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The Transference of Gender-Based Norms in the Law Reform Process: A Reflection on my Work in Thailand

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Abstract: In 2008, I spent a year as a Rule of Law specialist in Thailand with the International Rescue Committee (IRC), as part of a fellowship program for human rights lawyers. I was assigned the task of facilitating the development of a comprehensive legal code for the refugee camps along the border between Thailand and /Burma. As part of my work, I also sought to increase gender-based protection under the law through the incorporation of Thai and international human rights norms. This paper is a reflection on the processes that occurred during my time at IRC. The reform project approached the transference of contentious international norms for protection of women and girls in two ways: a) through the inclusive design of the law reform process and b) the establishment of a prohibition on rules that clearly violated international or national law. By forming a representative drafting committee and placing an emphasis on community consultation as a precursor to code finalisation, refugee perspectives, particularly female perspectives, were given scope to inform interpretations of national and international legal standards. By requiring international and national legal compliance and placing an emphasis on explanation and clarification of international and national standards in discussions, the project supported downward transference of international norms to a specific community context. We hoped that, as a product of these two normative flows, the resulting legal code would be a sustainable mechanism for gender-based protection and redress in cases of sexual and gender-based violence. During negotiations, it became evident that the inclusive design of the law reform process had a more positive impact on the success of norms transference than the actual substance of the norm. The norms that were most readily accepted were those introduced by law reform committee members themselves. Local norm translators played a pivotal role in the norms diffusion process. Though it is too early to draw conclusions about the overall success of the project, I believe that the observed process provides an instructive example of norm transference in the context of development and humanitarian interventions.

1. Introduction

1 In 2008, I spent a year as a Rule of Law specialist in Thailand with the International Rescue Committee (IRC), as part of a fellowship program for human rights lawyers. There, I was assigned the task of facilitating the development of a comprehensive legal code for the refugee camps along the border between Thailand and Burma. The code was meant to comply with international human rights standards, to reflect Thai law and to incorporate the cultural norms of the ethnic minorities in camp. As part of this work, I also sought to incorporate standards for protection of women and girls into law, in order to address pressing concerns for their protection. This paper examines the sources for the norms of gender-based protection that were eventually incorporated into the refugee code and differing approaches to their inclusion, viewing them in the light of relevant scholarship concerning norms diffusion.

2. Background

2.1. A Protracted Refugee Crisis

2 Since gaining independence from Great Britain in 1948, the nation of Burma has been embroiled in conflict. Burmese refugees began flooding into Thailand in 1984, fleeing military offensives and human rights violations. Members of persecuted minority groups in Burma, such as the Shan, Karen, and Karenni, migrated to camps on the border near their home states.[1]

3 Because of the protracted nature of the crisis in Burma, these refugee camps evolved from temporary shelters to semi-permanent encampments, not unlike small towns. Though Thai authorities oversee each camp, the Thai government has taken a "hands-off" approach to the refugees, tolerating their presence but providing them with minimal infrastructure and assistance. Within this vacuum, semi-formal, camp-based administrative structures have arisen to address the concerns of refugees. Refugee committees, organised according to ethnicity, serve as representatives for their respective groups throughout Thailand. They oversee camp activities, coordinate non-governmental assistance, and interact with international bodies and the Thai government. Additionally, each camp has a separate, semi-autonomous, elected camp committee which manages the day-to-day concerns of camp residents, including food distribution, health, education, as well as disputes between residents and those responsible for security. Depending on the size of the refugee camp, there may also be elected district and zone committees which operate on a more localised level to deal with the problems of those within their jurisdictions.

2.2. Protection Concerns

4 Refugees in Thailand face an array of threats, both externally and from within their own communities. Drug abuse, gender-based violence against girls and women and petty crime are common in the camps. Ethnic and religious-based tensions within the camps have also increased as more diverse populations seek asylum in Thailand. Additionally, refugee populations are vulnerable to exploitation at the hands of Thai government officials, Thai security officers, Thai employers and powerful members of their own ethnic groups. Burmese military incursions continue, and refugees are occasionally coerced into fighting on behalf of their own ethnic groups.

5 The effects of these threats are compounded by camp-based administrative shortcomings which fail to protect refugees affirmatively and offer few options for redress when refugee rights are violated. In the past, Thai authorities have been reluctant to assert their jurisdiction in the camps, preferring to intervene only when the most serious crimes occur.[2] Those structures meant to serve as substitutes for Thai authority can also be problematic.[3] The electoral process for camp committees is vulnerable to nepotism, discrimination and fraud. Once officials are elected, there are no camp mechanisms in place to ensure accountability and few guidelines exist to dictate their mandate or specify which duties they are expected to perform. Moreover, a dearth of regulations designed specifically for the camp context as well as a lack of knowledge of the applicable prevailing laws on the part of the refugee leadership and camp residents lead to ambiguity and inconsistency in the dispute resolution process. Camp-based administrative structures are often the only mechanisms in place to ensure access to justice and rule of law, meaning that, when they fail, camp residents are left with virtually no legal protection.

2.3. Concerns Regarding Protection for Women and Girls

6 Women are particularly vulnerable in the refugee camp context, with rape, gender-based violence and domestic violence all constituting chronic risks.[4] Women in the camps report several reasons for the high rates of sexual and gender-based violence, including gender discrimination and inequality, cultural norms, lack of adequate representation in community leadership positions, minimal access to justice and perceived impunity for the perpetrators.[5] Furthermore, perceptions of a lack of concern amongst community leaders, minimal camp resources and a community preference for reconciliation[6] lead female victims of sexual and gender-based violence to believe that they will be denied justice in the resolution of these crimes. Victims in cases ranging in severity reported that they were dissuaded from pursuing punishment for the perpetrators, or pushed into mediating serious cases.

