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Refugee Law and Practice in the Asia and Pacific Region: Thailand as a Case Study

Executive Summary

Thailand has provided a haven for massive numbers of asylum-seekers particularly since the 1970s. Currently, there is a still a substantial caseload of Burmese who have sought refuge in the country and who have been given temporary shelter. Any appraisal of the law and practice concerning these groups should bear in mind the highly volatile political atmosphere often affecting the question of refuge. In this respect, although the country is not yet a party to the 1951 international Convention relating to the Status of Refugees and its 1967 Protocol, Thailand's record in responding to the numerous influxes of asylum-seekers has been largely commendable throughout the years. The country has abided to a considerable extent by international law interrelated with refugees and their protection, while a number of key challenges remain to be addressed.

The country has attenuated the strictures of various national laws, such as its immigration law, by adopting policies which offer temporary refuge in many cases, thus preventing negative impact on those who seek refuge and who deserve protection. Yet, the approach to date has not been systematic and needs to be harmonised so as to provide greater clarity and certainty with a view to dealing with all asylum-seekers more rationally on the basis of non-discrimination. In this context, there is a need to evolve and implement a more responsive framework of actions to promote refugee protection and to foster greater understanding of international refugee law. This should interact with national law, policy and practice, on the one hand, and establish a balance with the concerns of national sovereignty and security, on the other hand.

Some of the strategic steps based upon a graduated approach, targeted especially to the Thai authorities and the Office of the United Nations High Commissioner for Refugees (UNHCR) in cooperation with relevant partners, as appropriate, could include the following:

- **Even if Thailand is not a party to the international refugee instruments, much can be done to protect asylum-seekers in Thailand, and Thailand is already doing this to a large extent. Thailand should establish a more uniform system/procedure – a harmonised national procedure - for determining the status of asylum-seekers with a view to granting admission and (temporary) refuge; this should apply to anyone or group that seeks refuge (rather than currently only to the Burmese group via the Provincial Admission Boards). The procedure should have these components:**

    i. **Preferably, the criterion for "screening in" asylum-seekers for the purpose of admission and refuge should**

be based upon the international "refugee" criterion, i.e. those fleeing their country of origin for a well-founded fear of persecution. This may be expanded to cover those fleeing fighting and the consequences of fighting, a criterion already provided for, to a lesser or greater extent, to process Burmese asylum-seekers in Thailand today;

ii. The personnel of these procedures should be specially trained to act in a fair, informed and balanced manner, with knowledge of international and national standards consistent with human rights, and adequate resources to carry out their tasks;

iii. The procedure should be at least two-tiered, with a possible review or appeal process where a case is rejected at first instance;

iv. The procedure should be transparent and open to international monitoring, especially with the presence of the UNHCR;

v. There should be a monitoring and reporting process in regard to decisions reached under the procedure, open to parliamentary and/or external scrutiny.

- **Even if Thailand is not a party to the refugee instruments, the grant of temporary refuge should be ensured and strengthened for those "screened in" as deserving protection.**
- **Even if Thailand is not a party to the refugee instruments, human rights should be guaranteed for all asylum-seekers, e.g. right to life, right to education, right to humane treatment and right of access to the courts to seek redress, with more gender sensitivity. Various aspects of child rights need to be promoted and complied with more strongly, e.g. the right to birth registration and the right to acquire a nationality.**
- **Even if Thailand is not a party to the refugee instruments, there should be a more liberal policy towards those who are "screened in", particularly in relation to the opportunity to seek employment. Currently, there is no policy to allow those asylum-seekers to seek employment, even though employment of this group does take place unofficially at times. This should be rectified and is linked to the national employment law.**
- **There should be continual efforts to clarify to the Thai authorities the advantages concerning accession to the international refugee instruments, including the fact that accession helps to ensure greater uniformity and certainty in relation to the standards of refugee protection, as well as international solidarity in shouldering the burden. In real terms, accession would help to provide Thailand with more transparent and credible tools to justify its conduct towards those seeking refuge, and it would help to safeguard the country against undue criticism.**

- **There needs to be continual emphasis that accession would not take away Thai sovereignty. Rather, accession respects such sovereignty , especially in regard to the status determination procedure which should be set up; it is the prerogative of the Thai Government to set up the procedure, although it should be open to international monitoring. In this respect, it is the national procedure, not external procedure, which would determine who is and who is not a refugee. However, in the absence of such procedure, the UNHCR should have residual power to screen asylum-seekers to accord protection and assistance.**
- **The current Immigration Act should be reformed so as to include a specific exception in regard to "humanitarian cases" (impliedly covering asylum-seekers) which should not be subjected to the various strictures of that law; these cases would not be classified as "illegal immigrants", even where they enter without the various entry documents generally needed for legal entry. Section 17 of that Act could also be adjusted so that the various authorities wishing to grant refuge to influxes of asylum-seekers would not need to obtain consent from the Cabinet.**
- **There could be greater utilisation of the human rights treaties to which Thailand is a party, e.g. the Covenant on Civil and Political Rights, the Covenant on Economic, Social and Cultural Rights, the Women's Convention, the Child Rights Convention and the Convention on the issue of Racial Discrimination, to influence national adjustments to benefit everyone, including asylum-seekers, as well as to maximise the international monitoring process for the purpose of transparency and accountability;**
- **Efforts are also needed to provide incentives to officials to raise the priority and pitch of refugee protection and related law/policy/practice and to engage them in a sustained and constructive process, conducive to a win-win mindset and situation based on respect for human rights.**
- **A more systematic approach of building a constituency in favour of accession is needed. This implies working with civil society, including NGOs and the media, on the one hand, and a variety of policy actors, including Government/State officials, independent agencies under Thailand's Constitution (e.g. Constitutional Court, Administrative Court, Ombudsmen and National Human Rights Commission) and parliamentarians, on the other hand.**
- **A particularly important entry point is to spread knowledge of the refugee instruments through curriculum development – "Refugee Studies" , rather than ad hoc training. In practical terms, this means that there should be more curriculum development especially through specific courses on refugee law and related matters, and or infusion of such information via other courses such as human rights for key actors such as**

teachers, civil servants, judiciary, police, immigration officials and military. There could also be more research to compare the substantive provisions of the international refugee instruments and national law/policy/practice in the case of accession, e.g. which national law(s) in which fields would need to be reformed if the country were to accede to those instruments ?

- **There should be more links with the media working in the Thai language, bolstered by dialogue and capacity-building with senior staff and editors to promote greater understanding of and interest on refugee protection and related law/policy/practice. This should be coupled with more educational materials in the Thai language and innovative/active methods of dissemination such as through TV programmes and "spots" targeted towards conveying a constructive/positive image of refugees.**
- **The nurturing of cross-cultural understanding towards the dilemma of refugees should be fostered from a young age in and out of school. There should be more outreach programmes to interlink between refugee children/youths and those from host communities.**
- **There needs to be parallel attention to the plight of the local Thai population affected by refugee influxes, including non-discrimination in the provision of development assistance, and a continual dialogue/engagement with community leaders and actors to enhance understanding of the plight of refugees and to prevent discrimination and intolerance.**
- **Greater responsibility-sharing needs to be advocated and concretised between source countries, first asylum countries and other countries, with a view to addressing the root causes of forced migration and to providing effective remedies. A variety of solutions, such as local settlement, third country resettlement, voluntary repatriation, and (transparent) orderly departure programmes, may be explored with effective support systems, such as cross-border arrangements ensuring safety of return under international supervision, and dignified treatment of all asylum-seekers.**

Introduction:

It is a well-established fact that many countries in the Asia-Pacific region have not yet acceded to the 1951 United Nations (UN) Convention relating to the Status of Refugees and its 1967 Protocol. 1/ Thailand is a case in point. Although these countries have not yet acceded to the international instruments mentioned, there is a wealth of experiences to be learned from them. Their record in upholding humanitarian principles in dealing with asylum-seekers or those seeking refuge is often no less commendable than that of countries which have acceded to such instruments. Yet, there lingers the question: what are the pros and cons of becoming a party to the international system as represented by those two treaties? How can countries be encouraged to become part and parcel of the international system more expressly ? Pending accession to those instruments, can the protection and assistance of those seeking refuge be improved ?

Thailand's own history as a South-east Asian nation attests to the fact that the country has been a haven for asylum-seekers for many centuries.2/ Over two centuries ago, many Vietnamese entered Thailand (Siam as it then was) in search of refuge, led by such royal personnages as Ong Chiang Chun and Ong Chiang Szu, and they were welcomed with open arms. Many Mons and Chinese also sought asylum in Thailand, and not only were they granted protection but also gradually they were assimilated into Thai society. For instance, as a result of the nationality legislation of 1913 in the country, many members of the Chinese community were granted Thai nationality.

After the Second World War, the country became a buffer between different ideologies, and the region surrounding the country was embroiled in various armed conflicts. This led to a variety of influxes into the country which increasingly tested the capacity of the country's response. In the 1950s, there were influxes, for example, from China, Vietnam and Burma (as it then was). The descendants of those post-Second World War groups have been increasingly assimilated into Thai society with periodic grant of Thai nationality. Pending that grant, many have been issued various identity cards so as to enable them to have access to the basics of life, such as access to education and employment.

Prominently there were new and very politically sensitive influxes in the last quarter of the twentieth century, and national policies and practices towards those seeking refuge became more constrained. This was influenced by a variety of factors ranging from national security to demographic pressures and fear of mass influxes and their consequences. Today, the advent of the new millennium poses a continuing challenge in view of the large caseload of asylum-seekers who are still in the country.

Situation:

Attention should be paid particularly to the caseload since the 1970s which has repercussions to this day. In 1975, there were key changes of government(s) in Indochina; Cambodia, Laos and Vietnam witnessed the rise of new regimes. Warfare

continued in the region and there were several mass influxes of Cambodians, Laotians and Vietnamese into Thailand which continued till the end of the 1980s.

