

CONFERENCE PROCEEDINGS

New Research in
International Development,
Human Rights and International Relations
at A Time of Disruption

29 - 30 July 2020



จุฬาลงกรณ์มหาวิทยาลัย
CHULALONGKORN UNIVERSITY



International Conference 2020



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Conference Proceedings

The International Conference 2020 On

“New Research in International Development, Human Rights and International Relations at A Time of Disruption”

Date: 29 – 30 July 2020

Co-Organized By

Master of Arts in International Development Studies (MAIDS), Faculty of Political Science,
Chulalongkorn University

Regional Center for Social Science and Sustainable Development (RCSD), Chiang Mai University

Master of Arts Program in International Development, School of Social Innovation, Mae Fah Luang University

Institute of Human Rights and Peace Studies (IHRP), Mahidol University

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Introduction

The challenge of the COVID-19 pandemic since early 2020 has brought widespread harm across societies in Asia and globally. Amidst acts of solidarity, the pandemic has placed into intense focus the consequences of inequality, the resilience of social welfare systems, and the responsibilities of governments as well as society at large. It has also led to a critical scrutiny of the current economic system together with the relationship between people and nature. Thus, this 'time of disruption' has intersected with existing issues in international development, human rights and international relations.

Conference Theme

The virtual international conference on "New Research in International Development, Human Rights and International Relations at A Time of Disruption" invites papers both on the underlying issues, as well the challenge of disruption in the present. Conference themes include:

- Risk, Vulnerability and Resilience: Disaster, Climate, Ecology and SDGs
- Mobility: Human, Resources and Capital
- Peace and Conflict, Transformation and Resistance
- Media, Information, Communication and Digital politics
- Non-Traditional Security
- Governance: Public, Private and People Partnership
- Human Rights
- Gender, Chauvinism, Intersectionality
- Resource grabbing
- Green politics and green economy
- Extremism, Ultra-Nationalism, Statism
- Neoliberalism, Populism
- Democracy and Authoritarianism
- International Relations: Trans-boundary and Transnationalism
- Great, Declined and Emerging Powers

Conference Format

Due to the current constraints on organizing large public events in Thailand, this international conference will be held as a virtual event on zoom. It comprises of a keynote session, followed by parallel sessions based on the themes of the conference. Each session will be moderated and with a discussant allocated.

Table of Contents

Table of Content.....	i
A K M Zakir Hossain.....	1
Achmad Firas Khudi.....	13
Adetokunbo Johnson.....	22
Akkanut Wattanasombat.....	44
Alisa Hasamoh.....	45
AMB Otto F. von Feigenblatt.....	46
Anish Kumar Thokar.....	53
Ankitha Joshy.....	68
Arif R. Haryono.....	79
Asma Al Amin.....	94
Balazs Szanto.....	105
Bavo Stevens, Karen Delfau.....	117
Bimo Satryo Wibowo, Wanwalee Inpin, Thanikun Chantra.....	132
Caio Gonçalves de Carvalho Feitosa Perim.....	147
Celso da Fonseca.....	160
Chadaporn Chaimala.....	171
Chandy Eng.....	187
Chayan Vaddhanaphuti, Helena Varkkey, Benjamin Tay, Tara Buakamsri.....	199
Chitsanupong Nithiwana.....	200
Chulit Nakornrattanachai, Wanwalee Inpin, Thanikun Chantra.....	210
Cory Cook.....	221
Fareha Jasmin.....	232
Gubag Gubag.....	241
Hsu Thiri Zaw.....	252

Table of Contents

Irshad Ahmed.....	262
James Gregory Alcaraz Villasis	273
James Reinaldo Rumpia.....	286
Jantanee Kanto	301
Jeesoo Baek	310
Joanico Gusmao Alves.....	322
Jude Russel Ulatan Cuntapay	331
Juvita Pereira Faria	348
Ka Ji Jia	358
Karntera Srimanote	370
Kasina Sundhagul	379
Khine Zin Yu Aung.....	393
Koh Cai Ling.....	406
Korima Begum.....	420
Ku Nurasyiqin Ku Amir, Bakri Mat, Mohd Nasrun Mohd	436
Kwanchanok Kongchoksamai.....	444
Le Thi Phuong Vy.....	458
Lena Muhs.....	469
Yap Li Yan	482
Mang Hre Lian	495
Manotar Tampubolon	507
Maria Agnes Bere	525
Maria Rosa Xavier.....	535
Maya Dania	547

Table of Contents

Michael DeLoach	558
Michael John Young	571
Michelle Soe Moe	586
Mohammed Muqtadir, Bhumika Sharma	599
Muslim Dokho	611
Natasha Rahman.....	625
Natchaya Chawalitchaikun.....	634
Nithis Thammaseangadipa	648
Than Nyo Mar.....	649
Ojaswi K.C	663
Pakpoom Sawangkhum	674
Panpaka Singkeewan.....	687
Pathomporn Kaewnoo	703
Phanuphat Chattragul.....	720
Phatranit Yaodam	733
Reni Juwitasari.....	753
Saittawut Yutthaworakool.....	767
Sally Dizon Escutin.....	778
Samira Yasmin	794
Sarah DeLoach	806
Saw Lin Htet	819
Saw Than Min Htun	828
Sharanya Chattopadhyay.....	844
Shraddha Pokharel	858

Table of Contents

Sirapat Puttachoo.....	868
Sophea Try.....	905
Suebsakun Kidnukorn.....	918
Sui Hluan.....	919
Sumitra Thidar Soe.....	926
Sutima Detsakulrat.....	940
Nga Thi Thu Tran.....	952
Vica K. Larasati.....	964
Worayar Yuwapolthanakorn, Yuki Miyake.....	974
Yakobus Fahik.....	987
Yu Ju Lin.....	1001
Yunkang Liu.....	1013
Zainab Nasir.....	1025

IN PLAIN SIGHT: SPIRALLING FREE SPEECH AND LEGAL REPRESSION IN BANGLADESH

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ABSTRACT

Bangladesh deflected from the democratic path by introducing arbitrary laws, stifling dissidents, oppressing political opponents, and providing impunity to the perpetrators of extrajudicial killings and enforced disappearance of thousands of people in the last decade (2009-2019). This article argues that structural dysfunctionality begets impunity and lawlessness in a state where authoritarianism is consolidated by manipulating the law and enforcing legitimacy. This paper exposes how an authoritarian rule of law dominates political structures, spaces and discourses in Bangladesh. Furthermore, the study demonstrates through a legal analysis of an arbitrary and politically motivated law that there is a clear sign of a one-party authoritarian state that potentially poses threats to democracy and human rights in contemporary Bangladesh. Research findings suggest several political and legal measures including the creation of a free, robust, democratic civic space.

Keyword: Free Speech, Authoritarianism, Rule of Law, Democracy and Human Rights, Legal Repression, Bangladesh.

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1. INTRODUCTION

Bangladesh emerged in 1971 as an independent state. Bordered by India, Myanmar, and the Indian Ocean, it is currently eighth-most populated country in the world (US Census Bureau, 2019). Ever since her independence, the country was ruled by military and pseudo-military regimes for 15 years whereas, civilian political powers were stained by rampant corruption and political instability. The people of Bangladesh witnessed a wide range of changes in governmental systems¹. After two decades of rigorous political turmoil since her independence, Bangladesh finally got into the trail of democracy in 1991, only to slide back to a regime where independence of the judiciary is mired by the controversial resignation and exile of the Chief justice (Toldanes, 2019).

It can also be said that Bangladesh is not a safe place for political critics and human rights defenders. One prime example is the case of Shahidul Alam, a prisoner of conscience, who was in detention for 107 days for criticizing the government on national television (Amnesty International, 2017; Ganguly, 2018). Another case involved a graduate student was beaten to by his fellow students due to his Facebook post on a bilateral agreement taken by Bangladesh (Bhuiyan, 2019; BBC News, 2019).

In light of the miserable condition of human rights and democracy, this article reflects on Bangladesh's evolution from a democratic success to an incipient regression. The following are the main questions of this study:

- why were more than a decade and a half (1991-2006) of relative democratic stability followed by a growing sign of regression since 2013 onwards?
- What are the underlying processes that constituted the growth of forces leading to the democratic decline in Bangladesh?
- Why has Bangladesh's democracy continued but not consolidated?

This paper will examine the arc of Bangladesh's democratic evolution by focusing on constitutional amendments and a particular law that, instead of providing basic legal freedoms, takes away people's fundamental rights. Drawing on existing literature, it discusses the impact of DSA 2018 on democracy and human rights situation in contemporary Bangladesh by concluding with the salient findings that preclude democracy and human rights.

2. METHODOLOGY

The study employed semi-structured in-depth interview and questionnaire to collect primary qualitative data. The research also carried out a thorough analysis of existing texts, which includes relevant legal and policy documents,

¹ This started with the parliamentary government; the presidential government of the one-party state; again, presidential system of government by multi-party; Care Taker Government (CTG) system (a unique system that Bangladesh call), and finally returned to the parliamentary system through Constitutional amendment. Despite people's high hope democracy has remained only as an aspiration and illusion in this country (Riaz, 2016).

newspaper articles, online and publicly available documents, reports, and any other relevant information. With the assistance of a legal expert, the Act is reviewed and comprehensively scrutinized. Through this exercise, it performs a discourse analysis of the impacts of the act on national and international human rights standards.

The selection of interviewees was based on their expertise and understanding of the effects resulting from the application of the Act and also the abuse of the Act by law enforcement agencies and citizens. Among the victims, only a few, who were influential, were contacted. Other interviews included journalists, media professionals, and bloggers.

3. LEGAL REPRESSION AND STIFLING FREE SPEECH

The Genesis of Section 57 of ICT Act 2006 and DSA 2018

The Government of Bangladesh introduced the Information, Communications and Technology Act in 2006 with the intention to regulate and set standards regarding the use of ICT throughout the country. According to Sultana Kamal, the human rights activist in Bangladesh and chairperson of Ain-o- Salish Kendra,

“The act is contradictory with the constitution because section 57 of the ICT Act 2006 deprives us of our right to freedom of speech. So, we want its repeal (Staff Correspondence.2017).”

Sections 46 and 57 of the ICT Act targeted the banning of Facebook, which is a highly popular and influential social media platform. These particular sections were challenged by the Bangladesh High Court by Barrister Arafat Husen Khan, Kazi Ataul-Osman, and Rokeya Chowdhury. In July 2010, the High Court showed cause by demanding the government to explain why the ICT Act should not be claimed unconstitutional. Instead of amending the ICT Act to ensure compliance with the Bangladeshi Constitution and international law obligations, the Government revised the ICT Act through an Ordinance on 20 August 2013 to make the law even fewer human rights compliant. On 6 October 2013, the Bangladeshi Parliament amended the ICT Act. Changes made many crimes under the Act non-bailable and cognizable. The amendments also executed a minimum jail sentence of seven years for crimes, and increased the maximum penalty for crimes from 10 to 14 years of imprisonment (International Commission of Jurists, 2013).

In the stated objective of ICT Act, it would provide legal recognition and secure the access to ICT throughout the country. It has been observed that the Act was designed to stifle the legitimate exercise of public criticism. Moreover, it would also subject various persons including journalists, bloggers, and human rights defenders to arbitrary detention. The Act authorizes the police to arrest any person who “commit crimes” by using digital or electronic device. Several journalists, bloggers, and social media users have been arrested under section 57 of the ICT Act, since the adoption of this Act. According to a report, from 2012 to 2017, 1,417 cases had been filed under this

Act. Of which, only 179 cases were dismissed. For the rest, they are facing trials, keeping a huge number in custody (Rabbi, 2018).

The Act has been found to conflict with Article 39 of the Constitution, Article 19 of UDHR and Article 19 of International Covenant on Civil and Political Rights (ICCPR). Finally, after receiving protests and criticisms, the Government decided to annul the law. However, it introduced a replacement in 2018, the Digital Security Act (DSA). The new Act seems to be nothing but a modification of section 57 of the ICT Act. This means the government had found a way to legitimately suppress dissent.

The 2018 report of Bertelsmann Stiftung¹ categorizes Bangladesh as an autocracy state. This declaration reflected the fall of a minimum standard that entails a state to become a democracy². Under any consideration, the present condition of democracy in Bangladesh seems to be grim although the constitution of the country guarantees democracy and FoE (Ahmad and Kugelman, 2018). The Constitution of Bangladesh, under part III of 'Fundamental Rights' in Section 39, *on* under *Freedom of thought and conscience, and speech*; states

“(1) Freedom of thought and conscience is guaranteed. (2) Subject to any reasonable restrictions imposed by law in the interests of the security of the State, friendly relations with foreign states, public order, decency or morality, or concerning contempt of court, defamation or incitement to an offense—(a) The right of every citizen to freedom of speech and expression; and (b) Freedom of the press, are guaranteed (Bangladesh government, 1972).”

4. FINDINGS AND DISCUSSION

The core purpose of this research is to examine the effectiveness of specific sections of the DSA 2018, which in principle, stifle freedoms of the press and expression. It also aims to provide recommendations for the improve or reform of the act based on human rights standards. Furthermore, the research argues that the regime has strategically used the amendment of the constitution to hold on to the power undemocratically. This research sought to trace the human rights and democratic situation in Bangladesh from 2013 to 2018 as a way to understand the 'manufacturing of illegality' through a range of (il)legal legislative amendments that enable the ruling regime to consolidate their power. In doing so, political authorities employ legal instruments to sanction extrajudicial killings and pursue draconian laws, such as the Digital Security Act, to regulate society and silence dissent. In this section of the paper, the researcher will examine the loopholes in the DSA 2018, and how it is impacting human rights and democracy in Bangladesh. Research

¹ Founded in 1977, under private law, The Bertelsmann Stiftung is an independent foundation, based in Gütersloh, Germany. It was founded by Reinhard Mohn. Available at: < <http://www.bertelsmann-stiftung.de/>>

² This report is complemented by 'Reporters without Border press freedom index which ranked Bangladesh 144th out of 180 countries and the Economic Intelligence Unit's Democracy Index where Bangladesh fell to 92nd from her previous 85th position between 2014 and 2017.

findings confirm that, through structural violence the state has rendered impunity to institutions who otherwise are mandated to protect the life of the people.

Table 1: Extra Judicial Killing (2013-2018)

Extra Judicial Killing (Odhikar,2019).

Year	RAB	POLICE	DB Police	Armed Police	BGB	Coast Guard	Forest Guard	Joint Forces* (Combination of 2 or 3 agency)	Total
2018	136	276	46		2	2	1	3	466
2017	33	117	2					3	155
2016	51	118						9	178
2015	53	126						7	186
2014	29	119				3		21	172
2013	38	175		64				52	329

Source: Odhikar, n.d. Statistics on Killed by Law Enforcement Agencies. Retrieved from <http://odhikar.org/statistics/killed-by-law-enforcement-agencies/> ; http://odhikar.org/wp-content/uploads/2019/08/Statistics_EJK_2001-2018.pdf.

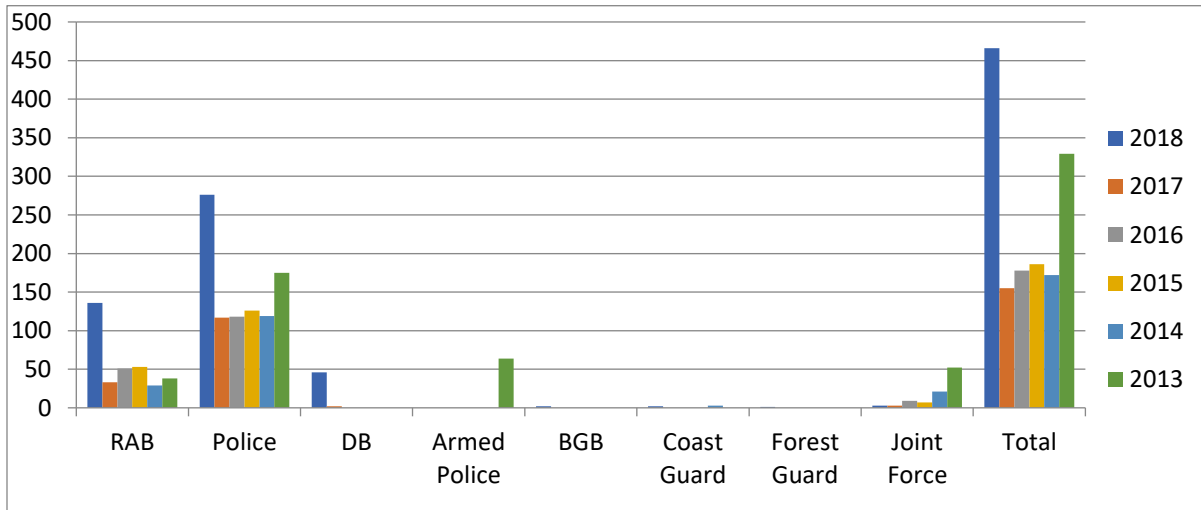


Figure 1. Extra Judicial Killing (2013-2018)

Adapted from <http://odhikar.org/statistics/killed-by-law-enforcement-agencies/> and http://odhikar.org/wp-content/uploads/2019/08/Statistics_EJK_2001-2018.pdf.

Both table 1 and figure 1 feature statistics on extrajudicial killings in Bangladesh. During the third cycle of the Universal Periodic Review (UPR) of Bangladesh, The Human Rights Committee, the country team, the Committee on Migrant Workers and the Special Rapporteur raised concerns over the fact that National Human Rights Commission (NHRC) may not have the capability to investigate critical human rights violations connected to the State's security apparatus. Furthermore, they indicated that the constitutional body who is supposed to keep the state actors accountable are devoid of such rights. Odhikar's report revealed how the culture of impunity had normalized extrajudicial killing, enforced disappearance and other forms of state-sponsored violence. A recent report of Human Rights Watch revealed:

“People are increasingly disappearing into government custody in Bangladesh. Government authorities staunchly deny these allegations, despite credible accounts from witnesses who saw government agents take the victims away. Families of the disappeared, desperately looking for answers, hold vigils in Dhaka. They wait for hours outside the offices of various security agencies, often turned away with dismissive denials (Ganguly,2019).”

In 2018, it had report that 466 extrajudicial killings were conducted by either the military, paramilitary forces, and the police.

Table 2: Statistics of Enforced Disappearance (2013-2018).

Enforced Disappearances (2009 - 2018): State Agencies Responsible								
Year(s)	Number of the Disappeared Persons	Allegedly disappeared by						
		RAB	Police	RAB-DB Police	DB Police	Industrial Police	Ansar-Police	Other Law Enforcement Agencies
2018	97	10	25	0	48	0	0	14
2017	86	12	18	1	20	0	0	35
2016	93	26	15	2	22	0	0	28
2015	66	23	6	4	24	0	1	8
2014	39	25	2	3	8	0	0	1
2013	54	23	1	0	17	0	0	13
Total	435							

Source: Data captured from Odhikar, 'Statistics on Disappearance (2009-2018).

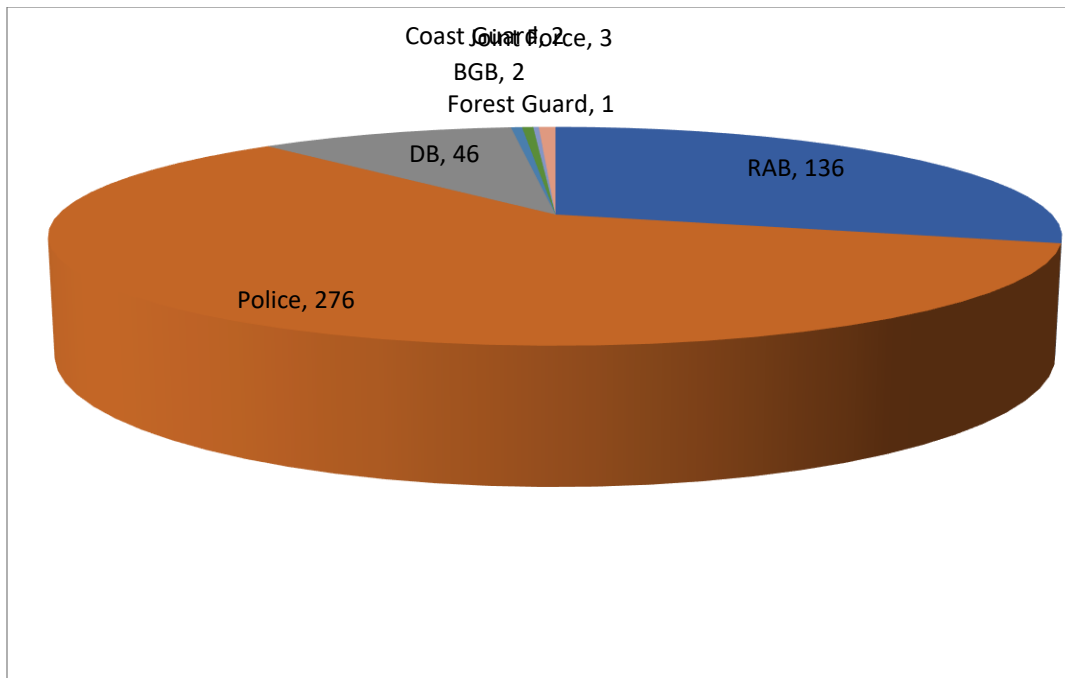


Figure 2. Extra Judicial Killing (2013- 2018) adapted from Odhikar (n.d).

5. CRITICAL ANALYSIS OF DSA 2018

In this analysis, the research scrutinized whether DSA 2018 complies with international human rights standards, especially on the Freedom of Expression. This analysis examines not only human rights concerns with specific sections of the 2018 Act, but also offers concrete recommendations on how each section may be modified to ensure their compatibility with international standards.

The researcher, with the help of a legal expert, conducted a brief legal analysis of critical issues related to DSA 2018. The following are the results of the critical review:

- 1) Instead of preventing crimes committed by digital means and offer security in the digital domain, the Act regulates media freedom by censoring and monitoring media which is encroaching freedom of speech and expression as guaranteed by our constitution.
- 2) According to the Act, police can arrest any suspected person/s without a warrant and/or permission of any establishments. The Act provides infinite power to the police to enter sites, search offices, conduct body searches, seize technological gadgets, computer networks, servers, and all related to the digital arena.
- 3) The Act has enormous ambiguity which makes media vulnerable to be misused and misunderstood.
- 4) DSA 2018 has created an environment of fear and coercion, which will make journalism and especially investigative journalism almost impossible to conduct.
- 5) DSA 2018 has created a culture of panic amongst media practitioners and active users of digital platforms

6. CONCLUSION

Globally, it has become a common phenomenon among the autocrats, dictators, and authoritarian regimes to control the production and dissemination of information in order to consolidate power and stifling the dissidents. This empirical study highlights that such practice is a sequence of intertwined and interdependent parameters in the socio-political spectrum that ultimately drains out democracy. The forceful political majority is strategically gripped by the authoritarian regime. This is done through uncontested and undisputed elections, which appears as one of a number of factors that had led to democratic regression in contemporary Bangladesh. Another factor is the arbitrary amendments of the constitution and incorporations of draconian laws, such as DSA 2018. These offer the authoritarian regime a tool to rule the people by law instead of maintaining the rule of law. Moreover, due to partisan politics and ideological crisis in public offices and state's administration, Bangladesh seems to be in a quagmire of socio-democratic crises.

It is normative understanding in the political discourse that the rule of law and authoritarianism are mutually incompatible. However, this study reveals that in a failed democracy like Bangladesh, the State can adopt an array of institutions and processes at the bedrock of rule of law to constrain dissidents. It can also forcefully manipulate the law and finally to corrupt public institutions such as the parliament and judiciary. While political liberalism and freedom of expression is a precursor to democracy, authoritarianism twist the rule of law and install fear in society. That is how democracy erodes and autocracy thrives.

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NARRATIVES FROM SELECTED GREATER JAKARTA RESIDENTS DURING THE COVID-19 PANDEMIC

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ABSTRACT

People living in Greater Jakarta enjoy high mobility circulating from peri-urban at the fringes to the center of the city during working days. The COVID-19 pandemic changed this pattern of mobility significantly. This forced urban people to obey the conditions and rules set by the local government. Ways on how local governments in Greater Jakarta tackle the pandemic are varied. Jakarta provincial government has more resources and stronger political clout as compared to the other eight municipal and regency governments in the metropolitan. It has to be noted that these other eight municipalities are home to around 4.4 million workers daily commute daily to their offices based in Jakarta.

The local governments in Greater Jakarta tackle the pandemic by limiting the mobility of their people. In this light, it would be crucial to understand insights of urban people towards their respective local governments' responses to the pandemic. Three concepts can be used understand these perspectives: anxiety due to the pandemic, changes in mobility, and insights on local government responses. Identification and examination of these perspectives will be done through narrative analysis. The research obtained a number of findings, which include anxiety of urban people, multiplexity, integrativity, and the fluidity of urban lives through contraction of relationship, the nexus of feeling, and empathy during the pandemic. People's condition during a pandemic can be associated with conditions felt by incarcerated prisoners. Moreover, a common sentiment from this narrative reveal that local governments lack the capacity to handle the pandemic. However, measures to track mobility seem to be a positive aspect of COVID-19 governance.

Keyword: Local Government, Narratives; Greater Jakarta; COVID-19.

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1. COMMUTING TO JAKARTA AND CONDITION DURING THE PANDEMIC

In 1975, only a third of migrants had visited Jakarta. Most of them come from regencies such as Bogor, Bekasi and Tangerang, which are relatively close to the city. Even since then, Jakarta was already a panacea, in which not only employment opportunities flourish but also urban living is thriving. The reasons given for leaving the village is due to dire economic conditions in the rural areas. When asked if they would return to the countryside if conditions are similar to the urban areas, most migrants said no. Migrants tend to also enjoy the level of freedom in the nation's capital (Temple, 1975).

Nowadays, the migration pattern has dramatically changed due to socio-economic advancement at national and regional levels. The urban landscape had transformed to accommodate various needs and opportunities. Jakarta, together with eight secondary cities or regencies, had turned into a mega city. Each regency now has their respective municipalities. Due to the rapid growth of these peripheral towns and cities, commercialization had emerged to be the norm—which contribute to their respective economic progress (Firman & Fahmi, 2017).

Diverse modes of transportations, both public and private, have enabled people from Greater Jakarta to enjoy freedom of movement and access different points within the megacity. Urbanites of Greater Jakarta acquired rituals and habits of movement in light of post-suburbanization. They commute from their home to the nearest train station. They then go to the center of Jakarta with a train together with hundreds of thousands of passengers from all walks of like, who travel for work or other errands. One will witness a variety of socio-economic identities based on their choice of clothing and accessories. Informal workers are usually seen with their produce or business apparatus. This form of migration in Greater Jakarta has become a habitus as the capacity of agents regularly orientate in the social world (Sapiro, 2015).



Figure 1. The Jakarta Metropolitan Administrative Map

Source: El Fatih B. A., (2020)

COVID-19 disrupted or is still disrupting everyone's way of living. Workers, in particular, have been impacted due to the COVID-19 pandemic, especially in amongst those living in post-suburban areas of Greater Jakarta. For some, they are able to work from home using technologies, yet are also obliged to perform care work. Low-income workers, many of who rely on daily wages or profits, tell a different story. Work from home arrangements could not be an option. For instance, individuals who work in the transportation sector find it difficult to access passengers, as many workers have to stay home. Other women are most affected by this. Those working for transportation sector often experience sexual harassment.

2. FRAMEWORK

This study seeks to analyse the lived experiences of urban people in light of the COVID-19 pandemic. This study will be based on the theoretical view on construction of cities and urban lives as popularized by Ulf Hannerz. The theory particularly focuses on fluidity, integrativity and multiplexity that uses multiple scales of networks as its base, as well as cities as whole. The fluidity can be clearly seen in changing of roles, relationship, and network, while multiplexity is a non-singularity network. Integrativity means that one individual's network covers realms of very strong inclinations to a point of concentration. Cities are a product of cultural facilitated by members of society. (Hannerz, 1980).

Furthermore, another approach for this study will be based on the there is an ethnography of prison and confinement, which can be compared to the current condition of urban people in the time of COVID-19 Isolation and limited mobility are, therefore, associates with the feel and condition of an incarcerated person. It is key to point out that urban experiences can be diverse depending on interpersonal and socioeconomic conditions. It is also important to look at how relationships are managed and negotiated during incarceration. (Cunha, 2014). The pandemic has indeed changed ways individuals construct their identities and manage their relations.

3. METHOD AND DATA

3.1 Method

The theoretical framework will be enriched by narratives based on experiences during COVID-19 in Greater Jakarta. Moreover, the study will consider the follow aspects: collective meaning systems, self-other communication and discovery, social relations and the formation of sociality, or self-formation (Peacock and Holland, 1993). This approach shall focus on personal experiences—which covers how one perceives his/her/their own experiences, and interactions with others. (Cresswell, 2007; Gubrium and Holstein, 2001).

In light of COVID-19, reliability may be difficult to validate. However, one must realize the fluidity of narratives and the changes in one's perspectives and experiences. At this point, transitions are happening while the pandemic is undergoing. The shift to the new normal is proof that major life changes are occurring. Disruptions in ways of living make the (Pillemer, 2001). This probably why it is important to identify and assess critical live experiences.

Memory specifies into redemption and contamination stories that register the pandemic experience and the local governments response towards the pandemic. Redemption stories apply when a bad situation turns out to be positive, whilst contamination stories occur in good situation turns negative.

Narratives were based on interview with urban people. They aim to capture memories of events, perspectives and life experience from March 2020 up to the present.

3.2. Research Question

The main research question is What are the perceptions of urban people living in Greater Jakarta about the COVID-19 pandemic and the local governments responses?

This study aims to identify perspectives of urban people living through COVID-19. Narratives aim to shed light on their selves and social lives, changes in mobility, and their views on local government responses towards the pandemic in Greater Jakarta. Interview questions will also cover issues related to social well-being and available health and social protection services and policies in Greather Jakarta. 1 governments in Greater Jakarta, and social protection of the pandemic.

3.3. Data

The research uses accidental sampling as a means to select participants for this research. Accidental sampling is a type of sampling where samples of the targeted population meet particular criteria such as easy accessibility, time availability, and willingness to join (Etikan et al., 2016). Based on these criteria, six research participants or respondents were selected and participated in this research. Below is a table which feature their respective profiles.

Table 2: Respondent Profile

Respondent Label	Age/Gender	Occupation	Address	City Area
Respondent 1 Tangerang	44/Woman	Local public official	South Tangerang City	Tangerang
Respondent 2 Jakarta	27/Woman	Staff of professional association	Tebet	Jakarta
Respondent 3 Bekasi	22/Woman	College student	Mustikajaya	Bekasi
Respondent 4 Bekasi	23/Woman	Customer service	South Cikarang	Bekasi
Respondent 5 Jakarta	23/Woman	Junior lecturer	Kalibata	Jakarta
Respondent 6 Bogor	27/Man	Staff of local enterprise company	Bojonggede	Bogor

Source: Author, (2020)

Based on information above, respondents are mainly based in four cities: Bogor, Bekasi, Tangerang, and Jakarta¹.

4. NARRATIVES ON URBAN LIVES IN GREATER JAKARTA

The pandemic affected everyone living in the Greater Jakarta area. . Most Jakarta urbanites who work in office had to change their usual habits in their workplace, specifically within their social circles. These mundane actions of urbanites altered dramatically into closer distance trips, virtual communication, and watching online piracy movies.

A number of women in Jakarta experience an increase in gender-based violence as they interact more intensely with their partner during the pandemic. One of them is Yuli who is a single mother of two children and who originated from Martapura of South Sumatera (BBC, 2020). The pandemic forced her to return home due to economic difficulties. She previously rented a house in Jakarta with her husband who would regularly beat her up. This pandemic is the second interaction after the violence or multiplexity that increasingly burdened her life.

Another miserable story is related to massive staff lay off from Lion Air Group (Tirto, 2020). About 2,600 people were dismissed by this low-cost airline company due to financial difficulties. Lion Air had a reputation for its

¹ Moreover, Tangerang City Area represents South Tangerang City, Tangerang City, and Tangerang Regency whereas Bogor is for Bogor City, Bogor Regency, Depok City. Jakarta is for DKI Jakarta Province itself, whilst Bekasi signifies Bekasi City and Bekasi Regency.

bad management of staff. The COVID-19 exacerbated this: contracts were severed, salaries were forcibly reduced and pension funds were terminated.

The pandemic has intensely interlaced the relationship between the city and its people. Urban people became more attached to a particular situation, place, and people as a means protecting themselves from getting infected. Most if not all felt a sense of anxiety due to media reports and lapses in the governance of the pandemic at the central and local levels (Kompas.com, 2020). People also refused to travel, either short or long distance. However, carbon emissions tremendously decreased due to the suspension of all forms of transportation.

5. URBAN PANDEMIC NARRATIVES AS SOURCE OF ANALYSIS

Research participants shared their narratives in light of the pandemic. Each research participant was encouraged to speak truthfully and willingly on the COVID-19 situation. These narratives focused on themselves, people they are associated with and on their view regarding government response to the pandemic. There is a wide range of memory collected towards local government in Greater Jakarta and various stories during the pandemic. Respondent-1 Tangerang felt that COVID-19 slightly shifted oral communication like other people. For her, this shift meant that she regretted not having the chance to communicate directly with people. Similarly, Respondent-6 Bogor said that he is not allowed to eat in restaurants and work with friends at the office. Instead, each one has to eat alone in his/her/their working cubicles. Such condition distanced them from enjoying their usual hobbies such as traveling overseas and going to the cinema.

This solitude and feeling of loneliness had impacted Respondent-3 Bekasi, as she is very afraid or anxious. Her parents do not allow her to go outside. She stated that:

“The COVID-19 pandemic virus might float in the air around my house. I just initially went outside after one and half months of self-isolation. However, my parents prohibited me to go outside.

Bekasi felt more isolated during this period. This respondent changed her habit related to her religious beliefs and practices. She now attends church activities online. Interestingly, she reduced her usage masks and hand sanitisers to support its distribution towards people or medical workers who needed them more. This pandemic taught her to be more empathic towards others—specially friend and colleagues who got unemployed as a result of COVID-19.

Research participants shared their views regarding local government responses towards the pandemic in Greater Jakarta. Respondent-1 is a public official working with the South Tangerang City Government. Therefore, her opinion on the city government of South Tangerang managing the pandemic is reliable. She said that a special unit for COVID-19 and related local government units have warned people eagerly but it is up to them to obey or not.

Respondent-2 Jakarta shared that the Jakarta Provincial Government is not too serious in addressing long queues in train stations. Respondent 5- Jakarta feels that the Jakarta Provincial Government can do more to address impacts of the pandemic. She added that there are no regulations being imposed in the apartment where she live and mentioned about long lines in the bus stations.

Respondent-1 Tangerang recalled the time when pandemic was first announced in Indonesia. She then responded to the question regarding contract tracing for COVID-19 prevention as being done in South Korea. She also mentioned something related to data privacy.

“Mobile tracking is quite challenging. From a health perspective, it can be an effective way of tracking people suspecting of carrying the virus. However, data can also be used inappropriately.”

Her response is supported by the fact that data security has been a controversial issue in Indonesia. This is related to the national identity card issue, where data were distributed by the Ministry of Home Affairs to private companies (Kontan.co.id, 2020). In addition to that, her response also touches on the issue of the promotion of human rights and freedom of movement amid a crisis.

Respondent-2 Jakarta mentioned about information regarding the location of a suspected patient. Respondent-3 Bekasi questioned the readiness of local governments in Greater Jakarta to implement mobility tracking. Respondent-5 Jakarta underlined a way of enforcing by consistently implementing rules and regulations. She provided an example about how the Governor of Jakarta broke the rule of social distancing.

Furthermore, Respondent-4 Bekasi informed us informed consent is key to enable effective mobility tracking. In regards data sharing among local governments, she is fully supportive of this because it can help suppress infections. This respondent got permission from Bekasi Regency to work in the office. People asked why she did not work from home instead.

Respondent-5 Jakarta then focused on changes in interactions. Social distancing enabled her to acquire and enjoy new hobbies such as sports and She also been cooking and eating more frequently.

Respondent-1 Tangerang first thought that COVID-19 is similar to the bird flu. She thinks that this issue is more serious that what everyone thinks it is. Respondent-2 Jakarta shared that COVID-19 had negatively impacted people’s economic well-being—this is based on her family’s experience.

Respondent-3 Bekasi specifically shared memories regarding public services of Bekasi City, which gave our family cards and personal identity cards. This made the delivery of public services more efficient and hassle-free. In terms of social protection, Respondent-3 Bekasi comment that:

“There are several places and households that are not receiving financial support sufficiently. This is often given to the head of neighborhood. News reports and many people say money is only distributed to

close friends. This is, I think, injustice. This should be scrutinized much further. Both rich and poor have been severely impacted by COVID-19.”

She later emphasized on the importance of universal health care especially for the marginalized and down-trodden. Respondent-5 Jakarta gave thoughts that mobility tracking may help alleviate poor people’s suffering as well as their privacy that needs to be protected. Furthermore, Respondent-6 Bogor flagged the issue of poor data management in their community.

Based on the narratives, the pandemic had directly impacted the lives and roles of people living in Greater Jakarta. social distancing had allowed people to be creative about their position in society. It also became a chance for them to embrace new hobbies and activities. Boredom has definitely contributed to changing perspectives and becoming more proactive. This fluidity is reflected in changes of roles, relationship, and networks during the time of pandemic among urbanites. It created some kind of contraction as can be seen from persons who are not able to go out e during the pandemic. Integrativity reflects in people who were anxious, and felt that injustice is happening amid a crisis.

COVID-19 changed the way to understand, communicate, and fill day-to-day to avoid the virus as well as to deal with multiplexity. Others issues related to multiplexity is duality on privacy risk and disease prevention benefit in the mobility tracking raised by most of respondents that can be understood as multiplex structure determining the central and multiplex actors (Hannerz, 1980; Diviák et al., 2019).

6. CONCLUSION

Urban people in Greater Jakarta hold a wide range of perspectives and towards their situation and ways the pandemic is being governed the Greater Jakarta Area. They mainly feel anxious due to information they hear about the seriousness of the disease. Multiplexity, integrativity, and the fluidity of urban lives are reflected in their lives through contraction of relationship, abundance of mixed feelings, and empathy towards others. Regulations restricting mobility make people feel they are prisoners in their own homes. This is, too, based on changes in interpersonal relation and socioeconomic condition during the pandemic. The pandemic reconfigured urban people where their adaptations of internal and interpersonal applied. Furthermore, they think They think that local governments need to significantly improve ways in governing the pandemic. One common suggestion is strengthening its mobility tracking programme—however, government should be mindful to protect data privacy of its people, while trying to mitigate viral infections.

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MIND THE GAP: HUMAN RIGHTS AND THE GENDER DIGITAL DIVIDE IN AFRICA'S COVID-19 ERA

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ABSTRACT

The digital divide is a human rights issue that has resonated significantly worldwide and particularly in Africa. Yet, the attention given to the gendered dimensions of this digital gap in African societies remains limited and scattered. Regrettably, this gendered digital divide was exacerbated and brought into sharp focus with the recent emergence of the coronavirus pandemic. Similar to the rest of the world, the emergence of the coronavirus pandemic has birthed unprecedented times in Africa. Approximately over twenty-two million persons worldwide, and still counting, have reportedly contracted this deadly disease. With this chilling statistic comes empirical and anecdotal research that discusses the negative gendered impact of this pandemic, particularly on African women. The unfortunate truth is that African women are disproportionately affected by this crisis in several ways. With strict lockdown rules and economies shutting down, the coronavirus pandemic has reinforced and amplified women's disproportionate disadvantage and inequalities in Africa. For example, evident in most African countries is women's historic disadvantage of being more likely to live in abject poverty. This situation prevails because they are usually the last ones to access adequate food, nutrition, education and health care services, leading to the denial of essential human rights enjoyment. Due to this pandemic's brutal mortality rates, the World Health Organisation urgently proposed a fourfold strategy to containing and tackling coronavirus namely, preparation in readiness for the pandemic, detection and protection, treatments and ensuring there is a reduction of transmission, and finally, innovation and learning. Using this fourfold strategy, the WHO insists all countries must ensure a balance between reducing economic and social disruption, safeguarding health and respecting human rights. With such fourfold strategy comes an erroneous assumption that there is much needed global internet access required for the containment of the pandemic. Yet, evidence demonstrates that more than half of the world population and mostly African women do not have access to the internet. Multiple reasons could be advanced for women's disproportionate access to the internet in Africa. One reason includes the patriarchal attitude and stereotype about women and their inferior societal position that persist in Africa. Societal sanctioned wifely and motherhood functions ascribed to African women means that the number of women that have internet access is significantly lower than the number of men. This situation not only widens the digital gap but importantly underscores its gendered dimensions currently exacerbated by the coronavirus era. Tackling and containment of the pandemic would, therefore, entail closing the gendered digital divide that has festered in African countries.

From the above, if it is possible to draw a strong correlation between African women's online access to information, communication and technology as well as the realisation of human rights particularly in this COVID-19 era, the need to close this gendered digital gap becomes obvious. Consequently, this paper portrays the gendered digital divide as a human rights infringement exacerbated by Africa's COVID-19 era. Drawing on the intersectional lens, I show how the African woman's intersectional identities impact on her internet access.

Keyword: Human Rights, Digital Divide, Coronavirus Pandemic, Intersectionality.

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1. INTRODUCTION

Globally, there has been significant progress to ensure that human beings can access and use the internet. This progress has become crucial, considering that in an increasingly virtual world, to be able to use and access the internet carries opportunities that remain fundamental to a productive existence (Human Rights Council, 2017). Despite the progress made, evidence demonstrates how more than half of the world population and mostly African women do not have access to the internet (AfterAccess, 2018).

Research finds that most African women use and access the internet through a mobile phone (AfterAccess, 2018). Yet, it is evident that compared to men, African women are less likely to own a mobile phone, not to mention a smartphone (AfterAccess, 2018). This insight reveals the profoundly gendered nature of internet usage and accessibility in Africa and its worrisome dimensions.

However, with the current World Health Organisation (WHO) 's declaration of the COVID-19 (Coronavirus) as a global public health pandemic (World Health Organisation (WHO), 2020); followed by the abrupt shift of human existence to the virtual online space, the gender digital divide in African countries is widening, thus bringing the gender digital divide into sharp focus. With strict lockdown rules imposed by several African governments in response to the pandemic, the gendered dimensions of this digital divide have become increasingly disturbing.

Against this backdrop, I ask the question: Is the gender digital divide a human rights matter? I argue that the gender digital divide is digital discrimination exacerbated by the current public health pandemic. The gender digital divide is a human rights matter as it holds the potential to interfere with coronavirus containment, and ultimately, the enjoyment of women's rights. Treated as a human rights matter, this is central in the urgent need to close the gap in African countries.

By making the argument, I contribute to the widely contentious debate about whether internet access should be considered a human rights issue, particularly in Africa's coronavirus era (Skepys, 2012). This paper proceeds in seven sections as follows. This first section makes up the introduction, where I outline how the arguments in the paper would proceed. In the second section, I introduce the notion of the digital divide, particularly its gender dimensions in Africa. Crucially, I expose the gender digital divide as a form of discrimination on women. I underscore the hurdles that African women face in attempts to use and access the internet.

This analysis lays a good background for the third section. In this section, I explore the multiple and reinforcing intersections that exist amongst African women and how this affects internet use and access. In the fourth section, I investigate the normative developments in addressing the global gender digital divide and in Africa. In the fifth section, I discuss the human rights implications of gender digital discrimination considering the coronavirus pandemic in Africa.

In the sixth section, I offer conclusions. The conclusion that emerges suggests that while wreaking havoc, this deadly pandemic is ushering a new and unanticipated norm – a new norm that compels governments across the

globe and particularly in Africa to explore new possibilities, conduct affairs differently in a manner that demands not just digital and internet inclusion and safety, but also digital equality between men and women in Africa. Closing women's disproportionate online disadvantage would ultimately reflect offline.

Fundamental to the closing of the gender dimensions of the digital divide in Africa is the realisation that internet access has the potential to be a driver and enabler towards the empowerment of women and the fulfilment of their human rights in Africa (HRC, 2017). I conclude that what the 'silent' pandemic has shown is that regardless of recognizing the internet access as a human right, it is an essential enabler in the realisation and enjoyment of women's human rights.

Finally, in the last section, I offer recommendations to key and specific stakeholders such as the African Union, African Commission, African Governments and Civil Society Organisations. In offering recommendations, I borrow inspiration from the example of the Council of Europe's 2011 Convention on Preventing and Combating Violence Against Women and Domestic Violence (Istanbul Convention). Drawing inspiration from this treaty, I view the gender digital divide with a twofold lens; first, as a form of discrimination; second, as both a cause and consequence of violence against women that happens online and offline.

2. THE DIGITAL DIVIDE AND ITS GENDERED DIMENSIONS IN AFRICA – AN OVERVIEW

To answer the question: Is the gender digital divide a human rights matter? I start this section by exposing the gender digital divide as an unfortunate reality in Africa.

For this paper, the digital divide refers to the gap between individuals with effective use and access to digital and information technologies, the internet, and those individuals with very limited or no internet use and access at all (Chawla, 2017). Of the 4 billion estimated people without internet worldwide, most are African women (Liu & Yan, 2016).

Another research suggests that one out of seven African women is likely to use the internet in sharp contrast to one out of every five African men (AfterAccess, 2018). The insight proves that because African women have limited access and use of the internet, it is inevitable that they lose the benefits. Consequently, the gender dimensions of this digital divide are exposed.

Yet, the scrutiny given to the digital divide and its gendered dimensions in African societies has remains limited and scattered. As documented by the 2017 report by the Human Rights Council, the gender digital divide is both a consequence and cause of human rights infringement (HRC, 2017). Women are significantly more likely to avoid the internet because of multiple reasons. Multiple economic, political, social and cultural reasons have been advanced for women's disproportionate access to and use of the internet in Africa.

Generally, according to research, women are more likely to be distrustful of digital devices, particularly the internet (HRC, 2017). Women are likely to show less interest in the internet and may think the internet is unnecessary and without value. Multiple reasons fuel such disinterest and internet phobia (World Wide Web Foundation, 2015).

First, a significant number of African women are uneducated. Evidence indicates that the highest number of uneducated women globally are based in Africa (Antonio & Tuffley, 2014). Unfortunately, this could mean two things. One is that the ability of uneducated or digitally illiterate women to access internet services would be limited. This limitation could be due to how digital tools, particularly the internet, are oftentimes not accessible. One typical example is language inaccessibility, where African women who are uneducated are unable to engage appropriately because the internet is not in their local indigenous language. Two, it could also mean that internet access and use is an educated privilege (Chawla, 2017). If this is true, it explains why more men enjoy this privilege since compared to women, men are more likely to have some form of education in Africa.

Another reason are the cost implications of internet use and accessibility. Research has found that most African women use and access the internet through their mobile phones (After Access, 2018; Organisation for Economic Co-operation and Development (OECD), 2018). What this means is that African women who cannot afford to purchase mobile phones because of high and inflated prices are less likely to use and access the internet. However, even where some can afford mobile phones, expending on mobile internet packages may be a luxury. Although this pricey mobile internet data affects both men and women, it is worse for women. In many African countries, compared to men, studies indicate how a significant portion of women still cannot afford to buy a mobile phone or even purchase internet data (Rowntree, 2019).

Women are the face of abject poverty in Africa (Kaka, 2013). Women are usually the last in line to access education, employment, food, health opportunities because of the disparities that exist in these spheres particularly compared to men. It, therefore, makes sense that they will be the last in line to use and access the internet. Importantly, if African women must choose between ensuring food security for their families and purchasing internet packages, it would most likely be the former option.

Evidence shows that because African women are more likely to be economically and financially dependent on their male counterparts, they are less likely to afford access to digital tools, particularly the internet (Antonio & Tuffley, 2014). It would therefore not be wrong to suggest, as Chawla (2017) has rightly observed, that internet use and access is a luxury enjoyed only by the rich.

An additional reason is the geographical location of African women. African women living in rural areas are less likely to develop an interest in internet use and access (OECD, 2018). Apart from the fact that it is more likely for internet services to cost more, it is less likely to have the required technological infrastructure, including the appropriate internet connection in rural areas. Besides, women in these areas are more likely to show more interest in ways to survive. As a result, it undermines women's internet access and usage in Africa.

Patriarchal notions that a man is superior to the woman supports the misconception that the internet is a male-dominated area (Mamba, 2018). This notion includes attitudes and stereotypes that teach that women are inferior to men, and is mirrored in employment, education and income disparities. Women are less likely to use and access the internet if they are too busy with the vast responsibilities attached to socially sanctioned wifely and motherhood roles. These wifely and motherhood functions ascribed to African women determine their value (Makama, 2013).

If this is the case, it will be unsurprising that African women spend more significant time fulfilling these roles as opposed to spending time on the internet, which is considered to hold no value. This situation could explain why the number of women that use and access the internet is significantly lower than the number of men. Negative stereotypes attached to gender in Africa means that even where women have some form of education, those smart and intelligent enough to use and access the internet marks confidence, and misconceptions and stereotypes seriously dissuade them (World Wide Web Foundation, 2015).

Also, if the experience of gender discrimination and violence by women in their daily lives manifest online, women would be discouraged from internet access and use. Regrettably, even when African women can access and use internet services, the potential internet threats to women are undeniable. For example, studies describe how the online and internet world has become particularly vicious and unsafe for women (Association for Progressive Communications, 2017).

Nowadays, women have become victims, easy targets and prey to online bullying, surveillance, violence, revenge pornography as well as harassment. Fake online and *deepfake* videos of women are prevalent. This online violence as research has shown, explains why many women do not just avoid the internet but develop an internet phobia (APC, 2017). Consequently, it is obvious how gender discriminations both online and offline tend to perpetuate and worsen the gender digital divide.

The analysis above exposes a threefold issue. One, the gender digital divide manifests as a form of discrimination against women. This assertion is valid, considering the digital divide is the differential treatment of (African) women in the digital space brought about by their status as women. Two, it is clear that women's disproportionate discrimination in spheres such as employment, education, development and health in African countries is reflected in the digital and internet space. Three, digital inequalities fuel women's existing disadvantages offline.

3. INTERSECTING FACTORS UNDERLYING THE GENDER DIGITAL DIVIDE IN AFRICA

Fundamental to closing the gender digital divide is the tendency to treat women as if they were homogenous (AfterAccess, 2018). Yet, women embody multidimensional and intersecting identities. Embodying multiple identities, according to Silvers (1998), means that the circumstances, situations and discrimination that women

encounter are numerous, different and countless. If this is true, a woman's identity is crucial to her sense of self as it forms her lived reality.

An African woman is therefore not just a woman and, if this is so, as Wing (2000) rightly illustrates, it will be hypocritical for any woman to attempt to forgo any part of her identity. She describes the impossibility of subtracting identity parts, a situation where an African woman is not just a woman, but as an African woman (Wing, 2000). What this means is that, as an African woman, she encounters not just a digital divide based on her gender, but notably, her digital divide intensifies as an African. This intensity is as a result of the intersection between her gender and an international information gap where developing African countries are lagging compared to developed European countries in internet access and use (Liu & Yan, 2016).

Crenshaw (1989) is credited to be the originator of the concept of intersectionality. Using the lives of African American women as a starting point, Crenshaw exposes the difficulties in the way law defines racial and gendered discrimination as single issues. Primarily, her insight demonstrates how an African American woman's experience of discrimination cannot be understood solely as an instance of racial discrimination or gendered discrimination, but as both racial and gendered discrimination at the same time (Crenshaw, 1989:141). Consequently, the intersectionality argument introduces the thought that discriminations cannot allot categories in a way that treats one form of discrimination as more fundamental than others.

This reasoning exposes how the African woman's experience of the gender digital divide as a form of discrimination cannot be understood solely from the gender dimensions. Apart from its gender dimensions, multiple and intersecting forms of discrimination contribute to and exacerbate the gender digital divide (HRC, 2017). Numerous factors such as ethnicity/race, ability, age, poverty and access to resources, minority status, and social status, language, religion, sexual orientation and gender identity, and class amplify the gender digital divide encountered by African women (HRC, 2017). Older African women who are poor and who live in conflict and rural areas are particularly vulnerable to the gender digital divide at a greater intensity.

For example, studies demonstrate how when gender and disability intersect, the digital divide encountered by disabled African women is even greater than women without disabilities. This situation is the same with intersections that exist between gender and poverty. Also, African women who reside in conflict areas are likely to face a more significant digital gap because, in situations of conflict, smartphones can present opportunities for theft and violence.

This gap is worsened and widened for African women who are older, disabled, poor and live in rural and conflict-prone states for a two-fold reason. First, it is evident that when gender intersects with multiple factors such as ability, poverty, sexual orientation, these factors might exacerbate the denial of women's internet access and use. Second, when gender intersects with multiple factors such as ability, poverty, and sexual orientation, the tendency for online discrimination and violence is increased dramatically.

4. INTERNATIONAL AND REGIONAL NORMATIVE DEVELOPMENTS IN ADDRESSING THE GENDER DIGITAL DIVIDE IN AFRICA

To claim that the gender digital divide is a human rights infringement presupposes women's use and access to the internet access as a human rights matter. The argument that gender digital divide is a human rights infringement gains validity once there is clarity on whether the right to internet access and use is recognised as a human rights issue. The idea that internet accessibility and usage is a human rights matter is still a subject of heated debate (Liu & Yan, 2016; Tully, 2014; Skepys, 2012).

As documented by the 2011 Human Rights Council report and other subsequent recent reports by the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, women's empowerment and human rights hinge on internet accessibility and usage (HRC, 2011). However, this realisation fuels continuous debate and contention. The contention is testament to the ambiguity on whether the right to internet access and use is, on the one hand, recognised as a human rights issue or on the other hand, is understood simply as an integral element to the realisation of women's human rights under international and regional human rights instruments.

Regarded as a multifaceted term and although not explicitly mentioned, the gender digital divide is implicitly addressed in several international and regional human rights instruments and resolutions. Fundamentally, women's right to internet access is located within other rights. This section illustrates these international and regional human rights standards.

4.1. United Nations Human Rights Treaties

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

The United Nations (UN) Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) was adopted in 1979 and entered into force in 1981 (CEDAW, 1979). CEDAW does not explicitly and comprehensively mention the gender dimensions of the digital divide. One can speculate and link the reason for the omission to the idea that the CEDAW drafters in the 1970s did not pre-empt the emergence of modern and new online media formats such as the internet.

However, Article 2 in CEDAW provides for the right to equality between women and men, forbidding any form of divide and discrimination in any sphere (CEDAW, 1979, Art. 2). Article 3 requires member states to take all the necessary steps to ensure women's development in all fields on an equal basis with their male counterparts. This can be read together with article 19 of the Universal Declaration on Human Rights (Universal Declaration, art. 19) as well as the International Covenant on Civil and Political Rights (ICCPR), that provides for the right to freedom of expression, right to information, right to freedom of association as well as assembly.

Through article 2 and 3 and other provisions, on the grounds of equality with men; it is possible to argue that women have a right to seek, receive and impart information and ideas of all kinds, regardless of boundaries, either

orally, in writing or print, in the form of art, or through any other media of choice. This right includes modern and new online media formats, such as the internet. Essentially, the closing of the gender digital divide, particularly the women's right to internet access and use, could easily be read within these equality and non-discrimination provisions.

Convention on the Rights of Persons with Disabilities (CRPD)

The Convention on the Rights of Persons with Disabilities (CRPD) adopted in 2006 is the first legal human rights instrument that applies to persons with disabilities (CRPD, 2006). Article 6 of the CRPD recognises that disabled women are particularly susceptible to multiple and intersecting discrimination.

Innovatively, the CRPD explicitly mentions the mandate of state parties to ensure that persons, particularly women with disabilities, can exercise the right to freedom of expression and opinion, and access to information. These rights should be guaranteed on an equal basis with others and through all forms of communication of their choice, which could easily include the internet. Besides, article 21 requires states parties to ensure that information provided through the internet is accessible to disabled persons, including women. Thus, the obligation of member states to address the gender digital gap is immediately apparent.

The Committee on the Rights of Persons with Disabilities (The CRPD Committee) has been very vocal about the gendered as well as disability dimension of the digital divide. According to the CRPD Committee, the disregard of disability and gender blind internet laws and policies, makes it difficult, if not impossible, for disabled women to participate fully and independently on an equal basis with others. The inaccessibility to the internet, functional helplines and hotlines are particularly troubling for disabled women in violent and abusive situations is a case in point (HRC, 2017). Consequently, African states that have ratified the CRPD are obligated to recognise and tackle the gender dimensions of the digital divide.

Apart from the above at the United Nations level, the General Assembly and the Human Rights Council has developed several resolutions and standards to draw attention to the gender digital divide. For example, there is a General Comment 34 that elaborates on Article 19 of the ICCPR. Interestingly, it recognises the significance of the internet by highlighting that internet restrictions are not allowed unless stipulated by law.

Also, the Human Rights Council adopted Resolution 32/13. This Resolution 32/13 (2016) mentioned the importance of using a human rights lens in providing internet access. It requested states to take proactive efforts to close all digital gaps concerning gender dimensions. It linked the closing of the gender digital gap as crucial to the empowerment of women and girls. Notably, the General Assembly adopted resolution 71/199 regarding the Promotion, Protection and Enjoyment of Human Rights on the Internet where although it commendably recognised the importance of the internet, the problem appears to be its selective emphasis on protecting existing offline rights online.

The Sustainable Development Goals (SDG) is another vehicle that supports the aforementioned human rights commitments made by African states to close the gender digital divide. Specifically, SDG target 9 mentions

obligations made by African countries to ensure that by this year 2020, there is universal and affordable internet access. Lastly, the recent reports of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression has emphasised the critical role that internet accessibility and usage play in the enjoyment of women's human rights.

African Human Rights Treaties

The Organisation of African Unity (OAU), now known as the African Union (AU), is a union of African countries that adopted the African Union Constitutive Act in 2000. Article 4(1) of the Constitutive Act of the African Union (Constitutive Act) establishes the 'promotion of gender equality' as one of the principles according to which the African Union should function. The African Union recognises the internet as a mechanism to enhance women's and girls' empowerment (African Union, 2003).

The African Charter on Human and Peoples' Rights (African Charter)

The African Charter on Human and Peoples' Rights (African Charter) entered into force in 1986 and has since been ratified by 54 out of the 55 African Union (AU) member states, except for Morocco. Article 2 provides that individuals are entitled to rights and freedoms on an equal basis and without discrimination, including based on sex. The right to internet use and access is not explicitly recognised in the instrument. However, this right can be broadly read and interpreted under article 9(1) of the African Charter, which gives every individual the right to receive the information. Besides, article 9(2), provides that every individual has the right to express and disseminate his opinion (emphasis mine). It is possible to argue that women's right to internet access and use is protected within these provisions since the internet identifies as a new media instrument for information and expression.

Nevertheless, the difficulty is with the gender-insensitive wording in article 9(2). One can suggest that such gender insensitivity is a consequence of African patriarchal and cultural beliefs, with women portrayed as minors, incapable of expressing or disseminating opinions. Additionally, this right to internet access and use can be broadly read and interpreted under article 11 of the African Charter, which gives every individual the right to assemble freely. This provision could mean, on an equal basis with men – women have a right to assemble freely, and with the advent of the internet, the virtual space has become a new assembly point. Without internet access and use in an increasingly virtual space, the right to assembly becomes increasingly difficult for women.

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol)

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol), which was adopted on 11 July 2003, came into force on 25 November 2005. So far, 42 African states have ratified the treaty (the African Union, 2003). The Maputo Protocol was adopted to respond to human rights infringements against African women and remedy deficits that the African Charter made with regards to women's rights (The Preamble to the Maputo Protocol, para 12.)

Similar to CEDAW, the Maputo Protocol does not explicitly mention the gender digital divide. However, article 2 provides for the right to equality between women and men, forbidding any form of discrimination or differential treatment which could include the gendered dimensions of the digital divide. Besides, the right of women to use and access the internet can be read into the rights of women to dignity as provided under article 3. Article 3(2) of the Maputo Protocol requires states to take appropriate steps that would ensure her development. This can be read together with the obligation to states to ensure women enjoy their right to sustainable development as provided under article 19.

The right to sustainable development, for instance, includes the use and access to modern and new online media formats such as the internet. With this insight, the right to sustainable development is difficult without internet access and use. This interpretation is valid, considering that the internet is a means to accelerate development.

Viewed as a consequence of online violence against women, the gender digital divide is tackled under the Maputo Protocol. As indicated earlier, although the Maputo Protocol does not explicitly mention the gender digital divide, article 3(3) of the Maputo Protocol mandates state governments to adopt and implement steps to forbid the degradation and exploitation of women. Besides, Articles 3(4) and 4 encapsulate an obligation on African states to protect women from all forms of violence including sexual and verbal violence which can also occur online.

These provisions can be innovatively and progressively interpreted to include protection from the violence against women that occurs online. With such progressive interpretations, the gender digital divide that happens because of online harassment and fear of violence can be bridged.

Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities (African Disability Rights Protocol)

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities (African Disability Rights Protocol) was adopted on 30 January 2018. The Protocol has not come into force as it has yet to be ratified by at least 15-member states.

Similar to the CRPD, the African Disability Protocol explicitly mentions under Articles 23 and 24 that state parties are mandated to ensure that persons, particularly women with disabilities, can exercise the right to freedom of expression and opinion. At the same time, they are mandated to ensure access to information, on an equal basis with others and through all forms of communication including the internet.

Just like the United Nations, at the regional level, the African Commission has adopted various human rights standards and resolutions. In 2019, the African Commission on Human and Peoples' Rights adopted a Declaration of Principles on Freedom of Expression and Access to Information in Africa. It elaborates on Article 9 of the African Charter and its relationship with the internet. This Declaration replaces the obsolete one adopted in 2002 and follows Resolution 362 by the Special Rapporteur on Freedom of Expression and Access to Information.

The Declaration acknowledges that the rights of African women to information and to express themselves fully using the internet is key to closing the digital gap and the enjoyment of other rights. It, therefore, urged African governments: First, to recognise how important internet access is to guarantee freedom of expression, access to information and other human rights especially when it is universal, equitable, affordable and meaningful. Second, to take proactive steps to tackle the specific needs of women to ensure that they can express themselves fully and access information on an equal basis with men. Third, to take proactive steps to ensure that they can claim their rights and are protected online. Finally, to not be involved with or tolerate internet disruptions for women or anyone of its citizens within its domestic jurisdiction.

5. THE IMPLICATIONS OF THE GENDER DIGITAL DIVIDE/ DISCRIMINATION ON WOMEN'S HUMAN RIGHTS IN AFRICA COVID-19 CONTEXT

Evident in most African countries is women's historic disadvantage of being more likely to live in abject poverty (Kaka, 2013). As earlier stated, this situation occurs because they are usually the last ones to access adequate food, nutrition, education, employment and health care services leading to the denial of basic human rights enjoyment. Unfortunately, women's disproportionate disadvantage in spheres such as employment, education, development and health in African countries echo in the digital and internet space, and vice versa.

Many of these inequalities and disadvantages experienced by African women are highlighted and exacerbated in the face of the current COVID-19 pandemic. African women are disproportionately affected by the coronavirus crisis in several ways. This situation is particularly evident with the increasing shift of daily lives to the virtual world because of this deadly virus. This abrupt shift has meant that African women without internet use and access are not only excluded and increasingly susceptible to human rights infringements, but are experiencing more rights violations than other Africans. As a result, the coronavirus pandemic has raised and brought into sharp focus how African women's lack of internet use and access has begun the gradual erosion of women rights.

The gender digital divide as a human rights infringement is exacerbated by COVID-19 pandemic in several ways discussed below.

Is Internet Access A Human Right or Not?

First, the COVID-19 has brought to focus the difficulties that non-binding resolutions, declarations and standards with mere persuasive power presents to the gender digital divide. What the emergence of the coronavirus has shown, with the sudden and abrupt movement of women's daily lives, is the importance of the right to internet access and use. It has become even more crucial for African governments to explicitly protect women's right to be able to access and use the internet in legally binding human rights documents, both domestically and internationally, for them to live meaningful lives.

This argument has been validated by the recent 25 June 2020, Economic Community of West African States (ECOWAS) Community Court's judgement between Amnesty International and others v. the Republic of Togo. In the decision, the Court decided that the internet is an essential element in human rights enjoyment the right to freedom of expression and the right to access information (ECOWAS, 2020; Access Now, 2020). However, as demonstrated below, coronavirus has shown how women's lack of internet use and access threatens their very existence and other fundamental rights that extends beyond freedom of expression and information rights.

A Threat to Women's Right to Life: An Increase in Gender-Based Violence Offline and Online

Second, due to COVID-19, the lack of access to the internet for women has reinforced an increase in gender-based violence. In African countries with strict lockdown rules, restrictions to movements as well as economies shutting down, economic insecurity and social isolation have meant a rise in gender-based violence (United Nations Women, 2020; Atlantic Council, 2020). The pandemic has brought into sharp focus another epidemic in the form of gender-based violence that unfortunately has ravaged several African countries without the needed attention it deserves. African women's limited access to mobile phones and internet connection has meant that women face life-threatening difficulties in getting much-needed assistance and recourse.

This situation is evident in African countries such as South Africa where evidence has shown how the strict lockdown rules and restrictions of movements have resulted in a massive increase in gender-based violence numbers (Atlantic Council, 2020). As a public health crisis, the COVID 19 pandemic has highlighted the public/private distinctions and how it contributes to violence against women.

On the other hand, the unfortunate increasing virtual shift because of COVID-19 has also meant online gender-based violence is on the increase. In this way, it is reinforcing women's disinterest in internet access, even a form of gender digital divide. Thus, the COVID-19 pandemic exposes the multifaceted life-threatening costs of the gender digital divide.

Threats to Women's Right to Education

Third, COVID-19 has exposed how lack of internet use and access have interfered with the right to education for African women. The closures of schools in several African countries because of coronavirus have shown that a significant number of young women and girls are unable to attend schools (United Nations Children's Fund, 2020). This lack of internet use and access jeopardises women and girls' right to education because many schools are moving to online learning options. With disrupted learning and a looming economic crisis as well as social isolation, the threat of forced and child marriages, including teenage and unwanted pregnancies increases considerably.

Even with proposals for the gradual reopening of schools in African countries, the pandemic has shown how without internet access, African women and girls forfeit affordable and inclusive educational opportunities with new learning pathways and varying learning approaches.

Threats to Women's Right to Health

Fourth, the gender digital divide has become evident with strained health care infrastructure in several African countries amidst the COVID-19 pandemic. African countries are reporting increasing strain to healthcare infrastructure and under-resourced health care services. Without internet access and use, African women might have difficulties accessing much-needed healthcare-related information, including routine health services such as sexual and reproductive health services used by women as well as essential medicines and medical supplies.

Scholarship that has lobbied for the right to internet access has relied mostly on its relationship with freedom of expression, rights to information and rights to assembly. These are mainly regarded as civil, political rights. Nonetheless, the coronavirus and the right to health has ensured the pertinence of socio-economic rights. Due to COVID-19, the right to health is threatened, particularly in African countries where the rights to health care are non-justiciable and treated as subject to progressive realisation. The problem is that complications from poor service delivery may leave women with life-threatening conditions. The relationship between the right to health, often regarded as a socio-economic right, and other civil political and self-determination rights are thus evident amidst the pandemic.

Threats to Health Information

Credible and accurate health-related information regarding coronavirus is now crucial with the potential to save lives. When African women lack internet access and use and are digitally illiterate, prevention of the spread of the virus is difficult. To prevent the spread and contain the virus, in line with the WHO guidelines, African governments were urged to take preventive and precautionary steps (WHO, 2020). One of these steps include ensuring the citizenry is regularly updated. It should include updates on the precautionary measures that should be taken to curb the virus, including physical distancing, masking up, hand hygiene and respiratory etiquette.

However, compliance with public health steps might be difficult without internet use and access. Without a mobile phone with an internet connection, African women may miss out on accurate, regular, accessible and science-based information on the threat the pandemic poses to health, the role and impact of the measures adopted for preventing and containing the virus. Notably, some African governments have innovatively been sending short messaging services (SMS) sometimes in local languages through mobile phones to share disease prevention and precautionary tips.

While this is commendable, the truth is that women who do not have a mobile phone and internet connectivity cannot benefit from this information, especially those who live in rural areas. Consequently, an African woman without a mobile phone, and by extension, internet connection at a time like this can potentially be life-threatening. Yet, women's susceptibility to the virus is high. This is considering socially sanctioned wifely and motherhood roles ascribed to African women which means they are often in frontline positions such as care and domestic work, teaching, as well as nursing professions.

Threats to Detection and Protection

For one, the coronavirus pandemic has meant increasing reliance on smartphones and internet connectivity. In most cases, detection and protection from the virus would require a mobile phone and internet access to help track and contact trace. Detection and protection from the virus, therefore, become a challenge where this tracing and testing is dependent on having access to a mobile phone. Evidence points to how some proximity and symptom tracking tools need individuals to have a charged smartphone and to always carry it (WHO, 2020). As a result, women who do not have smartphones are excluded from approaches that rely heavily on proximity tracing tools.

Threats to Treatments and Transmission Reduction

Similarly, without internet access and use, treatments and ensuring reduction of coronavirus transmission are increasingly difficult. This point is evident with the adoption of e-health and m-health care services. However, the coronavirus has also brought attention to some critical challenges, including information censorship, disinformation, misinformation and the protection of data privacy.

Enabling Repression

Fifth, dictatorial African governments, unfortunately, have used the COVID-19 pandemic response as an excuse to impose internet cuts, stifle opinions, monitor online actions, as well as block or filter access to information in a manner that enables repression. Evidence shows how some African states have used the COVID 19 pandemic as an excuse to block social media platforms and in some cases slowed down internet speed and in extreme cases, remove internet connection completely (Access Now, 2019; African Commission, 2020). Reports, for example, mention how the Ethiopian Government cut internet connection in response to the unrest in the Oromia region. The government has allegedly just recently restored internet connection in the area (African Commission, 2020).

Another example is in Guinea, where internet connections were disrupted allegedly because of elections. The internet that has served as a voice, was removed, rendering women voiceless (Access Now, 2019; African Commission, 2020). These internet disruptions not just reinforce but widen the gender digital divide interfering with the rights to freedom of expression, right to information, and the right to assembly.

African women's use and access to the internet has become increasingly difficult because of the undue interference in the right to access information, the right to freedom of expression and opinion as well as the right to assembly. Unfortunately, the rights, as mentioned above, were threatened amidst COVID-19 crisis, a public health emergency. As discussed above, the recent ECOWAS judgement Court proves that these internet cuts are unlawful. This decision, coupled with the internet disruptions, have the potential to amplify the spread of the virus (Access Now, 2020).

Threats to Women's Right to Work

Sixth, evidence shows that because the domestic and informal household work that African women perform are usually unpaid, and with looming financial and unemployment crises, women's means of livelihood are threatened. This assertion raises the tendency of African women already living in poverty to become poorer, a reality. Once this happens, African women's use and access to the internet becomes increasingly tricky.

With African countries gearing up for a possible second or third wave with the growing number of cases, followed by gloomy economic forecasts and disruptions, severe poverty and inequality are apparent. Thus, the COVID-19 crisis validates the popular quote – health is wealth. Women's lack of internet with the opportunities of e-commerce has left African women threatened by poverty to make difficult choices between the fear of dying from poverty and dying from the virus.

6. CONCLUSION

In this paper, I have attempted to answer the question, Is the gender digital divide a human rights matter? From the analysis above, I demonstrated that lessons from coronavirus show that in an increasingly virtual world, the gender digital divide is indeed a human rights matter. Central to the closing of the gender digital divide is the recognition that whether or not internet access is regarded as a human right or as an essential enabler in the realisation of women's human rights. When regulated appropriately, it is fundamental to human and women's existence during and post Africa's coronavirus context.

7. RECOMMENDATIONS

In answering the question raised in this paper, I have exposed a two-fold issue. First, African women's existing inequalities are exacerbated in times of crisis and pandemics, both offline and online. Consequently, the gendered digital divide in Africa, although not a new problem, was exacerbated and brought into sharp focus recently with the emergence of the coronavirus pandemic.

Second, I have shown the tendency of technology, including access and use of the internet or the lack thereof (gender digital divide), to inadvertently reinforce women's inequalities in today's African societies with implications for the enjoyment and realisation of women's human rights both offline and online. Thus, the strong correlation between African women's online access to information, communication and technology, and the realisation and enjoyment of their human rights in this COVID-19 era is clear.

To close this gendered digital gap therefore, I offer recommendations to key stakeholders such as the African Union, African Commission, African Governments and Civil Society Organisations. In offering recommendations, I borrow inspiration from the example of the Council of Europe's 2011 Convention on Preventing and Combating Violence Against Women and Domestic Violence (Istanbul Convention). The Istanbul Convention is a regional European Convention that was adopted in 2011 and came into force in 2014. Drawing inspiration from this treaty, I view the gender digital divide with a twofold lens; first, as a form of discrimination; second; as both a cause and consequence of violence against women that happens online and offline.

7.1 Recommendations to the African Commission

From the paper's analysis, there have been declarations and resolutions that mention the need to adopt a human rights approach to ensuring the use and access of the internet by African women as key to their empowerment. However, one stark lesson that has emerged from the outbreak of the coronavirus is that the realization and enjoyment of women's human rights depend on internet access and use in an increasingly virtual world. If this is so, there is a need for the adoption of a legally binding instrument that now encompasses the widening gender digital divide in Africa.

The 2019 Declaration of Principles on Freedom of Expression and Access to Information in Africa's starting point recognises the specific needs of African women to ensure that they can express themselves fully and access information through the internet on an equal basis with men. While this is useful, it falls short of explicitly recognising the gender digital divide as a form of discrimination and specifically as a cause and consequence of violence against women both online and offline in Africa. The truth is that it might not be necessarily sustainable at this point to argue for the adoption of a legally binding instrument that now encompasses the gender digital divide in Africa. However, borrowing insight from the example of the Istanbul Convention that explicitly defines violence against women as a form of discrimination and human rights infringement, I propose the drafting of a General Comment on article 4 of Maputo Protocol where the meaning of *protection from all forms of violence* is explained, expanded and interpreted to remove all doubts that this provision includes protection from violence against women that happens not just offline but also online.

This is particularly necessary with the emergence of artificial intelligence which could sometimes be used for purposes of violence against women including online stalking, bullying, harassment and creation of *deep fake* videos for intimidation, as well as revenge pornography etc. The proposed General Comment should explicitly mention the gender digital divide as a form of gendered and intersecting discrimination, as well as both a cause and consequence of violence against women. As such, it should explicitly require African governments to take concrete actions to combat online violence against women.

Consistent with the 2017 Human Rights Council report, the proposed General Comment should mandate African states to prevent online violence against women while simultaneously ensuring that women's freedom of opinion and expression and the realisation of other rights, such as the right to access information about sexual and

reproductive health and rights are protected. With such progressive obligations, the gender digital divide that occurs because of concerns about privacy, security, online harassment and violence would be bridged.

Similarly, I propose the establishment of a separate monitoring mechanism. The Maputo Protocol could benefit from an independent and effective monitoring mechanism that recognises the gender digital divide in two ways – as a form of gendered and intersectional discrimination and as a cause and consequence of VAW that happens both online and offline. This is consistent with the Istanbul Convention which would then ensure that the separate monitoring mechanism innovatively and progressively interprets the gender digital divide as a form of gendered and intersectional discrimination as well as a consequence of online violence against women. With such progressive interpretation, the gender digital divide that occurs because of concerns about privacy, security, online harassment and violence would be bridged.

Viewed as a form of discrimination and a consequence of both online and offline violence against women, African states should be required and encouraged to report specifically on the gender digital divide. This is following article 26(1) of the Maputo Protocol that requires member states to submit a report every two years detailing legislative steps and other measures to guarantee the provisions in the treaty. For example, governments should be required to report on laws, policies or practices. For example, the regulation of the licensing of ICTs, subscription services, affordability, discriminatory policies and practices including internet shutdowns that affect women. After deliberation on each report, this gender digital divide should also reflect in the African Commission’s concluding recommendations to states.

Furthermore, it might be useful to recommend, consistent with the United Nations, the creation of a new Special Rapporteur on Violence Against Women with a mandate that recognises the violence against women that happens offline and online, and how such acts of violence function in ways that widen the gender dimensions of the digital divide. Although, it is important to note that there is an existing Special Rapporteur on the Rights of Women in Africa tasked with exploring the specific needs of women. There is also a Special Rapporteur on Freedom of Expression and Access to Information in Africa tasked with ensuring all citizens in African states, including women, can express themselves fully and access information on the internet on an equal basis with men. It might be important in the interim to ensure that the two mandates are expanded in a manner that recognises the gender digital divide as a form of gendered and intersecting discrimination as well because of online violence against women.

7.2 Recommendations to African Governments

The coronavirus pandemic has exposed the need for African Governments to take the gender dimensions of the digital divide seriously. Viewed as a form of discrimination as well as a cause and consequence of violence against women, there are multiple ways to show seriousness in dealing with the gender digital divide. Paying attention to the negative and positive dimensions attached to women’s internet access and use, governments need to allocate adequate budgetary for financial, administrative and technological resources that would ensure affordability of internet. More importantly, there is a need for the enactment of comprehensive legal frameworks to protect women from violence

against women offline and online domestically in African countries. Such an enabling online environment would guard against violence perpetrated by private actors and internet shutdowns by repressive governments.

7.3 Recommendations to Civil Society

There is a need for an increase in scholarship and research on the widening gender digital divide in African societies. The coronavirus pandemic has exposed the need for civil society organisations in African to begin to engage in innovative scholarship to expose the barriers that prevent African women from adequate internet access and use. This includes how society sanctioned motherhood and wifely functions hinder internet use and access of African women and girls.

Civil society organisations should perform the dual function of lobbying and monitoring of African governments enforcement of commitments such as the SDGs as well as the 2019 Declaration. This includes the commitment to promote the empowerment of women through internet access and use (HRC, 2017). It should also serve as a powerful voice in ensuring the establishment of a comprehensive framework domestically in African countries. In this way, the right to the internet would slowly gain legal recognition consistent with some European nations.