7 In the refugee context, the problem of ineffective case resolution is often exacerbated by limited resources and legal restrictions on movement. There is little capacity to detain or remove suspects and perpetrators for extended periods of time. Therefore, after a crime is committed, victims may be further terrorised as they are forced to live in close proximity with perpetrators. Moreover, refugee victims of violence are less likely to receive the psycho-social services needed to aid them in dealing with trauma. Unfortunately, many in-camp suicides involve victims of rape or domestic violence.

2.4. Work of the International Rescue Committee

8 The International Rescue Committee (IRC) is an international humanitarian organisation focused on provided care and assistance for refugees. It began operating in Thailand in 1976 and has been aiding Burmese refugees since their arrival in 1984. The organisation currently services nearly 70,000 Burmese refugees in four of the nine camps on the border, providing healthcare, sanitation services, resettlement assistance and legal services.[7]

9 Given the protracted nature of this refugee crisis, humanitarian interventionists have had to adapt their traditional emergency response model. With no resolution of the conflict in Burma on the horizon, organisations like the United Nations High Commissioner for Refugees and the International Refugee Committee have had to adopt long-term, sustainable solutions to increase protection. Because of the aforementioned regulatory and administrative gaps, increasing engagement and capacity enhancement for camp-based administrative and judicial institutions proved critical. A model for protection emerged that was grounded in a development framework with a focus on community engagement.[8]

10 In 2006, as part of this approach, IRC, in collaboration with The Office of the United Nations High Commissioner for Refugees (UNHCR), established the Legal Assistance Center (LAC) a project intended to improve access to justice and ensure rule of law in the camps. Currently operating in three camps, the project 1) offers legal assistance and counselling to camp residents; 2) conducts legal training for community leaders; 3) facilitates community outreach in cooperation with refugee leadership; 4) provides material and technical support for camp-based administrative institutions; and 5) works to increase the capacity of the camp justice system. The project aims to increase understanding and appreciation of the law amongst refugees, to enhance the capacity of in-camp justice mechanisms to resolve cases effectively and consistently, and foster healthy engagement with Thai authorities.

3. The Law Reform Project

11 In 2007, a Thai security officer was shot in one of the refugee camps. After the shooting, refugee leaders supported by Thai government officials began to push for further clarification and development of the rules and administrative structures meant to govern the camps. Together with the IRC Legal Assistance Center (LAC) and UNHCR, they developed the law reform project. This project aimed to develop structural guidelines for camp-based administrative bodies and a comprehensive legal code for the camps that took into account international human rights,[9] was consistent with Thai law[10] and reflected important cultural and religious norms. The project was meant to increase transparency in the content and application of the law for refugees and camp justice leadership. The code provided a formal mechanism through which Thai law could be incorporated into observable rules for camp residents.

12 It was hoped that, ultimately, the development and adoption of a legal code would enhance the normative reach and the concrete applicability of legal rules and procedures, thereby increasing access to justice and strengthening the rule of law in the camps. Since my departure in November 2009, the law reform process has undergone several changes. However, the central goal of the project, namely to develop clear guidelines for the administration of justice in the camps, remains unchanged.

3.1. Drafting and Negotiation Process

13 Establishing a participatory structure for the law reform project was a critical factor in ensuring its sustainability and success. The law reform project was led by female representatives of the Karen Refugee Committee (KRC) and camp justice officials, with support from LAC. The process was structured so as to address concerns about political inclusion and the lack of women at the decision-making level in camp-based administrative bodies. In Mae La camp, community leaders were selected by KRC, camp justice and LAC to participate in a law reform committee. Their selection was meant to reflect the diversity of the camp population. Women, Muslim religious leaders, youth representatives and elected zone leadership were invited to participate.

14 Once the committee was formed, regular meetings were held to discuss and draft sections of the code. Explanations of the law and drafting negotiations were pursued until a consensus was reached among the committee members. Throughout the process, drafts were reviewed and refined to reflect the intent of the law reform committee. Once the draft of a section was completed, the camp leadership would hold a public forum to discuss it with members of the community. Community concerns were then taken back to the law reform committee and subsequently taken into account. As of January 2012,

the process is still in the drafting and consultative stages. It is envisioned that the final draft of the complete code will be sent to Thai authorities to be reviewed and disseminated in other Karen camps.

15 Though the code was meant to cover a wide range of civil and criminal offences, the focus of many of our more difficult negotiations concerned the adoption of norms for gender-based protection. The reform project approached the transference of contentious international norms for the protection of women and girls in two ways: first, through the inclusive, participatory design of the law reform process; second, through the establishment of a prohibition on rules that clearly violated international or national law. By forming a representative drafting committee and placing an emphasis on community consultation as a precursor to code finalisation, refugee perspectives, particularly female perspectives, on norms of gender-based protection were given scope to inform interpretations of national and international legal standards. By requiring that the camp-based law complied with national and international law, by placing an emphasis on explanation and clarification of international and national standards in discussions, and by exploring the implications of compliance for specific proposed rules during the negotiation and community consultation process, the project supported downward transference of international norms to a specific community context. As a product of these two normative flows, we hoped that the resulting legal code would be a sustainable mechanism for gender-based protection and redress in cases of sexual and gender-based violence.

16 However, because of the wide array of constituencies represented from within the community, participant interests and priorities often diverged, particularly in areas related to sexual and gender-based violence. Female advocates from civil society and women leaders often supported rules and procedures that closely followed international legal standards for protection. In contrast, certain higher-ranking male officials expressed a preference for following what they defined as tradition, for practices that often allowed for coercive family participation and favoured non-punitive mediation processes, even in the most serious cases. Perhaps they pursued this course in order to ensure the continued support of other powerful men, to maintain the patriarchal structures in place that buttressed their power, or to avoid resistance from within the larger community. However, their positions proved to be open to change. And, in spite of these divergences, all committee participants agreed on the necessity for reform. During the negotiation process, it became clear that resolving these divergent interests depended less on altering the substance of the proposed reforms and more on the manner in which the reforms were presented.

