

**THE STATE OF EXCEPTION OF THAI LAW FOR REFUGEES
FROM BURMA IN TEMPORARY SHELTERS IN THAILAND**



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**A THESIS SUBMITTED IN PARTIAL FULFILLMENT
OF THE REQUIREMENTS FOR
THE DEGREE OF MASTER OF ARTS (HUMAN RIGHTS)
FACULTY OF GRADUATE STUDIES
MAHIDOL UNIVERSITY
2010**

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Thesis
entitled
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was submitted to the Faculty of Graduate Studies, Mahidol University
for the degree of Master of Arts (Human Rights)

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ACKNOWLEDGEMENTS

First of all, I would like to express my sincere thanks to my advisors, Dr. Mike Hayes and Assoc. Prof. Dr. Decha Sangkawan, for their patient and support of this research. I would also like to thank Dr. Sriprapha Petcharamesree and Dr. Yukiko, who provided critical guidance during the initial stage of this research and in the development of thesis proposal.

My deep appreciation to staff of the Office of Human Rights Studies and Social Development, Faculty of Graduate Studies, Mahidol University, who always assisted me.

My whole hearted thanks to staff of the United Nations High Commissioner for Refugees, Regional Office in Thailand and Field Offices as well as staff of international and local non-governmental organizations especially the International Rescue Committee for providing information on the situation of refugees from Burma in temporary shelters. I would also like to thank camp commanders and Thai authorities especially the Ministry of Justice and the Office of Royal Thai Police, who provided their sincere analysis of the situation related to the administration of justice in temporary shelters.

I wish to express my sincere appreciation and admiration to the leadership of refugees from Burma in temporary shelters for their relentless effort to make the lives of their fellows as good as possible given all constraints that they have been facing. I would like to thank refugees whose stories were shared with me and I wish to share my encouragement to all refugees in sustaining their hope for a better life to come soon.

Last but not least, I would like to thank Veerawit Tianchainan for introducing me to study M.A. in Human Rights at Mahidol University as well as his encouragement and continuing support that helped me completed this research.

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ABSTRACT

The application of Thai laws is generally limited in the temporary shelters along the Thai-Burma border where refugees from Burma are residing. The limited application of Thai laws is the practical demonstration of the concept of the state of exception. Unlike the Western concept of the state of exception where there is a total exception of laws, as shown in the cases of Nazi camps or Guantanamo Bay Naval Base, the concept of the state of exception in Thailand demonstrates a sense of 'de facto' state of exception. This state of exception results from a blanket policy from the Royal Thai Government in which the application of and access to Thai laws for refugees from Burma are generally excepted. If and only if the UN High Commissioner for Refugees intervenes in cases, can the application and access to Thai laws then be negotiated. This situation of de facto state of exception of Thai laws for refugees from Burma in the temporary shelters revealed a secondary violation of human rights while seeking asylum in the host country. The right to access the Thai justice system is categorically denied. The consequences of the exception of Thai laws, demonstrated by cases of refugees from Burma in which the state of exception was applied, implicated the violations of their fundamental rights to life, safety, and security of refugees from Burma.

**KEY WORDS: REFUGEES/ HUMAN RIGHTS/ STATE OF EXCEPTION/
REFUGEE CAMP/ BURMA/ THAILAND**

130 pages

สภาวะการถูกยกเว้นจากกฎหมายไทยที่เกิดขึ้นกับผู้ลี้ภัยจากประเทศพม่าที่อาศัยอยู่ในพื้นที่พักพิงชั่วคราวในประเทศไทย

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บทคัดย่อ

กฎหมายไทยโดยทั่วไปถูกยกเว้นการบังคับใช้ภายในพื้นที่พักพิงชั่วคราวตามแนวชายแดนไทย-พม่า ซึ่งมีผู้ลี้ภัยหรือผู้หนีภัยการสู้รบจากประเทศพม่าอาศัยอยู่ ในสภาวะการณ์ดังกล่าวผู้ลี้ภัยไม่ว่าจะเป็นผู้กระทำความผิดหรือเป็นผู้ถูกละเมิด จะถูกยกเว้นจากการลงโทษหรือการได้รับการคุ้มครองตามกฎหมายไทย อย่างไรก็ตาม สภาวะของการถูกยกเว้นจากกฎหมายที่เกิดขึ้นกับผู้ลี้ภัยในประเทศไทยนั้น แตกต่างจากการถูกยกเว้นจากกฎหมายตามแนวคิดตะวันตก ซึ่งหมายถึงการถูกยกเว้นจากกฎหมายแบบสมบูรณ์ กล่าวคือ เป็นการถูกยกเว้นทั้งในทางกฎหมายและในทางปฏิบัติ ดังตัวอย่างที่เกิดขึ้นในกรณีของคนที่อยู่ในค่ายกักกันนาซี หรือกรณีคนที่ถูกคุมขังอยู่ในฐานทัพเรือที่อ่าวกวานตานาโม ทั้งนี้ แนวคิดการถูกยกเว้นจากกฎหมายที่เกิดขึ้นในประเทศไทยนั้น มีลักษณะของการถูกยกเว้นตามข้อเท็จจริงหรือถูกยกเว้นในทางปฏิบัติเท่านั้น มิได้เป็นการถูกยกเว้นโดยข้อกฎหมายแต่อย่างใด โดยสภาวะของการถูกยกเว้นจากกฎหมายไทยที่เกิดขึ้นกับผู้ลี้ภัยที่อยู่ในพื้นที่พักพิงชั่วคราวดังกล่าว เป็นผลจากการที่รัฐไทยได้วางนโยบายครอบคลุมการทำงานของหน่วยงานต่างๆ ของรัฐไว้ ในการที่จะยกเว้นการบังคับใช้กฎหมาย ซึ่งมักหมายถึงการยกเว้นไม่ให้ผู้ลี้ภัยมีสิทธิเข้าถึงกระบวนการยุติธรรมตามกฎหมายไทย การที่กฎหมายไทยจะถูกนำมาบังคับใช้ได้นั้น จะมีก็แต่ในกรณีที่สำนักงานข้าหลวงใหญ่ผู้ลี้ภัยแห่งสหประชาชาติเข้ามาแทรกแซงและขอเจรจาเป็นกรณีๆ ไปเท่านั้น จึงจะทำให้ผู้ลี้ภัยสามารถเข้าถึงกระบวนการยุติธรรมของไทยได้ สถานการณ์ของการถูกยกเว้นไม่ให้มีโอกาสเข้าถึงกระบวนการยุติธรรมตามกฎหมายไทยเช่นนี้ ส่งผลให้ผู้ลี้ภัยไม่ได้รับการคุ้มครองเมื่อถูกละเมิดสิทธิมนุษยชน ภายหลังจากที่หนีออกจากประเทศต้นทางและเข้ามาลี้ภัยในประเทศไทย ดังนั้น จึงสรุปได้ว่าผลที่เกิดจากการที่ผู้ลี้ภัยจากประเทศพม่าตกอยู่ในสภาวะที่ถูกยกเว้นจากกฎหมายไทย ก็คือการที่ผู้ลี้ภัยเหล่านี้ต้องสูญเสียที่จะตกเป็นเหยื่อของการถูกละเมิดสิทธิขั้นพื้นฐาน เช่น สิทธิในชีวิต ความปลอดภัย และความมั่นคงของชีวิตร่างกาย

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CHAPTER I

INTRODUCTION

The United Nations High Commissioner for Refugees (UNHCR) reported that approximately 140,000 refugees from Burma are currently living in temporary shelters in Thailand (UNHCR, 2007).¹ These refugees from Burma² have been encamped in temporary shelters along Thai-Burma border for over 20 years. These refugees fled from persecution and various forms of grave human rights violations in Burma (Hazel, 2002: 11). According to Hazel, upon arriving in Thailand, they encountered with two contrasting feelings. On the one hand, they felt safe and secured from life-threatening they had been running away inside Burma (Hazel, 2002: 78-79). On the other hand, they faced with different forms of human rights violations in temporary shelter in Thailand e.g. long-term encampment; no freedom to study, work and travel (BBC, 2004: 7).

At the outset, the refugees from Burma were denied their recognition as “refugee” by Thai Government (Hazel, 2002: 92). Thailand is not a state-party to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol and Thailand also made reservations on all refugee-related stipulations in other international human rights standards that it ratified (Huguet and Punpuing, 2005: 7). Instead of calling the

¹ In Thailand, refugees do not have legal status, as Thailand is not a state party to the 1951 Refugee Convention and its 1967 Protocol. Therefore, the Thai Ministry of Interior has formally replaced the word *refugee* with the term “*people fleeing from fighting*” and uses the phrase “*temporary shelter*” instead of *refugee camp*. However, this research uses the words *refugee* and *temporary shelter* throughout.

² On 18 June 1989, the military junta passed the ‘Adaptation of Expressions Law’ that officially changed the English version of the country’s name from *Burma* to *Myanmar*, and changed the English versions of many place names in the country along with it, such as its former capital city from *Rangoon* to *Yangon*. The renaming proved to be politically controversial. Opposition groups continue to use the name “Burman,” since they do not recognize the legitimacy of the ruling military government nor its authority to rename the country in English. This name change was recognized by the United Nations, China, India, Singapore, Thailand, Laos, Vietnam, Bangladesh, ASEAN, and Russia. However, it was not recognized by many western governments such as the United States, Australia, Canada or the United Kingdom, which continue to use “Burma,” while the European Unions uses “Burma/Myanmar” as an alternative. This research uses the term “Burma” throughout.

refugees from Burma as refugees, according to the Ministry of Interior of Thailand, Thai government invented an alternative term: “people fleeing from fighting”. This term could be interpreted as Thailand’s intention to avoid its implied obligation to international legal status as well as human rights for refugees. Similarly, refugee camps are alternatively called as temporary shelters.

The status of refugees in Thailand is “illegal immigrant” (Vitit, n.d.: 7). They are allowed by the use of executive power to stay in Thailand temporarily and they are subject to arrest and deportation as soon as they leave temporary shelters without official permission. Thai government has not referred to any existing stipulations, such as, immigration law, in allowing refugees to temporarily staying in Thailand legally. Inasmuch as refugees are unlawfully living in the country, the temporary shelters are also unlawful. The responsible agencies, namely, the Ministry of Interior and the Royal Thai Army, established temporary shelters without having lawful authority. Most of temporary shelters are situated in restricted forest reserve areas protected by national forest reservation laws and the Department of Forestry has filed charges against the Ministry of Interior for unauthorized usage of forest reserved areas in establishing temporary shelters.³ Overall, the refugees are unlawfully staying in the country; in unlawful areas.

The unlawfulness that refugees in Thailand are living in - as outsiders yet also being under Thai sovereignty – can be considered a tacit expression of, as defined by Giorgio Agamben (2005), “the state of exception”—the exception of Thai laws and international human rights laws—applied by Thai government. The refugees in temporary shelters are not recognized as citizens or lawful non-citizens of Thailand. In order to avoid international obligation to refugees on its territory the Thai government selectively invented the term “Displaced Persons Fleeing from Fighting” to replace what is an internationally recognized group of people as “Refugees”. Being a displaced persons fleeing from fighting, the refugees are merely recognized by the Thai government as illegal immigrants allowed in Thailand temporarily pending deportation. By so doing, the Thai government deprived the rights guaranteed by

³ National Park Act B.E. 2504 (1961) and National Forest Reserve Act B.E. 2507 (1964).

international human rights laws and Thai laws by claiming national security reason to control illegal immigrants on its territory. The exclusion clauses in the international human rights laws and Thai laws legally allowed Thai government to exercise its policy to except refugees from their legal rights. For this very reason, Thai government arguably made the exception of the application of Thai laws to the refugees in temporary shelters. Moreover, Thai government arguably also made the exception of international human rights laws for the refugees in temporary shelters.

This problematic issue is evidenced as noted in the key targets of the UNHCR Global Appeal 2008-2009 related to Thailand: “the administration of justice in the camps is improved, and refugees and asylum-seekers have fair and efficient access to judicial and legal remedies”. This is the central theme and focus on this thesis. To demonstrate the state of exception of Thai laws and international human rights laws, this thesis chooses to focus on the authority and the limit of criminal law in its application or non-application to refugees in Thailand. Focusing on this fundamental right is a clear illustration of how a person could be categorically excepted for the most fundamental rights of all, namely, right to life, safety and security of person.

Like in any other situation where thousands of people living together, there are conflicts among the members of the community as well as between the members of the community against others. The conflicts in the temporary shelters in Thailand range from minor crimes such as petty theft, quarrel and minor physical assault to serious crimes such as rape, serious physical assault and murder. The parties of the conflicts usually involve the refugees themselves but there are cases that involve Thai authorities and/or Thai citizens either as the perpetrators or the victims.

Similar to other states, Thailand has its own Penal Code and Criminal Procedural Code to prosecute and to punish the perpetrator of the crime and to protect and to provide remedy for the damage occurred to the victim of the crime. The Penal Code and Criminal Procedural Code have jurisdiction over everyone whether they are Thai citizens or foreigners on the Thai territory. As a consequence, all refugees living

in the temporary shelters in Thai territory are theoretically under the jurisdiction of Thai Penal Code and Criminal Procedural Code.

Nonetheless, the refugees in Thailand experience limited access to Thai criminal justice system. Physical limitations to access Thai justice and systematic procedural obstructions make the case of the exception of Law practical and plausible. While the refugees are not allowed to leave the camp premise without an authorization from the state authority, the only way for the refugee to access Thai justice system is by leaving the camp and reporting their case to the police who are designated as the authority to investigate and process the prosecution of the case according to the criminal procedure. This is in practice, or in fact, implausible as it would mean the refugee would be illegally leaving the camp premise and could be charged for illegal entry into the Kingdom and faced with deportation.

Whether the crimes occurred between refugee and refugee or between refugee and a Thai, the parties of the crimes encountered barriers for accessing the Thai criminal procedure. While the victim of the crime does not receive protection and remedy for the damage, the perpetrator of the crime is neither prosecuted nor punished. The culture of impunity in Thai criminal law is observed as a widespread social phenomenon in the refugee camps. This social phenomenon reveals the state of exception of Thai criminal law in the temporary shelters in Thailand.

Taking advantage of this vacuum in Thai law which represents the state of exception of Thai laws, justice has been administered within the temporary shelters (where the perpetrators are refugees) by the refugee leadership, known as camp committees. The traditional justice “systems” set up by the camp committees apply procedures, penalties and remedies that are neither in conformity with Thai law nor with international human rights standards. In addition, the refugees’ justice systems are highly politicized and are by no means impartial, given that they are administered by camp committees that are themselves politicized and directly linked with the political/military ethnic factions that exercise social and political control over the camps, for example, the KNU in the Karen temporary shelters and KNPP in the Karenni temporary shelters. Given the nature of Karen and Karenni society and

culture, the justice systems are also extremely patriarchal, and pay scant attention to the rights of women—an issue of particular significance given that one of the major crimes committed in the temporary shelters is sexual and gender-based violence. Furthermore, the traditional justice systems cannot, by definition, be applied to non-refugee perpetrators. As a result of all these factors, many refugees are without access to a remedy for violations of their human rights in the temporary shelters, and are also denied their right of access to the Thai courts.

Regarding access to Thai justice system, every temporary shelter has a procedure negotiated by UNHCR to allow the refugees to access the Thai legal system. However in practice, most refugees report that access to justice in the Thai courts can be difficult due to lack of information, lack of transportation, communication barriers and lack of power or money.

After living in the state of exception of Thai laws for a long time, many refugees do not know the extent of their rights in Thailand or believe Thai Courts will discriminate against them because they are refugees. According to the survey conducted by IRC in the refugee camps in...⁴, 55.1 percent of the respondents believe the Thai justice system will treat refugees differently from Thai people. Likewise, lacking a legal education, refugees do not know when they have a right to a remedy in Thai courts. Many refugees also believe that access to Thai justice requires money.

Communication barriers also prevent most refugees from considering the Thai justice system, especially for those wishing to report crimes of a sensitive nature, like rape. Members of the Camp Justice and KWO stated that they did not report a rape case to the Thai police because the victim feared her story would be misunderstood. In one case, an interpreter mistakenly told the police that the rapist was the victim's boyfriend, which resulted in having the victim forced to return to the temporary shelter.

Another barrier to access Thai justice is transportation. Many refugees report that they are unable to acquire transportation to the police station to file their

⁴ Internal report (confidential).

report. Others believe they will not be able to receive permission by the camp commander of the Ministry of Interior to leave the temporary shelters. Because of lack of such transportation, policy of Thai government, advice and information, the refugees with merit claims could not access justice in Thai courts, allowing camp justice structures more authority to replace Thai justice system in adjudicating cases in temporary shelters.

Against this backdrop, this research aims to study why and how the state of exception of Thai criminal law happened in the refugee camps in Thailand. In addition, the impact of the state of exception on furthering the violation of human rights of refugees in Thailand will be examined.

Background

Turmoil between the Burma-dominated central government and ethnic nationality groups has divided the country since the time of Burma's independence from Britain in 1948 (Fink, 2005: 23-24, 29). The war waged today by the military regime largely targets ethnic civilian populations; less the opposition fighters. Military attacks against ethnic civilians stem primarily from General Ne Win's "Four Cuts" policy, a strategy devised in the 1960s to undermine the ethnic opposition forces by severing the support structures that exist within the ethnic community namely, food, funds, recruits and information (Smith, 1994: 46). In practical terms, the "Four-Cuts" policy is implemented by attacking villages, forcing ethnic villagers to move into heavily controlled relocation sites, destroying their homes and crops, and planting landmines in their former villages and farms; the villages often undefended; and the villagers usually unarmed. As a result, many armed ethnic opposition groups are completely engaged in protecting and defending ethnic civilians from attack.

In Burma, government-directed development projects have resulted in massive relocations and displacement of villagers. People are forced to leave their homes to make way for large-scale projects, such as pipelines, dams and mining projects as well as small-scale projects, such as the construction of military bases, road networks and agricultural plantations.

EarthRights International (ERI) has documented human rights abuses and related displacement around the Yadana Gas Pipeline—a pipeline that runs from an off-shore gas field across 60 kilometers (40 miles) of land in southeast Burma en route to the Thai border (EarthRights International and Southeast Asia Information Network, 1996). Human rights abuses against local villagers in pipeline area in Burma have been committed by the Burma Army providing security for the oil companies and the pipeline; ongoing abuses continue to destabilize villages within the pipeline region (EarthRights International, 2009). Documented impacts from 1996 to 2009 include forced displacement, widespread and systematic forced labor on project-related infrastructure, rape, torture and killings (Ibid). As the military continues to provide security for the companies and the project along the pipeline route, human rights abuses are expected to cause additional displacement from the area (Ibid).

In the last 30 years, Thailand has hosted hundreds of thousands of refugees and asylum seekers from nearly every neighboring country and accommodated a host of international humanitarian agencies, including UNHCR, yet it has not signed any of the UN treaties relating to refugees and stateless persons. When Indochinese fled across the border into Thailand in 1975, they were housed in camps established and administered by the Ministry of Interior, following a Thai Cabinet decision of 3 June 1975 (The Public Affairs Foundation, 1989: 25). The first point of that decision captured a fundamental ambivalence towards asylum seekers that has been reflected in much of Thailand's subsequent policies and practices: "Should any displaced persons attempt to enter the Kingdom, measures will be taken to drive them out of the Kingdom as fast as possible. If it is impossible to repel them, such persons will be detained in camps." (Muntarbhorn, 1982: 14)

In the article 1 of the 1951 Convention Relating to the Status of Refugees defines a refugee as a person who "owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion is outside the country of his nationality and is unable or, owing to such fear, unwilling to avail himself of the protection of that country". As a matter of policy, however, Thailand does not employ the term "refugee" in reference to any of the populations displaced on its soil. The general term employed since 1954 has been

“displaced person”, following the Ministry of Interior’s 1954 “Regulation Concerning Displaced Persons from Neighboring Countries”, which defines a displaced person as “he who escapes from dangers due to an uprising, fighting or war, and enters in breach of the Immigration Act” (Robinson, 1995: 6).

Since 1984, the Burmese government has cruelly pursued control over anti-government groups. Consequently, a large number of people illegally migrate to Thailand to escape from government oppression. According to UNHCR, there are approximately 150,000 refugees living in Thailand. This is despite the fact that Thailand has never been a party to the 1951 Refugee Convention and the 1967 Optional Protocol. However, in most of the situations, the Royal Thai government has flexibly allowed refugees to stay in Thailand temporarily under humanitarian principles. Nonetheless, the refugee status is not recognized in Thailand and their status is equated with that of displaced persons who are illegal in the country waiting for deportation. In other words, the level and quality of assistance to refugees depends on state consideration. The Thai Government has permitted most ethnic groups (except some such as Shan and Rohinya),⁵ to live in one of the nine temporary shelters situated in four provinces of Thailand as follows (UNHCR, 2006c):

- Ban Mai Nai Soi temporary shelter, Muang District, Mae Hong Son Province
- Ban Mae Surin temporary shelter, Khun Yuam District, Mae Hong Son Province
- Ban Mae La Oon temporary shelter, Mae Sariang District, Mae Hong Son Province
- Ban Mae La Ma Luang temporary shelter, Sob Muey District, Mae Hong Son Province
- Ban Umpium temporary shelter, Pob Pra District, Tak Province
- Ban Mae La temporary shelter, Ta Song Yang District, Tak Province
- Ban Nupo temporary shelter, Umphang District, Tak Province

⁵ This observation is made by the author, which is contradictory to the information presented by UNHCR.

- Ban Don Yang temporary shelter, Sangklaburi District, Kanchanaburi Province
- Ban Tham Hin temporary shelter, Suan Pueng District, Ratchaburi Province

Refugees in temporary shelters live with security threats, many of which are not unique to the refugee camp setting in other places in the world. Murder, rape, beatings, domestic violence, and robberies are issues for these communities as they are for any community. This is a premise in which this research will explore in light of state of exception.

Conceptual Framework

Human rights forms the conceptual basis for this research through, among other treaties, the 1948 Universal Declaration of Human Rights (UDHR). The Article 1 of the UDHR defines the fundamental principle that “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.” By having equal human dignity, all of us possess equal rights just the fact that we are all human beings.

Article 2 of the UDHR emphasizes on the equality of human dignity and rights. It sets out the principle of non-discrimination that “Everyone is entitled to all the rights and freedoms set forth in the Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national, or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under an other limitation of sovereignty.” This Article is very important for the subject of this research—Refugees. As a refugee is a person who is not a national or citizen of the country of asylum, this Article lays down a key principle that the refugee must not be discriminated against.

Article 3 of the UDHR states that “Everyone has the right to life, liberty and security of person.” This Article elaborates on the fundamental rights of human beings. As some proponents suggest, these are ‘first-generation’ of rights; without these rights, no other rights will not be able to grow on. The research focuses on the issue of state of exception of Thai laws with the scope of criminal law and procedure as they are directly related so as to have the impact on the fundamental rights stated in Article 3 of the UDHR.

The concept of human rights related to law and rights of person is illustrated in the Article 6 – 11 of the UDHR, namely, recognition as a person before the law, equal before the law and equal protection of the law; right to effective remedy by the competent national tribunals; right not to be subjected to arbitrary arrest, detention or exile; entitlement in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge; rights to be presumed innocent until proven guilty and not to be held guilty of any penal offence if there is no law that made the act or omission constituting a penal offence at the time when it was committed.

The State of exception challenges the protection of human rights. The State of exception is coined by Giorgio Agamben in his famous book title of the same name. He deconstructed the expression of the State and its Power in forming the State and the power to execute the State. He argued that there is a power of exception before there is a power of execution. It is demonstrated in the differentiation between Law and the Force of Law. Before there is a Law, there must be a Force of Law that created and yields its power to Law. That very power is the power to except the Law. The State retains this power of exception of law. It could be argued that this power is even more so the fundamental and sacred power of the State, which is to make the exception.

