



UNHCR

United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiés

**LEGAL AND PROTECTION POLICY
RESEARCH SERIES**

**The Administration of Justice in Refugee Camps:
A Study of Practice**

Rosa da Costa

External Consultant

DEPARTMENT OF INTERNATIONAL PROTECTION

**PPLA/2006/01
March 2006**

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Abbreviations

BLC	Burma Lawyers Council
BO	Branch Office (UNHCR)
CBO	Community Based Organizations
CMC	Camp Management Committee
CRC	Convention on the Rights of the Child
DRS	Dispute Resolution System(s)
FGM	Female genital mutilation
FO	Field Office (UNHCR)
IP	Implementing Partner
KNU	Karen National Union
KNPP	Karenni National Progressive Party
KnRC	Karenni Refugee Committee
LSOEC	Law and Social Order Enforcement Committee
NGO	Non-governmental organisation
RCMS	Refugee Camp Management System
SGBV	Sexual and gender-based violence
SLS	State legal system
UNHCR	United Nations High Commissioner for Refugees

Preface

While there is no question as to the host state's sovereign jurisdiction over its territory, when it comes to assuming authority over refugee camps, national governments frequently abscond from their responsibilities. UNHCR's preoccupation with the question of administration of justice stems from the fact that some national governments are not interested in prosecuting offences that occur in refugee camps. Meanwhile UNHCR and its implementing partners, who are involved in the daily management of refugee camps, clearly do not have the legal authority to deal with such complex issues.

If a host State is lacking in its legal obligations to render justice to persons under its protection, UNHCR cannot fill such a gap itself, but does have the responsibility to ensure that refugee camps are administered by justice mechanisms that meet basic international standards. A need for guidance has been identified by those working in refugee camps on how to handle situations where either national justice does not meet international standards, or where the lack of national justice mechanisms has spurred traditional justice systems to be established, with their own limitations.

To obtain better understanding of these problems and to launch a process of formulating some guidance for field staff, a study on the administration of justice in refugee camps was commissioned. Thus far relatively few studies had been devoted to this and no guidance was available. The Protection Policy and Legal Advice Section of the Department of International Protection is therefore grateful to colleagues in the field who took the time to complete the questionnaire developed for the purpose of exploring certain aspects of this subject.

The questionnaire used for the survey covered a wide range of topics, including: traditional refugee dispute resolution structures (DRS); national legal systems; the types of issues that are most commonly the subject of litigation; and related topics, such as, policing, the protection of minors, governance structures in camps, and many others.

The analysis provided by the author of this paper is based on the responses to the questionnaire, supplemented in some cases by elements provided from other, related sources. UNHCR hopes that the wealth of information that has been gathered here will provide field offices with a better understanding of the most relevant aspects of the administration of justice in refugee camps. The study is also meant to be a first step towards providing more guidance to field operations. UNHCR therefore warmly welcomes any comments and feedback you may have.

Introduction

1. Context and purpose of the study

This study addresses the issue of how disputes and justice matters are resolved in the context of refugee camps, with the ultimate aim of contributing towards a better understanding of this topic and better strategies for a more equitable administration of justice, particularly in light of ongoing problems of sexual and gender-based violence.

This project is perhaps the first comprehensive attempt at compiling information on the situation of administration of justice in refugee camps. It emerged from the recognition that the administration of justice in the context of refugee camps raises some very fundamental questions and complex problems linked to protection, and impacts on the general security situation in camps. Most importantly however, this project stems from the concrete needs in the field – the needs of those working with refugees on a daily basis and are increasingly faced with difficult cases posing significant moral, legal, and organisational dilemmas. More knowledge and guidance on this issue is therefore urgently needed.

The study also complements the Agenda for Protection by, amongst other things, contributing towards the building of capacities to receive and protect refugees (Goal 3), addressing security-related concerns (Goal 4), and meeting the protection needs of women and children (Goals 6). Improving our response and capacity in the area of the administration of justice in refugee camps should be a key component of any protection strategy.

Amongst other things, the complex nature of the administration of justice in camp settings reveals the necessity of an integrated and inter-disciplinary approach to protection – an approach which links protection issues to programming, community development, assistance, and many other aspects of refugee work. For this very reason, the approach to the research for this project was broad in scope, touching on a myriad of factors impacting on justice and security issues, either directly or indirectly. The strategy was that casting a fairly wide net would allow us to see patterns and linkages which might otherwise go undetected, or who's impact on protection might continue to be underestimated. The project thus looks, for example, at how camp management, cultural identity, gender roles, restricted refugee rights, levels of humanitarian assistance (e.g. food) and policing practices, can impact on justice in the camp. Highlighting the interconnections between these will allow persons working in the field as well as policy makers to have a more accurate and holistic appreciation of protection and justice problems in camp situations, and to address them through integrated strategies instead of isolated projects.

This paper is structured into four main sections. The first maps out and provides an overview of the major types of legal issues, crimes and sources of conflict arising in camps, the actors involved, and the different laws, rules and mechanisms used for the resolution of justice matters. Section two focuses on the legal system of host states and looks, more specifically, into the various barriers to accessing this system, its perceived and actual shortcomings, and the patterns of use of state legal systems by refugee populations in camps. In Section three, the study provides an in depth analysis and description of the various types of refugee dispute resolution systems (DRS) functioning in different camps. This includes an analysis of, *inter alia*: the origin and main characteristics of these systems; their mandates (i.e., the types of cases they hear, and the rules and sanctions they apply);

the composition of their decision making bodies; and, as importantly, the merits and concerns in relation to these structures from the perspective of various actors, including refugees (i.e., the victim, accused and the wider refugee community), government and camp authorities, and international actors. The last section offers a summary of the key issues and findings emerging from the survey, identifies a number of areas in need of further development, and provides some preliminary recommendations on measures, tools or strategies that could enhance the administration of justice in camps.

As noted above, while UNHCR's experience is vast and varied in the field of camp management and staff is confronted daily with administration of justice issues, the topic has so far not been the subject of a systematic survey. The extensive survey carried out in a large number of countries for this project has provided invaluable feedback from the field. The intention of this paper, rather than to reproduce all the data that was collected during the survey or provide definitive answers, is in the first instance, to provide an *introduction* to this topic, in the form of a comprehensive overview of the most pressing issues and concerns raised by our offices.

It is hoped, however, that it will encourage more dialogue on refugee DRS (including with refugee communities), and engender more focused follow-up studies, such as on the treatment of SGBV crimes by host state legal systems and refugee DRS. Such follow-up studies would be useful to develop a more thorough understanding of some of the issues broached in this paper, and to generate discussion on the capacity and role of various actors (both refugees and outside actors) to address and improve the protection situation and the safeguarding of the individual and group rights at stake. Ultimately, it is hoped as well, that continued research on this subject will improve the identification of related protection problems, and result in the development of "guidance tools" or standards for dealing with individual cases, refugee communities, and other actors such as local communities, and camp authorities. Knowledge of administration of justice issues may also contribute to the implementation of better programmes in the areas of refugee security mechanisms, policing, prevention programmes, and 'governance' or leadership issues in camps. The questionnaire used to conduct this study, which is provided as Annex 1, maps out the various issues in this field, and can serve as a tool to implement a situation or needs analysis – and thus begin the work of addressing the situation of administration of justice in refugee camps.

2. Scope and methodology

This paper on the administration of justice in refugee camps is based in a large part on the findings of research carried out in over a dozen countries around the world. Originally, 21 countries were identified as potentially holding special interest in this area, and 18 of these countries then participated in the project. Finally, 13 countries in total were selected as the samples for this paper, based amongst other things on the potential relevance of their experience for other operations, the high quality of the responses, and the existence of practices or issues which deserved to be highlighted.

In addition to the information collected by means of the aforementioned questionnaire, this study has benefited from the participation of persons from different sectors including, *inter alia*, field and protection officers, SGBV focal points, community services officers and social counsellors. It should be noted that the questionnaire was primarily answered by UNHCR Regional, Branch and Field Offices, and was not distributed directly to other actors, such as, refugees themselves, camp and host government authorities, and NGOs. However, care was taken to ensure that UNHCR field staff from a variety of professional backgrounds and with direct and regular contact with the camp

population responded to the questionnaire. Moreover, the very detailed, self-critical, and comprehensive nature of the survey required many offices to do considerable research and investigations in the field, including amongst refugee populations and NGOs working in camps.

In addition to the responses to the questionnaire, regular UNHCR reporting tools (e.g. country operations plans, and protection and situation reports), supporting documentation on country practices (such as, relevant camp by-laws, project reports, monitoring tools, and national legislation), and interviews with staff who have worked in relevant camps were also used. As well, the research went beyond UNHCR sources, and was informed by the research and work done by others, including human rights and refugee-specific NGOs (both domestic and international), and experts in the fields of access to justice, non-state or traditional justice systems, juvenile justice, gender, human rights reporting, and monitoring mechanisms.

3. Geographic scope

The 13 countries selected for the purposes of this paper include: Bangladesh, Cote d'Ivoire, Ethiopia, Guinea, Kenya, Mexico, Nepal, Pakistan, Sierra Leone, Tanzania, Thailand, Yemen and Zambia. In total these 13 countries represent 52 camps and a total population of nearly a million refugees.¹

Country	Number of refugee camps	Number of refugees
Bangladesh	2	19,665
Cote d'Ivoire*	1	3,438
Ethiopia	2	49,457
Guinea**	5	107,814
Kenya	2	223,000
Mexico	7	8,281
Nepal	7	103,650
Pakistan	6	121,762
Sierra Leone	8	54,490
Tanzania	1	90,533
Thailand	9	116,560
Yemen	1	10,466
Zambia	1	34,871
Total	52	943,987

* Note: In the case of Cote d'Ivoire, the refugee population lived in a transit centre rather than a classic refugee camp. However, the answers and context of this living arrangement were deemed sufficiently relevant and analogous to a refugee camp, and were retained for this reason for the purposes of this study.

** Note: In the case of Guinea, the 5 camps mentioned above include two refugee groups living in an urban setting (namely in Conakry and Kissidougou), which were included in an integral fashion in the UNHCR office's overall response to the questionnaire. However, this was not judged to affect the overall accuracy of the findings and answers to the questionnaire by the office in relation to the situation in refugee camps, and the references to the specific situation and problems noted in relation to urban refugees were generally omitted in this paper.

¹ This figure represents the total number of refugees reported by UNHCR as residing in the respective refugee camps (i.e., those specifically included in the survey), based on statistics available from the end of 2003 to approximately June 2004.

Section 1: Justice in Refugee Camps

1. What causes lawlessness and litigation?

Refugee camps and settlements are meant to provide their residents with a safe and secure environment. They are a refuge from war, civil strife, personal attacks and other human rights violations and abuse, as well as from a climate of fear and persecution. At a minimum, these places of refuge are expected to provide personal physical security, respect for fundamental human rights, and access to the basics of life such as food, water, shelter and other essential needs.

In the immediate aftermath of flight, refugee camps and settlements do generally provide relief from imminent attacks and persecution. As the camp is established, however, security concerns must quickly shift from simply providing protection to refugees in the form of asylum, to putting in place mechanisms for the maintenance of internal law and order in the camps, as well as governance and management structures which can promote the welfare of the individuals and communities represented there. The establishment and maintenance of these structures continues to pose complex challenges, as refugees, host governments and the international community seek to increase the effectiveness and representativeness of these structures in the face of the myriad threats to the security and welfare of camp residents.

The challenges involved in maintaining law and order and the good governance of camps are in part, due to the fact that refugee camps are very particular settings and are often characterised by conditions and an environment which renders their populations, and particularly women and girls, especially vulnerable to crime, human rights violations, and abuse and exploitation. Some of the aspects and conditions of camp life which create these environments include:²

- **Poverty**, which places women and girls in an especially vulnerable situation, where they are sometimes compelled in various ways to exchanging sex for food or non-food items³, to being married off earlier than usual, or to marrying or taking partners they would not normally have considered, such as elderly men, since neither they nor their families have the same 'bargaining' power in this new situation. Exploitation, abuse, and various forms of sexual and gender based violence thus result (or are increased) directly as a consequence of this situation of displacement and extreme poverty. Men and boys are also more vulnerable to engaging in alternative means of securing a livelihood which may not be suitable or legal, or engaging in anti-social, delinquent or criminal behaviour, particularly since educational or work opportunities are either very few or non-existent. Refugee populations are therefore often in dire and urgent need of basic necessities such as food, shelter, and non-food items

² This is by no means an exhaustive list and a more detailed explanation of other relevant characteristics of certain refugee camps will be elaborated in more detail throughout this paper.

³ This can take the form of: adolescent girls engaging in (sexual) relationships in return for material gifts; single mothers resorting to prostitution to feed themselves and their children; young girls being married off by their families (who are too poor to continue feeding them) to men who would otherwise not have been considered prospective husbands, such as poor elderly men, who then use the girl for free labour and sexual purposes, leaving them to take care of dependants when they have abandoned them or have died.

with no obvious means to obtain them given restrictive regulations or lack of employment opportunities.

- Often, refugees also suffer from an **uncertain legal status** in the host country, as well as from restrictions on basic rights such as freedom of movement, and the right to work or earn a livelihood. In addition to being trapped in a situation of dependence and poverty, their restricted rights and uncertain or ‘inferior’ legal status in the country of asylum means that they are often perceived as having no rights at all, and are provided little if any *legal* protection as such.
- **There is a general lack of capacity (resources) or willingness of host governments** to take an active role in law and order issues arising between refugees in the camp, preferring to allow refugees to take care of their own affairs quietly. While some policing systems⁴ may exist in camps, there is a marked lack of capacity and/or willingness on the part of many host governments to engage directly in conflict resolution and ensure legal protection and remedies when disputes and rights violations affect or occur only between refugees (i.e. when nationals or locals are not involved). This situation is aggravated when refugee camps and settlements are situated in remote areas, where locals as well have little or no access to formal legal mechanisms. Refugees are thus often tacitly permitted to put in place their own justice and dispute resolution mechanisms, which are generally subject to little or no monitoring. As noted further in this paper, the lack of willingness or capacity to enforce the law and protect the rights of refugees in camps can lead to many abuses and a sense of impunity, and while alternative DRS established by refugees are useful, and perhaps even essential in this context, they are generally either deficient by international human rights standards or lack sufficient enforcement capacity. In addition, while some policing mechanisms exist in many camps, these are generally inadequate both in terms of quality and quantity (e.g. lack of any or sufficient female policing personnel, absence of night patrols, and lack of sufficient training), and perpetrators of certain crimes and exploitative practices can often be precisely those who’s job it is to provide physical protection.

Administration of justice may also be affected by the general attitude of the host State towards the refugees, influenced by geo-political or national security concerns. Factors such as the large size of the influx, their protracted stay, or the fact that the conflict they seek refuge from has wider regional or domestic implications affecting the host country, will result in an ambivalent welcome to the refugees.

- The **remoteness of many refugee camps** and the lack of resources and infrastructure in those areas, has the effect of isolating refugee populations and rendering them more dependant and/or vulnerable. The lack of easy access to services (including medical services), communications, markets, legal institutions, and their restricted mobility etc. means that they have fewer options available to them for the resolution of problems and in the day-to-day management of their lives. Importantly, their ability to receive and transmit information on their situation (to governments, NGOs or international organisations) is also more restricted, as are generally real (and safe) opportunities for complaints and grievances.
- **Limited monitoring of camps** due to too few UNHCR professional staff. Limited assistance budgets not generally based on actual needs on the ground but on availability of

⁴ The term ‘policing systems’ used in this paper should be understood in a wide sense as including a number of different types of arrangements, such as the use of military personnel, local or other police, security guards or other.

funds tend to result in an insufficient number of staff to provide adequate presence, protection, assistance and monitoring. This may mean that much of the day-to-day management in these camps is left to locally hired staff and refugees themselves. This limited capacity to monitor what are often remote camps, with large distances between them, has been widely recognised as a significant impediment to protection activities and to establishing a relationship of trust with refugee communities. This in turn risks becoming an obstacle to accurate information gathering and situation assessments, particularly with regard to crimes where victims fear reprisals or stigmatisation such as SGBV.

- **Security threats to refugee camps**, either by the presence of armed or military elements (in or near refugee camps), or their location in unstable regions of the host country riddled by poverty, civil strife, or general insecurity due to banditry for example. This exposes refugees to attack, places them in danger of forced military recruitment and participation in such activities, but also of being victimised by violent crime, including SGBV, abductions and trafficking in persons.
- **Cultural attitudes** of refugees and various actors working with refugees that accept exploitative (including sexually) arrangements and practices which violate basic human rights, particularly in relation to women and girls. While these cultural attitudes towards women and girls tend to be pervasive across all cultures to varying degrees, a ‘double standard’ also tends to manifest itself by local authorities in relation to refugees (as opposed to nationals), and characteristics such as level of literacy, the rural or urban background of the person, the region in which they reside⁵, and socio-economic background (i.e. their ethnic, clan, caste, religious or other social affiliation which has meant that they have been traditionally marginalised to the lower strata of their society) may also affect attitudes both by refugees and organisations working with them.
- The **breakdown of traditional community and family support structures** normally available to refugee populations. This may be due to the displacement process, the loss of family members, including male members who may traditionally have offered a certain sense of security against attacks by others, and to new or extreme forms of poverty which render traditional support mechanisms no longer tenable (e.g. the obligation of a late husband’s family to take care of his wife and children). The psychological stress related to the refugee experience and camp life may also make it difficult for individuals and communities to behave according to codes of conduct they normally would have observed. The changes generated by displacement impact on traditional roles and functions of individuals as well as cultural traditions. The community and social ‘protection’ mechanisms for dependants, often considered to include women and children, are no longer capable of functioning properly to provide the minimum safeguards they may have been historically set up to ensure. The profound ‘male’ dependency that has been created for women and children by some of these patriarchal practices and traditions, thus often results, in situations of crisis and insecurity, in their diminished chances of survival. Men may have been separated from their families, or are otherwise incapable of fulfilling their traditional duties in these new circumstances, while the community, which by tradition would ensure protection through the extended family and other social structures, may no longer be capable of providing this support.

⁵ The remoteness of a region, or the historical and political significance of a region in which a refugee camp is located could also have implications for the attitudes and level of intervention by government authorities as well as other actors.

At the same time, in times of crisis, adherence to traditional ways and solidarity to clan or tribe-based affiliations are often more necessary than ever to ensure one's survival, and to provide a psychological compass and sense of continuation. For these reasons, as well as others detailed throughout this paper, refugees generally turn to traditional and familiar systems of protection and conflict resolution during displacement and during their residence in camps. Problematic aspects of refugee DRS, many of which are discussed in this paper, thus have to be weighed against their benefits, and indeed even necessity at times, as well as the problems associated with alternative solutions.

- **Weight of refugee camp leadership** which exercises a high degree of control over the camp population. It may happen that the refugee leadership, individual refugee leaders, political or ethnic factions, or even irregular gangs, exercise this control without representing the diversity or real interests of the different refugee groups in the camp. When such refugee leadership structures are not representative and checks and balances or monitoring mechanisms are not in place, sections of the refugee population could be living in a climate of intimidation and fear, leading to under-reporting of crimes and human rights violations.

Frequently, many of these realities of displacement and camp life converge to create conditions of insecurity, as well as obstacles to accessing justice –resulting in a general climate of fear and impunity in some camps.

The complexity of the issues and the dilemmas raised in relation to the administration of justice in refugee camps is highlighted by the fact that some of the methods for resolving conflict and related traditional practices may themselves constitute serious violations of individual human rights and raise grave protection concerns. The refugee community as a whole, however, may not perceive certain issues as crimes or violations at all, or may have collective interests which it wishes to protect over and above individual rights, including to maintain control over its own political and justice issues in the camp, and to accept certain compromises (forgoing certain rights) in return for preserving 'privileges' or a beneficial 'entente' with the local population. Many, if not most, of these violations involve victims with little or no power, influence and resources within the traditional and political structures of their society. This is accentuated in the refugee camp, where they are now more disempowered than ever, have fewer options, and are at greater risk of various threats against their physical safety, general well-being, and even survival.

Refugee camps, whether managed by the host country government, UNHCR or NGOs or a combination of these actors, are generally subject to a myriad of value systems, laws and regulations, which impact on the administration of justice. These systems may take the form of:

- cultural traditions, codes of conduct and methods of conflict resolution brought by the refugee population;⁶

⁶ These values, customs and traditions have important psychological significance, including as a way of preserving a sense of normalcy in the life of refugees, and a sense of identity and continuation. They may also be key to one's survival since being accepted in one's community becomes more important than ever to obtaining a measure of help and protection. They are also simply part of the fabric of the individual and the community and cannot be unravelled without consequences. Yet these traditions and values, which generally include their own 'checks and balances', negotiation strategies and support structures, even for women and girls in some measure, often no longer function properly or at all in many camp and displacement situations. Moreover, practices such as arranged, early and various forms of forced marriage, and traditional protection and care structures for women, girls (and sometimes boys) may no longer function at all or sufficiently well when there is no/or no longer a male head of the family to take them on.

- the culture, norms, attitudes and laws of the host country, including those of the local population residing near the refugee camps, national staff and NGOs working with refugees, as well as regulations specific to refugees or refugee camps;
- the values, as well as legal and operational frameworks (i.e. organisational mandates, policies etc.) brought by international actors and agencies, such as UNHCR, international NGOs and international staff members.

These systems will be elaborated on and analysed in more detail further in this paper, but certainly the complex interface of local, national, international, and refugee-specific values and justice (i.e. DRS) mechanisms, poses important challenges to addressing the administration of justice in camps. These include the challenge of determining appropriate and sensible legal assistance and related protection programmes, potential forms of intervention in the face of problematic DRS or refugee customs, and the responsibility of international organisations such as UNHCR when the host government is unable or unwilling to address concerns related to the administration of justice in camps.

2. Who are the parties involved?

The types of crimes, disputes, and other justice issues arising in refugee camps are varied, and may arise between a number of different actors, including between:

- individual **refugees**; different segments of the refugee population; or individual refugees on the hand and the refugee leadership structures and committees on the other (such as refugee conflict resolution structures, refugee representative bodies, and refugee participatory bodies engaged in camp management or security);⁷
- refugees and other **foreigners** who are not refugees, such as criminals or armed elements;
- refugees and the **indigenous population**;
- refugees and **other actors and authorities in the camp**, such as camp management officials, government bodies, police, military or other security personnel responsible for law and order in the camps, international organisations such as UNHCR, NGOs, and all other persons or organisations working with or having responsibility for refugees in some fashion.

An important array of other justice or legal issues can also arise in camps which do not necessarily relate to disputes between individuals, but have to do, for example, with a variety of civil and legal status issues such as marriage and birth certificates.

Legal and justice issues that arise in the context of refugee camps can be broadly of a civil, criminal and administrative nature. No attempt will be made to categorize them in this paper however, as they are often categorized differently under different systems of law.

⁷ Some of these refugee structures can take decisions violating human rights standards and rights, grave enough to constitute crimes in themselves. Moreover, even when human rights violations are not an issue, there may be a lack of procedural safeguards, such as appeals or review of decisions by these refugee bodies.

3. What kinds of offences are committed?

It is noteworthy that amongst the 13 countries surveyed for this study, no significant regional differences were found with regard to the types of crimes reported in refugee camps (although a few violations were specific to particular contexts, such as, cattle rustling).

- ***Pattern of theft and sexual and gender-based violence (SGBV) as the most prevalent justice issues in all countries***

Indeed, one of the most important findings is the fact that theft and SGBV, as a consistent pattern across all regions and countries, are the pervasive justice issues. All countries surveyed mentioned the existence of these two types of crimes in the camps, many noting explicitly that they were by far the most prevalent legal and justice issues to arise.

Theft

Theft⁸ took different forms, including burglary, and was characterised by different degrees of severity, from petty theft to robbery with violence. Petty theft for example, included theft of money, ration cards, non-food items (e.g. clothing, bicycles, domestic goods, community property such as crops or property of organisations such as construction materials). Theft appeared to occur most commonly between refugees, although property of agencies and organisations such as UNHCR and WFP were also reported. The collection of firewood and fruit outside the parameters of the camp may in some instances also be labelled as petty theft, as it may be prohibited by the local authorities or be conducted on the private property of locals. On the other hand, in some countries locals were also mentioned to be posing as refugees in order to enter camps during food distributions. When thefts or burglaries occur in neighbouring villages or towns, it was further noted that refugees were often falsely accused.

Moreover, in some countries such as in *Sierra Leone*, disputes resulting from petty theft tend to reflect seasonal variations. For example, during the rainy season theft of plastic sheeting from latrines, community structures and individual dwellings increased sharply, while the dry season saw an increase in destruction of community forests and theft of crops.

Sexual and Gender-Based Violence (SGBV)

While the questionnaire for this study did not specifically quantify SGBV and its aim was not to obtain the exact data on the number of SGBV crimes or disputes in the camps surveyed, it would appear nonetheless that the greatest percentage of crimes and disputes in all the refugee camps surveyed would fall under the broad category of SGBV crimes. In *Sierra Leone* for example, domestic violence alone (as only one type of SGBV crime) is cited as one of the most pervasive justice issues arising in the camps, following closely behind thefts. Indeed, domestic violence, as a specific type of SGBV, is specifically reported as a widespread problem in all the countries surveyed and as the most common form of SGBV reported. Domestic violence is often used as a general term to include all types of violence and abuse within a household or family, including violence against spouses, children, and other members of the family (e.g. daughter-in-law), as well as harmful traditional practices such female genital mutilation (FGM).⁹ At other times, however, the expression ‘domestic violence’ is used in a more narrow fashion to refer more specifically to

⁸ The term ‘theft’ is used in this paper as a generic word which includes also for example, burglary, break-ins, robbery etc.

⁹ WHO states that Female Genital Mutilation (FGM), often referred to as female circumcision, comprises all procedures involving partial or total removal of the external female genitalia or other injury to the female genital organs whether for cultural, religious or other non-therapeutic reasons.

violent disputes between spouses.¹⁰ In this particular study, respondents to the questionnaire used the term in both ways without particular distinction. However, many forms of SGBV, including intra-family violence and abuse, were specifically mentioned.

Rape was reported as a problem by all the countries surveyed, and within this category, attempted rape, gang rape, and statutory rapes were mentioned specifically. Other forms of SGBV included *inter alia*: forced and/or early (child) marriage; abuse by authorities, including physical abuse; sexual exploitation; sexual assault; other inappropriate sexual behaviour, indecent acts and sexual harassment; incest; abductions or kidnapping (especially of girls and women); trafficking of women and girls; forced prostitution; and disappearances of women and girls. Amongst the most frequently mentioned crimes in refugee camps, and the most prevalent forms of SGBV, were the various forms of domestic violence, rape and forced or early marriage.

