Issues in the Thai government's policies on the repatriation of refugees

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Recommended Citation
DOI: 10.58837/CHULA.ARV.28.1.2
Available at: https://digital.car.chula.ac.th/arv/vol28/iss1/3

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ABSTRACT—With the advent of reform in Myanmar, Thailand hopes to be able to repatriate the large number of displaced persons from Myanmar. However, a survey shows that most Myanmar displaced persons do not yet have enough confidence about their security after repatriation. This article sets out the conditions and framework under which planning for repatriation should proceed. A human rights approach is needed to protect the rights of refugees. At present, the human rights mechanisms within ASEAN are not strong enough, and ASEAN is reluctant to intervene in controversial bilateral issues. The key players are thus the respective governments and UNHCR. Local community organizations also need to be part of the discussion. Any repatriation plan must meet basic international legal standards and have the acquiescence of the refugees themselves.

Introduction

The Thai government has clearly preferred refugee repatriation as durable solution since Thai the refugee exodus from Indochina in 1975. Thailand had experience in repatriating large numbers of Indochinese refugees in the 1980s and Hmong in the late 2000s. The Thai government’s first choice is refugee repatriation to neighboring countries.

In recent years, the repatriation of displaced persons from Myanmar across the Thai-Myanmar border has been primary solutions imposed by the National Security Council (Operation Center for Displaced Persons 2013, 5). Since the negotiations began in 2012 for a cease-fire agreement between the Myanmar government and several ethnic armed groups, the Thai government has wished to implement the repatriation of Myanmar refugees to their homeland. Although the
environment has been confused, authorities in Thailand and Myanmar have initiated some steps to organize meetings to discuss a concrete repatriation plan.

A plan has been discussed to repatriate approximately 136,499 displaced persons living in nine temporary shelters along the Thai-Myanmar border in Mae Hong Son, Tak, Kanchanaburi, and Ratchaburi provinces (UNHCR 2014). In May 2014, a Commission comprised of government authorities from Thailand and Myanmar, with no UNHCR representative present, met in Mae Sot District, Tak Province to discuss the plan. In the following month, Thailand’s Internal Security Operations Command (ISOC), the Thai military unit involved in national security issues, hosted a three-day meeting in Mae Sot with invited representatives of NGOs and UNHCR, including the chiefs from the nine temporary shelters, to seek cooperation on repatriation (Naing 2014). The discussion ended with a decision to establish a Thai-Myanmar Joint Task Force to prepare a prior-repatriation process by addressing the requirement of livelihood improvement in Myanmar in the preliminary phase.

Simultaneously, in 2013, UNHCR and the Mae Fah Luang Foundation conducted a preliminary interview survey in all nine temporary shelters to find the demographic details of the refugees’ demographics and their livelihood preferences. The survey was intended to guide plans for capacity building, vocational training, and livelihood development. The “Profiling Project of Temporary Shelters along the Thai-Myanmar Border” reached an agreement with all the key parties concerned: the Karen Refugee Committee, representatives of nine temporary shelters, community-based organizations, and the Thai government (Mae Fah Luang Foundation 2013).

Although this exercise was intended to assure protection of the rights of displaced persons, the profiling exercise provoked fear over the possibility of safe return. Displaced persons in the temporary shelters have been frustrated with the Thai government’s attitude on the possibility of repatriation since 2012.

Improvements inside Myanmar with respect to the economy, politics, and human rights convinced many humanitarian organizations and the Thai government that a durable solution of repatriation for the long-term displaced persons in Thailand was possible. The Thai government reached some agreement on a repatriation plan after long
decades of continuing political conflict between the Myanmar army and ethnic rebel groups.

However, human rights groups have been greatly concerned with the details of the repatriation plan (Corben 2014). Despite the signing of a ceasefire agreement, several violent clashes in ethnic-controlled regions have continued to propel local residents to seek refuge in Thailand. In October 2014, 280 Karen displaced persons with Burmese nationality were forced to flee their homes after a clash between the government military and the Democratic Karen Benevolent Army at the border site of Tha Song Yang sub-district in Myanmar and Mae Sot district in Tak Province in Thailand (Post Today 2014). Many reports from UN agencies and local NGO sources at the border depicted major obstacles for safe return such as landmines, continued armed conflicts in border areas in southeastern Myanmar, inadequate infrastructure, and no planning for livelihoods (Naing 2014).