3.2. Role of the Facilitator

17 As a facilitator, I was primarily concerned with the coordination of the law process and the codification of the rules and norms agreed upon in discussion. When necessary, during negotiations and community consultations, I also clarified national and international legal standards, principles and obligations for refugee protection. In short, my role was to support and educate, rather than lead the law reform process. Because of the role's supportive nature, maintaining healthy relationships with camp-based officials was crucial to ensuring the effectiveness of my work. Without these relationships, refugee leadership would have been reluctant to work with my organisation. In fact, this was the case when I arrived in Thailand. The law reform project was at a standstill, hindered by our organisation's fractured relationship with camp leadership. Mistrust on the part of camp officials and their perceptions of disrespect made them reluctant to work with us. Therefore, my first and most crucial task as a rule of law specialist was to repair this relationship.

18 Burmese camp officials needed to trust that I would take a non-judgemental approach to the law reform project. They had to know that I would listen to them, incorporate their views into our work and treat them with respect. Perceptions of my motives and capability based, in part, on my status as a female westerner of African descent, influenced how they responded to me and had to be taken into account in my approach. If not done properly, the concepts that I introduced would have been seen as a form of cultural or legal imperialism.

19 I had to approach relationship-building mindful of the historical, social, cultural and economic contexts in which I had to operate. Like many residents of countries with a history of development and humanitarian assistance, these Burmese leaders had a complex relationship with foreign N.G.O. workers. Our presence provided them with a sense of international recognition of their plight, and Burmese refugee groups maintained long-standing relationships with international aid organisations. However, as Burma is a former British colony, to some extent we were also viewed through the lens of colonial history, one in which westerners had treated them as lesser peoples, disregarding certain cultural norms and practices. Furthermore, though they faced significant obstacles, refugees had managed to carve out some space for themselves

within Thailand. The current community-led model of camp management empowered camp residents, while allowing them to maintain cultural and communal integrity, creating a delicate sense of autonomy that had to be carefully maintained.

20 As a young African-American woman, I did not fit easily into this framework. Although I had brown skin, like many of the community members, I was also clearly an American, one who had the visual and linguistic markers of a specific kind of educated foreigner. Our ancestors shared histories of oppression—mine under slavery and segregation, theirs under British colonialists and the military junta—but I was also clearly economically advantaged. Though I cannot say for sure, I think community members saw me as like them but not of them. In many ways, this perception served as an advantage throughout the relationship-building and negotiation processes. I was not immediately seen as part of a threat to the leaders' authority or autonomy. Therefore, there were fewer barriers to establishing a trusting relationship. I was a different kind of outsider: neither the commonly-seen white westerner, nor Thai, nor Burmese.

4. Conceptual Framework

21 The project for law reform was developed as a practical program to address protection concerns related to the inability of refugee camp leaderships to interpret and apply clear, observable rules to camp residents, resulting in inconsistent application of camp rules, and the inability of residents to access appropriate judicial remedies to in-camp disputes. Though the project was not conceived as an academic case study, it has proven instructive in the extrapolation of a real world situation in the conception and application of local law based on international human rights principles. For the purposes of analysis, it may be useful to situate the process within a theoretical framework for refugee protection and norms transference in the local context.

22 The techniques for norms transference used during the law reform process have been identified and reflected in scientific discourse across a number of disciplines, including sociology, international relations theory, anthropology and law. Within the context of human rights principles, respect and adherence to internationally recognised ideals is not a strictly legal phenomenon. Instead, it is one which may require institutional reform, community action, education and individual adoption to ensure widespread engagement. Therefore, when analysing international human rights norms transference, especially where gender-based protections are concerned, a cross-disciplinary analysis is particularly instructive.

4.1. Human Rights Based Approach to Protection Programming

23 The project was conceptualised as a component of a broader Human Rights Based Approach (HRBA) to protection frameworks. HRBA is an approach to work which utilises human rights and human rights principles in the shaping and execution of programming, focusing on the manner and degree to which human rights are embedded in operational processes as much as rights-related outcomes.[11] The interconnected principles which constitute the core of HRBA include: explicit application of the international human rights framework; empowerment; participation; non-discrimination and prioritisation of vulnerable groups; accountability.[12] HRBA has been adapted and applied by a multitude of developmental organisations and programs in a variety of contexts, including social and economic development, humanitarian interventions, public health and peace-building.

24 LAC employs the Human Rights Based Approach (HRBA) as a vital tool to ensure greater clarity, sustainability, impact and relevance in its protection programming. The Law Reform Project, in particular, relies on an HRBA approach to protection programming. A community-led participatory process where the primary goal is the construction of an observable legal code, the law reform project empowers refugees to develop a tool for more effective protection, based on human rights principles. By utilising HRBA standards in its formulation and design, the law reform project was also more effectively able to make gender concerns a central aspect of its approach. Women-focused community organisations were consulted throughout the process, women were included at the decision-making level and were encouraged to identify how proposed rules would affect women in the camp. Drafts were reviewed at several public forums held exclusively for women, and their criticisms were incorporated into subsequent revisions of the law.

4.2. Social Movement Theory

25 Before examining the techniques employed for norms transference, it is necessary to look at the environment into which the program was introduced and continues to operate. Social movement theory provides a useful starting point for the analysis of the context in which the law reform project occurred. Political and discursive opportunity

theories have been used to analyse the impact of activists working at the national and local level,[13] and I believe that they can also be applied to the refugee context of law reform.

26 Human rights scholars have used social movement theory, particularly political opportunity structure and discursive opportunity theory, to study varying activist techniques and to explain the receptiveness of target organisations and individuals to claims made by social movements.[14] As defined by Herbert Kitschelt in a comparative study of national anti-nuclear movements, political opportunity structure (POS) theory refers to "specific configurations of resources, institutional arrangements and historical precedents for social mobilisation, which facilitate the development of protests movements in some instances and constrain them in others" (Kitschelt 1986: 58). The openness of a political system, state capacity for repression and the presence of elite allies have been characterised as elements of the POS.[15] In contrast, discursive opportunity theory examines particular issue areas and concerns the cultural notions that influence "which demands [...] are considered as reasonable or acceptable, which constructions of the reality [...] are considered as appropriate, and which claims and collective actors involved in this field are considered as legitimate within the political system" (Giugni 2008: 302).