Many of these acts can also be categorised as harmful traditional (or common) practices, such as for example, abductions for the purpose of forcing a girl into marriage, other types of forced or early child marriages specifically for the purpose of paying debts, and FGM which is a traditional practice that falls within the ambit of domestic or family violence. For example in refugee camps in *Pakistan*, girls from the Afghan refugee community were reported getting married as early as 12 years of age. This includes Valwer marriages, a type of forced marriage where a young girl is given in marriage as a pay back system, either for a debt or other commitment.¹¹

Also of particular interest are so called ‘adultery’ cases. In *Thailand* for example, such cases are considered a major source of many of the disputes in the camps, and are generally dealt with under traditional justice systems. Moreover, ‘adultery’ is not defined simply as an extra-marital relationship by spouses in a marriage, but encompasses many other situations in which an unmarried woman and man or girl and boy have some type of prohibited contact (often, but not always, of a sexual nature), regardless if it is consensual. As such, rape is often defined as ‘adultery’ under these traditional systems of justice and the survivor is forced to marry the perpetrator who could be another refugee, a member of the Thai military or a security volunteer, or a Thai villager. Alternatively, if a marriage does not take place, the survivor may be found guilty of ‘adultery’ and sanctioned accordingly. The rapist is absolved of wrongdoing upon marriage, but if he does not marry, it is uncertain whether he will be punished at all, as it depends on who he is (refugee or national), his status and level of influence in the refugee or local community, the laws of evidence which are applied, and the extent to which traditional DRS or the national legal system is used. It will also depend on the willingness of the survivor or family to go forward with the case if he is disinterested in marriage, as the family’s honour would be tarnished, and as mentioned above, the survivor could be accused of adultery and judged herself by her community and existing refugee DRS. A small fine is often the only punishment that is imposed on the rapist, if found guilty by the refugee community.

Kidnapping, abductions and disappearances, especially of young girls were also reported by most countries surveyed. Such abductions and disappearances may be related to the following, *inter alia*:

¹⁰ The United Nations Declaration on the Elimination of Violence against Women (1993) defines violence as “any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.” Domestic violence would include violence perpetrated by intimate partners and other family members, manifested through physical, sexual, psychological or economic abuse.

¹¹ The UNHCR offices in *Pakistan* reported that no statistics or further details are available on the magnitude of these types of cases however.

- ‘traditional’ practices where, as mentioned above, men force young girls into marriage by abducting them for a period (and usually raping them);
- trafficking of women and girls, for example for purposes of forced prostitution;
- sexual exploitation and slavery by armed elements;
- a variety of other reasons ranging from honour crimes resulting in murder (where the victim disappears), common criminal activity and banditry, elopement, and sale of children into marriage or slavery.

Other types of disputes related to sexual and gender-based issues in camps include: defilement (‘taking’ of virginity outside of marriage); non-performance of conjugal duties; eloping; polygamy; suspicion of prostitution; and adultery in its different meanings.

In addition to some of the types of SGBV mentioned above, some traditional and community DRS and practices (and decisions), can also be a source of considerable suffering and constitute SGBV crimes themselves, particularly against women and girls. Indeed, sexual and gender-related offences allegedly perpetrated by girls and women, rather than against them, merits particular note. Girls and women may find themselves accused of a variety of gender-related violations such as adultery as was mentioned above, illicit romantic or sexual liaisons (often for unmarried persons, and which can be different from adultery depending on the particular act and the tradition), eloping, non-performance of marital and family duties, as well as transgression of a variety of other social mores, norms and customs for women (such as, those concerning restrictions of movement, permissible activities and contacts based on traditional, religious, cultural or gender roles, as well as issues related to the protection of male and family honour).

▪ ***Other offences***

A variety of other justice issues of varying degrees of seriousness arise in refugee camp settings. These include issues of a primarily criminal nature, civil disputes, and administrative violations – the latter are dealt with in the section below. In addition to SGBV crimes and theft, which are already mentioned above, other crimes reported by the countries surveyed included:

- murder;
- abductions and disappearances;
- drug trafficking, possession and use;
- physical assault, of refugees as well as others such as locals and UNHCR or IP staff members;
- incest;
- malicious damage to property, including UNHCR and IP property; and arson
- fraud, including recycling or purchase of additional ration cards, and obtaining money under false pretences;
- disturbance of the peace;
- illegal possession of firearms or other prohibited weapons;
- cattle rustling;
- bribery and extortion;
- illegal brewing or consumption of illegal brews;
- accusations of sorcery;
- bonded labour of refugees;
- illegal cutting of trees or use of other resources;
- prostitution.

Civil and other types of legal issues

These include non-violent domestic or family disputes, disputes amongst neighbours or other camp residents (including during the distribution of food and non-food items, about space in shelters, accommodation, and use of water pumps), civil (unpaid) debts, land disputes, inheritance and property issues, and child custody cases. It is also important to highlight that in many such cases, discriminatory practices or laws (either due to the application of the national law of the country of asylum or the application of customs or law, including religious laws, of the country of origin) are applied against women and girls, in clear contravention of international human rights norms and obligations of States.

Moreover, while it is not possible to expound on this within the scope of this paper, civil acts or status issues are also of concern, including legal or practical problems related to birth registrations/certificates, statelessness, marriage and divorce, and death certificates.

Violations of administrative and camp by-laws

While the general domestic law of the host country is in principal to govern refugee behaviour and their legal affairs, they are usually also governed by an additional set of administrative regulations adopted by relevant government or camp management bodies, which are specific to refugees (or to refugees living in certain camps).

Violations of administrative or internal regulations of refugee camps frequently include:

- rules relating to restrictions on freedom of movement, such as prohibited movement outside the camp or within a specified parameter around the camp (which may be a complete prohibition to leave the camp, or a prohibition to leave without prior permission etc);
- non-observance of hours for entry and closure of the camp;
- curfews;
- unlawful presence in the camp;
- illegal possession and presence within the camp of certain brews or objects classified as weapons;
- conducting prohibited activities inside or in the area around the camp, such as illegal collection of firewood, crops or fruits;
- hosting 'illegal' stayers (i.e. refugees whose stay in the camp has not been regularised);
- logging or illegal cutting of trees outside the camp;
- working illegally outside the camp;
- public disturbances of various types.

In addition to administrative rules imposed by the host government authorities and camp administrators, refugees are sometimes also subject to camp by-laws which they themselves have adopted (though these are usually developed either in conjunction with, or with the tacit or explicit assistance/approval of relevant authorities responsible for refugee affairs or camp administration, and/or UNHCR). The aim of these by-laws is generally to keep harmony and order in the camp and regulate relations between refugees through agreed upon rules of behaviour. Such by-laws are used in camps in *Sierra Leone* for example. A more detailed discussion is provided further in this paper with regard to camp by-laws, but suffice to say for the time being that such by-laws may regulate and sanction a range of issues in the camp, such as petty thefts, love affairs and adultery, refusal to perform required camp duties, witchcraft, as well as a myriad of other 'offences' under titles such as 'fighting', 'insults', 'incitement', 'riotous conduct', 'tribalism', 'religious argument' etc.

▪ ***Traditions, customs and religious codes of behaviour***

Traditions, customs, religious and other codes of behaviour and social mores also act as an additional layer of obligations for refugees, whose conformity and respect for these systems may be essential to their social acceptance and even to their very survival at times. A variety of systems or structures, which are here described generally as refugee DRS (dispute resolution structures/systems), are usually established in refugee camps, formally or informally, to address a number of justice issues and disputes in camps, including often the enforcement of the community's traditional, customary, religious or other social mores and norms. These DRS may pronounce judgement on whether these norms were violated by a particular member of the community, or they may simply use their traditional and social mores to interpret and decide on a particular conflict.

Often these norms and traditions are unwritten rules of behaviour, though their non-observance can have serious implications for individual members or families within the community, including on their protection situation. Moreover, both the norms and the sanctions imposed by the community and/or refugee DRS, may not be consistent with the norms and sanctions provided by the national legal system of the country of asylum, or indeed, by international law. In fact, acts categorised as violations of customary or religious norms by refugee DRS may not constitute a violation or crime of any type according to the laws of the host country, thus begging the question of whether the sanctions can be deemed legitimate. The same is true for the application of customary norms of interpretation, or rules of evidence etc, which are derived from their local traditions, or even religious or state law from their country of origin. These questions are especially relevant in cases where acts categorised as violations by the refugee community have no equivalent in the host country's national legal system, or in international law, or when the sanctions imposed are disproportionate (e.g. heavier or lighter) to those in the host country. Similar questions can be asked with regard to refugee camp by-laws for instance. More details and discussion are provided in section 3 of this paper, which addresses the different types of refugee DRS, as well as the types of issues and problems they often present.

▪ ***Conflicts and justice issues between refugees and non-refugees***

Disputes and justice issues naturally also arise between refugees and locals living close to refugee camps, as well as persons in authority or other actors who have contact with refugees. While the questions in the survey were general and did not specifically seek information on justice issues between refugees and persons in authority or other actors such as staff of international agencies, NGOs, or the host country government (e.g., police, camp management, military, local authorities etc), some of the responses regarding the types of violations and disputes occurring in camps do provide information on this as well.

Some of the more common types of disputes arising between refugees and locals, as well as other actors include:

- Theft, as well as false accusations of theft against refugees by locals;
- Illicit (sexual or otherwise) relationships, and sexual harassment;
- SGBV, including rape, attempted rape and sexual exploitation;
- Landlord and tenant issues;¹²
- Domestic disputes (e.g. in case of inter-marriage between refugees and locals, whether a legal or common law marriage);
- Abductions, including of women and girls;

¹² These issues were mentioned by UNHCR BO *Guinea* for example, which as an exception to this study, also included a caseload of refugees who were not living in camp situations, such as for example, refugees who eventually marry or cohabit with a local near the camp.

- Kidnapping of children by a spouse or their family, in cases of separation, divorce or other family crisis situations;
- Child custody and visitation disputes, also in cases of inter-marriage or cohabitation between refugees and locals;
- Disputes relating to arrest or detention of refugees by local leaders or local authorities;
- Abuse by persons in authority;
- Disputes over resources and shared facilities or services, often involving either allegations of discrimination, unauthorised use, or misuse, such as of land, water, fishing spots, health and educational services;
- Disputes related to labour issues including, remuneration, compensation for disability caused while in the employment of locals, bonded-labour, and recruitment of refugees for labour outside camps by labour agents;
- Assault, sometimes involving serious injuries;
- Fraud;
- Damage to property, including that of other actors working in camps, such as UNHCR.

In cases of disputes between refugees and locals or other actors, the dynamics and methods of conflict resolution tend to differ in important respects, and a more in depth analysis of these patterns is provided in section 4 in this paper.

4. Which laws apply to refugees in camps?

▪ Context

While refugees are clearly subject to the laws of the host country, many refugee camps in fact have a complex system of administration of justice with multiple and varied sources of law and other obligations, codes or rules regulating (and sanctioning) certain types of behaviour. These are complemented by a variety of mechanisms, both formal and informal, to enforce these official laws and other sources of obligations.

This section provides a brief overview of the main types of laws and other categories of rules that are applicable in refugee camp situations, the different legal and DRS in camps, and the dynamics between these different laws and mechanisms, i.e., how they relate to each other and function in practice. In this context, it is also noteworthy that refugee camps can often have a mixed refugee population, which can be of different nationalities, political backgrounds, ethnic groups, tribal affiliations, and religious persuasions. Hence, different groups may recognise and abide by different rules, beliefs and codes of behaviour, and therefore establish and use different enforcement and DRS, namely, those specific to their community.

Alternatively, refugee populations may sometimes share ethnic, tribal, linguistic or other characteristics and values (and even family) with the local population living near the refugee camp,¹³ and thereby use local DRS to resolve their problems. In other cases though, the values and DRS will be significantly different from the local population, and certain factors relating, in part, to power differences (i.e., the generally superior power of locals) will impact on the administration of justice in important ways.

¹³ This is sometimes the case when refugee camps and settlements are established close to the border with the country of origin, especially in Africa.

Therefore, the justice systems in place and the dynamics of how they relate to each other¹⁴ will often be determined by the specific needs and constraints of the camp, the type of issue or violation committed, as well as the beliefs, values¹⁵, and customs of the different refugee groups that might reside together within a single camp. This paper will not detail all the complex socio-cultural-religious and legal dynamics of how the different laws and justice/DRS systems work but will highlight instead, throughout the various chapters, some of the more frequent or interesting patterns, and provide a few case situations deemed especially illustrative.

As seen above, international principles and norms are also applicable to refugee populations in camps, including standards of treatment and rights deriving from refugee law, human rights, and humanitarian law. These international standards and rights are of particular interest to UNHCR, given its refugee protection mandate and supervisory role, but also in view of its general obligations as a UN agency to uphold, respect and promote the values of the UN, including those related to human rights. This is reflected in a variety of UNHCR sources, policies and guidelines, including for example, the UNHCR Code of Conduct.¹⁶ As such, refugee and human rights law will be used as a general reference point and framework for much of the discussion and analysis provided throughout this paper.

▪ ***Main sources of law applicable to refugees***

The major sources of law, regulations and rules governing refugee populations in camp situations include the following, *inter alia*:

International law and regional instruments

This includes refugee, human rights and humanitarian instruments, both international and regional, to which the host state is party, as well as international customary law.

In the context of administration of justice and some of the problems that have been identified in refugee camps, certain international human rights instruments are especially noteworthy, including instruments relating to women's and children's rights, such as:

- the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW);
- the Declaration on the Elimination of Violence against Women (DEVAW);
- the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriage (CCM);
- the Convention on the Rights of Children (CRC).

In addition to general human rights standards, international standards relating to legal rights as such, are also relevant, such as in relation to: arrests and detentions; due process and the right to a fair trial; the administration of juvenile justice; women's legal rights; and the legal rights of non-nationals and refugees. These standards are provided in some of the instruments mentioned above, as well as in general human rights and refugee instruments, such as, the International Covenant on Civil and Political Rights, the Universal Declaration of Human Rights, and the Convention relating

¹⁴ For example, the extent to which a particular refugee DRS is used, as opposed to the national legal mechanisms, or even religious or tribal mechanisms in the camp.

¹⁵ The term 'values' (as well as 'obligations' and 'rules') is used in this paper in a wide sense to refer generally to norms, customs, and codes of behaviour which engender 'obligations' or expectations in the eyes of the community and its members, and which the community, including the family unit (with the tacit or express approval of the community), has a practice of 'enforcing' through DRS and other mechanisms.

¹⁶ See <http://www.unhcr.org/admin>.

to the Status of Refugees (hereinafter, the 1951 Convention). For example, the latter provides in article 16:

Access to courts

A refugee shall have free access to the courts of law on the territory of all Contracting States.

A refugee shall enjoy in the Contracting State in which he has his habitual residence, the same treatment as a national in matters pertaining to access to Courts, including legal assistance and exemption from *cautio judicatum solvi*.

A refugee shall be accorded in the matters referred to in paragraph 2 in countries other than that in which he has his habitual residence the treatment granted to a national of the country of his habitual residence.

There are a host of other UN principles and guidelines,¹⁷ which, although not legally binding on host states, provide nonetheless important benchmarks and standards by which to analyse current practices relating to the administration of justice in refugee camps.

Host country domestic laws and regulations

- formal state law, including civil and criminal law, as well as specific laws on refugees and foreigners;
- non-state law in the form of local / traditional justice systems, which may or may not be recognised officially; and
- government directives, rules and regulations specific to refugees and refugee camps. These may include for example, internal camp rules regulating freedom of movement of its residents, use of resources by them, and the professional ethics, powers, actions, and mandate of camp administrators, police or security staff etc.

¹⁷ For example:

- *Basic Principles on the Independence of the Judiciary* (the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders in the Basic Principles on the Independence of the Judiciary), A/CONF. 121/22/ Rev.1 paras.58-59 (1985), endorsed by General Assembly resolution 40/146, Official Records of the General Assembly, Fortieth Session, Supplement No. 53, paras. 154-55, (A/40/53) 1986;
- *Guidelines on the Role of Prosecutors*, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990, UN Doc. A/CONF. 144/28/ Rev. 1 at 189 (1990);
- *Basic Principles on the Role of Lawyers*, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990, UN Doc. A/CONF. 144/28/ Rev. 1 at 118 (1990);
- *Code of Conduct for Law Enforcement Officials*, G.A. res. 34/169, annex, 34 UN GAOR Supp. (No. 46) at 186, UN Doc. A/ 34/ 46 (1979);
- *United Nations Standard Minimum Rules for Non-custodial Measures* (“The Tokyo Rules”), G.A. res. 45/110, annex, 45 UN GAOR Supp. (No. 49A) at 197, UN Doc. A/45/49 (1990);
- *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*, G.A. res. 45/113, annex, 45 UN GAOR Supp. (No. 49A) at 205, UN Doc. A/45/49 (1990);
- *United Nations Guidelines for the Prevention of Juvenile Delinquency* (“The Riyadh Guidelines”), G.A. res. 45/112, annex, 45 UN GAOR Supp. (No. 49A) at 201, UN Doc. A/45/49 (1990);
- *United Nations Standard Minimum Rules for the Administration of Juvenile Justice* (“The Beijing Rules”), G.A. res. 40/33, annex, 40 UN GAOR Supp. (No. 53) at 207, UN Doc. A/40/53 (1985);
- *Declaration on the Human Rights of Individuals Who are Not Nationals of the Country in Which They Live*, G.A. res. 40/144, annex, 40 UN GAOR Supp. (No. 53) at 252, UN Doc. A/40/53 (1985);
- *Declaration on the Elimination of Violence against Women*, G.A. res. 48/104, 48 UN GAOR Supp. (No. 49) at 217, UN Doc. A/48/49 (1993);
- *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, G.A. res. 40/34, annex, 40 UN GAOR Supp. (No. 53) at 214, UN Doc. A/40/53 (1985).

Refugee camp by-laws

Such by-laws and other written rules are developed by or in conjunction with the refugee population to preserve harmony and law and order in the camps. These types of by-laws may reflect to some extent traditional beliefs and customs but generally also tend to be adapted to circumstances and needs in the camp, and will often contain aspects which are brought in by UNHCR, government counterparts or other actors who have participated or sanctioned the process of adopting such by laws. They are not the same as camp regulations or directives imposed by host country and camp authorities, but are intended principally to maintain harmony among refugees in the camp and regulate their behaviour. Such refugee camp by-laws have been developed in camps in *Sierra Leone* for example.

Refugee's customary or traditional rules

These are often unwritten rules regulating behaviour and providing methods for resolving disputes among refugee groups in the camps. These traditions and codes of behaviour can be composed of religious, cultural, ethnic, national, tribal aspects or practices, or other values and customs. While in some communities these rules and customs are based on a mostly oral tradition, in others they may rely on the written word, such as religious texts which are then interpreted, or a combination of oral and written authority. Often dispensed by elder councils, composed of (former) village or tribal leaders for example, some of these unwritten rules may also be based or rely on what is considered the acquired wisdom, life-experience, and negotiation skills of these respected members of the community. To an important extent, the wisdom dispensed by these persons is expected to remain faithful to the major beliefs and traditions of the group.

Moreover, traditional DRS and values can be related to strong tribal systems and affiliations, which are not only maintained but sometimes even strengthened in the context of refugee camps where they are often perceived as a necessary form or vehicle of protection. For example, the Somali refugees in the Kharaz camp in *Yemen* place much emphasis on tribal affiliations, such that these colour all aspects of public life, and in particular, the manner of handling disputes and legal issues in the camp.

At the same time, customs and negotiation strategies must also generally be capable of evolution and adapting to changing circumstances. Tradition is not static or unchanging. It is necessarily subject to evolving interpretations, and indeed, has historically often emerged from necessity and compromise, and must remain creative and dynamic enough to adapt successfully to new challenges.

Gender roles¹⁸ and expectations

These are part of every society and often constitute a very significant aspect of social, traditional or religious customs, codes of behaviour and other societal rules. They generally reflect, to a greater or lesser extent, depending on the society, the historically unequal power relations between women

¹⁸ 'Gender' is defined as "the social differences between men and women that are learned, changeable over time and have wide variations both within and between cultures. Gender is a socio-economic variable to analyse roles, responsibilities, constraints, opportunities and needs of men and women in any context." Gender is therefore to be distinguished from 'sex' which refers to "biologically determined differences between men and women that are universal." The expression 'gender roles' for its part, refers to the "socially constructed and learned behaviours in a given society/ community or other social group, that condition expectations, as well as which activities, tasks and responsibilities are perceived as male and female. What constitutes what is 'masculine' and 'feminine' in any given culture. Gender roles are affected by age, social class, race, ethnicity, religion, or other ideologies and by the geographical, economic, social and political environment. Gender roles also determine access to rights, resources and opportunities." See, UNHCR, *Gender Training Kit on Refugee Protection and Resource Handbook*, UNHCR, December 2002, at p. 28.

and men. Given the significance of gender roles, it is useful in the context of this paper to look at this particular aspect of refugee traditions and customs.

In different societies, gender roles are enforced to different degrees by the legal, social, political and religious structures, including refugee DRS, when in the context of refugee camps. Even when not enforced explicitly through law or religious codes of behaviour for example, deeply imbedded values and beliefs about gender roles may still play an extremely important part in the process of (legal and factual) interpretation, decision making, conflict resolution and even patterns of enforcement. Moreover, as in virtually all societies, the family and small community structures remain the first and primary institutions for passing on and enforcing gender roles and related value systems.

Gender roles and related social mores are generally not considered when analysing systems and sources of 'legal' obligations, since they are social phenomena which are arguably not enforceable by law. Nevertheless, they should hold a central place in a discussion on the administration of justice in refugee camps, given their importance in many refugee DRS as well as in SGBV. Indeed, as mentioned above, in traditional refugee communities, refugee DRS either enforce gender roles directly (when these are explicitly deemed an integral part of the tradition or community beliefs), or use them as a frame of reference when interpreting tradition and customs. As well, law enforcement officials may selectively enforce national law and camp rules, and prosecute some crimes but not others, based on gender. National legal systems also contain and enforce particular conceptions relating to gender roles, especially in the areas of family, property and criminal law. For example, in many countries, the husband or father is still considered the "head of the family" for legal purposes. In criminal law, a society's concept of gender roles often impacts on definitions, interpretation and enforcement of violent crimes against women and girls, such that sexual and gender-based crimes against them are often minimised, ignored, or left relatively unpunished. Rules of evidence and inheritance law are other examples where gender roles and power differences between men and woman are enforced through the state legal system.

Moreover, social mores related to gender roles tend to play an instrumental part in the resolution of conflicts within the family unit, and in the case of clan and tribal disputes.

Laws and regulations developed by government or political parties in exile

Examples include rules established by the KNU (Karen National Union) which are effectively (though informally) applied in the Karen camps in *Thailand* (alongside the Thai formal justice system and camp regulations), and address a variety of sensitive cases such as murder, rape, serious physical assault and political issues.¹⁹ The Karenni refugee camps have an even more sophisticated and formalised justice system of their own, which includes: a camp judiciary system which judges civil, administrative and criminal cases; a central judiciary which includes a final appeals court; and a district and township judiciary. In these camps, relatively minor cases such as petty theft, adultery, minor domestic disputes, divorce and inheritance, and incidents of minor physical assault, are dealt with by the traditional dispute resolution structures (on the agreement of both parties to the dispute). Otherwise, as well as in more serious cases, the case is taken to the Karenni justice system, also

¹⁹ These KNU rules and regulations were originally set up by the KNU while the refugees were living on the Myanmar side of the border. These rules are applied by 'camp committees' in the camps, which are a natural outgrowth of their original village administration. Since most refugees moved across the border in village groups, they brought their traditional Karen village structure, in addition to the administration of the KNU, the political arm of the insurgency group against the government of Myanmar, which continues to have influence over the refugees in the camps. Out of the nine refugee camps on the Thai-Myanmar border in 2005, seven of these are predominately composed of the Karen ethnic group, while the Karenni ethnic group reside in the other two camps.

known as the LSOEC (the Law and Social Order Enforcement Committee).²⁰ Further details in relation to the functioning of the various dispute resolution and ‘justice systems’ in refugee camps in Thailand are provided below in section 3 in this paper.

Another example of refugee camps where the ‘justice system’ of a government or political party in exile is applied, is the case of the Western Saharan (Saharawi) refugees in the Tinduf camps in *Algeria*. While these camps were not retained as a case study for the purposes of this particular paper due to their very unique situation, they were part of the initial set of camps surveyed by the questionnaire. These refugees, who have a government and form a Republic in exile, effectively enjoy an important degree of autonomy accorded to them by the host country, until a solution is found to the dispute over the West Sahara territory and repatriation takes place. In these camps, protection and justice issues are dealt with by the Saharawi authorities, and the camps have their own fully functioning legal system, police, and military. Additionally, they have their own Minister of Justice, are governed by a Code of civil and criminal procedure (adopted in 1996), and have a court system made up of first instance and appeals courts for civil and criminal matters, as well as a supreme court. However, the legal system’s weaknesses remain in the area of civil and family law, where cases are often decided by Shari’ah “majilis” or councils, who apply traditional norms and Shari’ah, (i.e., Islamic) law. It would appear that in general, both the courts and the Shari’ah councils are respected by the majority of the refugee population, although they lack sufficient human and materials resources (including, lawyers, judges, and equipment etc), and some believe that proper legislation in the areas of civil and family law are urgently necessary in order to limit the application of Shari’ah law. It is noteworthy in this respect that crimes relating to SGBV tend to be dealt with at the family level rather than through this legal system.

Religious laws

Religious laws often emulate the religious rules and precepts of the country of origin in which they sometimes have force of formal state law. Even when these religious laws do not have force of formal state law in the country of origin, they are often perceived as having a mandatory *moral* character, can have a very detailed set of rules, and be strictly enforced through their own religious institutions. These religious laws and DRS are often transposed into a refugee camp context, and effectively function in parallel with other ‘justice’ systems in the camp, such as other refugee DRS, the host country legal system, and internal camp rules. Often, either the host country or the country of origin has a similar practice of co-existence of civil and religious laws and institutions. In fact, the reality is often that in villages or certain regions of the country (for example, regions made of a predominately Muslim minority population), religious laws and codes of behaviour are enforced by local leaders and authorities, regardless of the official position of the central government.

²⁰ Attached to the Karenni executive power, the KnRC is responsible for the administration of the two Karenni camps on the Thai-Myanmar border. Under the KnRC, each camp elects a camp committee, which amongst other things, organises and nominates security officers who have similar functions to a national police force and who enforce camp rules, restore peace and social order among camp residents and report administrative, civil and criminal cases to the township judiciary of their respective camp, as well as conduct investigations when requested by the judiciary. As indicated above, the Karenni refugee camp residents also use traditional DRS in certain cases, and in these cases the section leader of the plaintiff’s house, assisted by an experienced elderly will judge the case based on customary non-written ‘law’. In general, these traditional DRS are similar to those existing in Myanmar and have been more or less simply transferred across the border. As in the Karen camps, the traditional Karenni DRS is effectively controlled by the KNPP (the Karenni National Progressive Party), the only political party of the Karenni, many leaders of which live in exile both in and outside the camps in Thailand. In recent years, the Burma Lawyers Council (BLC), a non-governmental and non-political organisation (according to its mission statement), which was formed in 1994 and is made up of Burmese lawyers and academics, has been involved in efforts to improve the existing Karenni justice / DRS. Usually at the request of the KNPP, the BLC, which exists in Thailand only on an informal basis, provides training on such topics as human rights, democracy, federalism, constitutional primacy, rule of law, civil society and the right to a fair trial, to the Karenni leadership and Karenni CBOs.