The State has the legal power as provided by the law itself to include or exclude anyone or any group of people from any law. To illustrate this power in a simple scenario, the case of ‘state of emergency’ could be deployed to exemplify this concept. In the state of war or the state of emergency, the State executes its power to

except the law and cease the enforcement of any law to any group of people. In a less severe and dramatic case, the claim of national security is deployed by the State to justify its exception of law to some fundamental rights such as the right not to be arbitrary arrest and detention, the right to freedom of expression, the right to access justice. And the State could use the power to make exceptions to the law to any group of people such as Iraqis or Taliban who were suspected of being terrorists as deemed appropriate by the will of the State.

Even in the case of the Constitution as the highest law in the country, there is exception made by the power above the Constitution or within the Constitution itself that allowed the exception to be made to any one, any group of people or any right.

Consequently, owing to the features of the 'state of exception' in temporary shelters in Thailand—the exception of Thai laws and international human rights laws—refugees do not have access to criminal justice system of Thailand. Thai authorities do not apply Thai laws in temporary shelters. Similarly, refugees do not have access to Thai laws. Attempts to facilitate refugees' access to criminal justice system of Thailand encountered with political, knowledge, institutional, legal, procedural and attitudinal barriers. The state of exception of Thai laws and international human rights laws in temporary shelters entails further potential human rights violations on refugees from Burma living in temporary shelters in Thailand.

Agamben refers to Carl Schmitt's famous definition of the sovereign as "he who decides on the state of exception" (Agamben, 2005: 1). Agamben explained the topological structure of the state of exception as "being-outside and yet belonging" (Agamben, 2005: 35). This could be interpreted that the sovereign has the paradoxical law to suspend law and all juridical orders, not just the administration of justice, for any particular group of people for any length of time so that the particular group of people is outside the law and yet belonging to the law; that the administration within the state of exception by the sovereign is being outside the law and yet belonging to the law.

The definition of the term "state of exception" is complex, since it is situated at the limits of law and of politics. The state of exception would be situated at

an ambiguous and uncertain fringe at the intersection of the legal and the political, and would constitute a point of disequilibrium between public law and political fact (Saint-Bonnet, 2001: 28 and Fontana, 1999: 16). Indeed, I construe that the exceptional measures that characterize the state of exception—suspension of law by the executive power which they are authorized by the Law—are the result of the crisis between law and politics as well as the relationship between law and force of law.

Furthermore, the sovereign exception is considered as the original structure in the relationship between the State and the individuals. This relationship is demonstrated through law which relates to the life of individuals within the State. The State has the power to declare whether the individual is included or excluded from the application of law as long as they are in the territory of the State. Territorial sovereignty authorized the State to act or not act as the will of the State. The State can include the individuals in the recognition of their existence within the territory of the State but in the very same gesture that the State suspends its own exercise of law. By following this conceptualization, a theory of the state of exception would be the preliminary condition for an understanding of the bond between the living being and law; being outside and yet belong (Agamben, 2005: 35). He proposes that the state of exception, in as far as it enacts a suspension of the legal order in its totality, seems to escape every legal consideration; but for Agamben the issue is to ensure a relation, no matter of what type, between the state of exception and the legal order. The state of exception is always distinguished from anarchy and chaos and, in the legal sense; there is still order in it, even though it is not a legal order.

This articulation is paradoxical, since, that which should be inscribed within the legal realm is essentially exterior to it, corresponding to nothing less than the suspension of the legal order itself. In this way, the state of exception introduces a zone of anomy into the law, which, according to Agamben, renders possible an effective ordering of reality. Now we understand why the theory of the state of exception can be presented as a doctrine of sovereignty. The sovereign state, who can proclaim a state of exception, is thereby ensured of their basis in the legal order. Because the state of exception represents the control of a space that is neither external nor internal of the state, the sovereign state remains exterior to the normally valid legal

order, and nevertheless belongs to it, since the sovereign state is responsible for decision whether for the Law can be suspended.

Thus, in contemporary history, we have been able to witness a paradoxical phenomenon that can be effectively defined as the application of the state of exception. In the case of the Nazi State, when Hitler took power, he proclaimed the Decree for the Protection of the People and the State, which suspended the articles of the Weimar Constitution concerning personal liberties. The decree was never repealed, so that from a legal standpoint the entire Third Reich can be considered a state of exception that lasted twelve years (Agamben, 2005: 2). In this sense, modern totalitarianism can be defined as the establishment, by means of the state of exception, of a legal civil war that allows for the physical elimination not only of political adversaries but of entire categories of citizens who for some reason cannot be integrated into the political system. Since then, the voluntary creation of a permanent state of emergency (though perhaps not declared in the technical sense) has become one of the essential practices of contemporary states, including so-called democratic ones.

For another contemporary example of the state of exception, the immediately biopolitical⁶ significance of the state of exception as the original structure in which law encompasses living beings by means of its own suspension emerges clearly in the USA Patriot Act issued by the U.S. Senate on October 26, 2001 and the military order issued by the president of the United States on November 13, 2001, which authorized the indefinite detention and trial by military commissions of noncitizens suspected of involvement in terrorist activities (Agamben, 2005: 3). The effect of these laws and orders radically erase any legal status of the individual, thus producing a legally unnamable and unclassifiable being. Not only do the Taliban captured in Afghanistan not enjoy the status of Prisoners of War (POWs) as defined by the Geneva Convention, they do not even have the status of persons charged with a crime according to American laws. Neither prisoners nor persons accused, but simply “detainees” categorized as unlawful combatants. They are the object of a pure de facto

⁶ According to Michel Foucault in *History of Sexuality 1: The will to knowledge*, Foucault explains that biopolitics is concerned with population as a political and scientific problem, as a biological issue of the exercise of power. The term emphasized the humanistic view of politics rather than the conventional perspective in viewing politics as structure.

rule or given a status which is exceptional, of a detention that is indefinite not only in the temporal sense but in its very nature as well, since it is entirely removed from the law and from judicial oversight. They had lost every legal identity and they are left with nothing more than the fact that they are being humans.

The state of exception is not a special kind of law, for instance, the law in time of war; rather, insofar as it is a suspension of the legal order itself, it defines law's threshold or limit concept. As we have seen from the evidences given above, the state of exception has become a paradigm of government today. Originally understood as something extraordinary, an exception, which should have validity only for a limited period of time, but a historical transformation has made it the normal form of governance. The state of exception establishes a hidden but fundamental relationship between law and the absence of law. It is a void, a blank and this empty space is not constitutive of a legal system.

Taking the theory of the state of exception explained in the aforementioned section, Agamben applied the theory into a biopolitical context—the refugee camp. The refugee camp is the space that opens up when the state of exception starts to become the rule (Agamben, 2000: 38). In the refugee camps, the state of exception, which was essentially a temporal suspension of the state of law, acquires a permanent spatial arrangement that, as such, remains constantly outside the normal state of law.

We can reflect on the paradoxical status of the refugee camp or the temporary shelter as a space of exception: the temporary shelter is a piece of territory that is placed outside the normal legal order; for all that, however, it is not simply an external space. According to the meaning of the term 'exception', what is being excluded in the temporary shelter is captured outside i.e. it is included by virtue of its very exclusion. Thus, what is being captured under the rule of law is first of all the very state of exception. In comparison with the absence of law or void of law, the state of exception is the intention of the State with the power of law. It is not that there is no law or negligence of law. In other words, the temporary shelter is the structure in

which the state of exception is permanently realized if sovereign power is founded on the ability to decide on the state of exception.

To recapitulate on the relationship between the state of exception and temporary shelter, we can conceptually explain that the temporary shelters constitute a space of exception—a space in which the law is completely suspended—that everything is truly possible in them. Taking into consideration this particular political-legal structure of the temporary shelter, the existence of temporary shelters is precisely to realize permanently the exception in which whatsoever took place in them remain entirely unintelligible. The people who entered the temporary shelter moved about in a zone of the exception in which every legal protection had disappeared.

A continuing challenge

In absence of Thai law, the refugee's camp justice structures that exist to resolve disputes have evolved in response to the need for fair and peaceful forums to settle grievances. As the population inside the temporary shelters has grown, camp justice structures have had to respond to an ever-increasing amount of conflicts. Protracted encampment and its symptoms, including frustration, poverty and anxiety for the future, have led to a rise in crimes like theft, gender based violence and physical violence. These dispute resolution structures have also had to cope with situations like juvenile crime that test even developed judicial systems.

Effective and fair access to justice can only be facilitated by ensuring that the different actors involved in dispute resolution meet certain criteria such as affordability, transparency, easy physical access and cultural and linguistic appropriateness. In the context of temporary shelters, these criteria do not only apply to the refugee's court system but also to people's day-to-day interaction with other institutions like section and zone leaders, Camp Security, Camp Committee, Religious Leaders and Community Based Organizations (CBOs). Among the problems that prevent access to justice in the temporary shelter are: (1) the fact that camp justice structures are unequipped to handle the problems that affect women and children in the temporary shelter; (2) the rising and unresolved problem of young people

committing crimes and the protection of children; and (3) the refugees' perceptions of the difficulties in accessing Thai justice.

Research Methodology

The objectives of this research are two fold. Firstly, it aims to study why and how the state of exception of Thai criminal law happened in the temporary shelters in Thailand. Secondly, it attempts to study the impact of the state of exception on furthering the violation of human rights of refugees in Thailand.

The research endeavors to answer the key questions which framed the basis of the study: How and why does Thai government treat refugees in temporary shelters differently regarding criminal cases⁷ from other citizens and non-citizens in the rest of Thailand by applying a state of exception of Thai laws in temporary shelters despite the fact that Thai laws have jurisdiction all over its territory? What are the implications of the state of exception of Thai laws in temporary shelters on the human rights of refugees in temporary shelters in Thailand regarding criminal justice?

In order to establish a conceptual framework for this research, it can be argued that political, knowledge, institutional, legal, procedural and attitudinal barriers contribute to the cause of the state of exception of Thai laws and international human rights laws in temporary shelters; in which the state of exception contributes to furthering the violation of human rights of refugees from Burma living in temporary shelters in Thailand.

Given the comprehensive and complex nature of the subject of the study, qualitative research is chosen as the research methodology. This research is based on the primary data for the main part but, at the early stage, secondary data is used . Research methods employ the use of secondary data/documents such as existing documents and books,

⁷ The author focused on criminal cases only because they involved fundamental rights to life, safety and security of people. Criminal cases have direct and immediate effects on the well-being of people. Moreover, the activities of refugees in temporary shelters do officially allow them to involve civil cases.

This research sets out to find out how and why there is a state of exception of Thai criminal law in the camps in Thailand. The evidences of a state of exception of Thai criminal law would include, but not limited to, testimonies and/or reports from victims or witnesses of the crimes happened in the refugee camps revealing the inaccessibility to the Thai criminal system as well as the denial of rights according to Thai criminal procedure.

However, it is worth noting that the available secondary data is very limited. This is largely because there is little research conducted on this particular aspect of refugees in Thailand. There is even less research conducted on the issues related to the application of Thai laws and the access to justice for refugees in temporary shelters in Thailand. The policy papers and instructions related to the refugees from Burma in Thailand and the administration in temporary shelters are mostly classified documents.

Given the limitation on the secondary data, this research was largely based on primary data. In order to understand why the state of exception of Thai laws is politically and practically applied in the temporary shelters, in-depth interviews were conducted with policy makers and concerned authorities of Thai government agencies such as, the Ministry of Interior, the Office of National Security Council, the Ministry of Justice, the Royal Thai Police, the Office of Attorney General, the Ministry of Foreign Affairs as well as the authorities in the field, such as, camp commanders, local police officers, project coordinators of the Ministry of Justice, army officers, public prosecutors, judges and enforcement officers. Other sources of information included the independent agencies such as, the National Human Rights Commission and the Lawyer's Council of Thailand. In order to obtain perspectives of refugees, interviews were conducted with the accessible representatives of refugees. From another angle, interviews were conducted with the staff of the United Nations High Commissioner for Refugees and international and local non-governmental organizations working in the temporary shelters, especially the agencies working on related issues.

The followings are the list of field visits and interviews conducted by the researcher through out the period of study. It is noted that this list is not exhaustive as

there were many informal visits and talks with officials of international organizations, Thai authorities, refugees and non-governmental organizations. The researcher also used information cumulated from accompanying missions and field visits of international organizations and Thai government officials to temporary shelters prior to the beginning of this research.

JANUARY 2009

- Trip to Udonthani province: Meeting with Senators, police and other Thai authorities.

JUNE 2009

Sunday 14 - Thursday 18 June 2009

- Trip to Chiang Mai province: Meeting with NGOs and refugee representatives.

JULY 2009

1) Saturday 4 - Monday 6 July 2009

- Trip to Mae Sot district, Tak province: Meeting with local authorities, NGOs, refugee representatives and visiting refugees in Thasongyang district

2) Wednesday 15 - Thursday 16 July 2009

- Trip to Sangklaburi district, Kanchanaburi province: Meeting with central and local authorities, NGOs and refugee representatives.

OCTOBER 2009

Monday 19 - Friday 23 October 2009

- Trip to Tak province: Visiting Mae La, Umpium and Nupo temporary shelters; meeting with local authorities in provincial and district levels, camp commanders, NGOs, Community-based Organizations, and refugees.

NOVEMBER 2009

1) Monday 2 - Wednesday 4 November 2009

- Trip to Rachaburi and Kanchanaburi provinces: Visiting Tham Hin and Ban Don Yang temporary shelters; meeting with local authorities in provincial and district levels, camp commanders, NGOs, Community-based Organizations, and refugees.

2) Monday 9 - Wednesday 11 November 2009

- Trip to Mae Hong Son: Accompanying high level delegations of Royal Thai Government from Bangkok, meeting with local authorities in provincial and district levels, camp commanders, NGOs, Community-based Organizations, and refugees.

3) Monday 16 - Sunday 22 November 2009

- Trip to Mae Hong Son: Visiting Ban Mai Nai Soi, Ban Mae Surin, Ban Mae La Oon, Ban Mae La Ma Laung temporary shelters; meeting with local authorities in provincial and district levels, camp commanders, NGOs, Community-based Organizations, and refugees.

Key questions of the interview included, but not limited to, how crimes are dealt with in the refugee camps? Do refugees have rights and obligations according to Thai criminal justice system? Why or why not? Can refugees have access to Thai criminal procedure? Why or why not? Are there exceptions to Thai criminal law in the camps both theoretically and practically? Why or why not? What are the impacts of the state of exception of Thai criminal law on the human rights of refugees?

Information collected from the interviews was analyzed in conjunction with the conceptual framework found through secondary data to answer the research questions before writing up the final research.

It is worth noting that the scope of this research was limited to the study of policy and practice on the state of exception of Thai laws in temporary shelters of refugees from Burma along Thai-Burma border. Other aspects of refugees in Thailand were not within the scope of this research. This research was not focus on details in each temporary shelters but it rather focused on the general policies and practices in temporary shelters. This research did not aim to provide recommendation to resolve the cause of the state of exception of Thai laws in temporary shelters but it aimed to demonstrate the condition of the state of exception within the scope of the study.

Outline of the research

Chapter Two explains the criminal offence and criminal procedure according to Thai law. This chapter will help to establish what crimes are and how to legally respond to them, should Thai law is applied and enforced as it does to every one on Thai territory.

Chapter Three examines the state of exception of Thai law in temporary shelters through to study of the administration of justice in the temporary shelters of refugees from Burma along Thai-Burma border. The legal and institutional structure as well as the application of the connotation of the 'de facto' state of exception to the context of temporary shelters in Thailand, will be examined.

Chapter Four analyzes the implication of the state of exception on the human rights of refugees from Burma in temporary shelters along Thai-Burma border. The denials of access to Thai justice and the acknowledgement of refugee's judicial system in the temporary shelters as a form of de facto state of exception will be analyzed and whether they are violations of human rights principles.



CHAPTER II

CRIMINAL OFFENCES AND CRIMINAL PROCEDURE IN THAILAND

*The man from the country is delivered over to the potentiality of law because law demands nothing of him and commands nothing other than its own openness. According to the schema of the sovereign exception, law applies to him in no longer applying, and holds him in its ban in abandoning him outside itself. The open door destined only for him includes him in excluding him and excludes him in including him. And this is precisely the summit and the root of every law.—
Giorgio Agamben (Homo Sacer, p. 50)*

After understanding the concept of the state of exception, this section will explain what a criminal offence is and how criminal procedure is carried out according to Thai laws. The reason for focusing on criminal law is that criminal law has a direct impact on the fundamental rights of people, such as the rights to life, security and liberty of person. International laws require ratification to domestic laws and effective enforcement of such laws. However, Thailand specifically refers to refugees as illegal immigrants and the Thai government argues that this illegal status technically and conceptually excludes refugees from benefiting from the protection of Thai laws.

By understanding the legal framework in criminal law, it helps in analyzing the context of refugees in Thailand. In reality, the refugees are practically excluded from Thai criminal laws as they do not have access to the Thai criminal system. In addition, the refugees are also practically disallowed or have to face various obstacles which prohibit them from reporting their case to the police. Reporting a criminal offence to the police is the first step of criminal procedure and, thereafter, investigations will have to be conducted through interviews with the injured person and witnesses. To complicate the procedure further, the police do not have jurisdiction in the temporary shelters as police have to request authorization from district officials or camp commanders. The exclusion of refugees from the criminal law is more obvious than civil law and the impacts are more tangible as they involve life and death or the physical well-being of persons.

Before moving on to criminal procedure according to Thai laws, it is important to have an overview understanding of conflicts in temporary shelters.

Sources of Conflict

The following explores the psychological effects of long term encampment and the possible impact on crime rates and disputes. It also provides a list of some of the types of conflicts that arise in the context of temporary shelters.

Protracted encampment

Many refugees from Burma have been living inside temporary shelters on the Thai-Burma border for decades. Generations of refugees were born and live their lives since their birth inside temporary shelters.

According to the report of the U.S. Committee for Refugees and Immigrants (USCRI), refugees who lived in temporary shelters for a long time negatively affected their patterns of living, developed negative attitudes towards themselves and others and their coping mechanism with the community deteriorated. These negative effects reduced the psychological wellbeing of refugees in temporary shelters. An increase in the number of reported suicide incidents and registrations of mentally ill patients at clinics in temporary shelters are among the most troubling indicators. The report also cites alcohol consumption as the most common coping strategy of despair for refugees in the temporary shelters.

Less is known of the extent to which the psychological health of the community is leading to an increase in disputes and crimes. However, some refugee leaders mentioned that many refugees suffered psychological problems because of a lack of freedom. The emotional problems can potentially lead to disputes, such as domestic violence and cases of suicide.

Types of Conflict

Sexual and Gender Based Violence (SGBV)

SGBV is a broad category and covers many offences related to gender discrimination which include, among other offences, domestic violence, rape and abandoning the spouse. SGBV constitutes one of the biggest security issues in temporary shelters. Domestic disputes are often raised as one of the leading types of disputes within the refugee community and camp security officers report that they have to regularly deal with domestic cases. Domestic disputes often involve domestic abuse, which includes spousal abuse as well as violence against children. It is worth noting that domestic violence is often the result of alcohol abuse. It is widely viewed as a symptom of the frustrations arising from living in temporary shelters for many years, rather than a result of unequal distribution of power within the family or patriarchal attitudes.

Rape is a grave concern in all temporary shelters. Although reported incidents of rape are on the increase, staff of NGOs and UNHCR working with rape survivors remark that many cases remain unreported because of the stigma attached to rape, fear of blame and being rejected by society. According to the survey conducted by IRC⁸, 70 percent of women respondents identified the threat of rape as an urgent security concern and 60 percent of males also cited rape as a security threat: which could be interpreted that they fear for women in their family. Reported cases of rape include abuse by authorities such as teachers and Thai authorities as well as cases of attempted rape.

For the majority of the refugee population, rape is generally perceived as a serious crime. It is interesting to note that the IRC's survey results indicate that 10 percent of respondents consider the death sentence as the most appropriate punishment for the crime. 20 percent expressed that more than ten years of incarceration is a fair sentence. However, it is also important to note that imprisonment and death are not viewed as the only options. Rape is sometimes dealt with by traditional means, which

⁸ Internal report (confidential).

usually involves paying compensation to the victim and paying for a cleansing ceremony. It is also noted that 10 percent of the respondents indicated that payment is a fair punishment for rape. However, camp justice officers, CBOs and camp security officers expressed their concerns at the lack of punishment that comes from pay-offs and cleansing ceremonies.

The crime of adultery is a common source of disputes in temporary shelters. The term “adultery” is broadly used to encompass many types of inappropriate relationships and indecent acts including extra-marital affairs, pre-marital sex and inappropriate touching whether consensual or not. Refugees consider that adultery is a serious matter because it threatens the unity of community, family-society networks and the stability of temporary shelters.

Other gender related sources of conflicts include abandonment by a spouse or negligence. These are reportedly often cited as grounds for divorce. Observations made in the hearings into camp justice reveal that more than half of the cases petitioned for divorce.

Criminal Cases

Cases of a criminal nature are reported subject to the severity of the offence. Criminal cases can often be resolved at the section leader level or at camp security level. Petty theft is a common offence as well as physical assault and battery. The latter types of offences are often committed as a result of excessive alcohol consumption. Being intoxicated is usually considered as a factor in reducing punishment.

Civil and Other Types of Issues

Other than domestic disputes, section leaders report that quarrels between neighbors regularly catch their attention. These disputes can involve issues such as allegations of trespass, littering a neighbor’s compound and property disputes. Another interesting allegation is “hexing” or “casting of spells” whereby misfortune is brought upon an individual or family. These customary beliefs are often deeply held and section leaders say that such spells can lead to serious consequences. These types of

dispute are almost exclusively resolved at the section leader level and by community elders.

Violations of Camp Regulations

In addition to Thai law, traditional law and the Burmese Civil and Criminal Codes, social control in camp is also administered through camp regulations. These administrative regulations often cover common general concerns but are enacted specifically to each camp context. Common regulations include:

- Curfew
- Rules regulating the production of alcohol
- Rules prohibiting hunting and fishing beyond certain areas in camp
- Rules prohibiting logging
- Rules regulating working outside the camp
- Rules prohibiting the selling of rations outside camp

Theoretically speaking, from the general essence of the Law, every person in Thai territory is under Thai jurisdiction and, as such, the following description of criminal offence and criminal procedure equally applies to them. In a perfect judicial system in which no exception of Thai law would be made, the following sections will demonstrate how it should be performed.

Criminal Offences and Criminal Procedure in Thailand

A criminal offence is an action which is defined as an offence by the criminal law in force at that time. Therefore, we should understand what the criminal law consists of: laws which define offences and their punishment, such as the Penal Code, Narcotics Control Act, Money Laundering Control Act, Land Traffic Act, etc. The Criminal law aims to protect both individual rights and public order, and to correct the perpetrator.

Criminal offences are categorized as compoundable offences and public offences. Generally, a criminal offence is a public offence: e.g. offences causing death, offences against the body, sexual intercourse with a girl not over fifteen years of age,

offences of theft, offences relating to receiving stolen property. A compoundable offence is an exception that is clearly stated in the provisions of criminal laws. It has often been applied to offences which do not so much affect the public as the rights of the individual e.g. the offences of fraud, defamation, minor physical assault, rape of person over 15 years old and cheating against creditors.

