

Analysis of Gaps in Refugee Protection Capacity Thailand

November 2006

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This report was prepared in the context of the Committee for the Coordination of Services to Displaced Persons in Thailand (CCSDPT) and UNHCR's 'Comprehensive Plan Addressing the Needs of Displaced Persons on the Thailand/Myanmar Border' and the Strengthening Protection Capacity Project-Thailand (SPCPT-Thailand). These represent collaborative efforts to improve the protection capacity of Thailand to receive and protect refugees, enhance their means of self-reliance and expand opportunities for durable solutions.

The report examines the current capacity of Thailand to protect refugees and asylum-seekers who collectively account for approximately 0.5% of Thailand's total resident population of 64 million. While the report starts with an acknowledgment and appreciation for the protection afforded by the Royal Thai Government (RTG) to refugees for over three decades, it focuses primarily on current protection gaps and challenges as part of the collaborative efforts to improve protection that are presently underway involving RTG, international and national NGOs, UNHCR, donors, and refugees.

The report draws on information provided in CCSDPT documentation including the Comprehensive Plan, as well as reports by the Thailand Burma Border Consortium and other NGO documents. It also relies on UNHCR and Royal Thai Government reports and the views of refugees themselves as communicated during recent participatory assessments.

As with the Comprehensive Plan, this report is intended to be a living document, to be updated in line with progress made by the RTG, CCSDPT and UNHCR in addressing the identified protection gaps.

Executive Summary

Over the last three decades Thailand has hosted almost 3 million refugees. Currently over 140,000 refugees from Myanmar live in camps on the Thai-Myanmar border and approximately 1,000 asylum-seekers reside in urban areas. In addition, some 200,000 refugees, including ethnic Shan and others fleeing ethnic persecution, forced relocation, and violence also live in a precarious situation in Thailand.

Protracted uncertainty and insecurity in very difficult living conditions and without opportunities to make a contribution within Thailand have taken their toll on refugee communities. High levels of frustration, physical violence and grave psychological problems are among the most serious consequences of the restrictions imposed on refugees and the absence of solutions to their prolonged confinement.

The following is a summary of some of the key gaps in protection highlighted in this report:

Legal and Administrative Frameworks

While Thailand has ratified a number of important international human rights instruments, and incorporated these into domestic law, it is not a party to the 1951 Refugee Convention or its 1967 Protocol. As such, refugees and asylum seekers are considered illegal immigrants, permitted to remain in Thailand with executive discretion. This has been exercised in favour of the temporary stay of approximately 140,000 Myanmar refugees who are registered and reside in one of nine closed camps along the Thai Myanmar border. An unverified number of refugees, by some estimates amounting to approximately 200,000, reside in Thailand and are not distinguished from other illegal aliens. They are therefore at risk of arrest and deportation.

Host Communities and Refugees

Although recent surveys suggest a rather tolerant attitude among local communities towards camp based refugees, in urban areas there have been increased reports of harassment, threats, and physical abuse of refugees, fuelled in part by erroneous media reports that refugees spread diseases. Refugees are not included in national, regional and development agendas.

Reception and Return

Because most refugees are treated the same as illegal migrants, they risk being detained either while attempting to cross the border into Thailand or once within Thailand. Those arrested from countries that border Thailand frequently are informally deported back to their countries of origin. More formal removals, where the authorities of the receiving country are informed prior to removal, risk exposing refugees to persecution upon return. Detained refugees from countries that do not border Thailand must remain in detention until resettlement is secured, which can mean indefinite detention.

While UNHCR is provided access to asylum seekers who have been detained in Bangkok airport, it is denied access to certain groups of refugees in other parts of Thailand, particularly ethnic Shan and Lao Hmong. However, NGOs have some access to provide assistance to these groups.

Registration

Registration for Myanmar refugees in the nine camps is conducted jointly by UNHCR and the RTG. The Provincial Admissions Boards which were re-established in 2005 and determine admissibility into the camps of Myanmar nationals in need of protection have commenced yet there remains a significant backlog of cases in need of assessment.

There is no official RTG registration or screening mechanism for non-Myanmar asylum seekers and refugees. UNHCR carries out registration and RSD for non-Myanmar nationals in Bangkok and issues documents, but these are not always respected by the RTG.

Risks to Security from Violence and Exploitation

Refugees and asylum seekers in urban areas, because of their deemed illegal status, lead a precarious existence marked by the risk of exploitation/abuse, arrest, detention and deportation. Refugees in the camps, dependent on subsistence-level humanitarian assistance, lead lives of poverty, frustration and unrealized potential. Among the chronic protection risks experienced in the camps are high rates of rape (frequently of minors), high levels of domestic violence, recruitment of child soldiers and summary arrest, detention and deportation. In some camps there have been summary executions.

Prevention and response programmes are insufficient and camp based justice mechanisms currently do not systematically work for the protection of victims and the prosecution of perpetrators. Moreover, there is at present no integrated protection monitoring system in place with the result that many rights violations are believed to go unreported and unaddressed.

Refugee Participation

Camp committees are responsible for day to day camp administration. While efforts are underway to improve representation, women, youth and minority groups remain under-represented on these committees with the result that their issues and rights can be overlooked.

Essential Services

Many of the refugee camps are overcrowded. Food rations are insufficient to meet dietary needs. There is a shortage of many essential non-food items. These gaps lead refugees to seek employment outside the camps, with the attendant risks of exploitation, arrest and deportation this entails.

Improvements to sanitation including waste disposal is urgently needed to stem the spread of diseases. Health services are presently unable to meet the needs of refugees with mental and/or psychological problems, and there is a need for more extensive HIV/AIDS counselling for sufferers and their communities to encourage treatment and prevent social stigmatization that many patients currently experience.

Although there is a relatively high enrolment rate of primary school children, many do not complete their final exams. Moreover, school drop out rates increase as children move into secondary school in part due to early marriage and/or search for employment. School facilities require repairs and school supplies are needed. The absence of a

common curriculum leads to different qualities of education as does the high turn over of trained teachers, some of whom are resettled.

Documentation

There is presently no means for officially registering the birth of refugee and asylum seeking children born in Thailand, which leaves them at risk of not having a recognized identity in law. Refugee children born in the camps are issued with delivery certificates, but this system falls short of official birth registration.

Employment

Refugees and asylum seekers are not legally entitled to work in Thailand, either within or outside the camps. This leaves them entirely dependent on outside assistance, which not only is psychologically debilitating but also generally insufficient to meet their food and non-food needs. As a result many seek work informally, which leaves them open to the very real risk of arrest and deportation. Employment is generally seasonal and intermittent. Remuneration is low and refugees are known to work in exploitative working conditions, made possible by the illegality of their situation.

Durable Solutions

For the vast majority of refugees in Thailand, repatriation in conditions of safety and dignity is not likely in the foreseeable future due to the insecurity and violence that continues within Myanmar.

While opportunities for resettlement have opened up with the agreement by the RTG to permit the resettlement of Myanmar refugees, the number of places and the selectivity of resettlement countries presently render this an option for only a very small proportion of refugees.

Local integration is not permitted, although the RTG has expressed a willingness to permit expanded vocational training and the possibility of self-reliance activities that would benefit refugees and not impact negatively on local communities.

1. Favourable Protection Environment

1.1 Demographic profile

Over the last three decades, Thailand has hosted almost 3 million refugees. In earlier years, the majority of refugees came from Indo-China and Cambodia. For the last twenty years the majority of refugees in Thailand have come from Myanmar. Thailand recognizes those fleeing Myanmar as ‘displaced persons fleeing fighting’ and requires them to live in nine isolated camps along the Thai Myanmar border, one of which is situated on the border itself. The camp refugee population has been registered and number around 140,000, with the proportion of men and women approximately equal. A relatively large proportion of camp residents, 47%, are below 18 years of age, many of whom were born in the camps. Refugees are not permitted to leave the camps and are barred from employment.

In addition to camp refugees, there are many thousands of others refugees who are also in Thailand. They are considered illegal aliens, and their numbers have not been verified. According to the Royal Thai Government (RTG) there are approximately 2 million illegal migrants in Thailand. Of that number, some estimate that over 200,000 are refugees, the majority of whom are ethnic Shan from Myanmar.

In fact, most of those who have fled Myanmar in the last decades are members of ethnic minorities. Within the refugee camps, 80% of the populations are Karen, and 17% are Karenni with the remainder comprised of other minority groups including Burmese, Shan, Rohingya and Mon.

Refugees from other parts of the world are also resident in Thailand, although they too are not recognized officially as refugees. Among those that UNHCR has recognized are those coming from Cambodia, China, the Democratic Republic of the Congo and Sri Lanka. There are approximately 4,000 asylum seekers and refugees outside the camps registered with UNHCR. The RTG considers them ‘persons of concern to UNHCR’, and permits them to stay in Thailand pending resettlement elsewhere.

In addition, there are several thousand Lao Hmong who are living in a refugee-like situation in Thailand; many of these may be de facto stateless persons.

