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**TRAFFICKING AND EXTORTION OF
BURMESE MIGRANTS IN MALAYSIA
AND SOUTHERN THAILAND**

—————
A REPORT
TO THE
COMMITTEE ON FOREIGN RELATIONS
UNITED STATES SENATE

ONE HUNDRED ELEVENTH CONGRESS
FIRST SESSION

APRIL 3, 2009



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LETTER OF TRANSMITTAL

UNITED STATES SENATE,
COMMITTEE ON FOREIGN RELATIONS,
Washington, DC, April 3, 2009.

DEAR COLLEAGUES: Since 1995, approximately 40,000 Burmese refugees have resettled in the United States, fleeing the repressive military junta in Burma. The majority of refugee arrivals come via the United Nations High Commissioner for Refugees offices in Bangkok, Thailand or Kuala Lumpur, Malaysia.

Over a year ago, Keith Luse, my Senior Professional Staff Member for East Asia and the Pacific, began reviewing allegations about mistreatment of Burmese refugees enroute to the United States—specifically, that they were victims of extortion and human trafficking in Malaysia and southern Thailand. The attached staff report and recommendations represent findings from research in Malaysia, Thailand and the United States, as well as information obtained from other countries.

Subsequent to the preparation of this report, Malaysian police announced on April 1 that an investigation of these allegations has been launched. I welcome this encouraging development.

Life and death issues confronting migrants and refugees in Southeast Asia are not restricted to Malaysia and Thailand. Likewise, these and other Southeast Asia countries daily observe an endless flow of persons across their borders—in pursuit of employment, seeking a better life and escaping harm in Burma.

The attached report examines a specific and narrow component of a broader regional issue, namely, the ongoing migrant and refugee crisis throughout ASEAN which calls for the establishment of a comprehensive regional policy.

Sincerely,

RICHARD G. LUGAR,
Ranking Minority Member.

TRAFFICKING AND EXTORTION OF BURMESE MIGRANTS IN MALAYSIA AND SOUTHERN THAILAND

Many of the victims are enroute to the U.S. for resettlement

FOREWORD

In recent years, Malaysian print and television media, and non-governmental organizations (NGOs), as well as international NGOs and media, have reported the alleged mistreatment of Burmese migrants in Malaysia, along the Malaysia-Thailand border, and in southern Thailand.

While the allegations which led to the preparation of this report are not new, the report's content is based on first person accounts of extortion and trafficking in Malaysia and along the Malaysia-Thailand border. Committee information comes from experiences of Burmese refugees resettled in the United States and other countries. Malaysian Government officials continually deny such allegations. As reported recently in the Malaysia Star, "Home Minister Datuk Seri Syed Hamid Albar also denied claims that thousands of illegal foreigners held at detention centres were "being sold off" to human trafficking syndicates. 'I take offence with the allegation because neither the Malaysian Government nor its officials make money by selling people.'"

However, on April 1, 2009, Inspector-General of Police Tan Sri Musa Hassan stated that an investigation has been launched.

This is the first of three reports.

EXECUTIVE SUMMARY

In 2007, the Senate Foreign Relations Committee began receiving disturbing reports alleging the trafficking and extortion of Burmese and other migrants in Malaysia and from Malaysia into Thailand, for personal profit by some Malaysian Government officials, among others.¹ Committee staff conducted a year-long review of the trafficking and extortion allegations.

The committee has an active interest in the treatment of Burmese migrants in Malaysia. Many of the approximately 40,000 Burmese refugees who have resettled in the United States since 1995, have come via Malaysia.

¹In this report, the term "Malaysian Government officials," or reference to such may refer to Malaysia RELA (Malaysia's deputized citizens' corps), immigration, and /or police officials.

Malaysia does not officially recognize refugees, due in part to concern by the Government that official recognition of refugees would encourage more people to enter Malaysia, primarily for economic reasons.² Also, Malaysian officials view migrants as a threat to Malaysia's national security.

In an interview with *The New York Times*, "Rela's (Malaysia's deputized citizens' corps) director-general, Zaidon Asmuni, said, "We have no more Communists at the moment, but we are now facing illegal immigrants. As you know, in Malaysia, illegal immigrants are enemy No. 2."³

Many Burmese migrants travel to Malaysia to register with the United Nations High Commissioner for Refugees (UNHCR), for resettlement to a third country. Typically they profess fear of persecution by the repressive Burmese military junta. Once in Malaysia, Burmese migrants are often arrested by Malaysian authorities, whether or not they have registered with the UNHCR and have identification papers. Personal belongings confiscated at the time of arrest are usually kept by Malaysian officials.

Burmese migrants are reportedly taken by Malaysian Government personnel from detention facilities to the Malaysia-Thailand border for deportation. Allegations received by the committee from migrants, spanning years of personal experience, are similar to reports issued by NGOs and human rights activists.

Upon arrival at the Malaysia-Thailand border, human traffickers reportedly take possession of the migrants and issue ransom demands on an individual basis. Migrants state that freedom is possible only once money demands are met. Specific payment procedures are outlined, which reportedly include bank accounts in Kuala Lumpur to which money should be transferred.

