Human Rights in Translation

Dispute resolution
in the Bhutanese refugee camps in Nepal

Ilse Griek

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Prof. Dr. W. M. van Genugten
Prof. Dr. B. M. Oomen

Commissieleden:
Prof. dr. em. K. von Benda-Beckmann
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Prof. dr. M. Hutt

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Acknowledgements

I still recall with vivid intensity the first day I visited Beldangi-1 refugee camp in early 2010. I went in with a notebook and came out with new stories, new ideas, and a baby rabbit I bought from an elderly man who sold them in the camps for 150 Nepalese Rupees (approximately 1 Euro) each.

For fourteen months, the Bhutanese refugee camps and Damak – the humanitarian hub beside it – were my home, and for a long time after leaving Nepal I missed waking up to the sound of roosters crowing and the bustling onset of dawn in Damak. The sounds, smells, and sensations of the Terai are still with me today.

The PhD is often described as a lonely road, but it is also a huge collaborative effort. This project was only possible because of the countless people who contributed to and helped realise it – and to them I owe thanks.

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Last but not least, I thank my parents, who showed me the world and gave me the good sense to believe that anything is possible.

Many of the people mentioned in this book are no longer in Nepal. Refugees have been resettled to the United States, Canada, Australia, Norway, the Netherlands, and other countries, where they have started new lives. Many of the aid workers have moved on too – to Haiti, Sudan, Kenya, Malaysia, Jordan, Belgium, Denmark… the list of countries is long. Webs of transnational connections continue to grow.

This book is for the Bhutanese refugees – for all those who have left the camps in Nepal and are building new lives in third countries, and for all those who remain.

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List of Abbreviations

AHURA: Association of Human Rights Activists, Bhutan

ALNAP: Active Learning Network for Accountability and Performance in Humanitarian Action

AMDA: Association of Medical Doctors of Asia

APF: Armed Police Force

APFA: Association of Press Freedom Activists, Bhutan

BHA: Bhutan Health Association

BNS: Bhutan News Service

BPP: Bhutan People's Party

BRAVVE: Bhutanese Refugees Aiding Victims of Violence

BRCF: Bhutanese Refugee Children's Forum

BRWF: Bhutanese Refugee Women's Forum

BSC: Bhutan State Congress

CBO: Community Based Organisation

CDO: Chief District Officer

CeLRRd: Center for Legal Research and Resource Development

CMO: Camp Management Officer

CFUG: Community Forest Users' Group

CMC: Camp Management Committee

CMO: Camp Management Officer

CMSC: Community Mediation Service Center

CVICT: Center for Victims of Torture, Nepal

CWT: Community Watch Team

DV: Domestic Violence

EXCOM: UNHCR's Executive Committee

GNLF: Gorkha National Liberation Front

HUROB: Human Rights Organization of Bhutan

IOM: International Organization for Migration

INA:	Immigration and Nationality Act
LWF:	Lutheran World Federation
NBA:	Nepal Bar Association
NGO:	non-governmental organisation
NUCRA:	National Unit for the Coordination of Refugee Affairs
OAU:	Organization of African Unity[1]
PFHR:	People's Forum for Human Rights, Bhutan
RBA:	Royal Bhutan Army
RCU:	Refugee Coordination Unit
RGB:	Royal Government of Bhutan
RSD:	Refugee Status Determination
SAARC:	South Asian Association for Regional Cooperation
SASF:	Semi-Autonomous Social Field
SGBV:	Sexual and Gender-Based Violence
SUB:	Student Union of Bhutan
TSASF:	Transnational Semi-Autonomous Social Field
TPO Nepal:	Transcultural Psychosocial Organization, Nepal
UN:	United Nations
UNGA:	United Nations General Assembly
UNHCR:	United Nations High Commissioner for Refugees
USRAP:	United States Refugee Admissions Program
VDC:	Village Development Committee
VMF:	Voluntary Migration Form
WFP:	World Food Programme

[1] The OAU was disbanded in 2002 and replaced by the African Union.

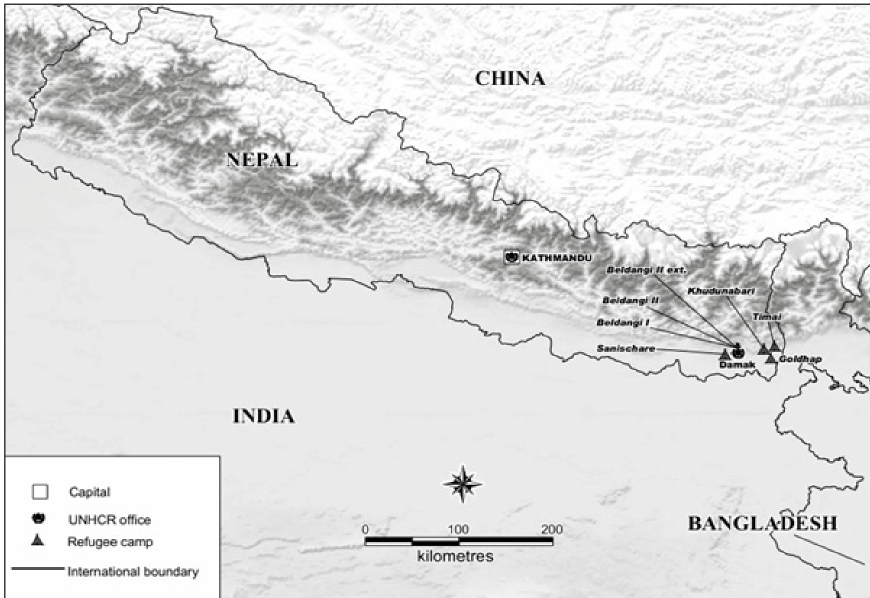

Figure i: UNHCR presence in Nepal at the start of my field research in 2009

Source: UNHCR (2006). Global Report 2005: UNHCR in Nepal.
Geneva: UNHCR © 2006 by UNHCR.

Chapter I: Introduction

> Bhuwani Shankar is 85 years old. He lives alone in a one-room hut in Sector B of Beldangi-2, in the Jhapa District of the Terai region of Nepal. Over the crowing of one neighbour's rooster and sawing from another neighbour's wood shop, he tells me that his wife and children – all grown up, by now, with their own families – have recently left him. While he stays on in Beldangi, his family now lives in the United States. Because Bhuwani is not interested in resettlement and his wife would not have been permitted to leave without him without his consent, she divorced him after sixty-six years of marriage. Bhuwani is upset and tells me that he would like to sue the U.S. president, who he holds personally responsible for his abandonment. That he does not know the President's name or address is a mere detail. As head of the government of the United States, the country that permitted his wife to immigrate without his consent, the President must be to blame.

Beldangi-2 refugee camp lies in a remote corner of Nepal, hidden between forest land and sleepy villages. Leaving the Land of the Thunder Dragon, Shangri-La and 'gross national happiness' behind, thousands of Bhutanese refugees fled to India and Nepal in the early 1990s in search of a safe haven from persecution, violence, and discrimination in their home country Bhutan. Those in India were soon deported and the majority of the refugees settled in camps in Nepal, where they would spend the better part of the next two decades. By 2007, seven refugee camps in south eastern Nepal together hosted an estimated 107,000 Bhutanese refugees.

The easiest way for visitors, researchers, and aid workers to travel to the camps from Kathmandu was by plane to the airport in Biratnagar or Bhadrapur. With the exception of one right turn, the road from Biratnagar to Damak (the town adjacent to the three Beldangi camps) felt like an endless straight stretch through the Terai. The two-lane road passed bustling villages, road-side markets, bridges, forests, fields of mustard flowers, and the occasional Hindu temple or Buddhist graveyard. On the road, one was bound to encounter goats, cows, rickshaws, locals and refugees on bicycles, massive trucks trading with India (just across the border), public transport buses filled to the brim, and scores of motorcycles – the new local rage. From the main road, Damak resembled any other village, but with a short foray into town the difference was palpable. Damak was the basis of the humanitarian operation that serviced the Bhutanese refugees – an international hub in the south-east of Nepal. The town's landscape, which had benefited from the

presence of the agencies and their international staff, was marked by one colourful multi-story brick or cement house after another, painted in shades of pastel in varying combinations. A few traditional wooden houses – the type on stilts inhabited by locals in other towns – still stood among them, but they were shrinking in number as their owners replaced them with sturdier structures. There also seemed to be more *sari*-clad bangle wearing women on the streets than in other towns, more motor cycles, UN vehicles and rickshaws, more bustle, business, and more *wealth*.

By 2014, the refugee camps that represented the *raison d'être* of the humanitarian operation in Damak had been in existence for more than twenty years. Nepal refused the refugees citizenship and did not allow them to integrate. Bhutan has not permitted a single refugee to return. Since their flight, the refugees lived in camps established by UNHCR with the assistance of the international community, where they waited for a solution to their plight. In the absence of state protection, essential services were provided by UNHCR and its implementing partners, which simultaneously implemented programmes intended – to the extent possible within the constraints of state regulations – to enhance respect for refugees' human rights.

The Bhutanese refugee camps in Nepal are the focus of this thesis. As the following sections will show, the findings of this study on dispute resolution, legal pluralism, and human rights implementation in the humanitarian setting of the refugee camps can be extrapolated to inform broader understandings of the way in which human rights norms are introduced, received, and used at the local level.

Transnational communities, transnationalised law?

When I first began writing this book in early 2011, the following message circulated on Facebook:

> Your car is German. Your vodka is Russian. Your pizza is Italian. Your kebab is Turkish. Your democracy is Greek. Your coffee is Brazilian. Your movies are American. Your tea is Tamil. Your shirt is Indian. Your oil is Saudi Arabian. Your electronics are Chinese. Your numbers are Arabic, your letters are Latin. And you complain that your neighbour is an immigrant? Pull yourself together! Copy if you're against racism!

The message brings to the fore two interesting phenomena. Firstly, it highlights the extent to which globalization has touched upon the lives of people around the world, increasing their exposure to foreign products and ideas to such an extent that it becomes difficult to distinguish their origins. After highlighting the extent to which the international affects readers' everyday lives, the message asks them to join a social rally around a norm

of international law. By calling for the abolition of racism, the message implicitly embodies the prohibition on racial discrimination – enshrined, *inter alia*, in the 1948 Universal Declaration of Human Rights and the 1965 Convention on the Elimination of Racial Discrimination.

This reference to racism is an indirect reference to international human rights law. Human rights accrue to all human beings on the basis of the 'recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family'.[2] They were formulated primarily with the intention of protecting individuals from the 'tyranny and oppression' of states, acknowledging that 'disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind'. Human rights norms are designed to supersede national law. They are expressed in various forms, including in international treaties signed and ratified by states (such as the 1965 Convention on the Elimination of Racial Discrimination) and as norms of customary international law. Many human rights norms have been interpreted and codified by states and have thus become part of legal understandings at the national level. Human rights norms also form the foundations of various forms of soft law, such as guiding principles and/or recommendations.

The influence of the transnational and the spread of international human rights norms is an apt parallel for the topic under discussion in this book: the extent to which refugees' lives, in a humanitarian setting managed by an international organisation, are influenced by foreign legal norms, including international human rights law.

By circulating the message against racism on Facebook, its proponents used a transnational social network to present it to people all over the world for discussion and support. The example highlights the empirical reality of legal pluralism, understood as the presence of multiple legal orders in a given social field (Griffiths, J. 1986: 3) in the everyday lives of people around the world. Globalization and the post-war order have resulted in an increasing proliferation of forms of law that transcend the nation state, bringing new actors and legal orders – both state and non-state – to the fore. In this international order, human rights have become 'the lingua franca of global moral thought, as English has become the lingua franca of the global economy' (Ignatieff 2001: 53).

International organisations – and those that are part and parcel of the United Nations system in particular – are both sources and proponents of human rights norms. However, they interpret these from the perspective of their

---

2 UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), Preamble.

own mandates and 'have their own take on the rule of law, which they bring to the diverse local contexts in which they operate and which can be the source of significant changes' (Taylor, Stoddard, Harmer, Haver, and Harvey 2012: 9). As they operate in multiple sites across geographical and jurisdictional boundaries, these organisations influence local legal landscapes and introduce legal norms, sometimes in unintended and unpredictable ways.

The effects of international organisations can be pronounced, particularly in settings where they have considerable influence, such as development interventions or humanitarian operations. Not only do international organisations have more reach than ever before, but the speed at which global norms and ideas circulate today is unprecedented in history. This has led to dual processes of translation. To an extent that was unfathomable a few decades ago, individuals – and no longer just states or organisations – come into contact with international norms, which they interpret and give meaning at the local level (Rajagopal 2003; Merry 2006a; Merry 2006b; Merry, Levitt, Rosen and Yoon 2010; de Feyter, Parmentier, Timmerman, and Ulrich 2011). The revolutions in information and communications technologies have ensured that these developments are not limited to western or industrialized countries. Over the past decades, the number of internet users has grown exponentially. In 2013 more than 2.7 billion people around the world – roughly 40 percent of the global population – were connected to the internet. Half of all internet users were in the developing world (International Telecommunication Union 2013). By end-2013, Facebook reported having 1.23 billion active users.[3] As Franz and Keebet von Benda-Beckmann point out 'Even where the "local" remains circumscribed in terms of a territorial or geographically bounded site it can no longer be divorced from global processes that have varying effects on the everyday life of individuals, institutions and social groups' (von Benda-Beckmann, F., von Benda-Beckmann, K., and Griffiths, A. 2005: 9). The potential reach of a message shared through Facebook (should all Facebook users see the message in question) is roughly 1/7th of the world population. Barriers between the global and the local have become blurred.

In refugee camps, the influence of international organisations comes together with highly mobile populations, including refugees themselves and the aid workers who assist them. Following flight, refugees retain ties with relatives and friends who fled persecution alongside them as well as with those who stayed behind in the country of origin. As refugees are resettled from camps to third countries, the web of connections grows. They may also develop close ties with their new countries of asylum. Transnational connections are

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[3] Facebook (2014): Facebook Newsroom: Key Facts. Retrieved from: http://newsroom.fb.com/Key-Facts, February 2014.

also brought by international organisations themselves, which work with a combination of local staff and international aid workers – the latter often well-travelled elites who speak multiple languages.

In humanitarian settings, the influence of the foreign is therefore tremendous. If the Facebook statement above were adapted to fit the context of a Bhutanese refugee living in one of the camps in Nepal, it might begin like this:

> Your bicycle is Chinese. Your *sari* is Indian. Your rice is Malaysian, your sugar Brazilian. Your teachers are Bhutanese, the UNHCR staff who run the camp where you live are Japanese, Danish, Swiss, and Kenyan. Your Department of Homeland Security (DHS) officer is American, the head of the Tuberculosis centre where you underwent your last medical check-up before resettlement is Russian. Your son has moved to Arizona, your daughter lives in Norway.

It might also include: 'You just had breakfast with a Dutch anthropologist (or an American grad student, or a British volunteer with a local NGO).'

Despite the increasing mobility of both people and legal norms, few studies have been conducted on the impacts of transnationalism and globalization on legal constellations in social fields or beyond the national level (von Benda-Beckmann, von Benda-Beckmann *et al.* 2005).

Taking the grassroots level as its basis, this thesis analyses how norms introduced by the humanitarian regime interacted with customary and other pre-existing legal norms in the Bhutanese refugee camps in Nepal. Subsequent chapters will show how refugees, humanitarian actors, and government personnel forged a new legally plural landscape in the Bhutanese refugee camps, affecting both disputes and their outcomes. An analysis of different disputes in the camps will show how these disputes and their outcomes were influenced by external legal norms, including the human rights norms introduced into the camps by UNHCR and other humanitarian organisations.

Refugee protection and UNHCR's evolving mandate

Article 1(A) of the 1951 Convention Relating to the Status of Refugees defines a refugee as someone who:

> owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside of his country of nationality and is unable or, owing to such fear, unwilling to avail himself of the protection of that country.

Refugees are assumed to be in need of protection by virtue of their exclusion from the protection of their country of origin. Their precarious legal position, as they fall between the cracks of the state-centred model of governance, has led to their association with exclusion and 'bare life' (Arendt 1952; Agamben 1998; Nyers 2006). Refugee law is essentially a palliative system designed to temporarily address the irregularity caused by the refugees' position outside of the regular protective system of the nation-state.

The 1951 Convention, as amended by its 1967 Protocol, is the most important international treaty regulating refugee protection and sets out the rights of those who have or seek refugee status. These rights accrue to refugees independently of human rights that may be applicable by virtue of other international human rights treaties. As with other human rights treaties, the notion of state responsibility is central to the 1951 Convention. Each of the rights granted to refugees is accompanied by a complementary and unequivocal duty of contracting states. Despite this emphasis on state obligation, however, the majority of the world's refugees are hosted in developing countries that are unwilling or unable to offer protection. In these countries, refugee camps are run by the Office of the United Nations High Commissioner for Refugees (UNHCR).

UNHCR was established by the UN General Assembly in 1951 as a subsidiary organ under Article 22 of the UN Charter[4] and is entrusted with the international protection of refugees.[5] Article 1 of the Statute of the High Commissioner for Refugees (1950) endows UNHCR with the function of 'providing international protection, under the auspices of the United Nations, to refugees who fall within the scope of the present Statute and of seeking permanent solutions for the problem of refugees by assisting governments and, subject to the approval of the governments concerned, private organizations to facilitate the voluntary repatriation of such refugees, or their assimilation within new national communities.'

In 1951, UNHCR was envisaged as a relatively weak organisation with a limited role – a notion that was reinforced by a limited mandate, restrictions on the population of concern to UNHCR,[6] and the requirement that

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4 See UNGA resolution 319 A (IV), 3 December 1949.

5 Article 1 of the 1950 Statute of the High Commissioner for Refugees, UN GA, 325th Plenary Meeting, A/RES/428.

6 People of concern to UNHCR included, under the 1951 Convention, those determined to be refugees under previous conventions or by UNHCR's predecessors (most notably, the International Refugee Organization) or those who fled as a consequence of events occurring before January 1st, 1951. 'Events occurring before 1 January 1951' are to be understood, pursuant to article 1B of the Convention, as either events occurring in Europe before this date (Article 1B(a)), or as events occurring in Europe or elsewhere (Article 1, under B(b)). The 1951 Convention also includes stateless persons in this category (Article 1, under A(2)).

UNHCR's mandate be renewed by the UN General Assembly every three (and later five) years. The subsequent expansion of the organisation's mandate must be seen in light of historical changes that have affected both the number and type of refugees around the world. Where UNHCR's activities in the 1950s were mainly confined to Europe, the 1960s and 1970s bore witness to various internal conflicts in Africa, leading to large refugee flows within the region. This trend continued into the 1980s – a decade marked by new emergencies linked to the demise of the dual-power structure of the Cold War in the Balkans, Great Lakes, Liberia, Somalia, and Northern Iraq. The new conflicts that emerged at the end of the bipolar world order were accompanied by sizeable refugee outflows. International failure to provide durable solutions for these refugee crises resulted in the establishment of large camps, often in refugees' regions of origin. The increase in the number of camps 'left UNHCR, not necessarily willingly or happily, with responsibility to co-ordinate a worldwide mini-empire with a population numbered in the millions' (Gilber 1998: 359-60).

Although humanitarian aid is premised on a presumption of transience, many refugee camps, like the Bhutanese camps in Nepal, have ceased being temporary places. In humanitarian lingo, these long-standing refugee situations are referred to as 'protracted'. Loescher and Milner define protracted refugee situations loosely as those 'which have moved beyond the initial emergency phase but for which solutions do not exist in the foreseeable future' (Loescher and Milner 2009). UNHCR considers a refugee situation to be protracted when it has been in existence for five years or more, without immediate prospects of a 'durable solution'. The label was initially reserved for populations exceeding 25,000 persons.

In 2009, UNHCR's Executive Committee (EXCOM) issued its first conclusion on protracted refugee situations, in which it determined that a quantitative restriction was not necessary for a refugee situation to qualify as protracted.[7] By this time there were well over thirty protracted refugee situations in the world, with an average duration that had doubled in only a decade. The majority were located in poor and unstable regions in Africa and Asia, and most refugees in protracted situations lived in camps that were established in the early 1990s (Loescher, Milner, Newman and Troeller 2008).

As refugee influxes slowed and increasing numbers of refugee situations became protracted (transcending initial 'emergency periods' to enter a 'care and maintenance phase'), attention within the humanitarian industry shifted from a focus on immediate needs such as housing, water/sanitation, and

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[7] UNHCR EXCOM (2009): Conclusion on Protracted Refugee Situations, No. 109 (LXI).

health care to a longer term, more developmental approach that addressed multifarious aspects of refugees' everyday lives – including issues that touch on social behaviour, law, and dispute resolution. As Gilber (op cit: 360) noted:

> While the management of large-scale relief programs was not envisaged by UNHCR's Statute, the provision of assistance has come to play an important role in the organization's efforts to fulfil its mission. Food, shelter, health care and other forms of assistance are essential to the survival and safety of displaced populations, and constitute a vital form of human rights protection in their own right, especially in situations where civilian populations are subject to deliberate deprivation – including starvation – by the parties to the conflict.

With this shift in the nature of refugee reception, UNHCR transformed from 'an agency whose job was, in large measure, to serve as trustee or guardian of refugee rights as implemented by states to an agency that is now primarily focused on direct service delivery' (Hathaway 2002: 24). Today, the provision of humanitarian assistance is a fundamental part of UNHCR's protection mission (UNHCR 1998, para 18).

In time, the notion of 'international protection' evolved correspondingly to include care and maintenance, human rights, and even development-related components. In a broad sense of the word, the provision of 'protection' currently comprises such diverse activities as the provision of shelter, food, health care, education, human rights training, and scholarship opportunities for university attendance, the arrangement of elections for refugee leadership, the organisation of opportunities for travel outside camps in case of urgent needs such as hospital or funeral attendance, voluntary repatriation schemes or programmes for migration to third countries in the form of resettlement, and self-reliance projects (such as micro-financing and other livelihoods initiatives). By providing essential services, the agency seeks to guarantee respect for refugees' economic, social, and cultural rights. It also facilitates the protection of other human rights, often by actively pursuing social change in beneficiary groups – for instance through a diverse range of initiatives that may be aimed at anything from peace building to the empowerment of vulnerable groups, efforts to promote gender equality, or the eradication of 'harmful traditional practices'.

In most camps, services are provided through parallel structures for refugee assistance that are established by UNHCR and exist separately from host state structures serving local populations. This phenomenon of 'parallel structures' has become a defining characteristic of the 'care and maintenance' model of refugee assistance (Slaughter and Crisp 2008). As

a result, 'instead of just being responsible for the protection of refugees, UNHCR and its implementing partners actually become responsible for the whole administration of very large populations – totalling 50,000, 100,000 or even 200,000 people – and the provision of humanitarian assistance to them' (Pallis 2006: 885). In 2010, 30 percent of the world's 10.55 million refugees were living in camps.[8] Nearly all of these camps were managed by UNHCR and its network of implementing partners.

The scope of UNHCR's new responsibilities for the administration of camps and the provision of assistance within them highlight the extent of the agency's control over day-to-day life in these settings – a feature that becomes increasingly relevant as humanitarian situations cease to be 'temporary' phenomena and endure over extended periods of time. Not unexpectedly, this resulted in the 'widespread perception that [UNHCR] was a surrogate state, complete with its own territory (refugee camps), citizens (refugees), public services (education, health care, water, sanitation, etc.) and even ideology (community participation, gender equality)' (Slaughter and Crisp 2008: 132). This further weakened the notion of state responsibility, 'while UNHCR assumed (and was perceived to assume) an increasingly important and even pre-eminent role' (ibid: 132) in refugee protection. Indeed, the extent of UNHCR's actual responsibilities today is reminiscent of other situations in which the United Nations has used its clout to by-pass nation states and take on roles ordinarily reserved for sovereign states, as it did in Kosovo and East Timor under Vieira de Mello (Power 2008). Academics have been quick to point out the extent of the UNHCR's power, describing camps as 'total institutions' (Harrell-Bond 2000) in which UNHCR operates as '*de-facto* sovereign' (Wilde 1999).

Protractedness: A humanitarian imperative for understanding law in camps

By end-2012, an estimated 6.4 million refugees were believed to be in protracted refugee situations in 25 different countries around the world.[9] The corresponding trend of prolonged encampment has been met with scathing critiques from activists and forced migration scholars (Crisp 2000; Jacobsen 2003; Loescher and Milner 2005; Verdirame and Harrell-Bond 2005; Loescher, Milner *et al.* 2008; Milner and Loescher 2011). In the late 1990s and early 2000s, the prevailing discourse portrayed refugee camps in terms that highlighted their anomaly as 'states of exception' (Agamben

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[8] UNHCR Statistical Yearbook 2010. Retrieved from http://www.unhcr.org/4ef9c8d10.html in June 2013.

[9] UNHCR Statistical Yearbook 2013 (p. 23). Retrieved from: http://www.unhcr.org/52a722c49.html in April 2014.

1998; Malkki 2002), 'legal islands' (Griek 2006), or 'non-places' (Diken and Laustsen 2005), where people were are left in a legal limbo that deprives them of the 'right to have rights' (Hanafi and Long 2010).

As a result, refugee camps 'have become a highly visible symbol of failed human rights campaigns' (Holzer 2013: 838). Accounts of insecurity in refugee camps are pervasive and highlight crime, the presence of military elements and (forcible) recruitment of refugees into rebel and military movements, and high rates of sexual and gender-based violence (Zolberg, Suhrke and Aguayo 1989; Jacobsen 1999; Milner 2000; Lischer 2001, 2005; Halperin 2003; Muggah 2006; see also UN Security Council Resolution 1208 (1998)). According to Jacobsen:

> In recent years, petty and organized crime have flourished in refugee camps. Few camps are organized to address these problems, and most camps lack an effective system of law and order. Crimes go unpunished because there is no adequate force to back up what rule of law does exist. Perpetrators are able to elude justice by hiding amongst the refugee population, or camps fall under the control of political or military elements, and civilian authority and sources of law and order are undermined. Refugees are then more likely to be deprived of their rights, and subject to violence and intimidation. (Jacobsen 2001: 14)

Survey research conducted among 746 crime victims in Beldangi-2 and Beldangi-2 Extension camps[10] in Nepal revealed that in the five years prior to the survey, refugees had experienced high rates of theft, verbal and physical violence, vandalism and polygamy. There were also instances of rape, sexual abuse, and loan disputes (known as *lin-din* cases).

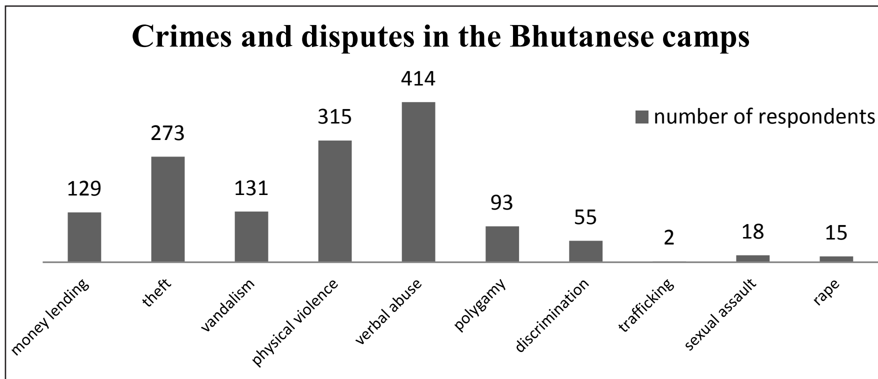

Figure ii: Crimes/incidents experienced by survey respondents between 2006 and 2011[11]

[10] This survey is introduced in more depth in the section of this chapter entitled 'Methodological Approach'.

[11] N=746. Because one person may have experienced more than one incident, the total

Several authors have related the insecurity in refugee camps specifically to the weak rule of law in these environments. Jacobsen (1999: 3) named the breakdown of law and order and the crime and associated problems to which this gives rise as one of the top three sources threatening the security of camps and the safety of camp-based refugees.[12] In Kenya, Crisp (2000: 20) similarly noted that a 'root cause of the insecurity in Kakuma and Dadaab [refugee camps] is to be found in the problem of impunity. For in both areas, the rule of law is weak and the perpetrators of violence are rarely held accountable for their actions.' According to Crisp, impunity derived from several related issues: the social organisation and culture of the refugee and local populations, the limited capacity of local security services, and the weakness of the Kenyan judicial system. The phenomenon was also observable in other camps (Da Costa 2006). Many governments, it turned out, were decidedly uninterested in prosecuting crimes taking place in refugee camps. Moreover, very few refugees appeared to be turning to host country legal systems.

An overlapping body of literature on refugee camps concerns communities and social relations. These studies point to the adverse effects of confining people to camps and the prolonged periods of life in limbo that result when refugee situations become protracted. Summing up some of the consequences of prolonged encampment, Adelman (2008: 8) pointed to 'material deprivation, psychosocial problems, violence, sexual exploitation, exploitative employment and resort to negative coping mechanisms'. Long-term encampment was also believed to lead to the destruction of solidarity, social bonds and social support structures in camps and the absence of a real sense of 'community' in refugee camps due to a lack of social cohesion and autonomous action. Agier (2008: 58) wrote that in camps 'neither work (as economic activity) nor politics (as autonomous action) is able to develop and consolidate itself'. Instead, camps remain bare towns in which refugees experience a kind of 'lasting and separate non-development' (ibid: 59). Crisp (2000: 25) argued that after flight, refugee see 'their social structures and cultural norms steadily eroded by the experience of exile'.

It cannot be denied that insecurity is a real problem in many refugee camps and that human rights protection is often lacking in these spaces. However, as protracted refugee situations endure over time, camps take on a developmental, almost urban character (Wilde 1999; Agier 2002; Jansen 2011). New, stable social structures are established by the communities that form in many of these settings. Refugees in most long-standing camps

number of incidents recorded is larger than N.

12 The other two sources of insecurity mentioned by Jacobsen are external military attacks or raids on camps and violence and intimidation occurring from sources inside or outside camps.

have established their own legal systems that operate independently, usually without assistance from states or UNHCR, and adjudicate disputes that take place among members of the refugee population (Da Costa 2006; Griek 2006). Both crimes and breaches of social norms are addressed through these systems. This suggests that shared sets of norms can and do evolve in refugee communities and that enough consensus can exist within camps to enable refugee-run legal systems to adjudicate conflicts and disputes involving these norms. When state systems are absent or inaccessible, refugee legal systems may be the only forums through which refugees are able to access remedies for problems they encounter, crimes committed against them, or violations of their rights.

The administration of justice in refugee camps

As Holzer (2013: 839) has pointed out, refugees living in camps often engage extensively with different facets of the law. Over the past two decades, UNHCR has devoted increasing attention to the administration of justice and rule of law in refugee camps. The combination of insecurity, pervasive rule of law gaps in camps, and establishment of independent legal systems that operate largely beyond UNHCR and host state control has undoubtedly played a role in this change.

The administration of justice is fundamental in ensuring respect for human rights, particularly in refugee contexts (Purkey 2011). Making the connection between the rule of law and the fulfilment of human rights, UNHCR's Executive Committee found in 1996 that 'for states to fulfil their humanitarian responsibilities in reintegrating returning refugees… an effective human rights regime is essential, including institutions which sustain the rule of law, justice and accountability', and called upon UNHCR 'to strengthen its activities in support of national legal and judicial capacity-building'.[13] By 1997, UNHCR indicated that it was playing an active role in this 'entirely new area' of work for the organisation. Examples of the type of support provided by UNHCR include logistical support and office equipment to Ministries of Justice and other parts of judicial systems, organising trainings on legal issues and human rights, providing training and technical support to judges, government officials, law enforcement, etc. (UNHCR 1997: 14).

Involvement in the legal field was not new for UNHCR. Since its establishment, the agency's mandate has comprised a strong standard-setting role. Through its contributions to the development of international,

[13] UNHCR EXCOM (1996): 'UNHCR's role in national legal and judicial capacity building', conference room paper EC/46/SC/CRP.31, May 1996.

regional, and national law, UNHCR has gained intimate knowledge of the legislative process. Since its inception, it has contributed to the drafting and adoption of various international conventions, including the 1967 Protocol Relating to the Status of Refugees, the 1967 UN Declaration on Territorial Asylum, and the 1966 Bangkok Principles Concerning Treatment of Refugees (O'Hara 2005). By providing information, textual suggestions, comments, and advice UNHCR has also influenced the final texts of regional refugee rights instruments such as the 1969 OAU Convention, the 1984 Cartagena Declaration, and the EU Directives on Asylum and Refugees. In many countries, UNHCR has played a similar role in the formulation and adoption of domestic law pertaining to refugees.

Through its experience with refugee status determination (RSD), UNHCR has also grown accustomed to a role as arbiter. In many states, UNHCR carries out the legal assessments that ultimately determine whether applicants will receive official recognition of their status as a refugee. Although there has been considerable criticism of the way in which UNHCR carries out this procedure – including allegations that it has violated international norms (Alexander 1999; Kagan 2006a; Kagan 2006b) – UNHCR's involvement in conducting RSD has required it to become familiar with legal standards such as those relating to due process and the right to appeal (UNHCR 2005).

Both RSD and the agency's history of involvement in standard-setting have undoubtedly helped prepare and equip UNHCR for its present involvement in the administration of justice, which is a considerably newer area of operations. To improve its understanding of the legal systems that operate in refugee camps and the obstacles faced by refugees in accessing justice, UNHCR commissioned a study on the administration of justice in camps in 2003. The resulting study, completed by Rosa da Costa in 2006, was the first to provide an overview of the legal systems refugees used to address conflicts and crime in camp settings. Da Costa made explicit mention of legal pluralism, observing that 'the complex interface of local, national, international, and refugee-specific values and justice mechanisms poses important challenges to addressing the administration of justice in camps' (Da Costa 2006: 9). While Da Costa's study was insightful in highlighting of obstacles to access to justice, it did little to describe these interfaces or the ways in which refugees' traditions interacted with national law and international human rights norms. Few in-depth studies have examined what these normative interfaces look like, how potentially conflicting legal systems may affect access to justice for refugees, or how UNHCR's justice interventions enhance respect for refugees' human rights.

To address gaps in research on the interaction of legal norms in refugee settings, the present research will answer three research questions, taking the Bhutanese refugee camps in Nepal as a case study:

1. What constellations of legal pluralism can be observed in the UNHCR-run Bhutanese refugee camps in Nepal?

2. How do refugees, humanitarian agencies and other actors introduce legal norms to humanitarian settings?

3. How does the introduction of foreign legal norms (including international human rights law) in humanitarian settings influence disputes, their resolution, and access to justice for refugees?

This research departs from the notion that a deep, anthropological understanding of legal pluralism in refugee camps settings – and of the legal structures that operate in these camps and the ways in which disputes are resolved through these structures – is crucial for comprehending how to improve access to justice and respect for human rights for refugees.

The first research question frames this research as a study of legal pluralism. The answer to this question (which is primarily descriptive) will map the legal orders that are applicable to the Bhutanese refugee camps, both in terms of a plurality of bodies of law and legal systems and, where relevant, in terms of a corresponding plurality of legal actors and/or dispute resolution forums. Highlighting the extremely transnational nature of the refugee setting, various types of law ranging from the local to the global will be considered, including customary and religious norms, state law, and international law.

The second research question asks how the various forms of external legal norms described above were introduced to the humanitarian setting of the refugee camps by refugees, aid workers, and others. It describes the ways in which both traditional or customary law and human rights law gained relevance in these settings – the first introduced by refugees themselves, the latter primarily through a combination of humanitarian and state actors.

Recognizing that the existence of simultaneously applicable (and often contradictory) sets of legal norms may impact legal choices and outcomes in humanitarian settings, the third research question asks whether this is actually the case. Does the implementation of human rights norms by humanitarian actors and others lead to the localisation of human rights at the 'village level' as Oomen and others have suggested (Merry 2006; Oomen 2010), or do customary and religious norms provide refugees with a means to resist externally imposed legal orders? At the micro-level, the answers to these questions can provide insight into the effectiveness of current approaches to protection and human rights-based programming in the refugee settings. More broadly, they will also provide insight into the ways in which human rights norms are appropriated or resisted at the grassroots level. Studying these impacts in a refugee setting has the additional benefit of offering 'the chance to record the processes of social change, not merely as a

process of transition within a cultural enclave, but in the dramatic context of uprootedness where a people's quest for survival becomes a model of social change' (Harrell-Bond and Voutira 1992: 9).

To answer the third research question, this research is focused on disputes. Disputes are understood as disagreements that stem from the perception of an individual or group that rights have been infringed, and which are subsequently brought before a third party or raised to the public arena for resolution (Merry 1979: 40). As people negotiate outcomes to disputes, they often explicitly make reference to legal norms: 'In disputes, legal arguments, rights and obligations become discursive and are most clearly articulated by the contending parties, as well as by a decision-making authority.... the process of negotiating and decision making shows us which are the relevant dispute processing institutions, which of the often contradictory versions of law are selected as being valid, and in which way abstract rules are concretized in a specific situation' (von Benda-Beckmann, F., von Benda-Beckmann, K., and Spiertz 1997: 229).

For this reason, early legal anthropologists considered disputes to be a crucial source of knowledge about non-state law and unwritten rules in non-Western legal orders (Llewellyn and Hoebel 1941; Nader and Todd 1978; Cotterrell 1992). Although the study of disputes has been refocused over time, disputes continue to be regarded as sources of information about law and legal interaction in contemporary legal anthropological studies (i.e. Oomen 2005; Thomas 2013).

Nader and Todd (1978: 14-15) described disputes as having essentially three stages: a grievance stage, followed by a conflict stage and – after the raising of this conflict to a public arena – the stage Nader and Todd refer to as the dispute itself. Felstiner, Abel and Sarat (1980) explained the transition from grievance or injury to dispute as a series of transformations. The first transformation is called 'naming' and occurs when people name a particular experience as injurious. In the second stage ('blaming'), a perceived injurious experience turns into a grievance and fault is attributed to another party – be it an individual or social entity. The third transformation occurs in the 'claiming' stage when the aggrieved person voices his or her grievance to the person or entity believed to be responsible, and asks for some remedy. Claims that are rejected become disputes. The following chapters will focus mainly on what happens during what Nader and Todd describe as the 'disputing' stage, in which conflicts are brought before a third party for resolution. Felstiner, Abel and Sarat's analogy of the naming, blaming, and claiming stages of a dispute will return in an analysis of the ways in which the introduction of foreign migration law through the third country resettlement programme implemented in the camps has reshaped family disputes.

As described above, refugee camps are highly transnational settings. A growing body of literature in the field of socio-legal studies has recognized the impacts of mobility and transnationalism on legal constellations as a diverse and intensely local experience. New legal constellations are formed across national, regional, and local boundaries, in accordance with different cultural, social, and political traditions and varying power hierarchies (von Benda-Beckmann, F., von Benda-Beckmann, K. *et al.* 2005). Describing the use of human rights by non-westerners, Wilson (2007: 348) stated that: 'Cultural appropriations of western law by local groups are fundamentally creative and represent a pluralistic form of resistance to global homogenization (and, read, legal centralism)'. Merry (1996: 68) used the term 'vernacularisation' to describe the process through which people translate human rights by developing their own cadences and vocabulary to talk about international norms, and mobilizing these in a way that frequently joins indigenous notions with global law. It is clear that the impacts of transnationalism – which cannot be divorced from the humanitarian context – must play a role in a discussion on the translation and impact of legal norms. For this reason, significant attention is paid to the third country resettlement programme implemented in the Bhutanese refugee camps, the new forms of law this has introduced to family-level disputes, and the changes that could be observed in these disputes as a result.

The findings of this research are illustrative in highlighting ways in which the introduction of new, external forms of law can influence existing practices in local settings, even when these are interpreted as 'custom' or 'tradition'. Answers to the second research question address both the ways in which external legal norms (such as human rights law) are introduced to local contexts and the changes these norms undergo as a result. Answers to the third research question will provide insight into the impact of new external norms on disputes and access to justice in local settings.

Structure of this book

This chapter has introduced the research setting and the humanitarian imperative for understanding law in humanitarian settings, particularly when these become protracted.

Chapter II sets out the legally plural context of the refugee camps. The role of 'project law' in introducing human rights norms to humanitarian settings is emphasized, as is the role of aid workers in translating human rights law to implement it in the specific local contexts of the field operations in which they work. The chapter also outlines the research methodology and introduces the transnational semi autonomous social field (TSASF) as a theoretical frame through which the impact and interaction of different forms of law can be analysed in transnational settings.

Chapter III maps the humanitarian space of the refugee camps. To place the disputes that are described in subsequent chapters in context, the first sections of the chapter introduce the Bhutanese refugees and the conflict that led to their flight to Nepal. The remainder of the chapter describes the establishment of the camps, the provision of services, the organisation of the camp administration and economy, and the re-establishment of a sense of community among the Bhutanese refugees. It highlights refugees' involvement in shaping the social and geographical environment of the camps in which they live and the community that is established in these settings as a result of the shared experiences among refugees. By describing the room for negotiation between refugees and humanitarian staff, this chapter emphasizes both the constraints refugees face and their ability to craft solutions that deviate from the rules imposed upon them.

An understanding of the different dispute processing forums and legal and quasi legal venues that were accessible to Bhutanese refugees is necessary to comprehend the role that different forms of law play in camp disputes. Chapter IV begins by introducing the three-tiered, mediation-based legal system established and operated in the camps by the Bhutanese refugees themselves, largely free from outside interference. This system is placed in its historical context, highlighting areas of continuity with the past as well as areas where the mediation system was transformed to meet the requirements of the new environment in which it was used. Following this discussion of the refugee legal system, the roles of main actors and institutions of the Nepalese legal system in addressing refugee disputes is described.

In Chapters IV, V, and VI the relevance and role of external legal norms in the resolution of camp disputes is illustrated in an ascending manner. Chapter IV outlines the role of mediators and committees of respected elders in solving disputes in the camps, showing the way in which individuals – with various beliefs – can contribute to organic understandings of law within the camps. The chapter concludes with a description of three cases that highlight the interconnectedness of the refugee legal system (the camp mediation system) and Nepalese judicial and law enforcement actors and institutions.

Chapter V presents a discussion of domestic violence-related conflicts in the camps. Interventions relating to sexual and gender-based violence (SGBV) and domestic violence (as a form of SGBV) are a major area of focus in the camps for UNHCR and its implementing partners. At the same time, there have been developments at the national level. A new Nepali Domestic Violence Crime and Punishment Act was adopted in 2009, criminalising domestic violence in Nepal and creating a more rigorous domestic legal framework for addressing transgressions. Did the principle that violence against women is a violation of human rights trickle down in mediation cases? What influence did it have? To show how external norms interacted

with refugees' cultural and personal values and religious beliefs as norms were debated during mediation sessions, an in-depth presentation is given of a domestic violence case discussed before the Counselling Board. This is followed by a presentation of three cases that illustrate different paths taken in domestic violence cases, in spite of UNHCR rules and Nepalese law.

Chapter VI describes the impact of project and foreign law through the third country resettlement programme on legal practices in the camps. Focusing on family cases in particular, it highlights the impacts of mobility and transnationalism on disputes and legal understandings in the camps. First, a polygamy case is presented, along with the rules pertaining to minor marriages in the different bodies of law that make up the legally plural context of the camps. The discussion on polygamy is followed by a similar discussion on minor marriage. In both cases, family disputes were reframed and transformed in light of new requirements that stemmed from foreign migration law, as refugees made concerted efforts to reconcile their desire to leave the camps with the obligations and rules that accompanied the resettlement programme.

Chapter VII presents a closing discussion of the particularities of legal pluralism in humanitarian settings. It will draw attention to the distinctive role of both refugees and humanitarian actors in introducing new forms of law (including international human rights law) to refugee settings. Attention is also drawn to the ways in which refugees themselves ignored, translated, or used external norms to support their cases they mediated disputes through the camp legal system. The chapter concludes with a discussion of the effectiveness of human rights-based programming, through project law, in enhancing respect for refugees' human rights at the local level.

Chapter II: Legal Pluralism in Humanitarian Settings

The notion of legal pluralism originated in the early twentieth century in reaction to prevailing exclusionary, state-centric views of law. In a seminal article on legal pluralism, Griffiths attacked the legal centralist notion that law was 'an exclusive, systematic and unified hierarchical ordering of normative propositions' emanating from the state. Instead, he argued, legal reality was inherently plural; a hotchpotch of norms that could emanate both from governmental and non-governmental sources (Griffiths, J. 1986: 3).

Griffiths criticised lawyers and social scientists for suffering from 'a chronic inability to see that the legal reality of the modern state is not at all that of the tidy, consistent, organised ideal so nicely captured in the common identification of "law" and "legal system", but that legal reality is rather an unsystematic collage of inconsistent and overlapping parts, lending itself to no easy legal interpretation, morally and aesthetically offensive to the eye of the liberal idealist, and almost incomprehensible in its complexity to the would-be empirical student' (Griffiths, J. 1986: 4). A decade later, he concluded that law everywhere is 'fundamentally pluralist in character' and 'anyone who does not [accept this] can safely be ignored' (Griffiths, J. 1995, cited in Tamanaha 2008: 395). As Tamanaha wrote more recently, 'There is, in every social arena one examines, a seeming multiplicity of legal orders, from the lowest level to the most expansive global level' (Tamanaha 2008: 375).

Today, legal pluralism is accepted as an empirical reality. People in social settings of all types are confronted with multiple and often vastly different forms of law: customary law, religious law, indigenous law, *lex mercatoria*, international law, etc. These different legal regimes may overlap, compete with, or contradict each other. For this reason, Santos argues that the different legal orders that apply in a given social setting should be conceived 'not as separate entities coexisting in the same political space, but rather the conception of different legal spaces superimposed, interpenetrated, and mixed in our minds as much as in our legal action' (Santos 1987: 297). The lives of people who live in legally plural settings, characterised by a continuous intersection of porous legal orders, can also be defined as existing in a state of 'interlegality' (Santos: ibid). As Hoekema (2005: 6) pointed out, 'National law and local law do not exist the one next to the other as self-contained entities or like billiard balls that perhaps hit each other but in itself are closed, massive entities.' Instead, they penetrate each other. The legal sensibilities of local people are affected by state law, just as state law may be affected by non-state legal orders. Hoekema (2005: 7) referred to this as 'interlegality in reverse'.

Early studies of legal pluralism focused on the co-existence of state and customary law in non-Western societies. In the 1970s, these studies began to shift their attention to legal orders in industrialised countries. The term legal pluralism was, during this period, used primarily to draw attention to the recognition of customary norms in state law, or the coexistence of customary or traditional institutions (even if not officially recognised) alongside state institutions (Tamanaha 2008: 390). Griffiths, J. (1986) and Merry (1998) have written excellent overview articles on the history of the study of legal pluralism, which I will not rehash in detail in this book.

More interesting to note is the direction in which contemporary studies of legal pluralism have been developing. Contemporary legal pluralists work in a context that demands increasing attention for the impacts of globalisation on local legal constellations. This has refocused the study of legal pluralism to new themes in which the transnational is highlighted: the growing cessation of state sovereignty to international and regional bodies such as the United Nations, World Trade Organization, or European Union, the invocation of human rights norms by non-governmental organisations and others in opposition to state law, the growth of trans-governmental networks with regulatory power, and the consequences of migration and transnational communication (von Benda-Beckmann, K. 2001; von Benda-Beckmann, F., von Benda-Beckmann, K. *et al.* 2005; von Benda-Beckmann, F. and von Benda-Beckmann, K. 2007; Tamanaha 2008; Provost and Sheppard 2012).

This chapter will introduce the legally plural context that will come back throughout this work in varying constellations. Different types of cases will show how different bodies of law come to bear upon everyday life in the Bhutanese refugee camps in varying constellations, touching upon social issues ranging from family relations to crime.

II.1 Delimiting law in a refugee camp

Almost since its inception, the study of legal pluralism has been plagued by a lack of conceptual clarity surrounding its use of the term 'law'. In opposition to formalist, state centric models that regard law as emanating from the state and based on written texts, legal pluralists have used broader views of law. Early conceptualisations of law used by legal anthropologists incorporated various types of social norms (e.g. Malinowski 1926; Moore 1973; Griffiths, J. 1986) and were criticised on the basis that almost anything could count as law.

The question 'what is law' has been debated heavily, but was never resolved and the blurred line between social norms and law has been a source of confusion ever since. Tamanaha (2008: 396) noted that 'Legal pluralism exists whenever social actors identify more than one source of "law" within a

social arena.' Like Tamanaha, I avoid the conceptual discussion over what is law (and what is not) by accepting as 'legal' what local social actors identified as such.

The vast majority of refugees in the Bhutanese camps had no legal background but used the word *kanuun* (which translates to 'law' in Nepali)[14] to refer in general terms to many of the rules with which they came into contact and which influenced their lives. Sometimes, they specified what they believed were origins of law – i.e. 'Nepalko kanuun' (the law of Nepal). As one man explained, 'different countries have their own laws. Some of the INGOs and NGOs, they have their own law. As per UNHCR's law, my daughter married that boy and I had to go and tell them that she married. Because I did not do that, I went against the law of UNHCR. When UNHCR found out, my [resettlement] process was stopped.'[15]

To the Bhutanese refugees, law could emanate from sources other than the state. Recognising law, I realised, required openness to the different shapes that law and legal phenomena may take and a willingness to look beyond traditional labels and seek ones that are more appropriate. If the Bhutanese understood humanitarian policies and rules as 'law', then a study of the interaction of legal norms should do so as well.

State law

The primary responsibility for maintaining the rule of law and ensuring security rests with states. Because they are located on Nepalese territory the Bhutanese camps are subject to Nepalese law – bringing the full spectrum of Nepalese civil and criminal law to bear upon refugees in the country. Although Nepal has not ratified the 1951 Convention Relating to the Status of Refugees it does, in accordance with Article 16, grant refugees full access to Nepalese courts.[16]

Nepal was never colonised and has been described as having a 'hybrid system' of law that has been influenced by different legal traditions, both western and non-Western. It was the French Napoleonic Code that ultimately inspired

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[14] K*anuun* or *qanun* is an Arabic word for law. It entered the Arabic language in the early middle ages and was derived from ancient Greek terminology for regulations of land taxes. In the early Islamic period, the term came to mean 'regulations laid down by the Ruler independently of Sacred Law'. (Arjomand 1989: 116). It has since been used to denote law in many different languages.

[15] Observation of a Counselling Board Case, Beldangi-2, 1 April 2011.

[16] Article 16 holds that '[a] refugee shall have free access to the courts of law on the territory of all Contracting States" on the same basis as nationals in the country of his or her habitual residence.'

Nepal's prime minister to codify Nepalese law as a single 'country code', the Muluki Ain, in 1854 (Heckendorn Urscheler 2012). This was done through a state-driven process of Sanskritisation and the Hindu legal tradition dominates Nepal's formal law.

In addition to Nepalese law, the conduct and behaviour of camp-based Bhutanese refugees in the country is further regulated by a set of quasi-legal "camp rules" established by the government coordinating body for refugee affairs (the Refugee Coordination Unit, or RCU) in cooperation with UNHCR in 1992 and 'designed to enforce Nepalese law in the camps and to regulate issues as varied as the suspension of rations for missing refugees to family planning' (Muggah 2005: 157). These camp rules, although not strictly law but policy, have similar effects.

As subsequent chapters of this book will show, Nepal is not the only state whose legal system affects the refugee camps. Through a third country resettlement programme implemented in the Bhutanese camps in 2008, foreign migration law has had increasing relevance for the camps.

Customary norms and local law

Much social interaction in the Bhutanese refugee camps was premised on understandings of tradition and regulated through a combination of Hindu and Buddhist religious norms.[17] Tamanaha (2008: 398) uses the term 'customary normative systems' to refer to 'shared social rules and customs, as well as a social institution and mechanisms, from reciprocity, to dispute resolution tribunals, to councils of traditional elders,' and points out that in some societies, these systems are indistinguishable from religious normative systems, which can also be considered aspects of culture (Tamanaha 2008: 398).

In a legal anthropological study of Sekukhune, South Africa, Oomen (2005: 210) argued that there was 'no such thing as a "system" of customary law, [but] there is a pool of shared values, ideas about right and wrong and acceptable sources of morality that are commonly acknowledged and rooted in local cultural orientations.' In traditional contexts, rules are often flexible and scholarship on customary law has shown that the 'customary' character of customary law, which has also been described using such terms as 'traditional', is not necessarily 'customary' at all. Instead, researchers found that many elements of what is presented as tradition or custom is either simply invented, or has undergone substantial changes over time (Snyder 1981; Hobsbawm and Ranger 1983; Spiertz 1991).

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[17] The administration of justice based on Hindu beliefs dates back to ancient times in Nepal (Michel, Walsch *et al.* 2009: 3).

Because 'customary law' is defined by lawmakers, judges, and experts in most legal systems, legal anthropologists have found it necessary to distinguish between 'lawyers'' and 'people's' customary law (von Benda-Beckmann, F., von Benda-Beckmann, K. *et al.* 1997: 221). To use a terminology that 'does not imply a claim about centuries-old and only very slowly changing customs, nor about the supposed "purity" of these customs' (Hoekema 2005: 10) von Benda-Beckmann and others have opted for the term 'local law' to denote the form of law that people use on the ground, or in Moore's semi-autonomous social fields.

As John Griffiths (2003: 1) posited in his seminal article "The Social Working of Legal Rules", 'semi-autonomous social fields are not only the social locus of rule following but also of the processes by which what ultimately become "legal" rules emerge.' New rules (or interpretations of rules) emerge in camps as existing rules are applied and debated. Local law is inherently flexible and allows for the incorporation or rejection of norms with different provenances, based on different power relations. Customary law, or different constructions (or older or newer versions) of it, often constitutes an important part of 'the ingredients from which local law is shaped' (von Benda-Beckmann, F., von Benda-Beckmann, K. *et al.* 1997: 228).

'Local law' is an intrinsically more suitable term to describe the norms that are applied by unofficial legal systems in refugee camps. Although refugee dispute resolution systems, which Da Costa (2006: 23) defined as 'structured mechanisms established and/or run by refugees with a specific mandate (formal or informal) to resolve disputes within the camp,' were found in all 13 countries she studied, these systems were organised in different ways. While some were described as specific to certain sub-groups within camps, others were derived from religious structures, or run by elders, tribal, clan, zone or camp leaders. In refugee camps with heterogeneous populations, local dispute resolution mechanisms may place less importance on customary norms in favour of shared norms between disputing parties from different origins.

International human rights law

The international human rights framework consists of principles and rights enshrined in the International Bill of Rights (comprised of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights) as well as several core treaties dealing with more specific human rights topics, such as torture or genocide, or with the protection of specific vulnerable groups such as women, children, indigenous peoples, and refugees. The preambles of both Covenants claim that 'human rights derive from the inherent dignity of the human person,' and the core purpose of

human rights, conversely, is to safeguard the dignity of all human beings (de Feyter 2011: 12) and to ensure their equal treatment.

Human rights norms are premised on the notion of state responsibility, and state law is an important vehicle through which these international norms are introduced to diverse national contexts. Nepal has ratified various international human rights conventions that have implications for refugees, such as the 1979 Convention on the Elimination of all forms of Discrimination Against Women (CEDAW).[18] Standards such as these have played an important role in influencing subsequent legal reforms for gender equality and in the development of such laws as the 2008 Domestic Violence Crime and Punishment. By criminalising domestic violence the Government of Nepal gave both local and refugee women recourse to the courts for violations of their rights in the domestic sphere.

International human rights law has also been seized upon by Nepal's Supreme Court which has made repeated reference to international legal norms. In a 2008 court case on homosexuality, the Court argued that homosexuality was a natural condition and that gender minorities including lesbian, gay, bisexual and transgender people should have equal rights under the law, including the right to marriage. The Court quoted extensively from human rights conventions such as the International Covenant on Civil and Political Rights (ICCPR). It also relied on soft law to motivate its ruling, citing reports by the UN High Commissioner on Human Rights, special rapporteurs, proceedings of meetings of experts, and NGO publications, and making reference to case law from the U.K., Australia, South Africa, U.S., and the European Court of Human Rights (Heckendorn Urscheler 2012).

While the Bhutanese refugees were able to rely on some forms of human rights protection (and remedies for human rights violations) through Nepalese law, the same law also served to restrict their rights, disallowing refugees such rights as the freedom of movement or right to work. In the case of state failure to take responsibility for refugee camps, protection is taken over by the UNHCR. The following section will illustrate that humanitarian agencies such as UNHCR can serve as both source and proponents of human rights norms, and will show how these norms were introduced to camps in the form of 'project law'.

'Project law'

Franz von Benda-Beckmann (1989: 134) first suggested that 'development projects have the form of law.' Since then, the contributions of epistemic communities in the law making process – whether assembled in international

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[18] Nepal ratified the CEDAW in 1991.

organisations, development organisations or otherwise – have received increasing recognition from academics and policy makers. It is now recognised that development organisations can both serve as channels through which law is transported from western to developing countries, and act as law-making instances in their own right (von Benda-Beckmann, F., von Benda-Beckmann, K. *et al.* 2005: 13; see also Tamanaha, Sage, and Woolcock 2012).

A number of legal anthropologists conceive the body of rules relating to the formation and implementation of international development projects as 'project law' (Günther and Randeria 2001; Randeria 2005; Weilenmann 2005; 2009a; 2009b). The most comprehensive definition of this term to date is given by Weilenmann, who explained project law as the 'normative orders… that coordinate the planning of development projects' (2005: 234). The term is used to refer to two types of legal schemes: 'On the one hand, it refers to those legal rules that guide the planning and conceptualisation phase of a development project.' On the other, '[p]roject law can… also refer to those legal rules, which are formed by the project personnel during the implementation process and in interaction with so-called target groups' (Weilenmann 2009a: 234).

In an earlier work, Günther and Randeria (2001) used the term in a more narrow sense to refer only to those rules that govern the *creation* of projects – i.e. the 'memoranda of agreement, terms of reference, management systems, administrative and budgeting procedures, accounting and auditing procedures and standards, regulations of purchase, benchmarks for evaluating the progress of the project and the attainment of project goals, operational policies and operational directives of the donor organisations which are binding on the credit or loan recipient' (Randeria 2005: 154). In a comment to Weilenmann, Randeria emphasised that not all norms governing development interventions should be considered project law:

> Development projects, for example in the area of family planning and reproductive health, certainly diffuse and even impose contraceptive practices, the acceptance of a small family norm, the necessity of fertility control (Randeria 1995). But these disciplinary practices, which are often institutionalized through policy frameworks and which aim to create docile bodies and modern subjectivities, are better understood as techniques of governmentality than as project law. In my view the use of project law is a very important technique of governmentality, but not all techniques of governmentality can be subsumed under project law. (Randeria 2005: 155)

To study the impacts of project law, a distinction between between different 'layers' of project law may be useful. When one treats the administrative

and legal rules that govern humanitarian organisations, the policies that are formulated at headquarter-level, and the local projects that result when these policies are implemented (including the rules that flow forth from project implementation) separately, the translation between these levels becomes evident. While 'governmentality' is shaped to varying extents by each of these forms or layers of project law, ultimately, it is the last type of rules that have the most direct and extensive legal impact on the lives of local people. These rules, which are implemented in local contexts and often vary from the norms set out in global policy documents, are most strongly felt by the people targeted by development or humanitarian assistance.

High-level operational policies rarely originate from the countries in which projects are implemented, more often emanating from 'first world' cities such as New York, Geneva and Rome, where the headquarters of most large United Nations development and humanitarian organisations are located. Hyndman has aptly described the interconnectedness between funding sources, decisions and projects, and highlights the strategic importance of Geneva for the humanitarian industry:

> Geneva, in particular, is both an international banking capital and a seat of power for the United Nations and other international agencies whose mandates include humanitarian and development assistance. Northwest of the commercial city center, an entire neighbourhood of these organizations exists in which the UN Palais des Nations forms a kind of humanitarian city center. The concentration of international organizations forms a kind of global locale that serves as the financial district and administrative center of humanitarian assistance. Various countries have permanent missions to the Office of the United Nations, and most vie for a space close to the Palais. The World Health Organization, the International Labor Organization, the World Trade Organization, the World Intellectual Property Organization, and the UNHCR, among others, share the neighbourhood with bilateral missions from individual governments and a range of international NGOs. The proximity and sociability of these organizations to one another, and especially to the Office of the United Nations, is critical to the politics of humanitarian funding that take place in Geneva. As an international financial center for private and public capital, the city has both symbolic and practical value. It is the place of emerging news, expert views, and key meetings determining the direction of financial decisions. (Hyndman 2000: 38-39)

High-level policies undergo several 'chains of translation' in the transition from headquarter locations to global field offices and implementing officers on the ground (Weilenmann 2009a) ground. These processes are conducted by translators or intermediaries, who 'work at various levels to negotiate

between local, regional, national, and global systems of meaning' (Merry 2006: 39). In this process they undergo changes that are sometimes subtle and other times less so. The result may be that the rules that are ultimately implemented in local settings deviate substantially from those that directed the first stages of project or policy formulation. Of course, the degree of variance that is permitted between the rules implemented in local settings and overarching policy goals is finite – the operational policies of large institutions constrain them in their project design (Kingsbury 1999: 338). These operational policies, like the donor relationships that influence funding for individual projects, affect the programmes that are ultimately carried out in the field, and the normative frameworks on which projects are based.

II.2 Project law in humanitarian settings

The State of the Humanitarian System report released by the Active Learning Network for Accountability and Performance in Humanitarian Action (ALNAP) defines the humanitarian system as 'the network of national and international provider agencies, donors and host-government authorities that are functionally connected to each other in the humanitarian endeavour and that share common overarching goals, norms and principles' (Taylor, Stoddard *et al.* 2012: 9). Through their professional staff and the implementation of projects in local settings humanitarian agencies, like development agencies, become involved in the proliferation of international norms, principles and other rules. The scale at which this takes place should not be underestimated. There are more NGOs involved in the humanitarian system today than ever before, with vast resources at their disposal. In 2010, the combined humanitarian expenditure of the 'global giants' in this group – the UN humanitarian agencies, International Movement of the Red Cross and Red Crescent and five largest NGOs – exceeded US$ 2.7 billion. That same year, the number of humanitarian workers worldwide was estimated at 274,000 (Taylor, Stoddard *et al.* 2012: 9).

Despite the prominence of humanitarian actors at the global level, existing research on the impacts of international agencies on law and legal and social orders has focused primarily on large-scale development interventions. Except in the context of what some lawyers have come to refer to as 'international territorial administration' similar discussions on project law and humanitarian orders have been largely avoided – a phenomenon that, to some extent, can probably be attributed to the perceived temporariness of humanitarian interventions compared to the longer-term design of most development projects.

In this research, the use of the term 'project law' is expanded to include the projects implemented by humanitarian organisations in the settings in which

they operate. Even when humanitarian assistance is intended as temporary, there are many settings in which the humanitarian regime has short and long term impacts on local legal orders, in much the same way as development organisations.

In its camp management role, UNHCR exercises significant control over the territories and populations under its administration. It has the power to impose rules that are akin to law for refugees inhabiting the camps. The expansion of the notion of refugee protection and quasi-governmental responsibilities that UNHCR has taken on in camps implies that that refugees have increasingly become subject to a non-State regime, in which their rights are determined not so much by governments as by UNHCR, and as a corollary, by the international community. Projects implemented by humanitarian agencies in these camps come to constitute an important form of governance and often have very direct legal consequences for the lives of beneficiaries. Sometimes, the resulting rules may be hard and clear, while at other times, they may be less direct. At any one time, a single project may draw on multiple humanitarian and human rights principles and have consequences for multiple sets of rights (Griek 2009).

Aid workers as street-level bureaucrats

Like Weilenmann's development project law, humanitarian policies and norms become real as they are implemented, interpreted, and used by humanitarian staff and beneficiaries. As this occurs they undergo several chains of translation. This does not necessarily happen in a clear-cut manner and projects – and the humanitarian and human rights based principles that underlie them – may not be understood the same way between, or even within organisations.

Unlike global policies formulated in Geneva, the ultimate make-up of projects implemented in refugee settings is often contingent upon other concerns relating to the nature of humanitarian assistance and the local context in which it is provided. Humanitarian agencies are often understaffed and relief workers face constraints not dissimilar to those Lipsky (1980) observed in the public sector: limited funding, perceived threats to bureaucrats' psychological or physical well-being, and ambiguous or contradictory expectations of performance.[19]

Relief workers often operate in challenging contexts and locations, not uncommonly designated 'non-family' duty stations for the lack of safety or services. In their daily course of work they are confronted with the added

[19] Franz von Benda-Beckmann (1989) drew a similar parallel between development workers who come into direct contact with villagers and street-level bureaucrats.

stress of visible human suffering, aware that the decisions they make about cutting or implementing relief programmes, granting or denying applications for resettlement, etc., have a major impact on people's lives and that mistakes can thus have a significant human cost. Walkup called this an 'awesome burden,' which he noted does not end when the work day is over for relief workers. Instead, 'at the end of the day, they must face the emotional conflict and guilt when they return in their air-conditioned vehicles to eat and relax in the relative comfort of their headquarters, homes or compounds' (Walkup 1997: 41).

Lipsky's (1980) study of street-level bureaucrats – low-level public servants who were responsible for implementing governmental policies in roles involving contact with citizens, such as postal service staff or police officers – highlighted their discretion in implementing policies and the differences between policy and implementation that resulted when this discretion was paired with the constraints under which bureaucrats operated. Much like Lipsky's street-level bureaucrats, humanitarian staff manage pragmatic concerns and competing goals (and potentially, competing value-sets too) as they implement humanitarian policies. The way in which they conduct their work is also influenced by their interaction with refugees. This may lead them to prioritise some aspects of projects and downplay others – influencing the messages that trickle down to the camps.

It may not always be clear to implementing staff which rights or principles should be prioritised at what moment. Equality and non-discrimination, participation and empowerment of women and girls, best interests of the child, and elimination of violence against women and girls are just a few examples of principles that UNHCR claims to respect and promote in all its work (UNHCR 2008a: 23). Understandings of humanitarian projects and their implementation may also differ on account of the personal characteristics of aid workers. Studies of 'aidland' – the people who make up the humanitarian and development enterprise, as well as their personal lives and backgrounds – point to the diverse backgrounds and motivation that aid workers have for doing what they do (Fechter 2011). The staff of humanitarian agencies are made up of a hodgepodge of individuals: seasoned professionals with many rounds of field work under their belts, international volunteers who are earning their credibility and work experience through their first assignment abroad, short-term international staff seconded by NGOs to fill temporary (or permanent) gaps in capacity, national staff from capital cities, and local personnel. The level of training enjoyed by different workers in this group is varied, as is their familiarity with the organisational culture and local context within which they work. Because international humanitarian staff, local staff, and beneficiaries typically come from very different cultural backgrounds, they are likely to have different takes on particular norms and principles.

On the ground, the uptake and interpretation of policies implemented by humanitarian staff is affected by the normative understandings of beneficiaries and the practices through which they give order to their world and shape their lives in the camps.

II.3 Theoretical challenges: Capturing transnationalism in law

Globalisation and transnationalism have resulted in 'the shifting importance of local, national, and global legal systems [...] in which the critical questions are how these systems intersect and exert power over each other" (Merry 1995: 7). Developments pointing to the increasing transnationalisation of law include both a new and growing *lex mercatoria* and the growing influence of NGOs and social movements on international human rights regimes (Randeria 2003). While various studies have pointed to the influence of local actors at the international level, little is currently known about the way in which global forms of law, such as human rights law, are 'produced, appropriated, localised and resisted by actors at national and local levels' (Merry 2005: 230; see also Goodale and Merry 2007).

If legal pluralism is understood, as Santos (1987: 297-8) suggested, as the superimposition, mixing, and interpenetration of different legal spaces in people's minds as much as their actions, then an understanding of the production, appropriation and re-interpretation of external forms of law at the local level requires a framework that can explain how these different bodies of law and sets of rules come together in local settings. To clarify how and where these intersections of legal spaces occur and how power relations may shift among and between legal systems, this work builds the concept of the 'semi-autonomous social field' (SASF) (Moore 1973; Moore 1978) as a perspective from which to study law and social change.

Moore's work on the SASF, which Merry (1988: 878) hailed as 'the most enduring, generalizable and widely-used conception of plural legal order', provides an appropriate locus for the study of law. Moore described society (or social structure) as composed of social fields, which can be understood as fundamental units of social control.

Moore urged that the social locale that is observable to the anthropologist be described in terms of its key feature: its semi-autonomy. The semi-autonomous social field (SASF)

> can generate rules and customs and symbols internally, but... it is also vulnerable to rules and decisions and other forces emanating from the larger world by which it is surrounded. The semi-autonomous social field has rule-making capacities, and the means to induce or coerce compliance; but it is simultaneously set in a larger social matrix which

> can, and does, affect and invade it, sometimes at its own instance. (Moore 1973: 720)

The frame of the SASF, in which multiple legal regimes interact and a notion of legal or regulatory pluralism is therefore inherent, enabled Moore to explain the unpredictability of effects of centrally instigated regulations or legislation, which interacted with and intruded upon 'ongoing social field[s] that [have] areas of relatively autonomous activity and self-regulation' (Moore 1978: 7). To an extent, the partially autonomous character of the SASF allows it to resist the imposition of external laws and regulations. Because these external norms come together with existing regulations and norms, the effects of introducing external laws are not necessarily straightforward or predictable.

Evidence from studies carried out in other areas points to the unexpected results that can follow from seemingly straight forward legal interventions. Fulton (2004) described the social tensions that resulted from the superimposition of Euro-American legal processes for conflict management upon Keex' Kwaan, a Native Tlingit community in Alaska. One of the reasons these local tensions arose, she argued, was because people were trying to live within incompatible value sets. 'Official' Euro-American legal rules and laws subverted attempts to solve problems using 'unofficial' laws. In another example, Engel (2009) found that the increasing migration inside Thailand (attributable to globalisation) led to peculiar changes in legal injury procedures in Chiang Mai. Where people had previously been able to opt between state and customary law – which were interconnected in many ways and could even be invoked together – with the increasing delocalisation that came with migration customary law ceased to be a viable option for people. At the same time, considerable increases were observed in the number of lawyers and legal insurance schemes in Thailand which, one might presume, would have enhanced the accessibility of the state legal system as an alternative to customary law. Instead, something very different occurred. Rather than turning to the state system, Engel found that people moved away from the law altogether in injury cases. Increasingly, they were using non-legal concepts such as explanations for injuries. Instead of risking worsening their karma further by pursuing revenge and compensation through the state legal system, people in the region of Chiang Mai preferred to improve it (and thus reduce their risk of suffering injuries or other misfortunes in the future) by being forgiving.

The transnational semi-autonomous social Field (TSASF)

Social fields are usually regarded and defined as locally bound (von Benda-Beckmann, K. 2001: 30). That said, local domains are 'embedded in and shaped by regional, national, and international networks of power and

information' (Griffiths, A. 2006). To examine law in highly transnational settings such as the Bhutanese refugee camps, I propose that the semi-autonomous social field be conceptualised explicitly as a transnational semi-autonomous social field (TSASF). This frame will be used throughout this work to show how mobility and transnationalism affect dispute resolution at the local level.

In a TSASF, the complex relationship between actors and external legal orders changes in two major ways. Firstly, the TSASF emphasises that relationship between social actors at the local level and law is increasingly influenced by forms of law that transcend the nation-state. Globalisation has resulted in a growing number of situations in which state governments are no longer necessarily the most important external form of law for specific social fields. Instead, new transnational actors such as humanitarian agencies, issue networks, and multi-lateral initiatives play important roles in spreading norms that affect local settings. These transnational actors have a strong impact on local legal frameworks and contribute to the increasing relevance of international (or transnational) legal norms and bodies of law at the local level.

These transnational actors bring to the fore a second important characteristic of the TSASF: the impact of human mobility on the shaping of law in local settings. As the mobility of legal norms has increased with globalisation, so has the mobility of social actors. The inhabitants of social fields, as is increasingly recognised, may be anything but sedentary (Horst 2006a: 37). Hyndman and Walton-Roberts (2000) were among the first authors to highlight the importance of transnational processes for the field of refugee studies. Refugee camps are characterised by an extraordinarily high level of mobility. In accordance with the definition of 'refugee' set out in Article 1(A) of the 1951 Convention Relating to the Status of Refugees, movement outside one's country of origin is a defining characteristic of 'refugeeness'. The Bhutanese community was highly mobile despite legal restrictions imposed on refugees' freedom of movement in Nepal. There was a sizeable Bhutanese presence in Kathmandu (especially prior to the start of the resettlement programme), as well as migration from the camps to other areas of Nepal or even to India for work – seasonal or otherwise. Since the advent of the third country resettlement programme for Bhutanese refugees in Nepal, the files of more than 100,000 of the originally 107,000 Bhutanese refugees in Nepal have been submitted for resettlement and by April 2013 nearly 80,000 had migrated on to third countries.[20]

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[20] UNHCR (26 April 2013): *Refugee resettlement referral from Nepal reaches six-figure mark.* Retrieved from: http://www.unhcr.org/517a77df9.html.

After interviewing a group of fifty Burmese refugees in Vancouver, Hyndman and Walton-Roberts observed that maintaining transnational connections was critically important to their respondents. In her work on remittances networks in Somali refugee camps in Kenya, Horst (2006a) similarly emphasised the importance of these connections for Somali refugees. Law plays a role in transnational discussions and law in refugee camps is influenced by these connections. Over half of the Burmese refugees interviewed by Hyndman and Walton-Roberts in Vancouver said that the type of contact they maintained with other Burmese refugees was human rights oriented: 'Their visible efforts to educate and motivate the Canadian public to push for change forge concrete connections between the otherwise elusive and abstract "global village" and the streets of Vancouver' (Hyndman and Walton-Roberts 2000: 252). Eritrean refugees in different countries of asylum used 'transnational advocacy networks' to discuss Eritrean human rights issues, connect these to the international level, and use newfound connections with foreign and international NGOs to lobby for change (Hepner 2007).