1.2 Major international and national instruments

A summary list of the international treaties that Thailand has signed and ratified is provided in Annex 1. Notably, Thailand is not party to the 1951 Refugee Convention or its 1967 Protocol.

It has, however signed and ratified a number of international human rights instruments that have been incorporated into domestic law - which is required by the Thai constitution in order for them to have effect. These include the International Covenant

on Civil and Political Rights 1966 (ICCPR), and its First (but not Second) Optional Protocol; the Convention on the Elimination of All forms of Racial Discrimination (CERD) and the International Covenant on Economic, Social and Cultural Right (ICESCR).

Thailand is also party to the Convention on the Rights of the Child (CRC), however, it has made reservations in regard to Article 7, which deals with the registration of births and the nationality of children, and Article 22, which concerns the children of refugees and asylum seekers. These reservations have been reflected in the limitations on rights accorded to refugee children in both areas notwithstanding the fact that Article 24 of the International Covenant on Civil and Political Rights, which Thailand has ratified without reservation also provide for the right of children to be registered after birth, the right to a nationality, and non-discrimination on basis of national origin.

Thailand is party to the 1979 Convention on the Elimination of All forms of Discrimination against Women and the 1952 Convention on the Political Rights of Women, but few of the provisions within these instruments have been implemented through domestic legislation.

In regard to statelessness, Thailand is not a party to either the 1954 Convention relating to the Status of Stateless Persons or the 1961 Convention on the Reduction of Statelessness.

1.3 Legal and administrative protection framework

Thailand does not have specific legislation or administrative mechanisms governing asylum and refugee affairs. Policies that impact on refugees are formulated by different 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.

According to the provisions of Thailand's Immigration Act, persons entering the country without proper authorization are in breach of the law and therefore subject to arrest, detention and deportation. These provisions may be applied against refugees and asylum seekers, and no distinction is made between the two groups, except those for whom specific executive decisions apply. In particular, under special circumstances the Minister of the Interior, with Cabinet consent, may exempt an alien from complying with the Act. This flexibility has been used to permit the refugees from Myanmar to reside in the border camps for the reason that they 'are persons fleeing fighting'.

To give effect to this exception, the RTG established Provincial Admissions Boards, for determining eligibility for admission into the camps. These were discontinued in 2001 but were re-established in 2004.

1.4 Partnerships to strengthen protection capacity

Strong partnerships exist in Thailand regarding refugee protection between NGOs, UNHCR, and other UN agencies. NGOs have been the prime providers of assistance to

refugees in Thailand for the past two decades. In recent years, the RTG has collaborated with NGOs and UNHCR on strategies to strengthen protection capacity.

The Committee for the Coordination of Services to Displaced Persons in Thailand (CCSDPT) is the NGO coordinating body, and the joint UNHCR/CCSDPT Protection Working Group (PWG) has been working to improve the camp protection environment on a range of issues, including the administration of justice, child protection systems, and SGBV. There are provincial PWGs in each of the border provinces.

In 2005, the CCSDPT-UNHCR prepared a Draft Comprehensive Plan Addressing the Needs of Displaced Persons on the Thailand/Myanmar (Burma) Border. In May 2006 this plan was presented to donors and the RTG in Bangkok. Consultation on this plan continues, with the view to prioritizing the gaps identified and developing specific projects to remedy them.

In regard to urban refugees, monthly meetings are held in Bangkok between UNHCR and NGOs to share information and discuss protection related issues. The Bangkok Refugee Centre is UNHCR's implementing partner for providing assistance to urban refugees.

Other collaborative efforts relating to the protection of refugees includes work within the UN Country Team particularly in regard to migration and child protection issues. In regard to the latter, the 'Working Group on Children affected by Armed Conflict/Child Soldiers' has been established composed of representatives from ILO, OHCHR, UNDP, UNHCR, UNICEF, and three NGOs, which works with the RTG and other non-state entities to monitor the situation of child soldiers, develop strategies to address the problem and report regularly to the UN Secretary-General.

Within the camps, NGOs and UNHCR and other international partners work with the political parties that run the camps (i.e. the Karen National Union (KNU) and the Karenni National Progressive Party (KNPP)) through their sectoral departments, and with elected refugee camp committees who handle day to day administration. Refugees are therefore centrally involved and indeed control to a large extent camp affairs, although more needs to be done to ensure equitable representation of women, youth and of refugees of minority groups on camp committees.

1.5 Migration policies and refugee protection issues

Thailand is centrally located in Southern Asia. Its geographic position coupled with its open and growing economy contributes to its being both a destination and transit point for migration. As yet there is no comprehensive legislative and administrative system in Thailand that manages migration in an integrated manner corresponding to the demands of the mixed composition of migration movements (asylum-seekers, regular migrants and those that enter in an unauthorized manner). This, coupled with the fact that there is no specific legislation pertaining to refugee protection, means that refugees and asylum seekers are not distinguished from other migrants and their protection needs are not assured.

In particular, refugees and asylum seekers who have entered unlawfully and are not registered in the camps, or determined to be of concern to UNHCR, are liable to arrest, prosecution, detention and deportation as part of regular and ongoing efforts by Thailand to combat irregular migration. In many cases, they are denied access to basic services.

Most deportations to Myanmar are ‘informal’ (persons taken to the border and sent back rather than being formally handed over to the Myanmar authorities). However, the RTG has a Memorandum of Understanding (MOU) with the Government of Myanmar: according to its terms, a list of deportees is provided to the Government of Myanmar before the individuals are formally handed over to them. Several thousand returns are effected this way every year. UNHCR monitors the lists to ascertain whether the lists include those who will face persecution upon their return, and if so, it intervenes on their behalf, and while it has been able to do so in many cases the system itself does not guarantee an absence of risk of refoulement.

In 2004 the RTG registered over 1.2 million migrant workers in an effort to regularize their status, and over half were granted work permits. Migrant workers are granted access to government-provided education and health-care and unlike refugees they do not face restrictions on movement or risk arrest and expulsion. These registered migrants were invited to re-register in 2005 and 2006, and less than 50% of the original number are now registered.

1.6 Local population receptivity towards refugees

Receptivity toward the predominately Myanmar refugees was seriously strained in 1999 and 2000 as a result of the temporary seizure of the Myanmar Embassy in 1999 and the Ratchaburi Hospital in 2000 by Myanmar students and political dissidents in Bangkok. The RTG closed the centre where many of the students resided and requested UNHCR assistance in resettling close to 1,800 persons from Myanmar considered of concern to UNHCR. The work of Provincial Admissions Boards was suspended, and no new admissions were permitted to the camps.

Two years later, the RTG took further measures to curb political activity among the Myanmar refugees by closing some of their offices near their border. This coincided with a country-wide crackdown on illegal migration. A demonstration in front of the Myanmar Embassy in 2003 by activists recognized as refugees by UNHCR, further angered the RTG who threatened to remove all Myanmar asylum-seekers and refugees.

Although the situation has calmed down since then, and the Provincial Admissions Boards have recommenced their activities with a slightly broader mandate, refugees and asylum seekers, including those from outside Myanmar, reportedly face discrimination, especially in urban areas. Reports of harassment threats and physical abuse by groups of young Thais against Myanmar nationals is increasing. Moreover, there is an overall impression within Thai society, fuelled by erroneous reports in the Thai media, that refugees spread diseases within the country and have a relatively high rate of HIV/AIDS.

Host communities perceptions of refugees may be relatively better in camp areas, for a recent IRC survey indicated that around Ban Tractor/Ban Kwai refugee camp 48% of the local population surveyed believed that refugees contributed to economy and society of Thailand. Fifty-five percent of the employers surveyed believed that refugees should have the right to work.

As regards the urban caseload, there have been many reports that refugees, particularly those from Africa, encounter racial discrimination when seeking accommodation.

1.7 Refugees and national, regional and development agendas

Refugees are not included in national, regional and development agendas.

There is no detailed information on the impact on local communities of the refugee camps although it is believed that local business who provide goods and services to the camps do benefit. It is unlikely, however, that refugees living within the camps impact significantly on the Thai economy as a whole, since they are not officially permitted to work, and most of the resources needed for care and maintenance come from the international community.

Refugees in border areas have been accused of contributing to environmental degradation of the region, through illegal logging, although other economic activities, including illegal logging by nationals, have a far larger negative impact. Projects to address adverse environmental impact of refugee camps are one of the priorities of the CCSDPT/UNHCR Comprehensive Plan, though the focus to date has been on environmental impact within the camps, as opposed to the impact on surrounding areas.

2. Admission in Safety and Registration

2.1 Access to territory

Immigration authorities control access to Thailand at airports and overland border points, and as noted earlier consider anyone who tries to enter the country without authorization as illegally present and subject to detention, prosecution and removal. In Bangkok airport the Immigration Commissioner, the Corrections Department and the Ministry of Justice cooperate with UNHCR enabling UNHCR to have access to detainees and conduct refugee status determination interviews of non-Myanmar asylum seekers to determine those who fall within its mandate. UNHCR has also access to detainees held in other prisons and Immigration Detention Centres (IDCs)

2.2 Non refoulement

The deportation of refugees, along with others from bordering countries who enter the country irregularly, systematically takes place. Individuals from Myanmar form the largest group, and are frequently simply taken to the border and either left there or, more often, obliged to cross. Deportations to Myanmar can be as high as 10,000 a month.

