

ENHANCING REFUGEE RIGHTS IN THAI CAMPS: INTEGRATING INDIGENOUS PEOPLES' INTERNATIONAL LAW

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ABSTRACT

This study explores the potential of International Law on Indigenous Peoples (ILIP) to enhance protections for refugees in Thailand's camps by complementing International Refugee Law (IRL) and International Human Rights Law (IHRL). Over 90,000 refugees, predominantly Karen Indigenous Peoples from Myanmar, reside in nine camps along the Thailand–Myanmar border, having fled persecution. Thailand, not a signatory to the 1951 Refugee Convention or its 1967 Protocol, lacks a formal asylum system and classifies these refugees as 'illegal migrants,' leaving them in a state of significant vulnerability. This paper argues that ILIP can address gaps in IRL and IHRL by recognizing the collective rights of indigenous refugees, particularly the Karen, whose cultural identity and communal needs are inadequately protected under existing frameworks. While IHRL provides universal rights applicable to all, and IRL offers specific refugee protections, neither fully accommodates the collective cultural and social rights crucial for indigenous groups. ILIP, through instruments like the ILO Convention 169 and the UN Declaration on the Rights of Indigenous Peoples, emphasizes collective rights to culture, self-determination, and traditional practices, which are vital for preserving the Karen's identity in exile. By integrating ILIP with IRL and IHRL, this study proposes a more holistic protection framework that responds to the unique needs of indigenous refugees. The analysis underscores how ILIP's focus on collective dignity can strengthen Thailand's legal and policy approaches, ensuring better safeguarding of Karen refugees' rights and cultural heritage in the camps.

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1. INTRODUCTION

The international legal framework for refugee protection is multifaceted, drawing from a variety of legal sources across different domains of international law, each contributing distinct yet overlapping norms. This diversity, often described as a reflection of the fragmentation of international law (Young, 2015), does not inherently lead to conflicting standards. Instead, these norms can intersect, align toward shared objectives, and mutually reinforce one another. This paper argues that the interplay among International Law on Indigenous Peoples (ILIP), International Refugee Law (IRL), and International Human Rights Law (IHRL) creates a synergistic network of protections that can significantly enhance the safeguards available to refugees, particularly those in Thailand's camps along the Myanmar border.

IRL, primarily anchored in the 1951 Refugee Convention and its 1967 Protocol, forms the cornerstone of the global refugee protection regime (Hathaway, 2021). These instruments establish the legal definition of a refugee and outline specific rights, such as access to employment, education, and freedom of movement, for those granted refugee status. However, their applicability is limited in contexts like Thailand, which hosts approximately 90,759 refugees from Myanmar in nine camps across four provinces as of November 2022 (UNHCR Thailand Multi-Country Office, 2022). Thailand's refusal to accede to the 1951 Refugee Convention or its 1967 Protocol means that refugees in these camps are not recognized as such under IRL and are instead classified as 'illegal migrants' under Thai law (UN Human Rights Council, 2021). In this paper, the term "refugee" is used broadly to highlight the need for international protection for individuals in these camps, regardless of formal status. When referring specifically to those granted refugee status under the 1951 Convention, the term "recognized refugee" is employed.

Thailand's non-signatory status to the Refugee Convention results in a significant protection gap, as refugees in its camps are denied the rights enshrined in IRL. Without a national asylum system, Thai law treats these individuals as undocumented migrants, subjecting them to restrictive policies that limit their mobility, access to work, and integration into society (Jetschke, 2019). This precarious legal status underscores the need for alternative legal frameworks to address the vulnerabilities faced by these refugees, the majority of whom are Karen Indigenous Peoples from the Thailand–Myanmar border region.

While Thailand is not bound by IRL, it is a party to several IHRL instruments, including the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention Against Torture (CAT), and the Convention on the Rights of the Child (CRC). These treaties confer rights to all individuals within Thailand's jurisdiction, regardless of their immigration status, thereby offering a critical layer of protection for refugees in camps (Edwards, 2018). IHRL's universal applicability helps mitigate some of the limitations of IRL by ensuring access to fundamental rights, such as non-

discrimination, education, and healthcare. For instance, the principle of non-refoulement, which prohibits returning individuals to places where they face persecution, is reinforced under IHRL through provisions like of CAT and Article 7 of the ICCPR, providing broader and more absolute protections than those in IRL (Chetail, 2021).

Despite IHRL's contributions, it is not fully equipped to address the specific needs of Karen refugees as Indigenous Peoples. The Karen, widely acknowledged as indigenous to the Thailand–Myanmar border region, have a distinct cultural, linguistic, and social identity that has been historically marginalized (Lehman, 1979; EthnoMed, 2008). Although not formally recognized as Indigenous Peoples by Thailand or Myanmar, the Karen's collective dignity and communal way of life require recognition and protection, particularly in the context of displacement (Howard, 1995). IHRL, with its emphasis on individual rights, falls short in safeguarding the collective rights essential to preserving the Karen's cultural heritage, traditional practices, and community autonomy. Similarly, IRL's focus on individual refugee status and associated rights does not adequately address the group-based needs of indigenous refugees.