Two constructive developments of significance took place in 1989 and 1991. First, in 1989 there emerged the Comprehensive Plan of Action; an agreement was reached between two source countries (Vietnam and Laos), other South-east Asian countries such as Thailand which were countries of first asylum, and the rest of the global community, including many resettlement countries, embodying a package of measures to settle the problem of asylum-seekers in the region. The source countries agreed to take action such as information campaigns to deter clandestine departures. The countries of first asylum agreed to establish procedures to determine the status of those seeking refuge – "screening process"; those passing the test would be allowed to stay in those countries temporarily pending resettlement in other countries. Those failing the test would have to return to their country of origin. In the meantime, third countries offered resettlement places so as to help shoulder the burden of the countries of first asylum.

This Comprehensive Plan of Action largely helped to solve the problem of those seeking refuge from Vietnam and Laos, and the screening process was completed in 1994-5. Interestingly, the criterion used for "screening in" and "screening out" those seeking protection in the region was based upon the international definition of "refugee", namely those fleeing their country of origin for a "well-founded fear of persecution". This definition was derived from the 1951 Convention mentioned above. Importantly, a basic international law principle adhered to by the participants of the Plan and the global community both as part of treaty based law and customary law was/is "non-refoulement" (non-return of refugees to countries where they may fear persecution).

Second, the warring parties in Cambodia reached a peace accord in 1991 which enabled Cambodians in exile to return to their country in 1992. Nearly 300,000 Cambodians who had previously taken refuge in Thailand and along the Thai-Cambodian border returned as a result. Consequently, the issue of asylum-seekers from Cambodia, Laos and Vietnam has largely been solved, although as will be seen below, the fate of a residual group remains to be settled.

However, on another front, since the 1950s, there has been a problem concerning asylum-seekers from Burma/Myanmar, and this was accentuated, particularly from the end of the 1980s, by the lack of democracy, suppression of democratic proponents (especially student activists) and continuing warfare between the military government in Myanmar and ethnic groups in the eastern region of the country near Thailand's western border. This has led to several mass influxes into Thailand, and there remains currently a caseload of some 120,000 Burmese who have sought refuge in Thailand since that period. This is the main challenge facing Thai laws, policies and practices today.

The Burmese can be divided mainly into two groups. First, there are the ethnic minorities who have fled from Myanmar. For many years, this group has been housed in various camps on Thai territory near the Thai-Myanmar border. Although Thailand has no formal procedure to determine refugee status (as it is not yet a party to the international refugee instruments), interestingly in the 1990s the Thai authorities

established a kind of procedure to determine the status of those seeking refuge from Myanmar for the purpose of admission into those border camps. Various "Provincial Admission Boards" consisting of representatives of the Thai Ministry of Interior at the provincial level were established as the status determination procedure. In 1998, Working Arrangements were reached between the Thai authorities and the Office of the UN High Commissioner for Refugees (UNHCR) to allow UNHCR access to the border population as well as to be an observer in the status determination procedure. The criterion used was "persons fleeing fighting and the consequences of civil war"; those falling into this category would be admitted into the camps and granted temporary refuge; those falling outside the criterion would be subjected to deportation.

Since then, there has been an issue concerning the interpretation of the said criterion and to what extent it is applied uniformly between different border provinces. Some of the Thai authorities have tended to take a narrow interpretation of that criterion by requiring that the influx must have been due to a direct event or incident of armed conflict, i.e.persons fleeing from fighting, rather than the consequences of armed conflict. Moreover, the definition differs from the international definition of "refugee", as it does not cover persecution cases or cases of other serious human rights violations.

Second, there are other Burmese asylum-seekers who manage to reach Bangkok to seek protection from the UNHCR - at times known as "the urban cases"; they have tended to be those linked with the democracy movement in Myanmar (i.e. political dissidents, including many students). With regard to this group, in 1991, by a Cabinet decision, the Thai Government decided to establish another camp known as the Safe Area ("Maneeloy Camp") in Rachaburi province to house them. This provided a shelter for those who had registered with the Ministry of Interior. It would also provide temporary refuge to others who had sought the protection of the UNHCR and who had been "screened in" by the UNHCR's own status determination procedure as falling under the international definition of refugees, namely those fleeing their country of origin for well-founded fear of persecution. Those who were/are "screened in " by the UNHCR are generally known as "Persons of Concern". However, in 1996 the admission to the Maneeloy Camp was suspended by the authorities on the premise that all camp inhabitants were to be transferred to the border camps.

The situation became more complicated in 1999. In October a group of Burmese armed dissidents raided the Myanmar embassy in Bangkok and took hostage of a number of embassy staff and visitors . Although the incident was resolved without bloodshed, with the dissidents escaping by helicopter and releasing their hostages unharmed, this caused a reaction from the Thai authorities to clamp down on "the urban cases". This was compounded by another incident in 2000 when similar dissidents attacked a hospital in Rachaburi province, causing further public reaction against Burmese nationals in general, including those who had sought refuge in Thailand (even though they had nothing to do with those infamous incidents). The Thai authorities requested the UNHCR to transfer all Burmese "Persons of Concern" to the "Maneeloy Camp". Those failing to report to the UNHCR for this purpose would be deported. Concurrently, the Maneeloy Camp population was increasingly

cleared for the purpose of resettlement in third countries, and that camp was eventually closed at the end of 2001.

The presumption thereafter was that those seeking refuge from Myanmar would be sent to the border camps to be processed for admission or rejection. However, in practice, the Provincial Admission Boards were no longer meeting consistently in 2002 to process cases, with the result that no new cases were registered for the border camps from that period. There was also a divergence of opinions between these Boards and the UNHCR. In some quarters, the decision-making by the Boards concerning the status of asylum-seekers was viewed as too restrictive, leading to many unnecessary rejections of those seeking admission and protection. Access by the UNHCR as an observer in these Boards also varied in practice. Gradually the Boards became more dysfunctional. On the other hand, according to an official source, one reason why the Boards met less and less is that ,during the period in question, there was no fighting in Myanmar and there was no reason to invoke the Boards accordingly to deal with cases.

The absence of a functioning procedure to process the admission of those seeking refuge from Mynmar meant that at the end of 2002 and 2003, there were some 17,000 and 19,000 non-registered cases respectively with limbo status living unofficially ("illegally") in the border camps. Intriguingly also in 2002, the Thai authorities began to advocate the need to establish camps ("safe areas") in Myanmar to house those seeking refuge in Thailand. This was generally criticised as jeopardising the lives of those who needed protection from the precarious situation in Myanmar and as inconsistent with the internationally established right of non-refoulement.

On another front, there remained a number of "the urban cases", with the UNHCR continuing to determine the status of Burmese asylum-seekers and recognising "Persons of Concern". In this regard, there was a misunderstanding between the Thai authorities and the UNHCR in 2003 when a key leader in governmental circles complained that the UNHCR was undertaking status determination procedures without informing the Thai Government. This was clarified by the UNHCR in Thailand as follows :

> " Recognition of refugee status by UNHCR is generally done in States which, like Thailand, are not signatories to the 1951 UN Convention relating to the Status of Refugees, or which do not have, in their domestic legislation, provisions relating to the determination and granting of refugee status. Such activities can only be carried out with the consent and cooperation of the host State. UNHCR has carried out its work in Thailand with the full consent and cooperation of the Government since 1975. These joint efforts have resulted in solutions being found for more than 1.3 million refugees since that time. The principle of non-refoulement (no forcible return of a person to a country where s/he could face persecution) has now been recognised as a principle of customary international law to be respected by all States. But UNHCR decisions to recognise someone as a refugee are not legally binding upon States. UNHCR is not a supranational organisation and the granting of asylum remains within the sovereignty of a particular State.
> In this context, UNHCR has repeatedly invited the participation of the Royal Thai Government in the refugee status determination process. Moreover,

> UNHCR always officially shares all namelist and other pertinent information about refugees with the National Security Council, the Ministry of Interior and the Department of Immigration on a monthly basis. The latest list was shared with the Government on 13 June 2003. Statements to the contrary are therefore not accurate….
> Regarding the issue of Burmese living in urban centres, UNHCR notes that following the events in October 1999 at the Myanmar Embassy in Bangkok, the Royal Thai Government announced that all displaced Burmese in urban centres should be removed to refugee camps on the border. Moreover, it said that Burmese living at the Maneeloy Burmese Students Centre should be resettled in third countries and that the centre should be closed. UNHCR pledged its cooperation on all of these issues.
> Subsequently, UNHCR resettled all of those living at the Maneeloy centre in third countries, enabling the Government to close the centre in late 2001. As for moving displaced Burmese from urban centres to border camps, UNHCR has repeatedly expressed its willingness to fully cooperate with the Government. However, to date, no Burmese have been transferred to the camps under the proposed scheme even though there are many volunteers of various ethnic groups.
> In UNHCR's assessment, only a very small percentage of Burmese nationals presently in Bangkok approach UNHCR for protection and assistance. An even smaller number of those who do approach the Office ultimately qualify for refugee status and are issued with certificates." 3/

At the beginning of 2004, the processing of Burmese asylum-seekers as "Persons of Concern" on the part of the UNHCR was suspended. At the time of writing this study, negotiations between the Thai authorities and the UNHCR were taking place to examine various options to process those seeking refuge; a distinct possibility was the revitalisation of the Provincial Admission Boards.

En passant, it should be noted that there have been, for many years, other nationalities/groups beyond the Indochinese and Burmese groups who have sought refuge in Thailand. These include Afghans, Iranians, Sri Lankans and Africans. The UNHCR has dealt with them by means of procedures to determine their status according to the international refugee criterion. Those passing the test are generally granted "Persons of Concern" status and are able to stay in Thailand temporarily pending resettlement in other countries.