27 As mentioned earlier, the law reform project was initiated by refugee camp leadership, with support of the Thai government, after a Thai security officer was shot in one of the refugee camps. This violent incident served as a catalyst, motivating leaders to act. It gave a concrete example of the effects of inadequate security structures, unclear legal obligations and the lack of the rule of law in the camps. Within the framework of POS analysis, this incident opened up formerly "closed" actors to suggestions for change. Further repression and the return of Thailand's large refugee population would strain Thai government resources. Finding an internal solution to these problems benefited both the refugee leadership, who valued their autonomy, and the Thai government, which wanted to keep resource expenditure to a minimum. The previously detached Thai government and refugee leadership found that they had overlapping interests, to ensure: 1) that refugees abided by the law, subject to its protections and sanctions and 2) that personnel working inside the camps were able to operate in a relatively safe environment. These interests also overlapped with those of N.G.O.s working in the areas of refugee protection, access to justice and the rule of law, which were willing to facilitate the process.

28 As a result of increased openness on the part of the Thai government and the refugee leadership, those working to increase protection in the camp were given a unique discursive opportunity. Community and N.G.O. workers were able to situate the resulting law reform project within the international human rights discourse, framing it in a way that bolstered rather than threatened participants' political interests. The law reform project also offered N.G.O. actors and women within the refugee community the opportunity to expand gender-based protection, moving from a focus on psycho-social service delivery and emergency response to an enshrining of affirmative protections within a legalistic framework.

29 It is difficult to say whether the law reform project would have proceeded so quickly, with as much momentum and institutional backing, if not for the tragic shooting of a Thai official. Thai political entities are notoriously closed and, at times, repressive. They are particularly sensitive to social mobilisation within the refugee camps, as they fear it may constitute a threat to Thai sovereignty. Within the camp, judicial and administrative structures can also be closed. The electoral process is flawed and there are few accountability mechanisms in place for those who do take office. Refugee leadership structures are vulnerable to corruption, fraud and cronyism. Some refugee leaders have tried to maintain this status quo to protect their interests. For both Thai and refugee political bodies, the shooting incident exposed the need for a drastic change to in-camp security structures, opening up the space for a previously unlikely project.

30 However, within the law reform context, an analysis based on social movement theory is hardly straight-forward. Unlike traditional social movement analysis, it is not comprised of an examination of social activists vis-à-vis established political entities. In this case, refugee judicial and administrative leaderships were the targets of social action, yet individuals within these groups also participated in social activism. Though refugee leadership shared some of the entrenched interests of political actors in a more traditional analysis, they were foremost members of a vulnerable group, one which benefited from the increased protections offered by the law reform project. Social movement theory is useful in understanding the context in which the law reform process is embedded. However, an analysis of the project utilising norms transference theories is necessary in order to examine more completely the methods by which individual norms were introduced and received during the process.

4.3. Norms Transference

31 International relations theorists, particularly constructivists, have closely examined the phenomenon of norms transference in international relations, resulting in scholarship on norm construction, life-cycle, influence and diffusion.[16] Within international relations scholarship, the theory of norm localisation provides a useful method with which to begin the analysis of the working methods used throughout the law reform process.

32 Originally employed by Amitav Acharya (2004) to explain norm diffusion from the international to local level, localisation theory explores the process by which local agents reconstruct foreign norms to make them more congruent with pre-existing local norms in order to facilitate institutional change. Though mainly concerned with norms transference on the national level, Archaya's theory is instructive for several reasons. It emphasises the agency and role of local actors, examines transnational norm diffusion and analyses the influence of pre-existing normative frameworks on norm diffusion. Amongst other factors, Acharya found that localisation was likely where: 1) initially feared norms and practices could be used by norm-takers to enhance their legitimacy and authority without fundamentally altering their social identity; 2) credible local actors, "insiders", are available, with the discursive influence to match external transnational norm entrepreneurs, including N.G.O.s, and whose primary commitment is to localise a normative order; and 3) norm-takers possess a well-developed sense of being unique in terms of their values and interactions.[17] In this context, foreign norms are more likely to be adapted to local situations than to replace local norms wholesale.

33 The law reform process contained many of the factors that, according to Acharya's analysis, increase the likelihood of localisation in norms transference. Refugee leaders viewed the incorporation of national and international legal standards into a camp code as a way to increase their legitimacy and reinforce their authority. Local civil society actors and key refugee leaders were committed to increasing access to justice and ensuring the rule of law in camps, and, as persecuted ethnic minority refugees, all involved were committed to maintaining their unique cultural identity throughout the process.

34 During the process, localisation primarily occurred through reformulation of procedural standards. Those involved in the law reform project were interested not only in encoding international standards for gender-based protection into the substantive law, but they also wanted to ensure that processes for resolving disputes in the camps took gender-based protection concerns into account. Because of limited resources and cultural considerations, the camp leadership could not import comprehensive international standards for criminal and civil procedures. However, they were willing to adapt their existing practices to bring them into line with international standards. For example, civil society activists were successful in arguing that mediation should be used less often in cases of sexual and domestic violence, and that more serious cases of sexual and domestic violence should be referred to Thai authorities. It was a small step. Though it did not bring dispute resolution procedure completely into line with international law, it increased awareness of the severity of these crimes, perhaps facilitating a more significant shift in the future.

35 Localisation theory alone, however, cannot adequately account for the norms transference process in the law reform context. Though localisation theory is useful for analysing certain norm diffusion phenomena which occurred during the law reform negotiations, its focus on the national level, as well as its formal institutional focus, limits its applicability to an informal community process. Peggy Levitt's and Sally Merry's theory of vernacularisation offers additional insight into the phenomenon of norms transference from the international to the local level, particularly as it relates to women's rights.[18] Vernacularisation refers to the two-way process by which globally generated ideas and strategies are appropriated and adopted into local contexts.[19] The practices observed in Levitt's and Merry's study closely mirrored occurrences in the law reform process.