As the ASEAN Community will be launched at the end of 2015, and Myanmar is Chair of ASEAN in 2014, the question has been raised whether improvement in the internal political conflict in Myanmar will help to achieve the politico-security aspect of regional cooperation, one of the three pillars of the ASEAN Community, and whether political security inside Myanmar is adequate to give the refugees some confidence in voluntary repatriation as a durable solution.

This article is based on a review of current literature and on an interview survey of 135 displaced persons living in three temporary shelters in Mae La in Tak Province and Mae La Ma Luang and Mae La Oon in Mae Hong Son Province. Data on the displaced persons’ perspectives on repatriation was collected through in-depth, semi-structured interviews with fifteen individuals and through focus group discussions. All interviews were conducted in the respondents’ own languages through interpreters.

Thai policy on refugee repatriation

Thailand’s policy on refugee repatriation dates back to the early 1960s when 35,000 Vietnamese refugees were repatriated to North Vietnam. These Vietnamese refugees were categorized into four groups based on the timing of their departure in 1785, 1820s, 1830s and 1912 respectively. Their arrival pre-dated the Vietnam War (Hynd
2014). However, the repatriation process was disrupted when the Gulf of Tonkin incident brought the US into the Vietnam War in 1964 (Greenspan 2014). After the end of the Vietnam War, Thailand was regarded as a sanctuary for Indochinese refugees. The number of refugees from Indochina continued to increase from 75,000 in 1975 to over 652,000 in the 1980s. These figures do not include another quarter million Cambodian displaced persons. Thai policy was to disperse these refugees through resettlement and relocation schemes. However, the decline of resettlement rates for all groups of refugees since the early 1980s has put pressure on Thailand to pursue repatriation as an alternative.

Refugee policy is framed by the concept of state sovereignty and the national security paradigm. Thailand is not a signatory to the 1951 Refugee Convention nor its 1967 Protocol Relating to the Status of Refugees, and hence UNHCR is not in a position to promote voluntary repatriation. The Thai government’s actions on refugee issues have generally come in reaction to international humanitarian intervention rather than as a proactive policy. Under the Immigration Act, refugees are categorized as displaced persons and have not been allowed to seek asylum. They have been expected to return home voluntarily at some point (Vungsiriphisal, Chusri, and Chantavancih 2014).

Thailand wants to send refugees home as soon as possible, and has considered repatriation since 1995. However, voluntary return has been hindered by issues of political stability and security in Myanmar (Lang 2001). Political change in Myanmar has improved the prospects for a durable solution on refugee repatriation. However, there is still concern over political security and the livelihoods of returnees (Human Rights Watch 2012). As a result, no concrete repatriation plan has been agreed (Ditton 2012).

International concern over Thailand’s policy on combating human trafficking has also become a factor. Thailand has been accused of taking insufficient action to combat human trafficking, forced labor, child labor, and sexual exploitation. The United States downgraded the country to its lowest rating on actions against human trafficking. This has resulted in stricter immigration controls at borders which previously were porous. People in temporary shelters at the borders have been suspected of involvement in human trafficking and smuggling. People in the camps have been refused permission from authorities
to move outside the temporary shelters. Authorities have conducted investigations of the real number of displaced persons in the shelters, imposed more restrictive measures for entry and exit from shelters, and planned to close the temporary shelters in the future. These actions have provoked some tensions among displaced persons about the possibility they will be repatriated (Frelick 2014).

These tensions rose when General Prayuth Chan-o-cha told Senior General Min Aung Hlaing, Commander-in-Chief of the Myanmar Army, that a repatriation plan should be drawn up while Myanmar held the chair of ASEAN in 2014. However, this attempt to manipulate policy within the framework of ASEAN runs counter to the grouping’s principle of non-intervention in the internal disputes of its member countries. This principle is embedded in the concept of the “ASEAN way”, as described by Davis Capie and Paul Evans (2003) as “a cautious attitude towards formal institutionalization, principle of inclusiveness, particular use of consensus and the non-interference of internal affairs of member states.” ASEAN thus ignored General Prayuth’s suggestion. Thailand has to deal with Myanmar bilaterally on the issues of refugees and the associated problems of drug and human trafficking. A series of bilateral meetings led to the creation of working groups, a joint border commission and commitments to refugee resolution through peaceful talks. But it is questionable whether this diplomatic approach will result in a comprehensive and long-term plan.