In a public offence, the inquiry official can prosecute a crime without the complaint of the injured person; but in a compoundable offence, the injured person's consent is very important as the prosecution cannot be started if he does not make a complaint. Moreover, in a compoundable offence the charge can be terminated by consent of the injured person, through withdrawal of the complaint or of the prosecution or by lawful compromise.

The Thai authorities have jurisdiction over crimes committed in Thailand whether the perpetrator is a Thai or non-Thai national. Moreover, there are cases in which the Thai authorities can prosecute a crime committed outside Thailand. The first case is when the perpetrator is Thai, and the Government of the country where the offence has occurred or the injured person requests punishment. The second case is when the perpetrator is a non-Thai national and the Thai government or a Thai national is the injured person. It should be noted that punishable offences are provided in the Penal Code section 8, such as offences against life, offences against the body, rape, offences against liberty, offences of misappropriation, offences of receiving stolen property, etc. The third case is under the Penal Code section 7; that is, universal jurisdiction to prosecute some offences affecting the public order of the world community. Therefore, the Thai authorities can prosecute the crimes even if the perpetrator is not Thai.

If a Thai soldier commits a crime, he will be questioned by military investigators in the same way as a civilian. After the inquiry is finished, if it appears that the case is subject to military jurisdiction, it will be lodged at a military court. The military court has jurisdiction over the case if the perpetrator is a soldier at the time he commits a common crime or a military crime. For example, if a soldier in service has committed larceny, or bodily harm against a civilian, in which no civilian participated

nor supported the commission of the offence, the injured person or the judge advocate can lodge the case at a military court.

A Thai authority which commits a crime is subject to the same civil court. Although the administrative court was established in 2001, it has no jurisdiction relating to criminal crimes, but only to administrative actions, e.g. where an authority refuses, without valid reason, to register and issue a birth certificate to a new born baby.

Aliens in Thailand, including refugees and asylum seekers and other categories of illegal immigrants, are also under Thai territorial jurisdiction. As refugees in camp are allowed to stay temporarily, they would not be prosecuted for a breach of the immigration law, but with a criminal charge, if they committed a crime. In cases of out of camp refugees and other illegal immigrants committing crimes, they would be charged for both the criminal offence and the breach of immigration law.

When martial law is declared in order to preserve public order, military officials have full power over civil officials in dealing with eliminating military operation and maintaining public order. However, all civil cases shall be lodged at civil court as usual⁹, excepting the two following cases: first, if the declaration states that civil cases occurring in the relevant locality should be lodged in military courts. Second, in the presence of special circumstances relating to national security and public order, the Supreme Commander may order prosecution of the crime in the military courts¹⁰. Martial law authorizes the exception of law and of some fundamental human rights such as freedom of movement, freedom of expression, freedom from arbitrary arrest and detention, etc. Nowadays all refugee camps are located on the Thai-Myanmar border areas where martial law has been declared¹¹. There is no exception stated in the declaration, so all civil cases should technically be lodged in civil courts.

⁹ Martial Law Act B.E.2457 section 6(1) and 7(2).

¹⁰ Military Court Act B.E.2498 section 36.

¹¹ Announced on 13 November 1998 and published in Government Gazette on 25 November 1998.

Procedures in Criminal Law

Responsibility for the administration of criminal law is shared by the Office of Royal Thai Police (RTP), the Office of Attorney General (AG), and the Ministry of Justice (MOJ). Appropriate branches of the RTP are charged with detecting and investigating crimes, collecting evidence, and bringing the accused before the court. The public prosecutor from the Office of AG represents the state in criminal proceedings and conducts the prosecution. The Ministry of Justice supervises the operation of the courts.

The first step in a criminal case is a preliminary investigation carried out by a police officer; the investigation might include searches of suspects, their homes, and others thought to be implicated. The required warrants for these searches state the reason for the search, the identity of the person or place to be searched, the name and official position of the officer making the search, and the nature of the offence charged. The police generally adhere to this requirement.

Similar procedures apply for arrest warrants, but a senior police officer is permitted to make an arrest without a warrant when the offence is of a serious nature, or when someone is apprehended in the commission of a crime or in possession of a weapon or instrument commonly used for criminal purposes. Private citizens are permitted to arrest without warrant anyone caught in the act of committing a serious crime. Arrested suspects are required to be taken promptly to a police station, where the arrest warrant is read and explained to them. They are then held or released on bail. The provisions for bail and security are defined by law.

After an arrest, a further and more detailed investigation of the case is made, but not until the complainant--the state or a private individual--has submitted and signed a full bill of particulars. At the beginning of this phase, accused persons are warned that any statement they make might be used against them in court. The investigator is not permitted to use threats, promises, or coercion to induce the accused to make self-incriminating statements.

When the investigation is completed, a report is filed with the public prosecutor, who then prepares an indictment and gives a copy to the accused or his counsel, who enter a plea of guilty or not guilty. Based on the plea and the evidence that has been gathered, the judge either accepts a case for trial or dismisses all charges. Trials are normally held in open court, and the accused is presumed to be innocent until proven guilty. If the defendant has no counsel and wishes to be represented, the court appoints a defence attorney. During trials, accused persons or their counsels can cross-examine prosecution witnesses and reexamine defence witnesses. They can also refuse to answer questions or to give evidence that might be self-incriminating. At the conclusion of the argument the court usually recesses while the judge reaches a decision; the court is required, however, to reconvene within three days and the judgment is to be read to the accused in open court. The presiding judge, after pronouncing sentence, frequently cancels half of the term of the sentence if the accused confesses to his crime. A convicted person wishing to appeal is required to do so within a stipulated period. The case then is transferred to the Court of Appeal, which can reverse or reduce, but not increase, the sentence imposed by the original trial court. The highest court is the Supreme Court and the verdict of Supreme Court is final.

When a crime is committed, there are three ways to begin a prosecution. First, an injured person has the right to complain to the authorities in order that the authorities make an inquiry and prosecute the crime. In this case, after finishing the inquiry, the public prosecutor will enter a charge in court and during the proceedings the injured person may apply to be a joint-prosecutor with him. Second, the injured person can lodge the criminal charge at the court. Finally, people who are not an injured person can make an allegation that a public crime has occurred to the authorities. This is called a “denunciation”. Then, the inquiry official will start an inquiry. If it appears to be a public offence, the authorities are responsible for continuing the prosecution. However, the inquiry officials may refuse to note the denunciation in cases where the denunciator does not disclose his identity (or the denunciation is anonymous).

This is the first step in which the refugee context practically prohibits refugees from entering into the process of prosecution. They are not allowed to leave the boundary of temporary shelters and there is no police station inside the temporary shelters. The only way to leave the temporary shelter is by requesting official permission from the camp commander. In order to lodge their request for camp pass authorization from the camp commander, the refugee usually has to acquire assistance or permission from the refugee camp committee. The refugee camp committee or camp commander can deny them permission to leave the temporary shelters, often without any repercussions. This could be the result of many plausible scenarios. For instance, the perpetrator of the offence may be linked to the refugee leadership or involved with the Thai authorities or with any influential persons in the temporary shelters or in the local village. It is obvious that the refugee camp committee or camp commander may not want the injured persons to report the case to Thai police and so begin criminal procedure. With the verbal instruction from central level in Bangkok to handle all cases within the structure of temporary shelters, refugees who do not know of their rights in Thai criminal procedure and who lack legal assistance and representation from external parties would be categorically excluded from any possibility to report their case to Thai police or to seek the benefit of the Thai judicial system.

The provision of law clearly states that it is in the power of an administrative or police official to conduct an investigation. This may include searching for facts and evidence in order to preserve public order and to ascertain the particulars of an offence. When the complaint or the denunciation is made to the authorities, it is the responsibility of an inquiry official to collect evidence and proceed in connection with an alleged offence for the purpose of ascertaining the facts or establishing the guilt and securing the punishment of the offender. The inquiry is the important process that enables the public prosecutor to enter a charge to the court.

Generally, inquiry officials have the power to hold an inquiry in reference to all criminal offences, but in the case of a compoundable offence it can be started when the injured person makes the complaint. For example, Mr. A has sexual intercourse with Ms B, an illegal immigrant, 20 years old, against her will. It is a compoundable offence according to the Penal Code. Even if Ms B has breached the

immigration law, she is subject to Thai criminal jurisdiction. She is an injured person and has the right to complain to the police. After the complaint is made, the official must continue the proceedings according to the provisions of the Criminal Procedure Code. If this rape is committed by two or more persons, it is a public offence. Even if Ms B does not make the complaint, inquiry officials have the power to make an inquiry.

An injured person can complain about a crime in reference both to public offences and compoundable offences. Complaint is a necessary step in starting the prosecution in a compoundable offence. The following are the requirements for lodging a complaint.

1) A complainant shall be an injured person who has received injury through the commission of any offence, including another person who has legal power to act on his/her behalf or a proxy. For example, parents can make a complaint in respect of offences committed against minors under their care. The ascendant or descendant, the husband or wife can make a complaint in respect of offences committed if the injured person died or is unable to act by him/herself.

2) The complaint shall be lodged with the authorities that are either administrative or police officials.

3) The complaint shall state that a crime has occurred, and how the complainant has received injury through the commission of an act in order to punish the perpetrator. It is not necessary to state any explicit offence but just the actual facts.

When the statement is reported to the authorities, they will consider if it is a complaint according to the Penal Code. If it is a complaint, the inquiry official shall start making an inquiry. If it is not a complaint, the authorities will only record the statement in their records but no inquiry will be made. In this case, the informer will be notified. If the statement is related to a public offence and has criminal grounds, it is within the power and duty of an inquiry official to continue the inquiry.

4) In a compoundable offence, the injured person shall make a complaint to the authorities or lodge a criminal case to the court within 3 months after

acknowledging the occurred crime and the perpetrator. In a public offence, the injured person can lodge a complaint anytime before the offence's prescription ends.

5) The complaint to an inquiry official may be made in writing and it must bear the date and signature of the complainant. If it is made orally, the inquiry official should make a note signed by himself and the complainant.

It is the responsibility of officials to receive the complaint or the denunciation, or to make the note of verbal statement. If the official fails to do so, it constitutes an offence: omitting to record a matter, as prescribed in the Penal code article 162(3)¹².

When a crime is committed, the right to institute a criminal prosecution against the perpetrator is established. The right is extinguished as follows;

1. The death of the offender
2. In case of a compoundable offence, the injured person can terminate the case anytime by the withdrawal of the complaint or of the prosecution or by lawful compromise before a final court decision.
3. In the case of offences punishable by fines, the case may be settled if the offender agrees to pay the fine to the official before the trial.
4. Final decision of a court.
5. A subsequent law abolishes such an offence.
6. No prosecution of the crime within the period of prescription.
7. Amnesty.

In the situation of temporary shelter, it is worth emphasizing that the rights of refugees to report their complaint to Thai police exists and there is no legal provision that prohibits them from doing so. Moreover, the police investigator will have to prosecute their case regardless of their legal status in the country, if their complaint is lodged with Thai police. It is also important to know that the most effective way to exclude refugees from Thai criminal law is by prohibiting them from

¹² The Penal code section 162: Whoever, being an official having the duty of making a document, receiving a document or filling the contents in the a document does any of the following acts in exercising his functions... (3) to omit to record a matter which he has the duty to record, or to make alteration of such matter in recording it; or...

reporting their case to the Thai justice system. It is also important to learn how criminal cases are extinguished. Given the refugee context in temporary shelters, described in the next chapter, it will be clear how crimes are dealt with in temporary shelters which is in violation of the criminal procedure mentioned above.

Witness Protection

A witness provides important evidence to prove whether the defendant is a perpetrator. Producing a witness for a case involving refugees as injured persons is another complicated situation. A refugee living in temporary shelter may not want to testify as a witness for a crime committed by another refugee or, even worse, for those who have links with, or who are, refugee leadership, Thai authorities or local influential persons. The refugees are not allowed to leave the temporary shelters and competent authorities of the Ministry of Justice or the Royal Thai Police do not have jurisdiction to enter temporary shelters at their will. The question is therefore raised as to how a refugee witness could be protected. To rephrase it, witness protection is another key area of the practical exclusion of refugees from benefiting from their right to witness protection which has a direct implication for the ability of injured persons to seek justice in the Thai justice system.

The refugees in Thailand should legally be entitled to benefit from the Constitution B.E.2540, which states that in a criminal case, a witness has the right to protection, proper treatment, necessary and appropriate compensation from the State as provided by law. The Ministry of Justice is currently in the process of drafting a bill that provides two measures as follows¹³;

1. General witness protection; In a criminal case where a witness would not be safe, he can make a claim to the Witness Protection Office¹⁴, Ministry of Justice, in order to be protected by police, staying in a safe place. The protection

¹³ Dr. Kaitkajorn Watjanasawat, **The Principle of Criminal Procedure: Prosecution before the trial**, Bangkok: Thammasat University, 2001, P.293-294.

¹⁴ Witness Protection Office is a new established agency under the Ministry of Justice.

includes the witness' husband or wife, his parents or descendants and other close persons who may not be safe.

2. Special witness protection; The witness in a serious criminal case may be specially protected such as by staying in a safe place, changing name, address and registered documents, gaining living allowances, etc. In such a case, the witness or other involved person can make a claim to the Justice Minister. If he agrees to protect the witness, the office would process his protection. Also the measure includes the witness' husband or wife, his parents or descendants and other close persons who may not be safe.

Although there is currently no provision of law related to witness protection, the police may provide witness protection on a case by case basis. The witness will be protected if;

- The witness can provide essential evidence, and
- No habitual residence of the witness is known, or the witness is not safe, or the witness might flee

Methods of protection include staying in a safe place, being given a living allowance, medical care, etc. In cases other than the above mentioned, provision of protection may be requested but expenses incurred shall be born by the person making the request.

In cases where the witness is not over 18 years old, court hearings may be made in a suitable place, not in the courtroom. Questions may be asked via audio-visual system through a psychologist or social worker. For some cases at investigation, it requires the participation of a psychologist or social worker, the requested person and the Public Prosecutor. Moreover, the identification of the alleged offender shall be arranged in a place where the offender is prevented from seeing the child witness.

If witness protection were implemented in the temporary shelters as the law stated, it would potentially help to protect the victims of crime from potential threats to their lives, safety and security. As the temporary shelters are situated in remote areas and excluded from the general protection available outside the camps, the police

do not have jurisdiction inside the camps so the refugees who are victims of crime have to rely on the existing protection structure inside the camps which are camp security and Thai security officers. However, a number of crimes inside the temporary shelters involve or directly or indirectly implicate camp security and Thai security officers. Given the present circumstances, the refugee victims could not feel safe reporting the crimes or bearing witness to any crimes implicating camp security or Thai security officers or those who are connected to them.

The rights of the alleged offender, the accused and the injured person

The following rights derive from the International Covenant on Civil and Political Rights (ICCPR) and they are important for the protection of individual rights in criminal procedures. These procedures help to guarantee rights according to the principles of the presumption of innocence, fair trial and the rights to freedom and liberty of person. It is important to know the respective rights of the refugees who would be the alleged offender, the accused and the injured persons in criminal procedure if they were allowed to enter into the system. If they are excluded from entering into the Thai justice system, the following are the rights to which they should be entitled, but which the state of exception practically denies to them.

1) The alleged offender

1. Being informed of his rights to meet counsel, and to receive visitors and medical treatment.
2. Being notified of the charge before an inquiry and made aware that whatever he says may be used as evidence against him in his trial.
3. Not to make any statement during an inquiry.
4. Being provided with a lawyer before the inquiry, in the event that the alleged offender is not over 18 years.
5. Having a lawyer or a person in his confidence to attend and listen to the examination.
6. Being presumed innocent and not being treated as a convict before there is a final judgment that the person has committed an offence.
7. Having the right to a speedy, continuous and fair inquiry or trial.

8. Having an interpreter or an interpreter of hand sign language when they cannot understand Thai, or speak or hear.

9. Having their application for bail be considered without delay and without demand for excessive bail. The refusal of bail must be based on legal grounds and they must be informed of such grounds without delay. Also they have the right to appeal against the refusal of bail.

10. Making a complaint to the court that the detention is unlawful.

2) The accused

1. Inspecting or requiring a copy of his statement and related documents during the inquiry when a Public Prosecutor institutes a criminal case in court.

2. If the final decision is that the accused is not the perpetrator or his act is not a criminal offence, being entitled to appropriate compensation, expenses and the recovery of any right lost on account of the decision, upon the conditions and in the manner provided by law.

3. Appointing a lawyer during the preliminary examination and trial, having personal talks with the lawyer, inspecting and copying the file of the preliminary examination or trial, inspecting the evidence and taking copies of it.

4. Having the trial conducted in open court and in the presence of the accused, excepting the cases that the court can try in the absence of the accused as provided by the law.

5. Being informed of the charge and having it explained by the court.

6. Appealing against the decision to the court.

7. Being provided with an interpreter without delay in the event that the accused does not understand Thai.

8. Being provided with an interpreter of hand sign language in the event that the accused does not speak, or hear.

9. Being presumed innocent and not being treated as a convict before there is a final judgment that the person has committed an offence.

10. Having the right to a speedy, continuous and fair inquiry or trial.

11. Being provided with a lawyer in the event that the accused is not over 18 years old, or the event that the offence is punishable with death or imprisonment.

12. Having their application for bail considered without delay and without demand for excessive bail. The refusal of bail must be based on legal grounds and they must be informed of such grounds without delay. Also they have the right to appeal against the refusal of bail.

13. Making a complaint to the court that the detention is unlawful.

3) The injured person

1. Making, modifying and withdrawing the complaint.
2. Denial of the examination of his body or mind.
3. Terminating the case, if it is a compoundable offence.
4. Instituting a prosecution in court.
5. Associating the prosecution made by the Public Prosecutor at any time before the pronouncement of judgment by the court of first instance.
6. Entering a civil claim in connection with the offence. It is a civil claim whose basis rests upon the criminal offence.

To conclude this chapter, it will be helpful to consider the nexus between the state of exception and the temporary shelters. Generally people would assume that Thai law is applied everywhere in its territory or under its territorial jurisdiction. However, the reality in temporary shelters confronts this general assumption as Thai law has technically and practically excepted temporary shelters and the refugees living inside them. One may ask fundamental questions related to the state of exception of Thai laws for refugees from Burma in temporary shelters in Thailand. The following are an attempt to respond to such questions in both law and in principle.

Firstly, is the Thai State empowered to provide justice to refugees in Thailand? As the State has sovereignty over anyone in Thailand, including refugees, and as the temporary shelters in which they are living are located on Thai territory, it is undeniable that the State has the right to administer justice in the temporary shelters.

Secondly, is the Thai State legally obliged to administer justice for refugees in Thailand? An obvious “yes” was enshrined in the 2007 Constitution of the

Kingdom of Thailand;¹⁵ as well as deriving from its obligations under international law, namely, Articles 6 – 11 of the Universal Declaration of Human Rights of 1948, and Articles 14-16 of the International Covenant on Civil and Political Rights (ICCPR) of 1966. Thus, administering justice is a duty of the State rather than a matter of discretion. The Thai State clearly intends to be responsible and accountable in providing access to justice without discrimination for every human being on its territory. Thai law underlines the “right to access the judiciary process [for human beings]” in administrative, civil and criminal matters.¹⁶ Hence, a Thai authority cannot deny justice to refugees in temporary shelters. Such an authority could even be prosecuted for conducting an unlawful act and face criminal liability.

Thirdly, is justice for refugees in temporary shelters different from that for people on the outside? Is there a double-standard? The Thai judicial system has a single universal standard, and discrimination in the administration of justice is not permissible.

Fourthly, for criminal offences in particular, do offences which are considered illegal outside the temporary shelters remain illegal inside them? The Penal Code of Thailand—the principal criminal law in Thailand—is effective over all Thai territory, pursuant to the principles of territorial jurisdiction¹⁷; when temporary shelters are on Thai soil, the Thai State has judicial authority. There is no difference between “outside” and “within” the temporary shelters as long as the shelters are located on Thai soil, and as long as there is no agreement to waive Thai territorial sovereignty over those places. Further, it is not possible for any groups to stipulate any criminal liabilities that are not subject to Thai criminal law. Territorial sovereignty does not tolerate any parallel powers, as such would compromise state security in its overlap with state sovereignty. The absolute power of the Thai State as the sovereign

¹⁵ “[p]rotecting rights and liberties of individual from any violation irrespective of whether such violation has been done by a State official or other persons, and providing justice to the public on an equal basis.” Sections 81 (2) of the 2007 Constitution of the Kingdom of Thailand.

¹⁷ Section 157 of the Penal Code of Thailand.

¹⁷ “A person who conducts any wrongdoing in the Kingdom must be punished under the law.” Section 4 (1), The Penal Code of Thailand.

entity cannot be surrendered or delegated to communities within the state, whether the communities belong to citizens or aliens.

Refugees in the temporary shelters along the Thai-Burma border are not Thai citizens. Being in Thailand and residing on Thai territory, refugees undoubtedly possess rights and responsibilities under both domestic and international law. Additionally, under international law, the state has jurisdiction to enact laws and to use its prescriptive power through the legislative processes to enforce the law through executive power and to administer justice to a person who resides on Thai soil, regardless of citizenship (Saisoonthorn, 1997: 241).

The Penal Code and the Penal Procedural Code clearly prescribe that an offence committed in the “Kingdom”¹⁸ must be prosecuted under the Thai judicial processes pursuant to the jurisdiction principle or the territorial principle, according to Sections 4, 5 and 6 of the Penal Code,¹⁹ and without discrimination as to a person’s nationality²⁰. Refugees, upon committing a criminal offence, are to be processed in the same manner that Thais are under the law. They can be “suspects”, “victims”, “witnesses”, “convicts”, or “prisoners” in the process. They must enter into the criminal procedures and legal enforcement.

Having considered the criminal law of Thailand mentioned above, it is worth noting that Thailand does not have specific legislation or administrative mechanisms governing asylum and refugee affairs. Policies related to refugees are formulated by executive bodies concerned with national security such as the National Security Council (NSC), the Ministry of the Interior (MOI) and the military. These policies tend to be adopted in an ad hoc manner in response to specific circumstances.

¹⁸ “Kingdom” means the land, the aero space above the land, water territory and aero space above the water territory which belong to the Thai state, but does not includes Thai embassies on foreign soil.

¹⁹ Section 4: A person who commits an offence in the Kingdom is subject to penalty. An offence committed in a Thai ship or Thai aircraft is considered an offence committed in the Kingdom wherever it has occurred. Section 5: An offence that has any portion committed within the Kingdom, and offence that has an effect in the Kingdom, as it was intended by an offender or by a manner of the offence thereof that the effect should occur in the Kingdom, or it is foreseeable that the effect will occur in the Kingdom, such actions are considered as an offence conducted in the Kingdom.

²⁰ Apart from territorial jurisdiction, the Penal Code also has the universality principle under Section 7, and the personality principle under Sections 8 and 9. The Thai Penal Code shall be applied pursuant to the territorial principle first, then the universality principle and the personality principle. If none of the above can be applied, Thai criminal law cannot be imposed on an offender.

According to the provisions of the 1979 Immigration Act (amended in 1992), persons entering the country without proper authorization are in breach of the law and therefore subject to arrest, detention and deportation. These provisions are applied against refugees and asylum seekers. Legally, an exemption could only be made according to Article 17 of the Immigration Act, which stipulates that “[u]nder special circumstance[s], the Minister [of Interior], by the consent of the Cabinet, may authorize an entry into the Kingdom subject to any condition or exempt any alien from compliance with this Act”. However, it is worth noting that the Thai Government does not apply this legal authority when exercising the flexibility that has been used to permit the refugees from Burma to reside in the temporary shelters for the reason that they ‘are people fleeing from fighting’. By avoiding the exercise of legal authority for exemption provided in the Article 17 of the Immigration Act, the status of refugees in Thailand remains that of illegal immigrants. Therefore, it could be contended that there is no legal basis for allowing the refugees to reside in Thailand—resulting in their unlawful status as refugees in temporary shelters—and the officials involved in making the executive decision may have breached the Immigration Act by unlawfully authorizing illegal immigrants to reside in the Kingdom. If concerned Thai authorities are well aware of this ramification, efforts should be made to comply with Immigration Law and legalize the status of refugees and grant them legal residency in Thailand.