This emphasises that what may look like territorialised or local understandings of legal concepts may in fact be shaped by discussions or interactions that cross multiple borders. Even if the cohesiveness of local settings is what binds social fields together, the impacts of migration and mobility force researchers to reconsider the boundaries of the social field and the role played by relations between people who migrate and leave a given social locale and those who remain. In a ground-breaking book on transnationalism and immigration, Basch, Glick Schiller and Szanton Black (1992: 7) used the term 'transmigrants' to refer to immigrants such as the Burmese, Eritreans and Bhutanese, who 'develop and maintain multiple relationships – familial, economic, social, organizational, religious and political – that span borders'. Transmigrants live multi-sited lives and may claim social or cultural citizenship in more than one country and make their daily decisions in relation to actors and institutions within two or more nation states (Glick Schiller 2005: 28). Transmigrants, for Glick-Schiller (2005: 32), inhabit an 'unbounded[21] transnational social field', as a result of which a multi-sitedness comes to characterise all aspects of their lives.

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[21] In the refugee camps, this unboundedness is a potentiality that is never fully realized. Although the Bhutanese refugees in principle have the possibility of moving to any country in the world, given the strict migration regimes with which they would have to comply, this is a freedom they do not actually have. While their status as refugees opens some opportunities for migration (i.e. through asylum procedures or resettlement), it closes off many others as refugees typically lack valid travel documents and often fail to meet the basic requirements for legal non-asylum migration.

Although I would not describe the social field of the refugee camps as itself 'unbounded', refugees who are resettled from the camps to third countries can to an extent be described as transmigrants who continue to communicate actively with refugees who remain in the camps. In this way, those who have left the Bhutanese refugee camps in Nepal continue to play a role in the TSASF of the camp setting. Communication and discussions between migrants who have departed from a social locale and those who stay behind may inform local legal experiences. The concept of the 'transnational social field' highlights the potential for such interaction, although in its emphasis on the social alone, it loses some of the clarity that Moore's explanation of the 'semi-autonomous social field' lends to an analysis of the interaction of various bodies of law and the impacts of external rules on pre-existing social fields. Merging Moore's notion of the semi-autonomous social field with Glick-Schiller's 'transnational social field', however, provides us with a frame that takes into account the mobility of law as well as the mobility of social actors and transnational communication among them.

As social fields are increasingly affected by transnational influences – from foreign forms of law to the interpretation of the meaning and consequences of these rules across borders – it becomes necessary to conceive of semi-autonomous social fields as themselves potentially (or even inherently) transnational. At the grassroots level, this frame emphasises that 'local law' is shaped and influenced not only by legal regimes with different origins but also by understandings and discussions about law that may take place across borders or simultaneously in multiple geographic sites.

Power and politics in law

As Holleman (1979: 6) observed, trials may become 'public contest[s] between embittered parties who seek not only legal redress for suffered loss or injury, but also vindication of their general social conduct' .

Even though mediation sessions in the Bhutanese refugee camps were oriented towards reconciliation rather than punishment and generally aimed to avoid open hostility, conflicts over legal norms still took place amidst power disparities between disputing parties, mediators, and observers, often each with their own stake in the outcome of a case. But power is not a monolithic construct. Following the Foucaultian tradition, power is understood in this work as something that is exercised, not possessed; as a relationship that is embedded in society, constantly in flux and contested (Foucault 1975). As Nordstrom (2004: 73) reminded us, 'Like all human endeavour, [power] emerges from complex human relations: continuously challenged, subverted; negotiated and renegotiated over time, space, and interaction.'

Power relations affect both the substance and form of law, and its expression. It is often argued that law inherently favours the powerful. Because of the 'negotiated' character of law (Comaroff and Roberts 1981; Oomen 2005), leaders and others with broad spheres of influence and support can influence the specific constellations of law that emerge in a given locale and the norms that are accepted as constituting part of 'tradition' or community 'culture'. In her study of dispute resolution in South Africa, Oomen (2005: 233) noted that 'While "tradition" […] is generally deemed important, which version of tradition gets accepted depends on the powers at hand.' Interpretations of law are affected by constellations of power in similar ways. As An-Na'im explained, the powerful are able to harness particular norms strategically: 'Dominant groups or classes within a society normally maintain perceptions and interpretations of cultural values and norms that are supportive of their own interests, proclaiming them to be the only valid view of that culture' (An-Na'im 2009: 69).

The resources and opportunities that people have, as social actors, can help explain their legal choices and their ability to transform local situations (Griffiths, A. 2002; Oomen 2005). The constraints people face in using the law effectively (whether in the context of a specific case or in order to effect normative change) are likely to approximate those that they face in the social world (Griffiths, A. 2002). An appreciation both of these resources and of constraints to the use of law is crucial to an understanding of the globalisation of law (von Benda-Beckmann, F., von Benda-Beckmann, K., *et al.* 2005: 11) and the different impacts of different types of external law. When people pursue legal solutions they consider their options with regard to the social framework in which they live and their power to pursue varying forms of negotiation within this framework. Their ability to use legal norms and to pursue legal solutions to their advantage is often connected to their ability to secure social support.

Watching mediation sessions as they occurred enabled me to examine the roles of different parties in the dispute resolution process, as well as the social interaction between them, bringing to light the ways in which 'social roles' influenced both people's ability to use the law, and to do so successfully. As in any other setting, not all refugees in a refugee camp have the same opportunities to be heard. Refugee populations are characterised by power disparities and hierarchies. Within refugee communities, structures are racialised, classed, and gendered (Horst 2003). Power differentiations may be linked to any number of factors, including wealth, caste/clan/tribal membership, gender moral authority, employment status (i.e. as incentive worker with a humanitarian agency), or membership in community decision-making structures. Refugee leadership structures in camps, which may range from 'block' or neighbourhood leaders to over-arching camp administrations, may be politicised, militarised or represent a particular

ethnic or national group, or they may transcend ethnic, national, and political divisions. Separate sub-groups with varying levels of authority may also exist independently of such administrative structures – as in committees of respected refugee elders, religious leaders, or the representation of different caste, clan or other sub-groups within a society.

The constraints and power differentiations that people experience in camps as social settings influence their ability to make use of and influence law. Some voices may be effectively silenced. For this reason, the existence of legal pluralism in practice does not imply that all legal systems are equally accessible to all people. Moore (1993: 523), who studied dispute resolution in Rajasthan, India, described courts as essentially the domain of the powerful:

> While there is competition and contradiction among the systems, in reality these legal arenas are almost exclusively the domain of the powerful. Behind-the-scenes bribing and politicking limit their value to others. In the village, the cultural construction of power focuses on combinations of money, family lineage, caste and gender. Women and most poor or low-caste men are not heard in the legal arenas (Moore 1991). They manage conflict and negative feelings in other ways. Sickness, spirit possession, flight from the affinal village, violence, and suicide are some of their avenues for the resolution of conflict.

As a result, there are those who never consider the possibility of seeking out formal legal remedies even when these are available. Others may reject legal options on the grounds that these will negatively impact social relationships that they feel they cannot afford to lose. Because of the different roles men and women occupy within society, such considerations may be distinctly gendered. As Griffiths noted, women have a 'more urgent need to factor in whether the potential benefits of negotiating will be outweighed by loss of respect and/or support for kin. [...] this requires individuals to make judgments about whether or not they can mobilise the resources necessary to support their position' (Griffiths, A. 2002: 271). She concluded that 'all the factors that constrain women in social life also operate to constrain their access to and use of the formal legal system' (Griffiths, A., ibid).

The version of law that is accepted in a given setting can itself serve as a potential source of power for local actors (von Benda-Beckmann, F., von Benda-Beckmann, K. *et al.* 2005: 13). Once adopted, legal norms can serve as emancipatory tools for marginalised groups or individuals. As Merry (2005: 229) observed, 'The appropriation of human rights creates the discourse and political space for local actors engaged in social reform.' Similarly, the ability to refer to a legal norm that prohibits domestic violence can empower victims, both inside and outside of court.

Power relations between refugees and external actors also affect access to justice in camps. In most cases, the power relationship between the aid regime and refugees is clearly imbalanced in favour of the former. UNHCR and host states determine who is eligible for the label 'refugee' and entitled to *non-refoulement* and the benefits accruing from refugee protection. UNHCR is responsible for camp management and has a great deal of power in ordering refugees' lives. The agency determines how camps are structured and where houses may be built, enters into contracts with WFP that determine to how many calories refugees are entitled and what foodstuffs they receive, and organises the provision of services such as medical assistance, education, legal aid, vocational training, micro-credit and home gardening schemes, etc.

Nevertheless, the ability of agencies – and states – to impose rules and structures in the camps and the 'refugee' label upon their inhabitants by no means implies that their power over refugees is all-encompassing or supreme. UNHCR's ability to claim space for and implement norms is subject to a shifting balance of power between itself, refugees and host country governments. Neither UNHCR nor host country governments have absolute control over refugee camps. Governance structures imposed by aid regimes leave considerable space for the subversion of rules, structures, or norms. Within the framework of overarching power relations, refugees not only have considerable room for manoeuvre, but skilfully make use of this space (Jansen 2008).

II.4 Methodological approach

To account for the numerous ways in which beneficiaries of humanitarian and other interventions shape their social, physical and legal environments, this research takes an actor-oriented approach, highlighting the agency of refugees (and aid workers) as they attempt to 'enrol each other in their various endeavours or "life worlds"' (Long 2001: 89).

Beneficiaries of humanitarian or development interventions are often stigmatised and labelled as '"poor," "resourceless," and "dependent"' (de Vries 1996) – in other words, as helpless victims. To some extent, this tendency is implicit in the very denotation of the discipline in which refugee studies is embedded as 'forced migration studies'. By using the term 'forced' as a basis, the very name of the discipline suggests an absence of agency and choice involved in migrating. Agier, in a recent account, referred to refugees as 'deciding' to migrate (Agier 2008: 11). His use of single quotation marks around the word *decide* indicates doubt that a decision to flee qualifies as a valid decision, thereby placing refugees in the stereotypical corner of those who lack agency and have become incapable of decision-making.

Analytically, narratives that obscure the agency and choice of beneficiaries do not do justice to the creativeness and spirit that characterises human life

– even when confronted with adverse conditions. They also fail to provide a satisfactory explanation for the ways in which humanitarian policies interact with the life worlds of refugees. Turton (2005: 278) objected to this incomplete rendering of refugee life emphasised, arguing that '[t]o emphasise the horror and pain of the loss of home… and to say nothing – or little – about the work of producing home or neighbourhood, whether in a refugee camp, resettlement site, detention centre, city slum or middle class suburb, is to treat the displaced as fundamentally flawed human beings, as lacking what it takes to be social agents and historical subjects'.

The notion of agency 'attributes to the individual actor the capacity to process social experience and to devise ways of coping with life, even under the most extreme forms of coercion' (Long 2001: 16). Its exercise may be affected the limited availability of information, uncertainty, and situational constraints, but it is not diminished. People influence their lives, those of others, and their surroundings with their choices and actions, regardless of whether they live in a refugee camp, an oppressive regime, or a liberal country with laws based on democratic ideals. The idiosyncrasies that emerge in humanitarian settings as refugees shape the distribution of aid, their communities, and the camps in which they live – even in arguably restrictive environments – testify to this influence.

By emphasising the agency of participants, an actor-oriented approach provides insight into the strategies local actors use to deal with disputes and legal phenomena, which may involve 'their manipulation, appropriation, or even subversion of such phenomena, in particular contexts' (von Benda-Beckmann, F., von Benda-Beckmann, K. *et al.* 2005: 20). This approach is relevant for an analysis of the way in which aid workers, as 'street-level bureaucrats,' implement versions of 'project law' in local humanitarian settings that deviate from overarching human rights norms or high-level policies, deviates from high-level policies when implemented in humanitarian settings. It is also ideally suited for a bottom-up examination of the ways in which people use law at the local level.

An ethnographic study of law

In the early days of legal anthropology, Hoebel (1954: 39) wanred that 'law divorced from its cultural matrix is meaningless'. Although more than half a century old, the adage continues to stand central to the anthropological study of law today. As Keebet von Benda-Beckmann (2003) pointed out more recently, an understanding of law and its workings cannot be divorced from an understanding of the context in which it exists.

Transnational practices do not take place in deterritorialised, imaginary 'third spaces' – they must be understood in terms of the constraints and opportunities imposed by contextuality (Smith and Guarnizo 1998: 11).

They occur within distinctly grounded realities, in which the 'local' and 'global' are not discursive opposites but inextricably intertwined.

To ensure that my understanding of law would be culturally embedded, I conducted a total of fourteen months of field work in Nepal. I spent the first two months in Kathmandu, where I followed Nepali language classes and obtained permission to conduct research in the camps. After securing permission to enter the camps from the Ministry of Home Affairs, I conducted twelve months of field research in the camps between January 2010 and April 2011, with a brief gap in the middle used to conduct a preliminary analysis of research results.

The following sections outline the data gathering process and introduce the survey used to place ethnographic findings in context and assess the generalisability of findings.

The dance for access

The first step in conducting anthropological field research consists of gaining access to the research site. As refugee researchers have discovered, access to refugee camps can be notoriously difficult to negotiate (Vogler 2007). Like many who have gone before me, I first attempted to secure access to the UNHCR-run refugee camps by approaching UNHCR for permission directly. I was encouraged by my previous experience in Kenya and by Hyndman, who wrote that 'as a former employee, I was generously hosted and my queries tolerated' (Hyndman 2000: xviii).

The humanitarian endeavour is a high-stakes industry that is not known for its transparency. Over the years, UNHCR has had a somewhat tenuous relationship with external researchers. Schmidt (2007: 93) attributed this, in part, to the implication of the refugee studies discipline in advocacy on behalf of refugees, which lead to a distrust of researchers by organisations who could expect to be criticised.

Unlike Hyndman's, unfortunately, my own status as a former UNHCR employee in the Netherlands and Jordan did little to speed up my requests for access to the Bhutanese camps. When UNHCR Kathmandu had still not approved my request after nearly a year, I decided to try a different strategy. From an anthropologist who had conducted research in the Bhutanese camps some years prior I learned that UNHCR did not, in fact, need to be consulted at all to obtain access and that it was possible to apply for a permit directly with the National Unit for the Coordination of Refugee Affairs (NUCRA), a department established under the auspices of the Ministry of Home Affairs.[22]

[22] UNHCR itself can be rather unforthcoming about this fact, as Jansen (2011:34) also

I secured a study visa through the Ministry of Education and negotiated my access to the camps with NUCRA. Vogler (2006; 2007) noted that this initial permission says little about any additional rules that may be imposed on researchers by local actors and described the ways in which administrative power can impact the study of terrains. Because the Government of Nepal did not permit researchers to set up base inside the refugee camps themselves, I resided in Damak – the nearest town to the three of the seven camps and regional basis for UNHCR, IOM, and most of the NGOs working in the camps. I moved into the top floor of a house owned by a local Nepali family. Like Vogler, I was banned from spending time in the camps after working hours. What this meant was left open to interpretation by local authorities and I soon discovered that these interpretations differed among them. The governmental Refugee Coordination Unit (RCU) Supervisor in Beldangi-1, for instance, was vigilant in restraining my movement and appointed people to keep tabs on my activities and 'accompany' me during my walks through the camp. Fortunately, I established a good working relationship with the RCU supervisors of the two adjacent refugee camps, Beldangi-2 and Beldangi-2 Extension, and as long as I called in every now and then for tea or lunch they allowed me to go about my work without interference. The freedom this implied and my consequent ability to stay in the camps beyond working hours and during weekends was a major reason for my decision to focus primarily on these camps.

Obstacles to gaining access to research sites are not likely to be construed as 'constructive' by researchers who may experience them as frustrating and generating a great deal of anxiety (Mulumba 2007: 63). Nevertheless, the 'dance for access' that researchers must undergo to enter camp sites can also have benefits, and it is useful in highlighting the complexity of relationships and power imbalances between UNHCR and host country governments which can overrule and bypass each other in different ways. Although states can override UNHCR in granting (or denying) third parties access to refugee camps and other humanitarian settings, UNHCR can also (and sometimes does) override state decisions on occasion.

'Doing' ethnography

From my apartment in Damak, I biked, hitch-hiked with farmhands on tractors, got lifts on the back of motorcycles or with the LWF staff vehicle, or took the occasional public transport bus (almost always to the not-so-subtle backdrop of loud Hindi *filmi* music blaring from speakers in the front) to the camps – vast sprawls of bamboo huts built on cleared forest land – where the bulk of the research for this book was carried out.

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discovered when he tried to secure permission to conduct his PhD field research in Kakuma refugee camp, Kenya.

Banki (2008) estimated that roughly thirty-five percent of the population in the camps had a working knowledge of English. I followed an intensive Nepali language course in Kathmandu and by the start of my field research, was able to engage in basic conversations with people about everyday topics like life in the camps, their families, cooking, etc. I could explain who I was and – in very broad lines – what my research was about. Deeper discussions were conducted either in English or with the assistance of an interpreter. There are arguments for and against working with refugee interpreters rather than Nepali speaking members of the local population and I consulted with refugees about both possibilities. I soon found that people in the camps generally felt more comfortable speaking to me through a fellow refugee rather than a Nepali-speaking local. Sometimes people expressed a strong preference for not sharing information about what they considered sensitive topics to people outside their own family or sub-sector. In such cases, they often appointed someone they trusted – usually someone from their circle of family and friends – to translate for them. This required some work with untrained and inexperienced interpreters and had inevitable implications for the quality of some of the interpretation. In general, however, I felt that the advantages of this approach in establishing rapport and contributing to people's willingness to open up to me were worth the loss of linguistic accuracy.

I recorded my day to day experiences in the form of field notes, usually immediately after returning from the camps. When interviews were planned and informants gave me permission to do so, I recorded our conversations.[23] I began my research by exploring the contours of the camps and the different areas that were important to social life: medical centres, schools, distribution points. I spent a great deal of time strolling through the camps' narrow lanes, and 'hanging out' (Rodgers 2004) with people in their gardens, houses, kitchens, and places of work. I attended religious ceremonies, *pujas*, a *puraan,* a wedding and a funeral, as well as football matches, campaigns and other events organised by community-based organisations and others on occasions like International Human Rights Day, International Women's Day, World Suicide Prevention Day and the 16 Days of Activism Against Gender Violence. In contravention of the rules imposed by the RCU, I arranged to spend a night in Beldangi-2. Walking around at night, listening to the noises, observing the organisation of neighbourhood watch teams and rotating guards at the school ground in almost complete darkness, and spending the night behind thin bamboo walls allowed me to observe aspects of camp

[23] In total, this recorded in 109 recordings of interviews and events in the camps, which were transcribed in full. All interviews were conducted either in Nepali with the assistance of Bhutanese refugee interpreters, or in English. The majority of these recorded interviews were interviews with refugees, as staff members of humanitarian organisations were more reluctant to consent to being recorded.

life that were impossible to see in the day time. I participated in trainings of young journalists and attended Camp Management Committee (CMC) and Youth Friendly Center (YFC) elections, where I watched the counting of votes and the announcement of winning candidates. I also observed the induction of newly elected CMC members, as they sat through trainings/ lectures given by UNHCR and its partner agencies.

After obtaining permission from the Camp Secretary and RCU to frequent the Community Watch Team office, I often walked in early in the morning to check who had spent the night in the 'safe rooms' (a euphemistic name given to the cells in the camp where refugees who caused trouble could be locked up for the night) and whether a case would result from what had happened. I gained access to the Counselling Board (the top-level dispute resolution forum) in Beldangi-2 refugee camp and spent a great deal of time observing the mediation of cases. In total, I observed twenty Counselling Board mediation cases, some of which took several sessions to resolve. In a few instances, I was also permitted to attend mediation sessions in the Armed Police Force (APF) base camp.

Apart from numerous informal conversations, I conducted unstructured and semi-structured interviews with countless refugees (often speaking to the same person on various occasions), including Camp Secretaries, Counselling Board Chiefs, Community Watch Team (CWT) Coordinators, Gender Focal Points, sector heads and sub-sector heads, as well as two men who had served as *mandal* (village headman) in Bhutan. Thirty of these were in-depth interviews with victims of theft, domestic violence, and polygamy. Four focus group discussions were held with refugee women on the subject of domestic violence. To protect refugees' privacy and prevent adverse consequences from participating in this research, all refugees interviewed for this book were given pseudonyms. There was one exception: Bhuwani Shankar Bhandari, with whose story I opened this book, and who explicitly requested that I use his real name when writing it down.

I conducted interviews with staff from all the organisations working in the refugee camps. This includes UNHCR's Representative and Deputy Representative in Kathmandu and Head of Sub Office in Damak, two consecutive Protection Officers, two Associate Protection Officers, the Sexual and Gender-Based Violence (SGBV) Protection Assistant, two Resettlement Officers, the Associate Program Officer, three Associate Protection Officers, a Field Associate and a Field Assistant. I also interviewed the Head of Sub-Office at IOM, the Head of Sub Officer of the World Food Programme (WFP), the coordinator of the legal aid programme for the Bhutanese refugees with the Nepal Bar Association (NBA) in Jhapa as well as two NBA lawyers, the Chief Coordinator of Caritas Nepal, the Project Coordinator of the Transcultural Psychosocial Organization (TPO-Nepal), and the

Director of the health centres run by the Association of Medical Doctors of Asia (AMDA-Nepal) in Damak. In addition, I spoke to implementing staff, counsellors and coordinators from most of these organisations and from a local NGO called Happy Nepal. I also interviewed coordinating members of the main community-based organisations: the Bhutanese Refugee Women's Forum (BRWF), Bhutanese Refugee Children's Forum (BRCF), and Youth Friendly Center (YFC).

I visited both the District Court and the prison in Chandraghadi, interviewed two judges at Chandraghadi District Court, the Inspector of the Nepal Police, an Inspector and a Sub-Inspector from the APF, three officers of the Refugee Coordination Unit (RCU), and the RCU Information Officer in Chandraghadi. In Kathmandu, I visited UNHCR's country office and the IOM transit centre, as well as SAATHI-Nepal (an NGO working in the area of women's rights), the Asia Foundation (specialised in governance and law in the Asian Region), the Forum for Women, Law and Development (FWLD), Danida, and the Center for Legal Research and Resource Development (CeLRRd), which was involved in training mediators in the camps.

As Merry and others have recognised, a study of the transnational must also encompass spaces that are unconfined by territorial markers and arenas such as 'information flows, the Internet and global conferences' (Merry 2000: 131, cited by von Benda-Beckmann, F., von Benda-Beckmann, K. *et al.* 2005: 9). The internet has become a 'venue' that is hard to ignore when conducting research among the Bhutanese. On account of the dispersed nature of the Bhutanese refugee community, an increasing deal of communication and social activity now takes place online. Over the last few years, video-based types of communication have begun to flourish. A brief search on YouTube reveals amateur films of life in the camps based on memories, photographs, and events in the camps. Most of these films were composed by Bhutanese refugees who were still in Nepal or had already resettled. Other films are emerging that show life in third countries: religious ceremonies, birthday parties, community events. Together, these films are instrumental in chronicling different versions of Bhutanese culture, both prior to and after resettlement. The internet has also provided a resource for dispersed Bhutanese refugee activists, who have used it to critique the Bhutanese regime and highlight human rights violations that continue to affect Nepali Bhutanese in Bhutan.

Throughout my research for this project, I monitored refugee-run news forums, blogs, and the websites of community-based organisations. I also used different means of internet-based communication, such as e-mail, Yahoo Messenger, and Facebook to keep in touch with Bhutanese in the camps and in resettlement countries. Research for this book was also conducted in other locations. I delved into literature published by Nepali Bhutanese

dissidents in the camps, in nearby towns, and further away in Kathmandu and India (see, for instance Dhakal and Strawn 1994; Rizal 2004; Rizal 2009). Political party offices established in exile were headquartered in such towns as Damak and Birtamod, and published political pamphlets, accounts of history and atrocities in Bhutan, records of housing evictions and expropriated properties. To meet the authors of the books and articles I read, I visited Bhutanese in offices, cafés and residential neighbourhoods in Kathmandu and outside the camps in Damak.

In the Netherlands, I attended the arrival of a group of resettled Bhutanese refugees at Schiphol Airport and visited them at the Dutch reception centre for resettled refugees in Amersfoort. I visited Bhutanese at their houses in Amsterdam, Utrecht and The Hague. I attended a cultural event organised by the Bhutanese Community in The Netherlands (BCN), watched the opening of a film in The Hague that prominently featured the Bhutanese refugees, and ate a nostalgic and wonderful meal at Himalaya – a restaurant in The Hague run by the first Bhutanese refugee to attain the Dutch nationality.

Parts of this research were also informed by my own prior experiences with UNHCR and refugee assistance. Between 2004 and 2006, I regularly attended UNHCR's Standing Committee meetings and annual NGO Consultations in Geneva. In 2006, I conducted research on access to justice for refugees in Dadaab and Kakuma refugee camps in Kenya. For much of 2007, I ran UNHCR's office in The Hague and in 2008 I spent half a year as a Resettlement Consultant with UNHCR in Amman. Since then, I have had the opportunity to meet with UNHCR staff, including those who live and work in Damak, on various occasions in other settings and places. Whilst the considerations faced by a UNHCR office or experiences its staff in one country cannot be substituted for another, the experiences outlined above have nonetheless made it easier for me to appreciate the lives of humanitarian staff, the dynamics within humanitarian organisations (and UNHCR in particular), and some of the dilemma's that confront staff in their work. They have contributed to my understanding of humanitarian work in a general sense and of the relationship between UNHCR field offices and HQ in Geneva as well as the constraints facing UNHCR and its staff more specifically.

Measuring access to justice

To place qualitative findings in perspective and enable generalisation about the types of incidents that occurred in the camps and the legal solutions used to resolve these, a quantitative socio-legal survey on crime and justice was also conducted. The central purpose of the survey for this research was to gather information on the frequency of different types of legal incidents and crimes that occurred in the camps and about people's perceptions of the

legal paths and processes through which these were addressed. Indicators used to assess people's experience with legal processes were derived from a methodology developed by Tilburg University's Measuring Access to Justice (MA2J) Working Group (Barendrecht, Mulder, and Giesen 2006; Barendrecht, Kamminga and Verdonschot 2008; Laxminarayan 2008; Gramatikov 2009; Gramatikov, Barendrecht, and Verdonschot 2011). In line with the actor-oriented approach described earlier, the survey methodology places the plaintiff's experience at the heart of the analysis, making it a highly suitable tool for a bottom-up understanding of 'justice' and what this means in a local community.

The survey instrument was adapted to the context of the Bhutanese refugee camps using data gathered in the first period of field research, which revealed what crimes/incidents were most frequent in the camps, and what legal authorities were used to resolve them. All major decision-making levels of the refugee-run mediation system in the camps were included, as well as accessible (quasi)-judicial authorities from the Nepali judicial and law enforcement systems and even the UNHCR Field Assistant (FA).[24] While the FA was not an official 'legal authority', he was often approached for mediation in the camps and if his mediation efforts were successful, could thus be the final 'legal' authority to decide on a case. The FA was also, in a few cases, the very first legal authority to which survey respondents reported their case.

We decided to work with a five-year frame, meaning that only incidents that occurred in the five years prior to the sample were included in the sample. By so doing, the interviews were restricted to incidents that were recent enough for people to remember well and did not cover crimes that might have occurred in Bhutan prior to refugees' flight to Nepal. When the survey was complete, a translation / back-translation method was used to ensure as much rigour as possible between the Nepali and English versions of the questionnaire. The survey instrument was pre-tested in the camps, after which de-briefings were held and the questionnaire went through several further rounds of refinement. The survey was administered with the help of my Bhutanese refugee research assistants. They participated in a one and a half week-long full time training on research methods, ethics, and the specificities of the MA2J survey methodology, and in pre-testing the survey before it was finalised. All caste groups and several ethnic groups were represented among the eight research assistants (half of whom were male and half female) enabling them to deal with sensitivities and to reallocate interviews to other candidates if respondents felt more comfortable talking

[24] More information on the legal actors/structures involved in resolving refugee disputes will be presented in Chapter IV.

to someone from their own caste or gender (although this did not occur frequently). Survey data was collected anonymously. In an introductory explanation of the survey, respondents were given an explanation of its purpose and were told that participation was voluntary and that there would be no consequences if they did not wish to participate. All respondents signed consent forms prior to participating.

Obtaining representative samples can be problematic when conducting survey research among marginal or mobile populations (Landau and Roever 2004; Mulumba 2007). Populations may be difficult to identify or access, and household registration may be absent or incomplete. This can lead to inadequate sampling frames and raising questions about the representativeness of populations under study. During the data collection test phase, my research assistants frequently found that huts officially registered as inhabited were empty or occupied by people who were not registered as living there. To overcome this problem, we aimed for a sample that was both systematic and as large as possible. Hut-to-hut visits were conducted for every household in Beldangi-2 refugee camp as well a randomly selected sub-set of Beldangi-2 Extension camp, representing approximately a quarter of the population of Beldangi-2 Extension. This resulted in 746 completed questionnaires, of which 657 from Beldangi-2 and 89 from Beldangi-2 Extension. Huts that were found empty three consecutive times were not included in the survey, nor were those whose inhabitants did not consent to participate or who stated that they had not experienced any crimes or incidents over the five-year period taken into consideration for the purpose of the survey.

Even with the care taken to avoid it, some sampling bias was inevitable. Cases involving 'taboo' subjects such as rape are likely to be underrepresented. On the other hand, the fact the majority of interviews took place in the daytime when women were more likely to be home than men means that female victims of crime are likely to be overrepresented in the sample. This may, in turn, have led to an overrepresentation of issues that predominantly affect women, such as domestic violence. These concerns were countered by available literature on the camps, which suggested that gender violence was a pervasive problem and confirmed that refugee women and girls in the camps suffered sexual assault and domestic violence perpetrated by other refugees, intimate partners, and local Nepalese residents (Human Rights Watch 2003). In numerous interviews and conversations I had with them on the subject over the course of my research, refugees and UNHCR and other agency staff alike acknowledged domestic violence to be a particularly widespread problem in the camps.

Data complementarity

The quantitative dataset gathered as part of this research is extensive and lends itself for a breadth of statistical possibilities that will not be explored in full depth in this thesis. The data has been shared with the Measuring Access to Justice Working Group to further its work on access to justice in different global settings. So far, this has resulted in a publication by Laxminarayan and Pemberton examining the outcome preferences of victims of crime. While previous research focused predominantly on victims' perceptions of justice in western countries, this study uses data from the Bhutanese camps to examine whether western findings on victims' outcome preferences could be extended to an informal, collectivist population.[25]

Throughout this work, quantitative survey data is used to complement, elucidate, and explain ethnographic findings, 'court room' observations, and qualitative interviews with victims of crime. The statistical breakdown of the frequency of particular types of crime and types of legal redress used is valuable because accurate statistics on these issues are often non-existent despite common claims that the majority of disputes in refugee camp settings are resolved by refugees themselves. There are various reasons for the absence of available statistics. UNHCR is not a police force and does not maintain comprehensive registers of crimes that take place in the camps it manages. What data is available may not be representative or meaningful. Official figures on crimes reported to the police, for instance, do not include those incidents that are mediated and resolved informally within the confines of the police station. On the other hand, UNHCR also has political reasons for not wanting to emphasise crime in camps or refugees' evasion of host country law. These concerns relate, among other things, to UNHCR's ability to secure funding for humanitarian crises, its desire to maintain positive relations with host country states, and its need to maintain international space for protection.

Survey data was also used to select particular types of cases for follow-up interviews and revealed a broad range of different legal approaches used by respondents.

Although many respondents experienced more than one type of incident, the legal process section of the survey focused only on the most recent crime or incident for which a legal process was completed, based on the assumption that memories of the most recent legal process are typically most accurate. It should be noted that statistics for the incidents that respondents experienced

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[25] Laxminarayan, M. and Pemberton, A (2012): Victims' justice preferences in a collectivist, informal setting: The case of Bhutanese refugees in Nepal. *International Journal of Law, Crime and Justice* 40(3), pp. 255–269.

most recently diverge slightly from statistics on the total number of incidents that were presented in the five-year overview earlier in this chapter.

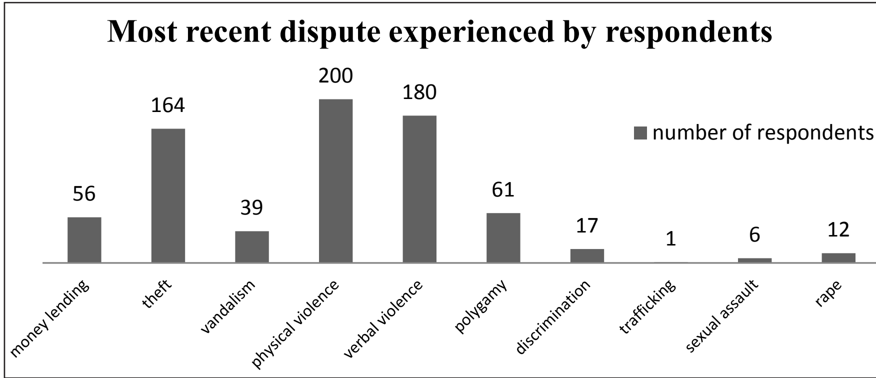

Figure iii: Most recent incident experienced by survey respondents[26]

As can be seen, the most common incidents experienced by people in the camps were physical and verbal violence, theft, and polygamy. Questions about the perpetrators of these crimes revealed that a significant portion of the physical and verbal violence cases reported during the survey were, in fact, incidents of domestic violence. Of the 200 incidents of physical violence experienced, respondents indicated that they knew the perpetrator in 191 cases (96 percent). 131 of these cases (66 percent of all physical violence incidents reported) constituted domestic violence. Of 180 people who experienced verbal abuse, 174 (97 percent) knew the perpetrator. 92 (51 percent) of verbal abuse cases reported took place in the context of domestic violence.

Some types of cases revealed more obvious overlaps with multiple, potentially conflicting legal regimes than others. This held particularly true for domestic violence cases which related in different ways to tradition, Nepalese law, and UNHCR policy. For this reason, and on account of the high representation of domestic violence in verbal and physical abuse cases (which frequently occurred together), domestic violence was selected as a category of dispute that would be followed in more depth as a source of information about the interaction of these types of law, which will be explored in more detail in Chapter IV. In-depth follow-up interviews were conducted with ten domestic violence victims who had used a cross-section of legal paths and responses that covered the range of different legal paths encountered within the sample. These interviews were approximately one and a half hour long and allowed respondents to describe in their own words what had happened to them and how their cases were handled.

[26] N=746

Similar in-depth follow-up interviews were conducted with victims who had experienced the other most prevalent causes of disputes in the camps: theft and polygamy (ten interviews each). A number of these theft interviews are used to illustrate legal paths in Chapter III, which will describe the ways in which actors from different legal regimes were involved in the resolution of camp disputes, sometimes concurrently and sometimes in sequence. As shown by the following tables, while disputes were usually reported first to family members and sub-sector heads, a broad range of actors was ultimately involved in their resolution.

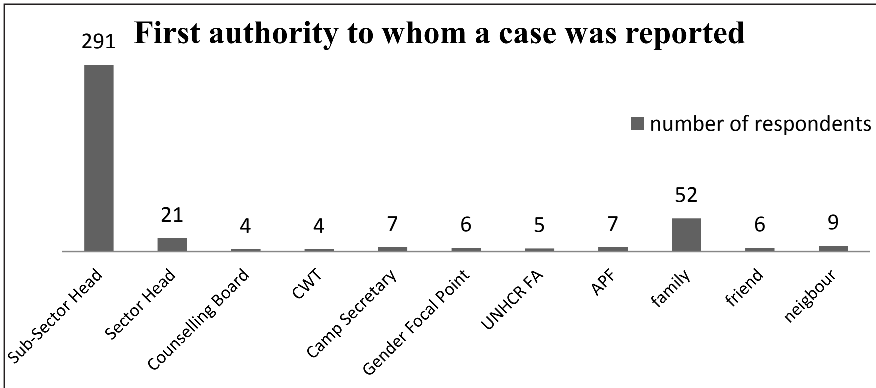

Figure iv: First authority to which a dispute was reported[27]

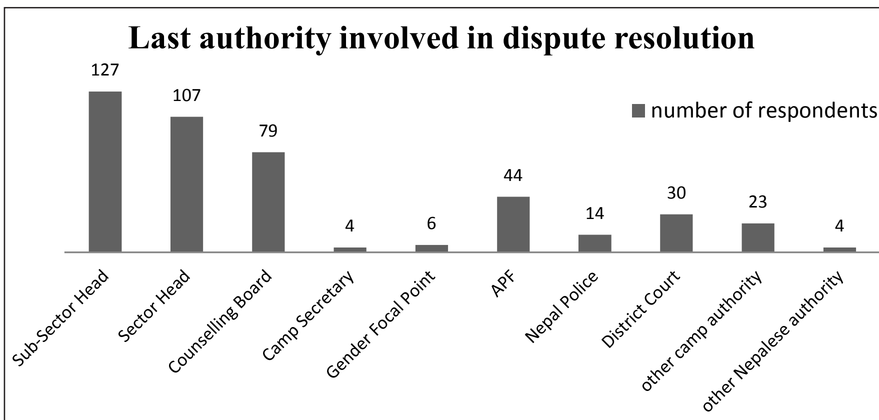

Figure v: Last legal authority involved in the resolution of a case[28]

27 N=418

28 N=438

An exploration of polygamy disputes revealed that these were often related to disputing parties' resettlement processes (or their desire to be resettled). The third country resettlement programme for Bhutanese refugees is the largest in the world and will be introduced in more depth in Chapter VI. At the same time, the interviews and observation of mediation sessions conducted as part of the qualitative research for this dissertation revealed that foreign law – introduced into the camps in the context of the resettlement programme – was having a disproportionately large impact on other family disputes as well, including minor marriages. To reflect this reality, Chapter VI focuses on resettlement and family disputes.

II.5 Conclusion

This chapter has described refugee camps as legally plural spaces and has outlined the legally plural context that applies to the Bhutanese refugee camps in Nepal, highlighting the relevance of different bodies of law including state law, customary/religious law, and international human rights law.

In large lines, the bodies of law outlined in this chapter are applicable to refugee camps all over the world. Human rights norms are introduced to refugee settings by international humanitarian organisations in the form of policies and projects that are implemented in humanitarian settings. Through these policies, described here as project law, aid workers play a fundamental role in translating international human rights norms to local settings. In these settings, they become part of systems of camp governance and may (or may not) be incorporated into local law by refugees.

To understand the impact that different forms of law can have in highly transnational settings such as refugee camps and the ways in which these bodies of law interact as refugees engage with legal practices and discourses, I argue that camps should be analysed using the theoretical frame of the transnational semi-autonomous social field (TSASF). While the TSASF is tied together by the cohesiveness of social locales – locales that are essentially grounded in specific localities – the frame of the TSASF emphasizes the extent to which such locales may be influenced by transnationalism, both in terms of the mobility of law and in terms of the transnational social relationships that are formed through the mobility of people.

Chapter III:
Mapping Transnational Humanitarian Space

Socio-legal and legal anthropological approaches to the study of dispute resolution analyse disputes as embedded in a social fabric – a cultural context. In this chapter, the transnational semi-autonomous social field (TSASF) of the refugee camps is mapped and the social setting within which disputes are understood and addressed is contextualized. The Bhutanese refugees are introduced, as are the conflict that drove them to Nepal and the camps in which they have lived for the past two decades. The strong sense of community that has developed among the Bhutanese refugees is also highlighted. This community – and its shared understandings and experiences – was fundamental to the functioning of the mediation-based legal system in the Bhutanese refugee camps, which brought together communal understandings of tradition and customary law, but also of international human rights norms.

As the camps and their population is described, the relationship between refugees and the humanitarian apparatus is highlighted, with emphasis on refugees' initiative and involvement in the design and operation of services in the camps, as well as their contributions to shaping the camps' geographical and organisational make-up. Partly through refugees' own initiatives and participation, humanitarian aid is 'localised' in camp settings, where external norms and frameworks come together with beneficiaries' own norms, ways of life, and interests. The room for manoeuvre that refugees have within the camps in which they live marks the 'semi-autonomy' of the humanitarian setting they inhabit. The ability of the Bhutanese refugees to renegotiate the blueprints of humanitarian assistance is telling for the ways in which they interpret, translate, and relate to external rules. By emphasising this room for manoeuvre, this chapter lays the ground work for an understanding of the ways in which legal pluralism shapes disputes and dispute resolution practices within humanitarian settings.

III.1 Conflict in the Dragon Kingdom: Mythico-histories

Texts about Bhutan, a tiny, mysterious Himalayan mountain kingdom known in Dzonkha[29] as *Druk Yul*, or the Kingdom of the Thunder Dragon, are studded with references to the last 'Shangri-La', an earthly paradise or Himalayan utopia. Sandwiched between geo-political power houses China and India, Bhutan is known best for its Buddhist temples on isolated

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[29] Dzongkha is the national language of Bhutan.

mountain peaks, a King who looks like Elvis, and its prioritisation of Gross National Happiness above Gross National Product.

Despite the serenity that accompanies these images of Bhutan, in the late 1980s and early 1990s more than 100,000 refugees fled the country in search of safety in Nepal and India. During my early conversations with the Bhutanese refugees in Nepal – and in the Netherlands before that – one of the first things I noticed was the importance they placed on my rendering of their history.

In camp settings, historical narratives take on extra meaning that goes well beyond a mere retelling or evaluation of the past. Malkki described such narratives as 'mythico-histories': neither history, nor myth, but 'a subversive recasting and interpretation of it in fundamentally moral terms' (Malkki 1995a: 54). As Hutt (2003: 24-5) has noted, 'When standard accounts of a nation that is undergoing a period of re-self-definition exclude or marginalize the history and culture of a part of its territory or one of its ethnic components, a space is left which inevitably fills with politicized and conflicting versions of history.'

The dominant version of history narrated by the Bhutanese refugees was that of 'a people who experienced not only an attack on their cultural traditions, but who were also expelled from their homes by an immoral government' (Evans 2009: 130).[30] Implicitly and explicitly, there was pressure within the community to present a uniform front when it came to this emphasised history which resurfaces in narratives, texts, communications, and virtually all literature on Bhutan produced by the Lhotshampa in exile. Dating much further back than the lived histories of those in the camps, these narratives trace ancestries back through time and often begin with accounts of the arrival of the Nepali community in Bhutan, and its contributions to Bhutan's development as an independent nation state.

Overwhelmingly, the version of the past that is presented in the narratives of the Bhutanese refugees is consistent with their initial desire to repatriate – an aim that would not be served by accounts of violence allegedly perpetrated by a portion of the refugee population itself. For this reason, 'the violent aspect of the Lhotshampa's resistance is played down in all refugees' accounts or is 'attributed to non-Bhutanese Nepalis' (Hutt 2003: 203). Evans conducted research on political involvement among children in the camps and discovered that accounts that emphasised misconduct by members and supporters of the Bhutan People's Party (BPP), which had been used by the Royal Government

[30] Lhotshampa refugee Bhim Subba of HUROB, for instance, set out 'to prove that refugees in the camps in Nepal are genuine Bhutanese citizens forced to leave their country against their will.' (Subba 1995: 2)

of Bhutan (RGB) to legitimate its hard-line attitude towards the Lhotshampa, had no room in the mythico-history refugees had constructed of their past (Evans 2009: 130). The camps hosted BPP members along with the rest of the population and out of fear of repercussions people avoided speaking openly about political issues in the camps and rarely mentioned violence committed by the democratic movement. One Bhutanese refugee woman told Roz Evans, who conducted field work in the camps in the mid 2000s, that 'We are more afraid of our own people than the army and Government of Bhutan' (Evans 2009: 131).

By emphasising a particular version of the past, the stateless refugees essentially made two claims. First, they used history to emphasise that the Lhotshampa were legitimate Bhutanese citizens and that they had a right to return. Second, by highlighting continuing human rights abuses committed by the Royal Government of Bhutan against Nepali Bhutanese residing in the country (and not just those who had been expelled to the camps), the refugees sought support for democratic reform and human rights within Bhutan.

In pressuring Bhutan to implement human rights-consistent reforms and to grant the refugees the right to return, Bhutanese activists set their hopes on the 'international community.' Their possibility of success hinged strongly on international recognition of their status as Bhutanese refugees. While UNHCR and the Government of Nepal may have recognised the majority of camp inhabitants (apart from a small group of asylum seekers) as refugees, the refugees' identity and legal status remains a point of contention between them and the Royal Government of Bhutan, and continues to hamper their ability to repatriate.[31]

The following section gives an overview of the events that led to the flight of Nepali Bhutanese from Bhutan and their exile in Nepal, presenting points of contention where these exist.

History: Disputed and contested

A rendering of the history of the Nepali-Bhutanese presence in Bhutan might be expected to start with what may be one of the hottest points of contention between the Nepali Bhutanese and the Royal Government of Bhutan – the

[31] On some occasions, it also follows researchers, as I found in an e-mail exchange about my research proposal in November 2009 with a Dutch linguist who conducted research in Bhutan at the invitation of the Bhutanese government. Upon receiving my proposal, he critically inquired why I spoke of "refugees," when the governments of Bhutan and Nepal had established the identity of those in the camps and had jointly determined a significant percentage of camp inhabitants not to be refugees.

date of their arrival. Disparities in accounts are considerable. Depending on who tells the story, the Nepalese are estimated to have migrated to Bhutan between the seventeenth and twentieth century. Although the Bhutanese government has claimed that Nepali migration into Bhutan continued well into the 1980s (Hutt 2003: 24), most academic scholarship places the moment of migration between the latter half of the nineteenth century (after the Anglo-Bhutanese war of 1865) and the first two decades of the twentieth century (Dhakal and Strawn 1994; Subba 1995; Hutt 2005).

Dissidents point to an earlier start of migration. One political party established in exile published a manifesto in 1993 claiming that Nepali migration to Bhutan dated back to the seventh century (Dhakal and Strawn 1994: 15). Others have cited later dates. Rizal, a Bhutanese dissident in Nepal and the author of 'Killing me Softly' – an autobiographical book that described the torture to which he was subjected while in prison in Bhutan – claimed that historical documents provide evidence of a Lhotshampa presence in Bhutan as early as 1624 A.D. – the year when the King of Gorkha, Ram Shah, dispatched a number of Nepalese artisan and agriculturalist families to Bhutan at the request of Shabdrung Nawang Namgyal as a gesture of goodwill between the two countries (Rizal 2004: 5). Sinha (2001: 165) also claimed to have traced documents issued to Nepalese residents in Southern Bhutan in the 1600s. Although Sinha indicated that these documents place the Nepalis firmly in Bhutan in the late seventeenth century, he maintained that 'In spite of claims on the part of some of the Nepalese (Dhakal, D.N.S. *et al.* 1994; BNDP 1993), there was no evidence of a sizeable Nepalese presence in Bhutan prior to 1865' (Sinha 2001: 164).

Even though many refugees admitted to Hutt that they could not all trace their own families' presence in Bhutan further back than the late nineteenth or early twentieth century, 'a handful did claim descent from seventeenth-century migrants, and many more firmly believed that there had been a Nepali community in Bhutan since the Shabdrung's time' (Hutt: 2003: 27). Subba, on the other hand, argued that these 'frequent references to the migration of Nepalese artisans to Bhutan during the reign of Shabdrung Ngawang Namgyel in the seventeenth century' were 'completely irrelevant to the issue since no southern Bhutanese family can trace its roots that far' (Subba 1995: 12).

It is generally undisputed that the number of Lhotshampas living and working in Bhutan increased rapidly during the late 1800s and early 1900s. as licensed contractors continued to bring in migrants (Hutt 1996: 402). Hutt described this influx as a 'mass migration of peasant farmers from eastern Nepal', which he indicated started some time after the Anglo-Bhutan war of 1864-1865, and probably ended after roughly 1930 (Hutt 2003: 23). They settled in five of Bhutan's twenty districts: Samchi, Chukha, Chirang,

Sarbhang, and Samdruk Jonkhar (Sinha 2001: 170). Successive generations of Nepali Bhutanese cleared Bhutan's forests, formed agrarian communities, and quickly became Bhutan's main producers of food.

A second point of contention concerns relative size of each of the major population groups in Bhutan. Like most South Asian countries, Bhutan's population is multi-ethnic, multi-cultural, and religiously plural. It can be categorised into three broad ethno-linguistic groups: the Ngalongs (or Ngalops) in the west of the country, the Sarchhops (or Sharchhops) of the east, and the Lhotshampas or Nepali Bhutanese in the south. The Ngalongs are of Tibetan origin and speak Dzongkha. The Sarchhhops are of Indo-Mongoloid descent and speak Tsangla. Both Ngalongs and Sarchhops practice a Tibetan form of Mahayana Buddhism that is supported by the state (although different styles of Mahayana Buddhism are practiced in different parts of Bhutan). The Lhotshampas are from a wide variety of different ethnic groups. The majority speak Nepali, although some sub-groups speak different Tibeto-Burman languages. The majority of the Lhotshampas are Hindu; the group also includes followers of Buddhism, the Kirati religion, and Christianity.

Because the relative sizes of these groups are 'contestable and, indeed, strongly contested' (Hutt 2003: 95), it is exceedingly difficult to come up with accurate population data and vastly different estimates have been given. Sinha (1993) described this game of numbers as a 'politics of statistics'. Estimates of the relative size of the Nepali Bhutanese population vary from 15 to 65 percent, depending on who makes the claim. In the 1970s, Bhutanese officials claimed that the Nepali Bhutanese constituted a relatively small percentage of the population. This claim surprised Rose, who noted that observers had reported that the *duars* (plains) and foothills of the south were relatively heavily populated, as a result of which 'one would have expected to find a larger proportion of Bhutan's total population in this area' (Rose 1977: 41). Rose contrasted the government's claim with the belief expressed by some Nepalese that they constituted between 25 and 30 percent (Rose 1977: 45) of Bhutan's population. Adhikari, Nepali Bhutanese himself, claimed that the Lhotshampa group was bigger than even Rose suggested: 'We, the southerners, constitute approximately 45% of the total population, including over hundred thousand refugees in Nepal and India. Even by its own admission the government has indicated the figure ranging from 25% to 38%' (Adhikari 2007: 13). According to Hutt (2003: 22), Nepalis were 'a majority in [...] five Dzonngkhags (districts) of southern Bhuta (Samchi, Sarbhang, Chirang, Dagana, and SamdrukJongkhar)'.

The size of the Ngalong population, in turn, has been estimated at between 10 percent in dissident literature and up to 25 percent by academics van Driem and Parmanand (Dhakal and Strawn 1994: 50). Van Driem, a linguist hired

by the Royal Government of Bhutan to conduct a survey of the country's languages, claimed that there were approximately 600,000 inhabitants in Bhutan: 160,000 Dzongkha speakers, 156,000 Nepali speakers, and 138,000 Tsangla speakers (Driem 1994). Calling the validity of these figures into question, Dhakal and Strawn (1994: 50) noted that van Driem 'is the only person who has ever contended that there are more Ngalongs than Sarchops' in Bhutan and that he failed to include the refugee population in the camps in Nepal in the number of Nepali speakers.

For a considerable period of time the Nepali Bhutanese were left to run their own affairs in Bhutan's southern states. The institution of hereditary monarchy, with a Ngalop king at its head, was only established in Bhutan in 1907 (Dhakal and Strawn 1994: 67) and the country did not become a unified polity until King Jigme Dorji Wangchuck brought it under a single administrative system in the late 1950s and established its capital at Thimpu (Hutt 2005: 45).

During the early days of the Bhutanese monarchy, the country consisted of a 'somewhat loose conglomeration of ethnically independent localities' (Dhakal and Strawn 1994: 145). The government's initial policy towards the south was one of isolation, and the king's first official tour of the south did not take place until 1957 (Dhakal and Strawn 1994: 146-47). For more than half a century the Hindu south had very little contact with the Buddhist Drukpa north. Travel to northern Bhutan was restricted for southerners: '[s] outh was south, north was north' (Zeppa 1999: 228).

According to Rizal,

> The separate administration for southern Bhutanese resulted in […] confinement of the Nepali-speaking population within prescribed areas and they were restricted from encroachment into areas in the north beyond an imaginary line. The northerners were required to obtain a pass to enter into the Nepali settlements. Therefore, the Nepali-speaking population remained isolated from the mainstream of Bhutanese society and polity, and in the absence of interactions with other communities from other parts of the country, Nepali culture, tradition and rituals, similar to that of eastern Nepal from where they had originally migrated, were preserved in southern Bhutan and, over the years, the region acquired a distinct Nepali cultural identity. (Rizal 2004: 7)

The initial isolation of the Nepali Bhutanese was not accidental but the result of deliberate government policy. Out of fear that the Nepali Hindu identity would challenge the dominant culture in Bhutan, the regime isolated the Lhotshampas from the rest of the country's population as completely as possible by restricting them to the south of the country (Rose 1977: 47).

The Nepali Bhutanese community Rose observed in southern Bhutan in the 1970s lived very much as Rizal described. Most Nepali Bhutanese resided in villages that were 'as classically Nepali Hindu as any in Nepal, harbouring at least some sense of alienation from the broader society in which they live and the government which rules over them' (Rose 1977: 47).

Seeds of conflict

For many years, Nepalese immigrants lived in the south of Bhutan without legal status and were subject to different treatment than other groups in Bhutan. The Lhotshampas paid a higher rate of taxes than the Drukpa northerners who were permitted to pay their taxes in kind or in labour up until the 1960s (Hutt 2003: 74). Nepali Bhutanese also faced restrictions in terms of access to employment; prior to the 1950s, they were not admitted to the police or army on the same terms as other ethnic groups in Bhutan (Rose 1977: 113).

In protest against the unequal treatment of the Lhotshampas, a group of Nepali Bhutanese established the Bhutan State Congress (BSC) in Assam, India in 1952. The party was modelled after the Indian National Congress and Nepali Congress and aimed to free the Nepalese community from the yoke of feudalism in southern Bhutan. The BSC organised a march from the Indian border to Sarbhang district and demanded civil and political rights for the Lhotshampas, abolition of the feudal system, and a democratically elected government. The movement was violently repressed and the party was banned in 1960.

The experience with the Bhutan State Congress may have alerted the Royal Government of Bhutan (RGB) to the need for a new approach to the south. Under the reign of Jigme Dorji Wangchuck, the third king of Bhutan, the government shifted its policy towards the Lhotshampas to one of integration and increasing efforts were made 'to encourage the Nepali-speaking south to identify with the nation' (Hutt 1993: 11). After the mid-1950s, the government began admitting ethnic Nepalis into the government bureaucracy, army, police, cabinet, and judiciary and officially recognised the Nepali language, festivals, traditions, and dress.

A new Nationality Law was promulgated in Bhutan in 1958. According to its provisions, foreigners who owned land and had lived in Bhutan for at least ten years became eligible for citizenship after taking an oath of loyalty to the king. Many of the Nepali Bhutanese were eligible for and acquired the Bhutanese nationality under this law. For some time, the RGB even offered cash incentives for Bhutanese-Lhotshampa mixed marriages.

From the 1970s onwards, the attitude of the Drukpa establishment began to shift once more as the RGB allegedly began to see the growing number

of ethnic Nepalis as a threat to Bhutan's cultural identity and the privileged position of the ruling Drukpa minority.

To deter further immigration, a new Citizenship Act was enacted in 1977 that made it more difficult obtain Bhutanese citizenship. The 1977 Citizenship Act required non-governmental employees to have resided in Bhutan for twenty years before becoming eligible for citizenship (governmental employees became eligible within fifteen years). Additional requirements for citizenship included oral and written knowledge of the Bhutanese language (Dzongkha) and of the history of Bhutan – requirements that many Nepali-speaking Lhotshampas were unable to meet. A 1985 amendment to the Citizenship Act revoked citizenship rights from anyone who had not resided in Bhutan before a cut-off date of 31 December 1958. Under the amendment, children could only obtain the Bhutanese nationality at birth if both parents were Bhutanese citizens (previously, only one parent had to be Bhutanese). Five years earlier, the 1980 Marriage Act attempted to limit new marriages between Bhutanese and non-Bhutanese citizens, disqualifying Bhutanese who married foreigners from state benefits.

To instil a greater sense of unity among the Bhutanese population, the RGB adopted a policy of 'Bhutanisation.' The policy, which was called *Driglam Namzha* ('One Nation, One People') was issued by royal decree as part of the country's sixth Five Year Plan (1987-1992). As a Bhutanese refugee in the Netherlands described: 'All of a sudden everything became odd. Judgement started on facial looks, caste and the language spoken. Ethnicity, dress and culture, which never surfaced, became disturbing. Issues of loyalty and nationality attacked the villagers. [...] This not only led to disruption of [the] social fabric of the society but devastated the social harmony.'[32]

The *Driglam Namzha* was based on Buddhist religious vows and thus premised on the cultural values of the Drukpa (Whitecross 2002). With the purpose of promoting cultural unity, it required Bhutanese citizens to wear a *gho* (knee-length robe for men) and *kira* (ankle-length women's dress) in all district administration centres (*dzongs*) and at all government offices and schools, monasteries, and official functions. State officials implemented the policy with different levels of strictness although it was often interpreted to apply to all public spaces, not only including government schools but also Hindu *pathshalas* – non-government schools that taught a Sanskrit/Hindu curriculum. In 1989, through a second royal decree, the government downgraded the role of the Nepali language and ordered it to be removed it from school curricula throughout the south of the country (Piper 1995: 67).

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[32] Dhakal, L. P. (7 May 2012): *The Kingdom of Thunder Dragon: Happiness in Despair.* BhutaneseLiterature.com. Retrieved from: http://bhutaneseliterature.com/archives/7898.

In 1988, the government embarked on a process to identify genuine 'Bhutanese nationals' in accordance with the criteria of the 1985 Citizenship Act. It did so by conducting a targeted census in Bhutan's southern districts, through which people in the south were to be classified into seven categories: F-1 – Genuine Bhutanese citizens, F-2 – Returned migrants (people who had left Bhutan and then returned), F-3 – Drop-out cases (those not present at the time of the census), F-4 – A non-national woman married to a Bhutanese man, F-5 – A non-national man married to a Bhutanese woman, F-6 – Adopted children, or F-7 – Non-nationals (i.e. migrants and illegal settlers.

For the purpose of the census, the RGB required each citizen to submit proof of citizenship, for which they were asked to produce a 1958 land tax receipt. Standards for documentary evidence were strict and in some cases, impossible to meet. For instance, the Home Ministry did not exist until 1968, and a system of proper documentation providing proof of payment of land taxes was only instituted in 1977. Prior to this, census records were held by village headmen *(mandals)* and were often inaccurate or incomprehensive (Piper 1995: 64).

Dissent and flight

The census created unrest and widespread anxiety among the Nepali-speaking population of the south, which had not been informed what would happen to those declared non-nationals (Amnesty International 1992).

Many Lhotshampas who had long been Bhutanese citizens, owned land, and paid taxes, were re-classified as 'non-nationals' (F-7) under the census and thereby effectively rendered stateless. Ethnic Nepali Bhutanese who possessed valid citizenship certificates issued under the 1958 Nationality Law saw these declared null and void in view of their inability to produce documents proving land ownership prior to 1958. Today, many refugees continue to claim that they did produce the relevant documentation but that it was seized or confiscated by local officials or census officials (Piper 1995: 65).

The census has been condemned by the Nepali Bhutanese who reject the notion that the majority of Lhotshampas migrated to Bhutan illegally. As Subba noted,

> Implicit in the argument of a post-1958 southern Bhutan standing out as a 'beacon in a strife-torn, impoverished and over-populated region,' is the propaganda of abundant fertile lands and excellent facilities – free education, free medical care, jobs and other opportunities – in southern Bhutan attracting illegal ethnic Nepalese economic migrants from immediately across the border and from Nepal. While not

> denying the possibility that some families may indeed have covertly and illegally managed to register themselves as Bhutanese citizens, government contentions that the country's population increased by a sixth through such clandestine methods without the administration's knowledge is absurd. (Subba 1995: 7-8)

Highlighting the important role played by the Nepali Bhutanese in Bhutan's development, Adhikari (2007: 13) added: 'Our ancestors have toiled hard to bring Bhutan to its present status. The country today is the product of the sacrifices of our forefathers. There is no doubt as to our legitimacy. A handful of people are holding the country in ransom to protect and promote their entrenched vested interests, and the longer they are allowed to do so the more disastrous the consequences will be for the country.'

The people of the south raised their concerns about the census to Tek Nath Rizal and B.P. Bhandari, the two southern members of the National Assembly and Royal Advisory Council who had been elected to represent them. In a petition expressing their worries, and those of their constitutents, Rizal and Bhandari appealed to the King to review the provisions of the 1985 Citizenship Act and move the cut-off date for citizenship from 1958 to 1985 – the year in which the new act entered into force (Rizal 2004: 47).

The King responded by declaring the petition to be seditious and contrary to the *Tsa-Wa-Sum* (the King, the country and the people). Rizal was arrested, relieved of his position, and accused of inciting the southern Bhutanese against the government. After his release a few days later, Rizal fled to Nepal.

In July 1989, in exile in Birtamod, Nepal, Rizal and a number of other students and lecturers from the National Education Institute established the People's Forum for Human Rights (PFHR) (Evans 2009: 118). A few months later, in November 1989, Rizal, Jogan Gazmere and Sushil Pokhrel were arrested at night by the Nepal police and transported to Kathmandu. They were interrogated and handed over to Colonel V. Namgyal, *aide de camp* to the King of Bhutan, who put the men on a Druk Air flight to Thimpu. Rizal was tried for treason and sentenced to life in prison. Forty-two others who were active in organisations protesting government policy were arrested in Bhutan around the same time.

After these arrests, political tension mounted in southern Bhutan. Hundreds of activists fled across the border in West Bengal where they reportedly stayed on a tea plantation run by a man sympathetic to their cause. Demanding democratic reform and civil rights in Bhutan, they established the Bhutan People's Party (BPP) in 1990. In September and October of 1990

the BPP, Student Union of Bhutan (SUB),[33] and PFHR tried to mobilise the Lhotshampa population and organised a series of peaceful protests in the south of Bhutan. The Bhutanese government sent the Royal Bhutan Police and Royal Bhutan Army to crush the movement. The BPP was banned and all activists and supporters were classified as 'anti-nationals'(AHURA 2009, cited in Evans 2009: 117).

There are different accounts of the atrocities that were committed in the mass flight that ensued. Accounts of torture and inhuman, cruel, or degrading treatment of Nepali Bhutanese at the hands of the Royal Bhutan Army and police have been presented by Lhotshampa dissidents (including the Human Rights Organisation of Bhutan (HUROB) and the Association of Human Rights Activists, Bhutan (AHURA) and exiled refugee leaders such as Rizal (2004; 2009), by NGOs (the SAARC Jurists Mission (1992), Amnesty International (1992) and Human Rights Watch (2003; 2007)), and by academics who have visited the camps (Hutt (1995; 1996; 2003; 2005) and Evans (2009)).

These reports unequivocally chronicled accounts of discrimination, repression, and torture. The Bhutanese army was accused of suppressing the democratic movement using 'mass arrests, flogging, torture, rape, arson, looting, and plunder' (HUROB 1992, cited in Evans 2009: 117). Former detainees in the camps reported having been tortured. By end 1994, the Centre for Victims of Torture, Nepal (CVICT) identified 2,331 survivors of torture in the camps in Nepal. All but two percent of those interviewed by CVICT said that their torturers had been soldiers, police, or prison guards (Shrestha, Sharma, van Ommeren, *et al.* 1998). Common methods described by torture victims included severe beatings with bamboo canes, wooden sticks, iron rods, belts, whips, rifle butts, bayonets, roots of trees and thorn branches, kicking, rape, the use of light and disturbing music, deprivation of food, sleep, hygiene and/or health services, prolonged standing, verbal and/or sexual humiliation, water or cold torture, and being forced to commit acts contrary to one's religion (i.e. forcing a Hindu to eat beef).

Reasons for fleeing recorded by AHURA including harassment by Bhutanese security forces of those who had participated in or otherwise supported demonstrations, requiring family members to sign Voluntary Migration Forms (VMFs) to secure the release of their relatives, orders by the government that those whose relatives had already departed should also leave Bhutan, threats to re-arrest former convicts if they did not leave Bhutan, orders presented by village heads to certain families requiring them

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[33] The Students Union of Bhutan (SUB) was formed in Sherubste College in 1988 and organized peaceful protests on college campuses demanding human rights and democracy.

to leave, and the eviction of those categorised as 'non-nationals' (AHURA 2000, cited in Evans 2009: 125-26). People were forced to sign Voluntary Migration Forms upon leaving which contained photographs for which they were forced to smile and were later used by the government as evidence that they had left the country voluntarily and had therefore willingly renounced their Bhutanese citizenship.

There were also reports of atrocities committed by segments of the Nepali Bhutanese population. The early stages of the democratic movement were marked by contentious performances, in which some activists reportedly adopted violent tactics similar to those used by Gorkha National Liberation Front (GNLF) extremists in India. People were pressured to support the movement financially and threatened with violence if they did not (Evans 2009: 119). In some villages, members of the banned Bhutan People's Party (BPP) reportedly compelled each household to send one family member to join the party. In military camps, BPP recruits underwent training, detonated self-made bombs, and kidnapped southern Bhutanese who had not paid their 'donations' to the party or who had been accused of spying for the government (Evans 2009: 126-7). When the severed heads of two southern Bhutanese government officials were found in a bag by a river in Samchi district in June 1990 (Zeppa 1999; Hutt 2003), the Royal Government of Bhutan claimed that the murder had been committed by anti-nationals who intended to overthrow Bhutan, and that a warning letter had been attached to the bodies stating that all those who supported the Royal Government would 'lose six inches' (their heads) or 'find their bodies in a bag in the river' (Evans 2009: 120).

New outlooks, new attitude to history?

That contended historical facts retained their relevance in the camps was glaringly evident from the outcome of a joint verification exercise conducted by the Royal Government of Bhutan and the Government of Nepal in March 2001. The aim of the exercise, which followed multiple failed rounds of bilateral negotiations between Nepal and Bhutan over the refugees' fate, was to determine which of those in the camps were in fact 'Bhutanese'. With this aim, it bore an uncanny resemblance to the 1988 census in Bhutan.

The refugee community was united in its opposition to the census, the results of which were later used by the RGB to support its claim that the majority of the refugees were not, in fact, Bhutanese. When the two governments released the results more than two years later in June 2003, they announced that only 2.5 percent of the camp population had been classified as 'bona fide Bhutanese citizens' who would be eligible for repatriation to Bhutan. Seventy percent were designated to have emigrated from Bhutan voluntarily and would be required to reapply for citizenship. Twenty-four percent were

classified as non-Bhutanese whose claims to citizenship would be rejected and three percent were categorised as suspected criminals who would be tried in Bhutanese courts if they returned to Bhutan. Those categorised had the right to appeal within fifteen days and appeals were reportedly lodged by 94 percent of those who had undergone the verification exercise. Appeals would only be considered, however, if new evidence was obtained or a fundamental flaw in the verification process exposed (Hutt 2005: 49).

Like the census that had been carried out in Bhutan itself, the results of the verification exercise in Khudunabari camp rendered thousands of refugees effectively stateless. The Royal Government of Bhutan argued that by emigrating 'voluntarily', the refugees had legally abdicated their citizenship. The results of the census were strongly condemned by NGOs and the refugee leadership. In a joint statement, Amnesty International, Human Rights Watch, the Lutheran World Federation, the U.S. Committee for Refugees and the Bhutanese Refugee Support Group criticised the length of time it took to complete the exercise, the lack of transparency and absence of any international monitoring, and the systematic exclusion of UNHCR from playing any role in the status determination process (Human Rights Watch 19 June 2003; Acharya 2001). They also contended that the categorisation process was seriously flawed and reported that many of those who were classified as having migrated voluntarily had in fact been forced to sign voluntary emigration forms before being expelled from Bhutan. The designation 'criminals' was found similarly troubling – NGOs feared that many of those determined to be criminals were likely to have been pro-democracy activists who would risk unfair trials and a lack of due process upon return.

Voices from within the refugee community traditionally downplayed atrocities committed by the BPP and Nepali Bhutanese, although counter-narratives have slowly begun to emerge. When Evans conducted her field research in the Bhutanese refugee camps in 2006 and 2007, some refugees told her that had they left Bhutan because they were literally caught between the government and the BPP: 'If people did not give donations or take part in the movement, the BPP said that they would shoot them with a gun. But if the people did give donations or took part in the movement, they were targeted by the government' (Bhutanese refugee, cited by Evans 2009: 121).

On the Bhutan News Service (BNS) website, a news site established by Bhutanese journalists in exile, a brother and sister tell the story of their flight from Bhutan and of their late father Icchya Ram who committed suicide in Belangi-2 in 2007. Writing from the USA where they had been resettled, the youths recounted how Icchya Ram had joined the Royal Bhutan Army in 1960, fought for the country and even served as a royal bodyguard. When he retired in 1980, he was 45 years old and went back to the livelihood he

knew before he had joined the army – cash farming crops like cardamom and orange. In the summer of 1990, Icchya Ram was abducted by four men claiming to be BPP cadres and taken to a BPP camp in India. Although he escaped the camp, his house was raided soon afterwards by soldiers from the Royal Bhutan Army (RBA) who accused him of being a BPP sympathiser. Icchya Ram was arrested and imprisoned. Sixteen months later, his family was told that his release would be expedited if they signed Voluntary Migration Forms. They signed the forms, left their village behind them and headed for the Indian border on foot from where they took a bus to Nepal. Icchya Ram soon joined them in the camps where he was diagnosed with PTST attributed to the torture to which he was subjected in prison in Bhutan.[34]

Counter-narratives such as the above – often largely if not entirely autobiographical – have also been recorded by Bhutanese journalists. Some have been published in a column of the Bhutan News Service website entitled 'Untold Stories' that focuses on life in and flight from Bhutan. The shift in narratives, which are beginning to acknowledge the controversial role of the BPP, may be partially explained by changes that have resulted from the third country resettlement programme.

By the time I conducted my field research in Nepal between 2009 and 2011, much of the political tension in the camps that had been expressed in accounts to Hutt or to Evans had dissipated. As the resettlement programme picked up in the camps, it became easier for refugees to admit their contribution to the conflict. Towards the end of my stay in Damak, one man confessed: 'We [the Lhotshampa] made mistakes too. We shouldn't have burned the *gho*. It was the Bhutanese national dress. Here, to visit people in high office, we are expected to wear the *daura suruwal* and *topi*. What does it matter? We didn't have to wear it all the time... in Bhutan, even the Drukpa now have started wearing jeans and t-shirts because the *gho* is so difficult to put on. We shouldn't have burned their books. Dzongkha is the national language. Bhutan wanted us to integrate. For that, we should learn the language of the country.'[35]

This type of candour grew as refugees' access to a durable solution was no longer predicated entirely on the political stalemate between the Royal Government of Bhutan on the one hand, and the Nepali Bhutanese on the other. At the same time, there were also refugees who had no desire to resettle. While smaller and weaker than it once was, the repatriation movement had

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[34] Dil Koirala Subedi and Hari Koirala (14 July 2011): Unfolding the Recurring Tale. *Bhutan News Service*. Retrieved from: http://www.bhutannewsservice.com/untold-story/unfolding-the-recurring-tale/comment-page-9/.

[35] Interview with male refugee, 3 February 2011.

not died down and there were still thousands of Bhutanese refugees who preferred repatriation, or even local integration in Nepal, to resettlement to the west. For them, and for the activists who continued to lobby on their behalf, the past retained distinct political relevance as the Royal Government of Bhutan continued to maintain that the majority of those in the camps were not refugees. More than two decades since the refugees were first exiled to Nepal, Bhutan had yet to allow a single refugee to return.

III.2 Bamboo, mud, plastic, and thatch: The building blocks of humanitarian space

On 12 December 1990, sixty Bhutanese refugees crossed into Nepal from India at the Kakarbhitta border point in search of asylum. Locals expressed sympathy with the refugees, who spoke the same language and shared the the same ethnic origins. With the help of the local population, the refugees settled on the banks of the Kankai Mai River in Jhapa District of Nepal – a location that would later be known as Maidhar camp (Subedi 2001). By the end of the year, a few hundred people had arrived. In 1991, refugees self-settled at Timai – a second site near the banks of the river. As the numbers of inhabitants in the spontaneously settled camps increased, conditions deteriorated and malnutrition, dehydration, diarrhoea, measles, and cholera became prevalent and problematic.

The number of Bhutanese refugees in Nepal rose steadily. By 1992, between three hundred and four hundred people entered Nepal every day (Khanal 1998: 152). The influx peaked mid that year with roughly 600 daily arrivals (Hutt 2003: 257).

At the request of the Government of Nepal, the UN High Commissioner for Refugees (UNHCR) took responsibility for the protection of the refugees. With the assistance of the World Food Programme (WFP), UNHCR began distributing food to the refugees in 1992. By end-1992, more than 70,000 Bhutanese refugees had made their way to camps in Nepal. A further 25,000 were thought to be in the country without having registered with UNHCR, and between 20,000 and 30,000 people were thought to have taken refuge in the Indian states of West Bengal and Assam, which are home to sizeable Nepalese local populations (Khanal 1998: 152).

All Bhutanese refugees who entered Nepal before 1993 were granted *prima facie* refugee status by the Government of Nepal. Those who arrived after this were required to undergo refugee status determination (RSD), which was carried out in coordination with UNHCR. To register and document the refugees, the government established a Refugee Coordination Unit under the auspices of its Ministry of Home Affairs in mid-1992, followed by a screening centre at the Kakarbhitta India-Nepal border point in May 1993.

Reportedly, new arrivals were not screened from this border point until June 1993, by which time the influx of refugees in the country had already slowed significantly (Khanal 1998: 152).

