

Move Over, Ladies!

Applying Conflict Transformation Theory to Re-prioritize Women's Rights

Nicole K. Pedi

Nkp4@georgetown.edu
Georgetown University, COL '10
Majors: Women's and Gender Studies/Government
Minor: Justice and Peace Studies
Spring 2010

Advisors:

You-me Park

Visiting Assistant Professor, WOMEN'S AND GENDER STUDIES PROGRAM
yp8@georgetown.edu

Elizabeth Velez

Director, CENTER FOR MULTICULTURAL EQUITY & ACCESS
veleze@georgetown.edu

Andria Wisler

Visiting Assistant Professor, PROGRAM ON JUSTICE AND PEACE
akw28@georgetown.edu

A Thesis Submitted in Partial Fulfillment of the Requirements for
the Major in Women's and Gender Studies and
the Minor in Justice and Peace,
Georgetown University, Spring 2010

Table of Contents

I. Abstract.....pg. 2

II. Acknowledgements.....pg. 3

III. Introduction.....pg. 5

IV. Why Conflict Transformation Theory.....pg. 15

V. Case 1- Long Neck Tourism in Thailand.....pg. 22

 a. About Long Neck Tourism.....pg. 22

 b. Human Rights Concerns.....pg. 24

 c. Legal Analysis.....pg. 35

 d. Alternative Solutions.....pg. 41

VI. Case 2- Domestic Violence Policies in the US.....pg. 46

 a. About Domestic Violence.....pg. 46

 b. Combining Race and Gender.....pg. 50

 c. Successful Domestic Violence Programs.....pg. 54

 d. Alternative Solutions.....pg. 58

 e. Legal Analysis.....pg. 63

VII. Conclusion.....pg. 70

VIII. Bibliography.....pg. 76

Abstract

This thesis was created in an attempt to rectify the incompatibility of universal rights for women and cultural relativity—two concepts emphasized in the respective fields of Women’s Studies and Justice and Peace Studies. In order to interweave a feminist perspective toward reforming patterns of de-prioritization of women’s rights, with a belief in the validity and congruency of the needs of every group, I created this thesis to begin an inter-disciplinary dialogue on transforming scenarios of rights in conflict between women and other groups with overlapping rights. In light of the challenges that arise due to competing rights, specifically for women who are often forced to sacrifice their own entitlements to sustain the traditions that make up cultural rights, I applied Galtung’s theory of transcendence to particular instances in an effort to develop alternative solutions which do not call for the surrendering of either group’s rights.

The incorporation of a conflict transformation framework allowed me to analyze current policies concerning the cases of long neck tourism in Thailand and domestic violence investigations in the United States in order to highlight the myriad of options to reconcile occurrences of intersecting rights. The development of alternative solutions such as better education, increased communication and the creation of sustainable development programs provided evidence that it is possible to change mindsets, allowing for women and cultural groups to co-exist when we consider the needs of both groups in a conflict and adjust the strategies for meeting the goals of every individual.

Acknowledgments

I'd like to acknowledge all three of my outstanding faculty advisors for their assistance in the creation of this thesis. Professor Park has continued to inspire me from the introduction course to women's studies that I took in the beginning of my undergraduate career, all the way to the senior seminar class she oversaw this past semester. From recommending feminist texts, to listening to me rant on endlessly about the topics that interested me the most, I will remain eternally grateful for having her serve as a mentor and role model, encouraging me to put my thoughts into action and my passion into writing. It is not surprising that Professor Park introduced me to the Kimberle Crenshaw article that stirred my interest in domestic violence investigation practices in the US—a subject that would come to be the focus of one of my case studies in this thesis—for after working with Professor closely I can attest that her extensive knowledge in the field of gender studies, combined with her attentiveness to the skills and curiosities of each student she encounters, radiates through her lectures and discussions.

Professor Velez has additionally provided me with motivation for this thesis, presenting the topic of long neck tourism, the second case study in this thesis, to her students the first day of our Feminist Theory course. She has remained patient and understanding with all of the roadblocks that accompany the writing process, offering only words of encouragement and support from the very beginning of this year. Many of the difficulties explored in this thesis were inspired in debates in Professor Velez's course. Her ability to challenge my opinions has enabled me to better articulate my thoughts, predict criticism to my arguments and firmly defend the beliefs and values I have adopted from feminist scholars and theorists. Professor Velez's ideas, critiques and questions have allowed me to continue to strengthen this document over

time, leaving me with a final piece that has stirred my interest in an endless number of additional topics for exploration and analysis in the future.

My interactions with Professor Wisler influenced every single aspect of this thesis writing experience. Her course on conflict transformation quite literally laid the groundwork for the theory component of this paper, allowing me to connect issues of women's rights with peace education values in an effort to transform scenarios of rights in conflict. She introduced me to the work of Galtung and Lederach, and was the first individual to even see my proposal for this paper. Her suggestions, edits, heart-felt conversations and confidence in my abilities as a writer helped steer the progress of my thesis, as she guided me through the entire process—extending from the early days of research to a culminating presentation of my thoughts and findings. Every meeting with Professor Wisler left me feeling recharged, ready to dissect a new aspect of my investigation. Her guidance granted me both a direction to move towards and the freedom to draw my own conclusions as my analyses naturally changed and developed over time.

All of my advisors were indispensable to the creation of this work. Their assistance in every stage of my academic experience influenced my writing and the intellectual advancements incorporated into its creation. Each and every professor I have had the privilege of learning from at Georgetown University have also assisted in contributing to the skills and knowledge base utilized to create this cohesive document. My professors have served to influence my interests, introduce me to new theories and concepts and present books and articles that continue to foster my intellectual curiosity. These professors, along with the endless number of feminist and peace scholars who have contributed a vast array of information and investigation to the discourse of conflicting rights have laid the framework for my thesis. For the work and efforts of these individuals, I remain both thankful and impressed.

Chapter 1 ***Introduction***

The conflict between the values of universal rights for women and the preference for cultural relativity has become an especially relevant issue in the United States (US) as this year marks the 30th anniversary of the General Assembly's adoption of the United Nations Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), categorizing the US with only 6 other countries that have failed to ratify the "women's treaty."¹ While the treaty addresses basic universal human rights of women with the intention to combat gender discrimination and provide women and girls with equal access to education and health care resources worldwide, Sarah Albert, co-chair of the Working Group for Ratification of CEDAW links the US's failure to ratify the treaty with concerns of government officials due to provisions regarding increasing access for women to reproductive health resources. While the treaty does not mention abortion, connections drawn between reproductive health and abortion are predicted to be an underlying factor in the hesitation of senators to vote on ratifying the treaty because of the country-specific charged view on abortion in the US.² Difficulty in gaining the American Government's support for an International treaty in the US that guarantees universal protections and equal treatment for women demonstrates the degree to which the concept of universal rights for women has proven to raise questions not only in other countries, but here within the US as well.

Examining numerous issues of rights in conflict, particularly as a result of the intersection of universal rights for women and standards of cultural relativity, has inspired the creation of my thesis: "Move Over, Ladies! Applying Conflict Transformation Theory to Re-prioritize

¹ United Nations, *United Nations Treaty Collection*, CEDAW: State Parties, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en.

² Sarah Alpert, Lecture at Georgetown University, September 28, 2009.

Women's Rights." This thesis will explore examples within the International community when the rights of women intersect with the rights of another group in order to analyze the solutions determined by the appropriate decision-making body. Each example describes scenarios of rights in conflict; overall demonstrating instances where women's rights are de-prioritized in order to uphold the rights of the second group at hand. In addressing the forced sacrifice of women's rights based on inconsistencies between the rights of women as a group and a second group with "competing" rights, this paper will regard the resulting dehumanization and de-prioritization that produce especially severe consequences for women due to their already marginalized status.

In addition to using this thesis as an analysis of the consequences that arise from trumping women's rights in order to promote the rights of another group, I intend to also question if any alternative resolutions exist which do not require forced sacrifice of one group's protections in order to support another group's rights. In considering different solutions for the examples of rights in conflict dissected in this thesis, upholding standards of human rights as detailed in the United Nations International Covenants on Civil and Political Rights and on Economic, Social, and Cultural Rights will serve as the goal in developing "better" solutions which incorporate the needs of both groups whose rights are in conflict.

The application of a conflict transformation framework will also be employed in order to examine incidents of intersections in rights between women and a second group in order to reconcile universal freedoms given to females which are threatened by the relative rights of other groups. By recognizing incompatibilities between women's rights and the rights of a second group, I hope to offer alternative solutions which do not simply result in for the de-prioritization of the rights of women, when they intersect with the rights of another group. Johan Galtung's

theory of transcendence will serve as the foundation of the applied conflict-transformation focus of this thesis. For each example of conflicting rights that I examine, Johan Galtung's theory of transcendence will be applied in an attempt to transform the conflict in a manner that neither ignores, marginalizes nor de-prioritizes the rights of any group involved. In order to illustrate the relevance of Galtung's theory of transcendence, the next chapter on theory will trace the aspects of his conflict transformation foundation that are most applicable to my thesis.

As a Justice and Peace Studies student, the concept of rights, particularly human rights, has been a subject heavily explored throughout my studies. The Justice and Peace discourse asks those interested to consider the importance of identifying freedoms as rights by describing the various levels of rights and discussing the steps necessary to uphold the rights of all individuals. Resolving conflicts when rights overlap, however, brings further debate into the field of Justice and Peace. When intending to advocate the expansion of rights in an effort to maintain peace, facing the challenge of intersecting rights is how I propose to help develop methods that prevent one group from facing further marginalization based on the continuous trumping over their rights. This topic therefore allows me to consider how to resolve overlaps in group rights while simultaneously questioning just how successful attempts to do so have been in the past.

As a Women's Studies student, the issue of female-specific protections and the consequences that arise for women when the same rights guaranteed to them come in conflict with the rights of another group, allow me to consider the ramifications of varying notions of feminist theory while illuminating the challenges presented in maintaining a universal value of the rights of women. This complete praise of female rights brings up a vast array of questions when I consider the intersection of cultural relativity or the inviolable rights of a different minority group. Throughout my studies, an unquestionable acceptance of universal protections

for women has been continuously made more difficult in the light of the abundant instances where upholding women's rights has translated into limiting the freedom of a culture or ethnic group.

Throughout my undergraduate studies, difficulties in both accepting and embracing universal rights for women have commonly been found in association with cultural rights and practices. Reading about cultural relativity from authors such as Louis Pojman in his article "Who's to Judge?" has highlighted the lack of capability of individuals to ever have the ability nor legitimacy to fully understand, and therefore be able to judge, the practices and traditions of outside cultures, races and communities. Pojman asserts that moral standards vary in every society, forcing those who adhere to ethical and cultural relativism to refrain from judging wrong or right outside of their own cultures or societies.³ Along with this acceptance of cultural relativity however, comes the difficulty in establishing any rights as universal. Due to the vast array of highly debated cultural and ethnic based traditions which revolve around women, rights guaranteeing inviolable protections for women are often the contested rights believed to violate standards of cultural relativity. But the more I have read about accepting cultural relativity, the more powerless I have found myself feeling to address the frustrating situations of conflicting rights which concern me the most. While I fully acknowledge the difficulty in approaching culture bound activities, beliefs and mindsets, I have based my decision to write a thesis on rights in conflict on my belief that the very existence of scenarios where upholding a culture's freedom results in the trumping of International accepted and guaranteed rights for women, exemplifies the importance in expanding dialogue on these difficult issues of cultural relativity. My examination of intersecting rights will undoubtedly be different from others' analyses due to my

³ Louis J. Pojman, "Who's to Judge?," in Holly J. Allen, ed., *Vice and Virtue in Everyday Life: Introductory Readings in Ethics, Seventh Edition*, (Belmont, CA: Thomson Wadsworth, 2007), 166-167.

role as an outsider looking in on a particular scenario affecting a culture, tribe, race or ethnicity of which I am not a member. But my attempts to explore scenarios where cultural relativity and the rights of women come into conflict have allowed me to objectively consider methods and solutions which can be employed to limit the restrictions placed on any group's rights.

I have chosen to investigate two examples of rights in conflict in this thesis. The first example of intersecting rights that this thesis will analyze reveals incompatibilities that arise when upholding universal rights as identified in International Covenants on Civil and Political Rights and on Economic, Social, and Cultural Rights due to an instance where protecting rights of women prohibit absolute agency of a cultural tribe in Thailand in maintaining a custom of beauty through the wearing of brass rings around women's necks. Known as long-neck tourism, the practice occurring in Thailand takes place as women of the Karen tribe place 10-20 brass coils around their necks, pushing down their collar bones in order to give the illusion of a giraffe-like long neck. The female members of this tribe in Thailand reside in tourist villages where tourists pay money in order to enter the villages and observe and take pictures with the women. While scholars such as Pírias Mac Éinrí praise multiculturalism, emphasizing the importance of recognizing right of cultures to uphold their own traditions and practices without interference from the state and fully embrace multicultural differences⁴, the case expanded up in chapter three intends to illuminate how many of these traditions also bring about dignity issues for women who are often put in danger in the name of these cultural beliefs that multicultural states have a right to practice. The conflict between cultural freedom and the right of women to protection by the state and sexual equality cause us to question why women are overwhelmingly the group given the burden of risking their own safety or dignity in the name of cultural tradition.