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TAMSANG-TAMSONG: SOCIAL DISTANCING PROMOTION AND JOB SECURITY FOR MOTORCYCLE TAXI AND FOOD VENDORS DURING THE COVID-19 CRISIS

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ABSTRACT

The social-distancing measures that were implemented due to the outbreak of COVID-19 had drastic economic consequences to food vendors and motorcycle taxi drivers. Prohibited from dining-in, customers in quarantine can only order food through food delivery platforms that make a profit through charging fees from the vendors. To compensate, vendors are pressured to raise their prices. As a result, customers who are also struggling economically have to spend more. Motorcycle taxi drivers are heavily impacted by the reduced need for transportation as regular passengers now work from home. These challenges are the context that gave way to our action research, which links these three stakeholders together under the framework of solidarity economy.

Tamsang-Tamsong (Food Ordered, Passengers Delivered) is a community-based food delivery and ride-hailing platform. Operating in the Ladprao 101 area, Tamsang-Tamsong strengthens the wellbeing of the community by assisting food vendors, motorcycle taxi drivers, and customers in transitioning to a platform economy. Currently, it works with over 60 food vendors and 50 motorcycle taxi drivers. The model based on solidarity economy that Tamsang-Tamsong uses can serve as a prototype for other areas in the country to increase job security and empower communities, even when social-distancing measures are no longer in effect.

Keyword: Social Distancing Promotion, Job Security, Motorcycle Taxi, Food Vendors, Covid-19 Crisis.

COVID-19, CIVIL SOCIETY IN THAILAND'S DEEP SOUTH AND THE WEAK STATE

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ABSTRACT

During a COVID-19 epidemic crisis, there is a window of opportunity for building peace in the Deep South of Thailand which the rival parties are the Thai government and BRN. On April 3, 2020, BRN-coordinate issued a statement ending violence in order to open the space for helping people who needed medical assistance with only one condition that the Thai state would not start military operations again.

This paper examines the roles of government and civil society organizations in responding to people living in the area of Deep South Thailand that faced difficulties during Covid-19 pandemic. It discusses challenges and possibilities of state's capabilities to handle internal violence and distribute political goods to their citizens. It argues against the way Thai state handle the epidemic disaster in authoritarian manners such as collecting ordinary people's DNA secretly during a critical situation with COVID-19 as an un-acceptable method and creates mistrust in the area. In comparison, the study also looks at the main objectives of the Civil Society Council of the Southernmost Thailand and their implemented activities in providing a platform for all public sectors regarding the enhancement of civil society, determining for resolving violent conflict, developing sustainable southern border provinces, communicating and creating public spaces for everyone.

Keyword: Covid-19, Civil Society, Thailand's Deep South, Weak State.

THE SECURITIZATION OF COVID-19: A PUBLIC POLICY CHALLENGE

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ABSTRACT

The present exploratory paper tackles some of the challenges presented by the COVID-19 Pandemic from a public policy and foreign policy perspective. COVID-19 has resulted in unprecedented public policy challenges and has brought to the fore disciplinary cleavages in terms of how to frame the crisis and, more importantly, in terms of how to rise to the challenge. The paper concludes that a more holistic approach which takes a more macro level approach and which borrows from the disciplinary toolkits of sociology, anthropology, political science, and public health is necessary.

Keyword: Public Policy, Security Studies, COVID-19.

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1. INTRODUCTION

The COVID-19 Pandemic of early 2020 has caused the untimely death of thousands of people, and has wreaked havoc in the world economy (Organization, 2020). Supply chains have been disrupted, unemployment has risen, and international commerce has slowed down. There is also the human toll in terms of the disruption of life for millions of people all over the world. While the medical facts regarding the structure and characteristics of the virus are not contested, the policy response as to how to deal with the pandemic has revealed serious policy cleavages at the domestic and international levels. Moreover, the Pandemic has undergone a process of securitization, which is the process of interpreting a phenomenon as a security issue in order to increase the urgency of dealing with it and to increase its importance as policy issue. As a result of serious disagreements as to how to deal with the crisis, foreign policy has become increasingly complex.

The following sections of this brief exploratory paper deal with two main issues. The first section talks of how different disciplines prioritize different variables in terms of dealing with the pandemic. In other words, different disciplinary lenses result in different wordings of the policy problem and thus result in different recommendations. The next section challenges the medical paradigm as narrow and overly simplistic. The final section posits the benefits of an interdisciplinary approach with the social sciences at the core. The present paper applies a hybrid method combining aspects of case study methodology and grounded theory. The need to follow a hybrid approach is due to the unfolding nature of the phenomenon and the need to triangulate the data. Case study methodology focuses on a particular case study; in this particular paper, the focus was on the United States. Grounded theory was used to conduct a brief discourse analysis based on published public statements made by stakeholders.

2. DISCIPLINARY PARADIGMS AND HOW THEY AFFECT OUR UNDERSTANDING OF THE COVID-19 PANDEMIC

Thomas Khun, in his seminal work on scientific revolutions and on paradigmatic shifts more specifically, deals with important issues on the underlying assumptions of different disciplines (Kuhn, 1996). Disciplines emphasize particular problems and have specific ways of dealing with them. One good example is Psychology. The main unit of analysis is the individual and the goal is to help the person achieve happiness (DeLamater & Hyde, 1998). Notwithstanding the generalization, Psychology tends to be more focused on the individual than sociology or anthropology (Kessler, 2009; Macdonald, 2007; Willis, 2007). Another example is the Hippocratic oath of physicians which focuses on attempting to save every life, and thus has an individual focus. The reason why the assumptions of a discipline are important is because they frame the way a problem is perceived, and in a way limit the possible solutions (Creswell, 2007; Doucet & Mauthner, 2008; Gulliver, 1988). Professionals at the master's and doctoral levels are trained in epistemology, and are thus keenly aware of the ontological assumptions made by their disciplines

(Doucet & Mauthner, 2008). Nevertheless, practitioners at the bachelor's level or holders of first professional degrees such as medicine and law, in many cases, lack training in formal research methods (Ewest & Klieg, 2012; Mangu-Ward, 2008). Even though not having gone through the experience of writing an original dissertation, which by definition is an original contribution to knowledge, does not detract from their ability to practice their profession effectively, it can create problems when working in interdisciplinary teams that require a deeper understanding of the complex web of knowledge linking all disciplines (Baker, 2005; Bens, 2005; Bergdall, 2005; Chilberg, 1989, 1995).

In regard to the COVID-19 Pandemic, some of the most serious effects have been completely unrelated to the medical aspects of the virus itself. The vast majority of the population living in affected countries has suffered more from the economic and socio-political effects than from the physical effects of the virus itself. Unemployment in the United States has reached levels unseen since the 1930s, and social conflict has also come to the fore in Michigan, Brazil, Texas, inter alia. Therefore, the brunt of the COVID-19 phenomenon transcends physical illness. One of the great challenges in facing a multidimensional phenomenon such as the COVID-19 phenomenon is defining the problem and identifying the possible alternatives (Abu-Nimer, 1996; Keltner, 1989; Kriesberg, 1997; Ury, 1993). Even if one follows the scientific method, the possible parameters of a satisfactory solution, as well as the alternatives considered feasible, will depend on the assumptions of the particular paradigm one adopts (Constantino & Merchant, 1996; Druckman, 2005). The initial reaction to the COVID-19 virus in Asia was tepid at best during the initial stages of the spread. Nevertheless, with an increasing number death and with an increasingly high number of cases in Europe, there was a subsequent change in the tone and language used to describe the phenomenon. This change reflects a process of the securitization of the COVID-19 phenomenon. By securitization, the researcher means the process of framing the challenge as a security issue. Concurrently, there was an attempt by the medical community to narrowly define the problem, and thus to monopolize the power to propose alternative solutions. Other disciplines also attempted to expand the definition of the phenomenon. Probably, the most obvious contender to the medical paradigm was the perspective provided by economists. There is no doubt that the measures taken to limit the spread of the COVID-19 virus have battered the economy and that, as a result of them, millions of people have lost their jobs and thousands of jobs have had to close their doors (House, 2020). Stock markets have fallen and consumer demand has decreased to level unseen for decades. Economists focus on solutions that would help ameliorate the economic malaise so as to shorten a possible recession.

One very important difference between disciplines is the unit of analysis. In the case of medicine, the unit of analysis is the individual patient, while in the case of economics, the unit of analysis is the household (Andriess & Westen, 2008). Thus, medicine tends to be individualist in its goal is to save every single patient and to view each case separately, while on the other hand, economics tends to have a more macro level approach with the goal of balancing the economy at the household or the national level, in many cases (Than & Thein, 2007). The very deep policy cleavages reflect the ebbs and flows of influence in terms of one discipline over another. Committees tend to represent several disciplines. But rather than take an integrated approach to the problem, each representative lobby and applies pressure to get the upper hand. This leads to some very interesting but harmful policy oscillations (Fritz, 1996).

A good example of this is the initial stoic approach taken by the American administration in terms of facing COVID-19. A macro analysis of the crisis favored a more cautious initial approach so as not to disrupt the markets and as a way to ameliorate the impact on the average American family. Nevertheless, the influence of the media and an increased anxiety because of the number of fatalities in Europe resulted in an increase in the relative influence of medical professionals. In the United States, this was seen by the prominence given to Mr. Fauci, and was also reflected in the tension between the administration and some of his public statements. At one point President Trump even openly considered the possibility of firing him as evidenced, by his Twitter posts.

The previously mentioned public altercation shows the tension and conflict between different professionals who share the goal of dealing with the crisis. As of the end of April of 2020, several governors had reopened important parts of their states' economies, and the Federal government was openly announcing that America was ready to reopen for business. It is important to take into consideration that by this point the number of cases in the United States had increased to over a million and the death toll had risen to over 60,000. The opening of several states such as Texas, Michigan, and Georgia were followed by grassroots protests of average Americans who wanted a relaxation of the "stay at home" orders and a rapid re-opening of the economy. The protests, in addition to the de-sensitization of the population to daily casualties and the normalization of a new threat closely, resemble the initial popular reaction to the War on Terror.

This process closely resembles the 9/11 terrorism scare. The initial public reaction was to limit travel in order to decrease the risk, but eventually, the new situation was normalized and people returned to their old habits (Ellis, 2009; Glassman, 2005; Holland, 2009). There was an initial criticism of the government by certain groups and government factions in relation to a perceived lack of security, criticism from other groups focused on too many restrictions and security provisions (Bush, 2010). Nevertheless, there was a clear trend in favor of the normalization of travel and a return to social activities.

While the 9/11 crisis was similar in some respects to the COVID-19 Pandemic, there are also important differences. The lesson from the previous crises is that complex phenomena require complex solutions. Cooperation between different disciplines should involve more than factional struggle between representatives of different interest groups and disciplines. The Public Health aspects of the crisis are certainly important, but there is also a more basic social and economic perspective that needs to be taken into consideration. It is a truism that society is hard to study because experimental conditions are rarely ever achieved. Society is not as simple as a Petri dish with bacteria that can be exposed to different stimuli. Therefore, the guiding principles of the response to a public policy problem should also be guided by expert from the social sciences.

3. RECOMMENDATIONS

Committees and boards established all over the world to deal with the COVID-19 crisis tend to suffer from a lack of cohesion and usually devolve into factional struggles. Thus, they more closely resemble national legislatures than think-groups. This is understandable because many leaders, in particular those with experience in the private sector, are used to hard bargaining tactics and distributive negotiation as their main styles of interaction (Fisher & Ury, 1991; *Negotiation: Your Mentor and Guide to Doing Business Effectively*, 2003). In addition to this, the incentive structure continues to favor the struggle for resources, making it difficult to tackle the problem from a more objective and truly interdisciplinary perspective. The emphasis should then be on good facilitation. One approach would be to appoint chairs with training in social science research and with particular experience in facilitation techniques (Baker, 2005; Chathaway, 2002). Approaches, such as the Delphi method, could be combined with other problem-solving methods in order to achieve true integration of ideas.

Policymakers should take a more interdisciplinary approach to tackle the COVID-19 crisis. Social scientists should be at the helm of the problem-solving process because of their expertise in facilitation, social analysis, and holistic project management methods. An integrated approach can yield more balanced results and help avoid the painful waves of policy oscillation and public panic occasioned by disciplinary factional struggles and irresponsible media coverage.

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ROLE OF NEPAL TAMANG GHEDUNG IN PROMOTING RIGHTS OF TAMANG INDIGENOUS PEOPLES IN NEPAL

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ABSTRACT

Indigenous peoples' rights in Nepal is one of the most dominant issues in ethnic social movements after the political transformation of 1990. There are 59 Indigenous nationalities under the umbrella organization - Nepal Federation of Indigenous Nationalities (NEFIN). Among them, Nepal Tamang Ghedung is the national organization of Tamang indigenous peoples. This research is a study of Tamang Ghedung, a social movement organization that was formed in 1957 to secure the rights for the Tamang communities in Nepal. The Tamangs are the third largest indigenous ethnic organizations in Nepal. The objective of this research is to analyze the activism of Tamang Ghedung in how it promotes, preserves and protects the rights of Tamang indigenous peoples in the country. Adopting the qualitative approach, this research attempts to analyze how Tamang Ghedung, as a social movement organization, advocates for constitutional reform to promote the rights of indigenous Tamang people in Nepal. Ten indigenous activists participated as informants in this research. The findings of the research show that the activism of Ghedung is either successful or unsuccessful.

Keyword: Indigenous Movements, Tamang Ghedung, Constitution.

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1. INTRODUCTION

Nepal promulgated the new constitution in September 2015 despite the massive protests of Indigenous peoples and the Tarai people against the constitution (Haviland, 2015; Indigenous Voice, 2015). The National Federation of Indigenous Nationalities (NEFIN) claims that the new constitution of 2015 failed to accommodate the indigenous peoples' rights and it continued the existing discriminatory provisions (Indigenous Voice, 2015; Lawoti, 2019). Moreover, NEFIN rejected and considered the new constitution "regressive", because it deleted many positive aspects based on equality rights decorated in the interim constitution of 2007 (Limbu et al. 2016). Since then, indigenous peoples have been struggling to fulfill their demands in the new constitution through its reform.

This research attempts to study the role of social movements of historically marginalized indigenous Tamang communities of Nepal. Tamang indigenous peoples have been struggling to reform the constitution of 2015 for securing their rights, which are preserved by the International Labor Organization (ILO) convention No. 169 (1989) on indigenous and tribal peoples and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) 2007. However, the constitution has not yet reformed to address their issues. This research seeks to analyze how social movements, as opposed to political campaigns, have contributed to introducing constitutional reform in Nepal. This article is divided into six sections. The first section serves as an introduction and a brief summary of the research paper. The second part discusses the theories of social movement that this research tested in the field. The third section gives information about the research method applied in this study. The part after introduces the Tamang people and how they were marginalized by the state in different phases of Nepal's history. The fifth section concentrates on the findings of this research. Finally, the sixth section discusses the findings and provides the conclusion of this article.

2. THEORETICAL FRAMEWORK

This research seeks to investigate McAdam's theory of social movement in which he had argued that successful social movements require political consciousness, institutional support, and favorable political context. McAdam made this argument based on his investigation of the civil rights movement in the USA. In this theory, he had argued that the African American population had sufficient political consciousness during the 1960s (McAdam, 2008, p.180). This consciousness contributed to make their social movement successful. McAdam, however, also added that mere political consciousness was not enough to make a meaningful structural change that the civil rights movement had sought to bring. For this to happen, they needed institutional support. This institutional support was provided to them through churches, mosques, legal firms, and civil rights organizations. McAdam made it very clear that political consciousness in the absence of institutional support would have been insufficient in bringing social change. The political consciousness and institutional support were two important pillars of the civil rights movement, but if the political context were not in favor of the movement, then the movement would have faced much opposition from the state (McAdam, 2008). Here McAdam (2008) argues that during the civil rights movement, the social and political leaders of the USA were divided. The civil rights movement was able to divide the ruling white elites, with

many of them supporting civil rights. This was the reason why the mainstream media, religious organizations, and trade unions supported the African American cause. The importance of context is also echoed by Charles Tilly (2004), who sees a favorable political context as a paramount foundation for social movements. This theory was tested by researcher in the context of Nepal. The favorable political context that McAdam and Tilly talk about was also present in Nepal since 2006 when democracy was reestablished in Nepal for the second time. The favorable political context did exist for the Tamang community's social movement. I seek to investigate how this favorable political condition was used by Nepal Tamang Ghedung (NTG), the largest Tamang social movement organization in Nepal.

Since this research is a study of a social movement organization, it is essential to develop criteria to analyze the success and failure of this social movement. NTG's activities that can alter the state policies in Nepal in favor of implementing indigenous peoples' rights decorated in ILO 169 and UNDRIP – 2007 are treated as a success. Not being able to influence the state to domesticate these articles in the state policies are considered as a failure of the NTG as a social movement organization. This research, rather than certifying whether the NTG is a successful or an unsuccessful social movement organization, seeks to analyze its role to reform the constitution to secure the rights of Tamang indigenous peoples.

3. RESEARCH METHODOLOGY

The researcher applied a qualitative approach to collect data for this research. The researcher used two qualitative techniques. The first method was the study of official documents of NTGN. The second method was the conduct of semi-structured interviews with board members and advisors of NTG. The purposive sampling methods were used to select participants for this study. Interviews were conducted with 10 participants. Each meeting lasted for more than 40 minutes. The interviews were transcribed and studied carefully. After that, essential quotes were highlighted in. The arguments in these quotes helped to make codes. The codes were categorized into common themes. This is how the collected data were analyzed.

The interviews were governed by the ethical standards of Mahidol University. Before the meetings, the participants were provided with Informed Consent forms. The informants were told in advance that their participation was purely optional in nature, and they had the right to participate or withdraw from the research anytime they wished to. Disclosure of identity was also granted during the interview.

4. CONTEXTUAL BACKGROUND

This chapter provides a brief history of the marginalization of Tamang people in Nepal and provides the reasons behind the formation of the social movement organization this research investigated. The first subsection explains the history of how Tamangs were marginalized in Nepal. The second part provides statistical data to argue

that the historical marginalization of Tamang people persists until today. The last subsection explains the birth of NTG and its transformation from a cultural to a social movement organization.

4.1. Nation Building and Marginalization

The Tamang community is believed to have originated in the Tibetan kingdom between the seventh and eighth century when the "Himalayan region – especially the areas adjoining the old trading routes" came under the "Tibeto-Buddhist influence" (Tautscher 2007, pp.14 -15). The Tamangs are believed to be descendants of Tibeto-Buddhist people. In the fourteenth century, Yaksa Malla, the king of Bhaktapur, brought the ancient Tamang areas such as Nuwakot and Gosaikund under his political influence (Tautscher 2007, pp.51-52). In the same period, another ancient Tamang area of Dolakha took under the sway of Kirti Sinha. The "oldest textual reference" to the Tamang "dates back to fourteenth annals of the Gungthan kings, where people referred to as the 'Taman Se Mon' of the kingdom of Serib" are mentioned (Tautscher 2007, p.23). Serib was the kingdom that expanded between the Kali Gandaki valley of lower Mustang and Annapurna range between seventh to fourteenth centuries (Tautscher 2007, p.23).

From 1768 onwards, the Gorkha Empire expanded in mountain regions bringing many Tamang majority regions under the Gorkhali rule (Tautscher 2007, p.14). Prithivi Narayan Shah, the king of Gorkha in 1768, was able to conquer the strategically located Kathmandu Valley militarily, and this greatly facilitated the expansion of the Gorkha Empire. In 1793, there was a Tamang rebellion in the Nuwakot district against the Gorkha Empire (Lawoti 2007, p.32).

The rulers of Gorkha were Hindus; hence, they imposed Hindu norms and values into Tamang regions. One example of this is the ban on beef-eating. The "royal edict" from 1810 during the reign of king Girban discouraged Gurung and Lama from eating beef (Holmberg, 1989, p.28). Most of the people known as Lama were ancestors of the present-day Tamang. The writings of Hamilton (1819) also state that Lama was "obnoxious" to the Hindu rulers. Gorkha rulers looked upon the Buddhist Lama with suspicion because they were afraid that they might have proximity with Tibetans. The Hindu Gorkhals saw Buddhist Lama as their cultural competitor (Holmberg 1989: 29).

The military coup d'état in 1846 gave rise to a hereditary Prime Minister system in which the Rana family who was behind the coup became the de facto rulers. Prime Minister Janga Bahadur Rana introduced Muluki Ain (National Code) in 1854 which institutionalized the informal caste system in Nepal. The National Code was written under the strong influence of the Hindu caste system had divided Nepali society into five hierarchical groups (tagadhari – warrior: Brahman and Chhetri, namasinya matwali – unsalable: indigenous communities who use alcohol but not allowed to be enslaved, masinya matwali – enslavable: indigenous communities who use alcohol and can be enslaved, Pani nachalne chhoi chhito halnunarpanya – impure but touchable: artisans from Hindu and Buddhist communities, Muslim and foreigners, pani nachalne chhoi chhito halnunarpanya – impure and untouchable). The impure and 'untouchable castes' were considered to be so unclean that if they touched people from tagadhari and matwali castes then the touched people needed to purify themselves before eating or engaging in any religious activities. The most common method of purification after the touch was to sprinkle water on oneself by chanting a holy hymn or mantra.

These hierarchical groups had different subgroups that were again ordered according to social ranks (Hoffer, 1979, p.9). This classification of social groups was a crucial legal instrument to discriminate and exclude the indigenous peoples in Nepal.

In 1984, the national code defined Tamangs as Bhote and as beef eaters (Hofer, 1979). Since then, the Tamangs were denied recruitment in the Hinduized Gorkha army because they ate beef (Holmberg, 1989, p.27; 2017, pp.8-9). The legal code of 1854 classified the Tamang as Masine Matawali, which meant that they were not considered as impure caste, however, they were put under the category of the community who were allowed to be enslaved (Holmberg, 1989, p.26). The legal provision made on the national code promoted the leading roles that exploit the Tamang community. The Shah-Rana rulers of Nepal considered Tamang people as the labor force in building construction and infrastructure and sustaining their lavish lifestyles (Tamang, 1992).

The banned underground political parties in Nepal in 1950 formed an anti-Rana alliance in India with the exiled monarch of Nepal. The coalition was able to end the Rana rule in 1951. David Holmberg (1989, p.x), argues that after the collapse of the Rana regime in 1951 the Tamang did not make a significant gain in the political power relations. He further argued that the lack of knowledge about the Nepali language also acted as a significant handicap for Tamang to control government administration in local areas (Holmberg, 1989, p.x).

In 1959, Nepal promulgated a democratic constitution. This constitution, however, was rejected by Mahendra, the new King of Nepal. In 1960, Mahendra-led coup d'état sieged the state and banned political parties and the parliament. In 1961, the Tamang community in Nuwakot organized a rebellion against state oppression (Lawoti, 2007, p.32). During the later stages of the 1970s, the Tamang leaders held a national conference in Lalitpur district. In the conference the Tamang leaders had argued for "equal opportunity" and "decried" the "backward" condition of the Tamang people (Holmberg 1989, pp.17-18).

The success of democratic movements in 1990 brought democratic freedom in Nepal that eased the ability of indigenous ethnic communities to organize social movements for their better representation in the "new democratic power structure" (Holmberg, 1989, p.xii). Following the end of the Panchyat system, the eight ethnic organizations in Nepal including a Tamang organization formed Nepal Janajati Mahasangh or Nepal Federation of Nationalities (NEFIN) in 1990 (International Crisis Group, 2011, p.5) which later renamed itself as a Nepal Federation of Indigenous Nationalities (NEFIN) in 2003 (International Crisis Group, 2011, p.5; Malagodi, 2013, p.235). The goal of NEFIN was to empower the Janajati community that it represented.

The political transformation of the 1990 movement ended the absolute monarchy system. It introduced a multi-party system in Nepal, which was considered a glorious revolution that failed to change the lives of ordinary people (Brown, 2002). Despite the end of authoritarian rule, politics in democratic Nepal remains marked by many of the same features that have characterized Nepali politics since the nation was unified in the second half of the eighteenth century. The political system continues to be hierarchical, centralized, riddled with conspiracies, and

dominated by the complex patron-client nexus. Most importantly, the structure and distribution of power and wealth mostly remained undisturbed by the adoption of a multi-party democratic system (Brown, 2002).

The Communist Party of Nepal (Maoist), CPN (Maoist), began their armed rebellion in 1996. In the year 2000, the Maoist under Dev Gurung formed the central ethnic department and ethnic fronts (Ogura, 2008). The fronts included Tamang fronts. The Maoist insurgency radicalized Tamang organizations. The Tamang social movements, rather than working for educational and health rights, began to struggle for the federal province. The politicization of ethnicity and radicalization of ethnic identity divided the Tamang leaders and activists in different political ideology rather than their common goals.

4.2. The Persistent Marginalization

Nepal is home to over 29 million people (29,033,914) from 125 different ethnic and caste groups. The Tamangs are the fifth largest indigenous peoples who comprise about 5.8 percent of the total population. Despite being one of the most significant indigenous peoples in Nepal, the Tamang people face many forms of cultural, social, economic, and political challenges due to structural and systemic discrimination by the state (Tamang, 2018). The literacy rate among the Tamang, for example, is 62.60 percent (Central Bureau of Statistics, 2014, p.16), which is lower than other marginalized indigenous groups and the national average literacy rate of 65.9 percent. The Thakali indigenous community has an 80.5 percent literacy rate. The Newar community similarly has an 80.1 percent literacy rate. Other indigenous peoples such as Loharung (79.4 percent), Limbu (74.69 percent), Lepcha (75.70 percent), Gurung (74.36 percent), Rai (74.33 percent), Magar (71.33 percent), Chamaling (70.70 percent) and Tharu (64.41 percent) have literacy rates that are higher than the Tamangs (Central Bureau of Statistics, 2014, p.16).

The Tamang people are behind other Nepalese communities, even in access to clean drinking waters. Tamang households that have access to an improved source of drinking water is 79.7 percent, which is relatively lower than Gurung households (88.1 percent), Hill Brahmin households (87.8 percent), Limbu households (84.3 percent), Magar households (81 percent), and Madhesi Brahman households (96.5 percent) (Central Bureau of Statistics 2014, pp.176-177).

Similarly, 22.4 percent of Tamang households have clean cooking energy, while 46.3 percent of the Brahmins have access to cooking energy. The inequality between them is also in access to electricity. The Tamang households that have power are 70.4 percent, while 85.8 percent of the Brahmin families have electricity facilities (CBS, 2014).

Importantly, the representation of Tamangs in the legislative sector is significantly low. In the provincial parliament, there are 17 members of the Tamang community (ECN, 2017). This election result shows that the Tamang Indigenous community, as a distinct group, is under-represented in the house of representatives. Further, Tamang has the lowest representation among others in their group, securing six parliament members at the federal parliament (ECN, 2017). Tamang people shared 1.79 percent members out of 334 in the house of parliament and 3.90 percent within their cluster, respectively, which is not in proportion to their share of Nepal's population.

4.3. Birth of Nepal Tamang Ghedung and Coming Age

Nepal Tamang Ghedung (NTG) was established during the 1950s. It was first established as Nepal Tamang Committee 1957, which was later changed to Nepal Tamang Ghedung (NTG, 2006). The purpose of the organization was to preserve the culture and language of Tamang people through cultural programs. During the 1990s, it became the official representative organization for Tamang people. It represents a member of the NEFIN, the largest federation of indigenous people in Nepal (NTG, 2006). Although NTG was initially established as a cultural organization to preserve and promote Tamang culture, it became vocal on issues like positive discrimination, multilingual state policies, secularism, and regional autonomy through federalism by the 1990s. These issues became major agendas of NTG after 2007 when the government of Nepal ratified ILO-169 and voted for UNDRIP. The democratic period of the 1990s can be called a period in which the NTG matured. The persistent marginalization of Tamang people despite the reestablishment of democracy compelled the organization to be more active in ensuring the rights of Tamang people in Nepal.

Although there were several programs organized by NTG, the fourth conference held on 4 – 7 April 1998 was a milestone for NTG's movement. In this conference, NTG declared 21-point policies and programs regarding their cultural rights, social rights, and political rights (NTG, 2006, pp.21-32).

NTG organized the first international Tamang conference in December 2002 in Kathmandu. The conference declared an explicit commitment to "empower the Tamang community to exercise the right to self-determination and customary rights and responsibilities over their territory, ownership of resources, environmental conservation and development" (NTG, 2006, p.17). Mukta Singh Lama Tamang (2009, p.269) says that this event was perhaps a historic moment in Tamang activism in Nepal when the term "Tamsaling", referring to their territory, was first employed among the large audience. The meeting included the state authorities concerning its historical past and desired future.

On 11 April 2009, the Tamsaling United Struggle committee and Talk team formed by the government of Nepal signed a 19-point agreement to address the demands regarding federal republic structure of the state. NTG has been organizing regular campaigning and advocacy to raise the pressure on the government to implement the agreement sincerely. NTG expressed 16 points of demands in its 8th national conference for constitutional reform (Chhar Mhendo, 2016, p.13). Some of the major demands among 16 points are demand to ensure Tamsaling territorial autonomy based on ethnic identity in the constitution, change of national animal cow, full proportional representation electoral system with a guarantee of participation of indigenous peoples in the local level, domestication of ILO -169 and UNDRIP domestic law.

After the promulgation of the new constitution in 2015, NTG's movements seem defensive. On 29 May 2018, NTG proclaimed the Kathmandu declaration, demanding the state to address its rights to self-governance, self-determination, ownership of water, land, and forest, natural resources, customary jurisprudence, implementation, and finally, displacement of industries and projects (NTG, 2018). At the same time, they also demanded special fees and attention to the protection and promotion of indigenous peoples' linguistic, social, and cultural rights.

5. RESEARCH FINDINGS

5.1. *Cultural Rights and Identity*

One of the main events that united the diverse Tamang community together and provided them with a collective identity is a celebration of Lhochhar festivals. Lhochhar is the national festival of the Tamang community, which is celebrated throughout Nepal and other countries where Tamang communities live. In 1993, the Lhochhar was recognized by state as a national event and declared as a day of the nationwide holiday. The status given to the festival was an achievement of NTG's activism. This, however, was nullified in 2017 when the Nepal Government removed it from the status of events considered as a national holiday.

NTG has been protesting this move of the state, but the status of the national festival has not yet been elevated. The Nepalese state promotes Hindu festivals and encourages citizens to celebrate it. General Secretary Mohit Kumar Tamang (interview, May 24, 2020), argued that the state provides three days to a week-long public holiday in Hindu festivals, whereas the indigenous peoples have to struggle for one holiday at their festival.

Majority of the informants who participated in this research agree that organizing the Lhochhar program is an important form of activism that involves various cultural activities. During the celebration of Lhochhar, more than a hundred thousand Tamangs gathered at one place and built solidarity (Tamang, 2007, p.287). During this festival, the cultural identities of Tamang people are solidified as the participants can use their traditional dress, play their cultural music, and buy books on Tamang culture, socio-economy, and history. Scholars claim that cultural activism is the process of "placemaking" through their history of the place of origin and common ancestry (Tamang, 2007; Buser, et al., 2013; Rai, 2013). Leaders of the NTG claim that celebrating Lochhar empowers Tamang people culturally. But NTG's activism has not been able to convince the Nepalese state to recognize it as a national holiday.

5.2. *Linguistic Rights*

Tamangs have their own mother tongue, which falls under the Tibeto-Burmese group. Tamang language is a part of the Sino-Tibetan language under the Bodic division (Shafer, 1955; CBS, 2014, p.61). About 73.18 percent (1,353,311) Tamang people use Tamang language as their mother tongue (CBS, 2014, p.57). The linguistic right is one of the major demands of indigenous peoples' movements in Nepal. The new constitution of 2015 has also guaranteed the linguistic rights to other dominated languages. According to the constitutional provision, every community can operate a school and develop a curriculum in mother tongue/local language up to the secondary level at the local level at their end. The current constitution guarantees the right to every community to impart education through the teaching of the mother tongue up to the secondary level (Article 31.5). NTG has been working along with the Curriculum Development Center, a government body, and developed a curriculum for Tamang language studies. Leaders of the NTG state that this is the success of NTG's movements.

5.3. Right to Freely Practice Religion and Culture

Nepal was a Hindu-dominant state since its formation. Discrimination based on religion still exists in the country. There are temples of Hindu gods and goddesses in the schools, campus, police camps, and army camps. The national holidays are on Hindu festivals. The leaders of NTG claim that the indigenous peoples and the Dalits suffer the most from such discrimination. Importantly, all the indigenous peoples are non-Hindu. Secularism is one of the major demands of Indigenous peoples. The House of Representatives on May 18, 2006 declared Nepal as a secular state that ended only one Hindu state in South Asia world (Letizia, 2011).

The current constitution of 2015 acknowledged secularism (Article 4). Despite the declaration of secularism, the constitution asserts that it guarantees the protection of traditional religious values of the "Sanatan" Dharma or Hindu religion. This provision has instigated protests from NTG. Similarly, the constitution still outlaws cow slaughter and religion conversion (Letizia, 2011, p.66). Tamang people traditionally eat cow, and religious conversion among Tamang people is one of the highest in the country. The constant fight of NTG to separate the Nepalese state from the Hindu religion and to change the cow as the national animal has been a long but unsuccessful struggle.

5.4. Right to Self-Determination, Territorial Autonomy, and Free, Prior, and Informed Consent

The right to self-determination is one of the major demands of NTG's movement. Dr. Mukta Singh Lama Tamang (interview, June 12, 2020) claims self-determination and territorial autonomy are essential rights for the Tamang indigenous peoples towards their desire for social, cultural, and economic development. They have been demanding Tamsaling autonomous, a Tamang majority province in Nepal since 2011. The right to self-determination for indigenous peoples is guaranteed in Article 3 of UNDRIP (2007). Tamsaling autonomy claim of NTG is to limit the role of government or private sector in implementing the development programs that aid Tamang indigenous peoples' lands or territories. Under autonomous provisions, the government first consults and cooperates with indigenous people and then develop plans for that area rather than the other way around (UNDRIP, Article 19). This demand has not been yet addressed.

When the government or private sector plans to implement the development programs that affect indigenous peoples' lands or territories, the government should obtain the free, prior, and informed consent (FPIC) of Indigenous peoples. There must be a provision of just and fair compensation with a return option while indigenous peoples forcibly relocate from their traditional lands and territories (UNDRIP, Article 10). To obtain the free, prior, and informed consent of indigenous peoples, the government should consult and cooperate with them through their own representative institutions while implementing legislative or administrative measures that may affect them (UNDRIP, Article 19). Majority of NTG's leaders including Mohit Kumar Tamang (interview, 23/3/2020) and Kuma Blon (interview, 29/5/2020) argue that the Tamsaling autonomy along with self-governance is essential for preserving Tamang indigenous peoples' rights to FPIC. NTG has been struggling for the legal provision of FPIC.

5.5. Right to Ancestral Lands and Natural Resources

The communally owned and managed lands called the Kipat¹ land were the lands of indigenous peoples in Nepal. Such lands were confiscated by the state in the late 17th century. The appropriation of indigenous peoples' land and territories has also continued by turning them into national parks and infrastructural developmental project areas. NTG's leaders argue that such processes deprived the indigenous people's access to natural resources such as the forest, herbals, and water from these areas. Such nationalization of indigenous lands increased poverty and deprivation among the indigenous peoples of Nepal (Gurung, 2009). For Tamangs, these ancestral lands are important for their religious as well as economic subsistence.

The ILO-169 (Article 15 and 16) has protected the rights over traditional lands of indigenous peoples and rights to use, manage, and preserve natural resources relating to the lands. The indigenous peoples, according to it, have the right to reoccupy their ancestral land (Article 16). Article 26 of UNDRIP – 2007 also claims that,

States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs, and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories, and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process" (UNDRIP, Article 27).

The activism of NTG has not been able to change the constitution of Nepal so that the Tamangs could have access to their historical territories to practice their culture and use natural resources available in them. The constitution emphasizes the formation of the National Natural Resources Commission to preserve, manage, and develop natural resources rather than to make a policy to promote, preserve, and develop natural resources owned by indigenous peoples.

5.6. Rights to Participate in Governance

The ILO – 169 asserts that the state should establish a mechanism to ensure the free participation of indigenous peoples in the policy-making level of the government and especially in cases of those policies that impact the indigenous population of that country (Article 6). NTG has been struggling to increase the number of Tamang people in not only the parliament but also in the state bureaucracy. Their demands have not been heard yet. However, the constitution of Nepal guarantees 40 percent seats in the parliament to various communities (Article 84.2), but among them (out of the total 40 percent), 33 percent for women and 28 percent for indigenous peoples are allocated, of which are not based on population size. NTG's leaders claim that such a provision is not beneficial to the Tamang

¹ The "Kipat" system was a form of communal land ownership where the customary form of the land was controlled by communities of Mongoloid or autochthonous tribal origin established in areas occupied by them before the migration of racial groups of Indo-Aryan origin (Regmi, 1977, p.87).

community because it is not based on a socio-economic development hierarchy among indigenous communities. They are a highly disadvantaged and marginalized group within indigenous communities said Laxmi Tamang (interview, 26/5/2020). Mohit Kumar Tamang says that the NTG has been struggling to increase the number of seats for the Tamang people through full proportional representation based on population size. Their struggles, however, have not brought any change in the current constitution yet.

6. DISCUSSION AND CONCLUSION

This section discusses how the findings of the research are related to McAdam's theory of social movement. It then makes a conclusion based on the arguments made in the findings section. The findings of this research indicate that it establishes that the claim made by McAdam that a friendly political context is not enough for the successful social movement is correct. This is because the findings showed that despite a favorable political context, NTG was not able to do much to achieve significant change that benefitted the Tamang community. Their failure was measured by the many articles of ILO-169 that were not reflected in the new constitution of Nepal. Secondly, the findings also justify the claim of McAdam that in the absence of widespread institutional support, a social movement cannot succeed. This claim was echoed in the facts uncovered by this research that show NTG has not been very successful in marshaling support from religious organizations, trade unions, and even political parties for connotational amendments. In the absence of such institutional and organizational support, it is not surprising that Tamang Ghedung and other pan-Tamang organizations are the only groups that are fighting for issues such as autonomy and affirmative action to benefit the Tamang people.

Thirdly, the findings indicated that the Tamang Ghedung has positively brought Tamang people together as a cultural community, but it has not been able to play an impressive role in raising political consciousness among them. This lapse in their ability to raise political consciousness among Tamang people is attested by the fact that majority of the Tamang people voted for political parties who opposed the demands of the Tamang Ghedung during the 2016 and 2017 federal and provincial elections.

It can be concluded that Tamang Ghedung, when investigated through the light of McAdam's theory, uncovers three factors that point to it is as a social movement organization not in a position to lead a successful social movement. This because of three major reasons.

The first reason is that NTG does not enjoy sympathy and support of a significant number of politically conscious supporters, which McAdam believes is one of the three critical conditions for a successful social movement.

The second reason why NTG has not led a successful social movement is that it enjoys neither sympathy nor support from a significant number of institutions and organizations in Nepal. Getting support from various institutions and organizations is an imperative condition for a successful social movement, according to McAdam.

The third reason is that despite being in a democratic context since 2006, NTG has not been able to influence, organize, and mobilize a significant number of Tamang people for their cause. This situation is because NTG is politically divided, and the leadership of NTG is more loyal to the major national political parties that they are affiliated with compared to the cause of NTG.

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ASSESSMENT OF BARRIERS TO MENTAL HEALTH TREATMENT AMONG INDIGENOUS CHILDREN EXPOSED TO SEVERE NATURAL DISASTERS IN KERALA, INDIA

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ABSTRACT

The southern state of India, Kerala, has witnessed severe natural calamities that created negative mental health outcomes for the victims, especially in indigenous children who are the most affected group in the disaster. Though the Government has conducted many programs to address children's mental health issues, indigenous children have not benefitted from them. Thus, this study uses a conceptual framework based upon barriers created by the social, political, economic, and cultural circumstances. It addresses why indigenous children in Kerala are not able to get treatment for the negative mental health outcomes caused by the exposure to natural disasters. For this, qualitative research using a semi-structured interview is conducted among 41 participants from Idukki district, Kerala. The study revealed that barriers had created a deliberate silence in indigenous parents, government officials, and State, leading to the violation of the right to the mental health of children. This deliberate silence will be broken through awareness-raising programs, implementation of cultural and linguistic sensitive health service centers, implementation of the law against discrimination, and the development of primary mental health service providers within the community. The findings of this study can be used to advocate the right to the mental health of the indigenous children exposed to natural calamities, which need immediate action from the State.

Keyword: Indigenous Children, Negative Mental Health Outcomes, Deliberate Silence.

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1. INTRODUCTION

In August of 2018, the southern state of India, Kerala, witnessed heavy monsoon rains, which resulted in landslides, rock slides, landslips, and flood in its 14 districts. Within 30 days, 339 people have died, thousands of houses were damaged, 1.5 million people were moved to relief camps, and many bridges and significant roads got damaged or washed away. The Government reported Rs.47,960 Million worth of property damage (State Relief Commissioner, 2018, p 6,38). The post-disaster stress is high (Government of Kerala, 2018, p 17), and it worsened after one year as they have to witness a more severe flood and landslide in August 2019 (Matthew Cappucci, 2019). The tribes are the most affected group in both the 2018 and 2019 floods in Kerala. They have witnessed massive landslides and cloud bursts and were isolated from the outer world. As the roads vanished in flood, tribes were not able to come to relief camps and relief works and medical experts were not able to reach them. Thus, they were forced to live in that destructed place for many days, which itself was retraumatizing.

Further, the continuous rain and lack of shelter and food made their health conditions awful, which led to viral fever (leptospirosis), respiratory diseases, snake-bites, and skin diseases. All these situations caused a physiological shock among the tribes, especially in children. The study conducted by Asim, et al. in 2019 shows that "in the Indian context, the variability in the magnitude of psychiatric illness is mainly attributed to the ethnic diversity (vulnerable population), severity and type of flood event and social support." They further state that children, adolescents, and the elderly are more vulnerable than others. Thus, it is evident that in a vulnerable population and age, indigenous children are more vulnerable to psychiatric illness and need special attention. However, after the second flood, the Government has not initiated any steps to tackle these issues of the tribal group.

2. TRIBES AND RIGHT TO MENTAL HEALTH

Article 21 of the Indian Constitution assures citizens the right to life, which is also interpreted as the right to live with human dignity and the right to health by the Supreme Court. The Court has also said that the maintenance and improvement of public health as the obligation of states flow from Article 21 of the constitution. Thus, people in India have the fundamental right to receive mental health care (Gautam, et al., 2009, p.82-83).

Being a State Party in the UN, India has legal obligations to follow the instructions given by UN instruments. Article 12 of the International Covenant on Economic, Social, and Cultural Rights (ICESCR) ensures everyone's right to the enjoyment of the highest attainable standard of physical and mental health. The Committee on Economic, Social, and Cultural Rights General Comment No.14 specifies that the right to health contains both freedom and entitlements, including the right to a system of health protection that provides people with equality of opportunity to enjoy the highest attainable level of health. (Gautam, et al., 2009, p.105-112). Furthermore, Article 25 of UDHR (1948) indicates that "everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing, and medical care and necessary social services, and the right to security in the event

of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control." Other international covenants have also recognized the right to health. Article 5(e)(iv) of the International Convention on the Elimination of All Forms of Racial Discrimination of 1965, Article 11.1(f) and 12 of the Convention on the Elimination of All Forms of Discrimination against Women of 1979, and Article 24 of the Convention on the Rights of the Child of 1989 has recognized the right to health.

3. BARRIERS TO MENTAL HEALTH SERVICES

The Indian Government introduced the National Mental Health Program (NMHP) in 1982 to ensure the availability and accessibility of minimum mental health care to all, particularly to the most vulnerable and underprivileged sections of the population (Sadath, Uthaman, and Kumar, 2019). Then, in 1996, the District Mental Health Program (DMHP) was added to NMHP to encourage community-based approaches. However, the services of these programs do not cover tribal dominant areas sufficiently (Sadath, Uthaman, and Kumar, 2019).

Furthermore, Sadath, Uthaman, and Kumar (2019) had identified financial difficulties, poor social support, myths and misconceptions, internalized stigma, difficulties accessing public psychiatric facilities, harsh living environment, and illiteracy as barriers faced by tribes in Kerala to get mental health services. Moreover, a study conducted by Joy (2014) has recognized the problem of remoteness and applying for counter medicine as the reason for the tribes in Kerala to not take general medical services. These studies raise questions about the inclusion of vulnerable groups and the grassroots level impact of the National Mental Health Program and the District Mental Health Program, which were designed to address these barriers. NMHP aims to ensure the availability and accessibility of minimum mental healthcare for all and encourage the application of mental health knowledge in general healthcare and social development. DMHP aims to provide sustainable primary mental health services to the community, early detection, and treatment of patients within the community itself, and to reduce the stigma of mental illness through public awareness (NHP, 2019).

During the 2018 flood, the district hospitals and NGOs have worked on the PTSD treatment among the victims (Manuel, 2019). However, the report did not mention about the palliative works done among the tribal people.

Even if NGOs, hospitals or other organizations try to establish mental health services for the vulnerable groups, they face challenges, like lack of resources, availability of funds and support, requirement of long-term employment and continued commitment from staff, bureaucracy and 'red-tapism' leading to delays and poor implementation, acute shortage of psychiatrists, and unattractiveness of having to work in a rural environment for implementing mental health projects in Kerala (Venkateswaran, Jose and Francis, 2014). These challenges indicate the lack of political will, corruption, and different priorities of the service providers like government officials and doctors. The World Bank also identified insensitive and discriminatory behavior by staff at medical facilities towards tribal people in India (The World Bank, 2012). They have also pointed out the deep-rooted cultural chasms between

tribal groups and the mostly nontribal healthcare providers, resulting in insensitive, dismissive, and discriminatory behavior on the part of health care personnel. Many tribal populations face language barriers while accessing health care since their dialects are not easily understood, even by the urban populations of the same State. They are frequently exploited for informal payments and often referred to as private chemists or medical practitioners with malintent. Service providers' actions are one of the main reasons why tribes prefer to self-medicate or visit traditional healers rather than public or private health facilities (The World Bank, 2012).

4. METHODOLOGY AND LIMITATIONS

To understand why the indigenous children in Kerala are not able to get treatment for the negative mental health outcomes caused by the exposure to natural disasters, the researcher has conducted the narrative approach research using a semi-structured interview (SSI) with thirty-one tribal parents from Uraly, Mannan, and Malai Arayans tribal settlements (represented as P in this paper), four teachers from nearby schools (represented as T), school counselor, and five activists (represented as A) from the Idukki District, where landslide, soil piping, and cloud burst occurred in the year 2018 and 2019. To include variety of data, 9 tribal settlements are selected from different parts of the district.

Kerala has a 0.485 million tribal population from 35 different tribal groups (KIRTADS, No year). According to the socio-economic survey of Scheduled Tribes in Kerala conducted in 2008-10, 4762 settlements and 1,07,965 families are spread over 553 local bodies in the State (521 Grama Panchayats, 28 Municipalities, and 4 Corporations) (Scheduled Tribes Development Department, 2013). Among them, tribal settlements in Wayanad, Malappuram, Idukki, Thrissur, and Palakkad districts are the most affected in the natural disaster in the year 2018 and 2019. However, the research is limited to Idukki district with the second-highest population of tribes (11.51% of the total tribal population) due to the following limitations:

- Recently, the Government has changed the rule regarding the research conducted among the tribes. As per the new rule, the researcher has to get prior permission from the Tribal Development Department and has to sign an agreement. Otherwise, it will be considered a criminal offense. The department will decide the terms and conditions of the agreement. Requests made by the researcher was rejected, stating the Covid-19 pandemic as the reason. However, while enquiring about the procedures to get permission, the officer reported that the Government has restricted to permit the research conducted by foreign universities. Recently, the Government has received criticism from the international community as part of an international organization's research outcome. As the researcher is a native of the Idukki district, access to tribal settlements has been taken without the government officials' knowledge.
- Travel restrictions due to the pandemic
- Geographical difficulties, security reasons, and accessibility

Idukki district has six tribal groups – *Malampadaram, Malappulayan, Malayarayar, Urali, Muthuvan,* and *Mannan*- in which *Urali, Mannan,* and *Mala Araya* tribal groups are selected for data collection. Among the 31 tribal parent participants, four respondents are from *the Malayarayar* community, three are from the *Mannan* community, and 24 are from *the Urali* community. The SSI questions for the parents, teachers and school counsellor has helped to understand how the post-traumatic stress has affected children’s daily life and what initiatives are taken by the government and themselves to address this issue. Individual activists have evaluated the actions of government to address mental health issues of children, the grass root level accessibility, as well as the impact of their actions and the history and reasons of discrimination faced by the tribes in Kerala. The discussion between these participants revealed the barriers faced by the children to access mental health services and why it is happening so.

5. FINDINGS AND ANALYSIS

P1 from *Maniyarankudi* lost his family members, except his son, in the cloudburst occurred in 2018. The flash flood triggered by the cloudburst has destroyed his house and killed the family members. Then, in Class V, his son was found trapped in the mixture of mud, rock, and water. It took hours to rescue him. Witnessing the loss of family members and home and being trapped in mud has created a PTSD in him. Before this incident, he was the favorite student of every teacher for his good character and excellent academic records. Now, he rarely comes to school, is addicted to drugs, depressed, and always talks in anger. In the initial days, he has received counseling from relief camp. When the camp came to an end, physiological services also ended.

T2 is a teacher in the Poomala Government Tribal Higher Secondary School, where more than 75% of students are from the Urali and Malayaraya tribal communities. The school has a hostel facility, especially for tribal children, managed by the tribal development department. She clearly remembers a student from Class X, who has been affected by a massive cloudburst. Half of his house vanished in the natural disaster. The family escaped from this incident and was moved to the relief camp. As he has not shown any symptoms of mental health issues related to PTSD, he has not considered counseling sessions in the camp. When the school reopened, he rarely comes to the school on rainy days. Upon inquiry, the teacher came to know that, during the rainy days, he will not step outside the house or allow anyone to go outside due to the fear of losing the family. He got a new house from the government, but none realized the need to address his mental health issues. He dropped his studies and is now helping his father in agricultural works.

P2 has two daughters studying in Class I and Class IV. She is well educated and is helping her husband in agriculture. 2 years before, cloudbursts have occurred in their farmland near the house. The sound of cloudburst was deafening, and the mud came out with foul smell. The majority of their farmland vanished. These situations have frightened the kids, and they suffered from fever for a few days. Even today, the sound of thunder and rain frightens them and they have sleeping troubles during those days. They cry loudly and will request their parents to move to a 'safer' place.

Above mentioned stories are few among the many which the participants have shared with the researcher. From the interview conducted among the participants and secondary data collection, the researcher came to the below-given findings:

The Flaw in Information Sharing

Under the DMHP, the district team has given an hour-long class to students and teachers regarding the mental health issues related to natural disasters. They have also provided special classes to teachers to identify the PTSD symptoms and where they can approach for treatment. However, they have not included the most important actors of the children's life - the parents. Previously, the researcher also believed that tribal people's illiteracy is the main barrier to information sharing. During the field visit, the researcher observed the interest of parents to listen and understand the reasons for their children's 'mysterious' behavior. Thus, the main reason behind the barriers faced by tribal children to get mental health services is a flaw in information sharing.

For instance, the Urali tribal community has the *Urukootam*, a meeting of tribes under the leadership of *Urumooppa* (head of the tribal community), to make decisions regarding the issues related to their community. The outcomes of the *Urukootam* will be submitted to the Tribal Development Office for actions. If the information about negative mental health outcomes has been given to the parents, they will be more vigilant and should have brought the issues to the sight of the government authorities. However, due to geographical difficulties, prejudice about their intellectual capacity, and untouchability, government officials are not ready to visit the settlements. They believe that tribes do not have the intellectual capacity to understand 'complicated medical terminologies' which may result in unnecessary panicking among the tribes. This internal politics and social beliefs created a flaw in information sharing.

False Beliefs About Tribes

The first comment of whomever the researcher has contacted for the data collection, aside from the parents, was that the mental health of the tribal children would not be affected by severe natural disasters as they are living inside the forest. They believe that the children will 'automatically' recover from the shock. Even the response from teachers, school counselors, and the majority of the activists was similar. According to activist A1, this false belief is based on a myth that, from the childhood onwards, the tribes have to face numerous incidents, like attack from wild animals, cloudburst and landslides, as they are staying inside the forest which will make them mentally strong to face any traumatic incidents in their life. However, this false belief has created a barrier to access mental healthcare, including the services of the school counselor.

Lack of Resources and Follow-Up Sessions

In the research area, the Government has appointed around 80 school counselors in the schools that have adolescent girls from the age of 12. However, as each counselor were assigned to three schools and have other duties like surveys, house visits, data collection, etc., they cannot provide enough time for the children. Participant T3 has pointed out this 'unavailability' of the counselor in their school. Also, the schools in tribal dominant areas are facing

issues related to alcohol and drug usage. As the government officials, including police and school authorities, are demanding a follow-up on the issues related to drug and alcohol, the school counselors have prioritized cases related to them over other issues within their busy schedule.

Moreover, the Government's actions to address the mental health issues related to natural disasters are momentary. Neither school counselors have received instruction nor the officials visited the school for follow-up sessions. For them, it is just an incident that happened two years before.

Cultural and Linguistic Differences

Most of the tribal groups have their language, unique wordings, or different dialect from others. Children often get confused due to this difference. Thus, they cannot express their feelings to their friends, teachers, or anyone outside of their community. This situation also created barriers to arrange mental health services, for which communication with the service provider and the receiver is essential.

Karupp, a kind of drug used among the tribes as medicine, is very common in every household, and it is part of their culture. Even parents are encouraging children to take this as a medicine for all their health issues. It will provide an instant relief on health issues as it works as a sedative at that moment. However, the continuous usage of *Karupp* may affect their mental health. Thus, this drug's usage worsens the situation of children who are suffering from negative mental health issues.

Parents Preference on Economic Stability Over Mental Health

The tribal people are allowed 2 to 3 acres of land from the Government for agricultural purposes. The rights of ownership have not yet been given to them. Most of these lands are identified as Ecologically Sensitive Areas (ESA) by Dr. Kasturirangan Committee, appointed by the Government to study the Western Ghats. Also, the geological survey of India has recognized these areas as landslide and cloudburst sensitive areas. Thus, the Government has announced a new project to place them to a 'safer place.' They will get a total of 1 million-0.6 million for the house and 0.4 million for land to settle down the place where the Government has already identified.

In most cases, within this limited budget, they will get a maximum of 10 cents of land, for which they have to exchange 2 acres of their farmland. Also, they have to find new jobs to feed their family. Thus, most of them are reluctant to accept this option, even though their children are getting retraumatized by living in the same place where they lost their loved ones.

Lack of Strategical Plan to Identify the Victims

The state government has introduced the Model Residential School (MRS) for tribal children. Many students from natural disaster-affected areas are students of MRS. As the Government has announced school closure due to heavy rain, the students came back to their home and witnessed the cloudburst and landslides. These students went

back to MRS, which was not affected by the natural disaster. Thus, these schools have been excluded from government projects to help people with negative mental health issues. Also, these schools' counselors have not given any priority to make a consultation with the victim children.

The above-given findings can summarize as the result of socio, economic, political, and cultural circumstances.

Table 1: Finding of Socio, Economic, Political, And Cultural Circumstances.

Sl.	Findings	Circumstances			
		Social	Economic	Political	Cultural
1.	Flow in information sharing	✓		✓	
2.	False beliefs about tribes	✓			
3.	Lack of resources and follow-up sessions			✓	
4.	Cultural and linguistic differences ⁰⁹				✓
5.	Parents prefer economic stability over mental health		✓		
6.	Lack of strategical plans to identify victims			✓	

For analysis, teachers and school counselors are considered as government officials. Even though they are equipped to identify negative mental health outcomes related to natural disasters, they have not addressed tribal children's issues due to the false beliefs and lack of resources and follow-up sessions. Thus, it is evident that government officials are keeping deliberate silence regarding tribal children to avoid additional work burden.

Due to economic hardship, parents are forced to choose agricultural land over their children's mental health. They fear that the Government may find the situation of children as a way to evacuate them from the ESA as instructed by the Committee. Thus, tribal parents are also keeping a deliberate silence regarding the children's negative mental health outcomes.

It will be an additional economic burden for the Government to increase the staff strength to address the issues of tribal children. Also, many officials are not ready to visit the settlements due to remoteness and untouchability. As the tribal people have not demanded mental health services, the State does not have to deal with the economic burden and staff issues. Thus, the State is also keeping a deliberate silence regarding the negative mental health outcomes of the tribal children.

6. CONCLUSION

The flaw in information sharing, false beliefs about tribes, lack of resources and follow-up sessions, cultural and linguistic difference, the priority of economic stability than mental health and lack in strategical planning to identify victims are social, economic, political and cultural circumstances which created a barrier for the tribal children

exposed to severe natural calamities in Kerala, India to access mental health. To avoid these barriers, parents, government officials, and the State have created a deliberate silence, due to which the children's right to mental health is violated. This silence can be broken by conducting awareness-raising programs for tribal parents. As most of the tribal settlements are in natural disaster sensitive areas, educating the parents about negative mental health outcomes will equip them to help their children as well as themselves. It is recommended to conduct these programs with the help of their own community members to overcome language barriers and to build trust among the service providers and receivers. After these awareness-raising programs, it is recommended to conduct medical camps in the disaster affected areas and list the victims for follow-up sessions.

It is also recommended to reduce the unnecessary workload of school counsellors, so that they can provide quality time for the students. Moreover, it must be made sure that a follow-up session is conducted among the victims every 6 months for at least two years from the day of the occurrence of disaster. In many cases, PTSD symptoms are seen after 6 months to 1 year of occurrence. By encouraging the participation of more tribes in the teaching field and appointing them in tribal dominant schools, language barriers in communication can be overcome. Also, development of cultural and linguistic sensitive health service centers with the implementation of the law against discrimination will enable more tribes to access medical services instead of applying counter medicine and will help them to overcome social and cultural barriers. Moreover, to overcome the geographical difficulties, the government can provide training to selected tribal people to give primary mental health service within the community.

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OVERCOMING LANGUAGE AND CULTURAL BARRIERS TOWARDS REFUGEE CHILDREN THROUGH SCHOOL PREPAREDNESS PROGRAM IN TRANSIT COUNTRY: A STUDY OF SOCIAL INTEGRATION OF REFUGEE FAMILY AND ITS IMPACT TO THE CHILDREN EDUCATION

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ABSTRACT

Indonesia is a non-state party to the international standard on Status of Refugees. This impacts the living conditions of refugee children in Indonesia, which is a transit country. By the end of March 2020, UNHCR reported that Indonesia hosted more than 13,657 refugees, 28 percent of whom are children. Refugee children experience obscurity in relation to durable solutions during their temporary stay in Indonesia; this is to the point it infringes on their rights to education. This paper argues that overcoming language and cultural barriers can be achieved through the Refugees School Preparedness Program, which is viewed as a means for refugee children to be locally integrated with the hosting community. This paper identifies that the difference of language and culture have adjourned the process of local integration of refugee. In general, the aim of the School Preparedness Program is to prepare refugee children prior to their enrollment in public schools. This done by teaching them language skills as well as other social competencies. Moreover, it also provides capacity building for the school principals and teachers in order to build a better understanding of refugees in general and specifically managing the classes of which refugee children are participating. Furthermore, overcoming language and cultural barriers is significant to achieve social integration of refugee children with the host community.

Keyword: Local Integration, Refugee Children, Rights to Education, Language and Cultural Barriers, School Preparedness Program.

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1. INTRODUCTION

In dealing with refugees and asylum seekers, Indonesia's policy and management are somewhat dazed and confused. Furthermore, they are illustrated as "unintegrated, sporadic, and insufficient" (Santoso & Suprihadi, quoted in Missbach, 2015, pp. 116). These matters have created systemic infringement of the rights of refugees and their children. To put this into, on several occasions, government officials declare their denial and/or disapproval of the existence of refugees in Indonesia. Despite the fact that Indonesia is prohibited to push back asylum seekers with severe humanitarian needs from entering its territory, some incidents involving an attempt to repel refugees were covered by the media. During the incident involving Rohingya Boat People in 2015, the Indonesian navy deliberately forced boats back to the sea (Missbach, 2017, pp. 42; Fuller and Cochrane, 2015). Afterwards, the Acehese fishermen provided the stranded Rohingyas with shelter and humanitarian assistance. Incidents involving the Indonesian navy and the stranded Rohingya's cohort is solid proof that there are problems involving existing human rights mechanisms how, in it is perceived and implemented by public officials.

Taking the geographical position and seemingly loose guard at sea territory into account, Indonesia has become one of the most popular transit countries in the region for those seeking asylum from persecution. Moreover, as state party to the UN Convention Against Torture, Indonesia is legally bound to not repel those who seek asylum or experience forced migration from their home country. These factors provide a basis of Indonesia's epithet as the safe haven for refugees and asylum seekers in the region. The Convention stipulates that state parties should not to expel, return (*refoul*), or extradite a person who is believed to be in danger of torture. However, due to the lack of protection mechanisms, whether Indonesia must host refugees or repel them back to their home country has become a consistent debate throughout the years.

Indonesia is ranked 4th in the Southeast Asia based on the number of refugees and asylum seekers they hosted. The UNHCR Office of Indonesia (2019) states that as per March 2020, Indonesia has already hosted more than 13,657 refugees, of whom 28 percent are children and/or unaccompanied children with limited protection mechanisms or access to basic needs. Aside from the negative actions by the government officials towards refugees, the Government of Indonesia also tends to ignore the protection and fulfillment of the refugee rights. The enactment of Presidential Decree no. 125 of 2016 on The Treatment of Refugee Overseas can be considered as a reflection of government's political will on the said issue. However, the Decree has failed to provide adequate rights and protection mechanisms for refugees during their temporary stay in Indonesia. Although Indonesia is not a state party to the 1951 Convention, Indonesia is among one of first states to sign and ratify the UN Convention on the Children Rights (CRC). This treaty stipulates the state party to acknowledge and respect the rights of refugee children irrespective of the status of their nationality. Thus, it should provide adequate protection mechanisms for refugee children.

Aside from the legal protection issue, there are also issues of incapacities by the State to handle refugees. Refugees and asylum seekers in Indonesia are mostly living outside of proper refugee camps. In Indonesia, only 29 percent of refugees are being accommodated in an immigration facility, whereas the rest have to settle in community housing (31 percent) and/or autonomous living (40 percent) (Anwar, 2017 quoted in Missbach, et al., 2018, pp. 9). This suggests that Indonesia lacks the infrastructure to facilitate the needs of refugees during their temporary stay in Indonesia. Furthermore, Missbach (2018, pp. 20) associates the lack of national regulation on refugees, particularly The Presidential Instruction no. 125 of 2016, with funding scarcity, political will, and accommodation. These impacted how the refugees have to deal with deteriorating conditions and the loss of future generations due to most of the refugee children unable to access education facilities.

Refugees in Indonesia are living dangerously due to the lack of the nation's protection mechanisms. Addo (2016, pp. 428) argues that the status of refugees can be determined when one of the durable solutions is being implemented and they are not required for needs related to their status. The UN High Commissioner for Refugees (UNHCR) on the Global Consultation on The Search for Protection-Based Solutions and Protection of Refugee Women and Refugee Children (2002a) states that protection-based solutions for refugees consist of three models: voluntary repatriation to the origin country, resettlement to the destination country, and local integration with the host country. With issues of limited quota and the condition of the refugees' origin country, neither resettlement nor voluntary repatriation could be helpful for refugees and their children. This leaves refugees with the last option, the local integration.

Local Integration is defined by UNHCR (2002b, p.2) as an end product of a multifaceted and on-going process, of which self-reliance is but one part. For it to work, integration requires preparedness to adapt from the refugees, without having to renounce their cultural identity. From the host community's perspective, it needs to welcome and provide positive responses to the refugees, and public mechanism that can meet the needs of a diverse population are essential. UNHCR (2002b, p.2-3) provides the following dimensions for local integration:

(1) Legal Process, in which the hosting State granted refugees with rights of movement, access to education and labour market, access to public relief and health assistance, acquiring property, and the capacity to travel with valid travel and identity documents;

(2) Economic Process, in which the refugees able to acquire sustainable livelihoods, thus progressively less reliant to State aid and humanitarian assistance from NGOs;

(3) Social and Cultural Process is defined by the refugees able to live amongst or alongside the host communities, without receiving any discrimination or exploitation. The social and cultural dimensions require refugees to contribute positively to the social life of their hosting country. Hence, local integration is considered to be a solution for refugees who are unable to return to their country of origin (UNHCR, 2002b, p.7).

The term local integration in this paper refers to the relations of refugees with the hosting community, whereas the phenomenon can be depicted by social relations/social integration of the distinct community. Echoing Lockwood, Mouzelis (1997, pp.113-114) stated that social integration is a “co-operative/conflictual relationship between actors, whereas system integration refers to compatibilities/incompatibilities between ‘parts’ that are always viewed as institutionalized complexes portraying different degrees of durability/malleability”. Furthermore, cultural integration of refugees within the hosting community described by Jacob (1994, pp. 308-311) is influenced by the pre-migration experience of refugees and the post-migration. This consists of the existence of integration policies, the absence/presence of close family, communities with similar or close in with the refugees’ culture, and social isolation of refugees with the hosting community. Koramaz (2014, pp. 50) also explained “the level of social integration is influenced by the level of collectivity, coherence, and inclusivity of a society’s social relations.”

This paper argues that social integration for refugee children can provide a temporary solution to their predicament. Local integration that is proposed in this paper does not mean provision of citizenship or nationality. It also borrows the ground concept of limited integration proposed by Crul et.al. (2019, pp. 272) when they described the case of Syrian refugee children in Turkey, who were able to access education facilities but were not registered into their national education system which opposed to Germany and Sweden’s education system. Whereas in the study case of migrants in Shanghai’s urban village, an improvement in educational background and cultural qualities could help them to integrate better into the modern social lives of urban areas (Wang and Ning, 2016, pp.112). The limited integration used in this paper of refugee children into the host education system is based on an informal process, to which the children could access the education facilities without regard to whether it is formally acknowledged by the host government.

This paper also aims to describe and explore the importance of the social integration of refugee children amidst the limited option of a permanent solution. By socially integrating with the hosting community, refugee children may have alternative means and opportunities to exercise their rights to education. However, prior to doing so, it is also critical for refugee children, or refugees as a whole, to overcome language and cultural differences. By mastering the host’s language and better understanding their customs and culture, it will ease the integration process while waiting for the permanent solution. The writer argues that breaking language and cultural barriers is one of the key factors to obtain social integration with the hosting communities.

This paper will be divided into the following four components. It will begin with describing the shortage of Indonesia’s regulations in terms of providing legal protection, thus affecting the fulfillment of the rights to education. It will then focus on the challenges that refugees are facing to access education facilities in transit or destination countries. It shall then reveal the language and cultural hindrance that emerges during the social integration process between the refugee community and the host country. This part will also describe the efforts to overcome the said barriers that eventually will affect the refugee children with the hosting children. This paper will use the example of a School Preparedness Program that is conducted by an Indonesia NGO which teaches refugee children Bahasa *Indonesia* (Indonesian language) and other social competencies to overcome language and cultural barriers.

2. UNDERSTANDING THE INDONESIA REGULATION ON REFUGEES AND THE RIGHTS OF CHILDREN

Indonesia has been, for decades, hosting refugees and asylum seekers in its territory. In 1979, after 12 months at sea, more than 250,000 asylum seekers from Vietnam (Indo-China) arrived in Riau Archipelago on fishing boats in poor conditions (Fitzpatrick, 2005). The refugees continued to live in Riau Archipelago for the next 17 years until refugee camps were resolved by the government of Indonesia. Three decades later, the Rohingya boat people, of about no less than 1,800 hopeless refugees went offshore seeking asylum in Indonesia (UNHCR, 2016). Ironically, with the long-list of experience as the host country for refugees, Indonesia has not ratified the convention on refugees. Furthermore, the national regulation does not comply in providing proper rights-based protection mechanisms.

Presidential Decree No. 125 of 2016

Presidential Decree no. 125 of 2016 on Handling of Foreign Refugees is considered the first regulation of the Government of Indonesia related to the issue of refugee and asylum seekers. Before its passage, these peoples were referred to as "illegal immigrants" (Tobing, 2018), without any distinction. The Presidential Decree has provided a legal definition of refugees, which is similar to the 1951 Convention without mentioning it as ratification to the treaty.

Some political issues made it incapable of providing a legal basis of protection to refugee children's rights. Missbach, et.al. (2018, pp. 12) stated that several weaknesses of the decree include the obscurity of funding from the National Budget (APBN) and Local Budget (APBD) to tackle refugees' cases, detail on the length of time of refugees and asylum seekers when he/she is being detained in the Detention Immigration Center (Rudenim), and lack of political will. Moreover, the Government of Indonesia refuses to be held accountable to issues concerning the rights of refugee children. It also relies heavily on national security perspective and coordination problems. This is shown during the 2015 Rohingya incident, whereby the Indonesia government opposed taking the asylum seekers into its territory. Moreover, the Presidential Decree did not refer to Presidential Instruction no. 36 of 1990 on the Ratification of the Convention of Child's Rights as the basis for child's rights protection, or to Law no. 35 of 2014 on Amendment to Child Protection Act no. 23 of 2003. Therefore, the Presidential Decree is deficient as a legal basis and lacks the power to influence political will to be used to enforce the rights of refugee children.

Lastly, the Presidential Decree has indeed provided a clear definition of refugee and asylum seekers, to the extent it provides government agencies with a basis to protect. But the decree itself only deals with refugees during search and rescue phase, while during their stay in Indonesia, the government of Indonesia relies on UN agencies and other international NGOs working on refugee and asylum seekers issues to deal with these problems. This has created substantial shortfalls when dealing with refugee children because government agencies do not have legal mandate to provide basic needs, allocating budget and sufficient protection of child's rights, or even coordinating mechanism intra-government agencies. In summary, the Presidential Decree on Handling of Foreign Refugees defined the conditions and identity of refugees that are in line with the 1951 Convention, however, it may not suitable an instrument in providing protection, particularly in relation to refugee children's rights.

Child Protection Act

Indonesia ratified the Convention on the Rights of the Child (CRC) through the Presidential Instruction no. 36 of 1990, which declares that the 1945 Constitution of the Republic of Indonesia guarantees the fundamental rights of the child irrespective of their sex, ethnic, or race. Interesting enough is that the Declaration is consistent with Article 22(1) of the CRC, which describes the obligation of state parties to ensure of child with refugee status shall "receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights outlined in the present Convention..."

However, the Presidential Instruction has two elemental insufficiencies as legal justification to protect refugee children's rights. Firstly, this Regulation is in conflict with the International Treaties Law no. 24 of 2000 article 10(d), which states that any ratification of international treaties shall be carried out by law if it is related to human rights and environmental affairs. Secondly, the Law does not regulate nor explain the legal standing of regulation related to the ratification of human rights before the Law no. 24 of 2000 being formalized. This has been one of the main considerations for the Committee to the Child's Rights. During the Second Periodic Report of the Committee to the Child's Rights in the Conclusion Observation, the Committee asserted "that the ratification of the convention is not backed by an Act of Parliament" (Prameswari, 2017, pp.181). Under Law no. 12 of 2011 on Establishment of Legal Regulations article 7, Presidential Instructions and Decree are considered in grade four of the hierarchy of regulations in Indonesia. This comes after the 1945 Constitution, the People's Consultative Assembly Decree, and the Act/Law. Such standing makes the Presidential Instruction no. 36 of 1990 weak with regards to political and legal perspectives.

An alternative solution that we could look upon regarding the protection and enforcement instrument to refugee children's rights is the Child's Protection Act no. 35 of 2014, which is the amendment to the same title of Law no. 23 of 2003. This Act has a broad range of protection and enforcement to child's rights for its derived from the principles of the CRC, as stated in article 2 of the said Act. It does not distinguish a child born as either an Indonesian citizen, foreigner, alien or stateless. This, thus can be used as an instrument to protect and enforce refugee children's rights.

The Act mandates responsibilities regarding the fulfillment of child's rights. The responsibilities are as follows: arranging for a child's protection (article 20); fulfilling child's rights irrespective to ethnic, religion, race, group, sex, culture, language, child's legal status, rank of birth, and physical and/or mental conditions (article 21 (1)). Article 59 also urges the government and other state institutions to be responsible and pay attention to children that require special protection¹, Article 60 on children in emergency situations are defined as children who become refugees, victims of social conflict, victims of natural disasters, and armed conflict. This makes the Act able to provide legal instruments in protecting refugee children's act. Furthermore, government responsibilities as stated in article 59A related to children require special needs consist of providing remedies, physical and mental rehabilitation,

¹ such as children in emergency situations, in conflict with the law, and children from minority or isolated groups, etc.

psychosocial and social assistance, as well as protection and assistance for children in conflict with the law. Regardless of the broad scope in the Child's Protection Act, it still requires sufficient political will to make this regulation applicable.

3. EDUCATION FOR REFUGEE IN TRANSIT AND DESTINATION COUNTRIES

In many transit countries, refugees are placed in camps, to keep them away from local. This is done to ensure comprehensive humanitarian assistance and deliverance for segregated community. The spectrum of assistance from health services, education facilities up to daily necessity of meals can be well-planned and organized in advance if refugees are placed in a more secured and concentrated place. However, not every transit country could offer these privileges as many refugees often have to find themselves a shelter or housing outside UN or INGOs designated places. This resulted in difficulties and complex situations in delivering assistance, particularly for the education for refugee children. As stated above, more than 71 percent of refugees in Indonesia are living outside government/immigration facilities, which significantly hinder the delivery basic needs.

In the midst of the absence of legal protection and mechanisms, refugees in Indonesia face difficulties in accessing basic needs of employment, adequate health, education, and proper housing. Accommodation for refugees who are scattered in many community-based housings or rent houses has been one of the factors that affect the quality of assistance delivery. Furthermore, due to language and cultural differences, refugees are disempowered from interacting with the hosting community. It is essential for refugees to be socially integrated with the hosting community while waiting for a permanent solution. In countries with an inclusive perspective towards refugees, education is able to facilitate the social integration of the two communities; something Indonesia cannot formally provide.

Many scholars and practitioners believe in the importance of education in overcoming social hindrance, such as poverty, economic instability, and many others. A good and well-managed educational system allows children to reach their full potential and exceeds their economic hindrances. For refugee children, education can also provide protection from exploitation and abuse (Christophersen, 2015a, pp.2), overcoming their past severe trauma that further affecting their social relation (Mcbrien quoted in Edwards, 2017, pp.223; Graham, 2016, pp.13), and for future reconstruction of their origin society (Dryden-Peterson, 2016, pp.474). An inclusive education approach in the destination country is beneficial for refugees with disabilities, as well as overcoming the multicultural and linguistic barriers from a diverse community (Taylor and Sidhu, 2011, pp.17).

This paper argues that an education system with an inclusive approach towards refugee children could assist the cohesion between two diverse communities. The experience of the Australian education system towards refugee children concluded that a school may be a crucial environment in providing interventions of physical, mental, and cognitive (Henley & Robinson, 2011, pp. 56). Furthermore, Edwards (2017, pp. 223) highlighted the role of teachers

and school's counselors in helping refugee children to adjust in the new environment by developing, among other, their language and communication skills.

Exercising the rights of education amongst refugee children comes with great burden. Prior to the resettlement process in Australia, refugee children are identified by having various mental health problems, including learning and intellectual disabilities. These challenges, to some extent, affect their adjustment process with the new environment, and access to rights to education and health.

In terms of rights to education, refugee children are facing difficulties in accessing educational facilities. Dryden-Peterson (2016, pp. 275) underscored the matter of inequality to access to education for refugee children in comparison to children in general. The problem is highly determined by the politically charged regulations of the hosting country. In the case of Indonesia, the access to education for refugees is highly dependent on the discretion of the local government, since national regulations fail to deliver firm stipulations related to the basic rights of refugees and their children.

Refugee children in transit countries encounter multiple barriers of economic, legal, social, and cultural (Christopherson, 2015a, pp. 8). Researchers found that aside from past-traumatic experience, language hardships, social, and emotional raise challenges for refugees and the children to be socially included in the new environment (Isik-Ercan, 2012, pp. 3026). A study conducted by UNICEF (quoted in Culbertson and Constant, 2015, pp. 16-18) identified problems of Syrian refugee children during their stay in the transit country of Turkey, Jordan, and Lebanon. Some obstacles they are facing include school quota availability, language barriers, bullying, tensions in school, and many others. Language problems occur when the education system in Turkey is delivered using Turkish, which many Syrian refugee children, who are native in Arabic, are unable to use. The Lebanese public school system also encountered similar problems, whereas the education system required the children to be fluent in English and French. Language differences and economic abilities have pushed more than 250,000 school-age Syrian children to drop-out from schools during the 2015-2016 school year (Nachabe, 2019, pp. 102; Christopherson, 2015b, pp. 12). The gaps related to assistance received has its own impacts towards the inability of the refugee families to support their children's education.

In conclusion, there are a number of fundamental challenges towards the full exercise of the rights of education for refugee children. This can be addressed by implementing an inclusive education system and curriculum, firm regulation, as well as, asserting sufficient political will by the government officials. Furthermore, other than physical and psychological issues, it is crucial for refugee children to overcome language and cultural barriers to ease the social integration with the hosting community.

4. OVERCOMING CULTURAL AND LANGUAGE BARRIERS THROUGH SCHOOL PREPAREDNESS PROGRAM

In most cases, refugees and asylum seekers in Indonesia come from a non-Melayu speaking country. As of December 2019, UNHCR (2019) Office in Indonesia reported that 72 percent refugees in Indonesia come from Afghanistan (56 percent), Somalia (10 percent), and Iraq (6 percent). Only a small number of refugees are able to speak Melayu or English due to their previous work experience in Malaysia. Research shows that refugee children were only able to access early childhood education to overcome their language and cultural barriers (Morland and Levine, 2016, pp. 70).

The International Organization of Migration (IOM) (2019, pp.6) emphasized that language barriers do not only affect the fulfillment of rights to education, but they also infringe on the rights to health and psychosocial health of refugees. In this light, the host state must protect and fulfill the rights of refugee children, particularly rights to education and health. Since Indonesia is not a state party to the 1951 Convention, some loopholes in the national regulation usually are being utilized by NGOs to provide the rights of education to refugee children.