This paper posits that ILIP, through instruments like the 1989 ILO Convention No. 169 and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), plays a pivotal role in filling this protection gap. ILIP emphasizes collective rights, such as self-determination, cultural preservation, and participation in decision-making, which are critical for indigenous refugees like the Karen (Lennox & Short, 2016). By recognizing the Karen's rights to maintain their cultural identity, practice their traditions, and govern their communal affairs, ILIP complements the individual-focused protections of IRL and IHRL. This complementary role is particularly vital in Thailand, where Karen refugees face cultural erosion and restricted access to their collective heritage due to camp policies that limit educational content and mobility (Oh, 2012).

The interaction among ILIP, IRL, and IHRL offers a robust framework to address the unique challenges faced by Karen refugees. While IRL provides a foundation for refugee protection, its absence in Thailand highlights the importance of IHRL's universal rights. ILIP further enhances this framework by addressing the collective dimensions of indigenous identity, which are often overlooked in other regimes. This paper acknowledges that implementing these international obligations depends heavily on state compliance, which remains a challenge in Thailand's dualist legal system, where international treaties require domestic incorporation (Verdier & Versteeg, 2015). Nonetheless, the normative force of these legal regimes provides a basis for advocating reforms in Thailand's refugee policies (Donnelly & Whelan, 2020).

This study begins by outlining the historical context of the Karen as Indigenous Peoples and their protracted displacement in Thai camps. It then examines the roles of IRL, IHRL, and ILIP in protecting refugees, highlighting IHRL's ability to address

IRL's limitations and ILIP's critical contribution to safeguarding collective indigenous rights. By analyzing the interplay of these legal regimes, the paper seeks to inform Thailand's legal and policy approaches to refugee protection, particularly for Karen refugees. This approach fills a gap in the literature, as few studies explore ILIP's potential to enhance protections for indigenous refugees, despite extensive research on refugee rights generally. The proposed framework not only addresses the specific needs of Karen refugees but also offers insights applicable to other indigenous groups in similar refugee situations globally.

2. OVERVIEW OF KAREN REFUGEES IN CAMPS ALONG THE THAILAND–MYANMAR BORDER

2.1 Historical Context of the Karen as Indigenous Peoples

The Karen, recognized as Indigenous Peoples of the Thailand-Myanmar border region, have a rich history rooted in oral traditions that trace their origins back approximately 2,500 years. According to these narratives, their ancestors migrated through Tibet and China before settling in present-day Myanmar (Minority Rights Group International, 2017; McConnachie, 2014). By the 18th century, the Karen had established themselves in the rugged highlands of eastern Myanmar, adjacent to Thailand, where they developed self-governing village systems that emphasized autonomy (Minority Rights Group International, 2017; Scott, 2009; Renard, 2003). This historical presence underscores their deep connection to the region, distinguishing them from the majority Burman population in Myanmar's lowlands (Renard, 2003).

The Karen are a diverse group, encompassing twelve subgroups, including Sgaw, Pwo, Pa-os, Paku, Maw Nay Pwa, Bwe, White Karens, Padaung (Kayan), Red Karen (Karenni), Keko/Keba, Black Karen, and Striped Karen (Harriden, 2002; McConnachie, 2014). Each subgroup contributes to the Karen's linguistic, cultural, and religious diversity. The majority practice Buddhism, with estimates suggesting over two-thirds adhere to this faith, though significant numbers converted to Christianity during British colonial rule in Myanmar (Minority Rights Group International, 2017). The Karen languages, primarily Sgaw (spoken predominantly by Christian Karen) and Pwo (common among Buddhist Karen), further reflect their cultural richness (McConnachie, 2014).

As Indigenous Peoples, the Karen have long asserted their distinct identity, setting them apart from the Burman majority, who dominate Myanmar's political and cultural landscape (Renard, 2003; Mason, 1862). However, this distinction has led to systemic marginalization by the Burmese state, which has pursued policies aimed at assimilating ethnic minorities into a Burman-centric national identity (Pedersen, 2008). The Karen's resistance to these efforts has manifested in a protracted struggle for autonomy, often through armed conflict. During British colonial rule, the Karen allied with the British against the Burmese state, seeking to secure their independence (McConnachie, 2014; Taylor, 2007; Ng, 2022). Following Myanmar's independence in 1948, the Karen, through the Karen National Union (KNU), launched a significant uprising against the

central government, marking the beginning of one of the world's longest-running insurgencies (Lintner, 1999; McConnachie, 2014; Pedersen, 2008). The KNU, established in 1949, remains a prominent force advocating for Karen self-determination, reflecting the community's enduring commitment to preserving their cultural and political autonomy (McConnachie, 2014).