By mid-1993, camps had been constructed at five additional sites in two districts in the southern Terai region of Nepal. Sanischare camp was established on 48 hectares of land in Morang district, 15 km west of Damak, in April 1992. It was followed by Beldangi-1 (35.6 hectares, 7 km north of Damak) and Beldangi-2 in May 1992 (54.6 hectares, 8 km north-west of Damak), Goldhap camp in June 1992 (16 hectares, 40 km north east of Damak), Beldangi-2 Extension in August/September 1992 (34 hectares, 8 km north-east of Damak), and Khudunabari North and South in April 1993 (together covering 60 hectares of land 49 km north east of Damak).[36] To avert an impending humanitarian disaster in Maidhar, the makeshift camp was eventually dismantled and its inhabitants were transferred to other camps. In 1996, Khudunabari North and South were merged. Together with Timai camp, which was located on a land area of 14 hectares roughly 50 km away from Damak, this left seven camps up until mid-2011.[37]

Refugee camps: Looking in

In the following sections, the camps in which the Bhutanese refugees have resided since the early 1990s are presented. The 'lived space' of the camps, the ways in which this space has been structured by agencies and shaped by refugees, and the community that formed in these locations are described. By providing a contextualised understanding of the humanitarian setting of the camps and their inhabitants, I emphasize the balance between humanitarian agencies and refugee initiative in shaping the physical and social environments of camps. The interplay between refugees and humanitarian agencies in shaping the camp environment, both in a geographical and organisational sense, is an apt metaphor for the legal interplay between refugees and external actors that will come to light in subsequent chapters.

Researchers, aid staff, and refugee camp visitors often have their first contact with camps from the sky (Turner 2010; Jansen 2011). The layout of a camp can say a lot about the setting, and there is no way to experience it quite like from above. When I flew to Dadaab and Kakuma refugee camps in Kenya in 2006, the helicopter view I had of the camps as they came into sight revealed organised public and private space in grid-like patterns of thatched huts. Set

[36] Source: UNHCR, camp profiles of Beldangi-1, Beldangi-2, Beldangi-2 Extension, Sanischare, Goldhap, Timai and Khudunabari camps, dated 08 July 2010.

[37] After 2011, the number of camps underwent several additional changes as population decreases resulting from the third country resettlement program led to the closure of some camps and merging of others.

against stretches of arid wasteland and the haphazard, fluid construction of houses and huts in nearby villages, the influence of agencies and an imposed western order on camp construction could not have been more obvious.

Because flights from Kathmandu to Biratnagar and Bhadrapur airports do not pass over the Bhutanese camps, I never had the luxury of analysing their layout from above. My first views of the camps were not from the air, but from land. Even though discovering the camps by road provided ample opportunities to learn about the accompanying obstacles – spontaneous rivers that made roads inaccessible, periodic transportation *bandhs* (strikes) that banned vehicular transport, etc. – it was difficult, at first, to get a good feel of their size or an overview of the way in which they were spatially organised.

A collaborative effort between UNHCR and Google Earth has made life easier for researchers in my position. By 2008, befitting the times, Google Earth presented bird's eye views of Kakuma refugee camp in Kenya, showing the schools, markets, and the space where the huts of the Somali Bantu had been, before they were resettled *en groupe* to the USA (Jansen 2011). The same year, and again a year later in 2009, I looked up the Bhutanese camps on Google. Disappointingly, while it was possible to discern where some of the camps were located, one could not 'look in' from above. Attempts to zoom in more closely revealed only patched blotches.

Google Earth may not have offered me much when I embarked upon my field research in Nepal, but my first introduction to the Bhutanese camps in Nepal was still very much a virtual one. The Bhutanese have an active online presence and different websites, like one compiled by the refugees together with a non-governmental organisation called PhotoVoice,[38] which presented pictures of the camps and described the work done by different agencies. From the comfort of my home in Bilbao, Spain, I was able to follow refugee news articles and observe the development of a veritable Bhutanese blogging community. Some accounts from aid workers could also be found on the Internet. A Dutch girl blogged about her experiences as an intern with an NGO in Damak. An employee of the International Catholic Migration Commission who was seconded to work for UNHCR's resettlement programme posted pictures of her bike rides through the fields surrounding Damak town.

By November 2010, when I returned to Nepal for my second period of field work, Google Earth's imagery of Beldangi-1 and Beldangi-2 and 2 Extension camps had improved only slightly. As they had been more than two years

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[38] Photo Voice website, http://www.photovoice.org/bhutan/index.php?id=29 accessed 9 December 2013.

earlier, the names of the camps were still misspelled: Beldangi-1 was called 'Bhutnees Refugee Camp 1,' and 'Bhutnees Refugee Camp 2' appeared to comprise both Beldangi-2 and 2 Extension. Sanischare refugee camp could only be found online by searching for Pathari, the Nepalese town in which it is located.[39] Goldhap, Khudunabari and Timai, the three eastern-most camps, were nearly impossible to find. Although I still could not zoom in very far – Google Street View had not made it to this part of the world – all of a sudden I could identify the same grid-like patterns I had seen from the sky when I flew over refugee camps in Kenya in 2006. These grids, like those of Kakuma and Dadaab refugee camps, are characteristic of refugee camp layouts in general and are also reflected in the maps of the Bhutanese camps that I obtained from the Lutheran World Federation (LWF), one of UNHCR's implementing partners in Nepal. The virtual Google fly-over reveals what from the ground is sometimes harder to observe. From the aerial perspective, camps look unmistakably foreign. From land, it can be more difficult (especially at first) to distinguish them from surrounding towns – places that grow more slowly, haphazardly and without the rigorous planning conducted by UNHCR and humanitarian agencies. While the agency's structural influence is sharply visible from above, the personal and cultural touches that define the appearances of these structures are brought to the forefront on the ground.

Ordering humanitarian space

'[I]n policy and practice', camps are 'structured according to supra-local understandings of local needs' (Hyndman 2000: 88). The standard model for a refugee camp can be found in UNHCR's Handbook for Emergencies. After discussing criteria for site selection, taking into account such diverse issues as health risks, accessibility, and climatic conditions, it introduces a standardised 'master plan' approach to the physical planning of a refugee camp. This plan begins with a single hut/house as the smallest unit and then recommends a 'modular planning' method, organising the unit of the family into clusters (sixteen tents), camp blocks (sixteen clusters), camp sectors (four blocks), and at the highest level the complete camp comprising four sectors, each ideally housing some 20,000 refugees. These camp units are hierarchically ordered, assigned numbers and/or letters, and equipped with the required services which may include latrines, feeding centres, distribution points, etc. According to the Handbook for Emergencies, each camp block should have its own central place with a water tap and each camp sector its own school. The smallest units of the camp are separated by narrow lanes designed for pedestrian lanes, while wider roads allowing for vehicular travel separate sectors from each other. Health and hygiene play a direct role in

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[39] Many refugees referred to Sanischare as 'Pathari camp'.

the planning process, determining, for instance, minimal distances between refugee families.

Assistance is often concentrated centrally, with staff offices located close to roads or at the edge of camps to ensure the safety of humanitarian staff, who leave the camps in the evenings. Organising service provision in this way makes it easier for humanitarian agencies to evacuate staff quickly if necessary, and facilitates the logistics of relief delivery in and out of the camps. Agency compounds and head offices are not located in the camps but in nearby towns such as Damak. This spatial organisation of service provision, with agency offices located not in the midst of camps but on their fringes or even outside the camps altogether, has an important impact on the everyday lives of refugees. The separateness of agency compounds from the camps and from refugees highlights the symbolic division of power between refugees and the humanitarian agencies that assist them. It also emphasises the lack of transparency that accompanies many aspects of agency programming. Staff offices hold the paperwork and documentation, both usually internal, that underlies decisions, policies, and programmes. Agency offices are as inaccessible to most refugees as the documentation within them.

'Everywhere', Herz lamented in a harsh critique of this mode of camp planning, 'the same naïve model is used to project a camp-city of European understanding onto regions that could not be more different. The same eleven pages of the Handbook for Emergencies are projected onto catastrophes all over the world' (Herz 2007: 6). Because most camps are based on the same blueprint, there are generally many similarities between UNHCR-run refugee camps, even when they are built in different regions with different climates and topographies, and host populations from different cultural backgrounds. Herz, an architect who spent some time studying refugee camps, concluded that the resulting image is 'one that, in its belief in structured organization, low density, and clear separation of functions and uses, suggests an idealized city reminiscent of those of early modernist urban planning of the 1920s' (Herz 2007: 5).

The Bhutanese camps were set up much along the lines described by Herz. Beldangi-2, where the majority of the field research for this dissertation was conducted, was surrounded by community forest land on the north and east, bordered Beldangi-2 Extension refugee camp to the west, and by a local market known as the *bange bazaar* on the south. The camp was divided into nine sectors (assigned letters A-I) and 36 sub-sectors – four per sector. Huts in the sub-sectors were positioned in straight rows and separated by narrow, dusty lanes – sometimes no more than a metre wide. Between sub-sectors, there were bigger streets, the broadest of which marked the borders between sectors and were designed to allow ambulances and relief vehicles to traverse

the camps. A main road ran straight down the entrance to the camp, which was blocked by an entrance barrier at the end that could be raised or lowered by a member of the Armed Police Force (APF) compound adjacent to it. The agency field offices and Camp Management Committee (CMC) office blocks were situated on the west side of the camp, with Beldangi-2 Extension's CMC and agency office block just opposite it, across the main road.

All seven Bhutanese camps were organised in this way, although there were minor differences between them. This included variations in population size, and some of the Bhutanese camps quickly outgrew other urban settlements in the area. By 1996, the site comprising the three Beldangi camps had a total population of 43,000 and constituted the largest human settlement in Jhapa district, which in 1991 had a registered population of 593,727 people (Hutt 1996: 412).[40] The following table gives a break-down of the populations of each of the seven refugee camps in 2006, the year prior to the start of the resettlement programme.

Pre-resettlement camp population

	Bel-1	Bel-2	Bel-2 Ext	Sanischare	Timai	Goldhap	Khudunabari
Population	18,440	22,610	11,664	21,275	10,513	9,555	13,418

Figure vi: Camp population prior to resettlement[41]

Not all camps were built on the same type of terrain, which led to differences in the ways they were organised, both spatially and administratively. Some camps had fewer sectors or sub-sectors than others. Huts in Beldangi-1, Beldangi-2 and Beldangi-2 Extension were constructed in straight, symmetrical rows, while Timai was partly self-settled and constructed more haphazardly, and Sanischare was built on marshy, uneven land that made it hard to build symmetrically or space huts evenly. Other differences resulted from the geographic locations of the camp sites. Damak was only a twenty to

[40] By 2011, Jhapa's population has grown to 812, 650, according to the National Population and Housing Census 2011 (Village Development Committee/ Municipality), published in 2012 by the Central Bureau of Statistics, National Planning Commission Secretariat, Government of Nepal.

[41] Based on UNHCR's 2006 Camp Profiles, as contained in: Commonwealth of Australia (2007): Bhutanese Community Profile. Retrieved from http://www.immi.gov.au/living-in-australia/delivering-assistance/government-programs/settlement-planning/_pdf/community-profile-bhutan.pdf in March 2013, pp.9-13.

thirty minute bike ride away from the Beldangi camps and provided a nearby urban hub and accessible source of employment opportunities in local schools, housing construction, restaurants, etc. The stony river bed beside Timai provided different employment opportunities in stone quarries, for instance in collecting and separating rocks for construction.

Differences in the physical layout of camps (including the materials used for hut construction) affect the everyday lives of refugees and have implications consequences for their physical safety (Hyndman 2000: 94). The 2008 fire at Goldhap was a stark reminder of the danger of building huts with thatch and bamboo, which were readily available in the surrounding area but are extremely flammable.[42] The close, even spacing of the huts meant that the wind could easily carry the flames from one hut to another. Within minutes, the entire camp was razed to the ground, leaving thousands homeless and without belongings. The camp was rebuilt only to be burned to the ground a second time in early 2011. Instead of rebuilding the camp again, agencies transferred Goldhap's remaining residents to Beldangi and Sanischare camps. Over the years, severe fires have also broken out in sections of the other camps.

Reordering space

Approaching Beldangi-2 by bicycle, wafting scents would greet me on a daily basis. Hints of turmeric, cumin, garlic, and onion in mustard oil, and sometimes the smell of burnt chicken feathers, cloaked the camps. Burning the feathers, I learned, was not just a way of 'plucking' a chicken. The burnt feathers could be used as an ingredient to another dish, as I would see one afternoon while helping two men prepare a chicken curry in their kitchen in the camp.

Despite the uniformity that is striking about refugee camp layouts from above, the grounded view of most camps is messier and less orderly than grid-like patterns suggest from the sky. In contrast to its aerial alternative, a grounded view of camp settings highlights the difference and particularity of camp settings.

Within the confines of space as ordered by the agencies, a reordering process takes place among refugees, which relates directly to the ways they use and inhabit space. Refugees are allocated plots and given materials to construct their houses but how they construct these is largely up to them. Over time, the homogenising grids of the Bhutanese camps were dotted with marks

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42 Nepal's 2011 Population Census indicates that twenty percent of the country's population of 26.5 million lived in houses with bamboo walls, and twenty percent had houses with thatch roofs.

of culture. Poles with prayer flags were put up beside Buddhist houses where someone had died, to help the dead find the right path to their next life. Some people painted their houses, others established benches outside where they could sit and socialise with neighbours. Women who were skilful at knitting and crocheting wove decorative covers for their beds and hung welcome signs outside their front doors. Structures were established with different functional purposes – rabbit pens, pigeon coops, and raised bamboo constructions where people kept goats. Some people planted banana trees in front of their houses, others established flower gardens. Refugee-designed benches inscribed with Nepalese texts cropped up near the edge of the forest. Temples dotted the different camps and electric cables were clandestinely draped from hut to hut in sections of Beldangi-2 that bordered the local market. Through these ongoing efforts to manage their surroundings, people filled in and changed the generic order imposed upon their lives through the planning efforts of humanitarian agencies. As they did so, they rendered space more suitable to their activities and accommodated it to different needs, not all of which were necessarily aid-related in a direct sense.

According to Jansen (2011: 122), place making processes are the result of the habitation of space. Sections of the camp became neighbourhoods as refugees lent their own interpretations and understandings to the environment in which they lived. This re-ordering process can be seen as a way of contesting or challenging the ordering process imposed by humanitarian agencies. People may contribute to and alter externally imposed order; they may also decide to defy it. When the Bhutanese camps were first populated, agencies allocated plots in similar areas to people who arrived at the same time. Because people from the same family or village frequently travelled together, this resulted in a degree of unplanned camp organisation along ethnic and family lines.[43]

That an agency allocates land to particular refugees does not mean that the persons in question will necessarily live on that plot, and refugees may re-order their living spaces along specific community or familial lines. In the Bhutanese camps, people moved huts for various reasons – within, but also between camps. Although some announced their intention to move or requested permission from the agencies or camp management, many did not. People moved to be closer to their immediate families, to establish a new residence for the newest wife in a polygamous marriage, to escape domestic violence, or simply because they were unsatisfied with the conditions or

[43] The official camp residence list for Beldangi-2, which was maintained and updated by LWF and which I was able to obtain through a friend who worked with the organization, shows evidence of this organization in the form of clusters of last names in many sub-sectors.

location of their previous shelter. UNHCR's Protection Officer in Damak distinguished between huts whose inhabitants lived in their designated plot in the camp and those who had moved and did not as 'authorised huts' versus 'unauthorised' huts. For her, the question of unauthorised huts was problematic – residence lists in the camps were often inaccurate and when people did not live where they were supposed to, UNHCR was unable to reach them to provide assistance or schedule appointments.[44]

As space becomes familiar and 'lived', it is given meaning. The meanings attached to particular spaces or areas within a camp, or even to the camp as a whole, are influenced by people's experiences, understandings, and interpretations of their surroundings. In this way, qualities are attached to space that go beyond the physical and become cultural constructions. In the early days of camp life, the refugees, who were used to a far less crowded environment in Bhutan, complained about congestion and a lack of privacy and the insecurity that accompanied these problems (particularly in periods of political turmoil in the camps). Conversations from huts next door were easily overheard through bamboo walls and noise carried even further in the night when the camps were quiet. After 2008, as people began to leave for resettlement and their huts were dismantled or turned into kitchen gardens, the camps slowly became less crowded. Under other circumstances, this might have seemed like an ideal solution to resolve the problem of congestion in the camps, but some women complained. They had grown accustomed to the previous set-up, in which they had lived since the early 1990s. As their neighbours began leaving the camps and over-crowdedness made space for vacant huts and kitchen gardens, they felt less protected and unsafe in the new 'emptiness' of the camps.

Spaces also incurred negative associations for other reasons. When the Transcultural Psychosocial Organisation, Nepal (TPO Nepal), a non-governmental organisation primarily engaged in psycho-social counselling, first began providing mental health services for the Bhutanese in the camps, it was allocated office space within the AMDA Primary Health Centres that were located inside each camp. TPO soon discovered that refugees' associations with the locations of its offices were hindering TPO's ability to work with them. Mental health problems are heavily stigmatised within the Bhutanese community (Hinton 2000: 202). Tol, Jordens *et. al.* related this stigma to the taboo on sharing strong emotions and attributed it to the collectivist nature of Nepali identity, which stresses conflict avoidance and sameness. As a result, they reported that 'the mentally challenged, people with psychotic disorders or depression are regarded with suspicion' (Tol, Jordans, Regmi, and Sharma 2005: 328). As TPO discovered, the stigma

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[44] Interview with UNHCR Protection Officer Julie Ward, 30 March 2011.

associated with mental illness among the Bhutanese refugees was reinforced by the location of TPO's offices in the camp's primary health centre. Not long after, TPO's offices were moved away from the health centre to a separate location that refugees were able to visit the organisation for 'counselling' in a more private setting. By downplaying the immediate connection between TPO's services and mental health, counselling lost much of its stigma and became far more accessible to the refugee population.

The names given to different areas of the camp highlight functional or emotional interpretations of particular locations, revealing similar processes of place-making. For instance, the area of space in front of the entrance to Beldangi-2 and Beldangi-2 Extension camps and the APF compound where buses picked up resettling refugees to take them to Bhadrapur airport became known among refugees as the *Runchhe Chowk* or 'crying junction'. Each day when the buses came, those leaving and left behind said their last goodbyes at *Runchhe Chowk,* often in tears.

III.3 Service provision in the camps

The offices of humanitarian agencies represent one of the most salient characteristics of the refugee camp: the provision of humanitarian assistance and aid. Funded by the international community, this aid is channelled through UNHCR and distributed to refugees in the camps by UNHCR and its implementing partners.

Agency offices in the camps were usually staffed from approximately 08:00 until 15:00 or 16:00, depending on the agency, and closed during weekends. Aside from these camp offices, UNHCR, IOM, and NGOs had their main field offices in Damak and national offices in Kathmandu. Whereas camp offices were manned by field staff and incentive workers, agencies' high-ranked personnel were based at a considerable distance from the camps and therefore inaccessible to all but the most persistent and well-connected refugees.

Depending on the laws and policies of refugee host countries, refugees may be permitted to access local health care systems, schools, or social services in refugee-hosting areas. Alternative facilities are constructed inside camps where local facilities are inaccessible or insufficient to deal with the size of the refugee population, which is often the case in developing countries. These facilities address a broad range of refugee needs: food, shelter, health care and education are a few examples.

Although the contours and content of humanitarian aid are often determined outside refugee camps – in Geneva, New York, or Kathmandu – there is ample room for negotiation on the ground; the results of which were clearly visible in the Nepalese camps. As a consequence of this 'negotiated' nature

of aid, 'The realities and outcomes of aid depend on how actors along and around the aid chain – donor representatives, headquarters, field staff, aid recipients and surrounding actors – interpret the context, the needs, their own role and each other' (Hilhorst and Jansen 2010: 1120). By presenting the humanitarian encounter as an 'interface', this approach to the analysis of aid emphasises the strategizing roles of beneficiaries in shaping aid itself. What it highlights is that refugees, as recipients of humanitarian aid, have a great deal more power in shaping the programmes through which they are assisted than is typically attributed to them.

In Nepal, the Bhutanese began to organise the settlements in which they found shelter well before the involvement of UNHCR or international aid agencies. When they arrived in Maidhar, there were no NGOs that provided assistance. Instead, refugee leaders organised themselves and approached the local community with requests for help and the People's Forum for Human Rights (PFHR), which had been established by Tek Nath Rizal and other Bhutanese dissidents in exile in Birtamod in 1989, took responsibility for camp management (Thronson 1993).

Refugees established community-based and human rights organisations to fill the assistance gaps, starting a range of initiatives that helped shape the aid environment in Nepal. Volunteers from the Students Union of Bhutan (SUB) established and ran the first schools for refugee children in Maidhar and Timai. Refugee doctors, nurses and other health staff organised to form the Bhutan Health Association (BHA), which provided medical health care during the emergency. Agencies capitalised on the structures established by refugees during the early period of the emergency and ultimately built upon many of these initiatives (Muggah 2005). Although the majority of the original community-based initiatives are no longer operational in the camps today, they have impacted the programmes offered by UNHCR and its implementing partners in a lasting manner. The following section describes the main services that were provided in the refugee camps, showing how these were influenced and shaped by refugees themselves.

Infrastructure, food, and water

The Lutheran World Federation Nepal (LWF) claimed credit as the first external organisation to come to the assistance of the Bhutanese refugees at Maidhar on the western Bank of the Kankai Mai river in 1991, even before the arrival of UNHCR. LWF was responsible for infrastructure in the camps, and organised or oversaw nearly all camp construction, from access roads to office blocks, to the houses built by refugees.

Because Nepalese government policy prohibited the construction of permanent shelters for the refugees, even for buildings such as schools and

health posts, the shelters in which the Bhutanese refugees lived since the early 1990s were constructed of materials that could be locally sourced and easily demolished. Walls were made of bamboo with bases of mud and dirt, and roofs were constructed of bamboo, plastic and thatch. Huts in the camps were constructed and maintained by refugees themselves and measured roughly 3.5 by 6 metres. In coordination with the Camp Management Committee (CMC)'s Infrastructure Committee, LWF provided materials for periodic repair and maintenance and distributed these on the basis of need. Extended families typically lived together in the camps (according to patrilocal arrangements) and larger families sometimes inhabited 'double' or 'triple' huts – multiple huts that stood directly beside each other and were registered as housing one large extended family. Latrines were maintained by refugees themselves and were initially shared between two huts, although the departure of a substantial portion of the population in the context of the resettlement programme meant that by the time I conducted my research in 2010 and 2011, many households had their own latrines.

Many of the larger structures, such as schools or a recent series of safe houses established for vulnerable families midway between Beldangi-2 and Beldangi-2 Extension camps, were constructed with the assistance of refugee incentive workers. Camp schools were situated in compounds and were equipped with bamboo roofs and walls made of woven bamboo panels designed to let in light (since there was no electricity in the class rooms). In Beldangi-2, the agency office blocks – housed in an unimaginative square cement construction – were one of the few exceptions to the rule of impermanence.

Since 1992, the World Food Programme (WFP) has provided the refugees with food. Refugees received rations of approximately 2,100 kcal/person per day, consisting of parboiled or raw rice, fortified wheat soya blend, pulses (lentils and chickpeas), fortified vegetable or palm oil, sugar, and iodised salt. UNHCR supplemented these rations by distributing fresh seasonal vegetables on a weekly basis.[45]

Food needs were recalculated periodically through joint assessment missions conducted by WFP in cooperation with UNHCR, the Government of Nepal, UNHCR's implementing partners, and donor representatives who participate as observers. Since 1992, there has reportedly been only one break in the food pipeline (the chain between the source of food products

[45] In December 2012, UNHCR reportedly informed the refugees that it would stop distributing vegetables in the camps as of January 2013. Hari Kumar Dahal (3 December 2012): No veggies from 2013, UNHCR tells refugees. *Bhutan News Service*. Retrieved from: http://www.bhutannewsservice.com/main-news/diaspora_exile_resettlement/no-veggies-from-2013-unhcr-tells-refugees/.

and their distribution in the camps) in the Bhutanese refugee operation. Despite the donor fatigue that often accompanies protracted refugee situations, WFP Head of Mission Abiola Akanni told me in 2009 that WFP had not cut refugees' rations in Nepal since the beginning of the operation. The only change was implemented with the aim of enhancing food nutrition. Until 2005, people received 410 grams of rice per fourteen days. This was later altered to a combination of 400 grams of rice and twenty-five grams of soya wheat blend.[46]

WFP delivered food rations to the warehouses in the camps referred to as *ration godown*. From there, the food distribution effort was coordinated by the Lutheran World Federation (LWF). LWF oversaw the unloading of food and its transfer to food distribution points, where it was distributed by members of the Camp Management Committee (CMC).[47] Sub-sector heads played an important role in the distribution process and were responsible for ensuring that all those within their sub-sectors received their rations.

Water was centrally distributed in each of the camps. With the help of diesel engines, it was sourced from deep wells and pumped up to overhead tanks, where it was chlorinated and distributed through a system of pipes to tap stands throughout the camps. These taps were turned on twice a day, once in the morning and once in the afternoon, for a few hours each time. Each person was entitled to between 20 and 25 litres of water per day, which could be collected from the taps in jerry cans and other containers.

Physical and mental health

Physical and mental health services were organised by a number of different organisations since the establishment of the camps. Activities that were initially conducted informally by the refugee-established Bhutan Health Association (BHA) were formalised in 1992, when Save the Children UK established the first external preventative and curative health programme in the camps. In 2001, this programme was overtaken by the Association of Medical Doctors of Asia, Nepal (AMDA), which ran the 'Primary Health Care Project for Bhutanese Refugees' and continued to serve as UNHCR's implementing partner in the area of medical health in 2013.

When I began my field research in 2009, there were seven primary health care centres – one in each of the camps. More serious medical cases were referred to nearby hospitals; the primary referral centre for refugees in the Beldangi and Sanischare camps was the AMDA Hospital in Damak. AMDA tried to provide a twenty-four hour ambulance service in the

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[46] Interview with Head of WFP Sub-Office Damak, Abiola Akanni, 17 January 2010.

[47] Before 2006, rations were distributed by the Nepal Red Cross Society.

camps, although its resources were limited. Only two ambulances served all seven camps.

TPO Nepal began implementing the 'Psychosocial Support to Bhutanese Refugees in Camps' project in the camps in July 2008, with the overall objective of enhancing community resilience and improving the mental health of the camp-based population. In 2010, a Nepalese NGO called Happy Nepal established a presence in the camps to combat drug and alcohol abuse. Both had been causing problems in the camps, not only in the context of refugees' prolonged stay in limbo but increasingly as a result of the added stress of the resettlement programme. The CMC made efforts to raise awareness about what it called 'anti-social behaviour', which it indicated was a major problem in the camps and led to such secondary issues as theft and domestic violence. Happy Nepal tried to rehabilitate addicts and alcoholics and provided assistance to the families of substance abusers. The agency ran both preventative measures, including sensitisation programmes against drug abuse, and remedial initiatives such as the drug rehabilitation centre in Damak where both refugees and locals could reside for periods of up to three months while receiving therapy to help them kick their habits.

In the early days of the Bhutanese refugee operation in Nepal, there were also NGOs that specifically targeted torture victims. Bhutanese Refugees Aiding Victims of Violence (BRAVVE) was established as a community-based organisation in 1993 to enhance the mental and psycho-social health of the refugee population. Rather than addressing these needs with health services, however, BRAVVE implemented vocational training and assistance programmes for victims of violence, with financial support from ActionAid Australia.[48] The Center for Victims of Torture Nepal (CVICT), a Nepalese NGO, operated in the camps at the same time and took a more traditional approach to rehabilitating torture survivors. After conducting fact-finding exercises to identify the number of torture victims in the camps, CVICT implemented a community-based rehabilitation programme that provided medical and psycho-social care to Bhutanese torture survivors. It documented 2,402 cases of physical torture among 90,000 refugees, 51 percent of whom reportedly approached CVICT for treatment (Sharma and van Ommeren 1998).

Education and vocational training

Caritas Nepal was UNHCR's implementing partner in the area of education. The organisation had been involved with the Bhutanese Refugee Education Program since November 1991, when it first began at Maidhar on the western bank of the Kankai Mai river. In 2003, UNHCR made Caritas

[48] ActionAid Australia was formerly known as AustCare.

formally responsible for managing the programme.[49] Continuing its work where the Students Union of Bhutan (SUB) left off, Caritas Nepal provided primary, secondary, and higher secondary education in the camps. Each camp contained sector schools, extension schools, and main schools. Beldangi-2 had nine schools: four schools from pre-primary until grade three, three schools for grades four through six, and two schools for grades seven through ten with a combined student teacher ratio of 35:1 (Commonwealth of Australia 2007).

In the calendar year 2009-2010, a total of 17,344 students were enrolled in primary or secondary education and 1,448 were enrolled in a higher education programme. Each school had a special needs support teacher and 1,448 students were provided with financial assistance (Rs 4,000) to attend classes eleven and twelve in local schools outside the camps. In November 2009, Caritas also established an Online Education programme that enabled refugees to follow online courses offered by a Canadian university.

Aside from basic education, Caritas provided language and vocational training opportunities. Since the start of the resettlement programme, these were increasingly geared towards preparing refugees for life in western countries. In 2009-2010, Caritas offered refugees a wide range of courses including advanced computing, hotel catering, sales, and boutique making, as well as courses that trained people for the position of office secretary, beautician/cosmetician, hair dresser, housekeeper, auto mechanic, floriculturalist, tailor, plumber, or carpenter. A number of these courses were held in Damak and were also open to participation by locals. In 2010, 6,835 people were enrolled in Caritas' spoken English language classes, 937 children and teenagers followed vocational training opportunities, 2,491 children participated in the disability programme, and 2,501 children were looked after in the Child Play Centres (Commonwealth of Australia 2007: 46). The majority of these programmes were fully or partially funded by UNHCR; additional vocational training courses for medical professionals were provided by AMDA and funded by WFP. Incentive workers often received additional forms of training in the context of their employment.

In addition to formal education and vocational training initiatives, informal trainings were also organised on other topics such as human rights and Nepalese law. The Nepal Bar Association, for instance, organised trainings on issues such as domestic violence, women's rights, and children's rights. Some of these trainings targeted the community at large, whereas others were channelled through specific community-based organisations such as the Youth Friendly Centre (YFC) or Bhutanese Refugee Women's Forum (BRWF).

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[49] Caritas Nepal (2010): Bhutanese Refugee Education Program (BREP), Annual Report 2010. Kathmandu: CARITAS. p.44-52.

Refugee participation

UNHCR was responsible for camp management – a role that gave the organisation a large degree of control over the way in which the camps were administered. At the same time, however, managing populations that run well into the tens of thousands is a labour intensive and costly enterprise and requires a large number of aid personnel to direct and supervise activities (Holt 1981: 176). To cut costs and make camp management more efficient, the majority of refugee camps, like the Bhutanese camps in Nepal, are run with a high degree of participation from refugees themselves.

The degree of participation of Bhutanese refugees in the provision of humanitarian aid in the camps in Nepal surpasses that in many other operations and has been hailed by various observers as extraordinary. In an introductory meeting with UNHCR's Protection Officer in 2010, she commented that you could almost consider the Bhutanese camps to be 'refugee-run', and said that they were remarkably well organised. The Bhutanese camps have been described as 'model camps', with various authors pointing to the extra-ordinary level of refugee involvement in the aid regime (Hinton 2000; Muggah 2005).

As described, much of the refugees' early involvement in the provision of humanitarian assistance stemmed from the needs that arose in a situation of spontaneous displacement, coupled with the absence, at the time, of camps or planned facilities to receive the Bhutanese in Nepal. As the camps transitioned from the initial emergency phase to a more settled 'care and maintenance' mode of assistance, refugees remained involved.

By the time Muggah visited the camps in the early 2000s, they had existed for roughly than ten years. Describing service provision, Muggah noted that:

> The management of camps by the refugees is exemplary. The number of services carried out by refugees has increased steadily since their arrival. The cleanliness and order of the camps is, according to the relatively broad experience of this writer, unmatched. Since the mid-1990s, the Refugee Women's Forum (RWF) and other Bhutanese refugee groups have developed an increasingly sophisticated network of activities with the support of UNHCR and its implementing partners. (Muggah 2005: 158)

Participation has now become a norm among international agencies and UNHCR is no exception (Evans 2009: 64).[50] Through participative strategies

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[50] Participation, as interpreted by UNHCR, is essentially a truncated construct. Divorced from power over decision-making or funding, what UNHCR terms

and community development approaches, refugees are encouraged to take up ownership of the daily running of the camps in which they live. UNHCR and NGOs conducted participatory assessments to design programmes for the camps, held focus groups with refugees, consulted with Camp Secretaries (as representatives of the refugee population) on a regular basis, and conducted a large part of their activities with the assistance of the Camp Management Committee and refugee incentive workers. The result was that refugees learned how to organise their activities in ways that were supported or accepted by humanitarian agencies and donors, and Muggah noted that the Bhutanese refugees had 'successfully appropriated donor language and discourse in their proposals for financial support. Submissions regularly include log-frame analysis, extensive and thorough discussion of proposed outputs and appropriate donor nomenclature' (Muggah 2005: 158).

The Camp Management Committee

The Camp Management Committee (CMC) was the most important participative body in the Bhutanese refugee camps. It was composed entirely of elected refugee volunteers and coordinated relief provision and communication between relief agencies and refugees.

The first official CMC elections were held in 1993 and were been organised regularly on an annual or bi-annual basis ever since. The CMC's chief purpose was to facilitate the provision of relief to the refugees and to assist the government, UNHCR, and its implementing partners in managing the camp (Muggah 2005: 157). Every camp had its own CMC, each of which was made up of a central board with several sub-committees that were responsible for overseeing issues such as infrastructure maintenance, the registration of births and deaths, health services, general administration, community mediation, and social problems in the camps.

The CMC was hierarchically ordered and leadership positions were paired with the units that comprised the geographical make-up of the camp: sub-sector heads (assisted by assistant sub-sector heads) were responsible for overseeing one sub-sector, sector heads were responsible for overseeing one sector (and its corresponding sub-sectors) and also managed and advised the sub-sector heads. While these positions were thus related to the spatial structure of the camps, a parallel can also be drawn between the hierarchical structure of the CMC and the hierarchically structured Lhotshampa society. While 'nurtured and to some extent re-engineered by Bhutanese human rights organisations, UNHCR and implementing partners such as the

'participation' is more accurately described as 'consultation', in which the freedom to accept or reject a policy recommendation rests solely with UNHCR.

Lutheran World Federation (LWF) in 1991-1992' (Muggah 2005: 158), community organisation in the camps essentially mirrored analogous pre-existing structures of social control and organisation. In many ways, the hierarchical organisation of the CMC leadership structure closely resembled the way in which these structures were organised in southern Bhutan.

CMC representatives had considerable influence in the camps. They were involved not only in the distribution of aid, but also in selection processes for incentive worker vacancies or training opportunities, forwarding requests for medical assistance, etc. In order to apply for a vacancy (or training opportunity), refugees were required to obtain signatures from their sector or sub-sector heads, and from the Camp Secretary. Over time, the CMC structure adapted to meet the changing circumstances of the refugee hosting context. When it became evident that the agencies would administratively merge Beldangi-1, Beldangi-2 and Beldangi-2 Extension into one large Beldangi-camp, the Camp Management Committee elections were changed to reflect the merger. Together with the representative of the Refugee Coordination Unit (RCU), UNHCR decided to place one overall Camp Secretary in charge of the three Beldangi camps. The two other camps would each have a Deputy Camp Secretary.

Given the established modus operandi of the CMC, this re-engineering of its structure had direct implications for assistance. Unhappy with the changes, one woman explained the implications of these changes for herself and other refugees in the camps:

> 'Like this it is not good, people are waiting a long time to get a signature, sometimes they have to stay for hours near the CMC and wait. Now, for any one small problem, people have to wait 4-5 days to get it solved. When I ask if the Deputy Camp Secretary can't sign it instead, she tells me that no, a signature of the Camp Secretary has to be there. Also for the Voluntary Training opportunities, we have to get a signature from the Camp Secretary. I had to wait a long time; it makes us helpless and hopeless.'[51]

To an extent, UNHCR attempted to re-shape these structures to bring them in line with international norms and to ensure that they met international human rights requirements. One way in which it structured participation was by introducing a fifty percent gender norm for CMC volunteers, as a result of which growing numbers of women became engaged in employment and volunteer opportunities. This, in turn, affected communal attitudes about acceptable gender roles for women and attitudes towards women in the work force.

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[51] Interview with refugee woman, 17 March 2011.

III.4 The camp economy

The Government of Nepal does not permit the Bhutanese refugees to leave the camps or to work in Nepal. Despite the barriers presented by official legislation and policies, however, most Bhutanese refugees I met in Nepal emphasised the need to supplement rations with additional income to survive, and few – if any – survived by relying on handouts alone.

Chambers and Conway (1992: 7) defined livelihoods as comprising 'the capabilities, assets (stores, resources, claims, and access) and activities required for a means of living'. As early as 1993, Kibreab's study of Somali refugees highlighted 'refugees' desire to earn an income, no matter how infinitesimal, to maintain their former lifestyle and relative independence as well as to overcome the boredom, idleness and lethargy which are inherent in camp life' (Kibreab 1993: 340). Over the past decade, scholars have paid increasing attention to refugee livelihoods and the economic arrangements that are formed in refugee settings (Jacobsen 2005; Horst 2006a; Horst 2006b; Werker 2007; Jansen 2011). These studies have shown that even when refugees' freedom of movement is restricted by law or policy, few camps if any are completely closed to traffic in goods, capital, and people (Pérouse de Montclos and Kakwanja 2000).

Both inside and outside the camps, the Bhutanese in Nepal were engaged in abundant economic activity. In addition to social networks, mobility, and the skills they brought with them from Bhutan, people acquired new skills through education, training, and other opportunities in the camps. The economies of the Bhutanese refugee camps were essentially premised on three main types of resource and/or activity: labour (formal, informal, or incentive work), livestock, materials and services provided by humanitarian agencies, and remittances. Through a combination of these resources, the camps became differentiated spaces with unequal income distributions.

Labour and incentive work

Because refugees were legally excluded from working in the formal economy, the majority of refugee labour took place in the informal sector. Informal work took place both within and outside the camps. A short walk through any of the Bhutanese camps revealed a great deal of wage-earning activity, much of which could be done with little prior investment and in the vicinity of refugees' homes. In Beldangi-2, there was a hair dressing salon, an in-camp vegetable market, and a butcher. Blacksmiths made jewellery, metal statues of Hindu deities, and other metal objects. Some refugees converted part of their huts into carpentry shops. They purchased wood from local vendors and made beds and other furniture for people's houses in the

camps.[52] Seated on mats in the sun near their huts, women of all ages wove balls of yarn and traditional Nepali *topi* hats. All of the shops in the camps – and many of those along the *bange bazaar* bordering the Beldangi-2 and 2-Extension camps – were run by refugees.

There was a good deal of seasonal and informal labour to be found in the agricultural fields and tea plantations surrounding the camps, as well as work in stone quarries and Damak's booming construction industry, providing ample sources of employment for the Bhutanese. There were also other opportunities, as I discovered one afternoon when riding a public transport bus from Sanischare camp to Damak. The driver was a Bhutanese refugee. One of LWF's Camp Management Officers estimated that thousands of people left the Beldangi camps on a daily to work in nearby field or construction sites. According to Banki (2008: 4), they earned an average of between 50 and 120 rupees per day in these jobs (equivalent to between US $0.77-$1.85).

The Bhutanese refugees were highly mobile and there were many refugees who travelled to India on a seasonal basis, returning to the camps only intermittently to see their families or relatives. Others took the risk of trying their luck in the more formal Nepalese economy. I also knew many Bhutanese who had found ways around the ban on refugee employment. A great number of refugees were employed in schools throughout Nepal, where they were sought after for their strong English skills. Some employers opted for 'don't ask, don't tell' policies – refugees were discreet about their background and their employers did not ask questions. Physically, the refugees were virtually indistinguishable from Nepalis. Because they looked and dressed the same and shared the same language and religion many were able to 'blend in' in the Nepalese economy relatively unnoticed.

Even employers' demands for Nepalese identity papers were not necessarily an obstacle. If they were able and willing to pay, it was sometimes possible for refugees to obtain Nepalese citizenship documentation in fraudulent ways. As he described the corruption inherent in many aspects of the Nepal's bureaucracy, one Bhutanese man joked with me that 'with 50,000 Rupees, even *you* can be Nepali!' What he did not say was that false citizenship came at a cost. Take for example one man I came to know well over my time in Nepal. He had spent several years working for a company in Kathmandu under the pretext that he was Nepali. Most refugees working in formal jobs in Nepal were forced, as he was, to hide their identity and Bhutanese nationality from their Nepalese colleagues even when these became close friends. They could

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[52] Refugees sold their ware at competitive prices which also made it attractive for the local Nepali community (and for researchers like myself). I bought a rabbit, a few silver toe rings, and a bamboo bed in the camps.

never really be themselves out of fear of the consequences of being found out.

The humanitarian regime itself also presented a source of employment through the numerous incentive jobs available with humanitarian agencies. In return for their labour, refugees received not wages but 'incentives' in the form of cash payments. Nearly all of UNHCR's implementing partners employed refugees. Caritas-Nepal worked almost exclusively with refugee staff in its education programme in the camp schools, hiring the Bhutanese as teachers, headmasters, counsellors, and guards. TPO employed refugee counsellors in the camps, AMDA employed Bhutanese community outreach health workers, nutrition assistants, family health promoters and emergency room assistants, and LWF hired incentive workers for construction purposes, as pump operators, etc. These lists are not exhaustive. Nearly all agencies employed refugees as guards in the camps and some worked with refugees as drivers or radio operators.

Agencies handled different pay grades for incentive jobs depending on the level of skill, experience, and education required for the job at hand. Refugees, who were paid considerably less than local Nepalis for the same jobs, often complained that incentive salaries were too low. However, they also recognised that these jobs still had better and more regularly pay than many opportunities within the informal sector. Incentive jobs could provide other benefits too, such as supplies or contacts with agency staff. They also presented refugees with internationally recognised work experience – experience that could help them find other work in the future if they had a good recommendation letter from a humanitarian agency. In the context of the resettlement process, incentive jobs had another important advantage. Because most incentive jobs were inside the camps themselves, they enabled refugees to work without having to leave the camps or move far from the agency offices, making it easier not to miss resettlement interviews and other appointments relating to the process (Weijers 2011: 26).

There were also refugees who augmented their income through 'negative livelihood strategies' and criminal activity. Rumours circulated of various types of fraud in the camps – from document forgery to the production of counterfeit money. Refugees were also believed to be selling false refugee identities to Nepali citizens who 'paid' for the resettlement places of people from the camps.[53] A number of arrests were made in connection with such

[53] In July 2010, two refugees were arrested with thirty copies of fake Bhutanese citizenship cards. Nepalese officials were suspected of being complicit in the scheme. Bhutan News Service (10 July 2012): Bhutanese arrested in connection with forged IDs. *Bhutan News Service.* Retrieved from: http://www.bhutannewsservice.com/main-news/politics/bhutanese-arrested-in-connection-with-forged-ids/.

allegations. In July 2012, for instance, two refugees were arrested with thirty copies of fake Bhutanese citizenship cards. The Bhutanese camps were also sources of prostitution and trafficking. Both refugees and the police mentioned girls from the camps who worked in local 'hotels' ('hotel' being the local term used to refer to restaurants, which in the absence of alternatives, doubled as bars). These jobs were generally understood as being cover jobs for prostitution. Although infrequent, there are also known cases of women who have been trafficked from the camps and forced into prostitution in India.

Other examples of economic activity in the shadows of legality include the illicit brewing and sale of alcohol (*changaa*) within the camps, drug dealing, and petty corruption. The latter was most visible in the form of bribes extracted from people seeking services that were officially free of charge. Many allegations of this form of corruption were relayed to me during my stay in Nepal. They implicated members working at different levels of the camp administration (including, in some cases, those of Mediation Committees), and even respected members of society who were called upon by mediators to assist in the resolution of disputes in the camps. Nepalese citizens were also said to accept and demand bribes from refugees. Particularly frequent complaints were made about one widely disliked RCU Coordinator responsible for Beldangi-1 refugee camp and members of the Nepal police.

Other resources: humanitarian relief, livestock, and remittances

The provision of relief to populations in need of assistance is one of the main aspects of humanitarian assistance and the *raison d'être* of refugee camps. In humanitarian settings such as refugee-hosting environments the goods and materials provided by humanitarian agencies constitute an important economic resource and serve, in some ways, as a form of social security comparable to that in a welfare state – particularly for vulnerable refugees who lacked or had few alternative sources of income. In Nepal, relief included food rations and non-food items such as soap, kerosene, sanitary napkins, kitchen utensils, firewood, solar cookers, etc. Aid resources were used, bartered, shared with relatives or others who were not entitled to receive rations, or sold.

Livestock served a similar purpose. According to government policy, refugees were not allowed to keep livestock in the camps. Despite this rule on paper however, livestock – in some form or other – was abundantly present in the camps. Some RCU coordinators, such as those of Beldangi-2 and Beldangi-2 Extension, turned a blind eye and many people kept animals both inside and adjacent to the camps. On their plots inside the camps, people kept chickens, pigeons, rabbits, ducks, and even goats. Although bigger animals were rare inside the camps, I saw two cows during my walks around Beldangi-2. Others kept pigs, buffalos, or cows on plots of land outside the camps.

Animals were typically bought young, fattened with rice, leaves and grass, and sold for profit – for instance before a big festival or wedding. To illustrate the significance of livestock in the camp economy, I asked one of my research assistants to find out how many animals were kept in her sub-sector in Beldangi-2. The sub-sector consisted of 104 huts, thirteen of which were empty as a result of resettlement, one for an unknown reason, and the last because its inhabitants had moved to another sub-sector. Of the remaining eighty-nine huts, the inhabitants of just under half – forty huts – did not have any animals. Between them, the inhabitants of the other forty-nine huts owned 181 chickens, thirty-one goats, twenty-two pigs, nine cats, seven rabbits, five ducks, and one dog. While cats and dogs were kept as pets and were not considered to have economic value, all other animals could be sold for profit.

Remittances are also an important resource in the camps. Over the past decade, the growth of remittances world-wide has surpassed that of private capital flows and development assistance (Page and Plaza 2006: 261). Horst (2008) distinguished between three different types of remittances: (1) remittances as emergency aid (for instance, in response to a communal or personal disaster), such as a fire or death), (2) remittances for care and maintenance (i.e. to enable people to buy vegetables, or partake in education outside the camps), and (3) remittances sent as sustainable development aid (to start a shop or other initiative that would generate enough income to present a sustainable livelihood strategy). She estimated that ten to fifteen percent of the Somali community in the Dadaab camps benefited directly from remittances (Horst 2006a).

Although Bhutanese refugees with jobs outside the camps and in neighbouring countries sent money to the camps long before 2008, remittances became an important financial resource after the start of the resettlement programme and increasingly so as growing numbers of people settled in third countries. The rapid growth of remittances after 2008 resulted in the surge of a long string of money-transfer facilities around the camps. As a result of the scale of the resettlement programme in Nepal and the sheer size of the resettled population, both in absolute terms and a relative share of the original camp population, the proportion of remaining refugees in the camps in Nepal who benefit directly from remittances is likely to dwarf Horst's figures for Dadaab. By 2013, around 7 million Nepalese rupees (roughly USD 90,000) entered the camps in the form of remittances every day. This influx brought considerable changes to the camps: by 2013, facilities like solar energy, LP gas for cooking (rather than briquettes and firewood), smart phones and laptops for chatting were common occurrences (Guragain 2013).

As families opted for different livelihood strategies and used a range of resources available to them, differences in average household income

emerged – not necessarily along the same lines that these had differentiated in Bhutan prior to flight.

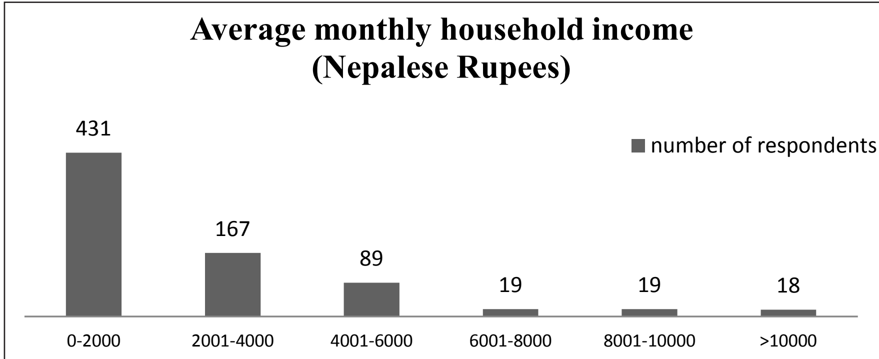

Figure vii: Average monthly household income in the Bhutanese refugee camps in 2011[54]

Incomes reported in the demographic section of the Measuring Access to Justice (MA2J) survey ranged from none to 50,000 Nepalese Rupees (NPR) (roughly US$ 550) per month, with a mean monthly income of Rs 2,818.[55] Seven percent reported having no income aside from the rations provided by the aid regime, whereas two percent of the population reported an average monthly household income exceeding Rs 10,000. Less than one percent of the camp population reported a monthly household income exceeding Rs 20,000 and only one respondent – 0.13 percent of the sample population – reported earning Rs 50,000 per month. It should be noted that this income distribution is likely to have changed since 2011, as the rising numbers of resettled refugees added to the pool of those who send money back.

III.5 Re-establishing community in exile

A refugee camp is not a self-identified community. It is an institution generated by the international refugee regime. (Hyndman 2000: 137-38)

Hyndman described the Somali refugee camps of Dadaab, Kenya. For Hyndman, as for others, camps are temporary solutions to displacement, not 'normal places'. The populations that inhabit camps are legally subordinated, spatially segregated, and characterised by their exclusion from land and wage labour and from formal participation in local economies, polities, and societies. By relegating refugees to camps, governments make them 'subjects of a tacit and unsatisfactory policy of containment by voluntary association' (Hyndman 2000: 140).

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[54] Currency: Nepalese Rupees (NPR). N=743

[55] The sample has a standard deviation of 3874, with a distribution that is sharply skewed to the right.

People move away from and between camps and arrive at different moments, which prompted Holt (1981: 176) to observe that the assembly of people who live in a specific camp is 'not automatically a sound society, but rather a collection of people from a badly damaged society'. Bauman, in a similar vein, described refugee camps as 'originating in a totally artificial creation located in a social void' and attached to camps a quality of 'frozen transience', an 'ongoing, lasting state of temporariness, a duration patched together by moments none of which is lived through as an element of, and a contribution to, perpetuity. For the inmates of a refugee camp, the prospect of long-term sequels and consequences is not part of the experience' (Bauman 2002: 345).

In emphasising the temporariness of camps and the movement of refugees within them, renditions such as Bauman's imply the absence of a cohesive community. While some social structures break down with displacement as villages, extended families, and even nuclear families find themselves dispersed among different locations of refuge, renderings of camp life such as these fail to do justice to the networks and relationships that form within camps over the years of their existence. Neither the expected impermanence of the Bhutanese camps nor the heterogeneous nature of the Nepali Bhutanese refugee population in Nepal or its changed composition with migration precluded the existence of community. Indeed, social networks and connections often become even more important with displacement and upheaval. When fleeing persecution, refugees are likely to find their primary security amongst members of their own group who can relate to their predicament, contributing to a sense of solidarity (Holt 1981: 176). Aside from their shared experience of persecution, refugees also share a common relationship to host states and humanitarian actors on whom they are heavily dependent for sanctuary, protection, food, shelter, water, and basic services.

Like the Burundian refugees in Mishamo camp in Tanzania, the Bhutanese lived in complex and multi-stranded social, political, juridical, economic, mythico-historical '*systems of relationship*' (Malkki 2002: 359). Where, in these systems, was 'community' to be found?

Anderson (1983: 6) noted that communities are to be distinguished 'not by their falsity/genuineness, but by the style in which they are imagined'. Collective remembering practices and narratives of cultural expression contributed to a sense of common history and shared identity among the Bhutanese in exile in camps in Nepal. The Bhutanese identity was felt not only by elders, but was also transmitted to youths who were born in the camps and who had never set foot in Bhutan. By participating in the camp community, listening to the stories of their elders, and re-imagining the past in classrooms and through poetry, art and song, youths acquired social memories of Bhutan through which they 'learned' to be Bhutanese in the camps (Evans 2009: 208).

In the following sections, I will show that the Bhutanese refugees self-identified as a community both in Bhutan and in Nepal and that they perceived themselves as distinctly different not only vis-à-vis other groups in Bhutan, such as the Ngalongs and Sarchhops, but also compared to the local population in Nepal. Shared understandings of tradition, custom, religion, and norms about socially acceptable behaviour played an important role in establishing this community identity. As will be shown in subsequent chapters, these understandings, which were fundamental to maintaining community cohesion, also played an important role in the resolution of disputes through the mediation system.

'We Nepalis' or 'We Bhutanese'?

On December 17, 2011, several hundred exiled Bhutanese gathered in Beldangi-2 to celebrate the 104th National Day of Bhutan, commemorating the installation of the monarchy in Bhutan on December 17, 1907. Those who participated in the event said they did so because they were Bhutanese and expected to return home. Dr. Bhampa, a Bhutanese physician who ran a clinic in Damak and was a central figure in the repatriation movement, remarked on the day: 'Every person has a well-defined nationality. We are Bhutanese citizens, entitled to enjoy equal rights as the King does. That is why we are celebrating the National Day today.'

Not all refugees endorsed the event and some refugee youth leaders insisted that commemorating the day the King was throned was akin to supporting a tyrannical monarchy.[56] The controversy surrounding the event reminded me of the period when, almost two years earlier, I had first begun to notice that refugees I met sometimes referred to themselves as 'we Bhutanese' and other times as 'we Nepalis', and to their culture interchangeably as 'our Nepalese culture' and 'our Bhutanese culture'. Different terms are also used in writings on the Bhutanese refugees, who are described as Lhotshampa (a Dzonkha term meaning people from the southern border lands), Nepali Bhutanese, and Bhutanese Nepali.

Even within Nepal, it is questionable what 'Nepaliness' truly means. Some predicate it on the dominance of the Bahun-Chhetri – the two highest castes in the caste hierarchy who (together with the lower Sudra caste) are known as Parbatiya in Nepal and who strongly endorse classical caste distinctions. As Hutt (2003) noted, this description fails to take into account those parts of the population with 'politically charged identities' as *janajāti*, including the Gurung, Magar, Rai, Limbu, and Sunuwar. To these groups, which were

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56 Bhutan News Service (17 December 2011): *104th National Day marked in camps*. Retrieved from: http://www.bhutannewsservice.com/main-news/104th-national-day-marked-in-camps/.

only incorporated into a uniform, caste based social order in 1854 with the promulgation of the Muluki Ain (Whelpton 2005: 56), this interpretation of 'Nepaliness' is more obviously a construction.

The different sub-groups that can be found in Nepal were represented in various constellations in different regions of southern Bhutan. On the whole, Sinha described a 'preponderance of *Matwalis* (those who habitually take intoxicant alcoholic drinks) against *Tagadharis* (those who are entitled to the sacred thread, thus are supposedly teetotalers – the *dwij* or twice-born)' (Sinha 2001: 169). He added:

> Though a few priestly Brahmins are found in almost all the settlements in Bhutan, as a whole there is a lack of the *Thakuri* and the *Newar* castes among the *Lhotshampas*. Among the Brahmins, apart from the priests, the herdsmen Upadhyay and Joshis were the first migrants, who moved to Bhutan *duars* in search of pastureland. As the Drukpa monks and noblemen are shrewd businessman, Newar traders could never find a welcome market for themselves. Gurung, Tamang, and the Kiratis such as Rai, Limbu, Sunwar, who were used to clear the forests in eastern Nepal found a welcome niche on the Bhutan hills. However, in the course of time, most of the *Lhotshampa* villages turned out to be multi-caste settlements organized under their headmen (*Mandals*), from among the families of the first settlers of the village. (Sinha 2001: 169-70)

Pommaret reported that the Chirang district was populated by the greatest concentration of Brahmins and Chhetris, whereas Morris noted that the population in Sarbhang in 1933 was more mixed and that he often came across Rais, Limbus, Magars, Gurungs, Brahmins, and Chhetris at the weekly market, although Rais seemed dominant. Accounts suggest that within Bhutan, there was a greater degree of social and religious interaction and cooperation between ethnic and religious groups than in Nepal (Hutt 2003: 101) and that despite their differences, the various Nepali-Bhutanese groups 'are effectively a single community bound together by the common Nepali tongue and hill-Hinduism' (Dhakal and Strawn 1994: 44).

Like the Nepali settlements in southern Bhutan, the Bhutanese refugee camps in Nepal were essentially heterogeneous settings – although the same hill-Hinduism that dominated in southern Bhutan dominated could also be said to dominate in the camps.[57] In exile, demographic configurations

[57] Refugees did not, during my research, report the use of alternative legal systems by members of minority ethnic or religious groups – the design of the camp system, which will be introduced in the following chapter, allowed for public participation and permitted each participant to voice his/her own views, enabling the discussion of a virtually limitless range of norms during mediation sessions.

changed again, both with first displacement and as people began to leave the camps through the third country resettlement programme.

UNHCR has warned that the population in the Bhutanese camps settled along ethnic and caste lines that played an important role in camp dynamics, as was particularly visible during elections in the camps.[58] Due to concerns that statistics might fuel inter-group rivalry or animosity within the camps UNHCR has not released detailed population breakdowns, although it has indicated that there are over fifty different ethnic and caste groups in the camps. Fortunately, some data on the representation of different ethnic groups could be extrapolated from demographic data gathered for the MA2J survey. Table vi below presents a breakdown of this data on the basis of ethnic group.

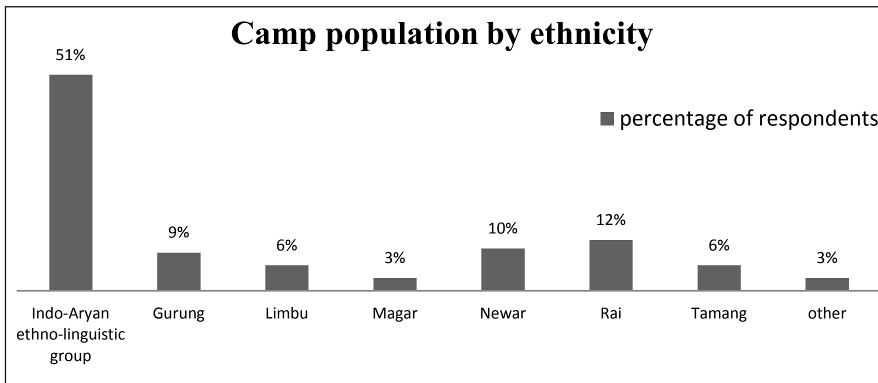

Figure viii: Survey respondents according to ethnicity[59]

In addition to a cross-section of ethnicities, the camp population also contains a cross-section of different castes. While it was not possible to obtain a complete caste breakdown from UNHCR, figure ix illustrates a rough distribution of the camp population according to social group.

The Parbatiya, who migrated from Nepal's western hills, dominated both the top and the bottom of the caste hierarchy. The middle caste rank was accorded to existing indigenous groups in Nepal's hill and mountain areas that belonged mainly to the Tibeto-Burman language group (Bennet, Dahal, and Govindasamy 2008: 2). Many of these groups traditionally consumed homemade beer and spirits, as a consequence of which they were called 'liquor drinkers' or *matwali* by Brahmins and Chhetris whose caste status did not permit them to drink alcohol. In contemporary Nepal, these different ethnic

58 Interview with UNHCR Resettlement Officer, Rachel Demas, 19 January 2010.
59 N=746

groups are now referred to as the *Adivasi Janajati* (indigenous nationalities)' (Bennett, Dahal, and Govindasamy 2008: 2).

UNHCR assessed the population as falling into four broad categories – Brahmins, Chhetris, Sudra and *janajati*.[60] This categorization does not take into account more subtle distinctions in Nepal's caste hierarchy, such as those between non-enslavable Matwali alchohol drinkers (such as the Gurung, Magar, Sunuwar, Rai and Limbu) and enslavable Matawali alcohol drinkers (like the Bhote including the Tamang, Tharu, etc.). As this data reflects, the Vaisya caste (which is normally hierarchically positioned in between the high caste Brahmins and Chhetris, and the low caste Sudra) was historically largely absent in Nepal.

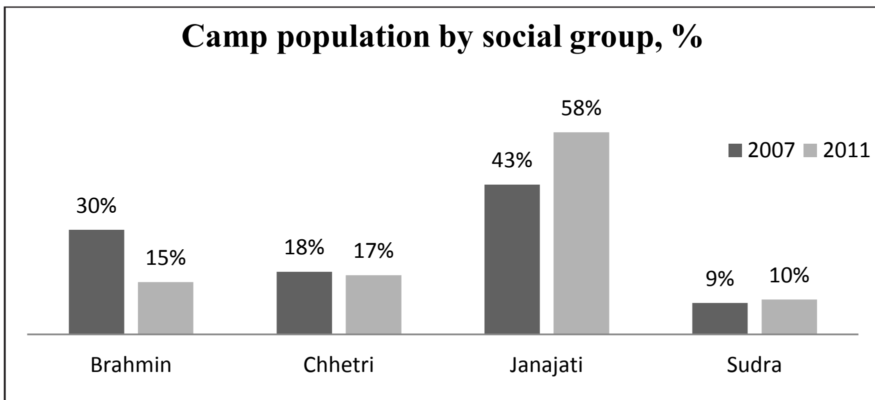

Figure ix: Camp population according to social group[61]

Differences in percentages between the data collected by UNHCR in 2007 and 2011 indicate changes in the representation of social groups in the camps on account of the resettlement programme.

The complex and shifting heterogeneity of the Nepali Bhutanese population over time – both in Bhutan and in exile – begs the question, as Hutt (2003: 94) rightly asked, how the Nepali Bhutanese self-identify as a group and whether and how they perceive themselves as being similar to or distinct from other populations. I came to realize that being Bhutanese and being Nepali were not mutually exclusive but complementary identities that refugees emphasised to identify with or distinguish themselves from

[60] NB: Brahmin, Chhetri and Sudra are caste groups. The *janajati* are not a caste but a social group, and were not traditionally part of Nepal's caste system.

[61] UNHCR (2011): Social Group Breakdown by Camp as at 31 December 2007 and 11 February 2011. [internal, unpublished], obtained from Parveen Mann with approval of UNHCR Damak HSO Rianawati on 13 February 2011.

relevant 'out-groups'. In Bhutan, the Nepali Bhutanese identity existed in opposition to that of the dominant Ngalong ethnic group. Refugees in the camps used the term 'Drukpa' to refer to the Northern Bhutanese as an identity clearly distinct from their own. When comparing themselves to the Drukpas, refugees highlighted religious differences between both groups and described the Nepali Bhutanese as understanding the value of education better, emphasising that they had established schools in southern Bhutan as community initiatives long before national plans for universal education were formulated by the Bhutanese government (Hutt 2003: 100).

In Nepal, the local Nepali population became the dominant 'other' and the need for refugees to differentiate themselves from the Drukpas declined. Despite cultural, religious, and linguistic similarities with the Nepali host population, refugees felt culturally distanced from the Nepalis and clearly perceived themselves as having a distinct identity (Aruni 2000). In different situations, the Bhutanese told me that they were less strict in observing the caste system than the local community and that they did not demand dowries for weddings – a practice that was common in the Terai. They also emphasised that they spoke better English. In conversations with Hutt, people underlined that the refugee community had a lesser degree of hierarchical stratification and Brahmin domination than the Nepalese host population, a more liberal attitude to intermarriage, greater social mobility for Tibeto-Burman-speaking ethnic groups, a more spiritual and less materialistic outlook on life, and less 'exposure' to modernity than Nepalis in Nepal and neighbouring Indian areas of Sikkim and Assam (Hutt 2003: 99). The local population, in turn, viewed refugees as more conservative, submissive to figures of authority, and old-fashioned than Nepalis.

Refugees, kin, family, and *samaaj*

Refugees' daily experiences and relationships vis-à-vis others in Nepal were partly shaped by their social positioning – as women, as members of a particular caste, ethnic or age group, etc. Some of these categories are inherently inflexible, while others, such as caste, may exhibit flexibility over generations through inter-caste marriage and collaboration. Other categories, such as wealth or labour status, are intrinsically even more elastic.

As researchers have noted, camps can reinforce some of these aspects of identity while downplaying others. Malkki (1995a: 163) used the term 'refugeeness' to refer to a broad, shared identity that emerges 'as a way of understanding the particular subjective experience in relation to existing refugee policies' that can override other identity markers, such as ethnicity, in refugee settings. Refugeeness – *being* a refugee – is a label that is both ascribed to refugees by agencies, locals and others, and is used to some extent as a form of self (or group) identification that emphasises the plight

of displacement and entitles group members to rights and existence (Horst 2006a: 13). The perceptions refugees have of themselves are likely to differ markedly from those ascribed to them (Zetter 1991). This divergence is likely to arise partly because refugeeness exists 'not in a desert, but in an often unstable social world of other statuses' (Malkki 2002: 358).

Among the Bhutanese in Nepal, the shared plight of living as 'refugees' created a definite bond. The label 'refugee' emphasised people's shared experience of being 'uprooted' and displaced from their homes. Up until the start of the resettlement programme, and for many even beyond, refugees also shared a desire to return to the country they loved.

'Refugeeness' also emphasised another important facet of people's shared existence: the hardships of camp life. According to Rianawati, Head of Sub Office (HSO) of UNHCR Damak, it was common for refugees in protracted situations to experience a sense of 'being in the same boat' and consequently, of communion:

> They feel that they are all in the same basket because they have the same status, so they need support – from the agencies, but also from their own community. They have the same worry – they have no citizenship or legal status in Nepal, so [they wonder], 'what will happen to our future?' This creates a sense of ownership and unity. Legally, the refugees are not allowed to leave the camps, so where can they get support from but their own? [62]

The notion of 'community' in the camps was strongly linked to the Nepali term *samaaj* which was used often, and in different ways. Fisher (2001: 84) defined a *samaaj* as 'a circle of social intercourse, social identity, life in association with others, or a body of individuals'. As Rianawati also emphasised that dusty February morning, 'this community is not just strong on "family unity", but also very strong on "community unity."'

Within the Thakali ethnic group of Nepal among whom Fisher conducted her research, the term *samaaj* was used to refer to three flexible levels of social interaction: (1) the level of the local village (or *gāū*) *samaaj*, (2) the local or regional Thakali *samaaj*; and (3) the Thakali *jāt* or *samaaj* as a whole. *Samaaj* is thus about the various spheres that make up the 'social.' In translating the term *samaa*' to me, the Bhutanese used the general word 'society.' As Fischer (2001) discovered among the Thakali, the word *samaaj* could also be used to refer to various types of social groups in the camps. At the heart of *samaaj* was the family – the cornerstone of Bhutanese society.

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[62] Interview with UNHCR Head of Sub-Office Damak, Rianawati Rianawati, 17 February 2011.

Lhotshampa society is collectivist, patriarchal, and patrilocal (also known as virilocal). Upon marriage in a patrilocal society, the wife becomes part of her husband's household and typically moves in with his kin.[63] Although many women retained ties with their *maiti ghar* (maternal household) after marriage, a woman's primary responsibility shifted from her maternal kin to her husband's family. There was a strong sense of respect for authority that was connected to age, and the oldest male was the undisputed head of the household in a typical Bhutanese home.

To gain an understanding of the importance of relatives and family in Nepalese society, it is useful to consider the sheer number of unique words that exist to describe family relations. The Nepalese language has separate words to denote matrilineal and patrilineal relatives, different words for each child – for the first, second, third, fourth, and fifth son, first, second, third, fourth or fifth daughter, for younger and older brothers, and younger and older sisters, etc. The number of unique terms for different family members emphasises their importance in all aspects of everyday life in Nepal, from the organisation of household tasks to religious performances and important ritualised events such as weddings and funerals.

Aside from blood and clan relatives, Bhutanese refugees also maintained close ties with non-relatives through the institution of *miteri*, or fictive kinship. In Nepali Bhutanese society, where kinship relationships are based on horizontal ties of consanguinity and affinity, the *mit* relationship allows the alternative of 'forming fictive kinship ties between members of otherwise endogamous groups and allows bonds to flourish vertically, between all levels' (Messerschmidt 1982: 5).

A *mit* relationship is entered into by two persons of the same gender and approximately the same age who are normally from different castes.[64] Men who share a bond of fictive brotherhood are called *mit* (fictive brothers), whereas women with whom a fictive relationship is entered are called *mitini* (fictive sisters). While they were described as resembling 'friendship' more closely than 'family', *mit* relationships played an important role in camp society and were formalised with a ritual, through which people entered into a relationship and incurred the reciprocal social obligation of coming to the other's aid. It was fairly commonplace for this obligation to extend beyond the two individuals who entered into the *mit* relationship and to include their families – my *mitini's* parents, for example, are my *mit-bā* (*mit*-father) and *mit-āma* (*mit*-mother).

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[63] If the wife's parents have a greater need for assistance, the situation is sometimes reversed.

[64] It is also possible to enter into a *mit* relationship with someone from the same caste – different ethnic groups in Nepal have slightly different practices in this respect.

The bonds of fictive kinship can be particularly beneficial to groups in difficult physical environments that force people to interact closely for resource exchange. In contexts such as these, *mit* relationships cement social interaction between levels of endogamous caste groups where these might otherwise have been separated. They are also instrumental in expanding networks of social ties beyond the family or immediate village (Prindle 1975).

Mit relationships, other forms of interaction between ethnic and caste groups in the camps, and their shared history and sense of 'refugeeness' have strengthened inter-*jat* ties in the camps in addition to the strong intra-*jat* solidarity that characterises the caste system in Nepal and India more generally. As a result, Bhutanese refugees in Nepal were able to identify with various (sometimes overlapping) levels of *samaaj*. In the camps, the term *samaaj* was sometimes used to denote the people of a sub-sector or a specific *jat* or caste group ('our Chhetri *samaaj*'), but it could equally be used to refer to the people of a camp as whole, or even more generally, to the entire Bhutanese refugee population.

Collaboration across spatial and kinship lines

Before, during, and after flight, social capital affects the options, opportunities, and resources that people have at their disposal. As noted, while social networks may change during and after flight, their importance does not diminish. Financial support, information, and contacts (especially relatives) often contribute to making migration possible.

Maintaining social capital is a two-way street, and as Horst (2006b) observed, belonging to a social network involves both giving and providing support. This placed refugees in 'networks of responsibility' that extend far beyond the refugee camps. Through their connections with their maternal and paternal families, extended families and fellow caste members, as former co-villagers or as neighbours, colleagues or classmates in the camps, Bhutanese refugees in Nepal incurred social obligations at a wide range of social levels.

As a result, cooperation in the camps took place across many levels of social and spatial organisation. To some extent, the spatial layout of the camps themselves created reasons for collaboration. The sub-sectors according to which the camps were organised provided natural (if artificial) units for social organisation, which was sometimes reflected in joint collaborative projects initiated by refugees at sub-sector level. Sub-sector inhabitants pooled money and labour for initiatives with communal benefit. Although the extent to which this occurred differed both across and within the camps, examples were abundant. For instance, regular night patrols helped maintain safety at both sector and sub-sector level and voluntary teams worked to ensure that

the sub-sectors were kept clean. People also pooled money and labour to build additional hand pumps to supplement the central water points where they could fill their jerry cans with water provided by the agencies.[65] Residents of sub-sectors situated closer to the main road separating Beldangi-2 from the local *bazaar* pooled their resourced to connect to electricity providers on the bazaar. By investing in cables and labour, they connected multiple households to the power grid and installed metres in the camps to keep track of usage per household.

People also collaborated on a larger scale and at camp-level, both through the Camp Management Committee and independently from it. One sunny afternoon, some men were painting a new cement bench, freshly constructed in a circle around one of the two peepal trees[66] in front of the Beldangi-2 CMC office. In the middle stood a small shrine. The peepal tree, known as *Ficus Religiosa* in Latin, can live for hundreds of years and is considered holy by both Buddhists and Hindus. Beneath the tree, which developed a strong wide trunk over the years and had far-reaching branches with large, thick leaves that provided good shade, the bench was also a comfortable, shaded spot for people to sit and wait in front of the CMC office or simply rest, observing the goings-on of the camp. As the men painted, an elderly man who had volunteered for the CMC for sixteen years told me proudly that they had been able to pay for the structure entirely with volunteer donations from refugees in the camps.

There was abundant evidence of people's concern for the welfare of other refugees, not just in their own camps but also in the others. When a devastating fire razed Goldhap camp to the ground for the second time in two years' time on March 22, 2011, the scale and speed of response from the other camps was astounding. Thousands of refugees from all over Jhapa and Morang came to the assistance of the fire victims in Goldhap that day. The fire started in the early hours of the morning. Within less than an hour, the first article about the unfolding disaster was posted on the BNS website by a refugee in Charlotte, North Carolina, who had heard about it from refugee correspondents based in Jhapa and Kathmandu. By that time, more than 600 huts had reportedly been destroyed. When I arrived at Beldangi-2 thirty minutes later, a bus chock-full of people was about to depart from the *bange bazaar.* People were crammed inside it and there must have been thirty or forty men on the roof. 'They are going to Goldhap', my research assistant told me, 'to help out.' When I asked one of the men on the bus whether he

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[65] Field notes, 14 March 2011.

[66] The Peepal tree is a large tree with light coloured bark. In India, is also known as the 'Bo-Tree', from the Sanskrit term 'Bodhi', meaning enlightened. It is believed that Prince Siddhartha Guatama meditated beneath a peepal tree until he attained enlightenment and became known as Buddha.

had any relatives in Goldhap camp he answered: 'No, but they are all our people. We all face the same fate.'[67]

People's commitment to the welfare of other refugees did not end with resettlement. Through Bhutanese community organisations established by resettled refugees in various countries, people have continued to contribute money for projects in the camps from their new homes in third countries. Examples of assistance range from one-time financial aid for the Goldhap or Beldangi fire victims, to donations for art projects, journalism trainings, or the establishment of scholarship funds for refugee students wishing to complete their secondary education outside the camps. Resettled refugees also helped sustain organisations such as the Bhutan News Service (BNS) when it was threatened with collapse due to a lack of funding in early 2012.