The committee was informed that on some occasions, the "attendance" list reviewed by traffickers along the border was identical to the attendance list read prior to departure from the Malaysian detention facilities.

Migrants state that those unable to pay are turned over to human peddlers in Thailand, representing a variety of business interests ranging from fishing boats to brothels.

The committee has received numerous reports of sexual assaults against Burmese women by human traffickers along the border. One NGO official states that "Most young women deported to the Thai border are sexually abused, even in front of their husbands, by the syndicates, since no one dares to intervene as they would be shot or stabbed to death in the jungle."

In August, 2008, committee staff met separately with officials in Malaysia's Immigration department and the Prime Minister's office, to again convey the committee's concern regarding the extortion and trafficking allegations. Immigration Director-General Datuk Mahmood Bin Adam and long-time Immigration enforcement official Datuk Ishak Haji Mohammed denied the allegations of mistreatment against Burmese migrants at the hands of immigration and other Malaysian officials.

²"Overview of Burmese Refugees, Malaysia's Refugee Policies," Congressional Research Service, Rhoda Margesson and Michael Martin, November 10, 2008.

³*The New York Times*, "A Growing Source of Fear for Migrants in Malaysia," December 10, 2007, Seth Mydans.

On December 11, 2008, The New Straits Times reported that “Immigration enforcement director Datuk Ishak Haji Mohamed has opted for early retirement following his sudden transfer to the Domestic Trade and Consumer Affairs Ministry.”

Director-General Mahmood’s predecessor, Datuk Wahid bin Mohamed Don and others were arrested by the Anti-Corruption Agency for alleged graft in 2008.

Statements are continuing to come to the committee from Burmese and other migrants who were taken to the Thailand-Malaysia border and threatened with violence, or being handed over to human traffickers unless extortion demands were met.

Details provided to the committee by Burmese refugees to the United States include names of persons to whom payments are allegedly made; payment locations in Malaysia and Thailand; bank account numbers to which extortion payments are deposited; locations along the Thailand-Malaysia border where migrants are reportedly taken by Malaysian officials; and the identification of persons allegedly involved in the trafficking of migrants and refugees. This information is being separately forwarded to law enforcement officials.

In addition to possible prosecution in Malaysia and Thailand, any persons allegedly involved in the trafficking of Burmese migrants in those or other countries in Southeast Asia, are subject to possible arrest and prosecution by U.S. law enforcement authorities after entering the United States. The Trafficking Victims Protection Act, as amended, grants the United States extra-territorial jurisdiction to prosecute any trafficking offense, or any attempt or conspiracy to commit an offense, by any individual present in the United States, irrespective of the nationality of the alleged offender or the location of the alleged offense.

The allegations of mistreatment by Malaysian Government officials and human trafficking syndicates in southern Thailand are not restricted to Burmese migrants, including refugees. However, the preponderance of complaints received by the committee are from ethnic minority migrants who fled Burma.

This report does not focus on other reported challenges confronting foreign migrants and workers in Malaysia, in Thailand, or while enroute to Malaysia from other countries. Whipping and torture while in Malaysian detention facilities are among other allegations received.

SFRC STAFF RECOMMENDATIONS

1. The Government of Malaysia should address the trafficking, selling and slavery of Burmese and other migrants within Malaysia and across its border with Thailand. Malaysian Police and Anti-Corruption officials should be encouraged to investigate and prosecute cases involving the trafficking of Burmese and other refugees. Malaysia has an anti “trafficking in persons” law that provides victims with protection services and temporary immigration relief.

Investigations and prosecutions should occur when credible and verifiable allegations are made of officials being complicit in trafficking in Malaysia.

2. Now that the new Anti-trafficking law is in place, the Government of Malaysia should continue to develop its skills and capacity to identify and assist adult and child victims of human trafficking within its borders, and fully implement its response to addressing human trafficking.

3. The flow of refugees from Burma to Thailand, Malaysia and other countries has cost Burma's neighbors millions of dollars in food and humanitarian assistance. Officials of impacted ASEAN countries should be intentional in measuring the financial cost of hosting refugees displaced from Burma, and to request financial compensation from Burma's military junta for costs incurred in caring for the refugees.

4. ASEAN issued a "Declaration on the Protection and Promotion of the Rights of Migrant Workers" during the Cebu Summit in 2007. The U.S. and other countries should encourage ASEAN Member States to implement "Commitments by ASEAN" as outlined in the Declaration.

5. The U.S. in coordination with other donor countries, should continue providing funds, 1) to facilitate sharing of information on human trafficking among authorities of Thailand and Malaysia; and 2) to provide technical and other assistance to the Governments of Malaysia and Thailand so that the trafficking of Burmese and other migrants may be more actively pursued and prosecuted.

However, greater emphasis should be placed on evaluating the effectiveness of prosecutions and providing victim protection. Do prosecutors focus on numbers of persons prosecuted rather than going after key syndicate players, which may require greater case preparation?

(The U.S. Embassy/Bangkok and Consulate General/Chiang Mai have continued to broaden and increase prevention activities in support of the Mission's overall anti-trafficking in persons (TIP) strategy. For example, the Mission has enlisted the support of Mrs. Eric John, wife of the U.S. Ambassador).⁴

Thai officials assert that proceeds from human trafficking in southern Thailand are among illegal sources of funding utilized by insurgents in southern Thailand.