Cases of Interest:

There have been some recent cases before the Thai courts, policy makers and practitioners which deserve attention; they highlight the interplay between the international law on refugees, national laws and policies, and related responses.

First, the Sok Yuen case. 4/ The facts concerned Sok Yuen, a Cambodian national who had entered Thailand in search of refuge after fleeing from Cambodia in 1999. He was jailed for illegal entry and was then prosecuted by a Thai public prosecutor before the Criminal Court in Thailand. The prosecutor sought his extradition to Cambodia on the suspicion that he had broken Cambodian criminal law by being

involved in an attempt to assassinate the Prime Minister of Cambodia in 1998 before fleeing to Thailand.

The accused argued that the alleged offence was a political offence for which there could be no extradition to Cambodia, as it fell under an exception covering political acts, recognised under the Thai Extradition Act 1929. The accused claimed to be a refugee under the mandate of the UNHCR and invoked the principle of non-refoulement under Article 33 of the 1951 Convention, thus seeking to dismiss the claim of the public prosecutor. He argued that his extradition would be in breach of the Universal Declaration of Human Rights 1948 (Article 10) and the International Covenant on Civil and Political Rights 1966 (Article 14).

The Criminal Court found in favour of the prosecutor on the following grounds 5/:

1. While the Cambodian authorities had sought the extradition of the accused on the basis of an extradition treaty between Thailand and Cambodia, that treaty was not yet in force at the time of the extradition proceedings concerning the accused, as it had not yet been ratified. However, Thailand could extradite the accused on the basis of its Extradition Act.
2. There was no case of mistaken identity concerning the accused.
3. The alleged offence was not a political offence but an ordinary offence with the character of terrorism.
4. With regard to his claim as a refugee under the 1951 Refugee Convention, Thailand was not yet a party to this Convention. Even if there were an international custom to protect refugees, it was not an obligation emerging from the Convention as claimed by the accused.
5. Under the Extradition Act, Sections 13 and 14, the Court did not need to hear evidence concerning whether the Cambodian warrant to arrest the accused was valid or not, and whether this was a political offence or not. All that the Court had to consider was whether the accused was the person identified to be extradited.
6. The Court based itself on Section 15 of the Extradition Act to order the imprisonment of the accused pending extradition to Cambodia, but suspended the extradition of the accused for 15 days. Moreover, if the accused was not extradited within three months from the date of the order, the Court stated that the accused should be released.

On appeal by the accused to the Court of Appeal, the public prosecutor corrected his initial claim concerning the Extradition Agreement between Thailand and Cambodia to acknowledge that it was not yet in force. The Court of Appeal then upheld the decision of the Criminal Court; it based itself on the Extradition Act, with the following reasoning 6/ :

1. The Court noted that in regard to the accused's claim of refugee status under the UNHCR mandate and claim of protection under Article 33(1) of the Refugee Convention, the accused conceded that Thailand was not a party to the 1951 Refugee Convention. Thus the Court did not have to consider that issue in relation to the application of the Extradition Act.
2. It was open to the Thai Government to consider those claims, as the judgement of the Court was not a definite order to extradite the accused.

Interestingly at the level of the Court of Appeal, while the Court upheld the lower Court's decision, it provided leeway to the Government not to execute the extradition order. This provided a degree of flexibility and room for political demarches. Subsequently, the Cambodian authorities dropped their demand for extradition, and with pressure from civil society and other human rights actors, a more humanitarian approach was adopted by the Thai authorities, especially as the accused was already old and ill. Finally, after four years in prison in Thailand, the accused was not extradited but was granted asylum in Finland.

On analysis, the Thai Courts followed the traditional approach of regarding international law in the form of treaties as not binding locally unless Thailand is a party thereto and unless there is national law to transform them (into national law) so as to be applicable in the Courts; this follows the "dualist" approach on the relationship between municipal law and international law. Moreover, as the Courts dismissed the accused's claim that he should benefit from the political exception under the Thai extradition law, impliedly they did not regard him as a political "refugee" in the international sense of the term. Thus, in theory, the accused could be sent back to the country of origin, despite fear of persecution.

In this respect, it may be wondered whether there is potentially or actually a conflict between that national perception and the international law/principle of non-refoulement. However, the possibility of conflict can be mitigated by policy flexibility or acquiescence. The strictures of national law, as represented by the immigration and extradition laws, can be attenuated substantially by the exercise of political discretion in a more benign manner, assisted by other demarches. In reality, this is what happened to Sok Yuen at the end of the day.

Second, the Vang Tao Raiders case. 16 Laotian dissidents appeared before the Criminal Court in 2003 in Thailand to face an extradition request from Laos on the ground that they were alleged to have attacked/raided a customs post in Vang Tao, Laos in July 2000 before fleeing to Thailand. By contrast with the Sok Yuen case, the Court dismissed the claim of the Laotian authorities and recognised that the accused fell under the political exception of the Extradition Act. In effect, they were treated akin to refugees and the principle of non-refoulement was upheld. One Thai newspaper analysed the situation as follows:

> " Denial of the extradition request means that the dissidents may now become eligible for political asylum through the United Nations.
> The attack on the Vang Tao checkpoint in the southern Champassak region of Laos was apparently a political action aimed at ousting the current regime by force, the court ruled. Thailand's extradition law prohibits returning people who have committed political crimes to face punishment in other countries.
> The court rejected an argument from the Lao Government put by the Thai State Prosecutor that the dissidents were members of a group of more than 30 armed men who stole State and private property in Vang Tao on July 3, 2000.
> In its ruling, the criminal court said: 'The raising of the three headed elephant flag to replace the Lao national flag during the operation…cannot be deemed as a normal robbery but it was a kind of political expression.'……

> State prosecutor …said his office would consider whether to appeal the case to a higher court. The Office of the Attorney General had 48 hours after the verdict to decide whether to appeal. If there was no appeal, all 16 dissidents would be freed. The dissidents' lawyer…said he had already submitted a request for political asylum for his clients to the UNHCR, and it was highly possible that the US would sponsor their resettlement…
> UNHCR legal officer said the UN would begin the process unless the Thai Foreign Ministry raised objections…" 7/

On analysis, this case invites comparisons with the Sok Yuen case. In terms of judicial reasoning, why was the Court decision somewhat more liberal (in granting refuge on the basis of a political offence/political exception) in the Vang Tao Raiders case than in the Sok Yuen case ? Factually, when the two cases are compared, was the former case more akin to ordinary crimes than political crimes ? Were there also policy considerations at work influencing the different outcomes ? As always, the answers do not always lie in legal strictures but also in political undercurrents, whether internal or external. In jurisprudential terms, the approach towards refuge and the political exception to extradition was/is thus ad hoc rather than systematic; it may lead to inconsistencies.

Third, the Tham Krabok Hmong case. The case involves some 20,000 Hmongs, many of whom sought refuge in Thailand in the 1970s. However, they were outside the scope of the Comprehensive Plan of Action noted above, because they did not stay in the camps where the screening procedures were taking place under the Plan. They were thus not processed and resettled abroad during the operations of the Plan. Instead, their shelter has been the Tham Krabok monastery in Saraburi Province, Central Thailand, but there is now a threat to close down the monastery. Various attempts to relocate them to other provinces in Thailand have not successful partly due to local reaction against their potential relocation and the discriminatory and stereotyped attitude that regards the group as being linked with illegal drugs.

The question of their resettlement in other countries arose again in 2003, especially as in that year the Thai Government implemented a very strict campaign against drug trafficking, and closure of this monastery was part of the agenda. The sensitive situation was analysed by one source as follows :

> " The issue of the Hmong at Wat Tham Krabok (Temple) has been discussed in national and international circles for almost 20 years. The rapidly expanding communities near the temple have strained relationship between the Thai and Laotian Governments.
> Vientiane believes that some of the Hmong at Tham Krabok are members of a right-wing movement led by General Wang Pao that continues to cause trouble inside the borders of Laos. Most Thai officials believe that, while there may be a small number of Hmongs at Tham Krabok who at one time took up arms against the present Laotian Government, most have resettled in third-party countries, mainly the USA, years ago…..
> When the ex-abbot of the temple was alive he insisted that the majority of the Hmong were from the northern provinces of Thailand and they had come to the temple for drug treatment. They eventually settled there, and the community expanded; their relatives came to stay with them.

> Relocating the Hmong Tham Krabok to holding centres in other provinces is seen by the Government as the first essential step in the Hmong relocation issue, and at the same time aiding the Government's drug war. Recently some Hmong people were arrested and reported to have connections with drug networks in Tak and Petchabun provinces. Drug suppression officials believe the temple compound at Tham Krabok is being used as a transit point for illicit drugs from the North." 8/

However, in reality, relocation to other areas in Thailand is becoming less likely, and resettlement in other countries is emerging as a key option. There are now indications that the USA is interested in providing resettlement places for the majority of this group.

There are many lessons to be learned from the Tham Krabok case. First, even though the Comprehensive Plan of Action solved most of the problems concerning the caseload from Laos, a residual caseload remains to be solved, and it needs a degree of ingenuity and commitment to solve it. Second, in many situations linked with those seeking refuge here or elsewhere, there are sensitive political vibrations which interplay with the grant or refusal of refuge. This shapes the availability of options. Third, the setting becomes more complex if the groups are not "included" into society after a long time, and the emergence of crime, such as drug trafficking, may lead to more intractable situations and discriminatory attitudes. Fourth, many situations require not only national cooperation but also international cooperation to provide long-term solutions based upon a humane response.

Needless to say, the above cases indicate that the context facing many of those seeking refuge here, there or anywhere is often highly convoluted, and the law does not always provided the answer; it bends with policies and politics.

Accession to the 1951 Convention and/or Protocol ?

One of the longstanding questions is: why has Thailand not acceded to the 1951 Convention and its 1967 Protocol ? The question is all the more intriguing since Thailand has provided refuge to a very large number of asylum-seekers for very many years. The record has also been commendable on many fronts, while the basic rights of those seeking refuge in the country have been largely respected. If Thailand is already abiding generally by international law, why not become a party to those instruments which embody the international law on refugees ?