2.2 The Prolonged Refugee Crisis in Thailand's Camps

The Karen's current situation as refugees in Thailand is deeply tied to decades of ethnic conflict and their quest for self-determination within Myanmar (Clarke, 2001). The Burmese military's campaigns against ethnic minorities, particularly the Karen, have driven significant displacement. In the 1970s and early 1980s, the Burmese army conducted seasonal offensives during the dry season, prompting Karen villagers to flee across the border into Thailand for safety, often returning during the rainy season when military activity subsided (McConnachie, 2014). However, in 1984, a shift in military strategy saw Burmese troops maintain their presence year-round, preventing many Karen from returning home. This led to the establishment of the first temporary refugee camps in Thailand, marking the beginning of a protracted refugee crisis (McConnachie, 2014).

Since then, the lack of political autonomy and rights for ethnic minorities in Myanmar has sustained the flow of Karen refugees into Thailand. The situation deteriorated further following the February 1, 2021, military coup in Myanmar, led by General Min Aung Hlaing. The coup triggered widespread violence, including airstrikes targeting Karen-populated areas in southeastern Myanmar, exacerbating displacement (Kapur, 2022; UN Office of the High Commissioner for Human Rights, 2023; Gravers, 2023; Refugees International, 2021). As of November 2022, Thailand hosted 90,759 refugees from Myanmar, predominantly Karen, in nine camps across four provinces along the Thailand–Myanmar border (UNHCR Thailand Multi-Country Office, 2022).

Thailand's response to this refugee influx has been characterized by restrictive immigration policies that offer limited protection. The Thai government does not recognize the legal status of refugees, classifying them as 'illegal migrants' under the Immigration Act of 1979 (Human Rights Watch, 2012; UN Human Rights Council, 2021). Refugees are confined to remote camps, officially termed 'temporary shelters,' and face stringent restrictions on movement. Leaving the camps without permission risks deportation, violating the principle of non-refoulement, which prohibits returning individuals to places where they face persecution (Human Rights Watch, 2012). Access to basic rights, such as education and healthcare, is severely limited. Refugees are excluded from the Thai educational system, and during the COVID-19 pandemic, they faced significant barriers to accessing vaccines, tests, and medical supplies (UN Committee on the Elimination of Racial Discrimination, 2022; Kobayashi et al., 2021).

The Karen's cultural identity is also under threat in these camps. Thai authorities impose restrictions on educational content, prohibiting the teaching of Karen

revolutionary history or narratives of their historical struggles, which are integral to their indigenous identity (Oh, 2010). Such policies prevent young Karen refugees from engaging with their collective heritage, contributing to cultural erosion (Oh, 2012; Carpeño & Feldman, 2015). The camps' restrictive environment limits the Karen's ability to practice their traditions, maintain their communal structures, or foster their distinct cultural values, placing their indigenous identity at risk.

The Karen's displacement is further complicated by Thailand's view of their presence as temporary. The Thai government assumes refugees will either be resettled in third countries or repatriated to Myanmar, despite ongoing conflict and political instability rendering return unsafe (Brees, 2008; UNHCR, 2006). This policy leaves refugees in a state of limbo, with little control over their lives and minimal prospects for integration into Thai society. The Karen National Union's historical resistance and the ongoing conflict in Myanmar highlight the complexity of their situation, as their struggle for autonomy continues to shape their experiences in exile (McConnachie, 2012).

In summary, the Karen refugees' presence in Thailand's camps is a direct consequence of historical and ongoing ethnic conflicts in Myanmar, compounded by Thailand's restrictive policies. Their status as Indigenous Peoples, with a distinct cultural and political identity, underscores the need for protection frameworks that address both their individual and collective rights. The following sections will explore how international legal regimes, particularly International Refugee Law, International Human Rights Law, and International Law on Indigenous Peoples, can interact to provide more comprehensive protections for these vulnerable refugees.

3. THE ROLE OF INTERNATIONAL HUMAN RIGHTS LAW IN MITIGATING THE SHORTCOMINGS OF INTERNATIONAL REFUGEE LAW FOR REFUGEES IN THAI CAMPS

3.1. International Refugee Law and Its Constraints in Protecting Refugees in Thailand's Camps

International Refugee Law (IRL), established primarily through the 1951 Refugee Convention and its 1967 Protocol, emerged in the aftermath of World War II to address the plight of displaced populations, initially in Europe (Barnett, 2002; Hathaway, 2005). These instruments define a refugee as someone who, owing to a well-founded fear of persecution based on race, religion, nationality, membership in a particular social group, or political opinion, is outside their country of nationality and unable or unwilling to return (Hathaway, 2021; Edwards, 2018). The Convention and Protocol outline a range of rights for recognized refugees, including access to employment, education, housing, and freedom of movement, forming the backbone of the global refugee protection regime (Goodwin-Gill, 2016). Today, approximately three-quarters of the world's governments are parties to these instruments, reflecting their widespread acceptance (Hathaway, 2021; UNHCR, 2002).