6. International donors, working with appropriate Thailand officials, should provide funding to local community leaders and political activists in southern Thailand to assist in combating the trafficking of persons, including Burmese migrants, from Malaysia into southern Thailand.

7. Malaysian officials should be encouraged to consider alternatives to detention for refugees and asylum seekers, especially for women and children. Honoring obligations as a signatory to the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) would be well-received by the international community.

⁴U.S. Embassy, Bangkok, "Anti-Trafficking Engagement Pays Dividends," November 20, 2008.

The U.S., other countries and relevant regional and international institutions should specifically encourage Malaysia to sign the Refugees Convention, the 1967 Protocol on Refugees, and include this issue in human rights dialogues with Malaysia and with ASEAN.

8. The Malaysian Government should be encouraged to allow UNHCR officials with free and unhindered access to all Malaysian facilities where Burmese persons and other asylum seekers are detained—and persons in detention claiming to be in need of international protection should be allowed access to UNHCR in order to be registered and have their claim for refugee status determined.

9. Malaysian and UNHCR officials should work together toward the promotion of refugee protection standards.

10. The U.S. and other donors should review the feasibility of providing additional funds to UNHCR so that its operational capacity could be increased in Malaysia, in consultation with the Government of Malaysia.

INTRODUCTION

Malaysia has made remarkable economic and development progress from the time of Japan's occupation of the Malay Peninsula in the 1940's to independence from Britain in 1957, and then confronting the Communist insurgency of the 1950's and early 1960's. The country has developed into a development showcase of international renown. Foreign investment has augmented the vision of former Prime Minister Mahathir bin Mohammed that Malaysia achieve "developed nation" status by 2020.

Foreign labor is an integral building block of Malaysia's upward economic mobility. While Malaysia's total workforce is 11.3 million, there are approximately 2.08 million legal foreign workers.⁵ Informed sources suggest there may be an additional one million illegal workers, however no accurate information is available.

The Malaysian Government has conflicted perspective regarding the presence of persons from other countries who are asylum seekers, refugees or migrant workers. In addition, "After 50 years of independence, Malaysia is still trying to consolidate the different races of citizens that make up the nation."⁶ (Indians, Chinese and Malays, or bumiputras—sons of the soil, are the primary racial categories in Malaysia).

"The dichotomy of bumiputras and non bumiputras, of Malays and orang asal or asli, of citizens and migrants is dividing and tearing the country with intense discriminatory practices. The differences that existed widened when Malaysia began implementing its new economic policy. Its zest to ensure industrialization was a success and to attract foreign investors led to the Government providing various incentives to increase the country's competitiveness. One such incentive was the guarantee of cheap labor. Women, the reserve labor force were motivated to work in the new economic zones at the beginning of the implementation policy. Then, migrant workers were recruited to strengthen the infrastructure development, the plantation sector and fill the vacuum in the household

⁵ Ministry of Human Resources, Government of Malaysia.

⁶ Tenaganita, "The Revolving Door, Modern Day Slavery," Kuala Lumpur, October, 2008.

work through domestic workers. After almost 30 years, Malaysia is very dependent on migrant labor for its economic growth.”⁷

While Malaysia accepts the presence of Burmese and others from outside of the country for the purpose of contributing to the work force, persons identified as refugees and asylum seekers, on their way to a third country are viewed as threats to national security.

The reports of the extortion and exploitation of Burmese and other migrants/refugees within Malaysia and the transfer of many to human traffickers in Southern Thailand have been previously reported from multiple Malaysian and international sources. However the Government of Malaysia has yet to address the allegations in a comprehensive, sustainable and transparent manner.

BURMA EXODUS

Burmese ethnic minorities and Burmans continue to exit Burma. There are continuing extensive human rights abuses perpetuated by the State Peace and Development Council (SPDC) and the Burmese military. “These reports have changed little over the subsequent . . . years” according to the U.S. Congressional Research Service (CRS).⁸ The CRS report goes on to state, “Many human rights abuses reportedly are committed by the military against members of Burma’s ethnic minorities. The Government negotiated cease-fire agreements with 17 ethnic insurgencies in the 1990s; but three groups, the Karen, Karenni and Shan have continued to fight. . . . ethnic groups (in Burma) have reportedly been subjected to forced labor, use as human mine sweepers and bullet shields, forced relocation, conscription into the army as porters or soldiers, rape, mass killing, extortion and denial of basic human needs.”⁹

Some insist that Burmese Government and military officials are involved in a dedicated effort to eliminate ethnic minority populations in Burma. This allegation is being examined in the context of a new project at The Center for Constitutional Democracy at the Indiana University School of Law (Bloomington). Legal scholars will be evaluating human rights abuse allegations to determine if evidence exists that international crimes may have been committed by Burmese military or civilian officials.

Since 1988, hundreds of thousands of ethnic minorities and Burmans have fled to Thailand, Malaysia and India, among other countries.