Deportees are usually dropped at 'informal' border crossings, where there are no Myanmar government officials. Some of these border points, however, are controlled by insurgent groups. Frequently, these groups will demand a bribe from the deportee to be released from their control and permitted to cross back into Thailand.

Although most deportations are not considered to be refoulement, there is concern that the present return and monitoring system does not provide sufficient safeguards to ensure that refugees are not refouled and there have been incidents which have raised alarm. These have included the removal of 27 Lao Hmong children to Laos who were reported to have been jailed and mistreated upon their return. Although the RTG has expressed its willingness to readmit the children and reunite them with their families, there are political obstacles between Laos and Thailand that have as yet hindered the resolution of the problem.

Nationals from countries that do not border Thailand tend not to be deported for illegal presence, generally because of the high cost of removing them. They are, however, subject to long periods of indefinite detention.

2.3 UNHCR access to new arrivals at entry ports

Although UNHCR is provided access to asylum seekers detained at the Bangkok airport, it is denied access to over 200,000 ethnic Shan refugees from Myanmar, as well as

approximately 6,500 Lao Hmong, including new arrivals from Laos, in the north of the country.

2.3 Individual registration of refugees and asylum seekers

Registration is done jointly by UNHCR and the RTG. For Myanmar refugees, admissibility to the camps is subsequently determined by the Provincial Admissions Boards.

When the Provincial Admissions Boards ceased their activities in 2001, no new arrivals from Myanmar were permitted into the camps. Thousands of Myanmar nationals, however, continued to cross the border, many due to ongoing fighting in Myanmar as well as persecution. They entered the camps and remained there but they were not registered. Consequently, close to 20,000 persons in the border camps were unregistered when the Provincial Admissions Boards were re-established in 2005.

In 2004, UNHCR started a re-registration exercise using new ProGres software. This system captures electronically important bio-data including information pertaining to age, gender, country of origin, intended place of return and specific vulnerabilities and/or relevant risk factors. Fingerprints were also collected and electronically stored as a requirement of the Ministry of Interior (MOI), and new household registration documents provided.

Most of the backlog of unregistered individuals in the camps has now been registered and the data pertaining to previously registered individuals has been updated. Ongoing registration is assured in regard to camp based populations.

In 2004 registration was also reintroduced for refugees and asylum-seekers in Bangkok and other urban locations also using the ProGres software. Registration at all locations is conducted by trained individuals, interpretation is available, and confidentiality respected.

2.4 Information regarding rights and responsibilities

Within the context of the Administration of Justice Programme, discussed in Chapter 7 below, camp refugees have received basic legal training and are aware of their rights and obligations under Thai and international law. The first phase of this IRC/UNHCR programme involved training members of refugee camp committees and other community-based organisations (CBOs) on both Thai law and international legal standards. This focused on both refugee rights, and on refugee responsibilities in Thailand. The second phase of this programme targeted RTG officials.

More generally, training on a range of protection issues is regularly provided by NGOs and UNHCR in the camps.

For the urban caseload, UNHCR and the Bangkok Refugee Centre (BRC) recently provided training on refugee rights, RSD, UNHCR's role, and general protection issues

to police officers working in the three districts of Bangkok where the urban refugee caseload is concentrated. Here, documentation procedures were also explained, and the police officers were provided with copies of the types of documents UNHCR issues to urban refugees and asylum seekers.

Information leaflets are provided to refugees and asylum seekers in Bangkok. A leaflet explaining the process of registration and RSD is distributed to new arrivals both at the BRC and at the UNHCR office. The leaflets distributed at the BRC are only available in English, which can cause difficulties for many refugees. Leaflets distributed at the UNHCR office are currently available in English, French, Burmese and Arabic – a need for leaflets in Chinese has been identified.

Newly recognised refugees are provided with a BRC leaflet giving details on services and types of assistance available. Again, these are at present only available in English, a problem which has been highlighted by the BRC.

UNHCR is in the process of finalising a more detailed booklet to be distributed to all who approach the office. This will include information on UNHCR's role, registration, RSD and some information on durable solutions.

During 2005, UNHCR produced an information leaflet for SGBV survivors which explains the meaning of SGBV and the legal issues involved, including the steps needed to bring the action under Thai law. The leaflet was disseminated in the camps and urban refugee centre, and was translated into both Burmese and Karen languages

2.5 Limited restrictions on movement

Refugees and asylum seekers are not free to move in Thailand. Those who live in the camps are not permitted to leave them. Although in previous years some movement to other camps to visit families and attend trainings was permitted, and trips outside camps to buy medicine, supplies and even to work was tolerated, this is now more tightly controlled. Those caught outside the camps are frequently deported.

Refugees and asylum-seekers who reside in urban areas are also vulnerable to arrest, detention, prosecution and deportation for being illegally in Thailand.

3. Fair and Efficient Status Determination

As noted above, Thailand has not signed the 1951 Refugee Convention nor 1967 Protocol and it does not have any asylum procedure legislation. Thailand makes no distinction between refugees, asylum seekers and other migrants except in the case of those from Myanmar. The Provincial Admissions Boards determine whether Myanmar applicants are eligible to remain in Thailand on a temporary basis.

3.1 Temporary protection: Myanmar nationals

The Provincial Admissions Boards were officially re-established in 2005 and have recently become functional. There are some 11,000 persons who have registered for the Provincial Admissions Boards but whose status has yet to be determined. As of early November 2006, the use of group determination provided for the approval of 27,880 persons who were resident but as yet unregistered in the camps.

Previously eligibility rested on whether the person was considered to be ‘fleeing fighting’. In 2004, the admissibility criteria were broadened to include those ‘fleeing persecution or for other reasons.’ Under the new system Myanmar nationals are pre-screened by authorities responsible for border security, informed of the Provincial Admissions Board process and admitted to a Reception Centre where their bio-data is taken. From there they are sent to Holding Centres in the camp along with those who are apprehended after entering Thailand and who have registration slips issued by UNHCR.

Applicants are interviewed by four-person teams, led by the district officer (or the authorized deputy district officer) where the camp is located, joined by the deputy district officer, the UNHCR field officer in the area, and an interpreter. Their assessment is forwarded to the Provincial Admission Board for further determination.

The Provincial Admissions Boards are comprised of eight members, at least half of whom must be present for there to be a quorum. Decisions are by majority vote. Each PAB includes a UNHCR representative.

Applicants deemed to be fleeing from fighting receive fleeing from fighting status and applicants deemed to be fleeing from persecution are granted displaced person status. They are then transferred to one of the camps and registered. Their status is regarded as temporary in that they may be required to return to Myanmar when circumstances permit. Those found to be fleeing persecution are eligible for third country resettlement.

Rejected applicants are told of their right of appeal, which they must file with UNHCR within seven days of the Provincial Assessment Board’s decision. UNHCR will then submit further documentation to the Appeal Board for further consideration. Rejected applicants are not given individual letters with reasons for refusal – they are simply informed of their rejection on notice-boards in the Holding Centres.

Applicants who are not granted status and who do not file for appeals must stay in the waiting area awaiting return to Myanmar.

The Bangkok-based Appeals Board considers appeals filed by UNHCR on behalf of rejected asylum seekers based on the original determination and newly acquired information. The decision of the Appeal Board (by majority) is final. Successful appellants are transferred to one of the camps, while those who are unsuccessful are transferred to the waiting area pending return to their homeland when conditions are conducive. Agencies represented on the Appeal Board include Ministry of Interior, Ministry of Foreign Affairs, National Security Council. UNHCR will not have an official position on the Board.

Given that the new procedure is relatively new, the strengths and weaknesses await further assessment.

3.2 Status determination: non-Myanmar nationals

In the absence of a government mechanism, UNHCR has been assuming responsibility for determination of refugee status of all non-Myanmar asylum seekers in urban areas on the basis of its mandate.

In 2005, asylum seekers of 41 different non-Myanmar nationalities registered with UNHCR in Bangkok, representing one of the most diverse RSD caseloads being handled by UNHCR in the world. New registrations in 2005 tended to originate from within Asia, although some have come from as far away as West Africa. The biggest groups of asylum seekers in 2005 originated from Cambodia, China, Laos, Nepal and Sri Lanka.

Individuals seeking UNHCR recognition are first interviewed by an interpreter (doubling as registration staff), who explains the refugee criteria and process. Asylum-seekers are assisted in completing a basic bio-data form, and must provide a written statement in the language of their choice. If they are not literate, interpreters provide assistance. A digital photograph is taken, and individual documents issued to each member of the family; these documents include a photograph of the applicant, office contact information, and several security features. An interview is then scheduled, ideally with 2 months of registration.