Article 13 of Act no. 20 of 2003 on The National Education System acknowledges three types of education made available for any citizens: formal education, non-formal, and informal education. Through informal education programs initiated by local NGOs, refugee children are able to secure their rights of education. However, in order to access formal education, refugees and their children encounter complicated situations. Firstly, the Indonesia education system does not provide conditions for refugee children to be formally enrolled in public school. Children cannot acquire a certificate upon their graduation. Second, refugees and their children do not own legal documents whatsoever provided by the Indonesian government due to the non-state party status to the 1951 Convention. Thus, refugee children are not formally recognized in the Indonesian education system and only be considered as “hand-over students” (*siswa titipan*) (Rachmah and Pestalozzi, 2016, pp. 51).

A survey on refugees in Indonesia conducted by Locastro, Alfath, and Hu (2019, pp. 27) showed that even though the education system does not recognize them, the refugees' expectations to reach higher education in the hosting country is very high (84.5 percent,) even more than their perceptions regarding employment (66.9 percent). The UNHCR Office in Indonesia (2019) shared that until December 2019, more than 3,571 refugees in Indonesia were able to access higher education, though only through informal and online modalities. Despite the inability of the education system to formally acknowledge refugee children, having to experience a school environment has positive effects on the refugee children as they can form bonds with the young members of the host community. Some local governments such as Nanggroe Aceh Darussalam, Makassar City, and DKI Jakarta permit refugee children to access public schools in their areas. Refugee children who have the opportunity to access public education in Indonesia are supported by NGOs to study Bahasa Indonesia and other social competencies through the school preparedness program.

The School for Refugees (SFR) is a preschool programme designed to accommodate learning needs of refugee children between the ages of 4 and 15 years old. They do this by teaching them language and social skills. Initiated by Dompot Dhuafa Foundation, Rachmawati et al. (2019, pp.6) stated that the purpose of SFR is to (1) guide refugees to imbibe characteristics related to Indonesian culture/s that match Indonesian cultures, (2) directing refugees to enthusiastic about studying in formal schools, (3) tutoring refugees who have entered the formal school, and provide them with a second chance to graduate; and (4). provide understanding to parents about its impotence of education. Since its first batch, the SFR program has provided a non-formal education for 282 refugee students, which led to the enrolment of 107 students in either Indonesian public elementary school or Community Learning and Teaching Centres (PKBM). During the seven months, refugee children receive teaching materials consisting of basic math, Bahasa Indonesia, as well as social skills. Table 1 shows how the programme had successfully benefited refugee children and their journey to social integration.

Table 1: Number of Refugee Children Enrolled in Education Facilities Through School Preparedness Program in Indonesia

Year/Batch	Number of SFR Students	Number of Students Enrolled
2015/Batch 1	72	25
2016/Batch 2	58	21
2017/Batch 3	45	22
2018/Batch 4	107	37

Source: Rachmawati, et al., 2019.

Refugee children who are admitted to the SFR programme must attend the classes from 8 am to 3 pm from Monday to Friday. The learning method of SFR is based on an active learning model that combines indoor and outdoor activities, cognitive learning methods, and project learning skills (only for students of 11 to 15 years old). This seeks to improve their skills and knowledge before studying in an Indonesian school. Some activities in SFR are designed to bring together refugee and Indonesian children during special occasions, such celebrations during Ramadan, Independence Day, Outing Class, and many others. With proper guidance and teaching, several refugee children were able to perform outstandingly. An example is Rayyan, a third-grade student from Ethiopia, who participated in the inter-school Takraw Ball team championship, and his little sister Riham who won runner-up in the school's singing competition.

Rachmawati, et al. (2019) and Kurnianingtyas, et al. (2020) stated that refugee children were bullied by their classmates due to cultural difference, the colour of their skin color, inability to speak the local language, and low performance in school. Despite success stories, it is important to stress that the rights of refugee children are still vulnerable due to lack of legal protection mechanisms. A durable solution is still substantial to further protect their rights.

5. CONCLUSION

Refugee children and their families still face many challenges during their temporary stay in of Indonesia. The lack of protection mechanisms and the government's negligence to protect and provide the refugee children's rights had worsened conditions. With respect to their rights to education, this situation caused confusion since the refugee children are not formally registered in the Indonesian education system. Nonetheless, some opportunities lie ahead as several local governments give discretion towards refugee children to enroll in any education facilities in their region. Though they will not acquire education certificates for future reference, this opportunity to exercise their rights of education must be put in good use.

A preschool programme initiated to build better understanding of the Indonesian language and community culture has increase chances for refugee children to access education facilities; thus, socially integrated with the host community. The ground concept of social integration is when the refugees do not experience any physical abuses, discrimination, and exclusion by the host community. In light of bullying by the Indonesian students, this phenomenon suggests that more has to be done to overcome cultural differences. Overcoming language and cultural barriers must be based on fair, rights-based regulations. To reiterate, this paper is not suggesting a full-fledged local integration programme, whereby refugees and their families have the option change nationalities. It is stressing, however, the need for government to provide sufficient legal acknowledgment and documents for refugees and their children during their temporary stay in the, so they may utilize it whenever a permanent solution comes their way.

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PROTECTING CHILDREN FROM DOMESTIC VIOLENCE AT THE TIME OF DISRUPTION: HUMAN RIGHTS CONCERNS

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ABSTRACT

Since early 2020, the COVID-19 pandemic has brought widespread injuries globally. The situation of Bangladesh is of no difference. Particularly, children are at greater risk of experiencing violence, exploitation, and challenges at a time of lockdowns and home isolation. Inadequately staffed and unequipped child protection services and lack of law enforcement make this situation worse. Alarming, different forms of violence against children have increased amid the coronavirus outbreak in the country. Recent research by Manusher Jonno Foundation (MJF) show that a total of 456 children had to face domestic violence in April during the coronavirus pandemic, where 92 percent of them experienced domestic abuse for the first time. The right to live free from violence is a basic human right. Domestic violence against children is a violation of their human rights which have been enshrined in many international treaties. The United Nations Convention on the Rights of the Child confirms in Article 19 that States Parties shall take all appropriate legislative, administrative, social, and educational measures to protect the child from all forms of violence. Moreover, it is necessary to take specific measures to protect children against domestic violence in situations of increased vulnerability like infectious disease outbreaks. In light of the above stated, the article examines the Bangladesh approach in protecting children from domestic violence during pandemic COVID-19 and concludes with certain recommendations. The research applied a descriptive qualitative analysis based on different case studies, literature reviews of different academic journals, articles, books, national laws and policies on domestic violence, international conventions, NGO reports, newspapers, and case reports.

Keyword: Human Rights, COVID- 19, Bangladesh, Domestic Violence.

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1. INTRODUCTION

Child domestic violence is a heinous violation of human rights and has been experienced in many societies of the world from time immemorial. Globally, an estimated one out of two children aged 2–17 years old suffer some form of violence each year (WHO 2020). Violence and harassment of children is a culturally justified practice and common scenario in Bangladesh. Several socio-cultural factors influence the practice of child domestic violence in the country. In particular, a girl experiences various forms of discrimination and violence from the date of her birth. Consequently, there are more chances of violence against children during the crisis period.

The vulnerability of children during infectious disease outbreaks due to a variety of reasons has already proven from different research. Evidence from the 2014-2016 Ebola Virus Disease (EVD) epidemic in West Africa suggest that the outbreaks of the infectious disease pose distinct challenges to traditional child protection responses (Guidance Note 2020). The reported similar situations have been encountered by the states worldwide during the current ongoing coronavirus pandemic crisis.¹ During the coronavirus outbreak, domestic violence reports tripled in China² (Mak, 2020). In India, domestic violence complaints filed during the lockdown are more than the recorded in a similar period in the last 10 years (Radhakrishnan, 2020). In most of the cases, the victims are women and children.

Bangladesh is also going through a similar situation, with domestic violence news every day. Apart from the health and nutritional impact of COVID-19, child neglect, abuse, exploitation, and other forms of violence are also increasing in Bangladesh. Reports from different NGOs, including Ain o Salish Kendra (ASK), Manusher Jonno Foundation (MJF), show that various forms of violence against women and child has increased at an alarming rate in the country during COVID-19 crisis.

The paper provides an overview of child rights concerns, in particular domestic violence posed by the coronavirus outbreak, and the role of human rights in protecting children, and recommends the government to uphold the rights of children during and beyond the COVID-19 pandemic. The research applied a descriptive qualitative analysis based on different case studies, literature reviews of different academic journals, articles, books, national laws and policies on domestic violence, international conventions, NGO reports, newspapers, and case reports.

2. CHILD DOMESTIC VIOLENCE: VIOLATION OF HUMAN RIGHTS

Historically, domestic violence has not been treated as a violation of human rights as it was treated as private matters to be handled within the family (Lemon 1999). Accordingly, the matter remained beyond the scope of state activity for a long time. However, the situation has changed with the resurgence of the women's movement by the 1980s. Till date, domestic violence against children get less attention from the states to compare to the domestic

¹ The virus first emerged in Wuhan, China in December 2019.

² Domestic violence has increased threefold in Hubei province, the heart of the initial coronavirus outbreak, from 47 cases last year to 162 this year.

violence against women. Even the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which was adopted in 1979 and enforced in 1981, does not explicitly mention violence against women (Hawkins and Humes, 2002). In 1993, states explicitly created norms treating violence as a human rights violation by adopting the Declaration on the Elimination of Violence against Women.¹ Article 2 of the Declaration provides a wide definition of violence which includes domestic violence. According to the said article, Violence against women shall be understood to encompass, but not be limited to, the following:

- 1) Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation;
- 2) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution;
- 3) Physical, sexual, and psychological violence perpetrated or condoned by the State, wherever it occurs.

A similar definition of domestic violence has been given by the United Nations International Children's Emergency Fund (UNICEF). It includes violence perpetrated by intimate partners and other family members, and manifested through:

- 1) Physical abuse such as slapping, beating, arm twisting, stabbing, strangling, burning, choking, kicking, threats with an object or weapon, and murder.
- 2) Sexual abuse such as coerced sex through threats, intimidation, or physical force, forcing unwanted sexual acts or forcing sex with others.
- 3) Psychological abuse includes behavior that is intended to intimidate and persecute and takes the form of threats of abandonment or abuse, confinement to the home, surveillance, threats to take away custody of the children, destruction of objects, isolation, verbal aggression, and constant humiliation.
- 4) Economic abuse includes acts such as the denial of funds, refusal to contribute financially, denial of food and basic needs, and controlling access to health care, employment, etc.

Thus, domestic violence against children does not refer to physical violence solely, but four different kinds of abuse may be identified as domestic violence against children. Domestic violence steals the normal life of children by causing a violation of the fundamental human rights of a child as a human being, namely the right of life, the right to live a healthy life free from torture, and the right against exploitation. The right to education and freedom of movement are also violated in the occurrence of child domestic violence as perpetrators restrict their movement and cut down their communication from the outside world. Child domestic violence can also be identified as harmful practices to children that result in discrimination and inequalities. Moreover, this vulnerability increased in the pandemic as the chances of being a victim at home is higher in this situation. The following rights are discussed here

¹ Declaration on the Elimination of Violence against Women, G.A. Res. 48/104, U.N. Doc. A/RES/48/104 (Dec. 20, 1993).

1) Right to Life and Health

Domestic violence causing physical and mental injuries to a child is a violation of the right to life. Moreover, the pandemic caused financial hardship to the families and this makes the children more vulnerable. According to a report by UNICEF and Save the Children published in May, said economic fallout of the COVID 19 pandemic could cause 672 million children to live in poverty by the end of 2020. Without urgent action to protect families from economic hardship, this is an increase of 15 percent in only one year. Consequently, children are highly vulnerable to hunger and malnutrition, which is a violation of their right to life and health.

2) Right to Freedom from Torture

Violence causes a violation of the human right to live free from the torture of a child. Physical abuse such as slapping, beating, arm twisting, stabbing, strangling, burning, choking, kicking, threats with an object or weapon, and murder is a form of torture that hampers normal life of children.

3) Right to Freedom of Movement

In most cases of child domestic violence, a child is bound to be confined at home, and this results in a violation of the right to free movement. Isolation is a common form of violence against children that restrict their movement.

4) Right to Education/ Right to Information

Child domestic violence causes a violation of the right to education while the victim is confined to the home. Moreover, widespread school closures due to pandemic mean more children are at risk of missing out on education. Consequently, the right to access to education is hampered.

Child Domestic Violence: International Law

Child domestic violence is a serious obstacle in the enjoyment of human rights and the fundamental freedoms of children. Several international treaties provide for the protection of child rights from violence. However, addressing violence against children in the home is one of the greatest challenges of the international community (UNICEF 2013). Interestingly, Bangladesh as a member of the international community, affirms those international norms and promised to protect child rights from any such kind of human rights violation.

The Convention on the Rights of the Child 1989 includes the right of children to live a life free from violence. As a fundamental law regarding child rights, the Convention on the Rights of the Child 1989 provides in Article 19 (1) that states parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has

the care of the child. Furthermore, Article 24 (3) provides that the parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children. Child domestic violence threatens the right to life of a child. Article 6 of the CRC obliges the state parties to recognize that every child has the inherent right to life. Again, Article 34 of CRC obliged states to protect the child from all forms of sexual exploitation and sexual abuse, which is common in domestic violence. Article 7 of the International Covenant on Civil and Political Rights (ICCPR) states that “No one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment.

The elimination of violence against children is one of the essential targets for the States under the 2030 Agenda for Sustainable Development. According to Sustainable Development Goals (SDGs) target 16.2, the states should end abuse, exploitation, trafficking, and all forms of violence against and torture of children. This is the first time the international community has recognized on international agenda the dignity of children and their right to live free from violence and fear as a distinct priority.

Child Domestic Violence Legislation: Bangladesh

Violence against children is normal, even encouraged by the Bangladeshi society. Beating and scolding children for their better future is an obvious culture in the country. Here, child domestic violence is deeply rooted in social attitudes, to which women and girls are regarded as inferior to men and boys based on stereotyped roles. Though the country has passed the Prevention of Women and Children Repression Act 2000 to address the need for more effective prosecution of perpetrators of violence against women and children, domestic violence was not a specific crime in Bangladesh until 2010. During that year, the Domestic Violence Prevention and Protection Act specifically addressed the domestic violence issue. Under the Act, domestic violence includes physical abuse, psychological abuse, sexual abuse, or economic abuse against a woman or a child of a family by any other person of that family with whom the victim is, or has been, in a family relationship. Later, the Act was supplemented by the Domestic Violence Prevention and Protection Policy of 2011. Section 3 of the said Act defines domestic violence as physical abuse, psychological abuse, sexual abuse, or economic abuse against a woman or a child of a family by any other person of that family with whom the victim is or has been in family relation. Section 13 of the Act provides that victims can receive medical and legal aid services, an interim protection order signed by a first-class magistrate as a relief. Despite legal protection from domestic violence, it still remains a common practice in Bangladesh due to its deep-rooted social stigma. Crucially, several factors, including patriarchal social structure, the economic dependence of women on men, and institutional discrimination (i.e., discriminatory laws/policies) all contribute to the prevalence of domestic violence in the country (Young and Hassan 2018).

3. REASONS FOR CHILD DOMESTIC VIOLENCE UPSURGE DURING COVID-19

The COVID-19 pandemic impacts dramatically the prevalence of violence against children. The rise of helpline calls for assistance to deal with child abuse has been reported in many countries during the COVID-19 lockdown (WHO 2020). This indicates that child abuse and children witnessing violence between their parents and caregivers have increased. In April 2020, the Committee on the Rights of the Child warns of the grave physical, emotional, and psychological effect of the COVID-19 pandemic on children and calls on States to protect the rights of children. Recently, the UN agency's Socio-economic Impact Survey of Covid-19 Response revealed that 104 countries out of the 136 that responded reported interruptions or suspensions of services, such as case management, referral services, and home visits by child welfare and social workers to children and women at risk of abuse. As the countries are taking measures to prevent COVID-19, children's access to child welfare authorities and national helpline services are severely affected.¹ Many reasons include economic and social factors that increase the vulnerability of child domestic violence. For instance, the Covid-19 pandemic rendered many people jobless, and this has created a devastating effect of mental health (e.g. anxiety, fear, stress, etc.), which has transformed to domestic violence (Arif and Mia 2020). Some of the reasons are as follows -

School Closure

According to the Global status report on preventing violence against children in 2020, school closures have impacted more than 1.5 billion children. Girls are likely to be the first to drop out, and this may lead to increases in early marriage in a country like Bangladesh. Generally, the teachers, social workers, nurses, and physicians recognize the signs of abuse under normal circumstances. As the schools are closed during the crisis period, they no longer have direct contact with children, and therefore are unable to report suspected abuse. Consequently, the perpetrators perpetrate violence against the victim more frequently.

Increased Financial Pressure

Stress, the disruption of social and protective networks, and loss of income can exacerbate the risk of violence for children. The lockdown has increased financial pressure on the families, and this force many parents to decide to marry off their underage daughters with the risk of violence.

Movement Restriction

Movement restrictions forced people to spend much more time at home, allowing violence in homes to happen more frequently.

¹Covid-19 disrupts child protection services in over 100 countries: UNICEF, <http://unb.com.bd/category/Bangladesh/covid-19-disrupts-child-protection-services-in-over-100-countries-unicef/56196>

Less Access to Justice

Lack of access to justice as regular courts are closed is another potential reason for increased child domestic violence.

Lack of Access to Protection Services

Child protection agencies have reduced monitoring to avoid spreading the virus. Shelters are closed, community services are not immediately available for lockdown situations. Thus, restriction of movement, financial constraints, less access to justice, and fewer police interventions give perpetrators more chances for violence. Furthermore, limited contact with informal support networks such as friends, teachers, childcare workers, extended family, and community members have left children and families more vulnerable.

4. BANGLADESH RESPONSE TO PROTECT CHILDREN DURING PANDEMIC COVID -19

As discussed earlier, child domestic violence in Bangladesh is common because of its patriarchal social structure. Consequently, the actual number of cases is never known. However, media reports indicate an increase in domestic violence amid COVID-19 in Bangladesh. In the Asian region, Bangladesh is one of the countries that has been affected the most by the COVID-19 pandemic. According to WHO Bangladesh COVID -19 Situation Reports, the Institute of Epidemiology, Disease Control and Research (IEDCR) confirm 165,618 confirmed COVID-19 cases, including 2,096 related deaths, in Bangladesh until 06 July 2020 (Situation report – 19 2020). The general holiday of the country has begun on 26 March, though from 17th March 2020 all learning institutions were closed due to the pandemic of the COVID-19. The country has been declared at risk of infection under the Infectious diseases (Prevention, Control, and Elimination) Act 2018¹ (Kamruzzaman 2020).

Statistics show that various forms of violence against women and children have increased amid the coronavirus outbreak in the country. As already mentioned, there are many socioeconomic consequences of COVID-19 that increased the vulnerability of the children worldwide. Different NGO research reports, including Bangladesh Mohila Parishad, show that about 480 women and girls have been victims of violence during March, April, and May of the current year.² Particularly, 456 children have had to face domestic violence during the coronavirus pandemic stated by a report³ from Manusher Janno Foundation. Alarming, 92% of the children interviewed by the MJF have been abused by their parents or other family members: 14 were raped, 16 faced attempted rape, two were kidnapped, and 10 were sexually abused. Thus, most of the children have faced violence from their parents or relatives (Mallick

¹ Act no 61 of 2018.

² The Business Standard, <https://tbsnews.net/bangladesh/crime/480-women-children-fall-victim-violence-last-3-months-88882>.

³ The telephonic survey was conducted in June when about 27 districts were brought under the research work.

2020). According to COVID-19 Bangladesh Rapid Gender Analysis, Child marriage is likely to increase as a consequence of the COVID-19 crisis-induced economic instability¹.

According to a survey conducted by UN Women in April 2020,² 49% of women and children are unable to access health and nutrition services at health facilities. Since March, all educational institutions have been closed as part of the Government's efforts to contain the spread of COVID-19; the government started telecasting classes for students. However, many students will remain out of reach due to lack of electricity, household burden, economic burden, etc. The Government announced a large relief, rehabilitation, and incentive package in the wake of the COVID-19 pandemic, which is mainly concentrated on food relief and food subsidy programs. As a result, child protection services remain vulnerable. Furthermore, in the face of movement restrictions, gender, and sexual minority youth may be psychologically impacted by the need to remain in unsupportive home environments. Accordingly, domestic violence is on the rise in this current pandemic crisis in Bangladesh. Unfortunately, the state has no specific steps concerning domestic violence prevention to date.

5. RECOMMENDATIONS AND CONCLUDING REMARKS

Child domestic violence is an epidemic problem that has devastating consequences in the life of a child, family, society, and country as a whole. To address these problems, an analysis of the dynamic impacts of the issue is necessary. Some set of laws alone cannot protect the victims and survivors. Unfortunately, the current legal framework of the country fails to provide primary protection to a victim. Thus, much more work is needed. Comprehensive community responses, including law enforcement, advocates, judges, health professionals, social workers, and others, are needed to develop a greater understanding of the limitations and capacities of each response system regarding child domestic violence (Lemon 1999).

Moreover, the protection of child rights during emergencies should be one of the prime concerns of the state. The government should give priority to comprehensive measures to address domestic violence. The state should adopt specific measures to protect children from domestic violence in situations of increased vulnerability. Such measures should include immediate and long-term measures.

Immediate measures should include the allocation of sufficient human and financial resources necessary to combat domestic violence in the context of COVID-19. The national action plan for COVID-19 should integrate policies to combat increased domestic violence against children. The government and NGOs should incorporate a human rights-based approach into all their COVID-19 responses. The government should ensure access to protection by ensuring safe shelters and helplines for the victims. States should strengthen phone and online reporting and referral

¹ COVID-19 Bangladesh Rapid Gender Analysis, https://reliefweb.int/sites/reliefweb.int/files/resources/RGA%20Bangladesh.Final_.May2020.pdf

² <https://data.unwomen.org/resources/surveys-show-covid-19-has-gendered-effects-asia-and-pacific>.

systems, as well as sensitization and awareness activities through TV, radio, and online channels. Child abuse may be reported to the government by calling specific toll-free numbers. More rapid action by the police should be increased for any news of violence. Perpetrators should be brought into account despite the lockdown situation. The government should target support for interim care centers and families. The government should provide financial and material assistance to families whose income-generating opportunities have been affected. Strategies to mitigate the economic and social impact of the COVID-19 pandemic should also include specific measures to protect children, particularly those living in poverty and lacking access to adequate housing.

Long-term measures should include the evaluation of the programs' response to child domestic violence, to understand which programs result in the best outcome for these children. The policymakers must ensure financial support for the replication of these programs throughout the country after identifying the best available program. Finally, the government should increase efforts to raise awareness of the criminal nature of domestic violence and the services available to victims.

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LEGITIMACY, ECONOMIC DEVELOPMENT AND THE STATUS OF HONG KONG

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ABSTRACT

Post-1989, the political system of the People's Republic of China has been underpinned by a delicate balancing to maintain the legitimacy of the Chinese Communist Party (CCP). It was obvious from the examples of the failing Eastern Block that repression would lead to regime failure. A focus on economic development has been integrated as a central pillar of CCP legitimacy. However, recent events in Hong Kong have revealed the inherent conflict between the PRC's economic and political ambitions. Through the pushing of its political agenda, the CCP has contributed to a significant disruption of the economy of Hong Kong, including the potential for long-lasting harm if Hong Kong's special status is withdrawn. This paper proposes to take a critical look at this conflict within China's political and economic system. To do so, the paper proposes to examine (1) the post-Mao legitimacy of the CCP, including the focus on economic development, (2) the political challenges posed by the special status of Hong Kong and how the island fits into a larger nationalist/patriotic context, (3) the effects of recent events and potential implications for the crisis. The issue of Hong Kong presents an interesting case study for a scenario in which a non-democratic regime seeks to maintain legitimacy through economic development, but then economic interest conflicts with political ones. The paper employs a qualitative research design. The issue is of particular relevance as the domestic politics of China continues to exert a growing influence on the international level, especially as China is becoming a great power within the system. Understanding the interconnectedness of Party politics with national interest is important to discern the behaviour of the PRC.

Keyword: Hong Kong, Chinese Communist Party, Legitimacy, Economic Development.

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1. DISRUPTION IN HONG KONG

Hong Kong has been subject to substantial disruption in the last year, part of a larger pattern of civil unrest and protests. The recent history of protests in Hong Kong largely focuses on the same issue - the growing anxiety about the encroachment of the mainland's political system, most prominently what is seen as attempts by the Chinese Communist Party to undermine the democratic system of the country. However, while the ignition points are usually political, the protests also reflect a general anxiety over unequal development, stagnating living standards and the future of the Hong Kong Special Administrative Region (SAR).

In 2014, the 'umbrella movement' adopted large-scale protest tactics to resist the imposition of Party oversight over Hong Kong's democratic system. The key point of contention was the National People's Congress's (NPC) evaluation of the upcoming election and its attempt to interfere in candidate selection. The NPC argued that "the Chief Executive has to be a person who loves the country and loves Hong Kong must be upheld [thus] The method for selecting the Chief Executive by universal suffrage must provide corresponding institutional safeguards for this purpose". (National People's Congress, 2014) While the assessment appears innocuous, it essentially means that the NPC requires Hong Kong to enact institutional measures to prevent the participation of candidates that would not meet the approval of the Party and are deemed unpatriotic (due to the particular nature of China's communist system, loyalty to the Party and the country are treated as synonymous). The response in Hong Kong was civil unrest and widespread protests, seeing large youth participation. Ultimately the protests were successful and the Hong Kong executive rejected the recommendations of the NPC.

The protests highlighted the growing tension within the 'one country, two system' principle that underpinned Hong Kong's special status after the British handover. The CCP has been increasingly unhappy with the political challenge Hong Kong posed to the legitimacy of the socialist system within its borders. The democratic governance of the SAR, accompanied with a liberal political sphere of free speech, was seen as detrimental to stable communist governance. Good examples of this situation were the 2015 *Causeway Bay Book Disappearances* (Reuters, 2016) and the re-arrest of Gui Minhai in 2018 (Bangkok Post, 2020). These incidents illustrated the growing desire of the CCP to stifle dissent emanating from the SAR and to bring Hong Kong in line with the rest of the mainland, preferably sooner than the fifty years the Party has pledged to respect 'one country, two systems' at the time of the handover.

In 2019, a new wave of highly disruptive protests has erupted. This time, the ignition point was a proposed amendment to Hong Kong's extradition laws. CAP 503 *Fugitive Offenders Ordinance* would have allowed Hong Kong to transfer fugitives beyond its existing extradition framework. (Hong Kong Ordinances, 2019) While the ordinance targeted the extradition of a murder suspect to Taiwan, where due to the nature of Party's 'one China' policy an extradition agreement was not possible, the popular fear was that its allowance of extradition to the mainland would put Hong Kong under the jurisdiction of the draconian legal system of the People's Republic of China (PRC). The main point of the opposition was that the CCP would use the ordinance to further political suppression, a fear that based on the case of Gui Minhai was not unjustified.

The response to CAP 503 was similar to that to the 2014 attempt by the NPC to interfere - mass protests. However, as a reflection of growing anxiety in Hong Kong, the protests turned considerably violent. Images of barricaded universities, arson, damaged public property, and students brandishing bows and arrows have cultivated the attention of the international media. The Hong Kong Police, once a model of professionalism, was accused of police brutality against protesters. (Amnesty International, 2019) The events in Hong Kong bear an eerie similarity to the democracy protests at Tiananmen Square some thirty years ago. While the reasons for each protest are complex and rooted in a deeper contemporary political context, one can clearly observe similarities, most prominently the opposition to the non-democratic governance system of the People's Republic of China and an equally strong determination by the Chinese Communist Party (CCP) to resolve the matter on their own terms. In the process, Beijing has shown a willingness to suffer the economic and political consequences of intervention, including sanctions that could prove devastating for the economy of the special administrative region that has capitalized on its autonomy to attract investment and expertise.

The political troubles of Hong Kong are compounded by economic ones, and these have contributed to popular dissatisfaction that coalesced into the recent violent protests. While the economy of Hong Kong continues to develop (World Bank), so does income inequality, creating a gloomy outlook for much of Hong Kong's younger generation. Hong Kong's Gini coefficient stood at 0.539 in 2016, significantly higher than other advanced economies. (Oxfam) For comparison, the United States that is beset by its own problems with structural inequality stood at 0.595. (Horowitz, Igielnik, and Kochhar, 2020) The situation is even grimmer if one takes the post-social transfer Gini coefficient, which stood at 0.473 for Hong Kong and 0.423 for the United States. Growing dissatisfaction with structural inequality has been a significant contributing factor to the protests, with young protesters often invoking a general hopelessness about a future in the special administrative region. (Wong and Liu, 2019) Shek (2020) highlights the role dissatisfaction over quality of life and inequality has played in providing fertile ground for the outbreak of protests, emphasizing that economic development in the absence of sufficient access to development in quality of life is a serious threat to social stability.

The economic outlook of Hong Kong is further clouded by the punitive response promised by major powers such as the United States. The US already has begun adopting sanctions targeting the Chinese regime. (BBC, 2020b) However, the ultimate question remains - the special economic status of Hong Kong. Due to its autonomous nature, Hong Kong enjoys a number of economic and regulatory benefits when interacting with the West, which made it an attractive destination for investment. The Trump Administration already begun rolling back some of these privileges, including access to high technology imports, export licenses and other aspects of preferential treatments. (CNBC, 2020) This has the potential to inflict significant damage onto Hong Kong's economy. Combined with the departure of dissidents and expats, it has the potential to trigger significant capital flight. In a precarious post-pandemic economic environment, such a capital flight would represent a significant economic threat.

The primary question to ask is 'why.' Looking at the situation, one has to wonder why Beijing would be seeking to undertake these steps, knowing the costs, and why now, as Hong Kong has re-joined mainland China in

1997. This paper proposes that a significant factor can be found in the issue of legitimacy. The divergent governmental structure of Hong Kong presents a major challenge for the Chinese Communist Party. In a sense, Hong Kong embodies what protesters at Tiananmen Square have sought - a China that not only has a free market economy, but a free and democratic political sphere. The existence of an alternate system within the boundaries of the People's Republic of China is inherently a challenge to the legitimacy of Chinese Communist Party, whose regime has been propped up by a narrative of necessity. This challenge has become more severe as the overall legitimacy of the CCP continues to weaken.

2. WEAKENING PARTY LEGITIMACY

The Chinese Communist Party is in a crisis; there is no escaping that. Regardless of how authoritarian a regime may be, it cannot ignore its legitimacy. (De Mesquita and Smith, 2011) If it cannot secure sufficient compliance from enough people, it will succumb to domestic political unrest, as many fallen dictators can attest to. However, as the CCP learned after the 1989 Tiananmen Square protests, repression can only go that far, especially if the country has ambitions of effectively participating in the international economic system, which was clearly the goal of the moderate wing of the CCP. Countries like North Korea can remain repressive because of their isolation and emphasis on self-sufficiency. This creates a significant political conundrum for the CCP.

The Chinese Communist Party, as the name suggests, is a communist party organized around a Marxist-Leninist ideology. It considers itself an expression of the proletarian rebellion against an oppressive bourgeoisie system, the vanguard of the worker-peasant revolution seeking to create an egalitarian system for all. The legitimacy of China's one-party political system rests on this ideological basis, that it is the 'democratic dictatorship of the people.' This is first in both the Constitution of the People's Republic of China (2004) and the Basic Law of the Hong Kong SAR. The socialist system is intrinsic to and inseparable from modern China and its focus on class warfare mandates the continued supremacy of the CCP.

The legitimacy of the CCP has experienced significant challenges for a very long time. During the Great Proletarian Cultural Revolution (1966-1976), Mao turned on the Party establishment, branding the moderate/statist wing of the CCP as counterrevolutionary and ordering the purge of his political opponents, leading to mass disruption in China. While the moderates have emerged victorious following the death of Mao and the defeat of the Gang of Four, the legitimacy of the party has been shaken by the legacy of the GPCR. The moderates were led by Deng, who has outlined an ambitious economic reform programme for the PRC. While the economic programme was extremely successful in transforming China into an economic powerhouse, it has also dealt a critical blow to party legitimacy. Growing income inequality and corruption has undermined the egalitarian class-warfare credentials of the CCP. Liberalized market economics were incompatible with traditional Marxist-Leninist ideas that the Mao period spent considerable resources to disseminate among the population as a source of legitimacy for authoritarian governance. The situation was further complicated by the fact that the post-Mao CCP allowed the emergence of fundamental

discussion on the future of China. Most notably, General Secretary Hu Yaobang favoured both economic and political liberalization in opposition to more conservative senior party figures. In 1987, the country has witnessed large-scale student protests and, by 1989 and especially following the death of Hu, the legitimacy of the Party has been critically weakened, leading to growing calls for political reforms.

In response to the 1989 Tiananmen Square protests, the CCP has dispatched the People's Liberation Army (PLA) to disperse the pro-democracy protesters with considerable loss of life. However, the international response of sanctions, threatening Deng's economic reform programme, and the ongoing collapse of the Eastern Block has demonstrated to the Party that continued repression will not suffice to keep the CCP in power. The Party needed to restore sufficient legitimacy to stabilize the domestic political order. In order to do so, a two-pronged approach was devised. The economic development and market reforms of Deng were adopted into the narrative of party legitimacy. While the economic liberalization and the abandonment of some Marxist principles were a significant source of the legitimacy deficit, the Party turned it around to argue that their ability to deliver increased living standards to ordinary Chinese should justify the maintenance of China's one-party system. The Party's ability to promote economic development and to credit it to China's state model is traditionally considered one of the key sources of post-1989 legitimacy. (Holbig and Gilley, 2010)

The simple idea behind this is that a satisfied population – or one occupied with material acquisition that can be dependent on apparent loyalty to the state – would be less likely to engage in subversive activity, even in the absence of more repressive measures. One important expression of this was the acceptance of businessmen into the Party. (Kahn, 2002) As they were expected to be a significant source of economic dynamism, by integrating them into the communist system (an idea contrary to traditional Marxist thinking) the party could take credit for their success, while also directly investing them in the survival of the status quo. While delivering increased living standards is important to pacify the masses to a certain degree, tying business interests to the Party ensures the compliance of those who would gain significant power in a market economy. Due to the interconnected nature of Party and state, the CCP can directly influence the fortune of entrepreneurs by shaping the regulatory environment to benefit or hinder them.

The second prong of Party legitimacy was sourced from a patriotic narrative that portrays the Chinese Communist Party as the vanguard of the Chinese state against a hostile international system. The patriotic narrative is based on a selective interpretation of history that emphasizes China's unique historical achievements and the damage inflicted by hostile foreign forces. (Zheng, 2012) Callahan (2010) describes this patriotic narrative as 'pessoptimist'; it focuses on the celebration of China's civilizational achievements but also on the reliving of historical trauma, infusing China with both a source of optimism and a sense of pessimism about the future. This is important from a perspective of legitimacy. A simple celebration of Chinese achievements – a domain of traditional nationalism – would not be sufficient to justify continued one-party rule. It is the 'pessimism of potential failure and humiliation if China relaxes its vigilance' part of the narrative that the CCP capitalizes on; Continued Communist leadership is needed because it was the CCP that ended the Century of Humiliation, and only the CCP can safeguard the PRC from hostile

foreign powers who would like nothing but to prevent China from realizing its rightful place in the international system.

Traditionally, these forces have been in relative equilibrium. Economic development has been a central focus of the party, following the wisdom of Deng, including his doctrine of ‘biding time and hiding strengths’ in order not to trigger balancing behaviour. The nationalist narrative was introduced through the patriotic education system (Zheng, 2012) and reinforced through a semi-liberalized but heavily controlled media (Shirk, 2008). Leaders such as Hu Jintao clearly emphasized Deng’s doctrine, limiting the presence of nationalism in outward policies in favour of directions, such as Hu’s ‘good neighbour’ policy that sought to counter ‘China threat’ theories by presenting a cooperative image towards Southeast Asia especially. (Chien-Peng, 2009) There have been questions about the sustainability of Chinese legitimacy based on these principles. (Holbig and Gilley, 2010)

The export oriented economic model selected by China to achieve meteoric economic rise is unsustainable. The very structure of the capitalist world economy is set up in a fashion that makes it virtually impossible for peripheral or semi-peripheral states to sustain economic development and escape the middle-income trap, as the structural advantages that promote export oriented economic growth diminish with economic growth. (Wallerstein, 2006) This can already be observed in China as rising labour costs decrease the competitiveness of the Chinese manufacturing sector (The Nation, 2019), forcing the CCP to pursue structural changes. The CCP has been struggling to reduce China’s dependence on the export sector in favour of its massive internal market. Exports have seen a significant reduction as percentage of gross domestic product since 2005. (China Statistical Yearbook, 2019)

Economic development as a source of legitimacy is also marred by unequal access to economic benefits. While China created a significant number of mega-rich entrepreneurs and a large middle class, economic development has left behind millions of workers and peasants. China’s Gini coefficient has seen a significant decrease since 2008 (0.491) and is a moderate 0.465 in 2019. (CEIC, 2019) However, deep-rooted structural inequalities exist. In 2018, average urban per capita income was almost three times that of average rural per capita income. (China Statistical Yearbook, 2019) Systemic corruption, unfair labour practices (including withholding wages), and issues surrounding access to basic services remain commonplace. There is also a significant division between the coastal economically-connected provinces and the interior. In 2012, GDP per capita on average in Hubei could be half of that of Zhejiang or Fujian. (The Economist, 2014) The situation is also worsened by the dramatic environmental toll of economic development.

Under the leadership of Xi Jinping, it is clear that the legitimacy of the CCP is shifting. Xi’s leadership is characterized by a more dominant focus on nationalism and translating economic gains into political power following the nationalist narrative, even if it means abandoning Deng’s advice. Military posturing and an assertive foreign policy have become more prominent characteristics of the Xi era, showing a shift within the two traditional sources of legitimacy to favour nationalism in the face of weakening economic performance. While China has pursued various economic projects, such as the Belt and Road Initiative (BRI) or the Asian Infrastructure Investment Bank (AIIB), on the international level, these fit into the larger Chinese nationalist patriotic narrative. One of the key tenets of this

narrative is the restoration of China as a great power with far-reaching regional and global influence. In this sense, China's patriotic narrative is distinct from more inward-looking forms of nationalism observed in the West that emphasize exclusion and isolation. However, they share a similarity in their focus on national exceptionalism and in their function on rallying support around the government. While projects such as BRI and AIIB would benefit other countries as well (if not interpreted from a geo-economic statecraft perspective), from a legitimacy perspective they demonstrate the rise of China under the CCP and its ability to enable China to act in this manner on the international stage. China has been highly antagonistic to Japan and has been assertively pursuing territorial claims on the South China Sea, justified by its own patriotic narrative. However, Holbing and Gilley (2010) highlight that even nationalism has its inherent weaknesses in this context.

In order to make up for its weakening legitimacy, the CCP has been resorting to additional tactics. Increasing the prominence of the cult of personality of Xi is one of these. While the Party has strongly opposed such politics based on its experiences with Mao, highlighting Xi as a 'man of the people' can humanize the regime and persuade citizens that are not convinced of the CCP to nevertheless accept the leadership of Xi. Similarly, China has been increasing its repression, both through direct intervention and social conditioning. China's social credit system is designed to directly tie access to basic services to compliance with the state, and by extension the CCP. Censorship, controlled access to the internet and encouragement of self-moderation is also in place to limit the spread of subversive narratives.

3. MAJOR INTERVENTION IN HONG KONG

The CCP is not known for tolerance of dissent. Backing down in the face of opposition, accepting limits on the authority of the CCP is a sign of weakness that the Party cannot afford, especially at a time when its legitimacy is unsteady. Under the current political climate, there was no possibility that the CCP could back down and simply accept that Hong Kong would not cooperate with communist rule. (While there are significant political differences between a communist and socialist system, in the context of China, terms are used similarly. While in the common vernacular and foreign political correspondence China is primarily referred to as a communist country, in China's own interpretation its system is 'socialism with Chinese characteristics.' In the paper, the two will be used interchangeably, despite the political theoretical differences between the two on paper. From the perspective of legitimacy, the main issue is the non-democratic nature of the regime.) While the CCP constantly faces criticism from abroad, the existence of such a domestic challenge could have significantly affected their grip on power, amplifying dissent on the mainland. The idea that the Party cannot pass legislation is viewed as a heretical notion, a betrayal of the nation itself.

Unsurprisingly, the CCP has responded strongly to the ongoing disruption in Hong Kong. In July, 2020, the *Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region* was passed (National Security Law, for short). The law essentially allows the mainland authorities to directly interfere in the affairs of Hong Kong and restore order to the restive special administrative zone. It was adopted

bypassing the Hong Kong legislature altogether. The National Security Law invokes Article 1 and 12 of Hong Kong's basic law, namely the supremacy of the socialist system and the party and the sanctity of public property, as justification for the intervention. In the massive legislative package, a number of measures are introduced:

- **Article 6** mandates the suppression of all activities deemed contrary to national security, and that any resident who assumes public office swears an allegiance to the People's Republic of China.
- **Article 9 and 10** orders a mass communication campaign, including re-education of citizens in schools and universities, to refrain from disruptive behaviour.
- **Article 12** mandates the creation of a new Committee for Safeguarding National Security, with a National Security Advisor appointed by the Central People's Government (**Article 15**).
- **Article 42** criminalizes most of the tactics of the protesters; arson and destruction of public property are considered to be acts of terror. **Article 43** grants sweeping powers to the police to investigate subversive activities, under the direct supervision of the Committee for Safeguarding National Security.
- **Article 48** establishes the new Office of Safeguarding National Security, under the oversight of and funded by the mainland (**Article 51**) and staffed by various law enforcement and security personnel from the mainland.
- **Article 55** allows the Central People's Government to directly exercise jurisdiction in Hong Kong in a broad set of circumstances.

The law realizes some of the worst fears of political dissidents, the bringing of the special administrative region under the direct oversight of the mainland government, ending any hopes of open political discourse and reducing the democratic institutions to a formality. While the law does not dismantle the political system of Hong Kong, political dissent is virtually impossible under the new law, and the kind of protests that have halted Beijing's political interference in the past are steeply criminalized.

The CCP also wasted no time to implement the laws. The first arrest was made on the day of the introduction of the law. (CNN, 2020) Within a week or so, the newly established security bureau already occupied a Hong Kong hotel, and Beijing has been busy dispatching agents and legal personnel to enforce the law. (Strumpf, 2020) Pupils are now officially banned from political activity. (BBC, 2020a) The Hong Kong, as known in recent years, is over; the special administrative region has been integrated into the mainland's strictly controlled political sphere. In the absence of free speech and the freedom to oppose the ruling elite, democracy is of little meaning. Unsurprisingly, there is an expectation for an exodus of Hong Kong residents, with the United Kingdom offering citizenship to many, and stringent international sanctions comparable to those imposed in the aftermath of the 1989 Tiananmen Square protests.

The fate of Hong Kong was sealed by two key factors. As discussed above, the Party is experiencing a legitimacy deficit. Economic development is slowing down and pushing the party to rely more heavily on nationalist credentials and repression to maintain the status quo, including the introduction of the repressive social credit system on the mainland. Hong Kong posed a fundamental challenge to the CCP by demonstrating an alternative form of

governance, an alternative that was suppressed after 1989 on the mainland. With a precarious legitimacy, the Party cannot afford to overlook defiance at a period when it relies on the idea that the socialist governance is essential to the survival and success of China.

The main deterrent to intervention in the past has been twofold: potential economic consequences and political sanctions. However, both of these deterrents have been eroded in recent years. Hong Kong's special status allowed it to have significant access to the world economic system and traditionally it has been more economically developed than the mainland. In 1997, the GDP of Hong Kong was 177 billion USD versus the mainland's 961 billion USD. (World Bank) Hong Kong was a significant economic prize and the CCP was willing to accept the British demand for 'one country, two systems' in order to secure the political, economic and nationalist victory of securing the return of the territory ceded at the end of the First Opium War, marking the beginning of the Century of Humiliation. However, by 2019, economic trends have shifted significantly. Hong Kong's economy has grown to 366 billion USD. At the same time, the mainland's economy grew to 14 trillion USD. (World Bank) While in 1997 Hong Kong was equivalent to 18% of the mainland's economy, in 2019 it was only 2.6%. Simply. The economic significance of the special administrative region has declined relative to the mainland to such a degree that it likely called into question for the CCP whether the challenge posed by a defiant region is worth the economic benefits.

Another factor that has likely contributed to the decision to introduce the National Security Law now is the global political environment. Despite the economic decline, China has been hesitant to act, allowing tensions to persist since 2019. However, the CCP has been always adept at capitalizing on opportune timing. In the Spring and early Summer of 2020, the U.S. and some other major economies have witnessed their own large-scale civil disruption in response to systemic social issues. Black Lives Matter (BLM) protests have rocked the United States. Importantly for the CCP, the U.S. decided to respond to these disturbances aggressively. A militarized police force, supported by an antagonistic President Trump, has responded to the protests with considerable brutality. Images of U.S. protests and the police response to them became indistinguishable from those in Hong Kong. On a smaller scale, similar disruption and response could be observed in the United Kingdom. In its response to the BLM protests, the U.S. has ceded any moral high ground, rendering any potential condemnation hollow and any political sanction hypocritical. The CCP has capitalized on the ensuing political chaos in the developed countries to introduce its own National Security Legislation at a time when condemnation would be empty and likely to be overshadowed by more recent disturbances and the ongoing COVID-19 pandemic.

The Party is facing a difficult political environment. In the absence of democratic consensus, they are forced to rely on alternate sources to retain sufficient legitimacy to ensure regime stability, but many of their traditional foundations are crumbling. Increasing repression illustrates the anxiety within the Party, but on its own it will only delay regime collapse if the CCP loses legitimacy. Hong Kong's democratic system has always been viewed as a fundamental thorn in Beijing's side, but was tolerated as long as the benefits of the SAR outweighed its costs. The Party's willingness to endure the economic costs of their decision shows the interconnectedness of Party and national politics in China and that, despite their focus on economic development as a source of legitimacy, the Party will choose

regime survival and political objectives over economic development when pushed. The 2019 protests, and the ensuing violence, have finally tipped the scales for Beijing to decide to accelerate the political disintegration of Hong Kong and introduce more stringent controls over the restive special administrative region.

While the saga of Hong Kong started with local disruption, it also illustrates the political dangers of global disruption. 2020 is a year where the frequent occurrence of crises forces the constant shifting of attention, creating a particularly dangerous environment where fear and calls for order can be used to strip away freedoms and protections. Massive global events such as the COVID-19 pandemic and social meltdowns in major powers that are supposed to underpin the system, can create cover for the introduction of repressive measures and the reversal of political and economic development. The CCP's actions demonstrate the usefulness of careful timing and the utility of distractions.

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A COMMUNITY IN TRANSITION: UNDERSTANDING THE CONDITIONS OF VULNERABILITY OF A THAI VILLAGE ALONG THE MEKONG

Bavo Stevens, Karen Delfau

ABSTRACT

In the early 2000s, Seri Phongphit and Kevin Hewison observed that Thailand's Northeastern region was experiencing significant -- and sometimes contradictory -- change. Despite economic development, life for many remained precarious as the region's resource base dwindled and globalization left many increasingly marginalized. By 2020, these observations appear more relevant than ever. Thailand's poverty rate has climbed for the first time in decades, and the country has slowly become one of the most unequal in the world. This paper seeks to revisit some of Phongphit and Hewison's observations by taking an in-depth look at how one village along the bank of the Mekong has been impacted by the political and social forces that have gripped the region. By using a variety of ethnographic tools, such as unstructured interviews, participatory observation, and transit walks, the paper explores how political and social change has exacerbated existing vulnerabilities in the communities while simultaneously creating new ones. These vulnerabilities have altered the community's relationship with the local environment, particularly its relationship with the Mekong, changed its traditional way of life, and caused significant demographic change. This paper aims to show how a more focused look at individual cases, such as the community studied in this paper, can help scholars better understand how a confluence of political and social forces come together to create conditions of precarity and vulnerability. Although the paper does not address the current Covid-19 crisis directly, it aims to show how the underlying conditions of vulnerability can create significant risks to communities during times of disruption and crisis.

Keyword: Community, Vulnerability, Thai Village, Mekong.

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1. INTRODUCTION

“The past was a time of abundance,” he said. “When I was a young man, I fished in the Mekong using only my knife. Now we’re lucky if we catch a handful fish,” another added. “The government doesn’t care about the poor; all they want is to control the land,” a third concluded.

These are some of the remarks we heard during our stay in the community. In all accounts, a lot had changed for the elderly men who talked with us that day. Though they admitted that life in the past was not easy, safe drinking water was scarcer and wild animals were a constant threat, it was clear to them that a lot had changed over the past decades, mostly for the worse. The fish that used to be abundant in the Mekong, both in terms of diversity and quantity, had slowly disappeared over time. Now, only a few fish remain. The nearby forest, a traditional source of food and forest products, became part of a national park. Now, using the forest was a risk. Several villagers had already appeared in court for allegedly damaging the protected area. And yet to them, they were simply using it the same way their parents and grandparents had for generations.

The story of this community, while unique and nuanced in its own way, echoes the story of many others along the Mekong. Over the past decades, political, social, and environmental change beyond their control has significantly altered their way of life. These often-contradictory changes, as Seri Phongphit and Kevin Hewison call them, have made the community more vulnerable and their existence more precarious.

In this paper, we explore how political, social, and economic change in the Northeast region of Thailand, commonly referred to as Isan, and the Mekong has created perceptions among villagers that their way of life is becoming more precarious than before. By focusing on a single community, we hope to show how nature’s precarity and vulnerability are multi-dimensional. We hope to explore in particular how the village’s relationship with the Mekong and nearby forest (now part of a national park) has made life more precarious in the village. Though sources of drinking and non-drinking water are available, the unpredictability of the Mekong, as well as the overall infrastructure weaknesses in the village, make these sources untenable in the long run. Similarly, the growing restrictions they face in accessing the local forest, their traditional source of food and forest products, has affected their ability to provide for their families.

Our intention here is not to make claims for other communities along the Mekong. Rather, we hope to show that while being vulnerable and precarious might be a common condition, the particularities of those conditions are diverse, various, and interdependent, often uniquely so.

2. THE POLITICS OF PRECARITY AND VULNERABILITY

Precarity and vulnerability are twin concepts that have received significant attention in public policy and academia since the early 1990s. International organizations such as the United Nations (UN) and the World Bank have

been particularly concerned with the vulnerability of communities and individuals to climate change, civil war, and broader insecurities. The preamble to the UN's Sustainable Development Goals (SDGs), for instance, claims that its agenda is "focused in particular on the needs of the poorest and most **vulnerable**," and if the ambitions of the SDGs are realized, "the lives of all will be profoundly improved and our world will be transformed for the better" [emphasis added] (UNU-MERIT). The World Bank has likewise used the language of vulnerability in its work. In a 2002 working paper, the economists Karin Heitzman, R. Sudharashan Canagarajah, and Paul B. Siegel noted that the profound political and social changes that took place in the 1990s resulted in the world's poor confronting a growing set of risks while simultaneously becoming less equipped to manage them (Heitzman, Canagaraj, and Siegel, 2002). Many have expressed anxiety about their perceived vulnerability - anxiety that they describe as a growing sense of defenselessness against damaging losses and an exposure to marked decreases in the standard of living (Narayan, 2000 and UNDP, 2014).

Similar to a growing sense of vulnerability, there has been a steady rise in the perception of precarity. The earliest use of the term precarity can be traced back to the work of Pierre Bourdieu, who used it to differentiate casual workers from workers with more permanent employment (Bourdieu, 1998). Over time, the precariat came to describe a class of workers in the Global North for whom employment was uncertain, unstable, and insecure (Vosko, 2010: 2, Standing, 2011). The term precarity shares close links with concepts such as "marginality", "informality", and "social exclusion", which have been used to describe work and labor that falls outside the formal capitalist development system (Munck, 2013).

But over the past decade, scholars have adapted the concept of precarity to suit cases that are not directly related to employment or labor in the Global North. The idea of precariousness has been extended to domains like migration. Migrants can experience a precariousness of place in the form of uncertainties, instabilities, and insecurities that make them vulnerable to removal due to their irregular migration status (Banki, 2014). Studies now distinguish precarity as a key characteristic of labor relations from the more generalized social condition of economic vulnerability - namely, precarity as a vulnerability that induces a sense or a perception of lack of security, threatening one's life in ways that appear to be outside one's control (Butler, 2006; Banki, 2014: 450; and Yea, 2019). Cultural anthropologists have been particularly sensitive to the feelings and subjectivities associated with the structures of precarious existences (Kasmir, 2013). As the anthropologist Anne Allison underscores, when everyday life does not align with expectations of betterment, life does not seem to lead anywhere. It simply gets lived (Allison, 2016). Put more succinctly, it is "life without the promise of stability" (Tsing, 2015: 2).

Though the concepts of vulnerability and precarity appear interchangeable, subtle differences distinguish them from one another. Rigg and his colleagues propose that vulnerability reflects inherited challenges and features that threaten life. These include existing environmental or economic obstacles that have existed and are relatively unchanged for decades. Precarity, on the other hand, are "new" or produced insecurities - often market or policy induced - that threaten life in novel ways (Rigg et al. 2016). Sometimes, these are directly linked with development efforts intended to better the lives of the poor. Rigg and his colleagues note that development initiatives in Nepal

intended to address “old” vulnerabilities created “new” precarities. The construction of roads, for instance, addressed the issue of physical isolation that prevented households from engaging with the world beyond their local area. Yet, greater access to the world led to the commoditization of land, which made it harder for young people to secure land-based livelihoods (Rigg et al. 2016). Kyoko Kusakabe and Aye Chan Myae noted a similar pattern in Laos and Myanmar, where farmers’ decision to plant rubber trees for short-term financial gain create new precarities to their livelihoods in the future because of how rubber plantations degrade the land in the long run (Kusakabe and Myae, 2018).

3. THAILAND’S NORTHEAST AND THE MEKONG

Thailand’s Northeast

By the early 2000s, Seri Phongphit and Kevin Hewison had already observed that the Northeast of Thailand, also known as Isan, was already undergoing significant (Phongphit and Hewison, 2001). In the twenty years since the publication of their book, that observation has only become more poignant. Studies show that the region’s poverty rate has declined over the past two decades, there is greater economic diversification, the average level of education has risen, and there is a deeper integration in national and global economic systems (Rambo, 2017). In the agrarian front, for instance, Rambo notes that agriculture has become a profit-oriented system focused on the production of cash crops. There is a greater reliance on modern technology, including using four-wheel tractors and combine harvesters, as well as heavy use of chemical fertilizers and pesticides (Rambo, 2017: 213).

But despite these changes the prevalent image of Isan life is still that of a traditional village-centered peasant’s, one which entails little involvement with the outside world (Keyes, 2014). The conventional view held by some of Thailand’s urban elite, including some academics and policymakers, is that Isan remains a poor and “backward” part of the country. A common stereotype of rural Isan people is one of poverty and ignorance (Chairat, 2013). For example, Anek Laothamatas’ problematic “two democracies” thesis that divided Thailand between urban and “modern” voters versus rural and patronage ridden voters, still holds sway in some sectors of Thai society (Anek, 1996). Anek reflects the view that the political motivations of rural Isan people are driven by simple patronage exchanges.

In reality, the participation in mass movements as early as the 17th century shows that the people from the region have always been politically active. Phongphit and Hewison identify at least eight overt rebellions against the central government since the 17th century, the latest one occurring in 1959. Rebellions were motivated by questions of exploitation, of preserving social and cultural identity, and of maintaining local autonomy and economics (Phongphit and Hewison, 2000: 78). Charles Keyes notes that rural communities in the Northeast have always actively participated in politics, whether as part of the Communist mobilization of villages in the 1960s, as NGO or community

development activists in the 1990s, or more recently as part of the loose political coalition referred to as the “Red Shirts” (Keyes, 2014).

Despite significant success in reducing poverty from over 65% in 1988 to under 10% in 2018, data from the World Bank shows that the number of people living in poverty in Thailand rose from 7.2% to 9.8% from 2015 to 2018 (World Bank, 2018). Furthermore, some reports suggest that Thailand is one of the most unequal countries in the world. The Bangkok Post reported that the Swiss bank Credit Suisse found that 5% of the population controlled around 80% of the country’s wealth (Chandoevrit, 2018). Though there is some evidence that income inequality is slowly declining, it nevertheless remains high, with circumstantial evidence suggesting it is a driver of political conflict in the country (Phonphaicit, 2016).

Economic circumstances look even bleaker since the onset of Covid-19. Though Thailand has thus far successfully weathered the public health consequences of the pandemic, it is economically set to experience its most severe contraction since the 1997 Asian Financial Crisis. Figures from the Thai Central Bank suggest that the Thai economy could contract by 8.1% this year (Bank of Thailand, 2020). The slightly more optimistic numbers from the World Bank suggest a 5% contraction, which would nevertheless make it one of the sharpest declines projected in the East Asia and Pacific region (World Bank, 2020). Furthermore, the World Bank projects that the number of economically insecure persons, those living on less than USD 5.5 per day, is projected to double from 4.1 million in the first quarter of 2020 to 7.8 million by the third quarter of this year (World Bank, 2020). An article in the Bangkok Post quoted Kalin Sarasin, the head of the Thai Chamber of Commerce, as saying that “We think about 7 million jobs have been lost already, and the figure will hit 10 million if the outbreak drags on for 2-3 months” (Bangkok Post, 2020).

While we do not have specific data on the Northeast at the moment, the region is likely to suffer significantly from the falling economic numbers. A large number of Thailand’s informal workers come from or work in Isan, where they are employed in sectors that have been disproportionately hit by the virus. This will likely play out in the flow of remittances. A. Terry Rambo notes that remittances have played a bigger role in the income for the majority of households in Isan. Citing work by Grandstaff et al., Rambo shows that remittances increased from 3.8% to 15.9% from 1981 to 2004 to households in the Northeast (Rambo, 2017, pp. 232). In some places, remittances can make up close to half of a household’s income, with the highest share of remittances going to skipped generation households where the grandchildren live with their grandparents (Rambo, 2017, pp. 232).

The Mekong

Like Thailand’s Northeast region, the Mekong river basin as a whole has experienced significant change over the decades. Traversing six countries -- Cambodia, Laos, Myanmar, Thailand, Vietnam, and China -- the Mekong river basin includes 810,00 km² of land and has a population of over 72 million inhabitants (MRC, 2019, pp. 7; 2016, pp. 16 & 172). The region’s vast geographic area, plentiful natural resources, and diverse populations have contributed to challenges related to managing, sharing, and developing water resources.

In addition to unsustainable land-use practices and extensive hydropower development, climate change, pollution, groundwater contamination, saltwater intrusion in the Mekong Delta, sand mining, and declining fish stocks have also grown in severity (Delfau and Yeophantong, 2020). By far, the two most significant changes that have occurred in the Mekong are climate change and the construction of dams on the river itself and along its tributaries. Still, the MRC asserts that “only 10 percent of the estimated hydroelectric potential in the Lower Mekong Basin is developed” (MRC, 2020(a)).

The disconnect between national and corporate perceptions of the water resources of the Mekong and that of the community is alarming. While the drive for hydropower development to support energy requirements of major cities within the Mekong Region dominate the agenda, communities have seen the quality and quantity of its livelihood severely diminished as a consequence. Non-governmental organizations, universities, and international governmental organizations, as well as the Mekong River Commission (MRC), have developed a plethora of materials to support the inclusion of the community’s voices, perspectives, and priorities in the processes - particularly those of women who have been marginalized disproportionately by hydropower development (see, for example Fauconnier et al., 2018; IUCN, 2018; Mekong Partnership for the Environment, 2017; MRC, 2020(b); Resurrección et al., 2018; Simon, 2013) The momentum towards continued hydropower development has hardly been slowed or deterred.

As a consequence, the community perceives increased precarity and vulnerability for future generations regarding how the Mekong and surrounding natural resources will be able to support their way of life, and the survival of the village communities, in essence. This precarity was reflected in the research conducted. Villagers experienced erratic flow patterns subsequent to the development of hydropower projects upstream, losing access not only to their livelihood resources, but also to elements of the river that contributed to their cultural identity.

4. METHODOLOGY

The data for this project was collected over the course of ten-days in November 2019 during a homestay with local families in the village. We were not the only researchers present in the village. In addition to ourselves, there was a group of graduate students Australia present there, studying the water management and sanitation conditions of the village.

This study primarily used semi-structured interviews as a source of data. In total, we interviewed 14 people, often in pairs from the same household, with an even split between male and female respondents. We used open-ended questions and encouraged our informants to share stories and impressions of life in the village—past, present, and future—and their relationship with water. We avoided asking leading questions, even when previous interviews offered interesting stories that we wanted to explore further. The exceptions were the interviews with adolescents. For our younger respondents, we asked shorter and less abstract questions, because they tended to struggle with open-ended questions.

Our informants were all community members of the village we studied. Through two key informants, we were able to identify a variety of respondents for our project. These included five men who identified their primary occupations as fishermen, farmers (some with “large” plots of land, “medium” sized land, and no land), as well as five women who primarily identified themselves as heads of households, and one who identified herself as a shop owner. It should be noted however, that most of our informants did not strongly identify with a particular profession (with the exception of the shop owner). To most of our informants, it was normal to have multiple professions. We also interviewed two adolescent males and two adolescent females. Two of our informants were originally from Laos and did not grow up in the village.

For all the interviews (with the exception of the adolescents) we asked the same set of core questions:

- (1) “In your childhood, when you were living with your parents/grandparents, how did you understand water? For example, how did you use water, how did you collect it, and what was the Mekong like?”
- (2) Often this question was followed up (for elders) “When you were setting up a household and starting and raising a family, what was the water situation? For example, who did you use water, how did you collect it, and what was the Mekong like?” and (for adolescents) “What do you think the water situation was like when your parents were young?”
- (3) “What is the biggest change that you see with the water situation between then and now?”
- (4) “What do you think the future will look like in your village? How do you think the water situation will change for your children? Your grandchildren?”
- (5) “Is there anything about water or the Mekong that we have not spoken about that you would like to share with us?”
- (6) “When you think about the word ‘water’ what is the first thing that comes to mind? What kind of words and pictures?”

These questions, while broad, gave space for our informants to tell stories about their childhood and early adult life while discussing their relationship with water. Most of the villagers were interviewed in pairs, usually with another member of their household. Adolescents were also interviewed in pairs, usually with a friend or a classmate that was not part of their household. Some of these interviews were done in relative privacy at the home of the informant, while others were done in or near the village’s community center. The shop owner was interviewed in her shop along with her mother. The shop and community center were slightly more disruptive than interviews done at the informant’s home. There was no indication at the time, however, that the location of the interviews significantly altered responses.

In addition to the semi-structured interviews, we also participated in group interviews with specific topics in mind and one-on-one interviews with key leaders in the community, such as the monk who headed the village temple. Through these interviews, we were able to develop a seasonal calendar that tracked the times of the year. We also took part in a transit walk, during which we identified the main resources of the community. These resources ranged from the water tanks in which drinking water was stored, the gardens on the banks of the Mekong where a variety of

vegetables and crops like cotton were grown, as well as more abstract cultural resources, such as the spirit house behind the village temple. Finally, we, along with other researchers, also engaged in some participatory observation.

While this case used similar techniques used in anthropological studies or ethnographies, we do not claim that this is an ethnographic study of the village. The data collected in this study was done over ten days, a timeframe that is too short to claim that this is an ethnography. Nevertheless, employing these techniques has offered insights on the conditions of precarity in the community.

5. PROFILE OF THE VILLAGE

Due to the sensitive nature of some of the villagers' ongoing issues with the central government, including legal disputes between some villagers and the government, we have decided to keep the location and name of the village anonymous. Participants in our research were told that their identities would not be reported. We believe that the promise of anonymity helped secure more forthcoming answers, even though many of the villagers insisted that we could use their names.

The community that is at the center of this study is located on the banks of the Mekong River, across Laos. The village has 135 households, the majority composed of individuals above the age of 60 or below the age of 20. In most cases, these households are made up of grandparents looking after their grandchildren. We were told that most working-age members of the community had moved to urban centers for work. Though the majority of the villagers are Thai citizens, several are stateless, having fled Laos during the country's civil war. Almost all villagers spoke Thai, but Lao was the first language of the majority of the villagers.

The villagers' livelihood is primarily derived from rice cultivation, river bank agriculture, cash crop production (primarily cassava), collection of food and other natural products from the nearby forest, fishing, and manual labor. Based on the interviews, we know that a significant number of households also rely on remittances from family members that work in regional cities and the capital. The extent of these remittances is not clear, but based on discussions with the villagers, it appears they were considered a significant contribution to household finances.

The village has a primary school, electricity, toilets, and a water system that provides intermittent running water to the houses in the village. Children attend various secondary schools in the sub district. Villagers visit a public health center in town for their health needs, though many of them continue to rely on traditional medicine and healers. In fact, during our stay, one of the elderly villagers explained in detail the various plants and medicinal properties that they had. The village is also home to two Buddhist temples, a "village temple" and a "forest temple". The former plays a significant role in the village's cultural and spiritual life. The latter plays a smaller role in the community, but has, in the past, helped diversify the community's sources of drinking and non-drinking water.

In addition to the primary school, the village is also home to a community center that plays an active role in the social and economic life of the village. For one, the center is an important site for non-formal education in the village. The center is used as a venue to teach children skills such as fishing and collecting fresh water snails. It provides educational programs for visitors to learn about the relationship between the local people and natural resources. During our own stay in the village, the community center was an important focal point for participatory observation. Through the community center, we had the opportunity to see and practice traditional cloth weaving, fishing in the Mekong, and rice cultivation. But more importantly, the community center also helps to develop alternative livelihood strategies for villagers and local people in the area.

6. FINDINGS

The responses we received from our interviewees provided a complex and sophisticated picture of the villagers' perceived challenges. Although the villagers did not use the language of vulnerability and precarity, it was clear that our respondents believed that political and economic changes over the past decade had put them in an increasingly precarious position. Across all responses, including from the children, there was a general sense of insecurity in the face of the changes in the Mekong and the nearby forest. It was clear from our conversations that the community believed its relationship with the Mekong River and nearby forest had ultimately changed over the past decade.

The changes to the Mekong seemed to be most concerning for the villagers. Our older respondents noted that, in the past, the river was a source of abundant water-based resources. Fishing was a profitable occupation, and the Mekong provided a plentiful source of a wide-variety of fish. One villager told us he used to catch fish with just the butt of his knife. A perhaps soberer account came from another respondent who remembered that, as a young man, he could easily fill a basket of fish in under an hour. In contrast, these days even the most skilled fisherman spends entire nights on the river trying to catch the same number of fish. But it was not just the number of fish that had grown smaller over time. The diversity of the fish had decreased as well according to our respondents. We were told that many of the fish that were once easily found in the river, particularly the larger species of fish, had become rarer or had disappeared. The villagers were deeply concerned about the dwindling number of fish they were catching. Fish are an important source of protein for communities along the Mekong. Depending on which country, inland capture of contribute between 47 to 80 percent of animal protein consumption in the Lower Mekong Basin (Vilain et al., 2016).

In addition to the dwindling fisheries, our respondents noted that over the past seven years or so the river has begun to flood and flow unpredictably. This change in flow has had a significant impact on the community's ability to use the riverbank as a garden. The villagers used to plant rice during the dry season, using the river as natural source of irrigation that made the cultivation of rice less intensive. But around six years ago, the village was forced to abandon rice cultivation along the river. The unpredictable flow of the Mekong put an end to this traditional practice, as rice

seedlings were washed away by the unpredictable flows. When we asked the villagers why the flooding occurred, almost all suggested that the Chinese of Laotian dams upstream were to blame. The unexpected opening or closing of the dams, they said, changed the flow of the water. The villagers' claims that dams upstream cause these irregular flows are not without merit. Recent research from the Stimson Center suggests that Chinese dams have played a significant role in the changing flow patterns in the Mekong (Eyler and Weatherby, 2020). The report suggested that this year, Chinese dams have held back water despite higher than average rainfall and snowmelt in that part of the Mekong. Holding back the water aggravated a historic drought downstream of the Mekong, including in Thailand.

In addition to the changing temperament of the Mekong, the village has seen its relationship with the nearby forest change as well. As noted above, the nearby forest has been an important lifeline to the community, acting as an important source of food and forest products. But over the past several years, access to the forest has become more restricted when it was incorporated into the nearby national park. Since these changes, villagers have had to contend with continuous pressure from the Thai government to vacate parts of the forest. At least one of our respondents was embroiled in a legal case initiated by the government.

Three of our respondents told us that the forest had always been a source of land for agriculture, food, timber, and other forest products for the village. From what we understood, several of the houses in the community were built using timber from the forest. Many of the plants used in traditional medicine also came from the forest, though apparently some of the plants no longer grew in the forest. Furthermore, the villagers also noted that the village had made efforts to preserve the forest because of its vitality to the community. When land surveyors initially came to assess the area of the national park, community members acted as guides in the area, helping them identify the boundaries of the village. The community was therefore deeply frustrated when they were told they could no longer access the forest and using it can mean facing legal challenges. Some of the respondents felt that the government's response did not take into consideration how the forest had always been an important resource since the village was established. They also felt that government's response was hypocritical, especially when it appeared that a member of the parliament (and a member of the same party that had won the 2019 contentious election), who was accused of encroaching on protected land, would not face charges (Bangkok Post, 2019). The issue led to one of our respondents openly telling us:

“The government doesn't care much about poor people – [they are] trying to control us, ban us from using land. Grandparents and great-grandparents use land until now, but no land title, if the situation does not change could become chaotic – maybe fighting – if continuously oppressed. Who knows what the future brings?”

The responses from the villagers above highlight a growing sense of vulnerability and precarity on the part of the villagers. All but three of the informants explicitly expressed worry for the future. Two were more ambivalent and told us that it is impossible to know what the future would hold. Only one interviewee was optimistic about the future, pointing out that with more knowledge and understanding the community could be led to a better future.

Nevertheless, the overall sentiment appeared to be one of uncertainty and anxiety, neatly summed up by one of our younger interviewees who said:

“In the future, the environment will change in a negative way. There will be no more beaches by the river, more people in the village, people still farming but maybe not so much fish. They will not let their children (in the future) go to collect food in the forest, and the forest will not be accessible to villagers in the future.”

7. DISCUSSION

The responses noted above reflect a growing sense of vulnerability and precarity among the community. There was a general sense of social and economic vulnerability in the face of changes in the Mekong and the forest. A general sense of defenselessness and lack of control characterized the responses. The experiences of the community reflected similar precarities that Rigg et al. (2016) and Kyoko Kusakabe and Aye Chan Myae (2018) identified in their own research, namely that the trappings of modernity and economic development had introduced novel threats to the livelihoods of the community.

This has certainly been true with the changes to the Mekong, which by all indications are the consequence of dam building upstream. Dam building has often been wrapped up in powerful discourses of economic development and poverty alleviation (Foran and Manoram, 2009). In Thailand, the dams along the Mekong have often been branded as essential sources of electricity (Shoemaker and Robichaud, 2018). For example, pamphlets and other promotional material by the Electricity Generating Authority of Thailand (EGAT) on Sirindhorn Dam in Ubon Ratchathani explicitly states that “The Northeast would face with electricity shortage [sic] resulting in a slow development [sic] of the region unless a new hydropower plant, Sirindhorn dam, was constructed” (conversation between authors and EGAT representatives at Sirindhorn dam). The same is true for dams built along the Mekong, which have often been built in partnership with the World Bank. Despite the language of economic development, the dams on the Mekong seem to have negatively impacted livelihoods in the community.

The issue surrounding the national park reflect similar concerns. The National Park Act of B.E. 2562 (2019) was intended to protect and conserve the environment. But both the law itself and its enforcement appear to not have considered the livelihood strategies of the local communities. The law imposes significant penalties for burning and clearing land in national parks - 5 to 20 years of imprisonment, a fine of THB 400,000 to 2 million, or both) (Tilleke & Gibbens, 2019). And while the Community Forest Act B.E. 2562 (2019) (Tilleke & Gibbens, 2019) is meant to protect access to forests to certain communities, at the time of writing the community studied here was not covered by the act. Nor is it alone. Other communities in Thailand have faced similar conflicts with the central government in Bangkok (Wongruang, 2018).

8. CONCLUSION

The Northeast of Thailand and the Mekong experienced dramatic changes over the past couple of decades. The significant -- and often contradictory -- change the region experienced has forced it to address existing vulnerabilities while confronting new precarities. This is certainly true for the village at the focus of this study. The consequences of the dams built upstream, coupled with the challenges faced with restricted access to the nearby forest, as well as the broader demographic changes the rest of Isan is experiencing, has left it in a tenuous position. This is not to say the community is not actively trying to address these new challenges. Through the village's community center and its close relationship with certain NGOs, the community has been able to secure some successes against the issues it is confronting.

The objective of this study was not to make broad claims about vulnerabilities and precarities of the region as a whole. Instead, the paper aimed to show how a state of vulnerability and precarity comes from a variety of dimensions. While we are confident that many of the patterns, we have observed in this community exist in others, it is also true that vulnerability and precarity are nuanced and unique experiences. It is our hope that this kind of study will encourage others to more carefully examine how communities tackle issues that are seemingly regional and sometimes international in scope, but often have very local consequences.

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TOWARDS DISASTER RESILIENCE: POLICY ANALYSIS OF DISASTER RISK REDUCTION IN INDONESIA

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ABSTRACT

There is growing understanding of the increasing rate of disasters and their effect on the economy and the population. The world has committed to finding more effective ways to reduce the human, economic, and material losses from disasters. The Center for Research and Epidemiology of Disasters declared Indonesia to be the nation with the highest number of deaths in 2018 (4,535 deaths). Concurrently, the Indonesia Disaster Management Agency has noted that there is an increasing trend of disaster occurrence in Indonesia. Through disaster risk reduction, which is synonymous disaster risk management, the Government of Indonesia seeks to engage with the consequences of its geological and climatological location. Through public policy analysis, this paper explores how the Government of Indonesia responds towards the ever-increasing occurrence of natural disasters. Through documentary research, it studies the development of Indonesia's public policy on Disaster Risk Reduction by focusing on the regulations issued by the Government of Indonesia to determine the relationship between resilience, public policy, and disaster risk reduction in Indonesia. This paper concluded that (1) the development of DRR in Indonesia is in line with the increasing frequency and growing diversity of disasters; (2) the development also shows that Indonesia is participating in the evolution of the world's DRR; and (3) with regard to disaster resilience, the development of DRR in Indonesia has not shown consistent progress.

Keyword: Resilience, Disaster Risk Reduction, Policy, Indonesia.

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Bimo Satryo Wibowo (6152301003@lamduan.mfu.ac.th). Having a political science background on his undergraduate degree focusing on diplomacy, the author continues his master degree on International development focusing on public policy and disaster management. Besides, he has worked for one of Indonesia's strategic projects that is Light Rail Transit for Jakarta, Bogor, Depok dan Bekasi. Through this experience and studies, he hopes to engage more and leverage my knowledge, capacity, and professionalism on the idea of development both on political and social sight.

1. INTRODUCTION

The Center for Research and Epidemiology of Disasters (CRED) declared Indonesia to be the nation with the highest number of deaths in 2018: 4,535 deaths according to the recorded data (CRED and UNISDR, 2019). Following the upward global trend of disasters, between 2010 and 2019, the Indonesia National Agency for Disaster Management (Badan Nasional Penanggulangan Bencana [BNPB]) recorded that, in 2018, there were approximately 3,397 disastrous events, as a result of which 3,874 people died, 563,135 people were displaced, and approximately 673,620 houses were affected. It also stated that, by April 2019, there had already been 1,692 events, resulting in 392 dead and missing, 838,321 displaced people, and 21,854 affected houses (BNPB, 2019).

This phenomenon is a consequence of the geological and climatological location of Indonesia (Yanuarto, Pinuji, Utomo, & Satrio, 2018). Geologically, Indonesia is located in the middle of three tectonic plates, the Eurasian, Pacific, and Indo-Australian plates, and two volcanic arcs, the Mediterranean and the Pacific. Consequently, Indonesia has to co-exist with a range of geological disasters, for example, volcanoes, earthquakes, and tsunamis (Hamilton, 1991). Moreover, climatologically, Indonesia is located on the Equator, meaning it has two seasons: the rainy season from October – March and the dry season from April – September. Besides, there are other phenomena caused by its climatological location: La Nina (cold phase) and El Nino (warm phase). These terms refer to periodic changes in Pacific Ocean surface temperatures that affect the weather. Some references also refer to more protracted seasons during the two phenomena i.e. La Nina may cause a longer rainy season and El Nino may cause a longer dry season. These phenomena expose Indonesia to climatological disasters including floods, landslides, tornadoes, droughts, and forest fires. Normally, La Nina and El Nino happen every three to seven years with an intervening period of nine to twelve months (Yanuarto, Pinuji, Utomo, & Satrio, 2018).

The earthquake and tsunami in Aceh in 2004 served to alert both government and people in Indonesia due to their huge impact on human lives, the economy, and supporting structure and infrastructure (BNPB, n.d.). Approximately 130,000 people were killed while 37,000 people are still missing and another 500,000 were left homeless (BRR and Partners, 2006). Therefore, in 2007, the Government of Indonesia issued Constitution Number 24 about Disaster Management as one of its attempts to respond to the issue of disasters. A government-based organization, Badan Nasional Penanggulangan Bencana (National Agency for Disaster Management / BNPB), was established as one of the outcomes of the policy, with the purpose of improving the capacity to respond to severe disasters, whose frequency is also increasing. In 2008, Presidential Regulation Number 8 concerning Badan Nasional Penanggulangan Bencana established the organization's function as the implementation of coordinated, integrated, and comprehensive disaster risk management activities. The organization was expected to provide better disaster risk management, including but not limited to efforts of prevention or preparation, response, recovery, and mitigation. The hoped-for result was that the number of disaster casualties would drop to none (BNPB, n.d.). Since then, it has marked a shift in disaster response in Indonesia from one that is response-oriented to one that is more prevention-oriented.

