

## **The Development of Democracy in Burma**

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**To the Senate Committee on Foreign Relations**  
**Subcommittee on East Asian and Pacific Affairs**

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I would like to thank Senator Richard Lugar and Senator Sam Brownback for organizing this hearing on the development of democracy in Burma. I would also like to thank the Senate for its overwhelming support for the people of Burma by passing the Burmese Freedom and Democracy Act of 2003.

Having worked with ethnic Burmese for more than 10 years, I am honored to offer testimony on behalf of *Refugees International (RI)*. Over the last eight months, *RI* has conducted two assessment missions focused on the human rights and humanitarian situation of Burmese ethnic minorities. My testimony will focus on two issues: first, the prevalence of rape by Burma's army against ethnic minority women in Burma; second, protection problems facing Burmese refugees before and after their flight to neighboring Thailand and Bangladesh.

### ***Part I: Rape of Ethnic Minority Women***

According to Burma's ruling military regime, the State Peace and Development Council (SPDC), Burma's army "safeguards national solidarity and peace." According to women and men from Burma's ethnic minority groups, particularly those living in the ethnic States along Burma's eastern and western borders, the army does the opposite. Rather than look to the army for protection, ethnic people flee in fear at the sight of a soldier. *Refugees International's* investigation on human rights violations against women and girls documented the widespread use of rape by Burma's soldiers to brutalize women from five different ethnic nationalities on Burma's eastern border. Additional informal research completed on *RI's* recent visit to the western border points to a similar pattern.

Although rape by soldiers in Burma has been a well-known, well-documented problem for at least a decade, a report by the Shan Women's Action Network (SWAN) and Shan Human Rights Foundation (SHRF), *License to Rape*, inspired an unprecedented level of international interest and outrage regarding the rapes of women from only one ethnic group. *RI's* research crossed ethnic boundaries to confirm that Burma's military frequently rapes women from various ethnic nationalities.

*RI* conducted interviews with individuals and focus groups of people living in refugee camps, in villages in Thailand and with people still living inside Burma. *RI* interviewed women, men, indigenous NGOs and local leaders about sexual violence committed by Burma's armed forces against women from the Karen, Karenni, Mon, Shan and Tavoyan ethnicities. In the course of 26 individual interviews with women and men and two focus

groups composed of 45 women, *RI* learned about numerous instances of rape against ethnic women: specifically, 43 cases of rape or attempted rape against women from these ethnic groups, with 23 of those confirmed through eyewitness testimony or physical evidence. In about one-third of the confirmed cases, the abuser raped the women on military property, and in over one-third of the confirmed cases, he was an officer in Burma's army. Rape happened in a variety of circumstances: during incarceration in military camps, during forced labor assignments, while foraging and farming and by intrusions into families' homes.

The specific rapes *RI* documented are but a fraction of those perpetrated by Burma's army. Every one of the 45 ethnic women who participated in the *RI* focus groups said she had heard about rapes occurring in her area of origin, and 75% said they knew someone who had been raped. It is clear that rape and increased militarization go hand-in-hand; when more soldiers are sent to an area, typically more rape occurs. It is significant that rape occurs on military property because even in those cases where the officer wasn't the one to commit the rape, he knew or should have known about it. In the vast majority of the cases, the rapes occurred in conjunction with other human rights abuses, such as forced labor, forced relocation, forced portering, torture, and extrajudicial executions. Furthermore, there is a direct connection between rape and migration. Many women flee Burma either because they have been raped, or because they fear being raped. Rape also occurs while women are in flight.

As an example of the dangers women face while trying to reach safety in Thailand, I want to share with you the story of Thay Yu. Thay Yu is a Karen mother in her forties who was fleeing to Thailand because of oppression by the military in her village. Near the border of Thailand, a group of six Burmese soldiers caught one of the families traveling with her. It was a family of four, composed of parents, a nursing baby and a six-year-old girl. Thay Yu hid in a nearby bush and while soldiers killed the baby with a blow to the back of the neck, then raped the mother while forcing the husband to watch. After killing the mother by stabbing her through her vagina with a bamboo pole, they shot the husband. The six-year-old daughter ran away and hid in a tree, where Thay Yu collected her and brought her to Thailand after burying the bodies of her parents. This gruesome story is one of many we documented. The treatment of ethnic minorities by SPDC soldiers is inhumane beyond description.