36 In a cross-cultural study, Merry and Levitt examined the process of movement and the vernacularisation of global norms for women's rights in four locations. Though a similar global rights package was embraced by leaders within each site, it was appropriated differently depending on the political and historical context in which the circulation and appropriation occurred. They found that several factors had an impact on the work of vernacularisation, including: the social and institutional position of translators; the channels through which ideas and practices flow; the nature of the ideas and idea "packages" in which they are embedded; the topography of the terrain in which these transfers take place. Many of the techniques of norms diffusion and the phenomena observed throughout the law reform process mirrored those identified in Levitt's and Merry's analysis of vernacularisation.

37 As in a localisation analysis, vernacularisers or translators play a key role in the diffusion and adaptation of norms throughout the vernacularisation process.[20] Translators re-fashion global rights agendas for local contexts and re-frame local

grievances in terms of the principles of global human rights and activities.[21] Within the law reform process, the active presence of female vernacularisers was crucial to the effective diffusion of norms. The process was led and heavily influenced by a female member of the Karen Refugee Committee, who was active in scholarly and activist forums on the rights of refugees and women. She was instrumental in ensuring that the voices of less prominent women were heard and that gender-based concerns were never sidelined in the process. Along with women representatives from civil society, she was able to imbue international norms with a sense of local relevance and legitimacy. Norm takers involved in the process were more likely to accept normative ideas proposed by these local vernacularisers than those that were introduced and actively supported by outsiders, including me.

38 Instrumental to the process of vernacularisation is the concept of framing.[22] Framing affects the way women's problems are defined and understood, while also channelling the way that a global rights package fits in with pre-existing norms and institutions. Frames can be legal, religious, political, economic or developmental.

39 During negotiations on rules to address protection issues faced by women and girls, strategic framing was crucial in avoiding several intractable debates, including those concerned with universality and cultural relativism. In their observations on the vernacularisation process, Levitt and Merry allude to the phenomenon of foregoing strictly international rights-based discourse in interactions on the local level in favour of more culturally resonant rhetoric and a focus on domestic legal systems.[23] Throughout the negotiation process, women's protection issues were framed in a strictly legal sense, practically a necessity in order to avoid conveying the impression of passing judgement on cultural practices. Additionally, norms translators re-framed broader rights considerations as local problems. Concerns about protection against sexual and gender-based violence were re-packaged as a component of broader camp-based security considerations. Interestingly, the norms of protection that were framed as a means by which to increase overall camp security and compliance with Thai law met with little resistance.

40 Finally, scholarship on norms transference, including the theory of vernacularisation, emphasises the role of the recipients' historical and cultural experience in the process of norm transfer (Acharya 2004, Levitt and Merry 2009, Shawki 2011). Karen history and current political realities informed the views held by the refugee leadership concerning western influence, and their reticence to accept what they considered primarily western, liberal norms. After contentious norms were vernacularised, localised and placed into the Karen refugee context, they were more readily accepted.

5. Sources of Law

41 The law reform process offered a unique opportunity to enshrine some affirmative protections for women in the refugee camps, under the authority of law. Though the sources we drew on in developing the camp code were comprehensive, covering a variety of crimes, for the purposes of this paper, I will focus on the legal provisions and norms concerning the protection of women and girls.

5.1. International Law

42 Because the law reform process was facilitated by an international humanitarian organisation, it was important that the code produced did not violate international law. Across international legal instruments, obligations for implementation vary, allowing for a certain amount of flexibility in the formulation of legal standards that collectively best reflect their intent. The International Covenant on Economic, Social and Cultural Rights (ICESR) allows for progressive implementation of its provisions, recognising that states with limited resources may take longer to realise fully the rights recognised in the treaty.[24] In contrast, most scholars agree that the International Covenant on Civil and Political Rights (ICCPR) creates an immediate obligation to implement treaty provisions upon becoming a State Party to the Covenant, regardless of state resources.[25] Though the concept of progressive implementation is not expressly recognised in the Covenant on the Elimination of All Forms of Discrimination Against Women (CEDAW), the instrument permits ratifications subject to reservations, provided those reservations are not incompatible with the object and purpose of the treaty.[26] Because of this variance in obligations for implementation and the limited resources of camp administrators, advocates of using the code as a tool to increase compliance with international standards took a broader view of international law, focusing on several core obligations while allowing for flexibility in their implementation.

43 The international legal principles and sources of law that were emphasised throughout the negotiation and compilation of the code were as follows:

- *Elimination of Discrimination on the Basis of Gender:* Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) Art 2; International Covenant on Civil and Political Rights (ICCPR) Arts 2 & 3; Universal Declaration of Human Rights (UDHR) Art 3; International Covenant on Economic Social and Cultural Rights (ICESCR) Arts 2(2) & 3.
- *Equal Treatment under the Law:* UDHR Art 7; ICCPR Arts. 14, 26; CEDAW Art 15.
- *Freedom from Gender-Based Violence:* CEDAW Recommendations 12, 19; UN Declaration on the Elimination of Violence Against Women Art 2, Art 4(c).
- *Right of Women to Political Participation:* CEDAW Art 7; ICCPR Art 25; Convention on the Political Rights of Women Art 2 & 3; UN Resolution 1325.
- *Equal Status in Marriage Matters and Family Relations:* CEDAW Art 16; UDHR Art 16; ICCPR Art 23.

44 Overall, international law provided a useful legal tool to increase gender parity, particularly where Thai law failed to do so. However, it must be said that the use of international legal arguments in the negotiation process was complicated. The justification of a certain gender-based concept as one which had international import could quickly shut down a discussion. The refugee leadership had an inconsistent relationship with international law. On the one hand, it was used by refugee leaders in their requests for humanitarian aid, in their relationship with the Thai government and in their advocacy regarding the war in Burma. On the other hand, they had difficulty conceiving that international human rights obligations could extend to the intra-community relationships between the refugees themselves.