UNHCR has produced an authorization to act as a legal representative in line with the RSD procedural standard. A full and inclusive refugee definition is used.

Decisions are issued in writing; reasons of rejection are explained in writing to the applicants, and verbal rejection counselling by an eligibility officer is provided upon written request. Rejected applicants are allowed to be accompanied by legal representation as observers at counselling sessions.

Appeals must be filed within 30 days of notification of rejection.

Processing is accelerated for extremely high profile cases, medical cases, unaccompanied minors, women-at-risk, the elderly, the mentally or physically disabled, those suffering from the mental or physical effects of severe torture, and those with special vulnerabilities or security concerns in Thailand. The last category includes those in

detention (with the exception of individuals serving prison sentences, who are processed upon transfer to the IDC).

Jesuit Refugee Service (JRS) provides legal advice to asylum seekers in Bangkok, primarily at the appeal stage. However there are other organisations in Bangkok who are reportedly providing advice on RSD to asylum seekers, however it is believed that much of this advice may be incorrect, and/or that asylum seekers sometimes have to pay to receive this inaccurate information. BRC has recruited an additional staff member who will, from December 2006, provide legal advice to asylum seekers in Bangkok. This service will be co-ordinated with the work of JRS, and a referral network is envisaged

4. Security from violence and exploitation

Refugees in Thailand face constant risks to their security from violence and exploitation. Those in urban areas, because of their deemed illegal status, lead a precarious existence marked by the risk of arrest, detention and deportation. Refugees in the camps, in common with other protracted refugee situations around the world, also experience threats to their security. Dependent on subsistence-level humanitarian assistance they lead lives of poverty, frustration and unrealized potential. It is an environment that is prone to violence and human rights abuses.

Rape, high levels of domestic violence, recruitment of child soldiers and summary arrest, detention and deportation are among the chronic problems experienced by camp based refugees. Instances of extrajudicial executions have also been reported, as have cases of individuals being forcibly taken across the border to Myanmar and detained or even executed as punishment for their conduct in the refugee camps.

The CCSDPT/UNHCR Protection Working Group has been working to address a range of protection concerns, including child protection, administration of justice issues and SGBV.

However, although there are programs in place to address these protection concerns, they do not provide complete coverage. Moreover, there is at present no integrated protection monitoring system in place in the camps, with the result that many rights violations are believed to go unreported and unaddressed.

4.1 Non arbitrary arrest and detention

The risk of detention is a constant and pressing one for urban and camp based refugees.

Urban refugees are routinely arrested for being illegally in the country and are detained. In Bangkok they are generally transferred to the Immigration Detention Centre. In 2005 UNHCR recorded over 125 cases of refugee detentions in Bangkok, the vast majority of whom were from countries other than Myanmar. Children are generally not detained.

Refugees from Myanmar, Laos and Cambodia have the option of indefinite detention or being voluntarily deported. Deportation generally involves being taken to one of the border crossings, where they arrive with no belongings, no funds, and no legal means of returning to Bangkok.

Detained refugees in Bangkok from non-bordering countries can access UNHCR's 24 hour hotline to request UNHCR's intervention with the authorities. UNHCR has been relatively successful in securing the release of those who have not yet been transferred to the Immigration Detention Centre. Once in the Centre, however, the authorities will only permit a certain number of refugees to be released on bail at a given time. Moreover, bail is conditional upon there being a reasonable prospect of resettlement in the near future. This is becoming more difficult to establish, given the growing reluctance

of resettlement countries to accept non-Myanmar refugees. Refugees released yet not resettled take up bail slots for long periods of time, making it even more difficult for UNHCR to negotiate further releases of other detainees.

The conditions in the Immigration Detention Centre are extremely unpleasant. It is overcrowded and immigration offenders are detained jointly with foreigners exiting the prison system. In isolated cases, refugees who are considered 'political offenders' can be detained at the Special Detention Centre in Bangkok which is not as overcrowded but where release on bail is not permitted. Detention centres are monitored by UNHCR and an affiliate of the Bangkok Refugee Centre.

Camp based refugees also risk arrest and detention if they leave the camps without authorisation, which many of them do due to economic need. If caught, they too are subject to arrest and deportation. This also applies to refugee children. There have been known incidences of refugees being arrested while being transported to work sites outside the camps and being forced to pay bribes for release. It is believed that the arrests were planned as part of the labour scheme, as a means of further profiting from the money paid to secure release.

UNHCR is often not able to intervene successfully on behalf of camp residents who have been detained for being outside the camps. Generally those arrested spend one night in detention and then are taken to an immigration processing centre at the border for deportation. If the deportation is formally undertaken from Thai provincial immigration authorities to their counterparts in the Myanmar government (known as the State Peace and Development Council, SPDC), the risk of persecution is considerably higher than if the refugees are transported to informal crossing points, where they are often received by the local officers of the Democratic Karen Buddhist Army (DKBA). The number of camp residents deported annually through informal crossing points is approximately 100.

The conditions of detention vary depending on the area. In Mae Sot the conditions are reportedly deplorable while those in Kanchanaburi are reasonable.

4.2 Mechanisms to prevent and respond to sexual and gender based violence

Sexual and gender-based violence (SGBV) remains a persistent and far too prevalent problem, especially within the camps. The forms are varied, but within the home domestic violence by husbands against their wives is the most common. Rape and attempted rape also factor disproportionately high in the incidences reported. Sexual harassment, sexual exploitation and trafficking also occur.

Women refugees report a number of reasons for the high incidence of SGBV in the camps, including gender inequality and discrimination, traditional norms and cultural attitudes, absence of adequate representation in community administration, inadequate security, lack of access to justice and impunity for the perpetrators. The influence of alcohol in incidence of domestic violence, and of violence in general, has also been highlighted.

The consequences of SGBV extend far beyond the violence itself, leading as it can to the transmission of sexually transmitted diseases (STDs), HIV/AIDS, family breakdowns, unwanted pregnancies, social ostracism and psychological problems. In addition, two in every three suicide victims are women, compared to a national ratio in Thailand of three males to every one female. Most suicides involve victims of rape or domestic violence.

In 2005, nearly one third of the SGBV reported cases (and half of all reported rape cases) were against minors; also nearly half of SGBV incidents reported were perpetrated by minors. There were also several reported cases of SGBV against women with physical and/or mental disabilities.

Prevention

NGOs and UNHCR partners have established a SGBV programme aimed at building community awareness and developing response mechanisms. These engage the refugee community in activities aimed at preventing and responding to SGBV. Prevention efforts include awareness-raising activities commonly undertaken by 'SGBV committees' targeting various camp populations. The committees have a diverse membership, including representatives from community based organisations (CBOs) such as the Karen Women Organization (KWO) and Karen Youth Organization (KYO), NGO workers, Camp Committee, Judicial Committee, Camp Security, Social Welfare Committee, teachers and community social workers, as well as ordinary refugees.

SGBV committees have often been trained by UNHCR. The content of the trainings vary from general knowledge about SGBV to the protection risks for women that arise out of SGBV.

With funds from UNHCR, production of an educational documentary film on SGBV was initiated by Kawlah Films, produced using participatory methods with the full involvement of KWO. The content of the film includes community perceptions of SGBV, root causes, why women do not leave violent partners, the effects of violence on survivors and their communities, support available, opportunities and challenges in seeking justice and next steps.

One considerable problem with awareness raising efforts is the resistance of male dominated camp leaders to engage in SGBV discussions and efforts to ensure the prosecution of perpetrators. In addition, there are no SGBV committees in the two Karenni camps, and four of the nine camps do not have special NGO SGBV programmes.

Another problem of considerable concern are threats received by NGO staff and SGBV committee members which has led to some to have resigned from their activities.

Reporting

A total number of 125 incidents were reported to UNHCR in 2005, although it is believed that the actual number of cases of SGBV were considerably higher, and that, in fact, most incidents are unreported. There are a number of reasons for this including refugees reluctance out of shame, fear of exposing themselves and/or of retribution. Under reporting by Community Based Organisations also occurs particularly when they have a close relationship with camp authorities who are reluctant to refer cases to UNHCR, and may pressure victims not to do so in favour of a local solution.

Only 5 out of 9 camps currently have specific NGO programs dedicated to SGBV. In two of the camps lacking such programs, there were no official reports of any SGBV incidents whatsoever for the past two years, despite the fact that the SGBV committees have confirmed that many incidents have in fact taken place.

Local solutions, as explained further below, often fall short of international standards.

UNHCR maintains a central database to record SGBV incidents. Once the Field Office receives the Incident Report Form (IRF), the information is then sent to UNHCR's office in Bangkok which opens a file on the case and enters the information into the central database, to monitor each case and specifically the actions taken on behalf of the survivor. The database also enables UNHCR to analyze trends and identify gaps in response to SGBV cases.

UNHCR also receives IRFs from NGOs although in some cases not as regularly or in sufficient detail needed to ensure full trend analysis of all reported cases. The absence of a UNHCR presence in all the camps adds to the difficulties in reporting, as does the absence of an integrated protection monitoring system in place within the camps.