However, IRL's effectiveness is significantly limited in Southeast Asia, where ratification rates are low. Within the Association of Southeast Asian Nations (ASEAN), only Cambodia and the Philippines have acceded to the 1951 Refugee Convention and its 1967 Protocol (Moretti, 2021). Thailand, a major host to refugees in the region, has consistently declined to ratify these treaties, rendering IRL largely inapplicable to the 90,759 refugees from Myanmar residing in nine camps along the Thailand–Myanmar border as of November 2022 (UNHCR Thailand Multi-Country Office, 2022). In Thai law, the concept of a refugee does not exist, and individuals seeking international protection are treated as immigration matters under the Immigration Act of 1979 (Jetschke, 2019; Coddington, 2018). This act classifies refugees as 'illegal migrants,' subjecting them to restrictive policies aimed at deterring unauthorized entry and residence (Gruß, 2017).

Thailand's Immigration Act of 1979, particularly Section 12(1), prohibits entry without valid documentation, such as a passport or visa issued by Thai authorities. Refugees, who often flee without such documents, are automatically categorized as illegal migrants and face exclusion from legal protections (Jetschke, 2019). Section 29 of the act mandates the deportation of undocumented migrants, further entrenching their vulnerability (Lego, 2018; Al Imran, 2022). While Section 17 of the Immigration Act grants the Thai government discretionary authority to permit entry under special circumstances, this provision lacks clear criteria and is applied selectively. On this basis, Thailand allows Myanmar refugees, primarily ethnic minorities like the Karen fleeing persecution or conflict, to reside in designated 'temporary shelters' along the border (Vungsiriphal et al., 2014; Petcharamesree, 2016). However, this permission does not confer refugee status under the 1951 Refugee Convention, and the Thai government views their stay as a temporary arrangement pending repatriation to Myanmar or resettlement in third countries (Brees, 2008; Human Rights Watch, 2012; UNHCR, 2006).

The absence of refugee status recognition in Thailand means that camp residents cannot access the rights articulated in the 1951 Refugee Convention, such as the right to work (Article 17), education (Article 22), or freedom of movement (Article 26) (UN Human Rights Council, 2021; Chetail, 2021). These rights are reserved exclusively for recognized refugees, leaving asylum seekers, undocumented migrants, and those at risk in their home countries without formal protections (Goodwin-Gill, 2016). The Thai government's policy of confining refugees to camps further restricts their ability to integrate or access basic services, exacerbating their marginalization (Human Rights Watch, 2012).

In 2019, Thailand introduced the Regulation of the Office of the Prime Minister on the Screening of Aliens Who Enter into the Kingdom and Are Unable to Return to the Country of Origin B.E. 2562 (the Regulation), which established a National Screening Mechanism (NSM) to evaluate individuals for 'Protected Person' status (Chotinukul, 2020). This mechanism, outlined in Clause 3, aims to identify those unable to return to

their country of origin due to safety concerns. However, the Regulation deliberately avoids terms like ‘refugee’ or ‘asylum,’ and the legal status of ‘Protected Persons’ remains ambiguous (Chotinukul, 2020). Moreover, the NSM’s implementation was delayed by the COVID-19 pandemic, and as of the latest reports, no individuals have been granted this status (Stover, 2021). Consequently, the Regulation has not altered the fundamental classification of refugees as illegal migrants under the Immigration Act, leaving them without meaningful legal protections (Jetschke, 2019).

The principle of non-refoulement, enshrined in Article 33(1) of the 1951 Refugee Convention, is a cornerstone of IRL, prohibiting the return of refugees to countries where their life or freedom would be threatened due to race, religion, nationality, membership in a particular social group, or political opinion (UNHCR Executive Committee, 1977). This principle has achieved the status of customary international law, binding even non-signatory states like Thailand (UNHCR, 1997, 2002; Lambert, 2021; Lauterpacht & Bethlehem, 2003). Its normative weight is reinforced by its frequent citation in UNHCR Executive Committee conclusions and various international instruments, reflecting widespread state practice and *opinio juris* (Lambert, 2021).

Despite its customary status, the non-refoulement principle is not absolute under IRL. Article 33(2) of the 1951 Refugee Convention allows exceptions for refugees deemed a danger to the host country’s security or community, permitting lawful refoulement in cases of overriding national security or public safety concerns (Lauterpacht & Bethlehem, 2003; Duffy, 2008). In Thailand, the lack of formal asylum procedures and comprehensive refugee legislation undermines compliance with non-refoulement. Refugees who leave camps without authorization face deportation, a practice that violates this principle (Human Rights Watch, 2012). The Thai government’s minimal cooperation with the United Nations High Commissioner for Refugees (UNHCR), particularly in border camps, further weakens protections, as UNHCR’s role in supporting refugees is significantly curtailed (McConnachie, 2012).