45 Ironically, as an international human rights lawyer, I tried to avoid relying on international legal arguments to explain or justify certain norms in the negotiation process. I found that my use of these arguments could, at times, alienate the refugee participants. They viewed these arguments from me, a western lawyer, through the lens of cultural imperialism. They perceived international law as a threat to their sovereignty and a repudiation of long-held traditional beliefs. However, if another refugee were to invoke international legal arguments in the negotiation process, they were much better received. When introduced by another member of the community, international legal standards were given the colour of ownership and legitimacy. Only then could they be embraced as an appropriate, innovative tool for law reform.

5.2. Thai Law

46 The law reform project was initiated with the support of the Thai government. They saw the project as a way to increase awareness of, and respect for, Thai law amongst Burmese refugees who resided on Thai soil. To that end, the legal codes produced during the law reform process were required to comply with Thai law.[27]

47 Thailand is a party to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRC), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant of Economic, Social and Cultural Rights (ICESCR), and the Convention on Elimination of All Forms of Racial Discrimination (CERD).[28] However, there are certain provisions in Thai laws that do not conform to international standards. Where Thai national law conflicted with Thai international legal obligations, the camp legal code was drafted to reflect Thailand's international legal obligations.

48 The Thai legal principles related to gender-based protection that were emphasised during the law reform process were:

- *Sexual Offences:*[29] Rape – Section 276 of the Thai Penal, Statutory Rape – Section 277 of the Thai Penal Code, Sexual Assault – Section 278.
- *Domestic Violence:* Domestic Violence Protection Act.

49 In 2007, shortly before my arrival in Thailand, the definition of rape was expanded under Thai law. The law was amended to cover other forms of forced sexual activity, to recognise male, homosexual and transgendered victims of rape, and to prohibit marital rape.[30] These much-heralded changes brought Thai laws governing rape more into line with international human rights standards.

50 Unfortunately, several provisions of the Thai code concerning rape and sexual assault still prove slightly problematic. For instance, Thai law does not make distinctions for statutory rape based on the age of the perpetrator, meaning that minors who engage

in consensual sex could find themselves in violation of the law, regardless of their age difference. Furthermore, under Thai law, in the case of statutory rape a perpetrator is allowed to marry the victim if she is over the age of thirteen and both consent to the marriage.[31] Finally, according to the Thai code, instances of rape and sexual assault that occur in private, do not involve a weapon and do not involve grievous bodily harm to the victim, are considered compoundable offences, subject to non-criminal sanction.[32]

51 Despite the issues we identified in the Thai justice system, it seemed more likely that refugee victims would be able to access justice for serious rape cases outside the refugee camp. For the purposes of law reform, rape with a weapon, rape resulting in serious injury or death, rape involving more than one perpetrator, rape or sexual assault of a minor, where there was a significant age difference or claims of force, and other forms of violent rape were considered serious offences to be referred to the Thai justice system.

52 As in the refugee context, domestic violence against women also poses a significant problem in Thailand.[33] Though the prohibition against domestic violence does not have an extensive normative reach in Thailand, in November 2007 the Thai government did extend legal protections to victims of domestic violence through the Domestic Violence Victim Protection Act.[34] However, because of strong Karen cultural norms emphasising reconciliation and privacy in the resolution of domestic disputes, minor domestic violence cases and first offences were eligible for mediation.[35] It was decided that serious domestic violence cases, those resulting in moderate to serious injury to the victim, were to be referred to the Thai justice system. In both minor and serious cases, a case could be referred to the Thai justice system at the behest of camp justice officials or at the request of the victim.

53 At times, Thai law was a useful tool for buttressing international norms of gender-based protection. However, as mentioned earlier, we also discovered instances where Thai law contravened international standards. In those cases, we gave primacy in the drafting of the code to Thailand's international obligations and international norms regarding gender-based protection. Often, this provided more protection for Burmese refugees than Thai law alone, without violating the letter of Thai law.

54 When negotiating, I found that Thai law seemed to carry more normative weight than international law. There was little resistance to individual Thai legal concepts, or to the requirement that the code should abide by Thai law. This could have been due to a variety of reasons. Refugees may have seen Thai law as a tangible legal mechanism that had a direct impact on their lives. They may have also viewed Thai law as geographically and culturally more relevant. Finally, there may have been a sense that, notwithstanding their limited options, they chose to flee to Thailand, and the adherence to Thai law was a reflection of that choice.

5.3. Cultural Norms

55 Though there are more than 100 ethnic minority and sub-minority groups in Burma, Mae La camp was primarily comprised of Karen refugees. The Karen are an ethno-linguistic minority group who traditionally inhabit the hilly, forested eastern border region of Burma. The Karen practice Buddhist, Animist and Christian religions. However, the majority of the camp leaders with whom I worked identified themselves as Christian. Given the fluid nature of culture, the effect of camp life on cultural practices and the diversity of beliefs that can be found in a specific cultural group, it is difficult to identify a specific set of norms that embody Karen cultural beliefs within the refugee context.

56 In my experience, cultural arguments put forth by camp leaders were heavily influenced by traditional Karen beliefs regarding the role of women in a conservative, family-focused, patriarchal society. Traditionally, men are seen as heads of the household and the primary decision-makers. Sexual relations outside of marriage and adultery are criminalised. Divorce is difficult to obtain, and has a disproportionately negative impact on women. On the whole, family issues, and specifically domestic violence, are considered private affairs, in which administrative bodies are reluctant to intervene.

57 However, the cultural norms that undermined the protection of women in camp were not immovable. A strong N.G.O. presence in camp and a history of outreach programs that educated camp residents about the negative effects of domestic violence, rape and inequality helped to precipitate a shift in norms. Women in camp became more knowledgeable and vocal about their rights. This phenomenon was reflected in the participation of the women on the law reform committee. They were vocal in advocating that stricter stances on rape, domestic violence and early marriage be enshrined in the camp law. These women embraced the norms introduced by outside actors and made them their own, resulting in the re-framing of international norms of gender-based protection as refugee norms for the protection of women within the Mae La refugee

camp. These re-framed norms were the most readily accepted by others, and this approach constituted the most successful method for norm transference in the law reform process.