The Japan International Cooperation Agency (JICA) released data that between 1990 and 2015 disasters occurred with greater frequency and, consequently, higher economic costs, though, fortunately, without an increase

in the total number of deaths (JICA, 2017). Disasters had cost US\$520 billion and forced 26 million people into poverty globally per annum, the World Bank recorded (Hallegatte, Vogt-Schilb, Bangalore, & Rozenberg, 2017). From 1998 until 2017, the value of economic losses amounted to US \$2,908 billion, of which 77 percent or US \$2,245 could be attributed to climate-related disasters (Wallemacq & House, 2018). Between 2007 and 2016, Asia experienced the greatest economic losses due to disasters with 53.4 percent of the world's share followed by America, Europe, Oceania, and Africa (Below & Wallemacq, 2018). Further, JICA explained that the cause of this was the ever-increasing size of the human population and the economy, while the space that can be occupied by humans is limited, including high-risk areas or areas with a record of disaster occurrences (JICA, 2017). However, JICA stated that disaster risk reduction (DRR) efforts could be one way to improve disaster risk management, which has been proven to be successful in reducing the death toll (JICA, 2017; CRED and UNISDR, 2019).

This paper aims to examine the Government of Indonesia's response towards the ever-increasing occurrence of natural disasters through public policy analysis, using the public policy model specifically. Firstly, it describes the development of disaster risk reduction and its orientation in Indonesia in chronological order. Secondly, it describes the relationship between resilience, public policy disaster, and risk reduction. Thirdly, it highlights the public policy model of developing disaster risk reduction in Indonesia. Through documentary research, this article focuses on one of the formal dimensions of the policy: regulation.

2. DISASTER RISK REDUCTION IN INDONESIA

Disaster risk reduction appears as a response to the huge impact disasters have on human lives, the economy, and supporting structure and infrastructure. In this case, Indonesia began its DRR in 1945 when it focused on the victims of the war of independence. Since then, the DRR has developed according to the changing "problem" faced by society in disaster-related fields. Data from Database Information dan Data Bencana Indonesia (Indonesia Disaster Information Database / DIBI) shows that disasters are occurring with greater frequency and diversity. Approximately 29,221 disasters occurred between 1950-2020, comprising natural, non-natural, and man-made disasters. The total number of victims (dead and lost, injured, suffered and displaced) is 50,290,458. Natural disasters (89 percent) make up the majority of causes, having affected 49,582,174 people over that period. Among the dominant disasters, climatological and hydrological disasters such as floods, tornadoes, and landslides are the top three, making up 33 percent, 24 percent, and 19 percent of total disasters, respectively, Tsunamis (76 percent), earthquakes (seven percent), and floods (three percent) are the three most deadly types of disaster.

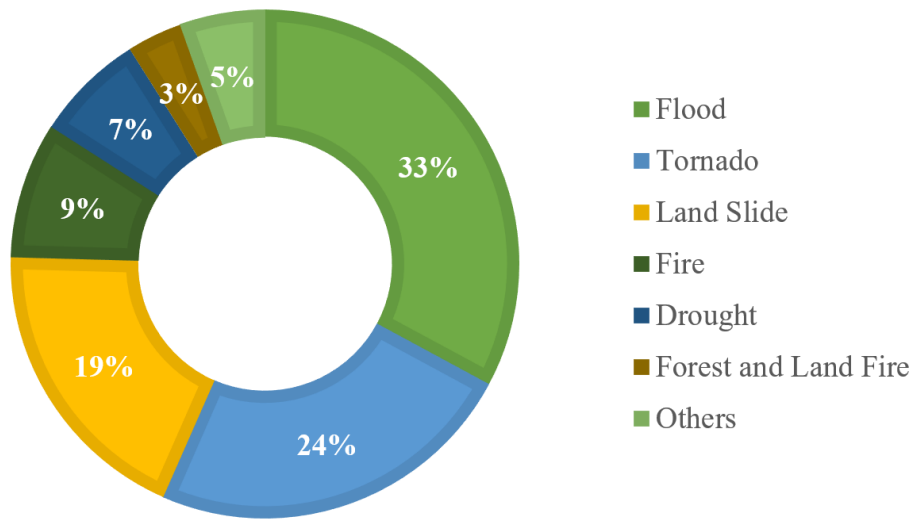


Figure 1. Distribution of Disaster Types in Indonesia 1950-2020
(Processed from Data Informasi Bencana Indonesia (DIBI) <https://bnpb.cloud/dibi/>)

Disaster risk management in Indonesia and its institutional history began with the independence of the country in 1945 (BNPB, n.d.). In total, disaster risk reduction has undergone eight major changes (developments) in accordance with the time and context that have contributed to formulating the disaster risk reduction paradigm in Indonesia.

- a) Three days after Independence Day, August 20 1945, the War Victims Family Relief Agency (Badan Penolong Keluarga Korban Perang/BPKKP) was established. The organization focused on assisting war victims and their families during the War of Independence.
- b) The issuance of Presidential Decree Number 256 in 1966 made the Ministry of Social Affairs responsible for Central Natural Disaster Management Advisory Agency (Badan Pertimbangan Penanggulangan Bencana Alam Pusat/BP2BAP). The focus of this organization was the management of emergency response and assistance to disaster victims. The legal basis and the organization marked the change in Indonesia's disaster management paradigm to engage not only in human-made disasters but also natural disasters.
- c) National Coordination Team for Natural Disaster Management (Tim Koordinasi Nasional Penanggulangan Bencana Alam/TKP2BA) was formed through the issuance of Cabinet Presidium Decision Number 14/U/KEP/I/1967 in response to the needs of coordinated and more serious disaster management due to the increase in disasters.
- d) National Coordinating Agency for Disaster Management (Badan Koordinasi Nasional Penanggulangan Bencana Alam/Bakornas PBA) was an upgraded version of its predecessor. Established by the issuance of Presidential Decree Number 28 in 1979, it was supported by Minister of Home Affairs Instruction Number 27 in the same year. Its scope extended to prevention, emergency response, and rehabilitation.
- e) Through the issuance of Presidential Decree Number 43 in 1990, the Government of Indonesia recognized that disasters arise not only from natural causes, but also social ones, for example, transportation accidents,

technological failure, and social conflict. National Disaster Management Coordinating Agency (Badan Koordinasi Nasional Penanggulangan Bencana/Bakornas PB) was an enhancement of the previous organization. Reiterated in the Presidential Decree Number 106 in 1999, the organization focused on natural and non-natural disasters. Furthermore, the Government of Indonesia also realized that disaster management requires coordinated cross-sectoral, cross-actor, and cross-disciplinary handling. A Coordination Unit for the Implementation of Natural Disaster Management was also formed in each province.

- f) The multidimensional crisis faced by Indonesia in the late 1990s resulted in a dispersed social disaster that needed a more specific approach. In 2001, the National Coordinating Agency for Disaster and Refugee Management (Badan Koordinasi Nasional Penanggulangan Bencana dan Penanganan Pengungsi/Bakornas PBP) was established through Presidential Decree Number 3. It was then amended by Presidential Decree Number 111 in 2001.
- g) The Great Indian Ocean earthquake and tsunami, and the issuance of Presidential Decree Number 83 in 2005 created the National Coordinating Agency for Disaster Management (Badan Koordinasi Nasional Penanganan Bencana/Bakornas PB). Functioning as a coordination agency, it was supported by the acting executive as the principal element in disaster management. The risk reduction paradigm was mainstreamed.
- h) Finally, having become more deeply concerned about disaster management, Constitution Number 24 regarding Disaster Management was issued in 2007. One year later, Presidential Regulation Number 8 about National Agency for Disaster Management was issued. This organization functioned as a coordination agency for the implementation of disaster management activities in a planned, integrated, and comprehensive manner. The National Agency for Disaster Management (Badan Nasional Penanggulangan Bencana/BNPB) comprises a chief, director, and executive of disaster management. This agency also accommodates the objective of having a legal institution and its consequences for disaster management.

Lassa's (2013) works on disaster policy change in Indonesia concluded that there are six phases of disaster risk management policy and regulation in Indonesia: colonial emergency policy 1930s-1945, 1945-1960, 1960-1990, 1990-2000, 2000-2007, and 2007-onwards (Lassa, 2013). As this article seeks to focus more on the development of DRR in Indonesia through public policy analysis, Lassa's work will only contribute starting from 1945 onwards. Lassa explains that during the 1945-1960 period, Indonesia focused more on the establishment of the nation. Further, the article explains that the paradigm of the DRR was affected by military and war-oriented policy, so that natural disaster was not the main concern of the DRR (Lassa, 2013). It is proven by the data from DIBI which shows no disaster records exist for the period 1945-1949. Besides, only seven disasters were recorded during 1949-1958 comprising floods, earthquakes, and volcanic eruptions. In addition, disaster data records are 'missing' from 1959 until 1962. However, the missing data could either mean that there was no single occurrence of disaster or simply that there was a lack of data records on DIBI as it was just founded in 2008.

From 1960 until 1990, the Indonesian government started to recognize the rising trend of natural disasters. Apart from embracing natural disaster as the new main focus of DRR, there was no significant institutional change (Lassa, 2013). Lassa also noted that regional moves regarding disaster and development stated that any disasters are

counterproductive towards the development progress of the member states, thus contributing to affirming the shifting paradigm in the 1970s.

In 1990-2000, there were two significant points. The first one was in 1990, when, at the beginning of the International Decade for Natural Disaster Reduction, the Government of Indonesia realized that non-natural hazards could also contribute negatively towards development. Over that period, fire, endemic disease, transportation accidents, and pests accounted for approximately 152 occurrences recorded by DIBI. Second, the discourse on managing disasters in several stages (prevention, mitigation, emergency, rehabilitation, and reconstruction) emerged from the National Coordinating Agency for Disaster Management. The Indonesian government also started to become aware that handling disaster management requires cross-sectoral, cross-actor, and cross-disciplinary coordination. A Coordination Unit for the Implementation of Natural Disaster Management was also formed in each province.

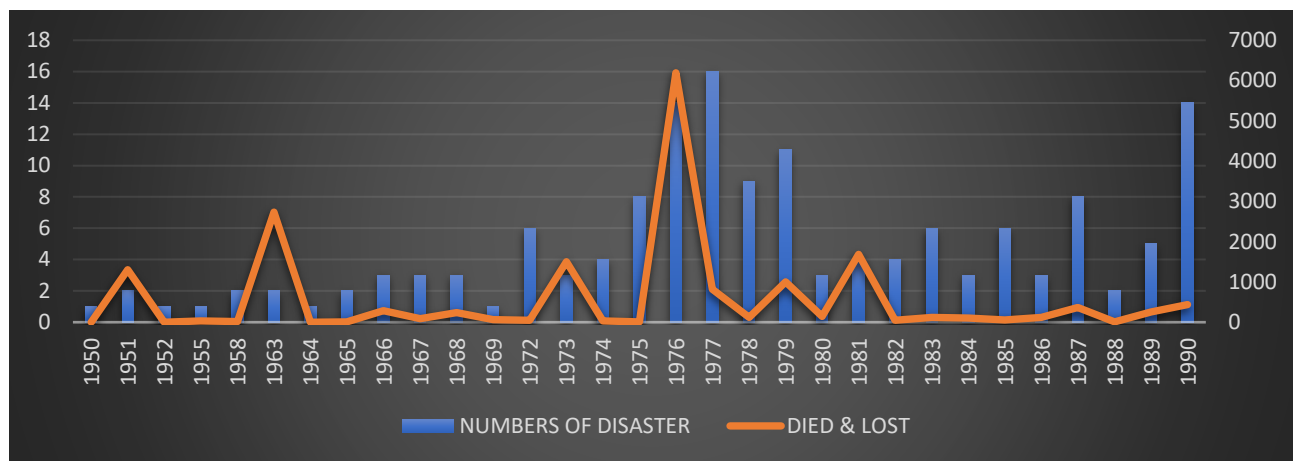


Figure 2: Disaster Occurrence and The Number of People Dead or Lost in Indonesia 1950-1990 (Processed from Data Informasi Bencana Indonesia (DIBI) <https://bnpb.cloud/dibi/>)

By the end of the 20th century, besides the economic crisis, the end of the Suharto era after 32 years in power and the upheaval in East Timor had become the trigger for a new problem at the beginning of the 2000-2007 period: displaced people. Therefore, DRR in Indonesia tried to engage by including displaced people as a concern together with natural and non-natural hazards. This inclusion resulted in a name change for the institution when it became the National Coordinating Agency for Disaster and Refugee Management (Badan Koordinasi Nasional Penanggulangan Bencana dan Penanganan Pengungsi/Bakornas PBP).

Disaster Management Law Number 24/2007 represented huge progress to the extent that it was called law reform (BNPB; UNDP Indonesia, 2009; Lassa, 2013). First, this was because its predecessor, the National Coordinating Agency for Disaster Management (Bakornas PB), was unproductive due to its coordinating mandate only. The agency also only worked during emergency response and most likely, along with the government, it was shocked by the unpredictability of upcoming disasters. Second, the reporting chart of the agency was unclear for administrative and functional reasons. The agency was under the patronage of the Ministry for People's Welfare and it report to the Vice President. The struggle to reform the law started in 2003, led principally by a non-state actor, but

it gained momentum in 2005 after a series of notable disasters over the years 2004-2006. The Hyogo Framework for Action 2005-2015 showed the first internationally recognized ambition to reduce the risk of disasters, advocating disaster risk reduction and disaster resilience (Combaz, 2014) and providing the basis for forceful encouragement (BNPB; UNDP Indonesia, 2009). Under the new disaster management law, two important points need to be highlighted:

- 1) DRR paradigm in Indonesia shifted from disaster response to Disaster Risk Reduction oriented on the sequence approach:
 - a. Pre-disaster, including disaster risk reduction, mitigation, preparedness, and contingency planning
 - b. Emergency response
 - c. Post-disaster, covering rehabilitation and reconstruction
- 2) The creation of the National Agency for Disaster Management (Badan Nasional Penanggulangan Bencana / BNPB), which has mandates:
 - a. To manage all emergency, preparedness, mitigation, disaster management training, prevention, and pre-disaster risk reduction activities
 - b. To manage all parties involves in emergency response
 - c. To manage the damage and loss assessment, rehabilitation and reconstruction

3. DISASTER RESILIENCE AND DISASTER RISK REDUCTION IN INDONESIA

Benedikter and Fathi's work about resilient society recognizes that resilience originated from Latin (*resilire*), meaning to bounce off (Benedikter & Fathi, 2017). Resilience in disaster refers to preparing, programming, and decreasing disaster risk to effectively conserve people, communities, and countries, as well as the livelihood, health, cultural heritage, socio-economic assets, and ecosystem (UNDRR, 2015). United Nations International Strategy for Disaster Reduction (2005) defines disaster resilience as the ability of individuals, communities, public and private organizations to organizethemselves to learn from experience and reduce their degree of exposure to future hazards at the international, regional, national and local level, and that this will determine the degree of resilience (UNISDR, 2005).

Resilience in disaster-related studies is interlinked with public policy and disaster risk reduction (Combaz, 2014; UNDRR, 2015). Public policy refers to the integrated implementation of measures or certain laws spreading the ideas and intentions of professionals or bureaucrats to solve designated problems with various embedded resources (Dye, 2002; Knoepfel, Larrue, Varone, & Michael, 2007; Page, 2009). However, there is a relatively small amount of academic literature about policymaking and there is no single existing policy model that could be recognized in the policymaking process in Indonesia due to the complexity of its political setting and actors' participation (Blomkamp, Sholikin, Nursyamsi, Lewis, & Toumbourou, 2017). Disaster risk reduction is perceived as the main tool for achieving disaster resilience. Disaster Risk Reduction (DRR) is more about the policy objective of anticipating and reducing

risk. Conversely, Disaster Risk Management (DRM), though it may be interchangeable with the DRR, is more concerned with the implementation of DRR or actions that aim to attain the objective of the policy (UNDRR, 2015). Hyogo Framework for Action 2005-2015 was the first internationally recognized proposal to reduce disaster risks which advocated disaster risk reduction and disaster resilience. Furthermore, disaster resilience as an interdisciplinary approach has become common ground in policy-making discourse in regard to disaster risk reduction. The Framework also stated that the perspective of disaster resilience has also made disaster risk reduction become less political and involve actors beyond those of government and state (Combaz, 2014).

To see how the development of DRR in Indonesia relates to resilience, below are some figures from DIBI (bnpb.go.id/dibi) showing the relation between the frequency of disaster occurrence and its impact on human life (dead and lost, injured, and displaced) and houses (severe, moderate and lightly damaged) from 1950 until 2020.

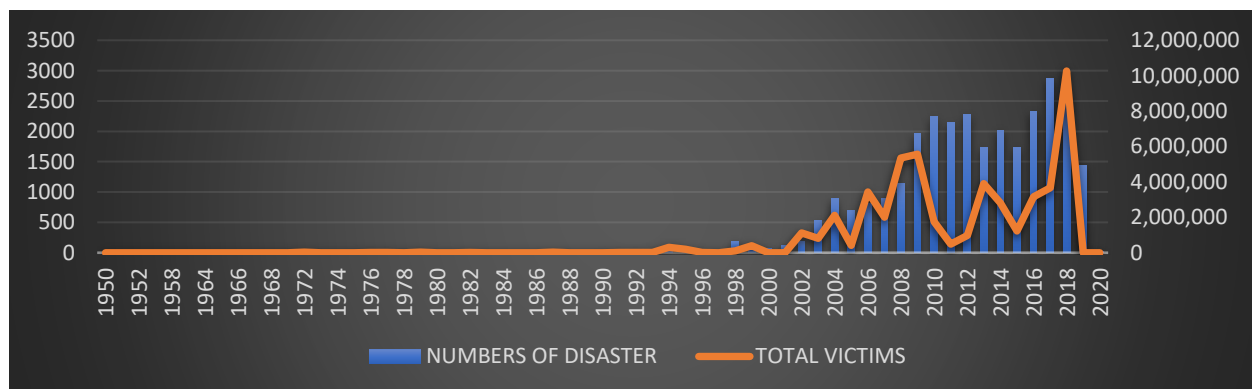


Figure 3. Number of Disasters and Victims 1950-2020

(Processed from Data Informasi Bencana Indonesia (DIBI) <https://bnpb.cloud/dibi/>)

Figure 3 shows an inconsistent line of total victims against disaster occurrence. There is a growing trend from 1998 until 2009, but it declines the year after until 2011, when it reverts to growth. The different trends can be seen in Figure 4, which shows a flat line for the numbers of dead and lost despite the increasing trend of disaster occurrence. However, it rises sharply in 2004, before abruptly declining in 2005 and reverting to a flat line. It may seem like DRR Indonesia successfully maintains the low number of dead and lost. Nevertheless, the DRR cannot overlook those who are injured, suffered, and displaced. They are the ones who survive and should continue their lives with whatever they have left (if anything), and the figure makes clear that the DRR in Indonesia still cannot guarantee they are disaster-resilient, at least until now.

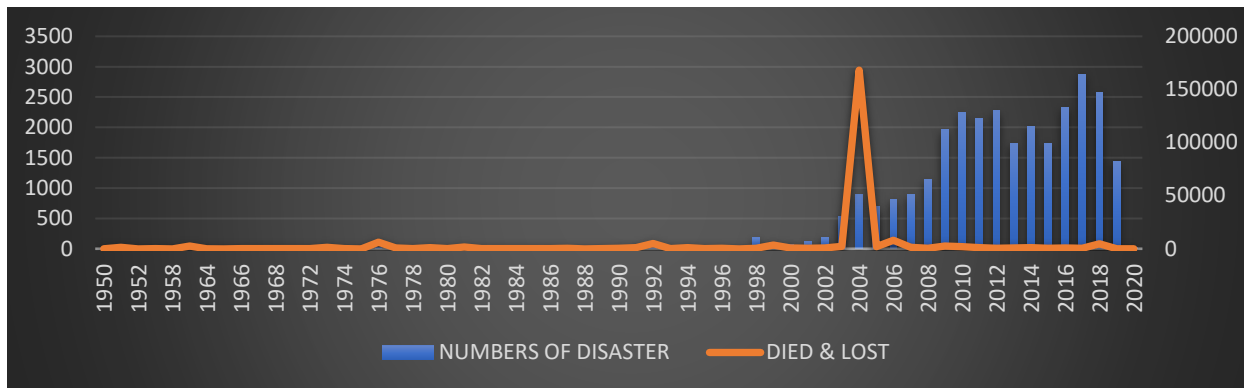


Figure 4. Number of Disasters, Dead and Lost 1950-2020
 (Processed from Data Informasi Bencana Indonesia (DIBI) <https://bnpb.cloud/dibi/>)

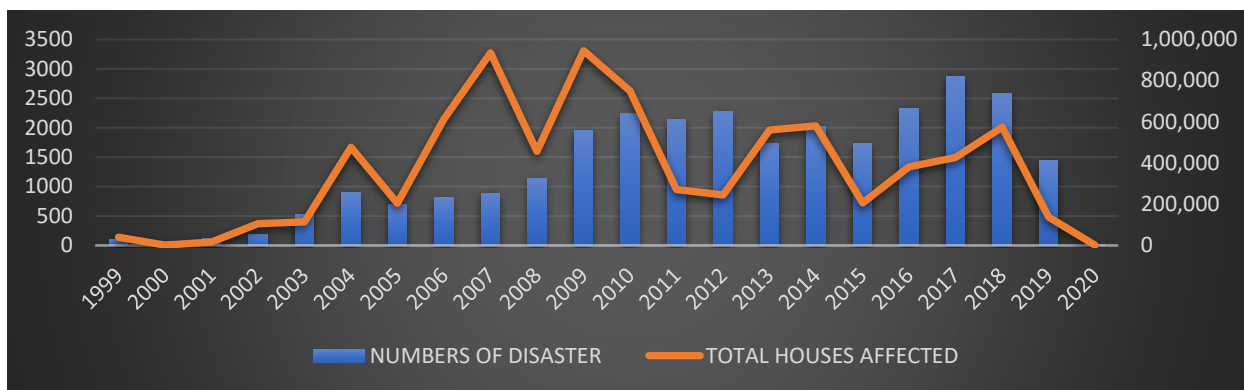


Figure 5. Number of Disasters and Total Houses Affected 1999-2020
 (Processed from Data Informasi Bencana Indonesia (DIBI) <https://bnpb.cloud/dibi/>)

Regarding the relationship between disaster occurrence and housing (a vulnerable asset of the people), it should be noted that the data from 1950 until 1999 is still unavailable in DIBI. The question of whether it is not yet available or simply that there is no record for that period needs further investigation. Yet, Figures 5 and 6 both show an inconsistent line as well. However, a low flat line can be found in Figure 6 from 2010 until 2017 showing that the DRR was, to some extent, able to operate quite well in this period to reduce the exposure of housing to hazards.

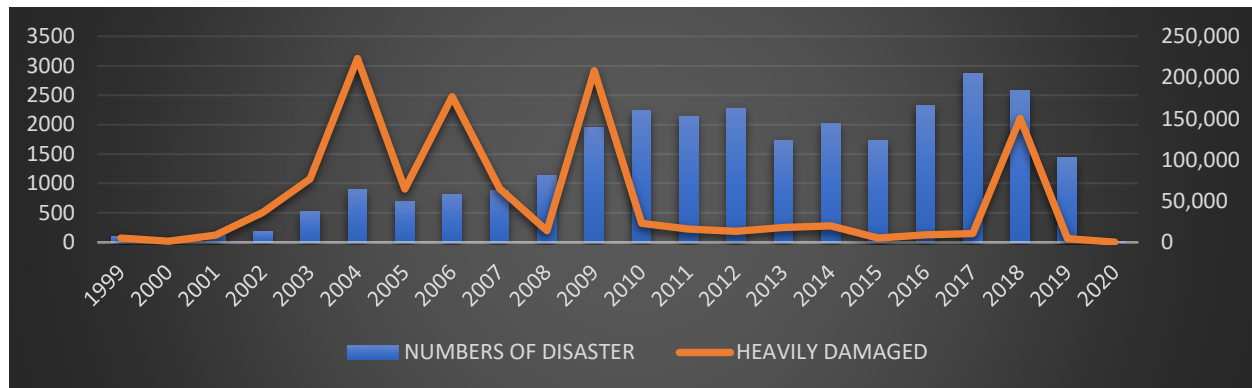


Figure 6. Number of Disasters and Heavily Damaged Houses 1999-2020
(Processed from Data Informasi Bencana Indonesia (DIBI) <https://bnpb.cloud/dibi/>)

On the basis of the above data, it could be assumed that there is an increasing frequency of disasters in Indonesia. Nevertheless, this is commensurate with people's exposure to harm to their persons and to their most vulnerable asset. People and their houses are still being affected by the hazards, even though the government has the mechanism to, supposedly, protect them from being exposed or at the very least mitigate the severity. Concerning the development of DRR in Indonesia, figures in this section can be assumed as the consequences because, before 2007, the DRR paradigm before was emergency response-oriented instead of offering comprehensive disaster management. More systematic disaster management had also just been mainstreamed in 2005 through the international disaster initiative, the Hyogo Framework for Action. Meanwhile, the idea had just been adopted by Indonesia in 2007 and only implemented since 2008. Saying "too early to judge" may sound like a clichéd excuse for not making any progress, because our world is ever-growing at a very fast pace. On the contrary, it is also not easy to deal with the unpredictability of nature.

4. CONCLUSION AND DISCUSSION

Indonesia is the biggest country in the region in terms of size and its population. With more than 17,000 islands located between three active tectonic plates in an equatorial zone, it is no exaggeration to say that there is no alternative place for its people to live without the risk of disaster. Indeed, let us not be naïve: there is no place on this Earth that is free from disaster. Nevertheless, statistics prove that Indonesia is far more prone to disasters and their huge impact compared to other places.

Engaging with disaster started with the independence of Indonesia as a nation. So far, institutional change has taken place eight times, but, of those eight, only two represented significant changes: that of 1979 and the law reform of 2007. Overall, emergencies have been the main trigger for policy change. For example, at the beginning of the DRR, situations of conflict made war victims the main concern. Otherwise, the increasing intensity of disaster

occurrence, comprising natural, non-natural, and man-made disasters, was counterproductive to development of the DRR. The disaster law reform which began in 2003 and gained momentum after the Indian Ocean earthquake and tsunami grew out of the realization that the former system was no longer able to cope due to the characteristics of the organization that preceded it, which operated solely as a coordinating agency, and whose administrative and functional scope was blurred. Besides, international developments to the disaster management paradigm also had a greater or lesser effect on the DRR paradigm in Indonesia. Namely, the International Decade for Natural Disaster Reduction in 1990 and the Hyogo Framework for Action in 2005. Both international agendas contributed to the promotion of DRR in Indonesia.

In terms of its relation to disaster resilience, the figure shows that DRR had no significant impact on the establishment of disaster resilience in Indonesia. The inconsistent line on the figure for both people and houses affected by disaster shows that people and their chief asset are still highly exposed to disasters and that the existence of DRR has made minimal impact.

However, it should be noted that all the statistical data in this article relies on DIBI, a platform under the National Agency for Disaster Management that has officially operated in Indonesia since July 29, 2008. The existence of this platform was meant to ensure the effectiveness of the recording and monitoring, and to provide a clear tendency analysis regarding disaster occurrence, magnitude, and impact. There is also a need to better equip vulnerable people and government with the capacity to identify hazards and their risk, to reduce and prepare to cope with upcoming disasters as well as plan development. Having said that, there are still many deficiencies in this platform that the authorized people are still working on, especially as regards recorded data. Compilation of the data may still be ongoing because it was previously scattered among many government and non-government institutions. Therefore, the absence of data could come down to two things: either the record or the event is absent. So, further investigation is needed to work on data accuracy and deeper analysis.

Having that said, the author would like to suggest that both the Government of Indonesia and the National Disaster Management Agency should have more political will when it comes to engaging with disaster. The law reform on disaster risk reduction in 2007 should become not only a historical achievement but rather a manifestation of the political will of the government and related actors in achieving resilience. Enhancing DIBI can be the most important one. Though we cannot predict disasters, this data could be useful in anticipating at least whether a “particular place has experienced disaster occurrence, so that it may occur sooner or later”, and, therefore, some anticipation and/or preparation should be made. Research and development of disaster-related issues also need to have more visible results. Having earthquake-resistant buildings is good, but there is still room for improvement.

Lastly, this paper deals with disasters in which a natural disaster, at least until now, cannot be predicted. It can happen anywhere, anytime, on any scale and any scope. Each variable could also have a significant meaning for the analysis. For example, as regards the analysis of disaster resilience and DRR in Indonesia, this paper only presents two variables: disaster frequency and its impact on human lives and homes. Adding new variables such as the diversity of disaster, magnitude, location, and population could give different results although obtaining the same results is not

impossible. Thus, further research is suggested to obtain a broader and deeper contribution to DRR in order to achieve resilience in Indonesia.

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HUMAN RIGHTS AND CONFLICT TRANSFORMATION ANALYSIS OF RECENT MEDIA CONTENT ON THE MOKEN PEOPLE

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ABSTRACT

For the past few decades, the world has awakened to indigenous matters and concerns, which by some means were neglected before. Indigenous peoples' issues have been more commonly debated, either in academic works or media platforms, even though distinct arguments are frequently presented. Nevertheless, indigenous peoples still face disrespect and have their integrity overstepped. And whilst advances take place on researches, indigenous existence is jeopardized by the lack of adequate policies and by subjugation, undermining the consequences of controversial actions oriented by the urge for visibility and essential human rights guarantee, among others, allied with the constant increase of relations with nonindigenous. The Moken people are an indigenous group inhabiting mainly the Mergui Archipelago, with part of the population living in communities in Surin Islands, Thailand, within the territory of the Mu Ko Surin National Park. This study briefly explores academic literature on indigenous peoples and the Moken, the national framework concerning indigenous peoples in Thailand, as well as media production, in order to analyse some aspects of the current situation of the Moken people living in Koh Surin, shedding light on a few recent events through an analysis of the media content to identify the different stakeholders involved. According to the news articles analyzed, the Moken have had insufficient participation in the decision-making processes and have had their livelihood frequently hampered. The goals are to expand the knowledge regarding the Moken people and understand their conflict issues through Parlevliet's human rights and conflict transformation approach, to identify the types of violence, and to assess the achievability of the establishment of a more efficient participation between the stakeholders and a more adequate interaction between the Moken and the nonindigenous parties involved. Additionally, the goal is to briefly explore norms and mechanisms concerning indigenous peoples in Thailand, as well as existing policies and the effects of them on the Moken community.

Keyword: Indigenous, Indigenous Rights, Media, Human Rights, Conflict Transformation.

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Caio (caio.perim@hotmail.com) is a student of Master of Arts program in Human Rights and Democratisation, Institute of Human Rights and Peace Studies, Mahidol University, Thailand, enthusiast of international development work, and experienced professional in communications, multimedia production, business management and promotion, and projects coordination, mainly on the topic of minorities and vulnerable groups, especially indigenous peoples. He has developed an extensive communications project in close collaboration with two indigenous communities from the Brazilian state of Espírito Santo, the Tupinikim and Guarani, in order to enhance the visibility of their cultures and diminish prejudice processes. Caio is currently developing his thesis on the topic of indigenous self-determination and the Moken people inhabiting in the Surin Islands, Thailand.

1. INTRODUCTION

For the past few decades indigenous matters have been placed in the spotlight of studies, researches, political agendas, and policies, among others. However, indigenous peoples still have not been fathomed or respected, constantly having their territorial space threatened or taken away, having what is for them indispensable territorial integrity violated. Despite the burdensome process of achieving a definition of the term indigenous, which is internationally accepted and incorporated into national legislations, the UNDRIP has developed a factsheet which concerns the definition and states that there are more than 370 million indigenous people spread across 70 countries worldwide (UN Fact Sheet, 2006, p. 1). The elaboration of the factsheet has been preceded by several events that marked important milestones to advances in the indigenous international framework, as well as in the general understanding of the special groups and their distinct social organization. As stated in the preamble of the Indigenous and Tribal Populations Convention,

Considering that there exist in various independent countries indigenous and other tribal and semi-tribal populations which are not yet integrated into the national community and whose social, economic or cultural situation hinders them from benefiting fully from the rights and advantages enjoyed by other elements of the population (Indigenous and Tribal Populations Convention 1957).

And elaborated in Article 1 of the Indigenous and Tribal Peoples Convention in 1989.

1. This Convention applies to:

(a) Tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations; (Indigenous and Tribal Peoples Convention 1989).

Due to the intensification of globalization, we currently live in a fast-paced world of multiple cultural exchanges. It is evident that there is an intense miscegenation of different ethnic groups, cultures, and customs, a tendency towards cultural homogenization at the global level. Yet it can be seen that, whilst this movement occurs, there are, subsequently or just concomitantly, processes of revitalization, reinforcement and appreciation of cultures doomed to be forgotten or to disappear.

Some theorists argue that the general effect of these globalizing processes has been to weaken or undermine national forms of cultural identity. They argue that there is evidence of a loosening of strong identifications with the national culture, and a strengthening of other cultural ties and allegiances, "above" and "below" the level of the nation-state. National identities remain strong, especially with respect to such things as legal and citizenship rights, but local, regional, and community identities have become more significant. Above the level of the national culture, "global" identifications begin to displace, and sometimes over-ride, national ones (Hall, 1996, p. 621).

Scholars have not just been developing researches regarding these native populations, but are also tracing a comprehensive analysis of their existence and the interrelations with the nonindigenous, geographically, socially and politically, among others. As Coeli Barry (2013, p. 1) states, “with the rise of indigenous rights movement and the growth of ethno-nationalism in the 1990s, cultural rights assumed greater significance on the global stage.”

Thailand has voted in favor of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Although the declaration is not legally binding, it is currently internationally adopted as a reference for the rights of indigenous ethnic groups and a benchmark for states to formulate laws and facilitate the process of policy-making regarding these populations. There are several disparities between Thai policies and international treaties, generating social and territorial conflicts over areas inhabited by indigenous populations. For the specific case of the Moken inhabiting Ko Surin, the conflict has been overall nonviolent but marked by few episodes of aggression.

Moken, Mawken, Morgan, or also referred along with other ethnic groups to as Chao Lay in Thai (the ‘Sea People’ or ‘Sea Gypsies’) are semi-nomadic people currently inhabiting the islands and seas of Myanmar and Thailand. “Nowadays there are about 2,000 Moken in the Mergui Archipelago in Myanmar and about 800 Moken in Thailand.” (Arunotai, 2008, p. 74). As stated by Arunotai, in 2004 there were 2 communities on Surin Islands with a total of 184 Moken. These peoples have been navigating seas on their Kabangs, wooden house boats, crossing oceans and establishing rudimentary and provisory wooden houses in several islands, for thousands of years.

According to archaeo-linguistic reconstructions, pre-Austronesian languages likely originated in the southern Chinese mainland 5,000 – 6,000 years ago among agriculturalists who migrated to Taiwan and there fully developed the Austronesian language. Aided by rice cultivation and skilled maritime navigation, Austronesian speakers are suggested to have spread rapidly from Taiwan to the Philippines, Indonesia, parts of Melanesia and the rest of the Pacific beginning 4000 years ago, biologically assimilating to various degrees with long resident indigenous populations along the way (Dancause, et al., 2009, p. 86).

They have maintained many of their traditions, even though cultural changes have been unavoidable. Instances of these are the gradual lessening of house boats being built and the eventual transition of residences, majority of which are in huts on shores.

In 2004, they were living in two villages in Surin Islands when the Tsunami hit. Due to their intimate relation with the environment, Moken did not face human losses despite having their villages swept away.

It could be said that the Moken were saved by an old legend, a keen observation of the sea and a strong sense of precaution, their intimate knowledge of marine and forest environment, their clever selection of village site, and their boat maneuvering skill (Arunotai, 2008, p. 73).

Mokens lost a territory they never had even before the Tsunami. From 1981 with the creation of Surin National Park and especially after the Tsunami, the islands freely occupied for centuries were now under strict laws and control by authorities. Nevertheless, after two weeks of taking refuge in a local temple, they decided to move back to the islands and “since they are a group that accumulates few material possessions, they did not dwell on the past,

but continue with their daily lives as in pre-tsunami days.” (Arunotai, 2008, p. 74). The Moken have undergone a thoroughly challenging period of social rearrangements, individual choices and, above all, an understating of their own identity. Those who returned home had to rebuild the villages in order to re-establish their social arrangement.

Meanwhile, for multiple reasons, important features of their culture’s progress are fading away.

Traditional Moken knowledge previously regarded as “common” or even “outdated” enabled the Moken (and others) to survive the tsunami disaster. It is unfortunate that these forms of knowledge are now limited only to the adults and the elderly. They are gradually forgotten and rarely passed on to the young generations (Arunotai, 2008, p. 77).

Despite the extensive and varied studies on the topic, there is a gap to be filled. Having known that Thailand is a member of the United Nations and has voted in favor of the UNDRIP, this article aims to provide a brief explanation on the international definition of indigenous peoples and the national legal framework concerning these peoples in Thailand. Supported by journalistic materials, this article also aims to subsequently develop an analysis with a human rights and conflict transformation approach and apply these concepts to the reality of the Moken people living in Koh Surin, Thailand, in order to understand their actual situation and furthermore, the different reasons behind. Hence, this article attempts to find adequate solutions for the achievement of an ameliorated livelihood. The news articles on the Moken cases, used as the secondary data for this study, indicate that the indigenous people have been under constant interference from different stakeholders at multiple levels of the non-Moken surrounding society. Decision-making processes are not adequately inclusive, and maintaining or deciding on their livelihood has not been an autonomous process. Through Parlevliet’s human rights and conflict transformation approach, the types of violence and stakeholders involved have been perceived and distinguished, with the main focus being the human rights violations as symptoms of an underlying systemic problem. There ought to be a formulation of appropriate suggestions for the Moken people living in Koh Surin based on human rights and conflict transformation approaches, adequate ethnographically and anthropologically, and in accordance with the international legal framework.

2. INDIGENOUS PEOPLES AND THE NATIONAL INDIGENOUS LEGAL FRAMEWORK IN THAILAND

Defining the term indigenous has become a challenge for academics worldwide. The United Nations Permanent Forum on Indigenous Issues (UNPFII), which is the United Nations’ body for matters regarding indigenous peoples, has issued a factsheet to collaborate towards an internationally accepted definition. It is understood that some aspects are common to indigenous groups regardless of where they inhabit geographically, which is generally the geographic territory they occupied before the arrival of settlers or formation of states. In general, indigenous peoples kept their ancestral traditions, undergoing through time a pace that diverges from the pace of the general international development. “As a rule, indigenous populations possess a distinctive culture that revolves around natural resources, and their way of life differs socially, culturally and/or linguistically from the dominant population (UN Fact Sheet, 2006, p. 1).”

Considering the diversity of indigenous peoples, an official definition of “indigenous” has not been adopted by any UN-system body. Instead the system has developed a modern understanding of this term based on the following:

- Self-identification as indigenous peoples at the individual level and accepted by the community as their member.
- Historical continuity with pre-colonial and/or pre-settler societies
- Strong link to territories and surrounding natural resources
- Distinct social, economic or political systems
- Distinct language, culture and beliefs
- Form non-dominant groups of society
- Resolve to maintain and reproduce their ancestral environments and systems as distinctive peoples and communities. (UN Fact Sheet, 2006 p. 1)

Demographically, these peoples are mostly minorities, being in a position of inferiority both in number and influence. Even in the countries where they are majority in number, their influence is extremely limited due to centuries of impositions and subjugation. As important (or even more important) as defining the term is developing a thorough procedure to recognize them, and therefore guaranteeing that these peoples have adequate policies and are protected internationally and regionally.

Thailand expresses concern for the promotion and protection of human rights in the country. However, Thai policies may be addressing key issues erroneously, hampering the indigenous people from enjoying their rights and from developing their societies according to the international indigenous legal framework. The Thai government does not recognize officially indigenous peoples and in the Thai Constitution of 2017, indigenous peoples are only mentioned under Section 70 of Chapter VI, Directive Principles of State Policies, and named as ethnic groups (Thai Const., 2017, p. 22).

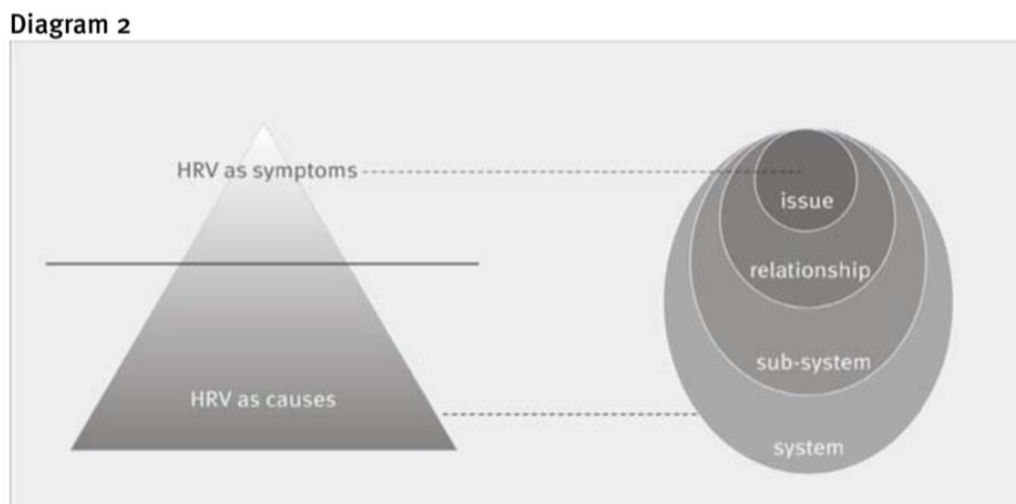
3. PARLEVLIEP’S HUMAN RIGHTS & CONFLICT TRANSFORMATION

Parlevliet defends that “considering human rights and conflict transformation *in conjunction* deepens one’s analysis of what is involved in moving from violence to sustainable peace” (2009, p. 16). Through this perspective, it is possible to analyze the Moken situation in a deeper and more comprehensive manner due to the theory-practice spectrum of the issue. Parlevliet also borrows a definition from the NGO Peace Direct on conflict which says that “conflict transformation is not about making a situation of injustice more bearable, but about transforming the very systems, structures and relationships which give rise to violence and injustice” (2009, p. 17). Parlevliet’s holistic approach to conflict transformation provides the appropriate tools to first understand the conflict then further develop a plan to redress the issue. Parlevliet presents a typification for violence as direct violence, structural violence and cultural violence (2009, p. 21).

Type of Violence	Human Rights Relevance
Direct violence	The rights of an individual or group are violated by the state or abused by a non-state actor; if the latter, the state fails to protect the rights of the individual or group as it is supposed to do. Rights involved are civil and political rights (the right to life, to bodily and mental integrity, freedom from torture, freedom of speech, freedom of peaceful assembly, etc.).
Structural violence	The rights of an individual or group are denied by the way that society functions and the state is organised. Individuals or groups cannot exercise their rights (civil, political, social, economic and cultural) and are not able to develop their full potential as they have differential access to social, political and economic resources.
Cultural violence	The humanity and dignity of individuals or groups is denied (stereotyping or demonising of 'the other'). They are therefore not afforded the respect and treatment due to them as human beings and are subject to discrimination.

Figure 7.

Furthermore, using the pyramidal diagram of the interchangeable causes and symptoms (2009, pp. 18-19) resulted from the Lederach and Dugan works presented and used in Parlevliet's work, the conflict can be analyzed and understood in different interconnected levels, improving considerably the efficiency of the approach (2009, p. 26).



Source: Dugan 1996, 9-20; Lederach 1997, 56-60; see also Diagram 1

Figure 8.

4. MEDIA CONTENT ON RECENT EVENTS

In 2004, the Tsunami, with waves that reached up to 30 meters high according to Smillie (2014), caused extreme damage in 14 countries of Asia, including Thailand and Surin Islands. “This tsunami, so devastating to the region, was a relatively small event for the Moken. They all survived” (Smillie, 2014). Although it is believed there were no deaths of Moken, the Tsunami swept away their wooden huts and house boats. The lands occupied by these villages were there, yet efforts were not enough to rebuild the villages in adequate time. Moken members were relocated to the mainland, where access to basic services could be provided immediately and actions to integrate them could be developed. Nonetheless, they were exposed to unusual social stimulus never before faced. “Life here was alien – noisy roads and speeding traffic replacing beaches, boats and the rhythm of the tides” (Smillie, 2014).

Thai Government indeed attempted to tackle the issues. Contextualizing, “the Moken moored on the Surin islands were also evacuated to nearby Khura Buri after the Tsunami -- but failing to adjust to modern life they quickly returned home” (AFP, 2014). Those who returned home had to rebuild the villages in order to re-establish their social arrangement. In addition, following the Tsunami, “the rise of mass tourism, a ban on hunting in newly protected marine parks and the depletion of fish stocks have made it increasingly difficult for Chao Lay to maintain traditional lifestyles” (AFP, 2014). The impact of external interference has been frequently highlighted.

Even though they have been living on the islands for generations, they cannot keep their way of living after the state stepped in with new laws. Development and conservation should respect their traditional rights. How could the state take away a tradition and lifestyle that has sustained the Moken for generations? (Jumlongrach, 2019).

The question asked in the Bangkok Post article reflects a general concern regarding the Moken people constantly present in media articles, covering events related to this Austronesian people inhabiting in Koh Surin. The recent fire that engulfed almost their entire village and brought it to ashes in minutes has been broadly reported by the media. As “strong wind sent flames to thatched houses and burnt down about 65 of them, [o]nly about 15 houses survived the inferno” (Chuenniran, 2019). The blaze left approximately 237 villagers homeless (Rujivanarom, 2019) and raised debates over the Moken situation, especially due to the social actions developed by NGOs and the Thai Government. Major media companies have been frequently covering episodes concerning the Moken and this time was not different. Several news articles have been published concerning not only the fire and subsequent events, but also the Moken situation overall. “Local naval officers and park rangers evacuated affected people and built a temporary shelter for them near Ao Bon” (Chuenniran, 2019). In addition to the emergency measures adopted by the governments, “[t]ourism operators' associations in Phangnga and Phuket provinces were gathering donations including food, water, clothing and medicine for the people. (Chuenniran, 2019)

The actions were aimed at rebuilding their village in order to re-establish their livelihood as before the fire. However, the community fears “its original design, an unsafe housing model consisting of highly flammable structures, densely packed together. And it has reignited a row about the Moken’s rights to their ancestral lands” (Smillie, 2019). According to The Guardian, the consultation occurred between provincial government, the national

park and navy, leaving the Moken people seemingly unheard. “We Moken men are well experienced in building our own houses,” points out Hook. “Why is no one asking us, how and where we want to set up our own houses?”” (Smillie, 2019). Once more the opinions and will of the Moken have been hindered as the members of the community had minor or no participation in the decision-making processes regarding their own village reconstruction, which had been previously planned inappropriately according to their beliefs.

Normally, the animist Moken erect their huts at the edge of the beach, stilted feet in the water, living in the space between land and sea, like their mythical kin, the turtle. When they were pushed to the smaller bay, the park insisted on the current formation of small huts in regimented lines, tightly packed together (lacking important social spaces), facing each other (considered an ill omen) set back from the sea, and near the jungle (where spirits are believed to reside). (Smillie, 2019)

Despite the gravity of the tragedy, “the devastation of Moken village on Phang Nga’s Surin island can possibly be used as an opportunity to restore the traditional way of life for the sea gypsies, academics said” (Rujivanarom, 2019). Narumon Arunotai, anthropologist and lecturer at Chulalongkorn University’s Social Research Institute, said that “state officials and aid organisations must not only focus on completing their charity drive and listen to the needs of the community, and that the Moken must have a say in the reconstruction effort.” She also stresses the importance of providing them time to organize their community assembles for the configuration of their understanding of the situation and the possible solutions proposed. “They must be given the time to come up with a plan for their future,” she said (Post Reporters, 2019).

Drawing upon the plight of the Moken themselves, it is not only academics who have been stressing the importance of a more inclusive approach. In addition, the “People’s Movement for a Just Society (P-Move) -- a grassroots group campaigning for land rights for the rural poor -- has also put the Moken people’s housing plight in its list of demands for the government” (Post Reporters, 2019). Apparently, it is a point of agreement among academics, journalists, NGO workers, and others that the Moken need more than just houses rebuilt. As stated on the Bangkok Post article, “Indeed, the state should respect their rights by allowing them to live with dignity” (Jumlongrach, 2019). The National Human Rights Commissioner Tuenjai Deetes, believing that the wisdom and traditions that have been an important part of their livelihood for so long should be preserved, “began pushing for ‘special cultural zones’ to be designated to protect them as a minority under a 2010 Cabinet resolution. However, owing to the lack of supporting legislation, the resolution is doing little to protect these people.” (Wongruang, 2019). As aforementioned, measures taken have not been reflecting such reality.

One of The Guardian articles has raised the discussion concerning the occupation of the territory in the Surin Islands, as Moken used to live in several bays, depending on the time of the year and the conditions of the areas. “It’s unlikely that we would expand any development beyond the current beach,” said Putthapoj Khuphrasit, the head of Koh Surin national park, as he surveyed the bay on 8 February” (Smillie, 2019). According to Khuphrasit, also reported by The Guardian, “We have to balance the needs of the community with the management of the protected environment inside of the park.” (Smillie, 2019). The matter is to achieve a multilateral agreement on the use of the territory which truly considers both the environment and the livelihood of the inhabitants of the lands considered a

national park. This ongoing discussion has involved a wide range of stakeholders with plural opinions. Whilst some believe that the policies and actions have been providing what the Moken people need, others contest the limitations faced by the indigenous group.

“The obvious solution would be to return both bays to the Moken to live in and manage. As General Surin Pikulthong, a member of the Committee for the Affairs of Indigenous Peoples, puts it: “They have been here longer than any of us ... there is no law that gives the government power to dictate the lives of ethnic groups who predated the government that are living on their ancestral lands (Smillie, 2019).”

Even though the Tsunami raised awareness about the Moken people, the “Covid-19 pandemic has revealed a hard reality: sea gypsy communities are stuck in poverty and unable to sustain themselves” (Jumlongrach, 2020). Additionally, it shed light upon the restraints and their impacts on the Moken livelihood, as the novel pandemic has enabled the Moken “to more freely roam the seas once again, with a gradual increase in families retrieving their boats from the berths and heading for the brines” (Shan, 2020). This reflects that certain aspects of their livelihood may need revision and that community participation is essential for a more holistic understanding of the situation. For instance, Earth Journalism explored briefly in an article a relevant criticism from a member of the village, who complained about the tourists wearing inappropriate swimming suits and entering villagers’ homes without permission. “Sometimes it feels like we are in a human zoo for the tourists to visit,” Ngoei–Tawan Klatalae, a young Moken man, said about the downside of tourism” (Triyos, 2019).

Another issue that has been raised once more is their documentation, the granting of identification cards. “The government won’t recognise their identities unless their name is registered to a place on land. So that makes it really difficult for sea nomads ... caught in between Thailand and Burma. And the modern world doesn’t know what to do with them – they don’t like people they cannot control,” says Runar Jarle Wiik, spearheader of the non-profit organisation Project Moken, which has worked with Hook and his community for decades (Shan, 2020).

Along with the awareness raised concerning indigenous matters worldwide, the recognition of misconducts towards the native peoples has been frequently officially stated. “In many countries, governments have apologised for the way indigenous minorities have been treated.” (Jumlongrach, 2020). And even though this is challenging, especially for Asian countries like Thailand, it is possible through thorough cooperation with an objective of achieving of positive outcomes for all parties involved.

5. PARLEVLIE’S HUMAN RIGHTS & CONFLICT TRANSFORMATION ON MOKEN CASE

According to Parlevliet, only states can violate human rights, and actions by non-state actors are referred as abuse. The distinction is fundamental to the development of the analysis on the rights of the Moken inhabiting Koh Surin, especially their livelihood. Many actors compose the parties involved, and the Thai Government and the society have been contributing to the conflict maintenance, however different. In regard to violence in the Moken case, one can easily observe that violence is occurring in all spheres presented. However, given that the focus of this article is

to analyze mainly the legal framework concerning the issue, the main type of violence explored is the structural violence caused by the situation of the Moken before law and within the policies. Adopting the pyramidal diagram of the interchangeable causes and symptoms (2009, pp. 18-19), human rights violations such as oppression, exclusion, impositions, poverty, uneven access to natural resources, discriminations and others are detected. Nevertheless, the focus of this paper is to analyse the human rights violations as symptoms. The main issues detected are the prohibition of hunting due to the transformation of Koh Surin into a National Park; the violation of private property and the difference in the concept of property the Moken are supposed to have with regard to the right to the land and/or land tenure; humiliation and degrading treatment such as verbal and physical abuse experienced mainly when circulating out of their communities; and according to the Human Rights Watch report: extortion, bribery, arbitrary arrest and confiscation of property (HRW, 2015).

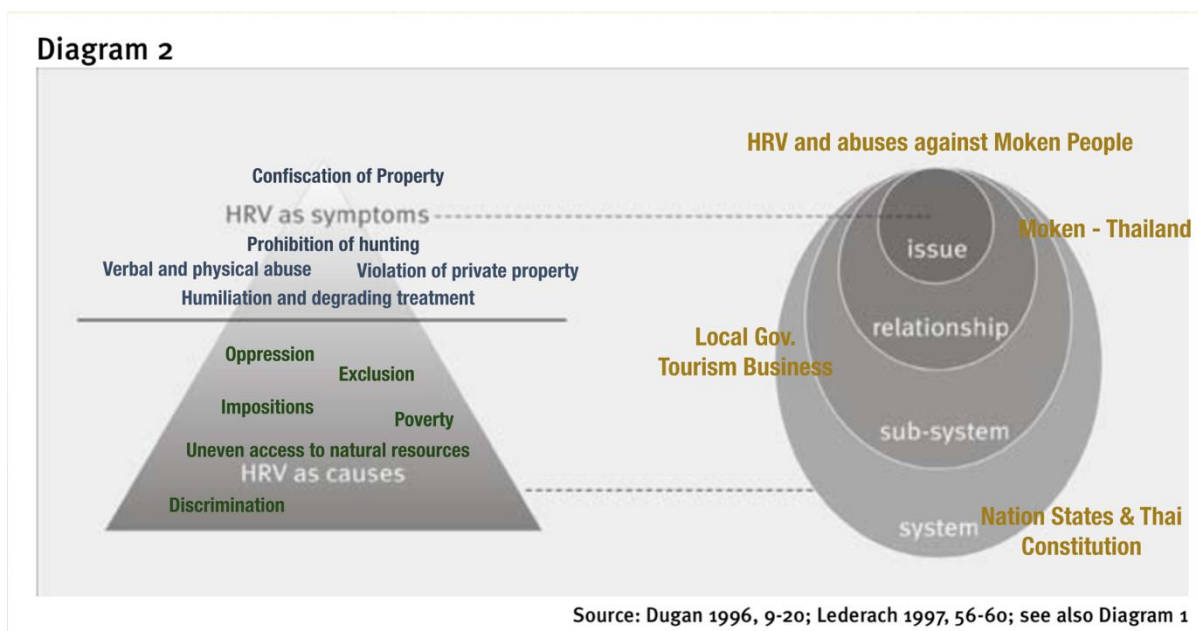


Figure 9.

The issues are the human rights violations and abuses against the Moken people, the relationship is the Moken inhabiting Koh Surin and Thailand, the sub-system local government and tourism businesses, and the system Thai Government and Constitution. Our main mission is to understand the reasons why the indigenous peoples' rights in Thailand are not being protected, which includes more than just the state's inability or unwillingness. It has several social aspects intertwined and stakeholders involved.

In general, a state's *inability* to protect rights may be due to, for example, weak state structures and lack of resources, both material and moral (legitimacy). Yet a state's *unwillingness* relates to how power is divided in society and how a certain way of functioning and making decisions may be to the advantage of some while being at the expense of others (Parlevliet, 2009, p. 20).

According to Parlevliet "in sum, a human rights perspective on (violent) conflict emphasizes inequality, inequity, injustice and insecurity as structural conditions underpinning violent conflicts" (2009, p. 21). Thus, even

though in the Moken case only minor episodes of direct violence have occurred, the four problematic structural conditions aforementioned can be detected as constituting parts of the issue. They ought to be adequately addressed, aligned with the definitions and requirements of the UNDRIP and other international documents on indigenous rights, respecting the differentiated rights concerning these peoples, especially considering the participation in decision-making processes and the right to self-determination of the Moken inhabiting in Koh Surin.

6. CONCLUSION

Having clarified the importance of territory to indigenous populations, we can conclude that the Moken have been considerably hindered from exercising their livelihood according to their traditions and actual will. The Moken should be granted more rights to the use of the land and sea adequately, allowing them to keep the traditions without major impositions, and be offered the possibility of being integrated in Thai society with all the rights reserved to Thai citizens. They should also be provided the possibility to choose, according to each individual's will, to remain in the indigenous villages or migrate to nonindigenous territory.

After the Tsunami and the blaze, the aid actions used to address the issue adequately, failed in some extent by relocating and isolating the Moken from the decision-making processes rather than providing participatory assistance to rebuild the villages according to their traditional and appropriate design. In addition to the long-established structural violence towards the Sea Gypsies, this mis-addressing of emergency measures, due to the inadequate actions previously mentioned, have generated aftermaths which may have irreversible consequences to the communities, since they affect their daily lives and were developed uncooperatively with the Moken and their direct representatives.

The violations here cited occurred mainly due to disparities between policies and practices by the relevant stakeholders and the UNDRIP articles, which are largely a consequence of the nonrecognition of their identities as indigenous groups. The Thai Government, consequently, is not able to provide proper assistance. Thus, this shall perpetuate until indigenous peoples are officially recognized as state citizens, whether with hyphenated identity (Thai-Moken, Thai-Karen, Thai-Lisu) or not, as stated in the preamble of the Indigenous and Tribal Populations Convention. Furthermore, there has to be a thoroughly participatory interaction apropos policy-making. Afterall, there is one thing we must bear in mind - indigenous peoples have always had voice, now we ought to give them ears.

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RIGHT TO EDUCATION: BARRIERS TO ACCESS TO EDUCATION OF PERSONS WITH HEARING IMPAIRMENT IN DILI, TIMOR-LESTE

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ABSTRACT

Although the right to education, as defined in international human rights conventions such as Article 13 in the ICESCR and Article 23 in the CRC, has been embraced by the government of Timor-Leste, children with disabilities still face various types of barriers to accessing spaces and opportunities for learning. One of the complex obstacles is an institutional barrier. People with different disabilities cannot access schools because they lack facilities to allow children with various disabilities to enroll in classes.

In this light, this research aims to identify institutional barriers, such as the lack of sign language interpretation systems, which that prevent children with hearing impairment from enjoying quality education.

The purpose of this paper is to help better understand the cause and conditions leading to these barriers. It seeks to furthermore; this research aims to contribute to existing literature on access to persons with disabilities' rights to education. The findings of this research also will enrich knowledge related to the right to education in Timor-Leste in order to influence policy development and reform.

Keyword: Rights to Education, Barriers to Education, Children with Hearing Impairment.

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1. INTRODUCTION

For a young democratic nation, the education sector is, indeed, the backbone of national development. In Timor Leste, the right to education is of utmost significance. It is emphasized in the Constitution, wherein article 59 mentions the right to access education. Furthermore, the government has been invigorating the education sector by improving school facilities, curricula, teaching capacities, and providing an "effective and affordable management system." Likewise, the development of social inclusion programs is an essential part of providing opportunities to promote "access for persons with disabilities" to education based on "equality and equality (TSDP, p. 19)."

In terms of international human rights commitment, the State has already ratified seven of the nine core human rights treaties. The ratification leaves two treaties still unsigned by Timor Leste: The Convention for the Protection of All Persons from Enforced Disappearance (CED) and the Convention on the Rights of Persons with Disabilities (CRPD). When it comes to language on the right to education, two treaties best provide guidance, the International Covenant on Economic, Social and Cultural Rights (ICESC), and the Convention on the Rights of the Child (CRC).

Even though education is both a human right and constitutional right, still not every Timorese could fully access education, particularly those living with disabilities. In fact, the 2010 national census revealed that 72% of persons with disabilities in Timor-Leste never attended school.

The purpose of this paper is to identify barriers faced by persons with disabilities in light of accessing education. It shall particularly focus on the availability, accessibility, and quality of sign language facilities in an inclusive school. The first section of this paper shall cover a brief discussion of disability rights. The second section presents the disability model by examining its evolution from being a health model to the human rights framework. It shall also look at the issue of the right to access education. The paper will then delve deep into the situation of children with hearing impairment and their concerns regarding education. This paper concludes that access to education for children with hearing impairment will never be achieved unless institutional and attitudinal barriers are fully addressed by society and the State.

2. THE RIGHT OF PERSONS WITH DISABILITIES

The rights of persons with disabilities have been written in Article 21 of the Timor-Leste national Constitution. The term "disability" found in the Constitution is known as "ema ho definition," which means that the correct terminology is currently used in Timor-Leste and recognized by the national law. The use of the definition shows state recognition and commitment to the rights of persons with disabilities.

At the global level, disability rights is relatively a newly accepted discourse in the universe of human rights. The Convention on the Rights of Persons with Disabilities (UNCRPD) proof that states take the fundamental rights

and the status of persons with disabilities seriously. CPRD is a new approach to addressing issues faced by persons with disabilities, which was previously approached through health, religion, and charity models. Although the rights of disabilities are reflected in international human rights discourses, the Timor-Leste government still has yet to ratify the UNCRPD.

Timor-Leste's Constitution and national policy both recognize the need to protect the rights of persons with disabilities. Therefore, it becomes the government's duty to ensure that the right to enjoy fundamental rights such as education is entirely project and enjoyed by everyone.

3. DISABILITY MODEL AND RIGHTS TO EDUCATION

Persons with disabilities live with various diverse types of characteristics, attitudes, and physical conditions. However, communities seem to approach and perceive disabilities in different ways. Furthermore, social assessment and approaches towards persons with disabilities are mainly related to physical appearance, which is most visible.

Health Model

The health model approach is one of the more traditional models applied in communities and societies. Persons with disabilities are always treated with medical interventions; as Bennett and Volpe (2018) argue, there is a general idea that persons with disabilities tend to be correlated with "consistent medical care.". This model conditions state and social conscientiousness that persons with disabilities have physical problems, so they need to be cured or treated through medical interventions.

Similarly, persons with disabilities in the past, especially those with mental health problems, were hospitalized. However, as suggested by Levy (2018) that there had been changes in the use of medical interventions; for example, previously, someone with mental health problems in the UK and the United States would immediately be medically treated. However, today, this poses grave ethical and rights issues for the "patient." This ethical consideration illustrates that the concept of disability had already shifted to the social and human rights models legally introduced in international human rights law in the 21st century, mainly through the UNCRPD.

Human Rights Model

In light of a dedicated international standard, disability is proven to be a fundamental human rights issue. The main objective of a human rights-based approach to disabilities is to promote equal opportunities without discrimination in light of "social inclusion." The UNCRPD, a binding treaty on the rights of persons with disabilities, not only promotes standards but also instills the principles of State accountability towards the promotion and protection of these rights.

The disability model is a developing feature of the UNCRPD. It is based on the principle that persons with disabilities can be most vulnerable if their rights are not recognized and protected. This treaty sets the foundation for strengthening concepts and mechanisms to mainstream the rights of persons with disabilities throughout the human rights framework at the international and national levels.

Apart from the UNCRPD, national human rights agenda and bodies, in Timor Leste in particular, embrace such values and principles. One of the more fundamental aspects of this is the right to access education.

Right to Access to Education

The right to education is enshrined in international human rights law and Timor-Leste's national legal framework. CRC Article 23 highlights the role of the state in recognizing and promoting children with disabilities to have "the resources, assistance, and special attention available" to participate in society. Moreover, Article 29 of the CRC emphasizes the state's role to ensure that children can access education. This refers to "children's talents and personalities, mental and physical abilities," and more referees to develop "cultural identities," including language.

Similarly, article 13 of ICESCR states the "right to education" based on the principles of free participation, tolerance, non-discrimination, friendship, fairness, and accessibility. This proves that persons with disabilities have the right to education guaranteed by the State. However, in reality, persons with disabilities face significant challenges in accessing schools. Whereas education is not the right of citizens only as provide by the law but is also guaranteed by national and global commitments.

UNESCO's Salamanca Statement (1994) addresses different types of "children with different needs for access to education." Interventions are needed, and schools should realize the need for "an adaptation of the environment or curriculum to enable children with disabilities to access schools." The Salamanca meeting leads to the realization of the concept of "inclusive education."

In Timor-Leste, the government is committed to embracing education as one of the priority issues for national development and the full promotion of the rights of its people. The government tries to ensure that all citizens have access to education. However, several barriers exist, including the lack of infrastructure, landscape conditions, social attitudes, policies, and environmental risks.

Several factors are restricting a person with a disability from fully participating in society—specifically in the realm of education. These obstacles are often related to policies, curricula, adjusting classes for persons with disabilities to access education, facilities such as braille, sign language materials, jaws-talking, and other facilities.

4. BARRIER TO EDUCATION

Persons with Hearing Impairment Access to Education

In Timor-Leste, access to education for persons with disabilities seems to be a priority issue for the government. It is conscientious that a critical mass of persons with disabilities is unable to learn informal learning systems. Data from the Timor-Leste National Statistics (DNS 2010) revealed that about 72 percent of persons with disabilities in Timor-Leste have never attended school.

Furthermore, ADTL (2015), a local disability rights organization, found that there are indeed barriers to one's access to education, including material shortages and other supporting factors, for example, "accessible materials, equipment, and school environment, providing classroom support for children with disabilities.". It (2015) adds that physical and non-physical facilities known as "tools" are the main factors for access to education. However, the absence of available "assistive devices" had led to the exclusion of persons with disabilities from formal educational systems. Environmental barriers are glaring as well; however, lessons currently delivered by the teachers should be accessible to all students with disabilities, such as sign language, which is vital for persons with hearing disabilities.

An interview was done with a program coordinator and a sign language translator connected to the Hearing Impairment Organization, called KDTL. In this interview, the KDTL program coordinator stated that:

"Students with hearing impairment in Timor-Leste cannot access schools. Because the problem is, most teachers are unable to explain to the students using symbolic language. Most of the teachers at the schools cannot explain the lesson's content because they do not understand sign language (KDTL, personal interview July 10, 2020)."

The government has not yet introduced national sign language to schools. As highlighted by ADTL (2016) that in Timor-Leste, "children with hearing impairment cannot access education if there is no sign language available at the schools." None of the public schools of the Timor-Leste government use sign language. There is only an English interpretation, introduced in Dili by one of the known local organizations (AGAPE). This organization is the only one providing sign language courses (ADTL, 2016).

It is clear that if there is no sign language facilities and modules available, then it has a considerable impact. There has never been a robust communication mechanism between teachers and students during the educational process of children with hearing impairments in school. Another factor faced by persons with hearing disabilities in Timor-Leste is social perception, which discriminates against persons with disabilities.

According to the KDTL executive director in an interview, she explained that many deaf people could not access schools because of "discrimination within schools, teachers, and the community." Therefore, deaf discrimination is an obstacle. This leads to premature departures from the school environment and society (Personal interview, July 15, 2020).

Furthermore, the Timor-Leste Minister of Education and Sports stated that sign language used in Timor-Leste is not formally recognized in existing education systems. The government will use the national language of Tetum to be able to adapt and develop a mechanic for the national sign language to be used in public schools (News Dili Weekly, 2019).

National statistics of Timor-Leste (2015) indicated that there are 2,386 students with hearing impairments who fully access education from pre-school to university level. In pre-school and primary schools, the number of students is at 1624. Even though the statistical data provide some information about the accessibility of persons with disabilities, a person with hearing impairment still cannot enjoy proper knowledge, which can lead to high rates of dropouts.

The director of KDTL pointed out that, at this moment, there are a certain number of persons with hearing impairments, many of whom have dropped out from formal educational systems, come to (KDTL) to access sign language courses.

As quoted from the KDTL director said that "The number of persons with hearing impairments who come to our organization is increasing. Our organization teaches ASL (American Sign Language) sign language courses, and we have used it as a formal communication for our activities (personal interview, July 15, 2020).

As noted from the interview with the director's personal interpreter, interestingly, sign language interpretation is a means for social integration and understanding about diverse realities. For the students, it is vital as a tool to communicate with others, friend, and their teachers.

Access to Equivalence Program

Timor-Leste has established *Diresaun Nasional Ensino Rekorente* (DNER) to facilitate an alphabetization and equality program at the primary school level for people who have never had the opportunity to attend or have dropped out from schools. It aims to address illiteracy and the need to provide educational opportunities for youth and adults (Governo Timor-Leste, 2020). This program provides opportunities for persons with disabilities to access formal school systems. It also aims to enforce a national equivalent exam that will later allow students to get the school certificate. The certificate is provided based on proof of enrollment in schools.

In connection with this, currently, there are around 35 persons with disabilities, those with hearing impairments enrolled at the secondary school introductory level. This program is supervised by the Ministry of Education, in collaboration with ADTL. In the coming month, they will be able to the national exam. Those who pass will get a certificate, according to the study package they are taking (Tatoli, 2020).

This program provides an opportunity for persons with disabilities to attend school and get a certificate. According to a teacher-respondent from the ministry of education, she acknowledges teachers, at present, are not

capable of using sign languages in their classes. Most teachers find it challenging to teach a person with hearing impairment. For instance, at this moment, 18 students are enrolled at the (*Ensino konkorente*) primary level. The program aims to support persons with disabilities, including persons with hearing impairment. Students can learn through sign language interpretation from KDTL. It helps us provide lessons to students who have hearing impairments (Personal interview July 14, 2020).

Furthermore, the inclusive education coordinator from Disability Association (ADTL) highlighted that the lack of educational facilities is the main barrier for disabled children access to school (ADTL, Personal Interview July 15, 2020). Nevertheless, the association of hearing impairment organizations helped students learn through sign language interpretation at the *Ensino Rekorenke* program. Therefore, these students were able to access this program organized by the ministry of education.

5. DISCUSSION AND ANALYSIS

The concept of gaining education from a human rights standpoint is a fundamental issue for everyone, including children with disabilities. This empowers them to enjoy equal rights to gain access to school without any discrimination. However, in reality, persons with disabilities still face several barriers. The national census of 2010 identifies that only 25% of persons with disabilities have entered the formal school system.

After one decade, in 2020, according to information from the Association of Defisiensiia Timor-Leste (ADTL) that around 25,000 persons with disabilities from 38,000 of the totals of persons with disabilities still could not access school.

Among persons with disabilities, people with hearing impairment face more significant challenges, including the lack of sign language facilities in schools. However, based on findings, Disabled Peoples' Organizations (DPO) are able to provide sign language purposed.

Some groups have used the Americal Sign Language as their primary instrument of sign language communication. Furthermore, some persons with hearing impairments are currently enrolled at KDTL (Klibur Defisiensiia Tilun Timor-Leste) to learn Sign Language. Before the existence of KDTL, there was only one sign language school in Dilu is AGAPE (Sign Language School). Many staff from KDTL are graduates of this school.

Most of the research respondents agree that sign language interpretation is vital for students with hearing impairment to learn in schools. Due to the lack of facilities, KDTL has been attempting to fill in the gap by providing services and advocating policies on the use of sign language. They have also been working with the Ministry of Education to build teacher capacities and improve the programs to be more inclusive.

This paper highlights that language instruments based in Tetum will be a more effective means for learning and communications. Without such improvements, there will be no possibility to teach people with hearing disabilities in schools. Education in Timor-Leste, especially public schools, would continue to exclude people with hearing impairments due to the lack of facilities and policies in sign language interpretation.

The government of Timor-Leste, up to now, has not taken any policy and constructive solutions to provide access for persons with hearing impairments to access education. This lack of facilities has been barring persons with disabilities' rights from gaining knowledge through education. This explains the low level of literacy, high numbers of dropouts amongst persons with hearing impairments.

It has to be reiterated that Timor-Leste has not fully recognized the importance of integrating a nation sign language to be used in schools. Such is a State's failure to enable an inclusive education system for persons with disabilities.

6. CONCLUSION AND RECOMMENDATIONS

The notion of "education for all" and inclusive education has yet to be achieved in Timor Leste Persons with hearing impairments, at present, still find it difficult to access education. Only two organizations provide sign language services in the country, AGAPE, and KDTL. These organizations aim to help persons with hearing impairment to hone their knowledge and skills through the use of ASL (American Sign Language). Access to this existing sign language allows students with hearing impairments to be able to access schools, specifically special schools (Ensino konkorente). Despite such gains, the government still does not recognize ASL as a formal means for communication and learning. This is because it uses American English and not Tetum, which is the national language.

The government of Timor-Leste, through the Ministry of Education, had initiated ways to develop sign language based on Tetum. However, not much had been done as of yet. Students with hearing impairments continue to be vulnerable due to the lack of such an inclusive facility. The lack of national sign language standards and mechanisms has exacerbated their right to fully access quality education.

This paper argues that the government failed to fulfill its citizens' right to access to education because of not recognizing the existing sign language (ASL.) Also, the reluctance of the policymakers to develop a national sign language had made it more difficult for persons with hearing impairments to access schools.

This paper found that the only way to fully fil and guarantee the right of persons with hearing impairment is by creating a national sign language and to mainstream this in the educational system. It further argues that the government of Timor-Leste should prioritize a new policy on national sign language for persons with hearing

impairment. As there is an existing sign language being used and promoted at the moment, the government should better collaborate with them to achieve this endeavor.

Sign language development can help the government of Timor-Leste enable a policy for inclusive education, which has been promoted by the ministry of education in 2017. To develop a new sign language in Timor-Leste, the ministry of education should closely work with DPOs, Civil Society Organizations groups, academic institutions, and, most importantly, persons with disabilities themselves. Through this, more young people are able to learn and contribute to the development of this young democratic nation.

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TACTICS OF ENVIRONMENTAL MOVEMENT UNDER AUTHORITARIAN REGIME: A CASE STUDY OF SEBAI CONSERVATION GROUP, YASOTHON PROVINCE, THAILAND

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ABSTRACT

This thesis studies the political context in an authoritarian regime that has influenced the mobilization of social movement resources and the social movement tactics of the Sebai Conservation Group who has protested the sugar factory and the biomass power plant. This study uses qualitative methods including documentary research, in-depth interviews, participatory and non-participatory observation. This thesis argues that the authoritarian government has centralized economic development policies related to increased sugarcane plantation areas and sugar production. These policies accelerate approval process by reducing operational procedures to facilitate and benefit large groups of companies. Those process leave out participation of people who lived near the sugar factory project. The Sebai Conservation Group use various tactics in such a context. The contentious activities were restricted by, in particular, the Article 44 of the Interim Constitution which gave almost absolute power to the head of the National Council for Peace and Order (NCPO) and the Public Assembly Act (B.E. 2015). Considering these conditions, the group changed their strategy to focus on livelihoods issue and on integrating Isan culture into movement activities to sustain the vibe of the movement.

Keyword: Environmental Social Movements, Authoritarian Regime, Sugar Factory and Biomass Power Plant, Resources Mobilization, Tactics.

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ยุทธวิธีการเคลื่อนไหวด้านสิ่งแวดล้อมภายใต้ระบอบเผด็จการทหาร ศึกษากลุ่มอนุรักษ์ลำน้ำเขบาย จังหวัดยโสธร

บทคัดย่อ

วิทยานิพนธ์ฉบับนี้ศึกษานโยบายการพัฒนาเศรษฐกิจของรัฐบาลเผด็จการทหารที่ส่งผลต่อยุทธวิธีการต่อสู้ของขบวนการเคลื่อนไหวทางสังคม โดยเลือกศึกษากลุ่มอนุรักษ์ลำน้ำเขบาย จังหวัดยโสธร ซึ่งเป็นกลุ่มชาวบ้านที่ออกมาเคลื่อนไหวคัดค้านโครงการก่อสร้างโรงงานน้ำตาลและโรงไฟฟ้าชีวมวล งานวิจัยชิ้นนี้ใช้วิธีการวิจัยเชิงคุณภาพ ประกอบด้วยการวิจัยเอกสาร การสัมภาษณ์เชิงลึก การสังเกตการณ์อย่างมีส่วนร่วมและไม่มีส่วนร่วม งานวิจัยพบว่า รัฐบาลภายใต้ระบอบเผด็จการทหารมีศักยภาพในการรวมศูนย์อำนาจการตัดสินใจในนโยบายการพัฒนาเศรษฐกิจที่เกี่ยวข้องกับอุตสาหกรรมอ้อยและน้ำตาลทราย ผ่านการเร่งรัดและลดขั้นตอนการดำเนินการทางกฎหมาย รวมทั้งตัดการมีส่วนร่วมของประชาชนเพื่ออำนวยความสะดวกและเอื้อประโยชน์ต่อกลุ่มทุนขนาดใหญ่ การใช้อำนาจจำกัดสิทธิเสรีภาพยังส่งผลกระทบต่อการรวมตัวเป็นขบวนการเคลื่อนไหวเพื่อต่อต้านโครงการ ยุทธวิธีการเคลื่อนไหวในระยะแรกใช้วิธีการเคลื่อนไหวแบบตั้งรับ การยื่นหนังสือร้องเรียน ชุมนุม กัดดัน และการสร้างเครือข่ายผู้คัดค้านโรงงานน้ำตาลและโรงไฟฟ้าชีวมวลในพื้นที่ภาคอีสานเพื่อเรียกร้องการแก้ไขปัญหาระดับนโยบาย แต่ข้อเรียกร้องไม่เป็นผลสำเร็จ เนื่องจากเผชิญกับมาตรการจำกัดสิทธิเสรีภาพของขบวนการเคลื่อนไหวภายใต้ มาตรา 44, พระราชบัญญัติการชุมนุมสาธารณะ พ.ศ. 2558 ทำให้การมีส่วนร่วมในกิจกรรมการเคลื่อนไหวเป็นไปอย่างจำกัด นำมาสู่การปรับเปลี่ยนยุทธวิธีการเคลื่อนไหวให้สอดคล้องกับวิถีการดำรงชีวิตประจำวันที่เชื่อมโยงกับการพึ่งพิงฐานทรัพยากร มาผลิตสร้างในขบวนการเคลื่อนไหวเพื่อแสดงถึงการปฏิเสธการเข้ามาของอุตสาหกรรมโรงงานน้ำตาลและต้องการกลับคืนสู่รูปแบบวิถีการดำรงชีวิตแบบดั้งเดิมและการปกป้องฐานทรัพยากรของชุมชนให้คงอยู่ต่อไป

คำสำคัญ: ขบวนการเคลื่อนไหวทางสิ่งแวดล้อม, ระบอบเผด็จการทหาร, โรงงานน้ำตาลและโรงไฟฟ้าชีวมวล, การระดมทรัพยากร, ยุทธวิธีการเคลื่อนไหว.