Widespread rape and human rights abuses against ethnic minorities are committed with impunity, both by officers and lower ranking soldiers. Officers committed the majority of rapes documented in which the rank of the perpetrator was known. The culture of impunity contributes to the military atmosphere in which rape is permissible. It also leads to the conclusion that the system for protecting civilians is faulty, which in turn suggests the rape is systematic. Due to the well-known impunity for rape, survivors and families are extremely reluctant to complain about rape. In the rare cases where victims or their families actually do complain to military officials, army personnel often respond with violence. In only two of the 43 cases *RI* documented were the perpetrators punished—these punishments were extremely lenient, such as the payment of 1000 Kyat or the equivalent of one US dollar.”

As an example of the impunity granted soldiers I want to share the story of Naw Mu Doh who told us she saw soldiers take her sister away from their home and transport her to their military camp. She heard her sister calling for her brother and father to help her because “they are raping me.” They could do nothing to help her. A day after her sister was taken, the soldiers brought her body back for the family to bury. Her wounds indicated clearly that she had been raped, perhaps to death. Despite the fact that the soldiers continued to return to their village after the murder, Naw Mu Doh and her family were too afraid to complain. One month later, her father was killed by the army.

According to *RI*'s conversations with more than 150 people along the Thai/Burmese border over the period of one month, *RI*'s research indicates that women from ethnic groups along Burma's eastern border experience rape at the hands of Burma's army on a consistent and frequent basis. Because the SPDC, and by extension, its army, view the ethnic minority groups as “insurgents,” their rape of ethnic women is a way of waging war on civilian populations. By engaging in the widespread practice of rape against ethnic minority women, Burma's army, (an arm of the State), is violating customary international law as well as both national laws and international obligations under multilateral treaties. These treaties include the Convention on the Elimination of All Forms of Discrimination Against Women, and the Convention on the Rights of the Child, both of which the SPDC has ratified. In doing so, the SPDC agreed not only to ensure that their activities did not contravene the letter or spirit of the treaty; they also agreed to take affirmative steps to realize the commitments enumerated in the treaty. By permitting—either actively or tacitly—Burma's army to rape ethnic women with impunity, the SPDC violates these agreements.

The SPDC has denounced reports about rape issued by ethnic women's and local human rights groups, the US Department of State and *RI*. They have conducted their own investigation in Shan State (with the active participation of SPDC general Khin Nyunt's wife), which has led them to conclude that such reports were fabricated. *RI*'s research tells a different story. These rapes are not a deviation committed by rebel soldiers; they are part of a pattern of brutal abuse designed to control, terrorize, and harm ethnic nationality populations through their women.

On November 19, 2002, the United Nations General Assembly adopted by consensus a resolution on the human rights situation in Burma, “express[ing] grave concern at... rapes and other forms of sexual violence carried out by members of the armed forces” and the “disproportionate suffering of members of ethnic minorities, women and children from such violations.” It is clear these abuses are directly linked to the internal war the SPDC is waging upon its own citizens. Until the violence ceases, and until the SPDC establishes and enforces adequate laws prohibiting rape and ends the culture of impunity for these horrific crimes, freedom from rape for ethnic women from Burma is impossible.

### **Recommendations**

For there to be any change, the SPDC must first acknowledge the epidemic of rape perpetrated by its army before this can change. *RI* further recommends that SPDC stop all military buildup and begin demilitarizing the ethnic areas promptly. The SPDC should further fulfill its obligations under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). This includes ceasing all practices and policies, which discriminate against women, including violence against women.