At times, religious systems of dispute resolution, such as the Shari'ah courts in some refugee camps in Thailand, are restricted in their mandate to certain domains, such as, specific types of civil and family disputes. In other cases, religious DRS are established and used only as an alternative recourse for a small group of devout refugees from amongst the camp population. In fact, where the host country population shares similar religious traditions and DRS, religious groups in a camp have sometimes preferred to use the local religious institutions of the host country, rather than other refugee DRS that may be available in the camp.

Internal committee rules

These rules, which are often unwritten, regulate dispute resolution by small and specialised refugee sub-committees, such as market committees (addressing contractual disputes, land issues etc), women's committees, and SGBV committees.

Code of Conduct

Agency or organisational Codes of Conduct, as well as codes and standards of professional ethics also have a role to play in the context of the administration of justice in refugee camps, and especially in regulating relations between the refugee population and a variety of other actors, both national and international. For example, codes of professional ethics may be applicable to doctors, police and security officers, lawyers, social counsellors, and a wide range of humanitarian workers, whether with NGOs or UN agencies.

These codes of conduct or professional ethics can derive from domestic law, be attached to specific professional associations, or be an international or organisational nature. Some set out specific legal obligations and norms which are subject to particular monitoring systems, while others provide guidance, promote good practices, and encourage international or regional coordination and standard setting.

Which justice systems apply?

All of the refugee camps in the 13 countries reviewed in this study rely on a number of different mechanisms to resolve disputes and legal or justice matters. As seen below, the issue of what mechanism is used in each case often depends on a variety of factors. Such factors can include, *inter alia*:

- **The parties involved in the dispute.** For example, if a dispute involves a national rather than being restricted to refugees, it is more likely to be resolved *via* national and formal legal institutions, particularly if it is a violent or serious crime. Where both the local and refugee populations reside in isolated regions of the country, disputes between locals and refugees may also be resolved at 'political' level, by the respective local and refugee leadership. A compromise will be sought between the refugee leadership and the local chiefs, at times with the assistance of UNHCR or camp management authorities. Also, when justice issues or disputes involve women or girls, certain mechanisms may be more popular than others, often reflecting historical or traditional ways of dealing with issues affecting women within that specific refugee community.
- **The type of case, crime or violation involved.** For instance, the mechanisms used may depend on whether the violation is criminal in nature, and even specifically, if it involves SGBV. Even where camp populations are generally left to resolve disputes between themselves, very serious crimes, such as murder, do generally command a greater commitment to pursue the case through the formal legal system. Moreover, in some camps, refugee DRS (whether traditional in nature or essentially deriving from refugee leadership

bodies or specialised committees) have been tacitly or explicitly afforded a particular mandate or terms of reference (by the host government or camp authorities) which delimit their powers and the type of cases they may adjudicate. Similarly, camp management officials, local justice authorities, and even local chiefs in certain areas, may have a legally explicit or traditional jurisdiction in certain types of cases in that area/camp.

- **The relative ease of access to the different justice mechanisms and related services, by the refugee and local populations near the camp.** As suggested elsewhere in this paper, the remoteness of many refugee camps from centres offering access to legal services and institutions, as well as the lack of adequate road infrastructures, communications systems and affordable transportation for refugee populations, are important factors in determining the choice of justice systems which are ultimately used. Other factors or obstacles, such as the language barrier, lack of familiarity with the host country's legal system, and a variety of administrative, procedural or other requirements, also tend to reduce or discourage access to formal legal mechanisms and courts by refugees. In addition to issues of access, perceptions of the advantages or disadvantages associated with the different justice and DRS by the refugee population, are also important in determining which mechanisms will be used. A more thorough discussion of these factors, obstacles and perceptions are provided in sections 2 and 3 of this paper.
- **The general commitment and resources provided by the host government** to enforce domestic law, and facilitate access to national legal institutions and services for refugees. While host governments in principle maintain that their national laws and legal systems apply equally to refugee populations, the practice has been much more nuanced and predicated by a number of political, regional, cultural, and historical factors, as well as resources and other practical considerations. Perceptions by host governments and local populations of refugees as rights bearers (i.e., persons with tangible legal rights), and perceptions as to whether certain types of crimes or cases impact on nationals or local affairs, are also key in determining whether the case should be pursued within the formal legal system. With national judicial systems already often overburdened, and a general lack of resources and personnel, especially in certain regions of the country, host governments often prefer refugee populations to manage their own affairs and disputes themselves. This use of double standards implies fewer rights for refugees.
- **The profile and beliefs of the refugee population** and their past experience or familiarity with different justice mechanisms and DRS. Characteristics, such as their general educational, professional, urban or rural background, ethnic, tribal or religious affiliations may also be of relevance. In addition to the refugee population's general perceptions of the state legal system, the relations between different refugee groups in the camp, as well as between the refugee population and the locals, may also influence which recourse is preferred. For example, strong pressure is often exerted on the victim not to have recourse to the national legal system, due to a generalised mistrust of the system by the refugee population. They may view the sanctions as disproportionately harsh, too often involving long prisons sentences, and as being applied in a discriminatory fashion. Tribal, ethnic and religious affiliations may also place pressure on the parties to use their own DRS already established in the camp.

In addition to the above, a range of other factors may impact in significant ways on the legal and dispute resolution system which is ultimately preferred by refugees in a specific case. A

good number of these factors and considerations are discussed in greater detail in the next sections.

Broadly speaking, justice and dispute resolution mechanisms generally available to refugee populations can be categorised into the following types:

▪ ***The national justice system of the host country***

The national justice system of the host country can be made up of:

- **The formal state legal system of the host country**, which is based on official domestic law and enforced by law enforcement authorities, and national judicial and quasi-judicial mechanisms, such as courts of law, administrative and regulatory bodies, etc.
- In addition to district level courts and appeal courts, other more local and camp specific justice structures also exist such as local quasi-judicial bodies in the form of chief district officers, and government camp managers. The latter may in practice often play a greater role in legal cases and disputes than is dictated by their specific powers or formal functions. Indeed, in addition to enforcing **camp regulations** or directives, camp managers and other government authorities in the camp, may act as unofficial mediators, and be called upon to resolve what are considered minor disputes in the camp.
- **The local non-state justice system or DRS:** these mechanisms are divided into those which are officially recognised by the state and those which function only on an informal basis without state recognition (with little or no interference, save on an exceptional basis) or sanction. Both are often referred to as traditional justice or dispute resolution systems and usually function in parallel with the state legal system. These traditional justice mechanisms are used predominately by certain ethnic or minority communities in a country, and/or function at the local level to dispense justice where the formal state legal system does not reach. Refugees living in camps in particular regions of the host country may therefore come into contact with this local non-state/traditional justice system, especially if they have regular contact with the local population and disputes arise.
- **Religiously-based legal or DRS:** these religious tribunals, courts or DRS can also form part of the official state legal system, but function most often without formal legal recognition by the state, in a similar manner to traditional DRS. Refugees sharing the same religious background as locals in the host country may sometimes prefer to use these religious DRS or courts, rather than the official legal system or refugee DRS in the camp.

▪ ***Refugee Dispute Resolution Systems (DRS), including traditional DRS***

These are structured mechanisms established and/or run by refugees with a specific mandate (formal or informal) to resolve disputes within the camp. They are often referred to as ‘traditional courts’, ‘discipline committees’, or ‘grievance committees’. These mechanisms can be composed of persons from elected refugee bodies, religious structures, or they can be run by elders, tribal, clan, village, zone or camp leaders. In refugee camps in *Nepal* for example, camp management committee (CMC) members are elected refugee representatives; and in camps in *Bangladesh* refugees resolved minor disputes through a variety of informal structures, which at the time of the survey were being consolidated into one arbitration committee whose members are elected by the refugee community.

- **Mechanisms specific to special groups or particular beliefs (within the camp).** Special dispute resolution structures, can sometimes run parallel or co-exist with the major refugee DRS in the camp. These cater specifically to the particular beliefs or preferences of a certain group in the camp who recognise the special authority of elders or religious leaders, and prefer to refer their cases to them. Not all camps have these alternative mechanisms, but those that do often require that both parties agree to its use, or that they be from the same religion, clan or tribe. Until recently for example, refugees in camps in *Bangladesh* have used a range of informal DRS, including systems based on elders, religious leaders, “majhees” (i.e., block leaders) and volunteers, to resolve minor incidents in the camps, while more serious cases are referred to UNHCR IP, social counsellors, camp authorities, or the national judicial system. As mentioned above, these structures are now being consolidated into an arbitration committee, which will consist of religious leaders, “majhees”, teachers and elders and will be elected by the refugee community.
- **Refugee leadership structures** generally have a representative mandate, participate in the management or administration of the refugee camp, and/or have other leadership functions in the camp such as serving in refugee DRS and engaging in broader diplomatic and conflict resolution activities (with authorities, local communities, and different tribes in the camp). At other times, refugee leadership structures are responsible for nominating or electing decision-makers to refugee DRS, and may even act as appeal bodies. In *Mexico* for example, refugee representatives and leaders also act as conciliators during disputes and try to resolve conflicts through community structures. In some refugee camps in *Guinea*, on the other hand, the Central Refugee Committee receives complaints, and then delegates the adjudication of the case to other organs, which are sometimes sub-committees.
- **Informal and *ad hoc* dispute resolution mechanisms** are also popular and can include counselling services provided by respected members of the community, and the use of networks or groups, including church groups and women’s groups. This age old traditional practice of seeking counselling, negotiation and mediation by services from respected members of the community or trusted groups, is most often used in refugee communities to resolve family conflicts and minor disputes. These influential individuals often include priests, former village leaders, respected neighbours or family members, and informal councils of elders.

- ***Rules and regulations of governments or political groups in exile***

Examples of justice systems developed and controlled by governments or political groups in exile include the Karen Camps in *Thailand*, and the Tindouf camps in *Algeria* mentioned above. In the Karen Camps in Thailand the refugee population is, in addition to domestic Thai law and camp regulations (for cases only involving refugees), also subject informally to the ‘justice system’ of the Karen National Union (KNU), which can address sensitive and serious cases occurring between refugees, such as, murder, rape, assault and political issues (as well as enforcing more minor camp regulations as mentioned below, under Refugee camp management systems (RCMS). Camp Committees (who are answerable to the KnRC) in each camp are divided into section leaders who, together with elders, address minor cases of disputes in the camp, based on customary unwritten law. More serious cases are brought to the Karenni justice system (also known as the Law and Social Order Enforcement Committee, or LSOEC).

▪ ***Refugee Camp Management Systems (RCMS) addressing disputes, complaints and other legal/ justice issues***

A number of actors and mechanisms can be involved in this category of dispute resolution, which also overlaps with camp governance and camp management. For example, in *Guinea*, the following are available: Government camp administrators who have overall responsibility for ensuring that law and order is maintained in the camps, and who intervene upon request in cases of disputes within the camp which the Central Committee (and the sub-committees) was unable to resolve; and the Mixed Brigade, which ensure camp security and intervene in serious and violent cases brought to their attention for formal intervention, possible indictment and prosecution. Often these RCMS may not be specifically or exclusively mandated to intervene in conflict resolution, but play a significant role in the administration of justice nonetheless, by virtue of their general management or policing functions.

Thus, these types of RCMS can include:

- Host government camp administration systems and officials;
- Refugee executive or representative bodies, such as camp committees (generally elected by the refugee population), mentioned above;
- Formal camp security contingents (with authority to intervene, and pursue a formal indictment and prosecution), government security personnel, or police;
- A variety of refugee committees and sub-committees (also referred to as ‘sectoral committees’ and issue-specific community mobilization teams) participating in different aspects of camp management, administration, security or socio-cultural structures, such as Women’s Committee, refugee watch systems, market committees, and SGBV committees. In these cases, these specialised committees are set up by the refugee community to address specific issues such as domestic violence, land, family disputes, camp security and contractual disputes.

Different realities in different camps

Different refugee DRS can exist within the same refugee camp and function along ethnic, tribal, religious or national lines for example. As such, different refugee groups within the same camp can each have their own traditional court system, reflecting their particular national, tribal, clan or religious affiliations and beliefs. In *Zambia* for instance, refugee DRS have been developed along nationality lines and largely reflect existing practices in the country of origin. Angolan refugees who came to *Zambia* with their ethnic chiefs and elders, simply recognized them as their leaders in the camp and established credible DRS for Angolans in the camp in a fairly straightforward manner. In *Pakistan*, refugee camps are divided into blocks based on tribal groups. Each block elects its elder, who is often both the representative of the tribal group (taking decisions for and on behalf of the community)²¹, and also responsible for settling disputes. When disputes involve different tribal groups, the elders sit together and negotiate a solution, which generally involves some type of compensation.

In *Guinea*, one camp with both a Liberian and Sierra Leonean refugee population has representation of both nationalities (as well as others) in its Refugee Central Committee²² (through an agreed upon number of reserved seats for each group), which is made up of sub-Committees, including several Committees specifically mandated to address disputes and legal issues arising in the camp. These sub-committees and DRS include for example: an Elders Committee which provides counsel,

²¹ This reflects the Pashtoon tradition, where councils of elders are generally responsible for settling disputes as well as for making decisions for and on behalf of the community.

²² The Refugee Central Committee in Guinea is a body mandated by the refugee population through elections in the camp to represent the interests of the refugees and advocate on their behalf with relevant authorities.

advises in case of disputes and ensures the continuation of traditional values; religious leaders, who also deal with disputes arising in the camp but cater in particular to refugees who depend on the strength of their faith and who prefer this alternative to other mechanisms; and a Grievance Committee, which is the main dispute resolution mechanism in the camp, and addresses disputes brought to the attention of the Central Committee. In *Sierra Leone*, refugees established a Grievance Committee, as well as a council of elders, which is especially noteworthy since it includes the representation of all the ethnic groups resident in the camp.

In contrast to the above examples, it is also possible that a single refugee DRS is established in a camp, even when the camp population is made up of refugees of different nationalities or ethnic groups. In such cases, these groups are often given equal, proportional representation in the relevant DRS.

Section 2: **The Host State Justice System**

1. Barriers to access

Access to the formal state legal system by the refugee camp populations in most countries surveyed was impeded not so much by formal barriers, but by multiple practical obstacles and difficulties, as well as by attitudes. Indeed, in most instances, these practical barriers and other deterrents (which will be discussed further on in this section) were found to have an important cumulative effect, resulting for most of the refugee groups in the camps surveyed, in a lack of both trust and interest in pursuing cases within the formal host state legal system. This was often further compounded by a lack of political will on the part of the host government to promote and apply (i.e. enforce) domestic law in cases of disputes exclusively between refugees.

In this section, we will look more closely at some common practical and legal obstacles which typically impede access to the host state legal system for refugee populations living in camp situations. In addition, we will provide some insight into other factors, including subjective and attitudinal aspects, affecting the types of recourse refugees elect to take in individual cases, as well as the general administration of justice in refugee camps.

Amongst the refugee camps surveyed, some of the most common obstacles and deterrents to accessing the formal state legal system include the following:

Physical distances

This is a significant barrier, as many refugee camps tend to be located in remote and rural areas of the host country or at considerable distances (particularly, where there is poor road infrastructure) from the courts and other legal institutions and services – most often available in district capitals and other large urban centres.

Restrictions on freedom of movement

Restrictions on the freedom of movement of refugee populations living in camp settings can often act as yet another administrative layer to surmount. For example, refugees may have to apply for and obtain prior permission to leave the camp in order to properly pursue their legal claims. Indeed, restrictions on freedom of movement were *specifically* mentioned as a barrier to refugees' access to justice in camps in a number of countries, including *Thailand, Kenya, Bangladesh* and *Ethiopia*. Moreover, even when such administrative restrictions are not strictly speaking absolute barriers, since refugees can usually ask for permission in advance to travel or leave the camp, they may act as a disincentive to formally file a case, and hamper efforts to do the necessary follow up to it. Such restrictions on freedom of movement (and the administrative *demarches* necessary to get around them), may be difficult to reconcile with the flexibility required to meet appointments, undertake all the necessary procedures, and travel considerable distances – when one is pursuing a case in the state legal system. Restrictions on freedom of movement and the obligation to secure permissions in advance, may also entail other difficult realities for refugees, such as having to coordinate permissions to leave the camp with availability and time of transportation, having to tell the relevant authorities or persons in the camp about their legal affairs (when they would prefer to keep it

confidential), and the risk of being asked for bribes or other favours in return for permission to leave the camp.

Lack of adequate legal representation

In many countries, legal assistance is not provided at all in civil cases, and in criminal cases is only provided to the accused but not the victim.²³ Moreover, representation in criminal cases, which is provided through legal aid or a defence lawyer assigned by the state, is sometimes subject to certain conditions such as proof of a maximum level of income, or crimes of a certain level of seriousness. Lack of adequate legal representation may also stem from the generally weak capacity of the state judicial system, which is the case for example in *Sierra Leone*. Host countries may have themselves suffered civil strife, have institutions and infrastructure which are severely overburdened, or have a serious shortage of judicial officers, including magistrates and lawyers, due to the effects of war or a brain drain. Amongst the camps surveyed, about half of them specifically mentioned the lack of adequate legal representation as a barrier to accessing the state legal system.

Lack of knowledge or familiarity with formal legal systems

In the majority of the 13 countries surveyed, the lack of familiarity with substantive or procedural aspects of the host state legal system was considered a significant barrier to refugees accessing the state judicial system. In *Tanzania*, *Zambia* and *Thailand* for example, despite formally having access to the state system, the refugee population's lack of knowledge as to the procedures to follow was seen as barrier. In *Pakistan* on the other hand, it does not appear to be so much the lack of knowledge of the specific procedures to follow that is deterring refugees from accessing the state legal system, but rather a more general lack of understanding of what is a judicial system *per se*. Particularly in camps where much of the refugee population is from a rural background and has little or no formal education, there is often little knowledge or prior experience with formal justice systems. They may have relied on and been exposed exclusively to tribal and other traditional DRS in the past. At times, this can also mean that certain refugee groups actually have little understanding of the gravity and consequences of certain crimes (such as SGBV crimes) in the formal justice system. This was noted as a concern in refugee camps in *Sierra Leone* for instance.

Fear of reprisals and community pressure

The fear of reprisals and strong pressure from the refugee community were specifically mentioned by some of the countries surveyed, and can undoubtedly constitute an important obstacle to accessing the formal state legal system in many cases, particularly for victims and potential witnesses. It is also a problem likely to be under-reported. The fear of reprisals in the form of intimidation and serious physical threats against these persons, their families and even their ethnic or tribal group (often by the perpetrator himself, his friends, family or clan members) can act as a powerful deterrent. Such intimidation is especially effective in environments like refugee camps, which are typically insecure environments to begin with, and generally lack adequate security and law and order mechanisms (including victim and witness protection systems), as well as temporary detention facilities. This is often compounded by the fact that camps are located in isolated areas and freedom of movement is restricted, thus rendering refugees especially vulnerable to reprisals – particularly if they lack the traditional support and protection of their extended family, ethnic, tribal, or community structures.

Pressure from the refugee community *not* to resort to the state legal system to resolve disputes can also be very strong and exist for a variety of reasons. For example, because pre-trial detentions

²³ Generally, victims tend to get little or no legal assistance to pay for example, for medical reports, protection from retribution, or to secure legal counsel. The exception is where there are assistance programmes for SGBV survivors, which are often funded by an international agency such as UNHCR, or by NGOs.

under the domestic law of many countries can be lengthy, they are often perceived by the refugee community as inherently unjust, leading to pressure on the victim to use alternative DRS available in the refugee camp instead. As well, the refugee community may have collective interests, privileges or informal agreements with the local population which they wish to protect, such that individual refugees may come under intense pressure not to press charges or use the state legal system in case of a dispute with a local individual, especially if that person is influential or the case raises sensitivities in the local community.

In other cases, fear of reprisals may be related to the leniency or lack of capacity of the host judicial system (for example, the lack of holding cells or prisons for pre-trial detention). Refugees may fear that the accused will simply be released on bail back to the refugee camp with little or no real regard for the rights and safety of the victim and other residents of the camp (e.g. *Sierra Leone*). This is especially true in some types of SGBV cases, such as spousal abuse and certain sexual offences, which may not be regarded very seriously by local (or even camp) authorities. In other cases, strict procedural and evidentiary rules, administrative delays in securing arrest warrants (from central authorities to local authorities, for example), or lack of holding cells near the refugee camp, may mean that perpetrators are released prematurely on purely procedural or practical grounds without any judgement on the merits of the case or due consideration to the safety of the victim or other refugees. Moreover, in *Thailand* various strategies appear to exist which allow perpetrators to escape detention and punishment, and there is a concern on the part of refugees that public prosecutors and the police may not fully represent the victim's rights. This situation means that refugee victims lack confidence in the final outcome of their complaints and formal charges, as well as their security. While refugees may not always understand the procedural details or exact reasons for the release of the accused, a few anecdotal cases may be sufficient to erode trust in the state justice system, and add to the perception that resorting to it may simply place them at increased risk rather than offering them protection. This is especially so when refugees have alternative DRS at their disposal in the camp which are often less adversarial and more accepted by the refugee community (including those accused); thus perhaps exposing the victim to less risks of reprisals.

Uncertainty of outcome and delays

General mistrust in the state justice system and uncertainty as to the effectiveness of this venue or their odds of success, together with its long delays (which in some cases may mean that the case will not be resolved before they leave the refugee camp), often suffice to dissuade refugees from undertaking official legal procedures. This is aggravated by the awareness that some crimes are simply not taken seriously by authorities, and that the judicial system may sometimes be manipulated and/or subject to corruption at different levels and stages of the process. Such manipulation can occur even at the reporting or complaint stage through, for example: the loss of complaints/reports; misreporting by police; placing reports at bottom of piles; or complications related to medical or other examinations (due for instance to lack of female doctors and insufficient financial means to pay for the examination). These disadvantages of the state legal system thus stand in sharp contrast, in the minds of many refugees, to the easy access, rapid resolution and familiarity of refugee DRS functioning in the camp.

Lack of financial means

Cited with respect to camps in *Bangladesh* and *Tanzania* for example, this is an issue in a number of host countries. This lack of financial means refers, not only to refugees' lack of resources to pay for legal counsel and other expenses related to the legal file, but also to the incentives that must be given to the various persons involved in the processing of the case in judiciary systems known for their corruption and slowness.

Difficulty or lack of logistical means

This can include issues of transportation and physical access, often related to the distance of refugee camps from major cities or towns where courts and legal services are located.

The language barrier

This barrier undoubtedly constitutes a serious impediment and disincentive for many refugees to access the host state legal system, and was specifically identified as an obstacle to access to justice in nearly all the thirteen countries analysed in this paper.

Explicit or implicit preference by relevant authorities²⁴ to have disputes between refugees amicably resolved within the refugee community

This may be evident in the host state's general lack of support and political willingness to facilitate access to the state justice system for refugee populations, and at times, even in their refusal to properly file reports or prosecute cases. It can be witnessed in the low level of motivation demonstrated by police and judicial authorities in the performance of their duties, as well as the quality (including accuracy of their reports) and promptness of their services. The lack of political willingness to encourage refugee access to the state legal system, is especially noted when disputes only involve members of the refugee community (i.e. when they do not involve nationals). Moreover, where relevant authorities (including camp commanders, police, district officials etc.) tend to discourage use of the state legal system, there also appears to be a stronger need for bribes, and incentives in order to gain access to it at all – a situation which is made worse by restrictive camp regulations and refugee rights. For example, restrictions on freedom of movement may mean that bribes are required in order to obtain permission to leave the camp.

Fear of discrimination and bias

Concerns about the potential for discrimination and bias within the state legal system are especially acute in cases of dispute between a refugee and a national. However, these concerns also exist generally for refugees in relation to the host state judicial system, particularly where authorities encourage refugees to resolve disputes internally between them, have restricted their rights, and where the refugee population does not share the ethnicity or language of the host population.

The need for bribes, incentives and the fear of corruption

As mentioned above, the fear that relevant authorities may demand large amounts of money simply in order to file, process, expedite the case, or judge it promptly and fairly, even when the case is in the refugee's favour, can act as a disincentive to initiate proceedings within the state system. Refugees may also fear that the party with the most resources will simply buy off his or her case. Coercion is reported as well.

Lack of knowledge regarding the rights of refugees

Relevant state authorities may lack knowledge or familiarity with the specific rights and sources of law relevant to refugees, including refugee and human rights law, minimum standards of treatment for both victims and the accused, and concepts of due process etc. In fact, there is sometimes confusion about whether refugees and foreigners have any rights at all, particularly at the local level, such that even the application of state law in their internal camp affairs is not necessarily seen as mandatory.

²⁴ This can include judicial, local and/or camp authorities, such as camp administrators or commanders, security staff or police, district officials etc.

Lack of legal status of the victim

Refugees lacking the proper legal status required by the host state to live in the camp or who have not fulfilled the requisite administrative or other requirements to live in the camp, may be perceived by relevant authorities as having even less rights (i.e. no rights at all) than other refugees and be denied access to the state judicial system altogether.

2. Other concerns relating to host state justice systems

Many of the obstacles experienced by refugees with regard to the state justice system are, of course, also related to more general concerns about the overall state of the judicial system. For example, nearly all countries surveyed cited lengthy procedures and long delays due to the lack of capacity of the state justice system, as well as a heavy bureaucracy. Highly bureaucratic judicial systems were specifically mentioned in *Cote d'Ivoire* and *Guinea*, for example. As already noted, some host countries such as *Sierra Leone*, have themselves experienced civil strife and now suffer from a severe lack of magistrates, qualified lawyers and legal expertise (especially outside the capital), resulting in very long delays.

Another consequence of a weak judicial capacity is that persons normally not habilitated to address serious cases, such as justices of the peace and others with little formal knowledge of the criminal code, procedures, or international human rights, are sometimes permitted to adjudicate even in criminal cases, especially in rural districts. The state may also have too few resources to put towards the training of its legal professionals, including updating judges and lawyers on new legislation or international legal standards. Similarly, resources may not be sufficient to ensure legal services, dissemination of information and general access to the state judicial system to remote (and also often poorer and less politically strategic) regions of the country – where refugee camps are frequently located.

In some environments, the state legal system is put to the test by difficulties in enforcing judicial decisions. This is particularly true in host countries or regions of the host country which are largely based on tribal affiliations rather than formal rule of law, such as in *Yemen*. Even in murder cases, historical 'acceptance' of certain practices involving revenge killings, tribal retributions, honour killings and other honour crimes and harmful traditional practices, may make it difficult to enforce formal domestic law or impose heavy sentences. Where a particular community tends to condone such practices, the investigation, prosecution and punishment for these crimes tends to be irregular, at best, reflecting social ambivalence on these issues and a reluctance to give up deep seated tribal or cultural traditions and concepts of justice. A refugee guilty of murdering his wife for having brought charges against him for domestic violence or rape for example, may never actually be charged for the crime, or may receive a light sentence. On the other hand, a refugee accused of killing a local in a refugee camp in Yemen, never had his day in court since the family of the deceased shot him dead in the court room, despite evidence that he had acted in self-defence. In environments where formal or 'modern' law enforcement mechanisms do not have a strong presence or much influence, refugees may reasonably conclude that the host state's resources and reach are insufficient to provide adequate protection against reprisals and a viable alternative to traditional DRS.