The answer should perhaps be based on the inscrutable charm of the Thai smile which invites a more profound assessment of the political body language! The issue of accession has been raised several times in the relevant governmental circles during past decades, but the answer so far has been NO. The reasons are multifarious. One of the most oft-cited reasons is national security. This reason was particularly pertinent in the 1970s when, in the midst of the Cold War, Thailand faced the threat of Communism from the surrounding environment which also produced a myriad of refugees from Cambodia, Laos and Vietnam. Why should such reason be relevant today when the ideological and conflict-based problems of those countries have largely been solved?

There is still a security concern in regard to the sensitive border and relations with Myanmar. Some Thai authorities also feel that to confer "refugee" status in accordance with the refugee instruments on asylum-seekers from Myanmar might be seen as an unfriendly act , particularly at this political juncture where Thailand's relations with the military Government in Myanmar are improving. They would rather not risk it.

A related reason is that the authorities prefer to have a large margin of discretion to deal with influxes, especially mass influxes. Thus they would feel constrained if Thailand were to accede to those instruments. In policy making circles, the two instruments are not a high priority. This can be compared with other human rights treaties to which Thailand is increasingly becoming a party; they seem to be a higher priority. Those treaties are dealt with below. Moreover, some high ranking policy makers are also privy to the argument (not shared by this author!) that the refugee instruments are somewhat Eurocentric and antiquated, and they may not be sufficiently relevant to today's realities.

The following analysis from the early 1990s is still pertinent :

> " The main obstacle to accession is that national sovereignty and security would be restricted. Added to this is Thailand's mistrust of Article 38 of the 1951 Convention, which confers upon the International Court of Justice the power to settle disputes relating to the interpretation of the Convention. Thailand's own experience with the Court has not been a happy one. In the famous Temple case, the International Court of Justice held that a temple which was the bone of contention between Thailand and Cambodia belonged to Cambodia. Moreover, Thailand has rarely acceded to other human rights instruments, although it voted for the 1948 Universal Declaration of Human Rights.
> Non-accession to the refugee instruments does not imply that Thailand has disregarded basic human rights for asylum-seekers. Its adoption of the Comprehensive Plan of Action and the introduction of screening for the Vietnamese in 1989 recognised the refugee criterion of the 1951 Refugee Convention, although this should not be taken to mean recognition of the totality of the rights enunciated by the Convention…" 9/

There have been numerous attempts by civil society and UNHCR to raise the issue of accession. These have included direct discourse with the authorities and indirectly through seminars and training programmes. However, the official position is still impervious to the advocacy of accession. This calls for sustained dialogue and dissemination on the issue to raise the pitch of official interest. It is necessary to maximise this advocacy in a step by step strategy geared towards a win-win situation, without being too dogmatic about accession. The strategic steps are submitted in the last part of this study as directions for the future.

Framework for Extension of Refugee Protection: International Law, National Law, State Practice…

1) International Law

As has been noted, the protection of the group internationally known as "refugees" is largely respected in Thailand, even though the country is not a party to the refugee instruments. The national response has thus been to act in conformity with the country's "moral" obligation at the international level, although the cogency of such obligation is subject to a degree of relativity. Consequently, there may be some inconsistencies in practice, as seen in various grey areas in the early 1980s until the advent of the Comprehensive Plan of Action 1989, as follows:

> " Thailand purports to act in accordance with humanitarian principles, but the degree of implementation of these principles may be nuanced, depending upon national policy. The differences are evident when one compares Thai national policy in 1979 with that after 1980. In 1979, a lenient attitude was adopted towards asylum-seekers, namely the "open door" policy of providing temporary refuge and not forcing them back across the border. This position paralleled the principles of non-expulsion and non-refoulement embodied in Articles 32 and 33 of the 1951 Convention, even though Thailand has not expressly assumed obligations from the latter. However, from 1980, a closed door policy, embodied in the term "humane deterrence", has been adopted, indicating a shift in attitude increasingly detached from the refugee instruments. In 1988, this was implemented strictly with many "push-off" (refoulement) of Vietnamese boat people in the Gulf of Thailand." 10/

More specifically, the impact of the UN human rights instruments and system is worth noting. In particular, Thailand voted for the Universal Declaration of Human Rights. By the end of 2003, it had become a party to the following human rights treaties which also bear upon refugee protection and assistance:

- the 1965 International Convention on the Elimination of All Forms of Racial Discrimination (CERD);
- the 1966 International Covenant on Civil and Political Rights (ICCPR);
- the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR);
- the 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and its Protocol;
- the 1989 Convention on the Rights of the Child (CRC).

These human rights treaties impose obligations on States parties to implement international standards, and a key principle is non-discrimination, i.e. human rights apply to all persons irrespective of their origins. They have also set up specific treaty bodies in the form of various committees to monitor implementation at the national level, and States parties are bound to send in national reports periodically to be scrutinised. The committees then make recommendations to the national setting for follow-up.

One of the features of accession to these treaties is that Thailand has made various interpretative declarations or reservations to limit the scope of international obligations apropos Thailand and the extent to which the country accepts the international obligations. Where there are reservations, the country imposes a limit on the country's acceptance of various rights. This has been the case particularly in

relation to the CRC where the country entered and has retained two reservations tantamount to rejecting various rights linked with refugee children. First, there is a reservation to Article 7 of the CRC which stipulates the right to birth registration and the right to a nationality. Second, there is a reservation to Article 22 which encompassses the rights of the refugee child. While various actors in Thailand have called for withdrawal of these reservations, the authorities have not done so.

As for national reports under the various human rights treaties, there have only been national reports under the CEDAW and CRC submitted to the relevant UN monitoring committees. Although the national report under the first Covenant has been completed, it is in Thai and has still to be translated into English; it has not yet been sent to the relevant UN committee. However, there are various examples which can be taken from the CRC experience, particularly Thailand's recently completed second national report which will soon be sent to the relevant UN Committee. The section on Children and Refuge notes as follows:

> " Problems:
> 1. Thailand is not a party to the Convention relating to the Status of Refugees 1951 and has no other domestic laws related to refugees.
> 2. As Thailand made reservations to Articles 7 and 22 of the CRC, therefore the protection for displaced children is not officially and legally covered by this international law in the country.
> 3. Displaced persons/asylum-seekers in Thailand do not enjoy any economic rights due to their lack of legal status.
> 4. Displaced children are not eligible to enroll in school in Thailand. However, those who are allowed temporary refuge in temporary shelters are provided with primary school education tailored to suit their particular context.
> 5. Currently there is no official registration at birth for children born in temporary shelters, even though they were born at hospitals in town and their births are reported to the provincial authorities. Thus displaced children lack identity papers/official document.
>
> Solutions:
> As has been noted, the main obstacle to providing proper and timely protection to displaced children emanates from the fact that Thailand has not acceded to any of the international instruments concerning refugees. At present, the Ministry of Foreign Affairs is placing a considerable importance on this matter. The Ministry has therefore set up a committee to consider the possibility of accession to the 1951 Convention on Refugee Status." 11/

From another angle, even though Thailand is not a party to the refugee instruments, it takes part in the Executive Committee of the UNHCR and is thus cognizant of international developments concerning refugee law, especially through the adoption of annual conclusions on the international protection of refugees by the Executive Commitee. Moreover, the Statute of the UNHCR 1950 provides the basis for the latter's work even in countries which are not parties to the refugee instruments; it is this Statute which offers a mandate for the UNHCR to work in Thailand subject to agreement with the Thai authorities.

In this respect, the evolution of the UNHCR's work in Thailand can be noted as follows:

> " UNHCR's presence in Thailand began under an agreement with the Thai Government concluded on 30 July 1975; this stipulated that the role of the UNHCR was that of "assistance", implying material assistance for displaced persons on Thai soil. A joint statement between the UNHCR and the Thai Government on 13 September 1975 established certain principles for operation in Thailand. They included recognition that in implementing the programme of humanitarian assistance, due regard was necessary to the national security, public order, public health and morals of the Thai nation, and that a distinction existed between persons who are within the competence of the UNHCR, and those who leave their country of nationality or habitual residence for reasons of personal convenience, for example economic migrants or persons who are not bona fide refugees.
> Under the 1975 agreement, the role of the UNHCR was seen at the time as providing "assistance" to displaced persons, but in practice, it has encompassed a field much wider that initially envisaged. At present, it covers several aspects of "protection", e.g. monitoring abuse in camps, protection against piracy, promotion of rescue at sea, tracing in order to facilitate family reunification, legal aid, and special protection for unaccompanied minors. These examples of protection are themselves not necessarily drawn from the refugee instruments of 1951 and 1967, which do not mention the principle of family reunification, or provide for unaccompanied minors.
> Th joint statement of principles of 1975 shows that humanitarianism does not exist in a vacuum, but is conditioned by national security." 12/

At the regional level, while Asia and the Pacific have no regional inter-governmental system for the protection of human rights, it is interesting that there is a kind of regional consultative group known as the Asian African Legal Consultative Organisation (AALCO), in which Thailand participates. There have been several attempts to evolve a regional position on refugees, although of a non-binding nature. Significantly, in 1966 the AALCO adopted the Collection of Principles concerning the Treatment of Refugees which offered a definition of the term "refugee" in a manner similar to the 1951 Convention, with these implications:

> " Evidence of the progressiveness of the AALCO principles can be seen, firstly, in Article III which deals with asylum granted to a refugee, in contrast with the lack of such provision in the 1951 Refugee Convention. Secondly, although the AALCO principles accept the traditional position that the right to grant asylum is the State's sovereign right (as opposed to a right of the refugee), the position of a refugee is enhanced by provisions which are not stipulated in the 1951 Refugee Convention. Thus, the exercise of the right to grant asylum is to be respected by all other States and is not to be regarded as an unfriendly act. No one seeking asylum is to be subjected to measures such as rejection at the frontier, return or expulsion to a country where he fears persecution. The reference to non-rejection at the frontier is more explicit