⁴ Pírias Mac Éinrí, Keynote speaker, Merriman Summer School, "Beyond tolerance – towards Irish models of multiculturalism?" (2002), <http://migration.ucc.ie/indexonlinepublications.htm>

The second case of intersecting rights that I intend to examine considers the political ramifications that occur when women's rights come into conflict with the rights of another minority group, thus again revealing a competition between universal rights for women and protection of the rights of a specific cultural or ethnic minority. The example that will be extended upon in chapter four describes the unforeseen dangers created for women due to many of the procedures utilized in investigating cases of domestic violence in the US. While efforts were incorporated into the investigation procedure that sought to protect ethnic minority men from susceptibility and structured discrimination and stereotyping, the absence of consideration for the consequences that these procedures would create for the minority women in the same neighborhoods left them vulnerable to violence. With studies illustrating women as the predominate victims in domestic violence cases,⁵ the need to sacrifice women's protection in order to uphold the rights of various ethnic minority groups has left feminists, black feminists and human rights advocates in search of better alternatives. Kimberle Crenshaw's article, "Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color," particularly describes how methods installed in order to prevent racism in minority neighborhoods affected by domestic violence have adversely created negative consequences for women in these same neighborhoods. The author's referral to overlaps between racism and sexism leave room for us to question what better methods exist to resolve a conflict between minority men to be free from stereotyping and the right of minority women to be protected from abuse. Because this case is particularly interesting based on its overlap of two marginalized groups (women and a racial/ethnic minority) the chapter will expand upon this political example

⁵ Patricia Tjaden and Nancy Thoennes, U.S. Dep't of Just., NCJ 183781, Full Report of the Prevalence, Incidence, and Consequences of Intimate Partner Violence Against Women: Findings from the National Violence Against Women Survey, at iv (2000), available at <http://www.ojp.usdoj.gov/nij/pubs-sum/183781.htm>

of intersecting rights in considering the factors utilized in determining which group involved in the conflict demonstrated a “more pressing claim.” Crenshaw’s description of the consequences for women due to particular methods in investigating domestic violence cases will be supplemented by the theories of other feminists who additionally consider the overlap that occurs when efforts to promote the rights of women intersect with efforts to ensure the rights of minority men.

When deciding which instances of competing rights to expand upon in this paper I considered different factors in determining which scenarios to utilize for examination. The case of domestic violence policies in the US struck me as particularly interesting due to the intersection of racism and sexism combined with the fact that the conflict in rights was occurring in the US, a country not usually considered to face many difficulties in upholding universal rights of women in current times. Additionally examining long-neck tourism in Thailand would therefore also provide a comparison about rights in conflicts occurring in the US and in a different country in the International community. Long-neck tourism jumped out as an especially relevant case firstly because I had not seen significant media attention paid to the case in the past. Long-neck tourism also incorporates multi-dimensional factors that contribute to the current state of the practice such as displaced status of the members of the Karen tribe who are upholding the customary tradition of wearing the neck rings. Both instances of intersecting right discussed in this thesis also revolve around cultural/ethnic beliefs and practices, illustrating the challenges to responding to multicultural issues.

For the purposes of this thesis, a few clarifications must first be made before further analysis of the two examples of intersecting rights can be dissected. I want to note that the discussion of “sacrifice” interwoven through out this thesis must be considered in context of who

is attempting to resolve the rights of different groups that are in opposition. For each instance that I analyze, women as a group are not choosing to sacrifice their own rights; the decision is being made for them by various bodies of authority. So while I recognize the definition of sacrifice to mean “the surrender or destruction of something prized or desirable for the sake of something considered as having a higher or more pressing claim,”⁶ the absence of any mention of personal choice to forfeit one’s own rights sets up the question of why society and its venues of power do continue to de-prioritize the civil liberties and freedoms of women by consistently not upholding their rights when they appear to be in opposition to any other groups’ rights.

This thesis must also recognize the potentially problematic outcome that arises from homogenizing “women” as one group. Authors such as Angela Davis have dedicated numerous books and articles to discussing additional factors such as race and socio-economic status, which prevent the women’s movement from functioning as a truly cohesive force due to all the other attributes which contribute to any woman’s identity. But the existence of women’s human rights in the human rights discourse and the development of women’s studies as a subject in scholarship illustrate the need to address women as a group due to patterns and commonalities noted simply on the basis of gender. While “women” make up a varied group of individuals, they exist as a group none-the-less, tied together by the challenge of existing as what feminist scholars such as Simone de Beauvoir describe as “the other” in a male-dominated patriarchal society.

The idea of intersecting rights is not a newly discussed topic in the Justice and Peace Studies discipline, just as identifications of trends where power structures in society force women to function as a sacrificial group is in no way new to feminist discourse. The discussion of multiculturalism has been highlighted as a significant challenge to establishing equal

⁶ Merriam Webster Online Dictionary, <http://www.merriam-webster.com/netdict/sacrifice>.

treatment and provision of rights for all citizens in light of the many factors of diversity interwoven into societies across the International community. In reconciling differences between individuals based on factors such as race, religion and gender, liberal theorists have posed multiple views on addressing the competing individual interests and rights in society. Theorists such as William A. Galston argue for the application of public neutrality as the most productive mechanism to achieve equality and limit situations of rights in conflict. According to Galston, regarding all people neutrally prevents the state from having to evaluate which lifestyles or practices are essentially “good” or “better” since there exists “no rational basis” for this evaluation to ever have to take place. He also argues that without a policy of public neutrality, we lose our individual freedom as the state gains power in granting special rights, thus becoming capable of passing judgment on which groups should receive accommodations over other groups, and on which groups’ rights should have priority and precedence in situations of intersection and conflict.⁷ Author Iris Marion Young, however, sheds light on the difficulty of installing universal standards and rights based on the reality of difference and particularity stemming from multiculturalism. She thus argues against a policy of public neutrality, claiming that the ingrained inequalities in every society require us to allot special rights to disadvantaged groups. To Young, ignoring the inequalities among groups of people through applying universal laws and rights regardless of individual differences works to further these very same inequalities that public neutrality efforts are attempting to get rid of in the first place.⁸

In light of the contributions of other scholars, this thesis intends to incorporate the wisdom I have absorbed by experts in evaluating conflicts in rights, specifically when they

⁷ W. Galston, *Liberal Purposes: Goods, Virtues, and Diversity in the Liberal State*, (Maryland: Cambridge University Press) 82.

⁸ Iris Marion Young, “Polity and Group Difference: A Critique of the Ideal of Universal Citizenship,” *Ethics*, 99:2 (January 1989), 259.

regard women: a group marginalized by structural discrimination. Considering feminist writings which assert that women's rights have in many ways been vulnerable to de-prioritization even when they do not come in conflict with the rights of another group, addressing examples where the forced sacrifice of women's rights is the result of the intersection with another group's rights, allows me to apply a conflict transformation framework in an attempt to offer new and better solutions. It is through the analysis and proposed resolutions in the following chapters that I hope to provide a roadmap to a reality which improves many of the injustices for women that I have spent the past four years learning about.

Chapter 2 *Why Conflict Transformation Theory?*

Through my efforts to consider alternative solutions to cases of rights in conflict I decided to incorporate a conflict transformation framework into altering the current conditions of the examples of intersecting rights that I am investigating. Conflict transformation is an approach to addressing disagreements that attempts to satisfy the ultimate objectives of both parties in a conflict, explained by John Paul Lederach as a process that seeks “constructive change” in a conflict.⁹ Differing from traditional theories of conflict resolution or conflict management, conflict transformation models do not try to implement fast paced solutions that can quickly be put into place in order to bring about a swift end to a conflict. The failure of these short term resolutions to address the underlying sources of each conflict do not allow both parties in a dispute to have their goals met, thus perpetuating the disagreements that led to the conflict in the first place.¹⁰ As Lederach explains, a resolution-based approach to addressing situations implements techniques such as problem solving and negotiating in order to fix the immediate problems resulting from a conflict. A transformational approach differs “because conflict transformation is more than a set of specific techniques. It is about a way of looking and seeing, and it provides a set of lenses through which we make sense of social conflict. These lenses draw our attention to certain aspects of conflict, and help us to bring the overall meaning of the conflict into sharper focus.”¹¹ Conflict transformation therefore differs in its aim to clarify the goals of both parties at hand, realize the complexity and context of every conflict and to bring about changes that address the very core relationships and institutions at the core of the disagreement.

⁹ John Paul Lederach, *The Little Book of Conflict Transformation*, (PA: Good, 2003) 5.

¹⁰ Lederach, 5.

¹¹ Lederach, 7.

In considering how to apply conflict transformation to this thesis I turned to the theories and suggestions of Johan Galtung. Galtung's theory of transcendence served to provide information of the patterns and foundations that make up conflicts as well as to exemplify the efforts necessary to positively convert the state of conflict in order to bring about stable peace. In Galtung's work "Conflict Transformation by Peaceful Means: the Transcend Method," he describes the "logic" behind conflict, explaining that individuals and groups involved in a conflict each have their own specific goals. When these goals are incompatible, however, each group has the tendency to "exclude each other," causing frustration which may lead to forms of aggression.¹² These instances of contradiction are the source of the conflict between groups' rights that I intend to investigate in my thesis. Furthermore, Galtung's recognition of the pattern of these contradictions to lead to violence leads him to present his ultimate task as transformation of the conflict, the same underlying project that I hope to undertake in examining instances of intersecting rights. According to Galtung, "The task is to transform the conflict, upwards, positively, finding positive goals for all parties, imaginative ways of combining them, and all this without violence."¹³ This same task will be applied to each instance of conflicting rights presented in my thesis in order to determine alternative solutions to current policies that undermine the rights of women.

In Galtung's conceptualization of conflicts, he describes the existence of five general types of outcomes in a conflict between two actors or parties. In the first two possible outcomes, one of the two parties prevails while the other party essentially loses. The third possible outcome in a conflict refers to "withdrawal" where the parties walk away from the conflict, thus failing to address the source of incompatibility. The fourth possible outcome refers to

¹² Johan Galtung, "Conflict Transformation by Peaceful Means (The Transcend Method)," Participants' and trainers' manual, United Nations Disaster Management Training Programme, (Geneva: 2000) 7.

¹³ Galtung, 8

“compromise,” where neither party achieves their goals in entirety, but at least some of each groups’ goals are met. And the final possible outcome presented by Galtung is transcendence, which embodies actions which “go beyond” the conflict in an attempt to transform the entire system in which the conflict operates.¹⁴ The cases described in my thesis refer to conflict outcomes which fit into the first two categories of “winner-takes-all” since the scenarios describe situations where women’s rights are de-prioritized in order to protect or uphold the rights of another group or culture. In each case discussed women as a party “lose” in the face of conflict with another party who ultimately prevails in having the rights of its members upheld. Galtung describes the fifth possible outcome for conflicts, transcendence, as the best possible method to be strived for. While Galtung recognizes that to transcend is the most demanding outcome to reach for, he also labels it “the most rewarding approach.”¹⁵ This thesis will therefore provide alternative solutions that attempt to resolve conflicts in rights through transcendence.

In order to transcend conflict through Galtung’s method of transcendence he requires a simultaneous focus on cultures, structures, actors and the source of the conflict.¹⁶ In evaluating instances of conflicting rights I will therefore identify each party involved in the conflict and spend time placing the conflict in context by identifying relevant cultural features of each group of actors. I will additionally highlight which societal structures, institutions or other decision making bodies have the power and authority to uphold the rights of women and groups with overlapping rights. Galtung specifically acknowledges that in order to move the conflict process into a “peace region” it is necessary to make cultures, structures and actors more peaceful in order to avoid the trend for conflicts to escalate into violence.¹⁷ This acknowledgement suggests

¹⁴ Galtung, 15

¹⁵ Galtung, 54

¹⁶ Galtung, 9

¹⁷ Galtung, 10

not only that it is possible to alter the way cultures and groups of people think, but that it is ultimately necessary to do so in order to ultimately transform the conflict in rights instead of simply resolving issues in the short term. The alternative solutions presented in my thesis will therefore identify methods to change mindsets and stereotypes as possible, realistic and ultimately essential for conflict transformation.

Galtung's theory of transcendence additionally calls for the utilization of actions and methods that lead to his "3 Rs," resolution, reconstruction and reconciliation. Resolution identifies the original root cause of conflict while reconstruction aims to restore the harm and destruction already created due to the existence of the conflict and reconciliation solves the meta-conflicts developed over time. In order to identify Galtung's "3 Rs" he prescribes an essential use of creativity and dialogue in order to eventually "create a new reality" through transcendence and to finally "transplant" that new reality through transformation.¹⁸ This thesis therefore attempts to set the stage for dialogue by providing a starting point for conversation and communication where rights of groups are discussed, and imaginative, inventive solutions are suggested in an attempt to illuminate the vast array of alternative possibilities to conflicts between rights which refuse to marginalize either of the groups in question.

Galtung's method of conflict transformation incorporates a series of steps to undergo in order to address a clash or struggle. The steps require one to explore the present, relive the past, project the future, deeply diagnose the past, discover deep therapy for the future, and determine prescriptions for the present. Thus in analyzing the present realities of conflicts and considering past influences that have led to the development of cultural attitudes and beliefs, we are best prepared to determine how the conflict will progress in the future and what actions are necessary to reconcile the incompatibility of goals in order to transform the state of the altercation.

¹⁸ Galtung, 24

Interwoven in Galtung's theory is a compilation of advice and suggestions for conflict workers who are attempting to apply transcendence to their peace keeping and peace building operations. Galtung specifically discusses the importance of objectivity in approaching a conflict. His reference to objectivity is specifically tied to the importance he places on "having explicit standards used to formulate opinions and proposals, such as basic human needs and human rights."¹⁹ The standards that Galtung mentions have served to structure the method through which I will assess the "better" solutions for addressing rights in conflict. By evaluating the solutions currently in practice in terms of the specific standards put forth in both domestic law and human rights conventions and covenants (that the countries in which the conflict is taking place have ratified), I will propose alternative solutions that serve to follow the protections put forth in the international human rights laws in accordance with domestic law policies and restrictions. By using human rights law as a framework to evaluate the quality of solutions, the subjectivity and personal bias in determining "better" alternatives is significantly reduced.