Other limitations or weaknesses of the state legal system which appear to affect refugees include general corruption within the judicial system, and the mishandling or tampering with reports by authorities, including the police. The latter can involve losing police reports, or modifying facts and statements made by the complainant in order to strengthen, trivialise or dismiss the case. Relevant

authorities also frequently fail to properly follow the procedure established by law, sometimes due to lack of sufficient legal capacity or training.

Other problems include frequent adjournments, often due to the failure of witnesses to show up because of fear of reprisals. Delays in arresting and prosecuting perpetrators is also problematic, and creates security concerns for the victim as well as other camp residents since the accused is often permitted to remain in the camp until an arrest warrant is issued. Long pre-trial detentions due to an overburdened judicial system and a shortage of magistrates, lenient sentences for serious crimes and protracted delays in the execution of judgments are some of the other problems identified. In addition, there may be concerns with regard to substantive legal provisions, such as the definitions of certain crimes, short time frames for filing complaints (even for serious criminal cases such as rape), and the lack of specific provisions regulating or criminalising certain forms of harmful behaviour.

As mentioned above, the fear of discrimination within the state legal system is a significant concern for refugees, especially in cases of disputes involving refugees and a national. For example, in *Guinea* as in many other host states, refugees often perceive nationals as being given an unfair advantage by the SLS. In addition, local authorities may demand large amounts of money from refugees, which if not paid will mean that the national will be given priority or preference. Discrimination can also be further targeted against specific groups of refugees, including women and girl refugees, and refugees whose status has not been duly regularised by the authorities. Discriminatory practices can be both passive and active, and can involve selective or targeted prosecution, as well as selective non-enforcement (and therefore, non-protection) of the law.

The legal system can be used as a tool of persuasion or manipulation of the refugee population, such as through targeted legal punishments of refugees who refuse to cooperate with a repatriation process. Alternatively, relevant state authorities may prefer to come to an out of court settlement or compromise, and put pressure on refugee communities and individuals to this effect. Other issues involve the ill treatment of refugee suspects and prisoners by police and prison management officials, the absence in some countries of the legal option of bail for refugees, and the lack of funds enabling refugee witnesses to attend court.

More broadly speaking, discriminatory attitudes and practices in relation to refugee populations are most often apparent in the double standards tacitly adopted by some host governments, whereby refugee conflicts and legal matters are considered a low priority and as not really being the concern of national authorities.

The use of the state legal system by refugees

There are a number of circumstances where refugees are either *obliged* to pursue cases in the state legal system, or where they are generally *more interested* in this venue than in refugee DRS. These situations include:

- when refugees feel that the penalty will be more (appropriately) stringent (especially in very serious cases, such as murder);
- in cases of theft (especially where the goods are not returned) and arson; and damage to property, fraud, and disturbance of the peace;
- in serious criminal cases in general, especially if they are of a violent nature and have resulted in serious injuries or harm, such as in cases of murder, attempted murder, serious

- physical assault or in order to seek compensation for injuries (through civil rather than criminal procedures);
- in cases where the state prosecutes the case on behalf of the victim;
 - when camp authorities are themselves committed to bring those accused of serious criminal offences to the state legal system;
 - in very serious cases of SGBV, such as: rape or attempted rape, particularly when it involves minors; certain other violent crimes such as domestic violence resulting in serious injuries; and defilement. In certain camps, such as in refugee camps in *Ethiopia*, authorities who come to know of serious SGBV crimes are obliged to refer the case to the police and the courts, such that victims do not technically have a choice regarding prosecution within the state legal system. On the issue of SGBV, it should be noted however, that in many (if not most) instances it is reported that refugees themselves, and particularly survivors and their families, prefer *not* to pursue the case within the state legal system;
 - where the survivor or another person acting on their behalf bring SGBV cases to the state legal system. This is usually done in grave cases such as rape (or attempted rape), trafficking, and sexual assault, and when the case involves a survivor who is a minor. The case is then brought to state legal institutions by the family. Increasingly, very serious cases of SGBV are being brought to the State legal system. This may be due to the introduction of camp regulations, training activities, and above all the focused attention on the issue over the last couple of years. In some camps, this has resulted in a ban on the use of other mechanisms (i.e. refugee DRS) to resolve these cases, as well as pressure on the host government to prosecute them. SGBV programmes, which include legal and other related assistance to survivors, have also contributed to a general improvement in the situation. Nevertheless, as noted above, most countries still report that refugees themselves tend to prefer addressing SGBV cases through other mechanisms in the camp such as traditional courts or mediation mechanisms;
 - some cases of divorce or separation, particularly when they involve the custody of children and/ or the division of property. In *Guinea* for example, refugees appear to feel that in such cases it is more effective to bring the case to the state legal system, particularly when it involves a national (the former spouse is a national);
 - when a crime is perceived to have seriously affected the integrity or honour of the family. The types of crimes likely to be perceived in this fashion can vary but often involve crimes (frequently of a sexual nature) against female members of a family;
 - when the case involves a national of the host country;
 - when there is a need for marriage certificates for resettlement purposes, for example;
 - cases where land and farming is used to sustain either individual refugee families or refugee camp populations, and where refugees may wish to legally secure these rights in some way. This can be done by obtaining a land-holding or ‘usage’ agreement with particular landowners or the government. Alternatively, they may wish to ask the courts to identify the land-holding system which has been in effect for the camp, including any limits on the use and extent of the land, so that the arrangement is formalised and their rights are clarified

(e.g. *Mexico*). Often refugees need the support of UNHCR or other actors to assist them with securing land agreements and resolving other legal land issues. This is especially the case when there is a sensitivity around these issues due to land scarcity or controversial land reforms.

3. Some patterns in the use of the state legal system

In the majority of the camps surveyed therefore, refugees were reportedly *most* interested in pursuing justice through the state legal system in serious cases of violent crimes such as murder, rape (especially involving minors), physical assault causing serious injuries, and in cases of theft (especially when the goods were not subsequently returned).

Refugees are also more likely to pursue such cases in the state legal system, when there does not appear to be a proper redress within refugee DRS in the camp. In fact, in some camps in *Thailand* for example, UNHCR notes that despite their efforts to encourage refugees to bring serious cases to the state legal system, refugees only appear to do so when there is no alternative redress mechanism at the camp level.

Also, some countries report that refugees (including victims, the refugee leadership and communities) appear most committed to pursue prosecution within the state legal system when the perpetrator is a non-refugee, i.e., a national, and when the refugees' basic and fundamental rights have been seriously harmed. One reason for this is the perception on the part of the refugee population that in many cases in the past involving local villagers, local authorities or the military, the victim was seriously disadvantaged if the State judicial system was not invoked. At the same time, there continue to be substantial fears about the risk to victims and witnesses. There is also a demonstrated interest in using the state legal system in cases where there is a possibility of a financial compensation.

On the other hand, as we have seen, there is generally more pressure to settle cases privately or through refugee DRS when the perpetrator is a refugee. This is particularly so among some religious, ethnic or tribal groups. In camps in *Thailand* for example, as in many other countries, rape cases have in the past been settled by marriage between the victim and the perpetrator, and there continues to be considerable pressure in many of the refugee communities surveyed to use this strategy. Refugee communities are reluctant to see perpetrators (who are fellow refugees) at the mercy of the host state's police and legal system, which is deemed unfair for some of the reasons noted above, such as a fear of discrimination, long pre-trial detentions, and the serious impact on the families of the perpetrators, especially their dependants.

Moreover, while refugees may indeed be initially interested in pursuing justice through the state legal system in cases such as rapes, physical assaults and theft, it was noted that often traditional notions of fairness can clash with formal procedures and punishments mandated by law. In such cases, refugees may request that charges be dropped after they themselves have determined that the violator has been sufficiently punished. Of special concern are child rape cases (noted in particular in *Thailand* and *Sierra Leone*), where the desire for prosecution and punishment is eventually sidelined once a financial and cultural resolution among the families involved has been reached. This is usually to the detriment of the survivor's well-being, since the resolution frequently involves forced marriage or the payment of indemnities, not to the survivor, but to his or her family.

In contrast to the above, it is interesting to note that in some refugee communities, such as in refugee camps in *Ethiopia* for example, it is traditional courts and refugee leaders who specifically avoid addressing cases of violent crimes, including SGBV. They may prefer that such cases be brought before the state legal system, at least in part, due to fears that it will engender conflict between contending tribes. Many of these cases, especially those involving SGBV, will be resolved at the family level (or within an intimate circle of people in the community) as neither the victim nor his or her family may wish the case to go public, or to be subjected to further trauma, humiliation or dishonour.

Perhaps not surprisingly, another pattern consistently maintained across most camps surveyed, is an obvious increase in the commitment of national authorities to enforce and prosecute crimes within the state legal system in cases of a dispute or crime perpetrated by a refugee on a national.

Section 3:

Refugee Dispute Resolution Systems (DRS)

1. Key questions

When looking at the different types of refugee DRS currently in place in refugee camps around the world, a number of questions and issues are relevant including, *inter alia*:

Why and how the structures were initially set up and what is their mandate? What types of issues and cases are brought before these structures? Do the DR practices actually emulate traditional practices (from the country of origin) or have they changed in the context of the refugee camp? Did UNHCR, government counterparts or others participate in their initial development? Have they (and if so, how) been involved in these structures since their establishment?

What are their essential characteristics? What is their composition and level of representation, such as of women and minorities? Are the decision-makers elected, appointed or otherwise selected? What are the DRS's procedures, guiding principles and how are decisions reached? Is the structure fair, impartial, and transparent? What type of sanctions and punishments are imposed by these structures? Is there an appeal or review process against their decisions? Is there a reporting or monitoring mechanism in place to keep track of the cases brought before these structures as well as their decisions? Do UNHCR, host governments or others have access to these records or the sessions themselves, or is there any other form of involvement allowing monitoring or influence over the system? If, so, who monitors and how is this involvement of 'outsiders' perceived by the refugee population and leaders of the DRS? If there is no monitoring or involvement in place, what are the reasons for it?

What are the possible advantages of these refugee DRS and what is their general reputation amongst the refugee population? How could they be improved?

What concerns do these refugee DRS raise for refugees in general, the victims, the accused, UNHCR, NGOs, host government authorities, others? And in particular, what are the concerns, merits or practices related to SGBV cases brought before these structures?

Besides the more organised and structured refugee DRS (usually organised as Committees or Council, or courts), **what other informal or *ad hoc* dispute resolution or mediation mechanisms exist in the camp** (e.g. elder's meetings, intra-family negotiation, spiritual leaders, teachers, camp leaders, marriage counsellors, refugee women's groups)?

While it is not possible within the confines of this paper to address all these questions, a brief description of these DRS, including the reasons for their establishment and types of cases and punishments imposed by them will be provided, as well as a brief review of some of the principal findings of this study in relation to their reputation, possible advantages and some of the concerns they pose for various actors (such as victims, government counterparts, UNHCR). Questions related to whether and how they represent women and minorities, their fairness, impartiality and transparency will also be broached, as well as how refugee DRS relate to other justice and dispute resolution systems, including the host state legal system, traditional DRS used by locals, and other

less structured, *ad hoc*, and informal mediation and dispute resolution mechanisms in the camps, such as the intra-family mechanism.

2. Some basic characteristics of refugee Dispute Resolution Systems

As mentioned above, traditional refugee dispute resolution structures or systems generally exist side by side with other systems to maintain law and order in refugee camps, including the host state legal system, camp administrative rules and management systems, religious laws, and *ad hoc* or informal mediation mechanisms based on the family structure (such as intra-family conflict resolution), the council of elders, neighbours, spiritual or other influential leaders within the refugee community. When there is contact with local populations, refugee populations may also be in contact with the traditional customs and dispute resolution structures of the local peoples living close to the refugee camps, and who may have little trust in or limited access to the national justice system.

In most of the countries surveyed, refugee DRS were established at the initiative of the respective refugee communities in the refugee camps. Most often these refugee DRS were set up as a way for refugee groups to retain their culture and traditional values, which they felt were in danger due to displacement (e.g. *Kenya*), and also in order to provide an accessible and culturally appropriate alternative to the host country national justice system, often perceived as too remote and inaccessible, or deficient and disadvantageous for a variety of reasons (too slow, non-compensatory in nature, especially in criminal cases).

At other times, dispute resolution activities and structures simply emerged as a natural extension of refugee leadership structures originally set up in recognition of the need to have a liaison between camp management and the refugee population (such as in *Zambia, Guinea*). In many cases, refugee representational or leadership structures, often referred to as the 'Refugee Committee' and made up of refugee leaders representing the camp population (or segments of the population), were established, most often through elections. Subsequently sub-committees would be set up through nominations, elections, or group representational systems, to address different issues, including justice issues and the settling of disputes between refugees. Refugees who relied on tribal leadership or the counsel of elders, including for dispute resolution, would often simply continue this tradition once in the refugee camp (such as in some camps in *Ethiopia, Guinea, Pakistan, Bangladesh, and Yemen*). In certain cases, as entire villages were displaced, the original village structure, including the DRS and the leadership systems, were simply replicated and continued in the refugee camp.

These various types of refugee DRS are often referred to as a traditional court, elder council, grievance committee, camp tribunal, discipline committee, community mediation services, or in some instances may simply be the tribal leaders. It is important to point out with regard to these titles, that although these refugee DRS are often and commonly referred to as 'traditional' DRS, and indeed many have preserved very traditional characteristics, not *all* these DRS structures or mechanisms are in fact 'traditional' or customary, and indeed some are relatively specific to the context of the camp, having only marginal connection with country of origin practices. As such, the more generic term 'refugee DRS' is used in this paper, instead of 'traditional DRS'.

While it is interesting to note that in some cases UNHCR and/or government camp authorities actively encouraged and were involved in the initial development of the refugee leadership structures, and also therefore the related DRS in the camps (including in the elections), in most

instances they only became involved at a later stage. Indeed in the great majority of cases,²⁵ the refugee DRS were first established at the initiative of the refugee community, with UNHCR and government counterparts becoming involved in the later development of these structures, including by providing guidance and assistance (such as through training for decision-makers), and trying to institute measures to ensure the representativeness of these structures (e.g. of women, and minorities, as well as ensuring that the elections were fair). Their involvement also came to be seen as necessary in light of the numerous and difficult individual cases increasingly being brought to their attention.

3. Links with traditional practices in the home country

It is important to mention that, while it is often the case, refugee DRS do not *always* or necessarily emulate traditional practices in the refugee's country of origin. The structures or institutions for resolving disputes between refugees can sometimes be fairly innovative and adaptive, such as when different ethnic (or nationalities, etc) groups residing in the refugee camp decide to establish and use the same camp DRS, with each contributing different aspects of their own traditions in a spirit of compromise. Refugee DRS can also evolve due to the involvement of UNHCR or government authorities (as seen above), or simply undergo changes due to displacement, and especially the process of transferring and adapting these traditions and mechanisms to the specific needs or context of the refugee camp. For example, the Maslaha Courts²⁶, which tried murder cases but did not have a general practice of trying rape cases in the country of origin, appear to have changed this practice in the context of the Somali refugee camps in *Kenya*, where they have been known to deal with rape cases (despite objections from actors such as UNHCR), while preferring not to address murder cases at all in this new context.

In many countries the involvement of outside actors such as UNHCR and government authorities influenced, and in some cases has led to an attempt at regulating, the traditional refugee DRS set up by the refugee communities. Their influence and capacity to bring about significant changes in relation to the traditional values, mores and codes of behaviour implemented by these mechanisms appears to have been limited to date, even if concerted programmes to undertake this have also been limited and conclusions on their actual effectiveness would be premature. Moreover, many of the more focused initiatives undertaken to date (with regard to refugee DRS), as well as more obvious results from the involvement of outside actors, have been in relation to ensuring a measure of representativeness within these structures (particularly for women and minorities), the fairness of elections or systems of appointment, and attempts to restrict their mandate with regard to problematic issues, such as SGBV, or other serious crimes of concern to the host government. Some of these activities are discussed further below.

In some camps in *Ethiopia* (e.g. Sherkole), in *Guinea*, *Tanzania*, *Cote d'Ivoire*, *Pakistan* and *Bangladesh* for example, despite some involvement by outside actors in relation to elections (of the DRS itself or the related refugee leadership structures which sometime then appoints or in turn elect those who are to sit at the DRS) and other organisational issues, there is an acknowledgement that these traditional systems otherwise generally reflect the traditional practices in their countries and communities of origin.

²⁵ For example in Kenya, Ethiopia (Sherkole), Tanzania, Sierra Leone, Zambia, Thailand, Nepal, Pakistan, Bangladesh, and Yemen.

²⁶ The word "Maslaha" means common interest in Arabic and refers to traditional courts often presided over by the community's elders. The system tends to emphasize the interest of the community over that of individuals.

In *Sierra Leone, Nepal, Thailand*, and some camps in *Kenya* and *Ethiopia* for example, some considerable efforts have been made to work with these refugee DRS on organisational issues, but also in relation to other substantive issues such as their mandate, the codification (i.e. adoption of these rules in writing) of the by-laws binding them, human rights standards and SGBV, and have even extended to monitoring activities, capacity-building, the establishment of referral system, and other areas of cooperation. As examples of such initiatives, one can cite the codification of the refugee camp by-laws together with the refugee population in *Sierra Leone*, the presence and training provided by UNHCR to the Sudanese Bench Courts in *Kenya*, and the various initiatives in *Thailand* and *Nepal*.

In *Thailand*, Karen refugee camps are effectively governed by both traditional types of DRS, as well as a very structured and modernised Karen justice which is effectively controlled by the KNU (i.e. the political/military group engaged in the ethnic conflict in Myanmar),²⁷ and which is in fact an extension of the legal structures already existing in Myanmar which were transferred across the border. A restructuring of the Karenni justice system was undertaken in recent years, which amongst other things, has sought to formalise the legal system and implement the principle of the separation of powers; such that the “Karenni government” is divided into executive, legislative and judiciary bodies which are independent from each other. A fairly elaborate Karenni justice system, based in part on some modern ideas and rules related to armed opposition groups, therefore functions in these camps, side by side with the more traditional DRS which many refugees still trust and prefer to use. It is interesting to note in relation to these justice mechanisms, that the Karenni justice system has requested and received regular training from the Burma Lawyers Council (BLC) for example, which has been involved in recent years in efforts to improve the existing Karenni justice/dispute resolution system by providing training on such topics as human rights, democracy, federalism, rule of law, civil society and due process.²⁸ Under the influence of the ‘Karenni government’, camp justice has thus been restructured by the Karenni justice system, and for the Karennis residing in these camps, the Karenni justice has in practice extended its competence to the camps inside Thailand.

It is also interesting to note that when refugee camps include refugee communities of different nationalities, refugees often organise DRS along national lines, with each nationality having recourse to its own system (at least for certain types of cases). However, depending on the history and profile of the refugee population, tribal, ethnic and religious affiliations can often be as strong or an even more powerful link to the particular DRS adopted by these specific groups, than nationality. In these cases, the parties may prefer to use a religious-based DRS of their faith to resolve a dispute for example, rather than to use even the main DRS in the camp. In fact, these types of affiliations often gain increased importance in the context of a displaced population, whether it be due to the nature of the conflict they are fleeing, the moral compass they offer in times of difficulty, the sense of continuity and familiarity they provide to groups who have identified

²⁷ Both the Karen camps and the Karenni traditional DRS in Thailand, are effectively controlled by the KNPP (i.e. the Karenni National Progressive Party), which is the one and only political party of the Karenni, many leaders of which live in exile both in and outside the camps in Thailand.

²⁸ The BLC is an organisation or council made up of Burmese lawyers and academics which was formed in 1994 and is according to its mission statement, a no-governmental and non-political organisation aiming to contribute to the transformation of Burma into a free, just and peaceful society (from Thailand’s response to questionnaire). Members of the BLC reside outside the refugee camps but the existence of the BLC in Thailand is strictly on an informal basis. Since 2003, the UNHCR FO staff in Thailand responsible for the Karenni camps have (largely because of the individual cases judged by Karenni justice which were increasingly coming to the attention of UNHCR) undertaken direct contact with the Karenni justice (LSOEC) and a network of persons both inside and outside the camps was established mainly through the BLC in order to engage in dialogue and gain a direct and better insight into how their system works as well as their perceptions of UNHCR, and the Thai justice system.

primarily along certain lines in the past, or the actual or perceived personal security they often provide their group members.

4. Types of cases heard by refugee DRS

The mandate of refugee DRS as well as the punishments they administer are two areas in which dialogue and initiatives have been undertaken by outside actors (both government, and others including UNHCR) in a large number of the countries surveyed. This is an ongoing process, which has already yielded some results in certain camps while in others cooperation, trust-building, and access to accurate information on the inner workings of refugee DRS has been extremely slow. In many camps, including some which have participated in ‘reform’ initiatives, there is certainly a measure of suspicion and resistance to outside interference with these structures or with certain fundamental aspects of their organisation and values. As such, even where attempts have been made and agreements reached in principle with leaders of these DRS, it is suspected or in some cases actually known that some unmandated hearings are still heard in secrecy (e.g. the Maslaha courts in *Kenya*). In these cases, the hearings take place without alerting UNHCR or government authorities, and the parties are not properly referred to the correct (i.e. mandated) authorities or legal mechanisms. Some punishments deemed inappropriate are also still being administered by these DRS – almost always with the complicit agreement and support (sometimes through community pressure, and fear of reprisals) of the refugee community who may also prefer to resolve refugee disputes between themselves and thus have a stake in keeping these hearings secret. The risk of driving these refugee DRS further underground is thus very real, and must be carefully considered and minimised in any strategy to attempt to regulate or intervene in these DRS.

This is evidenced in the types of cases which according to the survey, are brought to these refugee DRS, despite the general position held by UNHCR and government authorities in most countries that criminal and SGBV matters should not be dealt with by these structures. While the responses in some countries mention only the types of cases which these DRS are in principle mandated to hear, others went further in their investigations and answers, in an attempt to reflect reality.

For example, in *Kenya*, refugee DRS decide on all types of cases except criminal cases since these are prosecuted by the State. In reality, however, DRS also sometimes preside over cases such as domestic violence and theft, despite being criminal in nature. In *Ethiopia*, practices vary slightly in different camps, although in general, traditional refugee courts hear all types of cases, with only the most serious criminal cases (the majority of which are murders) being taken to the national justice system and courts. Other criminal cases, including violent crimes such as rape and other serious SGBV cases (which are not widely reported, especially among the Sudanese refugees) are mostly handled by the refugee DRS. Exceptions tend to be cases where the survivor is a minor, in which case the crime is reported to the police and brought to the state courts. In cases involving a local individual and a refugee, including in rape cases, the elders of the locality either become involved or both families agree to the resolution of the case through the traditional courts. While many factors can be decisive in the choice of venue, the lesser punishments meted out by traditional courts (or likely to result from a negotiated settlement between the refugee and local leaders) is certainly a factor in many cases – whether this is due to a shared view of the gravity of certain types of crimes and their appropriate punishment (which can differ considerably for example in SGBV cases, to what is provided for in the domestic legal system), or a willingness on the part of the refugee community to compromise on individual cases for the sake of preserving harmony and other interests with the local population.

In *Tanzania*, refugee DRS deal with all types of cases, including criminal, civil, violent, non-violent, as well as cases involving minors and cases of SGBV (including domestic violence). With the exception (in principle) of murder cases and cases involving locals, the same is also true of the elder system in the refugee camps in *Pakistan*, as well as the refugee DRS in *Bangladesh*, *Yemen* and *Thailand* for instance. In the case of the latter, the refugee DRS deal with almost all types of disputes in the camps, conduct investigations, hearings, and pass judgements and sentences. Particularly since 2003 however, UNHCR has sought to change this situation at least in relation to serious crimes which they believe should be dealt with under the Thai justice system.

In *Cote d'Ivoire*, refugee DRS address mostly cases of theft of money, household goods, and community property, as well as cases of domestic violence, insults, attempted rape and breaches of the internal regulations of the refugee centres, such as the non-observance of opening and closing times. In refugee camps in countries such as *Sierra Leone*, *Nepal*, *Guinea* and *Zambia*, the refugee DRS reportedly do not in practice deal with criminal cases or those involving violence and/or have at least agreed in principal to exclude such cases from their mandate. In these countries, refugee DRS resolve petty or minor disputes between refugees, such as cases involving debt repayments, minor thefts, non-violent domestic disputes, as well as other civil cases.

In relation to civil cases, it is worthwhile to mention that this category may and often does include family law issues related to marriage, separation and divorce, including the related aspects of property ownership or division and the custody of children. The importance of these issues should not be underestimated with regard to the administration of justice in camps. Despite the fact that these cases often draw less attention (and less objections that they be dealt with by refugee DRS) since they are not criminal in nature, their outcome is often vital to the well being of the parties involved, as well as representing areas where serious discrimination is often practised in relation to women.

Another aspect of refugee DRS which deserves further investigation is their treatment of minors. Indeed, it would appear that in general all refugee DRS deal with cases involving minors as well as adults, a particularly problematic issue in relation to cases of SGBV (potentially for both the perpetrator and the survivor), cases related to harmful traditional practices such early and forced marriage, and crimes and breaches of social mores or gender roles by girls, for example.

In *Sierra Leone*, the refugee DRS is governed by camp by-laws which were drafted with the participation of the refugees and are in fact largely based on the original guidelines and structures developed by the refugees themselves. These by-laws restrict the mandate of the DRS in the camps to ensure, among other things, that they do not deal with SGBV cases and criminal cases more generally. However, the mandate of these refugee DRS do, at the insistence of the refugee populations, include cases of witchcraft, consensual sexual relationships, and domestic responsibilities, which have in fact been included in the by-laws themselves. The example of the by-laws and the regulated mandate of refugee DRS in Sierra Leone thus illustrates how, in addition to the host state's legal system, refugee populations are governed (by both oral and coded rules of behaviour and traditional values which they are effectively obliged to follow, and for which violations incur punishments. Although these rules may be unwritten in many camps, they exist nonetheless, and are enforced by refugee DRS. It is also worthwhile to mention that in some cases, laws and aspects of the domestic legal system of the country of origin may also still bear some moral or legal weight in the lives of refugee communities, who may also use DRS in the camp to effectively enforce them.

5. Sanctions and enforcement by refugee DRS

Punishments or sanctions by refugee DRS generally tend to involve:

- fines (monetary);
- material or financial restitution or compensation (e.g. giving back of stolen goods, or compensating through giving of livestock, camels etc.);
- community work (e.g. cleaning compounds, as is practised in camps in *Nepal* and *Cote d'Ivoire*);
- other punishments or settlements which compensate the plaintiff, their family or the refugee community in some way, or restore harmony (such as those used by the Maslaha courts in refugee camps in *Kenya* and *Tanzania*).

Asking for pardon from the plaintiff and/or the family, or refugee community, is also widely practised by refugee DRS in many refugee communities. In some DRS such as those in refugee camps in *Guinea* which generally deal with civil and non-violent cases, the resolution of cases most often does not involve a punishment as such, but rather warnings, encouragement to refrain from negative behaviour, and requests to make public apologies before the relevant committee. In certain cases, the guilty party is sometimes also fined (money or in-kind) or asked to make a restitution. In cases of monetary disputes ration cards may be confiscated by the committee and the food given to the victim, or alternatively, the perpetrator may be asked to voluntarily give a number of their rations to a plaintiff who has been robbed. Failing to abide by the decision of the committee can result in a referral to the camp administrator.