Furthermore, the SPDC should fulfill its obligations under the Convention on the Rights of the Child, which prohibits gender-based violence against girl children.

The UN High Commissioner for Human Rights should ensure that if any investigation of rape inside Burma should be conducted by UN officials, it is done by experts on sexual violence, with guarantees of full access and complete, ongoing security for all witnesses and victims. Any restrictions on these terms could endanger the very women the investigation is designed to protect and should result in the investigation not taking place, or being aborted.

The support of 33 US senators in signing a letter to Kofi Annan calling for an investigation into the rapes, as well as the US Department of State's own verification of the problem of rape in Burma, have demonstrated significant support. The US Congress, and in particular the Senate, can continue to play a leading role by publicizing human rights abuses committed by the regime and continuing to put pressure on the SPDC and the United Nations to meet the aforementioned objectives.

***Part II- Protection problems facing Burmese refugees before and after their flight to neighboring Thailand and Bangladesh.***

I would now like to focus this testimony on protection problems faced by Burmese refugees and internally displaced persons (IDPs) in ethnic minority areas. I have divided this testimony into two parts. Each part reviews the situation of ethnic Burmese before and after their flight to Thailand and to Bangladesh.

*RI* has interviewed refugees who have fled the eastern and western borders of Burma for reasons of abuse or because of a well-founded fear of persecution by the government from the following eight ethnic groups: Karen, Karenni, Shan, Mon, Tavoyan, Rohingya, Rakhaing and Chin. These groups represent Buddhist, Christian and Muslim individuals.

**Human Rights Situation in Eastern Burma prior to flight to Thailand:**

“They treated me like an animal, like a dog. They broke my head until blood streamed out. My jaw, cheeks and ribs were broken—the SPDC can do what they like—they can kill and rape. We are weaker than they.” These are the words of an older man from the Mon ethnic group whom we interviewed.

Refugees interviewed by *RI* in Thailand indicated they had fled from their homes because they could no longer endure the human rights abuses by the army. Among those consistently listed were forced labor, beatings and torture, forced relocation, rape, property and crop confiscation and summary execution. One Burmese army defector interviewed by *RI* described the instructions given to him by his superiors: “In the frontline, everything in the village of the ethnic groups is yours—women, domestic animals. You are free to do anything you want.... you can do so even if you have a wife at home in your village.”

Other forms of abuse consistently levied against ethnic Burmese fleeing to Thailand are a result of Burma's worsening economy and 50% inflation. These include forced labor, land confiscation, taxation, extortion and rice quotas that interfere with people's ability to provide for themselves.

Some of the most common forms of abuses occurring in eastern Burma are forced relocation and its attendant forced labor. Forced relocation involves the often-sudden evacuation or destruction of a village and forced move of all available villagers to a relocation site overseen by the army. Evacuated areas are considered "free fire zones" where individuals found there may be shot on site. Individuals are then moved to relocation sites, settlements devoid of basic infrastructure that hold ethnic people hostage to forced labor and abuse. Relocation sites have been likened to concentration camps. Since 1996, when the government began to implement a stronger counter-insurgency plan, 176 relocation sites have been documented, housing more than 350,000 people. An estimated additional 300,000 individuals have chosen to live on the run and in hiding, rather than move to these sites.

In total, it is estimated that there are one million internally displaced persons (IDPs) living in eastern Burma. Most are unable to plant and harvest. With practically no access to humanitarian assistance, reports of malnutrition, starvation and death from preventable diseases—to the extent any information is available at all—abound. Yet despite documentation of their existence and circumstances, no UN agency and no international NGO has come to the aid of this population. They have in effect been abandoned by the United Nations and by the international community. Only small covert efforts conducted over the border have been able to address some of the emergency needs of these populations.