Galtung's theory is especially relevant for this thesis based on his insistence that each and every conflict renders equal attention and effort and ultimately possesses equal importance in determining how to change and reconstruct the underlying relationships that have led to conflict. In his manual of transcendence Galtung discusses conflicts extending from disagreements over an orange to the Lima Hostage Crisis.²⁰ Galtung therefore suggests that there is no conflict that does not have relevance, and that each and every example of conflict can be changed through the implementation of transcendence efforts. Applying conflict transformation to the two particular examples of long-neck tourism in Thailand and domestic violence investigation methods in the

¹⁹ Galtung, 36.

²⁰ Galtung, 6 and 15.

US thus serves as a model for transforming all other scenarios when women's rights and cultural, racial and/or ethnic rights intersect. While the alternative solutions that I suggest through utilizing information in conflict transformation discourse may not indicate a precise set of answers for any situation of rights in conflict, the process of incorporating transcendence theory into determining the specific solutions can serve as a blueprint for future attempts to balance competing rights.

The use of non-violent communication can additionally be applied as a means through which to apply Galtung's theory of transcendence. At the foundation of non-violent communication is the understanding that all people have needs—needs which are not inherently violent but instead function as completely compatible requests for what we require to survive. The strategies that individuals determine to fulfill their certain needs, however, have the capacity to overrule the needs of other individuals or groups. As described in Marshall B. Rosenberg's book, "Speak Peace in a World of Conflict: What You Say Next Will Change Your World," "everything we do is in service of our needs," so the actions that other pursue, actions which may in turn harm other groups or individuals or eliminate the protection of certain universal rights is realistically "the best possible thing they know to do to get their needs met."²¹

The incompatibility between goals that Galtung identifies as the source of every conflict is therefore manifested in the methods that are utilized to address needs. Non-violent communication offers the possibility of showing others how to utilize particular methods to meet their needs which are effective but which do not cause damage to the needs of another group. The process of non-violent communication simultaneously requires refraining from utilizing

²¹ Marshall B. Rosenberg, *Speak peace in a world of conflict: What you say next will change your world*, (CA: PuddleDancer Press, 2005) 11.

shame, hate or blame when groups are “not what we want them to be.”²² This theory offers the overarching argument that it is not the needs of groups which create conflicts in rights, but the strategies implemented to achieve these needs that produce contradictory goals and ultimately result in overlapping rights. By discussing alternative solutions to meeting needs, similar goals can be identified for both groups in a conflict, allowing the rights of women and other groups to co-exist.

²² Rosenberg, 11.

Chapter 3

Case 1- Long Neck Tourism in Thailand

In order to examine incompatibilities between women's universal rights as presented in various United Nations covenants and conventions and the rights of every culture to maintain their own traditions, I would like to use this chapter to present a conflict between women's rights and cultural rights: Long neck tourism in Thailand. Long-neck tourism presents us with a traditional cultural practice that when upheld serves to restrict the rights and agency of women participating in the practice, thus creating a discrepancy between attempts to install universal protections for women as outlined in various human rights instruments and efforts to uphold cultural sovereignty. The issue of long neck tourism demonstrates the difficulty in promoting universal women's human rights in the light of cultural relativism.

About Long Neck Tourism

Long neck Tourism is based on a tradition associated with Padaung women: a sub-group of the Karen tribe in Burma. The Padaung are often referred to as the Long Neck Karen tribe because of the multiple brass neck rings which female members wear in order to create the illusion of an elongated neck.²³ Because of continued civil war in Burma, many members of the Padaung have left Burma and escaped to bordering Thailand in efforts to escape the war. Once entering Thailand, the Padaung are gathered into artificial, tourist villages where visitors pay entrance fees to watch the long-neck women. Hoy Sua Toa Long Neck Karin village, located in Thailand's Mae Hong Song Province, is an example of such a tourist village.²⁴

While Padaung women often wear brass rings around their legs and arms as well, the coils they wear around their necks are by far the most notable and the most debated. The

²³ Amit Paley, "A Village, or a Zoo?," *The Washington Post*, August 23, 2009, 1.

²⁴ Antonio Graceffo, "Shackled by the Neck," *Asia Sentinel*, May 7, 2007, 1.

Padaung custom of wearing the neck rings requires girls to place the coils (which weigh up to 11 pounds) around their necks starting before puberty.²⁵ Various articles written on the practice, such as the Washington Post article, “A Village, or a Zoo,” describe girls as young as 5-6 years old beginning to place the coils around their neck. As the girls get older, more and more coils are added to their necks, until there are usually about 20 coils on each female’s neck. An Interview with a 33-year-old Padaung woman named Malao revealed that she, like many other Padaung women, only takes her rings off once a year to clean them and her neck. Besides this yearly cleaning the rings are worn at all times by the women.²⁶

While the wearing of neck rings is rooted in tradition, there is no consensus as to why the tradition was originally practiced. Thai tour guides perpetuate certain myths in order to entertain tourists with stories that the rings serve as “armor against tiger bites” and explanations of rituals stating that “only girls born on a Wednesday under a full moon can wear the coils.”²⁷ In reality there is no written history of the Padaung tribe’s customs and traditions so the tribe elders are not even really sure as to why the rings must be worn. Interviewed Padaung women give completely different reports as to the traditional grounds for wearing the coils as well.

The complexities of long-neck tourism have inspired much controversy over whether or not upholding the practice should be referred to as a human rights violation. The disagreement over the situation can be summed up by two opposite opinions described by individuals observing the practice. While Kitty McKinsey, the United Nations High Commissioner for Refugees’ (UNHCR) regional spokeswoman reports, “It’s absolutely a human zoo,”²⁸ Som Sak Seta, a Long Neck Karin Village tour guide explains, “It’s their choice. The Karen can make

²⁵ Seth Mydans, "Nai Soi's Long-Necked Women," *The New York Times*, May 20, 2001, 2.

²⁶ Paley, 3

²⁷ Mydans, 2

²⁸ Andrew Harding, “Burmese women in Thai ‘human zoo,’” *Tehran Times*, January 31, 2008, 1.

money, wearing their neck rings in the camp, or they can go back in the refugee camp. They don't have a right to stay (in Thailand). This is the compromise of the governors of this place, so the Karen can stay inside of the Thai border and make some money, and the governors can get some money as well.”²⁹

Human Rights Concerns

In analyzing the practice of long-neck tourism in Thailand and the implications that upholding the tradition has for the women of the Padaung tribe, I would like to examine the human rights concerns that wearing the brass coils raises as a cost of granting the culture sovereignty. The human rights concerns I'm considering investigate the possible health risks of the practice, the question of dignity that arises for those women participating, the lack of agency for women carrying out the tradition, the gender-specific requirement to uphold the tradition, and the limited movement that results when considering Thailand's treatment of the Padaung women refugees who do decide to uphold the practice. The fact that the tradition of wearing the brass neck rings can be traced back over time in the tribe's history relates the practice itself to ethnicity. The situational factors that influence that conditions under which the practice is upheld must therefore be investigated, tied in with the ethnic importance of the tradition, in order to determine solutions which derive political justice for all members of the Padaung tribe.

When focusing on the consequences that arise from the wearing of the rings themselves, it must be noted that this is significant disagreement surrounding the health risks of the brass rings for the women of the Karen tribe. The reality of the rings is that their placement on the necks of women serves to distort normal collarbone growth and gives the illusion of a long neck. The rings themselves do not actually stretch out the neck itself but serve to crush the vertebrae

²⁹ Graceffo, 1.

and collar bones down.³⁰ Even though there is significant debate over whether or not wearing the coils has significant health consequences for the women of the Padaung tribe, most physicians cite hematoma as the most common health hazard.³¹ Girls have also reported discomfort from wearing the coils and there is concern that the neck muscles of the women wearing the rings are atrophied and thus weak after prolonged use.

The most pain is reported from younger girls who have just started wearing the rings. According to older women in the tribe the pain subsides after continued use.³² Some female members of the tribe also report pain when taking the coils off. Malao, the same Padaung women who reported taking off the rings once a year, explains, "If I take it off for a long time, it is uncomfortable. My head aches, and I feel like my neck can't support my head."³³ While removing the coils has never proven to kill the woman who once wore them, Antonio Graceffo, an activist who writes articles and blogs based on his trips to Thailand and research of the neck ring practice, suggests that if girls have died because of the rings, it would never be recorded to begin with. "Tribal people accept death as a normal part of life and wouldn't record, or think about, or worry about something like that. The culture says wear the rings, so they wear the rings, end of story."³⁴ The only girls who have ever removed the coils have also been younger women who have not worn them for very long. Graceffo predicts that women who have worn the coils their entire life would suffer much more severe consequences when removing the rings since their necks have subjected to the pressure of the coils for a longer period of time.³⁵

Because we have reports on such few women who have ever removed the rings to begin with, in

³⁰ Paley, 1

³¹ Graceffo, 1.

³² Paley, 2.

³³ Paley, 2.

³⁴ Graceffo, 1.

³⁵ Graceffo, 1.

addition to a lack of significant studies on the ring-wearing practice in general, there is an obvious shortage of medical analysis on the health risks for women who partake in the tradition. There was at one point a hypothesis that if a woman removed the rings her neck would actually not be strong enough to support her head and she would therefore die from suffocation.³⁶ The decision of a few young women to remove their rings in protest of the tradition and the Thai government's treatment of the members of the tribe has proven this hypothesis incorrect in theory, but again, the fact that the only women who have removed the rings are young and have thus not worn the rings for many years echoes the suspicion that more severe health consequences of wearing the rings may exist but have not been discovered due to the absolute lack of investigation.

The observation that the tourist villages resemble "Human zoos" also offers a question of dignity for the women wearing the brass rings and being watched and photographed by paying tourists like would occur in a zoo. Seth Mydans describes, "Nothing here seems private. As they go about their lives -- feeding their children, washing at the village pump -- they are on display to all comers."³⁷ The idea of human dignity is at the heart of human rights discourse and law. Diana Ayton-Shenker explains in a United Nations background note titled, "The Challenge of Human Rights and Cultural Relativity," that the purpose of universal human rights is in fact to produce "one legal standard of minimum protection necessary for human dignity,"³⁸ illustrating a precedence for basing the validity of rights on the safeguard of dignity. While the same article contends that arguments in favor of cultural relativism assert that "traditional culture is sufficient

³⁶ Graceffo, 1.

³⁷ Mydans, 2

³⁸ Diana Ayton-Shenker, "The Challenge of Human Rights and Cultural Diversity," UN Website: <http://www.un.org/rights/dpi1627e.htm>.

to protect human dignity,”³⁹ the coining of the long-neck villages as “Human zoos” suggests that this particular traditional practice fails to defend the dignity of the women upholding the custom. Interestingly, however, the “traditional protection of human life, liberty and security,”⁴⁰ that cultural relativism aims to ensure, indicates that dignity is in fact a need of cultures. The lack of dignity existing for women participating in long neck tourism therefore illustrates the necessity for alternative strategies to allow the needs of the Padaung tribe to be met, since the current unchecked tradition of wearing the neck coils does not in fact allow for these otherwise beneficial needs to be upheld.

In addition to questions surrounding the possible health consequences and elimination of dignity that wearing the rings creates for women of the Padaung tribe, the concept of agency in participating in the tradition establishes additional tenets for human rights violations. Because the females of the Padaung tribe begin wearing the brass rings before puberty, combined with the fact that there are girls as young as 5-6 who have begun to wear the coils, the young age of the girls adhering to the practice forces us to question to what degree each woman is actually choosing for herself whether or not to wear the rings. Since the tradition begins at such a young age it is more accurately the elder females of the Padaung tribe who are making the decisions for their daughters as to whether or not wear the rings.

Payment is also offered as an incentive for the Padaung women to uphold the tradition in Thailand by tourist companies who control access to the settlements where the Padaung refugees live. While some families said they were paid about forty five dollars per month to wear the rings, others report being rewarded a sack of rice for upholding the tradition.⁴¹ Only those who wear the rings are paid in the tourist villages since tourists companies are able to charge

³⁹ Ayton-Shenker, 1.

⁴⁰ Ayton-Shenker 1.

⁴¹ Mydans, 2.

individuals for boat rides to the settlements and an entrance fee to actually get into the villages in order to see the long-neck women. As refugees without any official status in Thailand, the Padaung tribe members can not legally work in Thailand. So for Padaung people in tourist camps, the only source of profit is to wear the rings and to sell crafts and pictures to tourists who are entering the tourist villages. By offering financial incentive to uphold the tradition in light of an absolute lack of other means of making an income, agency is clearly restricted for women who are being responsible for the financial stability of their entire village. The fact that the refugees have no legal options for generating an income presents a dangerous power dynamic between the tour companies contracting the women to wear the rings and the members of the Padaung tribe. The economically exploitative nature of the Thailand tour companies' dependency on the Padaung women as tourist attractions takes the situation out of the confines of a culturally situated scenario. While cultural traditions carry the power of identity building, thought by some to allow for "self-definition, expression and a sense of group belonging,"⁴² the practice of long-neck tourism marginalizes the agency and freedom of every Padaung refugee due to the financial reliance on the practice. The economic aspect of the practice thus posits that the competition between gender and cultural rights is in fact a scenario of mistreatment and manipulation of an entire tribe of people masked by a defense of cultural relativity. While the aim of the Padaung tribe is to live comfortably away from the war-ridden reality of Myanmar, long neck tourism does not guarantee this goal. While it grants economic incentives, the burden of the practice is bore by women of the tribe whose dire need for resources for the entire community is abused by tour companies who offer small payments in exchange for unequal restrictions. These financial difficulties illustrate that the deep rooted conflict of long-neck tourism is not a matter of upholding culturally imperative practices but instead taking advantage

⁴² Ayton-Shenker, 1.

of ethnic customs from the past for the sake of profit for tour companies and the livelihood benefits for refugees with no other options of income.