> than the 1951 Convention, which simply refers to the obligation not to return ("refouler") a refugee. In addition, a State should grant at least temporary refuge to refugees. There is no reference to a temporary stay in the country granting refuge in the 1951 Convention, which is generally premised upon the assumption of permanent stay (asylum in the broader sense), rather than temporary refuge. In 1986, the AALCO adopted an Addendum to the 1966 Principles calling for international solidarity and burden sharing in solving the refugee problem. This innovation is particularly relevant to the question of responses to massive influxes facing Thailand at present." 13/

Finally, with regard to the question of international customary law binding upon Thailand , particularly the principle of non-refoulement, it may be noted that Thailand has largely complied with principle, although there have been various discrepancies in practice such as the infamous "humane deterrence" policy of the 1980s noted above. While Thai academic lawyers would have no problem accepting international customs as binding Thailand, the courts may be prove less sanguine about the prospect. This was implied recently in the Sok Yuen case above where the Court averred to the effect that:

> " With regard to his claim as a refugee under the 1951 Refugee Convention, Thailand was not yet a party to this Convention. Even if there were an international custom to protect refugees, it was not an obligation emerging from the Convention as claimed by the accused." 14/

2) National Law/Enforcement

Currently, there is no national law on refugees. In fact, the term "refugee(s)" has been avoided in law and policy. In Thai official circles, a variety of terms have been used throughout the years to circumvent the term "refugee(s)". They include "displaced persons", "evacuees", "illegal entrants", "illegal immigrants", and more recently in regard to the those seeking refuge from Burma, "those fleeing fighting" or "those fleeing fighting and the consequences of civil war". There is also no national law or procedure on the determination of refugee status, although there was temporarily a status determination procedure set up under the Comprehensive Plan of Action and although for the Burmese, there has been a system of Provincial Admission Boards to determine their status, albeit in an ad hoc manner. Various national laws deserve attention as follows:

a) The 1997 Constitution and Related Laws

To what extent is the Thai Constitution able to offer protection to non-nationals, including those who seek refuge in the country ? Article 4 of the Constitution proclaims human dignity as one of the key principles of the Constitution. This term is synonymous with human rights and should apply to all persons irrespective of their origins. The main part of the Constitution which deals with rights and freedoms is Part III, and for the first time the provisions can be invoked directly in the Courts. Yet, Part III is titled "Rights and Freedoms of the Thai People", indicating a narrow scope affording protection to the Thai people rather than all persons. This expands Article 5 of the Constitution which states that " the Thai people, irrespective of their

origins, sex or religion shall enjoy equal protection", while Article 30 advocates non-discrimination including between men and women.

However, other parts of the Constititution are not based upon a distinction between Thais and non-Thais, and by implication they would be able to benefit all who seek refuge in Thailand. For example, Part VIII which deals with the Courts system applies to all persons irrespective of origins. The mandate of new independent agencies established by the Constitution, such as the National Human Rights Commission, is also broad enough to cover all persons, not only Thais. This is paralleled by other laws, such as the Criminal and Civil Codes, and related Procedural Codes, which cover all persons. Thus a person who seeks refuge in Thailand and who is harmed along the way by a criminal act may seek redress under these laws and is accorded due process of law, although the quality of the Courts varies in practice.

At the apex of the Courts system is the Constitutional Court established by the 1997 Constitution. It hears cases concerning the constitutionality of laws, and it has on occasion dealt with the issue of discrimination. Yet, to date, no case concerning refuge or asylum has been considered by the Court. This is possibly an avenue to be tested in future so as to advocate the non-discrimination principle and improved protection of those seeking refuge in Thailand.

b) **Immigration, Extradition and Deportation Laws**

The law with the greatest impact on asylum-seekers is the national Immigration Act which dates from 1979. It establishes the legal position with regard to immigrants. Those who enter without the relevant papers such as passports and visas are classified as illegal immigrants, and they are ,in principle, subject to deportation. As those who seek refuge in Thailand are unlikely to have the necessary papers, they are most likely to be classified as "illegal immigrants' under the immigration law. However, in practice, the situation is attenuated by national policies which exempt those seeking refuge - who abide by the national policy of placing them in camps and who respect national law-and-order, from the strict application of the immigration law. However, those who seek refuge are supposed come forward to inform the authorities as part of the immigration law, and there is no right to freedom of movement in Thailand for the group. If they are admitted into a camp and then move out of the camp without permission, they are likely to be deported as acting in breach of the immigration law.

Section 17 of the Immigration Act is particularly important; it reads as follows:

> " Under special circumstances, the Minister, by the consent of the Cabinet, may authorise an entry into the Kingdom subject to any condition or exempt any alien from compliance with the Act."

Thus under Section 17, with the consent of the Cabinet, the Minister of Interior has the discretion to allow people to enter the country. This has provided leeway in enabling different groups of those who seek refuge in Thailand to be admitted into Thailand and to stay temporaily. There were a number of Cabinet decisions on this front in the 1970s and 1980s to allow temporary refuge for asylum-seekers from Indochina. However, in recent years, there have been few Cabinet decisions, especially on the Burmese group. The operational guidelines for the authorities to

work with the UNHCR on this group are primarily based on the Working Arrangements reached between the two parties in 1998, the year when the UNHCR was first allowed access to the western border of Thailand to deal with asylum-seekers from Myanmar.

Another national law which has been cited expressly recently, due to the Sok Yuen case, is the Extradition Act 1929. Generally, extradition from Thailand can take place via an extradition treaty between Thailand and another country, or even without such treaty if the authorities agree to do so. However, there is a political exception to the possibility of extradition which is akin to recognising refugee status, at least for the purpose of not extraditing the person to a country where s/he may fear dangers. This is seen particularly in Sections 12, 13 and 17 of the Extradition Act as follows:

> " Article 12. The Court must be satisfied
>
> 3) that the offence is extraditable and is not one of a political character…
>
> Article 13. The Court need not hear evidence for the accused except in his defence except upon the following points:
>
> 2) that the offence is not extraditable or is a political character;
> 3) that his extradition is in fact being asked for with a view to punishing him for an offence of a political character…
>
> Article 17. Appeals in extradition cases lie to the Appeal Court and its decision upon all questions both of fact and of law shall be final.
> If there was any evidence as to the fact found by the lower Court to justify the order made, the Appeal Court has no power to interfere. The Appeal Court will only see that the lower Court had such evidence before it so as to give it authority and jurisdiction to make the order and for this purpose may review the evidence and consider arguments:
>
> 4) that the offence is of a political character; or that the requisition was in fact made with a view to punish the accused for a political offence…"

However, as seen above, there has been a divergence between the Courts in the interpretation of the political exception; in the the Sok Yuen case, the argument based on political exception was rejected, while in the Vang Tao Raiders case, the argument was accepted.

On another front, there is the Deportation Act dating from 1946, as amended later. Key sections state as follows:

> " Section 5:
> When it appears necessary in the interests of public peace and order and morals, the Minister shall have power to order the deportation of aliens from the Kingdom for such period as may be found proper. Moreover, when the circumstances have changed, the Minister may withdraw a deportation order.

> The provisions of the first paragraph shall not apply to those who have held Thai nationality by birth.
>
> Section 6:
> Upon issuance of a deportation order, the Minister or officer delegated by the Minister shall order the arrest and detention at any place of the person to be deported until the arrangements are made to carry out the deportation order…
>
> Section 7:
> No person under a deportation order may be deported from the Kingdom before the expiration of fifteen days from the date notice of the deportation order has been given to the person to be deported. In the event of an appeal under Section 8, deportation shall be suspended until the President of the Council of Ministers has acted on the appeal."

If the deportation law is applied too strictly, however, it would obviously have impact on international refugee law, especially the principle of non-refoulement. The various laws on immigration, extradition, and deportation should thus placed in the international law framework to ensure compliance with international standards, even if there is no national law expressly on refugees in Thailand. Could those national laws be amended to recognise refugee status and or exceptions based on humantarian grounds ? This is rather unlikely to happen in the near future. The most that could take place is to have more liberal policies on the issue rather than laws reflecting international standards. This is linked to the various reasons already given for Thailand's non-accession to the refugee instruments.

c)**Birth Registration and Nationality Laws**

All persons born on Thai territory are required to be registered with the local municipal office where they are born. The procedure was described as follows in Thailand's second report under the CRC:

> " The Civil Registration Act of 1991 and the regulations of the Central Registration Office on Civil Registration 1992 stipulate the timeframe and process for registering a birth in the home and outside the home of any child with or without Thai nationality. The report of the birth must be made to the registration officer of that locality within 15 days of the birth. Upon registration, the registrar will issue a birth certificate as evidence of the birth. Birth certificates are classified into three categories: 1) a birth certificate called Tor Ro 1, is issued to a child with Thai nationality and whose birth is reported within the time stipulated; 2) a birth certificate called Tor Ro 2 issued to a child with Thai nationality and whose birth was reported outside of the timeframe and 3) a birth certificate called Tor Ro 3 issued to a child without Thai nationality…
> For displaced children fleeing armed conflicts and other displaced children, the Ministry of Interior has set up a registration service for displaced persons residing temporarily in displaced persons' camps along the border in Mae Hong Son, Tak, Kanchanaburi and Rachaburi. Details of each family are listed as follows: size of family, names, nationality, sex, dates of birth, dates

> of death, and photographs. The data contained therein will be updated monthly. A newly born infant will be added to the family registration." 15/

In principle, an official birth certificate should be granted to all children born in Thailand. However, the authorities have not been willing to grant such certificate to the children of those who are illegally in Thailand, including the children of asylum-seekers who enter in breach of the immigration law and the children of illegal migrant workers. This is compounded by Thailand's reservation to the CRC in regard to Article 7 which obliges States parties to register births and, by implication, to issue official birth certificates.