The limitations of IRL in Thailand highlight the need for alternative legal frameworks to protect refugees in camps. The absence of ratification, combined with restrictive domestic policies, creates a protection vacuum that leaves refugees vulnerable to exploitation, detention, and forced return. The following section explores how International Human Rights Law (IHRL) can address these gaps by providing universal protections applicable to all individuals, including those in Thailand’s camps.

3.2. IHRL’s Contribution to Complementing IRL Protections for Refugees in Thai Camps

While Thailand’s non-signatory status to the 1951 Refugee Convention and its 1967 Protocol restricts the applicability of IRL, the country is bound by several core IHRL treaties, including the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention Against Torture and Other Cruel, Inhuman or Degrading

Treatment or Punishment (CAT), and the Convention on the Rights of the Child (CRC) (Edwards, 2018; Harvey, 2015). These treaties provide a robust framework for protecting refugees in Thai camps by conferring rights to all individuals within Thailand's jurisdiction, regardless of their immigration status. This universality distinguishes IHRL from IRL, which reserves most rights for recognized refugees (Chetail, 2021).

A fundamental principle of IHRL, articulated in the Universal Declaration of Human Rights (UDHR), is non-discrimination, which ensures that all individuals are entitled to rights without distinction based on race, color, sex, language, religion, political opinion, national or social origin, property, birth, or other status (Edwards, 2018). This principle is echoed in subsequent treaties, such as the ICCPR, the ICESCR, and the CRC, reinforcing its centrality to human rights protections. For refugees in Thai camps, who lack formal refugee status, IHRL offers a critical avenue for accessing rights that IRL cannot provide (Harvey, 2015).

For example, while the 1951 Refugee Convention grants the right to employment only to recognized refugees, the ICESCR guarantees everyone the right to freely choose their work and obliges state parties to safeguard this right (UN Committee on Economic, Social and Cultural Rights, 2009). The UN Committee on Economic, Social and Cultural Rights (CESCR) has clarified that this right extends to refugees, asylum seekers, stateless persons, and migrant workers, regardless of legal status (UN Committee on Economic, Social and Cultural Rights, 2009). The CESCR further emphasizes the vulnerability of refugees due to their precarious legal status, urging states to enact legislation enabling refugees to work under conditions comparable to nationals (UN Committee on Economic, Social and Cultural Rights, 2016). In Thailand, where refugees are barred from employment due to their illegal migrant status, IHRL imposes an obligation to grant them access to the labor market and ensure practical measures to facilitate their employment (UN Human Rights Council, 2021).

Similarly, the ICESCR mandates that primary education be compulsory and free for all, including refugees, without discrimination based on nationality or immigration status. Secondary education, including technical and vocational training, must be accessible to all, and higher education should be equally available (UN Committee on Economic, Social and Cultural Rights, 2009). In Thailand, refugees in camps are excluded from the national education system, but IHRL requires their inclusion in primary, secondary, and higher education on par with Thai nationals (Human Rights Watch, 2012). Additionally, Article 12(2) of the ICESCR obliges Thailand to ensure non-discriminatory access to health facilities, goods, and services, including preventive and therapeutic care. This is particularly critical for camp residents, who faced significant barriers to healthcare during the COVID-19 pandemic (Kobayashi et al., 2021; UN Committee on the Elimination of Racial Discrimination, 2022).

IHRL also strengthens protections against refoulement, complementing and expanding upon IRL's provisions. While the Refugee Convention prohibits refoulement to

places where a refugee's life or freedom would be threatened, allows exceptions for security or community threats (Duffy, 2008). In contrast, IHRL's non-refoulement protections are broader and absolute. The CAT explicitly prohibits returning individuals to states where they face a substantial risk of torture, with no exceptions (UN Committee Against Torture, 2008). Article 7 of the ICCPR, which bans torture and cruel, inhuman, or degrading treatment, has been interpreted by the UN Human Rights Committee to include a prohibition on refoulement to such harms (UN Human Rights Committee, 1992, 2004). Unlike IRL, IHRL's non-refoulement principle admits no derogations, offering stronger safeguards for refugees in Thai camps (Edwards, 2018; Goodwin-Gill & McAdam, 2007; Mathew, 2021; International Committee of the Red Cross, 2017).

As a party to the ICCPR and CAT, Thailand is prohibited from deporting refugees to Myanmar if they risk torture or ill-treatment, regardless of their immigration status. Deportations for unauthorized departure from camps violate these obligations, highlighting a significant gap between Thailand's international commitments and domestic practices (Human Rights Watch, 2012). IHRL's absolute non-refoulement protections ensure that refugees are safeguarded against return to harm, even in cases where IRL might permit exceptions (Chetail, 2021).