6. Challenges

58 Though the law reform process has exhibited signs of success, several challenges emerged in the negotiation process and it is possible that these challenges could persist throughout program implementation. In most cases, these challenges have also been identified in relevant scholarship on norm diffusion and human rights. They are:

59 *Resonance* – Merry refers to the dilemma of resonance in her work on vernacularisation. In the context of vernacularisation, translators must tailor international norms to the local context to resonate with local actors. However, by tailoring these norms, they risk undermining their ideological significance, perhaps limiting the possibility of substantial long term change.[36] For law reform, localisation and vernacularisation techniques were crucial in reaching a consensus on contentious international norms. However, in some cases the translation of these norms, compounded by limited protections under Thai law, resulted in a dilution of international principles. It is possible that in the enforcement of these norms, further localisation could occur, limiting their impact.

60 *Cultural Relativism vs. Universality*[37] – To some extent, the universality debate can be avoided where project participants take a broad view of culture as dynamic and responsive, rather than as a static opponent of progress.[38] As mentioned earlier, participants in the law reform were able to skirt debates concerning the cultural applicability of norms for gender-based protection by focusing on the practical import of developing a code that complied with international and national legal standards. However, cultural arguments opposing foreign norms were employed throughout the negotiation process, and I imagine they may also be used to justify circumvention of these norms during the code's implementation. Whereas these arguments were effectively countered by local women during the drafting process, they will be more difficult to target and address after the law reform committee disbands.

61 *Depth of Norms Penetration* – Throughout the law reform process, it was difficult to determine which gender-based norms had been truly accepted and which ones were only embraced on the surface. For example, though they had previously agreed that the imprisonment of adulterers was a poor use of resources and non-compliant with international and Thai law, refugee leaders surreptitiously continued the practice. This form of non-compliance is common in contexts where traditional laws are still deeply rooted in society: local officials are often eager to appear to be complying with international expectations, while continuing non-compliant actions.

62 *Realigned Political Interests* – As mentioned earlier, the project gained momentum after a shooting incident in one of the refugee camps. Following this tragic event, previously closed political entities displayed openness to the support and adoption of a formerly controversial process. However, the political situation for refugees residing in Thailand is volatile and subject to sudden dramatic shifts. The current flooding crisis, a shift in conflict dynamics in Burma or changes in elected leadership could swing political priorities away from the process to more pressing concerns.

7. Conclusion

63 The law reform process provides an instructive example of norm transference in the context of development and humanitarian interventions. Because the relative success of a specific norms transference project can be difficult to measure, particularly in the short-term, in this instance I have limited the determination of the effectiveness of norms transference solely to the negotiation process. With respect to this process, norms transference is considered successful where previously unwilling participants agree to be bound by a formerly contentious norm and express their willingness to implement it on a broader scale. Within this framework, the inclusive design of the law reform process had a more positive impact on the success of norms transference than the actual substance and interpretation of the norm. In the law reform context, I observed that successful introduction of a norm hinged less on its actual content and more on perceptions of ownership.

64 In this particular case, vernacularisation theory most appropriately captures the process of norm transference observed during the negotiation and consultation process. The presence of vernacularisers who clearly articulated rights claims and rooted them in the local context was critical to effective norms diffusion. The norms that were most readily accepted were those introduced by law reform committee members themselves. Though these emerging community norms often reflected international and Thai

standards, they were seen as emanating from the community. As a result, they were given the character of ownership and legitimacy, more willingly accepted and more easily incorporated into the legal code.

65 Development and humanitarian interventionists must remember that cultural norms do not exist in a vacuum. Quite often, the communities in which we work have been the targets of attacks, precisely because of their ethnic make-up, religion, cultural beliefs or cultural practices. As a result of these attacks, they have been denied freedom, personal autonomy and control over the course of their lives. Because of these threats, persecuted community leaders can be fiercely protective of their cultural identity: where outsiders are seen as forcibly imposing cultural change, they can meet with resistance.

66 Norm localisation and adoption is a long-term process in which tailored international norms gain traction in the local context over time. Short-term success is not necessarily indicative of long-term viability. It is important to note that the law reform process is ongoing, and is currently in the consultative stage. Therefore, it is difficult to determine the overall success of the project, its transferable potential and its impact on the level of protection for women residing in camp. However, there have been some positive indicators for the law reform project. The relationship between Thai authorities and camp leaders has improved. Several portions of the code have been finalised and community leaders remain committed to the process. In the future, it will be interesting to compare the effects of a legally-based approach to refugee protection to more traditional education, outreach and response models.

Notes

1. Presently, there are nine refugee camps housing 135,000 refugees, spread across 4 provinces in Thailand (see Thai Burma Border Consortium website: Refugee Camp Organizational Structures. http://www.tbb.org/camps/management.htm (accessed 18 October 2011)).

2. These crimes include murder, human trafficking, rape and drug offences.

3. cf. Thailand Journal of Law and Policy website: Refugee Camps along the Thai/Burma Border and Rule of Law. http://www.thailawforum.com/articles/burma-lawyers1.html (accessed 18 October 2011).

4. cf. United Nations High Commissioner for Refugees (2006): Analysis of Gaps in Refugee Protection Capacity. http://www.unhcr.org/457ed0412.pdf (accessed 19 October 2011).

5. Id.

6. Reconciliation as a process may be appropriate in less serious cases of gender-based violence, where the victim has not sustained serious injury and both parties freely consent to participate in an objectively mediated discussion. However, in this instance the term reconciliation refers primarily to the ideal outcome of a dispute, with little regard to the nature of the case, the process through which resolution is obtained, or to the consent of participants.

7. cf. International Rescue Committee website: The IRC in Thailand. http://www.rescue.org/where/thailand (accessed 18 October 2011).

