establish military camps in KNU-controlled domains.

On the other hand, in terms of socio-economic development under the new administration and policies, the Myanmar government has encouraged reconciliation with the ethnic minorities in order to establish social stability and national integration. Many assistance projects and programs have been planned as part of the overall framework of integrated regional development to support the ethnic minorities in the southeast Myanmar. These projects include building industrial zones in border areas opposite Thailand's Mae Sot and Mae Sai Districts and near the Three Pagodas Pass, in cooperation with and support from the Japanese government, including de-mining, food security, preparing agricultural equipment, creation of employment opportunities, as well as building temporary shelters in Hlaing Bwe Township in southeastern Karen State for returnees. These projects are in the pilot planning stage.

It is necessary to solicit stakeholder opinion about the issues and continue to brainstorm practical and sustainable solutions. Successful return and reintegration requires much time and effort from various institutions and agencies, such as advancing the peace process, clearing of landmines, processing certified status registration of refugees, building reception capacity, and promoting education and livelihood opportunities in Myanmar.

Resettlement still has many challenges, including the psychological dimension. The preparation for resettlement should be promoted on the basis of self-reliance. More research should been done to comprehend the refugee perspective and experience. This is important for raising awareness of refugees to prepare themselves for adjustment in the new environment in the resettlement countries and the removal of barriers for resettlement. UNHCR, ASEAN member countries, and non-governmental agencies should strengthen the existing cooperative programs with the European Commission to encourage more European Union Member States to engage in refugee resettlement and to encourage European countries to increase the number of places available for refugee resettlement.

Measures on the control of irregular migration introduced since 1980s have complicated the situation and imposed restrictive criteria in classification of asylum seekers and refugees to attain security and protection in the territory. Thus, many refugees are still dependent on agents, traffickers and smugglers when crossing the border to seek asylum.

Refugees are still regarded as marginalized people. The governments of multiple destination countries in ASEAN have neglected the mechanisms of national and regional legal frameworks for recognizing refugees and asylum seekers in need of protection and access to asylum and, instead prefer to view refugees as a national security threat. The deficiency of asylum laws and disparity in national refugee regimes, as well as protection policy practices of ASEAN member countries, make regional conformity in refugee policy more challenging.

In terms of ASEAN regional cooperation, the Refugee Council of Australia (RCOA), which is a consultation organization working

with NGOs in Asia, holds promise for Australia's leadership based on its previous role in the Indochinese refugee resolution. The Asia-Pacific Regional Protection Framework was developed with the Australia-centered commitment toward the resolution of refugee protection. Australia's role is vital both in terms of its financial resources and as a resettlement destination. The Refugee Council is demanding the revision and amendment of Australia's current asylum policies. In the development of a regional protection framework, Australia should take a bigger role in modeling protection-centered asylum policies and show willingness to put resources into strategies to improve regional refugee protection outcomes in as many countries as possible. Australia is in an appropriate position to explore greater cooperation with the key resettlement countries of the United States and Canada, among other countries, to expand the reciprocal responsibility for resettlement within Africa, Asia, and the Middle East.

Myanmar has been expanding its economic and political role beyond the diplomatic relations in ASEAN regionalism. The prevailing structural factors have policy implications for refugee resolutions. All relevant parties need to support the participatory potential and multilateral coordination in advocating for an international response and ASEAN intervention for sustainable solutions to the refugee problem. In recognition of the principles of refugee protection, the UNHCR and other humanitarian actors have a vital role to play in supporting the practical initiatives to enable the government to support national refugee legislation in accordance with international and regional refugee laws and conventions, as well as customary and human rights laws. As previously noted, this role includes the initiative in capacity-building implementation in enabling the state agencies, frontline officers, immigration officials, local police, military, judiciary, and local government authorities, to adhere to such legislation.

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