Some refugee DRS, such as the Sudanese Bench courts in *Kenya* and some traditional courts in *Ethiopia* (e.g. among refugees at the Fugnido camp), also include punishments such as lashings, being locked up in a cell, and again, confiscation of ration cards in the event the perpetrator has no money to pay the fine. In some camps in Ethiopia, for example, lashing was eventually stopped some years ago due to pressure from UNHCR and government camp authorities, but now appears to be reinstated, due ostensibly to the fact that refugees are getting out of hand and not obeying their leaders. In such situations, camp authorities may also tacitly accept or even encourage such practices for the same reasons, i.e. to more easily maintain law and order in the camps. For this reason, raising the issue with the refugee leadership and camp administration can often be met with denials and protestations. Moreover, victims will often not dare to openly complain about these practices for fear of reprisals.

In *Bangladesh*, the penalties imposed by refugee DRS can be quite different from the typical punishments meted out by state justice systems and can include traditional practices such as: shaving the guilty party's hair; making him kneel down or stand for some time; obligation to clean toilets and bathing places; and undertaking not to repeat the offence in the future. In *Pakistan*, the emphasis is also on a process of negotiation and compensation rather than sanctions *per se*. In *Mexico* some punishments include community expulsion, fines, unremunerated labour and exclusion from aspects of community life, and are remarked as being severe in relation to the offence in some cases. Refugee camps in *Thailand* all impose a similar range of sanctions including verbal warnings, community work, fines or compensation, confiscation of property, detention and expulsion. In some extreme cases, it is also understood that the penalty is execution and although not much seems to be known about this, it appears that in such cases perpetrators are usually taken back to Myanmar for execution by the ethnic military faction.

Of particular note is the sanction chosen by many traditional refugee DRS to rape – a crime which is often defined as ‘adultery’ under these systems – and which entails requiring the survivor to marry the perpetrator.

6. Specific concerns related to DRS

As is illustrated by the example of the sanction for rape (a case which is discussed in further detail in the sections below), the punishments and other remedies administered by refugee DRS present in some cases a number of serious concerns.

One specific concern, as expressed by one UNHCR field office, regards the important gap between punishments that would normally be delivered by the national legal system, as opposed to those administered by the camp bodies. These frustrations are particularly acute in the area of SGBV and the treatment of women under traditional refugee DRS. Adultery, which is considered to be a very serious social problem and punishable crime, is the most frequent example. There are adultery cases for instance, involving simple cases of sexual relations conducted outside marriage that would not be punishable under the host country’s national law, for which women (and not men) have been put in detention for 6 months. At the same time, punishments imposed on rapists by refugee DRS in most circumstances are characteristically negligible or non-existent, even though they would attract much more serious punishments under national law. As mentioned above, a rapist might simply be absolved if he marries the survivor, or if it involves a minor, might be imposed a small fine or a minimal length of detention.

In one refugee camp for example, two cases of men who confessed raping (also referred to as adultery) one physically and one mentally handicapped minor (whom they therefore characterise as consenting) received 6 months detention for this extremely serious crime which would have attracted serious prison terms under national law. In other cases, but within the same refugee communities, rapists have been known to be condemned to execution, which is also not consistent with national law, and has forced UNHCR to intervene. Refugee leaders argue in this case that it is the traditional punishment for rape and that it will serve to deter others. However, as pointed out by UNHCR, this assertion is not matched by the inconsistent approach applied to the issue of rape by the refugee DRS and the ongoing problem of SGBV in the camps.

The above examples serve to demonstrate some of the different issues and problems which are raised with respect to the sanctions imposed by refugee DRS in camps, including:

- The criminalisation and punishment of acts (also referred to as crimes or violations) by refugee DRS that are not recognized by and are therefore not punishable under the laws of the host country. This is often applicable to violations supposedly committed by women and girls, such as transgression of social mores for example, which are not subject to any sanctions under the domestic law of the host country.
- Punishments for serious crimes which are either too light or not administered at all, particularly in comparison to how these crimes are dealt with under the laws of the host country. This is an especially serious problem in relation to SGBV crimes, particularly with respect to: survivor rights; the rate of recidivism associated with sexual crimes, exposing others in the camp to the same risks; and the culture of impunity that prevails in some

refugee camps, where the general conditions²⁹ already tend to dramatically increase the vulnerability of refugees to such crimes.

- Punishments which are excessive and not consistent with the national law of the host country, such as executions, and extra judicial detentions in harsh conditions;
- The lack of infrastructures such as designated detention facilities;
- The lack of a legal mandate (authority) and proper mechanisms to enforce sanctions; this can be seen even with respect to relatively minor punishments, including the payment of fines.

The realities of camp life, the non-state nature of traditional DRS, as well as the lack of resources and infrastructures thus impose certain limits with regard to enforcement and the types of punishments that tend to administered. Partly for this reason, fines are sometimes used instead of detention (given the lack of facilities), while in other situations substitutes must also be found for fines, which tend to include the confiscation of ration cards, in-kind compensation (e.g. cattle) and community work.

The issue of fines and the selling or confiscation of ration cards is a controversial and difficult topic in many refugee camps. One of the obvious difficulties with imposing fines is of course that for the most part, refugees do not have the money required or other sizable assets or revenues. As such, fines are often paid off with other material possessions such as livestock (e.g. camels or cattle), and the selling of *parts* of ration cards. Despite these difficulties in enforcing fines in refugee camps, where refugees typically have little or no money and few other possessions or financial prospects, refugees and decision-makers within refugee DRS refuse to abolish them in most camps in the countries surveyed, viewing them as an old tradition of compensation and the only way in the context of the refugee camp, of achieving some justice for the wrong done. This feeling is especially strong among some refugee populations in relation to cases of adultery or disputes involving different clans (or sub-clans). For example, the refugee populations in some of the camps in *Ethiopia* (e.g. Sherkole) would not consider satisfactory any other form of punishment. As is discussed elsewhere in this paper, the imposition of fines for certain crimes, and particularly serious SGBV crimes such as rape, presents some significant problems, not least of which is the fact that a serious violent public criminal offence which would normally be punishable with a stiff prison sentence is instead allowed to be paid off with often petty fines, which are most often given to the family rather than the survivor.

In general however, and in non-criminal cases, UNHCR has actively sought to promote community service as an alternative to monetary fines and the confiscation of ration cards in some refugee communities with some success, such as among Liberians in *Sierra Leone* for example. These initiatives can be helpful, as can other measures to ensure that the perpetrator's family is not adversely affected by this punishment through ration cards. Amongst other things, it is important to ensure at minimum that each individual in the family receives a ration card, rather than only issuing them to the heads of households.

²⁹ Some conditions include: inadequate law enforcement and policing mechanisms; restrictions on freedom of movement; lack of family or other support networks which traditionally can help protect individuals (and especially women and girls, in traditional societies); cramped living conditions; an increase in dysfunctional behaviour exacerbated by the stresses of camp life and displacement; and a culture of impunity or/ and oppression and fear in some camps, including by refugee/camp leaders, gangs or other groups.

7. Composition, procedures and other important factors affecting refugee DRS

In the 13 countries surveyed, a major concern in relation to refugee DRS is their level of representativeness, particularly in relation to the representation of women and to some extent, also minorities (e.g. tribal, ethnic, religious, or clan-based) living in the same camps. In refugee camps that house refugee groups of different nationalities, religious affiliation or ethnic backgrounds, different DRS are often established for each group. Alternatively, efforts and specific arrangements generally tend to be made (on the part of the refugee population, the refugee leadership or other actors such as UNHCR) in order to accommodate the different refugee groups in a single or central DRS within the camp, including through allocating a certain amount of seats (i.e. decision-making positions) to particular groups.

On the other hand, the lack of representation and influence of women in refugee DRS is an endemic problem across all refugee cultures in all the host countries surveyed. Beyond the issue of their actual numbers within these structures, which are indeed extremely minimal in the vast majority of cases, there are other factors which appear as important to consider. Chief among these is the lack of any real influence or decision-making power of the women serving within these DRS systems.

(i) Representation of women on refugee DRS

The majority of the refugee camps across the thirteen host countries surveyed, had refugee DRS with little (token) or no female representation at all. Chronic under-representation of women and their lack of influence, authority and decision-making power were noted as an on-going and pervasive problem.

In the refugee camps surveyed in *Kenya*, the Maslaha courts, which are clan-based are reported to be composed mostly of male elders, while the Sudanese Bench courts have a small percentage of women but are also essentially made up of (male) elders within the community. The camps surveyed in *Ethiopia* follow a similar pattern, in that the refugee DRS are also clan-based, and while the court in one camp has one woman representative from the Women's Association from amongst a total of five members, the other camp has no female representation at all in its central and zonal courts, which are composed of male leaders and elders, who also represent the major tribes and to some extent some of the minority groups. *Tanzania* as well cites minimum female representation as a concern in the camp local tribunal, which is made up of ten members and includes representation by minority tribes. In the refugee camps surveyed in *Pakistan*, each block of the camp selects its own elder to sit in the DRS, but all elders are men so that there are no refugee women selected. There is a complete lack of women representatives therefore, as well as a tradition in which women generally do not make any decisions for themselves, their families or their communities, so that based on this alone, the UNHCR office there believes that refugee DRS cannot be said to be fair to women, or indeed, impartial or representative.

In *Thailand*, the refugee DRS in the different camps, which are composed of camp committees are generally made up of men, and women are described as “not included in making important decisions.” In the camps covered by one of the field offices (FO Mae Sot) for example, the Karen Women's Organization is often among the group of people deciding cases (together with members of the camp committee, the KnRC, KNU, section leaders, and religious leaders). However, according to the FO “in cases of SGBV the Karen Women's Organization often complains about decisions by the male camp committees, which are often also not accepted by the victims, who feel that justice has not been served.” It cites the uneven representation of women as one of the factors making it a non-impartial system, since representation of women on the camp committees tends to

range from 10-40 %. As well, even though the power they wield tends to vary in the three camps in that area, it is “in no case [...] equal to that of the men on the committees”. Perhaps also telling is that while representatives of the women’s organisations (e.g. the Karen Women’s Organisation) have commented on this situation to UNHCR, they have also requested the organisation not to take further action “for fear of repercussions from the camp committees.”

The treatment by refugee DRS of crimes against women (i.e. their decisions), especially SGBV crimes, appears in fact to be an important problem across all the DRS in the camps in Thailand, and indeed, it would appear in most (if not all) of the camps in the host countries surveyed. As described by one of the field offices in Thailand “[d]ecisions relating to crimes against women, particularly SGBV, are made by male-dominated committees that pay scant attention to the rights of women and the seriousness of sexual violence against them. The decisions are often not based on written laws or a criminal code.” The situation with regard to female representation appears a bit better in the two Karenni camps, where the Karenni justice decided to nominate one woman judge for each level of the judiciary (although no details are provided on the total number of judges per level), and while very few in numbers, some women also serve as security officers.³⁰

In the camps in *Sierra Leone*, *Cote d’Ivoire*, *Nepal*, and *Bangladesh*, quotas (either in the form of specific numbers or percentages) are provided for female representation on refugee DRS. In *Cote d’Ivoire* the executive and discipline committee consists in a total of eight persons of which three are women. In *Nepal* the Community Mediation Services (CMS), of which there is one in each refugee camp, are composed of five members and at least two must be women. In *Bangladesh*, the Arbitration Committee consists of one religious leader, “majhee”, teacher, elder, and one woman (i.e. one out of a total of five members). By contrast, the Grievance Committees established in refugee camps in *Sierra Leone*, who’s members are appointed by refugee executives (who in turn are elected annually), are composed of two male and two female members, thereby boasting in theory and numbers at least the most egalitarian female representation amongst all the refugee DRS reviewed, although their level of gender awareness and influence within the Committees is not known. Another structure, namely the Council of Elders, which was established as an appeals body, and is comprised of at least one member of each tribe resident in the camp, allows each tribe to select its representatives in accordance with customary practice. Although these councils are in principle mandated to include an equitable number of women and other ‘vulnerable’ groups in its ranks, given that each tribe selects its own representative without gender specifications, it would be interesting to follow in the future whether tribal elders and representatives have included any women. Indeed, amongst the refugee groups surveyed in this study, the refugee DRS based on the elder system have almost invariably been male dominated, since elders have traditionally been male.

While responses relating to refugee camps in *Guinea*, *Zambia*, *Yemen* and *Mexico* refer to some female representation in the refugee DRS (and in some cases related refugee leadership or camp management structures), unfortunately no specific mention is made on the percentage of female members or their influence.

(ii) Representation of minorities (and different tribes or clans) and other aspects of refugee DRS (appeals, guiding principles and procedures)

In addition to the composition and representation of women on refugee DRS, other factors were also included in this survey in order to assess the general fairness of these structures. Respondents

³⁰ Unlike men however, the title for women is that of ‘security staff’ and they are limited to participation in the investigation of crimes only.

were therefore asked to comment on the general procedures, method for reaching decisions, guiding principles, appeal or review procedures, and their assessment of the DRS's level of impartiality, transparency and fairness. While it is not possible to provide a description of the practices in all the countries surveyed in this paper, those described below provide some insight into the nature of some of these mechanisms.

In *Kenya*, the Maslaha and Sudanese courts, which are clan-based and consist of elders, are considered by respondents as generally unfair and lacking in impartiality as they are based on the influence of clans. Moreover, although (unlike the Maslaha courts) the Sudanese courts have actually been influenced to some extent by the presence and intervention of UNHCR and its implementing partners, the Sudanese DRS is still based on traditional values that are often incompatible with recognized human rights standards. In both traditional justice systems, this gap is described as particularly visible in the adjudication of cases involving women. Also, even though in both cases refugees who are unsatisfied with a decision may complain to UNHCR or to authorities (and report directly to the police), there can be strong social pressure to accept the verdict of the elders and refrain from involving outsiders. Unlike the Maslaha courts, the Sudanese Bench courts do have their own appeal procedure.

With regard to procedures and guiding principles in decision-making, it appears that in both traditional systems, the elders convene a council or formal sitting (following a complaint) at which both the complainant and the accused are summoned to present their case and defend themselves, and to bring forth witnesses where relevant. In the Maslaha courts, decisions generally appear to be based on precedents, even though no formal records are maintained. Decisions by the Sudanese courts are described as being based on evidence, past history, and the rules and customs of the community – which may change depending on the specific ethnic group involved in the dispute. The whole community is summoned once a decision has been reached and the judgement is delivered in public, as well as the punishment if it includes lashings. A practice also noted as unfair in the Maslaha courts is the Somali custom whereby the family as a whole is held responsible to pay fines (in case a family member is found guilty). The result can be that the accused does not necessarily feel the weight of his crime, while his family may be unjustly punished.

In the camps surveyed in *Ethiopia*, the refugee DRS are either clan-based with equal representation for the different communities, or composed of leaders and elders who represent the major tribes (and to some extent also minority groups or tribes). As in the camps in Kenya, the proceedings for both these DRS are public (with few exceptions, and are therefore generally considered transparent), held in the presence of the plaintiff and the accused, and the decisions are based on the evidence, as well as the customs and cultural values of the community. Despite some of these similarities, the quality of the justice rendered by these DRS can vary significantly from camp to camp however. In one camp, for example, cases in which there are no witnesses are either transferred to the state justice system, or force is used to extract a confession. Moreover, the fairness and impartiality of decisions in this camp also vary from case to case, since nepotism and bribery have been evidenced in the system, and perpetrators are sometimes punished irrespective of the existence of extenuating circumstances, based on “an eye for an eye”. By contrast, the refugee DRS in another camp is generally characterised as dynamic, and to a great extent, considered as fair, impartial and transparent in the eyes of the refugee population. Neither refugee DRS includes an appeal process but the aggrieved party can approach UNHCR, the camp authorities, or the Central Committee of the Refugee Representatives. In meritorious cases where UNHCR is asked to intervene by one of the parties, they may discuss the case with the judges and make recommendations.

In *Thailand*, the refugee DRS in the camps under FO Kanchanaburi and FO Mae Sot appear to function on a rather loose organisational structure and are based largely on the leaders' and community's general understanding of things, tradition or customs, and what is perceived as common sense within that context. In camps under FO Kanchanaburi for instance, the camp committee would typically conduct an investigation, call the parties and witnesses together, and after hearing and verifying the information, pass a judgement. The members of the committee do not have legal training, and admit themselves their lack of qualifications or experience but feel obliged to maintain the structure. In general, the refugee DRS do not meet international standards or due process requirements prescribed by the judicial system of the host country, and there are no real checks and balances, or formal system of precedents. UNHCR FO Kanchanaburi believes that "although cases are dealt with in good faith based on the information received from parties and witnesses, the system is open to abuse and political influence." Particular mention is also made of the problems related to crimes against women which are judged by male-dominated committees, and the fact that very often decisions are not based on written laws or a criminal code. Moreover, despite the comparatively sophisticated judicial system in the Karenni camps³¹, it is also described as being open to abuse, and indeed in a number of cases the system has been demonstrably influenced by political factors.³² Also interesting is the fact that even though the Karenni camps have their own highly structured judicial and court system (including 2 township judiciaries in each of the camps), one out of three civil cases is still resolved through extra-judicial or judicial *arbitration* of disputes.

In *Tanzania*, decisions by refugee DRS are largely based on unwritten guiding principles derived from the customs and taboos of different tribes. The traditional tribunal, which includes representation of tribes, including minority tribes (although no statement is made regarding the equity of this tribal representation), hears arguments from both sides and then reaches a decision by consensus. Unsatisfied parties can appeal to a higher body for review of the lower body's decision (a case heard by village leaders can be appealed to a Zone leader, and eventually also the camp's local tribunal), as well as to UNHCR (which has a specific days in which to attend to problem cases), the MHA (government camp management), or the police. While the UNHCR office there feels that the structure is relatively impartial and transparent since the community is involved in the selection of the Tribunal members and the hearings are conducted in public, they reiterate that there is minimum gender representation. Moreover, as with most of the DRS in the other refugee camps surveyed in this study, the basic fairness of these structures is questioned not only because women are minimally or not represented at all, but also due to the fact that many of the tribal (or traditional) customs applied to decisions are also most likely to represent unequal gender (power) relations and 'rights', thus necessarily resulting in unfair decisions in cases involving women or girls.

In *Pakistan*, the essential fairness and impartiality of the refugee DRS, which consist only of male elders (selected from each camp block) is challenged on the same grounds. As described by the UNHCR office there, the lack of information in general on the DRS makes it difficult to judge exactly the fairness and impartiality of the mechanisms, except to say that given the lack of representation and decision-making power of women, one can argue that the structure is not fair to

³¹ The KnRC, which is attached to the Karenni executive power, is responsible for the administration of the two Karenni camps on the Thai-Myanmar border. Under KnRC supervision, each camp elects a camp committee, which among other tasks, organises security officers with similar functions to a national police force who enforce camp rules and ensure peace and social order in the camps, as well as reporting administrative, civil and criminal cases to the respective township judiciary in their camp.

³² For example, according to that field office (FO Mae Hong Son), in one case of murder of a refugee which involved a KNPP perpetrator, there was no prosecution under the camp 'judicial' or DRS and witnesses were subjected to threats and intimidation.

women. These DRS are also characterised by their non-adversarial nature – a method of reaching decisions which is not by consensus or majority vote but through negotiation and compensation – an aspect which as we will see below, also tends to do injustice to women. Generally, elders are described as reluctant to disclose information on their decisions and guiding principles to outsiders, including UNHCR and other agencies in the camp. It does not appear that there is a review or appeal process, and very few decisions would appear to be challenged by the community.

In *Bangladesh*, the camp is also divided into blocks, with each block selecting the members of their arbitration committee, consisting of four men and one woman. In this system, when a conflict arises, refugees are to report it to the “Majhee” of the block, who informs the arbitration committee, who in turn calls on the parties to the conflict and after listening to the parties, makes a decision based on a majority. The “Majhee” also acts as a focal point in reporting verdicts to UNHCR and the CIC (the government counterparts). This arbitration committee model is interesting as it evolved out of a previous system, which UNHCR found was unfair and problematic (including due to the corruption of its practices by the “Majhees”), and which, together with the refugee population, it sought to reform. During this process, UNHCR worked in close collaboration with refugees in reforming the system, including its procedures, rules, and permissible sanctions. Based on this consultation process between refugees, UNHCR, NGOs and Camp management (CIC), a new DRS was established in the form of an arbitration committee. The committee is described as representative since it is elected by the refugee population and transparent to the extent that its cases and decisions are heard and declared in public. In the event the parties are unsatisfied with a decision, they may go to UNHCR and seek formal legal assistance, and some even manage to secure their own private lawyer. As well, there are attempts at establishing a protection committee to which the parties could appeal and which would consist of a UNHCR Protection officer, Camp management, NGOs and the relevant government agency (the MOH).

In *Yemen*, the Sheikh of the relevant tribe usually plays a central role in resolving disputes. However, when he does not succeed, the case is brought to the attention of the refugee committee, which consists of elders (male) and women, and only if the committee then fails to resolve the case as well, does it go to UNHCR. In some cases, and especially cases involving violence, the security staff in the camp also have responsibility for conducting the investigation, detaining the accused and taking the necessary legal action in close consultation with UNHCR.

In the case of many of the camps in *Mexico*, the refugee population’s participation in dispute resolution goes beyond individual cases of disputes in the camp, and addresses questions relating to their very future, including that of their country of origin. As such, it is the broader political achievements of the refugee camp structures which are particularly noteworthy, including the refugee representative bodies (e.g. the refugees in the camp appoint representatives for different activities). Examples include the refugee participation in the permanent commission which dealt with the peace initiatives of the Guatemala Government, organised the return of 28,000 refugees and secured 100,000 hectares of land) and the activities of the (refugee) women’s organisations (such as the Mama Maquin which came to represent women from different ethnic groups such as the Kanjobal, Mam, and Chuj). With regard to DRS systems dealing with individual cases in the camp, it was noted that while the members are elected by popular vote, it is difficult to assess their level of impartiality, and when a sanction is imposed, women in general have suffered more than men.

In *Sierra Leone*, *Zambia*, and *Cote d’Ivoire*, the UNHCR offices expressed a fair amount of satisfaction with regard to the transparency and representativeness of the refugee DRS in the camps surveyed. In *Sierra Leone* for example, the grievance committee hearings are held in public at

regular times and locations determined by the refugees, and stationary has been supplied to enable them to record all disputes, their findings and to account for the fines collected (which, according to the by-laws are to benefit the community on specific projects). Each tribe is free to select representatives according with their customary practice, and Councils of elders containing at least one member of each tribe have been established as appeal bodies, while final appeal rests with the UNHCR protection unit. The UNHCR office in *Zambia* as well expresses satisfaction with regard to the representation of minority and ethnic groups, and comments how the recommendations by specific UNHCR and NGO staff doing protection and community services work are highly respected by the DRS leaders. In *Cote d'Ivoire*, while few decisions by the DRS are apparently contested (except in very serious cases), unsatisfied parties can lodge their complaints regarding a decision with the refugee executive committee, the Centre's administration (which can be Caritas, UNHCR or the government counterparts depending on the topic) or the NGO in charge of SGBV issues.

In the camps surveyed in *Guinea*, it is especially interesting to note that: the grievance committee (which comes under the central committee) members include men, women, elders, and young people (though no percentage of representation was provided); that they also represent different ethnic groups; and that they generally have a background dealing with dispute resolution. This includes refugees who previously worked as judges, or lawyers in Liberia or Sierra Leone, or refugees (elders, mostly) who have experience in traditional tribal laws and worked as tribal judges. While elders in many camps around the world may have previous experience in implementing traditional justice, the availability of refugees knowledgeable and experienced in the formal judicial or legal sector is rare and makes Guinea notable in this case. A refugee can lodge a complaint directly with the grievance committee, and after the hearing, if not satisfied with its decision, he/she can lodge an appeal with the central committee or other DRS in the camps. As well, the parties are free to go to UNHCR or the camp administrators at any time, including for legal assistance and clarification of their case. In the view of the UNHCR office in Guinea, while efforts have been made to render the DRS impartial, transparent and representative, complete fairness cannot be guaranteed due to the fact that traditional, cultural and religious norms guiding the society are taken into consideration.

8. How refugees view DRS

In the vast majority (if not all) of refugee camps surveyed in this study, there appeared to be a clear general preference on the part of refugee populations to have recourse to the refugee DRS rather than the host country judicial system. While this preference does not by any means reflect an unqualified support for or satisfaction with these DRS by refugees, it is an indication of the significant and valuable (and in some cases, indispensable) role played by these mechanisms in the context of refugee camps. To some extent, the value and extent to which refugee DRS are used by refugee populations is related to the fact that it functions as an alternative to a host state legal system, which is often difficult (or comparatively difficult) to access and in which there is a little confidence. Indeed, in some cases, the obstacles to accessing and using the state legal system are so significant (such as for those living in remote refugee camps) that the absence of any refugee DRS might effectively result in a 'judicial' void, and increasingly dangerous security situation, particularly since most camp management and policing structures are ill equipped to deal with many of the problems arising in refugee camps, often among groups of persons with a language and traditions different from their own.

However, there are also other reasons motivating refugee populations to establish and use these systems. Victims, perpetrators, their families and refugee communities as a whole each have their own reasons for resorting to or promoting these mechanisms over the state legal system. These DRS also have some value for host governments, and other actors working with refugees. This section is an attempt to flesh out some of the more valued aspects of these mechanisms, and the various reasons why different actors might prefer them to other alternatives. As well, the section also reviews the aspects of these DRS which are of particular concern to different actors, including refugees, women, host governments, and the international community.³³

The findings in camps in *Kenya* with regard to these questions are fairly representative of the majority of the other camps surveyed. Most refugees in camps in *Kenya* appear to report to refugee DRS rather than the host country judicial system because they are more familiar with the way it works, have easier and quicker access to it, as well as more confidence in the system, and because of its compensatory nature. In some instances, social and family pressure also plays a part. In *Kakuma* however, it is reported that women who are affected by harmful traditional practices increasingly view the imposition of traditional values as repressive and often turn to UNHCR and implementing partners for alternative interventions. Indeed, it would appear that even to refugees themselves, some of the decisions by the DRS may be perceived as unfair and outdated, and some of the more traditional notions are even repugnant to more progressive elements of the population, in addition to being at odds with human rights standards. Moreover, as mentioned above, power dynamics within the refugee population such as those relating to clan and family influence are also noted. For victims, the expediency of the system and rendering of decisions, and its straightforward and simple procedures are important attributes in favour of DRS. In theory, so is the compensatory nature of these systems, although this feature of the DRS presents some difficulties as well since it is often the clan (or family) rather than the victim who is compensated. This is particularly true in certain SGBV cases, where the issue at stake is not the harm suffered by the victim but the stain on the honour of the clan or family, so that the outcome tends to address (and compensate) the clan or family with no regard for the victim herself – who may be forced to marry her rapist, or whose needs may simply be disregarded in the proceedings.