Why are the authorities reluctant to issue official birth certificates ? This may be due to their fear that such certificates could be used to pressure the authorities to grant Thai nationality. It should be pointed out, however, that the fear is based upon a misunderstanding: the mere grant of an official birth certicate does not automatically imply the grant of Thai nationality to anyone. However, the grant of an official birth certificate is an important guarantee for the identity of the child; it ensures that s/he is officially recognised as a person and helps everyone, including the authorities and the child, to search for long-term solutions, including repatriation to the country of origin.

In 2003, the situation was attenuated to some extent when the authorities modified their position by stating that "delivery certificates" should be issued by the places (e.g. clinics) where those children are born. 16/ While these certificates are not tantamount to official birth certificates, they carry some weight as a document which helps to prove the identity of the child.

With regard to the nationality law, basically Thai nationality can be acquired in three ways: through a Thai parent (father or mother), through birth on Thai soil, or through naturalisation (i.e.request to adopt Thai nationality). The current law is based on the Nationality Act 1965 as amended in 1992. However, in reality, acquisition of Thai nationality by birth is not possible for those who are born of parents who are illegally in Thailand (including by implication those who seek refuge here), unless the Ministry of Interior exercises his discretion to grant nationality. This is due to Section 7 bis which provides the following:

> " A person who was born in the Kingdom of Thailand whose father and mother are aliens does not acquire Thai nationality, if at the time of birth, the legitimate father or the father who is not married to the mother or the said mother is:
> 1) a person granted permission to reside in the Kingdom as a special or specific case;
> 2) a person permitted to reside in the Kingdom temporarily; or
> 3) a person residing in the Kingdom without permission under the immigration law.
>
> In case it is deemed appropriate, the Minister may consider and order the person under paragraph one to acquire Thai nationality as per the grounds prescribed by the Council of Ministers…"

In practice, the Thai authorities have granted Thai nationality periodically to the children of those who sought refuge in Thailand in the first wave of influxes after the Second World War, e.g. the Chinese, Vietnamese and Burmese who entered Thailand in the 1950s. However, with regard to the more recent influxes, the principle of no grant of Thai nationality has been upheld to a large extent. This has been mitigated at times where those who seek refuge have ethnic links with Thailand, such as the Ko Kong population from Cambodia who are ethnic Thais; they have been granted Thai nationality.

In effect, many asylum-seekers and their children are de facto (in fact) stateless, since they are not protected by their country of origin. Who should accord them long term protection ? This delves into the realm of statelessness which calls for a more coordinated international response to share the responsibility in a concerted fashion. Without such response, the countries of first asylum may find themselves cornered, resulting in the adoption of or reversion to draconian policies jeopardising the provision of temporary refuge or asylum.

Could those laws be amended to reflect the plight of refugees and their children more expressly ? While this would be difficult, ministerial directives or regulations could conceivably be adopted to confer birth certificates on all who are born on Thai territtory irrespective of their illegal immigrant status. A more liberal approach to the grant of nationality could also be possible for those who are stateless. These are areas where national policies are able to pressure national laws to be more flexible, and they depend much upon how flexible national leaders are on the subject.

d)**Migration/Employment Law**

Generally, those seeking refuge in Thailand are not allowed to seek employment. This is partly due to the argument that the country does not want to create a pull factor by leading would-be entrants to believe that they will be able to work in Thailand. This is by contrast with illegal migrant workers who come from neighbouring countries due to economic reasons who have been “regularised”periodically in Thailand. 17/ It is estimated that there are over one million migrant workers of this group; if they come forward to be registered for work, they are allowed to work in various professions, even though they may have entered the country in breach of the immigration law.

The law on the subject dates from 1978: the Working of Aliens Act. Aliens are only allowed to work in activities designated by law by the relevant authorities (current the Ministry of Labour) as follows:

> “ Section 11:
> An alien who may apply for a (work) permit under Section 7 must possess the following qualifications:
> 1) Having a place of residence in the Kingdom or having been permitted entry into the Kingdom for temporary stay under the law on immigration but not as tourist or in transit;
> 2) Not being disqualified or prohibited under the conditions prescribed by the Minister as published in the Government Gazette.

Section 12:
The following aliens may engage in only such works which have been prescribed by the Minister as published in the Government Gazette. In such Notification, the Minister may prescribe any condition as he may deem appropriate:

1) aliens under a deportation order under the law on deportation who have been permitted to engage in profession at a place in lieu of deportation or while awaiting deportation;
2) aliens whose entries into the Kingdom have not been permitted under the law on immigration and are awaiting deportation;
3) aliens who are born within the Kingdom but have not acquired Thai nationality under the Announcement of the National Executive Council No.337…or under other laws;
4) aliens whose Thai nationality has been revoked under the Announcement of the Nationality Executive Council No.337…or under other laws.

An alien may engage in such works as prescribed by the Minister under paragraph one only upon receipt of a permit from the Director-General or official entrusted by the Director-General."

In view of the link between migration, human smuggling and trafficking in recent years, the authorities have also adopted more stringent actions against such practice. The Criminal Code, the 1996 Prostitution Prevention and Suppression Act and the 1997 Act concerning Measures to Prevent and Suppress the Trafficking in Women and Children have all been used in this respect.

On the issue of employment, one of the ironies of the situation is that while those seeking refuge for reasons of persecution or warfare are not allowed to work, those who enter illegally for economic reasons are increasingly allowed to work. Would asylum-seekers not be better off by claiming (illegal) migrant worker status ? It is quite possible to imagine this happening; at times the differentiation between those who seek refuge for reasons of persecution or warfare, on the one hand, and illegal migrant workers, on the other hand, is very tenuous, especially if there is no reliable status determination procedure to distinguish between the two categories . In the latter case, they would probably not land up in the camps but would be hiding or working in factories, in agricultural professions or on boats somewhere in Thailand. Why then not allow those who seek refuge to work ? So far, there has been no policy on this group. A positive Cabinet decision on this issue could open the door to work on the part of asylum-seekers; this would not only save cost (since asylum-seekers would be able to pay for their own maintenance) but also generate productive activities conducive to development, self-esteem and self-reliance.

Another interesting development concerning migrant workers is that increasingly Thailand has entered into bilateral arrangements in the form of Memorandum of Understanding (MOU) to manage migration flows in a more orderly fashion with neighbouring countries. The MOU between Laos and Thailand was signed on 18 October 2002. It set up channels of cooperation to manage migrant workers and send back the names of migrant workers to the country of origin in order to verify identity and nationality. The conversion of irregular status to regular status for the purpose of employment covers only those who are registered workers in Thailand. There will be more control over employment agencies, while there will be protection of the migrant

workers themselves. The two countries will assist each other in the return process concerning migrant workers where the employment contract has ended or has terminated. There will also be suppression of illegal migration and illegal employment, as well as follow-up between officials under the MOU.

The MOU between Thailand and Cambodia was signed on 31 May 2003 and is for the duration of five years. Basically, it provides a governmental channel for sending and receiving migrant workers, guaranteeing their basic rights, while emphasizing that they would abide by local laws. Safety of workers is ensured, and the workers are entitled to send their income home. Employment contracts can be terminated for a variety of reasons, including poor health of the workers and HIV/AIDS. The MOU between Thailand and Myanmar was signed on 21 June 2003. Like the other MOUs, it establishes a channel to manage migration and to exchange lists of potential migrant workers. The scope and objective of the agreement is outlined in Article 1 as follows:

> 'The Parties shall apply all necessary measures to ensure the following:
> 1) Proper procedures for employment of workers;
> 2) Effective repatriation of workers, who have completed terms and conditions of employment or are deported by relevant authorities of the other Party, before completion of terms and conditions of employment to their permanent address;
> 3) Due protection of workers to ensure that there is no loss of the rights and protection of workers and that they receive the rights to which they are entitled;
> 4) Prevention of, and effective action against, illegal border crossings, trafficking of illegal workers and illegal employment of workers.'

By contrast with those MOUs, could some bilateral arrangements be possible to facilitate orderly departures from the countries of origin of asylum-seekers influxing into Thailand ? What of parallel arrangements for them to return safely and voluntarily to the countries of origin ? In the past, an Orderly Departure Programme between Vietnam and the USA existed to facilitate such outflow from Vietnam to the USA, but Thailand has had no parallel arrangement with its neighbours to date. With regard to the repatriation process, special care is needed in regard to those who have sought refuge. For the purpose of transparency and checks and balances, it is important to bring the UNHCR into the equation to monitor and ensure that the return is safe and voluntary. To date, no such arrangement exists in relation to the main caseload currently in Thailand – asylum-seekers from Myanmar. The authorities in Myanmar have not yet been willing to enter into such arrangement, and it can be presumed that those who have sought refuge in Thailand still feel that the conditions in Myanmar are not yet safe for them to return, especially as the country is still under undemocratic rule and repression continues.

3) National Policy/State Practice

One of the key lessons from Thailand is the importance of national policies which have guided State practice towards asylum-seekers throughout the years. They are able to mitigate the impact of laws or reinforce the application of laws such as the immigration law. In reality, those national policies vary with the times, with the

groups of asylum-seekers, and with the surrounding circumstances, including the reactions of other countries (such as resettlement countries) .

The main State practice linked with national policy was to grant temporary refuge to Indochinese asylum-seekers, conditioned partly by the availability of resettlement places, in the 1970s and 1980s. However, since the 1990s till today, while the grant of temporary refuge also applies to the Burmese, the issue of voluntary repatriation to the country of origin rather than resettlement in other countries would seem to be more influential in shaping policy and practice towards them.