Response

Currently work is being done to finalize SGBV standard operating procedures (SOPs) for use by government, UN, NGOs and refugees organizations to improve monitoring and response mechanisms within the camps. The multi-sectoral SOPs will provide a road-map for action to ensure that survivors receive the necessary support – medical, psycho-social, and legal.

The SOPs define the various roles and responsibilities of each international and community-based organisation operating in the camps. The aim is to establish an individual case management and referral mechanism, so as to ensure that each victim can receive the full range of response and support services (medical, physical security, and legal) available in the camp.

Medical assistance is provided to survivors of SGBV by various NGOs within the camps and in Bangkok. In 2005, however, of 28 rape survivors in the camps, only 5 received medical assistance within three days of the incident occurring. As regards psychosocial support, considerable efforts have been made by community based organisations in the camps such as the Karen Women's Organisation (KWO, Karenni Women's Organisation (KnWO), and the Karen Youth Organisation (KYO). However the need for capacity building in this area is widely acknowledged.

Temporary shelters to protect those at risk is available in only some camps, and generally lack capacity. Moreover, where they do exist, woman often find themselves effectively imprisoned in the shelters, whereas the perpetrators are able to move about freely and sometimes continue to threaten the survivor. In particularly severe cases there has often been no other option than to arrange for survivors to be transferred to other camps for their own protection.

There is a need to work with communities in finding alternative strategies – which focus less on the physical confinement of the survivors, and more on the treatment of

perpetrators. However, discussions with refugees have revealed that the lack of women in camp management committees and justice committees was an important factor in the failure of community efforts to properly address SGBV.

In regard to prosecution under Thai law, most survivors of domestic violence prefer not to press charges. Frequently these cases are seen as a family affair, and response, where requested by the survivor, is generally in the form of safety assurances, counselling and/or separation. In regard to other forms of SGBV, in 2005 nearly half initially proceeded to be dealt with under Thai law but only a few cases were successful. There were a number of significant obstacles to the full adjudication of the cases, including withdrawal by the victims due to pressure by authorities, lack of permission to leave the camps to conduct the necessary formalities, and lapse of the 90-day statutory reporting limitation period.

Alternative camp justice systems are often preferred. They resolve the cases more quickly yet lack the capacity to deliver appropriate remedies and/or penalties for serious crimes. They can disregard the rights of the victim and their punishments can have little deterrence effect. (e.g. cleansing ceremonies, and/or fines to families of the victim as a resolution to rape) .

4.3 Specific programmes to protect children

There are many protection problems confronting refugee and asylum seeker children including the absence of official birth registration which renders them without an official identity. Among the other numerous protection risks they face within the camps are physical and sexual abuse and military recruitment. In addition there are approximately 6,500 children who are separated from their families and the absence of systematic family tracing, inadequate foster care and boarding house arrangements add to their vulnerability and risk.

Best interest determinations (BID) are now systematically done in RSD and resettlement processes, and standard operating procedures have been developed to ensure consistency and quality of the assessments. A panel was established in Bangkok to review all BIDs. However at present there are insufficient resources to swiftly conduct BIDs for all cases in need.

Birth Registration

The RTG does not provide for immediate registration after birth of refugees and asylum seekers. The only document available to newborns is a delivery certificate for children of registered Myanmar refugees born after 1999, and these are not consistently issued throughout all districts. They do not approximate official registration certificates. They are not recorded in any official birth registration system nor are they provided to the many thousands of refugee children who were born before 1999 and those who have been born since 1999 to non registered refugees.

Separated Children

There are over 6,600 separated children in the refugee camps, with a relatively equal proportion between girls and boys. Twelve percent of the total population of

unaccompanied children are between five and nine years of age. The majority of separated children live with relatives, while nearly 30% stay in residential care. One percent live without any adult support, in child headed households.

Education opportunities are one reason for the relatively high number of separated children in the camps. Parents send their children from the increasingly deteriorating situations in Karen and Karenni states to the camps in Thailand and or from one camp to another for better education opportunities.

Although there is adult supervision in the boarding houses, and the children are visited by community social workers, the residences are generally in poor condition. Children have reported a lack of adequate care, and sexual abuse of child residents has also been a problem in some camps. In addition, it is reported that the militarized wings of the Karen National Union (KNU) and the Karenni National Progressive Party (KNPP) have influence over some of the residences, and expect some of the children resident there to go for military training during school vacations.

The Catholic Office for Emergency Relief and Refugees (COERR) and UNHCR have together set up a computer supported data collection and reporting mechanism for monitoring the situation of separated children. The database is updated monthly to enable UNHCR and COERR to regularly monitor children at risk. There is a need to ensure more detailed reporting to capture specific risks.

Arrest/Exploitation/Physical violence

Other protection problems facing all children are the risk of arrest and/or exploitation should they leave the camps, which many do in search of employment. Boys often find work on farms or fishing boats and girls as domestic labourers. Some employers exploit their child workers. Underpayment, non-payment, and physically preventing the children from returning to the camps are among the reported abuses. The extent of these risks, and the involvement of human traffickers in child labour exploitation, is currently being researched in Mae Hong Son. A wider assessment of the full extent of trafficking from the camps is recognized as needed, but depends of funding.

A high incidence of sexual and gender based violence against children is a pressing protection problem. In 2005 over half of all rapes and attempted rapes reported to UNHCR were of children, with the youngest survivor just 5 years old. Children themselves have reported their fear of physical abuse, especially from drunken men. Early marriage is another protection concern, motivated in part to safeguard against military recruitment and or in response to an early pregnancy. An increase risk of suicides, especially among girls, is a concern reported in several camps.

Child Soldiers

Children are known to be recruited by military of the Myanmar government's State Peace and Development Council (SPDC) and those of the rebel Karen National Union (KNU) and the Karenni National Progressive Party (KNPP). Child soldiers of the SPDC who seek refuge in the camps face serious difficulties. They are often viewed with suspicion by camp residents, they often lack the support of extended family, and they can not access education when provided in Karenni because they do not speak the language. Moreover, those who are apprehended by the Thai authorities are at serious risk of being deported back to Myanmar where, considered deserters, they face persecution.

Child soldiers of the Karen and Karenni armed groups tend to be volunteers, joining because of their need of food and shelter or commitment, having experienced injustice at the hands of the SPDC. As yet there are not sufficient services within the camps to protect children from military recruitment and assist in their demobilization.

The recently established UN Country Team ‘Working Group on Children affected by Armed Conflict/Child Soldiers’ has among its tasks monitoring and reporting on grave violations committed against children in this context and information dissemination and advocacy. Both the KNU and the KNPP have made a commitment to this Working Group that they will not recruit child soldiers from the refugee camps. This commitment will require ongoing monitoring.

4.4 Effective security systems in the camps

Refugees in the camps report threats to their security and incidents of mistreatment or infractions at the hands of camp commander and Ministry of Interior volunteers have been reported. In 2005 systematic police brutality of refugee women was reported in the Tak province where women refugees reported being robbed, detained and assaulted by police. Refugees are often reluctant to report incidence of abuse for fear of reprisals. Also collaboration between various different Thai authorities and military elements within the camps also acts as a disincentive to prosecution.

4.5 Maintenance of the civilian character of camps and settlements

The nine refugee camps in Thailand lie along the Thai-Myanmar border with the Ban Don Yang camp literally situated on the border itself. Armed conflict within Myanmar, chiefly involving the SPDC – and ethnic resistance groups such as the KNU and the KNPP, render the camps in a chronic state of insecurity.

The border camps are particularly vulnerable to infiltration by armed elements and military recruitment. Although the Thai authorities are present, constant care is required to maintain the civilian nature of the camps. Refugees have reported many incidences of abuse and even death at the hands of the KNU and KNPP, especially of ethnic minorities or those perceived to have supported opposition groups. Forced labour, including carrying supplies in mine laden border areas, and summary executions are among the incidents reported.

Residents report their fear of the camps being infiltrated by spies and informers which is made possible by the constant flow of people across the border into the camps. Of concern as well is the arrival of children who have been soldiers. There are no demobilization programs in the camps or half-way houses to aid the reintegration of child soldiers. As a result, some former child soldiers have reportedly terrorized others and have attempted to organize gangs.

In terms of response to protection incidents, the influence of certain armed groups directly affects the administration of justice in the camp, in that crimes against the less powerful groups tend to go unrecognised or receive an inappropriate response. In general, justice meted out in the camps is often not in accordance with Thai law or international standards.

5. Essential Services

5.1 Refugees and asylum-seekers participate

The Karen and Karenni refugee committees, Camp Committees, and other community – based organisations play a central role in camp administration, protection mechanisms, and implementation of assistance programs.

However, these CBOs are under-resourced and require capacity-building. Training as well as financial and material resources are required to make camp management more efficient and transparent.