Despite these robust legal obligations, Thailand's implementation of IHRL remains challenging due to its dualist legal system, as outlined in Section 178 of the 2017 Constitution (Verdier & Versteeg, 2015). In a dualist system, international treaties do not have direct effect in domestic law and require legislative incorporation through an Act approved by the National Assembly. This dependence on domestic enactment means that IHRL obligations are subject to the Thai government's willingness to act, which has been inconsistent (UN Human Rights Council, 2021). Refugees in camps often do not benefit from IHRL provisions in practice, as Thailand has not fully incorporated these treaties into its legal framework (Verdier & Versteeg, 2015).

Nevertheless, IHRL's normative power remains significant. Since World War II, a global human rights regime has emerged, grounded in the principle that all individuals are entitled to dignity and equal rights (Morsink, 2019). This regime's legitimacy is widely recognized, making human rights a central concern in international politics (Donnelly & Whelan, 2020). Even in Thailand's dualist system, the country's ratification of human rights treaties creates binding international obligations, serving as a foundation for advocacy and potential domestic reforms (Chetail, 2021). IHRL's role is particularly vital in the 43 UN member states, including Thailand, that have not ratified the 1951 Refugee Convention, where it provides a critical source of protection (Chetail, 2021).

IRL and IHRL operate in tandem, forming a continuum of protection that addresses different aspects of refugees' needs. IRL establishes specific standards for recognized refugees, while IHRL's universal applicability ensures protections for all, regardless of status. Together, they create a framework that can inform and critique Thailand's

refugee policies, advocating for improved treatment of camp residents (Harvey, 2015). However, for Karen refugees, who are Indigenous Peoples, IRL and IHRL alone are insufficient to address their collective cultural and communal needs. The following sections will explore how International Law on Indigenous Peoples (ILIP) complements these regimes by recognizing the group rights essential to preserving the Karen's indigenous identity in exile.

4. THE ROLE OF INTERNATIONAL LAW ON INDIGENOUS PEOPLES IN ENHANCING PROTECTIONS UNDER INTERNATIONAL REFUGEE LAW AND INTERNATIONAL HUMAN RIGHTS LAW FOR REFUGEES IN THAI CAMPS

The Karen, as Indigenous Peoples residing in refugee camps along the Thailand–Myanmar border, strive to preserve their communal identity, autonomy, and cultural heritage despite the challenges of displacement (McConnachie, 2014). Their pursuit of collective rights—essential for their survival, well-being, and development as a distinct group—sets them apart from the individual-focused protections provided by International Refugee Law (IRL) and International Human Rights Law (IHRL). While IRL and IHRL offer critical safeguards, they primarily address individual rights, which do not fully meet the unique needs of indigenous refugees like the Karen. This section argues that International Law on Indigenous Peoples (ILIP), through its emphasis on collective rights, serves as a vital complement to IRL and IHRL, creating a more comprehensive protection framework for Karen refugees in Thai camps.

4.1. Limitations of IRL and IHRL in Addressing Indigenous Needs

IRL, centered on the 1951 Refugee Convention and its 1967 Protocol, focuses on individual refugee status and associated rights, such as access to work, education, and non-refoulement (Goodwin-Gill, 2016). Even in cases where the United Nations High Commissioner for Refugees (UNHCR) recognizes refugees on a *prima facie* basis, such as in large-scale displacements, the rights granted under IRL remain individual in nature (UNHCR, 2015). For example, a Karen refugee recognized under IRL would receive protections as an individual, not as a member of an indigenous collective with shared cultural and communal needs. In Thailand, where the government has not ratified the 1951 Refugee Convention, IRL's applicability is further limited, leaving refugees without formal status and reliant on alternative legal frameworks (UN Human Rights Council, 2021).

IHRL, with its universal application, provides a broader safety net by granting rights to all individuals, regardless of status. Treaties like the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), to which Thailand is a party, ensure protections such as non-discrimination, access to healthcare, and education (Edwards, 2018). Notably, the ICCPR recognizes the rights of ethnic, religious, or linguistic minorities to enjoy their culture, practice their religion, and use their language in community with others (UN Human Rights Committee, 1994). While this provision offers some recognition of

group rights, it is limited in scope and does not fully address the collective aspirations of indigenous peoples, such as self-determination or control over traditional practices (Figueira, 2020).

The Karen refugees' situation in Thai camps illustrates the shortcomings of IRL and IHRL. Confined to remote camps, they face restrictions on movement, access to education, and cultural expression, placing their indigenous identity at risk of erosion (Human Rights Watch, 2012; Oh, 2012). Thai policies prohibit teaching Karen revolutionary history or narratives of their struggles, which are integral to their collective heritage (Oh, 2010). This cultural suppression, combined with their classification as 'illegal migrants,' exacerbates their vulnerability and undermines their ability to maintain their distinct way of life (Carpeño & Feldman, 2015). Even if granted refugee status, the individual-focused protections of IRL and IHRL would not sufficiently safeguard the Karen's collective rights to cultural preservation, communal governance, or traditional economic activities (Figueira, 2020).