The complete lack of security and access to fundamental goods and services, including healthcare and education, as well as the frequent subjection to violent human rights abuses, have caused many ethnic people from these areas to undergo the dangerous journey across militarized and mined areas to enter Thailand. Despite the risk of denial of entry at the border by some authorities—an act in violation of customary international law—Burmese continue to flee to neighboring countries at the rate of three to four thousand per month. Many do so only as a last resort, having heard that Thailand may deny them entry at the border, deny entrance into refugee camps or subject them to abuses as so called "illegal migrants." Despite Thailand's attempts to deter Burmese from entering, there continues to be an increase in asylum seekers over the past year suggesting that human rights abuses, if not increasing, are certainly continuing, as the military struggles for total control of ethnic areas.

### **Recommendations**

To address the needs of these forgotten people *RI* recommends that international organizations push for independent access to these IDPs for emergency assistance. To ensure that those fleeing human rights abuses or a well-founded fear of them can reach safety *RI* recommends that the Royal Thai Government allow Burmese fleeing a well-founded fear of persecution, not "fighting" as the current criteria define, entry into

Thailand and access to humanitarian assistance. The Royal Thai Government should also allow the UNHCR to carry out its refugee protection mandate, which it has been unable to implement appropriately.

The US Government can play a leading role in encouraging the cooperation of Thailand, Burma and the United Nations in meeting these objectives by confirming publicly the scope of Burma's IDP problem, advocating for humanitarian access to ethnic minority areas and providing resources for emergency assistance to affected populations.

### **Protection of Burmese Refugees in Thailand- The Role of the Royal Thai Government and the UNHCR**

Only a tiny fraction of Burmese who have entered Thailand since 1984, approximately 120,000 people, have been permitted to live in refugee camps. Burmese seeking refuge in Thailand, primarily ethnic minorities from eastern Burma, have had no access to a status determination process for almost two years, and thus, no access to refugee camps or protection and care. As a result, Burmese enter Thailand as part of the growing “illegal migrant” population. Their presence marks the largest migration flow in Southeast Asia, burdening neighboring Thailand with an estimated two million Burmese seeking either a safe haven from human rights abuses and persecution or the opportunity to survive and earn a living, or both. The Royal Thai Government classifies all Burmese now entering Thailand as “illegal migrants.” This misnomer leaves them vulnerable to exploitation and forced relocation back to Burma. Legitimate asylum seekers are forced to live in limbo on the margins of Thai society either along the border or in urban centers.

Life as an illegal migrant often exposes Burmese to abuse and exploitation. This is especially true for women who are trafficked or sexually exploited at the hands of Thai authorities. Vulnerable individuals such as single mothers, elderly, handicapped or the ill have little option but to live on construction sites, in fruit orchards, or to work as domestic help with limited or no access to healthcare or education for themselves or their children and practically no legal redress should they suffer abuses. Abuses by Thais against Burmese are common. In one recent incident in May, six “illegal migrants” were shot and burned with the involvement of Thai officials. To date, no one has been held accountable.

The Royal Thai Government has invited United Nations High Commissioner for Refugees (UNHCR) to have an extremely limited role in Thailand. This limits the UNHCR's ability to protect Burmese refugees from classic refugee rights violations such as *refoulement*, denial of entry at the border and unscreened deportations of Burmese who are not in camps, but have legitimate asylum claims. UNHCR has also been unable to advocate for guarantees that incoming Burmese be allowed to enter camps, leaving new arrivals unprotected. Third country resettlement is virtually non-existent, at the request of the Royal Thai Government.

An example of UNHCR's inability to protect legitimate refugees is reflected in the case of the Shan people. Since 1996, the Burmese army has forcibly relocated over 300,000 villagers in Shan State, resulting in a mass exodus to Thailand. Furthermore, the Burmese

army's use of forced relocation, forced labor and its accompanying human rights abuses including rape, have resulted in over 1,000 new Shan arrivals per month to only one district in Thailand. Credible estimates place the number of Shan refugee seekers in Thailand at well over 150,000. The Royal Thai Government, however, has not organized refugee camps for the Shan, and UNHCR has been unable to push for any protection or assistance for this group.