“According to studies conducted by ethnic community based organizations (CBOs) and compiled by the Thailand Burma Border Consortium (TBBC), over 3,200 ethnic villages in Burma have been destroyed since 1996 affecting over one million people. Probably more than 300,000 have fled to Thailand as refugees (the majority being Shan and not recognized by the Thai Government). TBBC estimates that in 2007 there were conservatively still some 500,000 Internally Displaced Persons (IDPs) in the Eastern states and divisions of Burma bordering Thailand, including at least 99,000 in free-fire areas, 295,000 in cease-fire areas (including 11,000 in Mon Resettlement sites), and 109,000 in relocation sites. Meanwhile, the

⁷ *Ibid.*

⁸ Congressional Research Service, “Overview of Burmese Refugees,” Rhoda Margesson and Michael F. Martin, November 10, 2008.

⁹ *Ibid.*

population in the border refugee camps was just under 140,000 at June 30th (2008), a slight reduction during the year due to departures for resettlement to third countries.”¹⁰

EXTORTION IN MALAYSIA

As noted earlier, in 2007, the committee began receiving disturbing reports about the detention and brokering of Burmese and other migrants in Malaysia and along the Thailand-Malaysia border, allegedly with the knowledge, if not participation, by some Malaysian Government officials. The prospect that Burmese migrants, having fled the heavy hand of the Burmese junta, only to find themselves in harms’ way in Malaysia seemed beyond belief.

Subsequent committee research efforts in the United States, Malaysia and Thailand, revealed similar allegations that Burmese migrants, detained in Malaysia, have been and continue to be extorted by their captors, some of whom are allegedly Government officials. These migrants were (are) to provide monetary compensation or find themselves in the hands of human traffickers in Malaysia or southern Thailand. A collection of reports suggest that a few thousand Burmese migrants have been taken to the Malaysia-Thailand border in recent years.

As many of the Burmese who register with the United Nations High Commissioner for Refugees (UNHCR) in Malaysia permanently resettle in the U.S., their exploitation in the forms of physical abuse and financial extortion enroute to the U.S. are matters of direct interest and concern to the U.S. Government and the SFRC. Since 1990, Burmese refugee admissions to the United States have surpassed 38,000.¹¹

PEOPLE AS A COMMODITY—ANATOMY OF A SHAKEDOWN

While there is some variation in the methods reportedly used by migrant/refugee captors in Malaysia, the following points are common to a majority of statements received by the Foreign Relations Committee.

1. Burmese migrants in Malaysia, often regardless of whether they possess UNHCR identification, are arrested and placed in detention facilities. The committee has reports of individual refugee UNHCR official documentation being destroyed by Malaysian officials at the time of arrest or later.

2. Burmese migrants are allegedly taken from government detention facilities to the Malaysia-Thailand border by Malaysian Government officials. Reports received from NGOs such as Refugees International, Human Rights Watch, Christian Solidarity Worldwide and Tenaganita, and reports received directly from Burmese by the Foreign Relations Committee reflect a common pattern of allegations. The Malaysian Government officials who allegedly transport the migrants to the border “witness the trafficking that takes place and may benefit from the fees . . . paid by the refugees to the traffickers. If they are unable to pay for their release, the

¹⁰Thailand Burma Border Consortium Programme Report, June, 2008.

¹¹U.S. Department of State, October 27, 2008

refugees are sold into forced labor, most commonly on fishing boats.”¹²

In one interview with SFRC staff, Burmese migrants said they, along with others were transported to the border by Malaysian Government officials using Malaysian Immigration Department vehicles. Arriving at the border between 1:00 and 3:00 am, they were handed over to human traffickers, operating from the Thai side of the border. The traffickers would then allow the refugees opportunity to contact someone in Malaysia who could pay a ransom of 1500–1900 ringgit (\$470 to \$600), per person. Those able to pay were smuggled back into Malaysia and released. Males, unable to pay were sold to the Thai fishing industry, factories, farms or plantations. Women allegedly were sold to brothels, hotels and into domestic servitude. The fate of children was unknown.¹³

Many of the women deported to the border area state that they are sexually assaulted by human traffickers.

Regarding the deportation of refugees to Thailand in 2007, the U.S. Committee on Refugees and Immigrants (USCRI) asserts that Malaysian officials “often gave advance notice to traffickers who kidnapped the deportees or bought them directly from immigration officials.”¹⁴

3. Interviews with Thai police, Malaysian NGO officials and Burmese migrants and refugees¹⁵ yielded more precise information regarding the destination of Burmese refugees unable to pay once at the Malaysia-Thailand border. There were reports of men being directed or sold to work on Thai fishing boats, a shoe factory and a cast iron factory. Families were often separated, with women reportedly sold into the sex industry or for domestic help. There was no available documentation regarding the fate of children.

4. In a recently released book, “The Revolving Door,” the Malaysian NGO, Tenaganita, “exposes the abuse, the endemic corruption and the trafficking” of adults and children in Malaysia and at the Malaysia-Thailand border, many of whom are refugees. Included among the various testimonies is the account of one elderly refugee man who lost his wife and children to traffickers along the border because of his inability to pay for their release.¹⁶

The majority of testimonies directly received by the Foreign Relations Committee indicate that these persons were taken from Malaysian detention facilities to the Malaysia side of the border near Thailand. (Some migrants informed the committee of being whipped or beaten while in detention.)