4.2. The Framework of ILIP: Key Instruments and Principles

ILIP provides a specialized framework for protecting indigenous peoples through two primary instruments: the 1989 International Labour Organization Convention No. 169 (ILO Convention 169) and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) (Lennox & Short, 2016). These instruments emphasize collective rights, addressing the unique needs of indigenous groups like the Karen in ways that IRL and IHRL cannot.

ILO Convention 169 is the only legally binding international treaty specifically dedicated to indigenous and tribal peoples, ratified by 24 countries, though not Thailand (Ormaza & Oelz, 2020). It represents a significant evolution from its predecessor, ILO Convention No. 107, by rejecting assimilationist approaches and prioritizing indigenous autonomy (Thornberry, 2002; Wolfrum, 1999). The convention recognizes indigenous peoples as distinct 'peoples' with collective rights to maintain their social, economic, and cultural identities, as well as their customs, traditions, and institutions (Rodriguez-Pinero, 2005). Key provisions include:

1. **Cultural and Economic Rights:** Article 5 calls for the recognition and protection of indigenous values, practices, and institutions, while Article 23 acknowledges the importance of traditional activities like hunting, fishing, and gathering for cultural and economic self-reliance (Yupsanis, 2010).
2. **Participatory Rights:** Article 6(1)(a) mandates consultations with indigenous peoples on legislative or administrative measures affecting them, conducted in good faith, while Article 7(1) grants them the right to determine their development priorities and control their economic, social, and cultural progress (Ormaza & Oelz, 2020).

Despite Thailand's non-ratification, ILO Convention 169 sets a global benchmark for indigenous rights, influencing domestic legal reforms in ratifying countries and serving as a normative guide for non-signatories (Swepston, 2018).

UNDRIP, adopted in 2007, is a non-binding instrument but carries significant moral and normative weight, reflecting a global consensus on indigenous rights (Odello, 2016). Supported by 143 states, including Thailand, UNDRIP was developed with input from indigenous communities, making it a unique product of victim-driven advocacy (Burger, 2016). Its provisions build on existing human rights standards while introducing innovations, particularly the right to self-determination (Isa, 2019). Key articles include:

1. **Self-Determination:** Affirms indigenous peoples' right to freely determine their political status and pursue economic, social, and cultural development, while Article 4 clarifies that this involves autonomy in internal and local affairs (Wiessner, 2012).
2. **Cultural Preservation:** Protect the right to practice and revitalize cultural traditions, including religious and ceremonial practices, while Article 13 safeguards indigenous languages (UN General Assembly, 2007).
3. **Education and Governance:** Ensures the right to establish educational systems in indigenous languages, and Article 18 grants participation in decision-making through representative institutions (Isa, 2019).

Although non-binding, UNDRIP's influence is growing, with some provisions potentially achieving customary international law status due to widespread state practice and *opinio juris* (Wiessner, 2012; Odello, 2016). Regional courts, such as the Inter-American Court of Human Rights and the African Commission on Human and Peoples' Rights, frequently cite UNDRIP in their rulings (Isa, 2019; MacKay, 2018). Domestic courts in countries like Peru and Belize have also referenced UNDRIP, and nations like Bolivia and Ecuador have incorporated its principles into national legislation (Odello, 2016). This global traction underscores UNDRIP's role in shaping policies toward indigenous peoples, including those in refugee contexts.

The interplay between binding (ILO Convention 169) and non-binding (UNDRIP) instruments enhances ILIP's effectiveness. Soft law, like UNDRIP, can complement treaties by informing their interpretation or laying the groundwork for future binding agreements (Shaffer & Pollack, 2010; Boyle, 2014). Over time, soft law may contribute to customary law formation, as seen with UNDRIP's increasing acceptance (Shaw, 2021). Together, these instruments provide a robust framework for addressing the collective rights of indigenous refugees.

4.3. Applying ILIP to Karen Refugees in Thai Camps

For Karen refugees, ILIP offers a critical layer of protection by recognizing their collective rights as Indigenous Peoples. In Thai camps, the Karen face significant threats to their cultural identity due to restrictive policies that limit access to education, traditional practices, and communal governance (Oh, 2012; Carpeño & Feldman, 2015). ILIP's focus on collective rights directly addresses these challenges, complementing the individual protections of IRL and IHRL.

Under ILO Convention 169, the Karen would have the right to maintain their cultural institutions and practices, including traditional economic activities like farming or crafting, which are vital for their self-reliance (Yupsanis, 2010). Article 6's consultation requirement would mandate Thai authorities to engage with Karen representatives on camp policies, ensuring their voices shape decisions affecting their lives (Ormaza & Oelz, 2020). Emphasis on development priorities would empower the Karen to preserve their communal structures and cultural values, countering the risk of assimilation or cultural loss (Rodriguez-Pinero, 2005).