At present, camp leadership is dominated by men. As of early 2006, as revealed in a report by the Thailand Burma Border Consortium (TBBC), only 22% of positions on Camp Committees, and 10% of section committees, are held by women. In some camps, quotas were introduced in camp elections during 2006 to increase the representation of women. Others not appropriately represented include members of minority groups and youth.

Those women who participate in camp committees have relatively little influence, their opinions respected most when in line with those of the male leadership. Traditional expectations of gender roles, significant domestic responsibilities and fear of criticism are among the reasons for their relatively poor representation and influence.

Women’s committees exist in all nine camps, including the Karen Women’s Organization (KWO) and the Karenni Women’s Organization (KNWO), but their role is limited to serving as focal points on SGBV issues and making decisions on issues traditionally reserved for women such as children, the elderly, and health. .

In the realm of SGBV, the reluctance of men to participate in awareness and prevention programmes, coupled with their authority over issues such as remedies to survivors and punishment for perpetrators, diminishes the influence of women in prevention and response.

In 2004, the women’s committees in the camps were given the task of selecting the recipients of non-food items and managing their distribution. Efforts are ongoing amongst NGOs responsible for food distribution to encourage more women’s participation in its management.

5.2 Identification of urgent protection risks

Specific protection risks and needs in regard to children are identified through BIDs as part of the RSD and resettlement processes. As discussed earlier, there is a computer tracking and monitoring system which enables COERR and UNHCR to identify, assist and monitor separated children and risk. Nonetheless, as outlined above, there are many shortfalls in addressing their risks.

In addition, there are a number of other high risk groups whose needs also remain insufficiently addressed. Refugees with physical or mental disabilities, for example, are particularly more vulnerable to SGBV and other forms of violence and exploitation. There is a general lack of understanding for those with these specific needs, and improved monitoring is needed. For example, physically disabled persons have difficulty accessing camp services and buildings. A proper assessment is needed, in addition to improvements in the design of facilities. Moreover, there are insufficient educational programs for persons with speech and hearing impediments. In regard to those with mental disabilities, no activities or supervision is provided.

Other high risk groups include adolescents who are drawn to alcohol and drugs. Training, organized activities and psycho-social support are needed to reduce the incidents of substance abuse. While there are some projects aimed at this vulnerable group, their coverage is limited.

For those at risk of physical violence, temporary safety is sometimes provided in safe houses and community centres. However, these facilities are not available in all the camps, and in any case offer only temporary protection. There is a need to strengthen the capacity of these shelters, and at the same time to engage CBOs in developing complementary mechanisms to protect persons at risk.

5.3 Nutritional well-being

Within the camps there is a high level of chronic (stunting) malnutrition, attributable to the lack of diversity in the diet over a long period, poor child feeding practices and the inability of refugees to purchase additional food items. Fortified blended food has recently been added to the refugee food basket, which now meets international standards in terms of energy and nutritional requirements. However refugees often go outside the camps to forage for food where they risk being arrested and deported if they are caught by the Thai authorities.

Several NGOs provide appropriate agricultural training in the camps, supplying tools and seeds. These are small-scale activities, but do provide refugees with vocational skills and knowledge, as well as fresh vegetables and small livestock with which to supplement their diet. The results of these initiatives have been encouraging so far, but there are limitations in terms of adequate space and, in some areas, availability of water.

There is a need to ensure sufficient participation of women in distributions, but monitoring procedures indicate that food is reaching the target population and acute malnutrition is low. There is a need to provide more nutritional education, specifically on child feeding practices.

Several NGOs provide tools, seed and agricultural training in the camps, but space and water constraints remain problematic. Water quality is also poor in some areas.

In Bangkok, upon registration, UNHCR through the Bangkok Refugee Centre (BRC) provides asylum seekers who are considered vulnerable supplementary assistance for one

month to cover immediate basic needs. A modest cash allowance is also provided to recognised refugees in need. This is reported to be insufficient, particularly for large families.

The BRC conducts home visits to assess the refugees' living conditions and the necessary level of assistance. Stipends are also provided for a small number of Myanmar persons of concern who have not been recognised and who have medical exemptions to remain in urban areas, pending their resettlement.

The BRC provides monthly dry food rations to refugees, and exceptionally to vulnerable asylum seekers. BRC will shortly begin providing hot meals to refugee children attending school on-site. Persons without any UNHCR documentation often receive dry food rations, as well as financial and medical assistance, from Jesuit Refugee Service (JRS) in Bangkok.

Nevertheless, participatory assessments conducted in the context of the AGDM initiative, frequently indicate that many urban refugees struggle to meet basic accommodation and food needs with the assistance they receive.

5.4 Basic domestic and personal items

The increased confinement to camps and corresponding fall in income generating activities have left camp refugees increasingly reliant on provision of non- food items such as cooking fuel, stoves, clothing, blankets, mosquito nets, and sleeping mats, all of which are distributed regularly.

There is insufficient provision of a number of important non food items including clothing, toothpaste, soap, water containers, and sanitary napkins.

The BRC lacks the resources to regularly distribute the required NFIs to refugees in Bangkok.

5.5 Adequate housing

With the increase in the number of refugees, camps have become increasingly overcrowded and, in some cases, do not meet international standards. Sanitation and waste management are sub-standard. It has been recognised that more land needs to be allocated to the camps to meet shelter, recreation, education and training needs.

As reported by CCSDPT, the responsibility for site planning and infrastructure in the camps has never been assigned to any one agency. Action by local authorities, refugee committees, NGOs and UNHCR has been reactive rather than proactive, usually in times of emergency.

More systematic planning and maintenance is needed for watersheds, internal roads, drainage and critical points on access roads to camps. At present, access to the camps, and within the camps, remains difficult.

During 2006, UNHCR has retained the services of a civil engineer from the Swiss Development cooperation to carry out a 6-month assessment and recommend a plan of action. Provisional conclusions recall the needs highlighted by NGOs, and recommend systematic improvement of access roads and camp infrastructure, as well as improvement of water supply (quantity/quality), sanitation, and waste management.

Overcrowding is also reported to be a problem for urban refugees, who are not legally entitled to work and lack the funds to rent adequate housing in Bangkok. This is particularly problematic for refugees with large families. Peace House operates a temporary shelter in Bangkok that is available to a limited number of vulnerable asylum-seekers (single males only).

5.6 Primary curative health care and preventative health education

Refugees are currently not included in the national health plans, nor in local or national HIV/AIDS initiatives.

In camps, health care is provided by NGOs and refugees have access to basic health care. Nevertheless a relatively high incidence of infectious diseases remains of concern, despite having decreased over the past ten years. A lack of sufficient waste disposal sites contributes to the spread of disease. Enhanced response mechanisms and preparedness against an outbreak of infectious disease, jointly planned by NGOs and the RTG, are needed.

The protracted nature of the camp situation in Thailand has resulted in an increase in mental illnesses. Mental health treatment, however, is insufficient, and the lack of psychiatric care and facilities in the camps is an ongoing problem border-wide. Not only do persons in need of psychiatric treatment go without it, but they are often viewed by their community as security risks, and many have been detained rather than referred to medical care. The care that is available, however, is insufficient to appropriately address psychiatric problems, health NGOs generally having neither the resources nor capacity to deal with problems of this nature.

Counselling and advice is provided to women on maternal and reproductive health issues, and NGOs do follow-up home visits as well. Women generally give birth at home, assisted by trained midwives and go to the camp clinic if complications arise.

There are no precise figures for the rate of HIV among refugees in the camps although it is believed to be below that of the general population. Infection is confined mostly to high-risk groups such as mobile males and there is a concern that infection rates are increasing with the increase in work migration. Prevention and treatment within the camps is not uniform as there is no comprehensive HIV/AIDS program. Some HIV/AIDS-related activities are being implemented in some of the camps, including: prevention activities (health education in schools, distribution of condoms), voluntary HIV testing, counselling, prevention of mother to child transmission of HIV,

prophylaxis and treatment of opportunistic infections, and antiretroviral therapy (ART) for HIV-positive persons. These programmes are particularly vulnerable to funding cuts. The health NGOs associated with CCSDPT are looking at ways to improve HIV/AIDS programming for persons living in the camps and are exploring possibilities to collaborate with the Thai Ministry of Public Health (MOPH) to improve HIV/AIDS services.

Persons living with HIV and AIDS can experience severe discrimination within the camps. Refugee representatives have emphasized that there are widespread misconceptions relating to HIV/AIDS and more education is needed to combat stigma within the refugee community.

A number of resettlement countries require HIV/AIDS pre-screening conducted by the International Organization for Migration (IOM), and two of these countries reject outright those candidates that test positive. Those who test positive are brought back for counselling, which while necessary, identifies them as carriers given that those who test negative are not subject to preventative counselling following the pre-screening. UNHCR and the IOM have discussed the need to establish a system that links HIV-positive resettlement applicants with available services in the refugee camps and that ensures post-test counselling is provided to all people who undergo testing.

There are insufficient programs to meet the health needs of youth and adolescents, particularly in the areas of HIV/AIDS and reproductive health. There is also insufficient care and support provided to others with chronic health problems and their families.