A similar phenomenon marked the beginning of the refugee influx in Nepal, when refugee organizations mushroomed in exile. Almost without exception, all these organisations aimed to improve the situation for the refugee community by advocating return to Bhutan in dignity, democracy, and freedom, and with equal rights. These early efforts, which constituted the first time the majority of the Bhutanese came into contact with human rights norms, played a role in the formation of a specific understanding of human rights among the camp population. This understanding, as the following sections will explain, confounded human rights and politics, and was marked by disillusionment.

III.6 Human rights in the camps: A politicised landscape

'In Bhutan, there are no rights', refugees would often say to me when I asked them about human rights.

Bhutan is a historically isolated country. When the refugees fled from Bhutan in the early 1990s, Bhutan was a party to few major human rights treaties apart from the Convention on the Elimination of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CRC). It had not signed the Universal Declaration of Human Rights (UDHR), nor had it ratified or acceded to the International Covenant on Civil and Political Rights (ICCPR), the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR), or any of the other major international human rights instruments (including the 1951 Convention Relating to the Status of Refugees, the 1984 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), and the 1965 International Convention on the Elimination of All Forms of Racial Discrimination (CERD)).[68]

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[67] Field Notes, 22 March, 2011.

[68] Although Bhutan signed the CERD in 1973, it never ratified the convention.

When the majority of the Bhutanese refugees fled to Nepal in the early 1990s, there were no independent human rights NGOs in Bhutan. There was no freedom of press or political opinion, no democracy, and no freedom of religion. Human rights were not included in Bhutanese school curricula. It did not come as a surprise, therefore, that most refugees to whom I spoke learned only learned about human rights after arriving in the refugee camps. The few exceptions consisted of people who had come into contact with the concept of human rights during their studies abroad, mostly in India. For the others, their first contact with the concept of 'human rights' (both in a normative and legal sense) was in Nepal where they were first confronted with national and international non-governmental organisations, many of which had human rights-related programmes and goals.

Because the receptiveness to external norms can influence the extent to which these are subsequently adopted, this section provides some insight into the ways in which the camp's political landscape has influenced attitudes towards human rights among the Bhutanese refugees. It describes some of the human rights organisations established by refugees in the camps in their efforts to address human rights violations committed by the Royal Government of Bhutan, the ways in which these were linked to politics in the camps (or were perceived as such), and the consequences this may have had for refugees' engagement with human rights norms.

Bhutanese human rights organisations

From exile in Nepal, the Bhutanese established a number of organisations with explicit human rights mandates. One of the first, as noted earlier in this chapter, was the People's Forum for Human Rights, Bhutan (PFHR), established on 7 July 1989 in Birtamod by Tek Nath Rizal, the Lhotshampa member of Bhutan's Royal Advisory Council who had attempted to alert the king about the concerns of Bhutan's southern population. The PFHR'S main aim was to promote human rights and fundamental freedoms for all in Bhutan. Tek Nath Rizal, who became a focal point for dissidents in Nepal (Hutt 2005: 46), was appointed chairman.

In 1992, PFHR dissociated itself from the Bhutan People's Party – allegedly because it feared it was unwise to have a human rights group connected to a political party (Dhakal and Strawn 1994: 35). After this move, a new organisation called HUROB was established and incorporated much of the PFHR's former leadership. Tek Nath Rizal, who had been arrested in Nepal and was serving a prison sentence in Bhutan, was elected chairman in absentia. S.B. Subba served as Acting Chairman; other prominent leaders included Bhim Subba, Om Dhungel, and Dr. Bhampa Rai. Like the PFHR, HUROB's primary aim was to promote human rights and democratic reform in Bhutan (Joseph C. 1999: 151-2).

The Association of Human Rights Activists, Bhutan (AHURA) was established on November 16, 1992. Like HUROB and the PFHR, it was heavily invested in the human rights related aspects of the pro-democratic movement in Bhutan. The organisation opened an office in Damak-11 where Ratan Gazmere, who was educated in London and had worked as a lecturer at Bhutan's National Institute of Education, served as chief coordinator. AHURA was primarily active in and around the refugee camps and maintained contacts with international human rights organisation (Joseph C. 1999: 152). The AHURA office in Damak – located across from the AMDA compound and only a few metres away from the house where I stayed – was cleared and closed in 2010, by which time most active AHURA members had been resettled (many to Australia).[69]

From their base in Nepal, Bhutanese human rights organisations made considerable efforts to raise awareness at the international level of human rights violations in Bhutan. In 1999, AHURA embarked upon a documentation project called 'Documentation of Bhutanese Refugees,' which it designed as a tool for authenticating the refugees' Bhutanese nationality and promoting their rights to nationality, return, and property restitution. In an article for the Forced Migration Review, Gazmere and Bishwa (2000: 20-22), both AHURA members, described the project in detail. From January 1999 to March 2000, eighteen AHURA staff members worked to collect information from volunteers in the camps, which was verified with the assistance of former village authorities, deputy authorities, and village elders living in the camps. AHURA collected details of families' properties in Bhutan, which it supported with documentary evidence such as citizenship identity cards, land tax receipts, and photographs of houses and land. The results of the project were released in April 2000 as a digitalised database in CD-ROM format. Among other things, AHURA members hoped that the end result would help solve disputes during possible verification exercises between Nepal and Bhutan, and facilitate compensation payments and property restitution post-repatriation.

Fragmentation in the political struggle for democracy

In the early 1990s, Bhutanese political organisations mushroomed in the camps. Examples include the Bhutan People's Party (BPP), the Youth Organisation of Bhutan (YOB), the Communist Party of Bhutan–Marxist Leninist Maoist (BCP-MLM), the Bhutan National Democratic Party (BNDP), the Bhutanese National Democratic Front (BNDF), the Bhutan

[69] The AHURA office in Damak, located across from the AMDA compound and only a few metres away from the house where I stayed, was cleared and closed in 2010, by which time most active AHURA members had been resettled (many to Australia).

National Congress (BNC), the United Revolutionary Front of Bhutan (URFB), and the Bhutanese Gurkha National Liberation Front (BGNLF).

Because the struggle for human rights in Bhutan is inseparable from the struggle for democracy, many of the Bhutanese human rights organisations mentioned earlier were either closely connected to the political movement in exile, or perceived as such. Both individually and through joint efforts in changing constellations, these organisations issued statements on such issues such as the drafting/content of the 2008 Constitution of Bhutan, the right to an inclusive democratic process, and refugees' right to repatriate in dignity. In carrying out their political and human rights missions, Bhutanese NGOs and political parties embraced the transnational. They targeted international venues, made an effort to speak to and guide international visitors to the camps, and published materials in English for international audiences. They addressed a wide range of international and national institutions at various levels, ranging from the UN and the SAARC, to international NGOs such as Amnesty International and COHRE, to political institutions such as the European and Dutch Parliaments and the Government of Nepal.

Their messages have not gone unheard. Three camp organisations (AHURA Bhutan, the Bhutanese Refugee Representative Repatriation Committee (BRRRC), and Bhutanese Refugees Aiding Victims of Violence (BRAVVE)) co-sponsored the NGO response to Bhutan's state report to the 27th session of the Committee on the Rights of the Child in 2001 (CRC/C/3/Add.60), together with the Lutheran World Federation, DanChurchAid, and the Refugee Support Group (Ireland & the UK). The 2008 Bhutan Country Report by Switzerland-based NGO Center on Housing Rights and Evictions (COHRE) relied extensively on information provided by AHURA. The 2009 U.S. Department of State report on Human Rights in Bhutan (published on 11 March 2010) cited HUROB at length when it described alleged human rights violations, including forced disappearances of members of the Communist Party of Bhutan–Marxist Leninist Maoist (BCP-MLM) in Samchi district in 2008. HUROB reported these disappearances not only to the U.S. Department of State, but also to the UN Working Group on Enforced and Involuntary Disappearances.

Despite their efforts, political parties failed to present a united front and their activities contributed visibly to divisiveness and insecurity in the camps. Some parties radicalised. Bombings in Bhutan were attributed to some of these radical elements in the camps. Several prominent refugee leaders in the camps were murdered, allegedly for political reasons. In 2001, R.K. Budhatoki (leader of the BPP) was murdered during a BPP meeting in Damak. Other political murders followed. Politics became a subject that was shrouded in secrecy and even in 2010 and 2011, when much of the insecurity that characterised the camps in 2006-2007 had dissipated, conversations

about politics were still held in low voices and behind closed doors, for fear of who might hear and what the consequences might be.

The fragmentation of the political and human rights landscape in the camps and the divisiveness and insecurity that resulted from disagreements among camp organisations and political parties had consequences for refugees' understandings of human rights norms and their willingness to engage with these norms in other contexts. People did not always accept or understand the choices and reasons of their political leaders, some of whom were self-appointed besides. In 2010, the refugee coordinator of the Bhutanese Refugee Children's Forum (BRCF) explained that both human rights NGOs and political pro-democracy organisations had set aside their original advocacy agendas and adopted a pro-repatriation message. 'But what is the point,' he asked, 'when repatriation cannot take place without first having democracy and human rights? They are jumping the queue.' He told me that he distrusted both political parties and human rights organisations for this reason.[70]

Implications for local understandings of human rights

Since the conflict in the south and the exile of the Nepali Bhutanese refugees, the Royal Government of Bhutan has embarked upon a slow process of modernisation. Under the auspices of its SAARC membership, Bhutan has ratified a number of number of regional human rights instruments, such as the 2002 SAARC Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia and the 2002 SAARC Convention on Prevention and Combating Trafficking in Women and Children for Prostitution. With the adoption of its first-ever written constitution on July 18, 2008, Bhutan officially became a democratic constitutional monarchy. The new constitution incorporates human rights, including the rights to life, liberty and security of person, freedom of speech, expression and opinion, and religion into Bhutanese domestic law. However, for refugees in the camps, these developments have had little tangible meaning. Not a single refugee has been permitted to return to Bhutan. Efforts to document citizenship and land ownership resulted neither in compensation nor restitution. In a joint verification exercise conducted in Khudunabari in 2003, the Bhutanese government classified only 2.5 percent of the camp's more than 12,000 refugees as '*bonafide* Bhutanese'. Political parties backed by ethnic Nepalis continue to be barred from participating in the political process in Bhutan.

Although some human rights organisations (such as AHURA Bhutan) claimed to have no connections with political parties operating in the camps,

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[70] Interview with BRCF Coordinator, Beldangi-1, 21 February 2010.

it was often difficult to untangle political and human rights agendas. The messages sent by political parties and human rights NGOs – even when the latter claimed to be apolitical – looked very similar on the surface. There were rumours S. B. Subba (leader of HUROB) might be implicated both in the radical party URFB and in some of the political murders in the camps.[71] Political factions sent death threats to the addresses of prominent refugees. People were disappointed with the lack of progress booked by political and repatriation movements and some felt that leaders co-opted human rights agendas for their own benefits, while neglecting the camp population in the interim.

The frustration among refugees with the lack of attention for their situation in the camps is expressed by Pingala, a Bhutanese woman in her thirties who established a platform to raise the voices of female refugees called 'Voices for Change':

> I often wonder why the sufferers remain unheard and left ignored by the world. The innocent people keep dying every day due to the lack of fundamental rights, while the stakeholders of human rights keep themselves busy organizing human rights programs and seminars. We are always made experimental tools. When we hear of human rights it sounds so good but it only reflects on paper for us. Our hope rises up when people talk of rights but at the same time it becomes difficult to convince us when it is not realized in practice. (Pingala 2006: 74)

The enforcement of human rights, which has been named as fundamental to establishing a rights consciousness among individuals at the local level (Merry 2003: 381), has been largely lacking from this perspective. Refugees may be exposed to human rights awareness raising in camps, but they typically do not have the best personal experiences with regards to their human rights, which are trampled by countries of origins and again in camps. As illustrated by the table below, although just over half of respondents believed that human rights law could potentially help them with problems they faced in the camps, only forty percent believed that international human rights norms applied to refugees. Others were ambivalent and indicated that they did not know. Fifteen percent of respondents thought human rights law never applied to refugees.

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[71] Subba denied these rumours, which he called 'baseless allegations to weaken the movement for human rights in Bhutan'. Bhutan News Service (11 October 2009): EXCLUSIVE: Subba finally says 'no' to his hand in murder. Retrieved from: http://www.bhutannewsservice.com/main-news/subba-finally-says-%E2%80%98no%E2%80%99-to-his-hand-in-murder/.

	Yes	No	Sometimes	Don't Know
Does international human rights law apply to refugees?	311 (42%)	107 (15%)	153 (21%)	165 (22%)
Can human rights law help refugees in this camp with problems?	380 (51%)	65 (9%)	175 (24%)	118 (16%)

Figure x: Perceptions of human rights law among Bhutanese refugees

The discrepancy between rights and their implementation in the camps, and the divisiveness that characterised the highly politicised human rights debate among Bhutanese refugee organisations, may have influenced refugees' receptiveness of human rights norms in the camps in later years and contributed to the ambivalence that was evident from responses to human rights related questions in the MA2J survey.

III.7 Conclusion

Refugees are often described as disenfranchised and divided, and camps have been critiqued as temporary settings that are void of community. This chapter has outlined the history of the arrival of the Bhutanese refugees in Nepal and has described the refugee camps in which they lived in exile and the services that were provided in these settings by humanitarian agencies. By emphasising the importance of *samaaj*, the extent of collaboration in the Bhutanese camps, and the development of a shared identity as refugees, I show that a sense of community was distinctly present in the camps. As the Bhutanese made the camps their own, complex systems of relationships were established and maintained in exile. The sense of community that formed through these relationships was marked by a high degree of collaboration and had its own shared experiences, shared history, common norms and practices, and a lively scene of political and community-based organisations established in exile.

This community was fundamental for the functioning of the camp-based mediation system, which was designed on the basis of refugees' shared understandings of traditional dispute resolution practices and customary and religious norms. Its identity and experiences contributed to local understandings of law. As this chapter has shown, the emphasis on human rights by Bhutanese political organizations lobbying for democratic change in Bhutan, when seen together with the lack of success of these efforts and inter-organisational bickering this inspired, influenced refugees' early understandings of (and later receptiveness of) human rights, which they came to associate closely with politics and danger.

By outlining the responsibilities of humanitarian agencies and the services provided in the camps, this chapter has presented an overview of the humanitarian endeavour in some of its most discernible forms. Like most refugee camps around the world,[72] the Bhutanese refugee camps were planned according to predetermined rules like those in UNHCR's Emergency Handbook. Refugees interacted with the settings in which they lived and contributed to the ultimate make-up of the camps and the shape and form of service provision in these settings. The camps were presented as a combination of space ordered according to designs dictated by international agencies and of creativity, initiative, and place making by the Bhutanese refugees. Pointing to refugee initiative and participation, I have highlighted the ways in which humanitarian planning met refugee agency, creating a unique and personalised space within the top-down 'grids' imposed by agencies. Ultimately, humanitarian settings such as refugee camps are shaped as much by UNHCR and its implementing partners as they are by refugees themselves.

That the interaction between refugees and humanitarian agencies is marked by cultural difference and room for manoeuvre on both sides underscores the 'semi-autonomy' of these settings. Humanitarian initiatives are received in camp settings, where they are coloured by a host of factors including tradition, politics, people's daily experiences, and other factors. The ways in which refugees are able to influence the camp environment and contribute to shaping these settings marks a close parallel to the ways in which they shape the legal environment of the camp as they consider, interpret, adopt, or reject external legal norms during the mediation of cases through the camp legal system that will be presented in the following chapter.

[72] Self-settled camps, established by refugees themselves, are an exception to this rule.

Chapter IV:
Snakes and Ladders: Where legal systems intertwine[73]

In chapters II and III at least four competing legal or normative systems applicable to the Bhutanese refugee camps were identified, and even more if one counts each country participating in the third country resettlement process.

The first part of this chapter addresses the legal institutions and authorities to which the Bhutanese refugees had access in practice. First, the mediation system will be presented as the dominant refugee legal system that operated in the camps. Through this system, refugees resolved the most pressing sources of conflicts in the camps (identified in the survey as theft and physical and verbal violence) and the ensuing disputes that resulted.[74] This will be followed by a description of Nepalese legal system as it pertains to the camp, including Nepalese (quasi)-judicial actors and institutions to which refugees have access, the courts, Nepal Police, and Armed Police Forces.

As Whitecross (2004: 367) noted, 'The everyday operation of law cannot be separated from the practices embedded in the local and national courts, police units, the processes of legal education and interactions with other officials who are involved in the implementation of policy decisions and requirements.' Legal pluralism has resulted in a plurality not only of legal norms but also (although not to an equal extent) of legal systems through which conflicts surrounding these norms can be addressed. Tamanaha (2008: 409-10) argued that individuals in social arenas will play these systems against each other in pursuit of their objectives. For a complex understanding of these situations, he recommended a dual focus on 1) legal

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[73] 'Snakes and Ladders' is a well-known board game that originated in India. The point of the game, which can be played with two or more players, is to navigate one's icon from the start position at the bottom of the board, to the finish square at the top. The roll of a dice determines the number of spaces a player may move. When landing on a ladder, players can skip spaces and move upwards faster, whereas landing on a snake will return them to a space lower down and closer to the start of the board. The game originated in India, where it was known as Moksha Patam or 'the ladder to salvation'. Ladders represented positive virtues such as generosity and faith, whereas snakes represented vices (emphasizing that the road to salvation was reached through virtue). It also highlighted the roles of karma and fate.

[74] As mentioned in the introduction, the majority of physical and verbal violence in the camp took place in the form of SGBV. According to Da Costa (2006), theft and SGBV were the two most common types of problem faced by refugees in 13 different countries.

systems and the actors who staff them, and 2) the ways in which these exist and interact with each other, and on the ways in which social actors respond in a situation of legal pluralism (ibid2008: 401).

Although there were no separate authorities through which refugees could specifically address disputes relating to international human rights law or foreign migration law, these bodies of law nonetheless affected the resolution of disputes by the different authorities presented in this chapter to varying extents.

After describing the different legal authorities that were relevant to the camp, three cases will be presented that will demonstrate different ways in which Nepalese authorities, refugee authorities, and disputing parties responded to and managed legal pluralism.

As these cases will illustrate, the assumption that state and refugee legal systems operate in strict independence of each other can be misleading. In practice, refugee and state legal structures were far more intertwined in the Bhutanese camps than they would appear to be on paper. This resulted in a hybrid dispute resolution system that to some extent incorporated both refugee and Nepalese authorities, as refugee authorities adapted their dispute resolution practices to meet the demands of the Government of Nepal and UNHCR, while Nepalese law enforcement officials cooperated with refugee mediators and assisted in resolving refugee-related cases (often using the same approach to mediation as was used by the Bhutanese themselves in the camp-based mediation system).

IV.1 Contours of the camp mediation system

Many aspects relating to the design and operation of the camp legal system can be traced back to cultural and historical practices among the Bhutanese refugees, and there are close resemblances between aspects of the camp mediation system and descriptions of the way in which the Nepali Bhutanese community resolved disputes in Bhutan. To contextualise mediation practices in the refugee camps, the first section of this chapter will present a brief overview of legal developments in Bhutan during the period prior to the large-scale expulsion of Lhotshampas in the early 1990s, and of dispute resolution practices among Bhutan's Nepali Bhutanese population. Subsequent sections will go into some detail regarding the structure and procedural requirements of the camp mediation system and the role of mediators and members of society in the mediation process.

Historical antecedents: Dispute resolution in southern Bhutan

The first legal code of Bhutan was promulgated in 1651 under the Zhabrung

Ngawang Namgyal. The Zhabdrung was credited for having 'introduced laws where there had been no southern laws and fixed handles where there had been no handles on pots' (Aris 1986: 129, cited in Whitecross (2004: 356), although Whitecross warned that such statements 'have to be treated with caution because of the political role they played in confirming the supremacy of the Drukpa state administration established by the Zhabdrung' (Whitecross, *ibid*).

After a mission to Bhutan from 1863-1864, Ashley Eden, British Envoy in Bhutan, wrote:

> The Bootanese have no laws, either written or of usage [...] There is no Police. The Jungpens are supposed to exercise powers of life and death, but these powers are only used for the purposes of extortion. No one dares to complain of an offence, for if the person charged pays a sufficient bribe he is sure of obtaining his revenge by having his accuser heavily fined and probably robbed of all his possessions [...] The only resemblance to laws of which there is now any trace are those related to etiquette [...] Omissions in regard to any of these rules are the only offences of which any real cognizance is taken. (Eden, Pemberton, Griffiths and Bose 1865: 129)

Eden's mission to Bhutan took place during the Bhutan-Britain war, which is reason to believe his critical description of lawlessness in Bhutan may have been politically motivated. Nevertheless, Bhutan lacked an independent judiciary until after the enactment of the *Thrimzhung Chenmo* in 1959. Prior to 1959, judicial tasks were appended to the other responsibilities of government officials and were carried out by these authorities in their official capacity as officers of the state. In a practical sense, much judicial activity was thus decentralised. At the village level 'The village headmen (Gups and Mandals) were constituted as the court of original jurisdiction for minor crimes. Appeals from their decisions, and cases involving major crimes (mostly robbery and murder), were heard by the district officer in his capacity as head of the district court. The Druk Gyalpo[75] served as the highest court of appeal from the decisions of the lower-level courts and also held the sole power to sentence criminals convicted of major crimes' (Rose 1977: 206). According to Whitecross (2004: 356-7), '[l]ocal variations in custom and practices created a patchwork of laws which probably remained oral' and an environment in which 'law codes were less important than the ability of local lords to exercise *de facto* control and authority'.

The *Thrimzhung Chenmo* established equality before the law and led to a

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[75] Druk Gyalpo, or 'Dragon King', is the term used to refer to the king of Bhutan, who is also the country's head of state.

need to establish formal legal structures (Whitecross 2004). A high court was established in 1967 followed by an official three-tiered justice system in 1968. It consisted of a *Dungthrim* (a sub district level court headed by a *Dungthrimpon*), a *Thrimkhang* (a district level court headed by the *Thrimpon*), and the *Thrimkhang Gongma* (which operates at the central level and is presided over by the *Thrimpon Gongma*). The King is the ultimate appellate authority (Adhikari 2007: 14). District officers (referred to as Dzongdas) were stripped of all their judicial functions, which were reassigned to district courts called *Thimkhangs*. *Thimkhangs* were presided over by *Thimpöns* (district court judges) or, in less populated areas, headed by Senior *Ramjams*. By 1974, there were nine district courts and four sub-district courts in Bhutan.

In a harsh critique of the Bhutanese legal system, Adhikari (2007: 14) noted that it was driven by punishment rather than justice – a feature that is evident partly from the language used to refer to the courts and judges. *Thrim* translates to 'Punishment', while *Pon* translates to 'giver' and *Khang* to 'house' (Adhikari, *ibid*). *Thrimpön* can thus be understood as 'he who gives punishment' and the court as the 'house of punishment'. Punishment was administered as follows:

> The *Kadgen*, a special decree from the king, allows the *Thrimpon* to whip the accused up to twenty two times. The decorative used in the *Thrimkhang* is a whipa chepwa (a wooden frame for clamping the thighs) and the *Thrimpon* himself is adorned with *Patang* (one sided sword from the waist to ankle). Dispensing justice is an alien concept; rather he is an object of terror created by the government to instill a fear psychosis in the mind of the aggrieved. (Adhikari 2007: 14-15)

According to the rules of criminal procedure, criminal cases were to be decided by Bhutanese courts. A case could be brought to the court's attention by the police or at the initiation of a village representative, the victim, or his/her relatives. Under the *Thrimzhung Chhenmo*, any person who witnessed the violation of a law by another had the right to apprehend the latter person and take him or her to court. Preliminary investigations were conducted by the police. This was followed by an examination of the circumstances by the court, which then drafted its findings and read these out to the parties. The verdict was written out in a *Genja* (a contract or agreement) that could be appealed before the High Court (the Court of second instance) within a ten-day period (Hainzl 2000: 65-66).

The procedure for civil cases was slightly different. A party wishing to initiate a civil procedure had to present a written petition to the court, signed by the applicant and affixed with a legal court stamp. Within ten days of the case being registered, a preliminary hearing with a judge was arranged.

During this hearing, the petition was read out to both parties and the court proceedings were explained. The central aim of the preliminary hearing was to reach a compromise that – if successful – led to the withdrawal of the case from court. According to Hainzl, 'This is considered a reflection of a basic principle of the Bhutanese system that wherever possible, disputes should be settled by compromise' (Hainzl 2000: 67).

Describing the Bhutanese court system in the 1970s, Leo Rose noted that the state court procedure did not involve prosecutors or defence attorneys, partly because there were no lawyers in Bhutan to fill these posts. Judges therefore bore a broad range of responsibilities from investigating the charges filed, to prosecuting the case, to issuing judgments (Rose 1977). Nearly three decades later, the Royal Government of Bhutan invited Christian Hainzl to conduct research on the Bhutanese legal system. Hainzl found a dramatic absence of appropriate personnel to man the country's judicial system, brought on in part by the lack of higher legal education in Bhutan: 'Presently, there are only about fifteen Bhutanese who have been formally trained as jurists. Most of them are working in the court system and so far five have been appointed to the post of district court judge' (Hainzl 2000: 55).

Dzongdas or sub-district officers continued to resolve disputes in many areas of the country. Many of the country's villages were sparsely populated and considerable distances away from these courts. These officers were authorised to arbitrate certain types of disputes. Their judgments, which had the authority of court decisions, could not be appealed 'unless it is shown that there was some fraud, misunderstanding, or deception involved' (Rose 1977: 207). Even in more densely populated areas of Bhutan where courts were within relatively easy access, the presence of a *Thimpön* did not guarantee that a case would be resolved in court:

> According to one Thimpön, litigation is a favourite pastime of many villagers, particularly during the off-season when there is sufficient time available to indulge in extraneous activities. But even in the larger districts, the Thimpön's case burden is relatively light, and he may well spend more time mediating between disputants than trying cases in the more formal environment of the district court. (Rose 1977: 208-09)

The Nepali Bhutanese, who for various reasons had difficulty accessing the Bhutanese court system, also continued to resolve cases at the local level. Distance played a significant role: courts were often located far away from smaller villages, the road infrastructure was poor, and few people had access to cars or motorised transport. For many people, this made travelling to court difficult and exceedingly time consuming.

There were also other obstacles that prevented Nepali Bhutanese from actively using the Bhutanese court system. The language used in court and in all official transactions was *Dzongkha*, in which many Nepali Bhutanese were not fluent (Adhikari 2007: 16). The Bhutanese legal system was also criticised for its perceived protection of vested interests. In a leaflet released after exile describing its manifesto, the Bhutan People's Party noted that the 'Bhutanese legal system is based on the theocratic principle of [the] medieval period. The Judiciary in Bhutan is important in protecting the omnipotence of the absolute monarch and … the feudal interests.' In the same manifesto, the BPP noted that the party wished to see a rule of law based on legal safeguards, free and independent courts, participation of the public, universal equality before the law, and economic possibilities for all people to assess their rights (Bhutan People's Party 1995).

Even as late as the 1990s, courts were generally considered 'an institution of last resort' in Bhutan (Hainzl 2000: 61). The majority of disputes were mediated outside of courts, and reconciliation between conflicting parties continued to be a major goal in dispute resolution both among the Drukpa and the Lhotshampa. The practice of mediation was strongly promoted by the Bhutanese judiciary, primarily at the local level through men of influence such as village headmen. The basic principle for out-of-court settlements was that the parties to a conflict could choose any suitable person for the purpose of mediation or arbitration. Following ratification of the Civil and Criminal Procedure Act 2001, section 145 of the *Thrimzhung Chenmo* dictated that 'At any stage of the proceedings, it shall be open to the parties to take the help of a *Chimi*, *Gup*, *Chipon*, *Mang-Mi*, or *Barmi* as mediators for mutual settlement of a civil case in accordance with the requirements of this code' (Whitecross 2004: 364). *Gups* (the heads of local village blocks) were assisted by the *chipon* (village coordinator) and *mangi-ap* (village elders). Acting as mediator to help reconcile differences was considered a virtuous deed and the role of the various above-mentioned parties in dispute resolution was seen as 'encouraging social harmony and allowing communities to maintain control over social matters' (Whitecross 2004: 365). The Nepali Bhutanese brought these understandings with them to the camps, where social harmony was seen as equally important for their communal well-being. As they had previously done in Bhutan, mediators continued to play an important role in this regard.

The Bhutanese refugee legal system

The highest tier of the refugee-run legal system in the Bhutanese camps was known to refugees as the Counselling Board or *Mel Milaap Kendra* (which translates as reconciliation centre). In Beldangi-2, the Counselling Board was located just off the main road through which one entered the camp, close to (but distinctly separate from) the office block that housed the agencies and Camp Management Committee.

The Counselling Board's mandate to operate in the camps was laid out in the CMC Guidelines, a set of rules formulated by the Government of Nepal in conjunction with UNHCR that set out the mandate of the CMC and make explicit reference to mediation. Specific rules with respect to the structure of the Counselling Board were set out in the CMC Terms of Reference (ToR), which accompanied the CMC Guidelines. In October 2010, a member of the Refugee Coordination Unit was kind enough to show me the October 2010 draft version of the ToR. It made reference to the mediation center, which was renamed the 'Community Mediation Service Center (CMSC)'. The CMSC was to be composed of one 'Chief' and four additional members. Of the four CMSC members, at least two were to be women. Disputes mediated by the CMSC were to be handled by a flexible sub-grouping of three of the original five members, of which one should be a woman. In each dispute, one of these members was to be selected as chairperson to facilitate the discussion.[76]

The mediation room had bamboo walls and a roof made of thatch and gave off a strong scent of wet hay when it rained. The Counselling Board room was sparsely furnished, lined with benches for disputing parties and observers on three sides, with a desk for the mediator on the fourth. Beside the desk stood a cupboard that held the Counselling Board's filing system. Case files were organised by sector but at the time of my research these files did not date further back than a year and a half. A fire had destroyed all records of older cases. Every morning at some point between 8:00 and 10:00 a.m., the Beldangi-2 Counselling Board Chief came to unlock the padlocked door and prepare for the first hearing scheduled for the day.

In Beldangi-2, the Counselling Board shared a building with the Community Watch team, whose function of maintaining security in the camps closely related to the role of the mediation centre. Unlike the Counselling Board, which closed shop after the last case was solved each afternoon, the Community Watch Team office next door was almost permanently occupied by volunteers. Within the CWT office were two 'cells' with padlocked doors: one for women and one for men. The cells, referred to by refugees as 'safe rooms', could be used to detain suspects or criminals, with an official 24-hour limit. Actual practices differed per camp, and one of UNHCR's Associate Protection Officers in Damak told me that he knew of a case in which a person had been kept in the Sanischare camp safe room for more than a week.[77] Typically, refugees who were locked up in these cells were required to pay for their night on the floor (there were no beds in the cells). In Beldangi-2 the fee was Rs 100 per night at the time of my field research. According to one sector head, it was eventually raised to Rs 250 per day.

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[76] Interview with RCU Information Officer, Nirmal Khanal, 29 October 2010.
[77] Conversation with UNHCR Associate Protection Officer, 21 April 2010.

As a sub-committee of the Camp Management Committee (CMC), the Counselling Board was formally embedded within the camp administration. Like other CMC members, its representatives were elected during annual CMC elections within the camps. This administrative structure was essentially the same in all the camps, although the actual physical set-up and location of the Counselling Board room differed slightly from camp to camp. Unlike sub-sector heads, sector heads and camp secretaries, who also had non-judicial roles, the Counselling Board was established with the sole function of resolving disputes. The CMC Terms of Reference did not allocate a mediation role to the CWT, but permitted the CWT to run and maintain safe rooms in the camps. Through the CMC Guidelines, these safe rooms or holding cells were therefore explicitly recognised both by the Government of Nepal, and by UNHCR.

The multi-tiered mediation system was closely connected to the hierarchical administrative structure through which the camps were governed. As in Bhutan, where administrative village and district officials such as *karbaris* and *mandals* had the concurrent function of resolving disputes, each level in the hierarchy of the mediation system was tied to a tier of the camp administration (CMC). The prominent role of local leaders in informal mediation processes in Nepal has also been highlighted by Stein and others. According to Khadkha 1997 (cited in Stein 2013: 12), these practices evolved on the basis of the inherent power of local elders, leaders, and headmen.

In Chapter 3, the layout of the camps and its division into sectors and sub-sectors was described. The mediation system followed the general lines of this set-up. Each sub-sector had a sub-sector head responsible for mediating any conflicts that arose in his/her sub-sector. In the event that the sub-sector head was unable to resolve a case, he referred it up to the sector head, who was responsible for the (usually four) sub-sectors within his sector. The Sector A sector head, for instance, looked after cases arising from sub-sectors A-1, A-2, A-3 and A-4. Ordinarily, only those cases that were not successfully resolved at the sub-sector or sector levels reached the higher tiers of the dispute resolution mechanism, such as the Counselling Board and CWT. The buildings in which the Counselling Board and CWT were housed were the only visible structures relating specifically to dispute resolution in the camp. Sub-sector and sector heads did not have dedicated spaces for mediation, but typically gathered in public locations within their sub-sectors or sectors, or alternatively, in the private spaces of people's houses.

Bringing a case: Process and procedure

Procedural rules determined how a case was to be filed and in what order different steps in the hierarchy of dispute resolution steps were to be followed. These rules were determined by the Camp Management

Committee itself. Although they did not exist in written form, they were highly institutionalised. Nearly all refugees and refugee authorities, as well as the Armed Police Force (APF) and UNHCR Field Assistants, described the mediation path in roughly the same way (with an exception for certain 'extreme' cases, such as murder).

When a dispute occurred in the camps, parties involved normally first tried to solve it themselves at the family level. Most refugees expressed a preference for resolving cases as low down the dispute resolution hierarchy, and therefore as close to the family-level, as possible. One man from Beldangi-2 Extension, who was employed as an incentive worker for LWF, explained:

> The first and foremost thing of importance in our society is that we don't want to show our problems to others. As far as possible, problems are problems of the house. We say that the group itself is considered our house. Our relationships – our relatives – we have so many types of relations; all are interlinked. Brothers, nephews, grandfathers – they are all related to each other and we think of that as one big house. We don't want to show our problems to others, so as far as possible we try to hide them from outsiders and solve them ourselves. Before turning to a legal process, 'wise' people within people's close circles are called to try to persuade the parties to a dispute not to quarrel or hold a grudge and to reach a compromise.[78]

Only in the event that parties to a case failed to reach a satisfactory solution or decided against resolving the dispute within the family, did they approach the camp authorities. Once this occurred, there was a clear sequence through which cases typically progressed. To be considered 'admissible', a case had to follow this sequence and pass through the relevant steps in the hierarchy. Crimes and disputes first had to be reported to the sub-sector head. Depending on the type of dispute, a sub-sector head could either mediate the case or forward it on to the next level of the camp hierarchy: the sector head. Like the sub-sector head, sector heads could mediate cases or refer them further up the mediation hierarchy.

These first steps of this process were familiar to and understood by most people within the camps. Sub-sector heads were visible members of the camp administration with whom they had frequent contact. Sub-sector heads lived in the sub-sector they were responsible for overseeing and often had close relations with their neighbours. Because sub-sector heads were responsible for dealing with all sorts of problems that arose in their units and not just disputes, the consistency of the approach was easy for people

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[78] Interview with Beldangi-2 Extension Camp Secretary and male refugee LWF incentive worker, 28 March 2011.

to follow and understand. When I first arrived in the camps, I often asked people about the procedure for bringing a case before the mediation system. Refugees and refugee authorities alike would answer that cases should first be reported to the sub-sector head. When I would inquire why the sub-sector head, out of all the possible legal authorities to whom they could turn, the answer was simple and almost always the same: 'that is the procedure'.

Steps higher up the camp legal process than mediation by a sector head were not always familiar to people who had not themselves been directly or indirectly involved in a case. It was generally expected that if someone ever needed to resort to the camp legal system, their sub-sector head would explain what steps they should take and what they had to do. Predictably, given the structure of the CMC, if the sector head was also unable to solve a case, the next step in the hierarchy was the Camp Secretary who was the senior-most official in the camp administration. It was then up to the Camp Secretary to decide whether the case should be handled by the Counselling Board, the Community Watch Team (CWT), or another authority.

If the Camp Secretary referred a case to the Counselling Board (or as sometimes happened in Belangi-2, to the CWT) then another attempt was made to reach a compromise through mediation – this time in the formal setting of the Counselling Board room or CWT office. Of course, it sometimes happened (although less often so than among sector and sub-sector heads) that the CWT and Counselling Board also failed to facilitate an agreement between disputing parties. If this occurred the case was referred back to the Camp Secretary who then had to decide whether to attempt to mediate himself, to forward it on to the Armed Police Forces (APF), the Nepal Police, the RCU Supervisor, or Gender Focal Point, or whether other action was needed. The course of action chosen by the Camp Secretary depended to some extent on the nature of the incident. 'Rape, attempted rape, and armed cases are forwarded to the APF', the Camp Secretary of Beldangi-2 Extension told me, 'but simple cases too, if people don't obey the rules of the CMC'.

To bring a case before the camp authorities, refugees were required to submit an application or petition in writing. The application was expected to summarise the cause of the dispute, state when it happened, and describe the petitioner's grievance and desired outcome. To be official, it had to be filed with and signed by the sub-sector head as first designated camp mediator. Additional authorities could add their signatures to the bottom of the application throughout the mediation process, effectively converting the letter into an abridged chronology of the history of the case. Whenever an authority attempted to mediate but failed to resolve the case (or found it too serious to deal with), he or she was required to sign the letter and add a paragraph stating the reasons for which a compromise could not be

reached. This step applied to each authority who handled the case, although sector heads and higher authorities, besides their signature, also added their official 'stamp'. Sector heads in each of the camps had rubber stamps they could use to sign/stamp official documents, as did the Camp Secretaries. In Beldangi-2 Extension, the Camp Secretary ensured that the sub-sector heads had stamps too. He told me one day that he had paid for the stamps himself. When sub-sector heads didn't have stamps, he explained, people would lie – they scribbled 'sub-sector head' beneath their application letters and forged signatures without actually turning to these authorities at all. Through the system of stamps, the Camp Secretary believed he had put an end to this practice.[79]

Because the Counselling Board was subsumed within the CMC structure, it was subject to other rules that governed the composition of CMC membership and election of post-holders. This included, for example, UNHCR's fifty percent norm for gender equality, which required half of all CMC positions to be filled by women. For mediation committees, this meant that there were also female mediators. It did not guarantee, however, that they participated on equal footing with their male colleagues.

All parties who attended mediation proceedings were permitted to comment on the case. This included not only disputing parties and mediators, but also disputants' family members, their sub-sector heads, sector heads, and others from their sectors, as well as observers or bystanders. Through this structure, those involved and present at the hearing could introduce arguments and norms that they felt pertained to the case at hand. Although there were slight variations in the ways in which different ethnic sub-groups traditionally resolved disputes, members of different caste and ethnic groups in the camps did not report using 'traditional' alternatives to the camp system. The participative and interactive *modus operandi* of the mediation system allowed members of different groups to introduce norms perceived as specific to their culture. It also enabled members of different ethnic groups to customise legal outcomes (i.e. apology rituals) in culturally appropriate ways.

The general impression was that there was a greater degree of public participation in these discussions in the camps than there had previously been in Bhutan. In the words of a senior official in the Beldangi-2 camp administration: 'In Bhutan, people don't have a concept of their rights and duties, they always depend on religious leaders or other people. Now in Nepal, more than 75 percent of the people are educated and they know their rights. They know how to identify victims and offenders.'[80] He perceived people as speaking out more during the mediation sessions in the camps than

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[79] Interview with Camp Secretary, Beldangi-2 Extension, 16 February 2010.
[80] Interview conducted by research assistant, Beldangi-2, March 2011.

in Bhutan and as being less absolute in their deference to people of authority.

When parties to a case reached a compromise, which the Camp Secretary referred to as *milera aune* (coming to an agreement), the terms of this compromise were written down on paper much as had been done in Bhutan. Along with the terms of the compromise, disputing parties were usually made to promise not to commit the same transgression again in the future. When it involved a crime, they were often cautioned that they would have to 'follow the rules and regulations of the Nepali government' if they failed to adhere to the terms of the agreement. By signing, people agreed that they understood that their case would be forwarded to Nepalese law enforcement authorities if they re-offended – a carrot and stick approach refugee authorities used to improve the odds that compromises made, were also kept.

Understanding mediation in the camp context

As the name 'Mediation Sub-Committee' (as the Counselling Board is referred to in camp bylaws) suggests, disputes in the camps were officially resolved through mediation. In Nepali, the body is referred to as *Mel Milaap Kendra* (reconciliation centre), which emphasises the end goal of reconciliation and compromise. Mediation is the most common form of informal dispute resolution in Nepal, and is used in large parts of the country to resolve a broad range of social and other conflicts.

Shapiro's mediation continuum compares mediation to other forms of third party dispute resolution, such as 'go-betweens' at one end of the continuum, and judges at the opposite extreme. Shapiro (1981: 3) described the role of mediators in dispute resolution as follows:

> The go-between [...] may be any person, fortuitously present and not connected with either of the households, villages or clans in a dispute, who shuttles back and forth between them as a vehicle of negotiation [...] The mediator is somewhat more open in his participation in the triad. He can operate only with the consent of both parties. He many not impose solutions. But he is employed both as a buffer between the parties and as an inventor of mediate solutions. By dealing with successive proposals and counterproposals, he may actively and openly assist in constructing a solution meeting the interest of both parties.

I had many lengthy discussions about the role of mediators in the dispute resolution process, not only with mediators themselves but also with disputing parties and others. As I quickly discovered, the role of camp mediators surpassed that of the pure mediator in Shapiro's model to a certain extent. One step further along Shapiro's continuum is the arbiter,

who 'is expected to fashion his own resolution to the conflict rather than simply assisting the parties in shaping one of their own'. Unlike mediators, arbitrators typically have the legal authority to impose their solution upon one or both parties.

Although their judgments lacked legal enforceability in a strict sense, most camp mediators were positioned somewhere between Schapiro's mediator and arbiter. They often took an active role in 'advising' the parties to a case and encouraging them to reach an agreement. Solutions were often reached in consensus with others, including members of society invited to advise on cases. Even though they did not have the legal authority to impose solutions, Counselling Board chiefs and other mediators could frequently be seen scolding participants to a case, and it was not unusual for disputing parties to agree to a compromise with which they did not look altogether happy.

English-speaking refugees often described this process of advising/scolding to me as 'counselling' – an advisory role they considered an integral part of camp authorities' jobs. Refugees sometimes used the term counselling interchangeably with 'mediation'. When I asked the TPO coordinator about the dual use of the term counselling, a big smile crossed his face. 'There are many types of counselling, UNHCR does it, AMDA does some mental health counselling, TPO also does it. IOM gives cultural orientation, the CMC counsels people… [The refugees] frequently hear the word counselling, so they might feel that it is commonly used and so have adopted it.' He added that it was not a word that was used by the host community:

> This is specific to the camp. In the local community, they hardly know about counselling. But in the camp, it is a kind of situational result. Because they think that counselling works or supports them, even the elderly and youngsters are familiar with it. What happens is that a youngster goes to his circle and sees that someone was counselled and goes back to the house and tells his or her family. And they see that A, B, C got counselling and that their resettlement process was expedited or they were helped in some other way. So it is familiar among them.[81]

As refugees observed that counselling helped people solve some of their problems, vocabulary for mediation practices became intertwined with 'aid speak' in the camps.

The importance of this advisory role during the mediation process was outlined as follows by one Beldangi-2 sector head:

81 Interview with TPO Project Coordinator, Ram Dahal, Damak, 16 March 2010.

> Actually, the problem in the refugee camp is that people are illiterate, uneducated. We advise them: 'If you continue this way, it will be very difficult for you to live your life here. But if you go in that way, it will make your life better.' If we advise them in this way, they accept our words and come to an understanding, and we solve the case. These are the ways in which we make them understand.[82]

He perceived mediation as a skill that not everyone had: 'I am very proud to have attained this sort of ability to resolve the cases. I have dealt with so many cases and find that they have good outcomes – I manage to solve the cases in my mediation [sessions]. Whatever is supposed to be the outcome, I achieve it.' Another sector head added:

> We have to listen to both sides. If it is a minor case and we are educated, we can convince the people, isn't it? But if we show anger there, they may turn against us. Whenever we try to settle the case, we should remain very cool, and try to convince them happily. We may frighten them too, sometimes: 'If you do not settle here, [the case] will go to the FA [UNHCR Field Assistant], and the FA will report to UNHCR down in Damak, and then your third country resettlement process will be stopped.' We also give them this type of message sometimes.

He laughed conspirationally.[83]

The most desirable outcome in the context of the refugee mediation system was referred to as a compromise. Compromise was believed to be both positive and necessary; it was widely perceived that the alternative was a situation whereby enmity was maintained and relations remained strained, which people feared would cause other problems in the future.

Sitting in the camp canteen – a bamboo structure between Beldangi-2 and Beldangi-2 Extension known for cooking up a mean breakfast *puri* and serving *daal bhat* lunches to aid workers and privileged members of the camp leadership – I discussed the implications of 'compromise' with the Camp Secretary of Beldangi-2 Extension and a friend of the Camp Secretary who was employed as incentive worker for LWF. 'Enmity', the LWF incentive worker emphasised, 'leads people to end their relationship with each other. In situations where one party to a conflict is declared the victor and the other party is punished, the one who loses the case will be put down by others. This leads to a loss of prestige, and causes the perpetrator to feel shame before society.' He told me this was harmful for society as a whole because 'the whole community, our community, will think that the offender has started

82 Interview with Sector A sector head, Beldangi-2, 14 February 2011.
83 Interview with Sector E sector head, Beldangi-2, 14 March 2011.

to fall into negative ways. Everyone will look down on him, and so to prove himself again and to uplift his status in society, he will always be searching for an opportunity to find a particular point of weakness [in others] to prove his own status, to promote his status in society.'[84]

The Camp Secretary concurred that compromise was generally more desirable than an outcome involving 'the law of Nepal' and punishment of the offending party. If each family agreed on its own terms and managed to reach an understanding, then he believed compromise reduced the likelihood of future retaliation. Successful mediation with positive outcomes for both parties was also likely in situations that did not have an obvious offender or victim, but simply two parties to a dispute. When successfully mediated, the LWF incentive worker remarked that in this type of case 'both parties become winners, and there will be no feelings of revenge'.[85] However, the Camp Secretary also acknowledged that when power disparities between disputing parties were too great, a fair outcome through the mediation system was unlikely. In such situations, the weaker party was often 'persuaded' by the other and his or her family to agree to a compromise that was not necessarily in their best interest.

A role for society: The *pancha samaaj*

As the previous section has shown, there were close parallels between refugees' understanding of 'counselling' and the role of mediators and others in the dispute resolution process. To provide advice or coax parties to a case in a particular direction, mediators throughout all levels of the camp hierarchy relied not only on their own experience or skills but also on others. While they were not officially designated as members of any formal 'mediation committee' and their names were not transmitted to UNHCR, this practice of involving members of society was institutionalised through the use of what were described as committees of respected elderly persons from the community.

These groups were alluded to with different names (*pancha samaaj, pancha bhela,*and *buddhi jivi*). The term *buddhi jivi* was commonly used to denote 'intellectuals'.The word *pancha* refers to the number 'five' (paach/panch in Nepali) just as the word *panchayat* refers to an assembly (*ayat*) of five (*panch*) people. *Pancha samaaj* translates to 'five members of society' (the notion of *samaaj*, or society, was introduced in Chapter 3), and is used to refer to a committee of five intellectuals or respected members of society.

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84 Interview with Beldangi-2 Extension Camp Secretary and male refugee LWF incentive worker, Beldangi-2, 28 March 2011.

85 Ibid.

This use of committees of respected elders is another similarity between the camp legal system and dispute resolution among the Nepali Bhutanese in Bhutan. Nepal has a long history of informal and traditional dispute resolution, which has historically been centred around mediation by local elders and leaders (Stein 2013: 10). Later, this was a key feature that was institutionalized in the *panchayat* system which was prevalent in much of South Asia including Nepal. In the camps, these *pancha samaaj* or committee of elders typically consisted of five people, although the number of actual participants was greater or smaller (in some units structurally so, while in some sectors and sub-sectors the number of people present changed on a case-by-case basis. Younger mediators often relied especially heavily on these committees or asked for advice from older or former mediators with more experience than themselves.[86]

The LWF incentive worker emphasised the importance of tradition, but also convenience, in the use of this practice:

> You could say that it is our culture; we have been doing the same thing from ancestral times. Maybe… in those days there were no… maybe there was no law and order. And then, even if there had been courts, maybe they were a long distance away. It might have taken people a lot of time – it was time consuming to go to the court, and then appeal, and do all those things. Then the court would tell them to come back after a number of days, while the people – almost all of them – were agricultural labourers. They were farmers, so they may not have had enough time to attend court on the prescribed date. These types of activities [resolving problems/cases] usually don't take place in the daytime, but either in the morning or in the evening. In the morning or evening, people have more leisure time, so that's when they gather to handle or talk about cases – especially in the evening, many people are available. The people who come to solve this type of problem are respectable people in society.

Each sub-sector and sector head worked with these 'respectable people' or elders in their own way. Krishna, a sector head in one of the camps, explained the role played by the *pancha samaaj* (he called them *buddhi jivi*, or intellectuals) in dispute resolution in his sector. 'Before the case reaches me' he said, 'the *prathinidi* representative [the sub-sector head] will try to solve it with the assistance of the *buddhi jivi*. The *buddhi jivi* is important because they look after all members of the sector equally – the poor, the rich, they are unbiased.'[87] Unlike the five-member committee most mediators relied

86 Interview with Sector D sector head, Beldangi-2, 4 March 2010.

87 Interview with a Beldangi-2 sector head, 14 March 2011.

on, he maintained a list of ten. When I asked Krishna what type of people he approached to be part of the *buddhi jivi* in his sector, he said that he preferred to work with those who were literate, and who stayed in the camp rather than going to Damak for work. People who stayed in the camp, he pointed out, both knew more about what was going on in the sector, and had more time. Whenever a case arose, he called the *buddhi jivi* to ask them to attend the mediation session. During a session, they could come forward to speak, explain their case for a particular point, and present possible outcomes.

Unlike sub-sector and sector heads, the Counselling Board did not have an institutionalised *pancha samaaj*. In practice, however, respected elders and camp authorities from each the sub-sectors of the disputing parties were nearly always present during mediation sessions at the Counselling Board, and sector heads sometimes attended too. They were frequently called upon to provide advice with respect to issues pertaining to the case at hand and assist the parties in reaching a solution, and often participated actively.

The Camp Secretary and his friend, the LWF incentive worker, were both called upon from time to time to give advice during mediation sessions. Both men were very busy, but when I asked them why they agreed to play this role despite its time consuming nature and lack of financial reward, the Camp Secretary laughed. He looked at me in some wonder – as if the answer was obvious – and said that being called upon was a sign of respect and honour and that those who were called upon felt a commitment towards their society:

> These honoured people are usually old people, respected people, and they are seen as the fathers of this society. If a conflict occurs in society – if two children are fighting – the father will solve the problem. In our society, society is like the children, and honourable people are like the parents. The parents solve the problems of their children.

This feeling of obligation to the community and the prestige and honour that it conferred were strong motivating factors for people to take on unpaid volunteer roles within the Camp Management Committee, for instance as sub-sector head and sector head. As the LWF incentive worker explained:

> It is not only the sub-sector head who can build up the community; every individual has their responsibility in building up their community. So I feel that it is my responsibility to take part, […] to help maintain the peace in my unit. To build up our community… it is not just one person who can build up a community. Every individual has to take part, has his responsibilities in making his community a better one.[88]

[88] Interview with Camp Secretary and LWF incentive worker, Beldangi-2 Extension, 28 March 2011.

Through the reliance upon the *pancha samaaj*, mediators and key individuals in society played important roles in the dispute resolution process. The constellations of people involved differed depending on the identity of the mediator and the parties to the case. Depending on the 'importance' of the case, a range of camp officials (from sub-sector heads and sector heads to Gender Focal Points, CWT members, and others) might also be present. Parties brought their family members and relatives, supportive neighbours, and others. Bystanders attended out of interest or because they knew one of the parties to the case. Some remained silent, but they could also join the normative debate by speaking out in support of one side or the other, or with some third argument.

IV.2 The Nepalese legal system: Institutions and roles

Even if the majority of conflicts in the camps were resolved through the camp mediation system, the Nepalese legal system played an important role in enforcing law and order in the camps. In a conversation about the Government of Nepal's role in the administration of justice for refugees, UNHCR's Associate Protection Officer impressed upon me that 'unlike some other countries, such as Thailand, where host countries are uninterested in bothering about "justice" and securing equal access to state legal systems for refugees, the Nepalese judicial system is active in prosecuting refugee-related cases.'[89]

Indeed, the Nepalese example is markedly different from, for instance, that of Ghana, which refused to allow refugees access to Ghanaian courts (Sagy 2010). The preparedness of the Government of Nepal and the Nepalese judiciary to adjudicate on cases involving refugees was underlined by the fact that roughly thirty percent of legal cases dealt with by the Jhapa District Court in Chandraghadi involved refugees. This percentage is noteworthy given that Jhapa's population (812,650 according to Nepal's 2011 population census) was nearly eight times the size of the 107,000-strong camp population prior to resettlement. By 2011, when thousands of refugees had already left the camps for through a third country resettlement programme implemented by UNHCR, the difference was even larger.

The following sections will describe the most relevant Nepalese judicial and quasi-judicial institutions involved in the resolution of disputes that arose in the camps. While some of these institutions had government-designated judicial or law enforcement roles, they also operated in ways that went beyond what was dictated by Nepalese law.

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[89] Interview with UNHCR Associate Protection Officer, Andreas Kiaby, 26 January 2010.

Refugee Coordination Unit

The senior-most authority in each of the refugee camps was a government officer from the Refugee Coordination Unit (RCU), the government body responsible for refugees at the district level. The Refugee Coordination Unit was overseen by the National Unit for the Coordination of Refugee Affairs (NUCRA) – the government's head office for refugee affairs based in the Ministry of Home Affairs in Singha Durbar, Kathmandu. At the district level, the Refugee Coordination Unit fell under the responsibility of the Chief District Officer (CDO), who simultaneously served as its director. The Assistant CDO acted as deputy director of the Refugee Coordination Unit.

The head office of the Refugee Coordination Unit was located in Chandraghadi, Jhapa, and coordinated the activities of the seven operational Refugee Coordination Units in Nepal – one for (and in) each Bhutanese refugee camp. These operational units were responsible for managing security in the camps. Each was headed by an RCU Supervisor (referred to by refugees simply as 'the RCU') who worked in close coordination with the Armed Police Force and Nepal Police.

When I visited the RCU office in Chandraghadi one warm October day, the RCU Information Officer Nirmal Khanal noted that the Refugee Coordination Unit was also responsible for the registration of 'vital events' (births, deaths, camp transfers, etc.) and for coordinating with the United Nations, NGOs, and refugee organisations. RCU Supervisors liaised with the Camp Management Committees and agencies on a regular basis and in each of the camps, the RCU office was located in the same office block as the CMC and UNHCR's implementing partners. RCU Supervisors reported serious issues that arose in the camps directly to the Assistant CDO or CDO, or to the RCU Chandraghadi office.

Although the RCU's responsibility for security was primarily of a supervisory nature, RCU staff – both RCU Supervisors stationed in the camps as well as more senior staff based at the Chandraghadi or CDO offices – were occasionally approached by refugees for mediation. As Nirmal Khanal explained:

> Sometimes they call us, as representatives of the government of Nepal, to resolve their cases. They gather both parties – that is the procedure – and they try to settle [the issue] through mediation. Generally, the mediation committees in the camps do this, but if not, then the RCU may mediate also. If he doesn't, he may forward the case to the CDO or to court. Through this procedure, we can mediate easily.[90]

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[90] Interview with RCU Information Officer in Chandraghadi, Nirmal Khanal, 29 October 2010.

When cases involved refugees and staff members of the aid apparatus or were perceived as having potentially serious consequences for camp governance or for the relations between refugees, NGOs, and hosts, it was not unusual for the RCU to be approached for intervention. As a general rule, cases that were successfully mediated by the RCU (and thus considered 'resolved') did not see the inside of a court room.

Nirmal told he that he had also mediated cases, including 'serious beatings, divorces, and quarrels between husband and wife…,' adding that 'if the case is very serious, they do not call us but go to the police directly.' He recounted a recent case in which he had been involved:

> About 3 months ago in the rainy season, somewhere in the Nepali month of *saaun* [July-August] or *badhau* [August-September], I was called by some refugees. There had been a fight in one of the camps; the refugees beat an AMDA doctor.

The incident happened after one refugee died at the AMDA clinic, and refugees blamed the organisation for the death. The police and camp leaders had been trying to settle the case in the Area Police station in Birtamode for more than three days, and the police had arrested the refugee perpetrators. Nirmal went to the camp to try to mediate. He told me that it was important that cases like this be settled:

> If it had gone to court, it would have been very difficult. One refugee had just died, and then arrests were made immediately… this would have caused problems in the camps. To keep the peace, the RCU thought it better to try resolve the problem by having both parties come to a compromise. In the end, the refugees asked the doctor: '*Hamilaai sucharin dinuhos*? – Will you excuse us?'[91]

They promised never to behave violently towards any of UNHCR's implementing partners again and were not asked to pay compensation. Through this outcome, which allowed the refugees involved in the incident to save face, the Refugee Coordination Unit played a role in averting what could have become a riot between the refugees and aid agencies.

Armed Police Force

On a day-to-day level, the maintenance of security was carried out by the Armed Police Force (APF). The APF had a presence in the camps since 2007, after a period of insecurity in 2007 that related partly to aggression that arose in the context of the resettlement programme, and partly to conflicts

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[91] Ibid.

between the refugee community and local population in Sanischare refugee camp.

An APF base camp was established in each of the Bhutanese refugee camps except for Beldangi-2 and Beldangi-2 Extension (now merged as one 'Beldangi'), which shared one base camp because of their physical proximity. On average, between twenty and twenty-five APF units were deployed to each base, although actual numbers varied and were frequently lower as a result of staffing shortages, holidays, and other reasons.[92]

Over the course of my research, I had several lengthy conversations with an APF Sub-Inspector I came to know as Guna. He was interested in talking to me because he had met other Dutch people through his brother who worked for a trekking agency in Kathmandu. He was also happy to practice his English and told me, with a slightly disappointed look, that 'none of the foreigners' ever came to talk to him.

During one of our talks, we were seated on two plastic chairs in the Beldangi-1APF compound. We discussed the APF and its role in the camps. Guna explained that during the day, the APF's main function was to provide security to International Organization for Migration (IOM) and UNHCR staff – and the base camp was indeed situated right beside UNHCR's resettlement office in the camp. Guna's units also patrolled the camps between 18:00 and 19:00 every evening. Refugees could call the APF directly, but Guna said that they did not call for 'normal problems'. He understood 'serious' cases as those involving rape, murder, or attempted murder and explained that although these cases were handled by the Nepal Police, the APF captured and interrogated suspects.

When I asked what procedure the APF generally followed when crimes or other incidents occurred in the camps, Guna answered that the first step was an inquiry into the incident. If the APF determined that a case was 'too big', it was generally forwarded to the Nepal Police. If it was 'small', refugees were warned not to do it again and that if they did, they would be punished. Then, they were sent home. Guna gave me the example of fighting in the camps. When people fought, the APF released them with a warning – but if they fought over and over again, they were handed over to the Nepal police. Guna said this happened frequently and that a few refugees had ended up in jail as a result.[93]

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[92] UNHCR: Annual Protection Report Nepal, 2007: 3 (internal document).

[93] Interview with APF Sub-Inspector Guna Raj Baniya, Beldangi-1, 04 February 2010.

Each of the APF base camps had its own detention room, in which the APF was authorised to hold suspects for up to twenty-four hours before turning them over to the Nepal Police. During this time, the APF asked relatives of those detained to bring them food, because 'the APF has no rations for this'. Guna emphasised that the APF was not inhumane and that if nobody came to feed a detainee, the APF would provide food: 'It is the human thing to do. You can't let someone starve or he will die.' Despite the presence of detention rooms in the APF base camp, in Beldangi-2 it was more common for the APF to hand suspects over to the Community Watch Teams (CWT) for detention in the CWT safe rooms than to keep them in the APF base camp. UNHCR's Associate Protection Officer explained the APF's reluctance to keep refugees in APF cells as a matter of convenience. By handing them over to the CWT, the APF did not have to deal with 'drunken people' in its own base.[94]

Over the course of my conversation with Guna, which wandered back and forth between tourism and dispute resolution, he told me that the APF also mediated cases. I would later witness many such sessions myself.[95] When I asked him what type of cases the APF mediated, he replied: '*ekdam* simple cases', placing extra emphasis on the word *ekdam*, which means 'very' in Nepali. Giving examples, he named domestic violence cases and beatings that did not lead to serious bodily harm. He said that if the violence was more severe and the victim incurred serious wounds, the APF could not handle the case and turned it over to the Nepal police. Even in serious domestic violence disputes, the families involved sometimes asked the APF not to involve the police, preferring to settle it within the camp instead. According to Guna, the APF generally complied with such requests.

Like Guna, Hira Bahadur, Inspector of the APF base camp responsible for Beldangi-2 and 2-Extension, was also approached by refugees to mediate cases and did so from time to time.[96] Also like Guna, he said that he handed 'serious' cases over to the police in Damak. Giving an example, he told me:

> Yesterday, I arrested seven people. They were involved in an attack on their sub-sector head and sector head, using a knife. After they got a syringe,[97] they attempted an attack. I arrested them and sent them to the Damak police. There was also a case last night. They fought each

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94 Interview with UNHCR Associate Protection Officer, Andreas Kiaby, 26 April 2010.

95 When I discussed this informally with UNHCR's protection officer one day, a disapproving look crossed her face as she exclaimed: 'The APF are not supposed to mediate cases!'

96 Interview with APF Inspector Beldangi-2 and Beldangi-2 Extension, Hira Bahadur, 24 January 2011.

97 At the time of my field research, intravenous drug abuse was often mentioned as a growing problem in the camps.

> other using *khukuris*. One person was cut in the hand, the other on his head. These are common cases here; they quarrel with each other, drink, abuse substances. There are also theft cases...

'Why do you think this happens?' he then asked me, alluding to the theft cases. 'To pay for the drugs?' I suggested. Hira nodded.

> They don't have much money. They don't even work, and they become addicted to different substances. Before, they used dendrite. Nowadays, they turn directly to syringes. It's a new problem, about seven or eight months old. These days, they immediately start taking drugs this way – the hardest way of using. Within a month, we had about twenty-five or thirty such syringe cases – all boys, all teenagers.

Nepal Police

Before the deployment of the APF to the camps in 2007, maintaining security in the refugee camps was the responsibility of the Nepal Police. Rather than establishing police posts within the camps as was later done by the APF, the Nepal Police worked from temporary police posts established just outside the camps.

The Nepal Police, in addition to a somewhat uneasy relationship between the police and the refugees, was also confronted with the threat of separatists and rebel movements. In 2003, in the midst of the People's War in Nepal, suspected Maoist rebels shot and killed a police officer stationed in Khudunabari camp and blew up the temporary police post. The Nepal Police was withdrawn from the camps later that year. Between 2003 and 2007, there was no police presence in the camps.[98]

When tension began to mount in the camps after the announcement of the third country resettlement programme in 2006, the government decided to redeploy small teams of between four and seven police officers to each camp. They arrived in January 2007 but lacked transportation or communication facilities and were poorly equipped and poorly motivated. Reports of abuse and serious misconduct by police officers were rampant.[99] At the height of tensions between the refugee community and the police, refugee youths

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[98] UNHCR (22 September 2003): "Suspected Maoists attack police post at Nepal refugee camp", http://www.unhcr.org/3f6f1a1a4.html, accessed 1 December 2013.

[99] One refugee woman filed a landmark case under the Torture Compensation Act, after she was tortured while held in detention by a Nepali Civil Police officer serving in the camps. The case was resolved through a settlement reached in court between the woman and the police officer. Interview with Bhupal Khattel, Program Officer of the Legal Aid Program for Bhutanese Refugees, 18 April 2010.

attacked a group of police officers and chased them out of the camps. Riots ensued in the Beldangi camps. The security situation deteriorated in all seven camps and the police was withdrawn from the camps in May 2007, not to return.[100]

Even without a presence in the camps, the Nepal Police continued to play an important role in legal disputes involving refugees at the time of my research, particularly where crime was involved. The section of the police responsible for Beldangi-1, Beldangi-2 and Beldangi-2 Extension camps was the Nepal Police in Damak, which oversaw four Village Development Committees (Lakhanpur, Gaurahada, Marahanighoda and Topgacchi) and one municipality (Damak). Its office was headed by an affable Police Inspector named Nabin Karki. When we first met in March 2010 he had been working at the station for roughly ten months and planned to stay for two more years.

Police Inspector Nabin Karki estimated that although the Bhutanese constituted between a fifth and a quarter of the total number of people under his responsibility, only between five and ten percent of the cases dealt with by the police station involved refugees. He was aware that many cases from the camps never reached Damak.

> Sometimes, refugees come straight to the police station from the camp, but they generally go through the APF first because the APF is based in the camp. In the APF [base camp], they sit among their leaders, the Camp Secretary, [APF] Sub Inspector, and cry, discuss, and conclude. If the case is normal – quarrelling, general theft, etc., then the APF will try to solve it – they don't bring these cases to the Nepal Police in Damak. Otherwise, they will forward the case to us. The Nepal Police only files cases for heinous crimes.

'Heinous crimes' included all cases punishable under the 1992 State Cases Act, those punishable under chapters on homicide, rape, theft, and trafficking of human beings in the Muluki Ain,[101] as well as cases related to arson, arms and ammunition, and forgery. According to Nabin, the Nepal Police could legally detain suspects in Damak for up to twenty-five days – a period they used to investigate the case. Detainees' relatives were responsible for providing them with food. If they failed to do so, the police fed detainees and gave them the bill at the time of their release.[102]

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[100] UNHCR (2007): "Annual Protection Report Nepal, 2007" (internal document), p.3 and p.61-62.

[101] The Muluki Ain contains chapters on substantive civil and criminal law, as well as procedural rules.

[102] Not all police officers were permitted to investigate. This right was restricted to

The 1992 State Cases Act authorises the police to investigate crimes, and file charge sheets or First Information Reports (FIR). The Attorney General's office is entrusted as prosecuting authority. FIRs filed by the police were sent to the District Prosecutor's office in Chandraghadi, which bore responsibility for carrying out the work of the Attorney General's office in Jhapa district. District government attorneys were responsible for the prosecution of standard criminal cases and under Section 17 of the State Cases Act and had the authority to decide whether to initiate proceedings on the basis of a FIR or charge sheet filed by the police.

Nabin pointed out that investigating cases from the refugee camps was not always easy. Unlike the APF, the Nepal Police was unfamiliar with the geography of the camps and did not know its way around the sectors and sub-sectors. 'All the huts are the same and there are so many streets. But refugee leadership help – secretly – they tell the police where to go, what street, and guide them.' The APF also provided assistance when the Nepal Police visited the camps.

In the 2009-2010 fiscal year, the Nepal Police in Damak apprehended sixteen refugees in connection with eight cases: two public offences, two rapes, one polygamy case, one murder, one allegation of fraud, and one arms and ammunitions case. When I asked Nabin if the police station kept records of the cases for which they had submitted First Information Reports in previous years, he replied that these were tied up in *pokha* – bundles of files and other documents – and that sorting through them would be an impossible venture. There were no computers in the station and all reports were written by hand.

Although only two rape cases were filed, Nabin believed that more must have occurred but that the victims did not come forward:

> Often, when crimes like rape occur, women don't say it openly. If family members know or find out, they also try to keep it a secret. Sometimes, they will bargain for money – the perpetrator will say: 'Please don't go to the police, we have to solve this within our society', and if the victims are offered enough money, then they may accept. Only if they don't accept, does the case come here.

If a serious case, such as a rape, is reported to the police but the victim decides to withdraw it, the police is authorised to file it independently. Nabin explained that under such circumstances, particularly if a suspect had been apprehended, the police had an obligation to file the FIR although attempts to withdraw cases were common:

Inspectors and Sub-Inspectors; those with lower ranks could neither investigate, nor file cases.

> First, people may come here and file the FIR. Then they go home, sit with the members of their family, and try to come to a consensus with money. Then, the next day, they come and say 'Sir, it is false, he did not rape me.' But once the case is filed, the police cannot release the offender – the case has to go to court. If there is no evidence, which is often the case, then the most important thing in court is the victim's statement. Once the case is filed with the prosecutor, the court will call the victim to take her statement, comparing it with her original statement. [In court] she may say: 'No, [my first statement] is wrong, the police wrote it themselves.' Then, the court will release the suspect for lack of evidence."[103]

As will be shown in subsequent sections of this chapter, the fact that a case reached the police station was no guarantee that a FIR would be written up. Despite Inspector Nabin's insistence that the police could not 'drop' certain kinds of cases, camp authorities knew that the police could be persuaded to mediate instead of filing a FIR. However, if a victim did want to prosecute a case, then a statement alone was generally not enough to win – she also needed physical evidence. Unfortunately, women who were raped often waited several days before going to the police, by which time most physical evidence was lost.

Nepalese courts

Nepal has a three-tier judicial system consisting of District Courts, Courts of Appeal, and the Supreme Court.

The courts of first instance are the District Courts, where the majority of criminal cases are filed. There are seventy-five District Courts in the country, one for each district. Jhapa District Court is responsible for all cases in Jhapa district, where six of the seven refugee camps are located. It is based in Jhapa's district capital, Chandraghadi, which also hosts the CDO office and the Refugee Coordination Unit's regional coordination office.[104] Sanischare refugee camp is covered by the Biratnagar District Court, Biratnagar being the capital of Morang district.

In addition to the District Courts, Nepal has sixteen Courts of Appeal – one in each *anchal* (zone) plus an additional two in the Kosi Anchal, which cover the densely populated areas around the Kosi river – the largest river in Nepal. Jhapa district is located in the Mechi Anchal, which comprises four districts. The corresponding Court of Appeal is based in Ilam, while that for

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[103] Interview with Inspector Nepal Police, Damak, Nabin Karki, 18 March 2010.

[104] Conveniently for those in need of a lawyer, the Nepal Bar Association's Jhapa headquarters are located in the same compound as the court.

Morang district is located in Biratnagar.[105] The Supreme Court (located in Kathmandu) controls all subordinate courts and has the power to declare law inconsistent with the spirit of Nepal's constitution.

District courts can receive cases from the Attorney General's office but may also be approached directly by petitioners. According to Bhupal Kattel, Program Officer of the Legal Aid Program for Bhutanese Refugees, the types of cases brought by refugees were roughly similar to those brought by the local Nepalese population. The bulk constituted divorce cases, as well as a few rape or polygamy cases and, very infrequently, a trafficking or murder case.

UNHCR's Associate Protection Officer estimated that approximately fifty percent of all cases brought before the Jhapa District Court involved refugees, but he did not have records of the total number of refugee-related cases dealt with by Nepalese courts.[106] The Protection Officer was unsure whether court records distinguished between refugees and non-refugees.[107] When I visited Jhapa District Court it turned out that they did not make this distinction and that statistics on the ratio of refugee to non-refugee cases were extremely difficult to come by. The District Court Registrar's estimate of the percentage of refugee cases was slightly lower than that of UNHCR. Of every hundred cases dealt with by the court, he believed that roughly thirty involved refugees.[108]

Other (quasi-judicial) institutions

In addition to the courts described above, a number of quasi-judicial bodies were also involved in dispensing justice and resolving certain types of refugee-related cases. Two such institutions were the District Administration Office and the Forestry Office, which were responsible for overseeing compliance with specific laws and had both adjudicated disputes involving refugees.

The cutting of trees from forested areas surrounding the camps was illegal in Nepal and a common source of disputes between refugees and the local population, particularly in the Beldangi camps.[109] Refugees used fire wood to supplement materials they received for cooking. The offence was punishable

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[105] Nepal Supreme Court website, http://www.supremecourt.gov.np/main.php?d=general&f=districtcourts, accessed 17 January 2012.

[106] Interview with UNHCR Associate Protection Officer, Ramesh Karki, 27 January, 2010.

[107] Interview UNHCR Protection Officer, Chizu Matsushita, 19 January 2010.

[108] Interview with Jhapa District Court Registrar, Ashok Kumar Basnet, Chandraghadi, 18 April 2010.

[109] Conversation with Harka Bahadur Rai, RCU Beldangi-1, 25 January 2010.

by fines and imprisonment. People were often caught on the spot by the APF but instead of dealing with such cases itself, the APF turned perpetrators over to the Community Forest User Group (CFUG) responsible for the local *samudayik ban* (community forest), which dealt with forestry cases.

The 1993 Forest Act authorises CFUGs to manage their own forest areas, to deal with forestry cases, and even to punish offenders (in the context of which they often worked together with the District Forest Office). For any given forestry offense, the relevant CFUG could decide on the sentence a perpetrator is to receive, which under the 1993 Forest Act may include a fine and/or a prison sentence of up to five years, depending on the severity of the offense. These CFUGs operated under different names. To Beldangi-based refugees, the most important CFUG was that which monitored the forest near Beldangi-1 (known as the 'Hamse Dumse') and on the other side of the river (known as the 'Triveni').[110] APF Inspector Guna estimated that on average, the APF apprehended between five and ten refugees for forestry-related offences each month, that the Triveni caught between five and ten, and that the Hamse Dumse caught the most – ten or more per month.[111]

The Chief District Officer (CDO) was introduced in a previous section as Director of the Refugee Coordination Unit. As the head of the District Administration Office, the CDO is the highest administrative officer at district level and reports directly to the Ministry of Home Affairs. Among other responsibilities, CDOs are tasked with maintaining law and order in their district. Their offices have quasi-judicial powers and can perform some court-like functions. CDOs have jurisdiction over arms and ammunition cases as well as public offences cases. This includes such examples as obstructing to civil servants in the performance of their duties, disturbing public tranquillity by committing battery or engaging in riots, printing or publishing obscene materials, damaging public or private property, behaving irresponsibly in public places, molesting women in public places, and causing terror or intimidating the general public by participation in riots, assemblies, demonstrations or by showing weapons.[112] Public offence cases were particularly common and many involved drunken brawls in public places. The majority were not reported to the police.[113] 'Booze is a chronic disease in Nepal', Police Inspector Nabin Karki said wistfully: 'not just among refugees'.