According to the Penal Code of Thailand, all criminal offences occurring in temporary shelters are considered by law to be under Thai jurisdiction. But, as the next chapter details, in reality many legal rights and protections are not put in place and are instead substituted by another system administered by refugee and non-state actors.

CHAPTER III

THE ADMINISTRATION OF JUSTICE IN THE TEMPORARY SHELTERS

A man subjecteth his will to the power of others, must appear from the end, namely security. For whatsoever is necessary to be by covenant transferred for the attaining thereof, so much is transferred, or else every man is in his natural liberty to secure himself.—Thomas Hobbes (Human Nature and De Corpore Politico, p. 112)

The conceptual framework based on the concept of the state of exception, explained in the previous chapter, will assist in studying the application of the concept in the institutional and legal contexts. It helps to formulate a paradigm that will be the guidance on how to understand the mechanism designed and implemented by refugees in the temporary shelters. The refugee's mechanism is an effort to respond to the state of exception of Thai laws for refugees from Burma in temporary shelters in Thailand.

The Criminal Procedure Code of Thailand stipulates that the offence must be reported to the competent authorities such as the police in order for the case to be prosecuted. However, it was found that the Thai Government has made an exception of the Penal Code and the Criminal Procedure Code in regard to the prosecution of criminal cases in temporary shelters. On this issue, Huguet and Punpuing (2005) commented that:

Authorities of the Thai Government generally leave much of the operation of the camps, including the administration of justice, to the refugees themselves and their camp committees. This can be problematic when the camps are run by political or military groups, such as the Karen National Union; Union members may be given preference in cases in which they are involved. Also, the administration of justice may not conform to either Thai or international standards.—Huguet and Punpuing, p. 21

With this comment as a starting point, this chapter provides a contextual description of the refugee's justice structures and criminal process in temporary shelters. It also details legal protection issues, perspectives on protection and access to justice shortcomings, as well as the difficulties in-camp institutions face in managing

dispute resolution systems and maintaining social order. It is worth mentioning that the very existence of the refugee's justice system in the temporary shelters obviously demonstrates the state of exception of Thai laws in the temporary shelters.

Institutional and legal framework²¹

Governance, security and dispute resolution structures developed fundamentally in response to the protection and security needs of the refugee population and at the initiative of the communities they serve. The following sections will identify the relevant institutional actors within the temporary shelters as well as outline their basic composition and describe their main roles and responsibilities. Although the institutions within each temporary shelter function differently to meet the particular needs of the communities in which they operate and in accordance with their historical background, they also share some common characteristics.

Key Institutions

Justice institutions in the temporary shelters share several key common characteristics. First, in absence of Thai laws, justice structures follow a general set of guiding principles. Policy and practice are not always consistent owing in large part to the resource constraints and social/cultural pressures justice officials face in each temporary shelter. Second, judicial bodies, primarily camp courts, draw upon both traditional practices and modern legal codes to resolve disputes. This often leads to the application of integrated forms of laws. Third, section leaders, camp justice and camp security officials are deemed to lack basic legal, dispute resolution, and sensitization trainings. Lastly, all camp based institutions appear to operate under the direct and indirect influence of non-state political/military organizations. Both the Karen National Union (KNU) and Karenni National Progressive Party (KNPP) military wings have demonstrated a strong interest in the outcome of the justice process in the

²¹ Information used in this section is collated from the field visits of researcher (list of visits is in the Annex), internal reports of UNHCR and IRC's reports submitted to the Committee on Legal Assistance Center as well as a survey conducted by Ministry of Justice (confidential).

temporary shelters, especially where their military personnel are involved as parties to the disputes.

Camp Justice

Camp Justice in Karenni temporary shelters in Mae Hong Son province operates on a relatively complicated set of procedural rules as compared to Karen temporary shelters in Tak, Kanchanaburi and Ratchaburi provinces. The procedural structure for these justice structures were provided for by the Karenni government-in-exile in consultation with the Burma Legal Council.

Camp Justice in Ban Mai Nai Soi temporary shelter (BMNS) is composed of three courts with varying degrees of authority. Depending on the nature of the crime or civil dispute, other camp-based institutions may play an important role in camp justice matters.

For example, when a dispute occurs, Camp Security will forward both minor and major criminal matters to the attention of Camp Justice. Thereafter, Camp Justice decides which court level (1 or 2) will have jurisdiction over the dispute. “Trials” are usually served as forums for negotiations between parties. It was learnt from Camp Justice officials that many cases were settled amicably without a decision by the presiding judges.

It is worth noting that there is unclear demarcation to determine what constitutes a major crime or minor crime. According to general understanding across temporary shelters, major crimes always include rape, murder, fights where “teeth or bones are broken” and/or blood is drawn. It is interesting to note that adultery is considered as a major crime as it affects religious and traditional beliefs of the community. Major crimes are grave acts or acts accompanied by grave threats. Thus, burglary is usually not considered a major crime, whereas robbery would be. On the other hand, minor crimes are those that are not considered grave in nature: petty theft, physical abuses that do not lead to serious bodily harm. As a special note, domestic violence will be treated as a minor crime unless serious injury results.

The Level One Court (also known as Township Court) in BMNS is composed of three judges who make their decisions on a unanimous basis. Trials are open to the public. Plaintiffs and defendants have the right to be present at trial and to call witnesses. All Level One decisions can be appealed to the Level Two Court but the appealing party must file within one week.

The Level One Court in Ban Mae Surin temporary shelter (BMS) is composed of five judges. All decisions are made on a majority basis. Being a Level One court, all major criminal cases are forwarded to the Level Two Court of BMNS. Parties may also appeal the decisions of the Level One Court of BMS to the Level Two Court of BMNS. However, since the Court's establishment in 2003, no decision has ever been appealed to BMNS.

The Level Two Court is also comprised of three judges (and is sometimes referred to as "District Court"). This court is responsible only for major crimes and serious civil cases. Serious civil cases are those which involve disputes over large sums of money. At the Appeal Level, the court will rehear all testimony and review all evidence. Level Two cases can be appealed to Level Three, but the appealing party has between one to two weeks to file, depending on the gravity of the case.

Also known as the Supreme Court, Level Three receives all appeals from Level Two. This Level also has primary jurisdiction over civil cases where the damages at issue are over THB 100,000, and criminal cases involving political traitors or the death penalty. Level Three has reportedly convened once in the last two years.

Unlike the Karenni justice system in BMNS and BMS, the Karen justice system in Ban Mae La temporary shelter (BML) has only one court. There are five judges serving on Mae La's Camp Justice Committee. The judges, who are elders or served on the elders' committee, are elected for two year terms. Some of them are also members of the Camp Committee, which represents the highest leadership in the temporary shelter.

The Camp Justice Committee presides over grave crimes, such as serious physical violence, and cases which could not be solved at section and zone leader

levels. When a case is referred to Camp Justice, committee members investigate with the assistance of camp security. The Camp Justice Committee then holds hearings in the presence of parties, investigators, and eye witnesses. The court's decision in the case is guided by Karen Refugee Committee (KRC) law and by the willingness of the parties to compromise. Outcomes can include compensation, detention, fines or community service. Decisions involving grave crimes are communicated to the refugee's camp leader and the camp commander of the Ministry of Interior.

Camp Security

Camp Security is comprised of refugees who act as the policing arm of the refugee's camp committee and is mainly tasked to be responsible for maintaining law, order and peace within the temporary shelter. Although camp security officers are appointed by the camp committee, the unit remains a community structure for safeguarding the safety and security of refugee residents in temporary shelter. Therefore, the duties of camp security consist primarily of conducting security patrols and night watches, dealing with individuals who disturb the peace of the camp, maintaining order during the distribution of rations and resolution of smaller disputes. In the course of their duties, camp security officers have authority to arrest, detain, investigate and interrogate. These entrusted authorities are not clearly governed by any procedure or regulation.

The security forces in BMNS and BMS are jointly administered. There are 101 officers in the squad for BMNS and 25 for BMS. Chief of Security in BMNS supervises performance of security in BMS. The Head of Security for BMS submits monthly reports to its Camp Committee and the Chief of Security. Chief of Security also visits BMS intermittently to ensure that the actions of the two units are coordinated. In turn, the Chief of Security reports to the Karenni Refugee Committee's (KnRC) Advisory Committee.

In BML, there are 272 camp security officers, including 30 specialized investigators. The unit is divided by zone and section, with additional officers in the more populous such as Zone C of BML. Camp security officers are in constant

communication with section and zone leaders and superior camp security officers. Ultimately, Camp Security reports to the refugee's camp leader and head of camp security.

A large component of the work of Camp Security involves ensuring that camp regulations are respected by refugee residents. These regulations cover a wide range of prohibited activities such as unauthorized logging and traveling outside of camp confines. In BMS, Security can impose punishments for violation of camp rules that range from verbal warnings to fines and detention for up to one week without prior consultation with Camp Justice officials. For most violations, the offender is asked to sign a promise not to commit the act again.

To different extents in BMNS and BMS, camp security officers are also involved in resolving what they consider as “smaller” disputes in temporary shelters. The cases that come before them are predominantly domestic disputes such as spousal neglect or abuse. Residents either approach the security office directly for protection or intervention or officers come upon disputes during their patrols and perform on-the-spot interventions. In many cases, a section leader informs Camp Security of a criminal act or dispute. In BML, Camp Security refers all disputes to section or zone leaders. The separation of law enforcement and adjudication is strongly emphasized in camp security training.

In BMNS and BMS, officers usually employ mediation approach for dispute resolution. Parties are brought together to discuss their concerns and compromise is facilitated. If a party has been wronged or harmed, the wrongdoer may be asked to sign a “never again” promise or to pay compensation usually in the form of rice wine and a chicken. Cases that cannot be resolved as well as more complex criminal matters are forwarded to Camp Justice. These cases are usually recorded in an investigative report and the investigations mainly involve questioning the parties, witnesses and neighbors.

Camp Security in BML is primarily responsible for the investigation of crimes. It is authorized to search houses with the permission and presence of the

owner. It is also allowed to interview witnesses and parties. In special cases, camp security officers can be given permission to investigate outside the camp accompanied by Thai security officers (also known as 'Or Sors').

If there are immediate security risks, a refugee who is intoxicated or suspected of a crime can be apprehended and detained without a warrant for up to 24 hours. Continued detention requires permission from Camp Justice or Zone Leaders and an additional week can be granted to continue an investigation. After fifteen days, the suspect must be released. In some camps, there is no clear procedure for arrests without warrant. Suspects may be detained for up to a week before a warrant is issued. In BML, for difficult cases or cases where it is believed the suspect is lying, Camp Security can also detain the suspect pending the investigation of the crime, which can last over a week. After three days, however, Camp Security can no longer detain a suspect alone and must receive permission from camp justice structures.

Camp Committee

Camp Committee is the highest refugee governing body in the temporary shelters and is responsible for the regulation and administration of a wide area of issues pertaining to temporary shelter; for instance, ensuring that food supply quotas are met, health services are adequately provided, development projects of NGOs are implemented and refugee registration is conducted. Due to its broad mandate, it is the main point of interaction with external institutions like NGOs, international organizations and government authorities. Although delivery of services dominates the agenda, Camp Committee also oversees protection and security of its population. The Committee exercises both legislative and executive powers. It administers social order through enacting camp regulations such as curfews and prohibitions on alcohol production and also has judicial authority to determine whether these regulations are being violated and to enforce penalties for such violations.

Committee members are elected by the community and serve for a period of three years. Every registered resident over 18 is eligible to vote. Each committee is led by a Chairperson. The Committee submits monthly reports to Karenni Refugee

Committee (KnRC) or Karen Refugee Committee (KRC), which are the supreme leadership of respective Karenni and Karen refugees across the temporary shelters in Thailand. These reports detail the day-to-day administration of the camp, the challenges they face and their approaches to resolving such challenges.

Administration of the temporary shelters is managed through close cooperation with section leaders or zone leaders, who are the intermediary representatives in temporary shelters. The Camp Committee identifies a need, thinks about how this should be met and undertakes implementation with section leaders. Section leaders are usually responsible for the hands-on organization and work. With regards to protection, the Committee elects senior level security officers and is usually briefed about general security concerns and major cases that can potentially destabilize harmony in the camps.

The committees are involved to varying degrees in dispute resolution and their involvement largely consists of case management and dealing with logistical consequences of legal decisions. Due to the demands on their time, the few cases that are brought to their attention are either redirected to section leaders, Camp Security or Camp Justice. However, the committees are often called upon after final adjudication to locate homes for newly divorced spouses and to make appropriate adjustments to UNHCR registration. Similarly, the Committees coordinate cases that require outside intervention and cases which raise serious protection issues. In BML, the Camp Committee does not directly resolve cases, but members of the Camp Committee also serve on Camp Justice, and Camp Committee members (especially the camp leader) are generally consulted on serious or complicated cases.

The Committee in BMS differs in its approach to the administration of justice. Its high level of involvement can be attributed to the smaller population, which enables a more hands-on supervisory style. The Committee occasionally mediates disputes if the parties choose to approach them. Most of the cases, civil or criminal, are screened by the Committee and it decides whether a case should proceed to Camp Justice. Complicated or controversial cases are sent directly to BMNS for adjudication.

Section (Zone) Leaders

Section leaders are refugees elected to represent and administer sections of the residential area in temporary shelters. Their function is to act as intermediaries between the general population and the camp committee. In BML, an intermediary level of camp government, the zone leadership, operates between section leaders and the camp committee. Section leaders help implement regulations imposed by camp committee or zone leader, communicate with patrolling camp security and respond to the complaints within their sections.

Section leaders play an important role in the dispute resolution system in the camps. They are often the first to respond to an incident after camp security intervenes, and in BMNS and BMS they resolve additional disputes at the referral of the Camp Committee. In all temporary shelters, section leaders are most commonly called upon to settle a dispute between refugee residents. According to a survey conducted by the International Rescue Committee (IRC), 42 percent of respondents indicated they would first go to their section leaders if they were to seek a solution to a dispute. In comparison, 14 percent would go to the Camp Committee, 1.8 percent would seek help from a family member and only 0.3 percent would want to report to the Thai legal system, including Or Sors, courts and the police.²²

In all temporary shelters, section leaders resolve most minor crimes and civil cases; conflicts which include petty theft, loans between refugees, disputes between husband and wife and minor physical assaults. When a dispute occurs, section leaders investigate by interrogating parties and witnesses. If the injured party is willing to settle the matter with his or her section leader, section leaders will then convene the parties involved, discuss the problem with them and encourage them to agree on an outcome.

Dispute resolution at section leader level usually addresses the desires and needs of the parties rather than enforcing laws or regulations. Where the incident involves a minor crime, section leaders may refer to laws and penalties, but they do

²² According to the IRC's report submitted to the Committee on Legal Assistance Center Project (Confidential).

not have the authority to order punishment. They can only recommend remedies such as cleansing ceremonies (more common in Karenni temporary shelters), the payment of compensation or temporary separation of husband and wife. In Karenni temporary shelters, section leaders are also authorized to divorce marriages sealed by traditional ceremonies but are not authorized to order a division of the couples' assets or custody of children. In Karen temporary shelters, section leaders can also serve as witnesses to a contract or oversee the repayment of a loan.

When presented with a serious crime or with a dispute where the parties are unable to compromise, section leaders in Karenni temporary shelters refer the case to the next step, which is the camp justice system. In BMNS, a case is referred to the Level One Court. In BMS, a case is referred to Camp Security or the Camp Committee, depending on the severity of the case.

In Karen temporary shelters, cases that cannot be resolved by section leaders, non-minor crimes and civil cases where more than THB 1,000 are at stake are referred to zone leaders. Zone leaders will conduct a second investigation, summon the parties and encourage them to come to a resolution. Zone leaders can also authorize a divorce where both parties consent. Serious crimes and cases that cannot be resolved at zone leader level are reported to Camp Justice.

Even though the role and responsibility of section and zone leaders are very significant in the process of dispute resolution, they are unfortunately under equipped to help refugee residents with their problems. Most section leaders do not receive any training and are not properly advised on how to deal with cases involving gender based violence. They are politically instructed to discourage the legal claims of refugees who might express their wish to seek justice in Thai courts. Henceforth, section leaders do not have much power and are under the political influence of stronger parties. As a result, they are sometimes unable to protect weaker parties in the temporary shelters, including survivors of gender based or domestic violence.

Other relevant entities

In addition to the formal dispute resolution mechanisms, other entities have a role in informally resolving disputes in the temporary shelters. These entities include Community Based Organizations (CBOs) such as the Karen Women's Organization (KWO), and Karenni National Women's Organization (KNWO), NGOs, traditional leaders such as community elders, and religious leaders. Refugees often choose to seek the help of these other entities when they believe them to be fairer, better equipped to give them the help they need or more sensitive to their particular problem.

The Karen Women's Organization (KWO)

The Karen Women's Organization is probably the most powerful CBO in Karen temporary shelters. Many women (and some men) seek help from KWO after section or zone leaders were unable or unwilling to help them. Others go to KWO because it offers them the opportunity to resolve sensitive matters such as marital disputes in private, something section leaders cannot provide.

KWO usually provide counseling for victims of domestic violence, accompany refugees to section or zone leaders or help married couples overcome their disputes. They can also help survivors of rape or sexual violence access counseling and justice through the camp system. When Camp Justice orders the detention of women for crimes like adultery or prostitution, KWO can provide alternatives to imprisonment, including community service and life skills training.

In spite of its reputation as a fair forum of dispute resolution for women, KWO's ability to resolve disputes in the temporary shelters is unfortunately limited by its lack of formal authority. They are reportedly known to suffer from gender discrimination at section and zone leader levels. Members of KWO often receive threats from members of the community because of their work to empower women. There is also lack of support and protection from section and zone leaders when they encounter the threats. They also complain that section and zone leaders rarely consult

with them about cases involving domestic or sexual violence. Despite their hard work and good intention, KWO's presence alone is not enough to provide women with equal access to justice in the temporary shelters.

Karenni National Women's Organization (KNWO)

KNWO is the community based organization mandated to work with women and their concerns in Karenni temporary shelters. Their activities cover a wide variety of issues including hygiene, education for children, and gender based violence. KNWO's main programs include:

- Weaving. Materials are provided by Thailand Burma Border Consortium (TBBC) but KNWO oversees the production of traditional *sarongs* and *longhis*. Weavers are paid THB 20 per piece and the finished product is returned to TBBC for distribution in the temporary shelters.
- Distribution of sanitary napkins for women aged 13 to 49 and soap for babies.
- Managing nurseries in collaboration with Women's Education for Advancement and Empowerment (WEAVE).
- Psychosocial support and counseling for women with respect to domestic issues including gender based violence. KNWO has community based case workers in temporary shelters conducting regular home visits to monitor cases and provide immediate protection intervention if the need arises. KNWO also manages a safe house for survivors of GBV in need of interim protection.

KNWO's involvement with both the community and other NGOs is irregular and inconsistent. Unlike their fellows in KWO, they are structurally less organized and their management and leadership are highly politicized. These factors affect its legitimacy and acceptance within the community.

Despite gender based violence being generally acknowledged by all stakeholders in the temporary shelters as a prevailing concern, KNWO is reportedly

irresponsive to all reported cases. Its main programmatic involvement consists of home based psychosocial support and providing temporary safe accommodation for survivors. In some cases, it will assist in directing a case through the justice mechanisms in temporary shelters including working with section leaders and camp security in the early phases of a case. For example, on an adultery case, KNWO lobbied for the case to go to trial in Camp Justice and accompanied the woman throughout the trial process. Similarly, it helped another survivor obtain divorce at Camp Justice and provided her with a safe place to stay in the interim.

Catholic Office for Emergency Relief and Refugees (COERR)

COERR is the lead NGO supported by UNICEF and UNHCR to deal with children's issues within the temporary shelters. COERR worked with the Karenni Student Union to provide some material support for unaccompanied or separated minors including the unaccompanied minors living in boarding houses. A more extensive campaign for children's protection is underway. Under this campaign, COERR established community based Child Protection Committees staffed by representatives from various CBOs. The Committees act as a referral system to identify cases as well as provide the necessary support and counseling. For example, cases of child abuse in Ban Tham Hin temporary shelter (BTH) and Ban Don Yang temporary shelter (BDY) are often referred by COERR to UNHCR for follow up. COERR's protection team is also developing safe havens within the camps known as Child Friendly Spaces for children to seek support and information as well as a peaceful place to play.

Concerning child abuse, COERR adopts a two pronged approach to prevention. The family is consulted whether they want to pursue legal action. If the family agrees, the case is reported to UNHCR. Psychosocial support and monitoring is provided if the family chooses to resolve issues internally.

International Rescue Committee (IRC): Legal Assistance Centers (LAC)

Another key entity in the temporary shelters is a joint project between UNHCR, the Thai authorities and the International Rescue Committee (IRC) to establish Legal Assistance Centres (LAC) in several temporary shelters. The LAC will help to improve capacity in the temporary shelters to channel cases involving serious crimes to the Thai justice system where appropriate, as well as building the capacity of the refugee in-camp justice mechanisms to handle less serious cases in a manner consistent with Thai law and international standards, particularly those relating to due process. It is also anticipated that the Legal Assistance Centres will assist in improving the system of reporting protection incidents in the temporary shelters.

IRC's LAC project began in May 2006; however, due to delays in official approval as a result of conflicts of interest between the policy of the Royal Thai Government and the objectives of the project, centers were only opened in August 2007. The LAC project's overall goal is to increase access to justice for refugees living in temporary shelters on the Thai-Burma border, allowing them to understand and seek remedy for rights violations, as well as helping the refugee leadership to administer justice in temporary shelters more equitably. IRC is already funded to carry out this project in three project sites and currently operates three legal assistance centers within temporary shelters in Mae Sot and Mae Hong Son provinces. Each center serves as a hub for legal capacity building activities and as a community legal resource centre. It is noted that there are many challenges facing IRC in effectively progressing to achieve the objectives of the project given the blanket policy of the government against the application of and access to Thai law for refugees in temporary shelters.

Ministry of Justice (MOJ): The Administration of Justice in the Temporary Shelters along the Thai-Burma Border Project (AOJ)

The Administration of Justice in the temporary shelters along the Thai-Burma Border Project (AOJ) is a joint cooperation between the Ministry of Justice

(MOJ) and UNHCR. The objectives of the project are to address the problems related to the state of exception of Thai law in temporary shelters and promoting the rights of refugees to access the Thai justice system.

The AOJ project aimed to improve the administration of justice in phases: the first three phases were aimed at bringing Royal Thai government and refugee officials together to work out a basic legal framework for the administration of justice in the temporary shelters and to train all the parties in refugees' rights and obligations under Thai and international law. The next phase, introduced at the end of 2007, involved supporting the Thai authorities to build the capacity of the officials in the field areas in monitoring the criminal procedure according to Thai law as well as facilitating access to the Thai justice system. Logistical support and human resources were provided to implement the AOJ project. A potential area of focus was also to build in-camp capacity to deal with the issue of juvenile justice, which has been identified by refugee communities as one of the key legal and justice issues in the temporary shelters.