Camps have experienced difficulty in retaining training refugee health workers as they often register and are accepted for third country resettlement. And while health services are available outside the camp, for treatments unavailable within them, health NGOs are reluctant to refer patients to them, knowing that the demand for them outstrips their ability to provide the funds needed to access such services. They are similarly reluctant to use resettlement on medical grounds as a response to refugees in critical need of care unavailable within the camps.

In Bangkok, refugees have access to free basic medical services at the BRC clinic. This includes maternity care and psychiatric assistance. BRC also, when necessary, refers cases to government hospitals where medical services are provided to refugees at reasonable and affordable costs. Referrals also include dental care which is restricted to fillings and extractions. Refugees referred by BRC to a government facility are fully reimbursed for medical expenses, and shielded from arrest for their illegal status.

Other medical services in Bangkok include medical out-reach activity to refugees in detention centres, health counselling, special activities for those with psycho-social problems, HIV/AIDS testing, counselling and follow-up visits to refugees living with HIV/AIDS and survivors of SGBV. Refugee children also receive free immunisation from local health providers in Bangkok. Thai health and social centres have been identified to support special cases such as HIV/AIDS and psychiatric patients.

5.7 Primary and secondary education

Primary and secondary education for refugees in the camps is provided at schools run by refugees. The Ministry of Education (MoE) supervises education and skills training within the camps.

In line with the general evolution of the RTG approach, the MoE has recently shown an interest in the teaching of Thai language to refugee students, and in making refugee school curricula compatible with that of the Thai system.

NGOs provide a wide range of support including the provision of basic school supplies; language instruction (English, Karne, Burmese and Thai); and teacher training. The education sub-committee of the Coordinating Committee for Services to Displaced Persons in Thailand (CCSDPT) coordinates NGO activities in order to avoid duplication of services.

There are no precise figures currently available on the number of camp refugee children enrolled in primary and secondary education. ZOA, a Dutch NGO who for many years has been supporting education services in the camps, estimates, however, that 95% of children are enrolled in primary school (KG-Grade 4) and only 60% in secondary school (Grade 5-10). It estimates further that 93% of enrolled students complete the school year. Despite this positive figure, and the fact that girls and boys enrolment is on par, relative few of the total students enrolled in school pass the final exams at the end of primary school and mid-way through secondary school.

In 2005, ZOA conducted a comprehensive survey on education in the camps which is expected to reveal the present gaps needing to be addressed. One such gap is the absence of special services to meet the specific needs of disabled children and child soldiers. Another concern that the report will no doubt capture is that many children drop out of school due to feeling compelled to leave the camps to seek work. Not only do they forgo their education, but as discussed earlier, when they leave the camps for work they are exposed to serious risks of arrest and/or exploitation.

There is a need for further teacher training, as many trained teachers are accepted for resettlement. Moreover, there are disincentives to non-refugees teaching in the camps because they are not permitted to stay overnight and must therefore travel long distances to and from the schools. In addition, the absence of a uniform curriculum across the camps has been identified as an important education gap. Moreover, refugee adolescents themselves have pointed to the need for more diversity in schooling, with a preference for computer training, and language training in English and Thai. The Ministry of Education has expressed an interest in using the expertise developed in the Non-formal Education Department to expand Thai language training in the camps.

School facilities are frequently in a state of disrepair and the authorities have been requested to permit the use of semi-permanent building materials as one means to address the problem.

The education NGOs provide some children who drop out of school with vocational training, and the Jesuit Refugee Service, which supports wide ranging education services in cooperation with the Karenni Education Department in the two Karenni camps, has

started a home school liaison programme for such children. However, as yet there are there are no comprehensive programs to address the school drop out problem.

Another problem relating to education is the absence of sufficient opportunities for further training or employment post Grade 10, as in only a few camps are additional educational or vocational training provided. Although refugees are not permitted to leave their camp for education or training opportunities in other camps, some adolescents do. Those that remain have little to do and are vulnerable to recruitment and other threats, or are themselves prone to carrying out violence or other anti-social activities.

Refugees are similarly not allowed to attend out-of-camp colleges, universities, vocational training or language Centres. Although there are several NGOs involved in occupational training, a large part of the camp population has no meaningful occupation or skill.

The majority of children in urban populations are enrolled at the kindergarten, primary and secondary levels in either public or private schools. Tuition and other related expenses are covered by UNHCR. Refugees accepted to institutions of higher learning can apply to UNHCR for a DAFI scholarship (provided by the Albert Einstein German Academic Refugee Initiative Fund), but this project has been phased down in Thailand.

As refugee children who do not speak Thai or English face difficulties in gaining admission to public or private schools, BRC provides non-formal education, including primary level English and Thai language courses, to newly-recognized refugee children who are awaiting enrolment in local schools. As of August 2006, 138 refugee children were attending the school at the BRC site, which in fact only has capacity for 60 students. At present there are over 150 children on the waiting list for the BRC school; of this group, 80 children currently have no access to any school. To meet demand, BRC is considering setting up an extension of the school at Lotburi, north-east of Bangkok, to cater for both refugee and asylum seeker children

An August 2006 evaluation of the education program at BRC highlighted the lack of qualified teachers, and limited funds with which to hire any. The need for teacher training, and more organised curriculum planning, was also emphasised. The evaluation report recommended that UNHCR create at least two internship positions for refugee education in Bangkok, to involve aspects of program assessment, teacher training, and curriculum development. Other recommendations included improving the quality of internet access at the BRC, for both teachers and students, and the development of a library/language lab/learning centre at the BRC. It was suggested that the latter could also help address the difficulty of tailoring a curriculum to meet the needs of such a diverse student population

The BRC also provides vocational courses on computers, electronics, secretarial skills, hairdressing and dressmaking. Students wishing to take higher-level language courses are encouraged to do so outside the Centre nearer their homes in order to reduce travel time and minimize the possibility of arrest.

6. Documents Confirming Protected and Civil Status

6.1 Identity documents for asylum-seekers

Because the government has no legal or administrative mechanism for recognizing refugees, it does not issue documents to asylum seekers. UNHCR, however, does. Upon registration refugees and asylum seekers receive a document that includes security features such as a printed colour photo, an embossing stamp, distinctive paper and a UNHCR watermark. Every individual in a family receives his or her own document. However, these are not individual identity cards, but only household- and family-based documents.

In practice, identity documents provided by UNHCR to (non-Myanmar) refugees and asylum seekers outside the camps offer limited protection against arrest and refoulement. However the documents have no actual legal validity in Thailand; they rarely prevent arrest, and non-deportation depends largely on the goodwill of the Thai official(s) involved. In some cases, these documents have facilitated UNHCR's attempts to have arrested individuals released. In many other cases, however, persons have been arrested and deported irrespective of possessing these documents.

6.2 Identity documents for refugees (and persons granted complementary and temporary protection)

As noted above (see 2.3), with the new registration exercise, household registration documents have been issued to camp-based refugees. However these are available in English only, and do not provide effective protection against arrest and/or refoulement.

All registered urban refugees are issued documents by UNHCR, in both Thai and English, confirming their status as a person of concern to UNHCR and stipulating their right to non-refoulement. UNHCR also issues letters to those it considers in need of temporary protection (i.e. Iraqis) and those who are under consideration (i.e. North Koreans), and certificates to stateless persons. The RTG is not involved in this process

As noted identity documents provided to refugees (either camp-based or urban) by UNHCR currently have no legal validity, and provide only limited protection against arrest and/or refoulement.

Acknowledging the need for every refugee to have individual evidence of who he or she is, the RTG has recently agreed to issue individual identity cards to all camp-based Myanmar refugees above 15 years of age. The ID card will be in both English and Thai. This initiative is being funded by UNHCR and will result in ID cards being issued to approximately 80,000 refugees. Only refugees of Myanmar origin will benefit from this initiative.

6.3 Travel documents

Article 28 of the 1951 Convention provides for travel documents to be provided to refugees for the purposes of travel outside the territory of their country of asylum. However Convention Travel Documents (CTDs) are not issued to refugees in Thailand, which is not a party to the 1951 Convention.

Official travel documents are issued to refugees for purposes of resettlement from Thailand (with the assistance of Embassies and, where necessary, the International Committee of the Red Cross), but not for refugees who wish to leave Thailand for other purposes.

6.4 Documents confirming civil status

The absence of official birth registration and supporting documentation for refugee and asylum seeking children and the attendant protection problems is a pressing protection gap noted earlier.

Marriage and death certificates are not officially provided to refugees by the RTG.

However for refugees with documentary evidence of a recent marriage, BRC can issue with a document which recognises the marriage, on behalf of UNHCR.

7. Equal Benefit and Protection of the Law

7.1 Access to effective remedies in law

Refugees in the camps do not have access to effective remedies in the law principally due to the influence of camp justice mechanisms which are resorted to more frequently than Thai ones.