CDOs were authorised to hear public offence cases and issue judgments, which could involve a prison sentence of up to thirty-five days, a financial

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[110] Interview with APF Sub-Inspector Beldangi-1, Guna Raj Banija, 4 February 2010.
[111] Ibid.
[112] Some Public Offences (Crime and Punishment) Act 1970 (2066 amendment), Article 2.
[113] Interview with Inspector Nepal Police, Damak, Nabin Karki, 18 March 2010.

penalty up to Rs 10,000, or a demand that perpatrators compensate victims for injuries or damage to their property.[114] Harsher sentences could be imposed for violations of the Arms & Ammunition Act.

IV.3 Support for access to justice

To enable the Nepalese government to enforce the law more effectively in the camps, UNHCR provided both material and financial support to a number of Nepalese institutions. It constructed the APF base camps that were established in the refugee camps (which included accommodation for APF officers) and equipped them with furniture ranging from beds, desks, and chairs to kitchen utensils and television sets. UNHCR also provided the APF with stationary and other 'incidentals', such as additional kitchen utensils, upon request. In the past, UNHCR has also provided vehicles – it gave the APF three hi-Lux type pick-up trucks in 2007 or 2008 and donated one or two vehicles to the police in 1992. UNHCR covered fuel costs for the APF and the police, paid the APF's telephone bills, and provided the District Courts with a library of law books.[115]

Aside from the support it provided to Nepalese law enforcement and judicial institutions, UNHCR also assisted refugees in navigating these institutions. There were two major components to this assistance. The first was financial: UNHCR reimbursed the transportation expenditures victims incurred in going to and returning from court. Despite its importance, this form of compensation was rarely enough and many refugees who had received such reimbursements indicated that they had by no means covered all the costs they had been forced to make. Furthermore, fees were only reimbursed after they had been incurred, which presented a problem for those who lacked the funds to cover these costs to begin with and were unable to borrow the money from others.

A far more important aspect of UNHCR's assistance was the second component of its support to refugees in using the Nepali legal system. In 2003, UNHCR contracted the Nepal Bar Association (NBA) as an implementing partner. Interestingly, UNHCR's collaboration with the NBA was preceded by a similar partnership between the NBA and a Bhutanese organisation established in exile in 1999 – the Lawyers' Association of Bhutan (LAB). The LAB, whose members were Bhutanese refugees with law degrees, provided legal support to Bhutanese foundations and community organisations established in exile and to Bhutanese refugees who were arrested by the Nepalese authorities. To assist refugees with their cases before Nepalese

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114 ibid, Article 6(1).

115 Interview with UNHCR Associate Program Officer, Anup K. Aryal, 9 February 2011.

courts, the LAB reportedly established a working relationship with the NBA virtually since its inception, a good four years before the UNHCR-NBA partnership materialised. It is uncertain exactly for how long this relationship continued, but by 2010 all members of the LAB had been resettled and the organisation was no longer operational in the camps.[116]

Under the title 'Care and Maintenance for Bhutanese Refugees' the NBA provided free legal counselling and representation, especially for women and SGBV survivors. It was the only organisation that formally provided legal aid in the camps at the time of my research. The NBA also held periodic information sessions in the camp, during which its lawyers raised awareness on different topics related to Nepalese law. Some of these sessions were open to all refugees, whereas others targeted specific community based-organisations (CBOs) in the camps such as the Bhutanese Refugee Children's Forum (BRCF), the Bhutanese Refugee Women's Forum (BRWF), or the Youth Friendly Centre (YFC). Since 2009, NBA lawyers had a near-permanent presence in the camps. They held office hours in the camps from Monday to Friday except for Thursdays, when camp lawyers were required to attend team meetings in Chandraghadi. When the NBA's camp lawyers identified cases that refugees wished to file in court, they referred these to UNHCR. After an assessment of the case, UNHCR referred those considered eligible for assistance to the NBA's Jhapa office, where any one of a panel of twenty additional NBA lawyers was assigned to represent the case in court.

Reforming camp dispute resolution practices?

In its desire to ensure that refugees' human rights (and Nepalese law) were respected, UNHCR also invested resources in the mediation-based refugee legal system in the camps. Some of this energy was invested in measures designed to improve the dispensation of justice through the camp mediation system.

As mentioned in the previous section, mediation by the CMC was bound by rules contained in the CMC Terms of Reference, which were formulated by UNHCR and the Government of Nepal and which were subject to change from time to time. The draft 2010 CMC Terms of Reference described earlier in this chapter stipulated a number of requirements to which camp Counselling Boards (referred to as the Camp Mediation Service Centres (CMSC)) were required to adhere. *Inter alia,* they were required to maintain confidentiality, respect fundamental rights, and be independent and neutral at

[116] Conversation with the former Secretary General and founding member of the Lawyers Association of Bhutan, on 21 September 2010 during the second annual meeting of the Bhutanese Community in the Netherlands.

all times. Mediators were permitted to seek advice from the Camp Secretary and to invite the Gender Focal Point and UNHCR into discussions. When cases were settled, the Mediation Committee was required to provide a copy of the settlement to all parties and to keep one copy for its own records.[117] Apart from these procedural requirements, the Camp Mediation Service Centre was also mandated to ensure that mediators did not mediate 'illegal mediation cases', 'serious criminal cases', or 'SGBV incidents beyond the scope of the Counselling Board'. No further explanation was given as to what exactly this covered. Aside from these Terms of Reference, UNHCR also formulated additional rules for camp mediation, although its interference in this area was of a more recent nature.

While I spoke to UNHCR's Deputy Representative in Kathmandu about the UNHCR's approach to dispute resolution among the Bhutanese, she admitted: 'There is no clear policy on dispute resolution in camps, so it was very difficult. We looked at what were some of the problems with decisions and tried to improve them.' She pointed to Section 5.4.3 on traditional justice mechanisms in UNHCR's 2008 Handbook on the Protection of Refugee Women and Girls, and said: 'What it says is very nice, but how do you actually do it? The administration of justice, as you know, is the responsibility of the government, not UNHCR. But as in Thai camps, a lot of stuff goes on and the government is not necessarily interested in changing it.'[118]

Two months earlier, UNHCR's Japanese Protection Officer in Damak had told me that the refugee legal system was going through a 'transitional phase'. In 2009, UNHCR began working with the Center for Legal Research and Resource Development (CeLRRd), a Nepalese NGO specialised in mediation, to address refugee dispute resolution practices. The Protection Officer explained:

> The Nepalese legal system is insufficient for dealing with refugee cases. Police may not know what to do in the event of a rape case, despite trainings. Staff rotation among the police is very high. When a rape is reported the police sometimes encourage people to resolve the case by encouraging the perpetrator to pay compensation to the victim, rather than taking it through the Nepali legal system. Sometimes, victims and their families may prefer this, as [the outcome] is certain – they get compensation – and they don't know whether they will win the case in court. There is also the problem of how long [a court case] may take – people may not get a solution before their resettlement, or worse, resettlement may be delayed because of the on-going legal case.[119]

[117] Interview with RCU Information Officer, Nirmal Khanal, 29 October 2010.
[118] Interview with UNHCR Deputy Representative, Diane Goodman, 31 March 2010.
[119] Interview with UNHCR Protection Officer, Chizu Matsushita, 19 January 2010.

Little over a year later, her successor confessed that the situation was 'much worse than I thought' and said that she had put aside her hope of improving refugees' access to justice by focusing only on the Nepal Bar Association and the national court system. Instead, she felt that UNHCR should focus more on the mediation system.[120]

UNHCR's Associate Protection Officer confessed that for the first fifteen years of the existence of the Bhutanese refugee camps, UNHCR didn't really know what it was doing regarding community mediation. 'The mediation systems just existed' he told me, 'and there was no regard for any international standards'. For him, working with CeLRRd had been an eye-opener. As he explained it, CeLRRd showed him that what was happening in the camps was a long stretch from 'what was supposed to happen'.[121]

UNHCR stepped up its engagement with the camp-based mediation system after realising that cases involving serious sexual and gender-based violence were being mediated in the camps. In partnership with CeLRRd, a first round of trainings was held in November 2009 for Counselling Board-level mediators in all of the camps. A few local villagers were permitted to attend as well. The training focused on procedural requirements for mediators and incorporated Q&A sessions with participants to gain insight into actual practices in the camps.

The sessions gave both CeLRRd and UNHCR a better overview of camp mediation practices, and led UNHCR to conclude that the refugee legal system was in need of change. The first change on which the agency decided was that only trained mediators should mediate cases. All mediation was to take place at the level of the Counselling Board (renamed the 'Mediation Sub-Committee') and sub-sector heads and sector heads were no longer to be involved in the mediation process as they had previously been. Refugees were informed of these decisions through a bulletin posted in the camps and camp management was informed separately.[122] There were other rules too. Mediators were not to scold disputing parties and no punishment could be meted out.

The new Protection Officer admitted that she was uncertain to what extent these rules were followed or whether they would be adhered to in the future.[123] Camp Management Committees (CMCs) from the different camps had agreed with UNHCR that work on the camp mediation system was necessary, but she was not sure what they meant by this or how well they received UNHCR's ideas of reform.

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[120] Interview with UNHCR Protection Officer, Julie Ward, 21 March 2011.
[121] Interview with UNHCR Associate Protection Officer, Ramesh Karki, 01 April 2011.
[122] Interview with UNHCR Protection Officer, Chizu Matsushita, 19 January, 2010.
[123] Interview with UNHCR Protection Officer, Julie Ward, 21 March, 2011.

Staff shortages prevented UNHCR from monitoring the camp legal system more closely.[124] Counselling Boards were not monitored regularly in any of the camps (if they were monitored at all) and until the end of my fieldwork, UNHCR had very little oversight of what went on in mediation sessions. When I left the camps in 2011, the agency was in the process of liaising with the Nepal Bar Association (NBA) in the hope that it might be able to play a role in monitoring mediation in the camps. It was also in the process of hiring a dedicated staff member within its Protection Unit to work on access to justice and the refugee mediation structure.

IV.4 Navigating legal structures

In the previous sections of this chapter the actors and institutions involved in the resolution of refugee disputes were introduced, giving an overview of their roles and responsibilities and the types of disputes in which they were involved.

In this section, examples of the types of legal paths that were followed in three criminal cases that arose in the camps will be presented. As these cases will show, refugees did not resolve cases through the camp mediation system or Nepalese judicial system alone. They could approach a quasi-judicial actor or forum, such as the police or Refugee Coordination Unit supervisor. Sometimes, they resorted to a combination of systems. There was substantial interaction between mediators and authorities from the camps, the APF, and the Nepal Police. A single case could involve actors from different legal jurisdictions, either at different moments in time or simultaneously. It is here that the 'Snakes and Ladders' metaphor becomes valuable. Despite official rules regarding jurisdiction and formal processes through which cases 'ought to' progress through different legal systems, reality was more flexible and messier than it was portrayed. Because of the ability of both disputing parties and mediators to forum shop (von Benda-Beckmann 1981), cases could move either up (ladders) or down (snakes) the hierarchy of the camp mediation system.

The case descriptions contained in this chapter are based on transcriptions of lengthy interviews with victims of crime and camp authorities and illustrate the agency that both disputing parties and camp authorities had in influencing both the choice of forum and the way in which cases were handled.[125] They highlight the benefits of social connections and information, which could

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[124] Interview with UNHCR Associate Protection Officer, Ramesh Karki, 1 April 2011.

[125] The majority of these interviews were conducted in Nepali with the assistance of an interpreter. Mediation sessions were also attended together with an interpreter, who interpreted simultaneously. All citations are based on transcribed recordings. As noted in Chapter II, all names used are pseudonyms.

enable refugees to 'skip' steps in the mediation hierarchy. The presentation of these cases will be followed by an analysis of the nature of the implications of institutional pluralism in the camps and the relationship between refugees, refugee mediators, and Nepalese law enforcement actors.

A theft and a basket

Kamana was a slim woman in her late forties with a kind, upbeat face. She lived in Beldangi-2 with her husband, three of her four sons, and two daughters-in-law. Because her only two brothers and three of her sisters had passed away, Kamana took care of her mother, who lived with her. Kamana's fourth son resided in the hut next door with his wife and newborn baby. Both Kamana's daughters were married and lived in their husband's households.

To help support her family and pay back loans she incurred, Kamana worked outside the camp. One day, after returning from the *charka* hall where she earned money by weaving wool, she found that her house had been broken into and that she had been robbed. She began to explain what happened:

> The money they stole was money we had brought from Bhutan... I had 40,000 IC [Indian Rupees] when I came from Bhutan. We came from very far and could not travel with a heavy load, so we only brought our children and the money. We also earned some money here. We kept it [in a locked box inside the house] for the education of my children and for their marriage ceremonies. All that money was taken… all the money we had saved to give my children for their education was stolen.[126]
>
> There are so many small kids around here. Who shall I blame? Whatever things are lost, and whatever the pain we gained, it always stays with us. All our cash was taken, our clothes were strewn everywhere. When my sons and daughters saw, they came to the weaving hall to tell me. I didn't know how fast I could get here – maybe I flew. When I reached my house, I found everything scattered.
>
> At the time, I felt that we had to report what happened to the sub-sector head. He told us that no one had seen the thief and that he didn't know who had taken our money. When we reported to him, he took us directly to the APF. Had the camp authorities caught the thief, they might have solved our problems but they did not know who took the money so they could not do anything.

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[126] Schooling was only provided for free in the camps until class 10, and later, until class 8. Students wanting to complete Plus 1 and Plus 2 (equivalent to 11th and 12th grade) had to attend Nepalese schools outside the camps.

The sub-sector head advised us to place a basket outside our house. The authorities came themselves; they made the basket and hung it outside. They thought that somebody would return the money, that they would put it in the basket… The sub-sector head and sector head, as well as some respected people from this unit, they went hut-to-hut and told everyone that money had been stolen from us and that if they were responsible, to please return it. They said that we had a basket, and that they could put the money there.

Some old people, they keep a basket outside when something is stolen from their house so that the culprit can come and return it. If they see that the person whose money was stolen is facing problems, then out of love for that person, the thief may feel kindness and return it by putting it in the basket. In our culture, according to our tradition, if a relative has stolen money but returns it and puts it in the basket, it is not counted as theft.

There was also a theft in Sector C – C-2, once… A gold ornament was stolen, jewellery. They suspected someone who had visited the house. The people decided to put a basket outside and thought that if the culprit felt fear, he would put the ornament in the basket. And the next morning, the owner got his ornament back – it was in the basket.

We kept the basket outside for one night but when we went to look at it [the next day], there was nothing inside it. Then the sub-sector head told us to look out to see if anyone was spending a lot of money in the shop. Everyone was paying attention for us. They told us to report the theft to the police and the camp authorities. We reported to the police station [the APF base camp] and the camp authorities, telling them that if anybody was found using a lot of money, we hoped that they would arrest them. But even by doing that, we didn't find anyone.

We have so many children… After the theft I had no money left and I felt like I went mad. My husband is simpler than I am – even though I am ignorant and illiterate, I handle all the matters of our house. I was very sad and because of what happened I left the camp for fourteen or fifteen days, staying in different places. Even after I left, we did not find out who had taken our money. I thought that [rather than returning it] somebody would just keep it. When people get money, they don't throw it away – I only realised that now.

Then, after that, my mother also lost some money. It was not a big sum – just between 1,200 and 2,500 Rupees – but up until now, we haven't found it.

After being robbed twice, Kamana went to an astrologer who told her that her house would be robbed again. Despite the warning, Kamana stayed put in her hut in the camp. Just as the astrologer had predicted, she was robbed one more time. She and the other grown-ups in the house had gone out to attend a wedding.

> I went there to my brother's son's daughter's marriage. While we were gone, our box was broken into again. While we were attending the marriage ceremony, there were only small children at home, sleeping, and when we came back we found that the box had been broken and the money was taken. Now that it is time for the resettlement process, I don't think that anyone will return it.

Kamana did not report this last theft to her sub-sector head. She explained that did not see the point, as the authorities were unable to help her get her money back the first time, even though a great deal of money had been stolen.

> This time, it was just a small amount. After that, I thought – there is no money left, just fifteen days' worth of rations. If that were to be stolen as well, I thought I would feed myself by going door-to-door to beg. They may have thought that I had money because I had so many children, and that I would save for their education. But I had to borrow from other people – as a debt – and I paid for their education in that way.

Kamana added:

> In Bhutan, we lived very far apart. We did not know that people stole things. We used to wear different kinds of ornaments, jewellery, and we left our houses open, but people did not come to steal from us. In Bhutan, even old people wore their ornaments – they wore their ornaments and stayed at home, but there was no fear of theft… Here in the camps, if there is money, a thief will thieve it. We were very simple, and we did not know anything. We kept our money here in the house – that is why they got a chance to steal it… But education, what my children learn and gain, that cannot be taken by anyone.

The case of the stolen sugar

Theft was a very common problem in the camps. Many thieves were never identified, leaving victims without remedies. Where perpetrators were known, however, solutions were possible. The case in which Bishnu attempted to resolve the problem of sugar theft by her sub-sector head shows a very different approach than that outlined above, and is a good example of the ways in which personal connections facilitate access to higher-level

authorities and can be used to expedite processes or skip steps in the dispute resolution hierarchy.

Bishnu was a bold, smart girl in her twenties who worked in the Admin Sub-Committee of the Camp Management Committee. Somewhat uncharacteristically for a Bhutanese girl, she laughed loudly and wore shorts whenever she felt like it, regardless of social norms that found this inappropriate. She was single and when she learned that mother was not interested in resettlement, Bishnu approached the RCU and UNHCR Field Assistant and told them that as the eldest child in her family, she should be permitted to go by herself. When I asked her if she was scared to go alone, she replied: 'No, I don't feel scared, I have so many friends there [in the USA]…'

As she spoke, she combed my hair for lice, and when she was satisfied that I had none, she wove it into braids. Despite her normal bravado, she began speaking slowly, hesitantly.

Bishnu first noticed that her sub-sector head was keeping her sub-sector's sugar rations for himself when people in her sub-sector complained that they had not received their sugar rations two distribution cycles in a row. Very few of her own relatives resided in the part of the camp where she had been living since 1992, but she had a good relationship with her neighbours, who felt like relatives to her. When Bishnu's mother, who was unaware that the sub-sector head was implicated in the theft, approached the sub-sector head to complain he showered her with verbal abuse.

Bishnu, who witnessed this tirade, decided to intervene and rebuked the sub-sector head for the way he was speaking to her mother. The sub-sector head did not take kindly to her meddling. He responded by cursing at her, hitting her, and tearing the front of her vest.

It was a Saturday. Camp offices (including the Counselling Board) were closed but to Bishnu, the authorities were always accessible. They were her colleagues; she had many of their numbers saved in her mobile phone. Because in her case her sub-sector head *was* the perpetrator, the first official level of the mediation hierarchy was effectively out of the question. Instead of turning to the sector head, one step higher up the hierarchy, Bishnu thought it would be more effective to go straight to the Camp Secretary. When she phoned him and told him about the stolen sugar and the fight, the Camp Secretary advised her to call the APF.

Bishnu called the APF, who asked her to come to the base camp that evening to explain what had happened. The sub-sector-head's relatives tried to convince her not to go but she did not listen. After hearing her story and seeing her torn vest, the APF went straight to Bishnu's sub-sector, arrested the sub-sector head, and brought him to the base camp where they beat

him until he confessed to the fight. Tearing a girl's clothes was a matter of defamation. Bishnu explained: 'I am an unmarried girl. What he did to me may create problems for me in the future. When the time comes for my marriage ceremony, people may bring up these things that happened and speak negatively of me.'

At the APF base camp, the sub-sector head apologised to Bishnu and asked her to forgive him. He told her that he was drunk and that he had not known what was happening, but that he knew what he did was wrong. Bishnu replied:

> 'Ok, so you did what you did to me, but where did you take the sugar? Tell me that.' He didn't answer, but said he didn't take it. I told him: 'Go to the Ilaka office – the Damak police station – and I'll put another case on you. Go and stay there.' I told him that he had better distribute the sugar, and that if I would find out in the future that he had stolen it, things would be very difficult for him. He did not speak but asked me to excuse him. Everybody asked me to settle the case there, at the base camp. He had 9000 Rupees with him, and *shir uthaera* – did *sir uthaune* – by giving me those 9000 Rupees. The APF wrote the settlement, which said 'Next time, I won't do these things to my sister…' I told him: 'You gave me this much money, buy the sugar and let's distribute it to the public.' He said no. Of the money he gave me, I gave 3,000 Rupees to the APF, and another 80 for them to make the agreement paper. I also bought tea for all the people who were there to mediate the case.

At first, she refused to accept it. The sum she had been offered was inordinately high. When the sub-sector head's family insisted – she believed they were afraid the case would go 'higher up' – she accepted the money. As a gesture, she gave Rs 3,000 to the APF.

> Actually, the APF was saying that he [the sub-sector head] should be sent to prison and kept there for two or three months. But the children were crying, and his wife was also crying, so I said: 'Don't send him.' When the case was over, I returned to my house and was sitting outside. One of my neighbours' children came and told me that the SSH and SH had brought sugar by bicycle. It was a silk-pack sack of sugar. That day, they distributed it to everyone.

Syringes in Beldangi-2

In the course of their efforts to fulfil their law enforcement/judicial functions in the camps, refugee leaders sometimes turned to Nepalese authorities themselves, as the drug case described below will illustrate.

Suraj Rai was the youngest sector head in Beldangi-2 but had been working as a camp authority for several years – first as sub-sector head and then as sector head. Despite his age, he was well-respected by the people from his unit. As we spoke about mediation, Suraj told me that he had recently managed to solve a problematic drug case. It involved a 'guy' from his sector – Kumar Magi – who had been selling syringes filled with drugs. He had been on Suraj's radar for some time but Suraj lacked evidence. Then, one evening, Suraj received a phone call from Kumar's sister who complained that she felt uncomfortable staying in her house any longer because her brother was there with his friends, naked and injecting drugs. Together with the sub-sector head, Suraj headed straight to Kumar's house where they found Kumar with syringes, marijuana seeds, some other drugs and a stolen mobile.

Suraj told me about the steps he took to resolve the case:

> Before bringing him to the Armed Police Force (APF), we took him to the Community Watch Team (CWT) office. When he would not tell us anything there, we took him to the APF. There, he explained everything; we didn't even need to beat him. We arrested the others who were involved at 02:00 a.m. that night. We found two weapons with them – *khukuris* – as well as some drugs. During the inquiry, we inspected their bodies and found that those guys were also injecting. When we confronted them, they admitted that they were druggists.
>
> During the inquiry at the APF base camp, the boys said that a woman from outside the camp was involved. She stayed near the *bange* [local bazaar] where she sold drugs. When they said that, the APF told us that this case could not be mediated in the camp because it involved weapons and drugs.
>
> At 7:30 p.m., the APF called for a vehicle and sent the guys to the Damak police station. The next day, they told us to come to the police station too but the case was not pursued. Then, on the third day, we went there again. Seven people had been arrested, including that lady. When we arrived, the lady was not there… Maybe she paid some money to the police to let her go…
>
> We sat in a mediation session with the Police Inspector, the Gender Focal Point, myself, the sector head of Sector C, and the family members of those guys. We discussed there but the main culprit was that lady from the *bange*. She would buy drugs from India and sell them; she gave some to Kumar to share them in the camp with other drug users. Without her, the main culprit in the case was gone. We felt: 'What is the use, then, of keeping that Kumar there?' He had not been involved in this type of case before. We asked the

> police why they released her. The Police Inspector said that he was in Chandraghadi that day and that somebody else must have done it. When we asked another fellow from the police, he also said that he was in Chandraghadi and that they didn't know who had released her. Everybody was blaming each other and they did not tell us what was really going on, they did not listen to us.
>
> The police demanded a Rs 10,000 fine for each person who was going to be released. We tried to reduce the amount of money the police asked for, telling them: 'You have to catch that lady and punish her; you should not leave it like this …' but they wouldn't talk about her so we said: 'What is the use of keeping these guys here if you don't arrest her?' When we told the police: 'We'll give you Rs 2,500 for these guys', they didn't agree and in the end, they charged Rs 3,500. The parents of three of the youths paid the money and took their sons home. The other three had been involved in drug and weapons-related incidents before – twice involving weapons such as *khukuris* – and their parents said they were not willing to accept them back in the camps.

IV.5 Whither the twain shall meet?

Procedural rules about how to write up and file applications were followed strictly in the camps, as were rules about how agreements or compromises should be written up. Rules about the hierarchy and sequence of mediation steps were followed less strictly but were formalised to a sufficient extent for people to be referred back down to the 'appropriate' authority if they approached the wrong one.

As the cases have shown, there were many instances in which the dispute resolution hierarchy was applied flexibly and I encountered many examples of people who, like Bishnu in the case of the stolen sugar, did not follow the 'official' sequence of steps.

What this discussion of camp disputes has also revealed is that the distinction between resolving cases through either the camp mediation system or the Nepalese legal system was nowhere near as simple as that. Instead, in some examples the two could be construed almost as a continuum – people could move up and in certain cases, back down. The camp and Nepalese legal systems could overlap in a single case, either because people actually resorted to both systems, or through the (implied) threat of doing so.

Nepalese law enforcement as extension of the mediation system

While statistics show that the majority of refugee cases were resolved through the camp mediation procedure, the cases described above indicate

that refugees did not eschew the Nepalese legal system completely. As illustrated by the chart below, just over twenty percent cases were ultimately resolved by Nepalese authorities such as the APF, the Nepal Police, or the District Court.[127]

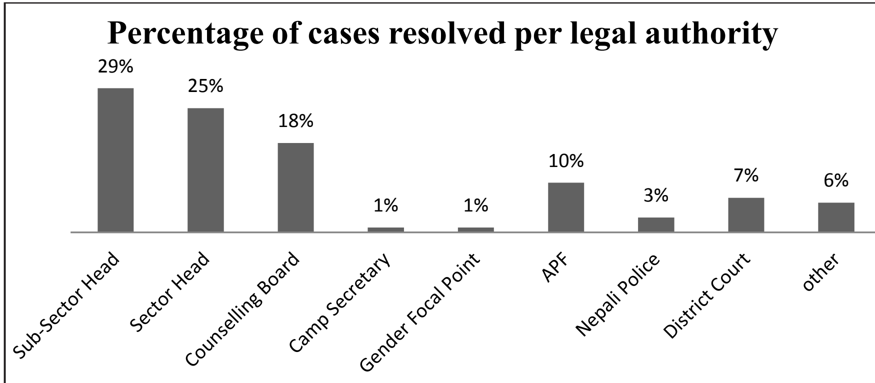

Figure xi: Percentage of cases resolved through different legal authorities[128]

Nepalese law enforcement agencies and judicial or quasi-judicial institutions were involved in refugee cases in various ways. Some refugees found their way to Nepalese law enforcement officials at the advice of camp authorities, relatives, or neighbours. Others were familiar with Nepalese institutions already and felt comfortable approaching them directly.

Disputing parties and mediators both 'shopped'. When they had the means, information, and were well enough connected to do so, users actively engaged in forum shopping – choosing or circumventing specific legal actors or venues to their advantage. Mediators, as 'shopping forums' (von Benda-Beckmann 1981), actively participated in this process – both by encouraging (or discouraging) particular legal paths or solutions, by forwarding cases they did not feel equipped to deal with (or cases with which they could not be bothered), and by involving other authorities as they saw fit. Mediators had competing incentives to discourage cases from being forwarded. While solving cases themselves enabled them to accrue prestige, it also exposed them to the danger of retaliation.

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[127] Given that the Armed Police Forces (APF) did not have formal authority to adjudicate cases, cases resolved by the APF refer to informal mediation by the APF in the APF base camps.

[128] N=438, out of a total of 439 cases that were reported to authorities (1 missing value).

Nepalese authorities shopped too. When the APF in Beldangi-2 decided not to detain refugees in the APF cell but to refer them to the safe room in the CWT office instead, it declined to take responsibility for the watch and care of these individuals (or the reaction this might provoke). The APF referred cases to their civil counterparts at the Nepal Police, mediated others, and turned others down altogether.

Sometimes, as in the Beldangi-2 syringe case, Nepalese law enforcement agencies were called upon directly by refugee mediators or camp authorities. For certain types of cases – social offences that they felt they could not control, cases they considered 'dangerous' or difficult to handle, or in cases that they believed they would be unable to bring to a successful conclusion for other reasons – sub-sector heads, sector heads, and others actively sought the assistance of Nepalese authorities. Refugee authorities also forwarded cases to Nepalese authorities when they feared that mediation would lead to an unenforceable outcome, for instance in the case of serial or repeat offenders who had already apologised and promised not to re-offend multiple times.

Refugees' experiences with Nepalese authorities were mixed. As Bishnu's case showed, the threat of sending a case to the Nepal Police could serve as pressure encouraging perpetrators to reach a compromise in camp mediation sessions. However, Nepalese authorities were not necessarily more effective than camp authorities. The majority of thefts went unsolved because camp authorities, the APF and Nepal Police were equally incapable of identifying perpetrators. Like many others, Kamana was never able to recover the money that was stolen from her house. Disillusioned, she feared for her safety in the camps:

> Staying here at night, they may use fire and kill us. They rob us and steal our things. If we earn some money, they come in the night and take it. If we wear gold jewellery, they come and steal that too… I thought that our money would be returned, that somebody would put it in the basket. But if wealth comes to very bad persons, they will not return it to us.

When her house was broken into a second time, Kamana turned neither to camp nor to Nepalese authorities. She had lost faith in their ability to help. For Suraj, cooperating with the APF was a positive experience. In front of the APF, the druggist from his sector admitted what he had done, something he had been unwilling to do when Suraj and others had taken him to the Community Watch Team (CWT) office. However, when it came to the Nepal Police's handling of the case, Suraj and the other camp authorities who were present at the mediation session were struck by the unfairness of the situation. It did not seem just that culprits from the camp were punished when the local woman who provided the drugs and enticed them to sell in the camps in the first place, was released without charges or investigation.

The involvement of Nepalese authorities did not necessarily imply a move outside the bounds of the mediation spectrum. As in the stolen sugar and syringe cases presented in this chapter, Nepalese officials resolved many refugee-related disputes through mediation – the APF, if it did not simply forward cases to the Nepal police, almost exclusively so. By doing so, these actors functioned as *de facto* extensions of the camp system. The transition from the camp mediation system to Nepalese law enforcement agencies was smoothened by both sides. Refugees invoked the state legal system to exert pressure upon perpetrators even when there was little intention of actually taking a case to court. When they did seek out Nepalese authorities, they often requested their assistance with mediation rather than following official procedures. Such requests were not alien to Nepalese authorities, who often complied. They shared the same cultural tradition of conciliatory dispute resolution and received similar requests from Nepalese villagers.

The initiative to mediate rather than resorting to official procedures could also come from Nepalese authorities themselves. This might happen for political reasons, as in the conflict between refugees and doctors from the Association of Medical Doctors Asia (AMDA) in Khudunabari camp over the death of a sick refugee, which the RCU Information Officer mediated because he thought it was best 'not to upset' the refugee community by involving the police. Convenience undoubtedly also played a role. Even when the parties to a dispute were Nepali citizens instead of refugees, police often chose not to register cases because they faced logistical challenges in remote locations, or lacked investigative capacity (Michel, Walsch, and Thakur 2009: 8-9). Handling certain cases informally, as in the syringe case discussed in this chapter, was less time consuming and potentially more lucrative than investigating a claim and filing an official report.

Although the drug case involving Kumar was mediated just as it might have been in the camps, the involvement of the police increased the pressure on refugees to settle. The consequences of not doing so were more severe: had they not paid for the release of Kumar and the two others the youths would have been sent to prison. Even though the police were in an obvious position of power, refugees still had room to negotiate and used this to their advantage. Well aware that the lady from the *bange* had been unfairly released, the sector head and others refugee leaders present at the mediation rejected the idea of the boys being taken to court. Instead, they agreed to the proposal of paying a fine for their release. By pointing out the unfairness of punishing the refugees but not the Nepalese woman behind the case, they were able to substantially reduce the fine proposed by the police.

Personal relationships: Where public and private roles collide

One explanation for the multi-stranded connections between the State and

camp level legal systems can be found in the connections between authorities from both systems. Legal officials are never only officials; first and foremost, they are people –who live in specific settings where they interact with and establish relations of dependence with others.

The establishment and maintenance of personal relationships between Nepalese officials, local or Nepalese aid workers and refugees was facilitated by the fact that they shared the Nepali ethnicity and spoke the same language. They celebrated the same holidays and when refugees left the camps to complete their education in the surrounding areas, sometimes attended the same schools. I even met aid workers who told me that in primary school, they had been taught by Bhutanese teachers.

Physical proximity also played a role. Because the Armed Police Force (APF) bases were situated inside the refugee camps, contacts between the APF and refugees were frequent. The officers and soldiers who guarded the camps worked, lived and slept in their base camps. They saw the same refugees every day. Despite regular staff rotation, it was not uncommon for the APF to build friendships and other relationships with the refugees whose security they were charged with protecting. One of the first observable features of the APF base camp at the entrance of Beldangi-2 and Beldangi-2 Extension camps – once you looked past the barbed wire fencing – was a badminton court. I passed the base camp almost every day and often saw refugees and APF soldiers play together. They also shopped at the same markets and APF teams were often invited to part take in inter-sector camp sports competitions such as football, volleyball or badminton.

In Beldangi-1, a small 'security village' had been constructed inside the APF base camp. It housed two refugee families that had received death threats in the camps. When I visited the village in February 2010 to speak to one of its residents, the APF Sub-Inspector came to bring us tea. He joked around jovially with the man I had come to see. When I commented about this later, he answered: "Of course! We speak the same language and have the same customs. We are like brothers and sisters."

Refugees cultivated and invested in these relationships, which could be beneficial to them in many ways. One family I befriended cooked for aid staff and the RCU Supervisor on a regular basis. Their house was immaculately kept, with hand-woven welcome mats hanging from the tops of doorways and lining the bottom rims of bed sheets, painted walls, and space for flower pots outside the front door. One day, while I was eating *daal bhat* with the lady of the house, she showed me the newly connected electricity cable in their hut. With the cable, she lit a few lamps and powered five or six different mobile phone chargers, mobile phones attached. There was a light in every room, as well as back-up battery-powered lights for moments of load-

shedding. As she admired her switchboard, the lady of the house remarked: 'We used to invite the RCU to our house for lunch. My husband [who is a sub-sector head] works with him. But if he knew we had a line then he would scold us very badly or make us remove it. So now I am no longer inviting him over to lunch.'

Refugees who lived outside the camps also established relations with Nepalese authorities. One man, whose apartment on the Damak-Beldangi Road I passed every day on my bike ride to the camps, lived on the second story of a house belonging to a Nepali family. After the murder of R.K. Budathoki, former leader of the Bhutan People's Party (BPP), he felt insecure in the camps and moved to Damak. There, he quickly befriended Nabin Karki, the Inspector of the Nepali Civil Police. He had Nabin's private mobile phone number and called him when he feared trouble or noticed suspicious activity outside his house.

Connections that formed in Nepalese officials' private lives also intersected their public lives. They influenced attitudes and behaviour not only towards individual refugees, but towards the refugee population as a whole. This process went two ways – personal relationships also affected refugees' attitudes to Nepalese authorities. Refugees' experiences with individual officers influenced their decisions about who to turn to for remedies for their grievances.

Most refugees felt that the APF treated them more fairly than the Nepal Police. One sector head divulged:

> In the seven different camps, if we go inside these [APF] base camps they treat us equally to the people from outside [the local community]. But if we go outside the camps, we find that they treat us differently. They do not listen to us seriously. Camp-level authorities, they treat us in a very good manner. This includes the APF – we interact cordially. But at the Damak police station, the police inspector does not want to interact with us in a friendly way. And if we talk about other authorities… I have not gone up to the CDO level, but I think that they also discriminate against us.[129]

Contact and familiarity, as well as a mandate that specifically entrusted the APF with the refugees' security, made a difference in refugees' perception of this authority. It should not come as a surprise that a far greater percentage of cases was handled by the APF (10 percent) than by the more distant Nepal police (3.2 percent).

[129] Interview with sector head, 14 February 2011.

Whose jurisdiction? 'Simple' versus 'serious' cases

Amidst these connections between legal structures, and between actors from different legal systems, confusion arose about who was responsible for resolving what type of incident and where the boundaries of jurisdiction lay. It quickly became apparent that refugees, mediators, UNHCR staff, and government officials had diverging expectations of what cases were to be settled at camp-level and which should be forwarded to the Nepalese authorities.

According to UNHCR's Protection Officer, trained mediators could only mediate 'simple' cases. When I asked her what this meant, she described these as 'non-criminal, non-SGBV-related cases'. She pointed out that UNHCR had had some problems with the Camp Management Committees in the past, because they had been handling cases that 'they shouldn't be dealing with', including serious SGBV cases such as rape. 'UNHCR discourages this', she emphasised. Where UNHCR considered all SGBV-related crimes to be serious and unsuitable for mediation through the camp system, refugees normally interpreted domestic violence cases as 'simple' quarrels between husbands and wife. Unless they involved serious bodily harm (and sometimes not even then), these cases were almost always addressed through the camp mediation system.

In deciding whether or not a case could be resolved through mediation, refugee mediators used similar terminology and often distinguished between 'simple' cases that could be solved at camp level and 'serious' or 'dangerous' cases that could not. Each camp authority with whom I discussed this distinction interpreted it slightly differently. Their understandings did not necessarily align with Nepalese law or even what might have been considered serious cases in Bhutan. A former *mandal* who lived in Beldangi-2 had worked as a mediator in Bhutan as part of his role as administrator. He said that in Bhutan, he had dealt only with 'simple, simple problems'. He included domestic quarrels and domestic violence in this category but not quarrels between neighbours: 'fighting between two persons from different families had to be sent to the police, we could not solve these at the *mandal* level. We could solve fights between husband and wife, if they were very simple. If the case was very big, and if it involved major injuries, then it had to be sent to the police.'[130]

In the camps, in contrast, one sector head explained that he considered quarrels between neighbours, fights between children, and *lin-din* (money lending disputes) cases to be minor cases.[131] Another said that he had been

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[130] Interview with former Bhutanese *mandal*, Beldangi-2, 2 March 2011.
[131] Interview with Sector E sector head, 14 March, 2011.

told by 'the officer' not to mediate rape cases or cursing cases at the sector level, but that he mediated everything else. After thinking about it some more he told me that he did not solve domestic violence, polygamy and theft cases at the sector level either.[132] Still others described serious cases as those in which the parties to a conflict were unable to reach a compromise.

UNHCR's Protection Officer believed that there were two major reasons for which refugee legal systems went beyond their jurisdiction with the type of cases they addressed: (1) people did not know that they should not deal with such issues through traditional, oral mechanisms, and (2) there was a strong preference among the refugees for resolving issues – regardless of their nature – within their own community.[133] It probably did not help that there was no single comprehensive definition of cases that could and could not be addressed through the camp legal system, as a result of which rules to this effect were unclear and ambiguous. Even in rare examples where external rules were unambiguous, however, they were not necessarily respected. Camp authorities were unequivocally prohibited from mediating rape cases and all CMC members to whom I spoke stated on the record that rape was a serious crime that had to be reported to the police. Nevertheless, rapes continued to be resolved through mediation at the camp level. UNHCR staff told me that they were aware that it happened, as did the APF. In February 2010, APF inspector Guna Raj told me of a rape case that had recently been mediated in the camp in Beldangi-1. The APF had apprehended the suspect and brought him to the Nepal police but the victim's family had not wanted to register the case. He explained that they were illiterate, poor, and did not receive rations (they had missed the last registration round that would have entitled them to assistance). In short, they had had neither the means nor the knowledge to pursue a case in court.

There were also other examples in which mediation was imposed on victims against their will. In early 2011, one of my research assistants urged me to go and visit a woman in Beldangi-2 Extension. When I went to see her, she confided that she had been raped three times, the last time very recently. The first time it happened, the perpetrator had broken open her door and held a knife to her throat so that she would not scream. When she reported the rape after it happened she was told to speak to the Gender Focal Point. Unfortunately for the woman, the Gender Focal Point came from an influential family in the camps and was a relative of the accused. The Gender Focal Point pressured her to agree to mediation at the Counselling Board and the perpetrator was able to evade justice by apologizing and offering some minor compensation. When the woman had refused to accept the outcome,

[132] Interview with Sector A sector head, 14 February 2011.

[133] Interview with UNHCR Protection Officer, Chizu Matsushita, 19 January 2010.

the Gender Focal Point left her with no choice. After this incident, she was raped again a second and a third time. Both times, her sector head refused to listen to her. She tried to visit the UNHCR Field Assistant, but because she was unable to articulate herself clearly he did not pay attention to her. She told me that she had not known where else to go. Unable to speak with the FA and unheard by her sector head, she lacked legal recourse for both the first and the subsequent rapes.[134]

IV.6 Conclusion

This chapter has introduced the camp mediation system and a number of Nepalese law enforcement actors as the main parties/forums involved in dispute resolution among the Bhutanese refugees. I have shown how, through early initiatives to self-organise and continuing participation and partial autonomy in camp administration, the mediation system in the camps was shaped largely by refugees themselves. Their past experiences with resolving disputes in Bhutan, and in Nepal before that, informed the structural and process-related characteristics of the camp legal system.

At the time of my research, the system continued to be informed by tradition and customary norms, which played an important role in the camp. Many elements of camp mediation practice described in this chapter can be traced back to the ways through which disputes were resolved among the Nepali Bhutanese in Bhutan. This included, for instance, the practice of handing out written settlements, and the integration of the mediation hierarchy within a hierarchically established system of public administration. Some features, such as the participation of the *pancha samaaj*, can be traced even farther back to historical practices in Nepal that predated migration to Bhutan. At the same time, the system has adapted to take into account the specificities and the requirements of the Nepalese context.

In the Bhutanese refugee camps, the mediation system was embedded in a setting marked not only by a plurality of simultaneously applicable legal regimes, but also by a plurality of forums through which disputes could be addressed. In some settings, legal pluralism (and the partial institutional pluralism that follows) leads to competing claims over jurisdiction (Thomas 2013: 233). This was not the case in the Bhutanese refugee camps. Whereas a semantic distinction can be made between various categories of legal authorities operating in the camp landscape – refugee authorities, Nepalese authorities, and others (i.e. the UNHCR Field Assistant) – these

[134] With her permission, I raised this case to UNHCR. UNHCR staff went to visit her house and later told me that the woman and her children would receive a house in an area of protected living units or that were being constructed in Beldangi-2 Extension and were nearly completed by the time of my departure.

categories were strongly interconnected in practice. Intuitively, of course, a law enforcement agency or quasi-judicial authority is not the same as a legal forum. However, these authorities became *de facto* legal forums when they chose to mediate cases. Through their involvement in the mediation process, certain Nepalese authorities were integrated into and became extensions of the refugee dispute resolution system, depending on the issue at hand.

Nepalese law enforcement and camp officials appeared to accept each other's roles and indispensability in maintaining peace and order in the camps. The Nepal Police realised they had no power when people chose to withdraw a case for mediation in the camp, even if this concerned rape cases. When the police filed cases in court against the victim's wishes, victims changed their statements and witnesses failed to show. The police knew that many criminal cases were never reported to them but they had little reach in the camps and were dependent upon camp authorities for assistance in finding suspects. In turn, camp authorities contacted Nepalese law enforcement agencies – normally the police or APF – if they encountered a 'dangerous' situation or were unable to successfully resolve a case at the camp level. The relation between legal systems was frequently a relatively fluent one and there were situations in which a mix of camp and Nepalese officials mediated cases together. All evidence indicated that Nepalese officials experienced this as relatively natural – they told me about interaction between the Nepalese and camp legal systems without raising an eyebrow and pointed out more than once that local communities used a similar process.

As the cases presented in this chapter illustrate, legal paths are flexible and there is ample room for interaction between authorities from the camp and state legal systems at different points in a legal procedure. More than one legal system can come to bear upon a given case. Both Bishnu's theft case and the police mediation of the Beldangi drug case are clear examples of involvement of the Nepalese legal system without leaving the bounds of 'camp mediation'. The formal state authorities could therefore be involved informally. In this way, the camp mediation system developed itself not as separate from but interwoven with the Nepalese legal system. Where one would expect the state to be strongly dominant in this relationship, both refugee authorities and disputing parties had a great deal of influence over the way in which refugee cases were resolved.

Chapter V: Resolving Domestic Violence Disputes

> Family violence is one of the most insidious forms of violence against women. It is prevalent in all societies. Within family relationships women of all ages are subjected to violence of all kinds, including battering, rape, other forms of sexual assault, mental and other forms of violence, which are perpetrated by traditional attitudes. Lack of economic independence forces many women to stay in violent relationships. The abrogation of their family responsibilities by men can be a form of violence and coercion. These forms of violence put women's health at risk and impair their ability to participate in family life and public life on a basis of equality.[135]

V.1 Domestic violence in the Bhutanese refugee camps

Domestic violence is one of the leading protection concern faced by women in refugee camp settings. Perpetrated by intimate partners and family members, it is the most commonly reported form of sexual and gender-based violence (SGBV) in refugee settings (Da Costa 2006: 10). It is a global problem that impairs a broad range of human rights and has a disproportionately severe impact on women.

Domestic violence is widespread in all regions of the world including both developing and industrialised countries. In 2000, UNICEF reported that between 16 percent (Cambodia) and 60 percent (Poland) of women claimed to have been physically abused by their partner or spouse at some point during their lifetime (UNICEF 2000: 5) and called it the 'most prevalent yet relatively hidden and ignored' form of violence against women and girls.[136] Actual figures are likely to be far higher because many women do not report domestic violence.

Statistics on the incidence of domestic violence in Nepal are even more shocking: CARE Nepal estimated that 95 percent of Nepali women have experienced violence first-hand and that 77 percent of it was perpetrated by

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[135] UN Committee on the Elimination of Discrimination Against Women (CEDAW), CEDAW General Recommendations No. 19, adopted at the Eleventh Session, 1992 (contained in Document A/47/38), 1992, A/47/38.

[136] These figures do not account for non-physical types of domestic violence, such as sustained emotional or economic abuse.

family members.[137] SAATHI-Nepal, a local NGO that has been working to address violence against women and girls (VAW&G) in Nepal since 1992, identified poverty and alcohol abuse as the leading causes. It also noted that women's economic dependency upon their husbands, their lack of education, and their desire to keep the family intact for the sake of their children were the leading causes for women's reluctance to report incidents of violence committed against them.[138]

There were no statistics on the incidence of domestic violence in the Bhutanese refugee camps. UNHCR had never conducted a quantitative investigation into domestic violence in the camps, the majority of survivors never approached UNHCR or the formal Nepalese legal system, and camp administrative records were often incomplete – if they existed at all. Nevertheless, both UNHCR staff and those of the NGOs that operated as implementing partners (AMDA, TPO, NBA) told me they considered it one of the most serious social problems in the Bhutanese refugee camps. Many refugees shared this view. Upon arriving in the camps in the mornings over the course of my fourteen months of field research, people would regularly tell me that they had overheard fights in their sub-sectors the night before when surroundings were quiet and voices and sounds crept out through bamboo walls, spreading easily from one thatch hut to another. Domestic violence victims were regular sights at the AMDA medical centre in the camp[139] and refugee mediators, sub-sector heads, and sector heads noted without fail that domestic violence cases – and spousal abuse cases in particular – were by far the most frequent type of dispute they were asked to mediate.

Results from the Measuring Access to Justice (MA2J) survey conducted as part of this research confirmed that perceptions about the prevalence of domestic violence in the camps were largely correct. Crime statistics indicated that physical and verbal abuse were the two most common problems occurring in the camps and often constituted domestic violence. Of all 746 survey respondents, 205 (28 percent) reported having experienced physical violence at the hands of a household member in the past five years, while 246 (33 percent) reported having experienced verbal forms of domestic violence. 157 participants (21 percent) experienced a combination of both.

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[137] IRIN News (28 September 2010): NEPAL: Pushing back against gender violence. Retrieved from: http://www.irinnews.org/report/90603/nepal-pushing-back-against-domestic-violence.

[138] Interview with SAATHI Nepal, Kathmandu, 9 April 2011.

[139] Conversation with AMDA incentive worker, Beldangi-2, 28 March 2011.

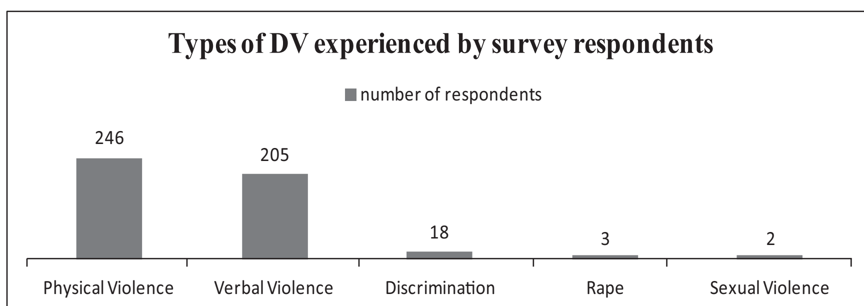

Figure xii: Incidence of domestic violence among survey respondents[140]

The majority of domestic violence cases were reported by women, although there were also men among the victims. The table above shows the total number of respondents who indicated they had experienced each of the types of domestic violence noted above. In a population of 746 respondents, this means that 33 percent of respondents experienced domestic violence in the form of physical abuse and 28 percent of respondents experienced a verbal form of domestic violence. Discrimination, rape and sexual violence were less commonly noted by respondents – only 2.5 percent reported an incident of discrimination, and less than 0.5 percent of respondents experienced rape or sexual violence at the hand of a spouse or member of their household.

258 people, or 35 percent of the sample, reported that domestic violence was the last type of incident they had experienced. Of this number, 222 (86 percent) were women and 36 (14 percent) were men. Domestic violence was found among refugees of all religions, castes, and ethnic groups in the camps.

For an investigation of the impact of legal pluralism on dispute resolution, domestic violence cases are a particularly pertinent example – and not only because of the high incidence of domestic violence in the camps and the large proportion of these cases that was addressed through the camp-based mediation system. Domestic violence is regarded as a serious protection issue. It is an area in which UNHCR actively tried to influence and change local practices, as well as one that touches upon the very cornerstone of camp society – the family. At the same time, there is a significant divergence between the ways different bodies of law relevant to the camps – Nepalese law, custom and traditions, and human rights law – deal with this issue. The cases presented in this chapter will illustrate how norms from these different legal systems interact to influence dispute resolution practices in the setting of the refugee camps.

[140] N=746

Cultural attitudes

Cultural attitudes and social norms may support domestic violence. In Nepal, many men – and even women – feel that it is a husband's right to hit his wife. The United Nations Population Fund (UNFPA) links these beliefs to Nepal's patriarchy, in which 'Violence, both in the domestic as well as in the public arena, is still used extensively… to establish dominion over women of all ages, from foetus to old age' (UN Population Fund 2007: 31).

According to the 2001 Demographic and Health Survey conducted by the Ministry of Health of the Government of Nepalese, more than 28 percent of the women surveyed thought that it was acceptable for a man to hit his wife for at least one of the following reasons: burning food, arguing with him, going outdoors without permission, neglecting the children or refusing to have sex (Ministry of Health Nepal, New ERA and ORC Macro 2002). Education made little difference in their attitudes. More than 34 percent of men similarly believed that men could beat their wives. Interestingly, this belief was even more prevalent among younger men. Where 44 percent of men between the ages of 15 and 24 thought it was alright for men to beat their wives, only 30 percent of men between the ages of 50 and 59 reported holding this belief.

As in wider Nepalese society, attitudes to domestic violence within the camps were tied to understandings of what constituted appropriate gender roles for men and women. Women were responsible for cooking, child-rearing, house cleaning, and washing and men were responsible for working and bringing an income and decision-making (covering such topics as household expenditure, when sexual relations would occur, whether a woman would be permitted to leave the homestead, what religion would be practiced by the family, and whether they would register for resettlement). Although there are some differences between religious, caste, and ethnic groups, there was a strong preference for sons, both for religious reasons (for instance, because of the role of the son in certain Hindu rituals) and because sons typically stayed in their parental home after marriage, whereas daughters moved in with their husbands.

Nepalese NGOs working in the field of women's rights reported that there was widespread acceptance of violence against women in society and that societal attitudes towards victims of violence were prevailingly negative. Victims were often pressured to stay in abusive relationships (SAATHI and The Asia Foundation 1997). According to UNFPA (2007: 32), Nepali women stayed in violent or abusive relationships for several reasons, including the fear of losing their own and their family's honour, the lack of a place to go or means of supporting themselves and their children, the hope of changing their husband's behaviour, love of their children, and threats by their husbands.

In the Bhutanese refugee camps, refugees were targeted by awareness-raising programmes on law and violence against women. This influenced attitudes to domestic violence, and most refugee leaders to whom I spoke said that domestic violence was unacceptable. Nevertheless, many women tolerated violence within their relationships, both for the sake of their children and to protect their own – and their families' – good name. When women tried to leave violent situations, camp authorities often impressed upon them the importance of family unity and reconciliation, and encouraged them to stay.

Ijjat

To fully understand people's attitudes to and willingness to report domestic violence cases (thereby 'exposing' these by bringing them out into the open), a discussion of *ijjat* is pertinent. The notion of *ijjat,* a Nepali term that translates to prestige, dignity, or honour and bears a strong relation to social standing, was briefly discussed in Chapter 2. Accruing *ijjat* was described as a benefit that motivated people to participate in the CMC and encouraged mediators to bring a conflict to a successful resolution.

Ijjat could accrue to both individuals and households and can be lost or (to varying extents) regained. Because of the strong relationship between *ijjat* and a person's reputation or social standing, working to uphold *ijjat* was a social investment. Maintaining *ijjat* was often paired with a level of social obligation. In an anthropological study of a Newar society in Sankhu, Nepal, Rankin found that

> A household's honor… must be continually defended and replenished by meeting numerous religious and social obligations that link it to the wider society. These obligations, often organised around the practice of feasting, come around with remarkable frequency and impose no small burden on household budgets. Failure to offer feasts and perform the social and religious rituals associated with them does not just incur the wrath of gods, ancestors, and ghosts; one's honour is also at stake and… there is a lot to lose. (Rankin 2003: 117)

Constructs such as *ijjat* encouraged men to contribute to their *samaaj* or society in the camp, through forms of social service. Prestige and social service were closely linked in the camps, and people often expressed an eagerness to contribute to society (see also Evans 2009; Weijers 2011). Both paid and unpaid work, depending on its nature, could be interpreted as serving the community. Refugee incentive workers from Beldangi-1 interviewed by Weijers in 2011 told her that they felt that they gained prestige from their work because they were able to assist others and help them solve problems (Weijers 2011: 26). When I circulated notices for eight research assistant vacancies, thirty-nine candidates applied for the posts. During

their job interviews, more than half of all candidates (both men and female) expressed a desire to engage in social service and 'help the community'.

Ijjat had a distinctly gendered dimension, and the ways in which men and women in the camp were expected to behave in order to maintain *ijjat* were related to socially specified gender roles. The gender divisions in upholding *ijjat* in Sankhu observed by Rankin (2003) was also observable in the camps. Men accrued *ijjat* by maintaining social investments and fulfilling social obligations through volunteerism or participation in the camp economy. For women on the other hand, *ijjat* related to perceived moral, sexual, and social propriety. In the camps, a woman's sexual purity was maintained by regulating her movement in space, just as it had been in Sanku. Although not all castes were equally strict with respect to the observation of this norm, social norms still dictated that it was best to restrict women's movement to the household:

> Although practice varies per caste, the high-caste norm of restricting women's movement outside the household to only limited occasions (visiting in-laws, meeting ritual obligations, working in the family shop or field) expresses the dominant ideology of women's seclusion to which most households aspire… Gossip operates so forcefully that even married women with children (who, theoretically at least, enjoy more freedom of movement) self-regulate their movement in public spaces – travelling only through back, narrow lanes instead of main thoroughfares, limiting conversation, walking briskly and purposefully, not sauntering. For high-caste women especially there are many quarters of town that they literally will not see in their lifetime. (Rankin 2003: 118)

Approval of the (self-) regulation of female movement in this way was voiced not only by elderly Bhutanese – and elderly women in particular – but to an extent also by my younger female research assistants. In their twenties, well-educated and unmarried, they spoke negatively of youths – and of young girls even more so – who 'roamed' the camp without purpose.

Like culture, *ijjat* is a flexible and organic construction. Social change in the camps affected the interpretation of *ijjat* and the ways it could be accrued. As increasing numbers of women became involved in volunteer positions, incentive jobs, and with community-based organisations, their work came to be valued in a way similar to that of men – volunteers were respected for spending their time honourably and contributing to the community. Hinton described how women's newly acquired skills to read, write, and earn money as a result of involvement in camp groups 'altered their perception of their place in the community' (Hinton, 1996, cited in Evans 2009: 163).

Airing family problems in public was believed to have a negative impact on *ijjat*. This was one of the most important reasons for which women hesitated to report domestic violence cases to the authorities. As illustrated by the pie chart below, roughly two thirds of domestic violence victims (166 of 258 respondents) reported the crime, against approximately one third (92 respondents) who did not.

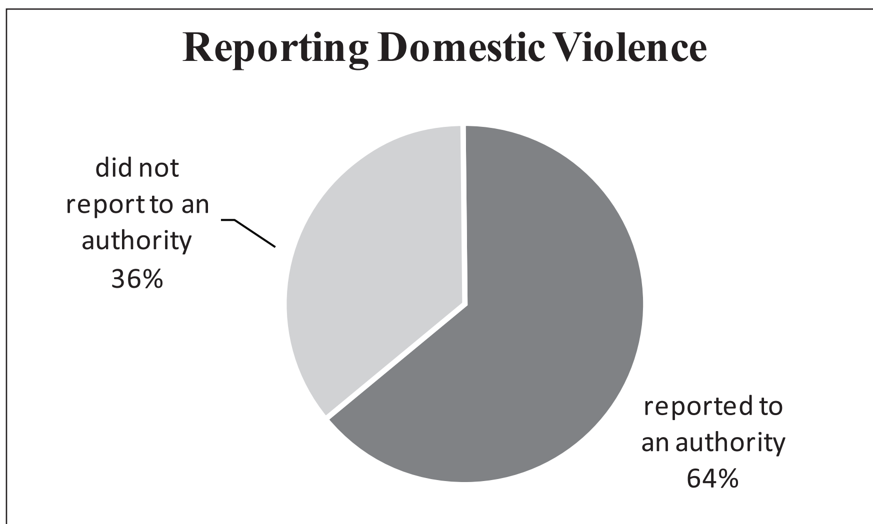

Figure xiii: Reporting of domestic violence cases by survey respondents[141]

In light of societal views among the Bhutanese refugees that airing family problems in public had an adverse impact on a family's *ijjat*, one might expect a stronger tendency to underreport among domestic violence victims, especially in comparison to non-family related disputes. On the contrary, the reporting rate for domestic violence victims was higher than for all crimes lumped together. The average reporting rate in the entire sample (including all crimes) was 59 percent – five percentage points lower than the average for domestic violence victims. Merry (2003: 381) attributed women's increased willingness to use the law to deal with gender violence as a response to two phenomena: (1) a powerful feminist movement redefining the meaning of battery from an inevitability to a type of behaviour that could be changed; and (2) the greater readiness on the part of the legal framework and law to treat complainants with respect and to take their problems seriously.

Women's willingness to report domestic violence cases may also relate to changing understandings of women's rights and agency efforts to curb

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[141] N=258

domestic violence in the camps. As social perceptions regarding appropriate behaviour for 'good wives' and 'good husbands' changed, the consequences of particular social behaviour for a person's or household's *ijjat* shifted accordingly. This shift was observable in attitudes towards divorce. Social attitudes towards divorce in the camps were not altogether positive – in the Hindu religion, marriage is seen as an eternal, spiritual union. However, the presence of domestic violence within a marriage could have an impact on these views. More and more women considered leaving a violent relationship a valid response. In the words of one talkative young Bhutanese woman in her mid-twenties: 'Yes, divorce affects the woman's prestige. Our society used to say bad things about them [people who divorce], to gossip. But if my husband and his family don't love me, don't give me prestige, then why to stay?'[142] A domestic violence victim who had recently divorced her husband explained that social attitudes depended on the reasons for the divorce. If a woman had suffered domestic violence, the community was more accepting of her choice.[143]

V.2 Nepalese law: Domestic violence as crime

On April 27, 2009, the Domestic Violence (Crime and Punishment) Act, 2066 (hereafter referred to as the DV Act) came into force in Nepal.[144] Prior to this date domestic violence was not defined in law but could be dealt with under the 1963 Muluki Ain (Country Code) which incorporates physical assault as a crime and covers both 'ordinary' and 'serious' injury. The punishment for physical assault was a fine of up to 10,000 Nepalese Rupees (NPR) and imprisonment of up to ten years, depending on the severity of the offence, the type of weapon used, etc. While the Muluki Ain did not cover verbal abuse – a form of domestic violence referred to as 'mental torture' in the camps, some aspects of verbal abuse could be addressed separately under the Defamation Act.

The definition of domestic violence laid out in the DV Act is the first comprehensive legal definition of domestic violence in Nepal and makes the act a criminally punishable offence in Nepal. Domestic violence is interpreted broadly, and four types of violence are covered by the definition contained in the Act:

(1) Physical harm (from causing pain to causing injury);

[142] Interview with female refugee, Beldangi-2, 17 March 2011.

[143] Interview with female domestic violence victim, Beldangi-1, 7 February 2011.

[144] The Act was promulgated in the Nepali year of 2066. It was adopted on 27 April 2009 on the Gregorian Calendar, and by some, may be referred to alternately as the Domestic Violence (Crime and Punishment) Act, 2009.

(2) Mental harm (threatening with physical torture, showing terror, reprimanding the victim, accusing a victim of false blame, forcefully evicting them from the household as well as discrimination based on thought, religion, or culture and customs and traditions);

(3) Sexual harm (sexual misbehaviour, humiliation, discouragement, or harm in self-respect of any person, or any other act that hampers safe sexual health);

(4) Economic harm (deprivation from the use of jointly owned property or privately owned property or deprivation of or access to employment opportunities, economic resources, or means). These forms of domestic violence include, *inter alia,* insult, defamation, practices that harm women's reproductive and sexual health, and practices that restrict women's use of property and resources.

Domestic violence is punishable by a fine ranging from Rs 3,000 to Rs 25,000, six months imprisonment, or both – depending on the severity of the offence. Under Section 13(3) of the DV Act, repeat offenders are liable to double punishment upon every repetition.

The DV Act dictates that domestic violence cases can be handled in several ways. First, a case can be filed with the *prahari* (Nepal police). The police are authorised to file a First Information Report (FIR) with the prosecutor's office, or to mediate cases. Victims can also approach the court directly, bypassing the police. If a case is forwarded by the police and the offender is known, he is held in jail until a verdict is reached. If victims self-report to court, the perpetrator is not held in remand but is imprisoned only if a verdict is reached in which he is found guilty.

Domestic violence cases may also be addressed by women's commissions and with 'local bodies' which include Village Development Committees (VDCs) and municipalities. The VDCs do not have the authority to arrest perpetrators, and typically resolve cases through mediation. Cases may also be filed with Nepal's Human Rights Commission in Kathmandu, which generally deals with them in the same way as the VDCs.[145] According to UNHCR's Associate Protection Officer wards (as sub-units of the VDCs) could also receive cases and were legally allowed to mediate – meaning that domestic violence cases could also be settled at ward-level.

I asked the Associate Protection Officer whether he thought that the refugee camp could be construed as a 'locality' in a similar way to the wards, and if so, whether the mediation centres in the camps could then also be construed

[145] Interview with NBA camp lawyer, 7 November 2011.

as 'local bodies,' he told me that he believed they could – the CMC was recognised by the government and the mediation centres in the camps were institutionalised parts of the CMC – inferring that legally, they could resolve domestic violence cases on their own.[146] Even if this interpretation were incorrect, domestic violence cases throughout much of Nepal itself are settled in similar ways – through mediation sessions, with family members, or at village level, both informally and through administrative quasi-judicial institutions such as VDCs.

Obstacles to enforcing the Domestic Violence Act in Nepal

Despite the enactment of the DV Act and criminalisation of domestic violence, most DV cases in Nepal are still settled through mediation rather than legal prosecution (United States Department of State 2011). As a young, energetic SAATHI-Nepal staff member explained when I came to visit her at her office in Kathmandu one Saturday morning, few Nepalese victims ever report domestic violence through legal channels, preferring instead to settle the case at family level or to solve it through third-party mediation without involvement of the judiciary.[147]

Throughout Nepal, awareness of the Act was generally low, both among security officials and citizens. Much-needed support structures for victims, which might make reporting more attractive, were still lacking. While the Nepal Police claimed to have women's cells (special sections of the police for cases involving women) in each of the country's 75 districts, the effectiveness of these cells were limited by minimal resources and a lack of staff trained to deal with domestic violence (United States Department of State 2011). Given the low level of awareness about domestic violence act, the 90-day statute of limitations on domestic violence prevented a further obstacle. If a victim waited longer than 90 days to report to the authorities, her (or in very rare instances his) case was inadmissible. This presents a further obstacle for victims, particularly those who lack knowledge of the law or are unfamiliar with this requirement.

Section 6 of the DV Act provides for interim protection measures in cases that have been filed or that are ongoing. This includes the requirement to find another residence for the victim, or an order to the offender – if the victim and offender remain together – to desist from causing further harm. Disobeying a court order under Section 6 makes one liable to a fine from Rs 2,000 to Rs 15,000, four months' imprisonment, or both. Unfortunately, these interim measures were difficult to implement. In April 2011, there were only three shelters for domestic violence victims in Nepal (all three

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[146] Interiew with UNHCR Associate Protection Officer, Ramesh Karki, 26 October 2010.

[147] Interview at SAATHI, Kathmandu, 9 April 2011.

centres were established and run by SAATHI-Nepal).

In November 2010, I had tea with Police Inspector Nabin Karki on the rooftop of his new living quarters in Damak – a brand-new multi-story building in the police compound in Damak, funded by USAID. He told me that women without financial resources might find it difficult to come to the police unit, district headquarters, or district court. 'There are four VDCs and one municipality in my jurisdiction,' he said. 'The victim may live fifteen kilometres from here, for example. For her, it may be better to appear at the VDC. Every VDC has one development office – it is more accessible.' While VDCs were empowered to arrest perpetrators and write up a document that could be taken to court, most VDCs only mediated cases. In the event that they did choose to forward a case to court, the problem of accessibility of the court for the victim was in no way diminished.[148]

V.3 Project law: SGBV and domestic violence

UNHCR's commitment to preventing sexual and gender-based violence (SGBV) is part of its protection mandate, under which it is responsible for ensuring the safety and security of refugees under its care. To implement this mandate, UNHCR has released a range of guidance documents on key protection issues. UNHCR approaches protection through a rights-based approach, which it defines as: 'A rights-based approach is a conceptual framework that integrates the norms, standards and principles of the international human rights system into the policies, programmes and processes of development and humanitarian actors.' The rights-based approach was recognised by UNHCR as the framework for its programmes in 2006. This was endorsed by EXCOM in 2007 (UNHCR 2008a: 26).

Although UNHCR lacks a stand-alone policy addressing domestic violence, the issue is covered in policies on the protection of refugee women and girls and responding to and preventing SGBV. These policies exist at two levels – the global and the local. UNHCR's global policies are designed at the agency's headquarters in Geneva. This process is informed by NGOs, UNHCR's member states (through input provided during Standing Committee and Executive Committee meetings in Geneva), and information from UNHCR's field offices. Once released, these policies apply to all UNHCR operations around the world, and therefore to all country-level and sub-offices. At the local level – that of the refugee camp – global policies manifest themselves primarily in the form of camp-specific or country-specific policies or Standard Operating Procedures (SOP).

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[148] Interview with Inspector Nepal Police, Damak, Nabin Karki, 29 November 2010.

Domestic violence in SGBV policies

UNHC's first Guidelines on the Protection of Refugee Women were released in 1991. The Guidelines recognise spousal abuse as a problem encountered by women in refugee situations and point out that that heightened levels of domestic violence are common in refugee camp settings, and that 'the enforced idleness, boredom, frustration and despair that permeates many refugee camps are natural breeding grounds for such violence.'[149]

A few years later, UNHCR promulgated a third set of guidelines targeting refugee women: the 1995 "Sexual Violence: Guidelines for Prevention and Response", which explicitly recognise that sexual violence can take place in the domestic sphere, at the hands of family members (Section 3.5).

In 2001, former High Commissioner for Refugees Ruud Lubbers articulated "UNHCR's Five Commitments to Refugee Women" – a move that gave women's rights and the specific protection concerns relating to refugee women and girls renewed attention. Of the five commitments, one pertains specifically to SGBV, stating UNHCR's commitment to developing integrated country-strategies for the prevention and abuse of sexual and gender-based violence.

Two years later in 2003, the 1995 Guidelines were updated following a revision process and renamed the Guidelines for Prevention and Response of Sexual and Gender-Based Violence against Refugees, Returnees and Internally Displaced Persons. They reiterate the High Commissioner's five commitments to refugee women and name domestic violence as one of the target-areas for country-level SGBV strategies.[150] Two main objectives of an effective SGBV strategy that are mentioned by the 2003 Guidelines include transforming socio-cultural norms and working with formal and traditional dispute resolution mechanisms to ensure that their practices conform to international human rights standards.[151]

A new UNHCR Handbook on the Protection of Women and Girls was completed in 2008, which emphasised that sexual and gender-based violence 'remains the most widespread and serious protection problem facing women and girls of concern.' The Handbook acknowledges that domestic violence is rarely reported and remains largely hidden, and that tackling it is complicated by the fact that 'it is often regarded as a private matter, including by UNHCR,

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[149] UNHCR(1991). *Guidelines on the Protection of Refugee Women.* Geneva: UNHCR.

[150] UNHCR (2003): *Guidelines for Prevention and Response to Sexual and Gender-Based Violence against Refugees, Returnees and Internally Displaced Persons.* Geneva: UNHCR.

[151] UNHCR (2003). *Guidelines on Prevention and Response to Sexual and Gender-Based Violence.* Geneva: UNHCR. p.33.

NGOs, and community members' (UNHCR 2008a: 204). The Handbook emphasises UNHCR's human rights-based approach to refugee protection, underlining that 'UNHCR's protection work is guided by international law, including international refugee law, international human rights law, and international humanitarian law' and that the operational principles from these bodies of law set out the basic normative framework for its work (UNHCR 2008a: 23). It advocates a combined rights- and community-based approach to protection. The latter is defined by the agency as 'a way of working that is based on an inclusive partnership with communities of concern' (UNHCR 2008a: 27) that mobilises and builds on their resilience to deliver protection. UNHCR encourages a strategy that addresses the role of the state, empowers refugee women, encourages intervention when necessary (for instance by providing survivors and their children with access to safe houses), and strengthens community solutions. As part of the latter, the agency places considerable emphasis on the importance of 'agents of change' who promote different perspectives on violence against women within the community. It also underscores the need to work with traditional justice mechanisms to have SGBV recognised as a crime so that appropriate penalties are imposed on perpetrators, and victims themselves are not penalised.

UNHCR's Standard Operating Procedures on SGBV in Nepal

The implementation of UNHCR's policies on SGBV requires translation into country-specific procedures, as mentioned often in the form of operation-specific standard operating procedures (SOP). The High Commissioner's 2006 Strategic Objectives and Measurable Targets set a 100 percent target for the percentage of UNHCR operations that should have SOP in place to prevent and respond to sexual and gender-based violence.

In Nepal, the problem of SGBV in the Bhutanese camps first received major attention in 2002, when UNHCR received allegations of sexual exploitation of refugee children in the camps and requested the Inspector General's Office to conduct an investigation. The results of the investigation were released in November 2002 and revealed eighteen cases of sexual exploitation (including rape and sexual abuse) of refugee women and children. The perpetrators were Nepalese government officials whose salaries were paid by UNHCR and fifteen refugee men who worked for NGO implementing partners (Human Rights Watch 2003: 38-39).

Following the investigation, which also identified other forms of SGBV in the camps, UNHCR made combating and responding to SGBV a matter of priority. Early efforts mainly targeted rape and sexual abuse. As UNHCR's awareness of SGBV-related incidents in the camps increased and the agency took note of the prevalence of domestic violence, however, the focus of SGBV

prevention efforts focus gradually expanded to include a greater emphasis on domestic violence.[152]

By end-2003, UNHCR Nepal had formulated its first Standard Operating Procedures (SOP) on SGBV in the camps, accompanied by an SGBV reporting framework. According to its terms, a survivor of sexual or gender-based violence may decide to report the incident to any person s/he trusts. The person to whom the incident is initially reported is responsible for escorting the survivor to an appropriate referral point and for ensuring that it is reported to the AMDA Maternal Health and Child Supervisor, the Gender Focal Point, or the UNHCR Field Assistant. All three of these actors have the authority to complete a Confidential Incident Report. These reports are then sent to UNHCR's Sub-Office in Damak, which takes further action.[153]

In an annual protection report describing the Bhutanese refugee situation, UNHCR stated that it continuously communicated to all parties in the refugee camps that all criminal acts, including acts of SGBV, should be reported to the RCU Supervisor and/or Nepal Police.[154] Nevertheless, UNHCR's approach to eradicating domestic violence in the camps does not focus exclusively on the Nepalese legal system. When UNHCR's staff comes into contact with DV victims, they do not necessarily push them to seek out the courts. 'If a victim does not want to go to court, we cannot force her', Diane Goodman told me when I met her at the agency's Kathmandu office in 2010.[155] Over beer one evening, UNHCR's SGBV Protection Assistant confided in me that she did not believe that courts were the best solution for everyone. When a case reached the courts, victims were called to appear numerous times and had to present witnesses. She believed this could be very traumatising for some girls and that some SGBV victims did not have the emotional stability or maturity to be able to deal with a court case.[156]

UNHCR's Associate Protection Officer saw justice as a question of supply and demand. He understood that there was no point in talking to an individual survivor and hammering on her right to justice if her whole family would be upset with her for seeking it. Things had to be approached with a measure of pragmatism. If UNHCR did not manage to create a demand for justice, there was no point in supplying it.[157]

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[152] Meeting with UNHCR Deputy Representative, Diane Goodman, 31 March 2010.