To make matters worse, rather than advocate for the Shan as legitimate refugees, UNHCR classifies Shan people and other non-camp based Burmese as illegal migrants without conducting any status determinations. Because there is no admissions process for them to undergo and no camps to house them, they have no choice but to live as illegal migrants. No schools are available for the children and health care is difficult to obtain. Shan women, many of whom have suffered from rape and other gender-based abuses, are particularly at risk of further exploitation. As one Shan refugee stated, "It is worse for the woman because she has no protection, and this is especially true if she has mental or physical problems; generally, there is more problem for her survival."

Interviews which I conducted while living in Thailand previously, with individuals who were forced back to Burma and subsequently escaped detention indicate that persecution is common not only for those accused of links to resistance groups (such as refugees) but those accused of having engaged in labor union activities in factories in Thailand. This makes it imperative that UNHCR have a presence at deportation sites so that individuals with legitimate claims of persecution if they are returned to Burma, can be entitled to certain basic protections in Thailand. It is critical that the distinction be made between those fleeing a well founded fear of persecution or human rights violations, including those violations that cause extreme poverty and people motivated only by economic opportunity in Thailand.

### **Recommendations**

In order to ensure the protection of Burmese in Thailand, *RI* recommends that the Royal Thai Government (RTG) establish a legitimate status determination process for Burmese "illegal migrants" and allow protection and assistance to Burmese fleeing a fear of persecution and human rights abuses. Burmese identified as fleeing a fear of persecution would be protected by international human rights principles and international customary law. This should also apply to the Shan people. Furthermore, it is also critical that Burmese about to be deported for being "illegal migrants" have the opportunity to make a claim for asylum as internationally accepted principles of non-*refoulement* would prescribe. The UNHCR should work with the Royal Thai Government to put in place a procedure to assess the eligibility of potential deportees for protection prior to their deportation.

The US Government can play a leading role in encouraging the cooperation of Thailand, and of the UNHCR in meeting these objectives. The US Government can also assist by providing resources for basic assistance to vulnerable non-camp- based populations.

### **Human Rights Situation in Western Burma—prior to flight to Bangladesh.**

On Burma's western border *RI* documented the flight of the Rohingya from northern Arakan State as a direct result of Burmese government policies. These policies deny them citizenship under the 1982 Citizenship Law, limit their religious practice, facilitate land confiscations for army camps or settlement by Buddhist settlers and prohibit them from leaving their villages. Restrictions on Freedom of movement limit their ability to access markets, employment, education and medical care. Unlike the Buddhist Rakhine who also live in Arakan state, or the ethnically dominant Burmans, the Rohingya must pay a significant fee in order to register for marriage or birth. As with most ethnic groups, *RI* interviewed Rohingya who were subject to persecution and human rights abuses for being accused of links with resistance groups. Such discrimination has contributed to a continuing influx of Rohingya into Bangladesh, estimated at more than 10,000 in 2002. This adds to the existing caseload of 21,000 "prima facie" Rohingya refugees and an estimated 200,000 unofficial Rohingya currently living in Bangladesh.

### **Protection of Burmese Refugees in Bangladesh- The role of the Government of Bangladesh and the UNHCR.**

Despite a clear record of discrimination by the Government of Burma against Muslim Rohingya, the UNHCR has stepped up repatriation efforts in an attempt to phase out its responsibilities to the 21,000 refugees residing in camps in Bangladesh. This group remains from the mass exodus of 250,000 Rohingya who sought refuge in Bangladesh in the early 90s. These refugees received "prima facie" refugee status, obliging UNHCR to protect and assist them. Refugees fleeing similar conditions following the mass repatriations in 1994 and 1995, however, were less fortunate, having been labeled economic migrants who have no legal right to UNHCR's protection and assistance. While conditions for Rohingya inside Burma have hardly changed in the last decade, what appears to have changed is UNHCR's policy towards Rohingya concerning rights to UNHCR protection and support. In less than two weeks, the UNHCR is planning to end its role in repatriations of Burmese Rohingya to Bangladesh. By the end of the year, they plan to phase out assistance with a final pull out anticipated by the end of next year.