The problems with camp justice mechanisms, discussed more below, have led to the development by UNHCR of an Administration of Justice Programme, agreed to by the RTG. The programme has established a basic legal framework to ensure that all serious crimes are referred to Thai justice, leaving less serious crimes to be dealt with by in camp refugee justice systems. Under this programme, refugees are receiving basic legal training and are made aware of their rights and obligations under Thai and international law. UNHCR-funded legal counsel is available for all victims of crime, and for accused perpetrators.

The next phase of the programme will see the establishment of seven Legal Aid Centres, administered by the International Rescue Committee (IRC) in three camps. They will help address the problem of the lack of UNHCR presence in the camps, by being available for the referral of serious crimes to the Thai justice system and building the capacity of traditional justice mechanisms to handle cases in a manner consistent with basic human rights principles.

This marks a significant development as it is rare for legal aid centres to be established in closed camp environments. There are a number of challenges yet to be overcome. These include the need to ensure full cooperation from Thai authorities in investigating and prosecuting cases where witnesses may be reluctant to testify and/or which have previously been considered best dealt with under traditional justice mechanisms (e.g. domestic violence). There is also a concern that the legal centres will not have sufficient personnel to handle the volume of cases that are likely to be referred to them. There is as well a fear that staff at the Centres may face threats to their security by an accused or his friends/family for referring the case to the Thai authorities as has been experienced previously by community services staff who referred SGBV cases to UNHCR.

Currently legal aid centres are only planned for the three camps in which IRC has a presence. There is a pressing need to establish similar centres in the other six camps.

UNHCR and IRC have planned for the latter part of 2006 to launch a training programme focusing principally on juvenile justice. The latter focus is driven by the fact that refugee communities themselves have identified this an important issue, especially given that a significant proportion of the crimes committed in the camps, including SGBV are inflicted upon and perpetrated by children under 18 years of age. The aim is to see how the best practices of the Thai juvenile justice system, which is a model in the region, might be applied in the camps.

7.2 Other dispute resolution mechanisms respect international legal principles

As noted above, most disputes, criminal and otherwise, are dealt with by refugee led alternative resolution mechanisms. The procedures, penalties and remedies that are applied by these systems are often not in accordance with either Thai law or international human rights standards. They also tend to be highly politicized, since they are administered by camp committees and linked directly with the ethnic military and political groups that exercise social and political control over the camps. Crimes against less powerful groups often go unaddressed, victims of crimes often do not report them for fear of threats to their security if they do and perpetrators belonging to the group administering the camps frequently go unpunished.

The systems are also male dominated and tend not to view SGBV, including domestic violence, as crimes. A related problem is the absence of a means for women to seek separation and divorce as these are not dealt with under current systems. There is a recognized need to find means to ensure more women's participation in camp leadership and as judges, and to provide more training on the criminal nature of SGBV and the importance of separation and divorce in ensuring women are able to separate from abusive spouses.

8. Ability to Achieve Self-reliance

8.1 Wage-earning employment

Refugees and asylum seekers are not legally entitled to work in Thailand, either within or outside the camps. This leaves them entirely dependent on outside assistance, which not only is exceedingly psychologically debilitating but is not enough to meet their food and non food needs. As a result many seek work informally which leaves them open to the very real risk of arrest and deportation.

Their lack of skills limits them to simple manual labour, and they remain ill-equipped for integration, resettlement or repatriation.

8.2 Social security and just and favourable conditions of work

Employment is generally intermittent, remuneration is low and, as noted earlier, refugees are known to work in exploitative working conditions, made possible by the illegality of their situation.

8.3 Trade and self-employment

The prohibition on wage earning employment also extends to self-employment.

8.4 Right to own property

Refugees do not have the right to own property

8.5 Educational and vocational programmes

Although the RTG generally prohibits income-generating activities for refugees, the Ministry of Interior has recently revised its policy and allowed the implementation of vocational training in some of the camps, and in urban areas, to keep refugees occupied and to prepare them for repatriation and/or resettlement.

Also, the Ministry of Education has recently established informal learning centres in the camps which teach Thai language.

While the types of vocational training allowed are relatively broad, there are restrictions such that some potentially useful skills training in construction and electricity, for

example, remain prohibited. Several NGOs are involved in skills training but much of the camp population has, at present, no meaningful occupation or vocational skills. During 2005, reviews were carried out to identify the need and potential for additional training and some projects were proposed and approved by MOI.

Vocational training is an important vehicle to keep refugees engaged and help prepare them for eventual repatriation and/or resettlement. There are, however, some key obstacles to realizing its full potential. Most significantly is the inability of refugees to immediately use the skills acquired given the restrictions on movement and employment. There are also vocational training opportunities for refugees in Bangkok, and BRC covers registration costs for some courses. However refugees remain reluctant to enrol, partly due to fear of arrest, and partly due to the lack of opportunity to subsequently use the skills they acquire through legal employment. BRC is in the process of developing a curriculum for an adult learning centre to be established within the BRC.

There are positive signs that restrictions on self-reliance opportunities will be eased. The Ministry of the Interior has acknowledged a need to open up occupational training, educational opportunities, as well as income generation or work opportunities for refugees. NGOs, UNHCR and the Ministry are in consultations on how to move ahead on this.

There is a recognised need for a comprehensive self-reliance strategy which considers: the skills of refugees; their economic coping strategies; the skills that should be developed to enhance self-reliance; the possible relationship and impact (both positive and negative) on local communities of increased employment opportunities; and, areas of potential cooperation between them.

9. Opportunities for Durable Solutions

9.1 There is a comprehensive and coherent strategy for finding durable solutions

The development of a comprehensive durable solutions strategy is constrained by the present limited prospects for voluntary return, resettlement and local integration for the vast majority of refugees and asylum seekers. Nevertheless, upon registration refugees and asylum seekers are asked a series of questions pertaining to their personal profile to help ascertain the most appropriate durable solution in their particular case.

9.2 Voluntary repatriation in safety and dignity

Given that the situation in Myanmar continues to be marked by insecurity and violence, repatriation there is not presently being encouraged.

The National Security Council (NSC), however, has overseen organized returns on a small scale basis for several years. In Tak province this has focused primarily on unregistered camp residents and those residing outside camps.

Fluctuations in camp registration figures suggest a decrease of 15,000 persons since 1999 but the reasons for this can not be verified as most refugees do not notify NGOs or UNHCR of the reasons for their departure. It is not known, therefore, what percentage of this drop consists of those who returned to Myanmar (either voluntarily or otherwise), or who moved elsewhere in Thailand, or those who left only temporarily and did not re-register upon their return.

9.3 Local Integration

The RTG instituted a system for regularizing the status of foreigners who had been living in Thailand for many years. There are different classifications, with different entitlement pertaining to each. At a minimum, those regularized have the right to work in labour-related employment and children born to them obtain Thai citizenship at birth. They must renew their status at periodic intervals.

While thousands of refugees have benefited from this regularization policy, the camp based Myanmar refugees, and the refugees in urban areas described in this report, do not. Moreover, although a considerable number of refugees have married Thai citizens, they are often unable to register their marriages and become naturalized because they lack the valid passports and valid Thai entry visas which are necessary to do so. In addition, while refugees holding RTG-issued hill tribe identification cards are potentially eligible for permanent residence in Thailand, and those without may be eligible based on their length of stay in Thailand, they are unable to meet other administrative requirements thereby making local integration often impossible.

9.4 Resettlement

Previously the RTG prohibited resettlement of Myanmar refugees, with the exception of a relatively few for reasons of medical need and/or family reunification. This policy was relaxed in 2005, and UNHCR and the RTG have undertaken a multi-year, multilateral initiative with some ten resettlement countries to facilitate the resettlement of Myanmar refugees.

This is a positive development which has seen an increase in individual case resettlement departures from 743 persons in 2004 to 2,519 in 2005. The numbers are expected to increase in the following years.

As regards group resettlement, from late 2003 UNHCR was involved in facilitating the resettlement of Lao Hmong who were residing in the Tham Krabok Monastery in Saraburi Province. The operation began in February 2004 and was undertaken on a 'good offices' basis together with the RTG, IOM and the US Embassy. The US government had agreed to consider these persons for resettlement in the US in light of the large number of Hmong already resettled there. The Australian government also became involved by considering individuals with family links in Australia. By the end of 2004 a total of 9,066 had departed for resettlement in the US, while 43 persons were resettled to Australia.

In 2005 a total of 13,400 refugees were submitted for resettlement consideration (including more than 10,000 refugees submitted through the group methodology to the US and Canada). Developments in 2006 and projections for 2007 indicate that this trend will continue, with upwards of 10,000 Myanmar refugees expected to be submitted in 2007, through both individual and group referrals.

Resettlement remains however, a very time and resource intensive process and there are several constraints in the full realisation of its potential. These include difficulties in securing departure clearances from the RTG and very selective policies adopted by many resettlement countries necessitating extensive screening mechanisms and the effective exclusion of certain groups of refugees in need of resettlement including those from the Middle East, Iraq, Afghanistan and Africa.