8. Harding, Joel/Varadan, Sheila (2010): A Community-Based Approach to Refugee Protection in a Protracted Refugee Situation. In: Humanitarian Exchange Magazine. Issue 46. http://www.odihpn.org/report.asp?id=3097 (accessed October 15 2011).

9. Because IRC is a humanitarian, international, non-governmental organisation that specialises in refugee protection, it could only support programmatic initiatives that were consistent with international humanitarian and human rights law.

10. Because the refugee camps were located on Thai soil and governed by Thai officials, refugee camp residents were subject to Thai law; increasing knowledge of and respect for Thai law was one of the central goals of the law reform project.

11. cf. Harvard School of Public Health, United Nations Population Fund (2010): History and Definitions of the 'Human Rights-Based Approach'. https://www.unfpa.org/webdav/site/global/shared/documents/publications/2010/hrba/ (accessed 17 November 2011).

12. International Human Rights Network: Human Rights based Approaches to Development: An Overview. http://tdh-cp-org.terredeshommes.hu/rcpp_content/country_pages/eu/hrba_overview_ihrn.pdf (accessed 17 November).

13. See Shawki, Noha (2011): Global Norms, Local Implementation – How are Global Norms Translated into Local Practice? In: Globality Studies Journal. Vol.26, pp. 1–13.

14. Id, p5.

15. See McAdam, Doug (1996): Conceptual Origins, Current Problems, Future Directions. In: Comparative Perspectives on Social Movements, edited by Doug McAdam, John D. McCarthy, and Mayer N. Zald Cambridge: Cambridge University Press.

16. See Finnemore, Martha/Sikkink, Kathryn (1998): International Norm Dynamics and Political Change. In: International Organization. Vol. 52, No. 4, pp. 887–917

17. cf. Acharya, Amitav (2004): How Ideas Spread: Whose Norms Matter? Norm Localization and Institutional Change in Asian Regionalism. In: International Organization. Vol. 58, No. 2, p. 249.

18. See Levitt, Peggy and Merry, Sally (2009): Vernacularization on the Ground: Local uses of women's rights in Peru, China, India, and the United States. In: Global Networks. Vol. 9, No. 4, pp. 441–461.

19. cf. Merry, Sally (2006a): Human Rights & Gender Violence. Translating International Law into Local Justice. The University of Chicago Press, Ltd., London pp. 219–220

20. Levitt and Merry identify three different types of local vernacularisers across social positions, specifically: 1) anointed elites who have been singled out and in whom the international community is invested; 2) cosmopolitan elites with less international prominence who are also involved in activist and scholarly networks; 3) locally-based beneficiaries and enactors of vernacularisation who learn from cosmopolitan elites and perform a second level of vernacularisation for the communities in which they work. For more information about the role of vernacularisers, see also "Mapping the Middle" by Sally Merry (2006b).

21. cf. Merry, Sally (2006b): Mapping the Middle. In: American Anthropologist. Vol. 108, No. 1, p. 39.

22. Levitt and Merry define framing as "ways of packaging and presenting ideas that generate shared beliefs, motivate collective action, and define appropriate strategies of action" (2009: 452).

23. Ibid., p. 446.

24. cf. International Covenant on Economic, Social and Cultural Rights (1966), Art 2(1). http://www2.ohchr.org/english/law/cescr.htm (accessed 9 February 2012).

25. cf. Frowein, Jochen A./Wolfrum, Rüdiger (2001): Max Planck Yearbook of United Nations Law. Volume 5. The Hague: Kluwer Law International, p. 405.

26. cf. Convention on the Elimination of All Forms of Discrimination against Women (1979), Art 28(2), http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm (accessed 20 October 2011).

27. Serious crimes occurring under Thai law were to be automatically referred to the Thai justice system. They could not be handled by camp-based judicial officials. These crimes included: serious rape, serious assault, murder, and human trafficking.

28. cf. Thailand Ministry of Foreign Affairs. http://www.mfa.go.th/web/24.php (accessed 21 October 2011).

29. cf. Thai Penal Code, Title IX. http://www.samuiforsale.com/Law-Texts/thailand-penal-code.html#208 (accessed 21 October 2011).

30. cf. Immigration and Refugee Board of Canada: Thailand: Domestic Violence; State Protection and Resources Available to Victims of Domestic Abuse. http://www.unhcr.org/refworld/publisher,IRBC,,THA,47d6547b23,0.html (accessed 21 October 2011).

31. Supra Note 27, Section 277.

32. Supra Note 27, Section 281.

33. According to the Public Health Ministry's One Stop Crisis Center, more than 19,000 cases of violent abuse against women and children, 80% of which involved domestic violence, were reported in 2007 alone (see Integrated Regional Information Network (IRIN): Thailand: Fighting Domestic Violence. http://www.irinnews.org/report.aspx?ReportId=80513 (accessed 21October 2011)).

34. Under the law, domestic violence victims and those who know about domestic violence conduct are obligate to report crimes to the police. After a report is

made, the police have an obligation refer the case to a public prosecutor within 48 hours (cf. Domestic Violence Victim Protection Act , Section 5).

35. This approach is similar to a Thai pilot program initiated in 2005. The program calls for police to refer domestic violence offenders to a probation officer. The probation officer then must mediate the case between the offender and other family members; assign an appropriate course of treatment, restitution; or community service; and report to police officers if the conditions set forth in the mediation have been met (see Kittayarak, Kittipong (2005): Restorative Justice in Thailand. http://www.icclr.law.ubc.ca/Publications/Reports/11_un/Kittipong%20final%20paper.p (accessed 20 October 2011).

36. Cf. Levitt/Merry 2009: 457; Merry 2006b: 49.

37. Cf. Merry 2006a: 8–10

38. For more information, see Merry, Sally (2003): Human Rights Law and Demonization of Culture. In: Polar: Political and Legal Anthropology Review. Vol. 26, No. 1, pp. 55–77.

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