The Thai government’s policy toward refugees has been framed within the paradigm of national security, and hence has emphasized control rather than rights and protection (Cheung 2011). The population in the nine temporary shelters suffer restrictions on their rights to livelihood and their freedom of movement. They have limited access to education, and are not allowed to undertake any income-generating employment.

Voluntary repatriation: need for a practical model

Voluntary repatriation is not covered by the 1951 Convention Relating to the Refugee Status, but is subject to the principle of non-refoulement (UNHCR 2006). In the international legal framework, “voluntariness” requires an agreement signed by the refugees involved. The principle of voluntary repatriation appeared in the 1969 OAU
Convention Governing the Specific Aspects of Refugee Problems in Africa. In this document, any scheme of voluntary repatriation had to take account of both “conditions in the country of origin” and “the situation in the country of asylum” (UNHCR 2006). The refugee’s decision to be repatriated had to be voluntary (UNHCR 2006). Any scheme must fulfill the condition that repatriation is achieved with safety, dignity and security.

Recent political and economic improvements in Myanmar have created a demand for labor. Surveys conducted by the Asian Research Center for Migration (ARCM) and International Organization for Migration (IOM) found that most refugees desire to return to Myanmar in the near future (IOM and ARCM 2013). However, the survey reported in this article showed that most are still reluctant to be repatriated in the near future. The principal reason for this reluctance is security. In the survey of displaced persons living in three temporary shelters, 92.5 percent were concerned over the safety of their lives and property (see Figure 1). With their long experiences of displacement and human rights violations, they do not trust the Myanmar government’s actions towards ethnic groups.

Figure 1: Reasons for Not Returning

<table>
<thead>
<tr>
<th>Reason</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>prefer to apply to resettlement country</td>
<td>100.0</td>
</tr>
<tr>
<td>safety</td>
<td>92.5</td>
</tr>
<tr>
<td>don’t know where to live</td>
<td>3.8</td>
</tr>
<tr>
<td>unclear mandate for assistant</td>
<td>0.8</td>
</tr>
<tr>
<td>others</td>
<td>5.3</td>
</tr>
</tbody>
</table>

Source: Author’s survey.

To prepare for a safe return requires actions both in the country of asylum and country of origin. The community based organizations
which represent Karen refugees and displaced persons along the border have laid out conditions which the Myanmar government must fulfill before repatriation (Karen Community Based Organization 2012; Burma Partnership and Burma Link 2015). These conditions include a political settlement, enforcement of a ceasefire, guarantees of safety, clearance of landmines, abolition of oppressive laws against refugees and returnees, availability of healthcare and education, and access to land. They also want a mechanism for monitoring the return by local and international key actors.

Under the principle of non-refoulement, the country of asylum must not return refugees into a situation that may be life-threatening, but must provide asylum under international standards in coordination with UNHCR (UNHCR 2006). However, UNHCR's role has been limited to screening the admission of refugees, subject to the approval of the Thai government. The delivery of aid and protection to refugees has been restricted by government policy. In particular, the refugees have been confined to shelters and are not allowed to move around in search of employment or higher education.

The Myanmar government has not given any attention to the practicalities of safe return. UNHCR is aware that the major factor threatening safe return is the political conflict in Myanmar. UNHCR has thus promoted national, regional and international cooperation to resolve the political conflict. UNHCR has also promoted measures to make refugees feel more confident about voluntary repatriation. The UNHCR Handbook on Voluntary Repatriation (UNHCR 2006) offers guidelines for the various parties involved, shown below in an appendix.

The possibility of safe return is dependent on many actions. In particular, training and education are needed to provide refugees with the potential to achieve a sustainable livelihood after return. In the temporary shelters, many local NGOs and aid agencies provide vocational and educational support through a wide array of courses on such subjects as electronics, mechanics, carpentry, hairdressing, cooking, and small-scale agricultural activities. However, access to these services is being limited due to decreasing resources and dwindling funding for programs in Thailand.

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Myanmar government’s involvement in repatriation

Since the election at the end of 2011, the quasi-civilian regime under Prime Minister Thein Sein has achieved some international approval. Most sanctions applied by Western countries have been dropped. However, the pro-democracy opposition leader Aung San Suu Kyi expressed her frustration prior to the attendance of President Barack Obama at the 25th ASEAN Summit in Naypyitaw: “There have been times when the United States government has seemed over-optimistic about the reform process. This reform process started stalling early last year” (AFP-Reuters 2014). The Myanmar government has been accused of disrespecting human rights, discriminating against representatives of ethnic groups in parliament, imprisoning several high-profile journalists, confining human rights activists, and opposing amendments to the constitution to reduce the military’s role in politics. According to the Border Consortium, the military is still fighting with ethnic armed groups over resources and commercial development.