From the perspective of the Kenyan UNHCR branch office itself, there is the sense that DRS should be supported if in line with international and national laws and principles, while also noting that they are sometimes unfair, there is too little documentation on practices and decisions, that the victim is at the mercy of the clan, and that the issue of representation in the refugee DRS remains a challenge, as traditionally most are male dominated. NGO concerns are reportedly similar to those expressed by UNHCR. As for government reactions to refugee DRS in camps in *Kenya*, they reflect a rather ambivalent situation, common to that of many other host country governments. On the one hand the official position or response by the government is that these structures are essentially unlawful (and those participating may in principle be charged with averting the course of justice)

³³ While this study does principally rely on UNHCR responses, it should be mentioned that many UNHCR offices participating in this survey, went to considerable lengths to consult with and ensure that their responses were indeed representative of the views of various actors. Hence, their responses and the findings in this section may be based on a variety of sources and research methods including: admissions of or views expressed by community leaders (e.g. such as in camps in *Kenya*); study and observation; discussions with different sections of the refugee community (such as in camps in *Ethiopia*); and the specialised knowledge accumulated by particular UNHCR offices or specific staff who have been closely involved in the analysis, monitoring, training or reform of these refugee DRS (such as in *Thailand* and *Sierra Leone* for example). Other responses however, are based on relatively little hard information, in part due to the culture of secrecy of some of these systems and leaders, the lack of documentation, and the fact that in some host countries there is simply not enough staff to address this issue in detail. Nonetheless, the findings reveal a certain consistency of information and patterns which, in some cases appear to apply across cultures and very different refugee communities.

and effectively create parallel courts, which is contrary to domestic law, while at the local (or field) and practical (enforcement) level, there is often a hands-off approach in the name of cultural sensitivity, and perhaps also a desire not to antagonise the refugee community.

In camps in *Ethiopia*, the expediency, familiarity, and cultural values of DRS, as well as the absence of language barriers, are also cited as important and positive aspects of these systems for individual victims, refugee communities, and even the accused. In addition, mistrust in the judicial system of the host country, which is at least partly based on their feelings of vulnerability as foreigners and refugees, also makes DRS the preferred option. In some cases, it is also the very method of conflict resolution used by these traditional DRS which is more familiar and considered more appropriate by refugees. Indeed, some refugee populations may feel more comfortable with less adversarial, individualistic and legalistic methods, such as mediation, negotiation, arbitration, and consensus or majority voting on decisions – which involve relevant members of the community, the parties to the dispute, their families, clan or other groupings. In both Fugnido and Sherkole camps studied by UNHCR Ethiopia, the camp populations are reportedly generally satisfied with the DRS, although there appears to be more mixed views among the population in the Sherkole camp which sometimes accuses the system of partiality and nepotism – an accusation which does not always appear to be without merit.

The government for its part, also appears in practice to be generally content with the refugee DRS as it is more cost effective, alleviates the responsibility of its already overburdened Municipal and National Courts, and avoids conflicts between the relevant government authorities and refugee populations. For UNHCR, while the DRS is indeed less expensive and more practical (since there is no need for transportation, interpretation services and costs, defence counsel etc), as well as close to the traditional and cultural norms of the refugee population, there are some serious concerns, particularly since the ‘satisfaction’ on the part of the refugees may be partly due to the fact that they do not in effect have an alternative option for justice. Even if the Ethiopian system is willing to accommodate them, the difficulties in choosing that option are too great, and include language, lack of freedom of movement and financial resources. As such, the best strategy, at least in the short term, might be to improve the refugee DRS and its observance of human rights through measures such as providing training to the decision-makers (traditional ‘judges’), and putting in place directives to guide proceedings, regularise punishments and establish an appeal system. In addition, the mandate of these refugee DRS should be limited to civil cases, while violent cases and SGBV cases in particular, should be tried by the national courts of the host country – a suggestion which has been echoed in most other host countries surveyed, and has in fact been undertaken in a number of camps (such as in Sierra Leone) where these mechanisms are already regulated.

In addition to some similar points as above, UNHCR *Guinea* also presented other interesting perspectives on the issue. For example, it was noted that refugee views on the resolution of conflicts in refugee camps is often tied to their views on the administration of justice and the best venue to obtain legal redress or justice in their country of origin prior to flight. As well, respect of refugee DRS by UNHCR and other actors ensures that they have a forum for targeted messages (and even training) in relation to human rights standards, SGBV and FGM specifically. This aspect is also important in relation to information gathering on crimes and other legal problems, and the possibility in turn of using this information to improve protection and crime prevention strategies in the camp, as well as using DRS as an entry point for promoting these activities. Moreover, in the specific case of refugee populations in Guinea, because they are from the same ethnic groups that straddle the borders, the refugee DRS found in the camps are similar to those found within the host community, which means that these refugee DRS are generally accepted, well understood and supported by authorities – who in turn also use these similarities to sensitise refugees to the

specificities of Guinean traditions and laws as well. Indeed, such ethnic ties between refugee and local populations in the host country, and similarities in traditions and dispute resolution structures are not uncommon in some regions, particularly where borders are porous and ethnic or tribal affiliations are strong.

For example, in *Pakistan*, one of the positive aspects of the refugee DRS for government counterparts is that the local community (in Baluchistan) uses similar dispute reconciliation procedures, and the negotiation and compensation process is accepted to some extent in the national judicial system as well. As discussed in more detail below however, refugees and especially victims also express concerns regarding the DRS 's inability or unwillingness to properly redress the wrongs committed through imprisonment, physical punishment, or other sanctions commensurate with the violation committed.

Tanzania reiterates some of the same advantages of refugee DRS as Guinea, citing in particular the fact that these structures help preserve the refugee population's sense of identity, and are important in empowering the community to address their own issues, thereby promoting a sense of ownership. For other actors, such as UNHCR, NGOs and Government counterparts, the community empowerment aspect as well as the cost effectiveness of refugee DRS are also positive attributes of these structures. In *Sierra Leone*, it is the Grievance Committee's focus and success in achieving consensus and reconciliation among disputants (rather than focusing on meting out punishment) that is highlighted. All the Committees (including different DRS structures) in fact have been instrumental in maintaining harmony in the camps and have emerged as well as a forum for social learning, particularly in cases involving youth and disputes among refugees of different traditionally-hostile ethnicities. This underlines how refugee leadership and DRS committees mandated to address specific cases, can also have an important function in broader community dispute resolution and negotiation, particularly when individual cases or other problems threaten to endanger clan, tribal or ethnic relations among the refugee population, relations with locals, or even with other actors such as the host government.

With regard to refugee camps in *Cote d'Ivoire*, it is the discipline committee's prevention role, and its participation in the 're-socialisation' or rehabilitation of the perpetrator through the type of sanctions that are imposed that is highlighted. For UNHCR, its implementing partners and government counterparts, refugee DRS are also an effective way of preserving peace and discipline among the refugee population with minimal interventions. However, UNHCR reports that some refugees fear a certain bias, which may indeed be a legitimate concern, given not only previous disagreements of some refugee with members of the Committee, but also the considerable influence of certain members of the Committee. Moreover, for victims in particular, the emphasis on resolving conflict through mutual agreement or out-of-court settlements ("règlement à l'amiable", rather than adversarial legal means), can sometimes result in feeling that the perpetrator did not receive an appropriate sanction. Perpetrators on the other hand, sometimes feel that the sanction is excessive; for UNHCR and its partners, some sanctions are indeed considered unacceptable, such as punishments involving physical punishments.³⁴ UNHCR *Zambia* for its part explains that their primary concern with these structures is that they are not always in line with modern practices and ideas including UNHCR guidelines with regard to the protection of women, minors, and other groups.

³⁴ More specifically, the UNHCR office in Cote d'Ivoire mentioned as unacceptable both "contraints par le corps" and "garde à vue".

In *Nepal*, refugees are also reportedly most comfortable settling disputes within the refugee community rather than the State legal system and generally respect the elders or decision-makers. The practical and convenient nature of these structures, especially in the case of minor disputes, is appreciated. Another aspect of the system which can also be positive is the fact that the community has insight into the conflict and knows the persons involved, thereby better enabling them to reach a solution to the benefit of both parties. In addition, the UNHCR notes that with a population of 103,650 individuals, it is not possible for all minor disputes to go through the formal mechanisms. In *Bangladesh*, an aspect of refugee DRS which is considered positive by refugees is the fact that resolving conflicts through these mechanisms in camps, helps them avoid unnecessary cases of arrest, and thereby languish in jail while going through a lengthy legal procedure in Bangladesh.

As for refugee camps in *Thailand*, the refugee population as a whole would appear to be *generally* satisfied with the existing refugee DR structures, particularly as compared to the host state legal system, according to the UNHCR field offices there. The absence of language barriers, any complicated procedures, or distances to travel, as well as the systems' ability for speedy decisions are all mentioned. In addition to these, victims also value their easy access and the security they feel is provided by the camp committees, while for the accused, these internal camp mechanisms represent better chances to negotiate or settle the case with the victim, or minimal punishments since the DRS in camps do not generally have prison facilities or many resources. Moreover, even if they are detained, families and relatives can visit them more often if they are detained in the camp. UNHCR offices in Thailand also point out how these refugee DRS can also sometimes provide a quick response to cases that cannot be dealt with effectively by the Thai authorities (such as petty theft, and minor domestic disputes), and serve as an important internal deterrent. The host government for its part does not have to stretch resources and manpower to serve refugee camps situated mostly in inaccessible areas with poor road conditions. However, UNHCR offices in Thailand stress as well that an increasing number of refugees in several camps are expressing the feeling that there are gaps in the existing structures and are having more doubts regarding the fairness of these traditional mechanisms. In two of the camps for example, it was suggested that this feeling was perhaps due to increased exposure to the Thai justice system. In the case of the Karenni camps, which have recently seen a restructuring (in 2002) of the Karenni justice system, residents appear on the one hand to still be wary of a relatively unfamiliar 'formal' legal system (i.e., the Karenni legal system), while also having mixed feelings regarding traditional DRS; they appear to be increasingly doubtful as to the fairness of the traditional DRS, and yet are still attached to the sense of familiarity it provides³⁵ – a trait of traditional systems of justice which is also still valued, together with accessibility, by refugees in other camps as well.

In addition to the particularities and specific aspects highlighted with respect to certain camps above, for the vast majority of the refugee populations covered through this study, the most commonly valued characteristics of refugee DRS (by refugee communities in general, rather than individuals) are thus reported to include:

- The expediency of the process, the speedy resolution of cases (and rendering of decisions), and their cost effectiveness;
- The easy and quick access to these mechanisms;
- The straightforward and simple procedures, as well as the absence of language barriers;
- Their familiarity for refugee populations; (mentioned also in the case of *Yemen* and *Mexico*, which were not detailed above);

³⁵ This was the general evaluation of the situation in the Karenni camps covered by UNHCR Field Office Mae Hong Son.

- Greater confidence in these systems than in the host state judicial system;
- The fact that they recognise and respect the refugee population's traditions and culture, which is important for the preservation of their identity and value system during their time in exile (highlighted in particular in the case of *Guinea, Zambia, Cote d'Ivoire, Tanzania* and *Ethiopia* for example);
- Since these mechanisms are close to or based on the refugee's traditions, they generally command the respect of the refugee community, as do in many cases, the individuals members of the DRS such as elders and refugee leaders composing the relevant councils and committees (e.g. mentioned in *Bangladesh, Pakistan, Yemen* and *Mexico*);
- As a result of this respect for these DRS structures and their members, the parties to individual cases are more willing to comply with its decisions even if they are not always what they would have hoped for;
- The respect the refugee populations have for the members of the DRS (such as the council of elders or representatives);
- The decisions made are generally accepted by perpetrators as they are aware of the need for them to comply if they wish to remain within their communities and be accepted by them when they eventually return to their country of origin;
- The compensatory nature of many of these refugee DRS;
- The promotion and focus on maintaining social harmony within the refugee community, including between different groups;
- The role of these mechanisms in promoting law and order in the camps, including by empowering refugees to take ownership of their problems and deal with disputes in a structured and accepted manner (especially if the cases outside their authority have been clearly defined).

9. Constraints of refugee DRS

Further to the concerns expressed above, some other problems associated with refugee DRS in the selected host countries have also been noted. In camps in *Nepal* for example, settling disputes within the CMC (Camp Management Committee) raises a number of concerns for the UNHCR office. For instance, while a logbook of cases is kept indicating the types of issues involved and the results, the grounds for decisions are not provided. As well, although the terms of reference (TOR) for the CMC explicitly state that the structure and the chairperson should maintain confidentiality, the crowded nature of the camps makes this difficult. Furthermore, despite being explicitly stated in the TOR for the CMC that it is to settle only minor disputes that are not violating the national law, UNHCR has noticed that the CMC has in fact handled disputes relating to SGBV and other criminal acts on a number of occasions.³⁶ In fact, this tendency to address cases beyond their mandate, even when this mandate has been explicitly stipulated and formalised, represents a significant problem which has been noted with regard to DRS in a number of camps in different host countries.

In *Pakistan*, while the system of negotiation and compensation is very much part of the refugees' belief system, it is pointed out that from a western point of view, one can argue that the decision tends to favour the accused but not the victim. For example, UNHCR notes that the resolution of disputes (especially serious crimes) through negotiation can mean that a murderer may walk free from the traditional court if the victim's family agree to forgive him or her, in return for a compensation provided to them (the victim's *family*, and not the victim) – which very often takes

³⁶ The UNHCR office in Nepal reports that it is seeking to address this problem through training and awareness-raising.

the form of providing a sister or daughter of the family of the accused in marriage.³⁷ This type of decision-making process, concludes the UNHCR office there, can therefore be in violation of human rights norms and standards. Indeed, in the above case, it is important to stress that in addition to the original victim (of murder), this method of dealing with crime and conflict, places other members of the refugee at risk since a murderer has been permitted to walk free, and violates the fundamental rights of the woman or girl offered in marriage to the victim's family.

In *Mexico*, the lack of impartiality and transparency of the process is noted and attributed in part to the tight secrecy surrounding how justice is applied, and the fact that the structure is "machista" in that it benefits men only. If the accused is a man and the victim is an indigenous, illiterate woman, she will be denied justice. Moreover, while physical and sexual abuse cases appear to also be brought to the host country judicial system, the sensitization of decision-makers, of persons with influence and of officials to the treatment of these cases is essential. Each problem affects women and men differently, and the organisation's intervention is key in each particular case.³⁸

In relation to the concerns of victims, it was noted by FO Kanchanaburi in *Thailand*, that most of the victims of crimes are refugee women and girls, usually in the form of SGBV – a situation which as mentioned previously, is common in most refugee camps in the host countries surveyed in this study. In this context, explains the FO, the concerns of survivors include for example, the lack of confidentiality accorded under traditional DRS, particularly as rape survivors are charged under refugee DRS as being accomplices in adultery and extra-marital affairs, and they are subjected to the same punishment as the male perpetrators. In some cases, the rape survivors are forced to marry the perpetrators. In this example, just as in the example from UNHCR Pakistan, the results not only fail to provide a proper *redress* for the victim, but place others in the camp at risk, and clearly *perpetuate further human rights violations* by imposing a forced marriage upon the victim. As well, it was commented that the punishments and redress in individual cases in the camps under the traditional DRS are not commensurate with the crimes. In other camps, the dissatisfaction with DRS sometimes felt by victims of SGBV was again highlighted.

One child abuse case provided by the UNHCR regional office in *Thailand* speaks to the experiences and dilemmas faced in individual cases. In particular, this case involving the sexual assault of a 5 year old child by one of the child's relatives raises some thorny questions regarding the approach to addressing crimes involving SGBV and working with traditional justice systems that do not apply international human rights standards. The remedy proposed in this case by the refugee camp committee, jointly with the Ministry of Interior camp commander, was for the perpetrator to sign a statement admitting to the assault and promising never to do it again, and for the perpetrator to be restrained from coming within a prescribed distance of the victim – an order that would be policed by the refugee community. The refugee's parents were happy with this remedy. However, UNHCR felt that insufficient action had been taken to protect the victim, as well as to protect other children in the camp who might similarly be subjected to sexual assault by the perpetrator. UNHCR therefore attempted to persuade the camp commander to refer the case to the police for a full

³⁷ This practice is often referred to as *Swara*. While the term actually means a female rider, its traditional meaning refers to a girl who is given over to the aggrieved family as compensation for blood. In such cases, the girl's family loses the amount of money that would normally have been part of the marriage negotiations or arrangements, referred to as the *Walwar* (which is the price of the bride). However, it is the girl (usually a sister or daughter) given over in marriage to the 'aggrieved' family who is of course to suffer the real consequences of this exchange. See, Khel, Muhammad Ali Baba, *Swara: Women as Property*, undated, published by Aurat Foundation Peshawar, at pp. 6 and 7.

³⁸ In addition to the above response by UNHCR Mexico, the office also points out how UNHCR has been coordinating with all NGOs and Government institutions in order to elaborate an integrated protection system of refugee rights. This has included trainings and seminars carried out with local authorities, which involve discussions and analysis of how to treat and resolve the protection problems related to traditional refugee DRS.

investigation and prosecution, but without success. The UNHCR regional office then wished to refer the case to the authorities at the central level – however, this was not consistent with the wishes of the child’s parents.

As described by that office, arguments for pursuing investigation and prosecution under Thai law were compelling and included (i) the fact that under Thai law sexual assault of a minor is a serious public offence requiring investigation; (ii) the fact that the perpetrator was still in the camp and could conceivably sexually assault another child; (iii) if there were to be no formal investigation or prosecution of such a serious allegation involving a minor, the climate of impunity already prevalent in the camps for SGBV crimes would only be exacerbated; and (iv) UNHCR’s guidelines regarding the protection of refugee children dictate that the office act in the best interests of the child, which in this case presumably would be the removal of the perpetrator from the camp; and (v) the fact that Thailand was a party to the CRC, which entails an obligation to protect children from such harm.

On the other hand, arguments against taking the matter were also persuasive. They included the following considerations: (i) the wishes of the victim are considered under UNHCR’s SGBV guidelines to be ‘instrumental’. Where the victim is a child, the wishes of the parents are therefore paramount; (ii) another UNHCR SGBV guideline “Sep by Step Guide for Protection Officers” reinforces this point in providing that “at all times the Protection Officer will ensure that the final decision on whether to institute legal proceedings rests with the victim/survivor”; (iii) practical difficulties in pursuing a formal investigation may have ensued if the parents were not cooperative and turned the child into a hostile witness; (iv) as the family and refugee leaders all believed the remedy to be viable, an unwanted investigation may have had a negative impact on UNHCR’s SGBV programme – i.e. refugees might in future refuse to report SGBV incidents to UNHCR.

Such cases raise serious dilemmas and questions in terms of the approach to be taken with regard to SGBV serious crimes, particularly those involving children, and the role accorded to traditional justice mechanisms. Should the decision under the traditional justice mechanisms to allow a self-confessed paedophile to walk free in refugee camps filled with children be endorsed? Should the decision not to prosecute taken by the victim’s parents be simply respected, and thus result in other actors such as government authorities and the international community being complicit in non-prosecution of a serious crime? Should the parents’ wishes be given pre-eminence in the case of child victims, when the parents may not be acting in the best interests of the child (especially, as in this case, where the perpetrator is also a family member)? Is it appropriate to place so much emphasis on the wishes of the victim in camp contexts where the victims’ choices are often totally circumscribed by political and social factors (particularly in host countries where opportunities to pursue investigations into serious crimes/SGBV, or to achieve a “proper” remedy prescribed by law are so limited)?

In the context of its attempts to focus more systematically on issues relating to the administration of justice in the camps in Thailand, and to monitor protection incidents more systematically, including through the introduction of a protection “incident report form”³⁹, UNHCR made some interesting findings which appear to echo issues and problems raised in a large number of the refugee camps in the host countries surveyed in this study. They describe their findings as follows:

³⁹ The objective of this form is to attempt to initiate a system among UNHCR’s NGO partners (who have a regular presence in the camps) to systematically report on all protection incidents, including SGBV, so that appropriate responses could be coordinated among the concerned agencies.

“The results of this more systematic monitoring demonstrated that there were a considerable range of criminal problems in the camps, including rapes of minor children, murder, etc. that were neither investigated nor prosecuted by the government authorities. The perpetrators of such crimes included refugees, Thai soldiers and camp security guards/volunteers, and local Thai villagers.

Taking advantage of this vacuum, justice has been administered within the camps (where the perpetrators are refugees) by the refugee leadership, known as camp committees. The traditional justice ‘systems’ set up by the camp committees apply procedures, penalties and remedies that are neither in conformity with Thai law nor with international human rights standards. In addition, the refugees’ justice systems are highly politicised and are by no means impartial, given that they are administered by camp committees that are themselves politicised and directly linked with the political/military ethnic factions that exercise social and political control over the camps i.e. KNU in the Karen camps and KNPP in the Karenni camps. Given the nature of Karen and Karenni society and culture, the justice systems are also extremely patriarchal, and pay scant attention to the rights of women – an issue of particular significance given that one of the major crimes committed in the camps is sexual and gender-based violence. Furthermore, the traditional justice systems cannot by definition be applied to non-refugee perpetrators.”

Many refugees, they conclude, are therefore without proper access to the domestic legal system and courts (including due to the pressures to use the DRS instead), and do not have a proper remedy for violations of their human rights in the camps. Since 2003, UNHCR has therefore increasingly sought to involve the Thai authorities in the administration of justice in the camps and to highlight the problems associated with the refugees’ traditional justice systems. Amongst the examples of the problems which were highlighted are: 1) the fact that rape is often defined as adultery under traditional justice systems, and victims are forced to marry the perpetrator; 2) as in the child abuse example provided above, a man who sexually assaulted a five year old child was allowed by the camp committee/camp commander to go free in the camp, since the parents did not wish to prosecute their family member; and 3) detention facilities in the camps have been built and operated by the refugee camp committees to detain alleged perpetrators of serious crimes without them ever having had access to due process.

The UNHCR office in Thailand describes the results of their initiative in the following manner:

“Surprisingly -- or perhaps not -- UNHCR’s approach turned out to be controversial with all stakeholders, including the Thai authorities, the refugee leadership, the refugees themselves, and the NGOs, with no one wishing to disturb the status quo. The reasons for the resistance to UNHCR’s attempts to promote the application of the Thai justice system in the camps were many and varied: the Thai government was resistant [in part due to] [...] the practical and logistical difficulties in administering justice in camps that are in remote and difficult to access locations along the border; the refugee leadership did not support greater involvement of the Thai authorities due to the fact that they did not wish to relinquish their own control over the camp population, and also because they did not believe that in practice, the Thai authorities [would have the willingness or resources] to fully administer justice in the camps; the refugees themselves were reluctant as they did not trust the Thai authorities to pursue justice even-handedly, particularly when the perpetrators were refugees; and the NGO resistance was based on a general philosophical approach to the camps (also reflected in their assistance policies), which they see as supporting rural ethnic communities with their own political and social systems that should move back intact across the border once the conditions for return are in place.”

Eventually, a compromise appears to have been reached which includes: focusing on the prosecution of serious crimes under Thai law, while petty crimes and civil matters would be generally permitted to be handled by the traditional justice mechanisms (at least until a more permanent arrangement is reached); obtaining reassurances and commitments at a senior central

level that government authorities would increase their efforts to prosecute serious crimes committed in the camps; and conducting a series of workshops (in three phases)⁴⁰ with refugee communities and the government to openly discuss the problem and to seek to address it in a structured and comprehensive manner.

In addition to these workshops, UNHCR also hopes to improve the administration of justice in the camps by assisting in retaining legal counsel to assist refugee victims in bringing perpetrators of crimes to justice under the Thai criminal justice system. This strategy has also been a key element of UNHCR's strategy to address SGBV in the camps. In 2003 for example, the office engaged legal counsel to represent refugee victims in 10 cases, 9 of which involved rape, and one which involved a custody and exploitation case. Due to the involvement of UNHCR-appointed legal counsel during 2003, investigations were at least conducted in all of these cases. In addition, some cases were successfully prosecuted in record time, including that of a Thai soldier who raped a 13 year old girl, and within 6 months had been tried, convicted and sentenced.

In addition to the above problems, an Australian Supreme Court judge working on a *pro bono* basis (and having previous experience of traditional justice systems in Papua New Guinea and Australia), found, albeit on a preliminary basis, after a brief review of the traditional justice systems in the Thai refugee camps, that they are inappropriately equipped to deal with serious crimes, given their lack of clear legal basis, transparency, fair procedures, or trained personnel.

Despite the numerous difficulties with refugee DRS in camps, it appears to nonetheless be the case that victims in general have tended to perceive the system as accessible, familiar and providing a quick resolution, particularly in the form of the financial compensation normally received, which would not be forthcoming in the Thai legal system. These attributes make these mechanisms not only comparatively attractive in relation to the host state legal system, but also in the eyes of many it is the only real solution available to them in the context of a refugee camp where pressure and fears are often high, and conformity with the wider group is even more of a requisite. The most explicit exception to this preference would appear to be in the case of survivors of certain types of SGBV crimes.

⁴⁰ Phase I involved training on Thai law and international legal standards for refugee camp committees and other refugees (particularly refugee women's organisations) involved with the application of traditional justice, in all nine camps (done in 2003). The aim was to sensitise refugees to their rights under Thai and international law so that victims would [press for investigations and access to the Thai justice system]. It also aimed to sensitise refugees to international human rights standards, particularly those relating to violence against women, and to penalties under Thai law for serious crimes, in order to provide a contrast to the penalties being applied under the refugees' traditional justice systems [...]. Phase II consists in a workshop with government officials involved in the administration of justice at the provincial and central levels, and seeks to ensure that the commitments made at the central level to prosecute serious crimes are translated into action at the camp level. The aim is to clarify procedures and roles played by various actors in criminal cases in the camps, including the camp commanders, local police, the public prosecutor's office, and the camp committees. This is considered necessary in light of the differing approaches adopted in each camp, which often depend on the approach of the individual camp commander. The objective is to ensure that justice is applied in the camps in a consistent manner border-wide. It is hoped that the debate can be expanded beyond the Ministry of Interior, the line Ministry for running the camps, to also involve the Ministry of Justice, the Ministry responsible for the Thai justice system. Phase III aims to bring together government officials and refugee leaders involved in the administration of justice. The aim is for the government to demonstrate its willingness to apply Thai law, including when it involves potentially investigating and prosecuting Thai offenders in particular, such as Thai military and Thai villagers who are accused of committing crimes against refugees. The aim is to discuss the role of the camp committees in the administration of justice which the Thai authorities would consider appropriate. It is this question regarding what should be the permissible mandate of these refugee camp committees, i.e., the types of cases they should be permitted to adjudicate – a question that can only be answered by the host state, that is at the heart of the third phase of this project, and still under discussion.

As mentioned above, those accused under refugee DRS, and particularly men, appear to often benefit from light sanctions, including fines, and conflict resolution methods which stress negotiation, asking for pardon, and verbal reassurances rather than punitive, adversarial and legalistic approaches. Moreover, even for serious criminal cases, punishments tend to include short-term detention or forced labour (also known as community service), since camp committees do not have facilities or resources to detain perpetrators for lengthy periods. In addition, there have been many instances where the accused has been able to escape from the camps or even the detention centre of the camp committee.