Due to political conflicts among concerned government agencies, the authorization for implementation of the AOJ project and permission for the officials of MOJ to access the temporary shelters were not granted by the Ministry of Interior and the Office of National Security Council. The AOJ project had to be suspended at the end of 2008. The obstacles found in the implementation of the AOJ project revealed the position and policy of the Government against the application of and access to Thai law for refugees in temporary shelters, which perpetrated the state of exception of Thai law in temporary shelters.

Traditional Justice Leaders

Traditional justice leaders are the alternative dispute resolution mechanism operating outside camp justice structures. Their role and significance are gradually subsumed by the emergence of the modern Camp Justice structure. Their authority to resolve disputes is based on either their current social positions as religious leaders or on the village leadership positions they used to hold when they were living in Burma.

Other traditional justice leaders include the Elder Committee who are experienced practitioners of customary ways. Their role is to act as informal mediators of dispute resolution.

Traditional justice leaders deal with violations of moral codes or minor crimes and minor civil disputes. Adultery, premarital sex, domestic disputes, disputes between neighbors and petty theft all fall within their authority.

In most cases, traditional justice leaders act as mediators between parties to a dispute. They invite both parties to their home to tell their side of the story. The adjudicator then strikes a “compromise.” Where moral crimes are at issue, traditional justice leaders ask those who have sinned to confess and to promise not to commit the wrong again. An aggrieved husband or wife in an adultery case may receive compensation in the form of a cleansing ceremony.

Cleansing ceremonies are interestingly the most common remedy or tool available to traditional justice leaders in dispute resolution. In the pantheon of traditional beliefs, a cleansing ceremony that is conducted effectively will mitigate the harm committed against the injured party by placating any negative spirits or bad fortune that may have been summoned by the wrongful act.

In the normal practice, the cleansing ceremony remedy involves one party offering the injured party a chicken and a bottle of rice wine. Elders or religious leaders are invited to attend the ceremony. The wrongful party makes a promise before these elders not to commit the wrongful act again. The chicken’s bones are examined for signs of good fortune and it is then cooked and eaten. Six to seven people, including section leaders and relatives of the parties, will attend the ceremony.

In addition to any restorative value cleansing ceremonies may have (the ceremony may symbolize the restoration of the social balance), they may also serve as an effective deterrent to disputes. The costs associated with providing for a ceremony can be very high. Cleansing ceremonies may also serve as an alternative to the detention option, in the event that detention is unavailable or inappropriate.

However, there is another unusual traditional justice practice, which is called the “lie-detector-test” to determine guilt or innocence. This method includes applying chili-paste to the eyes or dunking hands in “boiling lead.” The party that refuses to take part in the practice or expresses pain in the application is deemed to have lied. According to the traditional justice leaders, this method is becoming less popular and unsuitable within the present social context.

Although traditional justice leaders are important figures in the administration of justice, their personal involvement in resolving disputes appears to be decreasing as a practice. Nowadays, traditional justice leaders act more often as consultants to section leaders dealing with disputes. Where traditional justice leaders do settle disputes, section leaders must serve as witnesses. According to both authorities, the section leader is replacing the traditional leader as the person to go to for the resolution of small disputes or moral crimes.

Religious leaders

In BML, Muslim religious leaders are important mediators in their community. They are elected to two year terms by Muslim camp residents. Unlike section leaders, they receive uniform training through religious schools and are therefore relied upon to provide a fair forum for matters involving Shariah laws or minor disputes. For example, they can provide a divorce to couples married under Islamic law and can determine whether the dowry given to the bride must be repaid.

Muslim religious leaders also support formal camp justice structures. They refer difficult cases to section leaders and advise section leaders on cases implicating Muslim residents. They are even equipped to provide an alternative to detention for young offenders. Young residents caught using drugs or committing minor crimes can be sent on a month-long pilgrimage through mosques in temporary shelters and neighboring mosques, where they are given religious instruction and counseling. However, this is not done in every case. Muslim religious leaders are incapable of solving the growing problem of youthful offenders in the temporary shelters.

Rule of Law

The rule of law in the temporary shelters is threatened by their proximity to the border and by the shortcomings in the camp justice system and security infrastructures. Among the problems, which are detailed below, are: (1) Karen National Army (KNA) and Karenni People Liberation Front (KNPLF) militarization in the temporary shelters; (2) the inability of camp security to ensure security inside the temporary shelters; (3) difficulties in applying law; (4) the lack of enforcement mechanisms; and (5) the lack of adequate detention.

KNA and KNPLF Military

The presence of military factions sometimes presents major obstacles to strengthening the rule of law within the temporary shelters and, more particularly, to facilitating access to justice for the communities. Although this issue is not exclusive to the present context, the threat of abuse of power is higher because of the closed setting in which refugees live and the lack of forums for redress when abuses occur. These factors create environments of distrust and fear within the communities which can affect the credibility and accessibility of their local dispute resolution mechanisms.

In recent history, the military elite were deeply entrenched in camp. Military governance was characterized by rough or vigilante justice. Extrajudicial disappearances and executions were common methods of resolving disputes and dealing with crime. These severe methods led to a culture of silence, distrust and repression. Although the degree of militarization and use of such methods has significantly diminished in this decade, the culture of silence continues to prevail in some temporary shelters. For example, in the interview with Karenni refugees, the community is still reluctant to voice their concerns about justice in temporary shelters. Some respondents were “uncomfortable” with questions regarding the ethnic or Burmese army. In the same way, some refugees preferred using informal methods of resolving disputes, such as approaching a relative who has a connection with the armed group, because these types of negotiation produced quicker, more efficient and more favorable results. Refugees with the ability to do so may also prefer to

manipulate the existing power structures within temporary shelters to resolve problems in order to avoid public confrontation and achieve the outcome in their favor.

Camp justice officials as well as security officials confess to feelings of fear for their personal safety when they are faced with a controversial case or when they are dealing with parties with ties to the military. Judges are very aware of public opinion and responses to their decisions and this fear may compromise decisions they have to make or their approaches to deciding whether a party with a connection to an armed group is guilty of the charge. Both judges and security officials report that they have been threatened by members of the community. It is reported that some judges admitted to feeling pressured by the Karenni National People's Liberation Front (KNPLF). Another case involved a woman in a Karen temporary shelter whose abusive husband was connected to the KNU and who suffered years of abuse because Camp Security and section leaders were afraid of confronting him.

Personal security is also an issue for witnesses, particularly since Camp Justice and Camp Security do not have established procedures for witness protection or confidentiality agreements, even though such agreements may be difficult to enforce in smaller camps. All trials are open to the public, which may prevent witnesses from testifying. Rumors of witness intimidation are often reported but have to be ignored at trial because they cannot be supported with evidence.

Refugees also identified "big family" politics as one of the most significant obstacles to justice as well as one of the most difficult issues to address. This social politics is particularly present in Karenni temporary shelters and to a lesser extent in Karen temporary shelters. Administration of justice can be compromised by the military elite or their relatives who occupy positions of power in the camp committee and camp justice. Camp committee members are reportedly known to use their power to block cases from court when their allies are implicated in crimes. In some cases, serious crimes are taken out of the camp justice system entirely by an influential camp committee with an interest in the outcome. Under these circumstances, where the judges' ability or willingness to give fair judgments is in

doubt, people may refuse to pursue their problems through formal dispute resolution mechanisms.

Camp Security

In all temporary shelters, working for Camp Security is voluntary and open to almost anyone who is willing. Most members see their work as a public service to their communities. Despite the readiness of its members, camp security is sometimes unable to fulfill their responsibility of keeping safety inside the temporary shelters. They are under trained and lack law enforcement tools. They are also vulnerable to political influences inside the temporary shelters. Their inability to fulfill their responsibilities undermines the efficiency of other camp justice institutions.

In all temporary shelters, camp security receives little training. In BML, until recently, training took place only once a year. Members of Camp Security in all temporary shelters complain that they lack self-defence skills or are insufficiently trained in police duties, investigation and the responsibilities of security. Camp justice institutions that should depend on camp security complain that they sometimes let perpetrators escape from the temporary shelters or arrest the wrong person.

Camp Security suffers from a lack of materials. In all temporary shelters, they have neither weapons nor uniforms. In BML and BMS, camp security either do not have handcuffs or are forced to share handcuffs with five to six other officers. Without uniforms, weapons or handcuffs, tools that are considered necessary to police officers in most societies, Camp Security cannot safely apprehend or handle violent refugees. Many Camp Security officers fear for their safety, even as they are trying to protect others. Added to the danger of policing without the proper tools is the fact that Camp Security Officers may be authorized to arrest any person who breaks the law in the temporary shelters, but they will avoid arresting members of camp leadership or refugees with powerful ties to the ethnic armed groups.

Camp Security's lack of resources makes it difficult to maintain security in the temporary shelters. The temporary shelters are dynamic environments that require

constant and careful supervision by a regular force of well-trained and well-paid security forces. But the number of men and women who join the forces are insufficient or insufficiently paid to patrol the camp 24 hours a day. Every night, for four or five of the darkest hours, there is no patrolling security in temporary shelters. Refugees complain that outsiders sometimes break into the temporary shelters at night and threaten their safety. Moreover, although they communicate with formal camp justice institutions regularly, Camp Security cannot easily be called to respond to an emergency. As a result, according to the survey conducted by IRC, only 29.9 percent of the refugees interviewed believed that Camp Security fulfilled their function of ensuring security within the temporary shelters. 19.9 percent of respondents reported they “never” feel safe in the temporary shelters.

In fact, some refugees consider Camp Security as a source of danger rather than safety due to the lack of training, a lack of discipline and a lack of consistently applied laws. In BML, a refugee complained that Camp Security “only do their jobs when they are drunk.” In all temporary shelters, Camp Security is authorized to detain refugees, without orders from camp justice, during an investigation. According to the survey conducted by IRC, a substantial number of people, which is 48 percent of respondents in BMNS, fear abuse by Camp Security.

The Application of Laws

In all temporary shelters, the application of laws is a large challenge for camp justice officers. They have had little if any training in basic legal concepts or practices. Many of the legal resources they have are inadequate to provide clear guidance. Even when they are faced with simple disputes, the influence of powerful ethnic organizations and other cultural differences may complicate the way they provide justice.

The relatively complex camp justice systems found in Karenni temporary shelters came from a 1993 Karenni National Progressive Party (KNPP) justice initiative. At the request of the KNPP, members of the Burma Lawyers Council assisted in designing justice institutions and procedures to administer law in these

camps. Over the course of the following ten years, various individuals and groups of camp justice officers received training in Burmese law and practice. This attempt at building a justice structure suffered setbacks in 2003 when camp justice officers were resettled to third countries. They left a complex judicial system but took with them their skills and expertise.

Nowadays, current camp justice officers notably admit a lack of legal training as their most serious shortcoming. For example, some judges speak of the difficulty understanding the difference between civil and criminal law. They use the books that the original judges left behind, such as the Indian Penal Code of 1861 and the Burmese Code of Criminal Procedure 1974-1989, as their only sources of guidance. Yet, it is clear that these legal resources are obsolete in meeting the challenges of refugee disputes and crimes in the present day in temporary shelters.

The law books used by refugee leaders are full of very old laws. Even where the laws are relevant, the remedies offered are often not. Resource constraints which refugees are facing in temporary shelters limit what punishments can be given. In other cases, the law itself may be clear enough but the interpretation is not. In one domestic violence case, a woman claiming to be beaten by her ex-husband was told that while she did not deserve to be beaten, she was also not entitled to any justice. Camp justice officers in the case said the woman provoked her ex-husband's beating according to the Burmese criminal code as she had pointed her finger at her ex-husband while arguing with him.

In Karen temporary shelters, refugee judges apply a combination of KRC regulations, KNU laws and practical solutions to resolve disputes. Although KRC law was adopted by camp justice structures in 2000, it is not always applicable in the temporary shelters. In some places, the KRC regulations demand evidence that will rarely be found in a camp context, such as a written contract signed by witnesses or seven forms of evidence. In other cases, they demand penalties that should not be imposed upon refugees or are incommensurate to the crime, such as six-month imprisonment for committing adultery or petty theft by a refugee child.

Without legal training and guidance, camp justice adjudicators in all temporary shelters turn to compromise and negotiation—even in serious criminal cases—as a means of resolving disputes. Women in particular may suffer under this system where evidence of domestic violence cannot be documented. Women in this situation may be asked to “compromise” with their abusers. This practice is also common because of the underlying cultural context which favors reconciliation in domestic violence cases.

The matters often get more complicated when political considerations influence the outcomes of judicial proceedings. The KNPP directly appoint camp justice officers in Karenni temporary shelters. In Karen temporary shelters, the KNU also has influence over the judicial process. People with KNU connections will request KNU involvement, or threaten to do so, which disrupts the logical and fair application of law or dispute resolution techniques.

According to credible sources in temporary shelters, both the KNU and KNPP express a strong dissatisfaction for any camp justice process in which their soldiers are implicated in GBV crimes. Members of the armed groups reportedly threaten camp justice officers. A source in BMNS claimed that a member of the Karenni People Liberation Front (KNPLF) warned the judge that he should “be careful” after the court decided in favor of his ex-wife.

There is also pressure to find a solution to the cases which please the majority of the population in temporary shelters. It is generally known among residents in temporary shelters that social pressure controls behavior in a community where people live very close to one another without the possibility to freely move away.

Camp Justice Outcomes

Another barrier to the rule of law in the temporary shelters is that the sentences of camp justice are sometime difficult to enforce. This has led to disobedience of regulations in temporary shelters and impunity when breaching the regulations. For example, in cases where camp justice imposed a large fine or long-

term detention, some refugees would escape justice by leaving the temporary shelter. Some refugees chose to return to Burma while others found resettlement in third countries.

Another barrier is the lack of capacity for enforcement. Detention centers in temporary shelters are not equipped to keep detainees longer than a few weeks. In the case of paying fines, refugees do not have income and become unable to fulfill their obligation. Thus, judges have to impose shorter terms of detention or smaller fines. However, the lack of enforcement capacity creates the impression of inconsistency and weakness of the camp justice system.

Even when a perpetrator does not leave the camp, there are few appropriate means to enforce a sentence. By trying to enforce penalties, camp justice asks the family members of the perpetrator to “guarantee” payment of fines. This action, in effect, punishes the family members of the defaulting perpetrator. In one case, several relatives of a refugee who defaulted on payment of fines, including a 71 year old man and a child under the age of 5, were sent to the detention center in temporary shelter for his inability to pay the fine ordered by Camp Justice. In some cases, section leaders, though they are especially well-placed to monitor the payment of fines or compensation within their sections, are in practice unable to do so because they are afraid of confronting powerful refugees.

Detention Facilities

Each temporary shelter has its own detention facilities which are used to temporarily detain criminal suspects or to administer imprisonment sentenced by camp justice. Detainees in detention centers include convicted rapists and criminal suspects awaiting trial. According to COERR, refugee minors are sometimes held in detention centers together with adult perpetrators who have committed serious crimes.

Camp Security officers are responsible for administering the detention facilities in temporary shelters. Some detention officers in Karenni temporary shelters are reportedly known to be active KNPP soldiers. One detention officer noted that they

report to camp security but they are independent. It is understood that military power may help these detention officers to control detainees. On the other hand, such associations may also mean that the detention officers who abuse their authority while on duty are not punishable by the camp justice system.

In Karenni temporary shelters, detainees are given 2-3 hours per day to stay outside their cell in which they are allowed to be visited by their relatives. Some detainees reported that they were satisfied with their treatment by detention officers. Food is provided two meals a day. They are also given time to work in a community garden outside the cell and are taken on walkabouts near the detention center. If they are sick, a detention officer will call a refugee medic to visit them at the detention center.

The detention center in BMNS consists of two large buildings constructed of bamboo and wood. Detainees awaiting trial are held in one cell and those already sentenced are held in the other. Detainees can sit, stand, and walk around with ease. These facilities include bathrooms. The detention center in BMS is smaller and more rudimentary. A wooden cell is separated into two rooms and a bathroom. Camp detention facilities may provide satisfactory detention of suspects and criminals for temporary purposes according to the view of camp justice but they do not meet the standards of a proper detention facility.

BML has separate detention centers in each of the zones and a central detention center. Detention centers are bamboo huts with dark rooms cut off by corrugated steel doors. Detainees are often locked in stocks for several days at a time, regardless of age or physical condition. At the time of the visit, two detainees complained of being forced by Or Sors to spend three days and two nights in stocks, attached by their legs, unable to move without cutting their ankles. They had been arrested for going outside the camp without permission. One of the detainees suffered from gastritis and said the pain of being in stocks was hard to bear. It is remarked that neither of them knew how long they would be detained.

To conclude this chapter, Thai officials are perceived as being complacent about the state of exception of Thai laws in temporary shelters as they acknowledge and allow the refugee's justice system to flourish, which, in turn, strikes a blow at the national sovereignty of Thailand. The state of exception in temporary shelters in Thailand is clearly not by law, 'de jure', but it is the reality and practicality of the state of exception applied through a blanket policy of concerned Thai government agencies, which creates a 'de facto' state of exception in temporary shelters. The state of exception in temporary shelters produces a coping mechanism designed by refugees to replace the state's justice system. The practice of this mechanism, the acceptance of the refugee communities and the acknowledgement of Thai authorities allows the state of exception to reproduce itself both in perception and in practice.

By allowing the refugees to operate their own judicial system in temporary shelters, which are notably in Thai territory, the Thai Government basically accepts that its judicial power is subjugated in some parts of its territory. In contrast with the proclamation of national security and national sovereignty, leaving the temporary shelters and the refugees inside them in legal vacuum might also be perceived as an indication that the Thai Government accepts the fact that there is a state within a state in Thailand.

In the next chapter, this legal and political phenomenon raises the question of the implications of the state of exception of Thai laws made by the Thai Government for the human rights of refugees from Burma living in temporary shelters.

CHAPTER IV

IMPLICATIONS OF THE STATE OF EXCEPTION OF THAI LAWS FOR THE HUMAN RIGHTS OF REFUGEES

What happened in the camps exceeds the juridical concept of crime to such an extent that the specific political-juridical structure within which those events took place has often been left simply unexamined. The camp is the place in which the most absolute conditio inhumana ever to appear on Earth was realized: this is ultimately all that counts for the victims as well as for posterity—Giorgio Agamben (Means Without End-Notes on Politics, p. 37).

Protection incidents in temporary shelters

According to UNHCR, there were a number of reports of a wide range of protection incidents taking place in and around the nine temporary shelters on the Thai-Burma border, ranging from rapes of young children, murders and killings of refugees by other refugees, the Karen National Liberation Army, the Karenni Army and Thai soldiers alike, and recruitment of child soldiers. The report of these incidents identifies a number of human rights concerns, which are deemed to be the result of the state of exception of Thai laws in temporary shelters.

Among other concerns, restrictions upon education, employment and the right to move beyond the confines of the temporary shelters have been in place for up to twenty years, and have forced the 140,000 refugees living in the temporary shelters to lead lives of unrealized potential and frustration. In such an environment, violence and human right abuses have inevitably arisen. The UNHCR's report²³ indicates that more than 350 serious protection incidents falling into 17 different categories have been reported to UNHCR over the past 3 years. Due to the absence of a comprehensive reporting system, it is assumed that this number represents only "the tip of the iceberg".

²³ UNHCR Report (November 2006), "Protection Incidents in Refugee Camps on the Thai/Myanmar Border: Trends and Analysis 2003-2006". (confidential)

Some of the more interesting findings of the report include:

- No arrests are made in 4 out of 5 murder/extrajudicial killing cases
- There is a high level of involvement of Thai camp security guards (32%) in perpetrating physical assaults on refugees
- Rape and domestic violence constitute the most common form of violent crime in the camps
- There is a high rate of child rape, counting for 50% of all rapes reported in 2005
- 2 in 3 suicide victims are women, compared to a national ratio in Thailand of 3 males to every 1 female. Most suicides involve victims of rape or domestic violence.
- Alcohol abuse features prominently, with 1 in 4 physical assault cases and a high percentage of sexual and gender-based violence cases involving alcohol.
- The majority of murders/extrajudicial killings (60%) occurred inside the camps, with the majority of known perpetrators being other refugees.

It needs to be stressed that this analysis only represents a sample of cases that have been brought to the attention of UNHCR over the course of the last three years. UNHCR does not have reliable data on the full spectrum of protection incidents as there is currently no comprehensive monitoring and reporting system in the temporary shelters. As such, UNHCR considers that the statistics presented within this analysis represent only an initial attempt to identify general trends.

Despite the efforts exerted to collect information of protection incidents, it is important to note that there are numerous barriers that impede the full reporting of protection incidents to UNHCR. In addition to the absence of a clear multi-sectoral and inter-agency protection reporting mechanism in the temporary shelters referred to earlier, the refugees themselves are also reluctant to make reports. The act of reporting protection incidents and crimes to the relevant authorities is often understood by refugees as having the potential to result in stricter security measures being imposed upon the refugees by the Thai authorities. This, coupled with a desire to manage their own affairs, means that refugee communities often prefer to handle these incidents

themselves within the temporary shelters rather than involving the official Thai justice system or UNHCR. In addition, the Thai camp commanders have explicitly expressed reluctance for crimes to be reported either to the Thai police or UNHCR.

According to UNHCR, 17 categories of protection incidents were reported. It is noted that these categories do not necessarily represent all protection incidents that have occurred in temporary shelters but, rather, those which have raised the most serious concerns. Over the past three years there has been a steady increase in the frequency of protection incidents reported across the board.

It should be noted that a large number of incidents reported fall within two, if not more, of the 17 protection categories and UNHCR mentioned that it has sometimes been difficult to categorise the incident. In cases where one incident could fall within two or more categories, it has only been recorded under one category. This obviously affects the overall statistics so that numbers in some categories may, in fact, be under-stated. For example, cases involving rape by armed elements in the camp fall within two categories, namely “rape” and “militarization”. Because such cases are only recorded under the “rape” category, the number of “militarization” incidents will therefore be under-stated. As a result, the statistics collected by UNHCR should be considered as a general guide only.

The 17 protection incident categories reported to UNHCR

The following represents a sample, taken from actual cases reported to UNHCR, of each type of protection incident that UNHCR has identified as constituting a major concern.²⁴

²⁴ Some of the details in the following cases have been changed by UNHCR in order to secure the privacy and conceal the identity of both the victims and perpetrators, the majority of whom still remain in the temporary shelters. In cases involving either the Karen National Union (KNU)/ Karen National Liberation Army (KNLA) or Karenni National Progressive Party (KnPP)/Karenni Army (KA) the term ‘non-state entity’ has been employed.

1. Extra-judicial killing and murder

- A 42 year old refugee man was fatally shot by a group of Thai soldiers while travelling back to his temporary shelter. The victim died instantaneously from his wounds. The Thai military subsequently found that the soldiers had acted in self-defence.
- An ethnic Burmese refugee man was reportedly executed by one of the non-state entities after having been accused of raping a 15 year old refugee girl. The victim of the execution was reportedly handed over to the non-state entity by the camp committee. The alleged rape victim was the daughter of a former member of the non-state entity which carried out the execution. Friends of the executed man claim that he was innocent of the rape charges, and that his ethnicity was one of the key factors which led to the allegations against him and his subsequent execution.
- Another ethnic Burmese refugee suspected of being a spy for the Myanmar regime was executed by refugee security personnel in the temporary shelter, reportedly under orders from the former commander of a non-state entity. The refugee who was executed was reportedly mentally ill.

2. Threat of execution:

- A 39 year old refugee woman was threatened with arrest and execution and forced to leave the temporary shelter by members of a non-state entity on the grounds that she was having an affair with another man. The woman's husband was a former member of the non-state entity that was responsible for the threats against her. The woman was forced by the armed elements to abandon her two children and leave them behind with her husband's family in the temporary shelter.