The gender-specific requirement of the tradition comes into play when the sole capacity of women to make money in the tourist villages is fully analyzed. While the next paragraph discusses some of the dangerous consequences that arise when combining questions of agency and gender specificity, the capability of Padaung women to produce an income must be noted as increasing the value of females in the tourist communities—a reality that contradicts most of the stereotypical images of tribal women which reflect a very low position of power. The ability to make an income in the tourist villages allows women to exist as a valuable commodity for their own communities but also for the Thai officials and tour operators who exploit the profit possibilities of Padaung women upholding the ring tradition. In order to see the long-neck women tourists pay between 6 and 9 dollars to enter the long-neck Karen village-- a profit that is not given directly to the Padaung women participating in the cultural tradition but instead to tour companies and Thai officials running the tourist villages. Women wearing the rings instead report receiving monthly stipends from the authorities who control the villages, ranging from about \$20 to \$40, and earn additional income from the souvenirs they sell.⁴³

As a result of the economic incentives of wearing the rings, most Padaung men therefore prefer to choose a woman who wears the coils as his wife since she has the ability to generate income. Some journalists also predict that the economic benefit of wearing the rings is the primary force keeping the tradition alive since most women still living in the villages of Myanmar where the custom originated have ceased wearing the rings at this point. Seth Mydans' interviews with Padaung women have confirmed that in Burma the costs of the rings

⁴³ Aye Chan Myate, "The Coils of Custom," *The Irrawaddy News Magazine*, 17.9 (September 2009) 1.

alone make the tradition impossible to follow since most families can not even afford rice.⁴⁴ But in Thailand, wearing the coils brings with it economic incentives.

The fact that only those upholding the tradition are paid in tourist villages, and only women can participate in the tradition, raises concerns about the gender-specific requirement for Padaung women since it becomes the sole responsibility of the Padaung women to economically support the entire tourist villages. The gender-specific requirement to uphold tradition itself violates human rights instruments such as the Convention of the Elimination of all forms of Discrimination Against Women (CEDAW) and the Declaration on Violence Against Women which restrict traditions that are gender biased and which require harmful consequences for women in the name of tradition itself. A lack of agency and gender specificity combine in long neck tourism to place primary responsibility on females to generate enough money to sustain the entire tribe. This increased pressure placed on woman contributes to the growing lack of agency over each woman's decision of whether or not to uphold the tradition. The reality of duty placed on females to make enough of an income for the entire tribe to survive not only eliminates the ability of Padaung women to make their own decision whether or not to follow the tradition, it embodies the entire notion of dehumanization of women when their rights intersect with another group's rights. While my introduction to the predicament of rights of conflict expressed a desire to eliminate the forced sacrifice of women's rights, the economic reality created by long neck tourism creates a question that combines moral ideals with unpleasant realities: What if we see the sacrifice of women's rights as "worth it"? In spite of restricted agency, sexual discrimination, possible health concerns, and numerous other realities that most of us would rather avoid, the fact remains that upholding this practice is the only way the entire Padaung village can live comfortably. When following the tradition of wearing the coils is the only venue for profit if the

⁴⁴ Mydans, 3.

families are to remain in the tourist village, I assert that women essentially have no choice at all: They wear the rings or their family can not eat. The question that becomes more difficult to answer is: Is the sacrifice of women's rights a price Thailand and the Padaung tribe should be willing to pay?

The additional refugee component of long neck tourism has proven to result in restrictions to the freedom and mobility of Padaung tribe members in Thailand. Thailand's lack of any legislation or section of domestic law regarding the treatment of refugees, combined with the fact that the country has not ratified the 1951 Refugee Convention relating to the Status of Refugees, results in an absence of an official process and laws dictating the country's policies towards refugees. There also exists no method to distinguish refugees in Thailand from those seeking asylum. Members of the Padaung tribe are therefore not given any official status.⁴⁵

As a result of the absence of an official refugee policy, issues of mobility have arisen for Padaung tribe members attempting to leave the Thailand tourist villages in order to re-locate somewhere else abroad. In 2008, Thailand refused to grant exit visas to 20 Padaung tribe members who were being offered opportunities for resettlement in Finland and New Zealand as part of the UNHCR (United Nations High Commissioner for Refugees)'s resettlement program.⁴⁶ The UNHCR issued a press release the same year calling on Thailand authorities to issue exit visas or to grant Padaung tribe members the same rights granted to Thai citizens.⁴⁷ The United States Committee for Refugees and Immigrants described the situation as such in their World Refugee Survey 2009 regarding Thailand: "Authorities allow the Padaung refugees, who are tourist attractions because of the brass coils they wear on their elongated necks, neither

⁴⁵ Myate, 1.

⁴⁶ Unrepresented Nations and Peoples Organization, "Karen State: Thailand Deny Padaung Exit Visas," February 6, 2008, <http://www.unpo.org/content/view/7551/119/>.

⁴⁷ <http://www.unpo.org/content/view/7551/119/>

resettlement nor freedom of movement. In August, Mae Hong Son authorities prevented a group of Padaung from leaving whom Canada, New Zealand, and Finland had already accepted.⁴⁸

This marked the beginning of International criticism for the realities that surrounded long-neck tourism in Thailand, raising questions as to whether or not women should have to wear rings to begin with. Thailand's refusal to grant the exit visas combined skepticism on the consideration of choice, agency and dignity for the women of the Padaung tribe with confusion over the moral responsibility that should be associated with the Thai government as the financial benefactor of the maintenance and operation of the long neck tourism camps. Some observers claim the refusal to grant exit visas to the Padaung tribe is because the Thai government fears losing the income from Long-Neck tourism.⁴⁹ While Thai officials have been reluctant to explain why they denied the exit visas, some sources reflect rumors that Thai officials will not allow resettlement because Padaung refugees live outside the main UNHCR refugee camp in Thailand, thus making them ineligible for refugee status.⁵⁰ But Padaung members fight back that Thai officials separated them from other Burmese refugees to begin with due to their ability to attract tourists.

Journalists who have visited the tourist villages where the undocumented Padaung tribe members live have discovered additional issues of restricted movement for Padaung tribe members after speaking with various Padaung women. According to Amit Paley of the Washington Post, The women are not allowed to leave the one-acre village where she visited. Even groceries and other supplies are brought into the village by motorcycle every day. Mamombee, one of the tribe members interviewed explained, "We have to stay with the

⁴⁸ United States Committee for Refugees and Immigrants, *World Refugee Survey 2009 - Thailand*, 17 June 2009, available at: <http://www.unhcr.org/refworld/docid/4a40d2b4c.html>

⁴⁹ Graceffo, 1.

⁵⁰ *World Refugee Survey 2009 - Thailand*

middleman. If I leave, he might call immigration." The middleman was described as the man who brought Padaung members to the province. When asked if she wants to escape Mamombee replied, "I have no choice. If we leave, we will be arrested," further explaining that her only option is stay or pay the middleman money to be returned to Burma.⁵¹

Grazing the subject of alternatives to living in tourist camps in Thailand, when Paley asked Mamombee if she would ever consider returning to Burma, the Padaung woman replied, "I would much rather be here than in Burma." While Paley reported that none of the Padaung she spoke with admitted to wanting to return to Burma, she did have several tribe members express a desire for more mobility.⁵² Ajan Prasit Leeprecha, a lecturer at Chiang Mai University approached the subject of alternative options with the following quotation: "The Karen are faced with four options. Live in a tourist village, become official refugees, go back to the war in Burma, or number four, now some countries like New Zealand offer them a chance to go live in cultural tourism villages abroad."⁵³ I decided to take a closer look at each of the four options that Leeprecha presents:

1. Live in a tourist village: Living in a tourist village means wearing the rings in order to make any money to survive and living with the previous human rights concerns discussed in the presentation.
2. Become official refugees: Becoming an official refugee is not a possible option for those Padaung women in Thailand because Thailand does not have any refugee laws that outright defines what an official refugee is.

⁵¹ Paley, 2.

⁵² Paley, 2.

⁵³ Graceffo, 1.

3. Go back to the war in Burma: Returning to Burma is essentially no choice at all for the tribe members who fled to escape the conditions of Myanmar-- an authoritarian state led by a military junta and among the poorest countries in the world.
4. Live in a cultural tourism village abroad: Because Thailand has refused to grant exit visas to Padaung tribe members attempting to relocate to places like New Zealand, going abroad is not a choice either.

The issue of long neck tourism illustrates a direct violation of human rights listed in the Universal Declaration of Human Rights such as equal protection, dignity, freedom of movement, right to asylum, and the right to just and favorable conditions of work⁵⁴: all rights identified by the International community as the fundamental freedoms and guarantees promised to every individual. But the reality of long neck tourism encompasses overlapping layers of oppression and exploitation tied to gender, ethnicity and economic dependence. The significant number of added difficulties to consider when analyzing long-neck tourism, stemming from the very reality that some individuals refuse to view the practice as a human rights violation at all, serve to underline the lack of a comprehensive universal approach to transforming situations of rights in conflict. To those who reject the view that long neck tourism violates the human rights of the women of the Padaung tribe, the alternative of living in Burma suggests that women have a choice in deciding to wear the rings in Thailand. Many Padaung women themselves describe a preference to live in “virtual confinement” as long as they are paid and safe. Paley describes interviews with Padaung women which make her conclude that “their situation beats the alternative of living in a repressive country plagued by abject poverty and hunger.”⁵⁵

⁵⁴ The United Nations, *Universal Declaration of Human Rights*, December 10, 1948, <http://www.un.org/en/documents/udhr/>.

⁵⁵ Paley, 3.

Lack of information regarding the dangers of wearing the brass coils also poses difficulty for gaining International attention to the human rights violation. The women who are wearing the coils suggest that they have gotten used to the weight but journalists from the US can not help but notice the adjustments that must be made so that these women can sit without falling over, or the fact that removing the rings requires some kind of temporary wrapping or support of the neck due to the resulting dizziness and discomfort.⁵⁶ The fact that the Padaung tribe is an ethnic minority to begin with, also makes its members inevitably susceptible to marginalization, but the refugee status of the tribe in Thailand makes the members even more vulnerable to exploitation by tour guides and tourist village operators looking to make a profit.

Legal Analysis

In an effort to come up with solutions to the issue of long-neck tourism which do not call for the complete de-prioritization of women's rights or cultural rights I want to examine the human rights instruments as well as domestic laws available in Thailand to serve as a guideline in alternate suggestions. My version of "better" solutions therefore embodies the standards and legal discourse put forth by international covenants and conventions and incorporates these protections and standards into Thailand's domestic policies in order to address the reality of difficulties and complications surrounding long neck tourism in an effort to maintain the rights of women and the need for cultural sovereignty.

In examining long neck tourism in Thailand from a human rights perspective, a number of International instruments exist which can be applied to adjusting the situation at hand. Because Thailand has signed and ratified CEDAW, the violations that are being committed by allowing long-neck tourism to continue without regulation and review significantly indicate the need for modifying the nation's treatment of Padaung women wearing neck rings. Article 2f of

⁵⁶ Mydans, 2.

CEDAW requires ratifying countries to “take all appropriate measures, including legislation to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.” Article 5a similarly requires all states ratifying the convention to “modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.”⁵⁷ Both of these requirements illustrate that any practice only required by women is in itself discriminatory on the basis of gender and thus a violation of human rights. But as article 5a interestingly suggests, transforming cultural perceptions of women through education and dialogue make it possible to develop new methods through which to achieve cultural values that do not necessarily call for the discrimination of women. While there is debate surrounding the purpose of the wearing the neck coils, it has been posited that doing so is the result of adhering to a standard of beauty. The need expressed through the practice of long neck tourism is therefore aesthetic expression. While there is nothing wrong with the need for expression, the strategy that has been put into place to meet that need must be altered since it goes against human rights restrictions. Efforts to eliminate prejudice of women therefore translates into creating a space for specific cultures and ethnicities to develop new methods of meeting their need for aesthetic expression that do not prevent the need of women to exist free from harm and to exercise agency in their lives from also being met.

Article 2 of the Declaration on Violence Against Women also discusses traditional practices that are harmful to women, urging governments in Article 5 to both “condemn violence against women” and to abstain from invoking “any custom, tradition or religious consideration to

⁵⁷ The United Nations, *Convention on the Elimination of all forms of Discrimination Against Women*, (1979), <http://www.un.org/womenwatch/daw/cedaw/cedaw.htm>

avoid their obligations with respect to its elimination”.⁵⁸ The framework is therefore present in human rights covenants to overrule justifications of cultural relativity for traditions that lead to the discrimination or harm of women. But in an effort to not only resolve the rights in conflict but to rather transform the face of the conflict, the alternative solutions that will proposed in this thesis will also consider the protections of group and minority rights in order to uphold both the cultural rights and gender rights required to achieve an ideal vision of justice.

The International Covenants on Civil and Political Rights (ICCPR) and on Economic, Social, and Cultural Rights (ICESCR) and The Convention on the Rights’ of the Child both discuss the rights of women and children to the highest attainable standards of health, deeming the possibility of health risks associated with wearing the brass rings as violations of both of these Human Right instruments due to the lack of further investigation into significant physical consequences. Article 19 on the Convention on the Rights of the Child specifically explains that State Parties must "take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence."⁵⁹ The ICESCR additionally refers to the safety of working conditions and equality in work options for men and women in Article 7. Due to the economic incentives and exploitative nature of the practice of long neck tourism based on the absence of other work alternatives, the practice fails to ensure (a the very least) “Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work,” and “Safe and healthy working conditions,” “equal opportunity for everyone to be promoted in his employment to an appropriate higher level,

⁵⁸ The United Nations, *Declaration on the Elimination of Violence Against Women*, February, 23, 1994, <http://www.unhcr.ch/huridocda/huridoca.nsf/%28symbol%29/a.res.48.104.en>

⁵⁹The United Nations, *Convention on the Rights of the Child*, November 20, 1989, <http://www2.ohchr.org/english/law/crc.htm>

subject to no considerations other than those of seniority and competence;” all protections minimally guaranteed under Article 7.⁶⁰

The ICCPR and ICESCR both have identical statements in their preambles asserting that the “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.” This statement illuminates not only the illegality of restricting dignity through particular customs and traditions but particularly highlights the violation of mandating the necessity to do so for certain members of the family in order to encounter benefits for the entire family unit as a whole. The ICCPR does also mention cultural rights, declaring in Article 27 that “In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.” The ICESCR similarly guarantees the right to “Take part in cultural life,” in Article 15 (1). In exercising these cultural rights however, the ICCPR additionally provides a caveat, warning in Article 18 (3) that “Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.” The Covenant clearly places restrictions on cultural imperialism in cases where doing so violates the human rights of individuals, such as women in the case of long neck tourism. The health risks and restricted dignity, agency and movement of women upholding the long neck tradition must therefore be addressed in new solutions in order to create a call to action that adheres to the requirements present in human rights doctrines.