The variation of policies in the 1970s and 1980s can be seen especially from a number of Cabinet decisions in regard to Indochinese asylum-seekers from Cambodia, Laos and Vietnam, preceding the Comprehensive Plan of Action as follows:

> " With a few brief exceptions, Thai policy has been based upon a 'closed door' policy, as shown by a 1977 Cabinet decision which continues to guide action vis a vis refugees. Until the 1989 Comprehensive Plan of Action, policy was generally known as 'humane deterrence'. This was introduced in 1980 when the Thai border was closed to Cambodians, and then to Vietnamese and Laotian entrants. Humane deterrence was based upon the following principles:
>
> 1. The Thai border would be closed to new arrivals.
> 2. Those illegally entering Thailand would be kept under close detention in austere camps.
> 3. There would be no resettlement of new arrivals.
> 4. Treatment of those persons would be of a minimum standard not higher than strictly necessary for their subsistence.
>
> As time passed, there was a modification of this policy. The 'no resettlement' stipulation was not adhered to strictly, and varied with the date of arrival…..
>
> As for the Laotian asylum-seekers, in 1985 there was a significant development in that screening to determine their status was introduced to distinguish between bona fide cases (i.e. akin to refugees in the international sense), and mala fide cases. The Thai authorities are in charge of the screening with the UNHCR in an observer capacity. Initially the criterion used for screening was based upon the persecution element, complemented by four examples:
>
> 1. Soldiers and civil servants of previous regimes;
> 2. Former employees of foreign embasssies and international organisations;
> 3. Those who have participated in activities which are deemed to be antagonistic to the Communist Government (in Laos); or
> 4. Those with direct relatives in third countries.
>
> At the outset, the screening procedure tended to look to the four examples rather than the persecution test. This suggested a distortion of the refugee criterion; the four examples were influenced by the resettlement criteria of the United States rather than the international position on refugee status. As a

result of the Comprehensive Plan of Action in 1989, in principle greater emphasis was placed on the persecution element, with the four examples relegated to the periphery. From the start there was also a problem of what to do with the screened out cases. The Laotian authorities agreed to take these people back on a mandatory return basis, but the process has been slow.

By contrast, before 1988 the Vietnamese boat people were generally granted temporary refuge in Thailand. This was due to the fact that after 1975, when the exodus first started, third countries used broad criteria in offering them resettlement places as a priority group. However, because of the increasing number of those interviewed and rejected by resettlement countries in the mid-1980s and a marked rise in arrivals in 1988, the Thai Government adopted in that year an interdiction policy of refusing the Vietnamese even temporary refuge. This led finally to the Comprehensive Plan of Action, and the institution of a screening process from 1989 to determine refugee status for those arriving on and after the cut-off date of 14 March 1989. Interestingly, the criterion adopted was that of the 1951 Refugee Convention, thus importing the international notion into the local setting. However, this was for a limited purpose: those screened in would be eligible for resettlement in third countries, but not local assimilation in Thailand. Return to the country of origin would be the solution for the screened-out cases…..

Before 1989, Burmese asylum-seekers were liberally permitted to stay temporarily in Thailand. In November of that year the Government even stated explicitly a policy of temporary refuge for the Burmese. However, the policy changed in 1990, and some Burmese asylum-seekers were pushed back into Burma. The policy turned more restrictive with arrests of Burmese in Thailand and the potential establishment of a camp for Burmese students on Thai soil. The attitude of the local policy makers has been to avoid internationalising the Burmese issue, and they have prevented international agencies from becoming involved.

Other non-Indochinese – for example, Afghans and Iranians – have been treated on a case-by-case basis. Much weight is accorded by the Thai authorities to the viewpoint of the UNHCR in terms of determining the bona fides of the asylum-seeker. In a Note Verbale from the Thai Foreign Ministry to the UNHCR in May 1986, a classic example of Thai compromise was seen in its stipulation that, although the Iranian asylum-seekers were not to be regarded as “refugees’, they could be accommodated in Thailand before resettlement. In reality, while some non-Indochinese have been detained in Bangkok prisons, others have been allowed to live in ordinary accommodation. Despite the temporary refuge granted, one should not underestimate the power conferred by law to deport them.” 18/

On analysis, it should be noted that those policies were geared also to pressuring third countries to offer and sustain resettlement places. Indeed, resettlement was the maximum solution for the biggest caseload - the Indochinese asylum-seekers (with the exception of the nearly 300,000 who returned to Cambodia in 1992 after the peace accord). The same cannot be said of the Burmese for whom to date, resettlement has been a minimum solution rather than a maximum solution. In real

terms, it is voluntary repatriation of this group to the country of origin which is awaited as the maximum solution. This interplays with the fact that there have been very few Cabinet decisions on today's Burmese caseload (by contrast with the multiplicity of Cabinet decisions on the Indochinese groups above). Instead of high profile Cabinet decisions as before, the more recent tendency has been to have lower profile policies set between the key security agency and relevant ministries with a degree of "policy acquiescence" to allow the Burmese to stay in Thailand temporarily pending long-term solutions.

The difference in approach is partly due to the fact that the plight of the Indochinese asylum-seekers was more internationalised than that of the Burmese asylum-seekers. Thailand had to justify her position more outwardly through high profile Cabinet decisions in regard to the former group, especially as there were many political players operating in the South-east Asian region and exerting pressure on Thailand accordingly. By contrast, Thailand has tried to avoid internationalising the issue of the Burmese asylum-seekers. This was evidenced by the fact that until 1998 the UNHCR was not permitted access to the border camps where the Burmese were sheltered; instead, it was the NGOs which provided assistance in coordination with the Thai authorities.

With regard to the all groups of asylum-seekers in Thailand, while temporary refuge has been granted to a large extent, and while national policy has attenuated the strictures of the immigration law, in Thai law, asylum-seekers who enter in breach of such law are still illegal immigrants. This diverges from the international perception of refugees which would advocate that those who seek the protection of other countries, where the countries of origin are not able to protect them, should not be seen as "illegals". This divergence has led to lapses at times in the protection of asylum-seekers at the national level.

Throughout the years, it is undeniable that there have been various cases of push-backs or "refoulement", despite the general pattern of temporary refuge. There are also constraints on the enjoyment of other rights such as right to birth registration, right to a nationality, right to employment, right to housing, and right to relief and security. While primary and secondary education is provided in the camps, there is no access to tertiary education. While access to courts is possible where asylum-seekers wish to seek redress for harm, real access is difficult unless it is facilitated by the UNHCR and or local human rights NGOs such as the Law Society. While freedom of religion is generally respected, national authorities would look very warily on any claim of freedom of association, and there is no freedom of movement for asylum-seekers outside the official camps. While family reunification is generally guaranteed, the national authorities do not issue travel documents to asylum-seekers. Although the latter are registered for the purpose of admission to camps, the scope of the practice has varied throughout the years. In real terms, official responses to the needs and rights of refugees, alias "asylum-seekers" in the national setting, have tended to be conditioned by State discretion personified by fluctuating national policies, rather than an absolute acceptance of internationally binding obligations.

Even in such context where there is a degree of relativity between law, policy and practice, however, much can be done to provide a greater degree of certainty and uniformity in responding to the humanitarian challenge posed by asylum-seekers. The

preferred approach for the future is to adopt the step-by-step strategy noted below; this would need official back-up expressly at least in policy terms. It should be geared towards a more harmonised approach with humane procedures for all asylum-seekers on the basis of non-discrimination between all nationalities. This is elaborated in the final section of this study.

4) Capacity-Building

Capacity-building to promote greater knowledge of and empathy for international refugee law and the rights of refugees, whatever their national classification, has taken place with the support of the UNHCR and other actors in Thailand throughout the years. They range from lectures to workshops, from linking up - through an educational process or other processes - with key government agencies/interlocutors to NGOs, civil society, academic institutions and the refugees themselves. Various publications have been produced by the Thai UNHCR office, and refugee related information and literature is distributed by a mailing list and other methods. UNHCR staff also help to teach and train on refugee matters in various courses which are offered through both formal and non-formal education. For instance, UNHCR staff help to teach in various degree courses such as the Masters of Human Rights programme at Mahidol University and various courses run by the Migration Centre of Chulalongkorn University. In 2004, the Faculty of Law, Chulalongkorn University offered for the first time a course to LLB students on International Refugee and Migration Law, with a visit to the UNHCR to be briefed on recent developments.

Capacity-building through education- and information-related mobilisation may be explored further in a number of ways. First, by contrast with ad hoc training in the past, there is now room for more curriculum development in a more systematic manner. This should be targeted towards specific courses on refugee law and related matters, as well as the infusion of refugee law/rights via other courses, in educational institutions. In addition to coverage in universities, it is important to teach refugee law/rights more concretely through the curriculum of various key actors such as the police and military academies, judicial school, immigration related bodies, security related institutions, and parliamentarian-linked training institutions such as the King Prachatipok Institute. In terms of broad outreach throughout the whole countries, there are the teacher training colleges – Rajabat Institutes, which are now setting up more courses on human rights, also a window of opportunity for refugee law, with possible impact on primary and secondary schools. This could be coupled with the production of more educational materials in the Thai language on refugee law and related matters.

Second, sustained dialogue and capacity buiding through advocacy, information, education, and resource provision, needs to be promoted with key government personnel, ministries, the media , independent agencies established by the 1997 Constitution, and parliamentarians. More attention should be paid to liasing with the various independent agencies such as the Constitutional Court, the Administrative Court, the Ombudsmen, and the National Human Rights Commission. With regard to the parliamentarians, there is a need for close engagement with key parliamentary committees such as the Senate Foreign Relations Committee and the lower House's Human Rights Committee.

Third, there is more room for working with the media in the Thai language. While the English language newspapers in Thailand offer relatively consistent coverage of refugee-related issues, the Thai media – press, TV and radio – need further capacity-building. There could be more consultations and courses to educate not only middle level journalists but also the editors themselves, to encourage more attention to the refugee-related news and information. There could also be a more dynamic media campaign via TV and radio slots to nurture a positive image of refugees.