However, in certain cases, the punishments imposed by these DRS can be extremely harsh. A number of other problems exist for those accused of a violation under refugee DRS, including some of the following:

- the lack of the necessary facilities to process criminal cases, resulting in trials where the accused is not afforded legal representation to defend him or herself;
- the lack of an appeal or review process in some traditional DRS, such that the judgement is considered final by the refugee community;
- cases where, despite the lack of evidence, the accused is given a very serious punishment (even execution);⁴¹
- in some cases, camp committees have detained perpetrators in harsh and inhumane conditions.
- with regard to the international community, including UNHCR and international NGOs, the concerns are varied depending often on the specific circumstances in each camp, many of which have been mentioned in this section. However, some concerns are common to all or most refugee DRS in the different camps. For example, all the UNHCR field offices surveyed in this study found that refugee DRS in all the camps failed to meet international standards, including with regard to due process; the lack of qualifications, experience and training of decision-makers; and, as described above, the rights of both victims and the accused.
- the very low level of understanding of international human rights standards, as well as national standards, among refugees and their leadership;
- very serious crimes by international standards, especially those involving violence against women, are often treated in the same way as minor violations of cultural mores by women.
- in addition to the state of affairs described above, the lack of sufficient political will on the part of host country authorities to bring serious crimes to the state legal system, results in a myriad of unsatisfactory situations. For example, perpetrators of serious crimes are too often left to walk the camps; women are forced to marry the men who rape them or are punished excessively for extra-marital affairs; and perpetrators of certain crimes are sometimes subjected to summary executions.
- the role of refugee DRS in the camps as an important element of the control structure allowing the refugee political or military leadership to continue to exercise influence in the camps. This gives a false signal to the authorities that a working mechanism does exist to satisfy the needs of the refugee community in criminal and civil cases, and contributes to the

⁴¹ The above reflects the response by FO Kanchanaburi, Thailand. Another point made by UNHCR FO Mae Sot, Thailand, was that while some executions have indeed been pronounced (and carried out across the border), the traditional sentence for crimes such as rape and murder which would normally be execution as well are not imposed, partly because of the camp setting and the involvement of international organisations which have ensured that this is usually no longer possible. As a consequence, the penalties imposed by the camp committee tend in general to be more lenient than those which would be imposed by the state legal system.

- perception by the host country authorities that there is no need to take action under the domestic criminal system in the case of serious crimes.
- the need for host governments and international actors, including UNHCR, to clarify the role to be accorded to refugee DRS in general, and specifically with regard to SGBV crimes. More particularly, some participants in this study urged UNHCR to review, clarify and expound on the role of refugee DRS in the organisation's SGBV Guidelines.

While many NGOs certainly share most of UNHCR's concerns regarding refugee DRS, they also point out how domestic legal procedures may not be in the best interests of the victim either, particularly in view of the lengthy prosecutions, the damage caused to their relationships within the community, and the aggravated risk to their security as well as that of witnesses. Some NGOs, such as those working in camps in Thailand for example, appear fundamentally and irreconcilably divided on the issue as well. One group of NGOs reportedly perceive the present DRS as a sacred and indigenous development process, in which refugees are making their trials and errors, and which should not be subject to interference by external parties (i.e. international organisations or host government). The other group of NGOs view the system as sub-standard, and the camp committees as a biased, male dominated, authoritarian presence in the camps. The latter group questions the ability and authority of the camp committees to pronounce judgements and consider that the system requires fundamental change.

The official position of most host governments is that they have jurisdiction over refugee camps and domestic laws must therefore be applied to the camps. In practice, however, it is evident that in many host countries, authorities have generally demonstrated a lack of political commitment or willingness to intervene in cases exclusively involving refugees within the camp. As mentioned above, host authorities have in some cases also shown a certain reluctance or unwillingness to investigate and prosecute in cases where the offender is a national and the victim is a refugee. The opposite also appears to be true: that there is on the other hand, clearly a commitment to pursue cases within the state legal system when a refugee is accused of violating the rights of a national.

Certainly for the most part, the general approach at the field level is that involving the host state legal system is considered too difficult, in view of such problems as the practical and logistical difficulties in accessing the remote camps, difficulties in obtaining evidence from refugees reluctant to cooperate with official investigations, and the financial costs potentially entailed by legal proceedings. The lack of judicial capacity and the already overburdened court system of many host countries reinforce the implicit approach by many host governments to allow refugee communities to deal with internal conflicts and disputes within the camp and between each other, through their own DRS mechanisms and leadership structures, sometimes together with the camp commander. Indeed, this is not entirely surprising given that a similar approach is often taken by host country authorities with respect to the administration of justice in their own villages in remote locations – although it would appear that in some cases this attitude may be further compounded by a general discriminatory approach towards refugees.

Section 4:

Conclusions and Recommendations

The range of issues raised by the administration of justice in refugee camps are varied and while they cannot all be addressed in this section, or indeed this paper, the identification of trends, and some preliminary conclusions and recommendations may offer some strategic directions forward based on the findings of this study.

1. Issues and areas of concern

Amongst the findings drawn from this study are some conclusions about the types of issues and areas of concern which are raised in relation to the administration of justice in camps. The following is a list, which while not exhaustive, highlights some of the issues of most concern, as well as other aspects of camp life deserving of attention due to their linkages or impact on justice, and law and order in camps.

Link between assistance and protection: understanding of the protection implications of assistance policies and strategies (and levels of assistance) should continue to be deepened, and the direct as well as indirect consequences of inadequate assistance (including educational as well as livelihood and income generating opportunities) further documented and disseminated.

Policing issues: the police and security forces responsible for law and order in refugee camps/settlements generally play a key role in justice issues and conflict management. They often influence, officially or unofficially, what venue complaints are taken to, the investigation of the case, and levels of trust and reporting, especially of certain crimes or by certain groups. For this reason, policing and security arrangements, methodologies, training and other related aspects, should be considered an important part of work on administration of justice more generally.

Sanctions, remedies and enforcement issues: a variety of questions arise in this field, including: in relation to the enforcement capacity of DRS; what are permissible sanctions or remedies; the use or absence of detention facilities in camps and settlements; and the question of whether sanctions for acts which are not illegal or punishable under the host state justice system should be adjudicated at all by refugee DRS in camps or be recognised in camp by-laws or other reference documents used for refugee DRS (further discussed below).

In particular, the use of fines, ration cards, and in kind items (e.g. livestock) or other such compensatory sanctions present their own problems. These problems include:

- the fact that refugees generally have little or no means to pay fines; and ration cards are not an appropriate substitute since they constitute a basic necessity;
- in some societies, it is the family as such, and not only the actual perpetrator who is responsible for giving up a ration card or pay a fine. Amongst other things, this can have a negative impact on the welfare of children or a spouse;
- such types of compensation are often a key 'pull' factor for victims and/or their families to bring their cases to refugee DRS instead of the host state legal system.

This is especially so in cases where the victim is not likely to receive any form of material or other tangible compensation through the state system, such as in cases of violent crimes normally subject to prison terms. Unfortunately, given refugees' general lack of resources, the compensation awarded through DRS is usually meagre. This is all the more troubling in light of the seriousness of some of the crimes, the fact that it does not address the continued risk posed by the perpetrator on other camp residents, and that the compensation sometimes goes to families instead of the victim. Yet, the possibility of even a minimal compensation, will likely mean that victims of even serious crimes will continue to refer their cases in secret to refugee DRS (even when these mechanisms are not mandated to address these types of cases) or resolve the dispute through even more informal mechanisms, such as the family, community leaders, marriage brokers, or elders – all of which may have a traditional role as mediators in the community.

Other objectionable remedies and sanctions, some of which constitute in themselves serious human rights violations, may also be practiced by different refugee DRS. These may include giving a daughter or sister in marriage to the aggrieved family as a form of compensation for a serious crime, such as murder. As already mentioned, it may also include accepting an offer of marriage by the perpetrator as a form of redress for rape.

Detention: in the context of refugee camps and settlements, the subject of detentions can be a matter of concern for several reasons, including the use of secret detention practices and facilities administered by refugees, and the inability or unwillingness of authorities to detain those accused of certain crimes –thus placing the rest of the refugee population at risk.⁴² In particular, the lack of detention facilities in or around refugee camps deserves some attention, especially as it hampers enforcement capacity and may therefore simply reinforce the inclination of some government authorities to let refugees deal with their own conflict and problems. The result however, is that because refugee DRS do not usually themselves have a mandate to detain or imprison perpetrators, the refugee population continues to be exposed to the presence of dangerous individuals in the camp.

Refugees are therefore in the uncomfortable position of needing some form of protection from individuals who are known to have committed (and sometimes even admitted) a serious crime, but who have not actually been prosecuted. As mentioned above, this is all the more necessary since some violent crimes are sanctioned by refugee DRS through monetary, in kind or other compensatory remedies, leaving the perpetrator free to continue living unrestricted among the general camp population. The result is the same when a victim or their family (if a minor) refuse to bring formal charges against the perpetrator; a situation likely to occur when the perpetrator is a family member, or when the crime carries serious social stigma for the victim.

The rights of the accused: these include concerns regarding due process, whether in the context of refugee DRS or the host state legal system, and are likely to require some attention in the future.

⁴² This can be due, for example, to the prevalence of refugee DRS, which emphasise other remedies such as fines instead of detention and prison terms. Alternatively, it could be due to the lack of detention facilities or interest on the part of host country authorities to pursue certain cases, or inadequate administrative and legal mechanisms to issue arrest warrants and fulfil other necessary legal requirements /papers in a timely manner. Corruption and failure to take certain crimes seriously can also be a related problem, thus allowing detainees to 'escape' or somehow secure a quick release.

Witness protection programmes and other protection strategies (including resettlement): these need to be given more attention, particularly given the frequent failure of witnesses to show up at trials, and the fear of retaliation expressed by victims. Fears for their safety, as we have seen, are one of the reasons why refugees so often prefer to have recourse to refugee DRS, which are generally more lenient and more accepted by the community and the accused alike.

Civil acts in refugee camps: Given the importance of civil acts and the types of rights and obligations ensuing from these, they should be considered an integral aspect of the administration of justice in refugee camps. Basic rights related to nationality, marriage, inheritance, property, and many others are contingent on the possession of certain documents such as birth certificates, marriage and death certificates. Even resettlement, repatriation and reintegration can be affected by the lack of such key documents, as can the very ability to receive a spouse's pension, to remarry or even to marry at all. The lack of adequate mechanisms within most host state legal systems for addressing such problems (e.g., problems related to the issuance of personal and civil documents, the lack of any substitutes, or the ability of refugees to undertake civil acts or have them certified by relevant authorities) continues to place the present and future rights of individual refugees in jeopardy, and is therefore another aspect of camp justice which would benefit from continued efforts.

Special protection measures and practices related to minors: Particular safety and legal protection measures should be provided to minors (i.e. victims as well as perpetrators) in the justice sector. This is all the more important given the evidence suggesting that a very significant percentage of crimes (including of a violent nature), and harmful or exploitative practices that take place in a refugee camp context, are indeed inflicted on persons under 18 years of age. Minors are also responsible for a significant percentage of crimes committed in camps. It would be useful to explore the standards, practices, and special measures in place for minors in host state legal systems, as well as refugee DRS, and to consider how to improve the treatment of (refugee) minors. Prevention through educational, recreational and awareness raising programmes targeting age-specific youth groups should be increased, as should their involvement and representation in camp leadership and management structures. Whenever possible and as appropriate, SGBV sensitisation activities in particular, should be undertaken from a relatively young age for both girls and boys. Further discussion on minors and SGBV is provided below.

The impact of governance and camp management practices in addressing structural injustices and assistance gaps in refugee camps: Situations of injustice can stem from or be reinforced by practices related to the management, governance and assistance strategies employed in refugee camps. For example, it is now widely recognised that the lack of individual registration, identity or rations cards can render women and entire families vulnerable in a number of ways. Where the husband, as the designated head of the family, is the holder of these papers, the woman (and the children) is rendered dependent; a situation which may force her to remain in an abusive relationship for instance. As well, significant under representation of women in refugee leadership and decision-making structures, means that they have far fewer opportunities to express their particular needs and problems, influence the setting of priorities, or contribute to reforms. At the same time, there is a failure to capitalise on the real potential of women and girls. More investments in programmes which could assist them in managing their household and care-taking duties (which are essential to the welfare of the camp) would free them to take on more leadership, income generating and other such activities.

At the moment, it would appear that too few women have the energy or time to participate in camp leadership structures. When women do participate, they are generally few in number and reportedly

often lack any real influence. Traditional gender roles and mores may make it difficult for many women to take on an active role in leadership and decision making structures traditionally dominated by men. More creative solutions continue to be necessary in order to improve female representation and influence in these structures. For example, it may be useful in some contexts to have a representative of the refugee women's association or committee in refugee DRS, in addition to individual female members. Camp governance structures, policies and assistance programmes need to take better account of gender and age representation (or ethnic, as applicable), as well as gender profiles and roles prevalent among the refugee population (including through for example, gender/age analysis and participatory assessments). The latter will contribute to the formulation and design (or reform) of leadership structures and assistance programmes, which aim for effective and maximum female participation.

In addition to gender/age considerations, care must also be taken to ensure that refugee leadership (i.e., representative) structures include less influential or powerful groups among the refugee population. Refugee leadership structures should not be dominated by members who effectively represent an elite among the refugee population, or others who are favoured because they speak a particular language, or have an educational or socio-economic status in common with camp authorities, NGO or international staff.

In many of the camps surveyed in this study, programmes have already been undertaken by either UNHCR, implementing partners or camp authorities to improve and monitor the fairness of electoral processes for refugee leadership and camp structures (i.e. camp elections). This is an important step forward, and some of the lessons learnt and the standards established for camp elections should be shared. Examples of such initiatives in camps in Sierra Leone and the KnRC in camps in Thailand, for instance, would merit attention.

Other areas in need of further investigation include, exploring whether clear and effective reporting, complaint, monitoring and accountability mechanisms for addressing camp problems and cases of misconduct are in place or need to be strengthened. In this regard, certain procedures and management practices put in place in some of the camps surveyed may be noteworthy as they can help avoid or redress daily, as well as more structural injustices in camp settings. These include for example:

- regular pre- and post-distribution meetings with relevant IP, sectoral committees and refugee executives (in place in camps in Sierra Leone);
- weekly in-camp coordination meetings for IPs, refugee executives (leadership), UNHCR, government and host community representatives; and
- regular confidential reception hours with UNHCR protection staff.

2. Areas requiring sustained efforts

Increased presence to establish trust

Increased presence in refugee camps by UNHCR, particularly international protection staff and community (or field) officers, is a prerequisite to build and maintain relationships of trust with the refugee population. This relationship of trust is especially necessary for effective protection and community development work in the areas of crime prevention, conflict resolution and justice.

Developing organisational expertise and general competencies with regard to the administration of justice, and law and order mechanisms in camps

Relevant actors, including government, NGO and international organisations such as UNHCR, should develop further expertise and competencies in relation to the administration of justice in camps, including the knowledge and tools necessary to address related protection issues. These tools and competencies should include, in particular:

- assessment and monitoring tools to gather and analyse base-line information on the justice, and law and order situation in camps;⁴³
- learning tools including expert papers, studies, training programmes, and venues for exchange;
- implementation tools, including in the form of guidelines, compilation and exchange of good practices and lessons learnt, relevant standards (national and international) and indicators, and related policy frameworks to assist with the implementation of relevant programmes.

Awareness raising and sensitisation regarding the rights of refugees

Activities to promote awareness raising and sensitisation of camp commanders (administration) and other relevant authorities, including local authorities and populations, with regard to rights of refugees may need to be undertaken on an ongoing basis. At the same time, ongoing efforts to raise the general awareness of the refugee population itself with regard to their general rights in the host state, human rights standards and the domestic legal system, as well as other complaints, mediation, and DRS mechanisms available to them will also continue to be necessary. Such initiatives should empower refugees to access available legal services and the state legal system but also encourage refugee populations to effect necessary reforms to their refugee DRS and other practices.

At times, thematic and group-specific rights awareness campaigns can be especially effective, particularly when addressing problems affecting specific refugee groups. To the extent possible, these awareness activities should aim to, *inter alia*: address those on each side of the problem or situation; use an appropriate strategy which does not alienate the general refugee population or either group/side; and target or include both likely victims as well as likely perpetrators (although not necessarily at the same time). For example, thematic or group-specific awareness campaigns could be used as part of a strategy to address SGBV committed by adolescent boys and young men in the camps, harmful traditional practices such as FGM or those related to different types of early or forced marriage, various forms of domestic violence, child abuse and exploitation, and military recruitment. It is not sufficient to make women and girls aware of their rights, it is necessary to also increase the awareness of men and boys of their obligations and the rights of women. Similarly, training police and security personnel or NGO and international staff on their professional ethical obligations is arguably incomplete, if refugee populations (and especially women and girls) are not made aware of these professional codes of conduct and their own corresponding rights.

3. Recommendations for further policy development

In this section, we discuss some areas in need of more specialised studies, implementation tools such as guidelines, and policy development. This is not an exhaustive list, however. It should be

⁴³ The questionnaire used for this study or an adapted version of it, could potentially be used as an assessment tool for these purposes.

understood as a starting point, addressing areas and issues which may be considered a priority by those working with refugee camp populations, including UNHCR.

Some of these priority areas or issues include:

(i) *Implications for policy issues and development:*

The development of a framework for a rights based approach to refugee work (by UNHCR, NGO or government authorities) which takes into account the issue of the administration of justice in camps, and the implications and methodology of applying a rights based approach to this aspect of refugee life;

In particular, the findings relating to SGBV in this study, should be considered with regard to new or revised guidelines on the protection of refugee women, as well as refugee children (especially in relation to adolescent girls);

In view of the community and participatory aspects of refugee DRS, policies and tools being developed or revised in the field of community development and participatory frameworks should also take into account the findings in this paper, as well as related studies and guidelines. This is key to enhancing the participation and empowerment of women and other groups which are traditionally marginalised for such reasons as ethnic, tribal or caste affiliation;

Policies and information tools on harmful traditional practices should provide standards and advise on how to deal with these practices in the context of refugee camps, including with respect to cases brought to the host state legal system, refugee DRS, or other traditional mechanisms. Examples of effective strategies for addressing specific forms of harmful traditional practices in the context of these systems would be especially helpful.

Reporting and monitoring tools, especially those related to protection, should be mindful of the findings of this study and especially of the findings on the treatment of SGBV crimes by formal and informal justice systems in camp settings. Amongst other things, this could help improve the effectiveness and quality of reporting systems, and identify areas in need of more or better monitoring.

(ii) *Areas requiring further study and implementation tools:*

A focused paper or study on refugee DRS ⁴⁴ should be undertaken in the near future, and should include the traditional DRS used by locals living in proximity to refugee camps to the extent that these affect refugee populations. A study specifically on refugee DRS can draw on the important contributions already provided by the field through the questionnaire for this project (although for the most part it was not possible to include them in this paper), as well as the excellent research being undertaken by experts in the area of traditional justice and dispute resolution systems, particularly in the context of Africa. A specialised paper on DRS in a refugee context, would improve understanding and analysis of the merits, pitfalls, and strategies for dealing with refugee DRS systems and would inform the eventual development of practical tools and guidelines for dealing with these systems;

In response to the needs expressed by the field, tools such as guidelines or guiding principles for dealing with refugee DRS, should therefore be developed at the earliest opportunity. As indicated

⁴⁴ This would include both more structured and 'formal' systems as well as *ad hoc* and informal mechanisms based on, for example, the traditional 'counselling' and 'leadership' roles played by the family, tribe, religious leaders, friends and influential neighbours.

above however, it would be advisable to do a more focused study on traditional and refugee DRS first, so that the guidelines have a context and the research reflected in it (based amongst other things, on research on traditional justice mechanisms in different parts of the world, as well as on UNHCR policy etc) provides a basis for sound guidelines which can be applied to a variety of different contexts;

An analysis of the more notable programmes and practices implemented to date, as well as lessons learnt in relation to legal assistance and legal awareness initiatives could also provide an important contribution to protection of refugee populations. These would complement the above mentioned studies and recommended guidelines by providing concrete examples of strategies and programmes which have worked in the past. As importantly, it would be useful in the context of such a paper to address the possible reasons why certain programmes may *not* have succeeded.⁴⁵ Another question which could be asked within the framework of such a project would be as well, the comparative effectiveness of programmes implemented by (or involving) different actors (e.g. government authorities, NGOs, national legal institutions such as Bar Associations, international organisations etc);

In light of the different forms of SGBV prevalent in refugee camps, it would be advisable to make this the focus of a special study which would include, *inter alia*: the use, merits and concerns relating to how state legal systems and DRS systems address such cases, including from the standpoint of different groups within the refugee population (such as adolescents, women, refugee leaders, as well as government, international and NGO actors). Specific recommendations to improve the response to such crimes by these different mechanisms, and a review of lessons learnt, as well as noteworthy legal assistance and other programmes relating to SGBV could be provided. The latter review would be especially important to undertake in relation to SGBV cases, if a more general study on legal and dispute resolution assistance programmes (mentioned above) is not available.

(iii) Recommendations for host State legal systems:

The challenge of improving genuine access, trust and use of the host state legal system by refugees living in camp or settlement situations remains, in many respects, an illusive one in most camps surveyed. In addition to the many barriers faced by refugees specifically (such as language, lack of familiarity with the system, physical distances, lack of adequate legal services, and the stigma associated with certain crimes), we have also seen that the legal system of many host countries are also in a general state of crisis due to too little capacity and a lack of resources. Already overburdened legal systems and institutions may therefore not be able to respond adequately or in a timely fashion, to additional cases brought by a significant refugee community. Long judicial delays may mean that refugees repatriate or otherwise move before their day in court, that pre-trial detentions are unacceptable long, or inversely, that those accused of serious crimes are permitted to remain in the camp. As a result, a certain climate of lawlessness and impunity may reign in remote camps where residents know that the arm of justice cannot effectively reach. In view of these many challenges, and to the extent that conflicts and justice issues are restricted to refugee camp residents (and do not involve locals or nationals), many host governments have shown little or no commitment to address justice issues in refugee camps, preferring to allow refugee populations to discreetly and quickly address their own problems between themselves.

⁴⁵ For example, one could explore whether the following factors are responsible: the lack of adequate reporting and monitoring systems, support for victims (e.g. psychological counselling), and victim protection programmes; as well as insufficient presence and trust building by key actors; and insufficient involvement by the refugee community in identifying the priority protection and legal problems, and their preferred mechanisms for conflict resolution.

Nonetheless, special efforts and programmes have been undertaken in many camps, including by NGOs and UNHCR, in conjunction with government authorities in order to improve access to the state legal system as well as the quality of legal support services. Of particular note are the initiatives to improve legal and related support services for survivors of SGBV, including rape.

It would be an excellent initiative in this regard, to initiate, as recommended above, a compilation of some of the more notable programmes undertaken to date (i.e., including both the merits and lessons learnt) to improve refugee access to the host state legal system and the quality of legal support services. In this context, it would be highly desirable to conduct an evaluation of a few of the more noted programmes, such as the mobile court initiative in Kenya.⁴⁶ The results of these evaluations would hopefully be part and parcel of the compilation of practices suggested above and provide some hard evidence and insight into the achievements and weaknesses of these programmes and on how they could be improved or adapted to other operations. These evaluations should include feedback from key actors, such as:

- different groups from amongst the refugee population (e.g. including the target groups for the programme, women, men and different age groups, as well as refugee leaders and members of key camp institutions such as refugee DRS);
- relevant host country and camp authorities (including the security services or police, local law enforcement and other officials, officers involved in investigation and prosecution); and
- partners directly involved in the programme, such as Bar Associations, staff of legal NGOs, judges involved in refugee cases, etc.

Background knowledge of the refugee DRS functioning in the camp will be useful, and perhaps even indispensable, to the evaluation of programmes related to the state legal system. It will place these programmes in (comparative) perspective, and highlight the reasons why refugee populations use alternative DRS. Evaluations of programmes to improve access to the state legal system are necessary as well in order to assess their relative effectiveness (including their deterrent value) and the target group's level of satisfaction and success with them. These assessments will enable key actors and donors to make a decision on the most effective strategy to adopt in particular situations/operations and to judge whether it makes sense to: (i) invest more resources into improving the state legal systems' response to refugee problems; (ii) to adopt a dual approach of strengthening both SLS and refugee DRS; or (iii) whether in fact, the SLS is so problematic or unattractive to refugee populations (in general, or with regard to particular problems and cases, such as SGBV, family law, etc) that increased investment in it (beyond assistance providing to individual cases) is unlikely to yield better results.

For example, national legislation and practice in relation to particular types of cases may be so inconsistent with international norms (including human rights standards), refugee conceptions of fairness, or it may be so vulnerable to corruption, that increased investment in the form of capacity building initiatives may not produce desired results or increase refugee interest in accessing the state system.

With regard to the use of the state legal system by refugee camp populations, the following are some preliminary recommendations and areas, in addition to the above, in which further work or improvements should be considered:

⁴⁶ Indeed, TOR for an evaluation project of the mobile court programme in Kenya was drawn up, which includes detailed factors to take into account as well as methodology. However, it has not been possible for UNHCR to proceed with the evaluation of that programme as of yet.

- improving the situation with regard to objective barriers in accessing the state legal system, including physical distance, language barriers, lack of resources, and legal aid/counselling services;
- addressing subjective barriers⁴⁷ by providing relevant legal and psychological support services such as, accompanying victims to court, providing psychological and social support, counselling and follow up care; victim and witness protection programmes; and undertaking on an ongoing basis awareness raising and sensitisation programmes for refugees on their rights, harmful traditional practices, SGBV, and responses and programmes available to victims. Recourse to the state legal system is strongly discouraged by some refugee communities, sometimes to the point where an individual refugee wishing to take this legal venue can expect to meet resistance from the family and community. They may even suffer a measure of marginalisation or social exclusion, which in some cases, can be a further protection concern, especially if it involves a girl or woman in traditionalist societies. As seen throughout this paper, this is most often applicable to women, who are disproportionately affected by crimes carrying a strong social stigma, or considered to dishonour the family. Conversely, many violent acts against women and girls are not considered serious crimes by the community, or at least, not the type of incidents which should be addressed by the criminal justice system;
- increasing the knowledge of all key actors (especially refugee populations), on relevant domestic legislation and how certain crimes or cases are treated within the host state legal system. Refugees sometimes have to make very difficult decisions about what approach or recourse to take in a specific case. Ideally, staff providing counselling services should assist them by providing information on what each option is likely to entail, including what may be required of them (e.g. testifying), possible sanctions and duration of the case in the state legal system, as well as the pros and cons of bringing the case to either system (i.e., the state system or DRS in the camp);
- undertaking concerted efforts to improve the state system's response to specific legal issues considered a priority for refugee camp populations, such as, legal problems related to civil acts and documentation, family law issues, and SGBV.