3. Militarization of temporary shelters:

- While working in a clinic in one temporary shelter, a trained medic was forced to administer medical treatment to a family member of a soldier of a non-state entity. As the victim was tending to the medical needs of the patient, he was continuously threatened by the soldier who held a gun to his head. When the soldier became dissatisfied with the treatment that was being administered, he fired his gun in the direction of the victim.
- In another temporary shelter, medics reported being forced to cross the border into Burma to treat soldiers of one of the non-state entities who had been injured in fighting.
- Four refugee teenagers who had been involved in a range of petty crimes and who presented a considerable law and order challenge for refugee leaders were reportedly handed over by the camp committee to a non-state entity and taken away from the temporary shelter and detained at an unknown location in Burma waiting for execution order. UNHCR discovered the incident and negotiated for their safe return to temporary shelter.
- In another temporary shelter, two refugee men in their twenties reported that “soldiers ask us to go back to Burma to carry magazines and supplies. Sometimes we go for one month or sometimes less. The order comes for every household. One person is asked once a year”.

4. Recruitment of child soldiers:

- A group of refugee children, aged between 14 and 16, were recruited and returned to Burma during their school holidays to undertake military training and to engage in armed confrontations with Burmese government forces.

- A refugee child was injured by shrapnel while delivering food and other supplies to family members fighting for a non-state entity on the front-line in Myanmar.

5. Rape:

- A 12 year old refugee girl was raped by a Thai soldier while she was outside of her temporary shelter. The victim had been looking after her family's goats outside the parameters of the temporary shelter when the soldier called her over, ripped off her sarong and raped her. The whole event was witnessed by the victim's nephew – a 7 year old refugee boy. Minors are often targeted for rape and sexual assault in and around the temporary shelters as they are more vulnerable and less likely to effectively resist or report the incident.
- A 20 year old refugee woman suffering from a mental illness was assaulted, molested and subsequently raped in her own home by a Thai villager. The victim suffered from severe injuries and was left psychologically traumatised by the event. Physically and mentally disabled women are also often targeted for sexual crimes as they are less likely to effectively resist.
- A 3 year old refugee girl was raped by two of her neighbours, refugee men in their thirties. The rape took place when the little girl was left alone in the house while her parents were working outside of the temporary shelter.
- A 17 year old refugee girl was raped by the pastor of her church. She has subsequently been blamed for the incident and ostracised by her family and the refugee community as a “bad girl”. This case raises particular concerns regarding the young age of the victim and the abuse of power by the pastor.

6. Attempted rape:

- A 5 year old refugee girl was the victim of an attempted rape by her uncle, a refugee man in his twenties.

7. Domestic violence:

- A 30 year old refugee woman had been continuously abused throughout the course of her marriage. In repeated incidents the victim was choked (to the point of suffocation), brutally beaten and grossly intimidated by her husband. In the latest reported incident, the husband assaulted her when she was 7 months pregnant and repeatedly struck her in the abdomen in an apparent attempt to force a miscarriage. Her injuries were so severe that she had to be hospitalised and was considered a suicide risk.

8. Other forms of sexual and gender-based violence:

- A group of young refugee girls aged from 14 to 17 years old were sexually molested by the caretaker of the “boarding house” where they were living in one temporary shelter. These cases raise similar abuse of power concerns as the rape of the minor by the pastor.
- In another temporary shelter, a woman aged 21 was raped by the caretaker of her boarding house, who is also a church pastor, and who threatened to kill her if she told anyone. However, the victim fell pregnant as a result of the rape. When this became physically apparent, the perpetrator attempted to kill her so that she would not reveal the identity of the rapist. The woman survived the attack, but sustained serious injuries and had to be hospitalised.
- A refugee woman forced her 22 year old daughter to marry a Thai villager to pay off a debt that she could not otherwise repay.

- In several temporary shelters, refugee women have complained of being sexually harassed by Thai camp security guards (also known as "Or Sors").

9. Physical assault:

- A refugee man was stabbed with a knife by a Thai camp security guard.
- A 6 month pregnant refugee woman was severely beaten by three refugees outside her home. The perpetrators attacked the victim with a stick and repeatedly punched her in the stomach. After the attack, the victim required extensive medical treatment and had to be hospitalized.
- Three refugees were detained, and severely and repeatedly beaten by Thai camp security guards over a two day period for possessing mobile phones.

10. Threat of physical assault:

- A refugee man was working closely with both camp security and the SGBV committee in the temporary shelter that he was residing in. After having helped report three rape offenders to the security personnel within the temporary shelter, the victim was repeatedly threatened by the perpetrators.

11. Child abuse:

- In an incident involving child abuse within the family, a husband tied up his wife with a rope, beat and severely injured her, then brutally beat his 10 year old son, including by throwing him against the wall in their home. The boy subsequently required two days of hospitalization.
- In an incident involving child abuse outside the family, three refugee boys, age 14 to 17, were forced to serve as night security guards for a storage centre in their temporary shelter. One night, the storage manager was intoxicated and severely assaulted the three boys – leaving them with serious injuries.

12. Suicide and attempted suicide:

- A 40 year old refugee woman attempted to commit suicide by overdosing on prescribed medications. After her recovery, the woman explained that she had been involved in an affair with a married man who held an important position within the temporary shelter. She attempted to commit suicide because she feared that she would be ostracised by her community due to social taboos surrounding “adultery”.

13. Discrimination:

- During the course of the festivities that accompanied the arrival of the Thai New Year, a group of Thai camp security guards, drunk from the celebrations, insulted a Muslim refugee and threatened to cut off his beard. Upon hearing of the event, a mob chased the camp security guards out of the temporary shelter and physical skirmishes between the two groups occurred. In the melee that ensued, a Thai camp security guard opened fire and a Karen refugee woman and a Muslim refugee man were severely injured.
- In one temporary shelter, refugees who fall within an ethnic Burmese minority group have reported that they are regarded by the camp leadership with great suspicion and are routinely accused of being spies for the Burmese Army. They claim that over the past few years, 5 ethnic Burmese have been abducted from the temporary shelter by one of the non-state entities and either executed or detained on the basis of these allegations.
- In another temporary shelter, a senior member of the refugee leadership was threatened and placed under house arrest after a radio interview where he expressed political views with which the majority of the leadership disagreed.

14. Fraud:

- In one temporary shelter, a number of individuals – both refugees and foreigners (not associated with UNHCR) - posed as UNHCR resettlement officers and began to offer resettlement to refugees for fees of Baht 5,000 per person. This act of fraudulent criminal activity had the repercussion of tarnishing the reputation of UNHCR and diminishing the understanding of refugees of how the resettlement process functions (i.e. resettlement is conducted by UNHCR on the basis of need and without charge).

15. Accidental death:

- A 10 year old refugee boy was accidentally killed when he came across a discarded rifle. According to reports, the victim and three other young refugee boys left the temporary shelter and came across the gun in an abandoned shelter outside of the temporary shelter. When the victim tried to operate the gun, it exploded and killed him instantaneously.

16. Prostitution in camps:

- A divorced refugee woman, age 29, engaged in a sexual relationship with a Thai camp security guard (“Or-Sor”) for several months. The woman consented to the proposal for sex by the Thai camp security guard to benefit from favourable treatment. In addition, the man agreed to help her with maintenance tasks and other activities that are difficult for a single woman to pursue by herself. Her condition raised a concern that refugee women might be forced into prostitution due to their lack of power and alternative economic opportunities in the temporary shelters. In addition, there are also numerous ethical issues that arise when Thai camp security guards engaged in such relationships.
- In one temporary shelter, two women were reportedly denounced by the refugee community as they were found to work as prostitutes in a

Karaoke shop in the town. They were ostracized by the community and had to finally leave the temporary shelter out of shame.

17. Trafficking/exploitation:

- A group of refugees were part of a deal involving a number of employers and other “middle-men” to work illegally in a factory near one temporary shelter. At the factory, the refugees were forced to live in difficult conditions in a compound in the factory and were not allowed to leave. They were also forced to work under extremely poor conditions and were never paid for their work. A number of the refugees managed to escape and make their way back to the temporary shelters, while other members of the group remain at the factory.

Analysis of the implications of protection incidents for the human rights of refugees from Burma in temporary shelters

The four most serious protection concerns that have been reported to UNHCR in terms of the threat posed to the rights to life, safety and security of the refugees, as well as the frequency of their occurrence, are: (1) sexual & gender-based violence (particularly domestic violence and rape); (2) extra-judicial killings/murder; (3) suicide; and (4) physical assault. With the exception of physical assault, the trend has been one of annual increase. Perpetrators of the reported protection incidents were not brought into the Thai justice system, while the victims of these incidents could not access the Thai justice system in seeking recompense for the crimes committed against them. This culture of impunity is a result of the state of exception of Thai laws in temporary shelters which perpetrates the secondary persecution and/or violation of human rights of refugees from Burma seeking asylum in Thailand.

Domestic violence-the most common type of incident

Domestic violence represents the most common protection incident that is reported to UNHCR. All of the reports received have been from female victims, while

perpetrators are predominantly husbands and other known family members. While the main cause of domestic violence is the unequal power relationship between men and women, a key observation that has arisen from this analysis is that many incidents are often fuelled by the absence of law and lack of access to justice in the temporary shelters.

While there has been a clear increase in the number of domestic violence cases reported to UNHCR over the past 3 years, it should be stressed that the number of incidents reported represents only a fraction of those which actually occurred. Domestic violence is still considered as a 'family affair' by refugee communities and camp committees and, consequently, such incidents are under-reported and are often dealt with internally.

Many domestic violence victims remained vulnerable to repeat incidents due to the absence of legal remedies or other protection mechanisms. In some temporary shelters, there are safe houses or community centres which can provide temporary refuge. However even in the safe houses women can still face threats from the perpetrator. In particularly severe cases, there has often been no other option than to arrange for victims to be transferred to other temporary shelters for their own protection.

Rape-a leading source of violence

After domestic violence, rape is the next most common form of violent crime within the temporary shelters. The survivors of such incidents are always female while the perpetrators range from known family members to other refugees within the temporary shelters, Thai villagers from the surrounding areas and Thai authorities. In 2005, more than 50% of all rape and attempted rape victims were children – with the youngest victim being just three years of age. This is indicative of a trend of high rates of violence against children reported in the temporary shelters over the past three years.

Murders and extra-judicial killings

Murders and extra-judicial killings, unlike rape or domestic violence, are often high-profile protection incidents that are more likely to be reported to UNHCR (although in the case of extra-judicial killings by non-state entities this is not always the case).

The majority of victims of murder and extra-judicial killings were male refugees over the age of 18 (81% of cases). 14% are female refugees and 5% are boys and girls under the age of 18. It was found that 40% of perpetrators of murder incidents are refugees living in the same temporary shelters, 13% are Thai civilians, 7% are Thai Camp Security Officers, and 7% are Thai soldiers. While in 33% of cases the perpetrators are unknown, this reflects the lack of a fully functioning reporting and investigation system in the camps.

In some incidents involving military personnel, Thai military officials have found that the soldiers involved had acted in self-defence, while in others they have indicated that the refugees were engaged in illegal activities outside the temporary shelters. In some cases, compensation has been paid to the family of the victim, while in others this has not been the case. It is worth noting that these cases were not brought to justice.

Most of the murder and extra-judicial killing incidents happened inside the temporary shelters (60% of cases), while 40% happened outside the temporary shelters. In some cases, victims have been killed by Thai military or security forces after they have illegally left the temporary shelters, while in others they have been killed after having been taken out of the temporary shelters by non-state entities. Victims of extra judicial killings by non-state entities have often been accused of being spies for the Burmese regime, or of having committed some other crime.

Suicide and attempted suicide

Almost two in every three (63%) suicide incidents involved women. The high percentage of female suicide victims within the temporary shelters is a heavy contrast to national suicide trends in Thailand where the male/female ration is 3:1 and where young males between the age of 25 and 29 were most likely to be suicide victims.

The increasing suicide rates within the temporary shelters and the dominance of women within the ranks of victims corresponds with the increase in sexual and gender-based violent crimes. From the data collected by UNHCR, the main reasons for victims to choose suicide was the desire to free themselves—through death—from the traumas of past experiences of rape and from the ordeals of domestic violence that many refugee women often face on a daily basis. This highlights the need for more action to address sexual and gender-based violent crimes in a proper legal system, as well as for more mental health and psycho-social programmes in the temporary shelters.

Physical assault

The majority of victims (84%) of cases of physical assault that have been reported to UNHCR and that have not been categorized under the heading “Sexual and Gender-Based Violence” are adult males. The majority of physical assaults on females are mainly perpetrated within the confines of their own homes and by known family members and as such, they are reported and analyzed by UNHCR as domestic violence incidents.

Refugees represent the largest single grouping of perpetrators (41% of physical assaults) with Thai camp security personnel making up 32%, Thai Army personnel 5%, and Thai civilians 8% of perpetrators. The high level of involvement of Thai camp security personnel in perpetrating assaults against refugees is a matter of serious concern.

It is interesting to note that one in every four incidents of physical assault involves alcohol. The linkage between violence and alcohol abuse in this category coincides with the findings on the link between alcohol abuse and sexual and gender-based violence. It also highlights an apparent need for more programs to address alcohol abuse in the temporary shelters.

Many protection incidents related to “militarization” of temporary shelters

According to UNHCR, the protection category of “militarization” does not have a technical meaning, but has been created to reflect the impact of the presence of unofficial armed elements associated with non-state entities in the temporary shelters. The presence of these groups has resulted in increased levels of violence and has often undermined the administration of justice in the temporary shelters. It also runs counter to the requirement under international standards that the temporary shelters are civilian and humanitarian in nature.

Among the numerous reported incidents of “militarization”, there have been extrajudicial killings, intimidation and coercion, physical and sexual assaults, abductions, and detention carried out by armed elements. As with other protection categories, there is considerable overlap between “militarization” incidents and other protection incidents.

A number of the incidents of militarization reported to UNHCR involve refugees being removed from the temporary shelters by armed elements associated with non-state entities and in some cases being taken to the other side of the border, either voluntarily or involuntarily. Examples of voluntary movement include the reported recruitment of refugees as soldiers (including children) from the temporary shelters. Examples of involuntary movement include situations where the non-state entities appear to step in to take action into their own hands in dealing with perpetrators of crimes in the temporary shelters, resulting in the detention or sometimes even execution of the perpetrators involved on the Burmese side of the border. All of these activities clearly violate the national sovereignty of Thailand,

which requires that every person in Thai territory is under Thai jurisdiction, and the actions of non-state entities challenge the authority of Thai laws. These actions of non-state entities are only possible when the temporary shelters are in the state of exception of Thai laws, in which anything is possible within the temporary shelters.

Camp management

The extensive control exerted by the dominant ethnic/political groups in the temporary shelters and their close links to the non-state entities—which is linked to the “militarization” of the camps—has significant implications for the human rights of refugees in temporary shelters. Refugee leadership structures are not properly representative and do not include less powerful groups among the refugee population. This has a direct impact on and contributes to the high levels of violence and other protection problems faced by women, youth and other groups (e.g. ethnic minorities). In particular, it directly affects how justice is administered in the temporary shelters in that crimes against the less powerful groups tend to go unrecognized or to receive an inappropriate or inadequate response. For example, extrajudicial killings have often been used by the non-state entities to “deal with” criminals, while crimes committed by perpetrators associated with non-state entities often go unpunished, and are often accompanied by threats against victims to refrain from taking further action.

The chronic under-representation of women and youth in the refugee leadership and their lack of influence in decision-making structures reinforce the failure of camp justice mechanisms to treat sexual and gender-based violence and violence against children as a crime. The under-representation of women is particularly important in the judicial committees, where the refusal by male judges to treat crimes against women seriously is a major problem. This is an important contributing factor to the high levels of violation of the rights of refugee women and children in temporary shelters.

To conclude this chapter, it is clear from the report of UNHCR that the state of exception of Thai laws exists in practice in the temporary shelters and it has

implications on the human rights of refugees from Burma living inside the temporary shelters. The steady increase in the number of incidents reported is of grave concern for the human rights situation in temporary shelters. The rate of investigation, arrest and prosecution for serious crimes remains disturbingly low, and a climate of impunity, especially with sexual and gender-based violence, continues to prevail.

The majority of victims of crimes prefer to resort to traditional refugee justice mechanisms over the Thai legal system. This is a problematic phenomenon in cases involving serious crimes, as the sanctions exercised under the refugees' traditional systems are often not in line with either Thai law or international standards. For example, in a rape case handled by the camp justice system in 2005, the 'solution' that was proposed was for the survivor to marry the perpetrator. As a result, in many cases victims have not been granted adequate remedies and perpetrators have not undergone appropriate penal proceedings. When penalties against perpetrators are imposed by traditional justice mechanisms, the camp justice system often lacks the capacity or adequate facilities to implement the penalties.

From the standpoint of the Thai justice system, an overall improvement in the willingness of the Thai authorities to apply Thai laws in temporary shelters, pursue criminal cases and allow access of refugees to Thai justice remains a priority in the process of ending the state of exception of Thai laws in temporary shelters. At present, many incidents affecting the human rights of refugees remain unresolved. Procedural and regulatory limitations, such as access in and out of temporary shelters to report crimes, have presented a considerable barrier to refugees who would otherwise have filed charges under Thai law.

Among the cases of murder and extra-judicial killings, no arrests were made in 4 out of 5 cases (80%). In most cases, the perpetrators were either unknown, had fled, or remained at large as a result of insufficient evidence to mount an arrest. Even where arrests were made, only a fraction of cases made the progression from initial arrest to prosecution. Examples include a case where a refugee had reportedly been murdered by members of camp security but the authorities involved in the investigation were reluctant to pursue the case and the perpetrator was never

identified, arrested or brought before a criminal proceeding; in another case the Thai camp commander refused to issue permission to a child rape victim to leave the temporary shelter to file a report with the police; and in yet another case the camp commander did not report a case to the police due to his close relationship with the alleged perpetrator.

To recap on this chapter, the state of exception of Thai laws demonstrates a relationship with the continuing violation of the human rights of refugees. Lack of access and exclusion from the Thai judicial system as well as tolerance by Thai authorities perpetuates a parallel system of justice administered by refugees and non-state actors. The parallel system is plagued with nepotism and deficiencies in knowledge, resources, and legal authority. Fairness and consistency are eroded as the justice system presents a difficult burden for the refugee to bear by themselves. It is the state's responsibility to provide access to a competent justice system and to ensure impartial treatment to refugees on a par with citizens.

CHAPTER V

CONCLUSION

Human rights are distinct from constitutional rights, or from the rights of liberal democratic citizenship, or from other rights that belong to certain kinds of political institutions, both individualist and associationist. Human rights set a necessary, though not sufficient, standard for the decency of domestic political and social institutions.—John Rawl (The Law of People, p. 80)

UNHCR and the international community began to focus more systematically on issues relating to the administration of justice in the temporary shelters in Thailand in 2003 as a result of its more systematic attempts to monitor protection incidents in the temporary shelters, in particular Sexual and Gender Based Violence (SGBV). As part of its SGBV programme, in late 2002/early 2003, UNHCR introduced a protection “incident report form”, to attempt to initiate a system among UNHCR’s NGO partners (who have a more regular presence in the temporary shelters) to systematically report on all protection incidents, including SGBV, so that appropriate responses could be coordinated among the concerned agencies. The results of this more systematic monitoring demonstrated that there were a considerable range of criminal problems in the temporary shelters, including rapes of minor children, murder, etc., that were neither investigated nor prosecuted by the government authorities. The perpetrators of such crimes included refugees, Thai soldiers and camp security guards/volunteers, and local Thai villagers.

Surprisingly—or perhaps not—attempts to end the state of exception of Thai laws in temporary shelters through the Legal Assistance Centers Project by the International Rescue Committee or the Administration of Justice in temporary shelters along Thai-Burma Border Project by the Ministry of Justice turned out to be controversial with all stakeholders, including the Thai authorities, the refugee leadership, the refugees themselves, and the NGOs, with nobody wishing to disturb the status quo. The reasons for the resistance to the attempts to promote the application of the Thai justice system in the temporary shelters were many and varied: the Thai

government was resistant due to a combination of a general discriminatory policy towards the refugees and the practical and logistical difficulties in administering justice in temporary shelters that are in remote and difficult to access locations along the border; the refugee leadership did not support greater involvement of the Thai authorities due to the fact that they did not wish to relinquish their own control over the refugee population, and also because they knew that in practice the Thai authorities lacked the political will, as well as the resources, to fully administer justice in the temporary shelters; the refugees themselves were reluctant as they did not trust the Thai authorities to pursue justice fairly, particularly when the perpetrators were refugees; and the NGO resistance was based on a general philosophical approach to the temporary shelters (also reflected in their assistance policies), which supports the rural ethnic communities' own political and social systems that should move back intact with them across the border once the conditions for their return are in place.

Refugee women with claims of gender based violence are often denied justice or dissuaded from accessing justice on account of two overlapping factors: 1) section leaders, Camp Justice officials, and Camp Security officials show a lack of sensitivity to gender based violence issues and lack capacity to deal with them appropriately; and 2) a community emphasis on reconciliation and compromise pressures women to accept justice outcomes that are often not in their best interests.

Interviews with UNHCR staff and key stakeholders reveal that GBV matters are not adequately treated by camp justice mechanisms. When women choose to access rights in formal court settings in temporary shelter, camp justice officers are said to “treat victims with verbal abuse. Sometimes women are denied a chance to speak out what they are feeling.” Reportedly, intimidation by both male and female judges discourages women from giving details about their abuse. According to refugee women’s advocates, “victims feel that the courts do not judge cases fairly.”

Camp Justice in Karenni temporary shelters rarely turns to legal authority to justify their decisions in GBV cases. There were complaints that the refugee judges do not explain the rules they are using to the parties of dispute. A refugee added that in each of the many cases which were brought to camp justice, women were pressured to

accept “compromises” with the perpetrator of violence. In the worst scenario, a victim of rape was offered the resolution of marrying the perpetrator in order to reconcile the dispute and honor the reputation of her family.

Indeed, many judges do not treat GBV cases as serious criminal matters (especially where there is no evidence of bodily harm), categorizing them as domestic disputes within the realm of family law. Judges appear to believe that GBV cases are more appropriately handled by section leaders. If this institution fails to produce results, the justices suggest that the matter should then be taken to camp security officers. Only after all dispute resolution venues have been exhausted should the case be brought to the court.

Women are discouraged from accessing their rights through camp justice due to a demonstrable lack of capacity and/or will to handle GBV cases appropriately. Some respondents have stated that the task of overcoming these ingrained attitudes is so formidable as to require the creation of a separate judicial body to hear GBV cases.

Section leader adjudications of GBV issues amount to efforts at compromise and conciliation. According to respondents these compromises disfavor women. “When we go to section leaders the outcome is often not fair.” In a domestic violence case, section leaders will often request that a woman subject to abuse should “improve her conduct. They will say it’s not always a man’s fault.” The perpetrator will merely be asked to make a verbal promise not to repeat the offence.

Despite the many child rights awareness campaigns that have been conducted within the temporary shelters, both child protection and mechanisms to deal with children in conflict with the law are neglected areas.

Camp justice, security officials and Community Based Organizations (CBOs) express concern that child abuse is prevalent, and of particular concern are reports of incest and child sexual abuse. Alarming, almost 25% of reported rape or attempted rape cases are assaults against minors, often by family members or people in positions of power and trust such as teachers. Because the family unit is the primary mechanism of social protection and support for children, refugee leaderships fell

particularly ill-equipped to deal with child survivors. One security official expressed “helplessness” when confronted with the long term consequences of protection solutions that are predicated on separation from family. Camp officials are then faced with the difficult task of searching for viable long-term child support and care arrangements.