⁶⁰ The United Nations, *International Covenant on Economic, Social and Cultural Rights*, December 16, 1966, <http://www2.ohchr.org/english/law/cescr.htm> <http://www2.ohchr.org/english/law/cescr.htm>.

While the previously discussed human rights documents that Thailand has ratified provides an insight into the gap between the legal standards the nation has agreed to uphold and the provisions actually implemented on the ground in order to ensure the guaranteed protection of these universal rights in reality, the fact that Thailand has not ratified certain human rights instruments also illuminates an avenue for improvement. Thailand has not signed (nor ratified) the 1951 Refugee Convention and does not recognize the status of refugees. As a result, asylum seekers are not distinguished from other immigrants, legal or illegal.⁶¹ According to the UNHCR website, “The 1951 Convention relating to the Status of Refugees is the key legal document in defining who is a refugee, their rights and the legal obligations of states.”⁶² Signing and ratifying the Refugee Convention would serve to provide Thailand with a foundation for refugee reform that helps protect women of the Padaung tribe without eliminating the right of the culture to maintain its brass ring custom.

Because the Thai Constitution is the overarching body of Thai law, I would like to also highlight the legal standards presented in the constitution that encompass violations from the free practice of long neck tourism. The fact that the new Thai Constitution B.E. 2540 which was approved by the Parliament in 1997⁶³ has attempted to embody many of the human rights standards codified in the same International instruments listed above illustrates efforts by Thai authorities to emphasize the application of universal freedoms in Thailand—freedoms that make up the women’s rights being sacrificed as part of long neck tourism. The Kingdom of Thailand Ministry of Foreign Affairs website specifically brags, “The Constitution fully reflects the people’s aspiration towards human rights and human dignity.” The fact that the new constitution

⁶¹ The Kingdom of Thailand Ministry of Foreign Affairs website, “Human Rights Promotion in Thailand,” August 2005, <http://www.mfa.go.th/web/24.php>

⁶² <http://www.mfa.go.th/web/24.php>

⁶³ <http://www.mfa.go.th/web/24.php>

created mechanisms such as the Parliamentary Ombudsmen, the Administrative Tribunal, the Constitutional Court and the National Commission on Human Rights in order to guarantee the effective protection of human rights, further reflects the efforts of Thai authorities to associate International human rights principles into domestic laws.⁶⁴ The universal principles included in the Thai Constitution apply equally to women. As the same website explains, “All people can enjoy equal rights and fundamental freedoms irrespective of their origin, race, language, sex, age, physical or health condition, personal background or social standing, or religious belief.”⁶⁵ Section 4 of the Thai constitution specifically states, “The human dignity, right and dignity of the people shall be protected,”⁶⁶ illustrating obvious contradiction by the free practicing of long neck tourism in Thailand due to the questions of dignity raised as a part of “human zoo” accusations. The Perspective Policies and Planning for the Development of Women (1992-2011) was also formulated through the constitution to address constraints and vulnerabilities encountered by women, and also to identify strategies and actions for the full enjoyment of human rights by women, again reflecting an awareness of the need to enforce the rights of women in Thailand.⁶⁷ Legally speaking, Thailand has taken many appropriate steps to protect women’s rights in their constitution. But the fact that the Thai Constitution provides no information on the rights of refugees and offers no definition as to what a refugee is or guidelines on how the Thai authorities should regulate their movement into and out of Thailand offers the first hint to possible alternative solutions that neither sacrifice the rights of women or the Padaung culture.

Addressing the Treatment of Refugees in Thailand guarantees that the same standards used to uphold the rights of Thai women is also applied to Padaung women as well. Ratifying

⁶⁴ <http://www.mfa.go.th/web/24.php>

⁶⁵ <http://www.mfa.go.th/web/24.php>

⁶⁶ Constitution of the Kingdom of Thailand (2007), <http://www.asianlii.org/th/legis/const/2007/>.

⁶⁷ <http://www.mfa.go.th/web/24.php>

the 1951 Refugee Convention is therefore the starting point in altering the treatment of all Refugees, specifically the Padaung refugees, in Thailand. By using the Refugee Convention as a guideline in reforming Thailand's treatment of refugees, refugee specifications can be defined and the rights and protections of refugees can be codified in order to prevent the exploitation of Padaung women and increase the freedom of movement given to refugees. Using the Refugee Convention as a guideline would also provide a legal basis for Thailand to grant exit visas to members of the Padaung tribe thus increasing the amount of alternatives for Padaung women than having to stay in Thailand tourist villages.

Addressing and realizing the unique refugee situation that war in Burma has created within Thailand could be used to justify legal reforms such as granting refugees the opportunity to legally work in Thailand or to create a program that allows refugees the opportunity to become legal Thai citizens. Both of these suggestions create additional methods of income for Padaung tribe members in order to reform the sole income responsibility currently placed on women. Because many of the human rights critiques of long neck tourism revolve around the lack of agency for women participating in the practice, creating more options for movement and income/employment work to increase the ability of Padaung women to actually chose whether or not they want to uphold the cultural practice. Increased options for the Padaung tribe makes it unnecessary to simply prohibit the cultural practice altogether, but instead raises the possibility of correcting many of the human rights issue present within the practice.

Alternative Solutions

Based on the realization that the criminalization or prohibition of the long neck tradition is not a desirable goal since it eliminates the cultural sovereignty of the Padaung tribe, I have compiled suggestions in an attempt to reform the treatment of the neck wearing tradition that

enable the recognition of both women's rights and cultural rights. I have also considered the objectives of both Padaung women specifically and the general Padaung tribe in order to establish commonalities between the goals and desires of each group at hand. While women's needs include the right to safety and dignity, I argue that these needs also apply to the general Padaung tribe. Furthermore, the Padaung tribe possesses a need for cultural expression—a need which does not inherently contradict needs for safety and dignity. But continuing the practice of long neck tourism without any reform and adjustments carried out by the Thai government reflects the utilization of a strategy towards achieving cultural expression which does in fact violate the needs of Padaung women. In coming up with alternative solutions I am thus suggesting the need for alternative strategies to meet the needs of both groups at hand without sacrificing either group's inalienable rights. Because the tradition is both practiced and utilized in Thailand in order to gain profits from tourists, I also assert that the alternative suggestions require Thai actions in order to oversee the reform of the practice.

The first suggestion I offer is for Thai officials to facilitate more investigation into the risks of wearing the neck rings. In order to make Padaung women aware of the risks associated with the custom, UN doctors and researchers can be utilized to dispel the myths and misinformation interwoven into the practice so that more accurate information is available. Increased education through which women are informed of the facts that are known about the practice is the next important step. This leads to more informed decision making for the women in deciding if they will uphold the practice and thus decreases the stigmatization attached to not following the practice, thus increasing agency. Involve Padaung women in clarifying myths about the tradition before more definitive stances can be taken also brings more legitimacy into the process of balancing universal rights of women and the standards of relativity reserved for

the Padaung culture. Asking questions about the human rights concerns previously discussed is also a necessary step in addressing the human rights concerns that allow the tradition to trample women's rights without completely casting out the Padaung practice in general. Elders in the tribe can explain to Thai officials why children must start wearing the coils at such a young age. These discussions can raise the possibility of allowing the practice to begin later in a female's life so that the women participating are of an age to consent to following the customary practice. Adjusting the age in which women are asked to consider wearing the rings allows women to have agency over their participation in a practice while the Padaung culture is not forced to abandon the tradition.

The next suggested mode of change in the conflict of rights revolves about providing the women in the tourist villages with other ways to make a profit than having to wear the neck rings. Sustainable development models can be incorporated into the tourist villages through which women *and* men are taught skills and allowed to work in Thailand, thus allowing them to gain enough money to survive and compensate Thailand for the land they are living on. In the long term, the creation of tourist villages specifically for the Padaung may therefore no longer be needed because Padaung tribes will make a profit without tourism, and Thailand will also financially benefit from the ability of Padaung tribe members to work. Based on the fact that Padaung women are already accustomed to making crafts which they sell to tourists, the UN can also help facilitate a program through which Padaung crafts are sold abroad as a means by which to celebrate Padaung culture.

Considering the fact that the Padaung tribe consists of refugees from Burma, the reality exists that battling long-neck tourism requires solutions that do not only affect Thailand but Burma as well. "What is needed is Thailand's immediate action to enable international support

for cross-border aid and for the governments of SE Asia, China and India to support a UN Security Council Resolution on Burma”, Khu Thaw Reh, Mae Hong Son Area Coordinator for Burma Issues, a non-governmental organization working in Thailand, said.⁶⁸ Because of Thailand’s location to Burma and the vast array of Burmese refugees who have fled to Thailand, Thai officials must make it a priority to cooperate with the UN in treating refugees with the same human dignity that is emphasized in their own constitution in addition to making the rest of the International community aware of the consequences of war in Burma through their own first hand account. While the issue at hand is the treatment of the Padaung women, conflict transformation theory requires peace advocates to consider the root causes of the encounter in order to transcend rather than merely resolve the disagreement at hand. Because the placement of the tribal minority in Thailand is the result of the presence of refugees both Thailand’s treatment of refugees and the circumstances that caused the Padaung tribe to flee Burma must be addressed.

The issue of long-neck tourism in Thailand is an example of rights in conflict wherein the two groups in question are women and the Padaung tribe. While women are universally guaranteed a right to dignity and freedom from harmful practices, the Padaung tribe simultaneously holds the right to freely maintain their culture and to ensure the survival of their people as long as cultural practices do not in fact threaten the human rights of any individual. The idea of freedom to uphold a tradition to wear brass coils around the necks of women as necessary to maintain a component of culture, illuminates a situation grounded in cultural relativity. Whether or not we can even judge a culture’s practices is a question of what we praise more: applying universal rights or acknowledging the freedom of cultures to maintain their own

⁶⁸ Unrepresented Nations and Peoples Organization, “Karenni State: A People Targeted, Displaced, & Marginalized,” April 15, 2008, <http://www.unpo.org/content/view/8025/119/>

identity and traditions. And so, the idea of universal safety of women is brought into question when we have to consider the implications that protecting women from harm has on a culture. In long-neck tourism, however, the conundrum is further expanded when we consider the financial impact that the women who participate in long-neck tourism have on bringing in an income for members of the tourist villages and Thailand as a whole. Not only do their families financially benefit from them wearing coils around their neck in light of very dim alternatives, Thailand itself is financially benefiting from the tourists that are attracted to the villages hosting long-neck women. But even with the numerous difficulties and complications listed throughout this chapter in an attempt to highlight the added obstacles to resolving conflicts between universal rights and cultural relativity, I was still able to list suggestions that provide alternative results. The suggestions avoid trumping both women's rights and cultural sovereignty and instead address the various components of human rights violations in the long neck practice to those freedoms presented in CEDAW and other International treaties as well as protections listed in Thai domestic law.

Chapter 4

Case 2- Domestic Violence Policies in the US

In examining instances of overlapping rights between women and other minority groups, the issues of domestic violence and racial discrimination exist as two serious injustices that have the capability of interweaving with one another, creating an especially paralyzing reality for minority women who are forced to bear the burden of racial discrimination through domestic violence. Tagged by author Kimberle Crenshaw, the existence of “intersectionality” between racism and sexism can be specifically observed in issues of domestic violence in marginalized communities in the United States where female victims are forced to balance fears of racial stereotyping with their own safety concerns due to the abuse they receive at home. From reporting an act of domestic violence, to going through the court system to prosecute an abuser, female minority victims of sexual abuse and domestic violence are constantly in the face of conflict considering their rights to safety as women and their freedom from discrimination as a member of a racial minority group. While this chapter will examine how efforts to combat racism and sexism do come in conflict though domestic violence policies and practices, it is my intention to simultaneously highlight how the intersection of racism and sexism ultimately serve to heighten the degree of danger for minority women, illustrating a clear need for alternative solutions to handling domestic violence investigations.

About Domestic Violence

The intersection of racism and sexism manifests complications for female victims of domestic violence beginning with each victim’s ability and desire to report a case of abuse. To begin this chapter, I want to first examine proposed justifications for why minority women and immigrant women commonly do not, or simply can not, report cases of domestic violence.

According to feminist author Kimberle Crenshaw, in many instances of domestic violence in

minority neighborhoods in the US, immigrant women depend on their husbands for information regarding their legal status. In these cases, a husband has the ability to communicate to his wife that if she reports an act of domestic violence, once the police get involved, she will be deported. The women in this position are thus often faced with the understanding that reporting a crime of domestic violence will not only result on their own deportation, but also in the deportation of their entire family. Without a complete understanding of US law or legal policies to indicate otherwise, fear of deportation from contacting the police has the potential to create the belief that in order to ensure the safety and security of their family, women must refrain from involvement in any criminal proceedings, including those revolving around domestic violence.⁶⁹

Another factor that makes minority women less likely to report cases of domestic violence and seek help is the lack of resources available to them. The lack of resources providing information on the kinds of help and assistance available to victims of domestic assault makes it virtually impossible for many minority women to report acts of violence even if they want to. As Tina Shum, a family counselor, explains, “The typical immigrant spouse, may live in an extended family where several generations live together. There may be no privacy on the telephone, no opportunity to leave the house and no understanding of public phones.”⁷⁰ This blatant lack of resources illustrates the desperate need for better solutions to combat domestic violence. The restricted access to resources offering protection and support for minority and immigrant victims of domestic violence also leads to a limited understanding of investigation and court procedures for those women who do manage to report cases of abuse. As preliminary results from a Massachusetts survey indicate, a large number of minority and immigrant women

⁶⁹ Kimberle Crenshaw, “Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color” in *Feminist Frontiers*, Verta A. Taylor, Leila J. Rupp, and Nancy Whittier, (New York: McGraw Hill Higher Education, 2009) 432.