1. บทนำ

การศึกษาขบวนการเคลื่อนไหวทางสังคมที่ผ่านมาจำนวนมากเป็นการศึกษาขบวนการเคลื่อนไหวทางสังคมภายใต้ระบอบการเมืองปกติ มุ่งสนใจการก่อเกิดและพัฒนาการของขบวนการเคลื่อนไหว ยุทธวิธีที่ใช้ในขบวนการเคลื่อนไหว ขบวนการเคลื่อนไหวได้สร้างผลสำเร็จ ผลสะท้อนอย่างไรบ้าง ซึ่งการเคลื่อนไหวในระบอบการเมืองแบบปกติไม่สามารถอธิบายได้อย่างเพียงพอต่อกรณีของการเคลื่อนไหวในระบอบการเมืองแบบปิดที่สภาวะทางการเมืองได้เปลี่ยนแปลงไปสู่ระบอบเผด็จการทหาร หลังจากเกิดการรัฐประหารโดยคณะรักษาความสงบแห่งชาติ (คสช.) ในปี พ.ศ. 2557 แม้ว่าจะมีผู้ศึกษาขบวนการเคลื่อนไหวทางสังคมภายใต้ระบอบเผด็จการทหารอยู่บ้างแล้ว ข้อสรุปที่ได้มีทั้งขบวนการเคลื่อนไหวทางสังคมที่ประสบผลสำเร็จและไม่ประสบผลสำเร็จในข้อเรียกร้อง ที่เป็นเช่นนี้เพราะแต่ละขบวนการฯ มีการเคลื่อนไหวในประเด็นที่แตกต่างกันออกไป ความแตกต่างรายประเด็นของการเคลื่อนไหวนี้ย่อมส่งผลให้แต่ละขบวนการเคลื่อนไหวทางสังคมมีลักษณะโครงสร้างองค์กร การระดมทรัพยากรและยุทธวิธีการเคลื่อนไหวที่แตกต่างกัน เนื่องจากขบวนการเคลื่อนไหวทางสังคมไม่ได้ทำงานในภาวะสุญญากาศแม้ว่าจะก่อกำเนิดภายใต้ระบอบประชาธิปไตยหรือระบอบเผด็จการทหารก็ตาม

ภายใต้โครงสร้างโอกาสทางการเมืองที่รัฐบาลเผด็จการทหารมีศักยภาพและมีความเข้มแข็งในการรวมศูนย์อำนาจตัดสินใจทางนโยบาย การใช้มาตรการทางกฎหมายเพื่ออำนวยความสะดวกในการดำเนินนโยบายทางเศรษฐกิจผ่านกรอบทางกฎหมาย เช่น การใช้อำนาจตามมาตรา 44 ของหัวหน้าคณะรักษาความสงบแห่งชาติ (คสช.) ผ่านการเร่งรัดดำเนินการในรูปแบบโครงการสานพลังประชารัฐเพื่อเศรษฐกิจฐานราก ซึ่งเป็นการประสานความร่วมมือระหว่างรัฐบาลเผด็จการและกลุ่มทุนที่เข้าร่วมโครงการฯ สะท้อนความเป็นหนึ่งเดียวกันระหว่างรัฐบาลเผด็จการทหารและกลุ่มทุนขนาดใหญ่ในการดำเนินกิจกรรมทางเศรษฐกิจ โดยเฉพาะการเร่งรัดนโยบายขยายโรงงานน้ำตาลในทุกท้องที่ทั่วราชอาณาจักรประกอบกับนโยบายผังเมืองที่พ่วงให้เกิดการสร้างโรงไฟฟ้าชีวมวล เป็นปฏิบัติการทางนโยบายภายใต้รัฐบาลเผด็จการทหารที่ส่งผลกระทบต่อการมีส่วนร่วมต่อกระบวนการมีตัดสินใจในนโยบายสาธารณะของประชาชนผู้มีส่วนได้เสียในพื้นที่ใกล้เคียงโครงการอุตสาหกรรมดังกล่าว รวมทั้งไม่เปิดโอกาสให้ประชาชนได้รับทราบข้อมูลข่าวสารที่แท้จริง เช่นเดียวกับกรณีการเคลื่อนไหวคัดค้านของขบวนการชาวบ้านในนามกลุ่มอนุรักษ์ลำน้ำเขบาย จังหวัดยโสธร หนึ่งในไม่กี่ขบวนการชาวบ้านที่ก่อกำเนิดขึ้นในบริบททางการเมืองแบบเผด็จการทหารที่ลุกขึ้นมากระทำรวมหมู่ (collective action) และระดมทรัพยากร (resource mobilization) เพื่อเข้าร่วมในขบวนการเคลื่อนไหว จนเกิดเป็นขบวนการเคลื่อนไหวทางสังคมด้านสิ่งแวดล้อมเพื่อปกป้องฐานทรัพยากร ของชุมชนและตั้งคำถามถึงความชอบธรรมของกระบวนการมีส่วนร่วมตัดสินใจกำหนดอนาคตชุมชน

จากปรากฏการณ์การเคลื่อนไหวของกลุ่มอนุรักษ์ลำน้ำเขบายนำมาสู่คำถามวิจัย 3 ประการ *ประการแรกคือ* นโยบายการพัฒนาเศรษฐกิจของคณะรักษาความสงบแห่งชาติ (คสช.) ส่งผลต่อกลุ่มอนุรักษ์ลำน้ำเขบายอย่างไร *ประการที่สองคือ* การรวมตัวของสมาชิกกลุ่มอนุรักษ์ลำน้ำเขบายในบริบททางการเมืองแบบเผด็จการทหารเป็นอย่างไร *ประการที่สามคือ* ยุทธวิธีการต่อสู้ของกลุ่มอนุรักษ์ลำน้ำเขบายในบริบททางการเมืองแบบเผด็จการทหารเป็นอย่างไร เพื่อตอบคำถามวิจัยข้างต้นจึงนำกรอบแนวคิดทฤษฎีสถาบันแนวคิดสำคัญมาเป็นกรอบในการศึกษา ได้แก่ ทฤษฎีการระดมทรัพยากร (resource mobilization theory) มุ่งเน้นการวิเคราะห์องค์กรการเคลื่อนไหวทางสังคมซึ่งมีหน้าที่ในการระดมคนและทรัพยากร รวมทั้งคิดค้นยุทธวิธีการต่อสู้ให้เหมาะสมกับสถานการณ์เพื่อให้บรรลุเป้าหมายหรือความต้องการขบวนการฯ ภายใต้การใช้ยุทธวิธีการต่อสู้ในพื้นที่และช่องทางระบบการเมืองปกติ นำไปสู่การต่อต้านขัดขวางและการปราบปรามโดยรัฐหรือฝ่ายต่อต้าน โดยยุทธวิธีที่ใช้คือการใช้การกระทำรวมหมู่ (collective action) ด้วยยุทธวิธีขัดขวางระบบปกติ (disruptive tactics) เช่น การระดมมวลชนและผู้สนับสนุน (mass

mobilization) และการสร้างอัตลักษณ์ร่วม (collective identity) (ประภาส ปิ่นตบแต่ง, 2552: 77-84) งานวิจัยชิ้นนี้จะนำทฤษฎีการระดมทรัพยากรมาวิเคราะห์ทำความเข้าใจการก่อเกิดและพัฒนาการของกลุ่มอนุรักษ์ลำน้ำเซบาย ยุทธวิธีในการระดมมวลชนให้เข้ามามีส่วนร่วมในกลุ่มฯ ถึงแม้ว่าทฤษฎีการระดมทรัพยากรจะได้รับความนิยมในการศึกษาขบวนการเคลื่อนไหวทางสังคมหลายชิ้น แต่มักจะให้น้ำหนักไปที่องค์กรการเคลื่อนไหวมากเกินไป ทำให้มองการระดมมวลชนเข้าร่วมขบวนการเคลื่อนไหวแบบมีลักษณะคงที่ตายตัว ซึ่งขบวนการเคลื่อนไหวทางสังคมจะประสบความสำเร็จได้นั้นไม่ได้ขึ้นอยู่กับการอธิบายตามทฤษฎีการระดมทรัพยากรเพียงอย่างเดียว เนื่องจากขบวนการเคลื่อนไหวทางสังคมไม่ได้ทำงานอยู่ในภาวะสุญญากาศ จึงต้องอาศัยกรอบแนวคิดที่สองมาวิเคราะห์คือทฤษฎีกระบวนการทางการเมือง (political process theory) ซึ่งเป็นแนวคิดที่ขยายการวิเคราะห์ปัจจัยภายในองค์กรการเคลื่อนไหวทางสังคมมาสู่การวิเคราะห์ปัจจัยภายนอกองค์กรการเคลื่อนไหว ได้แก่ โครงสร้างโอกาสทางการเมือง (political opportunity structure) ฝ่ายต่อต้านขบวนการทางสังคม (counter-movement) (ประภาส ปิ่นตบแต่ง, 2552: 93-94) ขณะเดียวกันตามทัศนะของ McAdam (1982 อ้างใน สมชัย ภัทรธนานันท์, 2559: 147) ซึ่งว่าปัจจัยสามประการที่ส่งผลต่อการก่อกำเนิดของขบวนการเคลื่อนไหวทางสังคมประกอบด้วย โครงสร้างโอกาสทางการเมือง (political opportunity structure) ความเข้มแข็งขององค์กรภายในชุมชน (indigenous organizational strength) และปัจจัยด้านการตระหนักรู้ (cognitive liberation) แนวคิดที่สามที่จะนำมาวิเคราะห์นี้คือทฤษฎีการสร้างกรอบ (framing theory) เป็นการนำมิติทางวัฒนธรรมมาวิเคราะห์เพื่อขยายมิติของการระดมทรัพยากรที่ไม่ใช่เป็นตัวเงิน แรงงาน และเวลา แต่เป็นการระดมการสนับสนุนผ่านการเชื่อมโยงในมิติวัฒนธรรม ความคิด ความเชื่อ และทัศนคติ ผ่านการสร้างความหมายให้กับสิ่งที่ขบวนการฯ เรียกร้อง เพื่อให้เห็นภาพการไหลเวียนของผู้คนที่เข้ามาสนับสนุนและมีส่วนร่วมในขบวนการเคลื่อนไหว โดยกระทำผ่านกรอบโครงหลัก 3 ประการ (David Snow & Robert Benford, 1986 อ้างใน ประภาส ปิ่นตบแต่ง, 2552: 115-116) ประการแรก การสร้างกรอบในการวินิจฉัยปัญหา (diagnostic framing) ประการที่สอง การสร้างกรอบคาดคะเนทางออกของปัญหา (prognostic framing) และประการที่สาม การสร้างกรอบในการจูงใจ (motivational framing)

2. ความสำคัญของลำเซบาย

ลำเซบายเป็นแม่น้ำสาขาย่อยของแม่น้ำมูล มีความยาวประมาณ 233 กิโลเมตร เป็นแม่น้ำที่มีความอุดมสมบูรณ์และเอื้อให้ชาวบ้านที่อาศัยริมฝั่งลำเซบายได้พึ่งพิงอาศัยฐานทรัพยากรจากลำเซบายมาหลายชั่วอายุคน นอกจากนี้ลำเซบายยังเป็นเส้นแบ่งการปกครองของจังหวัดยโสธรและจังหวัดอำนาจเจริญ พื้นที่บ้านเชียงเพ็ง ตำบลเชียงเพ็ง อำเภอบำเหน็จ จังหวัดยโสธร ซึ่งเป็นหน่วยการวิเคราะห์ของงานวิจัยชิ้นนี้ตั้งอยู่ตอนบริเวณตอนกลางของลำเซบาย ชาวบ้านสามารถดำรงชีวิตโดยการจับสัตว์น้ำได้ตลอดปี สภาพเศรษฐกิจในชุมชนส่วนใหญ่ชาวบ้านประกอบอาชีพเกษตรกรรม แต่ชาวบ้านต้องประสบปัญหาการขาดแคลนน้ำเพื่อใช้ในการอุปโภคและบริโภค ปัญหาคุณภาพน้ำประปาที่มีสีขุ่นเหลือง รวมทั้งปัญหาการขาดแคลนน้ำในพื้นที่การเกษตรซึ่งชาวบ้านต้องอาศัยน้ำจากลำเซบายในการเพาะปลูกข้าว กรณีโรงงานน้ำตาลและโรงไฟฟ้าชีวมวลที่มีแผนก่อสร้างใกล้ชุมชนทำให้ชาวบ้านเกิดคำถามและข้อห่วงกังวลถึงผลกระทบที่จะเกิดขึ้นกับวิถีชีวิต ฐานทรัพยากรธรรมชาติดิน น้ำ ป่า และลำเซบาย หากต้องมีการแย่งชิงน้ำจากลำเซบายป้อนเข้าสู่โรงงานน้ำตาลและโรงไฟฟ้าชีวมวล

3. นโยบายการพัฒนาเศรษฐกิจของคณะกรรมการรักษาความสงบแห่งชาติ (คสช.) ที่ส่งผลต่อกลุ่มอนุรักษ์ลำน้ำเซบาย

การศึกษาพบว่านโยบายพัฒนาเศรษฐกิจภายใต้รัฐบาลคณะกรรมการรักษาความสงบแห่งชาติ (คสช.) โดยเฉพาะนโยบายที่เกี่ยวข้องกับอุตสาหกรรมอ้อยและน้ำตาลทราย เริ่มต้นขึ้นจากมติคณะรัฐมนตรีที่เห็นชอบตามมติที่ประชุมกรรมการร่วมภาครัฐและเอกชนเพื่อแก้ไขปัญหาทางเศรษฐกิจ (กรอ.) ครั้งที่ 1/2558 ว่าด้วยร่างการขับเคลื่อนยุทธศาสตร์สินค้าเกษตรเป็นรายพืชเศรษฐกิจ 4 สินค้า (roadmap) คือ ข้าวโพดเลี้ยงสัตว์ มันสำปะหลัง ปาล์มน้ำมัน และอ้อย สารสำคัญของร่างยุทธศาสตร์ฉบับนี้เป็นการสนับสนุนให้เกษตรกรหันมาปลูกพืชใช้น้ำน้อยทดแทนการปลูกข้าวในพื้นที่น้ำไม่เหมาะสม เพื่อให้สอดคล้องกับยุทธศาสตร์ของคณะกรรมการรักษาความสงบแห่งชาติ สำนักงานคณะกรรมการอ้อยและน้ำตาลทราย กระทรวงอุตสาหกรรม จึงกำหนดแผนยุทธศาสตร์อ้อยและน้ำตาลทราย 10 ปี (พ.ศ. 2558 - 2569) ทำให้ต้องเพิ่มพื้นที่ปลูกอ้อยจากเดิม 10.53 ล้านไร่ เป็น 16 ล้านไร่ภายในระยะเวลา 10 ปี (กระทรวงอุตสาหกรรม, 2559) หลังจากนั้นกระทรวงอุตสาหกรรมได้ออกประกาศกระทรวงอุตสาหกรรม เรื่อง การให้ตั้งโรงงานน้ำตาลในทุกท้องที่ทั่วราชอาณาจักร พ.ศ. 2558 และออกประกาศเรื่องเดียวกันในปี พ.ศ. 2559 ประกาศกระทรวงอุตสาหกรรมดังกล่าวไม่ได้ระบุถึงการมีส่วนร่วมของประชาชนในการรับรู้ข้อมูล ข่าวสารเกี่ยวกับการเข้ามาของอุตสาหกรรมใกล้ชุมชน

ภายใต้โครงสร้างอำนาจระบอบการปกครองแบบรวมศูนย์อำนาจการตัดสินใจในการจัดการทรัพยากรธรรมชาติและการพัฒนาเศรษฐกิจไว้ที่รัฐบาลเผด็จการทหารส่งผลให้รัฐบาลมีความสัมพันธ์ที่เอื้อผลประโยชน์ต่อกลุ่มทุนขนาดใหญ่ผ่าน “โครงการพระราชดำริเพื่อเศรษฐกิจฐานราก” มีเป้าหมายเพื่อสร้างความเข้มแข็งของเศรษฐกิจระดับท้องถิ่นผ่านความร่วมมือของคณะทำงาน 12 กลุ่มที่มาจากภาครัฐ ภาคเอกชน และภาคประชาสังคม โดยมีนายสมคิด จาตุศรีพิทักษ์ ดำรงตำแหน่งหัวหน้าทีมภาครัฐ และนายอิสระ ว่องกุศลกิจ ดำรงตำแหน่งหัวหน้าทีมภาคเอกชน กลุ่มทุนใหญ่ที่ร่วมลงนามในข้อตกลงสนับสนุนโครงการพระราชดำริประกอบด้วย 24 กลุ่มทุน (ประจักษ์และวิระยุทธ, 2561: 24-25) ในส่วนของคณะทำงานที่สอดคล้องกับอุตสาหกรรมอ้อยและน้ำตาลทรายเกี่ยวข้องกับคณะทำงานกลุ่ม D6 การพัฒนาการเกษตรสมัยใหม่ภายใต้การนำของนายอิสระ ว่องกุศลกิจ ประธานกรรมการกลุ่มมิตรผล (सानพลังประชารัฐ, 2559) ผลจากนโยบายसानพลังประชารัฐเพื่อเศรษฐกิจฐานรากส่งผลให้จังหวัดอำนาจเจริญมีแผนดำเนินการเปลี่ยนพื้นที่ปลูกข้าวเป็นพื้นที่ปลูกอ้อยตามข้อตกลงที่ได้ลงนามใน MoU ระหว่างกลุ่มมิตรผลและหน่วยงานราชการส่วนท้องถิ่น จำนวน 7,323 ไร่ (มติชน, 2559) ขณะเดียวกันช่วงเวลาของโครงการดังกล่าวกลุ่มมิตรผลได้ดำเนินการยื่นคำขอตั้งโรงงานน้ำตาลและโรงไฟฟ้าชีวมวลแห่งใหม่ที่จังหวัดอำนาจเจริญในชื่อบริษัท น้ำตาลมิตรภาพสินธุ์ จำกัด (อำนาจเจริญ) มีกำลังผลิตน้ำตาล 20,000 ตันอ้อยต่อวัน และโรงไฟฟ้าชีวมวลในนามบริษัท มิตรผล ไบโอ – เพาเวอร์ (อำนาจเจริญ) จำกัด มีกำลังการผลิตไฟฟ้า 61 เมกะวัตต์ กลุ่มมิตรผลเริ่มกว้านซื้อที่ดินที่อยู่ใกล้ลำเซบายในเขตพื้นที่หมู่ที่ 9 บ้านน้ำปลีก ตำบลน้ำปลีก อำเภอเมือง จังหวัดอำนาจเจริญ ซึ่งเป็นที่ดินที่อยู่ฝั่งตรงข้ามกับบ้านเชียงเพ็งหมู่ที่ 1 และ หมู่ที่ 7 ตำบลเชียงเพ็ง อำเภอป่าติ้ว จังหวัดยโสธร มีระยะห่างจากลำเซบายเพียง 3 - 4 กิโลเมตร แผนดำเนินการสร้างโรงงานน้ำตาลและโรงไฟฟ้าชีวมวลมีความขัดแย้งกับสภาพความเป็นจริงของการใช้ประโยชน์จากการถือครองที่ดินของประชาชนในพื้นที่ซึ่งส่วนใหญ่ประกอบอาชีพเกษตรกรรมและขัดแย้งกับวิถีชีวิตของประชาชนที่อาศัยใกล้กับลำเซบาย พร้อมๆกันนั้นกระบวนการจัดทำรายงาน EIA ที่เริ่มจัดทำเพื่อรับฟังความคิดเห็นครั้งที่ 1 (ค.1) เมื่อเดือนสิงหาคม พ.ศ. 2559 ขาดการมีส่วนร่วมของประชาชนที่อาศัยอยู่ในพื้นที่รัศมี 5 กิโลเมตรของพื้นที่ตั้งโครงการ

ด้วยข้อจำกัดด้านระยะเวลาของการจัดทำรายงานการวิเคราะห์ผลกระทบสิ่งแวดล้อม (Environmental Impact Assessment Report: EIA) และการได้มาซึ่งใบอนุญาตประกอบกิจการโรงงาน (รง.4) ทำให้กระบวนการจัดทำ EIA เป็นไปอย่างเร่งรัดเพื่อให้โครงการโรงงานน้ำตาลและโรงไฟฟ้าชีวมวล สามารถเปิดกิจการรองรับผลผลิตอ้อยได้ทันในฤดูกาลผลิตปี 2560/2561

ซึ่งจะเริ่มเปิดฤดูกาลผลิตอ้อยในช่วงเดือนธันวาคม พ.ศ. 2560 และสิ้นสุดฤดูกาลผลิตในเดือนเมษายน พ.ศ. 2561 เป็นปฏิบัติการทางนโยบายภายใต้รัฐบาลเผด็จการทหารที่ส่งผลกระทบต่อการมีส่วนร่วมต่อกระบวนการมีมติตัดสินใจในนโยบายสาธารณะของประชาชนผู้มีส่วนได้เสียและชุมชนที่เกี่ยวข้องที่ได้บัญญัติรับรองสิทธิในการมีส่วนร่วมในกระบวนการจัดทำรายงาน EIA ในพระราชบัญญัติส่งเสริมและรักษาคุณภาพสิ่งแวดล้อมแห่งชาติ พ.ศ. 2535 รวมทั้งการใช้อำนาจตามมาตรา 44 ของหัวหน้าคณะรักษาความสงบแห่งชาติ (คสช.) ในการลดทอนเกณฑ์ทางกฎหมายและตวงวันกระบวนการจัดทำรายงาน EIA ในอุตสาหกรรมบางประเภทเพื่อสนับสนุนการตั้งโรงงานอุตสาหกรรม พร้อมกับการใช้มาตรการจำกัดสิทธิเป็นเครื่องมือในการควบคุมประชาชนไม่ให้ออกมาเคลื่อนไหวหรือชุมนุมสาธารณะจึงกลายเป็นชนวนปัญหาและความซับซ้อนใจให้กลุ่มอนุรักษ์ลำนํ้าเซบายออกมารวมกลุ่มเคลื่อนไหวคัดค้านโรงงานน้ำตาลและโรงไฟฟ้าชีวมวลที่จะเกิดใกล้ชุมชน

ภายในระยะเวลาเพียง 3 ปี (พ.ศ. 2558 - 2561) นโยบายด้านการพัฒนาเศรษฐกิจที่เกี่ยวข้องกับอุตสาหกรรมอ้อยและน้ำตาลทรายมีการดำเนินการอย่างต่อเนื่องและเร่งรัดกระบวนการเพื่อรองรับผลผลิตเข้าสู่ภาคอุตสาหกรรม แสดงถึงความสัมพันธ์ในรูปแบบการร่วมมือกันทางธุรกิจระหว่างรัฐบาลเผด็จการและกลุ่มทุนขนาดใหญ่ โดยรัฐบาลทำหน้าที่จัดสรรทรัพยากรและอำนวยความสะดวกทางนโยบายที่เอื้อให้แก่กลุ่มทุนก้าวเข้าสู่พื้นที่ชนบทเพื่อเป็นพี่เลี้ยงและกำกับดูแลการดำเนินการทางเศรษฐกิจให้เป็นไปในรูปแบบที่กลุ่มทุนต้องการ สะท้อนความเป็นหนึ่งเดียวกันระหว่างรัฐบาลเผด็จการทหารและกลุ่มทุนขนาดใหญ่ที่ผลักดันการดำเนินงานโครงการประชารัฐเพื่อเศรษฐกิจฐานราก รวมถึงการออกแบบนโยบายทางเศรษฐกิจไปในรูปแบบ “ระบบทุนนิยมแบบช่วงชั้น” (hierarchical capitalism) (ประจักษ์และวิระยุทธ, 2561:32-34) แสดงถึงวัฒนธรรมทางการเมืองและระบบการเมืองระดับชาติเป็นไปแบบวัฒนธรรมแบบกีดกัน ชัดขวางและปราบปราม (exclusive) ฝ่ายที่อยู่ตรงข้ามกับรัฐ (Kitschelt, 1986 อ้างใน ประภาส ปิ่นตบแต่ง, 2552: 104-110) เช่นเดียวกับกรณีการเคลื่อนไหวคัดค้านของขบวนการชาวบ้านในนามกลุ่มอนุรักษ์ลำนํ้าเซบาย จังหวัดยโสธร เป็นหนึ่งในไม่กี่ขบวนการชาวบ้านที่ก่อกำเนิดขึ้นในบริบททางการเมืองแบบเผด็จการทหาร โดยชาวบ้านลุกขึ้นมากระทำรวมหมู่ (collective action) และระดมทรัพยากร (resource mobilization) เพื่อเข้าร่วมในขบวนการเคลื่อนไหว จนเกิดเป็นขบวนการเคลื่อนไหวทางสังคมด้านสิ่งแวดล้อมเพื่อกำหนดเจตจำนงถึงความชอบธรรมในการปกป้องฐานทรัพยากรของชุมชน

4. การรวมตัวของกลุ่มอนุรักษ์ลำนํ้าเซบายภายใต้ระบอบเผด็จการทหาร

การระดมทรัพยากรเป็นเงื่อนไขสำคัญที่ทำให้ขบวนการเคลื่อนไหวทางสังคมสามารถพัฒนา เติบโต หรือนำไปสู่การถดถอยและล้มเหลวได้ นั่นก็คือ การไหลเวียนของคนประเภทต่างๆที่เข้าร่วมในขบวนการเคลื่อนไหว กลุ่มอนุรักษ์ลำนํ้าเซบายเป็นขบวนการชาวบ้านที่ก่อตั้งเมื่อปี พ.ศ. 2560 เป็นการรวมตัวของชาวบ้านหมู่ที่ 1 และหมู่ที่ 7 ตำบลเชียงเพ็ง อำเภอบัวแก้ว จังหวัดยโสธร ช่วงแรกของการจัดตั้งกลุ่มมีการระดมมวลชนผ่านสายสัมพันธ์เครือญาติและลักษณะทางกายภาพของชุมชนที่แบ่งออกเป็นคุ้ม รวมทั้งการระดมมวลชนตามกลุ่มอาชีพที่ตนสังกัดในชุมชน เช่น กลุ่มเกษตรกรอินทรีย์ กลุ่มสตรีทอเสื่อผือ กลุ่มประมงน้ำจืด กลุ่มตัดเย็บผลิตภัณฑ์จากผ้า เป็นต้น กลุ่มอาชีพเหล่านี้มีความสำคัญต่อการระดมทรัพยากรคนเข้าร่วมในองค์กรการเคลื่อนไหวและมีความสำคัญต่อพัฒนาการการเคลื่อนไหวของกลุ่มอนุรักษ์ลำนํ้าเซบาย ในระยะต่อมา หลังจากที่นักพัฒนาเอกชนจากเครือข่ายทรัพยากรธรรมชาติและสิ่งแวดล้อมภาคอีสานเข้ามาสร้างกระบวนการเรียนรู้ให้กับสมาชิกและกระตุ้นให้สมาชิกวิวินิจฉัยและวิเคราะห์ปัญหาาร่วมกัน ทำให้กลุ่มอนุรักษ์ลำนํ้าเซบายมีเป้าหมายการเคลื่อนไหวที่ชัดเจนขึ้นและมีกรจัดตั้งองค์กรที่เข้มแข็งขึ้น มี

การระดมมวลชนสนับสนุนจากพันธมิตรเครือข่ายที่หลากหลายผ่านเครือข่ายของนักพัฒนาเอกชน สมาชิกส่วนใหญ่เห็นว่าปัญหาการขาดแคลนน้ำระหว่างชาวบ้านที่อาศัยอยู่สองฟากฝั่งลำน้ำเซบายมักจะเกิดขึ้นเป็นประจำในช่วงฤดูแล้งของทุกปี ประเด็นการแย่งชิงทรัพยากรน้ำและประเด็นการปกป้องฐานทรัพยากรลำเซบายจึงเป็นเครื่องมือที่กลุ่มอนุรักษ์ลำน้ำเซบายใช้ในการระดมมวลชนให้เข้าร่วมกลุ่มฯ แนวทางการเคลื่อนไหวของกลุ่มอนุรักษ์ลำน้ำเซบายช่วงแรกเป็นการประกาศเจตนารมณ์การคัดค้านโรงงานน้ำตาลและโรงไฟฟ้าชีวมวลผ่านป้ายผ้าณรงค์บริเวณปากทางเข้าหน้าหมู่บ้านบนถนนสายหลักและถนนสายรองในหมู่บ้านป้ายผ้าณรงค์นับเป็นเครื่องมือสำคัญที่ใช้สื่อสารกับคนในชุมชนและคนภายนอกได้รู้ว่าชาวบ้านกลุ่มนี้กำลังคัดค้านโรงงานน้ำตาลและโรงไฟฟ้าชีวมวล

4.1 โครงสร้างตัดสินใจของกลุ่มอนุรักษ์ลำน้ำเซบายกับมาตรการจำกัดสิทธิของรัฐบาลเผด็จการทหาร

ข้อจำกัดด้านระยะเวลาและการเร่งรัดกระบวนการจัดทำรายงาน EIA เป็นปัจจัยหนึ่งที่ทำให้การตัดสินใจของกลุ่มอนุรักษ์ลำน้ำเซบายมีลักษณะแบบรวมศูนย์ภายใต้การนำของนักพัฒนาเอกชนที่เข้ามาทำงานกับชุมชนเนื่องจากต้องการการตัดสินใจดำเนินการอย่างรวดเร็วให้ทันกับการกระบวนการ EIA โดยมีข้อเรียกร้องให้สำนักนโยบายและแผนทรัพยากรธรรมชาติและสิ่งแวดล้อม (สผ.) ทบทวนกระบวนการจัดทำรายงาน EIA ใหม่ตั้งแต่เริ่มกระบวนการ เพื่อสร้างกระบวนการมีส่วนร่วมของประชาชนที่อยู่ในเกณฑ์พื้นที่รัศมี 5 กิโลเมตรของที่ตั้งโรงงานน้ำตาลและโรงไฟฟ้าชีวมวล ขณะเดียวกันกลุ่มอนุรักษ์ลำน้ำเซบายเป็นองค์กรการเคลื่อนไหวที่ตั้งขึ้นมาใหม่ แกนนำและสมาชิกส่วนใหญ่ไม่มีประสบการณ์ในขบวนการเคลื่อนไหว มาก่อน โครงสร้างการตัดสินใจของกลุ่มอนุรักษ์ลำน้ำเซบายจึงมีลักษณะรวมศูนย์และเป็นผู้นำเดี่ยว (single leadership) ทำให้แกนนำกลุ่มอนุรักษ์ลำน้ำเซบายมีความเสี่ยงต่อการกลายเป็นเป้าหมายของการถูกโจมตีหรือดำเนินคดีจากฝ่ายต่อต้านขบวนการ (counter-movement) รวมทั้งการถูกควบคุมด้วยมาตรการทางกฎหมายของรัฐบาลเผด็จการทหาร ซึ่งมีการควบคุมและปราบปรามการแสดงออกของขบวนการชาวบ้านอยู่ทั่วทุกภูมิภาคของประเทศไทย (ดูเพิ่มเติม ศูนย์ทนายความเพื่อสิทธิมนุษยชน. (2562). นิตริฐที่พังทลาย: รายงาน 4 ปี ภายใต้ คสช. สิทธิมนุษยชนและผลพวงรัฐประหารต่อสังคมไทย) “ช่วงแรกๆมีชายแปลกหน้ามาวนเวียนที่หน้าบ้านบ่อยครั้ง บางครั้งเข้ามาถ่ายรูปบ้านและสอบถามเพื่อนบ้านว่าเราเป็นใคร ทำงานอะไร บางครั้งก็ขับรถวนไปวนมาในซอยชาวบ้านก็ยังพูดแซวว่าเดี๋ยวทหารก็มา แม้กระทั่งคนบ้านเดียวกันก็พูดว่าพวกมันคัดค้านเดี๋ยวทหารก็มาจับ คัดค้านยังไงเขาก็มาสร้างจนได้” (นพพร เนินทราย, แกนนำกลุ่มอนุรักษ์ลำน้ำเซบาย, สัมภาษณ์, 5 มีนาคม 2562)

การเข้ามาของชายแปลกหน้าที่ว่านี่คือเจ้าหน้าที่จากกองอำนวยการรักษาความมั่นคงภายในราชอาณาจักร (กอ.รมน.) ถูกแต่งตั้งภายใต้การใช้อำนาจพิเศษมาตรา 44 ออกคำสั่งหัวหน้า คสช. ฉบับที่ 51/2560 ทำให้เจ้าหน้าที่ทหารเข้ามามีบทบาทในภาคพลเรือนมากขึ้น การจำกัดกรอบทางกฎหมายที่จำกัดการเคลื่อนไหวของขบวนการชาวบ้าน ซึ่งเป็นกฎหมายที่กำหนดขึ้นมาเพื่อเอาผิดกับคนที่จัดการชุมนุมโดยเฉพาะคำสั่ง คสช. ฉบับที่ 3/2558 ห้ามชุมนุมทางการเมืองที่มีจำนวนตั้งแต่ 5 คนขึ้นไปและพระราชบัญญัติการชุมนุมสาธารณะ พ.ศ. 2558 กฎหมายนี้มีหลายมาตราที่เกี่ยวข้องกับผู้จัดการชุมนุม โดยเฉพาะให้ผู้จัดการชุมนุมต้องแจ้งการชุมนุมต่อตำรวจในท้องที่ล่วงหน้า 24 ชั่วโมง (ไอลอร์, 2561) ด้วยการจำกัดกรอบทางกฎหมายดังกล่าวทำให้การระดมมวลชนในช่วงการจัดตั้งความคิดเป็นไปอย่างจำกัด ชาวบ้านส่วนใหญ่มีความหวาดกลัวว่าหากรวมกลุ่มจัดตั้งขึ้นมาจะสูญเสียชีวิตหรือถูกข่มขู่ทางเมือง “ทหารเข้ามาถามทำไมเราต้องคัดค้าน ไม่กลัวหรือ พอเราอธิบายจุดประสงค์ที่เราคัดค้านไปเขาก็บอกว่าขอความร่วมมือไม่ออกไปประท้วงได้ไหม มันจะทำให้เหนื่อย ถ้าจะไปเขาขอให้เราแจ้งเขาก่อน เขาจะมาช่วยดูแลความปลอดภัยให้เรา” (วาสนา วิเศษ, อดีตครูโรงเรียนบ้านเชียงเพ็ง, สัมภาษณ์, 9 มีนาคม 2562) การใช้มาตรการกฎหมายในการจำกัดสิทธิของขบวนการชาวบ้านข้างต้น สะท้อนให้เห็นว่าการแสดงออกทางการเมืองหรือการชุมนุมเคลื่อนไหวโดยสันติวิธีในระบบการเมืองปกติ

กลายเป็นเรื่องความมั่นคงของรัฐ การตั้งหน่วยงานความมั่นคงขึ้นมาในนาม กอ.รมน. ประจําการอยู่ทั่วทุกจังหวัดในประเทศไทย เพื่อสอดส่องการชุมนุมและการทำกิจกรรมเคลื่อนไหวของขบวนการชาวบ้าน ส่งผลให้การมีส่วนร่วมในกิจกรรมการเคลื่อนไหวของกลุ่มอนุรักษ์ลำน้ำเซบายเป็นไปอย่างจำกัด นี่คือนักขบวนการหนึ่งภายหลังการรัฐประหารคือการสถาปนาอำนาจแบบเบ็ดเสร็จของรัฐบาลเผด็จการทหาร การเคลื่อนไหวในพื้นที่สาธารณะของกลุ่มอนุรักษ์ลำน้ำเซบายถูกแทรกแซงและถูกคุกคามในการใช้สิทธิเสรีภาพการแสดงออกและการชุมนุม ถึงแม้ว่าจะเป็น การเคลื่อนไหวต่อสู้การเรียกร้องในประเด็นการปกป้องฐานทรัพยากรธรรมชาติและสิ่งแวดล้อม หรือประเด็นวิถีชีวิตของชาวบ้าน

4.2 กระบวนการเรียนรู้ของกลุ่มอนุรักษ์ลำน้ำเซบาย

ถึงแม้ว่ากลุ่มอนุรักษ์ลำน้ำเซบายจะเป็นที่จับตามองจากเจ้าหน้าที่รัฐ กระนั้นก็ตามแนวทางการเคลื่อนไหวของกลุ่มอนุรักษ์ลำน้ำเซบายยังคงดำเนินต่อไปเพื่อระดมมวลชนเข้ามาสนับสนุนกลุ่มฯ พัฒนาการเรียนรู้ของแกนนำและสมาชิกกลุ่มฯ ไม่ว่าจะเป็นกระบวนการเรียนรู้จากสถานการณ์การชุมนุมต่อสู้ การยื่นหนังสือร้องเรียนไปยังหน่วยงานรัฐที่ไม่รู้จักมาก่อน การเรียนรู้ในสถานการณ์ปกติจากการประชุมประจำสัปดาห์เพื่อถอดบทเรียนหลังจากเสร็จสิ้นกิจกรรม กิจกรรมการเดินรณรงค์ชี้แจงให้สาธารณชนได้รับทราบและเข้าใจถึงปัญหาของการที่กลุ่มอนุรักษ์ลำน้ำเซบายออกมาเคลื่อนไหวคัดค้าน ประเด็นที่ใช้ในการเดินรณรงค์ให้ความรู้และบอกเล่าเรื่องราวการต่อสู้ของพวกเขาต่อสาธารณชน เช่น ประเด็นพื้นที่ตั้งโรงงานไม่เหมาะสม กระบวนการ EIA ไม่ชอบธรรม และการปกป้องฐานทรัพยากรลำเซบาย ทำให้กลุ่มอนุรักษ์ลำน้ำเซบายสามารถขยายฐานสมาชิกในหมู่บ้านอื่นๆ ในตำบลเชียงเพ็งได้ในเวลาต่อมา โดยเฉพาะบ้านเซ หมู่ที่ 2 บ้านเซข่ง หมู่ที่ 4 นอกจากนี้กลุ่มอนุรักษ์ลำน้ำเซบายพัฒนากระบวนการเรียนรู้ด้านกฎหมายจากเครือข่ายนักพัฒนาเอกชนที่ทำงานด้านกฎหมายสิ่งแวดล้อม ขณะเดียวกันความต่อเนื่องของการสร้างกิจกรรมการเคลื่อนไหวนับว่ามีส่วนสำคัญที่ช่วยสร้างกระบวนการเรียนรู้และเกิดการพัฒนาจิตสำนึกในการต่อสู้ร่วมกันระหว่างแกนนำและสมาชิกกลุ่มอนุรักษ์ลำน้ำเซบาย กิจกรรมการเคลื่อนไหวจึงถูกผนวกกับประเด็นการปกป้องฐานทรัพยากรของชุมชน โดยเฉพาะการปกป้องลำเซบาย

4.3 เครือข่ายหนุนเสริมกลุ่มอนุรักษ์ลำน้ำเซบาย

ลักษณะพันธมิตรเครือข่ายที่เข้ามาสนับสนุนกลุ่มอนุรักษ์ลำน้ำเซบายเป็นกลุ่มคนที่มีความหลากหลายของสาขาอาชีพ เครือข่ายแต่ละกลุ่มต่างมีบทบาทที่แตกต่างกันในการเข้ามาหนุนเสริมการจัดกิจกรรมการเคลื่อนไหวของกลุ่มอนุรักษ์ลำน้ำเซบาย ประกอบด้วยเครือข่ายสำคัญ 6 กลุ่ม ได้แก่ (1) นักพัฒนาเอกชนจากเครือข่ายทรัพยากรธรรมชาติและสิ่งแวดล้อมภาคอีสาน มีบทบาทในการสร้างกระบวนการเรียนรู้และเป็นพี่เลี้ยงในการประเมินสถานการณ์การเคลื่อนไหวและการกำหนดรูปแบบยุทธวิธีการเคลื่อนไหวในแต่ละครั้ง (2) เครือข่ายนักพัฒนาเอกชนที่ทำงานด้านกฎหมายสิ่งแวดล้อมและนักกิจกรรม ทนายความ นักกฎหมาย ทำหน้าสนับสนุนกลุ่มอนุรักษ์ลำน้ำเซบายในการเป็นพี่เลี้ยงคอยให้คำปรึกษาและให้ข้อมูลเชิงลึกด้านกฎหมาย (3) นักวิชาการ เข้าร่วมกิจกรรมของกลุ่มอนุรักษ์ลำน้ำเซบายพร้อมกับนักศึกษาเพื่อเปิดพื้นที่การเรียนรู้ให้กับนักศึกษาได้ เรียนรู้ชุมชนและเรียนรู้สภาพปัญหาที่ชาวบ้านเผชิญ (4) กลุ่มนักศึกษา มีบทบาทในการร่วมทำกิจกรรมการเคลื่อนไหวร่วมกับกลุ่มอนุรักษ์ลำน้ำเซบาย (5) เครือข่ายขบวนการเคลื่อนไหว กลุ่มนี้เป็นกลุ่มชาวบ้านจากเครือข่ายอนุรักษ์ลำน้ำเซบาย บ้านน้ำปลีก อำเภอมือง จังหวัดอำนาจเจริญ รวมตัวเคลื่อนไหวคัดค้านโรงงานน้ำตาลและโรงไฟฟ้าชีวมวลแห่งเดียวกับที่กลุ่มอนุรักษ์ลำน้ำเซบายคัดค้าน ซึ่งเคลื่อนไหวคัดค้านอยู่ก่อนแล้วเนื่องจากชุมชนของพวกเขาอยู่ใกล้กับพื้นที่ตั้งของโรงงานน้ำตาลและโรงไฟฟ้าชีวมวล มีบทบาทใน

การสนับสนุนทรัพยากรมวลชนในการเข้าร่วมกิจกรรมของกลุ่มอนุรักษ์ลำน้ำเซบาย (6) ข้าราชการท้องถิ่น คนกลุ่มนี้เป็นกลุ่มที่คนในชุมชนให้ความเชื่อถือและให้ความเคารพเป็นอย่างมาก โดยมีบทบาทในการประชาสัมพันธ์กิจกรรมของกลุ่มอนุรักษ์ลำน้ำเซบายผ่านเครื่องกระจายเสียงในหมู่บ้าน และช่วยเสริมกำลังใจแก่สมาชิกกลุ่มอนุรักษ์ลำน้ำเซบาย

ความก้าวหน้าอีกด้านหนึ่งของกลุ่มอนุรักษ์ลำน้ำเซบายที่สามารถสร้างพันธมิตรและขยายฐานอำนาจในการเรียกร้องกับรัฐบาลและเปิดพื้นที่ให้สาธารณชนรับทราบสภาพปัญหาความเดือดร้อนของกลุ่มชาวบ้าน เกิดขึ้นในเดือนสิงหาคม พ.ศ. 2562 มีการรวมตัวของเครือข่าย “คณะกรรมการประชาชนคัดค้านโรงงานน้ำตาลและโรงไฟฟ้าชีวมวล (ต่อไปผู้วิจัยจะเรียก คปน.) ภาคอีสาน” เป็นกลุ่มขบวนการชาวบ้านและเครือข่ายนักพัฒนาเอกชนที่ติดตามสถานการณ์และนโยบายที่เกี่ยวข้องกับโรงงานน้ำตาลและโรงไฟฟ้าชีวมวลหลังการรัฐประหาร พ.ศ. 2557 เพื่อเรียกร้องให้ผู้มีส่วนเกี่ยวข้องตรวจสอบกระบวนการจัดทำรายงาน EIA โรงงานน้ำตาลและโรงไฟฟ้าชีวมวลในภาคอีสาน 5 กรณี 6 จังหวัด ประกอบด้วย เครือข่ายอนุรักษ์ลำน้ำเซบาย จังหวัดอำนาจเจริญ, กลุ่มฮักบ้านเกิดเมืองเพีย จังหวัดขอนแก่น, กลุ่มสำนักรักษ์บ้านเกิด จังหวัดศรีสะเกษ, กลุ่มโอโซนรักษ์บ้านเกิด จังหวัดบุรีรัมย์, กลุ่มชาวบ้านคัดค้านโรงไฟฟ้าชีวมวล ตำบลฝักตบ จังหวัดอุดรธานี เครือข่าย คปน. อีสาน ยุทธวิธีการเคลื่อนไหวของ คปน. ใช้ช่องทางการเมืองปกติโดยการเข้ายื่นหนังสือเรียกร้องต่อนายกรัฐมนตรีและรัฐมนตรีว่าการกระทรวงทรัพยากรธรรมชาติและสิ่งแวดล้อม อย่างไรก็ตามท่าทีของเจ้าหน้าที่รัฐ ไม่ได้มีความคืบหน้าและไม่ได้ตอบสนองต่อข้อเรียกร้องของเครือข่ายฯ แต่อย่างไรก็ตามการเข้ายื่นหนังสือต่อกรมการที่ดิน ทรัพยากร และสิ่งแวดล้อม หนึ่งในคณะทำงานที่พรรคฝ่ายค้านตั้งขึ้นมาเป็นทางเลือกหนึ่งที่ คปน. ใช้ในการเรียกร้อง จึงเป็นประเด็นที่น่าสนใจและติดตามต่อไปหากคณะกรรมการฯ นำประเด็นข้อร้องเรียนของ คปน. เข้าไปอภิปรายไม่ไว้วางใจในรัฐบาลในรัฐสภาผู้แทนราษฎร

5. ยุทธวิธีการเคลื่อนไหวของกลุ่มอนุรักษ์ลำน้ำเซบายภายใต้ระบอบเผด็จการทหาร

ยุทธวิธีการเคลื่อนไหวจากมุมมองทฤษฎีการระดมทรัพยากรมองว่าเปรียบเสมือนเครื่องมือที่กลุ่มอนุรักษ์ลำน้ำเซบายนำมาใช้ระดมผู้คนที่มีความหมายเดียวกันในการคัดค้านและหยุดยั้งโครงการโรงงานน้ำตาลและโรงไฟฟ้าชีวมวล ภายใต้โครงสร้างโอกาสทางการเมืองที่ไม่เอื้อต่อปฏิบัติการด้านยุทธวิธีการเคลื่อนไหวที่มีการใช้มาตรการทางกฎหมายควบคุมและจำกัดสิทธิ จึงทำให้กลุ่มอนุรักษ์ลำน้ำเซบายการปรับเปลี่ยนยุทธวิธีการต่อสู้ตามสถานการณ์โครงสร้างโอกาสทางการเมือง โดยผู้วิจัยจำแนกการวิเคราะห์ยุทธวิธีการเคลื่อนไหวของกลุ่มอนุรักษ์ลำน้ำเซบายออกเป็น 2 ระยะ ดังนี้

5.1 ยุทธวิธีการเคลื่อนไหวก่อนการพิจารณา EIA โรงงานน้ำตาลและโรงไฟฟ้าชีวมวล

การประท้วงครั้งแรกของกลุ่มอนุรักษ์ลำน้ำเซบายเริ่มขึ้นเมื่อเดือนมีนาคม พ.ศ. 2560 กลุ่มอนุรักษ์ลำน้ำเซบายใช้ยุทธวิธีการเคลื่อนไหวต่อสู้แบบขัดขวาง ทำลายระบบการเมืองปกติ (disruptive tactics) เป็นปฏิบัติการทำร้ายซึ่งหน้า (direct action) ชุมนุมกดดันผู้ราชการจังหวัดอำนาจเจริญในเวทีรับฟังความคิดเห็นของประชาชนครั้งที่ 2 (ค.2) เพื่อประกอบการจัดทำรายงาน EIA ของโรงงานน้ำตาลและโรงไฟฟ้าชีวมวล การชุมนุมครั้งนี้กลุ่มอนุรักษ์ลำน้ำเซบายสามารถระดมมวลชนได้ประมาณ 500 คน ประกอบด้วยชาวบ้านจากตำบลเชียงเพ็งและเครือข่ายนักพัฒนาเอกชน เป็นแกนนำปราศรัย พร้อมกับนักศึกษาที่ร่วมเป็นทัพหน้าในการเผชิญหน้ากับเจ้าหน้าที่ตำรวจและเจ้าหน้าที่ทหารที่นำอุปกรณ์เครื่องกีดขวางการชุมนุมมาสกัดกั้นไม่ให้กลุ่มอนุรักษ์ลำน้ำเซบายเข้าร่วมในเวที ค.2 ส่วนสมาชิกกลุ่มอนุรักษ์ลำน้ำเซบายร่วมแสดงออกเชิงสัญลักษณ์โดยการชูกระดาษที่เขียนว่า “EIA ไม่ชอบ

ธรรม” พร้อมกับตะโกนในระหว่างการจัดเวที ค.2 ว่า “บ่เอาโรงงานน้ำตาล” “บ่เอาโรงไฟฟ้าชีวมวล” “โรงงานออกไป” ถึงแม้ว่าแกนนำจะทำหนังสือแจ้งชุมนุมสาธารณะและขออนุญาตใช้เครื่องขยายเสียงตามพระราชบัญญัติการชุมนุมสาธารณะ พ.ศ. 2558 แล้วก็ตาม แกนนำกลุ่มอนุรักษ์ลำน้ำเขบายพยายามต่อรองกับเจ้าหน้าที่ตำรวจเนื่องจากกลุ่มอนุรักษ์ลำน้ำเขบายถูกสกัดกั้นไม่ให้เข้ารับฟังเวที ค.2 เป็นเวลากว่า 2 ชั่วโมง ผลการเจรจาต่อรองตัวแทนกลุ่มอนุรักษ์ลำน้ำเขบายได้รับอนุญาตเข้าไปยื่นหนังสือต่อผู้ว่าราชการจังหวัดอำนาจเจริญได้ไม่เกิน 10 คน เป้าหมายของการประท้วงครั้งนี้เพื่อเรียกร้องให้บริษัทที่ปรึกษาจัดทำรายงาน EIA จัดเวทีรับฟังความคิดเห็นของประชาชนใหม่ตั้งแต่เริ่มกระบวนการ อย่างไรก็ตามท่าทีของเจ้าหน้าที่รัฐที่มีต่อกลุ่มฯ แจ้งให้ตัวแทนกลุ่มทราบแต่เพียงว่าประเด็นการไม่ได้อยู่ในขอบเขตอำนาจการตัดสินใจ

ถึงแม้ว่ายุทธวิธีการเคลื่อนไหวต่อสู้ของกลุ่มอนุรักษ์ลำน้ำเขบายในระยะแรกจะใช้ยุทธวิธีต่อสู้แบบขัดขวาง ทำลายระบบการเมืองปกติ แต่กลุ่มฯไม่ได้ใช้เพียงยุทธวิธีเดียวในการต่อสู้ กลุ่มฯ มีการนำยุทธวิธีการใช้ช่องทางการเมืองปกติที่ได้รับการรับรองตามกฎหมายและเอื้อต่อการเคลื่อนไหวมาใช้ร่วมด้วย โดยมีเป้าหมายเพื่อให้หน่วยงานที่เกี่ยวข้องดำเนินการตามข้อเรียกร้องที่กลุ่มอนุรักษ์ลำน้ำเขบายระบุในจดหมาย อีกทั้งเป็นการแสดงเจตนาและสื่อสารต่อสาธารณะชน โดยเฉพาะสื่อมวลชน ในการแสดงเจตนากรณีคัดค้านโรงงานน้ำตาลและโรงไฟฟ้าชีวมวลที่กำลังจะเกิดขึ้นใกล้ชุมชน เป็นยุทธวิธีการเคลื่อนไหวเชิงรุกที่ต้องทันการณีก่อนนโยบายรัฐตลอดเวลา แม้บางครั้งฝ่ายโรงงานจะไม่มี การเคลื่อนไหวใดๆก็ตาม การใช้กลไกปกติเช่นนี้มีข้อดีในสภาวะที่รัฐบาลเป็นเผด็จการ เนื่องจากรัฐบาลไม่สามารถนำประเด็นการส่งจดหมายร้องเรียนที่กลุ่มฯ มาใช้ข่มขู่ประชาชนได้ กลุ่มฯ ใช้ยุทธวิธีนี้ควบคู่ไปกับยุทธวิธีการต่อสู้ระบบการเมืองปกติในการประท้วง การชุมนุมกดดัน หลังจากเจ้าหน้าที่รัฐเปิดโอกาสให้ตัวแทนกลุ่มฯ เข้าเจรจาและยื่นหนังสือร้องเรียนต่อเจ้าหน้าที่รัฐโดยตรง ขณะเดียวกันกลุ่มฯ ได้ส่งจดหมายร้องเรียนไปยังหน่วยงานรัฐที่เกี่ยวข้องกับการดำเนินนโยบายประชารัฐเพื่อเศรษฐกิจฐานรากทั้งในระดับส่วนกลางและระดับท้องถิ่น

ในส่วนของ สผ. กลุ่มฯ ได้ส่งจดหมายร้องเรียนเพื่อขอให้ตัวแทนเข้าไปให้ข้อมูลประกอบการพิจารณารายงาน EIA โรงงานน้ำตาลและโรงไฟฟ้าชีวมวลต่อคณะกรรมการผู้ชำนาญการพิจารณาการวิเคราะห์ผลกระทบสิ่งแวดล้อม (คชก.) ต่อมา สผ. ส่งหนังสือเชิญตัวแทนกลุ่มอนุรักษ์ลำน้ำเขบายเข้าร่วมชี้แจงต่อคชก. ประเด็นที่ตัวแทนกลุ่มฯ ชี้แจงต่อคชก. มีสองประเด็นคือ *ประเด็นแรก* ชุมชนไม่มีส่วนในเวทีค.1 และค.2 *ประเด็นที่สอง* พื้นที่ตั้งโรงงานน้ำตาลและโรงไฟฟ้าชีวมวลขัดแย้งกับแผนยุทธศาสตร์การพัฒนาจังหวัดอีสานตอนล่างซึ่งมีแผนดำเนินการขยายพื้นที่การปลูกข้าวหอมมะลิอินทรีย์ ผลการพิจารณารายงาน EIA โรงงานน้ำตาลครั้งแรกไม่ผ่านมติจาก คชก. นับเป็นชัยชนะครั้งแรกในการเคลื่อนไหวต่อสู้ของกลุ่มอนุรักษ์ลำน้ำเขบาย สะท้อนให้ผู้มีอำนาจตัดสินใจเชิงนโยบายรับฟังข้อเรียกร้องและปัญหาที่กลุ่มฯ ร้องเรียน เวลาต่อมาบริษัทที่ปรึกษาการจัดทำรายงาน EIA ได้กลับไปแก้ไขรายงาน EIA และเสนอต่อคชก. อีกครั้งหนึ่ง คชก. จึงมีมติอนุมัติรายงาน EIA และให้บริษัทที่ปรึกษากลับไปทำรายงาน EIA โรงงานน้ำตาลฉบับสมบูรณ์เพื่อเข้าสู่ขั้นตอนการพิจารณาขอใบอนุญาตตรง. 4 ต่อมาคชก. มีมติอนุมัติรายงาน EIA โรงไฟฟ้าชีวมวล ทำให้กลุ่มฯ ส่งจดหมายถึงนายกรัฐมนตรี พลเอก ประยุทธ์ จันทร์โอชา เพื่อเรียกร้องยกเลิกการอนุมัติรายงาน EIA ของโรงงานน้ำตาลและโรงไฟฟ้าชีวมวล อย่างไรก็ตามผลการส่งจดหมายถึงนายกรัฐมนตรีไม่มีการตอบรับใดๆกลับมา

5.1.1 การแต่งตั้งคณะทำงานศึกษาข้อเท็จจริงการมีส่วนร่วมทรัพยากรและสุขภาพ จังหวัดยโสธร

เมื่อการส่งจดหมายร้องเรียนไปยังหน่วยงานภาครัฐในส่วนกลางไม่เป็นผล กลุ่มอนุรักษ์ลำน้ำเขบายจึงใช้ยุทธวิธีการชุมนุมประท้วง กดดันในระดับท้องถิ่น เรียกร้องผู้ว่าราชการจังหวัดยโสธรแต่งตั้งคณะทำงานศึกษาข้อเท็จจริงการมีส่วนร่วมทรัพยากรและสุขภาพ โครงการโรงงานน้ำตาลทรายและโรงไฟฟ้าชีวมวล การชุมนุมประท้วงครั้งนี้มีเจ้าหน้าที่ฝ่ายปกครองเข้ามา

พูดคุยกับแกนนำกลุ่มอนุรักษ์ลำน้ำเซบายพร้อมกับยื่นหนังสือไม่อนุญาตให้ตัวแทนกลุ่มฯ ชุมนุมและเข้ายื่นหนังสือ โดยอ้างว่ากลุ่มฯ ไม่ได้ทำหนังสือแจ้งขออนุญาตการชุมนุม ตามพระราชบัญญัติการชุมนุมสาธารณะ พ.ศ. 2558 อย่างไรก็ตามก่อนที่กลุ่มฯ จะมาชุมนุมที่หน้าศาลากลางจังหวัดยโสธร แกนนำได้ปฏิบัติตามช่องทางการเมืองปกติในการทำหนังสือขออนุญาตชุมนุมตามขั้นตอนที่ระบุใน พ.ร.บ.การชุมนุมสาธารณะ พ.ศ. 2558 ว่าด้วยการแจ้งการชุมนุมก่อนเริ่มการชุมนุมไม่น้อยกว่า 24 ชั่วโมง เมื่อไม่สามารถยื่นหนังสือเรียกร้องให้ผู้ว่าราชการจังหวัดยโสธรแต่งตั้งคณะทำงานฯ ได้ กลุ่มฯ จึงถ่ายทอดสดแถลงการณ์ผ่านสื่อออนไลน์ของกลุ่มฯ “เซบาย เชียงเพ็ง” เวลาต่อมาผู้ว่าราชการจังหวัดยโสธรแต่งตั้งคณะทำงานฯ ตามที่กลุ่มฯ ร้องขอ โดยแต่งตั้งรองผู้อำนวยการรักษาความมั่นคงภายในจังหวัดยโสธรเป็นประธานคณะทำงาน ซึ่งคณะทำงานดังกล่าวมีทั้งหมด 18 คน ประกอบด้วยเจ้าหน้าที่รัฐหลายหน่วยงานรวมทั้งอาจารย์มหาวิทยาลัยและภาคเอกชน นับเป็นความก้าวหน้าของการเคลื่อนไหวในระดับพื้นที่ สะท้อนให้เห็นว่าผู้มีอำนาจอย่างผู้ว่าราชการจังหวัดยโสธรรับฟังข้อเรียกร้องของกลุ่มอนุรักษ์ลำน้ำเซบาย อย่างไรก็ตามการแต่งตั้งคณะทำงานฯ ไม่ประสบความสำเร็จอย่างเป็นรูปธรรมในด้านการปรับความสัมพันธ์เชิงอำนาจระหว่างรัฐกับกลุ่มอนุรักษ์ลำน้ำเซบาย เนื่องจากคณะกรรมการตรวจสอบข้อเท็จจริงมีองค์ประกอบของข้าราชการและเจ้าหน้าที่ทหาร 10 คน ขณะที่ตัวแทนกลุ่มอนุรักษ์ลำน้ำเซบายได้รับการแต่งตั้งเพียง 1 คนเท่านั้น

5.1.2 ยกระดับการเคลื่อนไหว...จากเชียงเพ็ง สู่หน้าทำเนียบรัฐบาล

เมื่อไร้สัญญาณตอบรับจากหน่วยงานราชการส่วนท้องถิ่น กลุ่มอนุรักษ์ลำน้ำเซบายจึงขยายพื้นที่การเคลื่อนไหวต่อสู้จากเชียงเพ็งถึงหน้าทำเนียบรัฐบาล กรุงเทพมหานคร เพื่อชุมนุมกดดันรัฐมนตรีว่าการกระทรวงทรัพยากรธรรมชาติและสิ่งแวดล้อม รวมทั้งการชุมนุมกดดันคณะกรรมการกำกับกิจการพลังงาน (กกพ.) ส่วนกลาง เพื่อยกเลิกการพิจารณาการออกใบอนุญาตโรงไฟฟ้าชีวมวล “ที่เรามากรุงเทพฯ เพราะเราอยากรู้ว่าคนระดับสูงที่เขามีอำนาจเขาจะตอบเราว่ายังไง เขาจะช่วยยับยั้งไม่ให้สร้างโรงงานได้ไหม ทำยังไงเขาถึงจะหยุดโรงงานได้ ” (แต่ง เนินทราย, สมาชิกกลุ่มอนุรักษ์ลำน้ำเซบาย, สัมภาษณ์, 8 มีนาคม 2562) ถึงแม้ว่ากลุ่มอนุรักษ์ลำน้ำเซบายจะไม่ได้รับคำตอบที่ชัดเจนจากหน่วยงานภาครัฐที่เกี่ยวข้องกับนโยบายโรงงานน้ำตาลและโรงไฟฟ้าชีวมวล แต่จากการชุมนุมประท้วงหลายครั้งที่ผ่านมามีทำให้กลุ่มฯ สร้างกระบวนการเรียนรู้ร่วมกันระหว่างสมาชิกฯ ในการตระหนักถึงความจำเป็นของการรวมตัวต่อสู้คัดค้าน (cognitive liberation) ว่ากลุ่มฯ ต้องการปลดปล่อยจิตสำนึกการต่อสู้ของตนในการปกป้องชุมชนโดยการปฏิเสธโรงงานน้ำตาลและโรงไฟฟ้าชีวมวล

5.1.3 ฝ่ายต่อต้านขบวนการทางสังคม (counter - movement)

การตอบโต้จากฝ่ายตรงข้ามหรือฝ่ายต่อต้านมีวัตถุประสงค์ที่ตรงกันข้ามกับเจตนารมณ์ของกลุ่มอนุรักษ์ลำน้ำเซบาย โดยเป็นไปเพื่อสนับสนุนโรงงานน้ำตาลและโรงไฟฟ้าชีวมวล ถึงแม้ว่าจะไม่มีการเผชิญหน้ากันโดยตรงเป็นเพียงการ แสดงเจตนารมณ์ผ่านป้ายรณรงค์บริเวณสี่แยกบ้านน้ำปลัก จังหวัดอำนาจเจริญ โดยใช้ข้อความแสดงเจตนารมณ์ว่า “สนับสนุนการก่อตั้งโรงงานน้ำตาล สนับสนุนการก่อตั้งโรงไฟฟ้าชีวมวล” “ลำเซบายคือวิถีชีวิต โรงงานน้ำตาลสร้างเศรษฐกิจ เราขอสนับสนุนการก่อสร้างโรงงานน้ำตาลที่อำเภอเมือง จังหวัดอำนาจเจริญ จาก...กลุ่มรักษ์ลำเซบายร่วมกับกลุ่มชาวไร่อ้อย”

5.2 จากเมืองกรุง...สู่พื้นที่: การปรับยุทธวิธีเคลื่อนไหวหลังจากรายงาน EIA ของโรงงานน้ำตาลและโรงไฟฟ้าชีวมวลได้รับการอนุมัติ

ภายหลังจากที่รายงาน EIA ของโรงงานน้ำตาลและโรงไฟฟ้าชีวมวลได้รับการอนุมัติ การเคลื่อนไหวในช่วงนี้จึงต้องปรับเปลี่ยนยุทธวิธีเคลื่อนไหวต่อผู้จากที่เคลื่อนไหวต่อสู้ในระดับประเทศมาเป็นการเคลื่อนไหวในพื้นที่มากขึ้น โดยเฉพาะการสร้างตระหนักรู้แก่สาธารณะ (public awareness) โดยใช้ช่องทางสื่อสารผ่านสื่อสังคมออนไลน์อื่นเพื่อให้คนทั่วไปสามารถติดตามความเคลื่อนไหวของกลุ่มอนุรักษ์ลำน้ำเซบายผ่านทางเฟซบุ๊ก “เซบาย เชียงเพ็ง” ขณะเดียวกันกลุ่มอนุรักษ์ลำน้ำเซบายให้ความสำคัญกับการต่อสู้ในพื้นที่โดยการเดินรณรงค์สร้างความรู้ความเข้าใจในการปกป้องทรัพยากรในระดับตำบล อำเภอ และจังหวัด โดยใช้วิธีการพูดคุยกับชาวบ้าน ประกอบกับการแจกใบปลิวที่แสดงความเป็นมาของการก่อตั้งกลุ่มอนุรักษ์ลำน้ำเซบาย วัตถุประสงค์ของการคัดค้านโรงงานน้ำตาลและโรงไฟฟ้าชีวมวล และการสร้างความตระหนักรู้ในการอนุรักษ์ทรัพยากรธรรมชาติของชุมชน เพื่อสร้างพื้นที่สื่อสารไปยังสาธารณชนผู้เฝ้ามองอยู่ห่างๆ โดยเฉพาะชนชั้นกลางในอำเภอป่าติว อำเภอเมือง จังหวัดยโสธร ให้เข้ามามีส่วนร่วมในกิจกรรมการเคลื่อนไหวคัดค้านของกลุ่มอนุรักษ์ลำน้ำเซบาย อย่างไรก็ตามกลุ่มอนุรักษ์ลำน้ำเซบายมีการสร้างกระบวนการเรียนรู้ภายในของสมาชิกอยู่ก่อนแล้ว ในการทำให้สมาชิกตระหนักถึงความจำเป็นของการต่อสู้คัดค้านโรงงานน้ำตาลและโรงไฟฟ้าชีวมวล รวมทั้งการพัฒนาจิตสำนึกในการต่อสู้เพื่อปกป้องฐานทรัพยากรบ้านเกิดของตนเอง ทำให้เปิดประเด็นสื่อสารสาธารณะไปยังชนผู้เฝ้ามองให้รับรู้ถึงการเคลื่อนไหวคัดค้านของกลุ่มอนุรักษ์ลำน้ำเซบายถูกเปิดกว้างออกไป

5.2.1 การปรับเปลี่ยนยุทธวิธีเคลื่อนไหวสู่การประกอบสร้างวัฒนธรรมอีสาน

ภายใต้มาตรการจำกัดสิทธิและการมีส่วนร่วมของภาคประชาชน จึงส่งผลให้ยุทธวิธีเคลื่อนไหวของกลุ่มอนุรักษ์ลำน้ำเซบายปรับเปลี่ยนไปตามโครงสร้างโอกาสทางการเมือง การวิเคราะห์ในส่วนนี้ผู้วิจัยจะนำทฤษฎีการสร้างกรอบโครง (framing theory) มาใช้ในการวิเคราะห์การปรับเปลี่ยนยุทธวิธีเคลื่อนไหวที่นำการประกอบสร้างวัฒนธรรมและการนำวิถีการดำรงชีวิตประจำวันที่เชื่อมโยงกับการพึ่งพิงฐานทรัพยากร มาผลิตสร้างในยุทธวิธีเคลื่อนไหว อีกทั้งเป็นยุทธวิธีการระดมทรัพยากรเครือข่ายพันธมิตร และผู้คนในสังคมให้เข้าร่วมกิจกรรมการเคลื่อนไหวของกลุ่มอนุรักษ์ลำน้ำเซบาย ซึ่งกระทำผ่านกรอบโครงหลักๆ 3 ประการ ดังนี้

(1) การสร้างกรอบในการวินิจฉัยปัญหา (diagnostic framing) กรอบการวินิจฉัยปัญหาเป็นกรอบที่กลุ่มอนุรักษ์ลำน้ำเซบายสร้างขึ้นเพื่อให้ชาวบ้านมองเห็นภาพปัญหาความเดือดร้อนที่ชาวบ้านกำลังเผชิญและออกมารวมตัวเคลื่อนไหวคัดค้าน โดยการชี้ให้เห็นถึงผลกระทบต่อลำเซบายและวิถีการเกษตรอินทรีย์ซึ่งเป็นวิถีชีวิตหลักของคนในชุมชน รวมถึงปัญหาปัญหาการขาดแคลนน้ำเพื่อใช้ในการอุปโภค บริโภค และทำการเกษตร ซึ่งชาวบ้านต้องประสบทุกปี การเข้ามาของโรงงานน้ำตาลและโรงไฟฟ้าชีวมวลใกล้ชุมชนจึงเกิดเป็นข้อห่วงกังวลถึงผลกระทบที่จะเกิดขึ้นกับวิถีชีวิตของชาวบ้าน หากจะต้องมีการแย่งชิงน้ำจากลำเซบายเข้าสู่โรงงานน้ำตาลและโรงไฟฟ้าชีวมวล แม้โรงงานน้ำตาลและโรงไฟฟ้าชีวมวลกำลังอยู่ระหว่างการดำเนินการก่อสร้างและบางส่วนได้ดำเนินการผลิตน้ำตาลเป็นที่เรียบร้อยแล้ว แต่กลุ่มอนุรักษ์ลำน้ำเซบายยังคงสานต่อเจตนารมณ์คัดค้านโรงงานน้ำตาลและโรงไฟฟ้าชีวมวล และพยายามสื่อสารกับสาธารณชนเกี่ยวกับกระบวนการที่ไม่ชอบธรรมที่เกิดขึ้นว่ากลุ่มอนุรักษ์ลำน้ำเซบายคัดค้านมาตลอดตั้งแต่เริ่มกระบวนการจัดทำรายงาน EIA โดยกลุ่มฯ นิยามกระบวนการไม่ชอบธรรมนี้โดยใช้คำว่า “วงจรอุบาทว์ของ EIA” “เป็นแนวคิดที่ทำให้กลุ่มฯ ก้าวหน้า เพราะเมื่อโรงงานสร้างแล้ว คนภายนอกจะมองว่าทำไมกลุ่มคัดค้าน

ต่อ เราจะแสดงให้เห็นว่าเราจะคัดค้านตลอดชีวิตและแสดงให้เห็นว่ากระบวนการ EIA โรงงานน้ำตาลมันเป็นวงจรถาวร” (มะลิ จิตร เอกตาแสง, แกนนำกลุ่มอนุรักษ์ลำน้ำเซบาย, สัมภาษณ์, 7 พฤศจิกายน 2562)

(2) การสร้างกรอบคาดคะเนทางออกของปัญหา (prognostic framing) จากการที่กลุ่มอนุรักษ์ลำน้ำเซบายวินิจฉัยปัญหาที่นำความเดือดร้อนจนชาวบ้านต้องออกมารวมกลุ่มเคลื่อนไหวคัดค้านโรงงานน้ำตาลและโรงไฟฟ้าชีวมวล สภาพปัญหาเหล่านี้กลุ่มอนุรักษ์ลำน้ำเซบายเห็นว่ามีสำคัญและจำเป็นต้องเปลี่ยนแปลงหรือแก้ไขปัญหา ประสบการณ์การเสนอทางออกของปัญหาในระดับท้องถิ่นในการเรียกร้องให้ผู้ว่าราชการจังหวัดโยธธองแต่งตั้งคณะกรรมการศึกษาข้อเท็จจริงด้านการมีส่วนร่วมทรัพยากรและสุขภาพ กรณีโครงการโรงงานน้ำตาลและโรงไฟฟ้าชีวมวล จังหวัดโยธธอง เพื่อตรวจสอบข้อเท็จจริงด้านการมีส่วนร่วมของประชาชนในพื้นที่รัศมี 5 กิโลเมตรของพื้นที่ตั้งโรงงานน้ำตาลและโรงไฟฟ้าชีวมวล รวมทั้งตรวจสอบสภาพชุมชนที่มีพื้นที่ติดลำเซบายเพื่อสำรวจความหลากหลายของฐานทรัพยากรธรรมชาติในชุมชน อย่างไรก็ตามการแต่งตั้งคณะกรรมการตรวจสอบข้อเท็จจริงฯ ไม่ประสบความสำเร็จอย่างเป็นรูปธรรมในด้านการปรับความสัมพันธ์เชิงอำนาจระหว่างรัฐกับกลุ่มอนุรักษ์ลำน้ำเซบาย

เมื่อคณะทำงาน ไม่สามารถสร้างพลังอำนาจต่อรองหรือสามารถเปลี่ยนแปลงเชิงนโยบายได้ พร้อมกันนั้น โรงงานน้ำตาลและโรงไฟฟ้าชีวมวลกำลังอยู่ระหว่างการดำเนินงาน กลุ่มอนุรักษ์ลำน้ำเซบายจึงเรียกร้องให้รัฐประกาศเป็นพื้นที่ปลอดภัยด้านสิ่งแวดล้อม ดิน น้ำ ป่า อากาศ และคุณภาพชีวิต ควบคู่ไปกับการแสดงเจตนากรณีคัดค้านโรงงานน้ำตาลและโรงไฟฟ้าชีวมวลตลอดชีวิตของพวกเขา โดยกลุ่มใช้ข้อความขึ้นป้ายรณรงค์ว่า เมื่อรัฐกล้าอนุญาตโรงงาน “เมื่อรัฐกล้าผ่านใบอนุญาตให้โรงงานอุตสาหกรรม รัฐก็ต้องกล้าประกาศเป็นพื้นที่ปลอดภัยให้ชุมชนและสิ่งแวดล้อมด้วย” ยุทธวิธีนี้เป็นการกำหนดเจตจำนงของกลุ่มฯ ในการมีส่วนร่วมจัดการทรัพยากรธรรมชาติและสิ่งแวดล้อมของชุมชนตามที่ได้รับรองตามรัฐธรรมนูญ พ.ศ. 2560 กลุ่มฯ เชื่อว่าวิธีการเช่นนี้จะช่วยให้ภาครัฐและสาธารณชนเกิดความเห็นอกเห็นใจและสร้างความตระหนักรู้แก่สาธารณะ (public awareness) ต่อปฏิบัติการปกป้องฐานทรัพยากรดิน น้ำ ป่าควบคู่ไปกับการนำรูปแบบวิถีชีวิตของชาวเชียงใหม่ที่ผูกพันกับฐานทรัพยากรในชุมชนมาผนวกกับประเพณี วัฒนธรรม พิธีกรรม ความเชื่อ โดยเฉพาะประเพณีวัฒนธรรมอีสาน ฮีตสิบสองคองสิบสี่ เป็นการชี้ให้เห็นถึงอัตลักษณ์ขององค์กรเคลื่อนไหวของกลุ่มอนุรักษ์ลำน้ำเซบายและการนำยุทธวิธีการต่อสู้เชิงสัญลักษณ์มาใช้ในการระดมทรัพยากรจากสาธารณะชนให้เข้ามามีส่วนร่วมในการเคลื่อนไหว จะเห็นได้จากการประกอบสร้างอัตลักษณ์วัฒนธรรมอีสานขึ้นมาใหม่ในงานบุญสืบชะตาลำน้ำเซบาย

หากวิเคราะห์เป้าหมายของการจัดงานบุญสืบชะตาลำน้ำเซบายแล้วพบว่ามิ่ววัตถุประสงค์เพื่อการอนุรักษ์ทรัพยากรธรรมชาติลำเซบาย การใช้ยุทธวิธีดังกล่าวเป็นการสร้างตำแหน่งแห่งที่และสร้างความชอบธรรมให้กับกลุ่มอนุรักษ์ลำน้ำเซบายภายใต้บริบททางการเมืองที่จำกัดสิทธิเสรีภาพของรัฐบาลเผด็จการทหาร อีกทั้งยังเป็นการขยายเครือข่ายและสร้างพันธมิตรที่หลากหลาย โดยเฉพาะ อดีตข้าราชการระดับสูง (อดีตที่ปรึกษารัฐมนตรีช่วยว่าการกระทรวงเกษตรและสหกรณ์, อดีตอธิบดีกรมส่งเสริมคุณภาพสิ่งแวดล้อม, อดีตสมาชิกสภาองค์การบริหารส่วนจังหวัดโยธธอง) นักวิชาการ ข้าราชการในระดับท้องถิ่น (นายอำเภอป่าต้ว) ครูสื่อมวลชน นักศึกษา นักเรียน และสาธารณชนผู้เฝ้ามองให้ความสนใจและเข้าร่วมกิจกรรมในครั้งนี้ เปรียบเสมือนการระดมทรัพยากรจากกลุ่มคนที่หลากหลายเข้ามามีส่วนร่วมในกิจกรรมของกลุ่มอนุรักษ์ลำน้ำเซบาย อีกทั้งแสดงให้เห็นว่าเป้าหมายการต่อสู้ของกลุ่มอนุรักษ์ลำน้ำเซบายไม่ได้เป็นการต่อสู้เพื่อคนกลุ่มใดกลุ่มหนึ่งแต่เป็นการต่อสู้เพื่อชุมชน เป็นการต่อสู้เพื่อการอนุรักษ์ทรัพยากรธรรมชาติของชุมชน พิธีสืบชะตาลำน้ำเซบายจึงเป็นการประกอบสร้างอัตลักษณ์วัฒนธรรมอีสานมาโดยนำพิธีกรรมมาใช้เป็นส่วนหนึ่งในการเคลื่อนไหวต่อสู้ของกลุ่มอนุรักษ์ลำน้ำเซบาย

(3) การสร้างกรอบในการจูงใจ (motivational framing) กลุ่มอนุรักษ์ลำนํ้าเซบายนำประเด็น “การปกป้องฐานทรัพยากร” มาผนวกกับวิถีชีวิตประจำวันของคนในชุมชนที่ผูกพันกับฐานทรัพยากรดิน นํ้า ป่า โดยนำมาผลิตสร้างในกิจกรรมการเคลื่อนไหวที่หลากหลายและมีความต่อเนื่องของการสร้างกิจกรรม เพื่อสร้างกระบวนการเรียนรู้และการพัฒนาจิตสำนึกการต่อสู้ร่วมกันระหว่างแกนนำและสมาชิก อีกทั้งเป็นการสืบเจตนารมณ์การคัดค้านโรงงานนํ้าตาลและต้องการกลับคืนสู่รูปแบบวิถีการดำรงชีวิตแบบดั้งเดิมและสืบสานการปกป้องฐานทรัพยากรของชุมชน กิจกรรมที่หลากหลายนี้ประกอบด้วย การบวชป่าชุมชนดอนมะหรี กิจกรรมปั่นจักรยานบอกรักษ์ลำนํ้าเซบาย กิจกรรมด้านารวม กิจกรรมโฮมแองเกี่ยวข้างารวม งานปลาแดกแลกข้าว และหมอลำขอข้าว เป็นต้น ขณะเดียวกันช่องทางในการสื่อสารกับคนภายนอกและใช้นํ้าเสนอตัวตนของกลุ่มอนุรักษ์ลำนํ้าเซบายอีกช่องทางหนึ่งก็คือ บทเพลงปกป้องบ้านเกิดของกลุ่มอนุรักษ์ลำนํ้าเซบาย เป็นการสร้างความหมายเพื่อสร้างแรงจูงใจให้แก่สาธารณชนให้เข้าร่วมกิจกรรมของกลุ่มฯ บทเพลงแต่ละบทเพลงที่ให้เหตุผลว่าเพราะเหตุใดกลุ่มฯ จึงลุกขึ้นมาเคลื่อนไหวคัดค้านโรงงานนํ้าตาลและโรงไฟฟ้าชีวมวล

6. บทสรุป

ภายใต้โครงสร้างโอกาสทางการเมืองแบบเผด็จการทหาร การรวมศูนย์อำนาจการตัดสินใจกำหนดนโยบายการพัฒนาเศรษฐกิจจึงรวมศูนย์อยู่ที่ระบอบราชการส่วนกลางที่เอื้อผลประโยชน์ต่อภาครัฐกิจ ระบบการเมืองเชิงสถาบันที่รัฐบาลเผด็จการจัดสรรอำนาจชุดใหม่ให้กับกลุ่มทุนขนาดใหญ่ในรูปแบบระบบทุนนิยมแบบช่วงชั้น ภายใต้การกำหนดกรอบกฎหมายที่ให้สิทธิพิเศษต่อกลุ่มทุนขนาดใหญ่ การอาศัยอำนาจตามมาตรา 44 ของรัฐธรรมนูญฉบับชั่วคราว พ.ศ. 2557 โดยเฉพาะการเร่งรัดนโยบายขยายโรงงานนํ้าตาลในทุกท้องที่ทั่วราชอาณาจักรประกอบกับนโยบายผังเมืองที่พ่วงให้เกิดการสร้างโรงไฟฟ้าชีวมวล เป็นปฏิบัติการทางนโยบายภายใต้รัฐบาลเผด็จการทหารที่ส่งผลกระทบต่อกรรมมีส่วนร่วมต่อกระบวนการมีตัดสินใจในนโยบายสาธารณะของประชาชนผู้มีส่วนได้เสียในพื้นที่ใกล้กับโครงการก่อสร้างดังกล่าว รวมทั้งไม่เปิดโอกาสให้ประชาชนได้รับทราบข้อมูลข่าวสารที่แท้จริง ยุทธวิธีการเคลื่อนไหวของกลุ่มอนุรักษ์ลำนํ้าเซบายแปรผันไปตามโครงสร้างโอกาสทางการเมืองที่จำกัดสิทธิของขบวนการภาคประชาชน จากระยะแรกที่กลุ่มอนุรักษ์ลำนํ้าเซบายใช้ยุทธวิธีการเคลื่อนไหวแบบตั้งรับและทำทลายระบบการเมืองปกติ (disruptive tactics) แต่ดูเหมือนว่าการเคลื่อนไหวเป็นไปอย่างจำกัดด้วยมาตรการข้างต้น กลุ่มอนุรักษ์ลำนํ้าเซบายจึงปรับเปลี่ยนยุทธวิธีการเคลื่อนไหวโดยนำวัฒนธรรมประเพณีของชาวอีสานมาใช้มากขึ้น ประกอบกับการสร้างอัตลักษณ์ความผูกพันต่อฐานทรัพยากรดิน นํ้า ป่า เพื่อให้กลุ่มอนุรักษ์ลำนํ้าเซบายสามารถระดมทรัพยากรมวลชนได้ต่อเนื่อง เพื่อสร้างตำแหน่งแห่งที่และสร้างความชอบธรรมให้กับกลุ่มอนุรักษ์ลำนํ้าเซบายภายใต้บริบททางการเมืองที่จำกัดสิทธิเสรีภาพ อีกทั้งเพื่อให้องค์กรการเคลื่อนไหวในนามกลุ่มอนุรักษ์ลำนํ้าเซบายยังสามารถเติบโตต่อไป

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WOMEN'S LEGAL CONSCIOUSNESS ON THE RIGHT TO LAND IN CAMBODIA

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ABSTRACT

This study is to facilitate an understanding of the difference between the actual purpose of law and the legal consciousness of law by a social actor. This can help identify the challenges of the fact that women do not receive a good understanding of the law, and they must acquire this quickly once they are evicted. This will empower them to eventually claim their rights. The research can show how the law can be taken on better to protect women from being evicted from their land, and guide NGOs to create programmes that effectively advocate for women's rights. A total of 17 in-depth interviews (5 Women Rights defenders and 12 aggrieved women) took place in Phnom Penh, where most high-profile land eviction cases and NGOs working on women and land rights are located. This research identified the agenda of NGOs on women's issues on land rights, since it was generally not part of strategies of organizations that work on land rights. Furthermore, this research also identified and examined women's different levels of understanding of the law and factors that influence or hinder them from claiming their rights. The study exposed the role of their partners and law enforcement authorities on tackling or addressing this matter.