In this situation, the possibility of repatriation still seems remote. The issue of repatriation has not been high on the agenda of ASEAN foreign ministries. As argued by Kavi (2001, as cited in Jones 2007), the Myanmar government wishes to treat repatriation as an internal issue free of any external interference.

For almost three decades, since 1991, Thailand has urged ASEAN to adopt a policy of “constructive engagement” with Myanmar (Masilamani and Peterson 2014). Thailand has always had official relations with Myanmar due to their common border and historical ties (Kavi 2001, cited in Jones 2007), but other ASEAN member countries originally had very limited relations with Myanmar. Since the mid-1970s, Malaysia and Indonesia have had relations with Myanmar over refugee affairs because of the exodus of Rohingyas from Rakhine State following human rights violations by the military junta (Kaur 2007). After the end of the Cold War, ASEAN created the ASEAN Regional Forum (ARF) as a new regional security framework (Masilamani and Peterson 2014). Since Myanmar joined ASEAN in 1997, relations between Myanmar and other ASEAN members and dialogue partners have increased (Miller and Denmark 2014). Myanmar’s role as Chair of ASEAN reflects the country’s progress towards democ-
ratization. However, Myanmar’s foreign policy in both regional and global spheres is still seen as captive to its domestic politics (Miller and Denmark 2014; Clapp 2014; Caballero-Anthony 2014; Pedersen 2014).

In March 2013, the Karen Refugee Committee made proposals for a nationwide ceasefire, termination of political conflicts, and respect for international standards of human rights (Karen News, March, 2013). The Karen Refugee Committee stated that repatriation of refugees was only possible after the establishment of a genuine peace between the Myanmar government and the Karen National Union, and that all refugees should return home at the same time without a “repatriation pilot project,” as suggested by the Myanmar government (Saw Khar Su Nyar 2013).

Although there is more professionalism in Myanmar’s foreign policy, no genuine and lasting peace with the ethnic minorities has yet been achieved and this clouds Myanmar’s foreign relations (Clapp 2014, 21). The Myanmar government has not given any priority to the issue of repatriation, which hence remains a remote possibility.

**International monitoring of refugee protection**

For several decades, international humanitarian organizations, such as UNHCR, International Organization for Migration (IOM), European Union, and civil society organizations have developed plans for displaced persons living along the Thai-Myanmar border. They hold to the principle that the only sustainable solution is “voluntary repatriation in safety and dignity” under the condition that “the causes of fighting have been definitively and permanently removed” (UNHCR 1993, 104). They have pushed for better asylum and refugee protection through national dialogue mechanisms, information sharing, and capacity building. However, they have faced limitations in monitoring the protection of refugee rights, in advocating policy changes, and in improving access to services and assistance for displaced persons in the temporary shelters.

Prolonged exile has a significant negative impact on the dignity, security, and economic and social well-being of displaced persons. They are denied the opportunity to make a meaningful contribution to society. As argued by Milner (2011) and Betts (2009), one of the
major challenges in resolving the protracted refugee situation is simply achieving international agreement. In December 2009, the Executive Committee of the office of UNHCR adopted a set of conclusions about protracted refugee situations, known as the Executive Committee Conclusions (UNHCR 2008a). These represent a broad expression of consensus on the principles of international protection but they are not legally binding (Milner and Loescher 2011). A broader mechanism is needed to engage other actors both inside and outside the UN system. The UN Peace Building Commission and the One UN development initiative may be relevant to this process (Milner and Loescher 2011).

ASEAN diplomacy: Conflict resolution in Myanmar and refugees


Why have interventions to resolve the conflict resolution in Myanmar not been more effective? These efforts have been limited to advocacy with the government. The results have yielded no improvement of policies for refugee protection and no scheme for repatriation. This is partially because there is no institutional frameworks (Refugee Council of Australia 2011). The ASEAN Intergovernmental Commission on Human Rights has a role to promote human rights norms and practices among member states, but ASEAN has no power to make states comply (Narine 2012). In the area of regional cooperation, ASEAN sticks to its conventions of non-interference, consensus building, informality, and inclusivity (Capie and Evans 2003). ASEAN prefers informal mechanisms and bilateral engagements, for fear that any formal process will cause conflict among member states (Amer 1999).