UNDRIP further strengthens these protections. Right to self determination, interpreted as autonomy in internal affairs, would allow the Karen to govern their camp communities, maintaining their traditional leadership systems (Wiessner, 2012). Would protect their ability to practice religious ceremonies and revitalize cultural traditions, while ensure the use of Sgaw and Pwo languages in education and communication (Isa, 2019). Provision for indigenous-controlled education systems would enable the Karen to teach their history, including narratives of resistance, which are currently banned (Oh, 2010). These rights would empower young Karen refugees to engage with their heritage, fostering cultural continuity (McConnachie, 2014).

Applying ILIP in Thai camps would involve practical measures, such as allowing Karen-led educational programs, permitting traditional ceremonies, and recognizing community governance structures. These steps would not only preserve the Karen's identity but also enhance their resilience in displacement. While Thailand's non-ratification of ILO Convention 169 and UNDRIP's non-binding nature pose challenges, their normative influence can guide advocacy and policy reform, as seen in other jurisdictions (Odello, 2016; Isa, 2019).

4.4. Reconciling Collective and Individual Rights

A common critique of ILIP is that its emphasis on collective rights may conflict with the individual rights frameworks of IRL and IHRL (Patton, 2016). Critics argue that prioritizing group rights could limit individual freedoms, such as the right to opt out of communal practices (Iverson et al., 2000). However, this paper contends that ILIP's collective rights complement rather than contradict individual rights, creating a balanced protection regime.

UNDRIP's preamble explicitly states that indigenous individuals are entitled to all human rights under international law, while also possessing collective rights essential for their existence as peoples (UN General Assembly, 2007). This dual recognition ensures that Karen refugees can access individual protections under IHRL, such as the right to education, while benefiting from ILIP's collective safeguards. For instance, a Karen refugee could attend Thai schools under IHRL while participating in Karen-led cultural education under ILIP, with the freedom to choose their level of engagement in communal activities.

ILIP's collective rights are designed to enhance group life without compelling participation. The Karen could maintain their cultural practices and governance

systems, but individuals could opt to pursue opportunities outside the community, such as employment in Thai markets, without losing their individual rights. This flexibility ensures that ILIP supports the Karen's collective identity while respecting personal autonomy, aligning with IRL and IHRL's principles of individual dignity (Edwards, 2018).

4.5. The Complementary Role of ILIP

By integrating ILIP with IRL and IHRL, a more responsive protection framework emerges for Karen refugees. IRL provides a foundation for refugee status and individual rights, though its absence in Thailand limits its impact. IHRL fills this gap with universal protections, ensuring access to basic rights regardless of status. ILIP adds a critical dimension by addressing the Karen's collective needs, which are overlooked by the other regimes. Together, these frameworks create a holistic approach that safeguards both individual and group rights, enhancing the Karen's resilience and cultural survival in exile.

The normative power of ILIP, even in a non-signatory state like Thailand, lies in its ability to inform advocacy and policy reform. UNDRIP's global acceptance and ILO Convention 169's influence on domestic laws provide leverage for pushing Thailand to adopt more inclusive policies (Odello, 2016; Swepston, 2018). For example, recognizing Karen cultural rights in camps could align with Thailand's IHRL obligations under the ICCPR and ICESCR, creating synergies across legal regimes.

In conclusion, ILIP plays an indispensable role in complementing IRL and IHRL by addressing the collective rights of Karen refugees. By recognizing their indigenous identity, ILIP ensures that protections are tailored to their unique needs, fostering cultural preservation and autonomy in displacement. This integrated approach not only benefits the Karen but also offers a model for protecting other indigenous refugees globally.

5. CONCLUSIONS

The integration of International Law on Indigenous Peoples (ILIP) with International Refugee Law (IRL) and International Human Rights Law (IHRL) offers a robust framework for enhancing protections for Karen refugees in Thailand's camps along the Myanmar border. IRL, through the 1951 Refugee Convention, provides critical individual protections, but its absence in Thailand, a non-signatory state, limits its impact. IHRL, with its universal application via treaties like the ICCPR and ICESCR, ensures fundamental rights for all, regardless of status, addressing IRL's gaps by safeguarding access to education, healthcare, and non-refoulement. However, both frameworks primarily focus on individual rights, falling short of addressing the collective cultural and communal needs of indigenous refugees like the Karen.

ILIP, through instruments like ILO Convention 169 and UNDRIP, fills this gap by emphasizing collective rights to self-determination, cultural preservation, and traditional practices. For the Karen, ILIP supports their ability to maintain their cultural

identity, govern their communities, and educate their youth in their language and history, countering the cultural erosion they face in camps. By combining ILIP's collective focus with IRL and IHRL's individual protections, a comprehensive approach emerges that responds to the unique challenges of indigenous refugees.

Despite Thailand's non-ratification of key ILIP instruments, their normative influence can drive advocacy for policy reforms, aligning with Thailand's IHRL obligations. This integrated legal framework not only enhances protections for Karen refugees but also provides a model for other indigenous refugee populations globally. It underscores the importance of recognizing both individual and collective rights to ensure dignity and resilience in displacement, offering a pathway to more equitable refugee policies in Thailand and beyond.

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