Keyword: Legal Consciousness, Rights to Land, Forced Eviction.

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1. INTRODUCTION

“From a woman’s perspective, land represents protection, shelter, bonding, love, home, and care. From a man’s perspective, land can be classified as influence, wealth, power, it is the source of status and fortune, as well as conflicts (Mehrak, Chhay, My, 2008).”

Cambodia is marred by a great crisis when it comes to the issue of land rights. The number of landless and land-poor people is exponentially growing. This is a consequence of many factors, which includes population growth and contested government policies that promote Economic Land Concessions (ELCs). While large-scale land titling programs are expected to be completed within 10 years (GIZ 2014), today at least 7.7 million parcels of land remain to be titled. ELCs have been implemented in Cambodia at a massive scale in the process of altering often involuntarily livelihoods. As of 2012, even the Royal Government of Cambodia’s own records show that it has issued 118 companies a total land area of over 1.2 million hectares, which is just under 10% of entire country. An independent estimate by LICADHO, a local non-government organization (NGO) revealed that an even larger area of land of as much as 2.2 million hectares has actually been granted to ELCs. Alongside grabbed land, these ELCs have affected the way of life more than 420,000 people since 2003 (LICADHO 2014).

Land tenure security is weak in Cambodia, particularly in places where formal land certificates have not yet been issued (as is often the case in ELCs areas). Consequently, the communities living on these lands are frequently subjected to forced eviction, involuntary resettlement or relocation. These actions against the people are often poorly planned and implemented, with little respect for due process of law and for basic human rights. The process of land transfer from government to companies is made easier by the fact that all land ownership documents were destroyed during the Khmer Rouge regime (1975-1979) reported by Christoph Sperfeldt, Farrah Tek and Billy Chia-Lung Tai, in an Examination of Policies Promoting Large-Scale Investment in Farmland in Cambodia (Cambodian Human Rights Action Committee, 2012).

Women have long been going to the streets as an advocacy tool demanding for land rights and fair compensation. However, this has always been dangerous because no one knows the consequences during and after the protest. In this case, going through due process of the law or judicial processes should have a better option. Both women’s groups and NGOs have been consistently using women’s right to land parlance, but none of them has ever used relevant laws and policies in their advocacy agenda. One more important thing, women’s legal consciousness about land rights in Cambodia has never been examined. In this regard, level of legal consciousness of women regarding to land rights is questionable. In general, the legal system is not fully known nor understood by the majority of the population, especially women because they are less educated than men. Knowing about land laws and regulation could tighten a woman’s security over her land rights. This research seeks to study more on women’s rights to land, and explore the level of legal consciousness of women who were forcibly evicted have.

1.1 Legal Framework on Women's Rights to Land in Cambodia

The Cambodian government had made some efforts to take into account gender issues in its land reform laws and policies. Despite this, based on 2006 report by USAID, it was found that “the confusion and costs certifying ownership rights has had a negative impact on women’s land rights, especially for female-headed households”. There are a number lot of challenges facing women in light owning land. First, as a significant number of women attain little to no schooling at all, especially those who belong to indigenous groups, ethnics minorities, and the disability sector, they have limited or hardly any understanding of the land law and land titling procedures. These groups of women are more vulnerable to having their land rights ignored or taken away. They persistently face challenges when they attempt to judiciously claim their rights to own land. Second, joint land titles between husband and wife do not necessarily confer legal rights, as customary practices may not fully recognize women’s ownership rights.

The Land Law of 2001 includes strategies to protect women’s equal rights to land ownership. However, the reality is that a significant population of women are landless or have smaller plots of land compared to men. Furthermore, women who are heads of households are twice as likely to have sold their land compared to male head of household. Also, landlessness for female-headed households is one in five (21%) compared to one in eight for households in general (UNIFEM, World Bank, ADB, UNDP, DFID, 2004). Yet, as a result of Cambodia’s bitter political history, weak rule of law and widespread corruption have facilitated systemic land grabbing and forced eviction throughout the country. In a report by Human Rights Watch in 2013, at least 700,000 Cambodians have been affected by land conflicts throughout the country over the last couple of decades as revealed by Human Rights Watch in ‘Cambodia: Land Titling Campaign Open to Abuse’, (12 June 2013). Because of land disputes, there are a lot of women land rights activists who have appeared in the front line as land rights defenders. These women are called according to the different location of their disputes, such as Women’s Association of Boeng Kak, Women’s Association in Borei Keyla, Women Association of SOS, and Women’s association of railway in Phnom Penh. Despite differences in location and name, all of them share the aspiration of a fair living condition. These women activists have suffered tremendously violence inflicted by authorities, their partners, their relatives, as well as their managers at the workplace. Luckily, aside from unimplemented rule of law in Cambodia, some NGOs have been working hard to elevate women’s land tenure rights.

There are also specific provisions in domestic law which provide further protection for women’s land rights. The 2001 Land Law introduces the concept of co-ownership of a property in Chapter 9. This is often translated from the Khmer text as “undivided ownership,” whereby “each undivided owner enjoys the property and uses it to the extent that such enjoyment does not infringe on the rights of the other undivided owners” as mentioned in Land Law, Article 171. Moreover, the Civil Code of Cambodia (the “Civil Code”), which was enacted in 2007, contains provisions that further safeguards the rights of women “to use, enjoy the benefit from and manage the common property.” In order to sell a jointly owned property, both spouses must equally consent to the deal. However, this only refers to properties acquired during the marriage and does not extend to property that was owned by one of the spouses prior to their union. In this regard, the Royal Government of Cambodia (RGC) is obliged, under Article 46 of the

Constitution, to provide assistance to “women, especially to those living in rural areas without adequate social support, so they can get employment, medical care, and send their children to school, and to have decent living conditions.”

Results from a basic survey conducted by the registration project on systematic land registration show that, “female owners outnumbered male owners in the overall figure, 20% of the land titles were made in the wife’s name, 5% in the husband’s name alone, and 70% are joint ownership titles (Sar, Muller, 2008). Joint titling of land has generally increased in land distribution programs worldwide due to pressure from women’s movements and international donors (Suárez, Osorio, Langford, 2009). Although joint ownership – as perceived by the Cambodian Land Law as undivided (indivisible) ownership (Art. 168-174 Land Law), may be interpreted as an important strategy to ensure that the process of formalizing land ownership does not unwittingly produce gender-discriminatory effects (Mehrak, Chhay, My, 2008), it is highly questionable whether (joint-) land titling and the creation of exclusionary property rights will necessarily result in land tenure security.

1.2 Forced Eviction

“Forced eviction” is defined as a *permanent or temporary removal against the will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection* (Committee on Economic, Social and Cultural Rights, 1997). Between 1998 and 2003, the Phnom Penh municipality forcibly evicted 11,000 families, mostly urban poor living in informal settlements in or near the city center (World Bank, 2006, 48). Since then, forced evictions have reportedly displaced well over 30,000 people in Phnom Penh alone. The number of landless households grew from 12.6 percent in 1997 to nearly one in five in 2004 (ibid). Some 150,000 Cambodians across the country are known to live at high risk of being forcibly evicted from proposed development projects (Levy and Scott-Clark, 2008).

A major source of Cambodia’s land conflict has been the devastating policy of economic land concessions (“ELCs”), whereby the RGC has granted over two million hectares of land to private interests (May, 2016), which has given rise to extensive land grabbing, forced evictions and a number of serious rights abuses. Although thousands of hectares have been brought back under State control as a result of a countrywide review of ELCs, as of July 2016 there are still 223 companies in Cambodia holding ELCs spanning 1.5 million hectares of land (Human Rights Watch, 2013). In addition, land grabbing by powerful elites and the initiation of a number of supposed development and infrastructure projects – such as mining concessions and the construction of hydropower dams – have further sparked land conflicts throughout the country. It has been estimated that at least 700,000 Cambodians have been affected by land conflicts throughout the country over the recent decades. This number looks set to increase in the coming years with new conflicts being continuously ignited and no resolutions in sight for many existing conflicts. This is given the largely ineffective nature of the existing land conflict resolution mechanisms (CCHR, 2014).

2. RESEARCH OBJECTIVE AND METHODOLOGY

Research Objective

This paper explores how women's different levels of understanding of the law on land and rights influence their ability to claim rights. It will also provide ways to protect women against abuses and forced evictions with some support from NGOs in Cambodia.

Methodology

A total of 17 in-depth interview (5 Women Rights defenders and 12 aggrieved women) took in Phnom Penh, where most high-profile land eviction cases and NGOs working on women and land rights are located. Places and time of interview were based on the availability of respondents. This research attempted to identify agenda of NGOs on women's issues on land rights, since this theme is not found in strategies of organization working on forced eviction and land grabbing.

Legal Consciousness

This research shall examine the roles of domestic legality in light of the abuse of women's right to land, specifically during the forced eviction. The research does not concentrate on substantive principles of laws, but their 'effect' and 'presence' in the lived experiences of people. The research is consonant with the intellectual effort in contemporary law and society, which scrutinizes the role of law in everyday lives. Ewick and Silbey (1998) called 'legality'. It also contributes to the study of women's land rights by situating the the idea of land rights in domestic laws and policies within social practice. Land rights and domestic legality might present competing forces that shape legal frameworks and behaviors of social actors. This shall look at legal consciousness as a social phenomenon, contingent and revealed in what respondents 'do' and 'say'. Legal consciousness is less concerned with explicitly conscious attitudes, but more with the subtle ways in which people use and think about law in their lives that are expressed in their conversations. Legal consciousness also serves as framework for explaining how land rights awareness can be used to protect women against abuses and injustice of forced eviction from their land. Thus, in-depth interviews are found to be most appropriate in understanding how people defined, evaluated, justified and reacted to laws.

3. WOMEN'S LEGAL CONCSIOUNESS ON RIGHT TO LAND

Abuse of Law Enforcement

Women who were evicted from their land became more conscious about how their rights were violated. This enabled them to seek justice from some part of domestic law and international human rights standard. Sadly, this only

occurs after they were forced evicted from their land. However, their rights struggle centered on finding facts about what happen and seeking help from state agencies to make power holders accountable. Their claim based on international standards, UN agencies and international actors have transformed the issue of forced evictions into human rights violations and discrimination against women. Such knowledge, conscientiousness and passion for justice become their leverage when pushing or negotiative with authorities, companies and other involved stakeholder.

In an interview, Daly, who was once evicted, mentioned that her home was demolished and filled with sand overnight, at a time when she had nothing in 2009. Two years later, her husband left her. Daly lived with her sisters and her families for 6 years. For the past six years, she had been protesting and demanding for her rights. At times, the police openly harassed her and her group. In fact, they beat one demonstrator. This is just one example of violence incited by law enforces to silence or threaten land rights activists and claimants. This should how the police would rather use brute force, than respect and allow for due process of law. Consider Daly's comment.

Interviewer: How did you feel when you first heard about the eviction?

Daly: I was confused. I asked my husband, but I got no response. I was told to pack our things. I was told to join a meeting with the authorities. But after my house was filled with sand at night, it decided to join demonstration. I was beaten by the police a few times, after meeting with local authorities. I feel that this is all wrong. Why has police evicted me from my land which I bought with my money 25 years ago? Why can the rich claim ownership over my land? It seems like they ordered the police to evict us from our own property, in order to gain profit from it.

Women's Perceptions on Power and Court in Land Conflict

Local authorities, police and armed forces were blamed by women respondents for violating their rights. They all agreed that it was difficult to deal with police, since they do not use the law nor have any human rights knowledge when they participate in forced evictions. Respondents asserted that the law enforcers and local authorities think that they are above the law. Furthermore, legal and justice systems are of no use if it is gravely corrupted. Those who are powerless are unable to access justice.

Interviewer: What was your experience in dealing with local authorities and police?

Chantha: They have never listened to me. They used force against me and evicted me from my land. They can use their power to abuse us. They feel that what they say and do are considered the law.

Mala: During the protests, police beat me, but I could not file any complaints, because I do not have the resources to hire a lawyer and go through judicial processes. I cannot rely on the law to punish the police and those who took my land and abused my rights.

Physical force is deemed normal in the context of dispersing demonstrations. It is believed that the police in Cambodia were trained to use physical force and obey orders, rather than side with human rights and protect people from further abuse. They could shoot or beat people justifying that it is just for self-defense.

These experiences expose the position of police and local authorities with respect to legal consciousness. As per respondents, the law is not an independent source that could constrain nor regulate police authority. Moreover, these women have never experienced being equal with anyone before the law. They understood that local authorities, armed forces and polices as well as government always find a way to operate above the law. These powerful people can use court against the powerless without any shame. To some extent, injustice has already been internalized by these women who have yet to see the light of day.

Respondents are convinced that more women should stay at the frontline to demand for the rights and fight injustices. Traditionally, the police are “kinder” to women demonstrators. However, this is no longer true. Women, too, experience physical, emotional, sexual and economic violence as a consequence of their activism. Furthermore, they have been long ignored when the agenda of compensation for grabbed land is raised.

Interviewer: How do you feel about the level of your powered compare to local authorities, state, the rich and police?

Rady: I cannot compare myself to them. I am so small. I am just a housewife. I have lesser power, and I do not think that I can use the law to win against any of them. They have better understanding of law. If we have done something wrong, they could accuse us immediately. We might understand that the act is wrong but what kind of the wrong it is, we cannot identify.

This sense of weakness or powerless when dealing with the government and the rich is deeply rooted in their mind. Despite this, they continue to participate in protests due to NGO support, and in solidarity with other victims. One respondent, Lidam shared that it is through solidarity that they can collectively correct what has been done wrong to the people.

Connections with influential people and money should not get in the way of achieving justice and claiming human rights. All respondents mentioned about these when asked about their take on the law and justice. They think that in order to get things done, one has to use his/her/their connections and resources to get things done.

Rina: In my case, law alone does not really help me. I know some who were evicted at all, got better compensation, or accessed justice faster and easier compared to us. They had the connections and money to achieve this.

One of issues raised was about financial capacity and support. Money is an important feature in the practice of law and domestic justice. The higher-level people are involved, more resources are poured in to achieve justice. Some people already spent so much money to get what they claimed for. At the end, money spent was more than

compensation they received. Based on Cambodian culture, compensating people who provide help is a show of gratitude. Money is also a means to get this done quick and efficiently - especially in relation to court cases.

Long: I do not mind giving money to the local authority who had helped us. He spent a great deal of his time to get things done much faster. The amount given was not a lot, but good enough to show gratitude.

Organization D: For land eviction cases, it is not possible to bring cases to the court. This because victims do not have land titles. I do not think they have enough knowledge to follow the procedure and what to do. They somehow become the victims of any wrongdoing and would be sent to jail as you can see in the case of Bopha. Money and connection help to solve problems of land rights issues. Some victims pay a huge sum of money to get things done.

Based on responses, power, money and connection are deemed more important than abiding the due process of law. In such situations, these women create legal consciousness against domestic laws. This reality makes it challenging for NGOs and women rights advocates to educate and encourage people to appreciate human rights and to mainstream it in Cambodian society.

The women-respondents who were evicted from their land chose to survive outside the law. They fear the repercussions if they chose to take their cases to court, after settling with their abusers. Most women mentioned that without any resources and connections, they will never win a case in court. They will just end up more abused and with heaps of debt. Moreover, they cannot afford any kind of legal support.

NGOs are trying to help women internalize human rights discourse in light of their situations. But women still see themselves as inferior before the law, and that working with NGO is useless. They would rather engage in corrupt practices to solve their respective cases.

In such situation, these women create a legal consciousness contrary to domestic laws. Such internalization becomes a challenge for NGOs and women's rights advocates to influence changes in the mindsets of victims and to convince them about the significance of human rights and social justice.

4. NGO'S PROGRAMS ON WOMEN LEGAL CONSCIOUSNESS

It is true that individual organizations choose issues to focus on based on the context of their understanding, funder preferences, and existing national and international social movement. NGOs respondents shared that they have been trying to work on critical issues despite their lack of skills and knowledge. Some issues are quite popular in Cambodia such as domestic violence, less representative of women in leadership roles, while the newer issues such as rights to land, sexual rights, freedom in technology rely more extensively on international support and human rights framework.

Women's human rights workers from the five organizations selected for this study mentioned that they normally work on matters concerning domestic violence, freedom of expression and assembly, fair trial, rape, women in leadership, women in prison, women and labor rights, women and educations, land conflict, peace, and reproductive and sexuality rights. Forced evictions and land rights are quite new issues that all these organizations are involved in.

They used to work on women's land rights before, but focusing mainly on the issues of women in divorce cases and related to women's needs with respect to the land law.

Respondents assert that local authorities have little no knowledge on land rights, all the more on the rights of women who forcibly evicted. Local authority and economic powerholders use the legal exceptions and loopholes to sustain gross violations of land rights during forced evictions.

Some women's human rights workers indicated that contexts of injustice are derived mainly from legalistic and organizational traps. The norms about women's human rights are deemed abstract, and cannot be enforced as a standalone right. This aggravated by the fact that women are already disempowered and are not literate about their rights during forced evictions.

Organizations may seek to convey their messages by using well-established local practices or new ones drawn from international models, such as human right conventions. The five organizations have used both different and similar approaches to communicate the idea of international human rights into the local context of women human rights and land rights in Cambodia. They amplify the language of women's rights for international funders and to invigorate public awareness and capacity building. Moreover, most organizations in this research take a fairly strategic view of the human rights language and use it in limited ways.

Each NGO have been providing services and activities such as providing advocacy for policy reform, livelihood skills training, legal training and advocacy training skill, using non-violence communication and peace process, providing legal aid to women advocating for the retrieval of their land and house. Some also give free legal support to anyone accused of committing any wrongdoings. In these activities, they convey messages related to gender substantive- equality, non-discrimination and obligations of states on women's right to land, based on international women's rights standards. In order to run these activities, organizations have various tactics and creative approaches such as peaceful campaign, forum theater, drawing, exhibition, and song. As per women-respondents, there are several NGOs that engage with them during protests. It was qualified that not all NGOs are behind these demonstrations. They are very mindful of draconian laws and policies regulating NGO activities in the country.

NGOs have been playing an important role in empowering women in leading spaces and causes in the name of their rights. They have long been working on the nexus between women's rights and land rights. However, due to the lack of capacity, limited resources and harsh public regulations, some refuse to directly engage on these issues due to their extremely sensitive and politically charged nature. However, NGOs have created an environment where people can learn more about their rights, be able to trust the due process of law, and aspire to be empowered despite systemic

tribulations. It is important for civil society and peoples' organizations to re-strategize on their ways of thinking and doing with regards to gender equality, and women empowerment. Women must be released from the notion that they are inferior than their male counterparts, and that they can instigate meaningful changes with respect to protecting their land, advancing their rights and fight against any injustices.

5. CONCLUSION AND FURTHER RESEARCH

In the context of land evictions, abuses done by laws enforcement bar women from fully claiming their rights. This systemic injustice and discrimination had force women to subscribe to alternative ways of achieving justice, such as filing complaints against land developers, street protests, and working with international human rights actors. However, the general notion of women with respect to their land rights is still very much skewed by corruptive means to get things done.

There is a general notion that violence against women participating in demonstration is justified to promote and protect peace, order and public security. While this may be acceptable, however, it promotes systemic oppression of the powerless. The importance of law recedes when the larger socio-political environment successfully sustains a culture of impunity for local authorities and police who abuse women's rights.

Such conscientious paved the way for women rights workers to actively mainstream women rights. It is difficult to convince people to understand the law if the legal system, which should protect the people, has otherwise contribute to social inequality and injustice. Laws are viewed as tools for the rich and powerful to evict people from their land and rights.

Furthermore, it has been found that women affected by evictions no longer believe in the power of the law to provide remedies to their situation. It is, therefore, imperative to change this mindset by aggressively normalizing the relevance of women's rights in the lives of every Cambodian. Structural changes are needed to eliminate the culture of impunity and create spaces for people to appreciate and claim their rights. . However, it does not sound possible to occur if only aggrieved women are the one who are interested parties while women human rights abusers still enjoy protections by culture of impunity and everyone who feel of no impact from land evictions does not understand that they are staying in the level of least potential victim and does not care to hold women rights abusers hold accountable to not be protected when they commit violence against women and evict them from land.

National and international efforts need to be consolidated to seek an end to illegal land grabbing and forced evictions in Cambodia. They also need to be more active in raising awareness about policies and laws affecting the lives of women in the country. Further research can be done to capture more narratives about women dealing with this issue. It also calls for more knowledge on perceptions about the culture of impunity in light of land rights. Through this exercise, we can be able to learn more about the impacts of domestic laws in the lives of women living in Cambodia.

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HAZE AND SOCIAL (IN)JUSTICE IN SOUTHEAST ASIA: PAST EXPERIENCE AND WHAT NEXT?

Chayan Vaddhanaphuti, Helena Varkkey, Benjamin Tay, Tara Buakamsri

ABSTRACT

Over the past couple of decades, various sources of air pollution have become major issues of public concern in Southeast Asia and risen to the highest levels of public policy and politics. For example, annual forest fires were especially severe in Northern Thailand this year and raised tensions between vocal urban residents and rural ethnic communities who are regularly blamed due to their use of fire in agricultural practices. Yet, the latter have tried to demonstrate that they themselves are some of the most severely affected and, far from being to blame, are actually at the front line of trying to manage the wildfires risking their lives in the process. Meanwhile, transboundary haze linked to burning peatlands in palm oil plantations in Indonesia causes harm – and frustration – in Singapore and Malaysia, also stoking inter-governmental tensions and blame games even as at least part of the responsibility links back to transnational companies based in Singapore and Malaysia. Also significant across the region is air pollution in expanding major and secondary urban areas produced by vehicles and other economic activities within them, including in Bangkok, Manila, Jakarta, Vientiane, Hanoi and Ho Chi Minh City. Whilst it is commonly narrated that urban air pollution affects all residents, in practice there is a strong social justice dimension as those who work outdoors – such as motorcycle taxi riders or street vendors – are significantly more exposed and with less resources to protect their health. The recent pandemic, and resultant lockdowns, resulted in some respite for the typically harmful pollution even as it is only temporary, and at great cost to livelihoods in general. Within these heated public discussions, many types of knowledge are produced and circulated influencing contesting discourses – including scientific studies, monitoring apps, media analysis, and community knowledge. Whilst a range of divergent solutions are regularly proposed by government agencies, politicians, academics, civil society, and community leaders, year after year air pollution continues to remain a challenge.

This session will examine how various economic, social and political inequalities intersect in relation to air pollution in terms of its creation and exposure, and the consequences for individuals, families and society as-a-whole. We situate the analysis in relation to the past experiences of air pollution and the heated debates that have ensued, but also look to the future given that the COVID-19 pandemic is disrupting and has the possibility to transform many aspects of future society-environment relations.

Keyword: Social (In)Justice, Southeast Asia.

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DOING AND UNDOING GENDER IN CONTEXT OF KATHOEI UNDER HETEROSEXUAL DISCOURSE

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ABSTRACT

Kathoei is a term used to describe behavior, gender identity, or sexuality orientation in Thailand. Its definition is complex and has changed throughout history from the terms “homosexuality,” “transvestite,” “transgender,” to Queer. There are several communities which consist people who do not identify themselves with the more traditional gender binary notion. Kathoei could be defined as person who identify oneself beyond the conventional constructs of man or woman. These include Sao-praphet-sornng and transgender woman, or vise-versa. Interestingly, the previous studies mainly have reduced the concept of Kathoei to either being an effeminate male, gay man, or transgender woman. The author aims to demystify existing heterosexual discourse, which have played a role in defining Kathoei in Thai society and Thai academia. This will be based on a “Doing and Undoing” gender concept. “Doing gender” means that gender is done as an interaction within a wide variety of activities (West and Zimmerman, 1984). While, as per Judith Butler, “Undoing gender” emphasizes on performativity of gender related to countless performances. Thus, Doing and Undoing gender adopt a similar structure, by which a heterosexual discourse dictates a gender performance (Butler, 2004). The article aims to use these concepts to discuss the evolution of studies on Kathoei from the past to the present. It shall point out issues that are still missing and such concept should be developed in the future to cover the reality and diversity of Kathoei, as well as, LGBT+ and Non-binary communities in Thailand.

Keyword: Kathoei, Doing Gender, Heterosexual Discourse.

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1. INTRODUCTION

Doing or Undoing Gender?

What is Gender? Is something we are born with? Or is it something we do? Doing gender is originally conceived by West and Zimmerman in 1977 and published in 1987. Undoing gender is developed by Judith Butler. Both concepts are used to describe gender performance.

West & Zimmerman (1987) illustrated their concept as gender done or performed in interactions based on an accomplishment rather than a trait, a social role, or a societal representation. Doing gender therefore legitimizes social structures and establishes the male or female dichotomy and unequivocal categories as natural. West and Zimmerman also refuted the classic distinction between socially constructed gender as opposed to biological sex relations between social and physical features. Hence, these mainstream norms bring up concepts such as sex, sex category and gender. Sex is socially defined as being male or female, usually based on an individual's genitalia or chromosomal make-up at birth. Sex category is an assumed biological category which denies an individual's gender identification. Gender is the product of context-related social practices which codify either one's femininity or masculinity. Moreover, it is described omnirelevant as it is relevant in almost every interaction. For instance, in the case of Agnes, who is a transsexual who adopted a female identity at the age 17 and eventually underwent SRS. However, she was conscientiously did not fake what real women did naturally. She was obliged to analyze and figure out ways of doing gender under a social structure that she is part of. Doing gender consists of managing such occasions. The outcome is seen and seeable as gender appropriate (West & Zimmerman, 1987).

Undoing gender is based on the idea of Judith Butler, based on her book "Gender Trouble," and inspired by Foucault's post-modernism. Michel Foucault's *The History of Sexuality* (1976) refers to sexuality one's identity belonging to realm of either heterosexuals or homosexuals. During the rise of capitalism, the system of the society has changed to accommodate new structures such as legal systems, education modalities and employment structures. This also affected the "discourse" on sexuality, which had been part of cultural knowledge and changed perceptions and ways of thinking. Butler invokes Foucault in terms of bodies being inscribed with meaning, and emphasizes the important of one's environment in the creation of person's identity, rather being affixed to one's genitals (Butler, 1999).

The "Heterosexual Matrix" is the sexual discourse that describes the shifting of biological sex to gender, which in turn leads to an attraction to the opposite sex. Gender is repeated so often that it has become what we see as "normal" or "natural" performance. Hence, Butler argues there is no sex because sex is always already gender. She also denies any real difference between a biologically defined sex and socially defined gender a identity. Plainly because there really was no sex as our actions do not come from them, but from our actions. In this light, performativity is not something you are, but something you do. Furthermore, it also can be thought as the connection between people and ideas through action (Butler, 1999).

Doing and Undoing gender seem opposite concepts describing gender performance. However, West & Zimmerman (2009) argues that undoing gender deflects attention away from the situational character of gender accountability, and circumstantial modifications (West & Zimmerman, 2009). Despite this, both Doing and Undoing gender lean towards contexts influencing performance. The context is referred differently, but it could be implied as the similarity of both concepts. Furthermore, Butler (1999) refers to heterosexual matrix as a sexual discourse, while West & Zimmerman refers sex categories as obligatory heterosexuality or a social construction. Despite debates and evolving concepts, both doing and undoing gender demystify the mainstream heterosexual discourse.

Not Doing nor Undoing, But Re-doing Gender

West and Zimmerman (1984) argue that gender is done as individuals realize it through interactions and through a variety of activities. The case study of Agnes reveals that people do not expect a mismatch between biological credentials and gender presentations, but rather assume that gendered appearances reflect a biologically sexed reality (West and Zimmerman 1987). This assumption points out that transgender people, who live with a social gender identity different from a gender they were assigned at birth, can successfully do masculinity or femininity without having the genitalia that are presumed to follow. Butler (1999) shares that performativity of Gender of drag can be subversive. Drag is not a secondary imitation; it reflects the imitative structure by which hegemonic gender is produced and disputes heterosexuality's claim on naturalness and originality (Butler, 2004).

Gender studies, according to Butler, must be mindful that the alternative to the binary system of gender is a multiplication of genders. The disruption of the binary system need not lead us to an equally problematic quantification of gender. Its binariness cannot be taken for granted outside the heterosexual frame. To overcome this, she emphasizes on gender trouble or gender blending, transgender or cross-gender has a way of moving beyond that naturalized binary (Butler, 2004). These assumptions of both Doing and Undoing gender could imply Kathoei's gender performance is disruptive and goes beyond the heterosexual discourse.

There are many studies describing and examining doing and undoing gender of transgender people and their capacity to disrupt beyond the heterosexual discourse. Connell (2010) later offers 19 in-depth interviews with trans people about their negotiation and management of gendered interactions at work. It is a means to explore how their experiences potentially contribute to the doing, undoing, or redoing of gender in the workplace. West and Zimmerman have argued that gender can never be "undone," but might instead be "redone." Therefore, gender is "not so much undone as redone" (West and Zimmerman 2009). The disruption of sex, gender, and sex category is not apparent in their interactions with their coworkers only, but also take place in transgender themselves. For instance, Kurt, a 62-year-old white transman, felt policed by other men in the workplace regarding "appropriate" gender behavior. When he said "I'm going to slap the crap out of you." A man replied, "Men do not slap." Hence, this finding suggests that simply being transgender does not necessarily disrupt doing gender. However, they attempted to undo or redo gender even as their coworkers and clients held them accountable to conventional gender practices. This is also because coming out as transgender sometimes mitigates than ambiguity in gender presentation. The more gender normative, thereby the more accepted by others. However, some felt that gender-bending had important political meaning, others

wanted to maintain parts of themselves that felt authentic even if they did not perfectly “match” their chosen gender. For instance, Kyle intentionally chose to do his masculinity differently than his male coworkers. Kyle made his work style in his employment to keep certain so-called “feminine.” However, Kyle conscientiously created a hybrid gender identity. Furthermore, Jared, a 23-year-old white genderqueer resists to use the gender-neutral pronouns “ze.” This politicization of transgender, combined with the efforts at hybridity in their gender performances, could be interpreted as moments of undoing or redoing gender. This suggests that the concept “Doing transgender” captures trans people’s unique management of situated conduct as they, with others, attempt to make gendered sense of their discordance between sex and sex category. Doing transgender may operate more like “doing gender” or like “undoing/redoing gender,” depending on the context. Trans people are not necessarily the only social actors engaged in the undoing or redoing of gender; in fact, the more moments of challenging the gender binary that are identified, the more common ground is uncovered for trans people and others to oppose gender inequality (Connell, 2010).

Doing and Undoing (and even Redoing) gender refer to gender performance. However, Undoing gender refers to the origins from the countless perform into performativity, while Doing gender of West and Zimmerman emphasizes the context-sensitive and the changes of the performance. Lastly, new term of Redoing is very much similar Doing gender, however it emphasizes the assumption of the reproduction of Doing gender. There is a mismatch of the sex/gender/sexuality of transgender. In this light, Kathoei could reproduce the process of Doing gender under the Heterosexual discourse.

Kathoei: Do, Undo, (or Redo) Gender?

What does it really mean to be Kathoei? To analyze Kathoei’s identity as Doing gender or Undoing gender, we need to understand debates regarding the definition of Kathoei.

There are many different studies trying to identify Kathoei, an identity which has been existing in Thailand for a long time. It is a concept that has been long associated to homosexuality, transgender and gender blended definition. Such identity could not be judged as a male or female so called androgynous, or somewhere in between feminine and masculine behavior. In “Lanna”, northern region, and “Esan”, northeast region, Kathoei behaviors are called “Poo-Mea” or “Poo-Mae”, respectively. They both mean either a male who has feminine qualities and vice versa. In Central Thai language, Kathoei refers to a person with both female and male genital (intersex) or someone who has a sexual relationship with other men. Moreover, Kathoei behaviors are considered as a sexual imperfection, especially when a person performs out of the gender norms of men and women. However, some people still call themselves or their sexuality as Kathoei. Hence, Kathoei’s definition is still ambiguous, and to a certain degree, still can’t fit into any gender category (Duangwiset, 2013).

This study intended to look at Kathoei in Thai academia in several ways. First, the earlier studies identified homosexuals as “abnormal.” After World War II, the economic and social contexts changed. In the 1960s, the word “gay” was borrowed from the West to describe homosexuals. In the 1980s, gays tried to build a discourse of their own. In the 1990s, homosexuality was taken out from list of medical conditions. (Romjumba, 2002). Thai studies on Kathoei

have significantly been influenced Western thought and concepts. Over the past two centuries, western influence had focused more on emphasizing male-female gender binaries compared to segregating homosexuality from heterosexuality (Duangwises & Jackson, 2013). Based on 207 Thai documents produced from 1995 to 2010, epistemology of the homosexuality research embraced Postmodern feminism more than approaching the matter from a modernity lens.

The concept of sexual expression is considered as a universal thing, and is derived from a scientific method approaches gender identity and sex from a biological standpoint. This way of thinking leads to a simple conclusion that Kathoei is usually associated with homosexuality. Furthermore, science knowledge argue that think men who dress up as women are abnormal, because their way of expression does not correspond to their genitals (Duangwises, 2015).

Secondly, the movements to accept the Lesbian Gay Bisexual Transgender, Queer, Intersex and Asexual (LGBTQIA) community caused a spike of academic led studies. Examples include "Kathoei in a cabaret show" (Ayutthaya, 2003), "Kathoei women in Muslim Society" (Sanguankaew, 2003), "Kathoei in a rural area" (Wawisak, 2007), "Kathoei in a factory" (Chotiwan, 2014). These prove the diversity of gender performance of Kathoei in Thai society.

Ayutthaya (2003) studied about Kathoei's self-consciousness about sex sexuality and sexual performance in a cabaret show. The research was done through participatory observing. It is considered as one of the most groundbreaking research because it was conducted by Kathoei. It sought to understand and rethink about conservative attitudes towards and negative stereotype of Kathoei. Her study found that Kathoei's identity in public space varies, which includes repeat stereotyping and identity stigmatization. The Cabaret was seen as as strategy to pursue as Third space, which co-exist with spaces of power and oppression. Jackson (1997) divides gender into male, female and transgender, in which there are real Kathoei, transgender people. They are perceived as Homosexual and Homoerotic, which refer to all forms of homosexuality. She argued that categorizing Kathoei as Homosexual elicited the fake empathy from the community.

The study on "Kathoei Bannok" by Waswsak (2007), illustrated the different contexts based on previous Kathoei studies. It aimed to understand the means of self-construction and construction of Kathoei Bannok in Nakhonsithammarat province. This is because Kathoei in most of large cities such as Hai Yai, Bangkok, Pattaya tend to be more likely to look and perform feminine, in order to serve capitalist demands. "Bannok" is a rural lifestyle, stigmatized and discriminated against by more urban elite communities. It is perceived as powerless and coming from lower social class. It impacts ways women view their body, use cheaper accessories, speak local language and engaged in white collar jobs.

There are several studies that try to take the concept of Kathoei out of existing gender binaries and adopt the queer approach to this issue. Pravattiyagul (2014) researched about transgender women or Kathoei migrants in Europe. This study differs from Thongkajai (2014), which focused more sex worker. This study looked at sex work clientele.

She argues Kathoei are forced to do sex work, because they are discriminated in labour paces in Thailand. Furthermore, sex work in Europe was found to be the easiest way to financially support their families. It is also a means to support the emotionally. Most of them actively choose customers who satisfy their own sexual desires based on appearances. Based on data, male clients of Kathoei sex worker consider themselves as straight or heterosexual. They view “ladyboy” the same as biological women. Fanon (2008) found that European men had become Kathoei’s objects of desire. Orientalist-constructed inferior images influence the perception and mentality of Kathoei’s own ‘other’ identity. Kathoeis rely on the aesthetic myth to gain social acceptance that they are normal. The beauty myth validates Kathoei’s gender and sexuality as valued women. Even it brings diversity into the image of trans women, it still maintains the same stereotyped image of sex work, and heterosexual relationships. There are some instances showing diverse images of Kathoei. Preference of the customers towards “Kathoei-Mi-Ngu” or non-operated trans women influence sex work rates as compared to post-operated transwomen, gay men and biological women. In some instances, clients ask them to perform acts related to sexual preferences such as group sex, fetish, and violence. Lastly, this research found that these interesting relationship and sexuality are also done online (Pravattiyagul, 2014).

The existence of lesbian trans people such as Jibby and Piyadhorn in Bangkok makes the discourse more interesting. Thai society still does not accept that sexual orientation can diverge with gender identity. The concept of Kathoei puts strain on Thai lesbian trans and marginalized Thai trans. This paper demonstrates the harm of essentialist identity politics, which exacerbate discrimination, that should be deconstructed. The study described the fluidity of Kathoei identities and reflects the influences of essentialist identity within Eurocentric societies. It illustrates how these politics increase the stigmatization sexual minorities such as people with nonconforming gender, lesbian Kathoei, Kathoei sex workers, Kathoei immigrants in Europe, people who identify as Queer e (Pravattiyagul, 2014).

A study of Kathoei in Thai society and Thai academia reflected presentations of Kathoei under the heterosexual discourse Kathoei was still referred as feminine mostly with male partner. However, there are emerging groups of Kathoei who could not fit traditional behaviors or identities under heterosexual discourse.

Kathoei and Heterosexual Discourse

This section attempts to suggest a hybrid of both Thai and Western concepts of sex/gender/sexuality in the context of Thailand should be applied in future studies.

Peter Jackson originally argued that “Phet” is not only about a biological sex or a sexual activity. This concept covers includes sex, gender, and sexuality within a single word. However, Thailand eventually adopted the Western ways of thinking. The term “Phet” gradually changed to the identity based on ways of thinking of biology and psychology expanding to sex, emotions, gender, and sexual relations (Jackson, 2000). There are studies that illustrate the influential ideology through the history and how schools of thought that attempt to describe the variety of the gender performances. In Thailand, many scholars have tried to translate the term “Phet” as biological sex. (Jackson, 2000).

In Thai society, Buddhism views the existence of human beings as genderless or gender free, which is shared with experiences of birth, aging, illness, death. In this regard, sex is therefore not a sin. However, homosexuality becomes a problem when it causes suffering (Jackson, 1989). Furthermore, the concept of karma is regularly used to describe gender differences and the fate of humans¹. The polycultural multiplicity of Thailand is one of the defining issues for studies of the country's religious culture including Theravada Buddhism, Brahmanism, Chinese divinities, spirit possession, divination, and astrology (Peter Jackson, 2020).

Van Esterik shared that the concept of Kathoei mocks the notion of Thai masculinity and femininity. She also referred Kathoei as agents of destabilization of gender identities. Kathoei underscores the different positioning of boundaries in Thai and Western logic, and the ability of individuals to move in and out of identities. However, it might be only the case of Kathoei, whose identities are highly ambiguous. But there is Kathoei who compose a female body better than do women, and overdressed women accused of looking like Kathoei, in a parody of reversals. Hence, Van Esterik argued that Thai gender identity is a much more context sensitive than Western constructions. Thai gender, sexual orientation, sexual practices, and identity should be thought of as context-sensitive choices shaped by several factors.

The Thai term “Kalatesa” means proper, suitable, or balanced according to politeness, appropriateness, or context in time and space. “Kala” is the formal term for time in general. “Tesa” refers to space, or locality. Kalatesa helps understanding surfaces, strategies of interaction, and results in this pattern of adaptation. Children are taught from birth to recognize Kalatesa. It is now part of a middle-class Bangkok expression of order “Riaproy.” Further, Kalatesa reveals literary discourses in “Rabiab.” Thus, Kalatesa highlights regional, ethnic and class differences in the form the basis of gender hierarchies (Van Esterik, 2000). Interestingly, Nidhi argued that Thai kalatesa spatialities have clear borders or boundaries that gives men privileged access to more spaces than women. He contends that Thais, for example in terms of ritual or “Phithikam.” He gave the example of government office signs saying “Government Offices: Please Dress Politely”. Through this, Thais need to adapt their dress and bodily comportment before they can enter these locations in order to conform to the specific performative norms of that time and place. (Nidhi, 1991: 189 cited in Peter Jackson, 2020).

Most past research focusing on Kathoei assumed that Kathoei could be queer or such identities are able to overcome heterosexual discourse. However, most of them do not point the diversity of Kathoei about their mismatches of sex, gender, and sexuality. Especially, most of Kathoei in the studies were portrayed as a heterosexual relationship.

¹ One interesting source for this argument is the story of the adulterous husband who went to Hell for five hundred lives, was reborn a woman for five hundred lives, a Kathoei for five hundred lives, a castrated animal for five hundred lives, and later was reborn as a man. It is evitable that Karma is identified as a key Buddhist concept underlying gender ideology (Van Esterik, 2000).

2. CONCLUSION

Doing and Undoing (and even Redoing) gender refer to gender performance. However, there are several Redoing that means Doing gender. It emphasized the assumption of reproduction of Doing gender because the mismatch of the sex/gender/sexuality of transgender. In this regard, Kathoei could reproduce the process of Doing gender under the Heterosexual discourse. Butler asserted that gender studies should assume that the alternative to the binary system of gender is a multiplication of genders. However, the disruption of the binary system need not lead us to an equally problematic quantification of gender. Its binariness cannot be taken for granted outside the heterosexual frame. To overcome binariness is naturalizing binary (Butler, 2004).

Thailand is a unique location to testify the overlap of the Thai term and the Western concept of sex/gender/sexuality. Thai religion does not result only from the complex, multi-cultural mix of traditions and ritual. It also emerges from the fact that distinct processes of mixing of these diverse traditions take place. The Kalatesa contextualization as a modality of power over a succession of foreign cultural influences throughout Thai history gender and other forms of cultural diversity. There are several studies on Kathoei aiming to demystify how Kathoei would result in destabilization of heterosexual discourse in Thailand.

However, the lack of understanding on the concept and lived realities of Kathoei reflects the need for further studies to focus on the negotiation between an internal and external gender and sexual concepts. Furthermore, this article aims to point out that the heterosexual discourse in Thai should not be defined through Western framework. It requires a shift to highlighting an individual's life and social constructs such as family, workplace, social media, and public space along with the Thai concept of gender such as Phet, Religion, and Kalatesa.

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AN IMPLEMENTATION OF COMMUNITY-BASED DISASTER RISK MANAGEMENT IN MUEANG DISTRICT, UBON RATCHATHANI PROVINCE, THAILAND

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ABSTRACT

Mueang District, Ubon Ratchathani, floods every year because of its location on lowland terrain and proximity to two rivers, Moon River and Chi River, which flood regularly. Community-based disaster risk management (CBDRM) is a disaster risk management approach that empowers the community, as well as reduces the community's risks and vulnerabilities. This study aims to examine the implementation processes and problems of CBDRM in Mueang District, Ubon Ratchathani. Qualitative methodology is employed through document research and semi-structured in-depth interviews with local government officials, disaster prevention and mitigation officials, and civil defense volunteers. CBDRM emphasizes community participation as indispensable, especially in analyzing the community's risks and designing risk reduction strategies and measures. CBDRM also supports collaboration between the community and the government sector. However, some elements of CBDRM implementation in Mueang Ubon Ratchathani need enhancing in order to achieve sustainable CBDRM. When the will and incentives for disaster risk reduction measures by local governmental organizations and community leaders are lacking or put aside, it is difficult to have sufficient budgetary resources or initiatives to sustain CBDRM. On the community side, in rural areas, CBDRM has more participants than in urban areas because its members are engaged in agriculture which encourages participation. On the contrary, people in urban areas are busy with their routines, and urban areas have no clear community leaders to gather community members. Besides, people who do not have sufficient awareness of the potential impact of floods tend to be pay less heed to early-warning flood evacuation alerts, as happened in the case of flooding in 2019. Accordingly, it is necessary enhance people's awareness, and strengthen the will and leadership of local governmental organizations and community leaders in order to sustain CBDRM.

Keyword: Community-Based Disaster Risk Management, Disaster Risk Management, Flooding, Capacity Building.

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1. INTRODUCTION

Thailand is vulnerable to flooding due to its location in the tropical belt, where storms and monsoons are frequent (Center for Excellence in Disaster Management & Humanitarian Assistance, 2018). Ubon Ratchathani is a province in northeastern Thailand. Ubon Ratchathani is vulnerable to flooding because it is located on lowland terrain, called the Khorat Basin, and it has higher rainfall compared to other provinces in the same region. Mueang District is an economic and flood monitoring area, through which the Chi River and the Moon River flow. Besides, in Mueang District, Ubon Ratchathani City Municipality is categorized as a special flood monitoring area (Department of Disaster Prevention and Mitigation, 2019). The flooding in 2019 caused Mueang District to be one of the most flood-affected districts in Ubon Ratchathani. Thus, to reduce losses and damages sustainably, it is necessary to reduce risks and empower communities, which are disaster fronts. Community-based disaster risk management (CBDRM) is a disaster risk management approach that can reduce risks and vulnerabilities from flooding sustainably.

In August 2019, Thailand was hit by two tropical storms, Podul and Kajiki, which affected 33 provinces, mainly located in the northern and northeastern regions. Torrential rain lashed the area for two weeks causing flash floods and mudslides (Techakitteranun, 2019). On September 21 2019, the flood was announced as a level 3 disaster. According to the National Disaster Prevention and Mitigation Plan 2015, a level 3 disaster is a large-scale disaster that necessitates the intervention of the Central Disaster Management Centre in order to assume responsibilities for coping with disasters and decision-making (Department of Disaster Prevention and Mitigation, 2015; National News Bureau of Thailand, 2019). In Ubon Ratchathani, the flood affected more than 42,000 households in 25 districts and caused economic losses of approximately one billion baht (Thai PBS World, 2019; Prachachat, 2019). Mueang District was one of the most severely affected districts in Ubon Ratchathani because it is one of Ubon Ratchathani's two main economic districts, containing the Province's highest population: 222,679 out of the total Ubon Ratchathani population of 1,869,955 (Department of Disaster Prevention and Mitigation, 2019).

One of the approaches to reduce risks and empower communities is CBDRM. CBDRM enhances the community's capacity to deal with disasters. CBDRM has been conducted in Thailand since 2004. Besides, CBDRM is a part of the guidelines for disaster preparation in the National Disaster Risk Management Plan (2015). The National Plan regulates local governmental organizations to implement disaster prevention and mitigation plans in their jurisdiction. CBDRM enhances the community's capacity to cope with disasters through community participation and ownership, which emphasize community as a center for assessing and designing risk reduction strategies and measures. Moreover, the main role of governmental sectors is to support the community. However, the flood in 2019 still caused a high incidence of disaster-affected people, losses, and deaths. Therefore, this study aims to examine the implementation processes and problems of CBDRM in Mueang District, Ubon Ratchathani. This study is divided into six sections: 1) Introduction, 2) Concept of community-based disaster risk management, 3) Literature review on community-based disaster risk management, 4) Methodology, 5) Findings, 6) Discussion, and 7) Conclusion.

2. CONCEPT OF COMMUNITY-BASED DISASTER RISK MANAGEMENT

Disaster risk management is a systematic approach that aims to reduce a hazard's impacts through the understanding of potential hazards, identify risks and vulnerabilities, enhance capacity, and initiate policy and institutional support (Agrawal, 2018; United Nations Office for Disaster Risk Reduction, 2009). It is the responsibility of governments to manage disasters. Hence, employing a top-down approach is beneficial to law enforcement. Nevertheless, using the top-down approach to manage disasters often results in failure. When decisions are made by the higher authorities, they rarely reflect the needs of communities or disaster-affected people and they ignore local resources and perceptions (Pandey & Okazaki, 2005; Van Niekerk, Nemaokonde, Kruger & Forbes-Genade, 2018; Maskrey, 2011). Because the community is a disaster front, capacity enhancement and disaster risk reduction initiatives are crucial for coping with disasters (Kafle & Murshed, 2006). In contrast to the top-down approach, CBDRM employs a bottom-up approach that emphasizes the community's participation and ownership.

CBDRM is defined as *"inclusive, active and owned community driven processes aimed at addressing the drivers of disaster risk creation; disaster risk reduction; and societal resilience building within the context of local and indigenous knowledge and wisdom"* (Niekerk, Nemaokonde, Kruger & Forbes-Genade, 2018, p. 413). People are the core of decision making and implementation of disaster risk management activities (United Nations Development Programme, 2016). CBDRM aims to transform the roles of the community from passive to active and empower the community to be able to negotiate and link the supports from local and central governments as well as civil society (Marskrey, 2011). Sustainability of community initiatives is the key to community involvement; meanwhile, community involvement is essential to CBDRM because communities know and understand their own situation and context best. CBDRM supports sustainability in that it employs the ownership of communities to identify risks and vulnerabilities and enhances community capacity. In order to assess the success of the CBDRM process, some key measurements are:

- 1) *The existence of a local Disaster Risk Management Committee (DRMC) or organization;*
- 2) *Community hazard, vulnerability and capacity/resources mapping;*
- 3) *A community Disaster Risk Management Plan;*
- 4) *Training in disaster risk management and community learning system(s);*
- 5) *Regular community simulations and exercises;*
- 6) *Early warning system(s); and*
- 7) *A disaster risk reduction fund"*

United Nations Development Programme, 2016, as cited in Niekerk, Nemaokonde, Kruger & Forbes-Genade, 2018, p. 414).

Implementing CBDRM faces several challenges. It is vital to have the political will of government leaders to initiate policy, plan, and direction, which integrates CBDRM in policy and implementation. Otherwise, responsibility can be shifted to NGOs or INGOs due to the lack of governance structures, institutions, and policy

frameworks (Zubir & Amirrol, 2011; Salajegheh & Pirmoradi, 2013; Niekerk, Nemaokonde, Kruger & Forbes-Genade, 2018). The top-down approach is still extensively used in CBDRM that limits community involvement. As a consequence, lack of participation and ownership can lead to a lack of sustainability. Without sustainability, CBDRM's success will be gradually diminished (Kafle & Murshed, 2006; Pandey & Okazaki, 2005).

3. COMMUNITY-BASED DISASTER RISK MANAGEMENT IN THAILAND

The Department of Disaster Prevention and Mitigation (DDPM) is the governmental agency that responds to disaster management in Thailand. DDPM produces and disseminates CBDRM implementation guidelines, which consist of eight measures: 1) Building public awareness and participation; 2) Creating community information, and disaster prevention and mitigation plans; 3) Establishing a community committee and volunteers; 4) Community training on disaster prevention and mitigation, and evacuation; 5) Coordination between communities and local administration organizations for supports; 6) Establishing local search and rescue teams; 7) Building community networks; and 8) Continuous development of community members' capacity and knowledge (Office of Disaster Prevention, 2008).

Several scholars have conducted research on the implementation of CBDRM in Thailand. Bunjongsiri, Keowaan, Kandee & Chinnarasri (2017) investigated the lessons learned from flood management in selected model communities in all regions of Thailand. The results found that building awareness and incentives among the community towards the benefits of reducing losses and deaths from a flood are crucial to creating community involvement. Learning and understanding the causes of flooding and learning flooding case studies systemically help communities to understand and develop awareness of flood impacts, which consequently stimulate people to change their behaviors.

It consequently opens opportunities for the community to participate in understanding the lessons learned from previous floods, and in designing plans and measures to cope with floods at all phases of disasters, i.e. before, during, and after disaster phases. However, it requires support from the governmental sector to provide knowledge and training, assist in the establishment of local community networks, and provide contact with relevant organizations.

Complementary to the study by Bunjongsiri, Keowaan, Kandee & Chinnarasri, the results of Boonreang, Sumnuanyen, Ratchatawan & Jantanasakulwong's (2017) research on community-based flood management in fourteen communities of Warin Chamrap Town Municipality found that CBDRM increases community capacity to cope with disasters before, during and after disaster phases. Communities are able to respond to a flood rather than waiting for assistance from local governments, understand community context, and possess the readiness to learn and live with the flood. When empowering the community through actual experiences and learning, communities having more capacity and power contribute to community involvement. Consequently, community plans are integrated into the municipality's policies, plans, and projects, in order to respond to the needs of communities.

Likewise, Liengjindathaworn, Vadhnapiyakul, NamKhot, & Yuanyao (2018) conducted research on enhancing the effectiveness of local communities' participation in repeatedly flooded areas in Warin Chamrap District, Ubon Ratchathani. They found that effective flood management needs the participation of communities, local administration organizations, and other relevant organizations in order to plan strategies and measurements for coping with disasters in all phases. Assistance from governmental organizations and other relevant organizations in community planning and training helps community members to prepare and respond to hazards and know which organizations they should contact in a particular situation. To enhance coping capacity, local administration organizations should give precedence to developing knowledge and skills related to disaster risk reduction, integrating all stakeholders, and empowering community networks.

4. METHODOLOGY

This study employs a qualitative methodology. Data is collected from both primary and secondary data comprising semi-structured in-depth interviews and document research. For the interview, purposive sampling and snowball sampling are used to select the key informants who work on flood preparedness. Thus, the interviews are conducted with local government officials who operate in flood-risk areas, disaster prevention and mitigation officials, and civil defense volunteers. For document research, it is conducted to acquire policy data related to disaster risk management, legal documents, and literature. After reviewing the data, it would be analyzed through content analysis.

5. FINDINGS

5.1 Implementation of Community-Based Disaster Risk Management in Mueang Ubon Ratchathani

The Public Disaster Prevention and Mitigation Act, B.E. 2550. determines provincial governmental and local governmental organizations as the main actors to manage disasters, and stipulates that local governmental organization has a responsibility to prevent and mitigate disasters in their jurisdiction (Kamolvej, 2011). Thus, CBDRM is conducted by local governmental organizations. Local governmental organizations may ask for support from the Disaster Prevention and Mitigation Office, Ubon Ratchathani, the Disaster Prevention and Mitigation Center 13, and Civil Defense Volunteers. Disaster Prevention and Mitigation Office, Ubon Ratchathani, may also conduct CBDRM, based on the risk communities examined by the provincial organizations, while the Disaster Prevention and Mitigation Center 13 can provide equipment support. Civil Defense Volunteers are usually experts who assist and mentor communities to conduct CBDRM.

In the case of Mueang Ubon Ratchathani, conducting the CBDRM program in communities is a short-term project which generally requires two days, with 20-50 participants, who are community members. It places the communities as the main actors in the risk reduction process, with assistance from the governmental sector. In order

to enhance the capacity of the communities, the core issues involved in implementing CBDRM are analyzing threats, risks, and vulnerabilities, assessing community capacity, developing strategies and measures, and training. Experts from governmental sectors provide the basic idea and background of disaster management to participants. Likewise, experts help the communities to assess community resources, capacity, and maps so that they can identify threats, risks, and vulnerabilities, as well as design risk maps and safe maps.

Since the communities know their threats, risks, and vulnerabilities, this information is used to develop a community disaster prevention and mitigation plan. Moreover, the communities must assign a disaster management committee, which identifies clear positions and roles, and establishes a community disaster management center, as well as identifies clear procedures, a person in charge, and responsibility in each position. The disaster management committee has the obligation to monitor disaster management, disseminate early warnings, and keep tools and equipment, in accordance with the plan.

Community disaster prevention and mitigation plans identify measures and activities before, during, and after disaster phases. Fundamentally, in the pre-disaster phase, participants identify measures to mitigate or prepare for disasters such as early warning, equipment checking, temporary shelter location, and evacuation routes. During the disaster phase, participants identify evacuation measures, temporary shelter management, and rescue measures. In the post-disaster phase, participants organize accounts or reports which identify losses, deaths, and damaged equipment, in order to inform or request governments support and compensation. Later, once the community disaster prevention and mitigation plan has been successfully drafted, participants exercise the plan through a table-top exercise (TTX). TTX sets an informal situation and environment. TTX provides an understanding of roles and responsibilities and procedures in an actual situation. TTX also opens up the way for discussion of the procedural problems (Department of Disaster Prevention and Mitigation, 2015). After the TTX, participants and experts evaluate and recommend the plan based on the results of the exercise of the plan.

5.2 Problems of Implementing Community-Based Disaster Risk Management in Mueang Ubon Ratchathani

Mueang District, Ubon Ratchathani is located on lowland terrain. Two nearby rivers, Moon River and Chi River, pass through the district, and both regularly flood every year. CBDRM truly enhances and empowers community capacity to cope with the flood. It systematizes the local knowledge and experience of communities to conduct disaster risk reduction measures under the supervision of community members, while relevant local and provincial governmental organizations assist the processes. Nevertheless, several problems and obstacles occur that affect the effectiveness and sustainability of CBDRM.

When carrying out CBDRM, there is a difference between rural and urban areas. To explain this, in rural areas, CBDRM normally requires two full days; in contrast, it has to be adjusted in urban areas. Conducting CBDRM in urban areas may extend over more than two days, as only two to three hours per day are available. Besides, the content is shortened or condensed because urban residents' lifestyles and daily lives are busier. Each CBDRM project does not have as many participants as expected or informed. In a rural area, it has more participants because people in

rural areas are usually involved in agriculture, which makes it more convenient for them to join the CBDRM project. Additionally, it has clearly established community leaders. On the contrary, urban people are busy with their daily work, and it is difficult to gather them together because there are no clear community leaders.

Support and leadership of local governmental organizations and community leaders affect the initiative and sustainability of CBDRM. In many cases, it is not possible to sustain CBDRM because of the lack of local governmental organizations' support and leadership. Even though local governmental organizations have responsibilities to implement CBDRM, not all local governments initiate CBDRM. Besides, only a few pay attention to its sustainability. Many local governmental organizations do not prioritize disaster-related issues in their local development plan. When local governmental organizations do not make proposals on CBDRM to provincial authorities, the budget is not granted. As a result, the budget to support CBDRM, equipment procurement, training, and staff, is often inadequate. On the other hand, certain community leaders do not activate or prioritize disaster risk reduction issues. Without the incentives of community leaders to coordinate with local governmental organizations, it is difficult to initiate and sustain CBDRM.

Communities in Mueang District have the basic knowledge and capacity to cope with flooding after completing the CBDRM program. Furthermore, they are capable of handling regular flooding, because Mueang District floods every year. Nonetheless, the 2019 flooding incident showed that many people in Mueang District lacked sufficient awareness of the impacts flooding. Although the early warning was already disseminated to flood-risk areas by local governmental organizations, civil defense volunteers, and community leaders, after receiving the information from the Thailand National Warning Center, and provincial organizations, people stay choose not to evacuate. People evacuate when the flood is imminent. Since the 2019 flood flowed faster than regular floods, they did not have time to evacuate or move their properties. Additionally, civil defense volunteers are vital to cope with flooding because they assist disaster prevention officials. The Ministry of the Interior recommended that local governmental organizations have local civil defense volunteers equal to at least two percent of the population in their jurisdiction. However, some areas such as Ubon Ratchathani City Municipality have not had local civil defense volunteers for several years because people are not interested, and other types of volunteers, such as Village Health Volunteers, and Community Development Volunteers, have lighter duties.

6. DISCUSSION

The study found that CBDRM can increase the capacity of the community to cope with the flood before, during, and after disaster phases. Communities have ownership of the CBDRM program. They take leadership on risk reduction activities with assistance from local governmental organizations. Based on the United Nations Development Programme's seven measurements of the success of CBDRM, as cited in Niekerk, Nemaconde, Kruger & Forbes-Genade (2016), implementation of CBDRM in Mueang District, Ubon Ratchathani covers five out of seven elements overall. Communities conduct community assessment resulting in risk maps and safety maps and create community

disaster prevention and mitigation plans covering measures before, during, and after disaster phases. Community disaster management committees are established to respond to disaster risk reduction. The plans are put into motion in the form of a table-top exercise, and the results of the exercise lead to recommendations and improvements to the plan. Early warning is included in the measures of risk reduction, and practiced during the table-top exercise. However, regular community exercises and disaster risk reduction funds are not successful because local governmental organizations and community leaders do not prioritize disaster risk reduction issues. Implementing disaster risk reduction activities and regular exercises requires a budget. Community leaders and local governmental organizations' incentives contribute greatly to the accomplishment and sustainability of regular community exercises and budget. Thus, without their political will, it is difficult to sustain regular community exercises and secure the funds.

The main responsibility of local governmental organizations is to manage disasters in their jurisdiction. CBDRM requires local governmental organizations to assist, train, and empower the community although communities are the owners of the CBDRM program. Additionally, the implementation of CBDRM in Mueang District integrates stakeholders, mainly community members, local governmental organizations, and civil defense volunteers. As program owners and participants, communities learn to enhance capacity, assess community capacity, and design disaster risk reduction measures. Local governmental organizations propose and administrate the projects and manage disasters. Civil defense volunteers who are trained to cope with disasters assist in the processes as mentors or coaches. Besides, the CBDRM program may request assistance from the Disaster Prevention and Mitigation Office, Ubon Ratchathani, and the Disaster Prevention and Mitigation Center 13 for support with experts and equipment.

The integration among stakeholders also provides contact and networks of relevant organizations and communities, in case the situation is beyond the community's capacity. Due to CBDRM, communities have the basic knowledge and readiness to cope with disasters and know how to live with floods. Accordingly, the implementation of CBDRM in Mueang District conforms to the research results of Boonreang, Sumnuanyen, Ratchatawan & Jantanasakulwong (2017), and Liengjindathaworn, Vadhnapijyakul, NamKhot, & Yuanyao (2018) that CBDRM needs support from governmental sector and relevant organizations to assist community training, provide knowledge, and establish local networks. However, community incentives and awareness must be strengthened in order to increase the degree of awareness of flood impacts and the number of CBDRM participants.

The 2019 flood shows that sustaining CBDRM needs support from community leaders and local governmental organizations, as well as their will, in order to maintain regular community exercise and secure funds. Communities that were already trained knew how to cope and live with the flood. In the case of the 2019 flood, local government, volunteers, and community leaders and committees disseminated early warning alerts for evacuation in areas at risk of flooding when the flood was detected. However, several community members were not attentive to the warnings and aimed to evacuate or move their property when the flood was imminent. This flood was an irregular flood because it flowed faster; therefore, there were a lot of deaths and losses due to a low level of attentiveness to early flood warning alerts. It conforms to the study of Bunjongsiri, Keowaan, Kandeey & Chinnarasri (2017) that

showed losses and deaths can be reduced if communities are aware of the impacts of flooding, and have incentives to participate in CBDRM. Consequently, this flood event is a lesson from which communities can learn to build more awareness and understand the impacts of flooding and low attentiveness to early warning systems.

7. CONCLUSION

In conclusion, the implementation of community-based disaster risk management (CBDRM) in Mueang District, Ubon Ratchathani empowers the capacity of communities to cope with disaster in all phases, ranging from pre, during, and post-disaster phases. Communities are the owners of the CBDRM programs with assistance from the governmental sector. Communities assess their capacity and resources, create local networks, and initiate disaster risk reduction strategies and measures. In the case of Mueang District, implementation of CBDRM has not yet reached long-term success. Communities know their risks and vulnerabilities, have a disaster risk reduction plan, and have the readiness to cope with flooding; however, they are not successful in maintaining regular community exercises and securing disaster risk reduction funds. To sustain the implementation of CBDRM, what is required is to enhance community members' awareness of flood impacts, maintain regular exercises in communities, and strengthen the will and leadership of local governmental organizations and community leaders to support CBDRM.

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INTERNAL COLONIALISM AND CRISIS: ECONOMIC EXCLUSION AS A CULTURAL COMMODITY

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ABSTRACT

The outbreak of the novel coronavirus was literally a crisis of global proportions. By the time it was discovered that COVID-19 was universally infectious, it had already been spreading indiscriminately throughout populations across the world. The COVID-19 pandemic is a health, economic, societal, and political crisis that amounted to an existential dilemma for countries that saw an eventuality of societal collapse in mitigating the virus' exposure onto the public while awaiting a vaccine. Protecting societies required complete social cohesion. Moreover, the pandemic created a globally unifying moment where fundamental human rights needed to be universally applied. Instead, it was shown how consequences from such crisis have proven to be more severe for the socially excluded. In countries where infection fatality rates were highest amongst racial and ethnic minorities, there were clear parallels between the acceleration of COVID-19 cases and economically excluded communities. These groups were not genetically predisposed to the virus, but they had been positioned to be in a much higher risk category due to limited resources, uneven development, and discriminative treatment. This is a pattern that sometimes emerges whenever peripheral groups have been subordinated in societies led by a core group, where economic exclusion is systemic and used to make their vulnerability more exploitable. Essentially, this is social domination and these groups are just not marginalized, but also internally colonized. This paper aims to show internal colonialism as a dormant rights issue that is unencumbered by the human rights frame. This is because the distribution of equitable rights uses the same institutional networks that sustain cultural inequity.

Keyword: Internal Colonialism, Economic Exclusion.

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1. INTRODUCTION

Perhaps, it is better to begin by first clarifying that the intention of this paper is not to contemplate on the current COVID-19 pandemic, nor to analyze the characteristics of any contemporary society when confronted with a crisis. There is little need to explain how challenging a crisis can be for individuals and governments. Though there is lesser need to believe that the lapses in the protection of human rights seen at times of social crises are merely incidental when it occurs most often to vulnerable groups in culturally hierarchical societies. Because few words carry such ominous overtones and seriousness as the word *crisis*, when moments of volatility and instability arise, there is a certain sense of justification when choices are intended for the greater good and a vacuum of accountability when this also comes at the expense of others. This paper aims to challenge sweeping notions like social crisis and show that the perception of crisis in society is a matter of social positioning as its impact often contradicts its unifying connotations. The virtue of the current global crisis is that it is multidimension. This means that it is happening everywhere and to everyone, which allows the ideals expressed in this paper to be brought forth without dwelling on specificity or the semantic ambiguity of the term crisis. Instead, it uses this context as a powerful lens to focus on an understated dilemma in the human rights framework.

This dilemma is situated in the dissonance between the universal rights framework and culture, which is difficult to view because cultural rights are a prominent feature in the current rights discourse. The International Covenant on Economic Social and Cultural Rights (ICESCR) states, “the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights” (United Nations, 1966.) One can look at the number of reservations, revisions, and objections to, not only this treaty, but also any other rights mechanisms and realize how many states wanted to ensure that rights acceptance would not interfere with their domestic cultural arrangements. What makes a crisis a critical component to this discussion is that it offers an opportunity to look past laws permitting cultural differences and examine how penetrative human rights has been in the social culture of society. It also exposes how these differences in culture are linked to political rhetoric, systems and governance. The dilemma is that the human rights frame can recognize various forms of social inequality, but cannot fully acknowledge inequality as a human rights issue when many cultures have been built on the utility of social stratification.

Social stratification, as vast and complex as it is, is an important conceptual device when discussing the nature of social inequality. Its use in this paper is more practical and the term is used to establish that there are instances of inequality between members of society where some groups not only have privileges that others do not, but also the authority to exercise power over the powerless. One of those privileges can be understood by highlighting the power dynamics in the usage of a concept like crisis. For instance, when a state declares that there is a national crisis, it is invoked by those with power and usually in reference to class conditions where the privileged may temporarily experience the type of challenges that are typical and a permanent reality for others. To demonstrate, here are three questions:

- What does a public health crisis mean for those who are denied adequate medical treatment?
- What does financial crisis mean for those whom cannot gain employment with a livable income?
- What does a political crisis for communities that have no representation in government?

The goal of this paper is not to answer these questions, but to exemplify the type of vital non-rhetorical questions that go unanswered because the reason why they are seldom asked is the very same reason such questions should be asked. This paper endeavors to show that there are specific advantages for preserving socio-economic inequalities. This is also to point out an implicit global system that is more universal than the international human rights framework. This paper is not an introduction of a new mode of human rights thinking, but a reintroduction of the familiar concept of colonialism to understand how it still plays an dominant role in some societies. By drawing upon examples from literature and recent crises, it can be shown how integrating the theoretical model of internal colonialism into the universal rights framework would broaden and advance the current human rights scope.

This paper begins with an overview of the universal human rights framework and the role of duty bearers in society. Then, the internal colonialism theory will be introduced using prominent academic perspectives and literature. It shall also compare and contrast internal colonialism and marginalization so as to present a methodology that helps identify and understand when it is appropriate to use internal colonialism as a description of a rights violation. It will also look at the production of vulnerability and how internal colonialism can exist in spite of the human rights framework. The paper concludes with an observation of internal colonialism during the COVID-19 pandemic.

2. UNIVERSAL HUMAN RIGHTS AND DUTY BEARERS

The human rights framework is one of the world's greatest achievements in modern history. However, it needs to be discussed whether it functions as a universal outline for human rights realization or is an architecturally flawed compact between state duty bearers. The core components of the human rights frame are found in the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR), which is why these are sometimes considered as comprising the International Bill of Human Rights. The UDHR considers its normative principles as "the foundation of freedom, justice and peace in the world" and that Member States have an obligation to uphold their duty in protecting, respecting, and fulfilling "universal respect for and observance of human rights and fundamental freedoms" (United Nations, 1948). The framework's universality was conceived around the idea that, "all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood" (United Nations, 1948).

The language of rights conveys a spectrum of humanity's highest aspirations. Ideologically, it can be read universally, but is written in only one language. What is meant is that it is a self-contained framework that references the ideals of its authors to instill a behavioral standard and guideline for any society. It can be used to recognize, name,

and deploy legal mechanisms to address problems that occur around the world and has provided people a powerful tool in struggles for social justice, freedom, and allowed societies to demand a better world for future generations. Nonetheless, the rights frame is an instruction manual for state duty-bearers to align rights within their respective systems of governance.

This sentiment holds true upon acknowledging that there are no universal systems of implementation and Member States that accept the universal rights frame are interpreting its principles into their, otherwise, unique domestic systems. It is important to understand that the universal rights frame outlines rights for the individual, but it imposes duties upon the state's lawgivers to ensure that these rights are realized. Consequentially, this created two basic conceptions of rights, where some are inherent and others have to be given, otherwise referred to as negative and positive rights. The rights framework has the expected operational limitations of a political instrument that primarily gives states a legal imperative not to act, while suggesting that states use a moralistic "principle of mutual benefit" to determine when and how to act on behalf of rights-holders (United Nations, 1966).

Codifying rights while leaving duties at the discretion of the duty bearers has been a significant drawback of the universal rights system. The problem is that people are not always governed as free and equal people and yet, the rights framework cannot operate independent from government leaders that would prefer to sustain social imbalance. As such, intersectionality has been a critical argument that has led to a range of criticisms against the rights framework's universal concepts and skepticism regarding its applications. One prominent view is that universality cannot exist when there is an imbalance of power amongst members of domestic societies. This is evident when rights disparities are contextualized with sociopolitical power relationships. Universal rights may be inherent, but rights realization occurs through an executor that is also the benefactor of a one-sided power relationship in a society. The rights frame emboldens the dominant class by default, which is explained in Foucault's thoughts on power where he writes, "there is no Power, but power relationships which are being born incessantly, as both effect and condition of other processes" (Foucault, 1989, p.187).

Carole Pateman's *The Sexual Contract* expands on this unintentional centering of power from a feminist perspective. It contends that universal political principles are inherently androcentric or patriarchal and were meant to assume power over women (1988). Another critique from Charles W. Mills, introduced the idea of the "Racial Contract" and suggested that Western democracy, political systems, and social knowledge were designed to maintain white supremacy and epistemology and morality were created to confine non-whites to subordinate spaces (Mills, 1997). Foundationally, what unifies these ideas is that there are systems of dominance that helped shape universal ideals. Which is why a rights perspective can observe human rights abuses in the world's social problems, and at the same time, cannot fully appreciate how states can use the human rights frame to abuse the rights of others.

3. INTERNAL COLONIALISM THEORY

At the onset, it is easier to see that inequality exists in democratic societies than it is to accept that states that have accepted the human rights framework into their domestic laws would use inequality to perform a specific function in societies where. Part of the difficulty to accept this is because it has been declared that such situations no longer exist and there is no word to describe it based on the contemporary human rights lexicon. There is a glaring omission of the word colonialism because it is thought to be obsolete. In 1960, the United Nations General Assembly (UNGA) put forth its Declaration on the Granting of Independence to Colonial Countries and Peoples, which was followed with the announcement of the International Decade for the Eradication of Colonialism (1990) and has been announced ever decade since. For thirty years, the world's foremost international rights mechanism has demonstrated why there should be a reconfiguration of the human rights frame and the global rights network, because colonialism has lasted throughout every decade its eradication has been declared.

The age of colonies and Western expansion has ended, but internal colonialism is still a prominent feature in many societies around the world. The theory of internal colonialism is the notion that some societies have incorporated systems of dominance into cultural traditions, social processes, institutions, and knowledge in a way that allows certain groups to be colonized in their home countries. Pablo Gonzalez-Casanova states “with the disappearance of the direct domination of foreigners over natives, the notion of domination and exploitation of natives by natives emerged” (1969). Gonzalez-Casanova describes this as internal colonialism and as the “structure of social relations and exploitation between heterogeneous cultural groups” (1965, pp. 99-100). Walter D, Mignolo suggests, “internal colonialism is... colonial difference exercised by the leaders of national construction” (Mignolo, 1999, p.34). The motivation behind this process is described in Mills’ racial contract theory where “the general purpose of the [social] Contract is always the differential privileging” from a dominant group and imposed onto a dominated group in the form of “the exploitation of their bodies, land, and resources, and the denial of equal socioeconomic opportunities to them” (1997, p.11). This is a type of society where a moral imperative may exist for a chauvinistic core group, but uses a governance structure that ascribes status and infers a legal system of equal rights for unequal persons. This is how internal colonialism is systemically sustained throughout modernization processes, and can coexist alongside democratic principles and the human rights framework.