[153] UNHCR Annual Protection Report Nepal, 2007, p.68-69.

[154] UNHCR Annual Protection Report Nepal, 2007, p.67.

[155] Meeting with UNHCR Deputy Representative, Diane Goodman, 31 March 2010.

[156] UNHCR SGBV Protection Assistant, Field Notes 10 November 2010.

[157] interview with UNHCR Associate Protection Officer, Andreas Kiaby, January 26, 2010.

UNHCR helped create this demand by raising awareness on domestic violence and the services that were available as remedies. The SOP outlined an elaborate reporting structure, indicating who may be approached for assistance and to whom a case should be referred. As a specific point of contact for sexual and gender-based violence related-cases in the camps, the post of Gender Focal Point was created within the Camp Management Committee. Gender Focal Points (typically women) and their assistants (usually men) were refugee volunteers, just like other CMC members. They worked closely with UNHCR and played an important role in supporting victims of gender-based violence in seeking medical assistance, psycho-social or legal aid, and in bringing SGBV cases to the attention of UNHCR's Field Assistant.

UNHCR's Field Assistants (FA) maintained a daily presence in the camps and were the first point of contact within the organisation for refugees in the camps, including for domestic violence victims. FAs received cases through the referral system, which as the SOP indicated, could come from many sources: refugee leaders, Gender Focal Points, NGO staff, or even directly from refugees. The FA, in turn, referred these cases to UNHCR's Protection Unit in Damak, which ascertained whether further action was needed.[158]

Although this was not formally part of their 'job description', Gender Focal Points could also take on a role in 'counselling' and mediating conflicts. If they mediated successfully, a case might end there. If not, it was forwarded to another person or entity. The way in which one former Gender Focal Point described this process related closely to the way in which the referral systems worked in other levels of the camp hierarchy: 'If [the victim] is satisfied, we give her a written agreement and leave it. If she is not satisfied, we forward it to the APF, or FA, or Nepal Bar Association, or RCU. Some simple cases, we solve within our community as well'.[159] I encountered varying levels of diligence in terms of case registration and record keeping. The 2010 Gender Focal Point in Timai camp kept detailed records of all the cases that had come to his attention, but this practice was not systematic or consistent across camps.

CMC members (ranging from sub-sector heads to sector heads, the Camp Secretary and Counselling Board members) were involved in the anti-DV strategy through their roles in the mediation process. The terms of the SOP did not permit sub-sector heads and sector heads to mediate SGBV cases themselves – they had to refer these cases onwards. UNHCR's SGBV Protection Assistant had a lot of discussions about domestic violence with

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[158] Interview with UNHCR Associate Protection Officer, Ramesh Karki, 27 January 2010.

[159] interview with Beldangi-2 Gender Focal Point, 26 February, 2010.

sector and sub-sector heads, who she advised not to mediate DV cases. When mediators argued about the need to keep families together, or not to cause problems for resettlement, she would tell them: 'if she dies because he beats her, I will hold you, and you, and you personally responsible!' She said the same about parents beating their children. 'Then they are really shocked', she told me. 'You need to be really firm.'[160]

To ensure that all CMC members knew what was expected of them (and what was not), UNHCR organised orientation meetings for each new CMC after elections. During the CMC orientation following the elections in early 2011, CMC members sat through speeches by representatives from each of the agencies. These served to make the newly elected representatives aware of available services in the camp, to enable them to advise their constituencies accurately. The UNHCR Field Assistants also gave speeches and described (in brief) the referral process for SGBV cases. As I watched the orientation training for newly elected CMC members in February 2011, newly assigned the Field Assistant in Beldangi-2 camp advised refugees that all serious SGBV cases should be referred to the Gender Focal Point, and through him/her, to UNHCR. He acknowledged that in the past, refugees who approached the Field Assistant had been told (by previous Field Assistant) to first try to solve their cases at unit level and if that did not work, to go to the Counselling Board. They FA's office, they were told, was only a last resort. In 2011, the new Field Assistant gave an equally ambiguous message by pointing out that past practice had changed, but that participants (including sub-sector and sector heads) were permitted to solve 'simple cases' themselves.[161]

When I left the camps in 2011, UNHCR was in the process of revising its Standard Operating Procedures on SGBV. A lot had changed in the camps since the last version was drawn up. Neither the Nepal Bar Association (NBA) nor the Transcultural Psychosocial Organization (TPO) had a presence in the camps. Both organisations, which will be described in the next section of this chapter, played an important role in assisting SGBV victims. To decide how to make the changes and assess refugees' perceptions of the quality of services that were being provided, UNHCR held focus group discussions in the camps. It turned out that the system was not working as intended. UNHCR's SGBV Protection Assistant in Damak, who had attended a number of these discussions, confessed that the women in the camp have no idea what Bhutanese Refugee Women's Forum was and that they also did not know about the Gender Focal Point. Many also did not know about TPO or the NBA, although UNHCR discovered that if you explained what these agencies did, some women appeared to understand

[160] Conversation with UNHCR's SGBV Protection Assistant, 22 February, 2011.
[161] Field Notes: Observation of CMC Orientation Meeting, Beldangi-2, 22 February 2011.

after all – they just did not know the agencies by name. Many people said that they did not dare to approach the Field Assistant directly because they felt it would not be appreciated in the community. People had tried to bypass the camp system in the past but these efforts had been received badly within the community, which wanted to know why they did not first approach the Camp Management Committee and go through the proper channels. The SBGV Protection Assistant explained that instead of approaching any legal system at all, the majority of women would first try to solve their problems within their families and if this did not prove successful, then with the help of their neighbours. They only sought out the assistance of the sub-sector head if both these attempts failed. The women had also told her that bribes were paid at all levels of the camp mediation system and that mediation was often unsuccessful. One woman told her a story of a Counselling Board member who had chased his own wife with a *khukuri*. The case was sent for mediation to the very Counselling Board where the man worked. The other mediators – all his friends – decided in his favour.[162]

Enlisting NGOs and CBOs

In its efforts to combat SGBV and domestic violence in the Bhutanese camps and to provide assistance to victims, UNHCR involved national and international NGOs and community-based organisations (CBOs).

NGOs were hired as implementing partners and were responsible for the majority of service provision in the camps. Perhaps the most important organisation enlisted in the prevention of domestic violence was the Nepal Bar Association (NBA), the only legal aid provider with a presence in the camps. Lawyers working for the NBA's Legal Aid Program for Bhutanese Refugees were tasked with supporting victims of SGBV and domestic violence, provided legal advice and support, and referred domestic violence and other SGBV-related cases on to UNHCR, which then determined whether these would be forwarded to an NBA lawyer in Chandraghadi for legal representation before court. Cases could come to the attention of the NBA through any number of channels. Victims and perpetrators (who were aware of the existence of a 'camp lawyer' and knew how to find him or her) could approach the NBA directly. Victims were also referred by UNHCR, TPO, and other agencies such as the Association for Medical Doctors of Asia (AMDA), Lutheran World Federation (LWF), Youth Friendly Center (YFC), or Bhutanese Refugee Women's Forum (BRWF).

The majority of the cases referred to the NBA were SGBV related. When I asked Devi Niraula, NBA camp lawyer for Beldangi-2 and Belangi

[162] Field Notes, 10 November 2010.

2-Extension camps at the time of my arrival in Nepal, and for Beldangi-1 during my second period of field research, what types of cases took up most of her time, she said that she was predominantly occupied by SGBV cases. The majority were domestic violence and divorce cases.[163]

The Transcultural Psychosocial Organization, Nepal (TPO) is a Nepali NGO that played a structural role in the remediation and prevention of domestic violence. TPO has provided psycho-social assistance in the camps since 2008. According to Rianawati, UNHCR's Head of Sub Office Nepal, TPO came to the camps at UNHCR's request and began its operations in the camps to assist trauma victims following the 2008 fire that burned Goldhap camp to the ground, leaving thousands of refugees homeless and without belongings. It has maintained a presence since 2008. In 2011, one of its roles was to function as a non-legal complement to address SGBV. TPO also provided counselling in the context of the third country resettlement programme, which had created considerable anxiety among the community, and tension in refugee families. The agency was intended as a sounding board, to give refugees with concerns someone to talk to. 'Many refugees go about their problems by keeping them to themselves or resorting to violence', Rianawati told me.[164] TPO's offices were initially established within the AMDA health centres within each of the camps. These offices were moved to an independent location when it became clear that a general stigma on mental health issues within the community meant that psycho-social counselling was more accessible if it was not related explicitly related to a 'medical problem'.[165]

By 2011, TPO was approached by people with issues ranging from depression to substance abuse or domestic violence, particularly those who were afraid to report elsewhere for fear of a loss of *ijjat* (prestige) within society.[166] It also ran a Women Empowerment Groups (WEG) for vulnerable women. The programme specifically targeted divorcées, separated, widowed women, and women who were classified as vulnerable. TPO Project Coordinator Ram Dahal explained that many of these women were also domestic violence victims (or had been in the past). Victims of domestic violence could approach TPO both through this group, and individually.

Community-based organisations (CBOs) were enlisted by UNHCR in awareness raising efforts and provided various other types of assistance.

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[163] Interview with camp lawyer for Beldangi-2 and Beldangi-2 Extension, Devi Niraula, 26 February 2010.

[164] Interview with UNHCR Head of Sub Office Damak, Rianawati Rianawati, 16 February, 2011.

[165] Ibid.

[166] Interview with TPO Project Coordinator, Ram Dahal, 16 March 2010.

The Bhutanese Refugee Women's Forum (BRWF) was UNHCR's main community-based counterpart in dealing with issues relating to refugee women and had a better overview of vulnerable women and domestic violence victims in the camps than any other refugee organisation. It was established in 1995, with a head office in Sanischare and individual branches in each refugee camp. Through its camp offices, BRWF organised programmes and activities for women, such as a loan scheme through which it provided start-up capital for the small businesses – past successes in the camps included tailoring services, grocery shops, and small-scale vegetable and milk curd-selling enterprises.

On designated days, such International Women's Day (March 8) or the 16 Days of Activism Against Gender Violence, BRWF organised UNHCR-sponsored programmes. On International Women's Day, March 8, 2010, I attended a programme held by BRWF in Beldangi-2. It included speeches on human rights and a three-part drama performance about domestic violence and women trafficking. The message of the programme was that both were unacceptable and should be tackled and that potential victims could receive support from BRWF. Events such as these were often kick-started by long marches through the camp, during which the participating women held banners and called attention to women's rights.[167]

Like TPO and the NBA, the BRWF was also active in advising victims of domestic violence. When I was speaking to BRWF's Social Advisor in Beldangi-2 one day, he told me that he provided women with legal support and advice on how to get justice, usually in the event of domestic violence.[168] BRWF worked through its own network of 'sector heads', who were unrelated to the CMC sector heads. In each sector, these BRWF members could be approached by women to help them address issues involving gender issues or violence. BRWF members could advise women in domestic violence or polygamy cases, particularly if they were active and known within the community. Sometimes they also attended mediations by the CMC authorities, where they would speak on behalf of the victim.

The previous sections have illustrated some of the initiatives undertaken in the camps by UNHCR, its implementing partners, and community-based organisations to address and combat SGBV and domestic violence in the camps. The following sections will examine whether, and how, these initiatives may have had an impact on domestic violence disputes in the camps.

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[167] The purpose of these meetings was not understood in the same way by all participants, and interestingly, some of the banners women held had nothing to do with women's rights but focused on the rights of martyrs and political prisoners in Bhutan.

[168] Interview with BRWF Social Animator, Beldangi-2, March 4, 2010.

V.4 Inside the Counselling Board: 'Courtroom' views of a domestic violence case

When cases are mediated, parties have the opportunity to introduce arguments and legal norms from a variety of legal systems. All laws that form part of the legally plural context that pertains to the camps were fair game. These norms could contradict or complement each other, and were used to influence the outcome of a given case.

To illustrate how this happened, this section chronicles a spousal abuse case, as it was received and dealt with by the Community Watch Team and Counselling Board. The narrative is an abridged reconstruction of observations made during two mediation sessions regarding the same case. By rendering the discussion as it took place, a spectrum of social attitudes about gender relations and domestic violence is presented. At the same time, an illustration is given of the roles of different parties, including relatives, authorities, and bystanders, in helping disputing parties reach a mutually acceptable outcome.

The case is presented in three parts. Part one outlines the unofficial mediation session that took place in the Community Watch Team (CWT) office, where Bandana and her mother presented the case and CWT officials determined how it should be dealt with. In Part two, the Counselling Board mediation team lays out the facts and does the groundwork for coming to a solution. Part three shows how the positions of both parties were reconciled to reach a solution.

Part one: The CWT makes an initial assessment of the case

In March 2011, a young woman walked into the Community Watch Team office with her mother, followed by a tall, lanky young man. They came to file a case, and the girl – her name was Bandana – was holding an application letter.

Bandana looked terrible. She had a large cut diagonally across her left cheek and another on her forehead. Her left shoulder was completely purple. There were jaw/teeth marks imprinted in the middle of the bruise. She also had bruises on her back and marks on her neck.

When the CWT Chief inquired what happened, Bandana's mother began to explain her daughter's predicament. She told the CWT Chief that Bandana and her husband, Sukden, had only been married for two years. They married not through an arranged marriage but for love, but their relationship had turned violent less than a year after the wedding ceremony. The previous night, Bandana and her husband (the lanky young man) got into a terrible fight. He beat and bit her; the bruises on her neck were caused by his attempt to choke her.

They had already reported the incident to their sub-sector head, who had tried to mediate with the help of the *pancha samaaj*. Bandana's husband had refused to listen to them, using abusive language and declining to pay for the treatment of his wife's wounds as the *pancha samaaj* had ordered. When they failed to reach an agreement, Bandana was told to bring her case to the Community Watch Team (CWT)

The CWT Chief allowed me to read Bandana's application. It said:

> My name is Bandana Lepchha[169], married to Sukden Lepccha. My husband has beaten me many times. He also used to beat me before, but I did not complain then, taking it as a quarrel between husband and wife. This time, he beat me very badly and left me with visible wounds on my body and face. Having borne this beating, I don't feel I can stay with him for the rest of my life. I want to live independently by getting a divorce.

At the bottom of the application was a paragraph written and signed by Bandana's sub-sector head. It read: 'As per this application, we have discussed this case of beating by sitting with the *samaaj*. We found proof that the husband beat his wife and because he did not obey the *samaaj*, we are forwarding the case to higher post.'

Bandana looked uncomfortable as she stood in the corner of the CWT room. She shifted back and forth from one foot to another and it seemed as though there were parts of her body that were hurting as she stood. She watched silently as the CWT Chief lectured her husband.

The CWT Chief tried to impress upon the boy that what he had done was excessive and unacceptable. 'Listen', he said to Sukden. 'I will tell you one thing. You bit her with your *teeth*. If I have a wife and I beat her, I am responsible for her treatment. If you are not interested in bringing her anything, tell me frankly, in what sense have you brought her to your house?'

Somewhat predictably given their case history, Sukden responded by blaming his wife for the beating: 'It was a mistake, but my wife was telling me that we have to have a child. I didn't want that. I wanted to send her away, I don't like children. It is she who wants a child, not me. Bandana behaves badly. She uses bad words, speaks to me in anger all the time.' When asked to explain what prompted him to bite his wife, Sukden only said: 'She caught my hand... so I bit her. She scolded me, using very bad words, so I beat her very badly.'

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[169] While Bandana took Lepchha as her married name, she originally belonged to the Indo-Aryan ethno-linguistic group and was of the Chhetri caste.

The CWT Chief, assessing what to make of the case, asked the couple how they saw the future – what it was they wanted. Sukden answered in no uncertain terms that he wished to stay with his wife, but Bandana hesitated. She explained that her husband beat her constantly, for no reason, and that was also violent sexually. When she confessed that her husband forced her to have sex during her menstrual period, my male interpreter was shocked and looked very uncomfortable translating; sexual relations during menstruation is taboo among Hindus.

Aware of this fact, Sukden tried to stop Bandana from saying any more but the CWT Chief cut in, scolding him again. 'How is that? When she scolded you, you slapped her? Then you slapped the girl again! At the time, the girl caught your hand, and so you bit her. Who has made the mistake here? Think for yourself. Suppose she is your sister and I beat her like that. What would you do to me? Tell me that, and that will be your punishment.'

The CWT Chief stopped Sukden when he tried once more to defend his actions. He reminded him that in every conversation, one person might say something the other dislikes, and impressed upon the young man the importance of recognising what he had done. 'People commit mistakes, and they realise that these were mistakes. But those who do refuse to accept their mistakes, they cannot be excused.'

Watching this, Bandana appeared disheartened. She told the CWT Chief that she had had enough and wanted to separate from him – she wanted a divorce. Her husband, she said, did not recognise his mistake or accept that he was doing anything wrong. When she finished speaking, the CWT Chief warned her to think of the consequences of her decision carefully and not to make any rash decisions. 'Where do you want to live, how would you like to spend your life? Ask yourself that. You have to think very deeply about yourself. Very deeply.'

Then, he stopped lecturing the couple and leaned back. Looking at me, he said that they would not try to resolve this case here today – this was a domestic violence case, which he would forward to the Camp Secretary, who would then send it to the Counselling Board.

Before concluding, he ordered Sukden to take Bandana to the medical centre to pay for her treatment and for any medicine that may alleviate the pain of her cuts and injuries. Bystanders were sceptical that Sukden would listen, as he had ignored the *pancha samaaj* in the past. To make sure that he would take his wife to the medical centre as promised, the CWT Chief ordered Bandana's mother to accompany them. As 'insurance', he forced Sukden's mother, who by this time had also arrived, to wait for them in the CWT office. When they returned, he added his signature to the bottom of

Bandana's application, along with a message stating that he was forwarding it to the Camp Secretary 'for necessary action'.

Part two: The Counselling Board identifies the problem

Seven days later, Bandana and Sukden's case was heard by the Counselling Board.

Om Prakash, one of the members of the Counselling Board who previously served as Gender Focal Point, opened the proceedings by reading out Bandana's application letter. He slowly started asking questions, beginning by trying to determine what the couple actually wanted. First, he asked Sukden. Sukden explained that his wife now wanted to live without him. He said that he did not want a divorce, but that he would sign for it if Bandana really wanted one even though he preferred to stay with her.

When Om Prakash asked him what he believed to be the reason his wife wanted a divorce, Sukden answered that he thought Bandana's parents were behind it: 'If her parents had not encouraged their child, she would not be coming here to ask for a divorce.'

Om Prakash turned to Bandana, asking her what aspects of her husband's behaviour she felt he would need to change for her to stay with him. He lectured: 'Simple quarrels between husband and wife are no reason to apply for a divorce. There are other ways to solve the problem. The two of you must sit and talk about things.' As she had done before, Bandana responded by saying that her husband has beaten her many times. 'Now,' she said, 'he wants us to stay together, to come to a mutual understanding. But he gets angry with me for no reason, and when he gets angry, he beats me.'

When Om Prakash asked Sukden how many times he had beaten his wife, he answered: 'Three times, I beat her very badly. She called my mother a prostitute. That is why I beat her. She said: "You are the son of prostitute". I asked my wife: "With how many men has my mother been that you are calling her a prostitute?"'

The discussion quickly turned to Sukden's reasons for beating Bandana and the validity of these reasons. There were various parties present who had taken a clear stand against Sukden's physical reaction to his wife's words, regardless of what they might have been. Bandana's parents' sub-sector head, who had watched Bandana grow up in her *maiti ghar*, was most vocal. He told Sukden:

> Another person's daughter is not given to you simply so that you can beat her. You have to analyse what you do; it is not good for you to beat her. So many times, I have heard that you beat her. I am also married

> to somebody's daughter. Yes, it happens, sometimes a husband gets angry. The wife gets angry. But when that happens, should I beat my wife? It is not good. Sometimes, it happens – husbands and wives quarrel. I don't care what your wife says to you, you are not allowed to beat her. Now, you are blaming her parents [for encouraging her to ask for a divorce]. How will you face your wife's parents in the future, if you are blaming them like this?

A neighbour from the sector where Bandana now lived with her husband added that he had heard Sukden beating her many times. He said that it happened too often and that the beatings were far too severe. Again, Sukden tried to defend himself, repeating that his wife deserved the beating because she had spoken bad words to him. He insisted that wives should not say things to make their husbands angry because this compelled their husbands to hit them.

Om Prakash, who was considerably older and more respected than the twenty-something Sukden, did not appreciate the boy's insolence:

> Don't you teach me about husband and wives! I have two wives at my house. Instead of convincing your wife to behave better, you are just blaming different people for your problems. You have to ask your wife how you can solve it. Why are you blaming others? If you get angry and if you beat her, then she will also get angry. That is not the solution to your problem. You are the girl's guardian [now], and if you do not give her love, it is not good. And maybe she is younger than you, and she does not understand what she should not say. It is up to you to teach her that; it is not good to beat her. You must think how you can take your wife and convince her yourself.

As the mediation progressed, I slowly watched Bandana's pro-divorce stance begin to change. She said: 'I sent my application to the office. If we reach some kind of compromise, I will return to the house. Otherwise, I will separate from him and live without him.' Her mother looked concerned about this development, and argued: 'he beats her very badly. How can I send her to go back to her husband's house? At night, she came to our house telling that me she could not sleep at night because she was hurt so badly. I gave her medication and she slept. I cannot send my daughter to his house in this way, I cannot. If he kills her at night, what will happen?'

Bandana's father also spoke up, telling his daughter to think about what she wanted to do – about her life. 'Whatever things have happened, it is our right to go and ask about our rights, and it is also *your* right, to go and ask in different places.' Then he turned to Sukden and said: 'If my daughter's mouth is not good, come and ask me.'

The discussion became heated and Bandana's parents and their son-in-law yelled at each other in the Counselling Board room. Unbecoming of his age, Sukden addressed his wife's parents with the impolite form *timi*, a personal pronoun used to address those who are younger, instead of *tapai*, the respectful form used to address elders.

Heated arguments were not considered conducive to reaching successful mediation sessions, and Yadhu Prasad, the Counselling Board Chief, interrupted them. He asked Bandana: 'Do you want to go back and spend your life in a good way, with your husband, or do you want to do divorce?'

Divorce was unpopular among large segments of the camp population. The sector head of Sector E, who I knew for his strong anti-divorce stance, tried to convince the couple not to separate: 'I have asked the FA and the lawyers and divorce is not possible. It is better that you come to a mutual understanding and stay together.'

When Bandana remained silent, the Counselling Board Chief admonished her: 'You are not speaking, but you have to speak. How would you come to a compromise?' Turning to Sukden, he asked: 'Do you love her? What will you eat, what will you do without your wife? Listen. What do you think the law says?'

He did not go on to explain and the discussion paused. Sukden's mother was not present and Bandana's parents insisted that in order to come to a compromise, she had to be there too. Her participation was important because she shared a household with the couple and had consistently taken her son's side in arguments between him and his wife.

A neighbour explained that caste discrimination played a role in Sukden's mother's attitude, and that she had never felt that Bandana was good enough for her son. According to the neighbour, Sukden's mother had hoped that he would marry a Brahmin girl in an elaborate ceremony. This was somewhat odd because the Lepchha ethnic did not historically attach great importance to the caste system. However, as Bennett, Dahal *et al.* (2008: 2) noted, 'for most people living in the territorial boundaries of the modern Nepali state – especially after the promulgation of the National Code or *Muluki Ain* in 1854 – the caste system has been a major determinant of their identity, social status and life chances.' Sukden's mother might have been thiking in terms of social mobility, and had been adamant that her son deserved a girl of the highest caste – a Brahmin. Bandana may not have been Brahmin, but she as a Chhetri she could still be considered high caste. She was more educated than Sukden, having completed school until class 9, whereas Sukden had left school after class 6.

Part three: An apology, a promise

Sukden's mother arrived a few minutes later and the mediation session continued. The option of divorce now seemed like it was off the table and it appeared likely that some kind of compromise would be reached. Bandana's father explained that Bandana's sector head and the other people of their sector would like to see this case resolved. He told me that in the past, crowds would gather when Sukden and Bandana fought but that now, people were tired of the fights. The fighting happened too often so instead, they watched from afar.

When he finished speaking, Om Prakash asked Bandana to excuse her husband one more time. 'If you do, we will see that you respect society, and they will also excuse your husband.' To Sukden he said: 'You should not beat your wife. If you have a problem, you can tell your sub-sector head. Just try to convince your wife, don't beat her. You need to think and decide. If you choose to get a divorce, you will have to go to different places. Before that, you need to think very clearly.'

Turning back to Bandana he continued: 'And if he drinks, tell him not to do it… people who drink, their money will disappear and their health will grow poor. It is very bad. When he is happy, at those moments you need to convince him of those things.' Addressing both Bandana and her husband, he added: 'These are the causes of quarrels between husbands and wives. It would be good for you to think about this matter. If you were not married, if you were not husband and wife, you would have no right to compromise and leave here. Now, you need to correct the mistakes you are making – from both sides – and go.'

The sub-sector head, who had a prominent voice in the discussion, stressed that what happened from there on was the couple's own decision and not that of their parents. Others voices chimed in, concurring, and encouraged Sukden and Bandana to make up their minds and tell the Mediation Committee what they wanted.

The sub-sector head advised Sukden to explain to his wife that he understood that he had made mistakes. He argued that if he was able to admit to his mistakes, she would accept them, Sukden turned to Bandana. 'I made a mistake, I should not beat you. I won't do it again. I don't drink all the time, but I drink sometimes – *rakshi*…' Looking relieved, he said: 'I won't do it again; I'll not repeat these things.'

This was a turning point. Om Prakash looked at Bandana and said:

> This is important proof for you; I will write it down here. If he beats you again, you can take this paper and forward it to the FA, and your

> case will be dealt with very quickly. After marriage, people face different kinds of problems, but with the support of both sides, of the parents, you can solve these problems. If you reach a compromise and solve this in a good way, your life will be good.

Om Prakash and several others in the room pointedly warned Sukden that he would have a problem if he broke the promises he had made that day to come to an agreement. 'Whatever you say – 'I won't do this, I should not raise my hand at my wife,' if you agree to that here, we will take your word. But if afterwards, you go out to drink and come home and beat her, you will have big problems.' A neighbour added: 'As a neighbour, a brother, I am telling you that I have written many agreements here. If you agree here, you cannot come back tomorrow when this happens again. If you sign here, this letter will go to different authorities: the FA, Damak, the [Gender] Focal Point – things will be difficult for you if you break the agreement.'

When he was through trying to convince them, Om Prakash asked Bandana once more what she wanted. She answered: 'If he gets angry with other people, he should not beat me. If I go somewhere, even if just to my neighbour's house for a few minutes, he gets angry. There is an old lady who lives near my house. If I go there, he speaks very badly. My sister-in-law lives in our house, and if I go anywhere, he scolds her too. I am a human being; I should be able to go out.' When her mother-in-law interrupted, complaining that she was doing all the work that Bandana (as a good daughter-in-law) should be doing, Bandana held her ground. She continued: 'My husband should support me in whatever I do. Being a business man, he should support me.' In the past, he had been suspicious when Bandana left the house. His mother had not liked it either.

A neighbour spoke up in support of Bandana's position, and said that Bandana's husband should not suspect his wife of doing wrong just because she left the house. 'There should be trust between husband and wives in whatever they do. If there is no trust, no faith between the husband and wife, it will not work.' He explained that Bandana was intelligent and had a right to use her skills:

> Though she is a woman, a woman also has rights. The girl, she is very good at writing in English – her handwriting is beautiful. One day I saw her handwriting; she had written an application. So at that time, I asked her – she is my neighbour, and I asked her – 'Why are you sitting at home idly? Why don't you apply for a job?' She can apply in the hospitals, at AMDA Nepal, she can work anywhere. She would earn a bit of money to help run her family. At least she will be able to buy vegetables; she will have the right. She can expose her talent. She didn't argue with me, but you know, somebody said that she was not

> allowed to apply for these things. What I understand is this: this boy is not supportive of her doing any sort of work. You know, I gave them my own example. I told these two: 'If my wife goes away for fifteen days, I will not complain. I have faith that my wife will not do anything bad with anyone else. And she loves me, she trusts me, this is what I feel.' I was trying to convince this boy that he should cultivate this kind of mentality, so that his love will strengthen more and more and there will not be any sort of conflict. A man should support his wife. We believe this. Because she has rights, doesn't she?

The female assistant sub-sector head nodded, adding: 'If there is anything you are interested in the unit or the camp, just come and tell us. If you ask us, whether it is a vocational training opportunity or something else, we will forward your application to the higher authorities.'

Both Bandana and her husband were quiet. Neither of them argued with what had just been said. The atmosphere in the room had changed noticeably – a feeling of 'agreement' was in the air. Yadhu Prasad, the Counselling Board Chief, wrote up the mediation agreement, which he read aloud when he was done. It said: 'According to the application of Bandana Lepcha, B-2 hut 67, Bandana Lepcha was beaten by her husband, Sukden Lepcha. From today on, Sukden Lepcha will not physically beat to his wife, Bandana Lepcha. For beating his wife, Sukden Lepcha has asked to be pardoned by the *samaaj*.'

The document proceeded to set out the terms to which the parties would agree to abide: 'Bandana Lepcha should respect her husband. Sukden's mother should not listen only to her son. Both husband and wife should behave properly. They should not listen to what other people are saying against them. Sukden Lepcha hereby agrees not to beat Bandana again.'

It was signed by Bandana and her husband, their parents, the sector head, Counselling Board Chief, and a number of witnesses. Later, outside, I asked Bandana how she felt about the outcome. She answered that this was the first time that a *milapatra* – a mediation agreement – had been made and that if her husband beat her again, she would come directly to the Counselling Board with the agreement. If it happens again, she will not accept his apology: 'If he does it again, I will not come to any compromise. I will get a divorce.'

A cross-section of attitudes to domestic violence

By and large, domestic violence was still seen very much as a private issue in the camps. The same neighbour who stood up for Bandana during her mediation session at the Counselling Board told me later that people should not speak of husbands' and wives' quarrels:

> Half our lives have passed; we should not break the relations between husband and wife. If they reach a compromise here, and have a very good relationship, they can be an example for other people. But when they quarrel, they create very big problems in our society.

Explaining his satisfaction with the outcome in Bandana's case, he said: 'Our final conclusion today is: "Lead a happy life. Don't repeat the mistakes you have made, neither girl, nor boy. Tomorrow, lead a very happy life." That is finally what me, myself, and everybody here has convinced them.'

Incidents of domestic violence were regularly described by people in the camps as 'simple quarrels' between husbands and wives. Unlike 'serious' cases, which involved threats, murders, or grievous bodily harm, domestic violence constituted a crime under Nepalese law but was perceived by refugees as minor issue that appropriate for resolution through the camp mediation system.

Sukden's attitude towards domestic violence – that if a wife behaves badly, a husband is entitled to beat her – reflected that of many men in the camp and in the local community surrounding it.[170] At the same time, it was clear that attitudes in the camp were changing. It is noteworthy that the men present almost unanimously stated that they did not find it acceptable for Sukden to beat his wife: 'Another person's daughter is not given to you just so that you can beat her.' They told him that rather than beating her he should seek out his sub-sector head or another camp authority, with the assistance of whom he could resolve the issue without violence.

Nearly all the men who made these claims held positions of authority in the camp administration and had likely benefited from UNHCR awareness raising sessions and trainings that targeted CMC members more often than the general public. That their position was not yet unanimous in the camp was evident from Sukden's repeated and anguished attempts to justify his violence against his wife by her failure to behave as a good wife should.

Despite Sukden's resistance, these discussions show that perceptions of the appropriate roles of wives were shifting. Bandana articulated this shift when she said: 'I am also a human being, I also have rights.' Fewer and fewer wives in the camps, especially from younger generations, were content to stay at home. They wanted opportunities to see their surroundings, meet their friends, and use their skills. At the same time, many men continued be distrustful and jealous when their wives left the house. Older women (and even some younger ones) resisted the extra freedom that girls were now claiming and considered it 'loose' and inappropriate.

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[170] Interview with SAATHI Nepal, Kathmandu, 9 April 2011.

In mediation sessions where these norms were debated, translators or 'change agents' such as the (male) neighbour who insisted that Bandana should be allowed to work, to 'expose her talents', referring to her right as a women and her husband's corresponding duty to support her, could have a great deal of influence over others in the camp. They could sway public opinion, as well as the beliefs of mediators and disputing parties. By appropriating messages relating to women's equality and translating these for the local context, a process Levitt and Merry (2009) referred to as the vernacularisation of international human rights norms, they contributed to the formation of a rights consciousness among others in the camps.

V.5 Three women, three legal paths

Where the previous section showed how different norms relating to domestic violence and gender roles came together in the mediation room, this section depicts the legal paths taken by three domestic violence victims in Beldangi-2. The examples presented range of different sequences of mediation steps, ranging from addressing a case that was resolved through at the sub-sector level only to one that ended as dual DV Act/divorce proceeding before the Jhapa District Court.

Gita keeps it in the sub-sector

Gita was 28 years old. She had a seven-year old son and had lived in the camps for twenty years. When she first came to Nepal, she lived in Beldangi-2 Extension camp with her parents. Eleven years ago, she married her husband, Lal Bahadur. He was two years older than she and of the same ethnic group. Their marriage was arranged by his parents, who had come to Gita's parents' house to ask for Gita as a wife for their son. After the marriage ceremony, which was elaborate and lasted several days, Gita moved to Beldangi-2 to live with her new husband.

Not long after their wedding, the quarrelling started. Sometimes they only argued and he called her names, but he was also violent and frequently beat her. Even though she had an idea that Nepalese authorities could do something to help her, Gita did not know how to approach them.

> One time, we had a very big fight. At the time, I thought I should go report to the APF, but no one helped me to go. No one told me how I should report, so I did not go there. I felt that without help from anyone… that it would be very difficult for me to go alone.

She considered reporting him to the Counselling Board in the hope that he would be punished: 'If they take my husband there… they might beat him with bamboo sticks, and sometimes they make people kneel down on gravel.

And they… they keep them a whole night without any clothes.'

In the end, she decided against reporting to the APF or Counselling Board. Her husband had a short temper and she feared that he would take revenge. Instead she chose to approach her sub-sector head, who agreed to mediate. During the mediation session, Gita was able to explain what happened – she told people that her husband argued with her over small, meaningless things, was jealous when she spoke to other men, and did not trust her. She explained how they came to an outcome:

> The sub-sector head made my husband apologise to me. My husband said that he understood that he had made a mistake, and in front of the sub-sector head and my relatives, asked for my pardon. Then, the sub-sector head advised me to excuse my husband one time. I realised that sometimes, they happen, these problems between husband and wife, and that we have to forgive. In the end, I just accepted the agreement… What I thought was if that if he did something like this again, I would do something…

Gita felt the mediation session helped to an extent. Her husband changed a lot after the session and she told me that he treated her much better than he had before. He had stopped beating her but they still had problems. Sometimes, he drank and argued with her. Because he had not hit her again, she saw no reason to go back to the authorities. In that sense, she was satisfied with the outcome of the mediation, although she said she was still unhappy with her husband: 'All people marry one day but I would not wish this type of husband on my worst enemy. He argues with me for everything. Nobody should have a husband like mine.'

Gita's preference for the camp legal system related largely to her fear of retribution from her husband if she were to turn to a 'high-level' legal structure, such as the official Counselling Board. This fear was not uncommon among women. To keep her problem close to home and avoid her husband's anger, she decided to ask her sub-sector head for help. In line with UNHCR's efforts to denounce violence against women, Gita's sub-sector head lectured her husband that men could not beat their wives and ordered him to stop. Gita accepted her husband's apology and returned home knowing that she had made her position stronger, and that she could take legal steps if her husband beat her again. Although she did not take further action because he had not beaten her again, she found the encounter empowering. A camp authority had confirmed that she was right – that it was unacceptable for her husband to hit her, and that there was legal recourse should he continue to do so.

Indira gets divorced

Indira was sitting cross-legged on a bamboo bed in the front room of her hut when I came to interview her, a light pink *pashmina* shawl pulled up under her chin and wrapped all around her body to keep her warm in the January chill. She had just returned from fetching water, and told me that after our interview, she was going to the English language school.

Indira married her husband in 1993, two weeks after the birth of her younger sister and not long after they arrived in the camp. He was from the same sector as she, but from a different sub-sector. She was thirteen at the time, and her marriage was a *magi-biha* (a Hindu arranged marriage) with a man of the same caste and ethnic group as she. After the ceremony, she moved in with her husband, his parents, and his brother. She and her husband had two children – a 9-year-old daughter and a 13-year-old son – both of whom went to school within the camp.

For the first three or so years of her marriage, Indira was happy. Her husband was a good to her and they cooperated and made decisions together. Like those of many other wives in the camps, Indira's problems began when her husband started drinking. His drinking was excessive – he drank all the time. Sometimes, he would only come home at night, other times he was away from the house for up to 24 hours at a time. When he did return, he used abusive language and argued with Indira. He would beat her – sometimes very badly. Angrily, she told me: 'He didn't look after my children, didn't give us money, not even for school uniforms.'

Indira's father- and mother-in-law had tried to reason with their son but instead of listening, he fought with them also. In the end, Indira's neighbours, who had seen many of her fights with her husbands, convinced her that his alcoholism was causing problems for her household and advised her to take action.

Aware that her sub-sector head was the first designated person to handle cases from her unit, Indira reported her problems to him. A former teacher she knew and who understood her troubles helped her write her application. He did not ask for any compensation. With the application in hand, Indira would report to the sub-sector head every day, telling him that her husband was drunk and asking the sub-sector head to convince him to stop drinking.

Finally, the sub-sector head called them to mediation. During the mediation session he lectured her husband, admonishing him not to behave the way he did and telling him that he should stay home, help his wife and take care of his son and daughter. For a few days his words seemed to have an impact, but it was not long before Indira's husband began drinking again. When he came home drunk another two or three times, Indira had had enough.

She decided to take to her case up a step and turned to her sector head for help. As the sub-sector head had done, the sector head called Indira and her husband for mediation. In the presence of both relatives of both Indira and her husband, witnesses, intellectuals, and camp authorities, Indira's husband was told to stop abusing her. Indira said that everyone who had attended the session knew what had happened and how often he had broken his promise since the last mediation session. Still, they asked her to give him one more chance to apologise and to pardon him. To convince her, they told her: 'He is your husband, please give him another chance. You have two babies; if he improves his behaviour and character, it will also be better for you.' Indira said that as the listened to them, she was convinced that they were right, so she gave her husband one more chance.

When he started beating her again, Indira wrote another application to the sub-sector head and sector-head requesting that they mediate again. Both authorities refused. They told her that they had done what they could, and that it would be better for her to submit her application to the Counselling Board. She did, and her case was mediated again.

During the mediation session at the Counselling Board mediation session, which Indira's sub-sector and sector head both attended, her husband said the same thing he had said before: 'Give me one more chance, please excuse me – from today, I will be a better man…' This time, when Indira was asked if she would give her husband one last chance, she said no: 'This time, I felt unable to excuse him. He had already shown that he kept repeating his behaviour – the authorities knew this.'

Despite her resistance, members of the Camp Mediation Committee and the other respected community members in the room all encouraged her to try again. In the end, she consented:

> I gave my husband one last chance, but when he came back to the house, within three days he started again. He continued drinking – he never stopped – so I went back to the Counselling Board. Now, they said they would not accept my application, and advised me to report directly to the Field Assistant (FA). So I did, and my case was forwarded.

By then, Indira had learned about divorce from others within the community:

> I heard that if your husband tortures you severely, it is difficult to spend your life with him. Divorce means to stay independently, to become safe, and to gain peace. So I thought that if I would divorce my husband, at least I would spend my life free from harassment and torture. Without a divorce, every day was difficult. So I made the decision; I decided to divorce from my husband.

Even Indira's husband's neighbours, with whom she still had good relations, advised her that she would be better off by separating from him but Indira said that by this time, she had already made up her mind.

Indira told me that before her case was mediated by the Counselling Board, she had no idea who the Field Assistant was but that when she found out, she had approached him with a purpose: she went to the Field Assistant to get a divorce. The night before she went to see the Field Assistant, Indira's husband had beaten her severely, leaving marks and wounds on her body and face. She showed these to the Field Assistant, and told him the whole story from beginning to end.

The Field Assistant called Indira's husband and when he did not come, forwarded the case to the Jhapa District Court. When Indira was called to Chandraghadi fifteen days later, she was accompanied by the Gender Focal Point. In court, she explained the whole story again. She went to court a total of seven times, one time accompanied by a lawyer. Each time, Indira was given a piece of paper to sign and told that she would be informed when she would need to come sign again. 'I have no idea why they needed me to sign,' she told me. 'Nobody explained to me what the significance of my signature was.'

'I implored the Nepali judge: 'Please try to finalise my divorce as soon as you can; I am alone, I have no time to come here.' The judge told Indira that the process would go more quickly if her husband came too, but that one-sided divorces took time. 'The formalities had to be fulfilled' she said, explaining that the court told her they needed several signatures to grant her a divorce.

Indira's husband was called to court twice but never showed up. Indira believes he did this to avoid having to give his signature to allow her to divorce him, in an attempt to keep her trapped. Finally, the judge told her that he would grant her a one-sided divorce: 'He said, "How long should you have to stay with your husband, to endure this torture every day at his hands? You are a human being – you must get the right to stay in freedom."'

It took seven months before Indira's case was finalised. Unlike the camp mediations which had not cost her any money, the Nepalese legal procedure was expensive. In total, she spent more than 4,000 Nepalese Rupees. Each visit to court cost at least Rs 500 for transport, lunch in Chandraghadi, and other expenses. In total, she was reimbursed Rs 800 for transportation costs. She said that the Gender Focal Point had given her the money but that it might have come from UNHCR – she was not sure. Her other expenses were not covered.

Pabtira learned about her options as she underwent different stages in the legal process to deal with her husband's violence. When she first

approached her sub-sector head, she did not do so with divorce in mind; she only asked that he make her husband stop drinking. As camp authorities proved ineffective in changing her husband's behaviour and members of the community watched as he continued to drink and beat her despite his promises to stop, they taught her about divorce. Camp authorities, aware that she had followed each step within the hierarchy of the camp mediation system and that their efforts had not changed his ways, supported her in seeking the UNHCR's Field Assistant. When the Field Assistant took her case seriously, it was forwarded to the Nepal Bar Association and filed in court.

Arpana's encounter with the DV Act

By April 2011, only two court cases had ever been heard by the Jhapa District Court under the Domestic Violent Act. Arpana's case is one of those two and the only case that had been concluded. With the help of the court registrar, I was able to obtain a copy of the case file. It was filed in March 2010 and registered in July of the same year. The file contained a copy of Arpana's refugee identity card and the medical report from Mangalabare hospital, where she went to see a doctor. The report states that she suffered from several injuries – swelling on her thigh and bones, as well as blue bruises the doctor described as punch wounds. The report stated that the wounds were not fatal, that no weapon was used, that Arpana had been given first aid treatment, and that her condition was stable.

Arpana was born in 1978 and was 31 years old when we met. She is from Takai village, in the district of Sarbhang, Bhutan. Arpana and her husband were of the same caste and met in the camp, where they fell in love and married in 1998. Their marriage was not an arranged marriage but a love marriage. After the wedding, Arpana moved to her husband's house in Sector E.

After their marriage, Arpana's husband began to drink and take drugs. He would come to the house intoxicated and abused Arpana verbally and physically, beating and kicking her. He was jealous and controlling and the abuse was a regular occurrence. One day, he went to Gujarat, India, for work. He stayed for a month but when he came home, he started levelling accusations at Arpana. He told her she had cheated on him and spent the night in the homes of other men.

> He destroyed all the paper covering my walls and got a packet of condoms from outside somewhere and put it under the pillow of my bed. I don't know about those matters but my husband called all the neighbours and people and gathered them in front of our house and showed them the condoms under the pillow, telling them 'While I was away, she was having sexual intercourse with other men – look, she

> even keeps condoms beneath her pillow!' He would say things like this, to make me look bad in front of the community, to ruin my reputation.

Unlike many other women in similar situations, Arpana's husband's family supported her. They knew that what he had said about her was untrue and encouraged her to report him. Arpana listened and reported her husband multiple times. Her case was mediated by the sector head on various occasions but each time, Arpana's husband pretended to be on good behaviour and was able to convince the committee that he would not do it again. Each time, he was pardoned and sent home, where he was steadfast in his abuse.

When Arpana went to the sector head to report that her husband was still beating her, the sector head said that he could not continue to mediate and that he would forward the case to the Counselling Board. While she was waiting for her case to be called by the Counselling Board, an incident happened that was worse than the others.

Arpana's mother-in-law had lectured her son (Arpana's husband) when he grew threatening and abusive. He took out a knife and yelled that he would cut her in two. Then he went out; he did not come back to the house until the following morning. He had been out drinking, and when he returned, he was drunk. One of Arpana's daughters was sitting near him and he cursed at her, shouting: 'Why didn't you sweep the floors, clean the house?' Then he slapped her, hard. Arpana said:

> I argued with him, asking him 'Why are you beating this small child, not even ten years old? You have no right to hit her so hard, to torture her like that!' That night, I was sitting on the floor beside one of the beds, cutting vegetables. He had a small knife and stabbed my right thigh with it, cutting me. Then he pointed it at me, threatening: 'I'll cut you in two!' Then after, he took out a leather belt, and hit my small daughters two or three times, and me, two or three times. He took a long *khukuri* from the kitchen and came outside. He pulled me by the hair and turned my neck, and tried to slit my throat, like this.

Arpana gestured, mimicking his motion. At that moment, her brother-in-law came in and grabbed the knife. She explained that afterwards, her husband's mother and sister had been supportive, telling her that they found it difficult to watch her suffering day in, day out, and that she should go to the Field Assistant and tell him what was happening.

When Arpana attempted to visit the UNHCR Field Assistant (who she referred to as 'madam') the Field Assistant sent her away, telling her that a verbal report was not enough and that she needed to bring a written application letter. The next day, Arpana approached the lawyer from the Nepal Bar Association who was stationed in the camp. The lawyer advised

her to attend to herself first and said that they could see about the case after she had taken care of her health. Arpana listened and went to the Mangalabare hospital for treatment. When she returned, she also went to the APF. The APF told her that the next time her husband beat her, they would come and take him to jail and that in the meantime, the Field Assistant would take care of her case.

The Field Assistant received Arpana's details from the lawyer and forwarded her case to the Nepal Bar Association in Chandraghadi. Her case was filed in Chandraghadi District Court in March 2010 and Arpana was summoned to court a week later. She travelled to Chandraghadi with her brother's wife. In Chandraghadi, Arpana met her camp lawyer who was there to attend the weekly Nepal Bar Association team meeting.

At that first meeting, the court registered her case, and took a detailed statement from the lawyers. Arpana said they did not ask her much. 'They would just tell me to sign a book and give me an appointment slip. Every time, I would show that appointment slip to the Field Assistant, and the Field Assistant took a Xerox copy and kept it for their file.'

She struggled to explain that she filed two cases in court, not one. The first was a domestic violence case and the other a petition for a divorce, although Arpana did not understand this at the time. 'When I reported to the lawyer, she did not explain everything. She did not tell that the case would be handled in two different ways. It was only when I went to court that I learned that I was going to have two cases: one domestic violence case, and one to divorce my husband.'

Arpana told me that she must have gone to court at least twelve times in a six-month period. She spent more than 6000 Nepalese Rupees (NPR) on travel and other costs incurred for these court visits. UNHCR reimbursed her Rs 1600. After six months, she was given her divorce letter. She spent more than Rs 6,000 on travel and other costs relating to these visits. UNHCR reimbursed her travel costs with Rs 1,600. After six months, in the month of August, she was given her divorce letter. Although she was successful in obtaining her divorce, the domestic violence case was ultimately dismissed.

When I asked Arpana why her domestic violence case was dismissed, she explained that the judge had asked her what her main objective was. When confronted with this choice, she had answered that her goal was to divorce her husband.

> The Nepali court judge said to me: 'You have four witnesses. Those four witnesses are not enough for your two cases – your divorce case and your domestic violence case. One case you win, one case you lose. The DV case, you will lose, but your divorce case, you will win. We will

> give first priority to your one-sided divorce. If your husband comes and tells his story in detail, then maybe we will give him punishment, but your divorce will take a long time.'

The judge had granted her a one-sided divorce when, after sixty days, her husband had still not appeared before court. After the final divorce hearing, Arpana's lawyer asked her why she had not told the judge the details of her domestic violence case, telling Arpana that this case was not over yet, that it was still on-going. Arpana answered: 'This is what the judge explained, so what can I do? Three of my four witnesses have been resettled; only one is still in the camp. How can I find other witnesses? I can't simply make people witnesses who don't know my story.' Disregarding Arpana's protestations, the lawyer advised her to return to Chandraghadi to emphasise the domestic violence aspect of her case, telling her that action should be taken against her husband according to the law.

According to Arpana's file, she was summoned five more times to appear for her domestic violence case but never appeared. She was tired of travelling back and forth between Chandraghadi and the camp. The trips were hard on her financially and she had been unable to procure the two witnesses the judge had asked for. Had she known from the start that the judge would have asked her for two different witnesses per case, she said she might have taken a different approach, but she achieved what she wanted most: to separate from her husband.

Like Indira, Arpana started her legal procedure knowing little about Nepalese law or its possibilities. Although the two women had very similar outcomes, they legal paths they took differed. Unlike Indira's lawyer, Arpana's lawyer pushed the agenda of the Domestic Violence Act. Without understanding fully to what she was agreeing, Arpana consented to filing what she described as a double case – one under the DV Act, as well as a divorce case. Her lawyer, on whose advice she relied blindly, played a crucial role in this choice. Both women benefited from the legally plural setting of the camps by being able to seek out the Nepalese legal system when their problem was not resolved by camp mediation. Neither women knew much about Nepalese law or the judicial remedies available for domestic violence victims until advised about these by members of the community, or by the camp lawyer.

V.6 Shopping for justice

Victims of domestic violence in the camps were confronted with a range of programmes targeted either at them, or at the men who abused them. This included programmes organised through the Bhutanese Refugee Women's Forum (BRWF) on International Women's Day (March 8) or the Camp Management Committee, UNHCR's Standard Operating Procedures for

SGBV, and the provision of advice by the NBA about legal options, including the filing of a court case under the country's Domestic Violence Act. As Merry notes,

> Movement activists, NGO leaders, and government officials create programs and institutions that are a blend of transnational, national, and local elements as they negotiate the spaces between transnational ideas and local concerns. These institutions incorporate indigenous social institutions such as kinship systems, transnational models such as shelters, and human rights ideas such as the right to safety from violence. The result is a bricklayer of elements in constantly shifting relation to one another made up of elements that do not necessarily fit together smoothly. (Merry 2006: 134-135)

One discernible impact of the projects relating to sexual and gender-based violence (including domestic violence) that UNHCR has implemented in the camps has been a broadening of the range of dispute resolution forums open to domestic violence victims. The position of Gender Focal Point, which was created under the auspices of the Camp Management Committee to deal specifically with cases of sexual and gender-based violence, is one example. Through the presence of lawyers in the camps, Nepalese courts also became more accessible to SGBV victims.

Just over half (54%) of domestic violence victims who obtained an outcome through a legal or non-judicial authority reported that the case had been decided in their favour. The offender formally apologised to the victim in just under half (49 percent) of cases. Nine percent of cases – fifteen of the seventeen domestic violence cases in the sample that reached Nepali court during the five-year period under study – ended in divorce. Eighteen percent of domestic violence victims said that the authorities did nothing after the case was reported.

Contrary to UNHCR's rule that cases involving sexual or gender-based violence not be dealt with at levels in the mediation hierarchy lower than the Counselling Board, nearly half of all cases were resolved by sub-sector heads and sector heads. Twenty-three percent of cases were resolved by the Counselling Board level and approximately ten percent was mediated within either the APF or police compounds. Only seventeen cases (ten percent) ever saw the inside of a Nepalese court. This is slightly higher than the percentage of court cases among all types of incidents captured in the sample and relates in a large part to the prevalence of divorce as a legal solution for victims of domestic violence.

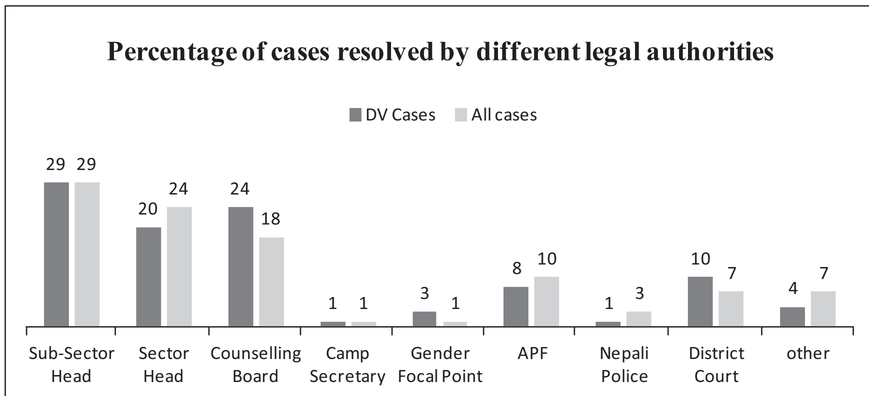

Figure xiv: Percentage of DV cases resolved through different legal authorities[171]

Legal pluralism can create uncertainty for those who cannot be sure what legal regime will be applied to their situation but it also creates room for individuals to opportunistically choose the legal authority they think will best advance their claims (Tamanaha 2008: 376). The relatively small number of domestic violence resolved in court suggests that despite UNHCR's efforts to enhance access to Nepalese courts, not all legal venues were equally accessible for refugee women in practice. A number of obstacles hampered access to court for refugee women. The sheer distance from Beldangi to Chandraghadi, for instance, meant that those who work inside or outside the camps were forced to forfeit an entire working day to travel to and from court. Travel and lunch are expensive – especially on a recurrent basis – and most women who were called to court for divorce or other cases were asked to appear many times before their case could finally be resolved. Many felt that court procedures took too long and required too many visits to Chandraghadi to make it a feasible option. Although UNHCR reimburses travel costs, most refugees I spoke to said that they had not been fully compensated. Travel costs are only reimbursed after they have been made, a construction that does not necessarily work for the poor, who may not have the money to advance the fare. Few of them knew enough about Nepalese law to fully understand the legal procedure and its requirements.

Victims of domestic violence may also be reluctant to turn to formal legal systems for other reasons. The refugees' experiences with the police in Bhutan were marked by violence, injustice, rape, and torture and several of my contacts alleged that this was one of the main reasons for which the Bhutanese

[171] For DV cases, N=165 (out of a total of N=166 reported DV cases in the sample). For all cases, N=438 (out of a total of N=439).

were hesitant to report incidents to the police in Nepal. Others perceived the Nepalese authorities as corrupt, politically biased, or discriminatory, and feared that they would not be treated fairly by Nepalese authorities (this fear was expressed with respect to both the district court and the Nepal Police). According to UNHCR's Associate Protection Officer, these fears were not altogether unfounded, especially in refugee-local cases. He believed that bias could lead refugees to draw the short end of the stick in cases involving both refugees and locals and that refugees were at an additional disadvantage because of their dependency on and fear of repercussions from the local community, which tended to lead them to settle more quickly, for a worse outcome than they would in a conflict with another refugee.[172]

When they consider legal solutions, women also face constraints 'beyond the courthouse and outside the law, including the powerful and power-laden organisations of gender, race and class that generate multiple forms of oppression' (Lazarus-Black 2007: 162). They may decide not to pursue court cases for reasons that have little to do with law but involve other considerations, such as emotional needs, love, children, family reputation, or financial dependency. For refugee women, the lack of information about Nepalese law and about legal possibilities for filing claims relating to domestic violence is likely to have played a role.

When respondents were asked whether they believed that Nepalese law prohibited men from beating their wives for the Measuring Access to Justice survey, the majority said that they did not believe so.

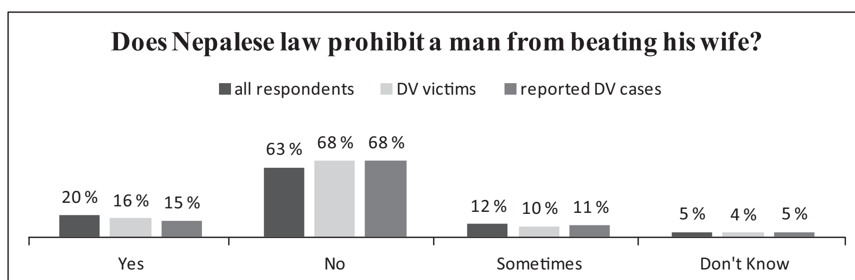

Figure xv: 'Does Nepalese law prohibit a man from beating his wife, even if she does not do what he wants?'[173]

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[172] Interview with UNHCR Associate Protection Officer, Ramesh Karki, 1 April 2011.

[173] For all respondents, N=736 (of 746); for all cases in which DV was the most recent crime experienced, N=254 (of 258); for DV cases reported to an authority, N=163 (of 166). Due to missing values for certain questions, the values used for N vary slightly in different analyses in this book, depending on the variables used. The numbers in brackets are the total number for each category when missing values are not taken into account.

Interestingly, the percentage of domestic violence victims who did not believe there was a law in Nepal prohibiting men from beating their wives was slightly higher than the percentage when all survey respondents were included. There were no distinctions between women whose domestic violence cases had been mediated and DV victims in general, which suggests that in domestic violence cases, experience with the legal process does not necessarily result in an improved understanding of Nepalese law.

These and other factors can make it more attractive for refugees to settle cases within the camp and reduce the likelihood that they will seek out state legal procedures. This effect is not unique to the refugee population; a USAID study found that the majority of disputes in Nepal itself were not handled by courts or government officials but were resolved by informal local actors like village chiefs. Important disincentives for seeking courts were that these were the perceptions that courts were costly, applied complex procedures, were difficult to reach, and that the effectiveness of court procedures was hampered by weak capacity and long delays (Michel, Walsch *et al.* 2009: 8).

On the other hand, the reasons women may have not to take their husbands to court may prevent them from turning to the camp legal system. Of the 92 domestic violence victims included in the survey who did not report their crime to any authorities (neither camp nor Nepalese authorities), 96 percent agreed or strongly agreed with the statement ‘I considered my problem to be a family matter’. 74 percent agreed or strongly agreed that they did not report because they did not want to cause problems in the community. 71 percent was agreed or strongly agreed that it would worsen relations with the other party. 67 percent gave not wanting to talk about what happened as a significant reason for not reporting the incident, and 63 percent stated that they did not think their problem was serious enough to report.[174] Despite UNHCR’s concerns, resettlement coupled with the fear that court cases would delay resettlement procedures did not appear to be a factor that prevented victims from reporting SGBV incidents. Only thirteen and fourteen percent of women were afraid that reporting their case to the Nepalese or camp authorities, respectively, would have negative consequences for her resettlement case.

Divorce as justice?

The proliferation of legal venues open to victims of domestic violence in the camps has not been paired, in practice, with an equal proliferation of legal solutions. By the end of my field research in 2011, Nepal’s experience with its Domestic Violence Act, enacted only two years prior, was still limited.

[174] People could report multiple reasons for not reporting the crime or incident they experienced.

Judicial practice had not had time to develop and everyone struggled to interpret and apply the procedural and substantive requirements of new legislation. As Arpana's experience with the DV Act showed, the law was a learning process for all involved – not only victims, whose understandings of divorce and of legal procedures and requirements were shaped largely by their own encounters with the law, but also for lawyers and judges.

Whether they were resolved at the level of the sub-sector head, higher up the camp hierarchy, or even by the APF, the outcome of domestic violence cases was usually the same. Perpetrators promised to stop beating their wives and asked their victims and the community to pardon their behaviour. Victims accepted and the terms of the agreement were written down on paper. In most cases, these steps did little to stop the beating. Bishnu was lucky; in her case, the mediation had impact and her husband stopped beating her. But she is also an example of a relatively empowered woman, who currently works as a sub-sector head, a role in which she now mediates domestic violence cases herself. Many other women were not as lucky, and ended in spirals of violence with husbands who continued to beat them.

Most women who turned to the courts, to the Nepal Bar Association (NBA), or to UNHCR did so not with punishment in mind as an end-goal. As Devi, camp lawyer in Beldangi-2 and 2 Extension camps told me resolutely, most domestic violence victims did not aim to prosecute under the Domestic Violence Act but were 'only interested in divorce'. She did not push them.[175] A list of refugee court cases in which the NBA was involved in providing assistance in 2010 revealed that of 58 cases identified as 'SGBV cases' that year, 46 (80 percent) were divorce cases. Of the other 69 cases handled by NBA that were not considered SGBV-related, only five (seven percent) was *not* classified as divorce cases.[176]

Even when women did seek alternatives to the camp system through for spousal battery cases they were likely to encounter very similar solutions and attitudes to domestic violence. While the values of judges and other members of the judiciary can serve to combat gender violence, they can also act as an obstacle in the enforcement of laws with this aim. In India, with which the Terai region shares a long border, feminists have long pointed to pervasive gender bias among judges with respect to their views of marriage and domestic violence, arguing that the state's disinterest in implementing amended rape and dowry laws in the country was a substantial impediment to women's rights. 74 percent of Indian judges believed the family should be preserved even if there was violence and roughly half thought that there were

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[175] Interview with camp lawyer for Beldangi-2 and Beldangi-2 Extension, Devi Niraula, 26 February 2010.

[176] Statistics obtained from NBA Jhapa, 24 March, 2011.

occasions where men were justified in slapping their wives (Sakshi 1996, cited in Merry 2006: 109).

The drive to maintain spousal unity was not limited to refugee mediators. Aita Maya, another woman in the camps with whom I spoke about domestic violence, discovered this when she took her physically abusive husband to Jhapa District Court to get a divorce. Her husband accompanied her to Chandraghadi, where in front of the judge, he promised to stop drinking and beating her. He even agreed to be resettled – a subject that had been a source of conflict between them. Instead of giving Aita Maya the divorce she had asked for, the judge emphasised how good it was when couples were able to reach a compromise. Aita Maya agreed to accept her husband's apology. Instead of going home a divorcée, she left the court with a signed agreement stated her husband's promise to cease his violent behaviour, similar to what she might have received after a mediation sessions at the Counselling Board in one of the camps. Her experience is not uncommon in Nepal, where police and courts frequently encourage disputants to resolve their claims privately (The Carter Center 2010: 5).

Indira put up with more than a decade of abuse by her husband, and approached the UNHCR Field Assistant only after refugee camp authorities were finally convinced that their counselling efforts would not change her husband's ways. With the Field Assistant's help, she was able to separate from her husband – an outcome she found empowering. Two years ago, she returned to her parents' house, where she lived with her mother and father, her three brothers, four sisters, and her children. Her health had improved and her children were happy in the home of their maternal grandparents, where they did not face abuse. She told me: '[t]he camp level authorities or UNHCR should give freedom to women who face problems like mine. Before my divorce, I faced many difficulties. I passed my days in tension all the time. Now since my divorce, I live freely and without tension. To be free is better than living in tension.' When I left Nepal in April 2011, Indira hoped to resettle to the U.S. where she intended to build a new life and a new future without her husband. She had already presented UNHCR with a copy of the divorce papers.

As noted earlier, the majority of the domestic violence cases that reached the District Court in Chandraghadi ended in divorce – fifteen out of seventeen in total – which is nearly ninety percent. In line with qualitative findings, survey respondents whose cases had been dealt with by the District Court in Chandraghadi reported being significantly more satisfied with both the legal process and its outcome than those whose cases had been resolved through either camp authorities, or with the assistance of the APF or Nepal Police.[177]

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[177] This figure is based on data for 166 domestic violence victims reported their case. Due to missing values, N=163 was used to compute satisfaction with the legal process, and N=160 was used to compute mean scores for outcome satisfaction. Means were

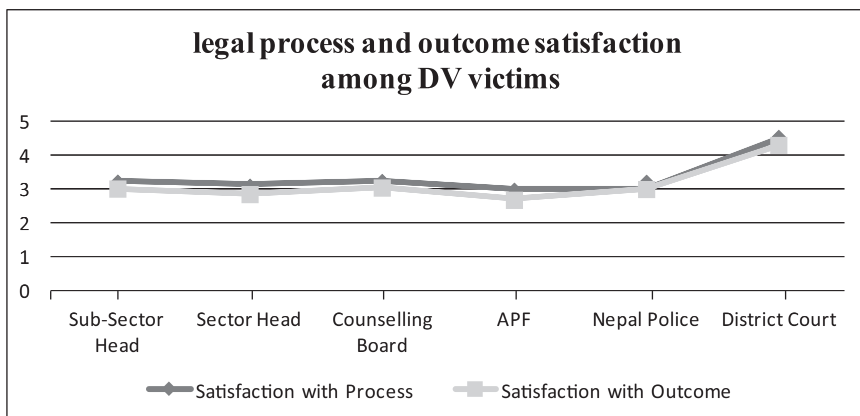

Figure xvi: Legal process and outcome satisfaction among DV victims

Neither Indira nor Arpana felt that divorce had made her life more difficult. Like Indira, Arpana moved back into her own parents' house after her divorce, where she lived with her mother, father, two younger brothers and their wives, and her 4, 10, and 13-year-old daughters. She told me that the agencies and CMC took steps to make life easier for divorced women. Because she was now separated from her husband, the camp authorities had classified her family as a 'vulnerable family' and no longer asked her household to provide manpower for activities in the camp such as loading or unloading materials, taking rations from the canteen, or maintaining schools. 'Agencies and people in the camp treat divorced families differently; they give me more support after the divorce than before the divorce. Even now, some people – those who are illiterate – those people still discriminate against widows and divorced women. But literate families who understand the problem, they support and look after us.'

What role for project law?

The impacts of UNHCR's efforts to eradicate sexual and gender-based violence (including domestic violence) in the camps can be seen at the district level, where the only cases filed under the DV Act in Jhapa's District Court involved refugees. Interestingly, both victims came from the same camp (Beldangi-1) and were assisted by the same female camp lawyer. This suggests that lawyers, and their advice or personal agendas, may influence the legal

compared using a One-Way Anova. Differences between legal authorities (Sub-Sector Head, sector head, etc.) for both process and outcome satisfaction were significant at $p<0.05$ level only when compared against satisfaction scores for the District Court. Satisfaction scores to the question 'how satisfied were you' were: 1=not at all; 2=small extent; 3=moderate extent; 4=large extent; 5=very large extent.

paths chosen by women. Neither woman had known much about the DV Act before starting her court case. In each instance, it was the NBA camp lawyer who had advised her how to handle her case and who had assisted her in filing the claim. This highlights the importance of lawyers in vernacularising legal norms (whether in the form of Nepalese law or international human rights norms) to make these intelligible to refugees.

While these cases were exceptions even in the camps, the absence of comparable experiences among the local population indicates that UNHCR's efforts may have had some impact. The road to Jhapa has become increasingly popular among refugee women. One UNHCR staff member explained this as partially due to the greater awareness of reporting cases among refugees as in comparison to Nepali rural areas. The problem with legislation like the new Domestic Violence Act in Nepal, a women's rights activist with the Nepali Congress party ('one of the country's oldest political parties,' she told me proudly) told me during an upper class birthday party in Kathmandu, was that it did not trickle down from the central level, and so women in villages had no recourse to justice. This was not the case for refugees, who all had access to lawyers within walking distance.

Refugee women had another advantage over their local counterparts – a fortunate by-product of the provision of humanitarian aid in the camps. In Nepal, women who were left by their husbands and could often count neither on his support nor on that of their maternal families were at risk of falling into dire poverty or worse. In the camps, a woman in the same situation still had access to rations, shelter, medical care, and education for her children. This made refugee women less dependent on their husbands – and their husbands' families – than their Nepali counterparts.

On the other hand, the limits of UNHCR's rule-enforcing abilities at the camp-level were also clear – particularly when it came to the implementation of the Standard Operating Procedures against Sexual and Gender-Based Violence in the camps. This task fell largely on the shoulders of the agency's Nepalese Field Assistants, who were stationed in offices in each camp. Enforcement of the SOP was weak at best. Although the SOP states that FAs could receive cases directly from refugee victims, Beldangi-2 CMC members and domestic violence victims alike said that the Beldangi-2 FA would only deal with a case if it was accompanied with a referral from a CMC member. The logic behind this requirement, according to refugee leaders, was that the FA did not have a good overview of what went on in each sector – the camp population was simply too large to be overseen by only one FA per camp.

As UNHCR's Danish Associate Protection Officer impressed upon me, Field Assistants did not just work in the camps for a day, but also the *next* day and the day after that. To carry out their functions, they needed to maintain

positive relationships with other actors within the camps – there was a mutual dependency. Field Assistants could not tell off an actor for failing to respond to something adequately one day and then ask for his help the next.[178] This constrained their ability to take action in cases of camp practices that contravened UNHCR's rules. Because Field Assistants cannot not function in the camps without showing at least some respect for the CMC hierarchy, they may respond like the Field Assistant in Beldangi-2 at the time of my field research – by 'inserting' themselves in the camp reporting hierarchy and requiring refugees to support their statements with evidence that they have reported to their camp authorities before approaching UNHCR. The unfortunate consequence of this interpretation of the referral system was that victims who were unable to obtain the support of their camp-level authorities were also prevented from accessing UNHCR.

What also did not help was that not all refugee authorities were reached by trainings on Nepalese law. Although CeLRRd reportedly held trainings for all camp mediators, by the time Gita was nearing the completion of her term as sub-sector head in November 2009, she had never attended a single training – not on human rights, nor on domestic violence, nor on what she should or should not mediate. She mediated domestic violence cases but until I asked her about it, was not aware that there was a law in Nepal that has criminalised domestic violence. To Gita, human rights were only a theoretical construct. While she thought that human rights may be able to help people, she did not know how or what human rights were. In March 2011, I attended the introductory trainings for the new Beldangi-2 Camp Management Committee – I had watched as its members were elected that February. While SGBV reporting was shortly alluded to in the trainings, what was required of mediators was never made clear.

That is not to say that the message did not reach the refugee leadership. Those to whom I spoke knew enough to tell me that they believed domestic violence was unacceptable. However, they also readily admitted that they did not necessarily consider it a greater social evil than divorce, which led to the break-up of refugee families. And they did not necessarily know that it was against the law, and if they did, that did not mean they understood whether it was against Nepalese law, or UNHCR's rules, or ordained by another party. While they discouraged domestic violence, lectured perpetrators and made them apologise, they also encouraged victims to accept these apologies and stay with their husbands. This did not help the ambivalence with which domestic violence victims were already confronted.

Like UNHCR's Field Assistants, refugee Gender Focal Points straddled their

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[178] Interview with UNHCR Associate Protection Officer, Andreas Kiaby, 26 January 2010.

positions within the agency with their positions within the community. They worked closely with UNHCR, but only in a volunteer capacity. They belonged both to the community and its culture and were asked to uphold UNHCR's norms – two potentially conflicting value sets that each Gender Focal Point reconciled in his/her own way. They had loyalties to their families, their colleagues within the CMC, and others, which they had to manage alongside their roles as Gender Focal Point. They did not necessarily go against the community's wishes to push the agenda of divorce; the Gender Focal Point in Beldang-2 was an active proponent of reconciliation.

The fact that even hoped 'gender advocates' might try to keep families together was in no way an outcome that was unequivocally bad. Women were not necessarily unhappy *per se* with mediators' encouragement to forgive their husbands. In fact, a statistical examination of legal processes undergone by female survivors of domestic violence from Beldangi-2 refugee camp established that survivors of domestic violence were, on the whole, *more* satisfied with their legal procedures than other types of victims (Laxminarayan and Pemberton 2012), a relationship that is usually reversed. Roughly three quarters of the variation in victims' satisfaction of the legal process, irrespective of the system they used, was explained by three factors: whether the mediator, judge, or other third party listened to the victim, whether the process was perceived as objective, and whether it recognised the harm that had been done to the victim.[179] A further analysis of victim's legal experiences suggests that nearly two thirds of the variation in their satisfaction with the outcome of their case was explained by their satisfaction with the process itself.[180]

Where divorce victims whose cases had been resolved in court reported being significantly more satisfied than those whose cases did not go to court, they represented only a small portion of the sample – of the 165 domestic violence victims who reported their crime to a legal authority, only seventeen cases (seven percent) ended up in court. Even if divorce was perceived as very common by Field Assistants and NBA lawyers (whose time was largely occupied with divorce cases) the interest in divorce was not unanimous among women, some of whom shared the same cultural disapproval of divorce that was expressed by men.

The findings above suggest that to improve the legal experience of domestic violence victims it may be more important for UNHCR to focus on

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[179] A regression analysis of process satisfaction against voice; objectivity and recognition of harm was significant with p-values of 0.02, 0.00 and 0.00, respectively. The model had an R Square of 74.4 and an adjusted R Square of .738.

[180] A regression analysis of outcome satisfaction against process satisfaction has an R Square of .628, a significance of 0.00 and a standard error of .861.

conditions surrounding the legal process, particularly in the lower tiers of the camp mediation hierarchy where nearly all cases are first reported and the majority are resolved, than on encouraging women to hold their husbands accountable for their crimes under Nepalese law.