(iv) Recommendations for dispute resolution systems:

The majority of the respondents in the 13 refugee hosting countries surveyed recognised the important role played by refugee DRS. Some thought they should be supported in their functions in relation to petty crimes, others that they should be accorded legal recognition since they already have *de facto* recognition by the host government, and yet others advocate for more capacity building, regulation (i.e. as to their mandate, permissible sanctions etc.) and other improvements to these systems.⁴⁸

⁴⁷ While this categorisation of 'subjective' and 'objective' barriers to accessing justice can be considered rather artificial, it is used in the above context simply to highlight that it may be necessary in many situations to work simultaneously, and invest almost equally, in addressing these two facets of the problem.

⁴⁸ For example, UNHCR Kenya recommended that they be supported especially when it comes to dealing with petty crimes, while UNHCR Ethiopia suggested that as these systems enjoy *de facto* recognition, perhaps legal recognition was not to be ruled out, and many other respondents made a variety of other recommendations to improve refugee and traditional DRS in camps.

Many arguments have been advanced on the merits of working with and improving these DRS in camps, rather than abolishing them. Some of the more convincing arguments maintain that these DRS:

- Encourage the refugee community to be more responsible;
- Would be difficult, if not impossible in many cases, to dispose of even if one wished to do so. These DRS would in most likelihood simply go underground (or further underground), making possible abuses harder to monitor and address;
- Can be an important vehicle for maintaining social harmony in the camps (as opposed to only dispensing sanctions), particularly through their use of consensus and reconciliation methods, as well as a useful “forum for social learning”.⁴⁹ These functions are especially valuable in relation to cases involving youth, and in disputes between refugees of different, and sometimes hostile, ethnic or tribal groups;
- Serve as a ready-made and accessible system available within the refugee community to resolve disputes which would otherwise have taken a long time or not been addressed (i.e. or even reported) at all. Generally, refugee DRS boast a quick resolution of cases and easy access with few, if any, cultural, linguistic, geographic or monetary barriers;
- Are composed of members who often know the parties personally, as well as the customs and ways of the refugee community, and are therefore well placed to deal with those coming before them.

However, the recognition of the important role played by refugee DRS in camp situations is not unequivocal and many recommendations have been put forth on how these systems can be rendered more acceptable in the face of a number of serious concerns. One of the recommendations most consistently and persuasively made, is the need to strengthen the capacity of DRS to uphold minimum human rights standards. This was clearly echoed by the vast majority of respondents in the 13 countries surveyed,⁵⁰ despite very significant differences in the nature and types of refugee DRS used in the 54 camps studied across the globe.

For the most part as well, these DRS were deemed particularly useful for dealing with petty offences, while serious offences, and SGBV crimes in particular, were considered inappropriate for this venue and should be dealt with under the host state legal system. This would entail, amongst other things, a regulation of the powers and mandate of these DRS. In the same vein, and as suggested elsewhere in this study, closer monitoring (and recording or documentation) of the practices and decisions of refugee DRS is highly recommended.

However, such reforms to DRS require other accompanying measures, such as training of relevant actors, sensitisation of the refugee population and leadership (and DRS decision makers), and improvements in the legal assistance services and accessibility of the host state legal system. Without such measures, tighter regulation and more restrictive mandates of these DRS might simply drive their activities underground or mean that disputes are resolved by even more informal (and less public) mediation and conflict resolution mechanisms, such as at the level of the family or tribe. Where camps hold refugee groups with significant differences, this can result in wider clashes between these groups. A solid ‘receptive base’ (developed through dialogue, negotiation and sensitisation) and the strengthening of alternative state mechanisms must thus be prepared in

⁴⁹ This was suggested by UNHCR Sierra Leone for example.

⁵⁰ Indeed, nine out of the 13 country UNHCR offices surveyed responded specifically, when asked what recommendations they would have regarding refugee DRS and their practices in the questionnaire, that refugee DRS should be strengthened to uphold human rights standards. In addition, all the 13 UNHCR country offices surveyed identified human rights as a concern or issue.

advance, including by improving the investigation and prosecution of crimes, so that dangerous vacuums do not emerge. If refugee DRS are to be prohibited from dealing with certain cases and types of crimes, a reasonable and accessible alternative should be available (together with support services). Otherwise, refugee populations may continue to put pressure on DRS to address their case clandestinely, and even more worryingly, refugee camps may become even more fertile ground for a culture of impunity.

(v) Recommendations for Sexual and Gender based violence

The preparation of a paper specifically analysing the various mechanisms of redress for SGBV crimes (i.e. both refugee and traditional DRS as well as formal judicial mechanisms of the host country), including the barriers and merits of each, the lessons learnt, and the good practices in place, was already suggested above. Other specific recommendations are summarised and detailed further below.

One such recommendation notes the need for clarification and further development of guiding principles and/or policy for addressing cases of SGBV against minors, including the issue of forced early marriage, and protocols for dealing with situations where the best interests of the child (or the safety of other children in the camp) are, arguably, not served by the parent's or guardian's wishes. This can include cases where a minor who is raped is coerced to marry her rapist subject to banishment from the home, and cases where the parents refuse to press criminal charges against an offending paedophile because he is a relative, or because they prefer to settle the case quietly in return for in kind or monetary compensation.

The general principle whereby the victim's wishes are to be respected in SGBV cases, and where by extension the parent's wishes are to be taken as that of the child's in cases involving a minor, (and as representing her or his best interests), should be nuanced in order to allow for and provide guidance on how to treat possible exceptions. Since domestic legislation may differ from country to country with regard to the rules for state prosecution of such cases, as well as rules relating to parental authority and guardianship etc, the above refers primarily to the treatment of such cases outside (or partially outside) the state legal system, and to principles guiding organisations such as UNHCR. New or revised UNHCR Protection Guidelines relative to children for example, or Guidelines on the best interests of the child, would perhaps be an appropriate place to elaborate standards and principles to address such cases.

Guidelines or policies on refugee women could also provide an appropriate venue to state or reiterate the general principles that should guide an organisation in the area of administration of justice in camps and the related treatment of refugee women and girls.

As well, alternative ways of ensuring against or minimising the risk to camp residents posed by SGBV offenders who are not brought to justice or apprehended should be explored together with the refugee community, government and camp authorities. We have seen that cultural attitudes, family ties, legal loopholes (e.g. charges are brought after the short time periods stipulated by law), and traditional methods of dispute resolution may result in perpetrators of SGBV being permitted to live freely in the camp. As articulated by some respondents in the field, this issue poses an important moral and practical problem for those in charge of refugee protection, particularly when it relates to harmful traditional practices and the sexual abuse of children.

In this regard, the database established by UNHCR Thailand to keep track of all SGBV cases and identify patterns in this field, can be of some assistance and is a notable practice which could be explored for possible use in other operations.

It would appear that in some camps, a certain practice has emerged relating to protocols and letters of understanding on the exchange of information on SGBV crimes, between NGOs working with refugee camp populations and UNHCR (as well as host government authorities, where relevant). It could be useful to review these agreements in order to assess whether they are consistent with the organisation's protection responsibilities, SGBV guidelines and other policies. In particular, it would be advisable to analyse why such agreements came into existence, the confidentiality aspect and restrictive conditions set in these agreements, and how the limited information accessible to UNHCR staff through them may hamper their protection activities.

In addition, an in depth look into reporting and monitoring practices (including barriers and good practices) with regard to SGBV should be undertaken, including in relation to the monitoring of decisions and treatment of these cases by the different refugee DRS.

Dialogue, coordination, joint training and other methods for improving the quality of the services and response to SGBV in refugee camps, including through more effective partnerships between UNHCR, NGOs, relevant host government authorities and the refugee population itself must continue to be promoted. Critically, women, men and the youth sectors of the refugee population, i.e. adolescents, should be targeted, as well as traditional refugee leaders. In particular, sensitisation and awareness raising, as well as targeted training, should be provided with regard to SGBV to refugee populations, refugee leaders, and decision-makers within DRS. In some cases, sensitisation activities on SGBV are best implemented indirectly or by including them in the context of wider awareness raising or capacity building programmes on legal issues, human and refugee rights, health, camp governance and management, or the security situation in the camp.

(vi) Violations of administrative regulations, camp by-laws, and unwritten codes of conduct and social mores

As seen throughout this paper, in addition to the general domestic law of the host country, refugee populations are also governed by several other sets of rules. These often include for example: a set of (government) administrative regulations specific to refugee camps (e.g. rules relating to restrictions on freedom of movement, curfews, the possession of illegal brews etc); the refugee population's own set of rules and customs regulating their behaviour and conflicts; and at times, written camp by-laws which are also usually adopted by refugees themselves in conjunction with or with the tacit approval of refugee and camp authorities, and sometimes UNHCR. These additional layers of rules raise some key issues.

Camp by-laws, as described earlier in this paper, are usually developed by the refugee community, with the assistance (or support) of camp authorities and or UNHCR, and generally aim to keep harmony and order in the camp by regulating relations between refugees through agreed upon rules of behaviour and sanctions. They constitute in effect a type of written 'social contract' between the refugees in the camp, and generally reflect the beliefs and culture of the refugee population, albeit with certain compromises, which are usually demanded by UNHCR or other actors assisting in the process. These camp by-laws typically regulate a range of issues within the camp, including most commonly, petty thefts, love affairs and adultery, refusal to perform required camp duties, witchcraft, as well as other vague offences under titles such as 'fighting', 'insults', 'incitement', 'riotous conduct', 'tribalism', and 'religious argument'.⁵¹ These cases are usually adjudicated by designated refugee DRS.

⁵¹ These are offences are included in the draft camp by-laws in Sierra Leone, for example.

It is true as well that most often, these rules and codes of behaviour imposed by refugee populations are not actually ‘formalised’ or documented (i.e. written down) as camp by-laws in this manner, but operate unwritten as simply part of community life and tradition. Whether formalised as camp by laws or not, however, these rules in effect constitute an additional layer of ‘obligations’ for refugees in camps, which are enforced by refugee DRS and have corresponding sanctions.

The result of such camp by-laws and traditional codes of behaviour therefore, is that they:

- create ‘new’ types of ‘violations’ which usually do not exist under the domestic law of the host country – thereby raising the question of whether violations of these by-laws or codes of conduct should be considered ‘violations’ at all in the context of the host country legal system;
- impose restrictions or obligations which have no ‘legal’ validity as such, for the same reason as above; and/or
- impose sanctions and punishments which are not provided for under domestic law, or are either significantly lighter or heavier than those normally applicable under the host country’s legal system. This raises the issue of the legitimacy of such sanctions, and the even more fundamental question of whether sanctions imposed for violations or infractions not recognised as such under the domestic law of the host country are acceptable at all.

Adultery, and other types of extra-marital relations (including sexual), as well as witchcraft for example, may well be included as ‘violations’ or ‘infractions’ with corresponding sanctions under camp by-laws – even if no equivalent infraction exists under the domestic law of the host country. At the same time, we have seen that most often sanctions by refugee DRS for SGBV crimes for example, are notoriously light. This is one of the more common and most grave complaints against refugee/traditional DRS. Other types of crimes and violations may also receive lighter punishments by DRS than prescribed under domestic law. This is explained in part at least, by the limited (or complete absence of) enforcement capacity, mandate (i.e. powers) and resources (such as detention facilities) of DRS. Fines are thus often imposed for violent crimes, instead of the prison sentence which would normally apply. In the area of family law, profoundly discriminatory practices relating to divorce, separation, child custody and property rights as well as inheritance, can also be applied by refugee mechanisms in contravention of international human rights standards.

To the extent that such matters are contained in camp by-laws or are part of a *de facto* (i.e. unwritten) system of camp justice which is supported by government and camp authorities or international organisations such as UNHCR (which has a supervisory mandate), the legitimacy of these by-laws or practices become the concern of these actors. However, simply ignoring or prohibiting them will most likely only drive them underground. For example, not recognising the refugee population’s belief in witchcraft and refusing to include such a provision in camp by-laws, can result in suspects being punished in secret, with likely more severe sanctions than the fine or community work generally imposed by camp by laws. The same is also likely applicable to cases of adultery or ‘illicit’ love affairs. Yet, categorising as a ‘violation’ an activity which is not illegal under the domestic law of the host country, and imposing a sanction, even if in the form of a fine, is not necessarily something which should be readily accepted without some debate.

Other problems noted with regard to camp by laws, is the often vague formulation of their provisions, the lack of proper definitions of certain violations (which can lead to wide interpretations and greater powers to DRS), and the limited enforcement capacity of DRS. These refugee DRS, which admittedly can play a critical role in maintaining harmony and order in camp settings, rely fundamentally on the strength of social pressure and shared values and traditions to

ensure compliance with their decisions. However, there is obvious legal recourse or method of enforcing a decision by DRS if someone simply refuses to respect it.

In light of the above, it would be advisable therefore to develop some guiding principles on the approach to take when developing camp by-laws together with refugee populations. Such guidance could pertain to the types of violations and sanctions they may prescribe, the definitions provided, the decision-making and enforcement powers accorded to relevant bodies, and the criteria for recognising such bodies as legitimate (e.g. recognition by the host government, camp administration or international actors, the presence of a proportional number of women on the decision making panel, and compliance with rules relating to the election or appointment of members of the DRS).

With regard to administrative or internal (government) camp regulations, while these may generally be consistent with domestic legislation, it is pertinent in some cases to question whether certain specific regulations are indeed legitimately imposed and consistent with the host country's laws (e.g. their human rights, administrative, refugee and aliens laws), as well as international law. Similarly, it may be relevant to look into whether the administrative camp rules imposed on one refugee camp or particular group of refugees are also imposed on other refugee groups or camps. Where unjustified differentiations in treatment occur, they may be in violation of non discrimination provisions in international or national human rights instruments, including article 3 of the 1951 Convention.

Annex

Questionnaire on the Administration of Justice in Refugee Camps

1. Country: _____ Branch Office or Camp Name(s): _____
2. Name and Title of Respondent(s): _____
3. Population of the Camp (total number of persons, gender–age desegregated), nationality or ethnicity of refugee population, urban or rural population): _____
4. In general, what types of disputes, ‘justice’ or legal issues arise most commonly in the camp? Please be specific, rather than mentioning only the category.
(Examples: theft, different types of violent crimes such as kidnapping or murder, SGBV such as forced marriage, property and civil issues, contravention of certain camp management rules, such as circulating beyond the stipulated camp limits)
5. What general legal mechanisms and dispute resolution structures (both formal and informal) are in place to address disputes/ justice issues between refugees in the camp? In point form, list them, mention who has set them up, and what issues they address?
6. **Traditional Refugee Dispute Resolution Structure (TR-DRS) in the Camp (set up, used or developed by refugees)**

Name, briefly describe the nature and history of these structures in the camp, and answer the specific questions below:

- a) Did UNHCR, NGOs, or Government counterparts participate in the initial development or set up of these ‘refugee’ structures? Or have they been involved in these structures since then?
- b) Briefly explain, why, how and when were they set up?
- c) What types of issues and cases are brought to these refugee dispute resolution structures (i.e., what is their ‘mandate’, do they hear criminal, civil, violent, non-violent cases, SGBV cases, cases involving minors)?
- d) Description of the refugee dispute resolution structure (s):
 - what is their composition (including representation by women, minority groups)
 - describe the procedure, how decisions are reached, its guiding principles (attach documents if possible)
 - is this structure/mechanism fair, impartial, transparent and representative? Explain
 - what are the types of sanctions (penalties and punishments) imposed by these structures?
 - is there an appeal or review procedure against their decisions? If so please describe. Please also note if unsatisfied refugees go to UNHCR for assistance or to complain in such cases (to whom and how).
 - is there a reporting or monitoring mechanism (by refugees themselves, UNHCR or NGOs) in place to keep a record of the cases brought to these refugee structures and their decisions? Does UNHCR or its implementing partners have access to these records, to the ‘sessions’ themselves, or do they have any other form of involvement allowing them to monitor and /or

influence the system? If so, please describe who attends or monitors, how often, how they proceed to do this, and how their involvement in the TR-DRS is perceived by the refugee population and the leaders of the structure (as well as the victim and perpetrator). Is there another way (such as involvement with the camp leaders and refugee population) in which UNHCR and IPs can receive feedback from refugees on these structures and the cases they deal with? If there is no involvement or monitoring system in place, please explain why not.

- What organisation or body (NGOs, government, UNHCR, refugee camp committee etc), and what persons in particular (name, title etc) are in your opinion, the most knowledgeable and/or have the best access to these TR-DRS? Please involve them in this questionnaire, to the extent possible.
- e) What is the general reputation or view of these mechanisms by the targeted refugee population? And on what is your answer based?
- f) What concerns do these refugee structures and mechanisms raise for: a) refugees in general, b) victims, c) the accused; d) UNHCR; e) NGOs; f) Government, g) others.
- g) In particular, what are the concerns, merits, practices relating to the treatment of SGBV cases brought before these structures?
- What types of SGBV cases are brought to this venue (and by whom, victim, family, male members)?
 - What are the characteristics of this system (e.g., familiarity, security, cultural appropriateness, access, punishments, expediency) that are valued by those bringing SGBV cases to them (the victim, the accused, the families)?
 - Are there any guidelines, programs, or strategies in place to work with or improve this system's treatment of SGBV cases? Explain
 - Are there any reporting or monitoring mechanisms in place to keep track of the types of SGBV cases brought to this venue and its decisions? What can be done to improve these mechanisms, even at the informal level?
 - What are some lessons learnt and your recommendations for improving how this venue addresses SGBV cases, how we work with them on this issue, and how we monitor?
- h) What, if any, are the advantages (in relation to possible alternatives) that traditional refugee dispute resolution structures generally offer a)refugees, b) victims, c) the accused, d) UNHCR, e) NGOs, f) the government?
- i) What general recommendations would you have regarding these TR-DRS and practices?
- j) In your specific context, do you know if these TR-DRS actually emulate traditional practices in the refugees' country (and region) of origin? Is there a mix of refugees (for example, refugees from a rural and urban environment) in the camp which makes these structures unfamiliar and inappropriate for certain groups of refugees (even though they are from the same country)?
- k) Please list below all the available documents (full title and date) you forwarded (for all documents sent, always indicate if sent by e-mail or pouch) concerning traditional refugee dispute resolution structures/mechanisms in refugee camps in your country.
- l) What **other informal dispute resolution** or mediation systems do you know of that exist in the camp (apart from the more 'structured' traditional committees or 'courts'). For example, this may take the form of advice or mediation services provided confidentially to refugees (both or either of the parties to the dispute) by elders, spiritual leaders, teachers, camp leaders, marriage counselors, 'witches' etc. To your knowledge what types of cases go to them, what are typical remedies, is their advice generally followed and respected? Is UNHCR involved and working with these persons in the camp? Explain.

7. Access, Use and Experience of the National Legal System by Refugees (SLS)

Please describe and comment on the use of the (national) **state justice system (SLS)** (of country of asylum) by refugees.

- a) What are the major barriers (if any) for refugees trying to **access** the state legal system (e.g. lack of freedom of movement, familiarity with system, legal assistance; *de facto* discrimination, authorities' refusal to prosecute cases)
- b) In the experience of UNHCR, and NGOs etc, what are the major concerns (e.g., quality, due process, fairness, effectiveness, delays) in general of the state legal system, and in particular of the treatment of refugees by that system?
- c) What type of SGBV cases, if any, are most commonly brought to the SLS (and by whom)?
 - Are there particular concerns regarding the treatment of SGBV cases within the state legal system (SLS) and in national legislation? Why do refugees decide to bring or not bring their cases to the SLS?
 - What programs and legal assistance is in place for victims pursuing their case in this venue, for perpetrators, for their families –and is it sufficient to meet demand?
 - What realistic recommendations do you have for improving existing assistance programs and how the national (state) legal system deals with such cases?
 - What reporting and monitoring mechanisms are in place to keep track of such cases, their decisions, and to take follow-up action (see (f) below)?
- d) When are refugees most interested in pursuing cases in the SLS, and what types of cases involving refugees are brought to the SLS by UNHCR, NGOs, government or local citizens?
- e) Please describe and provide documentation regarding any training, support, or other assistance programs UNHCR or IP may have in place to assist with issues relating to the SLS. For example, programs to raise legal awareness and provide legal assistance to refugees, programs to facilitate their access to the system, and programs to support the SLS (through eg.training, legal materials, building courts)
- f) Please describe reporting and monitoring mechanisms in place for cases brought to the SLS: who is responsible, how involved can they get, who do they report to, can they intervene and how?
- g) Please list below all the relevant (existing) supporting documents you have provided on the above topics (e.g., program reports, project proposals describing a current program, evaluations, monitoring reports etc)

8. Civil Acts and Issues in the Refugee Camp

- a) Please describe and comment on how **civil acts and other civil issues** are dealt with for refugees living in the camp? For example, how are the issues of birth registrations and obtaining a formal birth certificate, marriage, divorce, custody, death certificates, property issues (for which refugees typically lack necessary documentation) dealt with? Can refugees effectively use the state legal system to deal with these types of matters? If not, are there complementary or substitute systems in place in the camp to address these issues and provide legally valid 'minimum' documentation of (or for) these civil acts to refugees?
- b) Where there is already a lack of such critical documents as birth certificates, does this impede exercise of certain rights and access to the state legal system (if the legal system requires these documents to pursue a case)?
- c) What, if any, barriers exist to affect these civil acts (e.g. lack of administrative, logistical, or legal assistance, lack of necessary papers etc.)? What programs and persons are in place to assist refugees with civil acts and issues?
- d) Please list any supporting (existing) documents you have provided on this issue.

9. Cooperation on Justice Issues & Relationship between the State Legal System (SLS) and the Traditional Refugee Dispute Resolution Structures (TR-DRS)

- a) How do different actors (refugees, UNHCR, NGOs, government etc) cooperate to administer justice within the camp? If competencies overlap, which system would refugees generally prefer to use or regard as most authoritative?
- b) What is the interplay, if any, between traditional refugee dispute resolution structures and access to the state (national) legal system? For example, does the existence of TR-DRS in the camp (and pressure within the camp to use this mechanism) mean that refugees are less willing or able to access the SLS, do police refer them to the traditional refugee structures rather than complete police reports etc.?
- c) In your view, to what extent do the traditional refugee structures and mechanisms within the camp replace the state legal system or relieve the host country of its justice responsibilities towards refugees?
- d) What are your thoughts regarding the above and what recommendations would you have on these issues?

10. Local Traditional Justice System Used by Nationals (LTJS)

Please describe and comment on any **local non-state (traditional and usually not official) ‘justice’ or ‘dispute resolution’ systems** in place which are used by the local population (nationals of the country of asylum) in the area around the refugee camps. Also comment on how this system impacts on refugees? How are refugees treated in this system, what sorts of cases involving refugees go through this system and why? What types of cases do they deal with and what sanctions do they impose? How are SGBV cases involving refugees treated within this venue? What is UNHCR and NGO monitoring, involvement or strategy in relation to this system, and what is the Government’s involvement or *de facto* attitude to this system etc? What are the concerns regarding this system and your recommendations for dealing with it more effectively? Please list documentation provided on this issue.

11. Disputes and Justice Issues between Refugees and Local Citizens

- a) When there is a dispute or justice issue between a refugee and a local citizen (of country of asylum) to what legal or traditional venue is the conflict brought – to the national legal system or the local ‘traditional dispute resolution structures’ of nationals residing near the refugee camp? What types of cases are typically brought where? And how are refugees treated in these justice systems in such instances. Please describe what assistance (legal counseling, political negotiation or intervention, logistical support, visiting accused in detention) is provided and by whom to refugees caught in these situations?
- b) Please provide recommendations for improving how such cases are dealt with.
- c) Please list the supporting documentation you have provided on this topic.

12. Legal Assistance Related Programs

- a) Please enumerate and briefly describe the different legal assistance related programs in place, by UNHCR, NGOs, refugees, local groups, government (refer to the section if already mentioned elsewhere in questionnaire). This may include, for example:
 - a. **Legal and SGBV training/awareness-raising & material support**
 - b. **Legal counseling and legal representation**

c. **Logistical and other assistance to refugees (including relocation of victim and family to safe place or other safety measures, accompanying victim to hearings, provision of transportation etc)**

d. **Mobile court or other programs aimed at improving access to SLS**

- b) Are these legal assistance programs sufficient in relation to need? to what degree?
- c) What partnerships or working relationships does UNHCR have with local lawyers, NGOs, associations, or members of the state legal system with regard to legal/justice issues? For example, providing legal representation and counseling, awareness-raising, participating in constitutional challenges etc.
- d) What recommendations would you have on this topic?
- e) Please list relevant documents provided on this topic.

13. **Policing Program and Practices in the Camp**

- a) Please describe and comment on the policing program currently in use in the camps. Also comment on how police attitudes, guidelines, training, patrol shifts, monitoring mechanisms, composition (% of women, refugees, state police), reporting and other police practices in the camp may impact on level of reporting, security, access and successful use of the different 'justice'/legal systems by refugees. What are the concerns and what are merits of the current policing program in the camps.
- b) What realistic recommendations would you have on this subject?
- c) Please list relevant documents you have forwarded.

14. **Protection Provided to Minors**

- a) What special safety and legal protection measures are provided to minors (victims as well as perpetrators) in:
 - 'traditional' refugee dispute resolution structures in the camps
 - the (national) state legal system
 - the local traditional system of 'justice' used by locals
 - other informal advice or mediation systems (e.g., by church, camp leaders)
 - family decisions and traditional practices considered harmful to the child (forced or early marriage, compensation for rape, 'kidnapping').
- b) What programs, strategies, concerns or recommendations could you provide for dealing with youth and SGBV crimes (for minor victims & perpetrators, & families)?

15. **Governance in the Camp: Tools and Issues**

- a) Please describe and comment on governance issues, tools, procedures, guidelines or directives in the camp. For example:
 - i) are there camp rules and a code of behavior for refugees ? (if so, please provide the relevant documents)
 - ii) are there clear and effective reporting, complaint, monitoring & accountability mechanisms for addressing camp problems and cases of misconduct (provide documentation),
 - iii) do these need to be strengthened and how?
 - iv) is there (representative) refugee participation on governance and management issues/decisions in the camp? If so, who is involved, and is there any refugee women participation?
- b) Please provide recommendations on how these might be improved, and in particular, how governance issues could take into account and address 'justice' issues and refugee participation more effectively.

c) Please list all supporting documentation provided on this issue.

16. Best Practices

Please provide a minimum of **3 examples** of practices, programs or strategies on any of the topics / issues brought up in this questionnaire which you think work well or deserve mention as successful practices. They may be in relation to any of the topics brought up in this questionnaire such as, prevention, legal response programs, governance issues, refugee participation, SGBV, policing, reporting or monitoring systems, traditional refugee dispute resolution structures, programs to increase access to the national legal system etc. Please provide description and comment on merits of each. Also provide supporting documentation when available, and list them below.

17. Lessons Learnt

Please provide a minimum of **3 examples** of lessons learnt (positive or negative) in any of the areas/ topics mentioned in this questionnaire. For each example, provide a description of the program or target activity, and what specific lessons were drawn which merit note. Please provide available documentation, and list below.

18. Your Views and Comments on the Questionnaire

- a) What in your view are the strengths and weakness of this questionnaire?
- b) Was it a useful process for you professionally, and for UNHCR operations in your country? If so, how so? If not, why not?
- c) How do you think the results of this could / will probably be used in the operations of your BO, field offices, IPs (NGOs) etc?
- d) Other comments.

Thank you for completing this questionnaire. Your participation in this project is greatly appreciated.