In Robert Blauner’s 1969 article, ‘*Internal Colonialism and Ghetto Revolt*,’ he details four components to explain the internal colonization process: “How the racial group enters into the dominant society. ... Colonization begins with a forced involuntary entry”; “An impact on the culture and social organization of the colonized people which is more than just a result of such ‘natural’ processes as contact and acculturation. Rather, the colonizing power carries out a policy, which constrains, transforms, or destroys indigenous values, orientations, and ways of life”; “Colonization involves a relationship by which members of the colonized group tend to be administered by being managed and manipulated by outsiders in terms of ethnic status”; “Racism: a principle of social domination by which a group seen as inferior or different in terms of alleged biological characteristics is exploited, controlled, and oppressed socially and physically by a superordinate group” (Blauner, 1969, p.396).

Both Mills and Blauner focused on race as the primary factor that allowed certain groups to become exploited or internally colonized. However, this paper does not see this as the central component. Gonzalez-Casanova pointed to social relationships in culturally heterogeneous societies, while other internal colonialism theorists pointed to class relationships and underdevelopment, or the control resource distribution, and economic discrimination and exploitation (Chaloult & Chaloult, 1979). Ethnicity, nationality, religion, social identity, and other ideological or epistemological devices have been used to stratify society in this way. Moreover, what unifies these views is that internal colonialism exists when the arrangement of social relationships leaves one domestic group being dominated and exploited by another. Despite the means of internal colonization, at its center is the social construct that is rationalized difference. This creates a culture of “othering”, whereby social purity legitimizes dominance and gives the core group the inherent ability to exploit peripheral groups.

4. MARGINALIZED OR INTERNALLY COLONIZED

Against a backdrop of universal rights that are dispatched through systems of power, marginalization should not be considered as a euphemism for internal colonization. These concepts are not interchangeable and one does not replace the other, but it is particularly difficult to distinguish one from the other when many of the conditions are the same. This is an important aspect that John Lovering points to when he argued against accepting the internal colonialism theory, as Lovering believes it, “obscures class relationships” and does not consider class divide within marginalized groups because it cannot be differentiated from consequences of capitalism (John Lovering, 1978). However, Rodolfo Stavenhagen counters this and raises valuable insight by saying, “Capitalist accumulation requires unequal development and social and economic polarization... the system of stratified interethnic relations plays a crucial role. Because more often than not, the pattern of capitalist domination/subordination involves not only economic classes and geographic regions, but also ethnic groups, particularly when in the post-colonial ethnocratic state social class divisions happen to coincide or overlap with ethnic (linguistic, cultural, religious, racial) distinctions. Of course, this does not just ‘happen’ accidentally but is the outcome of a particular colonial and post-colonial history. Thus, the pattern of ethnic stratification that we encounter in so many countries today is the expression of a deeper structural relationship that we may call internal colonialism” (Stavenhagen, 1996). Lovering and Stavenhagen’s arguments can both be true, but their views represent how neither marginalization nor internal colonialism should be used as an absolute truth that explains social inequalities and injustices.

The challenge for human rights is to overcome the absolutist position that colonialism has been eradicated and interpret internal colonialism within the human rights frame without being obstructed by it. A major driving force of human rights mechanisms is the language of rights. The procedures in which rights issues are assessed, rights-based approaches and strategies are developed, and the effectiveness of the methods of applications are all conceived around using the appropriate vocabulary for specific conditions that are defined with human rights terminology. Genocide is not the same as the death penalty and although they violate the same fundamental right to life, it would be absurd to think that these violations would be approached in the same way.

Unfortunately, this is what happens with violations of social and economic rights. This is especially true of states that have implemented the necessary international rights principles into their governing frameworks and have no blatantly discriminative laws and yet, minority populations are the most vulnerable groups in any society. From a human rights standpoint, vulnerability and exclusion are prerequisite conditions for recognizing marginalization, but there is another criterion to be met before an actual human rights abuse taking place is recognized.

There is no globally accepted definition of marginalization. The existing human rights framework offers only a myopic approach to addressing it because states are not expected to be impervious to social inequality. Marginalized people are thought to be those that are outside the prominent realms of society and are non-participants unable to contribute to society in a meaningful way. As long as there is a nondiscriminatory domestic system of rights and a state is willing to take steps to correct inequality, even steady conditions of exclusion and vulnerability against minority groups would not be identified as a rights violation. Although vulnerability readily refers to its socioeconomic dimensions, labeling it as marginalization helps link its justiciability to discrimination or other possible civil and political rights failures. However, if vulnerability was rethought and not only seen as a result of marginalization, but that it could be a catalyst for the production of dependency as well, it would have to be determined if inequality derived from a system of deliberate rights failures rather than a single abuse. Doing this would initiate a discovery process to uncover if there is the systemic perpetuation of cultural oppression or institutions that force minority groups to assimilate into unequal positions so that they can be exploited. When internal colonialism exists, the rights frame could potentially be turned into a political asset for justifying inequality.

Misinterpreting internal colonialism as marginalization has allowed for a full collapse of the rights system to occur in some states, while rights mechanisms were being dispatched to remedy a lapse of rights. It is an eventuality of using a farsighted human rights scope because it searches for universal rights failures as the cause of inequality. This is instead of considering it to be a consequence of a historical pattern of unequal relationships in a society. Stavenhagen mentioned the importance of historical relationships, but an additional layer to this critical perspective can be gained from Johan Galtung's concept of structural violence. Galtung views inequality as a major form of "structural violence" that fits into the rights frame and the outside of the idea of rights violations (Galtung, 1969, p.175). For Galtung, structural violence, or indirect violence, is social injustice that is integrated into societies structures of power, where violence is "that which increases the distance between the potential and the actual, and that which impedes the decrease of this distance" (Galtung, 1969, p.168). Structural violence is as harmful as physical violence, but as opposed to personal violence, structural violence is stabilized with other social systems. Its consequences are subtle, yet often seen in monopolized power and inequality (Galtung, 1969, p.175). Galtung proposes that structural violence should be assumed that current forms were likely created by a preceding incident of structural violence, that is unless "the pre-history of the case or even the structural context are conveniently forgotten" (Galtung, 1969, p.178).

Understanding internal colonialism and the seriousness of its impact, offers ample justification for disproving it before dismissing it when analyzing social inequality. For this task, social researchers Norma Beatriz Chalout and

Yves Chaloult developed a methodology that can be used to analyze internal colonialism, as well as metrics to identify and measure variables of the power relationship. Chaloult and Chaloult propose an analysis along “economic, political, social, and cultural” levels, which they believe are interrelated and directly correspond with relationships of power (1979, p.88). They based their measurement upon agreeing and disagreeing views amongst leading internal colonialism theorists and focused on “economic-political and socio-cultural variables” (Chaloult & Chaloult, 1979, p.88). An example of their data set measured the power relationship with concepts such as access, participation, development, wages, transportation, health, housing, language, education, and land ownership (1979). The benefit of their methodology is that this system also pertains to the universal framework and can be easily adapted to measure these variables through consistencies and inconsistencies of rights realization.

5. VULNERABILITY AS A COMMODITY

Although economic rights are not inherently problematic, the vast amount of inequality and wealth disparity shows that there is a problem with these rights being equally guaranteed. Furthermore, the progressive realization principle acknowledges that some states may not have the resources to ensure these rights are equally realized, and this has made economic assistance a major component of global cooperation. Accordingly, this principle made it easier for states to deny economic rights because states are not obligated to fulfill an equal level of rights, but to take steps to ensure the “minimum essential levels of each of the rights” are met (United Nations, 1966). Unlike most civil and political rights, economic rights are fixed to political instruments, as governments have to administer these rights entitlements through legislation. Whereupon, limiting a group’s mobility, access, and participation in a way that puts them at an economic disadvantage could happen unintentionally due to resource constraints or acculturation, or states could do so “for the purpose of promoting the general welfare in a democratic society” (United Nations, 1966).

In a society where people are internally colonized, socio-economic inequality and exclusion are cultural assets and are used for the promotion of the core group’s welfare. When one group controls the state’s political and social resources and processes, there is more incentive for maintaining a subordinate social class than eliminating it because it is what gives them control. Blauner’s example of Black communities in the US shows a major reason why internal colonialism is distinctly different than marginalization, as the people that are colonized are not outsiders but have been relegated to a lower social stratum. The social infrastructure of an internally colonized state is built around ensuring that “a minority group becomes a part of the dominant society,” but also that they “remained controlled economically, politically, and administratively from the outside” (Blauner, 1969, pp.396-397). The concept of colonialism largely relates to a system of dominance, subordination, and exploitation; and a minority group can be oppressed and controlled in society without it being internal colonialism. Internal colonialism is when a group’s shared experience was shaped by their historical subjugation, and this form of exploitation occurs through the systematic deprivation and inequity of economic rights, resources, and opportunities.

The consequences of economic vulnerability do not transfer from one generation to the next; it accumulates until these internal colonies gradually become dependent on the dominant group. The inverse is also true, as the society's dominant groups are reliant upon these internal colonies. Resource hoarding, uneven development, restrictive social ascension, and limiting the means to gain ownership, does two things that should be noted. It concentrates power, control, and socioeconomic strength around the core group, while destabilizing the capacity of peripheral groups and economically excluding them from benefitting. It also culturally homogenizes development, economic growth, and productivity, and the state seeks its own advancement by continuing to prioritize these prominent areas of society and deprioritizing other areas. This exploitative system can explain why as some states became more developmentally advanced, the disparities in domestic wealth also increased.

When looking at an internally colonized society, it should be considered that the colonizer and the colonized might not be aware of their involvement in or of the colonization process because it has been internalized or normalized into the culture. Galtung mentioned how the history and context of structural violence can be forgotten and society being unaware of internal colonialism does not necessarily imply societal amnesia, but shows that people "are already socialized into such structures, and all they do is project their experiences and their habits," which in itself helps perpetuate the structure (Galtung, 1969, pp.179-180). However, because individuals may not understand the exact process taking place does not mean that they are unaware that their society has a system that gives benefits to some through the disadvantages of others. Universal rights principles would be a threat to systems of dominance, and internal colonialism suggests that some duty-bearers simply appropriated the human rights frame in a way that allows for partial disenfranchisement. To restate Galtung's view of violence, current state leaders may not have started internal colonialism; they are still committing the offense through their inaction (1969, p.168).

6. CONCLUSION

As turbulent as 2020 has been, the COVID-19 pandemic has shown why internal colonialism warrants a separate discussion where it is not dismissed as discrimination or generalized as marginalization. The domestic challenges and rights issues that have surfaced in some of the most rights compliant and economically developed states, such as the US, have a precedent where sects of society have been systemically subjugated and are traditionally disadvantaged. People everywhere have tried to cope with the troubling reality of an international crisis, but while some search for a *new normal*, others are still trying to still grapple with the old normal. This class exploitation is evident in instances when countries were forced to halt nonessential commercial and social operations, and only permitted activities that were designated as crucial to meeting basic needs. Societies became reliant upon essential personnel that were putting their own lives at risk to perform necessary services. Aside from healthcare workers, much of this essential workforce was composed of the most economically vulnerable.

Livelihood stability and health were a common concern, but some people were at a much higher risk due to the fact that they could not afford to be unemployed. The imbalanced death and infection rates that was sometimes

highest amongst minority groups, forced many to revisit the historical treatment of these groups to ascertain whether there was any correlation between the past and present.

Understanding history is an important component in understanding internal colonialism because when all other conditions are met and there is correlation to the past, then it should be considered as proof of internal colonialism. A trend that can be seen in other situations when the broader society faced crisis, is that their crisis became weaponized and used to usher in further rights transgressions against those that needed them most. Internal colonialism allows for this to happen, and removing colonialism from human rights language has allowed for it to undermine the effectiveness of the human rights framework in domestic society. The world may be in crisis, but there are people that have continued to suffer under an invisible crisis throughout their lives because of internal colonialism. Building upon universal rights principles and international mechanisms, a rights-based approach can be developed to address this issue, but it must be addressed by its actual name before any progress can be realized.

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HUMAN RIGHTS OF MIGRANT WORKERS: RECRUITMENT AND EXPLOITATION OF FEMALE MIGRANT WORKERS FROM BANGLADESH TO THE MIDDLE EAST

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ABSTRACT

Globalization has promoted labour migration from Bangladesh to various countries on a greater scale. Remittance from Bangladeshi migrant workers is considered to be a major determinant of the economic development of Bangladesh over the last decade. Female workers to the Middle East constitute a large portion of those Bangladeshi migrant workers. Domestic violence, abuse of the workers' vulnerability, violation of their rights to information are some of the common stories among them. Focusing on the experience of Bangladeshi female migrant workers, this paper looks at the recruitment process of Bangladeshi female workers to the different states of the Middle East through various channels. This paper intends to trace the reasons behind the exploitative situation of female migrant workers abroad. Migrant workers' rights are human rights. By focusing on the exploitative practices during the recruitment of female migrant workers in Bangladesh for employment to the Middle East, this paper links human rights and migrant workers' rights. The recruitment process of migrant workers is complex and often bypasses official rules. Being vulnerable women from a poor socio-economic background, female workers are at risk of high recruitment costs, debt bondage, deception, and human trafficking. The author argues that the emphasis on recruitment practices can improve the condition of workers at all stages of migration. Finally, this paper suggests measures to ensure better recruitment practices and the rights of migrant workers.

Keyword: Human Rights, Migrant Workers, Bangladesh, Exploitation, Recruitment.

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1. INTRODUCTION

Currently, there are 272 million international migrants who constitute 3.5 per cent of world population (UN DESA, 2019). While historically, males constituted a far higher number of migrants than females, currently, females make up 48% of total international migrants (IOM, 2019). A significant number of international migrants migrate for work opportunities.

As the international migrants stay outside their country of nationality, many of them are at risk of human and labour rights violations. The nine core UN human rights instruments are applicable to all persons, including migrant workers. The UN adopted a specific convention for migrant workers, *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*, that was signed in 1990 and entered into force in 2003. Under the Convention, there is a Committee on Migrant Workers which is responsible for monitoring the Convention's application by States Parties. There are also other mechanisms within the UN system relevant to the protection of migrant workers, most importantly the UN Special Rapporteur on the human rights of migrants. The International Labour Organisation (ILO) has been concerned about the protection of migrant workers since its beginning in 1919. It has adopted two Conventions, in 1949 and 1975, which are accompanied by non-binding Recommendations. Two other ILO Conventions also deal with the recruitment of migrant workers, and domestic workers: Private Employment Agencies Convention, 1997 (No. 181) and the Domestic Workers Convention, 2011 (No. 189) (ILO, 2019). Therefore, it is evident that migrant workers' rights are recognised as human rights in several international human rights instruments.

Bangladesh is one of the major states of origin for migrant workers. The Arab Gulf States in the Middle East are the largest destinations for Bangladeshi migrant workers. Various studies and reports show that many migrant workers in the Gulf States experience labour exploitation (Azad, 2018). Several studies also indicate that the recruitment process is usually complex and may often create harmful situations for the workers during the recruitment, and later, during employment (Azad, 2018; ILO, 2015).

As many countries experience local shortages of labour, Bangladesh is in a suitable position to provide much-needed workers, thereby extracting a positive outcome out of its migrant workforce. Remittance from Bangladeshi migrant workers is considered to be a major determinant of the economic development of Bangladesh over the last decade. It has been the largest source of foreign exchange earnings for many years. In 2015, remittances accounted for more than US\$14 billion, about 7.4 percent of GDP. According to several survey findings, it is clear that the flow of remittance into Bangladesh has a positive impact upon household-level poverty alleviation across the country. Returnee migrant workers have great potential to further develop the economy of Bangladesh by using the skills they have acquired overseas (ILO, 2014).

Focusing on the experience of Bangladeshi female migrant workers, this paper looks at the recruitment process of Bangladeshi female workers to different Middle Eastern states through various channels. The migrant workers are recruited through a complex process involving government bodies and various private actors.

This paper focuses on the experience of female migrant workers during recruitment and analyses how the problematic recruitment processes lead to the exploitation of the workers. Fair and transparent recruitment has the potential to ensure better working and living conditions for the migrant workers. Moreover, the emphasis on recruitment is a preventive measure to reduce the future exploitative experiences of the workers.

The paper is based on secondary literature. Initially, the published literature on female migration from Bangladesh and conceptual/ theoretical issues of recruitment, exploitation and vulnerability are studied. Reports of human rights groups and selected newspapers are thoroughly reviewed. Quantitative data on female migration is taken from the Bangladesh Bureau of Manpower Employment and Training (BMET) website and previous reports by international organisations.

2. HUMAN RIGHTS OF FEMALE MIGRANT WORKERS FROM BANGLADESH

Since 1976, when the government started to record overseas migration up until 2018, more than 12 million Bangladeshis went overseas for work, considering only the legal channels (BMET, 2019). The migration has been mainly dominated by semi-skilled and less-skilled males.

Before 2000, females constituted less than 1 per cent of total migrants. The government officially restricted overseas migration of semi-skilled and less-skilled women till 2003 in order to ‘protect’ women (Siddiqui, 2016). After the lifting of the ban, the number of female migrants started to increase sharply; in 2010, women constituted about 3 per cent and, in 2014, about 18 per cent of total migrants. Since 2015, the number of female migrant workers amounts to consistently more than 100,000 per year (BMET, 2019). These figures show the obvious growth in female migration or the increasing ‘feminisation’ of migration from Bangladesh.

However, the focus on numbers only obscures many of the challenges faced by migrant women and the nuances of complex migration issues. Most of these women go to the Middle East to work as domestic workers - a sector characterised by high levels of labour and sexual exploitation. Human rights groups and several research studies found that the situation of migrant domestic workers in the Middle East often amounts to human trafficking and modern slavery (Human Rights Watch, 2014; Vlioger, 2012). Because of the severe abuse, several Asian countries such as Indonesia and the Philippines have banned sending maids to Middle Eastern countries, though the measure did not end the suffering of workers (Varugur, 2017).

Popular pressure has been exerted on the Bangladesh Government to ban female migration; however, the government has not taken any such action so far. Recently, hundreds of migrant women have returned to Bangladesh primarily due to alleged severe physical and sexual harassment by their employers (‘90 more Bangladeshi female workers’ 2019). These women are not only denied justice for the crimes perpetrated on them, but also face social stigma when they return home. In many cases, their family and relatives refuse to take them back. Though NGOs such

as BRAC help them to reintegrate after their return, the measures taken fall far short of what is actually needed ('why women migrant workers are compelled,' 2018).

The international labour migration of women may challenge global and local patriarchal gender norms as migrant women need to overcome various social obstacles. Most importantly, international migration has the potential to make the women financially self-sufficient, which may enable them to achieve more decision-making power. On the other hand, international movement exposes the women to new risks and exploitation in foreign environments which lack the traditional protective shields (Bélanger and Rahman, 2013).

The nations where the migrant workers were employed largely failed to ensure the human rights of female migrant workers. The workers, despite being exploited, can rarely access mechanisms of justice there. They are forced to live at the mercy of their employers. However, as a country of origin, Bangladesh can improve the recruitment process to reduce harm to the workers. Therefore, this paper emphasises the recruitment process.

3. RECRUITMENT OF MIGRANT WORKERS FROM BANGLADESH TO THE MIDDLE EAST

The *Overseas Employment and Migrants Act, 2013* is the key legal instrument to regulate labour migration from Bangladesh. The Act defines recruitment in the following way:

“Recruitment” means the hiring of workers for overseas employment by any overseas or Bangladeshi employer directly or through concerned authorities or a recruitment agent by means of a contract entered into orally or in writing, or enlistment of workers subsequent to publishing or circulating an advertisement for recruitment of workers, or exchanging letters or in any other way (section 2.15).

Officially, the licensed Recruiting Agency (RA) is responsible for the recruitment of the workers under the regulation of the BMET. There are more than 1,100 licensed agencies currently. A recruiting agency is a national-level contact point for a foreign recruiting agency or foreign employers. Recruiting agencies usually have control over information that allows them to negotiate with prospective migrants and their potential employers (Rahman, 2012). However, in practice, unlicensed brokers—known locally as *dalal*—play a key role in recruiting the workers. The RAs who are based in the capital or major cities cannot access the potential migrant workers who predominantly come from rural areas; here the brokers link the two parties. Moreover, many people migrate through social networks such as friends and relatives already living abroad. Several studies show that migrant workers often face various types of exploitation during recruitment such as high costs, false information, debt bondage and deception (Afsar, 2009; Azad, 2019). The studies focus on all workers in general. The female migrants, especially ones working as domestic workers, have not received adequate attention. My research fills the gap.

Understanding the *kafala* system is crucial for explaining the recruitment process to the Gulf States. Labour recruitment in those countries is governed by the *kafala* system. In the *kafala* system, a migrant worker is sponsored

by an employer who assumes full economic and legal responsibility for the foreign employee during the contract period. The *kafeel* (sponsor-employer) may be an individual, a placement agency or a company/institution. The *kafeel* signs a form whereby he or she declares that the foreigner works for him or her, undertakes to inform the immigration department of any change in the labour contract such as expiry, renewal or cancellation, and, lastly, pledges to repatriate the employee upon termination of the contract (Rahman, 2012). In the case of a migrant domestic worker, the *kafeel* has absolute control over him or her. As a result, the *kafeel* frequently confiscates their passport upon arrival and controls their movements outside the house; the life of the worker is, to a large extent, dependent on the sponsor-worker.

4. EXPLOITATION OF FEMALE MIGRANT WORKERS DURING RECRUITMENT

There is no specific definition of exploitation. It includes various types of exploitation such as labour exploitation, sexual exploitation etc. By the term exploitation, here I mean the harmful experience of female migrant workers during the recruitment process which include but are not limited to the high cost of recruitment, deception, debt bondage, and exploitation of vulnerability.

Being poor and illiterate, many female workers remain vulnerable to the system which is manipulated by the agencies, brokers or greedy social networks. Gender aspects add more to their vulnerability. Driven by poverty, these women want to migrate for work overseas to bring a piece of happiness to their family members. Being women from poor backgrounds who often lack education, they become vulnerable to the exploitative recruitment system.

According to official statistics, the majority of Bangladeshi migrant workers are recruited by private recruiting agencies (ILO, 2015). Moreover, many migrant workers obtain work permits through brokers or *dalals*, who are unlicensed sub-agents or intermediaries. Many migrant workers choose irregular channels and thus end up lacking legally valid documentation and approval to emigrate to a destination country. Though many migrant workers start through regular, authorized channels, by the end of the journey, they end up as irregular migrants. Most of the undocumented migrant workers are vulnerable to exploitation.

The ILO report (2015) further states that the cost of overseas labour migration from Bangladesh is one of the most expensive in the world. On average, a migrant worker spends 309,259 Bangladeshi taka (BDT) on the recruitment and migration process. Such a huge cost poses risks for the worker. The government of Bangladesh has set a maximum cost for certain destination countries. The recruiting agents are bound to not demand any more than this maximum from potential migrants. However, Bangladeshi migrants pay much more than the amount set by the government. One particularly striking feature of the labour migration process is that about 78 per cent of the total recruitment and migration cost is pocketed by brokers or intermediaries in Bangladesh and the countries of destination. The migrants pay this high price by taking out a loan or selling property. Therefore, even if they face severe abuse in the country of

destination, they cannot simply leave the job as they need to recoup the recruitment costs. The debt they take out for recruitment may bind them indirectly to ‘debt bondage.’

There is a high risk of false information and exaggeration during recruitment which does not match with the experience of the workers later during employment. As found in the Bangladesh Household Remittance Survey by IOM (2010), 20.6% of migrant workers did not get the job specified at recruitment in the contract after arrival at the destination. In addition, 45.8% did not receive remuneration as specified in the contract. A significant proportion of migrant workers had a combination of both problems. Afsar (2009) shows that 33% of the workers faced discrepancies between promised and actual wages. They also reported differences in other areas including the type of job, overtime payment, weekly holidays, sick leave, medical cover, and the provision of food and accommodation. Because of harmful recruitment practices, the migrant workers often face deception and human trafficking (Azad, 2018).

5. ADDRESSING THE RECRUITMENT PROCESS TO ENSURE HUMAN RIGHTS

Improving the recruitment process can have an impact on all aspects of migration. Whereas the reforming other aspects of migrants’ experience in the destination states is difficult to effect, recruitment can be more easily addressed by the country of origin, Bangladesh. Here I present several ways to ensure the rights of migrant workers by addressing the following issues during recruitment.

Increase awareness: Raising awareness among the migrant workers, recruitment agents and brokers about the rules of fair and transparent recruitment is the primary step.

Ensure a transparent information flow: Information about the conditions of the job during recruitment should be made clearly available to the workers so that they can take an informed decision.

Education and training: If the workers have basic education and training on the job, there is less likelihood of exploitation.

Regulate informal brokers: Though it is illegal, informal brokers play a key role in recruiting workers. The government may consider bringing them under licensing rather than keeping them illegal.

Reform of the *kafala* system: The *kafala* system in Middle Eastern countries binds the worker to a single employer, which can facilitate exploitation. The *kafala* system of recruitment should be reformed so that the workers can change employer.

Monitoring and service during departure: The government officials in the international airport should monitor to check if the migrating workers are in full possession of all the information about the job.

Accountability of the recruitment agencies: There are sufficient legal provisions in Bangladesh to bring unscrupulous agencies to accountability. However, the laws need to be properly implemented.

6. CONCLUSION

Bangladeshi female migrant workers are vulnerable to various kinds of exploitation due to lack of education, poverty, and denial of the right to information. In Bangladesh, the recruitment process of these vulnerable women is complex and often exploitative. The high cost of recruitment and deception are the most common types of exploitation they face. There is even the risk of human trafficking. Most of them never get an actual contract paper, nor the actual salary they were promised, but are provided with false statements about the work and salary. After arriving at the destination, the migrant workers cannot do anything other than accept the situation due to their vulnerability and debt bondage.

This paper contributes to a better understanding of the migration of less-skilled women and the challenges they face when going overseas for work. It will help to make better policy and practice for the government bodies, recruitment agencies and NGOs working for the rights and dignity of both female and male migrant workers.

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THE USE OF EXCESSIVE FORCE BY THE POLICE IN PAPUA NEW GUINEA

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ABSTRACT

The continuous use of excessive force by the Royal Papua New Guinea Constabulary, that anticipates violence and brutality in most cases, has grossly violated the basic rights of various individuals and alleged crime suspects, including women, children, and old people as well. The human rights and freedom, as enshrined in Papua New Guinea's National Constitution, safeguards and protects every citizen against any unlawful act and offense. The legal framework that stipulates the judicial power and authority through the court system under the basic citizens' rights and acts with accordance to the standard policing practice has always been ineffective to hold police officers accountable for their unlawful actions, hence giving rise to impunity. The main aspect questioning the transparency and accountability of the police deliberates on their behavioral conduct and manner in how they execute their duty at enforcing law and order. Various reports and assessments of police conduct has revealed certain acts while arresting and detaining suspects to be unreasonable and unlawful in reference to the universal human rights and international policing standard. The principles of human rights, as adapted and engraved in Papua New Guinea's Constitution under section 36, 37 (1) (17), that guides the work of police personals have been violated by the numerous officers on various cases. These include use of excessive force, rape, arbitrary torture, extra-judicial killing, etc. on the citizens. The concept of universal human rights with regards to the legal framework of the police institutions under Section 14, Subsection 1 (a) (i), and Section 17 (1) (b) of the Police Arrest Act of 1997 that recognizes the rights of citizens when being dealt by the police has been breached, and officers get away easily without being held accountable for their actions.

This research identifies the basic rights and freedom of every person and the ineffectiveness of the legal framework with the implications of misconduct and violations by the police use of excessive force. The method of data collection purposes to justify through comparative analysis the violation of basic human rights and ineffectiveness of the legal frame work with the concept of accountability and transparency. This will be primarily based on secondary sources and desk research. Human rights and freedom, as enshrined in the constitution, is the legal framework that sets the foundation of the laws. Each state department, including the disciplinary institutions, acts to recognize the basic rights and freedom of every individual citizen.

Keyword: Use of Excessive Force, Accountability, Transparency, Legal Framework, Universal Human Rights, International Laws, National Constitution, Arrest Act 1997.

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1. INTRODUCTION

The use of excessive force by the police has always been a global controversial human rights issue that binds the legal implications of the international and national human rights laws, standards norms and mechanism of each country under the United Nations practicing the democratic system of government. Excessive force, by the definition provided by the Cornell Law School, is force in excess of what is reasonably believed to be necessary for a police officer, and this can result in the officer being held liable to the course of action taken. Nevertheless, the police's use of excessive force is recognized as an illegal and unlawful act in violation of the international human rights laws, standards and norms.

This is also considered illegal and unconstitutional within the Papua New Guinean legal system. The legal system of Papua New Guinea consists of the National Constitution as the supreme law. The constitution recognizes and acknowledges the basic and fundamental rights and freedom of everyone, such as the right to life with the guarantee of security and protection of the law, and further legalizing it under Section 23 and 23 which provides the Enforcement of the Constitution to be sanctioned by the National Courts. The excessive use of force as a threat to the Right to Life under Section 35 and as a violation to the Freedom from Inhuman Treatment under Section 36 which guarantee everyone to be fully protected by law under Section 37 sets the basis to abide and uphold the provision of the Police Act 1998. Article 7 of UDHR; ICCPR Articles 6 (1) and 9(1) as the fundamentals of human rights, that is the right to life, liberty and security, is most likely to be affected by the use of force, and any breach of these laws by officers must be carefully balanced to ensure that it complies with the principles of legality, necessity, proportionality and accountability (ICRC, 2015).

Talao (2009) reviews the civil and political rights as enshrined in Papua New Guinea's National Constitution and states that it is not effectively enforced in due course because of certain barriers in the procedural process. Papua New Guinea's human rights legal framework - consisting of the National Constitution as the supreme law, along with the legislative Arrest Act 1997 of the police force are well set and laid out to serve and protect the rights, freedom and security of every person - has not served its purpose and has failed immeasurably over the years. The ineffectiveness of the legal system that involves procedural matters, accountability and transparency issues to promote and strengthen the basic rights with provisions in the police legislative acts makes this research significant in identifying the gaps constituting the lawful conduct of officers with respect to the laws and acts which are giving them rights to enforce law and order while serving and protecting the rights of all people, both innocent or guilty of a crime.

2. RESEARCH METHODOLOGY

The researcher has followed a narrative desk research. This will include reviewing existing literature. The researcher has relied on secondary data collected through online and offline sources from all human rights agencies, NGO's, INGO's and government bodies dealing with policing and human rights issues. Published court cases and

files from international human rights court, including the National Court of Papua New Guinea, will also be collected for reviewing and analyzing the various misconduct and abuse of power by the police force through the use of excessive force.

The paper attempts to review and analyze the existing international human rights legal framework/system, along with the International policing standards, with regards to the Papua New Guinea's legal system and policing approaches to human rights. This also includes a comparative analysis of existing PNG's human rights laws and policing legislative acts and of other human rights case studies and court files, to purposely justify the ineffectiveness of PNG's legal system. The paper is written on the basis of the findings and analysis of the secondary data collected through desk research. The paper majorly follows inductive reasoning, beginning with specific reviewing and comparing, to identify and prove the ineffectiveness of the laws and acts that protects human rights, and hence formulate some tentative hypotheses that can be explored, and finally end up developing some general conclusions or theories.

3. OBJECTIVE

The objective of the paper is to show that the legal system of Papua New Guinea is still weak and ineffective to promote and safeguard human rights, despite all the appropriate laws and acts put in place that prohibits the use of excessive force by the police. In addition, the paper includes case studies of the judicial system to support the underlying issue. Nevertheless, the paper also extends to include transparency and accountability as contributing factors to the problem, hence vice versa also offers remedies to minimizing the use of excessive force.

4. EXCESSIVE FORCE

Excessive force is a term associated with policing. It is taken into account and acknowledged by many scholars, organisations and institutions to various extents that always anticipate the attributes of human rights concept in specific area of the basic citizens' rights and freedom. The various cases involving the use of excessive force by police officers is a violation of the international law on human rights human rights and the national constitution of Papua New Guinea that recognizes the rights and freedom of every citizen. The constitution sets the basis of the human rights laws under the criminal justice system that gives direction to policing with specific acts to guide their actions with respect to safeguarding and promoting the rights of everyone.

Excessive force implies the use of unnecessary force by police officers, further described as extralegal actions which substantiate physical force willfully inflicted on someone without a genuine reason (Babovic, 2000). Furthermore, with regards to the law under the criminal justice system, excessive force is defined as the illegal force used by the police to take control of a situation that is not justified with regards to the departmental acts, administrative,

professional or legal guidelines (McElvain and Kposowa, 2004). However, the term excessive force does not have a fixed definition to specify the acts in a particular manner relating to an unlawful behavior; rather, it provides contributing factors and measurements involving the actions of police officers with regards to the department and institutional procedures and indicators (Castner, 2014). Measuring the amount of force used with the surrounding issues provides a better understanding to determine the definition of excessive force that differs from deadly force resulting in severe injuries and death (Garner and Maxwell 1997).

In most cases, police use excessive force during arrests. Usually, young boys, being suspects of crimes, are being physically assaulted and beaten using gun butts, batons, timber, iron and other strong objects, causing serious bodily injuries. Young women and girls also fall victims to police use of excessive force and are often forced to chew condoms or beaten by various hard substances against their will when suspected as a prostitute (PNG Human Rights Watch, 2005). Furthermore, sexual crimes were also committed by certain police officers as a result of excessive force used over women and girls against their will during the arrest of being accused as prostitutes; these have fueled the spread of HIV/AIDS (McLeod and Macintyre, 2007). The rise in injuries and the medical records of health complaints from victims unable to receive proper medical treatment as a result of excessive force used by the police have paved way for public outrage with distrust and riots, discrediting the work of policing. The use of excessive force raised complaints and concerns from people whom had been severely wounded during arrest after being treated as crime suspects without being aware of their accused crimes and rights to be read to them (US Dept. of Justice, 1999).

The police department of Papua New Guinea, known as the Royal Papua New Guinea Constabulary (RPNGC), has been greatly accused of various allegations of misconduct and use of excessive force over the past decades. Almost every report, article and blog from international observers and human rights organisations state that almost every case of these police misconduct and use of excessive force have taken place while on duty routine. This is usually done during arrest or while in detention under custody. The Human Rights Watch Report of 2005 and 2006 has reported the frequent rise in police violence and use of force on individuals, especially women, children, older people with young teenagers, through brutal beatings, rape and torture. Most of these cases go unreported and unresolved. This misconduct always goes unpunished, further strengthening impunity for the officers to get away easily without being held accountable for their actions.

5. UNIVERSALITY OF HUMAN RIGHTS AND POLICING

The concept of human rights, also known as inalienable natural rights, is internationally recognized and legally represented in numerous instruments. This entails support and protection of every person as human beings with dignity to have the right to life, freedom and security. From this international standard, the prospect of human rights is legally recognized as adopted by the international law with deliberation in various agreements amongst civic laws to protect human rights of every citizen in a state. The implementation and enforcement of these laws are entrusted to the law enforcement agencies to exercise their powers to protect the rights of every person with caution

(Sastry & Bhujab, 2016). The principle of the universality of human rights, envisioned in the Universal Declaration of Human Rights by the United Nations to promote the right to life, liberty and security, is legally binding on every state institutions and agencies; hence, the delegates' responsibility for every member states is to accept and realign their legal institutions, particularly the courts and law enforcement agency - the police force. In this light, the exercise of the powers of the state to enforce law and order is accompanied by the obligation to protect and promote human rights with minimum use of force, as prescribed in the legislative acts enacted to safeguard the rights and freedom of every person. This is to prevent the misuse of power and violation of human rights according to various international standards and guides of policing.

In an attempt to promote and protect the human rights of every individual from the international level to the national level of each state as member countries of the United Nations, directions to guide policing and enforcement of the legal mechanisms of each state was issued through a number of documents, laws and treaty bodies. The documents, laws and treaty bodies are designed to serve human rights; this includes the specific rights of the police to be accounted for while enforcing the human rights. The UDHR, ICESCR, ICCPR, etc. are international documents regarding human rights to be enforced by the police. In addition, other international legal documents directly relevant to human rights and policing work and administered by the United Nations with regards to criminal justice and human rights instrument that is legally binding on domestic laws and enforcement agencies are:

- Declaration on the Protection of All Persons from being Subjected to Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (1975)
- UN Code of Conduct for Law Enforcement Officials (1979)
- UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (1989)
- UN Declaration on the Protection of All Persons from Enforced Disappearances (1992)
- UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
- UN International Covenant on Civil and Political Rights (ICCPR), (1966)
- UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990)
- UN Standard Minimum Rules for the Treatment of Prisoners (1977)
- UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (hereafter referred to as Body of Principles) (1988)
- UN Convention on the Rights of the Child (1989)
- UN Rules for the Protection of Juveniles Deprived of their Liberty (1990)
- UN Declaration on the Elimination of all forms of discrimination against Women (1967)
- UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Powers (1990)

The principle of the universality of human rights, defined in the Universal Declaration of Human Rights, promotes the recognition of every person as human being having the right to life, liberty and security. This is accepted and recognized as an international customary law that asserts the responsibility and commitment of every member states of the United Nations to accept and uphold these to the best interest of their government and people. The right to life, liberty and security is legally binding on every state institutions and agencies that specifically bestows responsibility on the justice system to facilitate to its bodies. Disciplinary agencies, such as the police force and the courts, have a primary role to guarantee the right to life, liberty and security of every person. The international human rights law provides a legal framework for every member states of the UN to align their domestic laws to accommodate the basic rights, liberty and security. Every state, through their judiciary system and law enforcement agency, sets precedence of guiding and protecting the rights of their citizens.

Policing with respect to human rights fulfill a major component to building and maintaining trust and confidence from the public. This recognition and commitment is a value that promotes the dignity of every person as human beings and citizens of a state. Papua New Guinea, as a member state of the United Nations, recognizes the fundamental principles of human rights and freedom as a universal norm under the United Nations Universal Declaration of Human Rights. The concept of human rights and freedom for all member states is binding on the basis of the legal and administrative obligations of all these member states, including Papua New Guinea. The police force responsible for internal security issues is bound to protect the human rights and freedom of every citizen in accordance to the department's legislative act as guided by the national constitution.

The police abuse of power and continuous use of excessive force and harsh treatments involving violence and brutality when enforcing law and order through investigation, conducting arrest and public encounter during official duty towards the people violates the basic rights, and this is a growing concern and endemic social issue that has already taken root to be a norm. Such act is unlawful that infringes on the police department's legislative acts, and therefore breaches the basic rights to life, liberty and security of every person, as enshrined in the constitution. The much-needed lack of education and awareness on the concept of individual rights and freedom as enshrined in the national constitution, along with the guiding laws and legislative acts of the police force guaranteeing safety, freedom and security for every person, is one restraining factor fueling the rise of impunity in the excessive use of force.

Accountability and Transparency

The lack of accountability mechanisms within the administrative and operational structure of the Royal Papua New Guinea Constabulary fails to instill public trust and confidence; hence, maintaining discipline in accordance to the legal acts under the criminal justice system to prosecute officers using excessive force weakens and discredits the public perception of the police force. The principles of accountability implies that the actions of police officers when enforcing the law should be accountable at all levels of the judiciary, the public with the government and the chain of command (ICRC, 2015).

The strengthening of accountability methods within the Royal Papua New Constabulary will tighten the grip of the legal instruments involved in the work of internal affairs to hold and prosecute police officers violating the basic human rights through the use of excessive force. Administrative measures include independent investigators, internal affairs and prosecutors to assess and deliberate cases of excessive force to avoid conflict of interest and manipulation of evidences to be presented before the courts. Operational methods to improve accountability include field duty and conduct of policing using body cameras to monitor the actions of officers to ensure their compliance with the standard practices with respect to human rights; this can be used as evidence to hold officers liable to their actions when using excessive force. Poor data management and lack of access to data and information by the people about the police force regarding new policing laws, rapid changes in administrative and operational functions and duties anticipate the attributes of misconduct from officers without the public knowledge and scrutiny.

Policing accountability is more effective when facilitated by greater transparency to the facts and information on the police organisation and its operations, in addition to the reports of individual police officers and their behaviors.’ This allows police activities to be open to scrutiny by the people and other organisations in light of human rights. Interested parties and people will be able to understand the basis of the administrative and operational decisions made on policing activities in accordance to its program, objectives and goals (Prasad, 2006).

Transparency is associated with accountability, and this gives effect to lawful and legal policing methods starting from the individual behaviors of police officers to the whole organizational structure. It backs and strengthens the role of policing to serve and protect the rights of every citizen at different situations before and after the law. Individual conduct of officers is paramount to upholding human rights in compliance to the legal aspect following due process when enforcing law and order in the society. Transparency in the behaviors of police officers reflects an image of strong and healthy public relations, and trustworthy and genuine conduct with good personal records and reputations. Promoting transparency through openness in disseminating information on police operational plans, administrative processes and personal records of officers instills public knowledge and confidence on the work of policing. The withholding and non-disclosure of information by the police agency decreases the credibility of legitimate policing.

International and Domestic Human Rights Legal System

The principle of universality of human rights sets the foundation of the human rights law as expressed through treaties and customary international laws or general principles which guide the enactment or passing of domestic laws. The International Criminal Court and the European Court of Human Rights deal with various crimes committed against human rights on the international level with jurisdiction over almost every member states of the European Union and United Nations. The recognition of human rights as a universal norm and the right to life as a non-derogable right is the cornerstone deliberated through a number of international conventions and treaty bodies; hence, this specifies a number of conventions and legal documents on the standard of policing that outline the use of excessive force as illegal under certain circumstances. Article 3, 5, 7, 9, 11 (1), 19, 20 of UDHR and Article 6 (1) of ICCPR advocates the right to life with an obligation of the state under the law enforcement agencies to uphold and protect.

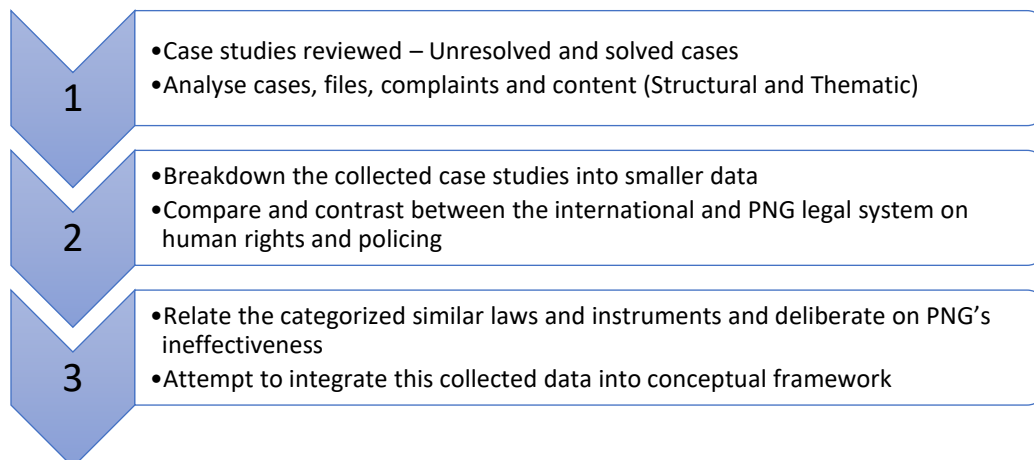
Violation of the State's obligations under international human rights law by law enforcement officials in the exercise of their duty will entail the State's responsibility at the international level, including the obligation to provide compensation and redress (ICRC, 2015).

The National Courts of Papua New Guinea is responsible of handling crimes against human rights committed by the police force from various cases and offences involving the excessive use of force and other unlawful conducts. In compliance with the International Laws on Human Rights, Papua New Guinea National Constitution - comprised by the National Goals and Directive Principles in the 1st and 5th goal that calls for Integral Human Development and Papua New Guinean Ways - also emphasizes the rights and freedom of everyone in support of the basic rights adopted from the United Nations Declaration of Human Rights. The right to life, as read in Section 35 (1) (b), justifies the use of force to be lawful only under certain circumstances, with an extension to subsection (2) that revokes the use of force by any person using Subsection (1) (b) as an excuse to kill another without proper judgment. Furthermore, Section 36 provides the right to be free from inhuman treatment with the support of Section 37, guaranteeing protection of the law which is an obligation of law enforcement agencies and the courts. Thus, subsection (1), (3), (4), (7), (14), (17), (18), and (19) outlines the obligation and commitment of the law enforcement agency to serve suspects held in custody; as in most cases, this fails to occur. All these human rights, as enshrined in the constitution provide a platform of which the domestic human rights laws under the criminal court and the Police Legislative Act, are enacted and exercised with respect to the rights and freedom of every citizen. In addition, the basic rights, as read in the national constitution guides the legislative act of the Police force (Arrest Act 1997), strongly prohibits the unlawful acts on the use of excessive force with specific provisions granting the rights of every person during arrest and in police custody.

6. COMPARATIVE ANALYSIS

Unit of Analysis: Court Files

- International Human Rights Court & PNG National Court



Judicial Case Studies and Analysis

The case files of Abdullah Yasa et al. v. Turkey, heard by the International European Court of Human Rights under the criminal offense of human rights violation through the disproportionate use of force by the police in a public protest and demonstration, was identified as a clear breach of Article 3 and 46 of the European Convention on Human Rights. The court revealed the failure of the Turkish Police Agency to enact a legislative act to regulate and guide officers in using tear gas grenades and buttons. The court decision includes compensation payment to be paid by the Turkish Police Department for injuries sustained by Abdullah. In comparison to the court rulings of *Kolokol v. Constable Amburuapi and Kass*, the charges of human rights violation in the National Court of Papua New Guinea of two alleged officers that breached of Section 36, 37 (1) (17) of the National Constitution and Section 14 (1) (a) (i), 17 (1) (b) of the Arrest Act 1997 was proved as nothing more than lack of professional conduct. The court decision held the whole police department accountable for the actions of the two officers with compensation to be paid to *Kolokol* without further actions and penalty for the officers to face individually. This clearly shows the lack of official, moral and ethical conduct of the officers in acting unlawfully, despite being accountable and responsible to follow the legal procedures as stated in the National Constitution and Arrest Act.

7. CONCLUSION

The use of excessive force by the Royal Papua New Guinea Constabulary is prohibited by the international law and domestic laws of human rights. The United Nations Declaration of Human Rights (UDHR), through its various conventions and treaty bodies to promote the universality of human rights, recognizes the law enforcement body as paramount to ensuring and protecting every person with the right to life, liberty and security. The UDHR follows various conventions and treaty bodies that are legally binding on every member state, and hence also specifically provides legal instruments and documents for the police agency to adopt and use as a commitment to preserve and uphold the principles of human rights. The human rights principles, as enshrined in Papua New Guinea's National Constitution, has special provisions establishing the police force, with enactment of its legislative acts to comply with the rights of every citizen to be secured, respected and promoted.

However, the legal system and framework guiding the work of policing in Papua New Guinea is ineffective and weak towards protecting and promoting the citizens' rights and freedom against police abuse of power through the use of excessive force and unlawful treatments. This includes the standard official duties and procedures of policing that should be practiced to enforce law and order in a more legitimate manner. Accountability and transparency are factors that are lagging in the work of policing and these had not been considered much by the government in its effort to improve the work of policing with respect to human rights. Most crimes of human rights violation, especially by the police through the use of excessive force, goes unresolved, and in many cases, never enters court hearing for fair trial and judgment. The judicial system, especially the National Court of Papua New Guinea, is responsible for handling matters of human rights crimes and violation. As in most cases, it delivers fair decisions

without strong repercussions for the police department to strengthen accountability and transparency for individual officers.

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THE PEACE ROAD OF MYANMAR DURING PANDEMIC TIME – "WAY FORWARD OR BACKWARD FOR THE FUTURE PLANS?"

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ABSTRACT

Myanmar is well-known for its diverse cultures and traditions, and also for her more than 135 ethnic groups. Moreover, it has been at war with itself since its independence in 1948, an extreme struggle playing out with the neighboring countries in the country's ethnic borderlands. During the time the democratic government started in 2011, President U Thein Sein announced an inclusive political process for all stakeholders and agreed to address some of the ongoing political concerns of ethnic communities. In April 2012, ceasefires had been reached with 10 out of 11 major ethnic armed groups. However, the peace process is still pending, and the government cannot implement absolute peace yet.

Meanwhile, with the outbreak of the Covid-19 global pandemic, UN Secretary General Antonio Guterres suggested a ceasefire to the world because of the international concerns about the threats of the Covid-19 to humanitarian issues and conflicts in the indigenous community. Despite this suggestion, tensions have continued in some conflict zones, especially in the western part of Myanmar, even in the time of pandemic. Along with the conflicts, the aids for the Covid-19 pandemic are being obstructed in these conflict areas. Therefore, the coverage and guarantee of the ceasefire agreement and the implementation of the peace process by the government against ongoing conflicts in those ethnic communities are questionable. So, this study will analyze the current situations of the peace process during the Covid-19 and present the challenges for the stakeholders in the peace process during this disrupted time. Moreover, it will also illustrate which are the best ways for the government, military and ethnic armed organizations to work together for the absolute peace in the future by focusing on the fact that the current time can be leading the peace process forward or backward.

Keyword: Conflict, Peace Process, Myanmar, Pandemic, Covid-19.

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1. INTRODUCTION

In Israel, Palestine, and Jordan, the health officials worked side-by-side by sharing information to prevent the disease from spreading when bird flu broke out in the Middle East. The well-connected cooperation and coordination among health professionals in those countries and their sufficient work on detecting, identifying, and monitoring infectious diseases made this successful response to a potential emergency possible. (Gresham, 2009) In the other regions of the world with complicated stories, with the problem of having low trust and weak mutual understanding among countries, the cooperation between the countries is a highly impossible situation. (Long, 2011) However, those Middle East countries proved that the networked communication for the cooperation to fight against infectious diseases is essential for the countries with conflicts and civil wars.

Myanmar, often regarded as the country with the world's most prolonged ethnic conflict, seems divided into two types of administrative areas - one is the central government-controlled area, and the other territories along the border with neighboring countries controlled by the armed ethnic organizations. (Group, 2020) Moreover, since 2012, with the effort of the government on conflict resolution and peace process, around 20 ethnic armed organizations, which had been fighting for equality and ethnic rights in the country, have been talking about peace. Some armed organizations signed the Nationwide Ceasefire Agreement for evidence about conflict resolution and peacebuilding. (BBC, 2020) However, there are still ethnic armed organizations which are fighting with the Myanmar military forces and conflicts in some regions of Rakhine and Chin states in the western part of Myanmar. These conflicts have led to more than 150,000 displaced people in those regions. (Htet, 2020)

For the conflicts in Myanmar, the United Nations Secretary-General suggested the global ceasefire due to the Covid-19 combatting plans; however, the situations in conflict zones are worse during that time. (Post, 2020) On the other hand, the second-largest ethnic armed organization, the Karen National Union (KNU), which is also the signatory of the Nationwide Ceasefire Agreement, called on the Myanmar government concerning the cooperation with their respective departments to fight against Covid-19 pandemic in the country. Regardless of the cooperation and coordination between Myanmar military and KNU, according to KNU's offer, some clashes and small attacks have occurred in the area.

Although the Covid-19 pandemic is a dangerous situation, the advised prevention for the pandemic - social distancing, wearing face shields or masks or other protection and prevention measures - are not the priority of the ethnic people in the conflict area. Moreover, local people are facing inadequate healthcare service and medical aids due to the conflicts and the pandemic. They also have challenges in accessing the basic needs of goods and services. Therefore, 18 foreign ambassadors to Myanmar asked for the end of armed conflicts between the military and ethnic armed organizations in the region in order to lessen the impact of Covid-19 in those ethnic areas. (Carter, 2020) In Myanmar, the situation is different in each conflict regions because the armed attacks are on hold between the military and ethnic armed organizations, such as Shan State and Karen State (KNU); but in Rakhine, the situation is not different at all and the conflicts are still continuing. Therefore, there is always a questionable condition of conflict resolution and peace during this time of pandemic, especially in the conflict-affected countries.

2. LITERATURE REVIEW

2.1 *Pandemic and Peace*

There are countries around the world with connecting borders and territories, so they have to face challenges to prevent and even control whenever there is a communicable infectious disease outbreak. In Asia, the Mekong Basin Disease Surveillance Network - which is comprised of six member countries: China, Myanmar, Laos, Cambodia, Vietnam and Thailand - are sharing land and water borders, where thousands of local people and animals cross daily. This becomes a long-standing challenge to control communicable disease. Developing interdependence in the region and the rise of the spread rate of communicable diseases, many of zoonotic origin, emphasized rapid identification of the type and source of infections, vaccine development and treatment regimens. (Kimball, 2008)

Instead of cooperation among the countries, there are problems of blaming and framing concerning the disease's spread in the regions. In South Asia, Shia Muslims have been portrayed and blamed for carrying the virus to Iran, and those blames even lead to tensions in the society and challenges for the effective response to the pandemic in Pakistan. On the other hand, hate speech is a struggle for the government and the arguments are breaking out between villages and along religious lines. (Burke, 2020)

Meanwhile, there is a high risk of having a Covid-19 outbreak in the community of displaced persons or refugees who are living in refugee camps in Iraq and in the Middle East, Africa, and Asia. In the area, there are cases of fleeing for safe places, and so the authorities and local people forcefully react to them. As a result, these lead to violence. Moreover, the Covid-19 outbreak in refugees and internally displaced people (IDPs) impact more the women in conflict-affiliated regions. (Reuters, 2020)

Unlike other cases concerning conflict resolution and peacebuilding during the pandemic time, the conflicts between local armed cells in Thailand and the Thai military have been confronted since 2004, and these led to over 7,000 deaths with shootings, bombings, and attacks. Although a ceasefire between the two groups had been demanded for a long time, it never happens. However, the outbreak of Covid-19 has encouraged a minor break for those armed forces because the rebel groups postpone hostilities until the pandemic is under control. (Burke, 2020)

The shutdowns and social distancing during pandemic time have interrupted the peace process in society. Peacebuilding dialogues and programs have to be cancelled because of the pandemic in South Sudan, Colombia and the Democratic Republic of the Congo. According to Bridget Mois, U.S executive director of Peace Direct, the aspect of conflicts is rising up quickly through time. On the other hand, the pandemic could also affect multinational peacekeeping and security assistance efforts in countries. For example, the UN has announced suspending the unit rotation of UN peacekeeping operation troops, including in China and Italy, as the spread of Covid-19 is at the dangerous level. Moreover, the Security Council postponed meetings from 16th March onwards, and it has started applying virtual online meeting options for the diplomats who are still going to meet sometimes to vote on some

important cases. (Group, 2020) Healthcare support and humanitarian services are then important because they are the ones who are facing the drivers of conflict. (Lieberman, 2020)

2.2 Impact of Covid-19 on Conflict Zones

Habib Mayar, Deputy Secretary-General of g7+, an organization of fragile and conflict-affected states with 20 member countries, said that countries where conflicts are breaking out should focus carefully at the coronavirus pandemic. He added that,

“Lockdowns or closures of borders or airports have created social and economic challenges for these countries where people mostly live in a hand-to-mouth situation. The institutions are fragile. They don’t have the capacity to respond to their needs – economic, social, or even health needs. If the situation persists, it might affect the current peace-building initiatives or the transition (Welsh, 2020).”

In reality, the Coronavirus-2019 pandemic crisis is interrupting the peacebuilding process and its underlying roots can increase the risk of violence in societies. The tensions between groups and even individuals are caused by the practice of social distancing and false rumors blaming each other for the spread of the virus. (Direct, 2020) The poor, women, disabled, elderly, marginalized, and indigenous people are mostly suffering the impact of the pandemic. However, peace activists and peacebuilders are also in dangerous conditions to take an inclusive peacebuilding approach in those conflict areas where there is already the impact of the pandemic. Tensions, vulnerable or marginalized situations, trauma and psychosocial experience all contribute to aggressive responses in the communities. As most of the conflict-affected areas are profoundly impacted by the pandemic, the governments of those countries need a successful and effective response to the pandemic for and with the cooperation between the stakeholders. (Group, 2020)

With the active conflict cases, the international medical aids and support might struggle to reach the people in need in the conflict-affected area. For example, in 2019, violent local armed groups in the Democratic Republic of the Congo (DRC) blocked access to some areas in the eastern part of the country affected by the Ebola outbreak, so the World Health Organization (WHO) and international organizations struggled to reach the outbreak areas. Although the Congolese government and stakeholders and World Health Organization (WHO) succeeded against Ebola outbreak after some months, the infectious disease lasted far longer and death tolls rose up. (MSF, 2020) Another example of this is Syria’s case, where there are areas of active conflicts and the highest immediate risk of Covid-19 outbreaks, and Yemen, who has already experienced a weak healthcare system and healthcare crisis during their internal conflicts. Nevertheless, the UN gave red alarms to both countries about the outbreak of Covid-19 in the country. (Hill & Al-Hlou, 2020)

Despite the suggestion by the UN Secretary-General to the countries around the world which are facing internal conflicts, tensions have continued in some conflict zones, especially in the western part of Myanmar, even in pandemic time. (UN, 2020) Along with the conflicts, the aids for combatting Covid-19 are being obstructed in those conflict

areas due to many challenges, such as the health and social supporting programs for internally displaced people (IDP) in those regions. Therefore, the coverage and guarantee of terms and agreements under the Nationwide Ceasefire Agreement (NCA) is questionable because the medical aids and workers are at risk as long as the armed attacks are escalating in those regions; this condition will undoubtedly lead to a potential health disaster. (Group, 2020) Furthermore, the implementation of the peace process by the government for those ethnic communities and the ongoing conflicts concerning human rights and ethnic rights in the country are challenging issues for the government to handle during this disrupted situation.

3. METHODOLOGY

The research question of the study is if the moving path of the Myanmar peacebuilding process under this disrupted Covid-19 pandemic time is stepping forward or walking backward from the current point. Technically, the study is questioning the direction of the ceasefire, conflict resolution and creation of the absolute peace in Myanmar, and how the stakeholders and key players in this organizing structure are shaping the peace process within this problematic situation. For the research method, the research methodology to be applied will be a descriptive analysis based on news from national and international organizations, and reports and records from various organizations, including ethnic organizations, groups working for human rights, ethnic rights and indigenous people, to get different perspectives on such issues and announcements by the respective organizations, whether governmental or non-governmental ones.

Concerning the research analysis procedure, this study will firstly analyze the current situations of the peace process during the Covid-19 pandemic, and then present about the challenges for the stakeholders in the peace process during this pandemic time. Filtering and analyzing those contents, the study will clearly point out the challenges under this difficult situation and illustrate which are the best ways for the government, military and ethnic armed organizations, who are the key players in the conflict resolution and peacebuilding process, to work together for the absolute peace in the future by answering the questionable fact that the current time can be leading the peace process forward positively or backward negatively.

4. FINDINGS AND ANALYSIS

As seen in the reports, the screening post by the Health Department of KNU about Covid-19 protection was closed down by the Myanmar military in the area which is controlled jointly by KNU and Myanmar military. Again, in Mutraw District, Karen State, the screening post about combating and protecting Covid-19 was burned by the Myanmar military. An armed attack was launched between two forces instead of a peaceful cooperation against the pandemic in the region. (Htet, 2020) According to the report by the Myanmar Institute of Peace and Security (MIPS),

it is estimated that there are over 1000 combatants and 150 civilians killed because of the armed conflicts in 2019 (Security, 2020).

Instead of the uproar over the destructive pandemic, the government is putting their best effort to proceed with the meetings and dialogues on the ceasefire via virtual online system and also to hold Union Peace Conference 21st century Panglong in 2020 as the signing of the Union Agreement based on the results of the 21st Century Panglong Conference, one of the seven steps of the roadmap for National Reconciliation and Union Peace announced by the Myanmar government on 15th October, 2016. As a result of the working group meetings between the government and Nationwide Ceasefire Agreement Signatories Ethnic Armed Organizations (NCA S- EAO), Union Peace Conference 21st Century Panglong Conference will be held on 12th August. (NRPC, 2020)

On 15th October, 2016, the Myanmar government announced their “Seven Steps Roadmap for National Reconciliation and Union Peace,” which are:

1. To review the political dialogue framework
2. To amend the political dialogue framework
3. To convene the Union Peace Conference – the 21st Century Panglong in accordance with the amended and approved political dialogue framework
4. To sign union agreement – the 21st Century Panglong Conference Agreement based on the results of the 21st Century Panglong Conference
5. To amend the constitution in accordance with the union agreement and approve the amended constitution
6. To hold the multi-party democracy general elections in accordance with the amended and approved constitution
7. To build a democratic federal union in accordance with the results of the multi-party democracy general elections (Myanmar, 2016)

With the announcement date of the 21st Century Panglong Conference, there are people worried about the risk of the pandemic spreading, while there are people who are happy about the ongoing peace process moving forward even in this time of pandemic. Although the government, military and NCA S-EAO open up about the preparations, there are conflicts, arguments and even armed attacks in specific ethnic areas. Shown in the reports, the military blocked the Covid-19 pandemic checkpoints of the Kachin Independence Army (KIA) and Shan State Army South (RCSS/SSA), and there is no response action of the military to remove Covid-19 checkpoints.

Moreover, the chairman of the Restoration Council of Shan State (RCSS) pointed out the statement of the union people, that if peace process is focused on the Union level in the country, federal union, which every ethnic people has been willing to build, can be created with all support. On the other hand, the number of internally displaced persons is increasing in the northern Shan state, up to more than 700 displaced people. Despite the armed attacks and increasing number of internally displaced people, vice-chairperson of the Joint Monitoring Committee on the

Ceasefire (JMC-Union level) stated that there is no worrying situation regarding the fighting between the Nationwide Ceasefire Signatories Ethnic Armed Organizations (NCA S-EAO).

The regions where conflicts are breaking out have high risks of Covid-19 impacts, and these areas are mostly outside of the central government's administration. Therefore, the strong support, cooperation and coordination among the government, military and ethnic armed organizations are necessary for fighting against this pandemic, especially for the prevention, surveillance and healthcare service in the regions. Despite the cooperation and coordination in those conflict regions among the stakeholders, the supports and aids are lacking for the ethnic people.

Moreover, there are people criticizing where all the help and funding go to because World Bank approved a \$50 million credit line for Myanmar's Covid-19 response on 20th April. The Myanmar government has allocated a budget of 2.4 billion Myanmar Kyats for the prevention measures of the pandemic. (Carter, 2020) However, in the real situation, most of the funding and budget goes to the country's intensive care capacity, mostly in Yangon and Mandalay, which are the biggest cities in Myanmar. The people living outside the urban centers and big cities cannot access such kinds of healthcare aids and support because all the international supports go directly to the central government, and the budget allocation throughout the country is up to the central government.

5. CONCLUSION

It is obviously seen that the Myanmar's peace process was progressing with the effort and cooperation of the government, military and ethnic armed organizations. But because of the Covid-19 pandemic time, the dialogues, informal talks and meetings have not been able to be held in person. As the dialogue is a process to help the policymakers, stakeholders and participants in the event speak up about their interests, opinions and comments about particular issues or problems in a more effectual and non-violent way, discussions or talks for the peace process should adopt a dialogue style to obtain effective output. The methods applied in dialogue should lead to the mutual understanding and respect among each individual participant in the process and bring the changes for the creation of sustainable peace.

Governance can be defined as the "ability to promote collective action and deliver collective decisions" and, as distinct from government, can be fulfilled by a wide range of individuals and institutions, including the public sector, private companies, non-governmental organizations, professional bodies, and civil society. (Dodgson, Lee, & Drager, 2000) As per the definition, the government is responsible for collecting all forces to finish the ongoing conflict resolution and peacebuilding process in the country.

Due to the outbreak of Covid-19, the 21st Panglong Conference can only be held in the middle of August, although the stakeholders in the peace process were planning to make it in the early 2020. On the other hand, the current NLD (National League for Democracy) government of Myanmar is only focusing on the challenges on the prevention, protection and surveillance on the Covid-19 pandemic, and also the healthcare service for the infected

people. Although the government tried their best to complete the roadmap for National Reconciliation and Union Peace during their political term, as their promise during the 2015 election for the creation of conflict resolution, national reconciliation and absolute peace and ethnic rights during their political term, they might not finish their ways of building peace in the country.

Myanmar, a developing country, is struggling so much during this pandemic-disrupted time, especially with the economy. Therefore, the government has set up the prevention of pandemic as their first priority, and the budget allocation is mostly for the healthcare service. As it is already known that peace process is a continuing and long-term process which is time-consuming and needs vast amount of budget allocation, some procedures and functions for the peace process might be lacking because of the huge budget allocation problem and weak local people's attention on the peace process during the middle of the pandemic period.

Furthermore, there will be general election in November of this year, so the government's concentration is on the canvassing for votes. The 21st Century Panglong Conference might not have significant results that can bring competent answers or solutions for the current peace process. On the other hand, it is questionable if holding the 21st century Panglong Conference, which is the crucial Union Peace Conference in the country, might just be a campaign for election votes, unless there is no strong attaching and sound mind for national reconciliation and peacebuilding process. So, in a nutshell, the Covid-19 pandemic can bring challenges to the ongoing peace process, whether the process can move faster forward or backward.

As the latest improvement of the peacebuilding process during this government's time, the Fourth Union Peace Conference, 21st Century Panglong Conference, has been held on 19th August, 2020 and the Third Section of Union Peace Agreement will be signed on the third day of the conference, 21st August, 2020. In the opening remarks of the conference, the representatives of the ethnic armed organizations made the speech agreeing to move forward to the goal of building Federal Union based on the path of Nationwide Ceasefire Agreement (NCA). On the other hand, the Commander in Chief of Myanmar military pointed out internal peace in the country as their highest priority, to build democracy and the Federal Union. Regardless of any situation, the stakeholders in the process should persist on creating peace, and such efforts should have the enough coverage down to the ground.

To conclude, all the process depends on the government's systematic plans and structures. The Covid-19 is just a test for the stakeholders in the peace process, including government, military and ethnic armed organizations, concerning how strong their mindset for the peace process is. With the exact genuine peace mindset, absolute peace is not far away at all for Myanmar, a country with the longest civil war. However, with the impact of Covid-19 pandemic, Myanmar's conflict resolution and peacebuilding process might be pending, unless the newly elected government after the 2020 election will give the best effort toward peacebuilding as their first priority for new governmental time.

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A COMPARATIVE ANALYSIS OF POLICIES AND LEGAL ACTIONS AGAINST ENFORCED DISAPPEARANCE IN PAKISTAN AND NEPAL IN LIGHT OF THE INTERNATIONAL HUMAN RIGHTS INSTRUMENTS

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ABSTRACT

Silencing the open dissent and voice against anti-people policies, laws and harmful projects at the outset of the alleged threat to national security under the war on terror in Pakistan, and the Maoist People's War in Nepal, law enforcement agencies in both countries enforcedly abducted and arbitrarily arrested hundreds of thousands of people, depriving them of liberty, life and security in secret detention centers. The extent of the current research "*A Comparative Analysis of Policies and Legal Actions on Enforced Disappearance in Pakistan and Nepal in the Light of International Human Rights Instruments*" is an attempt to evaluate the implementation of national policies and legislative measures towards the prohibition of enforced disappearance in Pakistan and Nepal. Based on comparative analysis, the study examined the existing scholarship, reports of relevant agencies, national and international policy and legal instruments on enforced disappearance in Pakistan and Nepal. In this context, the study provides a brief analysis of the situation of enforced disappearance in both countries, and the current state of policy and legal practice under the recommendations of international human rights instruments applicable to the field of enforced disappearance. The study also reflects on the impact of the application of policy and legal actions, and the adoption of international treaties under domestic laws and policies on the enforced disappearance situation in Pakistan and Nepal. Both states have made some progress on policy and legal actions under their domestic laws on enforced disappearance. However, the desired results against enforced disappearance are still unachieved because of a lack of political will, flawed and ineffective policy and legal actions and legalized forms of impunity regarding the perpetrators.

Keyword: Enforced Disappearance, Human Rights, Domestic Laws, Policy and Legal Actions, International Instruments/Treaties/Conventions.

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1. INTRODUCTION

Enforced disappearance is a global phenomenon that violates a wide range of the civil, political, social, economic and cultural rights that people are guaranteed under international human rights instruments (OHRC, 2009). The abduction, arrest and detention of a person in an enforced manner, based on alleged threats to national security, have been practiced without informing the victim or the family of the disappeared person while continuously denying the fate and whereabouts of the victims (AFAD, 2015). The purpose behind enforced disappearance had always been associated with the elimination of political opponents for the pursuit of power, and because of its widespread, structured and purposeful nature with regards to a person's involuntary abduction or arbitrary arrest beyond and against legal provisions, enforced disappearance is therefore recognized as a "severe human rights violation" and "a crime against humanity" under various international and regional human rights instruments (AFAD, 2015 and Escobar, 2018).

Over the last one and a half decades, enforced disappearance had been widely practiced at the outset of the war on terror in Pakistan, and the Maoist People's War in Nepal. Law enforcement agencies in both countries enforcedly and secretly abducted hundreds of thousands of people over alleged accusations of threatening national security. With respect to the issue of enforced disappearance, neither state has yet ratified the ICPPED; nonetheless, both countries are party to various other international human instruments under which enforced disappearance constitutes a severe human rights violation. The governments of Pakistan and Nepal have also enacted various domestic policy and legal actions that, according to the UN Human Rights Committee and other experts, need to comply with international human rights standards because of a lack of concrete actions and do not provide an effective recourse to justice for victims as regards knowing the fate and whereabouts of the victims, access to fair trial and reparations, nor ensure the prosecution of the perpetrators (ICJ, 2015 and HRC, 2017).

Therefore, to analyze policy and legal actions in Pakistan and Nepal, this paper specifically addresses the following questions: (1) how effectively does the implementation of existing national policies and legal actions address the issue of enforced disappearance in Pakistan and Nepal? (2) do these national laws, policies and mechanisms against enforced disappearance comply with the recommendations of the international human rights instruments given to Pakistan and Nepal? and (3) what impact do these national policies and legal actions have on the situation of enforced disappearance in Pakistan in comparison with Nepal? To understand the extent of national policy and legal actions against enforced disappearance in Nepal and Pakistan, the arguments of this paper are developed in four parts. The first section reflects on the general situation of enforced disappearance in both countries. The second part highlights the status of the implementation of policy and legal actions against enforced disappearance in Pakistan and Nepal. The third part establishes the degree of compliance with international instruments and the fourth part analyses the impact of policy and legal actions against enforced disappearance in Pakistan and Nepal.

2. THE PHENOMENON OF ENFORCED DISAPPEARANCE IN PAKISTAN AND NEPAL

The phenomenon of enforced disappearances in Pakistan and Nepal became more apparent as a burning issue over the last one and a half decades from the outset of war, internal conflict and political militarization in both countries. After the incident of 9/11, particularly on account of the war on terror, thousands of political activists and human rights defenders were enforcedly disappeared by security agencies over accusations that they posed threats to national security in Pakistan (Khan, Jaspal and Yasmin, 2017; Shafiq, 2013). Similarly, Nepal also experienced the widespread practice of enforced disappearance in the wake of a decade-long (1996-2006) armed conflict between the Maoist Communist Party of Nepal and the last King's Government of Nepal, during which cases of enforced disappearance increased significantly and those thousands of victim's fates and whereabouts are still unknown (ICJ, 2017).

Similarly, in Pakistan, according to cases registered by the Commission of Inquiry on Enforced Disappearance, up to May 2019, a total of 6,124 people were picked up by law enforcement agencies in a manner that runs contrary to the provision of the law (COIOED, 2019). In actual fact, these figures would appear to represent an underestimate since, as the Voice of Baloch Missing Persons, an NGO, estimates, since 2001, around 18,000 people have been disappeared in Baluchistan Province alone (ICJ, 2017), and hundreds of cases are not even reported due to the fear of repercussions for the families of the victims and the victims themselves. Dealing with the cases of enforced disappearance in Pakistan, no serious efforts are being taken to investigate the circumstances of the persons illegally abducted by law enforcement authorities (HRCP, 2018).

More than 10 years of armed conflict in Nepal between the national army and police force and the Maoist People's Movement led by CPN-M claimed 13,000 lives, of whom around 8,000 were killed, and some 1,300 were enforcedly disappeared by both sides (Sapkota, 2008). After the declaration of a state of emergency and the mobilization of the Royal Nepalese Army in 2001, the cases of enforced disappearance escalated significantly, and the fate and whereabouts of those thousands of victims are still unknown (ICJ, 2017). Thus by exposing the lives of the Nepali people to the "culture of terror", the security agencies not only violated intimate spaces but they also committed assault, hit people and shot at their houses from helicopters, effectively turning their homes into a battlefield (Pettigrew, 2004).

3. THE IMPLEMENTATION OF INTERNATIONAL HUMAN RIGHTS INSTRUMENTS AND NATIONAL LAWS IN PAKISTAN AND NEPAL

3.1 *International Human Rights Instruments against Enforced Disappearance*

Several international human rights instruments recognize the crime of enforced disappearance as a severe human rights violation and a crime against humanity (Escobar, 2018). Within the frameworks of the United Nations systems, the crime of enforced disappearance has been addressed under the *International Convention for the*

Protection of All Persons from Enforced Disappearance (ICPPED) (2006), as a largely binding instrument. The absolute nature of ICPPED as stated under its Article 1(1) is a non-derogable and autonomous right that persons may not be subjected to enforced disappearance (Vermeulen, 2012 and Erenner, 2015). Under Article 4 of the ICPPED, states are obliged to uphold domestic laws as a separate and distinct offence; furthermore, it requires that they ensure legislative measures to prevent the deprivation of liberty in an officially recognized manner, hold authorized persons accountable, and that persons deprived of liberty shall have access to means of communicating with their relatives and must be guaranteed legal assistance and proceedings before the courts (HRC, 2010 and Hassan, 2009).

The second pertinent instrument is the *Rome Statute of the International Criminal Court*, (1998) which qualifies enforced disappearance as a "crime against humanity" The ICC system required member states to fully cooperate with the Court over the matter of investigation and prosecutions of human rights violations related to crimes against humanity (ICC, n.d). Besides the above-mentioned specific instruments, the enforced disappearance of a person infringes other personal rights as guaranteed under The *Universal Declaration of Human Rights (UDHR)*, The *International Convention on Civil and Political Rights (ICCPR)* (1966), and *The Convention against Torture (CAT)*. (OHCHR, 2009).

3.2 National Policy and Legal Actions on Enforced Disappearance in Pakistan and Nepal

Despite widespread practices and thousands of cases, and international human rights recommendations, enforced disappearances are not established as a separate offence under domestic criminal law in Pakistan. In response to international human rights recommendations, in 2004, the Government of Nepal included a bill to amend Criminal Code 1963 (known as the 'Muluki Ain 2020') under which the government proposed to criminalize enforced disappearance, which was later endorsed in 2017 by the President of Nepal, requiring the approval of parliament for its implementation (ICJ, 2017). Due to the absence of domestic law regarding enforced disappearance, family members of the victims of enforced disappearance in Pakistan and Nepal have to rely on the following domestic policy and legal actions against enforced disappearance:

National Jurisprudence under judicial review (habeas corpus) in Pakistan and Nepal - the Constitutions of Pakistan and Nepal guarantee a person's right to life, liberty and security. The Article of 199 and 184(3) of the Constitution of Pakistan 1973, and Articles 23 and 88 of the 1990 Constitution of Nepal ensure the right of detainees to judicial review (*habeas corpus*). Encountering difficulties in finding out the truth and their relatives' whereabouts, the families of "disappeared" persons made *habeas corpus* petitions to the Supreme Courts and High Courts of Pakistan and Nepal, requesting that the courts investigate and determine the whereabouts of their missing family members (Sapkota 2008 and ICJ, 2017). In responding to the widespread practice of enforced disappearance, in 2005, the Supreme Courts of Pakistan and Nepal took *suo motu* actions that conferred *habeas corpus*. The Supreme Court of Pakistan summoned high-level security and military intelligence personnel to appear before the court and to both explain the legal basis for the acts of enforced disappearance and produce the detainees physically (2017). In the case of Nepal, its Supreme Court ruled that the existing legal provisions lacked standard provisions and that the

Government must form a separate commission on enforced disappearance with effective inquiry mechanisms. (Sapkota, 2008).

Commission of Inquiries on Enforced Disappearance (COIOED) in Pakistan and Nepal - Dealing with the escalated number of enforced disappearance cases, the Supreme Court of Pakistan directed the Government to establish a Commission of Inquiries on Enforced Disappearance to investigate the cases along with recommendations to prevent the practice of enforced disappearance (ICJ, 2017). Complying with the directions of the Supreme Court of Pakistan, in 2010, the Government established the Commission of Inquiry on Enforced Disappearance (CoIoED) for six months. Since 2011 it has been extended on several occasions up until the present time, operating with a mandate to trace the whereabouts of enforced disappearance victims, conducting an impartial investigation, fixing responsibility on individuals and organizations for the crime of enforced disappearance, and launching FIRs against the perpetrators involved directly or indirectly in the disappearance of the person (2017).

In response to the widespread calls by the international community and the United Nations Office of the High Commissioner for Human Rights (OHCHR), in 2014, the Government of Nepal established the Commission on Investigation of Disappeared Persons, Truth and Reconciliation Act (2014), under which two Commissions of Inquiries (COIs) were established in February 2015: one is The Truth and Reconciliation Commission (TRC) with a mandate to investigate cases of serious human rights violations including large-scale killings, enforced disappearances, torture and sexual violence. The second is the Commission on the Investigating of Enforced Disappearance (CoID), which was given the specific mandate to investigate enforced disappearance for a period of two years (ICJ, 2017).

National Human Rights Commissions (NHRC) of Pakistan and Nepal - The next important instrument in ensuring the respect, protection and fulfillment of human rights obligations is the mandate of the National Human Rights Institutions. In keeping with international recommendations, the governments of Pakistan and Nepal established a National Commission for Human Rights. The mandate of the NHRCs in both countries is to serve as a link between international and regional human rights mechanisms, investigate cases of human rights abuses including enforced disappearance, and make recommendations concerning violations.