⁷⁰ Crenshaw, 432.

do not only lack a cohesive grasp of the court system, they also receive little assistance in understanding and managing court proceedings.⁷¹

Understanding the difficulty in obtaining resources also requires an examination of the socioeconomic status of women in minority neighborhoods. While economic standing does not have a direct correlation to the rate of domestic violence abuse, those from a lower class financial situation require the most need for services and protection programs in order to be capable of leaving an abusive intimate partnership. Based on statistical outcomes that highlight the strongest patterns of poverty among minority communities (specifically African American communities) and women,⁷² African American and other females require an abundance of support remedies to escape domestic violence situations rather than the current disconnect between need and supply.

In addition to the basic lack of resources such as a telephone, Crenshaw explains that minority women experience difficulty reporting cases of domestic violence due to language barriers and a lack of bilingual resources regarding assistance for victims of domestic violence. Although statistics stating that that Latina, South Asian, and Korean female immigrants experience rates of domestic violence extending from 30% to 60%,⁷³ demonstrating the large numbers of minority women affected by domestic violence every year, language barriers limit victims' access to information about available security shelters. Even if minority women manage to locate a shelter, many safe havens go as far as turning women away who can not

⁷¹ US Human Rights Network. "Domestic Violence/Access to Court Proceedings: Response to the Periodic Report of the United States to the United Nations Committee on the Elimination of Racial Discrimination," February 2008,

http://www.ushrnetwork.org/files/ushrn/images/linkfiles/CERD/15_Domestic%20Violence.pdf, 4.

⁷² Lisa M. Martinson, "An Analysis of Racism and Resources for African-American Female Victims of Domestic Violence in Wisconsin," *Wisconsin Journal of Law, Gender and Society* 16.2 (Fall 2001),

<http://academic.udayton.edu/health/01status/violence05.htm>, 1.

⁷³ Giselle Aguilar Hass, Nawal Ammar & Leslye Orloff, "Battered Immigrants and U.S. Citizen Spouses," *Legal Momentum*, April 24, 2006, <http://legalmomentum.org/legalmomentum/files/dvusc.pdf>, 1.

speak English due to a lack of bilingual resources and staff.⁷⁴ The need for better translation capabilities is especially obvious in court room procedures when a female victim's ability to properly communicate information has a direct correlation to the outcome of her domestic violence trial. As Purvi Shah, Executive Director of Sakhi for South Asian Women, Testimony to Matrimonial Commission explains, "If a court interpreter does not adequately present a survivor's case, her whole life—and her children's lives—can be affected."⁷⁵ Interpretation issues can also lead cases to be delayed, specifically due to the lack of available interpreters. In many states, even when courts make attempts to provide interpreters at trials, these interpreters are not provided for the first stage of domestic violence investigations when victims lacking English proficiency most require assistance in determining how to file an Order for Protection.⁷⁶

A lack of resources and dependence on husbands for outside information can easily be resolved with more attention and money spent to address the issue of domestic violence. If we publish more bilingual manuals dispelling myths about deportation when reporting cases of domestic violence, and make these manuals available in supermarkets, hospitals and community centers, we can better provide victims with an accurate account of what reporting domestic violence entails. If we create more shelters with bilingual staff, we can also publish information on contacting these shelters. In addition, stickers directing victims of domestic abuse to toll-free hotlines can easily be placed on public phones, along with very simple instructions on how to dial these hotlines in numerous languages. These are seemingly simple solutions to the issue of domestic violence. The difficulty however, comes into play when the issue of domestic violence interweaves with situations of racial discrimination.

⁷⁴ Crenshaw, 435-436.

⁷⁵ "Domestic Violence/Access to Court Proceedings," 6.

⁷⁶ "Domestic Violence/Access to Court Proceedings," 6.

Combining Race and Gender

When race and culture are taken into account, the suppression of cases of domestic violence becomes greater and more complicated. As Nilda Rimonte, director of Everywoman's Shelter in Los Angeles describes, "In the Asian community, saving the honor of the family from shame is a priority. Unfortunately, this priority tends to be interpreted as obliging women not to scream rather than obliging men not to hit."⁷⁷ Women of color experience additional cultural influences that can lead to the silencing of victims of domestic violence. As Kimberle Crenshaw explains in her article, *Mapping Margins: Intersectionality, Identity Politics, and Violence Against Women*, "Women of color are often reluctant to call the police, hesitancy likely due to a general unwillingness among people of color to subject their private lives to the scrutiny and control of a police force that is frequently hostile."⁷⁸ Fear of racial discrimination by police officers and belief in a lack of effectiveness of police investigations to bring domestic violence perpetrators to justice serve as underlying factors in the competing dangers of racism and sexism in the minds of minority and immigrant female victims of domestic violence. A study performed regarding sentencing patterns in Arizona served to strengthen these very fears when results indicated that domestic violence perpetrators were on average, less likely to be convicted than those individuals charged with the same crime without a domestic violence designation. Of these same perpetrators, however, African-Americans had higher rates of prison sentences than white perpetrators.⁷⁹

Feminist author Mindie Lazarus-Black similarly considers the influences that "cultures of reconciliation" play in constructing attitudes towards reporting abuse for those minority women

⁷⁷ Crenshaw, 433.

⁷⁸ Crenshaw, 433.

⁷⁹ David Wells, "Domestic Violence Prosecutions: Inequalities by Gender and Race Perpetuated in Arizona," For *The Arizona Coalition Against Domestic Violence* (September 2003), <http://www.asu.edu/news/research/ACADVReport.PDF>, 1.

capable of doing so despite the barriers previously described in this chapter. Lazarus-Black expands upon the culture of reconciliation present in Trinidad, where ingrained patterns suggest that family matters are private in nature and must be reconciled within the home, thus contradicting laws which insist that domestic violence is a public, not private issue, that must be reported in order to address it legally. Accepted cultural norms and fears ingrained throughout generations even after individuals have immigrated to the US, thus serve to interrupt domestic violence sources emphasizing the need for women to report instances of abuse to the authorities. Cultures of reconciliation additionally incorporate notions of gender hierarchy, which manifests itself as the common practice of women meeting the commands of their husbands due to the simultaneous insistence placed on compromise for handling private family matters. According to Lazarus-Black, the influences of cultures of recognition have led to a trend of victims disappearing from the court rooms in an effort to gain cultural acceptance by handling domestic violence privately.⁸⁰

Perceptions of foundational racial discrimination tied to the court system not only extend to fears of exposing male perpetrators to biased and thus unjust system but also spill over to racial stereotyping of victims. Results from a study claim that “women of color are often not seen as victims and thus do not receive appropriate attention” from individuals working on the court cases involving minority women.⁸¹ As Lisa M. Martinson explains, stereotypical perceptions of African-American women as aggressive individuals lacking the credibility and vulnerability traditionally tied to white victims of domestic violence, translates to the need for African-American women to have to prove that they are in fact victims by highlighting that she

⁸⁰ Mindie Lazarus-Black, *Everyday Harm: Domestic Violence, Court Rites, and Cultures of Reconciliation*, (Urbana: University of Illinois, 2007) 8.

⁸¹ C. Cuthbert, “Battered Mothers Speak Out: A Human Rights Report on Domestic Violence and Child Custody in the Massachusetts Family Courts,” Wellesley Center for Women, (2002), 37.

is suffering from “circumstances that are not her fault.”⁸² By not instantly recognizing African-American women as victims, they are at a significant disadvantage in pursuing support and protection mechanism and experience perceived illegitimacy from judges, lawyers and advocates working on their cases, leading to increased chances of case dismissal and imminent danger due to a lack of victim assistance.

While the examples of both Asian communities and African American communities discussed previously illustrate a cultural component of shame incorporated into the challenges of defeating domestic violence, massive media cues reveal similar attempts to place the responsibility for preventing forms of sexual and domestic violence on women. Ads for self-defense courses, pepper sprays, rape whistles and chemicals to test if one’s drink has been tampered with illustrates the presentation of products and services to women in order to defend themselves against violence. In the article “Fighting Bodies, Fighting Words: A Theory of Politics of Rape Prevention,” author Sharon Marcus justifies the need to place responsibility in the hands of women rather than men as a way to empower women as having control of what happens to their bodies.⁸³ Other feminist authors indicate the focus on women as an underlying issue in the fight against domestic violence. Lynne Henderson, for example, describes patterns of assumed “male innocence and female guilt,”⁸⁴ to be at the center of arguments for equipping victims with responsibility to defend themselves in order to prevent a rape from occurring rather than placing collective responsibility on society to influence men to stop committing acts of domestic and sexual violence.

⁸² Martinson, 1.

⁸³ Sharon Marcus, “Fighting Bodies, Fighting Words: A Theory of Politics of Rape Prevention,” in *Feminists Theorize the Political*, ed. Judith Butler and Joan Scott, (New York and London: Routledge, 1992).

⁸⁴ Lynne Henderson, “Rape and Responsibility,” *Law and Philosophy* 11.1/2, *Philosophical Issues in Rape Law* (1992): 130.

In addition to social cues which place responsibility on women to defend themselves against sexual and physical violence, as eluded to previously, the fear of police involvement for minority women is increased due to suspicions of racial stereotyping by police officers. Statistics indicating the predominance of minority men in the prison system supports fears (whether they are or are not justified) that police will uphold stereotypes. Lisa Martinson explains the perceived concern of reporting cases of domestic violence in an African-American community as presenting a two-fold risk for black female victims. Firstly, the possibility exists that reporting the violence may reinforce negative stereotypes of the African-American community by the general public due to an assumed "readiness of the outside society to label or blame these acts of violence as racially predictable." But African-American women deciding whether or not to report cases of domestic violence also risk facing ostracism within their own communities if others view their reporting of abuse as a contribution to racial stereotypes. The added component of culture therefore creates what Martinson identifies as a "dilemma" for African American women when "[p]reserving cultural identity often requires strong allegiance to the community as a whole, causing women to choose between fear of rejection or continued violence."⁸⁵

Politics also plays a role in the overlapping nature of the issues of racial discrimination and domestic violence. When Kimberle Crenshaw attempted to get statistics from a Police Department which would explain how many arrests for domestic violence occurred in each racial group, the police refused to release the statistics. A police informant explained that, "representatives from various minority communities opposed the release of the statistics. They were concerned, apparently, that the data would unfairly represent Black and Brown communities as unusually violent, potentially reinforcing stereotypes that might be used in

⁸⁵ Martinson, 1.

attempts to justify oppressive police tactics and other discriminatory practices.”⁸⁶ So, the fear that statistics will support an unfounded stereotype that categorizes minority men, especially Black men, as violent, prevents the statistics on domestic violence from even being revealed. This fear that making the public aware of the growing number of cases of domestic violence will add to racial stereotypes in turn places one issue as more important than the other and presents the victims of domestic violence and racial stereotyping as competing victims.

Successful Domestic Violence Programs

It is my belief women should not have to pay the price for racial discrimination by exposing themselves to unchecked domestic violence. And in order to figure out solutions to domestic violence that do not support racially discriminating stereotypes, I want to examine domestic violence programs which have encountered success once put into effect.

In the article, “San Diego program has reduced domestic slayings by half,” for example, readers learn about an established domestic violence program that combines the efforts of police officers, court officials, hospital staff and social workers in order to handle the needs of domestic violence victims in a sensitive and effective way. More than 200 people comprising of hospital staff, police, prosecutors, court officials and workers from various community programs started meeting in 1989 to see what could be done as a response to the growing number of domestic violence crimes, yet the small number of cases that were actually reported by the victim. As a solution, in 1990, the Domestic Violence Unit was created in the San Diego police department. The idea of the unit was to combine the efforts of various agencies and to train each agency vigorously on how to handle domestic violence cases by paying closest attention to the victims.⁸⁷

⁸⁶ Crenshaw, 432.

⁸⁷ Boyle article

Police officers were trained on how to best address questions to victims of domestic violence. “You don’t ask if this happened before, you ask how many times has this happened before,”⁸⁸ Sgt. O’Dell, head of the domestic unit explained. The job of the police officers handling the cases changed as well. Their tasks no longer entailed simply investigating the scene and giving victims “cursory information on their rights.” Instead, police officers now made it their job to make sure these cases made it through the court system at a fast pace. They also provided the female victims with information on where to get help, providing them with contact information on shelters and hotlines. Doctors and nurses participating in the program are also trained in domestic violence cases. So, police officers automatically bring all domestic violence victims to the hospital, where nurses and doctors take notes on the victims’ injuries and take pictures when necessary. At the same time, however, hospital staff members remember to deal with the victims in a kind, sympathetic matter, paying attention also to what the victims have to say.⁸⁹

Prosecutors are also involved in the program, beginning with the \$800,000 within The Office of the San Diego City Attorney being spent on a special unit just to handle cases of domestic violence. With eight attorneys, two investigators and 11 other staff, the office decides whether or not to press charges, not the victim. So, since under this program the victim is not required to sign a formal complaint in order for prosecution to occur, victims can not be coned into refusing to press charges. Since the program proceeds without the formal complain of the victim, the fault is taken away from the victims. It no longer becomes a women’s responsibility to protect her family from shame because the proceedings will occur regardless of her

⁸⁸ Boyle, 1.