V.7 Conclusion

By focusing on domestic violence project law, this chapter has illustrated how UNHCR's projects introduce human rights ideals in the camps, where these norms are juxtaposed with pre-existing practices, traditions, norms, and values that influence their implementation and impact their effectiveness.

As this chapter has shown, different aspects of UNHCR's efforts to combat domestic violence have been received in different ways by the refugee population. On the one hand, efforts to curb prevent the resolution of domestic violence cases through the camp mediation system have been largely unsuccessful. Despite attempts to encourage victims to seek justice before the Nepalese legal system, the majority of domestic violence cases continue to be 'resolved' by sub-sector heads and sector heads, who considered them 'minor' cases that should be addressed at camp level.

Women often depended on others to advise them regarding the steps they should take next. The lack of knowledge was a major constraint in their ability to influence the course of their procedures. Few women knew enough to argue with the advice given to them by camp authorities, and even fewer knew that they could approach legal actors other than their sub-sector heads directly. Awareness raising efforts did not necessarily reach them: camp policies can be inattentive to conditions of work or home for women even when they explicitly aim at promoting or supporting refugee women (Hyndman 2000: 91). Cultural constructs such as *ijjat* and gendered social norms regulating the movement of women affected their access to services. It meant that many women were not reached by information campaigns held in central locations in the camp, far from their huts or sub-sectors. Women who adhered to gender norms requiring them to stay at the household were forced to rely on those in their vicinity for information. More than two thirds were unaware that Nepalese law did not allow their husbands to beat them.

That women were not *more* informed about Nepalese law, even when they had experienced domestic violence and addressed it through a legal procedure, is not as strange as it may seem. The refugee legal system, which operated largely free from interference by the Nepalese governments or UNHCR, was a forum within which the norms introduced by agencies are aired and debated. Refugee authorities and others who were ambivalent about domestic violence or lacked knowledge of UNHCR's SOP sent contradictory messages during these mediation sessions, as was apparent from Bandana's case

before the Counselling Board introduced in the beginning of this chapter. From the range of authorities available – camp mediators (who continued to mediate domestic violence cases), the APF (who did the same), the courts and Nepalese law (which explicitly leaves room for mediation), as well as UNHCR's staff (whose SOP contrasted with the actual approachability of Field Assistants in the camps) – refugees received contradictory information about domestic violence and about remedies for victims.

That is not to say that norms relating to women's rights and the eradication of violence against women did not have an impact in the camps. Even if no convictions were secured, two refugee cases were brought before Jhapa District Court under the Domestic Violence Act – while no local cases were filed in the same time period. Both Bandana's and Gita's mediators condemned domestic violence. During the mediation of Bandana's domestic violence dispute, a bystander spoke out to highlight that women have rights, helping to convince her husband that he should beat her less and give her more freedom. When Gita's case was mediated and her husband was told that it was unacceptable for men to beat their wives, he stopped. Voices aired in the support of human rights contributing to the weight of arguments that helped convince offenders of the error of their ways.

For women who suffered from domestic violence but were unable or unwilling to pursue a formal legal case through the Nepalese legal system, the camp mediation structure was the only valid alternative and support received in these sessions was sometimes an important outcome in itself. A paper with a promise might not stop a woman's husband from beating her again, but it was something that she could use to hold him accountable the next time. And, if she was lucky, she had an authority who knew her problem and to whom she could turn.

Chapter VI: To Divorce, or not to Divorce? Resettlement and the shift in family conflicts[181]

Late one morning in February 2011, I walked towards the camp canteen with my one of my research assistants, having just completed an interview. As we chatted and strolled along the dusty main road of the camp, we noticed commotion near the Beldangi-2 office blocks. Two IOM-buses, full of people with their suitcases on the roof, were parked in front of the office. My research assistant was surprised, as was I. Normally, these buses left early in the morning, from *Runchhe Chowk*[182] near the APF base camp, and not from the office block. Dozens of people were milling about and they did not look happy. As I mingled, I learned that the two buses had left the camp for the airport that morning but had turned around and come back.

Third country resettlement was a durable solution that presented a way out of limbo for the Bhutanese refugees by offering them the prospect of regaining state protection and access to their full range of human rights. At the time of my research, it was a highly desirable solution. The process was lengthy; resettlement processing involved a series of steps, and acceptance depended on compliance with UNHCR's rules and the migration laws of resettlement countries. The return of the buses and the commotion caused by the incident underline the importance of the third country resettlement programme for people's lives in the camps. The relationships between refugees, aid workers, and others sketched in this scenario is a close parallel for the balance of authority between UNHCR and refugees and highlights some of the difficulties refugees experienced in trying to make sense of the requirements and rules that accompanied the process.

Although the incident had just occurred, the rumour mill was already running active duty. While I stood among the crowd, a man claimed that there had been a fight between UNHCR and IOM. Another said that the USA would not accept the people on the buses because there were security problems with their files. An elderly Brahmin man, at whose house I received a *tika* for *Dashain*, appeared unconcerned. His theory was that the buses had returned

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[181] Parts of this chapter were published in Griek, I. (2013): A Daughter Married, A Daughter Lost? The impact of resettlement on Bhutanese refugee families. *European Bulletin on Himalayan Research*, Vol. 43 (Autumn/Winter 2013), pp. 11-25.

[182] Runchhe Chowk, which means 'Crying cross-point', is the name given by the refugees to the area at the entrance to Beldangi-2 and 2-Extension refugee camps where the IOM buses pick up people and their luggage for their flights to Kathmandu, and from there to third countries.

simply because rain had prevented flights from leaving Bhadrapur airport that morning. A short distance away, a man in his forties with a reputation for being a trouble-maker in the camp whispered loudly, with a glint in his eye, that he had 'secret information'. He proceeded to tell me – all the time anxiously watched by others – that Maria Sotero's recent diplomatic visit to India, Nepal, and Bhutan had led to a decision by the U.S. Government to stop resettlement for good and to focus on repatriation instead. A little later, a former teacher wandered by and shared his two cents with the group. He had heard that the problem was related to a lay-over the airplane would have to make in Bahrain: 'There are two types of Muslims there: Sunni and Shiah Muslims, and they had some problems. The prince intervened to talk to both groups. Because the route to the U.S.A. is via Bahrain, they cancelled those flights.'

As I watched events unfold, one of the members of the Camp Management Committee turned to me and said that this had never happened before and that people were angry because they did not understand why it happened. Why had the agencies not kept these refugees in Damak or at their offices? Why did they send them back to the camps, which they had left this morning thinking it would be for the last time? When their houses were empty at best and demolished at worst and when they had already sold all of their belongings?

UNHCR's Security Officer arrived at the scene. Standing in front of his white Toyota four-wheel drive, he told me that the U.S. government was implementing new security regulations and that refugee flights to the U.S. from all over the world had been cancelled that day. He explained that UNHCR and IOM were not informed of this until the very last minute, after the bus had already left the camp, and that this was why this had happened. Everybody had to be brought back to the camps because of the cancelled flights, and because IOM and UNHCR were not sure exactly how long it would take to resolve the issue.

When he addressed the refugees, he told them largely what he had told me. From the elevated cement platform on which the agency and CMC office buildings were constructed, he spoke English with a thick Danish accent. His words were translated into Nepali by UNHCR's Field Assistant, as he looked at the crowd and said:

> For your information, what happened this morning is that all refugees bound to the USA from all over the world had their flights cancelled today. Not just from Nepal, but from all over the world. The reason is that the U.S. is changing some security procedures and this caused delays for people scheduled to depart today and tomorrow. It is unknown exactly how many days this will take but we will try to resume

> as soon as possible. This is *not* a sign of problems with anyone's process – it is only a delay. UNHCR and IOM are working together and hope that the delay will only last a few days. In the meantime, those who are very disappointed not to depart will need food, shelter, and everything else they require to stay here for a few more days. We were only told ourselves this morning, when the refugees had already departed for IOM. In order to help these people, we need your cooperation to help them get food and whatever they need.

The Security Officer's message did not get across. With the buses in full view, people pushed at the gates of the CMC compound. A crowd had gathered inside and before long, the APF took charge. Three APF guards, two armed with sticks and one with a rifle, guarded the entrance to the office block, where they prevented people from entering the compound and ordered others to leave. Turning to the crowd, the newly elected Camp Secretary asked people to stay calm. When he finished his speech, the RCU Supervisor, senior members of the Camp Management Committee, UNHCR, and the Lutheran World Federation (LWF) Camp Management Officer retreated for a private meeting behind closed doors to discuss what to do next.

Large numbers of people continued to throng around the fence marking the outside perimeter of the office block. Rumours circulated unabated, despite the speeches that had just been given. Many people, anxious and nervous looks on their faces, expressed worry about the implications of this event for their own resettlement procedures. Hoping that I might have more answers than others, an old woman approached me, asking: 'What do I have to do, do I have to stop my resettlement? Or do I have to go?'

By the afternoon, the news had spread within the camp and far beyond it. As I sat cross-legged on the floor, sipping tea with a pretty woman in her twenties who had been too busy with housework that morning to leave her sub-sector, she implored me to tell her what was going on. Having heard stories from neighbours and others, she was trying to make sense of it all. Beside us, her husband's mobile phone rang. It was a friend, calling from the Nepal-India border post of Kakarbhitta. The man, who was travelling to make his way to Puentsholing – a border town in Southern Bhutan – had heard about the resettlement incident and immediately called the camp to find out what was going on. While we talked, journalists from the Bhutan News Service were busy keeping BNS constituents abreast of developments through regular updates on the BNS website. Even the community-based organisation Bhutan-BRAIN, one of whose board members was among the few non-CMC members allowed to stay in the CMC compound as others were ordered out, sent out regular updates through Yahoo Messenger.

That evening at the IOM Guest House, located in the same compound as the UNHCR and IOM offices and the place where IOM and UNHCR staff often gathered in the evenings for beer, I hoped to find out more. Most international staff were either present or were being called in, apart from a few people who had flown to Kathmandu to attend a Bryan Adams concert (a rare event in Nepal). As many people as possible were needed at the office to call the refugees who had been affected by the day's incident and explain to which dates their flights had been rescheduled. By the end of the evening, the problem was resolved. Flights were to be continued from the following day.

Sitting back over their drinks, the aid workers reflected on what they, by this time, were calling the 'riots' in the camps that day. A sceptical UNHCR staff member turned to me and said: 'Every aid worker wants to experience a crisis. It's good for the CV – we can say 'There was a crisis, and we solved it.' A female IOM staff member added irritably: 'This population really annoys me. I have never seen such a sense of entitlement among refugees. It was not like this in Africa. Resettlement is not a right. Here, they treat it as if it is a right.'

As noted, this chapter is about the influence of the third country resettlement programme on the refugee camps in Nepal and the influence of new rules introduced through the resettlement process on disputes and their resolution. Many facets of the incident described above can serve as metaphors for the problems people encountered in the context of resettlement and for their relationship to the legal rules that governed the process.

The extent of people's concern that the process might be halted underline the importance of resettlement for people's lives. The large number of contradictory messages about the incident created disorganisation and bewilderment. This is analogous to the confusion caused by the large number of institutional actors involved in the resettlement process – many of whom had *de-facto* decision-making power – paired with refugees' inability to participate in this process on equal footing.

The APF officers charged with guarding the CMC compound can be construed as gate-keepers restricting refugees' access to the source of information. Not all refugees had equal access to interviewers or decision-makers within agencies or at government level, and not everyone was able to read the informative bulletins that were circulated in the camps. The degree of information available about the resettlement process, or the rules that accompany it, was not the same for everyone.

The speed of the rumour mill underscored the fact that the messages communicated by agency staff were not necessarily the same as those received by refugees. People gathered information from a broad range

of sources both at the national and international levels, which presented significant room for distortion.

The following sections will describe the scale and context of the third country resettlement programme as implemented in the Bhutanese refugee camps in Nepal, followed by an analysis of the impacts of the programme upon different types of disputes in the camps. I will argue that new external bodies law gained relevance in the camp environment with the advent of resettlement, and that these external legal norms interacted with other legal norms to affect disputes (and dispute resolution practices) among camp residents. Several of the rules that determined whether people qualified for resettlement dealt with family composition issues. Refugee-receiving states had their own rules on what they regarded as valid (or permissible) marriages, what relationships they considered part of a family or household, and what relationships would be regarded as part of a household or would need to be disentangled from it. Because the family is the cornerstone of Bhutanese society, impacts of these rules were particularly evident in family cases. The decisions people made to stay with or leave their families (or to form new ones) intersected with their resettlement interests and those of others, resulting in a transformation of family disputes. Because refugees did not have the authority to effectively challenge UNHCR or state decisions, changes to family disputes were not limited to the type of grievances people articulated but also affected who they held responsible (and why). Blaming UNHCR would have little impact and was therefore an ineffective course of action. Instead, people attributed blame to those within the camp community who they held responsible for problems relating to their resettlement processes, and who they believed could undo these problems.

VI.1 Third country resettlement: A new influence on Bhutanese lives

> We want to live in an atmosphere where we can eat our own bread earned from our own sweat. We don't want to be dependent on others. We no longer want to have the tag of 'refugee'. Half our lives have been spent as refugees. We don't want that tag on our children's forehead. We want them to be proud citizens. (refugee from Beldangi-1, cited byHuman Rights Watch 2007: 38)

By 2006, UNHCR acknowledged that 'many refugees from Bhutan who were deprived of citizenship languish in camps in Nepal and foresee little chance of returning home or reacquiring their citizenship' (UNHCR 2006: 26) and that they faced the prospect of remaining 'part of the UNHCR casebook for the coming years' (ibid: 27). Years of bilateral negotiations between the Nepalese and Bhutanese governments failed to lead to any progress regarding repatriation, and the Government of Nepal remained unreceptive to the idea of local integration.

UNHCR's ultimate goal for any refugee is a durable solution – one through which refugees are able to re-establish their lives under state protection and in dignity, and in the enjoyment of their full range of human rights. Three durable solutions exist: voluntary repatriation to the country of origin, local integration in the first country of asylum, or resettlement to a third country. With both repatriation and local integration out of reach, only one 'durable solution' remained: third country resettlement.

That same year, UNHCR began informing the Bhutanese of the possibility that resettlement – accompanied with a chance at permanent citizenship in a third country – could be a solution to their prolonged plight in the camps. The news was met with consternation by the refugee leaders involved in the repatriation movement. In an effort to strengthen and unite the movement, Bhutanese political, social, and human rights organisations had joined together earlier in 2006 under the banner of the Bhutanese Movement Steering Committee (BMSC). Participating organisations included: the National Front for Democracy in Bhutan (NFD), the People's Forum for Human Rights Bhutan (PFHRB), Drukyul Forum for Human Rights (DFHR), Bhutanese Refugee Representative Repatriation Committee (BRRRC), National Assembly members, the Students' Union of Bhutan, and the Women's Union of Bhutan. The NFD was itself composed of three parties: the Bhutan People's Party, the Druk National Congress, and the Bhutan Gorkha National Liberation Front. Other organisations, including such *krāntikārī* (revolutionary) groups as the Communist Party of Bhutan (CPB), similarly opposed the resettlement process, calling the programme a 'US/Bhutanese conspiracy to stop the people's war in Bhutan and protect the Wangchuck regime' (Evans 2009: 170).

On July 28, 2006, repatriation leaders denounced resettlement as a durable solution.

Approximately 1,000 refugees from Goldhap and Khudunabari camps organised a sit-in at Mukti Chowk, where they brought vehicular traffic to a halt. D.P. Kafle, a refugee leader and General Secretary of the People's Forum for Human Rights, Bhutan stated that 'the sit-in was organised to protest against the recent UNHCR decision to resettle 16 refugees in the United States and Canada as it was guided by an intention of weakening the refugee movement.'[183]

The movement to which Kafle was referring was the repatriation movement, on which the Bhutanese had fixed their hopes since exile in the early 1990s. Members of the movement felt that resettlement would reward Bhutan for

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[183] Reliefweb (29 July 2006): *Bhutanese refugees in Nepal denounce UNHCR's third country resettlement proposa*l. Retrieved from: http://reliefweb.int/node/212689.

having expelled them, reduce the strength of the repatriation movement, and preclude them from returning to Bhutan. As a result, they vehemently opposed not only their own resettlement but also that of others. As Rianawati, Head of UNHCR Sub-Office Damak explained, 'these refugees wanted to go back to Bhutan, as a group, as a community. This is what they wanted from the beginning; they have been focused on repatriation from the start.'[184]

By October 2006, Ellen Sauerbry, U.S. Assistant Secretary of State for Population, Refugees and Migration, announced the willingness of the U.S.A. to resettle up to 60,000 of the Bhutanese refugees from Nepal. The position of the Government of Nepal on the matter was not yet clear.[185] The same month, the camp secretaries of the six camps in Jhapa district held a press conference in which they announced that they would support the US proposal, which they felt was the best alternative to the seventeen years they had thus far spent in exile. Their move was rapidly condemned by the Bhutanese Refugee Representatives Repatriation Committee, which responded by dismissing all six camp secretaries from its central coordinating committee for sowing division among and working against the interests of the Bhutanese community in exile.[186]

In November, the Government of Nepal and UNHCR launched a joint census exercise in the camps to verify the identities and whereabouts of the refugees within them, and to issue them with identity cards. The census was launched to in preparation for the resettlement programme. Despite the efforts of pro-repatriation leaders, a great many refugees *were* interested in the resettlement offer. By this time, an entire generation of refugees had been raised and educated in the camps with no or little first-hand knowledge of Bhutan. Not all people agreed with or cared about the fears articulated by repatriation leaders. There were many others who had lost hope that they would return to Bhutan, were tired of enforced encampment and reliance upon food rations, or who simply wished for better lives for their children and for themselves. Human Rights Watch, which conducted a series of interviews with refugees in the camps in late 2006, reported that those interviewed all had in common an 'urgent desire to regain their independence and to be allowed to become productive members of society' (Human Rights Watch 2007: 38). To advocate for resettlement they too established organisations.

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[184] Interview with UNHCR Head of Sub-Office Damak, Rianawati Rianawati, 17 February 2011.

[185] UNHCR Spokesperson Jennifer Pagonis, *Nepal: Generous US Resettlement Offer May Help Break Bhutanese Deadlock*, UNHCR Briefing Notes, October 6, 2006, http://www.unhcr.org/45262b462.html (accessed April 11, 2012).

[186] APFA News (12 October 2006): *BRRRC Suspends Camp Secretaries*. Retrieved from: http://apfanews.com/stories/brrrc-suspends-camp-secretaries.html.

Examples include the Bhutanese Refugees Durable Solutions Coordination Committee (BRDSCC), a woman's group called Voice for Change, and the Bhutanese Refugee Resettlement Coordinating Committee (BRRCC). Members of these organisations lobbied politicians and others in favour of resettlement, sent appeals to various embassies, and staged contentious performances such as signature campaigns and demonstrations.

The contrasting opinions about the resettlement process resulted in a highly charged camp atmosphere. In an environment where privacy was scarce, fear forced many people to keep their resettlement decisions 'a guarded secret, even from close friends' (Banki 2008: 26). Anti-resettlement activists spread rumours that those who supported resettlement were *bideshī dalāl* (foreign agents) who worked on commission from the United Nations and U.S., and would receive payment for every refugee they convinced to resettle (Evans 2009: 174). They also spread rumours to discourage refugees from applying. One anti-resettlement group claimed that refugees who applied for the programme were made to sign for loans of US $20,000, which they would have to pay back upon arriving in the resettlement country. Others claimed that they would not be allowed to practice their religion in the U.S. or that the U.S. government might only expel them later, as Bhutan had done. Supporters of the programme, in turn, accused anti-resettlement activists of luring politically innocent refugees with false hopes of repatriation, and of driving those who were interested in applying for the process out of the camps with intimidation, threats and violence (Evans 2009: 175).

In 2007, UNHCR, together with the Government of Nepal and the Core Group for Bhutanese refugees in Nepal (consisting of seven countries – Australia, Canada, Denmark, the Netherlands, New Zealand, Norway and the U.S.) officially announced that resettlement would be pursued as a strategy for resolving this protracted refugee crisis. The Core Group proclaimed a multi-year commitment to resettle the Bhutanese and made available over 60,000 places, with the United States offering to absorb by far the largest share (UNHCR 2011a: 58).

To ease refugees' fears about the negative impact that resettlement would have on repatriation, UNHCR circulated information leaflets about third country resettlement 'in answer to the questions raised in the context of refugees originating from Bhutan in Nepal' (UN High Commissioner for Refugees 2007: 2). The circular contained a section that specifically addressed the question of whether the Bhutanese would still be permitted to repatriate. It informed refugees that resettlement was 'not intended to prevent you from repatriating to your home country. Many refugees who have been resettled from other countries also continue to want to return home and often they do when conditions improve and repatriation is possible. Although Bhutan will set the terms for repatriation, you will have the right to travel and may

be able to return to Bhutan if and when conditions permit or within the framework of the applicable visa regime in place for travel to Bhutan' (UN High Commissioner for Refugees 2007: 10). It further reassured refugees that 'UNHCR together with the international community will continue its efforts to impress upon the Bhutanese authorities to take back its citizens in conditions of safety and dignity' (UN High Commissioner for Refugees 2007: 10).

By 2009, the sheer scale of the resettlement programme in Nepal was undeniable. On a daily basis, visitors to Damak and the camps could see numerous International Organization for Migration (IOM) buses, transporting people to and from their resettlement interviews and airports – the roofs of buses loaded with suitcases and packages. There were constant goodbye parties for departing refugees and Western Union and Himal Remit shops mushroomed around the camps as resettled refugees began sending money back to their families in the camp. Cyber cafés had also grown in number, as owners (refugees and locals alike) benefited from people's desire to keep in touch with their relatives and friends abroad.

Resettlement was the reason for the new clinics constructed in Damak to screen the refugees for tuberculosis, and it was evident from the arrival of large numbers of new foreigners and the largesse of the IOM, which did not have a presence in Damak prior to the resettlement programme. Damak blossomed with IOM's arrival, its deep pockets and large staff. Houses were constructed to meet the needs of well-paying international aid workers, 'inverters' and diesel-powered generators for overcoming local power outages ensured that the agencies' office premises were lit throughout the night. Roads were constructed and the local economy grew so fast that by the time I left, it had well surpassed that of the comparably sleepy district capital of Chandraghadi.

When I began my field work in 2009, more than 25,500 Bhutanese refugees had been resettled from the camps. By the end of my field research two years later, the Bhutanese resettlement programme was the largest in the world. The IOM office in Damak had a total of twenty international staff (who the Head of Mission refers to as 'officers'), and 260 local staff. To transport refugees to resettlement interviews in Damak, medical screenings, and the airport, IOM had fifteen buses and twenty-seven drivers. On average, they travelled some 40,000 kilometres per month. By early 2010, 800 refugees visited the IOM offices every day for interviews.[187] Those who left the camps were flown to Kathmandu on charter flights departing from Bhadrapur airport.[188] Some

[187] Interview with Head of IOM Sub-Office Damak, David Derthick, January 26, 2010.

[188] When circumstances required, flights sometimes departed from Biratnagar airport instead.

fifteen flights left each weekend, each of which carried thirty people. From there, they were transported to IOM's transit centre facility in Kathmandu, which had a capacity for 400 people. Then, after receiving a last round of cultural orientation sessions to prepare them for their departure, refugees boarded their international flights at Tribhuvan International Airport.

Resettlement countries have since revised the number of available places for Bhutanese refugees and by 2011, resettlement staff were satisfied that there would be a place for each Bhutanese refugee in Nepal who was both eligible and wished to be resettled. In August 2011, roughly two years later, 50,527 refugees had departed (42,601 to the USA), and nearly 40,000 were 'in the pipeline.'[189] Only 17,000 people (roughly fifteen percent) had not expressed an interest in resettlement. By January 2014, more than 104,000 cases had been submitted for resettlement and nearly 87,000 refugees had left the camps for third countries (UNHCR: 2014).[190]

Since the beginning of the programme, resettlement has had a radical impact on the camps. It has affected the operations of all agencies, as well as the mindset of the refugees themselves. The report of a joint assessment mission conducted in the camps in 2008 notes that 'Resettlement is the major change identified by the Joint Assessment Mission. All programs and camp activities will be affected by resettlement and will have to be adjusted as the population decreases' (UNHCR and WFP 2008: 8).

The following sub-sections describe a number of areas in which the camps have undergone major changes as a result of the resettlement programme: (1) violence and order, (2) the creation of a resettlement wish, (3) the re-orientation of service provision and assistance, (4) brain drain, (5) transnationalism, and (6) shifting demographic/ethnic constellations in the camp.

Violence and order

The third country resettlement programme represented a radical departure from refugees' expectations of what their futures, long geared towards repatriation, would look like and the start of the resettlement process was marked by tension, anxiety, and violence. UNHCR's assurances that it would continue to advocate for repatriation did little to assuage the tensions

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[189] This means that they have submitted a 'Declaration of Interest' in resettlement and are at some stage in the resettlement process. It *does not* mean that they will all be resettled, as many people were still 'on the fence'. Expressions of interest could also be withdrawn.

[190] At this time, approximately 30,255 refugees from Bhutan remained in two camps: Beldangi and Sanischare. Approximately 75% had declared an interest in resettlement.

between pro- and anti-resettlement groups in the camps. When the first refugees submitted declarations of intent to resettle in 2007, they were targeted in the camps. Their huts were burnt as a warning.[191] Refugee leaders were also targeted with violence. On 27 May 2007, the pro-resettlement Camp Secretary of Beldangi-2 was called to the CMC to discuss a radio interview he had given, in which he had openly supported resettlement and alleged that the revolutionary cadres in the camps were armed (Banki 2008: 7). He was badly assaulted and in the struggle that ensued when the police arrived to protect him, a seventeen year old boy was shot and killed. The following day, refugees gathered outside the police post to demonstrate the death and another refugee was killed by police gunfire. In August 2007, the acting Camp Secretary in Beldangi-2 Extension was beaten until he lost consciousness for signing a form enabling a Voices for Change member to attend a conference in Thailand. Rumours had spread that the conference was about resettlement. Soon after, many pro-resettlement refugees left the camps in fear of further repercussions and Evans (2009) estimated that by October 2007 between fifty and one hundred and fifty refugees had been displaced from the camps.

During a visit to Goldhap in May 2007, High Commissioner Antonio Guterres urged refugees to respect each other's freedom of choice and told them that everyone had the freedom to decide whether or not to resettle.[192] To address the violence and insecurity that marked the start of the programme and to maintain the safety of humanitarian staff and refugees, the Government of Nepal deployed the Armed Police Force to the camps. In November, UNHCR began a mass information campaign to inform refugees about resettlement and IOM set up offices in Damak. Nevertheless, threats by members of the Communist Party of Bhutan (CPB) continued unabated. As Evans (2009: 180) described: 'while refugees listened to UNHCR staff describing the resettlement process during the day, at night the CPB broadcast radio messages threatening to kill refugees who filled in interest forms.'

A year later, on the evening of 5 May 2008, nine masked men carrying stones and sticks attacked and vandalised an IOM bus that was returning to Khudunabari camp to drop off fifteen refugees who had been to Damak for resettlement processing. Two refugees and the IOM bus driver were injured. A similar incident occurred a few weeks later, when an IOM bus near Sanischare camp was attacked by unidentified men while returning refugees

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[191] Himalayan Times (12 November 2007): *Refugees Get Death Threats*. Retrieved from: http://durablesolution.blogspot.nl/2007/11/refugees-get-death-threats.html.

[192] UNHCR (29 May 2007): *UNHCR appeals for calm in refugee camps in Nepal*. Retrieved from: http://www.unhcr.org/465c730b4.html.

from the IOM office in Damak.[193] On the night of 30 June 2009, a third bomb attack targeted the IOM premises and bus park in Damak. Three explosions caused minor damage to the IOM office building but no one was injured.[194]

Then, in 2009, former Camp Secretary Santi Ram Nepal was murdered. Responsibility was claimed by an underground outfit that called itself Druk Leopard, which issued pamphlets with death threats to eight refugee leaders and their families for betraying the repatriation movement. One of these leaders was still housed in the Protection Area (APF in Beldangi-1) in early 2010.

By 2010-2011, much of this social tension had dissipated. The resettlement programme had picked up significantly in scale and the majority of refugees had relatives and friends who had departed for third countries. While I conducted my field work, people openly travelled to resettlement interviews and cultural orientation sessions. Having learned from others which Nepali goods were cheaper in Nepal, or hard to find abroad, they stocked up on pressure cookers, Nepali copperware, and *saris*. There were parties in different sub-sectors of the camp every day of the week as people organised festivities to say goodbye to their family, friends, relatives, and neighbours. These parties were mirrored by festivities organised by UNHCR and IOM, as the agencies met and surpassed quantitative resettlement targets.

In place of insecurity on account of conflicts between pro- and anti-resettlement groups, however, new social tensions were beginning to emerge – in the form of frustration, worries about family unity, etc. As people watched families separate and depart, new concerns arose about how to keep their own families together and with whom to resettle (or stay behind). New forms of violence and social ills were reported to have increased. This included alcohol and drug abuse, high drop-out rates among students, increased reports of suicides in the camps and in resettlement countries. Both refugees and the APF blamed substance abuse was blamed for increases in the incidence of theft, vandalism, and small scale violence in the camps. Domestic violence was thought to have become more frequent on account of family disputes about resettlement.

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193 I Reliefweb (1 July 2008): *IOM, UNHCR and WFP denounce the bomb attack at the IOM office in eastern Nepal.* Retrieved from: http://reliefweb.int/node/272036. In response to this incident, IOM raised the walls of its compound and lined them with coils of barbed wire [also, APF opposite the IOM offices are there only to guard the IOM office, not to provide protection in Damak itself. Interview with David Derthick, Head of IOM Sub-Office Damak, 26 January 2010.

194 Reliefweb (1 July 2008), op cit.

The creation of a 'resettlement wish'

As the resettlement process took off, growing numbers of refugees submitted declarations of interest in resettlement. When I arrived in the camps in January 2010, more than 85,000 of the originally 107,000 Bhutanese refugees (roughly 80 percent) had formally expressed an interest in the programme, while 6,000 said they definitely did not want to go, and another 25,000 were uncertain.[195] By the time I finished my fieldwork in April 2011, more than 85 percent of the population had submitted a declaration of interest.

The increase in interest in the resettlement process was paired with growing impatience and restlessness among the refugees. As people made up their minds regarding resettlement, they longed to start a new life and did not want to waste any more time in the camps. This translated into large numbers of school drop-outs who felt that they were wasting their time in camp schools until they were able to leave. In 2010, 1,344 students sat for the Nepali School Leaving Certificate in class X, of whom 590 passed – a rate of only 44 percent. According to Caritas, 'The lower level of pass percentage of class X as compared to the past years was mainly because of the distraction faced by students due to the ongoing resettlement process. The students were not certain of their departures, many of their friends were leaving, and due to these disturbances many of the remaining students did not pursue studies as required' (Caritas 2010: 48).

Horst (2006) uses the Somali term *buufis* to describe a similar longing or desire for resettlement among Somali refugees in Dadaab. *Buufis,* or the existence of a resettlement dream among Somalis, resulted from two things: the poor quality of life in the camps, and the need for peace and security. The sheer visibility of the practice contributed to the intensity of this feeling – the large numbers of people resettled generated expectations among those left behind. As Jansen (2011: 172) noted, '*Buufis* is not just the product of the search for security; by now it is also a desire instilled by the many examples refugees have seen of others leaving the camp, and the images they receive in the media of the west, and the imaginations that exist about that place.'

The restlessness among those still waiting to be resettled surfaced in nearly every interview I conducted in the camp. The waiting, uncertainty, and the lack of knowledge about the process or what would happen were recurring topics of conversation. When people received news about their resettlement process, they quickly shared it with others. Those who had not seen each other for a while were always fast to inquire about resettlement developments.

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[195] Interview with UNHCR Resettlement Officer, Rachel Demas, 19 January 2010.

Re-orientation of service provision and assistance

Up until the start of the resettlement process not only refugees but also agencies had oriented their activities towards repatriation. In Caritas-run camp schools, children began their days by singing the Bhutanese national anthem in school yards. They were taught the history and geography of Bhutan and studied Dzongkha next to the Nepalese curriculum – knowledge of the language was stipulated by the Government of Bhutan as a requirement for Bhutanese citizenship.

Since the start of the resettlement programme, programmes and trainings on offer in the camps were increasingly oriented towards meeting resettlement-related needs. Because the majority of the refugees were resettled to English-speaking countries (the U.S., Canada, New Zealand, and Australia) Caritas (2010) identified a growing need for English language skills among adult refugees, and women in particular. Trainings that provided skills that could be useful to refugees in western countries, such as driving and computing, were also highly popular in the camps.

The way in which service provision itself was organised also had to change. By the time my fieldwork ended in April 2011, only 14,000 refugees remained in Beldangi-2, a camp that in January 2008 had hosted more than 22,000 people.[196] The seven camps that existed at the start of the resettlement programme were, by July 2011, reduced to four. Goldhap and Timai had closed, and Beldangi-1, 2 and 2 Extension were merged administratively to form one large Beldangi camp. The need for administrative steps such as these has increased further with the phenomenon of brain drain, which was a growing problem in the camps.

Brain drain: Impacts on skills and service provision in the camps

One of the first and most worrying consequences of the resettlement programme has been its impact on service provision on the camps. By and large, the educated were the first to apply (and depart) for resettlement. As a result, the camps suffered from acute and worsening brain drain.

Father Amal Raj, Field Coordinator of the Caritas Damak office and its programme for the Bhutanese refugees, explained that where it had been easy for Caritas to find qualified teachers in the camps in the past, it was now very difficult. Job rotation was too high and people were leaving too quickly.[197] To give an idea of the scale of the problem, 686 refugee teachers

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[196] Figures obtained from the Camp Management Officer of the Lutheran World Federation, April 2011.

[197] Interview with Caritas Field Coordinator, Father Amal Raj, 22 January 2010.

who worked in the primary and secondary schools in the camps and 108 non-teaching staff had left for resettlement over the course of 2010 alone (Caritas 2010: 46). Primary and secondary school teachers and students were not the only ones who were leaving their jobs because of resettlement; Caritas was confronted with the same problem among its course attendants. Of the 6835 students (841 male and 5994 female) enrolled in the Spoken English course in 2010, 1223 were unable to complete the course because they had to leave for resettlement. Out of 120 participants in Caritas' Online Education programme accepted by the Respect University of Canada, forty-one reportedly dropped out for the same reason (Caritas 2010: 48).

With the high rotation rate of trained and experienced refugee incentive staff, it became increasingly difficult for agencies to find and train replacements to continue to man their programmes in a sustainable manner (UNHCR and WFP 2008: 4). The difficulty of replacing experienced and qualified staff affected both humanitarian service provision by agencies like Caritas or AMDA and community-based organisations in the camps. As we drove back from Sanischare following elections of the Youth Friendly Center (YFC) in early 2010, Father Amal Raj grumbled that the quality of new candidates for YFC posts had suffered from resettlement. The most active and educated leaders had already left the camps, he explained, and those left behind were less 'involved' than their predecessors. According to Father Amal, a similar development plagued the Camp Management Committees (CMCs). In order to minimise the impacts of staff rotation on service provision, UNHCR and the Government of Nepal introduced resettlement-related criteria into the CMC election process. To qualify for a CMC post, refugees should not have been interviewed by the Department of Homeland Security (for resettlement to the U.S.) or by a resettlement country mission (for resettlement to other countries). To qualify for one of the four key executive positions in the camp (Camp Secretary, Deputy Camp Secretary, Gender Focal Point, and CWT Coordinator) the requirement was more stringent: candidates were not permitted to have undergone their first IOM pre-screening interview (UNHCR 2011), which marked the beginning of the resettlement process.

Agencies hoped that camp consolidation would mitigate some of the negative impacts of brain drain by enabling them to continue providing services in a way that required fewer staff. It was unclear whether this would be sufficient in the long term. Both AMDA and Caritas had begun to merge their services within camps. AMDA referred to the process as 'rightsizing', a term it felt had fewer negative connotations than 'downsizing'.[198]

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[198] Interview with Director of AMDA Health Centers Damak, Madhu Rima Bhattarai, 19 January 2011.

Father Amal Raj hoped that merging schools would enable Caritas to maintain the quality of its education, which was suffering as its best teachers departed. Fewer teachers would be needed if services were merged. Caritas merged its secondary schools in 2010 and there were also plans to merge schools from class four to class eight, reducing the number of such schools to one per camp. Each camp would also have only one school for class three and below. At the end of the resettlement programme, the school curriculum would be revised once more to suit the needs of remaining refugees. Father Amal also entertained the possibility of changing the language of instruction from English to Nepali or even merging camp schools with local schools.[199]

Transnational contacts: Mediascapes

As the Bhutanese were resettled to third countries in growing numbers, the degree of transnational communication between Damak and third countries increased at amazing rates. Computers courses were among the most popular offered in the camps and many refugees had learned to use the internet to communicate with their resettled relatives. Cyber cafés were big business in Damak and along the *bazaar* beside the Beldangi camps. The Richa Cyber Café in Damak, where I would go to read the news or check my e-mail when load shedding meant that I had no electricity – or internet – at home, was often full of entire families on weekends, from youths in jeans and t-shirts to grandmothers donned in *saris* and adorned with *potes* and gold nose ornaments. Huddled together in front of a single monitor, a family shared a headset as they spoke to their relatives in another country via Yahoo Messenger. Others used cheap internet-based phone services, offered by phone shops that, due to popular demand, had put up lists of set prices for calls to the U.S.A., Canada, and New Zealand. Before the resettlement programme, it had been more common to see prices for calling such countries as Bahrain, Dubai, or Qatar, which attracted large numbers of low-scaled migrant workers from Nepal.

In the countries to which refugees have moved, community based organisations have mushroomed as quickly as they once did in the camps in Nepal. These included national-level community-based organisations in virtually every resettlement country, like the Association of Bhutanese in America (ABA)[200] and the Bhutanese Community Support Organization in America (BASCO),[201] the Bhutanese Community of the Netherlands (BCN),[202] the Association of Bhutanese in Norway (ABN), the Bhutanese Australian Association of South

[199] Interview with CARITAS Field Coordinator, Father Amal Raj, 23 January, 2010.

[200] http://www.aba-usa.org/.

[201] http://www.bascoma.org/.

[202] http://www.bcn-bhutan.nl/.

Australia (BAASA),[203] and the Canadian Bhutanese Society (CBS).[204] In the United States, community organisations have also been established at the state level (i.e. the Vermont Bhutanese Association).[205] Internet-based groups or 'online communities' can be mobilised for a variety of reasons, including furthering specific political agendas, organising around a specific interest, or bringing together members of dispersed familial or ethnic groups (Wilson and Peterson 2002: 449). Many of these organisations maintained websites that, in 2011 and 2012, emphasised the importance of maintaining 'our culture' and traditions. Discussions within the BAASA in 2012 concerned establishing an ethnic school where Bhutanese children would be taught in Nepali. As community based organisations in resettlement countries organised festivities during important Hindu festivals and other occasions, an overwhelming and colourful array of Bhutanese engaging in Nepali dance and other forms of cultural performance surfaced on video-sharing websites like YouTube. Community organisations in resettlement countries also showed concern for those in the camps, maintained links with refugees in Nepal, and engaged in donor drives among the resettled population in support of causes and projects in the camps. Activists have also established international advocacy groups (like the Bhutan Advocacy Forum, Europe) through which they lobby parliaments and the UN in Geneva to pressure Bhutan to improve its human rights performance. They keep in touch through Google Groups, which were used to test ideas for projects and get reactions and advice from peers.[206]

Shifting demographic constellations

Because people sign up for and depart for resettlement at different speeds, resettlement can alter the ethnic make-up of refugee camp populations. The general perception among the Bhutanese refugees was that resettlement had caused a shift in the distribution of castes and ethnic groups in the camps. A Brahmin journalist remarked one day that the people left in Beldangi were mostly '*matwali*' (alcohol drinking castes). Like him, some Brahmins and Chhetris had the impression that they were becoming a minority in the camp. They saw their fears confirmed by the shift in representation of the Camp Management Committee (CMC) following the 2011 elections. Whereas the majority of key positions in the CMC had been occupied by high caste Brahmins and Chhetris since its inception, the 2011 elections overwhelmingly saw *janajati* candidates elected to these posts.

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203 http://www.bhutanesesa.org.au/.

204 http://cbsalberta.org/index.php/about-us.

205 http://vermontbhutaneseassociation.org/.

206 Interview with refugee member of the Bhutan Advocacy Forum-Europe, the Netherlands, 16 September 2010.

David Derthick, IOM Chief of Mission in Nepal and Head of IOM's Sub-Office in Damak, was also under the impression that Brahmins and Chhetris had resettled first – not because IOM or UNHCR was prioritising higher castes but because members of these groups had been the first to express an interest in resettlement.[207]

Table vii presented in Chapter III gave an overview of shifts in caste representation in the camps. As can be seen from table vii, the percentage of Brahmins in the camps declined significantly by 2011, while there was an increase in relative representation of *janajati* groups in the camp population.

These shifting ethnic constellations in the camps, and corresponding shifts in terms of ethnic representation in key positions in camp organisations and the camp administration correlated to some extent with developments in resettlement countries. After resettlement, the old social hierarchy in the camps was perpetuated to an extent in exile, as many of the same people who were leaders in the camp became leaders of new refugee associations and structures in third countries.[208]

VI.2 Legally plural bearings on refugee marriages

While the initial violence that accompanied introduction of the resettlement programme was short-lived, new social conflicts emerged as families made decisions about their futures. The following section will focus on a new area of conflict in the camps: family relations and refugee marriages. By highlighting the examples of a polygamy case and a minor marriage case, it will show how resettlement has transformed the nature of family disputes, as refugees began to understand marriage as having potential consequences both for the speed of resettlement procedures, and for family constellations after resettlement.

First, however, it is necessary to elaborate upon the legal framework that pertains to these types of family disputes in the context of the third country resettlement process. As outlined in Chapter II, as transnational semi-autonomous social fields the camps are influenced by various constellations of law and legal norms, including customary and religious norms, Nepalese law, and human rights law.

In Nepal, as in India, the state has traditionally had little involvement in the solemnization of marriages:

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[207] Conversation with Head of IOM Sub-Office Damak, David Derthick, 12 April 2010.
[208] Conversation with Rachel Demas, UNHCR Resettlement Officer, March 5, 2010.

> The solemnization of Hindu marriages is first of all a matter of social conventions and ritual elaboration, involving the dramatization of social norms and all kinds of related beliefs. In the traditional Hindu system of marriage, there was no role for the state, as marriage remained a private affair within the social realm. In the traditional system, the solemn performance of a long sequence of traditional Hindu marriage rituals was assumed to evoke a mental awareness of being married, both for the spouses concerned and for those who celebrated the marriage with them and witnessed it. (Menski 2003: 273)

Customary and religious norms about the institution of marriage, its solemnization, and its dissolution, played a prominent role among both mediators and the parties to family disputes. As Menski explained, 'proper' Hindu marriages were legitimised and registered by Hindu society, not by the state.

With the advent of the third country resettlement programme, customary and religious norms have increasingly been confronted by resettlement policies, which also touch on such issues as marriage and family composition. UNHCR's resettlement policies determine who qualifies for the programme and is to be submitted as a resettlement candidate. Introduced below as 'resettlement project law', these policies are themselves influenced by various external forms of law (including both international human rights norms and Nepalese rules regarding the granting of exit permits).

Lastly, third country resettlement brings a new dimension of law to bear upon the transnational semi-autonomous social field of the refugee camp: the migration law of receiving third countries (also known as resettlement countries). Where UNHCR and host country laws and policies regulate the departure of refugees from their first country of asylum, the domestic immigration laws of these third states ultimately determine whether a refugee is accepted for resettlement.

The coming sections will elaborate upon the new legal regimes that affect family relations as refugees depart – or plan to do so – from Nepal for resettlement to a third country.

Resettlement project law

The key document that sets out UNHCR's resettlement policies, referred to here as 'resettlement project law', is the Resettlement Handbook. The handbook contains substantive and procedural requirements with respect to resettlement and covers such matters as eligibility, processing, and fraud. UNHCR country offices must work with baseline Standard Operating

Procedures (SOP), which are developed centrally and concern subjects like resettlement management and risk mitigation as well as resettlement processing-related themes including case identification, the making of submission decisions, etc. These baseline SOP must then be used by local UNHCR offices to elaborate their own country-specific and context-specific resettlement SOP. Country-specific SOP designed to 'provide a narrative description of how the Field Office implements the baseline standards in resettlement management and risk mitigation and the stages of resettlement processing, as well as office-specific details for each stage of resettlement processing' (UNHCR 2011a). These SOP are internal documents that are not shared with refugees and rarely with researchers. Cultural or other practices of the target population often require additional policies on issues for which no central level policies have been formed. This leads to local approaches, which may in due time inform or become part of higher level policies. In 2011, for instance, there was no overall policy or SOP on adolescent marriages and resettlement. The issue, which was complicated and had led to problems in Nepal, prompted the concern of UNHCR's Resettlement Officer in Damak, who planned to attend a conference on resettlement in Thailand that year to discuss this very issue and see if it might be possible to come to a cross-country approach.[209]

The handbook also contains a number of general principles and rules regarding resettlement and its relation to refugee protection. One such principle is that of the 'universal imperative', which requires that 'when UNHCR submits a refugee with a certain profile within a given population for resettlement it should, as a general rule, be willing to submit all cases with a similar profile' (UNHCR 2011a: 37). Another important example is the principle of family unity, with the corresponding rule that 'If one family member is being considered for resettlement (e.g. on protection grounds), UNHCR will seek to ensure, where possible and in line with the principle of family unity, that all of the refugee's family members, including dependent non-nuclear family members, are resettled together' (UNHCR 2011a: 178). As this shows, UNHCR project law also concerns itself with refugee families.

When it comes to third country resettlement, UNHCR's policies and rules determine who is eligible for resettlement and who is not, and which files will be submitted to resettlement countries for consideration. A great deal of UNHCR's decision-making in this regard takes place locally. Although countries often fix the quotas of particular refugee populations they are willing to absorb during UNHCR's Annual Tripartite Consultations on Resettlement in Geneva, decisions regarding the country to which a particular refugee's file will be submitted are made by UNHCR staff at the

[209] Interview with UNHCR Resettlement Officer, Michael Wells, 9 February 2011.

local level. These staff members also decide whether cases will be submitted as 'linked' to other cases (thereby submitting them together for resettlement to the same country or even city) and which cases will be classified as 'regular', 'urgent', or 'emergency' submissions. Resettlement interviews are conducted by different national and international staff, each of whom may interpret and apply resettlement policies in a slightly different way. In the end, individuals – not a central agency – advise refugees and determine if and how a refugee's file will be submitted for resettlement. Individuals also decide which cases do not meet UNHCR's criteria or how severely an individual or family will be punished for fraud. For the benefit of standardisation, individual resettlement submissions made by UNHCR's resettlement staff are double-checked by senior staff (such as the Resettlement Officer) and often again by staff in a Regional Hub. Nevertheless, no amount of supervision can completely eliminate the effects of the personal characteristics of interviewing staff. There is always a measure of discretion in staff decisions, which are often accepted at higher levels if well motivated and perceived as being in line with third country policies and quota demands. An individual's level of experience, personality, or even mood, his or her relationship with or opinion of a particular refugee, or the qualities of an interpreter can all have a significant impacts on the amount of time devoted to a refugee's case, the amount and type of information given, and the decision reached.

In each of its resettlement operations, including the Bhutanese, UNHCR emphasises that resettlement is not a 'right'. According to UNHCR, the refusal to grant a refugee resettlement cannot, therefore, be interpreted as a violation of refugee rights. The procedure through which UNHCR assesses resettlement submissions is internal and there are no external legal avenues in which UNHCR's decisions can effectively be challenged. Few countries select refugees for resettlement without using UNHCR as intermediary.[210] Although states have the ultimate power to decide which refugees they will accept for resettlement, UNHCR can unilaterally decide which refugees will be barred from the process altogether. Whether or not resettlement is interpreted as a right, this aspect of UNHCR's decision-making – its ability to single-handedly determine whether someone will or will not be given access to a durable solution – has very real legal consequences.

The US Refugee Admissions Program

As noted, UNHCR lacks the authority to determine which of its resettlement submissions are ultimately accepted. These decisions are made by states,

[210] There are some exceptions. The US Refugee Admissions Program (USRAP) also accepts submissions from other sources, including NGOs. This is not, however, a practice that is applicable in the Bhutanese refugee camp.

and states alone. With the advent of resettlement, the migration laws of resettlement countries have therefore become an important factor in refugees' lives.

The vast majority of Bhutanese are resettled to the U.S., which has the largest resettlement programme in the world and accepted just under 75 percent of all 73,000 refugees resettled to third countries in 2010 (U.S. Department of State, U.S. Department of Homeland Security, and U.S. Department of Health and Human Services 2012). Following from these statistics, U.S. law is arguably the most prominent – and, not counting Nepalese law, most important – external form of law that affects the Bhutanese refugees.[211] As it is beyond the scope of this dissertation to go into detail about migration law in all countries to which the Bhutanese are resettled, discussions on foreign migration law in this chapter will focus specifically on the U.S. Refugee Admissions Program (USRAP).

Section 207(a)(3) of the Immigration and Nationality Act (INA) specifies that USRAP will admit refugees 'of special humanitarian concern' to the United States. A priority system that defines three types of cases that have access to USRAP determines to which refugees this applies. Priority 1 (P1) cases are individual resettlement cases whose circumstances point to an apparent need for resettlement, Priority 2 (P2) cases are group cases whose specific circumstances point to an apparent group need for resettlement, and Priority 3 (P3) cases are individuals from designated nationalities granted resettlement for the purpose of family reunification with relatives already residing in the U.S.

In 2010, the Bhutanese were the third largest group to be resettled in the U.S. Of a total of 73,311 arrivals that year, more than 12,363 (17 percent) were Bhutanese – a number surpassed only by Burmese (16,693) and Iraqi (18,016) refugees (US Department of State, US Department of Homeland Security *et al.* 2012). Bhutanese refugees were accepted primarily as P2 cases, but also constituted a designated national group for P3 cases.

The U.S. Government describes USRAP as an 'inter-agency effort', involving various governmental and intergovernmental partners both in the U.S. and overseas. Overall management responsibility for the programme is

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[211] US law is not the only foreign law that 'enters' the camp – (much) smaller numbers of refugees are also resettled to countries such as the New Zealand, Australia, Canada, the Netherlands, Denmark, Norway and the UK, and in the same way, resettling refugees are required to comply with the migration laws of these countries. With respect to the cases that will be discussed in this paper, however, these countries apply more or less the same policy – polygamy is not allowed, and marriage is not accepted below the age of 18.

held by the Bureau of Refugees, Population and Migration within the U.S. Department of State. Proposed Bhutanese resettlement cases referred to USRAP by UNHCR. To improve the efficiency of the Bhutanese refugee resettlement programme, the US Government has established and funded an Overseas Processing Entity (OPE) in Damak. These OPEs were later renamed Resettlement Support Centers (RSCs) and operate on behalf of the US Department of State. RSCs receive cases from UNHCR and are authorised to carry out administrative and processing functions, including file preparation and storage and data processing. In Damak, the RSC is managed by IOM and works out of the IOM compound.

RSC staff prepared and pre-screened cases, making an initial determination as to whether applicants qualified for access under U.S. law and policy and whether they should be presented to the Department of Homeland Security (DHS) for interview. Those who clearly did not qualify were 'screened out'; DHS interviews were scheduled for the rest. As the U.S. does not accept resettlement submissions on dossier-basis, all resettlement candidates were interviewed by a DHS officer. Only the Department of Homeland Security could make a final decision about whether a case would be accepted for resettlement to the U.S. This meant that DHS officers had the legal power to make final determinations as to the admissibility of an individual refugee and the priority of his or her resettlement request (US Department of State 2013).[212]

VI.3 Polygamous marriages and resettlement

The practice of polygamy is historically prevalent in Nepal, and continues to be so today. Dr. Jit Gurung, a Nepalese sociologist employed with Danida's Kathmandu office explained:

> We have a cultural tradition [of polygamy]. One of the Hindu Gods, Krishna, the myth is that he used to have 16,008 wives. It is a very popular saying, and devout Hindus still believe him to have had this many wives. Ramayana talks of the adventures of Rama. Rama's father is reported to have had 3 wives in particular religious texts. Polygamy is scattered throughout religious texts, so it is not very unusual for people. In modern times, a person having many wives is generally considered to have better status.[213]

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[212] Section 207(c) of the Immigration and Nationality Act. U.S. Department of State, Department of Homeland Security, Department of Health and Human Services. Report to the Congress: Proposed Refugee Admissions for Fiscal Year 2011, October 2010. Available at: http://www.state.gov/documents/organization/148671.pdf, Accessed 14 August, 2011.

[213] Interview with Jit Gurung, DANIDA, 12 January, 2011.

No linguistic distinction is made between marrying two wives (bigamy) or marrying more than two (polygamy or polygyny) in Nepali – the same word (*bubibiha*) is used to describe both practices. Both polygny (whereby a man has multiple wives) and polyandry (whereby a woman has multiple husbands) are prevalent in Nepal, although the latter is rarer.

There are some differences in the practice of polygamy among different ethnic and caste groups. Variations in the prevalence of polygamy have also been linked to social status. A study conducted on polygamy among the police force in Nepal found that of all castes, Chhetris had the most wives, followed by Brahmins. Polyandry was most common among the Tibeto-Burmese ethnic groups.[214] The practice also existed in Bhutan and Jigme Singye Wangchuck, the fourth Dragon King or Druk Gyalpo of Bhutan (who ruled from 1955 until he abdicated the throne to his eldest son in 2006) had four wives – all of whom were sisters.[215]

As in refugees' host society and country of origin, polygamy was also prevalent in the Bhutanese refugee camps. Although I did not come across cases of polyandry, anecdotal evidence suggested that there may have been a few polyandrous families in the camps.[216] Many refugees to whom I spoke were of the opinion that it was acceptable for a man to take a second wife under certain conditions. Under the 'right' circumstances he might even be encouraged to do, as happened to one YOB member I befriended whose wife was barren.

That it is encouraged under particular circumstances does not mean that the practice unequivocally accepted. It is declining both in the camps and in Nepal. Instead of obeying his mother and taking a second wife, the YOB member mentioned above decided to leave his parents' house and eventually adopted a daughter. Jit Gurung attributed the decline in polygamy to a combination of factors including education, increased literacy, legal changes, and the gradual realisation that a polygamous relationship 'is not a good relationship': 'it causes many problems, such as domestic violence. If a person has three wives, it is very unusual for that household to be peaceful. One tends to be the favourite; the others are neglected – they do not get good

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[214] Adhikari, Bishwo (unpublished): *Polygamy in Police: A Study of Current Situation.* Kathmandu Law School. Retrieved from: http://www.ksl.edu.np/cpanel/pics/Poligamy.pdf.

[215] This marriage, like the case that will be discussed in this section, is an example of sororal polygyny.

[216] Occasions where a married woman takes another husband are treated differently in the camp. This is seen as *jhari*, and is normally settled by the new husband paying compensation to the first husband (who is thereafter regarded as the 'former' husband).

food, or clothing. There tends to be violence also…'

The favouritism Jit described was a palpable problem for women in polygamous marriages in the camps. Unlike in Bhutan where the abundance of land made it possible for men to construct separate houses for their multiple wives (thereby minimising opportunities for conflict between them), the constricted and densely populated camps had limited room for housing and did not allow for this practice. Changed socio-economic circumstances and shortages of space meant that co-wives were often forced to share a single hut, which increased the risk of conflict within polygamous households.

Despite this problem, the practice has endured in the camps. During my stay in Nepal from 2009 to 2011, various camp authorities had multiple wives, including some sub-sector heads, sector heads, and the former Gender Focal Point (who was elected as a member of Beldangi-2's mediation sub-committee in 2011). Of all 746 respondents to the Measuring Access to Justice survey, 91 (12 percent) reported that her husband had taken another wife in the past five years.

Polygamy and the law

Chapter 7 (the 'Marriage Chapter') of the Muluki Ain defines the conditions of a valid marriage in Nepal. This includes criteria for legally marriageable ages, the consummation of a valid marriage, prohibited conditions of marriage, and punishment for illegal or prohibited marriages. Chapter 7 defines polygamy is defined as a crime to be prosecuted by the state, in accordance with the provisions of the 1993 State Cases Act. However, if certain conditions are met, then polygamy is legally permitted. A man may legally take an additional wife if his first wife suffers from an incurable sexually communicable disease, a certified medical board proves that she is not capable of bearing children, she is unable to move due to paralysis, she becomes blind, she is legally separated from her husband, or if she becomes incurably mad (Sangroula 1998). This provision was found to be a violation of women's right to equality by the Nepalese Supreme Court, which ruled that the exceptions should be removed from the law. To date, the ruling has not been implemented.[217]

Although Nepalese legal provisions on polygamy were relevant to those refugees who intended to challenge the legality of their polygamous relationships in Nepal, it had little consequence for refugees resettling to the USA. Instead, the consequences of polygamous relationships for refugees

[217] Interview with advocate with the Forum for Women, Law and Development (FWLD), Seema Dhami, 28 February 2011.

undergoing a resettlement process were determined by UNHCR and resettlement countries.

UNHCR's position on polygamy is informed by international human rights law. Although the Convention on the Elimination of Discrimination Against Women (CEDAW) makes no specific mention of polygamy, the CEDAW Committee condemned polygamy in General Comment 21 of 1994 as a violation of the equality of men and women in marriage. UNHCR shares this general view of polygamy but applies these rules with a measure of flexibility. As a general rule, refugees in polygamous families are told during their resettlement interviews that polygamy is illegal in resettlement countries and they if they still wish to continue with the resettlement process, they have to decide which wife will stay with the husband and which children shall remain with which wife.[218] When polygamous families are characterised by the vulnerability of one (or more) family members and a high level of dependence, UNHCR may decide to submit both wives as 'linked' cases, thereby recommending that they be considered for resettlement together (preferably not only to the same state or city but also at the same time).

Ultimately, not UNHCR but resettlement countries must determine whether a refugee is eligible for admission under domestic legislation. Because resettlement countries have final say over any admission decision, polygamy clauses contained in immigration laws have a strong impact on resettling refugees. In U.S. migration law, these norms are set out in the Immigration and Nationality Act (INA). The INA defines what is considered a valid 'family' for the purpose of immigration to the United States, which marriages are considered valid, and what constitutes a child or dependant (UNHCR 2011b: 4-5). The following section will outline the major elements of these regulations as they relate to polygamy in the context of asylum migration to the USA.

The polygamy bar in U.S. immigration law

Bigamy (or marrying two wives) is banned in all fifty-one states of the USA and constitutes a legal ground for inadmissibility of immigrants. The core provision regarding polygamy in U.S. immigration law is the polygamy bar set out in Section 212(a)(10)(A) of the INA, which bars the admission of practicing polygamists (or those who intend to practice polygamy) to the United States. Under Section 212(a)(10)(A), to sustain a charge of polygamy a non-citizen 'must be found to subscribe specifically to the religious practice or historical custom of polygamy, that is, the taking of plural wives… This

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[218] Interview with Head of Sub Office UNHCR Damak, Rianawati Rianawati, 16 February, 2011.

inadmissibility applies not only to a husband who takes multiple wives in a polygamous marriage, but to any and all of the wives in the marriage as well. Thus, if any party to a polygamous marriage admits the intention to practice polygamy in the United States, the visas of all parties to the polygamous marriage will be denied' (Smearman 2009: 401).

The polygamy bar has broad consequences throughout the immigration process. Because it makes applicants inadmissible to the United States, all visa requests of those persons who acknowledge that they intend to practice polygamy while in the U.S. will be denied. As a ground for inadmissibility, polygamy also has implications for the possibility of a non-citizen to become a lawful permanent resident in the U.S. and it can also have consequences for the statuses of asylum seekers in the U.S. (Smearman 2009: 398-399).

Under Section 212(a) of the INA, bigamists are guilty of a 'crime of moral turpitude'. The notion of moral turpitude is not explicitly defined in immigration law, but has been defined by the Fourth Circuit as conduct 'that shocks the public conscience as being inherently base, vile or depraved, contrary to the rules of morality and the duties owed between man and man, either one's fellow man or society in general' (Medina v. United States, 259 F.3d 220, 227 (4th Cir. 2011) cited in Smearman 2009: 430). A DHS officer may exclude a refugee from resettlement to the U.S. on the basis of moral turpitude by declaring him or her inadmissible on these grounds (Smearman 2009: 430). This applies to all non-citizens seeking to immigrate to the United States.

The polygamy bar has the greatest impact upon family-based migration (migration on the basis of family relationships). According to Smearman (2009: 403), 83 percent of all migration to the U.S. in 2007 was family-based immigration – a statistic that includes derivative beneficiaries of those who migrate to the US with immigrant visas, including asylum seekers.

For the purpose of family-based migration, the recognition of a marriage or relationship as valid is a critical factor in the determination of whether a child or spouse will be granted entry to the United States. As a general rule for determining the validity of a marriage, an adjudicator looks at two things: (1) whether the marriage was valid when and where contracted (governed by the law of the jurisdiction where the marriage took place); and (2) whether the marriage is valid under the INA. A marriage that is valid under the jurisdiction where it contracted, but which violates the INA, will not be recognised as valid for immigration purposes.

This approach towards establishing the validity of a marriage has implications for refugees in polygamous families, and means that the polygamy bar affects first and second wives differently. Smearman noted:

> The first wife of a polygamous marriage… *will* be granted spousal status under U.S. immigration law. Immigration officials will permit a citizen or permanent resident husband to petition for one of his wives and will recognize a polygamist's first wife without question; he need not end his subsequent marriages for the first spouse to obtain immigration benefits. The first marriage will be recognised on the theory that it was valid at the time it was contracted, and that no pre-existing marriage served as an impediment. A husband will not be required to divorce a second, third, or subsequent wife in order to petition successfully on behalf of his first wife' (Smearman 2009: 407).

For all immigration purposes including asylum, a refugee's first marriage is automatically recognised. This has consequences not only for the recognition of subsequent wives in polygamous marriages for migration purposes, but also for the recognition of children resulting from these unions.

Smearman showed that divorce is not a requirement for resettlement. However, in the event that a polygamous man wishes to be considered legally married to a woman other than his first wife, he must first show that he has divorced his first wife. It sometimes happened that parts of a refugee family decided to go ahead for resettlement on their own with the intent of having the rest of the family join them later. In such cases the polygamy bar becomes relevant for a determination of which spouse and/or children will be entitled to a status as derivative asylees. In order to apply for an adjustment of residency status in the United States (i.e. by applying for permanent residency), a refugee must prove that none of the grounds of inadmissibility laid out in Section 212(a), including polygamy, apply to him or her. The same holds for all derivative asylees.

That the U.S. government does not accept polygamous families for resettlement does not mean that it is impossible for parts of polygamous or 'former' polygamous families to reside in proximity to one another. One way in which this happens is through 'linked' or 'cross-referenced' cases, as previously introduced in the section of this chapter outlining UNHCR's approach to the resettlement of polygamous families. A background document for U.S. resettlement workers instructs the latter that:

> Applicants for U.S. resettlement are counselled that polygamy is illegal in the United States, and a polygamous male accepted for U.S. resettlement will be considered married to his first legal wife only. All other wives will be legally single in the United States, where they will need to adjust to living separately from their husband and the other women with whom they previously shared a household. However, for the sake of family unity and to ensure that children can maintain contact with both parents, the cases of formerly polygamous families will be soft cross-referenced, allowing individuals to be resettled to

the same geographic area.[219]

For polygamous families interested in resettlement, the issue is likely to come up during both UNHCR and IOM interviews and again thereafter with DHS officers. The following section will present a polygamy dispute that was mediated in Beldangi-2 in early 2011 and the ways in which refugees tried to resolve their desire for resettlement with their family situation.

A third wife from the *bange*

In March 2011, I attended a polygamy dispute that was mediated in the Community Watch Team office in Beldangi-2 refugee camp. The application to the Counselling Board was filed by two sisters, Sita and Chandra Chhetri. The sisters shared a husband, Durga, to whom they had both been married for more than twenty years. The marriage had been arranged by the women's father, who 'gave' his second daughter to Durga along with the first because his first daughter was 'handicapped'. The women were generally happy with the arrangement, shared the same homestead, and had several grown children including two sons.

For Sita and Chandra, the problem occurred when Durga took a third wife – a local Nepalese woman from the *bange bazaar* next to the camp. Their anger was compounded because they were interested in resettlement, an option their husband had thus far refused to consider.

As soon as Durga married his third wife, Sita and Chandra filed an application to start a case against their husband. In writing, they demanded: (1) that their husband should separate from his third wife, (2) that if he did not separate from her, that he and his third wife would not live in Sita and Chandra's hut, and (3) that he should sign to allow them to resettle.

During the mediation session, participants invoked a wide range of norms and rules. Most could be roughly grouped into two categories: those that addressed the validity of Durga's third marriage and of polygamy in general and those relating to the implications of the practice for resettlement. With respect to the validity of Durga's third marriage, the community had conflicting opinions. Where Sita and Chandra's father insisted that it was unacceptable for a man to take a third wife if he already had two wives, a bystander insisted that 'If a man gets a woman pregnant, he must marry her', while the mediator maintained that one could not just leave a wife one had taken because 'women have *ijjat* [prestige], and are not to be treated like animals, sold here and there..' Consensus was not reached on whether or

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[219] Cultural Orientation Resource Center (COR) (June 2011): *Refugees from Darfur: Their Backgrounds and Resettlement Needs*. COR Center Refugee Backgrounder No.6: Retrieved from: http://www.cal.org/co/pdffiles/backgrounder_darfuri.pdf.

not polygamy was acceptable but there were rumours that Durga, despite his advanced age, had gotten the third woman pregnant and it was soon established that 'sending her back home' was not an option.

More interesting, for the purpose of this analysis, was the discussion that followed, in which attendants of the mediation session debated what this would mean for the family's resettlement process. It was clear that most people were sure that this presented a problem, although they were not certain what the implications would be for Durga's family's resettlement process or what steps would need to be taken. Below are some of the statements made as they search to understand their situation:

Sita/Chandra: Divorce is needed for resettlement, according to the IOM officer.

Sita/Chandra + Mediator + bystanders: Resettlement is not possible with a third wife.

Bystander: During the resettlement process, without the signature of their husband, the women are not allowed to go.

Bystander: If UNHCR knows it is polygamy, then the process will not proceed.

RP's brother: Resettlement is possible if Durga divorces his first wife.

Mediator: What will you do if you want to go for third country resettlement, and the outside *samaaj* (society) says 'you cannot take our daughter with you'?

It was evident that different parties held differing views of the legal consequences of this polygamous union for resettlement and the best way to deal with it. The man who pointed out that Durga's wives needed his signature alluded both to an actual procedural requirement related to resettlement and to the belief that the head of household determined whether his family members would be resettled. Culturally, the oldest man in a household – the patriarch – bore responsibility for making decisions on behalf of his family. However, UNHCR's rules were different and allowed each person over the age of eighteen to decide for themselves whether they wished to be resettled or not. The decision of a father was therefore not binding on his relatives unless they were minors.

Other statements referred to the consequences of polygamy. Sita and Chandra believed that a divorce was necessary but were unsure who exactly should divorce. A bystander thought Durga should divorce his first wife while another believed that if a family was polygamous, UNHCR would not process their case at all. Sita and Chandra pointed to an 'IOM requirement',

whereas a bystander referred to UNHCR. The mediator highlighted an additional issue of concern – community-host relations – and questioned Durga about what he would do if the local community were to protest a possible decision to be resettled together with his third wife.

These interpretations did not necessarily correspond to actual rules or legal norms. It was often unclear to which type of law people were referring – not only for observers but also for the disputing parties themselves.

For various reasons, this case was not resolved that day in the CWT office. The CWT Chief believed that the issue was too dangerous for the refugees to solve unilaterally without the presence of the third wife's parents or guardians. He wanted representation from the host community, so as not to be held unilaterally responsible if Durga's third wife's relatives were unhappy with the outcome of the case and the parties agreed to meet again in the presence of the host community. In the end, the CWT Chief decided that the case should be solved in the APF base camp where it was mediated a few days later by representatives of the CWT and Counselling Board, Durga's family, his sector head and sub-sector head, and members from the local community.

Several decisions were reached. Firstly, it was agreed that Durga would stay with his *third* wife for the moment and that he and his sons would henceforth be responsible for her welfare. Durga was to construct a separate hut for his third wife, so as not to force his first and second wife to cohabit with her. Furthermore, it was agreed that Durga would not register his third wife with the RCU Supervisor or on his ration card, so as not to create additional problems for the resettlement process of his first wives. Moreover, he would not divorce his first or second wife, who (having had some time to think about it) decided they loved him too much to be permanently separated from him.

At the household level, Sita, Chandra, and their husband came up with a solution for their resettlement process. They decided that Sita (Durga's first wife) would be submitted for resettlement together with her daughter. Chandra (the second wife) would be submitted for resettlement on a separate file together with Durga and their youngest son. As neither the first nor second wife wished to divorce their husband, the women construed this solution as a way of resettling – even if not necessarily at the same time – without permanently breaking up their family.

They also decided that the third wife, who had family in Nepal and had only been with Durga for a very short while, would stay in Nepal after Durga's resettlement. He would leave some property for her and would support her financially by remitting money to the camp. Durga's oldest son was not interested in resettlement and would take care of Durga's third wife after his father's departure.

The outcome highlights Durga's and his family's attempts to manoeuvre around the system of resettlement regulations in order to become eligible without taking steps they perceived as undesirable or as having negative consequences for their family, such as divorce. They wished to have their cases submitted together to avoid separation and did not perceive the 'one wife' requirement as necessarily implying the break-up of their family.

Stories of people who succeeded in circumventing resettlement rules to maintain their family composition were communicated back to the camps, where they informed resettlement-related disputes. Examples were not difficult to come by: over the course of a two-day workshop on the resettlement of Bhutanese refugees organised by Michael Hutt at the School of Oriental and African Studies in London in May 2013, two women who conducted research or worked among resettled refugees in the United States told me that between them, they knew of three different polygamous families who had been assisted not only in living in the same neighbourhood, but in the same house.

Success stories such as these served as encouragement for others to adopt similar strategies. Whether they achieved their goal of maintaining family unity depended on the discretion of UNHCR and receiving states. Although refugees could make requests to have their files 'linked', they had no authority to determine whether UNHCR would actually submit them as such or if it did, whether the resettlement country would accept UNHCR's recommendation.

VI.4 Minor marriages and resettlement

In 2011, the Washington-based Population Reference Bureau ranked Nepal eighth in its list of top ten countries for child marriage, with 51.4 percent of the country's population reportedly married before the age of 18 (Hervish and Feldman-Jacobs 2011). Ancient Hindu scriptures encourage marriage at a young age; influential religious texts such as the *Bishnu Sutra* and *Gautam Sutra* enjoin fathers to marry off their daughters within three weeks of their attaining puberty. In the *Manusmriti*, Sage Manu declared that if a girl remained unmarried after reaching the puberty, her father had failed in his duty towards her (Maharjan, Karki, Shakya and Aryal 2012; UNICEF 2008: 24). These texts were not without effect on Hindu populations. Social perceptions of women and girls and poverty also contributed to the practice. In the twentieth century, child marriage was firmly established in both India and Nepal, with cross-sectional differences in ages of first marriage when factoring for religion, caste, region of residence, and education completed (Agarwala 1957, Bajracharya and Amin 2010, Choe, Thapa, and Mishra 2005).

Among the Bhutanese in exile in Nepal, parental attitudes toward early marriage slowly shifted and the frequency of arranged child marriages greatly declined. Education is often correlated to the age at which girls first marry; the more education girls complete, the higher the average age at which they are first married (Eruikar and Muthengi 2009, Singh and Samara 1996). In Bhutan, most girls had limited access to education. Schools were often long distances away and parents generally preferred to send their sons, keeping their daughters at home to help with the housework. This changed dramatically in the refugee camps in Nepal, where humanitarian agencies aimed at universal primary school enrolment. In coordination with UNHCR, Caritas Nepal established schools that were free of charge and located in each camp, generally at short distances from refugees' houses. They also advocated gender equality and the importance of education for all children, including girls. By the time I visited the camps in 2010 and 2011, many adults expressed the preference that children should wait to marry (and have sexual intercourse) until attaining at least the age of eighteen. One Counselling Board chief even explained that he was against marriage before twenty-five, because he felt it was too great a risk for the life of a girl to have children at a young age. In the sector of the camp where he lived and worked as Sector Head, two girls who married as minors had died during childbirth – one was sixteen, the other only fourteen. Their bodies, he told me, were not mature enough to be able to cope with birth.[220]

A similar change was observable among the host population in Nepal. Although child marriages were still common in Nepal (particularly among girls) the practice was declining (Choe, Thapa, and Mishra 2005). In 1981, nation-wide, roughly fourteen percent of women between the ages of ten and fourteen were married. Twenty years later, this figure was less than two percent (UN Population Fund 2007: 22). Between 1981 and 2001, the mean age of marriage for women in Nepal increased from 17.4 to 19.6 – an increase of more than 2 years. This change has been even more marked among inhabitants of the Terai, the region where the Bhutanese refugee camps are located. The prevalence of arranged marriages has also declined among the Bhutanese and by 2008, it had become so common for men and women to select their own spouses that IOM referred to it as a 'cultural habit' of the refugees (IOM 2008). Again, the same trend could be observed in wider Nepal (Choe, Thapa, and Mishra 2005).