By stepping up repatriation efforts and reducing assistance to refugees, UNHCR has created an environment in which protection for the Rohingya is virtually untenable. In the course of an assessment mission to Cox's Bazaar district in April, where Rohingya refugees live in camps and illegally among the local population, *RI* found clear evidence of attempts by camp officials to coerce refugees to return to Burma. Methods of coercion which refugees reported to *RI* include a reduction in certain basic entitlements, including food, withholding of medical services or pharmaceuticals, forced relocation within the camps to poorer housing, beatings, and, most commonly, threats of and actual jail sentences.

Mohammad, a father of six in his thirties, was asked to agree to repatriate by camp officials in the presence of UNHCR. When he dared to tell UNHCR he did not want to return, he alleges that the camp authorities later beat and tortured him until he fell unconscious. He was then sent to jail on false charges for more than two years. UNHCR, aware of his situation, was unable to help him. Now that Mohammad is out of jail, he faces the same predicament. Already the camp leader has threatened him with another jail

sentence if he does not agree to repatriate. “I have only two choices: I go to jail, or I go back to Burma. Going to jail is better than going to Burma,” he stated.

A local Government representative, concerned over UNHCR’s premature withdrawal from its repatriation role, has admitted that, “UNHCR’s decision to withdraw from the camps has caused us to try to speed up repatriations. The refugees who do not want to return cannot stay here. The Government will send them back even if they do not want to go. Bangladesh is a poor country and cannot take care of this situation.”

UNHCR has been unable to ensure that returns are voluntary. UNHCR has received dozens of reports of coercion from refugees and other concerned sources, but repatriations continue to scale up with no clear response to allegations of involuntary returns. Some refugees have chosen to leave the camps and live illegally in hiding in surrounding towns.

UNHCR claims that once it disengages from the repatriations, it still plans to perform its protection duties. UNHCR’s poor record monitoring repatriations to date, and the fact that by its own admission it is under-staffed, give cause for concern about the future of protection for the Rohingya. With responsibility for the camps being handed over to the Government of Bangladesh, it is unclear how UNHCR will be able to uphold its protection mandate.

UNHCR insists that refugees have the option of integrating into the community once it disengages. As a challenge to this assumption, however, one has only to look as far as the slum settlement of 4,000 in Teknaf. Government authorities evicted this group of illegal Rohingya from their homes in late 2002. They now live in horrendous conditions with mortality rates near emergency levels and no means of obtaining basic services and protection. As illegal immigrants they are not allowed to own land, have access to education and public health care, or enjoy the basic rights granted to citizens of Bangladesh. As one local authority stated, “Refugees cannot integrate with the local people. They will have to take care of everything for themselves. This is difficult in this region when you don’t own property.” Cox’s Bazaar is one of Bangladesh’s poorest and most depressed areas. Further “disengagement” of UNHCR from the Rohingya caseload amounts to disengagement from their legal obligation to provide assistance and protection to these refugees. The proposed phase out plan is likely to leave the Rohingya with limited redress for assistance or protection from *refoulement* or abuse by local authorities.

### **Recommendations**

In order to give these Rohingya the protection from non- *refoulement* that is their right, *RI*, recommends that the Government of Bangladesh honor the principle of *non-refoulement* and UNHCR continue its camp-based assistance and protection role. It is imperative that repatriation activities cease until an independent investigation has been conducted into the voluntary nature of repatriations. UNHCR must strengthen, not weaken its protection activities by increasing its presence in the camps and increasing expatriate staff who are not subject to local pressures. Donor governments should

continue to fund humanitarian and protection programs for the Rohingya. Meanwhile, the Office of the UN High Commissioner for Human Rights and independent human rights monitors should conduct an investigation into the discriminatory policies and human rights abuses of the Government of Burma against the Rohingya.

Thank you for the opportunity to share *RI*'s findings with the Subcommittee on East Asian and Pacific Affairs.