⁸⁹ Boyle, 1.

compliance with the police, taking the proceedings out of her hands. This forces the perceived responsibility to be placed on the battering husbands instead of the abused wives.⁹⁰

Once the police get involved, victims are also interviewed by a “full-time victim/witness advocate”, and after the domestic violence suspect first appears in court, the city attorney also asks the court to issue a stay-away order. This acts to give the victims the appropriate information they need to understand what is going on within the court proceedings, and to provide them with protection from their husbands once the court proceedings begin. Help is also provided for the batters, since they are required to participate in one of the 19 different counseling programs in the city for a year in order to provide them with treatment. Sgt. O’Dell explains that the city-wide program has two aims: to keep the victim safe and to gather enough evidence to prosecute.⁹¹

As a result of the combined efforts, the program has led to a significant drop in domestic violence murders and a huge surge in the domestic violence crimes reported in San Diego. The Program itself has required a change in attitude for all the agencies involved in the program, along with a change in policy. In California, police are not mandated to make an arrest when the assault has not taken place in front of the officer. In other states, such as Massachusetts, arrest is mandatory. But the San Diego Program has addressed this inadequate policy and now automatically arrests batters, bringing them directly to the domestic violence unit “to be booked and interviewed.”⁹²

As this successful program has illustrated, coming up with a solution in order to address domestic violence requires the cooperation of a number of different agencies. Police need to be aware of the victims’ fears, especially those regarding bringing shame to the family and adding

⁹⁰ Boyle, 1.

⁹¹ Boyle, 1.

⁹² Boyle, 1.

to racial stereotypes. With an understanding of the victims' fears and concerns, police are able to handle the situation in a professional way, which provides victims with immediate and secure assistance. The victims must also be convinced that if they do decide to report a case of domestic violence, that doing so will protect them. And the fact that the prosecutor's office decides to press charges instead of the victim, helps conquer the myth that the victims are "responsible" for their husbands' arrests: instead the prosecutor's office decides, so it is out of the women's hands.

Maureen Boyle's article "Experts say more must be done to aid women in crisis," also addresses more of the actions that must be taken to combat domestic violence. In addition to some of the steps I mentioned earlier, such as the creation of more bilingual security shelters, Maureen Boyle's article suggests the creation of resources such as job and skill building workshops, aiming to prepare women for economic independence so they do not have to feel obligated to stay with battering husbands in order to survive economically. This article also includes a need for better policy regarding cases of domestic violence. When restraining orders are filed against battering husbands, but visitation for the battering husband to see his children is mandated by the court, complications arrive. The article discusses one case where a woman was shot by her husband when he arrived at the house to visit the children. As Ms. Stiles, head of the Massachusetts Coalition of Battered Women Service Groups explains, "She had done everything right in terms of the police and the court order, and she had her address impounded. [But] he knew she would be there dropping off the kids."⁹³

In the article "Being Tough, and Helpful, on Domestic Abuse" we learn about another Domestic Violence Program created in Nassau County in New York to address the unsuccessful attempts to address domestic violence in the past. Nassau County, like Massachusetts and San

⁹³ Boyle, "Experts say more must be done to aid women in crisis"

Diego, implemented a mandatory arrest policy for batterers, based on the same logic present in the San Diego Program: “Even if a victim changes her mind and decides not to press charges, it’s out of her hands.”⁹⁴ The program also stresses the importance of having social workers on board. As District Attorney Denis Dillon explains, “Rather than having an assistant District Attorney call the complaining witness, a certified social worker now makes the first contact with the victim to reach out immediately after the complaint is made.”⁹⁵

The social workers help the victims assess their safety risk, assisting the victims in procedures ranging from changing the locks to providing victims with cell phones or transmitters with a direct line to the police. The social workers also help the victims in navigating the judicial system and assist victims in securing resources such as shelters, parenting classes, health care, and job training. These workers also help victims finding jobs and locate new housing and legal services.⁹⁶

Alternative Solutions

Added difficulties and challenges making minority and immigrant women particularly susceptible to domestic violence without a perceived existence of productive assistance are due to a combination of factors. Unawareness of support resources, a lack of understanding of legal rights and options regarding protection from an abusive intimate partner and assumed discrimination of police officers and judges are combined with the need for a more efficient justice system that incorporates culture and gender sensitive training, appropriate interpretation services and improved efforts to make victims aware of remedies such as protection orders. The incorporation of shame into the cultures of domestic violence victims are further reinforced by a

⁹⁴ Swirsky, “Being Tough, and Helpful, on Domestic Abuse”

⁹⁵ Swirsky, “Being Tough, and Helpful, on Domestic Abuse”

⁹⁶ Swirsky, “Being Tough, and Helpful, on Domestic Abuse”

media emphasis on female responsibility to protect oneself rather than male responsibility to refrain from violence and discriminatory images of the “ideal” victim of domestic violence. While the list of barriers to balancing the rights of women and minority men is extensive and complicated, each challenge mentioned offers the possibility for establishing alternative solutions to domestic violence that considers the concerns and fears of domestic violence as both females and members of minority or immigrant communities.

In an effort to transform the conflict between racist and sexist tendencies in domestic violence cases I first want to utilize Galtung’s emphasis on indicating the common needs of either side in a conflict in order to evaluate the shared goals between both women’s rights advocates and anti-racism advocates. Female victims of domestic violence wish to have their right to be protected from violence upheld. This entails fair prosecutions which render them safe from their abusers. Members of all minority communities wish to be free from discrimination and racial stereotyping. This includes the prevention of racial targeting and assumptions based on immigration status and ethnic background. Both women and members of minority communities therefore share a desire to be free from harm. In discussing any and all alternative practices for investigating domestic violence cases, the prevention of harm for women and men alike of every minority group must be held up as the end toward which the solutions are a means to achieve.

In allotting resources and police presence to those areas with highest risks of domestic violence, common beliefs within African American communities “that racism always trumps sexism” and that the “hierarchy of interests within the Black community assigns a priority to protecting the entire community against the assaultive forces of racism,”⁹⁷ must be both realized and addressed in determining alternative solutions to the current state of domestic violence

⁹⁷ Martinson, 1.

policies and investigative practices. Assumptions can not be made that African-American victims of domestic violence do not exist when a lack of cases are reported until further actions are taken to alter the mindsets of both female and male members of minority communities concerning domestic violence. By considering the intricacy of the realities of minority women, where racism and sexism interweave to create a complicated series of concerns raised from the mere possibility of reporting abuse, the development of new domestic violence resources can integrate the experiences of all victims of abuse to make assistance mechanisms equally effective for minority victims. As Martinson explains, “If the resources took into account all victim concerns and realities, the victims would likely feel more comfortable using the resources. Just as resources, such as a shelter, do not ignore facets of a victim's life such as whether she has children or a disability, so should the resource not ignore whether the victim is African-American.”⁹⁸ Inextricable factors such as race and ethnicity must be incorporated into all solutions on how to lower domestic violence occurrences in order to assess what modes of help must be available for victims of minority communities.

One of the biggest platforms for change in domestic violence policies in the US therefore revolves around providing resources and information about domestic violence in a culturally and racially sensitive manner. Women and men must be involved in expanded dialogue about domestic violence so that the overarching umbrella of “harm” can be properly addressed as a means of relating the struggle of minority men to escape the harm—both physical and emotional—that results from stereotyping and structured racial discrimination in arenas such as the workforce to the consequences that arise for women as a result of the harm inflicted on them by intimate partners in domestic violence scenarios. Involving churches and community centers in providing information to members of minority communities about domestic violence statistics,

⁹⁸ Martinson, 1.

assistance and counseling that exists for victims of domestic violence, and resources that offer support for victims of racial, ethnic or cultural stereotyping and discrimination allows institutions entwined in minority communities to approach the conflict without involving outside voices of authority. The utilization of these institutions therefore allows for culturally-relevant sources of authority to transform the perceived responsibility of women to prevent stereotyping of the community by refraining from reporting cases of abuse.

Mandated police and judicial training programs and prison reform movements must also be tied into efforts to address the interlaced fear of police mistreatment and stereotyping that has instilled fear into reporting cases of abuse to the authorities and reinforced the underlying premise in cultures of reconciliation that matters affecting the family are better handled privately rather than publicly. Currently, training on domestic violence for judges and individuals involved in the justice system is not mandatory. Those states that do provide domestic violence training often do not integrate the issue of race into their training and financial restraints and inadequate funding also serve to limit the efficiency of current required education and judicial training programs already in existence.⁹⁹ Gender and culture sensitive training can be initiated with proper funding in order to train police officers on how to properly respond to reports of domestic violence, indicating methods on the type of questions to ask both victims and perpetrators and the appropriate information to provide to domestic violence victims with language and culture appropriate resources for emotional assistance. Training in victim-interaction will enable police officers or specially assigned advocates to offer information about restraining orders and the judicial process to victims of domestic violence at the very start of the investigation. Incorporating the work of NGOs which already consider the intersection of race, ethnicity and gender in responding to cases of domestic violence will allow the expertise of

⁹⁹ Supreme Judicial Court of Massachusetts, *Gender Bias Study of the Court System in Massachusetts* (1989), 59.

individuals well versed in the overlapping issues of racism and sexism to filter into the operation of domestic violence investigations.

Utilizing media to illustrate domestic violence as an issue that affects every community will serve to alter cultural assumptions regarding reporting and prosecuting domestic violence cases. While statistics indicate that the rate of African-American women experiencing intimate partner violence exceeds the rate that white women experience intimate partner violence by 35%¹⁰⁰, current media attention to this phenomenon is consistently misleading. Lisa Martinson uses the example of a television special on the Violence Against Women Act put together by 48 hours to illuminate the media focus on white victims of domestic violence rather than minority victims. Of the seven women introduced in the television special due to their experiences as domestic violence victims, six of them were white. The only black woman introduced in the program was not accompanied by anecdotal stories and a humanized account of her life as the other women were. Oppositely, the black victim's name was omitted and only the image of her bruised and beaten face was revealed to the audience, eliminating any opportunity for the audience to connect with the realities of her experience. While changes in the domestic violence movement have sought to deliver the message that domestic violence affects all communities, including even upper white class neighborhoods, positive gains such as the "creation of new methods and tools to fight domestic violence in society"¹⁰¹ have been made at the expense of minority women whose particular susceptibility to domestic violence has in many cases been ignored.

¹⁰⁰ Patricia Tjaden & Nancy Thoennes, U.S. Department of Justice, Full Report of the Prevalence, Incidence, and Consequences of Intimate Partner Violence Against Women: Findings from the National Violence Against Women Survey (2000), <http://www.ojp.usdoj.gov/nij/pubs-sum/183781.htm>.

¹⁰¹ Martinson, 1.

Recognizing the economic status of minority victims of domestic violence also reveals the need for the creation of sources of assistance that are geared towards women of lower financial standing. In a 1998 study, over 50% of the African-American women interviewed indicated decisions to remain with their battering partner because “they did not think they could support themselves and their children alone.”¹⁰² Reinforced by data revealing that a disproportionate amount of African-American women in the United States are living in poverty, the fear of financial stability after leaving an abusive intimate partner requires that programs are developed to educate women in financial management and to provide various skill training which grants women employability if having to survive independently. Absence of economic security and knowledge of the working of the legal system shine light on additional problems that must be addressed in order to balance women’s rights and minority rights through attempts to implement broader approaches to meeting the diverse needs of domestic violence victims. Parallels between patterns of poverty and the lives of women also require policy changes that seek to improve the economic status of women. Low socioeconomic status may not make women more susceptible to domestic violence but it does hinder success in court based on the forced dependence on court provided lawyers—especially in light of distrust of the court system among minority communities.

Legal Analysis

Both domestic law and International human rights covenants and agreements illustrate the need for the US to take efforts to transform the current conditions accompanying domestic violence policies. The US’ failure to ratify CEDAW reflects the same de-prioritization of women’s rights that this thesis intends to reverse. By ratifying CEDAW, the US government

¹⁰² Matinson, 1.

would be able to establish a sense of legitimacy towards the country's resolve to ensure that women live free from harm both inside and outside of the home. While the US has signed and ratified the International Convention on the Elimination of All Forms of Racial Discrimination of the United Nations in 1965, the definition of racial discrimination provided in the convention is expressed as: "Any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life."¹⁰³ This codified explanation of prejudice therefore does not extend to gender discrimination. In order to approach the challenges of domestic violence due to the intersection of sexism and racism, the US must expand the forms of racism recognized by ratifying CEDAW in order to highlight the government's recognition of the particular forms of discrimination experienced by women. In CEDAW specifically, the intersection between gender and race is highlighted by the convention's explanation that the "eradication of apartheid, all forms of racism, racial discrimination, colonialism, neo-colonialism, aggression, foreign occupation and domination and interference in the internal affairs of States is essential to the full enjoyment of the rights of men and women."¹⁰⁴ While CEDAW is considered a human rights mechanism for claiming rights for women, its expansion to eliminating discrimination for both men and women regarding gender and ethnicity make it a foundational mechanism for transforming domestic violence investigations in the US.

Provisions in CEDAW also express an appreciation of tasks traditionally associated with women such as motherhood, child care and domestic responsibilities. Ratifying this document

¹⁰³ The United Nations, *International Convention on the Elimination of All Forms of Racial Discrimination*, December 21, 1965, <http://www2.ohchr.org/english/law/cerd.htm>.

¹⁰⁴ *Convention on the Elimination of all forms of Discrimination Against Women*

therefore serves to illuminate the country's resolve to re-prioritize and place value on the work of women occurring within the private sphere. Based on the fact that cases of domestic violence predominately occur within the private sphere, endorsing CEDAW helps to question inscribed mindsets that make up the cultures of reconciliation that Lazarus-Black refers to—a step that Galtung refers to as necessary in transcending conflict.