Since the advent of resettlement, however, evidence suggests that the trend of a declining minor marriage rate has begun to reverse in the Bhutanese refugee camps and that underage marriages are once more on the rise. The new type of minor marriage is markedly different from that of the past. For

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[220] Interview with Counselling Board mediator, Beldangi-2, 5 March 2011.

one, UNHCR's Resettlement Officer observed that 'in most cases, underage marriage does not involve a huge age difference. For example, the guy may be twenty-three, and the girl seventeen.'[221] Unlike previous minor marriages, these new marriages were no longer arranged by parents but by youths themselves, who eloped with their sweethearts so as not to be separated from them during the resettlement process.[222] Some have observed that this is an indirect effect of Counselling provided by staff of the International Organization for Migration (IOM) – referred to jokingly by some as the 'International Organization for Marriage'[223] – who allegedly advised youths to marry before rather than after resettlement (Adhikari 2008).

Underage love marriages have led to new types of legal disputes in the refugee camps that centred on the validity of these marriages and their consequence for the resettlement processes of those involved. The following section will describe the legal regimes that govern these marriages. To varying extents, rules from these different legal systems were invoked and debated in disputes as parties tried to negotiate and influence the outcomes of specific cases.

Minor marriage and the law

Marriages among Bhutanese refugees in Nepal are governed by several overlapping legal regimes. These include traditions and customary norms (many of which are derived from the Hindu religion), Nepalese law, and foreign migration policy. UNHCR's resettlement policy also constitutes an important set of rules. Although these policies and rules are not 'law' in a strict sense, their impact on refugee applicants for resettlement is largely the same. A determination by UNHCR that a given refugee is ineligible for resettlement constitutes a migration bar as hard and decisive as a State decision not to allow entry. In fact, it may be even more far reaching, as it limits not just that refugees' access to one but all resettlement states.

In Nepal, the declining popularity of child marriages resulted in a series of legal changes that gradually raised the permitted age of marriage. In 1854, the marriage of a five-year old was permissible under the Nepalese Muluki

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[221] Interview with UNHCR Resettlement Officer, Michael Wells, Damak, 9 February 2011.

[222] One Damak-based journalist, who visits the camps on a regular basis and has written many articles on the Bhutanese, alleges that this has been accompanied by an increasing number of parents seeking formal legal annulment of the marriages of their children. Adhikari, C. (19 September, 2008): Refugee Youths Become Eligible Life Partners. *Ekantipur.com,* Retrieved from: http://www.ekantipur.com/2008/09/19/related-article/refugee-youths-become-eligible-life-partners/161127.html.

[223] Discussion with a former volunteer for the Bhutanese Refugee Children's Forum, London, 22 May 2013.

Ain (Country Code). By 1934, the age was raised to eleven for Brahmin or Chhetri castes. By 1976, the minimum legal age for marriage was set at sixteen years of age for girls (of all castes) if they had parental consent and eighteen if they did not. For boys, these ages were fixed at eighteen and twenty-one, respectively (Onta-Bhatta 2001). Those found legally responsible for arranging the marriage of a minor, whether parents or *pandit* (Hindu priest), are punishable by law and can be fined and/or sentenced to prison. The 11th amendment to the Muluki Ain (2002) established the age of twenty as the legal age of marriage for girls and boys without parental consent, and eighteen for those who had consent.[224] As prescribed by Article 4c of the Marriage Registration Act, 2028 (1971),[225] a marriage can be registered when both parties have reached the age of twenty.

In 2006, the Nepalese Supreme Court issued a directive order for the effective enforcement of Nepalese laws regarding child marriage (UNICEF 2008: 28). Nevertheless, child marriage continues to be prevalent in Nepal and in 2011 the CEDAW Committee expressed its concern about the persistent practice of early marriage in Nepal, despite legal provisions banning the practice. The committee recommended that the State enforce its legal minimum age for marriage.[226]

UNHCR's Resettlement Handbook (ibid: 209) describes child marriage as a harmful traditional practice, and explicitly states that 'UNHCR does *not* normally submit cases of married children for resettlement unless there are compelling protection risks that warrant resettlement, and resettlement is in the best interest of the child' (ibid: 211). For its operations on Nepalese territory, UNHCR is required to work within the Nepalese legal context. With respect to minor marriages, this has several consequences. As UNHCR's Resettlement Officer explained:

> In Nepal, the law does not permit marriage below eighteen years. For those under twenty, parental consent is needed. UNHCR can't recognise marriages that don't fulfill these criteria, but it can recognise relationships. A new policy on underage marriage has just been finalised. So far, UNHCR has kept cases on hold involving married minors, until they reach the age of eighteen, after which the wife can

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[224] Muluki Ain (General Code) 2020, Chapter 17 'On Marriage'. Translation by the Nepal Law Commission, http://www.lawcommission.gov.np/en/documents/func-startdown/605/, accessed in August 2013.

[225] As amended by the Administration of Justice Act, 2048 (1991) and the Amending some Nepal Acts relating to maintain Gender Equality Act, 2063 (2006).

[226] CEDAW Committee, Concluding Observations of the Committee on the Elimination of Discrimination Against Women, Forty-ninth session, 11-29 July 2011. CEDAW/C/NPL/CO/4-5, para 33-34.

> be transferred to her husband's hut. But so many people were put on hold, that the need arose to approach the issue differently.[227]

Fearing that the information would be used to commit resettlement fraud if leaked, the Resettlement Officer would not give me any details about the new policy. He did explain that the previous policy dictated that as long as either party to a marriage was underage, the resettlement processes of both the minor and his/her family members – as well as those of the other partner and his/her family members – were put on hold. Ration card transfers were only effected in the event that a couple was legally married and thus above the legal age limit. As a consequence, even if an underage girl had married and physically moved to the hut of her husband and his family, administratively, the transfer could not be effected until she was eighteen (presuming that she had parental consent). Until this administrative transfer takes place, a girl is still on her maternal family's ration card and thus tied to their file, also for resettlement purposes. This means that she cannot be separated from her parents, even if she has already been living with her husband for years. Her parents will not be resettled without her until the transfer takes place, which can delay the entire case and creates frustration among her relatives, who consider the girl as having effectively transferred to her husband's household.

The maintenance of administrative links between a girl and her parents does not imply that UNHCR does not recognise her relationship with her husband. As defined by UNHCR (2011a: 178) '[a] nuclear family is generally accepted as consisting of spouses and their minor or dependent, unmarried children and minor siblings. UNHCR considers not only legally-recognised spouses (including same-sex spouses), but also individuals who are engaged to be married, who have entered a customary marriage (also known as common-law marriages), or who have established long-term partnerships (including same-sex partners), as spouses within the nuclear family.'

Assuming that the girl is the one who is underage (which was more common in the camps than the reverse), if she and her husband are recognised under this definition as being either engaged or having entered into a customary marriage, they are also entitled to preservation of the unity of their family. However, because she cannot be transferred to his file until she is eighteen, he has to wait too – as do any dependent family members he may have or any family members upon whom he is dependent.

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[227] Interview with UNHCR Resettlement Officer, Michael Wells, 9 February 2011.

If UNHCR determines that a couple is eligible for resettlement, an assessment is made of whether they also meet the criteria in place in different resettlement countries. Migration to the United States, the largest resettlement country of Bhutanese refugees, is governed by the Immigration and Nationality Act (INA). In addition to describing who qualifies for migration in a general sense, the act spells out what is regarded as a valid 'family' for the purpose of immigration to the U.S., what types of marriages are considered valid, and what constitutes a child or dependant (UNHCR 2011b: 4-5).

UNHCR's Resettlement Handbook specifies that 'for U.S. migration purposes, the validity of a marriage is generally determined by the law in place in the country of asylum' (UNHCR 2011b: 11). Under this principle, a marriage that was considered legally valid in the country where the marriage took place is generally valid for the purpose of migration. The U.S. may also accept common law marriages as lawful if they were lawful in the place of celebration and are not contrary to Federal public policy, in recognition of the fact that many people enter into marriages through cohabitation, without the involvement of local courts or even a religious ceremony (UNHCR 2011b: 11). For Bhutanese refugees transacting a common law marriage in Nepal, this meant that if the conditions of the marriage in question were valid under Nepalese law, its validity was also established under U.S. migration law (Titshaw 2010).

The fact that Nepalese law required an age of eighteen for marriage with parental consent (or twenty without parental consent) suggests that it would be contrary to Federal policy to recognise a minor marriage that is transacted before these ages in Nepal. According to UNHCR's Resettlement Officer, in practice parents generally did not refuse consent after their children turned eighteen because this would delay their resettlement procedures even further (although there were exceptions). If parents did refuse consent, UNHCR had several tools at its disposal. Through dependency assessments, vulnerability assessments, and best interest determinations, staff members tried to determine what was in the best interests of children and other family members. Nevertheless, UNHCR did not divulge exactly how it dealt with the law in this situation, or what legal steps it required if a couple married without parental consent, while one (or both) parties were over eighteen, but under twenty.

A 'modern' minor marriage

In March 2011, the same month in which the aforementioned polygamy case took place, a minor marriage dispute was mediated by the Counselling Board, again in Beldangi-2. The case bears resemblance to other minor marriage disputes I observed over the course of 2010 and 2011 and is a typical example of the type of adolescent marriage that was on the rise in the camps, through which youths chose their own partners and eloped (usually

without the consent of their parents) to avoid being separated from each other in the resettlement process.

In March 2011, Man Kumar and Pabitra fell in love. Pabitra was sixteen, Man Kumar was twenty. They wanted to marry and Man Kumar brought Pabitra's family wine and flowers as dictated by the traditional wedding customs of his ethnic group. Pabitra's parents disagreed with the marriage and tried to convince their daughter and Man Kumar to separate. The youths refused. They left the camps and eloped without Pabitra's parents' consent – a way of marrying that was commonly described as a 'love marriage' in the camps.

When Pabitra's parents found out, they tried once more to convince their daughter to separate from her husband. This strategy did not prove fruitful, so Pabitra's father filed an application against Man Kumar demanding that he and Pabitra separate until after Pabitra and her family were resettled. In the application, Pabitra's father also stated that he did not have a problem with Man Kumar as such, and that he would agree to the marriage after his family's resettlement to the United States, if both Man Kumar and Pabitra still wished to marry at that time.

Later that month, the case reached the Counselling Board. For the duration of the mediation session, the Counselling Board room was full of young girls and boys who were watching with great interest. Some of them were Pabitra's friends and studied at Pancha Oti Secondary School in the camp. Most were likely to be wondering not just how this case would turn out, but also how the ruling might affect them and the way they looked at marriage.

Like most of the other youths, Man Kumar and Pabitra were dressed in modern garb, not the traditional *sari*, *daura suruwal* and *kurta suruwal* worn by most of the older people in the room. Man Kumar's jeans were ripped, Pabitra's were tight. A row of rubber bangles adorned her wrist, more similar to those once passed out in raves than the customary bangles worn by married Hindu women.

As in the polygamy case discussed above, two major themes emerged from during the mediation session. The first part of the case addressed concerns about the marriage, its validity, and the consequences of 'the law':

Mediator: Man Kumar should wait to marry Pabitra until Pabitra is 18, 'as per the law';

Mediator: If Pabitra does not go home, we will send you to the Gender Focal Point';

Bystander/Mediator: Man Kumar can get a prison sentence ranging from 6 months – 20 years jail for rape;

Pabitra: Once a girl is with a husband, she should not separate from him.

At no time in the procedure did anybody – neither the mediator, nor the bystander, nor Pabitra – specify to which rule they were referring. If the mediator's claim that Man Kumar and Pabitra should not marry until Pabitra was eighteen 'as per the law' referred to Nepalese law it was incorrect, since Nepalese law set the age at twenty for youths lacking parental consent. To try to convince Pabitra to return to her parents, the mediator indirectly invoked UNHCR's SOP on sexual and gender-based violence when saying that if she refused, he would send the couple to the Gender Focal Point. The risk of a prison sentence to which both the mediator and a bystander alluded derives from definitions of statutory rape but did not represent an *actual* legal risk, since Pabitra was sixteen and the provision of statutory rape applies only to victims below that age. Pabitra, in turn, dismissed all these arguments. When she said that girls should stay with their husbands, she was invoking cultural and religious Hindu ideals of marriage.

The second major point of discussion concerned the consequences of Pabitra's marriage, in the event that it was not annulled, for her family's resettlement process. Pabitra's parents expressed the fear that if their daughter married at sixteen, they would have to wait two years to be resettled. Their fear was an explanation for Pabitra's father's position, as stated in his application to the Counselling Board, that he was willing to allow Man Kumar and Pabitra to marry *after* resettlement. Their understanding of resettlement project law, even if they did not refer to it as such, was fairly accurate. Under prevailing UNHCR policy, Pabitra would not be separated from her parents' file until she turned eighteen – two years from the time of the case. At the same time, they understood that if she was considered 'married' UNHCR would also not forcefully separate her from her husband – implying that Man Kumar's family would also have to wait.

To resolve the problem of the impending delay to both families' procedures, the mediator, together with members of the community, decided that Pabitra should return to her parents' house, where she and her parents should come to a compromise together at home (*milera aune*). The issue, the Counselling Board determined, should be resolved at family level. Pabitra was to return home; her wish to stay at her husband's house was overruled. Because she did not appear at all happy with the judgment, the mediator warned Pabitra's parents that to prevent their daughter from getting depressed (and placing her at risk of committing suicide, a visible and much discussed problem in the camps), she should be permitted to keep seeing Man Kumar, even if they would not be allowed to live together.

In this example, both the case itself and the ruling were related to resettlement. The application letter submitted to the Counselling Board by Pabitra's father

made it clear that it was not the marriage itself but his wish to comply with resettlement regulations and to avoid delays in his family's procedure that prompted him to file his case. His main source of frustration stemmed not from his daughter's choice of a husband but from UNHCR's implementation of resettlement policy, which required him to wait in the camp for another two years until his daughter had reached a marriageable age – a wait he was unwilling to endure. The family's resettlement process was already in advanced stages and for Pabitra's father, it was urgent that they depart quickly. He had two wives, the first of which had already departed to the USA with his eldest daughter. He explained that his first wife was handicapped and that, on account of her continued dependency upon him, UNHCR had agreed to send him (and his other wife and children) to the same location so that he would be able to support her. He had not divorced either of his wives.

VI.5 Reframing family disputes: 'Naming, blaming, claiming'

The family is the cornerstone of Nepali Bhutanese society and the impacts of foreign law on families in the camps have been considerable. In the past, as is still the case today, family solutions to household problems were preferred to 'public' solutions through local or Nepalese dispute resolution mechanisms. With resettlement, however, family problems have increasingly led to obstacles that people did not fully understand and/or which they were unable to resolve on their own.

Polygamous and minor marriages could impact and present significant delays for the resettlement processes of all those directly involved, and even of family members involved indirectly. As agencies strived to resettle people quickly, easy cases were handled more quickly than 'trouble' cases, which could shift to the bottom of the pile resulting in delays in individual resettlement processes. In the event that people needed to take legal steps (such as obtaining divorce papers) to advance in the resettlement process, the resulting delays to their process could be considerably longer than the time it took them to resolve the legal issue that constituted the reason for the delay in the first place.

Through resettlement, the large extended families that played a fundamental role in social support structures in the camps were dispersed and separated. UNHCR and IOM resettled families as nuclear, not extended units, and resettlement countries accepted refugees on the same basis. Although attempts were often made to resettle people to a country and/or state where people had close relatives, this was not always possible. As a result, families were separated and extended support structures dissipated. The nuclear family, in turn, became more and more important.

The consequence has been an increasing litigiousness among refugees

regarding problems that were previously considered 'domestic' but that had direct or indirect implications for resettlement. The central issue in these problems was the threat to the union of the nuclear family. To resolve these disputes, people referred to norms and requirements from foreign legal systems that they did not understand. Instead, they compared interpretations of things 'authoritative persons' (i.e. IOM staff, UNHCR staff, etc.) had said to them, and observations of families being resettled around them, to reach answers that could lend the process a degree of predictability.

Resettlement affected not only the types of rules that people invoked during the mediation of family disputes but also the disputing process itself. It altered the ways in which people defined or named their problems, the speed at which they made legal claims, and the parties to whom they attributed blame (see Felstiner, Abel, and Sarat 1980).

Firstly, the 'resettlement wish' and perceptions about the requirements associated therewith – and the consequences of violating these requirements – altered people's perceptions of 'injury' in family-related disputes. Under Nepalese and international human rights law, the child or minor is considered the injured party in an underage marriage. As minors increasingly began eloping themselves, however, the understanding of injury shifted. Increasingly, parents began to see themselves as injured parties as a result of the marriage of their underage child. Through no fault of their own, their resettlement procedures were delayed as a consequence of the actions of their children. Parents were also reluctant to see their daughters resettled far away. Because of UNHCR's nuclear family criterion, paired with the agency's acceptance of the Nepali Bhutanese as a virilocal society, a married woman is submitted for resettlement on her husband's file. Her file is thus separated from that of her parents, meaning that she may very well end up in a different state or country altogether. As such, parents' admonitions that their children wait to marry until *after* resettlement to marry could also be construed as attempts to prevent the dispersal of their families.

In polygamy cases, additional marriages were perceived to cause an additional element of injury for the first wife – an injury that is all the more grave because of the consequences it presented for her future. Like several other women to whom I spoke, Ambika's husband came home one day with a second, younger wife. He had not announced that he planned to take another wife, and he and Ambika began quarrelling more and more regularly. When her husband stopped looking after their three daughters, she went to report him. During mediation sessions by the sector head and later by the Counselling Board, Ambika's husband was told to look after both his wives equally and that Ambika would live on her own with her three daughters. Although Ambika had little faith that he would care for her children and those of his second wife equally, she hoped that he would help her if there was ever a

serious need. She saw no reason to get divorced, until she decided that she wanted to be resettled. 'If I was going to stay here in the camp, there would be no need to do a divorce. But if I go to the U.S.A., I should divorce my husband because he has two wives. I heard that if a husband has two wives, the IOM will not accept them.' When she approached UNHCR directly, the FA confirmed that her resettlement case would only be processed after she divorced her husband.

Like Ambika, many other women who had been unhappy that their husbands had taken second or third wives did not take any steps to seek legal redress until they decided that they wished to be resettled. When a woman's husband takes another wife, not only is her resettlement procedure delayed but she also runs the risk that her husband will leave her to be resettled with his new wife. In the camps, they might have continued to live together as husband, wife, and co-wife, and she might have been able to rely on a measure of continuing support from her husband. Where husbands failed in their responsibilities towards their wives and children, UNHCR functioned as a safety net that provided them with food aid and essential non-food items. After resettlement, this safety net is no longer available. As a result, divorce may increase a woman's vulnerability and force her to rely upon her children for survival if she cannot work herself.

A second important transformation took place in the way that people attributed blame for their injuries, real or perceived. Although it was UNHCR that put cases 'on hold' or decided which cases would be submitted before which other cases, and resettlement countries that determined the speed of acceptance after submission, power differentials placed UNHCR and state governments firmly out of reach of the refugees. Refugees lacked an opportunity of independent appeal and were unable to effectively challenge decisions to delay or stop resettlement processes. As a result, the object of blame was redirected within the refugee community itself. Instead of blaming UNHCR or foreign governments, refugees attributed blame to the person within the community who they perceived as being responsible for creating the impediment to their resettlement and tried to reach solutions that removed these obstacles internally.

The speed with which injuries were translated into claims and became disputes also changed. Where people were ordinarily reluctant to quickly draw family disputes out into the open, when a dispute was framed or understood in terms of a resettlement-related injuries they were not only more litigious but also faster to make a claim. Even when the origin of a particular dispute might itself be quite old, from the moment of realisation of the consequences of a dispute for resettlement, people did not wait long to take action – provided, of course, that they were aware that legal remedies existed and knew how to approach legal forums or authorities.

This can be explained in terms of the sense of urgency that accompanied the resettlement wish in Nepal. Once people made up their minds that they want to resettle, remaining time in the camps felt to many as if it was 'wasted' – another day in the way of a new, more promising life. The sense of immediacy was intensified by the visibility of departures. All around them, people were leaving every day. Delays were a source of great frustration and people often perceived it as highly unfair when others who they thought had applied later than themselves were resettled before them.

VI.6 Divorce and the break-up of refugee families

'Divorce Cases on Rise due to Resettlement' read a 03 March 2012 headline on the Bhutan News Service website. Quoting Bhupal Kattel, Program Officer of the Legal Aid Program for Bhutanese Refugees with the Jhapa Chapter of the Nepal Bar Association (NBA), the article emphasised that as many as 1,000 divorce cases had been registered in courts in the last eight years. According to Kattel, divorce cases constituted seventy-five percent of the NBA Jhapa chapter's refugee-related caseload. He believed the trend was caused by polygamy and migration to third countries – the USA and Canada in particular. Divorce was on the rise because partners had differing opinions over the migration process.[228]

When I visited him in the NBA's Chandraghadi office, Kattel told me much the same thing. He believed that the tradition of 'double marriages' within the Bhutanese community had led to a strong rise in the divorce rate among refugees, primarily because of the polygamy bar in resettlement countries: 'in the Bhutanese community it is common, but in third countries it is against the law – it is called polygamy. So to make the resettlement process easier, the rates have gone up.'

Because refugees experienced resettlement as problematic for people with non-Bhutanese spouses, who did not qualify as 'persons of concern' for UNHCR, marriages between Bhutanese refugees and local Nepalis or Indians from across the border (known as 'mixed marriages') were another reason for the high divorce rate.[229]

On a crumpled piece of white paper Ashok Basnet, the man responsible for statistics in the court registry in Chandraghadi, tallied the number of divorce cases that involved refugees between 2008 and 2010. According to Ashok,

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[228] Bhutan News Service (3 March 2012): *Divorce cases on rise due to resettlement*. Retrieved from: http://www.bhutannewsservice.com/main-news/divorce-cases-on-rise-due-to-resettlement.

[229] Interview Program Officer of the Legal Aid Program for Bhutanese Refugees with the Jhapa Chapter of the Nepal Bar Association, Bhupal Kattel, 18 April, 2010.

159 divorce cases involving refugees were filed in the Jhapa District court between 2008 and 2009. From 2009-2010, with three months left in the fiscal year, 112 cases were filed. On average, one hundred cases were registered in court each month, of which some thirty involved refugees. If these figures are accurate, then refugee divorce cases represented thirteen percent of the Jhapa District Court's total caseload over 2008-2010 and forty-three percent of all refugee cases over the same period. Although he could not give me figures for earlier periods, Ashok perceived this as a strong increase from 2007.[230]

Devi Niraula, camp lawyer in Beldangi, shared Ashok's perception:

> What increased because of resettlement is divorce in polygamy cases. They are not allowed to go without divorcing one of their wives so some people are compelled to divorce – not because they are interested in separating or because they are quarrelling, but because the resettlement guidelines of resettlement countries require it. In the past, there were a few cases where the woman chose to send her husband to jail, but recently, there have been none. Most Bhutanese polygamy cases are old; they married in Bhutan itself. It is the culture, they only come for divorce for resettlement reasons.[231]

Similar observations of increasing divorce rates with resettlement have been made with respect to other polygamous refugee populations. Currie (2007) wrote that divorce had been rare among the southern Sudanese, who saw marriage as a political institution more than a function of romance or sexual desire. Among southern Sudanese refugees in Cairo, however, it was on the rise. According to Currie, the refusal of western countries to resettle refugees who were in polygamous marriages was a catalyst in the rising divorce rate.

One of my research assistants believed that there was another explanation for the rising divorce rate: 'Before resettlement, there were fewer divorce cases. After resettlement, they increased. This is not because there were no cases before, but because there were no channels – there were no UNHCR Field Assistants and no NBA lawyers in the camps.'[232]

Although divorce was stigmatised within the Bhutanese refugee community, as it was in Nepal and India where marriage is considered sacred, communal attitudes appeared to be shifting. The increasing number of divorces and perhaps the 'valid' reasons for them in the light of requirements accompanying the resettlement process, may have contributed to a reduction in stigma

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[230] Interview with Jhapa District Court Registrar, Ashok Basnet, 18 April, 2010.

[231] Interview with Devi Niraula, NBA Jhapa camp lawyer for Beldangi-1, 7 November 2011.

[232] Informal conversation with male refugee, 7 November 2011.

on divorcées within the refugee population.[233] Ram Dahal, TPO Project Coordinator in Damak, explained that divorced women in the camps were ostracised less than those in the local community: 'People are taking divorce easily. The NBA facilitates it. There is stigma, but compared to the local community, it is insignificant.' Most divorce cases in the camps were filed by women, and Ram Dahal believed that many of these cases related to alcohol abuse (by husbands in particular) and domestic violence. He explained that the community understood these issues: 'They take these things positively. The community knows about her situation, realises the necessity of divorce because of an unbearable situation with her husband.'[234]

Not all camp residents were happy with these developments, however, and there were still many who firmly believed in the union of marriage, and in trying everything possible to avoid the road of divorce. This included members of the camp administration, sub-sector heads and sector heads. One sector head explained that UNHCR and the NBA turned to refugee authorities before taking independent action in a divorce case:

> Before the FA deals with a case, he asks for an application signed by us. Without that, the FA does not accept it. When they come to us to ask us to sign the application, we try to convince them, to keep them together if possible. From whatever angle we can, we try to keep them together. Sometimes, the husband comes but the wife does not. Or the wife comes, but the husband does not… this may happen. To convince them, to keep them together, we try to keep the case pending for some days so that they understand. We don't go to the FA immediately. We also do not start trying to convince them immediately; let them cool down for two or three days! *(laughs)*. That's what we do, and if at last we still cannot convince them, then we will forward the application. Whatever the case, we first we to explain it to the FA ourselves. If he accepts the case, then it will be forwarded.[235]

When he was done translating, my interpreter reflected on the sector head's statement for a moment. Then he said: 'This must be a new system, before it was not like that. Ladies, wives, who do not agree to stay with their husbands, they write the application and they – even the sector head and sub-sector head – they just sign it without looking into the matter very deeply and the FA and the UNHCR, they just accept the case and forward it.' His complaint was echoed many times by other refugees, both men and women, who felt that divorces were granted too easily and had come to see the UNHCR FA as the 'divorce person' in the camps.

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[233] Interview with refugee divorcée, 7 February 2011.
[234] Interview with TPO Project Coordinator, Ram Dahal, 16 March 2010.
[235] Interview with Sector E sector head, 14 March, 2011.

Divorce as abandonment

While more liberal attitudes towards divorce have undoubtedly empowered women who favoured divorce as a solution for their problems, the rising divorce rate within the Bhutanese community has also had disempowering effects. This held true not only for women in polygamous marriages who were abandoned as their husband chose to resettle (or stay behind) with other wives, but also for an unexpected new category: elderly men who were divorced and abandoned in the camps.

When word went around in the camps that I was interviewing victims of crime, I was approached by two elderly men who insisted that they wanted an interview with me. Both men perceived themselves as victims of crime – the crime being divorce. I had met one of the men, Bhuwani Shankar Bhandari, before during a religious ceremony organised by a family in a sector that neighboured his own, but we had not spoken much. This time, he had a story to tell and he asked that I use his real name when writing it down.[236]

Bhuwani was a Brahmin and a Vaishnav Hindu who wore two thin vertical white stripes on his forehead, a red stripe in the centre. His hut, consisted of one large room, perhaps twenty square metres in size. Every surface in the room was cluttered. There was a kitchen area in the corner that did not look as if it was often used to cook. The surface of a spare table that might once have served as a desk was covered in little pots and objects, and clothes hung haphazardly from bamboo beams in the ceiling and above the bed, which was crookedly made. There were few other belongings: two jerry cans filled with water, an umbrella hanging from a beam, a plate, and one cup in a rickety cupboard.

'What is the American government doing that it splits families?' he asked me in anguish. 'It split my sons and daughters, and my wife. What is the American government doing? I want, still, my family back. I want them to come back to my place.'

He explained that all his family members – three sons and a grandson – had wanted to go to the United States and that he felt forced to participate in the process. Reluctantly, Bhuwani had agreed to be interviewed for resettlement, although he never wished to go. At the eleventh hour, Bhuwani walked out of the cultural orientation session designed to prepare him for life in the USA:

> There, in the middle of the day, I was not satisfied with the explanation given by the orientation teacher about the United States, so I left and asked the guard there 'Can we not say that we won't go for

[236] Interview with Bhuwani Shankar Bhandari, Beldangi-2, 1 February, 2011.

> resettlement?' I asked him this, and he replied: 'It is as you wish. If you want, you can go. If you don't want to, you don't have to go.'

After that day, Bhuwani stopped attending the cultural orientation sessions, while the rest of his family completed the course without him. He announced his decision to resign from the programme to an IOM staff member and ordered him to stop his entire family's resettlement process. Bhuwani's move led to conflict within his family. As I sat on Bhuwani's bamboo bed taking notes, he described how one day his granddaughter dug a big hole in the ground outside. When he asked her why she had replied: 'to keep you here'. Bhuwani answered that she should make the hole bigger and longer so that it would fit his body. He told me that when his family went to visit the IOM office in Damak to ask that their resettlement process be resumed, they were told that they would not be permitted to go without his signature. This created even more tension within the household. Bhuwani's family grew exasperated and finally said to him: 'If you don't want to go for resettlement, take a rope and go hang yourself.'

The IOM called Bhuwani many times after that; he thought this was due to pressure from his family members. Then one day, he was called to the Refugee Coordination Unit office in Damak where he was informed that his Travel Document was ready. Confused, Bhuwani said that he had not agreed to go for resettlement. Because his rations would soon be suspended on account of his family's and his impending departure, he was told to sign a document that would provide for a temporary restoration of his rations.

> For that, they said: 'You have to sign here.' But I learned later on that this was false, because that paper was made for a divorce between my wife and me. After I signed that paper, my wife's file was added to my son's file; she had been on my file before. I did not go to court or anywhere else for the divorce. After doing that, they started… they started shopping for the resettlement process. Then I understood that that paper was done for the divorce with my wife. I even complained to the APF, here in the base camp. When the date [for their departure] came, I told the APF to stop my family members from going and they asked me: 'Have your family members been given a date?' I replied that they had, and the police told me: 'Now, it is impossible to stop them. If you had told us earlier, we could have stopped them but now we cannot do anything.'

Bhuwani never read the paper he believed resulted in his divorce – he told me that it was written in English, which he could not speak. When I met him, Bhuwani Shankar Bhandari was alone and concerned about his future.

> Now, I am 80 years old. All my sons, my daughters-in-law, my daughters and sons-in-law... including my granddaughters and grandsons, I have 45 members in my family. They have all gone. Now I am alone – an 80-year-old man in this hut… I am an 80-year-old man with so many sons and daughters. This is the time for me to retire, to take good food – healthy food – with the help of my sons and daughters. But instead, I have to face this type of problem. Now, I bear living like a man without any family members. I make food for myself, bring things here myself…

Bhuwani's religion and caste rules dictated that he was unable to eat food prepared by people from a lower caste than his own. This meant that he could not accept food from the majority of his neighbours. He was also concerned about his funeral rites, which must be performed by a man's oldest son. Bhuwani had no one left in the camp to help him, but accepted his fate. 'What can I do? What will happen, will happen. If I cannot walk, if I cannot move here and there, if I cannot prepare food, then I may die. God is there to see me...'

During a training session on refugee protection at UNHCR's Global Learning Centre in Budapest more than a year later, I told Bhuwani's story to a new member of UNHCR's Resettlement Team in Damak. She looked at me in disbelief and asked me who had been identified as his 'caretaker'. According to Bhuwani, there had been no one. All his children had left and his only remaining sibling in the camps – a brother who was living in Khudunabari – would soon be leaving too. Shocked, she said that this could not have happened today. She indicated that UNHCR had addressed the issue and now required that a caretaker be identified for elderly/dependent refugees who will be left behind. This involves a reprioritisation of needs – and with the needs of vulnerable, dependent refugees outweighing those of their care-takers, this an inherently sensitive process.

VI.7 Explaining the impact on refugee families: Power shifts in the TSASF

Resettlement policies, when compared to other types of project law, have had a relatively obvious substantive impact on families, and disputes in the camps. The changes resulting from the introduction of the resettlement process have taken place quickly and were already visible by the time of my research, just a few years after the introduction of the programme.

This prompts the questions why resettlement project law and foreign law had such a great impact on the camps, and what can explain this impact. One explanation may be found in characteristics of the resettlement programme itself. The programme was broad in scope and targeted the entire population

in the camps. The scale of interest and participation in the programme was tremendous. Although third country resettlement, as a durable solution, was received with a great degree of mistrust and hesitation when first announced in 2007, by 2011 it was perceived as highly desirable by the majority of the refugee population. In part, this shift should be understood in light of the paucity of alternative durable solutions for the Bhutanese. After twenty years of waiting, repatriation, for many, no longer felt like a realistically attainable possibility in the short term. While this was not to say that the refugees had not tried (or continued to try) to open the doors for repatriation to Bhutan in the future, in the interim a life in a western country with a right to freedom of movement, to work, and abundant educational opportunities for their children was viewed by most as a better alternative than their rightsless existence in Nepal.

Refugees who wanted to be resettled (as many did) had no alternatives but to comply (or appear to comply) with UNHCR regulations and foreign laws. This gave these rules a coercive nature – particularly when seen against the absence of realistic alternatives to resettlement. The coercive nature of rules paired with refugees' resettlement wish has resulted in a shift in the balance of power between refugees and UNHCR. As a consequence of its desirability, the resettlement programme gives agencies a great deal of power over the refugees.

Even so, the impacts of foreign rules on refugee families are not necessarily predictable, as this chapter has shown. This is the result of two major factors. The first involves the lack of transparency of agency and foreign regulations.

The UNHCR Resettlement Handbook (2011a: 125) states that:

> In principle, refugees are entitled to access information which they have provided, but have limited access to UNHCR-generated information or documentation from other sources. In such cases, UNHCR needs to weigh its own interests (such as staff safety considerations or protection of UNHCR's sources of information) against the refugee's legitimate interest, for instance, to know the reasons for any decision that affects her or him.

In March 2012, a member of UNHCR's Resettlement Unit in Damak said that she believed the Bhutanese resettlement operation to be extremely transparent. While some information was shared with refugees, on the whole refugees themselves did not share this perception. Resettlement Standard Operating Procedures and specific rules were not shared with refugees nor were they given documents that set out U.S. immigration laws or those of other countries that participated in the resettlement programme. In any event, for refugees the laws of these countries were often difficult

to distinguish from UNHCR rules. To most refugees, the Department of Homeland Security (DHS) interview they underwent after having passed through several UNHCR and IOM interviews simply seemed like 'one more step' in a single process.

The little information that *was* shared with refugees, for instance during resettlement interviews, was not necessarily consistent. People were seldom told the real reasons for delays in their procedures and agency staff members sometimes gave refugees curious advice. Some of the youths in the Bhutanese Refugee Children's Forum (BRCF), for instance, dubbed the International Organization for Migration (IOM) the 'International Organization for Marriage' because IOM staff members had allegedly advised youths that if they did not want to be separated from their love interest by the resettlement process, they should marry before going.[237] Others referred to the UNHCR Field Assistant (FA) as the 'divorce person' and held him responsible for the rising divorce rate in the camps, while at the same time there were women who, wanting a divorce, found the FA inaccessible. A polygamous man with two wives might be advised by one staff member that he must divorce his second wife to become eligible for resettlement, by another that he must divorce one of his two wives, and by a neighbour that he is ineligible for the process altogether.

In this context, it is not at all strange that people's beliefs about laws diverged from what these laws actually required. Interpretations of actual or imagined legal requirements varied with the examples and information that people were given, and with what they saw around them that confirmed (or rejected) this information. The opinions of certain people (local leaders, or 'wise' members of the *samaaj* believed by the community to have more knowledge of 'the law' than others) were counted more strongly in discussions about the law and its requirements. But such local 'experts' often held diverging views themselves and rules were a matter of considerable debate, both within and outside the context of disputes. The examples people encountered in their surroundings differed too. For instance, while some might have polygamous neighbours who experienced delays in their resettlement processes and were forced to separate, there were also examples of polygamous families who were resettled together and continued to practice polygamy in the United States.

[237] Conversation with former volunteer with the Bhutanese Refugee Children's Forum (BRCF) in the camps in London following a workshop on Bhutanese Refugee Resettlement organized by the School of Oriental and African Studies (SOAS), London, May 22, 2013.

Power, transparency and information

Over the years, various authors have pointed to the aforementioned lack of accessible information about resettlement (Human Rights Watch 2007; Banki 2008). This is not to say that UNHCR has not taken steps to try to inform refugees – the agency has worked with radio programmes, bulletins/circulars in the camps, invested in personal counselling sessions for refugees, and set up a 'blue box' system.[238] Unfortunately, not all these steps necessarily provide enough information about the actual rules that govern the resettlement process. They also fail to address the 'Chinese telephone' problem – news changes as it is spread from one mouth to the next, leading to unpredictable and inaccurate outcomes.

The inaccessibility of information was a problem for all refugees. Even those who had access to agencies (or their senior staff) did not normally have access to their own files or to internal agency policies. When people in the camps asked refugee authorities for information they discovered that camp leaders often knew as little as others. Refugee authorities were also worried about the resettlement procedure and did not necessarily understand it better than the rest of the camp population. They had their own share of problems – local wives, polygamous marriages, inexplicable delays. Refugee leaders faced the same frustrations and had the same difficulties as others when it came to getting clear answers about their cases.

One former sector head, who was later elected for a post on the Beldangi-2 Counselling Board, was accused of participating in the demolition of a hut during an anti-resettlement campaign – an accusation he denied. Since then, his case has been on hold and although he understands that this relates to the hut demolition, he does not know how to address the problem or for how long it will affect his family and himself.[239]

Another sector head, who married a local Nepalese woman (a marriage known as a 'mixed marriage'), was still waiting for news:

> I asked UNHCR many times – 'Please take me, all my relatives, everyone has gone.' Up to know they are not calling us, not for the photo also, the casework hasn't been done. My whole family is Bhutanese, only my wife is from Nepal. She doesn't get rations; they do not give them to Nepalese citizens. But my process has not started. What is the law doing for me? Cases like mine, those who have married after 2006 also, they have already reached the USA. I married in 1994; my son

238 Interview with Rachel Demas, UNHCR Resettlement Officer, Damak, 19 January 2010.

239 Interview with Gender Focal Point, Beldangi-2, 26 February 2010.

> is thirteen years old. He has rations, a health card, everything. Other mixed marriage cases have already gone. Those who were married more recently have already gone.[240]

Despite having visited the IOM office countless times to inquire about his process, he was unable to find out more. One day, he tried one last time to find out when he and his family would fly. The IOM employee who attended to him answered: ‘I don’t know, there is no guarantee. You may go, or you may not go – we do not know. You have to wait, we cannot say when you will go.’ Feeling utterly frustrated and disheartened, he responded:

> Sister, please do one thing. I will give you the best and easiest solution – write down what I say to you now. Give us one appointment, during office hours when it is quiet and you have free time, when there will be few people, no disturbances. Give us an appointment, and I will come with my whole family. You won’t have to pay even a single coin to dye the cloth with which to cover my eyes. Keep us there, in the open field, and shoot us. Shoot us, kill us all so that you don’t have to study my file. I’ll not come again and again to talk to you. You’ll have five candidates less to fly; you won’t have to spend all that money – all problems solved.

When she did not respond, he scolded her, turned around, and left. ‘Since then,’ he said, ‘I have not gone back. I don’t know... the procedure is not transparent. Day by day we grow old, and what can we do here in the camp? Tears fall if I hotly say this. Tears fall. I cannot express it.’

The lack of clarity regarding the resettlement process among refugee authorities had implications for other refugees. When people in the camps grew distressed, they turned to their sector and sub-sector heads for advice – people who had their own problems, just like the sector head above who out of frustration asked a member of IOM’s staff to shoot his family and himself.

Explaining his predicament and referring to the commotion described in the introduction to this chapter, he told me:

> Do you remember what happened last time? Some people were brought back to the camp. All the people were saying ‘IOM stopped taking people for resettlement, what can we do now?’ They were shouting all night. That whole night, we went from hut to hut to convince the people. But what about me, who convinces me? Even UNHCR gives such type of answers: ‘you may go or you may not go, we do not know.’ See, is that transparency? I feel really sad about this. I

240 Interview with Sector E sector head, Beldangi-2, 14 March 2011.

told Mr. Mike [UNHCR's Resettlement Officer] my whole story from beginning to end. Some people say there is a bribing system, this and that. But I do not know. I do not do anything with that.

Searching for legal certainty

The lack of information that characterises much of the resettlement process from refugees' perspective was even greater when it came to the rules. Whereas it is theoretically possible to learn about Nepalese law in law books, UNHCR does not give out internal documents pertaining to resettlement procedures (only its general Resettlement Handbook is publicly available online) and resettlement countries rarely motivate their reasons for rejecting a resettlement application.

When analysed as part of a greater body of rules that emanate from UNHCR and the humanitarian apparatuses in camps, the rules that govern the resettlement process are unclear and often contradictory. Foreign migration laws may be equally ambiguous: the resettlement bar in U.S. migration law, for instance, was at odds with U.S. government's aspiration to softly cross-reference family cases for resettlement to the same geographical area. Through offbeat constructions, some refugees were able to resettle with more than one wife (as Pabitra's father planned to do in the minor marriage case described earlier in this chapter), sending a confusing message to those who stay behind and learn from these examples.

The increase in sources of law that characterises humanitarian settings such as refugee camps, has not been met with an accompanying plurality of accountability mechanisms or legal avenues through which these rules could be challenged, or through which beneficiaries of aid could address perceived injustices, or obtain remedies for wrongs.

In the absence of adequate or effective legal avenues through which to challenge decisions relating to the resettlement process, refugees looked for alternative ways to resolve resettlement-related problems they faced. Some did so by reframing family disputes, as described in the previous section. Not all these cases were about polygamy or minor marriage – some were about damages relating to the resettlement process itself. In April 2011, a case was brought before the Beldangi-2 Counselling Board by a man named Prakash Chhetri, whose resettlement process had been put on hold for two years by UNHCR. He had filed the claim against his son-in-law, Anup Khadka.

Prakash's daughter Sita had been resettled to the U.S.A. together with Prakash's wife and he intended to join them. Before their departure, at Prakash's brother's funeral, Sita and Anup had informed the family that they had married. Both families were present at the funeral but when Anup's

parents asked Prakash if they should organise wedding festivities, he asked them to wait with the marriage ceremony until his family had reached the U.S. The elders decided that the youths should wait to be officially married until after Prakash's family had completed the resettlement process, which was in its final stages.

Little did Prakash know that Anup's parents proceeded to organise the marriage in secret despite Prakash's wishes and organised a wedding ceremony at a local *mandir* (temple). The marriage was held in the presence of witnesses including several camp authorities and after the ceremony, a document was prepared declaring that Anup and Sita were married and should be resettled to the same state. Anup was to wait until Prakash and the rest of Sita's family had been resettled, after which he would show the document (which had been signed by sector heads, sub-sector heads and other camp authorities) to UNHCR for the purpose of family reunification. Prakash, who was unaware of the formal ceremony that had taken place, did not change his daughter's marital status on their resettlement application. Had UNHCR known of the marriage, Sita's file would have been transferred to that of her husband. Instead, she was resettled to the U.S. without him. Prakash was accused of misrepresenting his family composition and his resettlement process was suspended for fraud. His objective in filing the case was to find a solution that would undo the harm that resulted from Anup's impatience. In addition to his preferred outcome, which was that the suspension be lifted, Prakash demanded Rs 100,000 from Anup as compensation for the delay.

Others tried to seek remedies with the assistance of Nepalese law enforcement actors. Speaking of parents' unhappiness with the minor marriages that were taking place in the context of resettlement, Armed Police Force Inspector Hira Bahadur told me: 'That underage marriage hampers their resettlement process, because [the minor is] attached to family. The whole family gets delayed. Every day, they come here: "Sir, help us manage our problem."'[241]

Still others hoped to find international legal solutions. Bhuwani Shankar, the man with whose story this book opened and whose wife and children left for resettlement without his consent, held the president of the United States of America responsible taking his wife and children and felt that the U.S. government should either return them to the camp, or pay for his funeral arrangements. Before I left, he asked me if I would bring his problem to President Obama's attention.[242] A Bhutanese man who used to live in Beldangi-1 refugee camp but now resides in The Hague (where he

[241] Interview with APF Inspector Beldangi-2 and 2-Extension, Hira Bahadur, 24 January 2011.

[242] Interview with Bhuwani Shankar Bhandari, Beldangi-2, 1 February 2011.

has obtained the Dutch nationality) has used his membership in the Bhutan Advocacy Forum (BAF-Europe) to lobby the European Union for EU monitors in Damak to ensure that the resettlement programme didn't 'waste any refugees' time' – an innovative attempt to gain some measure of legal certainty or accountability in a process that essentially lacked both of these features.[243]

VI.8 Conclusion

This chapter has shown how foreign law and UNHCR rules pertaining to the resettlement process have pervaded the refugee camp and impacted local disputes. The resettlement programme brought a new phase of transnationalism to the camps, which both affected on-going conflicts, and created new ones.

The impact of these rules was particularly significant because they affected a fundamental unit in Nepali Bhutanese society: the family. Because UNHCR aimed to resettle people as families, this transformation was particularly visible in family disputes in the camps. Individual decisions to migrate (or not) to a third country became sources of conflicts in and of themselves. Disputes arose in the camps as large numbers of people strived to comply with migration requirements related to the refugee resettlement programme, while managing simultaneous and competing objectives such as maintaining family unity.

Transnationalism, as evidenced by the plethora of new rules introduced with the resettlement programme, can encourage not only plurality *of* law but also plurality *within* law (see also Vlieger 2011: 79). The consequences of the introduction of new rules through the resettlement process, and the increasing legal complexity in which this resulted, have been multi-directional. For some, the impact has been empowering. By couching family claims in terms of their argued impact on a party's resettlement process, these claims were lent legitimacy in a new manner and requests for divorce from polygamy or domestic violence victims were often taken more seriously when brought with a resettlement argument, than without it.

However, as this chapter has illustrated, the added complexity resulting from transnationalism can also have adverse impacts. The more transnational a space, the more difficult it may be for an individual to understand the maze of laws that he or she must navigate. Information about legal rules and requirements was communicated to refugees on a piece-meal basis and it was exceedingly difficult (if not impossible) for people to obtain clear,

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[243] Conversation with Bhutanese man at Himalaya Restaurant, The Hague, 15 March 2012.

non-contradictory information about what these rules entailed. Lacking an understanding of new sets of rules, or the ability to manage them, women and men who were abandoned by their spouses through the resettlement process, like Bhuwani Shankar, lacked legal recourse for the harms they experienced.

Chapter VII: Conclusion

This book opens with the story of Bhuwani Shankar Bhandari, a Bhutanese refugee who had been living in the refugee camps in Nepal for two decades when he was separated from his family through the third country resettlement programme implemented in the camps. Bhuwani asked me to sue the U.S. president, who he held responsible for his divorce and for his family members leaving the camps without his consent.

Like most long-standing refugee camps in the world today, the Bhutanese refugee camps in which Bhuwani lived are governed by the UN High Commissioner for Refugees (UNHCR)[244] – a humanitarian agency funded by states and private donors.[245] This study began in part as an inquiry into the ways in which refugees, humanitarian actors, and others introduce new forms of law in humanitarian settings. As a corollary, it sought to explore the effects of the introduction of such external forms of law, and the implementation of international human rights law in particular, on human rights and access to justice in humanitarian settings such as refugee camps. Through UNHCR, an international humanitarian agency that is part and parcel of the UN system, the international community bears collective responsibility for what happens in these settings. The protracted nature of many refugee situations, which exist for decades on end, increase the moral imperative for understanding how this international governance is perceived at the local level, how it affects access to justice and respect for human rights in refugee settings, and how it interplays with other norms prevalent in the local setting.

The Bhutanese refugee camps in Nepal, like the one in which Bhuwani lived, have been described in this work as legally plural and highly transnational settings. Bhuwani's story is emblematic of the plight of the Bhutanese refugees, who over the years have been confronted with multiple external normative and legal regimes in the camps in the refugee camps in Nepal. It highlights the extent of UNHCR's influence on refugees' lives through the programmes and policies that are introduced in camp settings, and emphasises the disconnect between customary and religious norms and

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[244] Palestinian refugee camps are an exception, and fall under the mandate of the UN Relief and Works Agency (UNRWA).

[245] UNHCR's 2013 budget of almost USD 3 billion was funded almost entirely by the U.S., Japan, the European Union, the U.K., Germany, Kuwait, Denmark, the Netherlands, Norway and a handful of other states and private donors. UNHCR (4 February 2014): Contributions *to UNHCR for Budget Year 2013 as at 31 December 2013*. Retrieved from: http://www.unhcr.org/51c991a79.html.

other rules and norms related to humanitarian projects such as the third country resettlement programme. Bhuwani found himself in an unfortunate position. Where customary norms might have ensured his protection in old age, the rights-based resettlement process did not ensure this protection. Under customary norms, Bhuwani, as the head of his household, was responsible for making decisions on behalf of his family. He had several sons; in virilocal societies sons (joined by their wives) live with or near their parents' household and are responsible for caring for them when they can no longer do so themselves. It is also unlikely that his wife would have left him – she and Bhuwani had been married for more than sixty years; her main reason for wanting a divorce had been that she wanted to be resettled along with her sons, some of whom had already left the camps.

The application of human rights principles that grant each person over eighteen the right to decide for him/herself whether or not they wish to be resettled, left Bhuwani alone and vulnerable. His sons left without his consent and his wife divorced him to leave with them. His story also emphasises the potentially curious legal situations created in transnational settings, aptly reflected in the rather exotic idea of an elderly Bhutanese refugee in Nepal, who spoke no English and had no understanding of the American legal system, but still wished to sue the president of the United States for wrongs he experienced in the camp in which he lived.

Legal pluralism affected everyday issues in the Bhutanese camps where, much as in other settings, people dealt with such issues as domestic violence, petty theft, and divorce. By studying the resolution of disputes through the mediation-based refugee legal system in the camps, this work has examined the impacts of international organisations and the forms of law they introduce into camp settings, on such everyday issues. Through its examination of disputes, this work contributes to an understanding of how human rights norms introduced by humanitarian agencies impact refugees' lives in camps. These insights can be abstracted from refugee settings. They are informative in showing how international human rights are implemented, translated, and used at the grassroots level and what role these norms can play in empowering victims who make rights-related claims before non-state legal systems.

Transnational semi-autonomous social fields

I have used the lens of the transnational semi-autonomous social field to describe how refugees' lives, legal systems, and dispute resolution practices are affected by bodies of law from different countries and sources, including refugees' countries of origin and host states, but also international organisations and even third states.

The term 'semi-autonomous social field' was coined by Sally Falk Moore in 1973, when she urged that anthropologists describe the social locales observable to them in terms of their 'semi-autonomy'. Moore, whose frame has been widely used by legal anthropologists, emphasised that society should be understood in terms of social fields, which had their own rule-making capacity but were simultaneously situated within larger social and legal matrices that could pervade them. As such, they were only 'semi-autonomous' and it was precisely the fact that internal rule making could be influenced by, and interact with, external rules that rendered legal interventions so unpredictable.

Humanitarian aid, implemented by international organisations with the assistance of international staff, brings an added dimension of transnationalism to local settings. To emphasise the extent to which the external legal matrix that pervaded the Bhutanese refugee camps crossed national boundaries, in this work, I have reframed Moore's notion of the semi-autonomous fields as explicitly 'transnational'.

International and transnational forms of law have become increasingly relevant for individuals within states, leading Hoekema (2005: 5) to argue that we are headed for a global legal pluralism. Today, the transnational plays an unmistakable role in legal processes both at the local and global levels, adding layers of complexity and pluralism in the process. The global relevance of this phenomenon suggests that the frame of the TSASF has broader value and can be abstracted beyond the refugee setting.

While the specific constellations of law that emerge in local settings as a result are unique and situation-specific, the phenomenon itself is universal. Both developing and industrialised states outsource and transfer roles to civil society and international organisations. Almost every society is host to distinct communities – societies with their own distinct socio-cultural norms, such as national minorities, indigenous peoples, immigrant communities, and others. The global movement of people from one nation to another, or from rural to urban settings, has contributed to this development and is one of the central themes in Tamanaha's (2008) assessment of 20th century legal pluralism.

Humanitarian agencies: Sources and proponents of law

The presence of humanitarian agencies and their role in providing relief and assistance to beneficiaries is one of the defining features of the humanitarian and refugee setting. Where various authors have theorised the legal influence of development organisations and their role as source and proponents of international norms (von Benda-Beckmann 1989; Randeria 2003; Randeria 2005; Weilenmann 2005; Weilenmann 2009a; Weilenmann

2009b; Tamanaha, Sage *et al.* 2012), far fewer studies have focused on the comparable role of international humanitarian organisations in this regard.

As described in Chapter II, UNHCR's humanitarian role extends more and more often to one of governance – in protracted refugee situations in particular. Academics have described this governance using such terms as 'humanitarian empire' (De Waal 1997) and 'cultural imperialism' (Sagy 2008), and the extent of UNHCR's role as surrogate governance has prompted Holzer (2013) to refer to refugees as 'wards of international law'.

Examples of the types of projects and decisions that are implemented in refugee camps range from the initial construction and spatial organisation of camps themselves, to refugee status determination (which determines who is granted entry and protection), the provision of food and non-food items, and ultimately, community and human-rights based programming in camps. Human rights norms are introduced in humanitarian settings as part of the arsenal of policies, projects, rules, and norms implemented in these locales by humanitarian agencies. The protection of refugee rights is a key part of UNHCR's mandate and in 2006, the agency explicitly recognised the human-rights-based approach as a framework for all its operations.

The policies that are implemented in humanitarian settings, and the rules and requirements that accompany them, are described in Chapter II as 'project law'. While some might debate the use of the term 'law' to refer to these policies, the term is helpful in illustrating that for refugees living within UNHCR-run refugee camps, humanitarian policies, projects, and rules have impacts that are legal in a very real sense. Examples that support this contention are abundant and can be found in areas ranging from refugee status determination to resettlement programmes and initiatives aimed at promoting gender equality in camp settings. For instance, in countries that lack national asylum procedures or where States are unwilling or unable to assess asylum claims fairly or officially, UNHCR's mandate permits it to conduct refugee status determination (RSD). In 2012, of a total of 919,700 individual applications for asylum worldwide, 115,800 applications (13 percent) were processed by UNHCR. UNHCR's recognition rate that year was 78 percent (UNHCR 2013: 43-45). Those who are not recognised as refugees under the organisation's mandate are excluded from international protection and from the rights that accompany refugee status.

In the Bhutanese camps, policies were enforced, and their effects felt, to varying extents. For example, the fifty percent representation rule, which dictated that women should fill half of all camp management positions, could only be partially enforced. When too few women ran for these posts, fifty percent representation could not be ensured. Moreover, when women were elected there was no guarantee that they would participate on equal

footing – in many situations, decisions were made by men and few women openly attempted to contradict them. Rules relating to resettlement, such as definitions and consequences of resettlement fraud, were enforced more easily. When Prakash Chhetri strategised to keep his family together in the minor marriage case described in Chapter VI, UNHCR suspended his case for a two-year period after finding him guilty of fraudulently presenting his daughter as unmarried. Similarly, when UNHCR determined that in the context of resettlement, everyone over eighteen had the right to decide for him- or himself whether or not to participate in the programme, it created a legal right for minors who might otherwise have been prevented by their families from choosing independently.

The impact of humanitarian agencies is not limited to refugee camps: 'many "normal" legal domains also become part of, and, to some extent, [are] reshaped by humanitarian crises' (Holzer 2013: 843). One might think of comparable situations such as camps for internally displaced persons, but also of cases where humanitarian governance can be considered *de-facto* international territorial administration, as in the examples of Kosovo and East Timor (Wilde 2001; Power 2008). In fulfilling their mandates in such settings, whether from a human rights-based perspective or otherwise, humanitarian agencies impact local legal landscapes all over the world.

A dual process of translation: From international law to street-level bureaucrats

As part of the UN system, UNHCR bases its policies on international human rights norms. These norms inform refugee protection and are translated into high-level, globally applicable policies. In the process of translating norms to policies, the underlying principles on which they are based undergo multiple steps or 'chains of translation' (Weilenmann 2009a). High-level policies inform programmes at the country or sub-office level, where they are translated once more into locally workable, field-specific programmes that are ultimately implemented by humanitarian field staff.

In Weilenmann's analysis of project law, the last 'chain of translation' in the transition from human rights to field-level policies occurs when aid workers implement these policies at the local level. This, in the camps, is where they come into contact with refugees. Ultimately, the aid workers who have the most contact with refugees are not those who make policy but those who implement it: the resettlement interviewer, not the resettlement officer. These implementing aid workers can be understood as the international, humanitarian equivalent of Lipsky's (1980) street-level bureaucrats. Like street-level bureaucrats, aid workers operate under series of constraints. When aid workers alleviate these constraints through coping mechanisms using a wide margin of discretion in implementing their tasks, this can lead

to a considerable divergence between the policies they reportedly implement, and what these look like 'on the ground'.

As they implement projects in the camps, aid workers become much like Merry's translators – the 'people in the middle' who translate discourses and ideals from international law to local situations, all the while negotiating between local, regional, national, and global systems of meaning (Merry 2006: 39). On the ground, these 'people in the middle' are relief workers, incentive workers, and staff of community-based organisations. They fulfil a crucial role:

> These people translate up and down. They reframe local grievances up by portraying them as human rights violations. They translate transnational ideas and practices down as ways of grappling with particular local problems. In other words, they remake transnational ideas in local terms. At the same time, they interpret local ideas and grievances in the language of national and international human rights. Those occupying the middle are no longer the village headmen of colonial indirect rule but activists providing services and advocacy to local communities. (Merry 2006: 42)

That humanitarian aid workers, as translators of international norms, are also street-level bureaucrats who operate with a wide margin of discretion indicates that policy implementation is often more ambiguous than the text of a policy documents or Standard Operating Procedures (SOP) would suggest. Like street-level bureaucrats, aid workers dealt with daily problems not by referring to SOP, laws, or organisational policies, but by looking for solutions that minimised stress and reduced the burden on resources and need for administration. They did so in ways that would not threaten their own ability to function within the refugee community, where they would also be working the next day, and the day after that. As they exercised discretion, the expectations, values and ideologies of individual staff members could conflict with assigned organisational roles and tasks. As a result, as Walkup (1997: 41) noted, 'there are often conflicts between vertical structures (e.g. among headquarters, country directors, and field staff) and horizontal structures (e.g. between fundraising and operations, or 'development' and 'emergency') because of differing operational rules and priorities.'

At times, UNHCR's staff struggled to reconcile policy requirements with values, community relations, and other concerns. Field Assistants, who were dependent on the cooperation of the Camp Management Committee (CMC) to carry out their functions, could not always demands that conflicted with other policy goals. When the CMC subjected Field Assistants to procedural rules, for instance by requiring that all domestic violence cases be referred to them through a CMC member (as was the case in Beldangi-2) they could not

always refuse, even if compliance meant violating the terms of UNHCR's SOP on Sexual and Gender-based Violence.

A dual process of translation: Local law transnationalised

The last phase of 'translation' of international norms took place within the camps themselves, as refugees came across and used these norms to varying extents in their everyday lives. To a large extent, it could be related to the uptake of project law.[246] When human rights norms were introduced to the Bhutanese refugee camps, they joined other norms that played a role in ordering society in the camps. Derived in part from the Hindu religion and in part from other traditions and customary norms, customary and religious norms played a prominent role in the resolution of disputes in the Bhutanese refugee camps, as they had previously done in Bhutan. The camp-based mediation system itself strongly resembled dispute resolution formats that had previously been used by the Nepali Bhutanese in Bhutan. As shown in Chapter IV, the resemblance was no coincidence. Among the refugees, who formed a group so large that it was estimated to represent roughly a six of Bhutan's total population, there were many former community leaders and mediators, such as *karbaris* and *mandals*. These refugee leaders were consulted by UNHCR in the phase of camp establishment and were involved in the setting up of services, including the community mediation system. Names changed to reflect the hierarchy of the Camp Management Committee structure, but the essence of the system remained the same.

It soon became clear, however, that reliance on customary norms was by no means exclusive – refugee legal systems relied not only on customary norms but also on a range of other norms with different origins. A dynamic understanding of culture recognises its capacity to innovate, appropriate, and create local practice (Merry 2006: 228). The 'local law' that was applied in these settings was not limited to traditional or customary law but could be understood as a flexible, changing constellation of norms originating from refugees' customs/traditions, Nepalese law, and external bodies of law such as international human rights law. As disputes were addressed through the camp mediation system, refugees passively and actively incorporated (elements of) external rules into the arguments they used to support their claims. As they did so, these understandings became part of local law, which was itself transnationalised.

These findings illustrate that the 'fusion' of local concepts of justice and human rights may be key to the development of an effective approach to issues of human rights, and human dignity, at the local level, as de Feyter

[246] (Or state law, where this is informed by human rights norms).

(2011: 20) has also argued. Even in domestic violence cases, where traditional understanding of gender roles differed most markedly from international standards, human rights were sometimes referred to, both directly and indirectly. When Bandana's husband argued that she had misbehaved and that men had the right to beat their wives in the domestic violence case presented in Chapter V, the mediator emphasised that daughters were not given away to be beaten. A bystander referred to human rights more directly, insisting that women have rights and should be able to develop their skills.

The range of arguments presented in mediation sessions such as these demonstrated tensions between norms: for instance between cultural values that legitimated wife-beating and international norms that regard violence against women as a violation of women's rights, or between norms concerning the prerogative of the eldest male, as head of the household, to make decisions on behalf of his family and the rights of anyone over eighteen to make decisions for themselves (as in the minor marriage case discussed in Chapter VI). To some extent, these tensions were a logical consequence of the governance rationales of humanitarian or development agencies: '[i]n the logic of development intervention, whether from above or from below, policy goals often come first, and the conception of reality is constructed as its negative condition that has to be changed' (von Benda-Beckmann, F., von Benda-Beckmann, K. *et al.* 1997: 122). As disputing parties negotiated between these conflicting norms, subjective understandings of rights, gender roles, and permissible behaviour in public and private arenas underwent slow changes.

The process of interpreting rights was not an activity people necessarily conducted purposely or consciously. The success of negotiations over these norms depended on several factors including proponents' place in the social and power hierarchy of the camps, which in turn was affected by the way in which they were situated in networks of kinship, family, or community. The resources that people possessed, for instance in the form of awareness of and the ability to draw upon legal rules, wealth, contacts/networks, etc., also played an important role. Some women were more vulnerable than others by virtue of their social positioning and the limited resources upon which they could draw. Women who did not know how to report to a given authority and who were not helped by others were unlikely to look beyond their sub-sector heads or sector heads. To what extent a person's interpretation was accepted by others depended on several factors, including their place in the social and power hierarchy of the camps and their institutional position. Within the hierarchical society of the camps, people listened to respected elders and members of authority more readily than to others. While politically and otherwise more powerful families still had an advantage over weaker parties, rights-based arguments could sway outcomes in the favour of traditionally more vulnerable parties.

Unanticipated impacts of rights-based programming

Ultimately, 'the credibility and the effectiveness of the global human rights system rests with its local relevance and the appropriation of international norms and mechanisms by those whose rights are continuously violated at the local level' (de Feyter and Parmentier 2011: 4). Human rights crises emerge at the local level and it is at the local level that groups use rights claims to challenge social exclusion, or to insist on the accountability of those they hold responsible for threatening or violating their human dignity (de Feyter and Parmentier 2011: 3).

Where national legal systems are perceived as foreign, inaccessible, or where there are cultural or social obstacles to access, refugee legal systems like the Bhutanese mediation system may be the best bet for securing protection for human rights and enhancing access to justice in camp settings, as UNHCR's Protection Officer recognised in 2011. While the camp mediation system may not have been equipped to meet international procedural standards on justice – staff were not professionals and it was generally not possible to guarantee a victim's privacy or protection – this system was by far the most accessible legal forum for victims of crime and often the first place to which they turned to report a crime or problem. It therefore makes sense to prioritise remedies that are close to where contested incidents take place. Local remedies, such as those provided by the mediation system in the Bhutanese camps, are often more accessible, typically require fewer resources, and often provide relief more quickly.

But, as the framework of the TSASF suggests, the effects of human rights campaigns at the local level are inherently unpredictable, and may not resonate with the aims of human rights principles. The impact of the resettlement programme, which was intended to provide a durable solution for the Bhutanese refugees, is a good example. As illustrated in Chapter VI, specific humanitarian projects, like UNHCR's refugee resettlement programme, can reshape the interests that are at stake in specific disputes. When refugees decided to participate in the programme, this decision was often accompanied by a sense of urgency, and a feeling that any additional time spent in the camps was 'wasted'. Resettlement – and delays or adverse consequences for people's resettlement processes – became an explicit aspect of the way in which grievances were understood and framed. Family unity was also an important concern although what this meant was understood in different ways by different parties. Among youths, rules relating to family unity in the resettlement process led to an increase in the very child marriages that other UNHCR policies sought to avoid. Parents whose children married below the age of eighteen began taking their children 'to court' in an attempt to 'undo' the marriage and undesirable delays, as Pabitra's parents did in the minor marriage case described in Chapter V. The

re-allocation of 'victimhood' from child to parent was related solely to the adverse consequences for resettlement processes and stood in stark contrast to the representation of minor marriages in Nepalese and human rights law, which posit the child as the victim and the parents (assuming that they arranged the marriage) as perpetrators.

The incidence of divorce also increased significantly since the start of the resettlement programme in 2008, despite the fact that divorce was perceived by most refugees, including authorities and mediators, as incompatible with Hindu ideals about the sanctity of marriage. There are several explanations for this effect. One reason is the prohibition of polygamy in resettlement countries. Under the international human rights framework, polygamy is perceived as a violation of women's rights and as inadmissible discrimination against women.[247] For victims of polygamy who wanted to divorce, the resettlement argument (polygamy being illegal in most resettlement countries) lent additional weight to their claims. But there were also women who were victimised by the polygamy bar, as their husbands abandoned them to be resettled with other wives.

The presence of lawyers in the camps concurred with the start of the resettlement programme. This proved empowering for women who wished to leave their husbands, provided that they were able to navigate the camp institutions. As with the polygamy bar, there were also those who saw themselves as unexpected victims of women's newfound ability to divorce. This included men like Bhuwani Shankar Bhandari who were not interested in resettlement. As patriarchs, they were used to bearing responsibility for decision-making within their families but saw themselves abandoned in the camps when their wives divorced them to be resettled along with their children.

Human rights: Partially implemented, partially understood, partially localised

This work has illustrated both successes and failures of international human rights campaigns, highlighting the 'mixed outcomes' (Holzer 2013) of human rights-based programming. The use of human rights norms in refugee legal systems indicates that the assumption that local law hinders development (or respect for human rights), which von Benda-Beckmann (1989: 30) has called 'one of the most deeply rooted ideas which informs development planning', is misinformed and fails to recognise the flexibility of local law and its ability to incorporate external norms.

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[247] Human Rights Committee, General Comment 28, Equality of rights between men and women (article 3), U.N. Doc. CCPR/C/21/Rev.1/Add.10 (2000).

Nevertheless, the uptake of human rights in the Bhutanese refugee camps remained an incomplete endeavour. Even though refugees, as a result of the international governance of the camps in which they live, have an extraordinarily high exposure to human rights norms, they are also confronted with the failure of states, and UNHCR, to uphold those rights. As Verdirame and Harrell-Bond have noted, UNHCR operates in a confusion of roles. On the one hand, the agency is charged with refugee protection but on the other, it complies with state policies that limit refugees' movement and freedom – a phenomenon that Verdirame and Harrell-Bond have termed 'Janus-faced humanitarianism' (Verdirame and Harrell-Bond 2005). In Buduburam refugee camp in Ghana, '[d]espite some efforts by UNHCR and host governments to promote legal practices in the camp, most camp inhabitants... experienced host law as a proprietary resource of citizenship from which they could not benefit' (Holzer 2013: 839). Holzer described this 'simultaneous engagement with and alienation from the law' as a paradox that 'has serious consequences for debates about the local consequences of international law.'

The result of transnationalism was a tremendous cacophony of different norms in the camps. The sheer number of rules and the contradictions between the ways in which these were interpreted and implemented were confusing. People often did not understand where rules came from or what they required. The fact that more information was available, from a greater number of sources than ever before, only increased opportunities for incongruence. This problem, while perhaps addressed at managerial level through inter-agency coordinating meetings, resurfaced at the level of street-level bureaucrats – aid workers, law enforcement officials, and others who do not participate in these coordination sessions. When the plurality of rules used as a reference is sufficiently vague, new norms may emerge that bear little resemblance to any applicable body of law. What may appear as institutional disorder, however, can be instrumentally functional: different actors may benefit from the lack of legal clarity, which allows power relations to influence legal outcomes (Chabal and Daloz 1999).

Among Liberian refugees in Buduburam, legal empowerment raised a confused awareness of entitlements (Holzer 2013: 839). Like them, the Bhutanese refugees were often unable to distinguish between human rights norms and 'UNHCR rules.' When they discussed legal norms or requirements, people did not group law into neat boxes or categories. Sources of legal norms were not mentioned and the latter were often interpreted incorrectly, for example when a bystander told Pabitra that her husband could be sentenced to between six months and twenty years' imprisonment for rape in the minor marriage case discussed in Chapter VI. This vague reference, which pointed to statutory rape, did not actually apply, since the legal age limit for statutory rape was sixteen and Pabitra was older.

Nevertheless, the argument was introduced in support of a desired outcome – Pabitra's separation from Man Kumar.

Agencies themselves may also benefit from or have an interest in being unclear about the provenance of policies and legal rules. Even before the enactment of the Domestic Violence Act in Nepal, for instance, UNHCR emphasised that domestic violence was against Nepalese law, pointing to provisions on assault and battery that in practice were rarely used for this purpose. The resettlement officer's argument for not disclosing UNHCR's Standard Operating Procedures on specific resettlement-related issues was to prevent refugees from strategising to circumvent the rules.

Despite the gradual incorporation of human rights norms in the resolution of disputes in the camps, there was still considerable divergence between local legal interpretations and international norms. This divergence can be traced back to refugees' lack of knowledge about rules and the unavailability of external legal mechanisms through which they could obtain remedies for other human rights violations that were important to the Bhutanese – most importantly, the right to repatriate to Bhutan. To enable both non-state legal systems and individuals to use human rights claims, they must first be aware that human rights exist. For human rights to be truly effective, the most vulnerable segments of the population (and not just those identified as community leaders or representatives) need to be made aware not only that they *have* rights, but how they can obtain remedies for rights violations. Similarly, for rights claims to be effective, human rights norms must be enforceable.

From localising rights to access to justice?

As the previous sections have shown, the implementation of human rights norms in refugee camps settings is a process that is incomplete and fraught with contradictions. States – often both countries of origin and countries of asylum – fail to uphold refugees' human rights. UNHCR steps in to address this failure but lacks the authority to grant refugees full human rights protection. Its own processes also lack transparency – Chapter VI in particular has shown how UNHCR is caught between a desire to protect and enhance respect for refugees' human rights and a perceived need to keep refugees at a distance and prevent them from committing fraud to bypass its rules.

On the one hand, refugees are thus told that human rights matter while on the other, their human rights are ignored by the world. Given these failings, it should not come as a surprise that human rights were only partially localised in the Bhutanese camps. In fact, it can be considered impressive that human rights were seized upon at all.

Ultimately, the rule of law is indispensable for ensuring respect for human rights and access to justice at the grassroots level. An anthropological understanding of a community, the legally plural context in which it lives, and the ways its members approach dispute resolution can provide insight into the most effective ways to strengthen access to justice in local settings. While this work highlights the ability of local, non-state legal systems to contribute to respect for human rights, it also shows that human rights-based programming may not be the only way to effectively enhance refugees' access to justice.

The complex legally plural situation that existed in the Bhutanese camps was characterised by a multiplicity of different actors involved in law enforcement and judicial and quasi-judicial processes in one way or another, even if unofficially. Rather than encouraging refugees to seek out courts, it may make more sense, as Chapter IV suggests, to focus on those legal forums that are most accessible at the local level and provide people with the best outcomes. In the Bhutanese refugee camps, there were many instances in which legal authorities from different systems worked together. The high degree of collaboration between refugee mediators and the Armed Police Forces (APF) highlighted in Chapter IV is a good example. Although the APF was not stationed in the camps with a mandate of playing a role in resolving disputes among refugees, its proximity to and knowledge of the camps made it an important party upon which camp authorities relied to provide order. The APF was also constructive in helping mediators enforce their decisions or taking some of the responsibility away from refugees for resolving cases that might pose a threat to their safety. This indicates that it may be useful to focus on strengthening local institutions, or the collaboration between them.

Grounded understandings of local contexts may also identify other areas that can contribute to access to justice and respect for human rights in practice. The example of Kamana's theft case, presented in Chapter IV, stressed that situations of *de facto* impunity in which culprits of crimes were unlikely to be caught made it less likely that victims would seek out justice. The majority of theft cases in the camps, like Kamana's, were not mediated because the perpetrators were never identified. Installing enough street lights to light up refugee camps at night, for instance, may decrease the likelihood that perpetrators of crime are able to escape unseen – an important step to ensuring that they can be brought to justice, and that victims receive redress for their losses.

While non-state legal systems can be instrumental in improving access to justice and enhancing human rights protection at the local level, it is clear that their ability to do so is contingent upon the local contexts in which these systems are situated. The availability of accurate information about laws,

rights, and rule of law are indispensable factors in this equation. Ultimately, respect for human rights cannot be divorced from the availability of accessible and effective mechanisms that provide remedies for human rights violations where state and non-state systems fail to do so.

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Curriculum Vitae

Ilse Griek (1980) was born in Heerenveen, the Netherlands. She obtained an MSc in Human Rights from the London School of Economics and Political Science in 2003. In 2006, Ilse completed an MSc in Public Administration and Public Affairs from Leiden University, for which she conducted research on the administration of justice in Kakuma and Dadaab refugee camps, Kenya. She has worked for UNHCR in the Netherlands and in Jordan. Since 2012, Ilse has been employed as human rights specialist for Sustainalytics, a role in which she advises investors and companies on human rights risks relating to corporate activity and ways to address and mitigate exposure to these risks.