Often the destination was an area in the vicinity of the Thai border city of Sungai Golok, bordering Malaysia’s state of Kelantan. Another destination is reportedly the border city of Padang Besar in Malaysia’s Perlis state.

Travelling to Sungai Golok to meet with Thai police, committee staff learned that Thai police currently have active court cases

¹² Refugees International, “Malaysia: Government Must Stop Abuse of Burmese Refugees and Asylum Seekers,” May 23, 2007.

¹³ U.S. State Department report, Kuala Lumpur, September 3, 2008.

¹⁴ U.S. Committee on Refugees and Immigrants, “Malaysia,” 2007 Annual Report

¹⁵ Interviews with Burmese refugees in Malaysia and in Fort Wayne and Indianapolis, Indiana.

¹⁶ Tenaganita, “The Revolving Door,” Kuala Lumpur, 2008

pending, involving the prosecution of at least three alleged human traffickers. In 2005, Thai police raided a jungle compound operated by human traffickers which contained 37 Burmese and 2 Pakistani migrants.

Knowing that eventual arrest and extortion are likely realities, many Burmese migrants in Malaysia pool their financial resources, so that they are prepared to respond to individual demands for paid freedom.

Burmese migrants are not always transported to the Malaysia-Thailand border for payment arrangements to obtain their release. There are reports that freedom from detention can come by paying Malaysian officials where they are detained. One Burmese refugee, now resettled in Indiana, cited eight occasions from May, 2001 to September 10, 2006, when payment was made for their release from detention. The fee ranged from 50 ringgit on December 24, 2002, to 800 ringgit on August 15 of 2005.

Reports have been received of refugees being beaten if they are unable to arrange payment. The committee also received a report of two refugees being shot and killed at a border location in August of 2008, allegedly for inability to pay ransom demands.

IN THE WORDS OF THE REFUGEES

The committee has received several reports from Burmese refugees who were allegedly trafficked by or with the knowledge of Malaysian officials while in Malaysia. Their stories are similar to the pattern of reports outlined earlier in this report, "People as a Commodity: Anatomy of a Shakedown."

Samples of the reports in the possession of the committee follow:

Victim No. 1

Paid 1800 Ringgit (approximately \$490) for his freedom. He also reports that Burmese women refugees "are sold at a brothel if they look good. If they are not beautiful, they might sell them at a restaurant or house-keeping job" (in Thailand).

This victim also states: ". . . we, (about 40 to 45 people), were taken in a Malaysian Immigration bus from [DELETED] Camp to the Thailand border. After 10 hours, we arrived at the Thai border. We knew that Malaysian Immigration officials and Thai agents already discussed that we would be taken there. The Thai agents wanted us to arrive at the Thai border after dark, because they didn't want the Thai police to know what they were doing."

The victim adds: "We arrived at the Thai border at midnight. They asked us to go into a small boat and the Thai agents took us to Thailand. We were in small huts for days. If we had money we could return to Kuala Lumpur right away. But I didn't have money and they (the Thai agents), asked me to contact my friends who lived in Kuala Lumpur. My friends helped me to return to Kuala Lumpur. They paid 1800 Ringgit (approximately \$490) to [DELETED]." (2008)

Victim No. 2

Reports that he was part of a group of refugees taken to the Thailand border by Malaysian Immigration and RELA officials during one trip. After being released, he was arrested for a second time, and again taken to the border. He paid a total of 3000 Ringgit (approximately \$820) for release on two occasions.

The victim states: "When we arrived at the Thai border, it was already dark. The Thai agents were already there when we arrived at the border river bank. The agents took us to Thailand by boat. The city we arrived in was [DELETED]. We were there for about a week. The Thai agent gave us very bad meals, they fed us twice a day. They asked us to contact our friends and family who live in Kuala Lumpur. My friend sent 1500 Ringgit (approximately \$400), to Hah Cai (Hat Yai) from Kuala Lumpur by [DELETED] Bank. After they received the money I was sent back to Kuala Lumpur. After a week I was arrested again and sent to the Thai border again." (2005)

Victim No. 3

"The (Malaysian) police and Immigration personnel asked us to get onto the bus. Then the bus left the [DELETED] Camp around 11:00 am. After driving about 3 hours, we stopped at a small town and another 15 refugees were forced to get onto our bus. All of us were about 55 people and very crowded. Then the bus rushed to the border. We passed through many mountains and valleys. Finally, around 11:00 pm, we arrived at the river, and our bus stopped. There was a boat on the bank and we were forced to get into the boat. We crossed the river and arrived at the town called Sungai Golok. The Thai agents were waiting for us. They knew my name already, because my friend who lived in Kuala Lumpur had given them ransom money. The Thai agent sent me back to Kuala Lumpur. My friend gave the ransom money to [DELETED]." (2006)