Fourth, more specific and more profound training/consultation is needed for officials who are likely to come across asylum-seekers directly and or be involved in the various screening procedures to determine their status. This pertains particularly to immigration officials, border police, security forces, provincial governors and related personnel and the key ministries behind them. They may also need more incentives for their work, and more resources to build their capacity to respond more effectively.

Fifth, there could be more specific training of trainers at various levels on refugee law and related matters – ranging from grassroots trainers to school, varsity and government level trainers. A network of teachers and trainers on refugee law and related matters could also be organised and promoted as partners in capacity and advocacy-building, with periodic meetings for peer interchanges, updates and follow-up.

Future Directions:

Thailand's record in responding to the numerous influxes of asylum-seekers has been largely commendable throughout the years, and the country has abided to a considerable extent by international law interrelated with refugees and their protection. The country has attenuated the strictures of various national laws, such as its immigration law, by adopting policies which offer temporary refuge in many cases, thus preventing negative impact on those who seek refuge and who deserve protection. Yet, the approach to date has not been systematic and needs to be harmonised so as to provide greater clarity and certainty with a view to dealing with all asylum-seekers more rationally on the basis of non-discrimination. In this context, there is a need to evolve and implement a more responsive framework of actions to promote refugee protection and to foster greater understanding of international refugee law, interacting with national law, policy and practice, on the one hand, and balancing with the concerns of national sovereignty and security, on the other hand.

Some of the strategic steps based upon a graduated approach, targeted especially to the Thai authorities and the UNHCR in cooperation with relevant partners, as appropriate, could include the following:

- **Even if Thailand is not a party to the international refugee instruments, much can be done to protect asylum-seekers in Thailand, and Thailand is already doing this to a large extent. Thailand should establish a more uniform system/procedure – a harmonised national procedure - for determining the status of asylum-seekers with a view to granting admission and (temporary) refuge; this should apply to anyone or group that**

seeks refuge (rather than currently only to the Burmese group via the Provincial Admission Boards mentioned above). The procedure should have these components:

i. **Preferably, the criterion for "screening in" asylum-seekers for the purpose of admission and refuge should be based upon the international "refugee" criterion, i.e. those fleeing their country of origin for a well-founded fear of persecution. This may be expanded to cover those fleeing fighting and the consequences of fighting, a criterion already provided for, to a lesser or greater extent, to process Burmese asylum-seekers in Thailand today;**
ii. **The personnel of these procedures should be specially trained to act in a fair, informed and balanced manner, with knowledge of international and national standards consistent with human rights, and adequate resources to carry out their tasks;**
iii. **The procedure should be at least two-tiered, with a possible review or appeal process where a case is rejected at first instance;**
iv. **The procedure should be transparent and open to international monitoring, especially with the presence of the UNHCR;**
v. **There should be a monitoring and reporting process in regard to decisions reached under the procedure, open to parliamentary and/or external scrutiny.**

- **Even if Thailand is not a party to the refugee instruments, the grant of temporary refuge should be ensured and strengthened for those "screened in" as deserving protection.**
- **Even if Thailand is not a party to the refugee instruments, human rights should be guaranteed for all asylum-seekers, e.g. right to life, right to education, right to humane treatment and right of access to the courts to seek redress, with more gender sensitivity. Various aspects of child rights need to be promoted and complied with more strongly, e.g. the right to birth registration and the right to acquire a nationality.**
- **Even if Thailand is not a party to the refugee instruments, there should be a more liberal policy towards those who are "screened in", particularly in relation to the opportunity to seek employment. Currently, there is no policy to allow those asylum-seekers to seek employment, even though employment of this group does take place unofficially at times. This should be rectified and is linked to the national employment law discussed above.**
- **There should be continual efforts to clarify to the Thai authorities the advantages concerning accession to the international refugee instruments, including the fact that accession helps to ensure greater uniformity and certainty in**

relation to the standards of refugee protection, as well as international solidarity in shouldering the burden. In real terms, accession would help to provide Thailand with more transparent and credible tools to justify its conduct towards those seeking refuge, and it would help to safeguard the country against undue criticism.

- **There needs to be continual emphasis that accession would not take away Thai sovereignty. Rather, accession respects such sovereignty , especially in regard to the status determination procedure which should be set up; it is the prerogative of the Thai Government to set up the procedure, although it should be open to international monitoring. In this respect, it is the national procedure, not external procedure, which would determine who is and who is not a refugee. In the absence of such procedure, the UNHCR should have residual power to screen asylum-seekers to offer protection and assistance.**
- **The current Immigration Act should be reformed so as to include a specific exception in regard to "humanitarian cases" (impliedly covering asylum-seekers) which should not be subjected to the various strictures of that law; these cases would not be classified as "illegal immigrants", even where they enter without the various entry documents generally needed for legal entry. Section 17 of that Act could also be adjusted so that the various authorities wishing to grant refuge to influxes would not need to obtain consent from the Cabinet.**
- **There could be greater utilisation of the human rights treaties to which Thailand is a party, e.g. the Covenant on Civil and Political Rights, the Covenant on Economic, Social and Cultural Rights, the Women's Convention, the Child Rights Convention and the Convention on the issue of Racial Discrimination, to influence national adjustments to benefit everyone, including asylum-seekers, as well to maximise the international monitoring process for the purpose of transparency and accountability;**
- **Efforts are also needed to provide incentives to officials to raise the priority and pitch of refugee protection and related law/policy/practice and to engage them in a sustained and constructive process, conducive to a win-win mindset and situation based on respect for human rights.**
- **A more systematic approach of building a constituency in favour of accession is needed. This implies working with civil society, including NGOs and the media, on the one hand, and a variety of policy actors, including Government/State officials, independent agencies under Thailand's Constitution (e.g. Constitutional Court, Administrative Court, Ombudsmen and National Human Rights Commission) and parliamentarians, on the other hand.**
- **A particularly important entry point is to spread knowledge of the refugee instruments through curriculum development – "Refugee Studies" , rather than ad hoc training. In practical**

terms, this means that there should be more curriculum development especially through specific courses on refugee law and related matters, and or infusion of such information via other courses such as human rights for key actors such as teachers, civil servants, judiciary, police, immigration officials and military. There could also be more research to compare the substantive provisions of the international refugee instruments and national law/policy/practice in the case of accession, e.g. which national law(s) in which fields would need to be reformed if the country were to accede to those instruments ?

- **There should be more links with the media working in the Thai language, bolstered by dialogue and capacity-building with senior staff and editors to promote greater understanding of and interest on refugee protection and related law/policy/practice. This should be coupled with more educational materials in the Thai language and innovative/active methods of dissemination such as through TV programmes and "spots" targeted towards conveying a constructive/positive image of refugees.**
- **The nurturing of cross-cultural understanding towards the dilemma of refugees should be fostered from a young age in and out of school. There should be more outreach programmes to interlink between refugee children/youths and those from host communities.**
- **There needs to be parallel attention to the plight of the local Thai population affected by refugee influxes, including non-discrimination in the provision of development assistance, and a continual dialogue/engagement with community leaders and actors to enhance understanding of the plight of refugees and to prevent discrimination and intolerance.**
- **Greater responsibility-sharing needs to be advocated and concretised between source countries, first asylum countries and other countries, with a view to addressing the root causes of forced migration and to providing effective remedies. A variety of solutions, such as local settlement, third country resettlement, voluntary repatriation, and (transparent) orderly departure programmes, may be explored with effective support systems, such as cross-border arrangements ensuring safety of return under international supervision, and dignified treatment of all asylum-seekers.**

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Notes

1/ For recent general reading on the region, see: UNHCR, **Global Report 2002** (Geneva: UNHCR, 2003); UNHCR, **Global Appeal 2004** (Geneva:UNHCR, 2004).
2/ For literature on Thailand, see: V.Muntarbhorn, **The Status of Refugees in Asia** (Oxford: Clarendon Press, 1992), pp.125-41; V.Muntarbhorn, "Refugees and Asylum in Thailand: 1975-1989", **Thailand Yearbook of International and Comparative Law**, II(1994), pp.102-22.
3/ UNHCR press release, Bangkok, 1 July 2003.
4/ For press coverage, see: **The Nation**, 17 January 2004; **Bangkok Post**, 17 January 2004; **Bangkok Post** , 21 January 2004.
5/ Criminal Court judgement, 26 November 2002: black case number 6/2553; red case number 7/2545.(in Thai)
6/ Court of Appeal judgement, 30 September 2003: black case number 1668/2546; red case number 8630/2546. (in Thai).
7/ **The Nation**, 12 June 2003.
8/ **Bangkok Post**, 11 January 2004.
9/ **The Status of Refugees in Asia**, op.cit., p.132.
10/ "Refugees and Asylum in Thailand: 1975-1989",op.cit., p.109.
11/ The Sub-Committee on the Rights of the Child, The National Youth Commission, the Office of Welfare, Promotion, Protection and Empowerment of Vulnerable Groups, Ministry of Social Development and Human Security, **Thailand's Second Report on the Implementation of the Convention on the Rights of the Child submitted to the United Nations Committee on the Rights of the Child** (Bangkok: Ministry of Social Security and Human Security, 2003), pp.126-27.
12/ "Refugee and Asylum in Thailand: 1975-1989", op.cit., p.112.
13/ Ibid., pp.110-11.
14/ Criminal Court judgement, 26 November 2002, op.cit.
15/ **Thailand's Second Report on the Implementation of the Convention on the Rights of the Child submitted to the United Nations Committee on the Rights of the Child**, op.cit., pp.51-52.
16/ Ministry of Interior circular dated 26 May 2003.
17/ See further: P.Martin, **Thailand: Improving the Management of Foreign Workers** (Bangkok: International Labour Organization, 2003).
18/ **The Status of Refugees in Asia**, op.cit., pp.129-31.