Another obstacle to protection is the perception that children are concerns of the family and, traditionally, such affairs are dealt with in the private sphere. Camp security has reported that it feels disempowered from intervening in what may be considered a private family issue unless serious protection issues justify their actions. This tension is particularly acute when parents or family members disagree with separation as the protection solution.

Beyond abuse, other urgent community concerns widely cited by refugees are early marriage, pre-marital sex and young single motherhood, which are illegal according to the Thai Penal Code. Community leaders are especially worried for young mothers who forgo education, only to be abandoned by their husbands after pregnancy. Camp committees are routinely asked to sign marriage contracts for minors, and, while they profess to not want to legitimize a culture of early marriages, they feel concern that non-recognition will push relationships underground and generate increased stigma around the issue.

It was noted that the rate of young people committing petty crimes is increasing dramatically. This rise has been attributed to a disenfranchised youth, frustration at the lack of mobility and competition for scarce jobs in temporary shelters. Among the crimes the children commit are drug abuse, alcohol possession or use, and theft. The camp justice system does not have a separate structure, alternative sentencing guidelines or established rehabilitation protocols to deal with young offenders, and officials at every level of the camp justice structure find dealing with youth to be the one of the most difficult aspects of their jobs.

In some temporary shelters, refugee minors are dealt with like adults and are incarcerated at the detention center. Alternatively, parents are called upon to pay

finer for crimes that their children commit. Incarcerating children aggravates the general frustration and fear the children feel about their future. Practically, detention places these children in close contact with more serious criminal elements. Calling upon parents to take responsibility for their children is also ineffective because it rarely draws attention to the lack of guidance that compels or permits these children to commit crimes. The general lack of sustainable solutions causes these children to recidivate.

Some refugees involved in camp justice, CBOs and NGOs believe the problem of youthful offenders could be alleviated by raising awareness with the parents and children, applying Thai laws in temporary shelters and by drawing on the experience of Thailand's Family and Community Group Conferencing dispute resolution for juvenile offenders. Without resources to implement these, however, camp governance is unequipped to deal such problems.

Refugees find it very difficult to access Thailand's justice system in the state of exception of Thai laws. Temporary shelters are geographically remote, and government officials (both local and central) have been reluctant to assert jurisdiction over camps, and have been content to let communities largely govern themselves. Recently, the Ministries of Interior and Justice have shown conflicts of interest and principle regarding their commitment to asserting jurisdiction over serious crimes in temporary shelters. The state of exception of Thai laws barricades refugees from bringing cases to Thai courts, where they would have the opportunity to secure appropriate legal remedies.

Not surprisingly, the Thai police are also not interested in becoming involved in criminal cases committed in the temporary shelters. As in the past, the less serious cases and even some serious ones continue to be resolved by the camp-based refugee leadership. Despite their presumed good intentions, the refugee leadership lacks legal training and capacity, and has little or no understanding of international fair trial standards. It is necessary to work with the refugee leadership to build their capacity to better resolve disputes by providing training in mediation and arbitration, legal case management, and fundamental human rights principles. Also, it

is important to work with refugee leadership to explore restorative justice techniques and community service alternatives to detention.

The implementation of Thai criminal law and procedure in temporary shelters is a hypothetical scenario. Practical consideration will have to be given on how to educate refugees in Thai criminal law and procedure. Points of contact for reporting will have to be made available and easily accessible by refugees inside temporary shelters. Language barriers will have to be overcome through interpreters available in the languages and dialects used by refugees. Transportation in and out of the temporary shelters for refugees and authorities will have to be available on a daily basis. Refugees and authorities may have to commute between the temporary shelters and police stations or courts in town.

Awareness-raising and training activities for refugee communities should be carried out to provide them with knowledge about their legal rights in temporary shelters and in Thailand. The program should also be designed to educate refugees on how to access justice if they are victims of crime. The overall goal will be to increase access to justice for refugees living in camps on the Thai- Burma border, allowing them to understand and seek remedy for rights violations.

There would also be practical issues that need to be overcome. There may be differences between Thai criminal law and the traditional customs of refugees. For instance, early marriage is one of the most common practices among refugees. However, Thai law prohibits sexual relationships with children under 15 years old whether or not there is consent. This could pose an issue where law conflicts with local custom.

The political aspect would need attention. By introducing Thai law into the temporary shelters, it would challenge the fundamental power structure in temporary shelters. The refugee leaders who used to enjoy authority in managing and resolving conflict in temporary shelters would lose their authoritative figures. The inclusion of temporary shelters into Thai jurisdiction would open up the debate on the legal status of refugees and their residence in the kingdom.

Regardless of these practical and political implications, it is the fundamental human right of refugees to enjoy equal rights and access to justice through competent authorities of the State. Free and fair judicial systems need to be consistent with national and international standards. The state of exception should not be permissible from the perspective of national sovereignty as well as the principle of human rights. What happens in the state of exception is a stain on the justice and human rights of the kingdom.

Nonetheless it will be impossible to prevent further violation of the human rights of refugees in temporary shelter, and to realize their right to access justice, if the Thai government as a primary responsible entity does not have the political will to end the state of exception of Thai laws in temporary shelters. Given that the justice system in Thailand is recognized by the international community as a competent system, it would be within the competency of Thailand to extend the judicial system to cover the refugee population in its territory. It would not only benefit refugees to have access to Thai justice system, but also strengthen refugee compliance with Thai laws through effective law enforcement. Maintaining the current political position on the issue is counter-productive as it leads to the weakening of Thai national security and sovereignty as well as damaging the international image of Thailand.

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APPENDIX A

KAREN REFUGEE COMMITTEE'S CAMP RULES IN 2000

Karen Refugee Committee's Camp Rules

1. Camp Security must be informed about any visitors that wish to stay overnight in camp.
2. Camp authorities will not be responsible for any refugee who leaves camp without permission.
3. Everyone should work together and cooperate "for the good of the camp."
4. Rations cannot be traded or sold.
5. Anyone traveling within camp confines at night must use a torch light.
6. Any suspicious or "strange" individuals found in camp must be reported to Camp authorities.
7. Theft and destruction of public property is prohibited.
8. Foresty laws should be respected.
9. Camp authorities have to be informed of any loan or credit transactions in camp.
10. Drugs and alcohol cannot be traded or sold.
11. Gambling is prohibited.
12. Adultery is prohibited.
13. Acts to insult any other person's exercise of religion is prohibited.
14. Rape of women and children is prohibited.
15. Murder and other acts that can cause the death of another are prohibited.
16. Human trafficking is prohibited.
17. People who raise livestock will be held responsible for their animals.
18. People who keep dogs must follow camp rules regarding the raising, breeding, and maintenance of dogs.

Camp Rules

Revised on 19, September, 2002.

1. Every household in camp must post their house number, section number and house registration on the front of the house.
2. Section Leaders must be informed about any visitors that wish to stay overnight in camp.
3. Anyone who leaves or enters camp gates must have permission.
4. Camp authorities will not be responsible for any refugee who leaves camp without permission.
5. Everyone should work together and cooperate “for the good of the camp.”
6. Rations cannot be traded, bartered or sold.
7. Camp meetings must be attended by the head of the household or any other person who can make decisions for the household.
8. Only Camp authorities are allowed to travel within camp confines between 9:00 PM and 5:00 AM. Camp authorities traveling between 9:00PM and 5:00 AM must carry a light.
9. Any “strange” or suspicious individuals found in camp must be reported to Camp authorities.
10. Raising of cows, buffalo, sheep and goats is prohibited.
11. Chicken, ducks, pigs and dogs must be kept with care. Raising of these animals should not cause “destruction” to the surrounding environment.
12. Bathing or washing near artesian wells is prohibited.
13. Do not monopolize artesian wells water or taps.
14. Every household must have the latrine
15. Destruction or theft of public property is prohibited.
16. Logging of trees inside and outside camp without permission is prohibited.
17. Camp authorities have to be informed if anybody wants to borrow money or any other precious items.
18. Trading of drugs or alcohol is prohibited.
19. Distilling or trading of alcohol is prohibited.
20. Do not drink and cause trouble in camp.
21. Gambling is prohibited.
22. Abuse of national unity is prohibited.
23. Taking anyone's property without his/her consent is prohibited.
24. Do not cause problems or argue.
25. Do not defame or abuse someone else's faith.
26. Camp authorities must be informed if anyone leaves camp for more than one month. Anyone who leaves camp for more than one month without informing camp authorities will be struck off the registration list.
27. People must obey fire regulations.
28. Murder and other acts that can cause death of another are prohibited.
29. Do not show video or film that promote lust and degrading acts
30. Do not show video or read books that defame and abuse national honor and national unity.
31. Everyone must obey health regulations.
32. Do not allow people who work outside camp to live in your house.
33. Everyone must follow these rules.

Punishment for those who violate the Rules

1. Education
2. Awareness raising
3. Dismissal from employment
4. Detention
5. Seizure and confiscation of property
6. Fines
7. Ejection from camp



Offence	Definitions of type of offences	Punishment
1. Drugs	Dealing amphetamines Possession of amphetamines Use of amphetamines or heroine. Use of opium and marijuana.	Fine 5000 THB and 6 months detention Fine 2,000 THB and 3 months detention Fine 500 THB Treatment, Rehabilitation
2. Murder	The act of killing another person that results in death is murder.	Detention; send to KNU
3. Manslaughter	Assault (because of a sudden burst of anger) that results in death is murder.	Detention; send to KNU
4. Conspiracy	Planning to harm to individual, group of people or the camp committee	Fine 500 THB and 6 months detention
5. Hiding weapons and Possession of weapons	Guns and any other weapons must not be kept in camp. Hiding weapons and possession of weapons are offences.	Send to KNU
6. Espionage	Any suspicious person deemed to have been sent by the enemy to gather information.	Interrogation and send to KNU
7. Rape of women	Rape is forcing sexual intercourse on a woman. Sexual intercourse with girls under 15 years of age, whether consensual or not, is considered rape.	Fine 2000 THB and 6 months detention
8. Adultery	The offence of adultery is: Married women who have sex with other men, or Having sex with a married woman.	Fine 2000 THB and 6 months detention
9. Abortion	Terminating a pregnancy with assistance from traditional doctor. Terminating a pregnancy through the use of drugs that can induce abortion or causing physical harm to the fetus are offences.	Fine 1000 THB Fine 500 THB

Offence	Definitions of type of offences	Punishment
10. Theft	The offence of theft is: Taking somebody else's property without permission. Taking public property from houses, offices, churches, schools or storehouses is an offence of theft.	Fine 500 THB and 1 month detention Fine 1000 THB and 6 months detention
11. Sale of stolen property	Taking the property from a storehouse or warehouse to sell.	Fine 3000 THB and 6 months detention
12. Illegal brewing and trade of alcohol	Brewing or trading alcohol is an offence.	Fine 2000 THB or 3 months detention
13. Gambling	Gambling is an offence. Gambling includes: playing cards, lottery, playing dice and betting on cockfights.	Fine 1000 THB; Fine 500 THB; Fine 100 THB
14. Offences that corrupt public morals	Prostitution, sexually explicit behavior, public displays of sexual acts corrupt public morals and are considered offences.	Education; Warning; Ejection from camp
15. Drinking and causing disturbances	Getting drunk and causing disturbances such as shouting or cursing is an offence.	Education; 24 hours detention
16. Cheating	Cheating is the act of using, destroying or stealing money or other valuables entrusted for safekeeping.	Fine 300 THB if the property or money is valued at 3000THB and repayment of value of the property or money; Fine 500 THB if the property or money is valued at 5000THB and repayment of the value of the property or money; Fine 1000THB if the property or money is valued at 10,000 THB and repayment of the value of the property or money.
17. Abuse of Religion	Verbally abusing, insulting, ridiculing, someone else's faith.	Education; Warning; Ejection from camp.

Offence	Definitions of type of offences	Punishment
18. Video, Film	Videos that are abusive national honor and unity. Videos or film that promote lust must not be shown.	Education and warning; Fine 1000 THB; Ejection from camp.
19. Fires	Cooking fires, lamps, candles and burning of garbage that start fires and cause destruction of property is an offence.	Fine 100 THB; Fine 500 THB; Fine 1000 THB
20. Disobedience or disrespect of laws	Disobedience and disrespect of the law is an offence.	Education; Warning; Fine 100 THB.
21. Causing harm	Arguments that result in assault and causes injury. Causing injury with a knife or machete.	Fine 500 THB for medical costs; Fine 1000 THB for medical costs; 6 months detention.
22. Child support	Child is to be supported until he or she reaches 16 years of age. The payment is 200 THB per month.	
23. Wife support	Monthly payment to the wife of 200 THB until her death or until she remarries. Lump sum payment of 10,000 THB.	
24. Divorce	Divorce is granted only when husband and wife consent to the divorce.	
25. Breaking an engagement agreement	When an individual formally consents to an engagement in the presence of elders or other officials but refuses to honor the engagement.	Payment of 1000 THB to the victim. Payment of 300 THB to the elder or official who resolves the dispute.
26. Infectious diseases	Tuberculosis and elephantiasis	Quarantine or stay in the clinic.
27. Raising animals	Raising cattle, buffalo, sheep and goats in camp is an offence.	Education, Warning; Fine 100 THB; Ejection from camp.
28. Raising dogs	Dogs that are kept as pets must be tagged for identification. Owners are responsible for the care of their dogs. Rabid dogs that bite people.	Warning Dog to be put down.

These Rules were enacted on 9th September, 2000.

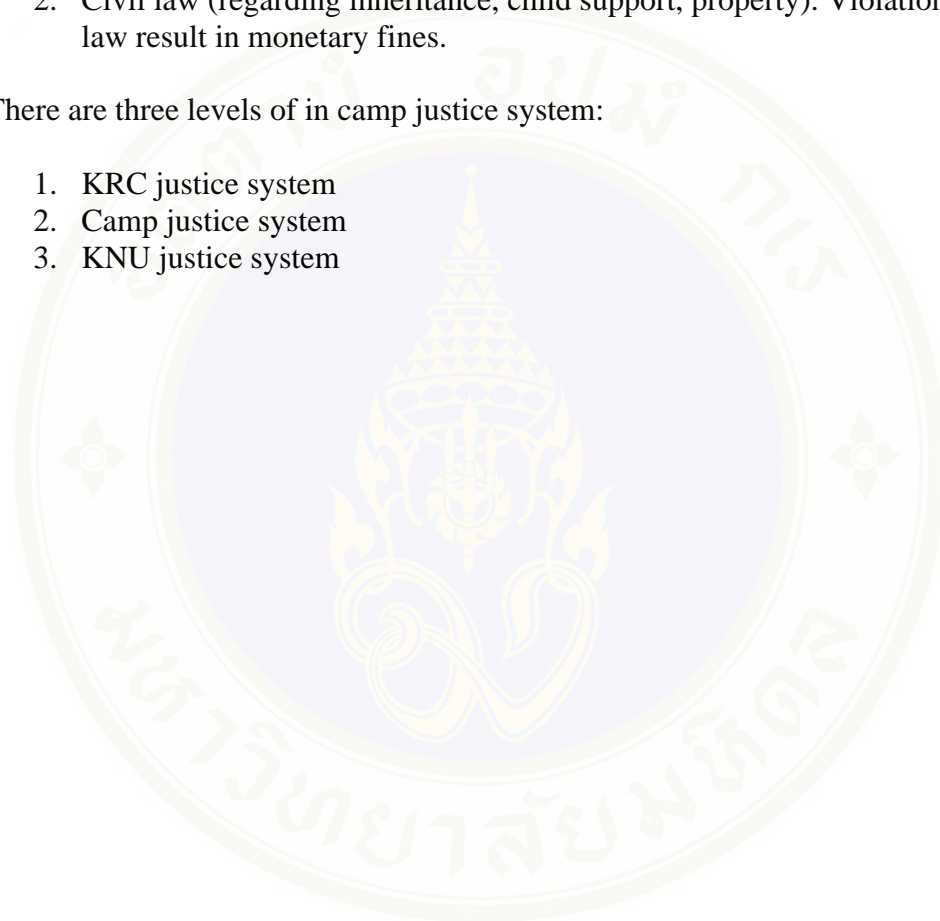
These Rules only apply to refugees.

There are 2 types of law:

1. Criminal law
2. Civil law (regarding inheritance, child support, property). Violations of civil law result in monetary fines.

There are three levels of in camp justice system:

1. KRC justice system
2. Camp justice system
3. KNU justice system



APPENDIX B

KAREN REFUGEE COMMITTEE'S CAMP RULES IN 2007

Karen Refugee Committee's Instruction to Camp Committee (June 2007)

- (1) Camp Committee have to follow the Karen Refugee Committee's instruction.
- (2) The camp committee have to be aware and check that the instruction are followed by the camp residents as well as remind them to strictly follow the instruction.
- (3) The camp committee have to provide information to the section leaders and the community to follow the instruction of the Karen Refugee Committee.
- (4) If there is any problem related to the regulation, the camp committee will take full responsibility.
- (5) The camp committee is authorized to issue and withdraw the rules but it has to keep the camp resident informed and comply with the rules.
- (6) The camp committee has to cooperate with the Thai authority, military, regarding the assurance of the rule.
- (7) The camp committee have to cooperate with NGOs. If there is any difficult issue and it was not able to solve, the camp committee has to report to KRC in due course.

Karen Refugee Committee's Instruction to Camp Section Leader (June 2007)

- (1) All the section leader have to follow the camp committee's instruction .
- (2) All the assistance are distributed according to the figure of the population, so that how many people in the section, how many people can have a food ration should be reported correctly. If it is not correct the camp committee should take action accordingly.
- (3) The section Leaders have to explain to every household in their section to keep their ration cards carefully.
- (4) The section committee's role is not collect/keep the community's ration card.
- (5) The section committee have to know that they are an impotent person they have to report the figure of population figure correctly, section leaders should be honest to the refugees in the camp in order to receive the food as long as possible. If the camp committee finds out , any section committee and camp residents member are corrupt, action will be taken against both parties.
- (6) In the section, buying and selling house is rising more and more because of the resettlement. The section committee will follow KRC's rules regarding selling and buying houses and will cooperate with camp committee.

Remarks: Action and punishment may be different according to the rules and regulations as well as the situation of each camp.

Karen Refugee Committee's Instruction to camp resident
(June 2007)

1. All camp residents have to comply with the rules and regulations issued by KRC.
2. All camp residents have their duty to collaborate with the camp administration.
3. The ration card has to be with the owner. If it is found out that the ration card is possessed by other persons, the camp authority will punish the owner with a rational punishment.
4. Other camp residents must not possess the other camp residents' ration card. The camp authority will take an action against people who possess others' rations.
5. Appropriate action will be taken against a head of household who does not identify the real number of his /her family feeding number.
6. No one is allowed to accept money and secretly accommodate anyone in his/her household. If it is necessary to accept anyone in the household, true and appropriate reasons need to be clarified for the record. If anyone has accepted people in his/her household, appropriate measure will be taken against him/her.
7. There is a KRC instruction not to buy or sell houses. If anyone does not follow the instruction, the camp committee will take an action against both parties who bought and sold the house.

Remarks: Action and punishment may be different according to the rules and regulations as well as the situation of each camp.

APPENDIX C

CAMP RULES AND REGULATIONS, THAM HIN, 2006-2007

The background features a large, faint watermark of the Mahidol University seal. The seal is circular and contains the university's name in Thai script: "มหาวิทยาลัยมหิดล" (Mahidol University) at the top and "จุฬาลงกรณ์มหาวิทยาลัย" (Chulalongkorn University) at the bottom. In the center of the seal is a golden emblem featuring a crown and a sword.

Camp's Rules and Regulations
ThamHin
2006-07

Tham Hin Refugee Camp Basic Rules and Regulations

Verse (1) Terms and Definitions

The committee is named "The Committee of ThamHin Camp". The implementation of the committee is free from the characteristics of religious groups, non-governmental organizations (NGOs), but it is cooperating with Camp Elder Advisory Board (CEAB), Thai authorities, international NGOs and Thai Public NGOs.

Verse (2) Objectives

The objectives of the committee are:

- (a) to assist refugees who are temporarily taking refuge, to give protection and basic needs for living
- (b) to train and educate refugees about their rights and how to gain those rights
- (c) to protect those who are facing repatriation without their will and to assist those who are willing to repatriate

Verse (3) Characteristics of the foundation of the committee

- (a) The committee is consisted of 15 elected members from candidates those who are elected by refugees under the supervision of the camp committee.

Please see the attached document for the characteristics.

Verse (4) Formation of Camp Elder Advisory Board and its responsibilities

- (a) The feature of Camp Elder Advisory Board
 1. Chairperson
 2. Secretary
 3. Three committee members and

4. Two organizing and managing committee members, totally 7 board members.

(b) Responsibilities of Camp Elder Advisory Board

The Camp Elder Advisory Board is specifically established by 7 members those whom were directly elected by Head of ThamHin's C.R.C. The group is consisted of 5 committee members, and they are a chairperson, a secretary and 3 members or 2 committee members those who are assigned as camp's Control Committee's chairperson, secretary who coordinates with the Elder Advisory Board in order for them to make sure the tasks run as order. The group is responsible for advising, guiding, correcting the tasks of the camp's committee members. The group has monthly meetings in order to give guide and support as required. They will have to be present to give advice if there is an emergency.

Verse (5) Terms of duties

- (a) The Elder Advisory Board, Camp's committee members and Camp's leader are assigned on 2 years term
- (b) Election of Camp Leaders
 - (i) a month before changes of current leaders, there will be the election of 7 committee members
 - (ii) the election of committee members will be conducted by religious leaders and elders respected by people in the camp
 - (iii) Among the 7 elected committee members, chairperson, secretary and 5 members will be elected
 - (iv) The elected members will be equal between men and women

Verse (6) Election of Camp's committee members

- (a) Each section will select 3 representatives recommended by people in order to run for the camp
- (b) the camp's election committee will confidentially vote to select 5 among the 15 representatives in order to run for the zone level
- (c) 15 representatives will become the camp's administration committee, and the chairperson will be confidentially voted against them
- (d) the newly elected chairperson will assign responsibilities as required tasks to the rest 14 members
- (e) each sub-committee can be founded by those 14 responsible members at will if required

Recognition of the meeting

- (a) The meeting will be held monthly at the last week of the month.
- (b) The meeting can be held if there are sudden issues.
- (c) The meeting can be held if 50% of members are present.

Verse (7) Responsibilities of the Chairperson

- (a) The chairperson is responsible for the arrangement of all activities in the camp, communicating with Thai authorities who overview the camp, instructing the committee members in communicating with International Non-Governmental Organizations (NGOs) and Thai Non-Governmental Organizations. S/he will instruct and set up the meeting and arrange all the needful in the camp whenever it is required.
- (b) The vice-chairperson is responsible for assisting the chairperson at all the time, and s/he has full authority as assigned by the chairperson.

Verse (8) Responsibilities of Secretary and Assistant Secretary

- (a) The secretary is responsible for arranging and implementing activities in the camp and documenting internal movements and pro-long issues, and maintain and updating camp related monetary accounts. S/he will guide the committee, arrange and report statements, and call the meetings as required.
- (b) The assistant secretary I will assist the secretary at all the time, and will take charge as the secretary when the absence of the secretary.
- (c) The assistant secretary II is responsible for assisting secretary and assistant secretary I at all the time, and is in charge of keeping track with income statements, manage camp related expenditure statements and statement of cash flows.

Verse (9) Responsibilities of the Head of Camp Affairs

The Head of Camp Affairs is responsible for monitoring and keeping records of tasks of sections, and if required, s/he will report to assistant secretaries for the advice. S/he will also give advice and guide sections whenever it is required.