Victim No. 4

"About 3 am they asked us to get up from bed. They gave us a good breakfast unlike other days. They told us that we would be sent to the Thai border. They asked us to give a promise that we were not going to come back to Malaysia. Then, about 6 am they sent us to the Thai border. We arrived at the ...town called Rantau Panjang about 9 pm. We were forced to take the boat (across the river) and deported to the Thai town called Sungai Golok. I was taken by the man name(d) [DELETED]. He was working for the rich man, who [DELETED]. I was with Mr. [DELETED] for 2 days. My friends sent Mr. [DELETED] by [DELETED] . . ." (2003)

Victim No. 5

Returned to Kuala Lumpur from the Thailand-Malaysia border after arranging payment of 1600 Ringgit (approximately \$440). The victim was advised that inability to pay would result in his being “sold to another Thai agent to work in the sea as a fisherman without pay.” (2007)

Victim No. 6

Reports he was taken by “Immigration officers of Malaysia,” from [DELETED] camp to Sungai Golok and paid \$1600 Ringgit (approximately \$440). (2006)

Victim No. 7

“We left [DELETED] camp around 5:00 pm, then we arrived at Sungai Golok around 2:00 am. After crossing the Sungai Golok River, we arrived at Thai territory. The Thai agent already knew about our arriving because our friends who lived in Kuala Lumpur had already paid the ransom money at [DELETED]. The Thai agents took care of us that night. Then, the next day we returned to Kuala Lumpur.” (2006)

Victim No. 8

Reports that he was arrested and sent to the Malaysia-Thailand border on three occasions. “On the third time, I was sold to Thai fishermen for 30,000 Baht (approximately \$750). While we were waiting for the Thai fishing ship [DELETED] one of the [DELETED] found me and ransomed me.” (2005)

Victim No. 9

Reports paying 1600 Ringgit (approximately \$440) for return to Kuala Lumpur after being taken to the Thailand-Malaysia border. (2006)

Separate from the work of the Senate Foreign Relations Committee, Human Rights Watch reports that “Testimonies from migrants, refugees, and asylum seekers deported from Malaysia to the Thai border indicate collusion between Malaysian immigration officials and human smuggling gangs who charge steep fees to facilitate deportees’ return to Malaysia or back to Burma.”¹⁷

AN OVERVIEW OF MALAYSIA, REFUGEES AND THE ROLE OF UNHCR

Malaysia is not among the 147 nation states that have acceded to one or both of The 1951 Refugee Convention¹⁸ or the 1967 Protocol on Refugees. Article I of the Convention defines a refugee as: “A person who is outside his or her country of nationality or habitual residence; has a well-founded fear of persecution because of his or her race, religion, nationality, membership of a particular social group or political opinion; and is unable or unwilling to avail him-

¹⁷ Human Rights Watch, January 2009 Malaysia Country Summary.

¹⁸ “The 1951 Refugee Convention,” UNHCR, September, 2007.

self or herself of the protection of that country, or to return there, for fear of persecution.”

For the purpose of this report, it is important to delineate between “refugees” and “economic migrants.” According to the UNHCR: “economic migrants normally leave their country voluntarily to seek a better life. If they choose to return home they will continue to receive the protection of their Government. Refugees flee because of the threat of persecution and cannot return safely to their homes unless there is a fundamental shift in the situation (for example a durable peace agreement or change of government).”

Malaysia has a challenging task of attempting to control its porous borders. Government officials view migrants/refugees, whether from Burma, Indonesia, the Philippines, or elsewhere as threats to national security and often do not distinguish between refugees, asylum seekers and illegal immigrants.¹⁹

“ . . . (Malaysia) does not formally recognize people as refugees; it considers individuals who have entered the country without the required travel documents as illegal immigrants. . . . in Malaysia (they) are subject to various penalties, including caning (up to six strokes), fines (up to \$2,600) and five years in prison. Illegal immigrants may also be detained and deported. However, under Malaysia’s Immigrant Law, an illegal immigrant may be allowed to temporarily reside in Malaysia by the issuance of a IMM 13 visa. In addition, some illegal immigrants are allowed to seek employment while in Malaysia.”²⁰

To the credit of the Malaysian Government, the UNHCR has been allowed to carry out protection and assistance activities in Malaysia since 1975, when the Vietnamese boat people began arriving. “UNHCR assisted Malaysia in hosting close to 275,000 boat people over two decades before durable solutions were found for them.”²¹

In addition, it is important to note the Malaysian Government’s ongoing cooperation with UNHCR and the large U.S. refugee resettlement program, processing over 4,000 Burmese resettlement cases annually. The cooperation by the Malaysian Government enables UNHCR to carry out its mandate and allows operation of the U.S. resettlement program.

The long-term level of cooperation extended by Malaysian authorities has varied. During a March, 2005 crackdown in Malaysia against illegal migrants, UNHCR officials were concerned “that refugees and people of concern to us could get caught up in the crackdown.”²² Nearly half a million Malaysian enforcement officials and RELA personnel spread throughout Malaysia in small groups to round up an estimated 400,000 illegal workers and their employers. At that time, UNHCR officials were sometimes called to locations where RELA carried out raids, so as to identify those of concern to UNHCR.²³

¹⁹ Refugees International, “Malaysia: Government Must Stop Abuse of Burmese Refugees and Asylum Seekers,” May 23, 2007

²⁰ Congressional Research Service, “Bosnian and Cambodian Refugees in Malaysia,” Michael F. Martin, October 16, 2008.