Some advocate legal approaches to address human rights violations in Myanmar, which would imply setting up a regional human rights court with the ability to issue binding judgments on member states.
(Arendshorst 2009, 120). However, the implementation of human rights in the region has been extremely difficult and it is unlikely that ASEAN will enlarge its machinery for protecting human rights. This is challenging issue for finding common ground among ASEAN nations due to the diversity in their histories, regime types, stances on human rights, and law enforcement mechanisms (Arendshorst 2009). The ASEAN-European Union relationship may provide support for strengthening the network of judicial institutions and personnel in ASEAN, and possibly lead in future to a ASEAN Human Rights Convention (Muntarbhorn 2012, 19).

Some critics allege that Myanmar is an obstruction to the establishment of a security community in Southeast Asia (Roberts 2010). ASEAN has not been able to influence the issue of repatriating refugees.

Conclusion

Most host states including Thailand want to return refugees to the country of origin as soon as possible. An agreement is needed among regional stakeholders to ensure that legal standards are upheld in the treatment of refugees, including repatriation.

Any voluntary repatriation of refugees must comply with the fundamental principle of non-refoulement. Displaced persons should not be repatriated by force. UNHCR and the Thai government should work closely to ensure that each refugee can make his or her own decision on repatriation.

Currently, Myanmar refugees in Thailand are not willing to be repatriated because of the political situation in Myanmar. Therefore, they should be provided with adequate assistance as long as they remain in the temporary shelters.

Local community-based organizations should be involved in any planning for repatriation planning to guarantee all that the processes meets basic standards of protection. The UN Refugee Convention and other international conventions can provide the framework for addressing short-term issues as well as a comprehensive solution.
Notes

1. The National Security Council has implemented eight measures for dealing with people fleeing from fighting in Myanmar as follows: 1. repatriation, 2. controlling (maintaining order, reducing/removal of the area, arm searching, drugs, and running away from the areas), 3. intelligence, 4. humanitarian assistance. 5. action for the new incomers (categories sorting). 6. resettlement in the third country (only for humanitarian reason). 7. public relations and psychological operations, and 8. renovation of temporary shelters.

2. The survey was conducted in October-November 2012 as part of a research project on ‘Alternatives of Durable Solutions for Refugees from Myanmar in Thailand: Policies for Repatriation and Resettlement Programmes’, a thesis submitted in partial fulfillment of the requirements for the Doctor of Philosophy degree in International Thai Studies Programme, Faculty of Arts, Chulalongkorn University, Academic Year 2013.

3. In December 2009, the Executive Committee (ExCom) of the Office of the UNHCR adopted an ExCom Conclusion on protracted refugee situations. This is a potentially significant development and reflects increasing international interest in one of the most complex and difficult humanitarian problems confronting the international community.

4. Myanmar is not a party to the Rome Statute. The International Criminal Court (ICC) has jurisdiction only over nationals of a state party or over crimes committed within the territory of a state party. However, the ICC also may exercise jurisdiction in cases referred to the court by the United Nations Security Council. This may eventually apply to the case of Myanmar.

Appendix: Roles and Responsibilities in Repatriation

Country of Asylum

- Principle of non-refoulement
- International standard
- International protection function
- Coordination with UNHCR
- Promotion of voluntary repatriation as durable solution
- Facilitation with UNHCR and country of origin
- Assessment condition of repatriation

Country of Origin

- Return in safety and dignity
- Fulfillment of guarantees, amnesties and assurances
• Facilitation UNHCR's role in voluntary repatriation
• Documentation for return
• Nationality concern
• Conditions conducive for return and reintegration
• Monitoring refugee for return

UNHCR
• Promotion of solution/repatriation and facilitation
• Profile of the refugee community and of the country of origin: culture, tradition, desirability for return, socio-economic background, population
• Organized and spontaneous return
• Cross-border coordination
• Promotion of development in the origin area of refugees: political, security/military situation, humanitarian law and order, attitude of local population, return of internally displaced persons, pattern of refugee flow
• Political development in Myanmar and formal consultation between Myanmar and Thailand
• Repatriation negotiation and agreement
• New arrival
• Residual caseload

In the Country of Origin
• Returnee monitoring
• Amnesty and guarantees, monitoring, reporting, intervening
• Internally displaced persons
• Reintegration
• Absorption capacity
  - Infrastructure improvement, military/paramilitary in the returnee areas
  - Internal displacement
  - Sustainable agricultural land
  - Landmines
• Evaluation of financial support
References

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