While the Violence Against Women Act has led to the creation of additional legal methods to address domestic violence and assist victims, the absence of accountability mechanisms have prevented stereotypes of police discrimination from dissolution and have reinforced negative attitudes based on impressions of the court system's failure to achieve justice and protection for victims. Statistics indicating that 60% of protective orders were violated within a year of their issue date and that almost one third of women with orders of protection report “violations involving severe violence,” reflect the need for better police relations in the communities most affected by domestic violence—a solution which first requires the elimination of associations between the authorities and racism.¹⁰⁵

The Declaration on Violence Against Women additionally highlights the need for alternative solutions to addressing domestic violence based on a series of violations to the human rights explained in the document. The preamble of the Violence Against Women Act expresses concern that “some groups of women, such as women belonging to minority groups, indigenous women, refugee women, migrant women, women living in rural or remote communities, destitute women, women in institutions or in detention, female children, women with disabilities, elderly women and women in situations of armed conflict, are especially vulnerable to violence,”¹⁰⁶ yet the failure of the US government to allot resources and support mechanisms to

¹⁰⁵ “Domestic Violence/Access to Court Proceedings,” 7.

¹⁰⁶ *Declaration on the Elimination of Violence Against Women*

women in these susceptible groups has illuminated a failure to properly address these understandable concerns. Furthermore, in Article 4 the Violence Against Women Act requires states to refrain from invoking “any custom, tradition or religious consideration to avoid their obligations with respect to its elimination (of violence against women).”¹⁰⁷ Court and police prejudices must therefore be addressed through adequate training as well as the simultaneous incorporation of education into minority and immigrant communities in an effort to reform the perception of women in the minds of various cultures and races.

Specific rights listed in the ICCPR draw attention to the legal shortcomings of domestic violence practices. Article 2 (3a) requires states “To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy” and in Article 2 (3b) “To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities.”¹⁰⁸ While the importance of police and court cooperation in pursuing a case is thus presented as a right, without the availability of translation services, counseling, bilingual instructions and bias-free judgments, domestic violence victims can not encounter the justice they are guaranteed in the human rights document. Furthermore, Articles 9, 10, 11, 14 and 15 refer to the treatment of any individuals charged with and/or convicted of a crime, including rights for individuals facing a criminal trial and for those who are imprisoned.¹⁰⁹ The failure of investigation units and the court system to uphold these expressed rights have led to the very assumptions about the legal system that are at the foundation of pressures on women to not come forward to report cases of domestic violence. The US must therefore re-assess justice system practices and the mindsets of officers in order to

¹⁰⁷ *Declaration on the Elimination of Violence Against Women*

¹⁰⁸ The United Nations, *International Covenant on Civil and Political Rights*, December 16, 1966, <http://www2.ohchr.org/english/law/ccpr.htm>.

¹⁰⁹ *International Covenant on Civil and Political Rights*.

help dispel the same stereotypes that have created the conflict between women's rights and the rights of ethnic and cultural minority groups.

In addition to the International laws that the US is responsible for adhering to, the existence of the US Bill of Rights underlines a human rights framework already present in US domestic law. Amendments V, VI, VII and VIII all consider the rights and protections of every individual to a fair and speedy trial and to just treatment as an accused person.¹¹⁰ As was explored in the above paragraph, upholding these professed rights requires better training and education of police and court officers and judges, including gender and culture preparation that serves to eliminate racial biases and prejudices that plague ethnic minority groups involved in the legal system. Domestic violence is also specifically discussed in the US constitution in Article 4, Section 4 stating, "The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence."¹¹¹ While equality, liberty and pursuit of happiness are all guaranteed rights under US domestic law, the absence of better solutions to eliminate the prominence of domestic violence crimes, specifically in minority neighborhoods has again depicted a disconnect between the declaration of human rights and protections and the provision of the actions and resources necessary to uphold these rights in reality.

Analyzing the International and domestic laws that the US government is bound to has served to both illustrate a gap between the declaration of fundamental rights for every individual and the provision of the resources and protections that enable those same rights to be upheld in practice, and the lack of attention to gender issues echoed by the absence of the US in the

¹¹⁰ The Bill of Rights, <http://www.earlyamerica.com/earlyamerica/freedom/bill/text.html>

¹¹¹ The United States Constitution, <http://www.usconstitution.net/const.html>

ratification of conventions, such as CEDAW, which reinforce the importance of eliminating gender inequality. In spite of the overlap between racism and sexism which serve to place women as victims in the conflict between ensuring female rights and minority rights, certain domestic violence units and practices have been created that consider the present difficulties of violence against women and the past precedence of racism in the court system and police interactions which offer a series of challenges and dangers for domestic violence victims. As Galtung's theory of transcendence requires, these considerations of the present, past and future conditions of the conflict between racism and sexism present in domestic violence policies in the US call for prescriptions for alternative strategies that enable the needs of women and minority cultural and ethnic groups to be met without requiring the usurpation of either set of rights. Using the establishment of successful domestic violence units as a starting point for determining areas of improvement in investigation practices and resource allocation, the epicenter of the conflict was considered in order to address underlying issues such as economic inequities, language barriers and cultural perceptions based of fear and assumptions. The solutions that I offer for transcending the conflict between women's rights and cultural rights in domestic violence therefore do not offer any "quick fix" resolutions. Instead education, skill building, dialogue, and sensitivity training are a few of the many strategies required to alter the mindsets within minority communities regarding the role of women as well as to readjust the stereotypes that court officers have when dealing with minority victims and perpetrators.

In each of the successful programs I highlighted in this chapter, the appropriate provision of funds is a common source for the implementation of strategic mechanisms to addressing domestic violence in a manner that is both gender and culturally or racially aware. While the programs are located in various areas of the country and they have differing minority

populations, they all have the funding necessary to make their programs work. Increased funding could additionally be applied to developing multilingual education programs (again in community centers, churches and local schools) that educate individuals in minority and immigrant communities on their legal rights, incorporating information for women on where to locate resources that provide protection from domestic violence. Educational programs taught in appropriate languages will again help to address cultures of reconciliation and violence and beliefs on gender inequality. While difficulties and challenges do inevitably exist in the epidemic of relationship violence, the conflict in rights between women and minority groups does in fact offer the possibility of transformation due to the vast array of creative mechanisms of change available for utilization.

Chapter 5 ***Conclusion***

When considering what human rights are, many will give descriptions of guaranteed freedoms and principles that are fundamental and universal. Rights that allow individuals to live free from harm and violence or to freely maintain one's own culture therefore immediately come to mind. Difficulties, however, begin to arise when we observe instances of overlap between rights. When two of those rights that we consider fundamental and necessary suddenly intersect, the conflict between two universal freedoms force us to consider which of the two rights we will uphold and which of the rights we chose to sacrifice. But in sacrificing one of the rights in conflict, the vulnerability of universality comes into light.

The valuing of cultural relativity stems from the understanding that the diverse viewpoints and experiences of every culture leads to varying understandings of moral ideals. The standards put forth in human rights can therefore be interpreted and applied differently within each ethnic or cultural group. Diana Ayton-Shenker draws the conclusion that, according to this view, "human rights are culturally relative rather than universal."¹¹² But considering the negative implications for the legitimacy and efficiency of international human rights mechanisms if certain universal standards of safety and dignity are not enforced by every member of the global community, this paper posits the simultaneous existence of universal principles and diverse mindsets and perspectives. Ayton-Shenker specifically points out that "The flexibility of human rights to be relevant to diverse cultures is facilitated by the establishment of minimum standards and the incorporation of cultural rights."¹¹³ It is therefore through the codification of the necessary criteria for upholding human worth as reflected within covenants such as the

¹¹² Ayton-Shenker, 1.

¹¹³ Ayton-Shenker, 1.

International Covenants on Civil and Political Rights and on Economic, Social, and Cultural Rights, that boundaries are created in which states have the opportunity to embrace cultural diversity “without diluting or compromising the minimum standards of human rights established by law.”¹¹⁴

Much of the difficulty in evaluating conflicts of rights come from the overarching reality that the same movements utilized to promote a certain groups rights have failed to incorporate the rights of other groups. In both Long Neck Tourism in Thailand and Domestic Violence policies and practices in the US, the two groups in conflict do hold one outstanding factor in common: they both contain women. When we examine the rights of minority ethnic and cultural groups, women are inherently members of these same groups whose rights have traditionally gained priority over the universal protection of women. The very presence of women in the same groups of individuals whom rights intersect universal female rights illustrates the requirement to end the perceived necessity of employing one sole strategy to meet the needs of a group and to replace that exclusivity with a newfound effort to recognize the gender, ethnic and cultural differences in every community in order to include the experiences of all individuals in reaching end goals and resolving instances of conflict. Kimberle Crenshaw’s theory of intersectionality highlights that holding feminism and anti-racism as separate disciplines furthers the conflict between the rights deriving from their relative movements. Failure to address the intersections between feminism and anti-racism leave the goal of promoting the rights of women to feminism and the goal of ending racial, ethnic and cultural stereotypes to the anti-racism movement respectively. But the exclusivity of efforts to combat patriarchy and racism leads to a scenario where “one analysis often implicitly denies the validity of the other.”¹¹⁵ While this

¹¹⁴ Ayton-Shenker, 1.

¹¹⁵ Crenshaw, 5.

entire thesis aims to provide alternative solutions in cases of competing rights, the epicenter of the issue being examined is why the rights of women and other cultural or racial groups have to compete with one another to begin with.

In applying a conflict transformation framework to examining long neck tourism in Thailand I have developed a series of solutions such as expanded dialogue among women in order to increase agency in custom participation, a cultural and medical investigation of the practice itself to compile a better understanding of risks and significance, the establishment of refugee rights and protections for the Padaung tribe members in Thailand and the creation of a sustainable development program within tourist villages to provide more opportunities for the tribe members to generate an income regardless of gender. Each of these proposals consider the safety of women and the economic and traditional significance of the cultural practice of wearing neck rings. Similarly, in analyzing the situational difficulties surrounding victims of domestic violence in minority communities, the proposed solutions that I have offered such as gender-sensitive and racially-sensitive training for police officers and court employees, the provision of more translation services and bilingual manuals and counselors, and incorporation of culturally significant institutions such as churches and community centers to increase education and oversee skill building for both men and women, consider the realities of both racism and patriarchal influences in order to address violence against women in a cultural and ethnically sensitive manner. In both cases of conflicting rights that I examined, I utilized Galtung's explanation of conflict transformation to highlight similar goals between the two groups in question. All of the proposed solutions for each case incorporated a degree of dialogue and included creative means of satisfying the needs of either group involved in the conflict. Close

analysis of both long neck tourism in Thailand and domestic violence practices in the US also illustrated the existence of episodes which have essentially masked the epicenter of the conflict.

The underlying judgment that my solutions impose is that every single individual should have their rights met regardless of gender, race, ethnicity, or socio-economic status. I have therefore attempted to evaluate scenarios of rights in conflict objectively, based on the ability of each developed solution to meet human rights standards codified in United Nations. While these same human rights mechanisms prohibit cultural justifications for violating the inalienable rights of any individual, recognition of culture as “one of the primary sources of identity,”¹¹⁶ has required an incorporation of cultural rights into all of the solutions I provide. While cultural relativity has consistently been used to justify the sacrifice of universal rights for women, this thesis has attempted to illustrate the opportunity that traditions and customs provide in forming a framework through which human rights can be introduced and enforced in a culturally sensitive manner. Instead of holding cultural rights and women’s rights in competition with one another, the power of cultural identity can be applied to appropriately challenge stereotypical views of women in ways that incorporate the diversity of every culture’s life experiences.

In highlighting the similar needs of women and cultural groups in order to determine harmonious, rather than incompatible goals of either group at hand in a conflict, the importance of human rights is strengthened through the possibility of adopting the strategies used to promote universal human rights regardless of the restrictions of cultural traditions. The underlying cultural values of both the practice of long neck tourism and attempts to avoid racism in domestic violence investigations are in fact congruent with women’s rights and needs, serving to highlight the existence of basic moral standards that truly are shared and valued by all cultures and ethnicities. If cultural relevance can be utilized to support the relevance of universal human

¹¹⁶ Ayton-Shenker, 1.

rights rather than to inhibit the application of protections of dignity and life, more time and energy can be dedicated to determining “compatible practices and common values from traditional cultures”¹¹⁷ that provide a cultural context to enhance the promotion of human rights. This approach not only encourages greater tolerance, mutual respect and understanding, but also fosters more effective international cooperation for human rights.

As a Women’s Studies and Justice and Peace Studies student, there has been a consistent overlap in my studies over the past four years, stemming from an emphasis on the importance of rights and the power, protections and privileges that arise for groups once their proclaimed rights have been put into action. The incongruity between the accentuation placed on universal women’s rights and the value associated with cultural relativity, however, continuously left me frustrated and discouraged by the lack of cohesion between the two subjects that had otherwise interlaced perfectly, leaving me with a consistent view on human rights. Specifically considering the complications that arise in situations of rights in conflict, and recognizing the reality that women’s rights have traditionally been suspect to sacrifice in scenarios of intersection with another groups rights, I found myself deciding to write this thesis in an effort to prove that competing rights can in fact co-exist without the forces trumping of either group’s needs or goals. This endeavor allowed me to apply a feminist lens to scenarios of rights in conflict, acknowledging patterns of de-prioritization of women’s rights when they do come in conflict with another group’s rights, but also arguing that through the application of Galtung’s theory of transcendence to instances of competing rights it is possible to begin an inter-disciplinary dialogue in finding solutions that do not require the sacrifice of either group’s rights when they intersect.

¹¹⁷ Ayton-Shenker, 1.

The solutions that I have offered for long neck tourism and domestic violence do not exist as perfect suggestions aimed to completely eliminate the problem at hand. They also are not intended to prove that direct solutions exist to transform every conflict in existence. But through the utilization of Galtung's theory of conflict transformation the alternative solutions I determined allow for the belief that alterations in the perception of women and culture are both possible and necessary to change the state of a conflict. The incorporation of education, communication, provision of agency, cultural sensitivity, skill training and sustainable development programs into the proposals I offer for Thailand and the US therefore illustrate that the rights of women and a cultural or ethnic group can co-exist when we consider the needs of either group and adjust the strategies for meeting the goals of every individual.

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