²¹ “UNHCR in Malaysia,” UNHCR Website, November, 2008.

²² UNHCR, Kuala Lumpur, Malaysia.

²³ *Ibid.*

More recently, in 2008, top officials of the Malaysian Immigration Service denied UNHCR with full access to all detention facilities in Malaysia. During an interview with Immigration officials, committee staff were informed that UNHCR officials could now visit detention facilities throughout Malaysia, however would not be guaranteed full access in each of the facilities.²⁴

“In Malaysia, there are no legislative or administrative provisions dealing with the right to seek asylum or the protection of refugees. Since the Malaysian Government takes no direct role in the reception, registration, documentation, and status determination of asylum-seekers and refugees, nor in respect of their assistance, welfare, and basic human standard needs, UNHCR is required to perform almost all functions which would otherwise rest with the State, including all registration, documentation, and RSD-related activities directly under its mandate. In addition, since refugees and asylum-seekers face a wide array of protection problems in Malaysia and are formally penalized for illegal entry and in principle subject to arrest, detention, caning, deportation and possible refoulement, UNHCR continues its protection intervention efforts, including in detention and the courts.”²⁵

Since 2002, UNHCR in Malaysia has registered approximately 57,000 individuals from Burma, among whom the majority have been ethnic Chin (approximately 25,000), and Rohingya Muslim (approximately 16,000), with the remainder among the other ethnic minorities from Burma, including Arakanese, Kachin, Karen, Mon, Shan, and Burmese Muslims. Some refugees are Burman, as well. “As of January this year, there were some 43,000 persons of concern registered with UNHCR in Malaysia, including some 27,000 from ethnic minority groups in Burma.”²⁶ These numbers do not reflect the thousands of Burmese refugees in Malaysia not yet registered with UNHCR (as many as 30,000 or more),²⁷ who are detained by Malaysian officials, or are hiding in discreet jungle or urban locations attempting to avoid the wrath of *Ikatan Relawan Rakyat Malaysia (RELA)*, a volunteer citizens force of up to one-half million individuals charged with identifying and arresting persons in Malaysia with no legal status. In addition to receiving a small monthly stipend, RELA members have in the past reportedly received a bounty payment for each illegal migrant arrested. The Migrant and Refugee Working Group of the Malaysian Bar Council’s Human Rights Committee says that “. . . an average of 700 to 800 UNHCR-recognized refugees remain in detention each month, including about 100 children.”²⁸

“According to Malaysia’s Home Ministry, the role of RELA, which dates back to 1972, is ‘to help maintain security in the country and the well being of the people.’ It is used as the eyes and ears of the Government, to collect information for Government agencies such as the police, customs, and immigration on threats to security, to do security patrolling to prevent crime, and, when necessary, to carry out citizens’ arrests. The 2005 amendment ceded more power

²⁴ SFRC staff meeting with Malaysian Immigration officials, August 29, 2008.

²⁵ Congressional Research Service, Rhoda Margesson, October, 2008.

²⁶ UNHCR News, March 23, 2008.

²⁷ Congressional Research Service, Rhoda Margesson, October, 2008.

²⁸ Irrawaddy, “Malaysian Immigration Giving Refugees to Traffickers, Say Activists,” August 3, 2008.

to RELA by permitting it, 'where it has reasonable belief that any person is a terrorist, undesirable person, illegal immigrant or an occupier, to stop that person in order to make all such inquiries or to require the production of all such documents or other things as the competent authority may consider necessary."²⁹

". . . the 2005 amendment to Malaysia's Essential Regulations, part of Malaysia's security legislation, RELA is allowed to arrest an individual or enter and search any premises, public or private, without a search or arrest warrant. The amendment also gives RELA volunteers the right to bear and use firearms, and to demand documents. The 2005 amendment also gives effective legal immunity to RELA volunteers."³⁰

UNHCR's registration of Burmese asylum-seekers surged after the Malaysian Immigration Act was amended in 2002 to impose stiffer penalties on undocumented persons. The Malaysian Immigration Act does not delineate between a refugee and an immigrant.

Refugees and other persons detained for not having proper Malaysian Government immigration documents are not always taken to court; often times, they are handled administratively under the Immigration Act without court action. Thus, there are cases in which detained refugees do not appear before a judge.

MAKING ONE'S WAY TO MALAYSIA

The majority of Burmese migrants enter Malaysia from Thailand. One NGO estimated that perhaps 5% of the migrants make their way to Thailand from Burma by boat, a perilous journey. In December of 2007, a boat reportedly carrying nearly 100 Chin migrants from Burma, heading to Malaysia, capsized in the sea of with 45 men, women and children losing their lives.

"On November 25, 2007, a trawler and two ferry boats carrying some 240 Rohingyas being smuggled to Malaysia sank in the Bay of Bengal. About 80 survived, the rest drowned. A week later, another boat sank, allegedly fired at by the Burmese Navy. 150 are believed to have perished. On March 3, 2008, the Sri Lankan Navy rescued 71 passengers, most of them Rohingya, from a boat that had drifted 22 days in the Indian Ocean with a broken engine. Twenty had died from starvation and dehydration."³¹

The prospects of employment in Malaysia, while enduring the UNHCR relocation process and risking the possibility of arrest by Malaysian officials, presents a worthwhile basis for braving travel to Malaysia, in the minds of many Burmese migrants.