Verse (10) Responsibilities of the Head of Education

Head of Education is responsible for maintaining and managing educational tasks to implement educational activities. S/he will communicate with KRC Education department and release statements as the scheduled dates. S/he is also responsible for coordinating with overseas friends and Non-governmental Organizations (NGOs) that support educational movements. Under the Head of Education, there is the educational committee that will manage and implement educational tasks of the camp.

Verse (11) Responsibilities of the Personal Affairs

Head of Personal Affairs is responsible for visiting zones in order to find out what are the needful and difficult issues related to people in the camp, so that these can be addressed and resolved. S/he is to cooperate with Heads of civic affairs, heads of zones and sections. Under the control of the head of Personal Affairs is a committee

that is included basic groups such as women organization, youth organization and health (IRC) in order to cooperate regarding personal affairs.

Verse (12) Responsibilities of Head of Office Center

The head of Office Center is responsible for delivery of food and maintenance of other tasks related to delivery of materials for the construction of buildings to people in the camp. Under of the head of Office Center is a committee that will process the delivery of food and materials to people. It will maintain lists related to food and others, and will report to the secretary via the head of Personal Affairs as schedule date once a month. It will also report the condition of food and other materials in the camp whenever required. Under the committee of Office Center there is a group of who will coordinate to make things go smooth.

Verse (13) Responsibilities of Head of Security

The head of Security is responsible for the security of the whole camp, and s/he will cooperate with head of Personal Affairs, head of Office Center, and heads of zones and sections. If there are issues that cannot be solved internally, s/he will address to Thai authorities via the secretary and as the instruction by the secretary s/he will coordinate. S/he will review records of people who come in and go out of the camp for the security and delivery of food and other materials. S/he will monitor, inquire, document and address to the secretary via head of Personal Affairs. Under the head of Security there is a camp security committee that will coordinate with him/her. Under the security committee there is also a security team that implements security tasks.

Verse (14) Responsibilities of Head of Public Affairs

Heads of Public Affairs are also heads of the camps. They will cooperate with committees and sub-committees. Heads of Public Affairs are also auditors for camp financial statements. Those financial statements will be reported to the secretary every two months. If required those statements will be reported during the public meetings.

Verse (15) Responsibilities of the Jury

The jury is responsible for deciding to give legal punishments on those who are guilty if breaking rules and regulations of the camp, and will cooperate with camp's committee, Camp Elder Advisory Board and Camp Security Committee. It has 2 leaders, and will be enforced by Camp's committee, Camp Elder Advisory Board and Camp Security Committee if required for the judgments.

Verse (16) Responsibilities of Auditors

Auditors are responsible for auditing tasks, income and balance of office, tasks of each zone, financial statements of 3 heads of Public Affairs and sections. Auditing will take place monthly. If required, financial statements of zones and sections will also be audited every two months.

Verse (17) Amendments

After the rules and regulations are made officially, if there is any conflict or questions raised, amendments can be made only by Camp Elder Advisory Board and Camp's Committee when it is required.

Signature

Signature

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(Beh Beh Zu)

Chairperson

Chairperson

Camp's Adult Advisory Group

Camp Administrative Committee

ThamHin

ThamHin

New comers must obey camp's rules and regulations

1. New comers must obey and follow rules and regulations
2. Neither new comers nor people already been in the camp can found a team to cause unrest in the camp
3. New comers must listen to instructions from heads of camp and zones
4. New comer must be present whenever they are required to show up
5. New comer can live only by the commitment of related head of families
6. If there is unrest caused by new comers, head of the family who took responsibilities will be fully responsible.
7. If new comers caused unrest and flee, the responsible head of the family will be arrested by Thai authorities
8. New comers must behave well and understand that they are not living in the camp as lawful citizens
9. One cannot go at will to the important locations such as Security Office, Camp Office and Public buildings. They can go only if they are issued permits and if they are allowed to enter.
10. They must inform the head of Camp Security if they would like go to work or go out for a short trip due emergency issues

Rules of the Camp

1. Office Affair

- (a) When food and materials are delivered, people those who are not in the camp will not be issued rations.

Exception: Those who are absent because of camp related tasks would be given rations.

- (b) There is no food for visitors.
- (c) Ration Card must be in the hand of the owner. It must be kept well. It must not be destroyed. It must not be torn a part. The owner must not lose it. The card owner must read rules written at the rear side of the card and must follow the rules.

If one lost the ration card, there will be a B 25 for the replacement. Because there will be no rations if there is no ration card.

- (e) Office authorities must first keep note of the weight number of food, then food and materials can be delivered.
- (f) Every month head of zones and sections must report the total number of people, those who leave and those who stay (those who will receive ration) to camp and zone offices on the 25th of the month.
- (g) The store, in order to deliver food and materials, will be opened only between 8:00 am and 4:00 pm. However, for certain needs it will be extended according to the permission of the secretary.
- (h) During the delivery of food and materials, those who are on duty for the camp or NGOs will have to send their family member or reliable candidate in order to receive ration on their behalf.
- (i) Camp officers must thoroughly review the list of head of the family and members who have left, and if there are things that need to be revised, they must be informed about the decision.

Likewise, if there are not enough facts on reasons for those who left, s/he will be questioned thoroughly, and at last, the camp's administrative committee will judge for the punishments.

- (j) Ration must be checked when there are food and materials delivery. No one is responsible for any complaints after rations are received.
- (k) Buying food and materials inside the camp is not allowed.

- (l) During the delivery, no one is allowed to carry packages out of the delivery location (Rice, Beans, Flours and Cooking Oil)
- (m) Persons who are responsible for monitoring inventory must check materials monthly and report to Camp's Administrative Committee. They will have to periodically check incoming and outgoing food and materials whenever it is required.

2. Camp Business Affairs

- (a) Everyone living in the camp must fulfill camp's businesses harmoniously.
(tasks that they are capable of working)

Exception: Heads of the camp, religious leaders, teachers, doctors and medics are exempted from working for the camp's businesses. However, their family members, if any, will have to work as others.

- (b) People who are 60 years or older will be free from heavy tasks. Nevertheless, they will have to work for light tasks.
- (c) Those who suffer from the chronic disease not only need to have recommendation letters from the head of zone or section but also must have doctorial approval in order to be exempted from working.
- (d) Those who cannot be asked to work or those who act as if they are sick will be taken action as required steps
- (e) For anyone who has goes out of the camp for business but are required to work, someone from his/her family will have to work in place of him/her.

3. Living Condition Affairs

- (a) Working and playing that related to money gambling are strictly forbidden in the camp. (Playing cards, Red Flag, dice, Head and Tale, Sparrow Lottery, Cheh Lottery and etc.,)
- (b) Whenever committing adultery and pre-marital sex are found out, these will be reported and taken actions.
- (c) One should not offend the community's dignity and culture through misbehavior, words and physically injury including relationship between opposite sex.
- (d) There must not be quarrel between spouses and families that leads to disturb neighbors. If either wife or husband reports any physical injury or property damage, it will be investigated and taken action as required.
- (e) Causing unrest or fighting that leads to physical injury will be taken action severely.
- (f) Forcing someone, who is 15 years old or younger, to get married, to have sexual intercourse or to accept money for such act will be severely taken action.
- (g)
 - 1) Persuading and recruiting people to go out of the camp for working is not allowed. If reported or found out, action will be taken.
 - 2) If the man left the lady who got pregnant after the intimate relationship, and if the lady reports with true facts and evidence, the man who is guilty will be taken action.
- (i)
 - 1) Drinking alcohol and causing troubles to other are not allowed.
 - 2) Selling or producing alcohol or other drugs such as opium, heroin, yaba (Crazy Drug), marijuana and etc., is not allowed in the camp. If found out, severe action will be taken.

- (j) 1) Never enter someone's house without permission by the owner.
2) Do not steal. Do not forcibly take others' belongings. Do not break someone's house to enter for stealing.

If get caught or found out s/he will be taken action

Note: If s/he is caught in a house before stealing anything or when stealing s/he will be taken action

(k) Patients are not allowed to go out at will after 9:00 pm. Nobody is allowed to cross either between zones or sections. (If there is an emergency to go out, s/he has to carry waxing light or candle light.)

(l) All lights must of turn off between 9:00 pm and 4:00 am. No setting fire for cooking in the kitchen and must be silent. Action will be taken if one does not follow the rules.

(m) Anyone who is back to the camp at night will be questioned by someone who is on duty or by a group of the camp security, s/he must obey. Refusing to obey will so s/he will be taken action.

(n) If there are any overnight guests, the head of the house must inform head of the section on time.

- (o) 1) Keeping any kind of gun and explosive devices is strictly forbidden.
2) Wearing military uniforms is strictly forbidden.
3) No breaking Thai laws or hurting any Thais.

If there is any issue against the above 3 rules, the person will be taken action according to Thai civil law.

(p) No moving from zone to zone or section to section. If there are concrete reasons to move, the case will be addressed to head of section, head of zone and committee, and only if approved one can move.

(q) Everyone must be a ware of fire.

- 1) No burning in the camp.
- 2) No letting children playing with matches.
- 3) Set up fire to burn things at a proper location only if necessary.
- 4) Keep the fireplace in the kitchen away from the wall.
- 5) No playing with fire in the house.

- 6) Kill the fire before dumping cigarettes or cheroots.
- (r) Action will be taken on anyone who interrupts or opposes those who on duty.
- (s) No cheating for money nor over charging for selling things. No lending or borrowing money. No selling things even with very cheap prices. If found out, it will be reported to the camp authorities.
- (t) No child adoption nor giving up child without a legal process. In order to adopt a child, camp's leaders, in charge of orphanage and religious groups must be acknowledged. After the thorough investigation and agreement between both sides the signed document will be issued. If there us an adoption without proper document, it will be treated as unlawfully selling and stealing a child.
- (u) 1) If the whole family leaves the camp, the responsible person has to be informed. Also, the registration and ration card have to be turned in. Failing to do so, action will be taken when return.
- 2) Anyone whose name is in the list of UNHCR or the list of refugee camp office must immediately inform the head of section when leaving and returning.
- (v) 1) each house whole must have each well of water for cooking or washing and bathing. Left over food and disposable things in the kitchen must be disposed at a designated location. Must not be carelessly disposed.
- 2) Do not carelessly dispose rubbish or diapers. Those must be disposed in the garbage bin or in the separated restroom.
- (w) 1) Bathing, fetching water and washing clothes at designated zonal bathrooms and water pumps or well.
- 2) The time for fetching water and washing clothes is from 6:00 am to 6:00 pm. Action will be taken if bathing, fetching water or washing clothes during off hours at designated locations.
- (x) Raising chickens, ducks, pigs and dogs in the camp. If difficult consequences caused by that, the owner will have charge and legal action.
- (y) For those who grow vegetables and keep life stock by the streams
- 1) Fences of vegetables garden and life stocks must have at least 2 yards distance from the stream.

- 2) For the unclean water coming out of those gardens to not flow back into the stream, canals or pipes must be used to let it flow out to other places.
- (aa) NGOs' staff from both inside and outside the camp must first meet with Karen Refugee Committee (KRC) and Camp's Committee before conducting their duties.
 - (bb) If the above-mentioned rules and regulations and other camp related instructions are not followed, action will be taken according to camp's committee's judgments.
 - (cc) Rules and regulations, judgments and punishments are equally for all people living in the camp.
 - (dd)
 - 1) Anyone who is given punishments must stay at the place until the time is due.
 - 2) Food ration will be suspended for those who are arrested and sentenced with heavy duties more than 15 days.
 - 3) For anyone who is detained at the detention center because of s/he breaks rules and regulations of the camp, his/her family member must deliver food for him/her.
 - (ee) If required, rules and regulations can be amended or added during the meeting by the camp's committee.

Judgment and Punishment

Rule Number	Description	Estimated Punishment	Comments
Number (1) Verse j, k	- Buying goods at the store - Carrying unpacked packages	Action will be taken by camp leaders as required.	
Number (2) Verse a, b, c, d, e	- doing businesses inside the camp	1) S/he will be summoned and given educated by camp leaders as the first and final warning 2) If commits it again, s/he will be detained with heavy duties from 3 to 30 days 3) If commits it as the 3 rd time, the case will be reviewed and reported to a higher stage	
Number (3) Verse (a)	Various kinds of gambling	All gambling materials and money will be taken, then punishment such as detention or cash will be charged or both	
Number (3) Verse (b)	- committing adultery or pre-marital sexual intercourse	Will be detained up to 7 months with heavy duties	If it is a rape case, it will be transferred to the hands of Thai authorities

Rule Number	Description	Estimated Punishment	Comments
Number (3) Verse (c)	- causing damages to someone's dignity	Will face charge and be detained from 3 to 15 days with heavy duties	
Number (3) Verse (d)	- causing unrest or disturbing neighbors	S/he who begins to cause such case will be detained 24 hours, if causing physical offence, s/he will be punished according to camp's rules and regulations	
Number (3) Verse (e)	- fighting	Someone who is responsible for the fighting will be detained 2 days. If causing physical injury s/he will have to pay for the victim's medication and be detained 2 months with heavy duties.	
Number (3) Verse (f) 1/ 2/	- raping under aged - persuading people to work outside the camp	12 month duration of detention with heavy duties. If raping has been done action will be taken according Thai law. Punishment will be given according to the camp's committee's decision	

Rule Number	Description	Estimated Punishment	Comments
Number (3) Verse (g) 1/	Issue after sexual relationship	Both parties will be detained up to 6 months	
2/	man failing to take care of woman who got pregnant by him	Will be detained for 6 months with heavy duties. In addition, he must pay costs of raising the child.	
Number (3) Verse (h) 1/	- drinking alcohol and causing problems	1/ will be disciplined and given warning 2/ if commit it again, will be punished and detained for 3 days.	
2/	- selling alcohol and drugs in the camp	- selling alcohol: for the first time, s/he will be charged Thai B 1000, if commit it again s/he will be charged Thai B 1500 plus one month detention with heavy duties - selling drugs: will be charged Thai B 5000 and detained for 3 months with heavy duties. if commit it again, s/he will be expelled from the camp.	

Rule Number	Description	Estimated Punishment	Comments
Number (3) Verse (i) 1/	entering a house without the owner's permission	As complaint by the owner, s/he has to accept and follow.	
2/	looting, breaking in	S/he will have to pay fine and return things to the owner. In addition, s/he will be detained with heavy duties from 7 days to 3 months	
Number (3) Verse (c), (k), (v) 1,2, (w) 1,2	- going out at night, failing to shut off kitchen fire (light), leaving place for drinking water, washing and bathing unclean	1/ verbal warning by camp leaders 2/ if commit it again, s/he will be detained with heavy duties for 3 days	
Number (3) Verse (3)	- entering and leaving the camp at night	1/ verbal warning by camp leaders 2/ if commit it again, s/he will be detained with heavy duties for 24 hours	
Number (3) Verse (m)	- overnight visitors in the camp	Head of the hosting family will be charged Thai B 100 and detained for 7 days	
Number (3) Verse (1) (2) (3)	- carrying arms - wearing military uniform - hurting Thai civilians	Action will be taken according to Thai civic law	

Rule Number	Description	Estimated Punishment	Comments
Number (3) Verse (o)	- relocating from place to place	1/ verbal warning by camp leaders 2/ if ignore and commit it again, s/he will be detained with heavy duties for 24 hours.	
Number (3) Verse (q)	- fire and precaution	detention with heavy duties from 7 days to 30 days	
Number (3) Verse (r)	- disturbing responsible staff who are on duty and at work place	Will be detained from (3) days to (15) days	
Number (3) Verse (s)	Stealing	If a person's complaint is correct with evidence, someone who is guilty will have to return money and will be detained depending on the amount of money s/he steals	
Number (3) Verse (t)	Adoption, Giving up child	If there is an issue, the person who is adopting child without proper document will have to return child to the mother of birth. If there is an argument upon the case, the adopter not only has to return the child but s/he will be detained up to (7) days as if s/he stole the child.	

Rule Number	Description	Estimated Punishment	Comments
Number (3) Verse (u) 1/	Family leaving the camp	If they return and report to the head of their section, they will be provided benefits after 3 months of their return. However, as required, the head of their section will take an action.	
2/	Whoever leaves but returns the camps without reporting to the head of his/her section		
Number (3) Verse (v)	Raising pets/animals in the camp	If those pets/animals cause damages, owners of pets/animals will have to pay for all damages including costs for buying and selling. Moreover, as a required step s/he will be detained from (3) days to (3) days.	
Number (3) Verse (w)	- growing vegetables, raising animals outside the camp by the stream	If failing to follow the rules, not only s/he will have to work for the head of zone , but s/he will be banned from growing vegetables and raising animals	

APPENDIX D
KARENNI REFUGEE CAMP RULES
KARENNI REFUGEE CAMP RULES.²⁵

Objective: To reduce crime and other offences amongst refugees living in the Karenni Refugee Camps along the Thai-Karenni border. Every resident must obey these rules. Those who break these rules are liable to punishment under these rules.

Offences Relating to Nature

1. Residents must not set fire to the forest or cause a forest fire, cut wood in the forest, or carry wood out of the forest for sale. Punishment is between 1 and 30 days of work, or payment of a fine equivalent to 50B per day. Equipment used for the offence will be seized.
2. Residents must not killing animals, including fish or frogs, or destroy beehives using poison, fire or explosives. Punishment is between 1 and 3 months of hard labor. Equipment used for the offence will be seized.
3. Residents must not search for fish or frogs, chop wood, or clear the ground for the purpose of planting at the water fountains. Punishment is 1 to 10 days hard labor, or a fine. Equipment used for the offence will be seized.
4. Residents must not cut wood where the wood is Teak or other hardwoods such as Pyin ga doe, Thit yar or Pe dot, or where the tree trunk is greater than one hand span in size. Punishment is between 1 day to 3 months of hard labor, or a fine. Equipment used for the offence will be seized.

Offences Relating to Drugs

1. Residents must not use, sell, distribute, keep, or carry drugs. Punishment is according to the Karenni law.
2. Residents must not sell, distribute or carry alcohol from one place to another. Punishment is 1 to 15 days hard labor. Equipment used for the offence will be seized.

²⁵ Rules created by KNRC in 1997. Translation by Yuri, edited by Ellen, checked by David.

Offences relating to Thai Community

1. Residents must not steal fruit or vegetables, catch fish, or destroy property belonging to the Thai community. Punishment is between 1 and 15 days of hard labor.
2. Residents must not leave Camp area illegally to travel or stay in Thailand. Punishment is 1 to 15 days hard labor, and the resident will only receive food rations again after staying in the camp for 2 months. (This point also will apply to the paragraphs 2, 6 and 10 of the section below.)
3. Residents must not cut wood or bamboo, or clear other people's land for the purpose of planting. Punishment is between 1 and 7 days of hard labor.
4. Residents must not drive a vehicle without a license, if traveling or going inside the town. Punishment is between 1 and 3 days of hard labor or a fine.
5. If a resident fails to deliver or distribute a task officially required by the Camp authorities, punishment is between 1 and 3 days of hard labor.
6. Residents must not travel through Thai or Karenni land to hunt, or to search for fish or frogs without permission. Punishment as No.(2) above.

Rules Inside the Camp

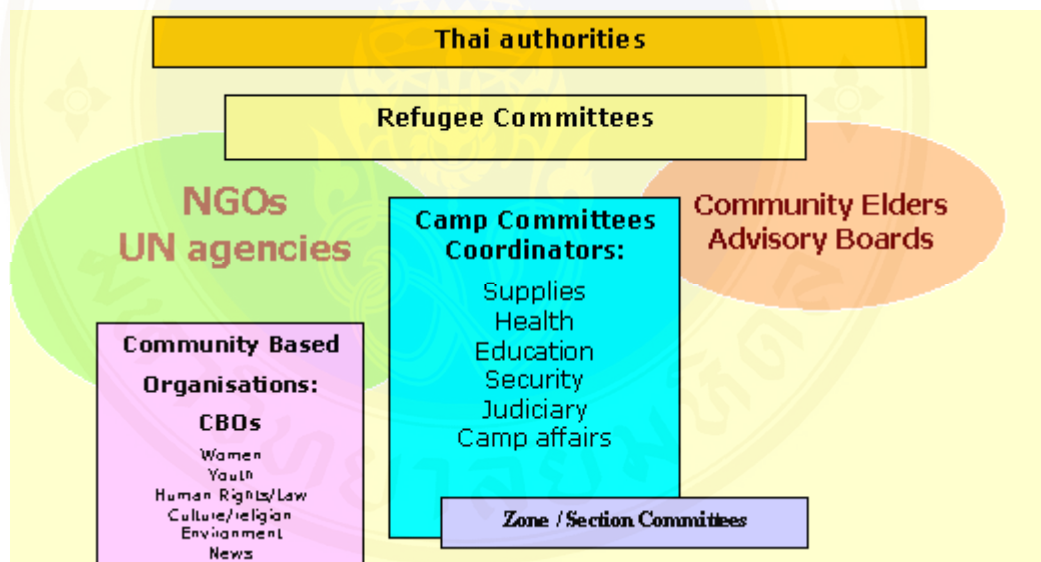
1. Residents must not gamble, host gambling or assist with gambling activities. Punishment is according to the Karenni law.
2. If a resident decides to leave the Camp either to live in Thailand or to go back to the West Bank (Burma), they must return their UN card to the Camp Committee Office. If they do not return the card, they will not be accepted again into the Camp in future.
3. Responsibility will not be taken for any resident who goes outside of the Camp without informing a camp official. If a resident does so, punishment is 1 to 15 days of hard labor.
4. All house owners must report to the Camp Office through their Section Leaders if they have a guest from outside to stay in Camp overnight. If they fail to do so, punishment is 1 day of hard labor or a 50B fine.
5. All residents must perform free labor when requested by their Section Leaders (as usual or in rotation). If they fail to perform the labor: punishment will be to perform labor for double the number of days missed.
6. Residents must drive slowly inside the camp. Any resident who drives at a speed of over 5 miles per hour will be fined 100B.
7. Any person who enters or re-enters the Camp and wishes to remain inside as a refugee must report to the Camp authorities for investigation. If their refugee status is approved, they will receive the appropriate rights.
8. Residents must not sell food that has been distributed by the donors outside the Camp. Punishment is between 1 and 5 days of hard labor, and the property will be seized.
9. Residents must not stay outside the Camp for longer than their permitted 'long stay leave'. As punishment for doing so, their food rations will be cut.
10. Residents must not take 'long stay leave' for the purpose of working outside the Camp without asking permission. Punishment for doing so is according to no. 2.

11. Residents must not destroy, tear or dirty any official Camp announcement papers or notification boards. Punishment is between 1 and 3 days of hard labor.
12. Every organization in Camp must ask permission from the Camp Committee before arranging any celebrations, meetings, or trainings. If they fail to do so, they shall either be given a warning or their organization shall be cancelled from the permitted list.
13. Residents are permitted to brew or distil alcohol for rice wine for the annual celebration. However, if a resident brews or distills more than the approved limit, the property will be seized.
14. Residents are permitted to brew or distil alcohol for rice wine for traditional celebrations, family celebrations or funerals. However, if a resident brews or distills more than the approved limit, the property will be seized.
15. Prostitution is prohibited. If a resident is found to be acting as a prostitute, they will either be given education or will be dealt with according to the law.
16. Residents must not abuse or harm women or children. If a resident is found to be doing so, they will either be given education or will be dealt with according to the law.

APPENDIX E

THE ORGANISATIONAL STRUCTURE FOR CAMP ADMINISTRATION

The organisational structure for administration of the temporary shelters is illustrated in the following chart.



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