REFUGEES NOT WELCOME

Malaysia's tough anti-refugee policies are enforced through arrest by RELA personnel, incarceration, and punishment which may include caning. "Barely surviving in jungle camps or urban flats in cramped conditions with poor sanitation, no health care and little food, they are at grave risk of being raided by the Malaysian immigration authorities, police and the officially-sanctioned RELA. If ar-

²⁹ Human Rights Watch, "Malaysia: Disband Abusive Volunteer Corps," May 9, 2007.

³⁰ *Ibid.*

³¹ Forced Migration Review, "Asia's New Boat People," Chris Lewa, April, 2008.

rested, the Burmese refugees face appalling conditions in detention, caning, beatings and other forms of abuse . . . Women and children, including pregnant women, have been detained and mistreated.”³²

“Because the Malaysia Government has refused to grant legal recognition to Burmese refugees, a terrible consequence is that Burmese children are not permitted to attend school and many are denied health care.”³³

Hundreds of Burmese migrants survive in six or more jungle locations, where they hope to avoid RELA raids and arrest until their resettlement to another country is approved. The top medical challenges confronting these refugees are tuberculosis, HIV/AIDS, renal failure and ulcers/gastritis.

A REMOTE AND DANGEROUS AREA—DISAPPEARING OVER THE BORDER INTO SOUTHERN THAILAND

The Thailand-Malaysia border is a remote division between the two countries. The border is a meandering asset to Thai insurgents, human traffickers, druglords and others whose activities pose a direct threat to Malaysia and Thailand law enforcement officials.

Thai Immigration police, citing the dangerous area, declined a staff request to visit a jungle location which was the site of an earlier raid where nearly 40 Burmese migrants had been held by traffickers. In the week prior to the staff visit to Thai Immigration Police in Sungai Golok, vehicle bombs were detonated on the street adjacent to their office, killing and wounding persons nearby. The untamed jungle provides helpful cover for human trafficking syndicate operations and poses a major challenge to any law enforcement effort.

Due to the remoteness of the border area, it is not possible to accurately report the eventual plight of women and especially children who become the property of southern Thailand or northern Malaysia trafficking agents.

Multiple reports suggest that Burmese men are trafficked to owners of fishing vessels in Thailand’s waters, and to factories. The estimated percentage of the Burmese that never return to Malaysia from Thailand runs as high as ten percent of the Burmese migrants transferred to traffickers along the border when transported there from Malaysian Government detention facilities.

As Thailand officials view human remains discovered in southern Thailand, effort is being made to identify those of Burmese origin.

A CALL FOR THE END OF RELA

In March of 2007, the Malaysian Bar Association called for the end of RELA. “There have been allegations of torture and even the causing of death by volunteer RELA personnel, who also received

³²Christian Solidarity Worldwide, “Burma Briefing: Visit to the Thailand-Burma Border and Malaysia,” February, 2008.

³³Tenaganita, “The Revolving Door,” *Modern Day Slavery Refugees*, p. 35, 2008.

payment for each undocumented migrant they managed to catch.”³⁵

“The Bar’s Resolution called for the repeal of the Emergency Act of 1979 and all Regulations and Rules made there under, in particular Essential (Ikatan RELAWan Rakyat) Regulations 1966 (P.U. 33/1966), as amended by the Essential (Ikatan RELAWan Rakyat) (Amendment) Regulations 2005, also for the employment and usage of only properly trained professional law enforcement personnel in Malaysia as opposed to the RELA volunteers.”³⁶ The Resolution also called for inquests into the deaths of persons who allegedly died as a result of RELA actions.

In addition, the Malaysian Bar:

- asked that all persons including undocumented migrants and/or refugees be treated humanely and accorded equal protection of the law;
- stated that “Malaysia, who is a party to the April 1999 BANGKOK DECLARATION ON IRREGULAR MIGRATION,” which clearly states “Irregular (undocumented) migrants should be granted humanitarian treatment, including appropriate health and other services, while the cases of irregular migration are being handled, according to law. Any unfair treatment toward them should be avoided . . . (Malaysia) must adhere to its commitments.
- called on the Malaysian Government “to immediately ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families and also the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.”³⁷

CONCLUSION

The committee continues to receive information regarding the alleged extortion and trafficking of Burmese and other migrants, while in Malaysia, along the Malaysia-Thailand border, and into Thailand.

The calculation that a few thousand Burmese migrants in recent years have been victims of extortion and trafficking in Malaysia, along the Malaysia-Thailand border and in southern Thailand raises questions about the level of participation related to these activities by Government officials in both countries. This is the first of three reports.

³⁵ Migrant Forum in Asia, “Lawyers Unanimous in Call for the Demise of RELA and the Usage of Only Professional Law Enforcement Personnel in Malaysia,” Charles Hector, March 18, 2007.

³⁶ *Ibid.*

³⁷ The 61st Annual General Meeting of the Malaysian Bar held in Kuala Lumpur, March, 2007.

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