4. COMPLIANCE WITH INTERNATIONAL HUMAN RIGHTS INSTRUMENTS IN DOMESTIC POLICY AND LEGAL ACTIONS OF PAKISTAN AND NEPAL

Being state party to various international human rights instruments, Pakistan and Nepal received several recommendations to ratify the ICCPED and legislation regarding enforced disappearance and to legislate enforced disappearance under domestic laws during their Universal Periodic Review (UPR) sessions. In light of the ICCPED and other international human rights instruments, the Working Group on Enforced or Involuntary Disappearances made a series of recommendations to Nepal (2004) and Pakistan (2012), under which the WGEID called upon both

governments to abolish impunity, prohibit enforced disappearance under domestic laws (HRC, 2012), review laws relating to preventive detention regimes authorizing arrest without warrants, and ensure that the deprivation of liberty must be in accordance with due legal procedure (HRC, 2012 and ICJ, 2017).

Having provided recommendations, the HRC's concluding observations stressed that, notwithstanding, there had been no meaningful progress in Pakistan and that the government had delayed taking solid steps to fulfil its pledge of criminalizing enforced disappearances under domestic laws (HRC, 2017 and ICJ, 2017). The Government of Nepal abolished impunity and grassroots violations during the conflict, and prohibited enforced disappearance under its domestic laws (HRC, 2014). Similarly, in their concluding observations as part of the Universal Periodic Review, the Committee against Torture (CAT) Committee on the Rights of the Child (CRC) and the Committee on the Elimination of Discrimination against Women also expressed concern that the governments of Pakistan and Nepal had failed to implement domestic laws on enforced disappearance and urged them to undertake immediate investigations of alleged enforced disappearances and extrajudicial killings (CAT, 2017 and HRC, 2017).

5. THE IMPACT OF POLICIES AND LEGAL ACTIONS AGAINST ENFORCED DISAPPEARANCE IN PAKISTAN AND NEPAL

5.1 Judicial Activism and The Question of Impunity, Criminal Accountability, And Non-Compliance of Security Forces in Pakistan And Nepal

Despite the absence of specific laws regarding enforced disappearance as a separate offence, the practice of domestic jurisprudence in Pakistan and Nepal against enforced disappearance held landmark decisions referring and adopting international human rights instruments, and ordered the governments to disclose the whereabouts of the victims, prosecute the perpetrators and bring the laws into compliance with international human rights standards (ICJ, 2017). As a result of the Supreme Court rulings in Pakistan, in March 2014, the Pakistani Defense Minister lodged FIRs against military personnel responsible for enforced disappearance, which the provincial governments forwarded to the military for investigation and trial under the Army Act, 1952. (Omer, 2017c). Similarly, the role of the Supreme Court of Nepal with regards to Jurisprudence against enforced disappearance achieved landmark progress.

Under its rulings in the cases of *Rajendra Prasad Dhakal vs. Government of Nepal* (2007) and *Madhav Kumar Basnet vs. Government of Nepal* (2014), the Government was ordered to immediately investigate all cases of enforced disappearance and prosecute those found guilty without amnesties or pardons. (ICJ, 2017). In many other cases related to enforced disappearance, court orders to produce the enforced disappeared persons that involved security personnel were ignored by the executive officials (Hassan, 2009). The role of the Supreme Court of Pakistan in dealing with cases of missing persons, especially when it involved military officials, was systematically undermined on account of the right to *habeas corpus* by security agencies.

Having met with such a defiant refusal by security agencies to follow the Court's directions and COIOED, the courts also avoided using its contempt of the court powers to press the authorities for the implementation of the orders (ICJ, 2017) On the other hand, in Nepal during the time of conflict, for more than nine years, the courts adopted the role of 'judicial dictum' regarding enforced disappearance cases and remained reluctant to enforce the *habeas corpus* writ relating to CPN-M. After a change in their political dynamic, those same courts held human rights-friendly rulings on enforced disappearance cases (Sapkota, 2008).

5.2 Ineffective COIOED And NHRCs and the Question of Investigating the Truth, Fate, And Whereabouts of Disappeared Persons in Pakistan And Nepal

The role of the Commission of Inquiries on Enforced Disappearance and National Human Rights Commissions in Pakistan and Nepal remained ineffective and questionable on many levels in terms of investigating the truth and tracing the fate and whereabouts of the victims in Pakistan and Nepal. In Pakistan, the non-compliance of the state law enforcement agencies, as well as the insufficient allocation of resources by the central governments proved to be the major hurdle in the way of implementing the Commission's recommendations according to its original mandate. In Nepal, there was a similar failure to comply and conform with international standards regarding criminal accountability for gross human rights violations as established by its Supreme Court. of.

The commissions in both countries lacked a legal mandate, and recommended amnesties for gross human rights violations, including enforced disappearances, while failing to provide guarantees for independent and impartial operations by the Commission (ICJ, 2015). For instance, as of July 2017, the TRC had received a total 58,052 complaints of human rights violations, and the CoID had received 2,874 complaints. In none of these cases were investigations initiated (ICJ, 2017). During the formation of the TRC, the process of consultations with important stakeholders such as victims, the media and the human rights community was sidelined and most of the participants were not aware of any plan to implement the TRC process in Nepal (Cochran-Budhathoki and Worden, 2007).

5.3 The Absence of Domestic Criminal Law and The Question of Penalties and Prosecution for The Perpetrators, And Remedies and Reparations for The Victims of Enforced Disappearance in Pakistan And Nepal

Due to the absence of domestic laws on enforced disappearance, in Pakistan, complaints of enforced disappearance are registered under sections 359 to 368 of the Penal Code relating to the crimes of "kidnapping" and "abduction", which incur the minimum punishment of two to seven years imprisonment and fines (ICJ, 2017). These offences are inadequate when it comes to classifying cases of enforced disappearances do not recognize the gravity of the crime and are not even commensurate with the penalties or the remedies to the victims of enforced disappearances (Omer, 2018). The other critical issue is that the police often avoid to identify agents of the security forces as the perpetrators, refusing to file complaints against "unknown persons" (ICJ, 2017).

In response to international human rights recommendations, in 2004, the Government of Nepal included a bill to amend Criminal Code 1963 (known as the '*Muluki Ain 2020*') to criminalize enforced disappearance. The bill

was endorsed in 2017 by the President of Nepal, but still awaited approval from parliament to be enforced, since the bill fails to contain the international standards under the ICPPED, and does not include the crimes committed between 1996-2006 (ICJ, 2017). The absence of domestic law on enforced disappearance as an offence in the criminal justice system in Nepal has provided amnesty from prosecution to the perpetrators.

5.4 The Perpetrators in Power and Questions About the Political Will to Comply with International Human Rights Instruments in Pakistan And Nepal

The effective implementation of policy and legal actions regarding the prohibition and prevention of enforced disappearance in line with international human rights standards is a prime responsibility of the state. In this respect, the roles of the Supreme Courts of Pakistan and Nepal have made a tremendous impact on enforced disappearance in terms of their landmark decisions. For instance, to achieve the ends of justice, the Supreme Courts in both countries under their judgements on disappearance held that "although the country is not a party to ICPPED, the principles and provisions under the international law on enforced disappearances, including under the ICCPR and the International Convention for the Protection of All Persons from Enforced Disappearances (CED), reflected customary international law and courts could interpret fundamental rights provisions in the Constitution in their light, even if Pakistan had not ratified the CED (ICJ, 2017; Omer, 2017a).

Even though both countries have ratified major international human rights instruments and the government of Nepal has made a positive move to criminalize enforced disappearance under its domestic law in compliance with international recommendations received during its Universal Periodic Review (UPR) in 2011 and 2015, it nonetheless still needs to fulfil the commitment with regards to meeting the standards, principles and guidelines under its criminal law (ICJ, 2017). Despite international human rights recommendations given by WGEID, the Human Rights Committee, the Committee against Torture, the Committee on the Rights of the Child, and international human rights organizations during universal periodic reviews, there has been no meaningful progress in Pakistan to criminalize enforced disappearances under domestic laws (HRC, 2017 and ICJ, 2017).

According to the concluding observations, both countries have failed to fulfil their pledge to uphold international human rights recommendations to prohibit enforced disappearance under domestic laws, abolish impunity for perpetrators, ensure investigations, make reparations to the victims, and ratify the International Convention for Protection of All Persons from Enforced Disappearances (ICPPED) and the Rome Statute of International Criminal Court.

6. CONCLUSION AND RECOMMENDATIONS

Dealing with the crime of enforced disappearances, the role of the Supreme Courts of Nepal and Pakistan has been far more appreciable with regards to their landmark decisions on enforced disappearance as well as the interpretation of international human rights instruments in their judgements. At some level, particularly in Pakistan,

the non-compliance of law enforcement agencies with the Court's decisions, as well as conferring powers to military courts for the trial of civilians in the case of enforced disappearances have raised several questions about judicial independence and integrity in addressing the issues of impunity and criminal prosecutions of the perpetrators in both countries and well as access to justice and fair trial for the victims of enforced disappearances.

Similarly, governments in both countries have not authorized or empowered the Commission of Inquiries on Enforced Disappearance. Without proper allocations of resources, the competent authorities remained questionable and largely failed to provide impartial and independent investigation into the truth, fate, and whereabouts of disappeared persons in Pakistan and Nepal. The Commission of Inquiries in both countries exists only on paper since they were not able to bring one single perpetrator to justice and failed to handle the complaints of the victims or establish the fate or investigate the whereabouts of the victims. In Nepal, the commission has also lost its integrity since the government has established the commission without the engagement of all the stakeholders.

On the contrary, despite being party to various international human rights instruments and the rights guaranteed in the Constitutions of Pakistan and Nepal, the governments of both countries failed to comply with international human rights instruments. Although Nepal made positive moves to bring a bill to criminalize enforced disappearance into domestic law, it nonetheless needs to be passed by parliament. As of now, the past perpetrators are in power in Nepal, as is the case in Pakistan where the violators have the direct authorization and support of state security agencies. Therefore, this raises the question of a lack of the political will to comply with international human rights recommendations as pertaining to the issues of bringing perpetrators to justice, abolishing amnesties, and establishing enforced disappearance as separate laws as well as providing remedies and reparations to the victims of enforced disappearance in Pakistan and Nepal.

Recommendations

In order to reinforce effective policy and legal actions against enforced disappearance in Pakistan and Nepal, human rights stakeholders in collaboration with the organizations that represent families of enforcedly disappeared persons in both countries will have to come up with strong advocacy and lobbying strategies if they are to pressurize their governments to comply with international human rights obligations. Policy advocates, researchers, human rights NGOs and civil society movements must also focus on addressing the gaps and challenges in policy implementation as well as highlight a weak and ineffective policy and legal actions against enforced disappearance in shadow reports.

Governments in both countries will also have to play a positive role in adhering to international human rights recommendations to empower and fully fledge COIOED and NHRCs, criminalize enforced disappearance as a separate offence in domestic law, investigate all enforced disappearance cases, provide full reparation and remedies to the victims of enforced disappearance, close all the secrete detention centers, review national security laws and prosecute the perpetrators of the crime of enforced disappearance in both countries.

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‘LEGAL TRANSPLANTS’ PHENOMENON: THE ROLE OF THE PHILIPPINE SUPREME COURT IN THE DEVELOPMENT OF HUMAN RIGHTS NORMS

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ABSTRACT

This paper examines the existence of judicial legal transplants behavior by the Philippine Supreme Court, and its impact on the development of domestic human rights norms. Judicial legal transplants exist when the Supreme Court, when deciding on human rights cases, refers to foreign judicial decisions to resolve an issue. The paper draws on the analysis of select human rights cases promulgated by the Philippine Supreme Court between 1987 and 2019. It argues that legal transplants behavior is present in judicial decisions, and that it re-shapes the existing domestic human rights norms. It also discusses the effect of such practice in the advancement of local human rights norms. The paper argues that the Supreme Court plays an important function in the development of domestic human rights norms in the Philippines. This is justified by its expanded Constitutional mandate, thereby emboldening the Supreme Court to engage in legal transplants by way of judicial borrowing. The borrowing is performed by referring to foreign human rights cases and transplanting it into the Philippine setting through judicial decisions. Furthermore, the paper finds that the Philippines relies heavily on court decisions issued by the US Supreme Court, which have greatly contributed to the development of domestic human rights standards.

Keyword: Legal Transplant, the Philippine Supreme Court, Human Right Norms.

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1. INTRODUCTION

The contemporary Philippine Supreme Court is a product of a post-Marcos Constitution. Drafters of this instrument are dominated by anti-authoritarian, pro-democracy leanings. They viewed the judiciary as an institution to keep an authoritarian regime at bay and to preserve and enrich democratic institution and values in the country. In light of these objectives, the writers of the Constitution made sure that the Marcosian dictatorial regime tainted with gross human rights violations, would never be repeated in the annals of Philippine history (Ciencia, 2012). As such, the 1987 Constitution expanded the judicial power of the Supreme Court, ensured its independence, and added a novel rule-making authority.

The Constitutional fiat expanded the power of the Supreme Court supported by strengthening its independence. This contributed to the establishment of an emboldened judicial body. Given these characteristics, there is a need to examine its behavior in keeping this mandate.

This paper shall attempt to document the legal transplants behavior of the Philippine Supreme Court during the period of the effectivity of the present constitution. This presupposes that such behavior proliferates due to the invigorated nature of the post-1987 Supreme Court. Moreover, the impact of such behavior will be examined especially in the area of the development of domestic human rights norms. In light of this aim, the paper shall analyze select cases decided by the Philippine Supreme Court. The sampling of cases is purposively based on the following criteria: (a) that cases are promulgated between 1987 and 2019 (30 years). The year covered was deliberate since the present Constitution came into effect in 1987; (b) such cases cover issues involving human rights; and (c) cases feature the legal transplants behavior of the Supreme Court, wherein foreign human rights norms were introduced or used in resolving the issue.

At the outset, the paper argues that legal transplants behavior is applied by the Philippine Supreme Court in deciding on human rights cases, which influence domestic human rights norms in the country. To support this argument, the paper is divided into four parts. The first part preliminarily would look into the evolving roles of the Philippine judiciary in promoting and safeguarding human rights. The second part would discuss the concept of legal transplants in view of the Philippine Supreme Court. The third part would cover the manifestations of legal transplants in court cases, and would explore its impact in the transformation of the domestic human rights norms. The fourth part shall draw an analytical conclusion.

2. THE EVOLVING ROLES OF THE PHILIPPINE SUPREME COURT

2.1 *The Traditional Role of The Supreme Court*

The traditional understanding of the role of the judiciary, especially the Supreme Court, in a democratic society is confined to the idea of adjudicative or decision-making authority. This notion boxes the Court into a function where it decides on cases according to the law that the legislative branch of government had duly enacted. In the course of its decision, the Supreme Court will determine the rights of the parties and provide remedies to the victim and render obligations to the violator.

The traditional adjudicative function of the judicial power of the Supreme Court bears additional roles. The Supreme Court wields the power of judicial review, which authorizes the Court to test the validity or constitutionality of official acts pursued by other branches of the government. This authority presupposes the supremacy of the Constitution. It is the expressed will of the people, then all acts of the political branches of the government should toe the line of its texts (Ramirez, 2003).

The 1987 Philippine Constitution has likewise solidified the power of judicial review by the Supreme Court. Article VIII, Section 1 expressly grants the power to the judiciary to take cognizance of cases where there is grave abuse of discretion in the part of any branches of the government. Article VIII, Section 4 explicitly outlines the power of judicial review where the Supreme Court can determine the constitutionality and validity of a treaty, international or executive agreement, or law as well as the application or operation of presidential decrees, proclamations, orders, instructions, ordinances, and other regulations. In performing a judicial review, the Supreme Court assumes both checking and legitimating functions

Checking function. To curb any abuses by other branches of the government, the Supreme Court can review whether these acts follow the tenets of the Constitution (Sison, 1993; Tiojanco and Aguirre, 2009). This is an important function in a democratic system since it keeps the political branches within their boundaries, which should prevent any abuses of power.

Legitimizing function. Conversely, when the Supreme Court finds that official acts of the Executive or Congress are constitutional, then it will so declare the legitimacy or validity of the same (Gatmaytan-Magno, 2007). For instance, when a law duly enacted by Congress is challenged before the Court for being unconstitutional, but the Court finds otherwise and declares it to be constitutional then the legitimacy of the law is put to rest. In short, the Supreme Court legitimizes the existence of the law (Wright, 1968; Ramirez, 2003).

2.2 Emerging Roles of The Supreme Court

Amidst new and emerging legal realities and challenges, traditional roles of the Supreme Court require a rethinking. Aharon Barak (2002) argues that the role of the Court in a democracy is “not restricted to adjudicating disputes in which parties claim that their personal rights have been violated”. He claims that the Supreme Court has the function of responding to the needs of the society, which are left out by law, as well as to preserve the integrity of democracy. These roles include gap bridging and defending and preserving democracy. .

The role of gap-bridging between the law and society. Barak (2002) claims that while the primary role of crafting laws belongs to the Congress or the Parliament, the Supreme Court has, to some extent, legitimacy to participate in this law-making process, since it has the duty to interpret what the law means and applies it to particular sets of facts. When interpreting the law, the Supreme Court is tasked to understand the law, as well as, the social realities surrounding it. This endeavor, however, involves a careful balancing between responding to the needs of the society by filling in the gaps in law on one side and the requirement of avoiding the collapse of the whole legal system.

The role of defending and preserving democracy. Barak (2002) posits that the Supreme Court has the mandate to protect “democracy in general and of human rights in particular”. This is an inevitable consequence of post-world war democracies, where every society sees it necessary “to give effect to democracy by ruling in accordance with democratic values and foundational principles.” The protection of democracy in general partakes the Supreme Court’s role in upholding human rights. This is because this is the cornerstone of contemporary democracy. In turn, human rights are the soul of democracy.

While Barak has supplied two roles of the Supreme Court in contemporary democracy, Barroso (2019) adds another function, which is performing an “enlightened role” in contemporary democracies. He claims that the Supreme Court serves as the voice of reason in a democratic society, oftentimes going against popular opinion and common sense. To articulate his claim, Barroso uses the US case involving the abolition of segregation in schools. The US Supreme Court declared this state conduct as violation of the right to equality before the law. In reasoning out such support to this decision, the said Court declared that the right to education is vital in modern societies and that the “segregation engendered a feeling of inferiority in African-American children related to their status in the community”. This decision at that time goes against common sense or popular dogma of “separate but equal”. This initiated the enlightened period in the life of the modern American civil rights movement.

3. THE PHILIPPINE SUPREME COURT AND ITS LEGAL TRANSPLANTS BEHAVIOR

As previously mentioned, the 1987 Constitution had strengthened the Philippine Supreme Court intending to transform the judiciary as the guardian and bulwark of human rights in the whole architecture of the government. Along with these new constitutional features, the Supreme Court is expected to assume an emerging role other than its traditional function of adjudication.

3.1 Legal Transplants Behavior as An Indication of An Emboldened Supreme Court

“Legal transplants” refer to the exportation of laws from one country to another (Legrand, 1997). Although this terminology is of recent creation, the phenomenon of the migration of laws from one territory to another is old practices. An engagement by the judiciary with ‘legal transplants’ behavior is an indication that the Court is slowly assuming a transformed role, especially for the protection of human rights. Such is a challenge to the traditional role of adjudication and leans towards the function of gap-bridging and defending and preserving democratic values.

Judicial borrowing, a species of legal transplants, solidifies the previous assertion. This concept, in essence, refers to the use of foreign norms and principles to interpret domestic statutes and even the Constitution. In this light, the Philippine Supreme Court borrows norms from foreign courts to settle a domestic human rights issue. While on its face, this is considered as a performance of an adjudicative function by the court. A closer look will prove otherwise. Here, judges act as if they are crafting a law rather than merely interpreting it. In performing a judicial adjudicative function, the Court is proscribed from going beyond the strict interpretation of the text of the human rights law. By using human rights norms or ideas that are alien to the domestic system, judges replace the original intent of the framers of the instrument considering that the norms developed in foreign countries are borne out of their own unique democratic mechanism (McGinnis, 2006).

While the legitimacy of this judicial conduct is suspect, the paper will not dwell on it. What is relevant is that the engagement of the court with legal transplants i.e., judicial borrowing highlights the evolving role of the Philippine Supreme Court beyond its traditional function.

4. INDICATIONS AND IMPACTS OF JUDICIAL BORROWING ON THE PHILIPPINE DOMESTIC HUMAN RIGHTS NORMS

4.1 Means and objects of judicial borrowing

Judicial borrowing occurs when a domestic court adopts a norm obtained from foreign decided cases and applies it to resolve a particular human rights issue. Such a process, therefore, exemplifies the 'transplantation' of the foreign norm. The transplantation is facilitated through a court-to-court borrowing where "judges around the world are reading, citing, and generally 'engaging' (...) the decisions of their foreign peers" (Perju, 2012). This has a wide range of objects, which include "general principles and norms, conventions, legislation, legal practice, case law, ideas in the judgments, legal doctrine and even soft law (Laffranque, 2008)." To establish the existence of judicial borrowing of foreign human rights norms, an empirical analysis of cases decided by the Supreme Court is imperative.

4.2 Freedom of Expression: A Case of Judicial Borrowing

The 1987 Philippine Constitution provides that "no law shall be passed abridging the freedom of speech, of expression, or of the press". This same provision appears on the texts of the previous 1935 and 1973 Constitutions. The relevance of this right has been recognized by the Court dating back to 1969. In *Gonzales and Cabigao v. Commission on Elections*, the high tribunal has accorded this liberty with "primacy and high esteem as a fundamental postulate of (the Philippine) constitutional system."

The provision guaranteeing the said freedom was admittedly of American origin. In the 1957 case of *Cabansag v. Fernandez*, the Supreme Court speaking through Mr. Justice Bautista Angelo recognized such a fact. While the plain text of the Constitution explicitly recognizes the freedom of expression, speech, and the press of the

people, the Supreme Court had expanded its meaning and scope through the cases that it decides on. Owing to the fact that this has originated from the United States, the Court had, for many occasions, borrowed the US Supreme Court's decision when explaining this right. The following table summarizes the judicial borrowing of norms concerning the concept of the freedom of expression.

Table 1: Summary by Year of Judicial Borrowing by The Philippine Supreme Court on Norms on Freedom of Expression.

Human Rights Norm	Philippine Case	Date Issued	US Case Where the Norm Was Borrowed
The freedom of expression cannot be censored on the grounds of the right to privacy of a public figure.	Ayer Productions Pty. Ltd. v. Capulong	29 April 1988	Strykers v. Republic Producers Corp. (1952)
Freedom of expression, press, and speech can be balanced by equally important public interests, such as the maintenance of the integrity and orderly administration of justice.	Zaldivar v. Gonzales	7 October 1988	Pennekamp v. Florida (1946)
Any acts of the government that restrain speech are hobbled by the presumption of invalidity and should be greeted with furrowed brows.	Iglesia Ni Cristo v. Court of Appeals	26 July 1996	New York Times v. United States (1971)
The restriction on the conduct of exit polls is a violation of the freedom of expression because such purpose was impermissible. Furthermore, the statute was neither narrowly tailored to advance a state interest nor the least restrictive alternative.	ABS-CBN Broadcasting Corporations v. Commission on Elections	28 January 2000	Daily Herald Co. v. Munro (1988)
The right of students to free speech in school premises, is not absolute. The right to free speech must always be applied in light of the special characteristics of the school environment.	Mirriam College Foundation, Inc., v. Court of Appeals	15 December 2000	Healy vs. James (1972)

Human Rights Norm	Philippine Case	Date Issued	US Case Where the Norm Was Borrowed
Mere legislative preferences or beliefs respecting matters of public convenience may support regulation directed at other personal activities, but be insufficient to justify such as diminishes the exercise of rights so vital to the maintenance of democratic institutions.	Social Weather Stations, Inc. v. Commission on Elections	5 May 2001	Schneider v. Irvington (1939)
If a law furthers an important or substantial governmental interest, it should be invalidated if such interest is related to the exercise of free expression.	Social Weather Stations, Inc. v. Commission on Elections	5 May 2001	United States v. O'Brien (1968)
Commercial speech is a separate category of speech, which is not accorded the same level of protection as that given to other constitutionally guaranteed forms of expression but is nonetheless entitled to protection.	Pharmaceutical and Health Care Association of the Philippines v. Secretary Duque	9 October 2007	Virginia Pharmacy Board v. Virginia Citizens Consumer Council (1976); Central Hudson Gas & Electric v. Public Service Commission (1980)
Only unprotected expression may be subject to prior restraint by the government. However, it bears the heavy burden of proving the constitutionality of the prior restraint.	Chavez v. Gonzales	15 February 2008	New York Times v. United States (1971)
Expression of one's homosexuality is a protected form of expression.	Ang Ladlad LGBT Party v. Commission on Elections	8 April 2010	Lawrence v. Texas (2003)
The overbreadth and vagueness doctrines then have special application only to free speech cases. They are inapt for testing the validity of penal statutes.	Southern Hemisphere Engagement Network, Inc., v. Anti-Terrorism Council	5 October 2010	Broadwick v. Oklahoma (1973)

Human Rights Norm	Philippine Case	Date Issued	US Case Where the Norm Was Borrowed
When a penal statute encroaches upon the freedom of speech, a facial challenge grounded on the void-for-vagueness doctrine is acceptable.	Disini v. Secretary of Justice	11 February 2014	Reno v. American Civil Liberties Union (1997)
Drastically curtailing the ability of a candidate to effectively reach out to the electorate would unjustifiably curtail his freedom to speak as a means of connecting with the people.	GMA Network, Inc., v. Commission on Elections	2 September 2014	Buckley v. Valeo (1976)

The review of selected cases decided by the Philippine Supreme Court on matters concerning freedom of expression proves the frequent use of legal transplants in interpreting the right. The prevalence of reference to US cases is also apparent. The reason for this is attributable to the fact that the guarantee under the 1987 Constitution is a twin provision of the first amendment right of the US Constitution.

As may be gleaned from the extract of norms subject of judicial borrowing that there are two main aspects where the concentration of such practice occurs: (1) the substantive coverage of the right; and (2) the limitation on the interference by the government on the exercise of the right.

4.3 Impacts of Judicial Borrowing: Limitation and Delimitation of The Free Expression Rights

Judicial borrowing has impacted the local understanding of freedom of expression in the Philippines. The transplantation of foreign norms by the Supreme Court has expanded the scope of the right and limited the state interference on the exercise of such rights.

(1) Expansion of The Coverage of The Freedom of Expression Guarantees

The Supreme Court in two landmark cases related to freedom of expression held to expand the coverage of the said right. The questions posed in these cases were novel, which prompted the Court to look into settled norms in foreign courts to justify its holdings.

Commercial speeches. In the *Pharmaceutical and Health Care Association of the Philippines v. Secretary Duque*, the Supreme Court was confronted with an issue whether it is valid for the Government to limit commercial advertisements or promotion of milk formula. In declaring that the State has an interest in limiting such promotions through mass media, the Court nevertheless recognized that the limitation is not absolute considering that such advertisements are a form of speech that should be fully protected. It was the first time that the tribunal recognized such. Since it was a new question, the Court speaking through Mr. Chief Justice Puno resorted to the use of foreign

cases to justify this holding. In citing two US cases, *Virginia Pharmacy Board v. Virginia Citizens Consumer Council* (1976) and *Central Hudson Gas & Electric v. Public Service Commission* (1980), the Court discussed the changes in time that would justify the recognition of these advertisements as part of the freedom of expression guaranteed under the Constitution.

Expression of one's homosexuality. In *Ang Ladlad LGBT Party v. Commission on Elections*, the Supreme Court was confronted with a novel question – may the Commission on Elections validly deny the application of an LGBTQ party-list to participate in the election on the ground of immorality? The Court answered in the negative. It upheld the right of the members of the LGBTQ to organize a party-list and participate in the public vote. In citing the US case of *Lawrence v. Texas* (2003), the Court held that the expression of one's sexuality or gender orientation is a form of protected expression. The tribunal further ruled that the Commission on Elections is disabled from invalidating the application by an LGBTQ group to participate in the election without infringing the right to free expression.

(2) Restrictions on The Limitations on The Freedom of Expression

It has to be elevated that free expression is not an absolute right. The 1957 case of *Cabansag v. Fernandez*, explicitly laid down the rule by which the State can validly restrain the exercise of the right to free expression: first, “the words are used in such circumstances and of such a nature as to create a *clear and present danger* that they will bring about the substantive evils that the State has the right to prevent”. Second, “if the words uttered create a *dangerous tendency* of an evil which the State has the right to prevent” (*Cabansag v. Fernandez*, 1957). These instances by which the State may limit freedom of expression was further expanded by the Supreme Court in its post-1987 holdings.

The balancing of interest. The 1988 case of *Ayer Productions Pty. Ltd. v. Capulong*, elucidates a further rule that goes beyond the two instances under which free expression may be limited by the State. Here, the Philippine Supreme Court introduced the balancing of interest rule by citing the US case of *Strykers v. Republic Producers Corporation* (1952). Under such rule, the Court held that the State is not confined in determining whether the utterances pose a clear and present danger or a dangerous tendency of an evil which the State has the right to prevent. The Court may, according to the balancing of interest rule, “take conscious and detailed consideration of the interplay of interests observable in given situation or type of situation”. In the *Ayer* case for instance, one of the parties seeks to make a true-to-life film of a public figure, which the latter opposed on the ground of privacy. No such evils exist, rather competing interests between parties prevail, on the basis of the right to free expression and right to privacy. In holding that the right to free expression rules over the public figure's privacy rights, the Court applied the borrowed norm of balancing of interest.

The same borrowed norm was applied by the Court in the 1988 case of *Zaldivar v. Gonzales*. This was taken into judicial cognizance six months after the *Ayer* case was ruled. Unlike *Ayer*, *Zaldivar* cited a different US case of *Pennekamp v. Florida* (1946). Here, the Court balanced two clashing interests – the freedom of expression on one

hand, and the orderly administration on the other. Although of varying issues, both *Zaldivar* and *Ayer* applied the same borrowed norms from the foreign court.

Facial challenge may be applied on penal statutes that may curtail free expression. The prevailing rule is that the Court may only apply the facial challenge on free expression statutes. Facial challenge refers to an action where a person may seek the invalidation of a government action even if no actual violation has yet occurred. In *Southern Hemisphere Engagement Network, Inc., v. Anti-Terrorism Council* (2010) and *Disini v. Secretary of Justice* (2014), the Court chose to abandon the prevailing rule citing the US cases of *Broadwick v. Oklahoma* (1973), and *Reno v. American Civil Liberties Union* (1997), respectively. In both cases, the Court held that penal statutes that have tendencies to encroach upon the exercise of free expression are an exception to the prevailing rule in order "to counter the 'chilling effect' on protected speech (...). A person who does not know whether his speech constitutes a crime under an overbroad or vague law may simply restrain himself from speaking to avoid being charged with a crime". This is an affirmation of the value that the Court has placed on the primacy and relevance of free expression in the functioning of a democratic society like the Philippines.

Restricting the government's right to restrain free expression. In *Iglesia Ni Cristo v. Court of Appeals* (1996), the Supreme Court made a clear pronouncement that the right of the State to restrain protected expression should always be treated with caution. Such a restriction is "hobbled by the presumption of invalidity and should be greeted with furrowed brows". This presumption was transplanted from the 1971 US case of *New York Times v. United States*.

Citing *New York Times*, the Supreme Court further ruled in *Chavez v. Gonzales* (2008) that although some forms of expression are unprotected. Thus, the government does not wield an unbridled restraining power. In so doing, the State still carries the heavy burden of proving the constitutionality or validity of the prior restraint.

Restrictions on political speeches. Political speeches are given special treatment by the Philippine Supreme Court. In *GMA Network, Inc., v. Commission on Elections* (2014), the Court citing *Buckley v. Valeo* (1976) said that such speeches are relevant and should not be curtailed because that would mean preventing the candidates from communicating with the electorate. This would further prevent the latter from making informed choices during the election. The same issues of political speeches were covered in the cases of *ABS-CBN Broadcasting Corporations v. Commission on Elections* (2000) and *Social Weather Stations, Inc. v. Commission on Elections* (2001).

In the *ABS-CBN* case, the question was, may the government prevent the media company from conducting exit polls during election day? In declaring the Government restraint as invalid, the Supreme Court citing *Daily Herald Co. v. Munro* (1988) held that such "restriction is a violation of the freedom of expression because such purpose was impermissible, and the statute was neither narrowly tailored to advance a state interest nor the least restrictive alternative". Otherwise stated, there is no valid state interest involved which would justify the government from limiting the said exit polls.

Meanwhile, in the *Social Weather Stations* case, the issue involved was may the government prohibit survey firms from conducting election surveys? The Court responded to this concern in the negative, thereby invalidating such government interference. Citing *Schneider v. Irvington* (1939), the Supreme Court justified its holding by stating that in prohibiting election surveys, the mere belief of the government that such activities influence the outcome of an election is insufficient to justify the restraint on the exercise of the right to free expression.

5. CONCLUSION – THE PHILIPPINE SUPREME COURT’S LEGAL TRANSPLANTS BEHAVIOR AS MEANS FOR THE DEVELOPMENT OF THE DOMESTIC HUMAN RIGHTS FRAMEWORK

The examination of cases decided by the Philippine Supreme Court established a vibrant existence of the Court’s legal transplants behavior. It was observed that the Court resorted to adopting provisions in US cases to resolve freedom of expression issues. Cases reviewed were promulgated during the effectivity of the 1987 Philippine Constitution which presupposes an emboldened Supreme Court.

Likewise, it may be gleaned from the discussion that legal transplants, such as judicial borrowing, have catalyzed changes to the existing human rights norms of the country. Two areas were specifically identified with regards to freedom of expression: first, the Supreme Court had expanded the substantive coverage of the free expression guarantees; and second, the limitation on the restraining power of the State was further solidified.

In finality, the Philippine Supreme Court’s judicial borrowing behavior has generally benefited the strengthening of the existing human rights norms in the country, especially the right to freedom of expression. The development of the domestic human rights norms prove that the Philippine Supreme Court has taken and is taking a progressive stance in protecting this liberty from State incursion.

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POWER, INEQUALITY, AND PARTICIPATION IN ENVIRONMENTAL IMPACT ASSESSMENTS: THE CASE OF PT SEMEN INDONESIA IN KENDENG MOUNTAIN, CENTRAL JAVA, INDONESIA

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ABSTRACT

As the State is involved as both a guarantor and an industrial actor through a state-owned enterprise (BUMN), its participation in the case of PT Semen Indonesia, involving the establishment of a factory by in the Kendeng Mountains in Central Java, is a clear example where the power regulates and creates possible space for political participation. However, communities living around the Kendeng mountains are ignored and excluded from participating as actors who have the right to determine development.

This research aims to explore how power works in ensuring the imposition of the construction of the PT Semen Indonesia factory against the local community's will and participation within the establishment of PT Semen Indonesia's Environmental Impact Assessment (EIA). This had become a point of contention to explain asymmetrical power relations between companies and communities. As per the Indonesian Supreme Court decision Number 99 PK/TUN/2016, the EIA production has been stated as ignorant to the demands and rejection of peoples and local communities towards the construction of the cement factory. Although the Supreme Court's decision had canceled the environmental permit of PT Semen Indonesia, in February 2017, the company was able to obtain a new permit with a note that it has resolved public participation issues. Similar to the previous case, people got no information about this new EIA.

This paper borrows the concept of John Gaventa related to local communities' power and powerlessness in decision-making processes as they negotiate with power holders (state apparatus and company). The suppressed voices of the people as actors is only a part of public uprising supported by many other agencies.

Keyword: Kendeng Mountain, Cement Factory, Power, Powerlessness, Public Participation, Environmental Impact Assessment.

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1. INTRODUCTION

This research aims to explore how power works in ensuring the imposition of the construction of the PT Semen Indonesia factory against the local community's will and participation. This is in the context of the development of PT Semen Indonesia's Environmental Impact Assessment (EIA), which had become a point of contention to explain the asymmetrical power relations. In the situations, the right to public participation of every citizen must be guaranteed, protected, and fulfilled by the State. Article 25 paragraph of the International Covenant on Civil and Political Rights (ICCPR) states that the right to public participation is a guarantee for participating in public affairs. General Comment No.25 explains that the scope of public affairs is the exercise of political power within legislative, executive, and administrative matters. This provision includes the formulation and application of policies at the national, regional, and local levels (United Nations High Commissioner for Human Right, 1996).

Environmental Impact Assessment (EIA) is part of the execution of a environmental policy that must include full participation of individual and groups affected by a development project. It provides both position and process in collecting valuable information, measuring damage, and underpinning policies to maintain environmental quality (UNEP, 2004; Arabadjieva, 2017; Knox and Pejan, 2018). Article 70 paragraph (1) of Indonesian Law No. 32 of 2009 concerning Environmental Protection and Management guarantees equal opportunities and rights for the community in being involved in environmental protection and management. This provision can also be interpreted as involvement in the production of an EIA. However, in practice, the realization of EIA in Indonesia only becomes an administrative part without considering the substantial responsibility for environmental protection and community participation.

In the case of PT Semen Indonesia in Rembang Regency, Central Java Province, the Kendeng Community initiated by the Samin community criticized and fought against the existence of the cement industry. This was done through through various social movements and lawsuits. The community questioned how an environmental permit could be established, if the they were not involvld in the process. In the Indonesian Supreme Court decision Number 99 PK / TUN / 2016, a manipulated EIA did not pay attention to the existence of the Groundwater Basin and ignored community resistance to refusing cement plants. Despite the cancellation of the environmental permit of PT Semen Indonesia, in February 2017, PT Semen Indonesia was able to obtain a new permit, with a note that has resolved public participation issues. Similar to the previous case, involved communities got no information about this new EIA.

This article is divided into five parts. The first part shall tackled the problem background, stories, and arguments related to the PT Semen Indonesia case and aspects of participation in the production of EIA. The second part shall discuss the background of the successful invasion of the PT Semen Indonesia cement business in the Kendeng mountains. The third part shall explain the Legal Formality, PT Semen Indonesia's strategy in creating a crisis of resistance towards the manipulation of EIA and Administrative Court situations. The fourth part focuses on the crisis of Kendeng People Resistance and the possibility of movements and strategies to protect Kendeng from the cement extractive business. The last section discusses the conclusion of this research article.

In this article's research, the concept developed by John Gaventa, which looks at the link between related to power and powerlessness in decision-making processes (state apparatus and company) shall be used. Both EIA 2012 and EIA 2017 reflect that PT Semen Indonesia dominated processes and discourses related to EIA framing, process to be take for environmental permits. The conceptual framework of power relations in decision making is used to explain that EIA production is complex before and has already become a requirement for the approval for an environmental license. Power, in this case, has taken control of the structure and built a hegemony shaped the EIA production towards supporting the cement industry. The people of Kendeng are aware of their helplessness, but they have not yet conceded defeat.. This condition is interesting because it describes the so-called acceptance of legitimacy, inevitability, as well as positions formed by power holders and authorities (Gaventa and Martorano, 2016). The Kendeng community accepted the situation, but also continued to build a mechanism and movement to resist the construction of the factory. The dynamics and discourse developed by the Kendeng Community and PT Semen Indonesia paint a picture of the dialectic of power that affects EIA production.

2. CEMENT INVASION, AGENDA SETTING AND SPACE OF PARTICIPATION

The story of the cement conflict in the Rembang Regency, Kendeng Mountains, has peaked over ten years. However, this resistance movement by the community was only briefly mentioned on Page III-146 of the. It only described conflicts related to the recruitment process and the issue of project land acquisition. PT Semen Indonesia did not recognize Kendeng Community's resistance to the project (PT Semen Gresik, 2012).

In this section, the study will discuss the dimensions of the cement business invasion in the Kendeng Mountains. It shall also cover the agenda-setting with regards to space for participation. The concept of power as domination was adopted from Gaventa's property which covers third-dimensional power, namely visible, hidden, and invisible (Gaventa, 1980, 2006). Furthermore, the concept of power is translated as the ability to determine what is determined (Hay, 2002; Lukes, 2005; Shapiro, 2006).

There were two different opinions on the establishment of a cement factory in Kendeng. These are related to when the rejection of the cement factory began, and how the moment of rejection was captured by the Kendeng community. The first opinion focused on 2007 as the beginning of the Kendeng community protest (Suharko, 2016; Herwati and Danardono, 2019). Different opinions state that 2006 witnessed the start of community opposition (Safitri, 2018; Hadi, Purnaweni, and Kismartini, 2018). The difference is only in the perspectives related to understanding the existence of the conflict. 2006 covered the anti-cement movement, which was seen from the community's opposition against the construction of the cement factory. Opinions that chose 2007 focused on the moment when the factory was already producing cement.

The existence of PT Semen Gresik in the Kendeng mountains, Pati Regency, only lasted until 2009. EIA of PT Semen Gresik was problematic in terms of mining locations and community rejection of the factory and its

activities. The EIA production was considered inaccurate and manipulated in assessing the industrial impact of PT Semen Gresik. The Indonesian Ministry of Environment then sent a letter to the Regional Government of Central Java Province expressing concerns over the cessation of all factory activities, as long as the EIA problem was not addressed (Kompas.com, 2009). This decision had consequences that ended the existence of PT Semen Gresik in the Pati region.

However, such victory was shortlived, and did not end the invasion of the cement industry in the Kendeng mountains. PT Semen Gresik changed its name to PT Semen Indonesia. It eventually transferred the mega-cement project to the Kendeng mountain region located in Rembang Regency, Central Java Province. The ambition to keep invading the Kendeng mountains comes from various reasons and interests. Moreover, PT Semen Indonesia saw opportunities that can be used as strength/capital to seize and dominate the EIA production discourse. This visible power can be in the form of structure, authority, formal rules, procedures, and other capital that can determine the orientation and form of domination (Gaventa, 2006; Culley and Hughey, 2008; Gaventa and Martorano, 2016).

First, Gunem Subdistrict Rembang Regency, as a new location, potential provided the natural resources needed to support the cement industry. Article 26 paragraph 2 of the Regional Regulation of the Rembang District Number 14 of 2011 concerning the Spatial Planning of the Rembang Regency in 2011-2031 stated that the matter of the Gunem area can be designated as a mineral and coal mining area. The Portland Cement Association noted that the main ingredients for cement include limestone, shells, chalk or marl combined with shale, clay, slate, blast furnace slag, silica sand, and iron ore (Portland Cement Association, 2019). PT Semen Indonesia can exploit at least two of these ingredients, limestone and clay, in Gunem District. The existence of these two materials proved to be strategic for PT Semen, Indonesia.

Second, support can be enjoyed by PT Semen Indonesia due to the status of a legal entity and business interests in line with the Government. The company's status as a State-Owned Enterprise (SOE) is capital that cannot be ignored for the success of a business in Indonesia. Research done on 2010-2015 period on Indonesian SOEs revealed that government support did not even have an impact on financial development (Nugroho, 2019). Moreover, support from the State created corrupt dependency patterns through traditional and deep-rooted practices of illicit business behavior and collusion among power holders (Apriliyanti and Kristiansen, 2019). In these two conditions, the certainty of trying would be more secure because of the similarities in economic politics between State and SOEs actors.

National cement demand claims and discourses are essential assets in the cement industry. The Government released a budget of IDR 415 trillion or USD 2.8 billion to address infrastructure needs (Kementerian Keuangan Republik Indonesia, 2019). The existence of the cement production plan by PT Semen Indonesia is aligned with the acceleration of the infrastructure development plan. The strategic position of PT Semen Indonesia as an SOE could potential adjust the country's particular needs.

Third, the discourse of poverty in the area and welfare from mining activities have implications on how communities are treated and power is negotiated. The PT Semen Indonesia factory's construction is correlated with

employment opportunities for residents in the Gunem sub-district, Kendeng mountains. In the 2012 EIA document (the first EIA, which is still named PT Semen Gresik), the community's existence is described as being interested in joining as workers and receiving capacity building from PT Semen Indonesia. Cement industry activities can be optimized for positive impacts such as increased economic status, employment for local workers, enhanced welfare, health insurance, and various socio-economic impacts which can be favourable to Kendeng people (PT Semen Gresik, 2012).

The Central Java provincial government described an excellent perception of the existence of PT Semen Indonesia in the Kendeng mountains. A study on Kendeng said that state framing through the Rembang regional government created a "welfare myth" so that roads and actions facilitate and place the cement industry as a solution for development policies (Ardianto, 2016). Attitudes and reciprocal actions between the Government and companies are thus not a coincidence. Discourse has the power to dominate public space in understanding the existence of the cement industry.

Techniques and strategies of PT Semen Indonesia using power capital depend on the existence of agenda-setting. The setting or hiding of power agenda is used to determine parties and spaces in the process of decision making (Lukes, 2005; Gaventa, 2006). In this context, PT Semen Indonesia's ability to secure a space and include participants in EIA production is necessary to facilitate and produce decisions that support the smooth operation of the cement factory. Restrictions on space and participants will also remove unnecessary potential obstacles that may come about, such as complaints and protests from the Kendeng community.

At the planning stage, a description of PT Semen Indonesia's efforts to determine the space for participation can be seen in its EIA document. EIA 2012 was the first document used by PT Semen Indonesia to obtain environmental permits. In article 5 of Government Regulation Number 27 of 2012 concerning environmental licenses, the EIA Indonesia document covered terms of reference, environmental impact analysis, and the Environmental Management Plan-Environmental Monitoring Plan. In terms of the reference document, PT Semen Indonesia did not clearly describe the mechanism to enable community participation.

PT Semen Indonesia claimed that the cement industry would affect people's lives for the better. Furthermore, the community is expected to accept overall changes that occur with the existence of a cement factory (PT Semen Gresik, 2012). With such discourse, PT Semen Indonesia described it as not a form of direct rejection of the company in the context of conflict. Moreover, conflict could only occur in two conditions. First, conflicts during factory construction occur when PT Semen Indonesia does not meet local workers' recruitment requirements and second, the issue of land acquisition for residents and the existence of land brokers (PT Semen Gresik, 2012).

In the end, a study of the community's social conditions, especially on participation, is more of a perspective to approve the establishment of the cement factory. PT Semen Indonesia claimed that there are a variety of high expectations in the form of excessive areas such as regional planning, greening, local workforce priorities, and greening, and gender equality (PT Semen Gresik, 2012). Gunretno, leader of the anti-cement movement, said that the

community had never been involved in these processes, all the more in decision making. If there is an opportunity to participate, then this condition can be achieved through protests. He reiterated that the voice of the community has never been accommodated by PT Semen Indonesia nor by the Government (personal communication, 28 March, 2020).

3. LEGAL FORMALITY, CONFLICT, AND DECISION OF THE STATE ADMINISTRATIVE COURT

EIA is not just an administrative document to be submitted by a company. The purpose and process towards the development EIA is result of a series of environmental decision-making processes. In the previous section, PT Semen Indonesia used the opportunity and superior power to secure EIA as a permit condition. The EIA document does not clearly describe aspects of public participation and the existence of resistance to the cement industry. This section will explain further about the EIA process. It shall also touch upon the existence of conflict, and the continued strategy of PT Semen Indonesia to create powerlessness in the Kendeng community.

Public participation is technically regulated in legal products in Indonesia. Article 9 paragraph (2) of the Government Regulation No. 27 of 2012 concerning environmental licenses mentions the obligation for proponents (those who seek activities that have significant impacts) to involve the community in the production of EIA through public consultation mechanisms. The EIA terms of reference as the first part of the EIA document must go through this process before finalization. The EIA terms of reference should be first document to illustrate the initial commitment of PT Semen Indonesia to guarantee and involve community participation.

Indonesian law guarantees participation mechanisms even at the stage of preparing a business plan. Regulation No. 17 of 2012 pursued by the Ministry of Environment, set Guidelines for Community Engagement in the Analysis of the Process of Environmental Impacts and Environmental Licenses. This guarantees openness issues since before the production of EIA. In this condition, PT Semen Indonesia is required to public announce the plan for a cement project in the Kendeng Mountains before entering into the EIA production stage. After the project's announcement, the Ministry of Environment Regulation No. 17 of 2012 provides a mechanism for communities to respond to these announcements and plans. At this stage, community suggestions, opinions, and responses must be managed, processed, and taken into consideration while developing the EIA terms of reference.

Rules on community participation indicate systematic stages and open broad opportunities for the community. In this process, public opinion must not be overlooked nor ignored as it is an inseparable part of the analysis of potential environmental impacts. With regards to other stages, such as the preparation of environmental impact analysis and the Environmental Management Plan - the Environmental Monitoring Plan must also pass through the mechanism of announcements and be able to accommodate community aspirations/voices before the business sector obtains an environmental permit.

In this condition, EIA production should also open performative participation of the community. Such can enable rejections forms of normalization and submissiveness to the ruling regime (Kulynych, 1997). The Kendeng community's resistance is, therefore, supposed to be recognized because a variety of aspects will free the group from neglect and further marginalization. Therefore, the EIA developed by PT Semen Indonesia should not be granted as a prerequisite for a permit given its covert and manipulative process.

Power in the case of PT Semen Indonesia broke through the formal parts of the rule of law. Public opinion was ignored until PT Semen Indonesia was able to obtain Central Java Governor Decree No. 660.1 / 17 of 2012 related to PT Semen Gresik's environmental permit in Rembang. In fact, when it first came to Rembang, PT Semen Indonesia still took the name PT Semen Gresik. The description of legal acrobatics from the Central Java Provincial Government and PT Semen Indonesia against the Kendeng community can be traced in the lawsuit process at the state administrative court. The Semarang Court is the first chamber for the state administrative court for the Central Java Province. Surabaya Court becomes the second level while the Supreme Court becomes the last level to handle state administration cases. Environmental Permits are under the regime of this state administration.

At first, the Kendeng community filed a lawsuit on 1 September 2014 at the Semarang State Administrative Court, intending to cancel the environmental permit. The participatory aspect was explained as no less necessary in the EIA production process to the enactment of environmental permits. The Decree of the Semarang State Administrative Court No. 064 / G / 2014 / PTUN SMG illustrated that the community file the case because they were not aware of the existence of a cement project in the Kendeng mountains. The only thing they knew as PT Semen Indonesia had obtained an environmental permit. In the initial stages of EIA production, the announcement of a business plan, and the preparation of terms of reference obviously did not involve the community. The community also did not know the people involved EIA appraisal commission and the existence of consultations to assess environmental permit applications.

In the court process, there was a pattern of objections from PT Semen Indonesia,. PT Semen Indonesia's advocate team was firm in explaining the existence of administrative-technical aspects. The Governor of Central Java as Defendant 1 and PT Semen Indonesia as Defendant 2 conveyed the chronology that aspects were fulfilled under Law No. 32 of 2009 and Government Regulation No. 27 of 2012. Their first reason was that the plaintiffs did not carefully pay attention to the formal requirements for filing a lawsuit based on a state administration decision. In the Decision of the Semarang State Administrative Court No. 064 / G / 2014 / PTUN SMG, the Government and PT Semen Indonesia explained Article 93 Law No. 32 of 2009. The article provides that state administrative decisions can be sued if the EIA is not well-equipped, and does not contain an Environmental Management Plan-Environmental Monitoring Plan. Furthermore, a business permit is invalid without an environmental permit. Claims filed argued these could not be done because the Government has fulfilled the formal aspects.

The formality trap in the trial can be illustrated by the decision made by the state administrative court. At the Semarang administrative court level, Decision No. 064 / G / 2014 / PTUN SMG pursued that the Kendeng community lawsuit could not be accepted. The judges' panel considered that a series of legal facts related to the community had

been involved in the production of EIA. The evidence base for involvement is the Head of Timbrangan Village's recognition as the village apparatus located in the location around the cement factory. In this ruling, Joko Priyanto, the plaintiff, was allegedly found to have known the existence of EIA production, because he already knew of a cement factory, and the refusal was only based on personal interests such as protecting agricultural land.

The judges' panel emphasized the status of the lawsuit, which did not have formal qualifications relating to the state administrative court and the case for a decision on environmental permits. The judges used the argument in Law No. 5 of 1986 concerning the Administrative Court to determine the validity of community lawsuits. Article 55 Law No. 5 of 1986 emphasizes the existence of a lawsuit has expired.

The announcement of the permit was made on 11 June 2012, while the lawsuit was registered on 1 September 2014. The time allowed for a lawsuit is a maximum of 90 days. This condition resulted in the lawsuit unfit for acceptance by the Semarang State Administrative Court.

The panel of judges' arguments, if he considered the essence and orientation, were the same as those of the Central Java Government and PT Semen Indonesia. The Semarang State Administrative Court emphasized that the environmental permit case satisfied only administrative domain. This condition was expected by the Advocacy Team representing the community. Rahma said there were various irregularities in the judicial process that tended to show partiality to the Government and PT Semen Indonesia. Moreover, the expert team that delivered the testimony was limited, due to inability to use power point presentations. Another fact is that the dismissal process should have been carried out at the beginning of the process to determine whether a lawsuit can be processed (personal communication, 13 March, 2020). The case began on 1 September 2014 and was completed on 22 April 2015, but the result was that the suit was formally met by the public.

The community hoped that the process at the level of the State Administrative High Court could cancel PT Semen Indonesia's permit. Unfortunately, the Decree of the Surabaya State Administrative Court No. 135 / B / 2015 / PT.TUN.SBY did not provide any changes related to the case, and the decision only confirmed what was carried out by the Semarang Administrative Court. In this 14-page decision, there were no significant discussions related to community participation. The authority of the Regional Government and the legitimacy of PT Semen Indonesia's EIA production further strengthened community participation preference. The practice of power has demonstrated its real influence on preferences related to the production of EIA. When referring to the concept of Gaventa, power has reached its form to influence ideology and psychology (Gaventa, 2006). Power has managed and determined the issue to allow cement mining, which directly causes environmental problems and social-community problems. Power also influenced the psychology of decision makers related to the cement industry and the position of the Kendeng people who built the anti-cement movement.

The concept of participation claimed by the local Government and PT Semen Indonesia is found in the system that guarantees space and opportunities for the community. The community almost gave up since they already lost in the previous two stages. However, this aspiration had re-emerged through the Indonesian Supreme Court. As one of

the community advocates, Rahma said that the community could conduct a review in the Indonesian Supreme Court because of the evidence in the name of Joko Prianto. Joko Prianto and the team succeeded in obtaining tickets, boarding passes and flight statements approved by Garuda Indonesia (JKTKLGA.) These three letters of evidence served to support the argument that Joko Prianto took part in PT Semen Indonesia EIA (personal communication, 13 March 2020). In the previous stage of the litigation process, the community was considered to have participated in EIA's production. This led the lawsuit on the permit into an abnormal condition. Through new evidences, the public can justify that PT Semen Indonesia manipulated the EIA process to obtain an environmental permit.

Indonesian Supreme Court Decision No. 99 PK / TUN / 2016 can shape the formation of preferences for the conditions and quality of community participation. This decision states that various facts must be considered before concluding participation in EIA, which was carried out by the company. First, Joko Prianto was not involved in the socialization on 22 June 2012. PT Semen Indonesia can also not claim that Joko Prianto has been involved in the socialization. Second, PT Semen Indonesia still relies on the formality aspect only to meet EIA production requirements. The Supreme Court, through this ruling, argued that companies should consider the effectiveness and success aspects of community involvement. In this context the use of language and materials should follow the conditions of society. Third, representation of communities must be more diverse, and not just limited to specific groups. In particular, the company should also consider the objections and demands of the people who reject the cement industry.

The legal consequences of the Supreme Court Decree No. 99 PK / TUN / 2016 eventually overruled Surabaya State Administrative Court Decision No. 135 / B / 2015 / PT.TUN.SBY and Central Java Governor Decree No. 660.1 / 17 of 2012 about Environmental License for PT. Semen Gresik in Rembang, Central Java. This decision is proof that state still guarantees public participation in relation to the protection of community rights and the environment. Furthermore, companies like PT Semen Indonesia must stop exploiting the Kendeng mountains.

4. CRISIS OF RESISTANCE AND DAILY CRITICISM OF KENDENG COMMUNITY

The power intervention is a collaboration between PT Semen Indonesia and the Government, which both are keen to establish a cement business in the Kendeng Mountains. In light of the Supreme Court Decision, the Central Java Regional Government had a different understanding and perspective. Central Java Governor Decree No., 660.1 / 4 of 2017, canceled the permit with additional points instructing PT Semen Indonesia that all business activities under the permit must be temporarily suspended. This condition set precedence for the full protection and guarantee of rights for the Kendeng community. Nevertheless, the disaster of the cement business did not end there. In this section, the research will discuss the crisis related to community resistance, collaborative strategy of PT Semen Indonesia and the Government, and the opportunities for resistance built by the community.

After the environmental permit was revoked, the Central Java Government assumed that they had an obligation to facilitate the new environmental permit. As mentioned, the Central Java Regional Government provided conditions for PT Semen Indonesia to improve the EIA in order to comply with the Supreme Court's decision. In February 2017, the Governor of Central Java issued Central Java Governor Decree No. 660.1 / 6, which is related to the environmental permit of PT Semen Indonesia. This permit was then followed by a provision of both limestone mining and a clay mining permits. PT Semen Indonesia could then return to the cement industry within four months of the Supreme Court's Decision. Even in this condition, one cannot expect a participatory EIA.

EIA 2017, as a condition of the new environmental permit, did not possess significant changes from EIA 2012. The EIA content, even in some parts, was merely a repeat of EIA 2012. PT Semen Indonesia still did not recognize the existence of people who reject the existence of a cement factory. People living around its premises were even described as people who are in dire need of a cement factory. Furthermore, it stressed that the unemployment rate caused social problems, such as moral degradation and alcoholism (PT. Semen Indonesia, 2017). This description did not reflect the existence of community involvement and consultation at EIA. PT Semen, Indonesia yet again, blatantly ignored the community to eliminate conflicts in EIA production.

The collaboration of PT Semen Indonesia and the Central Java Regional Government created new preferences regarding environmental permits. After canceling the environmental permit, the Government can issue a new permit based on changes to made the EIA. The Indonesian Center for Environmental Law (ICEL) noted that the case of PT Semen Indonesia being able to receive new licenses is a bad precedent to the implementation of Indonesia's environmental policy. Government Regulation No. 27 of 2012 concerning environmental license and Environment Ministry Regulation No. 23 of 2018 concerning environmental permit could not regulate such situation, as environmental permits canceled by the Administrative Court can use the mechanism of changing environmental permits (Quina and Vania, 2019). Furthermore, this condition denied the recommendations of the Strategic Environmental Assessment (SEA) Team (Environmental study team formed by the Central Government) in terms of refusal to permit new mining projects in the Kendeng Mountains, especially along the Watu Putih groundwater basin. (KLHS, 2017).

The anti-cement resistance by the Kendeng community from the beginning was a movement not only focused on the stages of participation in EIA production.. The Kendeng community also proved that people's knowledge of the environment based on life principles and academic studies had been neglected in the production of EIA. The idealism of community to drive out the cement factory is still firmly planted. The Kendeng community, initiated by the Samin Farmers Movement, possesses philosophical principles that pursue environmental protection to attain the highest quality of life. Respect for the environment is value that cuts across boundaries of tribes, customs, and culture of the Kendeng community¹.

¹ Samin's teachings came from a farmer with Samin Surontiko, who was born around 1859 in a village near Randublatung in the southern part of Blora Regency (Benda and Castles, 1969).

The foundation of this environmental movement is the belief in the relationship between humans and nature. The teachings referred to as the "Faith of Adam," which increases the degree of nature. Such belief is very compatible with the role of farmers, who are described to have close affinities with "mother earth" because of the activities and behavior of working on the land (King, 1973). The existence of PT Semen Indonesia is interpreted as disturbing farmers' relations with "mother earth." Samin's teachings strengthened the choice of resistance to guard the Kendeng mountains. Samin people who are children must defend their mother "mother earth" by rejecting a cement factory (Kurniawan, 2018).

Massive resistance is based on dynamic values in and amongst social movements. The Kendeng community has always been finding ways to acquire new formulations and strategies without departing from the principles of environmental protection. In a research interview, Sudharto P. Hadi (Expert in Strategic Environmental Assessment) stated that the Kendeng community was very aware of the consequences of the cement factory that continued to exploit the Kendeng Mountains. The community was against exploitation of groundwater basins. These were the aspirations and interests that have never been accommodated by PT Semen Indonesia in decision making (personal communication, 29 March 2020).

The community advocates for a better understanding of nature. They also encourage the Central Government and Central Java Regional Government to submit to SEA studies initiated by the Ministry of Environment and the Office of the Secretariat of President. The result of SEA studies is the Watu Putih Groundwater Basin's establishment as a Karst Landscape Area (KBAK). The consequences of determining the KBAK area related to the mining business are the cessation of mining activities, the cessation of new mining licenses, and the move of mining activities to other locations (KLHS, 2017). The use of academic study claims by the Kendeng Society makes resistance more reasonable. On the one hand, environmental damage due to mining can affect water quality. On the other hand, the central government should be the party responsible for implementing the SEA Study. The community had protested that Governor of Central Java did not comply with the SEA Study. This was through Moeldoko (Presidential Chief of Staff) and was to be submitted to President Jokowi (CNN.Indonesia, 2019).

The Kendeng community is also aware that a continuous movement must counter the domination and formation of preferences. The Kendeng community continues to maintain the actions, demonstrations, and publications regarding the PT Semen Indonesia case through social media. Kendeng community already exists at the level of awareness that accepts the situation. The community accepts because they realize that mining activities will affect their lives. Efforts to maintain the movement are critical to open up opportunities for changes in power relations (Gaventa, 1980).

Equally important is to oversee the revision of Rembang Regency regulations related to Spatial Planning and Regional Planning. Regional Regulation of Rembang Regency No. 14 of 2011 governing the spatial and regional layout of Rembang is still not consistent with protecting the environment, especially in the District of Gunem, as the location of a cement factory. In Gunem Subdistrict, the determination of area functions appears to overlap. The function of the area in Gunem Subdistrict is determined in various forms, namely mining, water catchment, drought-

prone areas, and agricultural areas. Sukinah (a farmer in the village of Tegaldowo, Gunem Subdistrict, Rembang Regency) revealed that the Kendeng Community had overseen the process of revising spatial regulations. The Government of Rembang Regency is quite responsive by giving news about phases that have already been carried out (personal communication, 2 April, 2020). This escort process is essential because regional and local spatial plans still do not pay attention to environmental degradation and water deficits. The final spatial plan must be under the SEA study, so that the revisions pay attention to environmental issues, especially for the Kendeng Mountains (Hadi et al., 2020).

5. CONCLUSION

This research found that the manipulation of the EIA production was a powerful strategy to protect business interests. During the initial stage (2006-2016) in Rembang, PT Semen Indonesia distorted the EIA production by taking refuge in the rules' formality. The aspect of community participation is fulfilled by reaching out to selected limited circles, such as the village government and other parties supporting the cement factory. After the Indonesian Supreme Court Decision (2016-present), the agenda-setting of the Central Java Regional Government of PT Semen Indonesia appeared to create norm preference, which was an environmental permit with super-fast EIA production (less than four months).

The difficulty of the Kendeng community participating in the production of EIA reflected negligence by PT Semen Indonesia against the community.. During the production of EIA 2012 and EIA 2017, Kendeng people resisted against the cement factories were ignored and denied from participating. Lack of community participation means that the preference towards the environment was limited to business interests. In contrast, aspects of transparency and participation are essential for strengthening self-determination and resource-related questions (Feichtner, Krajewski, and Roesh, 2019).

The Kendeng community's resistance to the manipulative EIA production was carried out with efforts that went beyond the formal aspects. On the one hand, the Kendeng community clearly understood relevant Indonesian law to test and prove at what conditions or levels the right to participate in EIA production must be guaranteed by the State. On the other hand, the Kendeng community was able to invigorate a movement strategy by strengthening awareness on environmental issues. The resistance of the Kendeng community is a battle that also opposes the dimensions of power which have become hegemonic, systemative, and structured to support the existence of the cement industry.

At the moment, the anti-cement movement has always been associated with the concepts and principles of Samin's teachings which illustrate the important position of farmers. Farmers are committed to the philosophy on the harmony and sustainability of the relationship between humans and nature. Strengthening awareness is also aligned

with various academic studies related to water, the environment and potential damage if there is mining in the Kendeng mountains.

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INTERSECTIONALITY IN AGE-GAP RELATIONSHIP BETWEEN A “KIN DEK/PUMA” WOMAN AND A YOUNGER MAN

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ABSTRACT

I believe that women identity can be different from one society to another depending on the way the members of society evaluate the role of females and males. Our gender identity can be influenced from the ethnicity of the group, their historical and cultural background, family values, religion and other factors. Crenshaw (2003) problematizes the intersections between race and gender as identity categories that cannot be separated. All people have a social location that is defined by their gender, race, social class, age, ability, religion, sexual orientation, and geographic location. Each group membership confers a certain set of social roles and rules, power, and privilege (or lack of), which heavily influence our identity and how we see the world. Therefore, my main argument here is that intersectionality allows feminist theorists to account for the differences between women because intersectionality rejects the universalizing of women’s identity. In this article, I would like to study lives of a “Puma” woman, who is widely regarded as a woman under 40 who prefers younger men who are under gender norms, sexuality discourses and etc. Intersectionality is another concept that will help the researcher sees factors and processes that a “Puma” woman uses to negotiate with family, partner and society in order to liberate herself. She suffers from social sanctions as violating social norms. Since having a younger boyfriend deviates from what is regarded as normal, the couple could be regarded as outsiders and receive less social support sometimes. The case study might be a good example of women oppression in this kind of relationship because in any relationship it is not about only two people, there are something more beyond that.

Keyword: Intersectionality, Puma Women, Age-gap Relationship.

AUTHOR’S BIO

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1. WHAT IS A KIN DEK OR PUMA WOMAN?

Recently, movies about older women-younger men relationships have also become popular in the Thailand, perhaps because of the popularity and media attention received by celebrity. The number of films in 2000s about this kind of relationship in which the woman is older increased. Therefore, relationships in which the woman is the older partner are slowly becoming more socially acceptable and more common. From effect of the media, cougar relationships have received as well as heightened awareness of cougars in popular culture. Here are some examples of cougar/cub relationship in Thai films that starts the trend of cougar or puma/cub relationship in Thailand in the last few years.

Cougar is a slang term that refers to a woman who seeks sexual relations with younger men. This label suggests that such women are more likely to be seen as sexual predators rather than individuals looking for true love. It has been a taboo which heavily influenced by the Freudian notion that the older women are mother substitutes or “robbing the cradle.” (Weedon, 2013) ABC News gave the definition of “cougar” as women who pursue sexual relations with people more than eight years younger than they are. The New York Times states that the women are over the age of 40 and ‘aggressively’ pursue sexual relations with men in their 20s or 30s. However, the term can also refer to any female who has a male partner much younger than herself according to age or age difference.

Nobody knows the origin of the word “cougar” as a slang term. It is thought to have originated in Western Canada and first appeared in media on the Canadian dating website “CougarDate.com”. There is another origin in Vancouver, British Columbia. This term is used as a put-down for older women who like go to the bars and go home with anyone was left at the end of the night. Later, the cougar concept has been used in television shows, advertising, and film.

Therefore, couples where the woman is significantly older than her male partner currently have a high prominence in national and international media and in popular culture. The widespread media attention on cougars and the term’s acceptance into popular culture. As we can see, these movies or TV shows are the talk of the town topics for a while because they have high receptions and the plots are fanciful. But does the popularity of cougar relationships in the media and among celebrities translate to real life for ‘real’ women or are they simply a media creation?

Interestingly, there is another term about age gap relationship that I will use in my study because of my age. “A puma” is widely regarded as a woman under 40 who prefers younger men while the cougar label is applied to women in their 40s and 50s who seek out younger male companions who are at least 10 years younger and often half their age. The difference between a cougar and a puma is cougars are not committed to any single man, and they move from one to the other. On the other hands, puma women are seen to be somewhat committed in their relationships until they are satisfied. Puma women are seen hanging out in the bars and clubs. They wear the most modern fashionable dress and love listening to the trendiest music. In maturity, cougars are more mature than the puma women (Betts and Carroll, 2012).

The first movie is *Seven Something or Rak Jed Thee Dee Jed Hon* (2012). This movie has 3 parts. The third part is called “42.195” and is about a woman who meets a young man who encourages her to complete a marathon. The story is about SHE (Suquan Bulakul) a 42 years old newsreader whose life changes and transitions to a whole new chapter once she meets, He (Nickhun Horvejkul), a young marathon runner who invites her to join the Bangkok Maraton race. Her life will never be the same again.

The next film is *Fabulous 30 or Sam Sib Yang Jeaw* (2011) (Patcharapa Chaichue) a beautiful woman has everything a woman is supposed to dream of having; a successful career, a partying lifestyle, and a handsome sweetheart. On her 30th birthday, Ja finds her perfect life changed when her boyfriend wants to halt the relationship. Now, at thirty something, Ja accepts a happy single life until a new guy (Phuphoom Phongpanu) gets in her life and he's 7 years younger than her. This film is very interesting because the actress's real life, she also has a younger boyfriend.

First Kiss or RakSood Tai Pai Na (2012) is another movie that female protagonist is much older than the male protagonist. Sa (Kaneungnij Jaksamittanon), 25 years of age never had a boyfriend and has never kissed someone her entire life. While riding a bus from work, she meets Bass (Pichasini Tanwiboon), a high school student, when they accidentally share a light kiss on the lips. Bass got hooked on the woman who's almost 10 years older than he is and is now determined to win her heart. Things got more complicated when Sa's first love comes back to her life and tries to win her heart as well. This encourages the high school boy to try even harder to win her heart.

In addition, media is a carrier of information, ideas, thoughts and opinions. It is a powerful force in influencing people's perceptions on a variety of issues. The media can be both positive as well as negative in terms of the position and views of women as well as a powerful mechanism for education and socialization. The lack of gender sensitivity in the media is evidenced by the failure to eliminate the gender-based stereotyping that can be found in public and private local, national and international media organizations. Overall effect of the portrayal of women in media is to reinforce rather than reduce prejudices and stereotypes. However, the depiction of “Puma” women in the media seems to empower women but the seeming potential for cougar identity that offer them new choices previously unavailable, it brings with it limits. If a woman is going to accept cougar as an identity then she has to accept being left out of traditional marriage and family. She has to accept being sexually marginalized. Even though there have been attempts to reimagine the term cougar, it still carries a stigma (Weedon, 2013).

As we can see, these movies or TV shows are the talk of the town topics for a while because they have high receptions and the plots are fanciful. But does the popularity of cougar relationships in the media and among celebrities translate to real life for ‘real’ women or are they simply a media creation? Most of middle age women who have or want to have younger partners are not as same as the female protagonists in the film. It's true that the female protagonists are older than male protagonists but they are very good-looking, have good builds and look younger than their real age. In reality, the women who are labeled as “PUMA” are very different from the “PUMA” presented in the media. Real cougars are just ordinary women who are not married, widows or even divorcees. Of course, this group of women is judged by the society that they are “not good women”. This brings me to the question; “WHY?”

2. DEBATES ABOUT WOMEN'S SEXUALITY

There are some critiques among feminists about the cultural diversity issues at the macro level. The Third World Feminists focus on the intersection of gender and sexuality with race, class, and issues related to the exploitation of women in different parts of the world. This group of feminists contends that no woman is free until the conditions that oppress women worldwide are eliminated. Multicultural feminism also pays a great attention on the specific cultural elements and historical conditions that serve to maintain women's oppression (Mohanty, 1991).

The cultural changes are about the consciousness-raising of postmodern feminist and contemporary psychoanalytic thinking contribute significantly to evolutionary changes in the understanding of sexuality. For example, Foucault used the term docility in his work "Docile Body" (1977) to explain how control and power was achieved through actions of discipline. This is a way of controlling the operations and positions of the body. He said that the body was a subject of attention and though people were no longer subjected to force, violence, or torture, the body was now automatically subject to discipline and control. Discipline is used through all institutions of social life such as school, work, prison, church, or hospital. So, everyone involved is subject to an extent of discipline. As humans, we are subjects of habit and consistency. Furthermore, he constructs bodily processes and operations as the object of applications of power. It is the act of controlling how bodies move, the processes they perform, and how they enact them. Therefore, we cannot look at symbolic interactionism as a micro level interaction process (Foucault, 1990).

Foucault also revealed that our idea about sexuality is largely informed by the "repressive hypothesis," which claims that the history of sexuality over the past three hundred years has been a history of repression. Sex is taboo except for reproduction purposes. If we want to liberate ourselves from this repression, we should be more open about our sexuality, talk more about sex, and enjoy it (Foucault, 1990). Puma women try to step out from social norms to free themselves from the restricted sexuality. Unconsciously, this group of women oppresses themselves from inside. They automatically try to control their lives to live under social norms as they sometimes feel guilty.

Once again, sex is the biological and physical things whereas sexuality is the characteristics we are identified with. So, sexuality is a social construction and varies across cultures. Symbolic interactionism assumes that children are born into a social world and their identities are developed through their interactions. When I was born, I had no sense of self. I have been learning these things every day and from everywhere. With each interaction I have with other people, myself and my sexuality are formed of who I am and what that means in my society and culture.

The first world feminist debates against Foucault are useful as they encourage feminists to examine gender and sexuality at the same time. Nevertheless, there are some gaps of these critiques that have to be filled. The reason is that the context of the First-world countries and where I conduct my research is different. Here, I would like provide some debates of Third-world feminism who disagree with the concept of women universalizing. Starting with the slogan "Sisterhood Is Global", it was created around 1970s to connect women around the world due to their shared gender oppression and essential identities (Shrock, 2013). Later, this idea has been criticized for its generalization by

white, middle-class, Western women. Audre Lorde (1984) saw this problem and argued in her essay that women's movement in the second wave paid too much attention on sexual oppression of women of color. This group of women didn't suffer from sexual discrimination only, but there are multiple forms of oppression which were ignored.

Chandra Talpade Mohanty (1991) sees that this perspective frames two-thirds world women and women of the global South as victims, while White Western feminists are framed as liberated. Behar explains the ways in which the female identity relates to interpretations of cultural and social issues. It's also necessary to reevaluate the writings of women of color. She talks about the Yolanda Fundora's picture in her work which represents how women are being watched while they are writing. This shows the relationship between the native women somewhere else who doesn't write and the female anthropologists who are turning the others in to object of their gaze but are themselves already an object.

Gayatri Spivak (1988) also sees women in western cultures usually investigate women in other cultures. In her well-known work "Can the Subaltern Speak?", Spivak discusses the ethical problems in examining a different culture based on "universal" concepts and frameworks from the First-World countries. Aiwa Ong (2001) is another Third-World feminist who disagrees with the idea of global sisterhood. She thinks that Western feminists focus on Western targets and ideas of development too much without considering alternative and/or native developmental goals. There shouldn't be only one on class or gender exploitation. Feminists would rather pay attention to the cultural constructions and struggles in different communities.

3. WOMEN'S SEXUALITY IN THAI CONTEXT

Thailand has a rather modest sexual culture. Sexual issues are hardly ever openly discussed in Thailand, especially among women. To be considered "morally good", Thai women are not supposed to have personal sexual desires. Talking or writing about sex is considered culturally and morally improper. Moreover, Thai women are also expected to be sexually quiet and virginal in order to maintain respect in society. A woman who lets more than one man to gain access to her body is labeled as a 'bad woman' due to Thai cultural standards. However, this situation has been improved in Thailand at the present. Many young Thai couples adapt the Western lifestyle to live together before getting married. This lifestyle confronts criticism from some conservative Thais for undermining good Thai culture and women's value (Harrison, 2000).

In different settings, women and girls' sexuality and sexual activity may be repressed and controlled through such customs as placing a premium on girls' virginity, basing family honor on the sexual control of daughters and wives, exacting severe punishment on women for adultery, preventing equal access to divorce, and segregating girls and women from boys and men (Hughes, 2000). In addition to these customs and norms which deny women full citizenship and sexual agency, there is the nearly global practice of using women's bodies to market consumer products and services. This objectification of women's bodies reinforces perceptions that women's and girls' bodies are things to be admired and consumed by men (Piayura, 2012).

From the culture and norms of Thai people, it can be seen that they believe in a conservative approach regarding a woman's sexual behavior and virginity. Women are required not to violate cultural traditions and preserve their virginity until the wedding day. Thai society has focused on these beliefs as social norms that good ladies should adhere. Thai society also believes that males have superior social status to females, especially regarding the value of sex in society. So, males have the privilege of sexual freedom, whereas Thai women have been taught to be careful as well as control their sexual behavior, and believe in conserving the virginity as a determiner of a female's value (Ounjit, 2011).

However, according to the present social trend, more people have become open minded about couples cohabitating before marriage and this trend is evident in all age groups. This might also be the cause of many problems in Thai society. Specifically, many problems are in direct contrast to Thai people's values such as the situation of being pregnant before getting married. Therefore, there is a structure in terms of the values and standards of Thai society in regards to sexual freedom and the double standard as a determiner of a female's value. It can be concluded that Thai society did not use only one standard for judging a human's societal value, especially in females, but a double standard is used by administering the value and norm of Thai society as determinants of a person's value in society (Ounjit, 2011).

4. INTERSECTIONALITY

From the debates of Third-world feminists against the First-world ideology, I will use the concept of "intersectionality" which often used in critical theories to describe the ways in which oppressive institutions. Intersectionality is a concept often used in critical theories to describe the ways in which oppressive institutions such as racism, sexism, homophobia, transphobia, ableism, xenophobia, classism, etc. They are interconnected and cannot be examined separately from one another. The concept first came from legal scholar Kimberlé Crenshaw in 1989 and is largely used in critical theories, especially feminist theory when discussing systematic oppression.

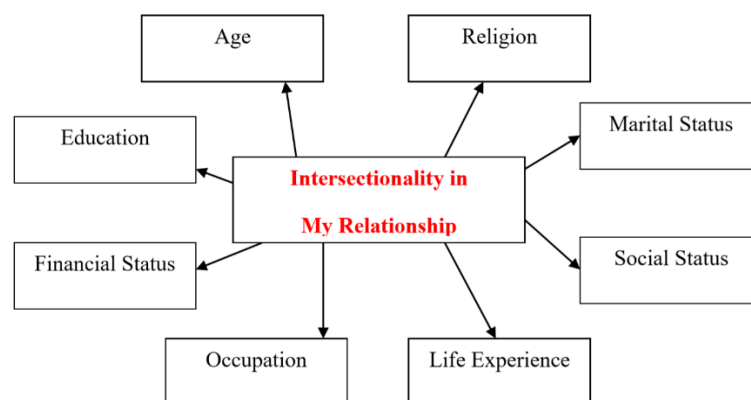
Intersectionality shows how it is impossible to theorize about women's lives by looking at one part of a person's complex and multidimensional identity. Following from this, intersectionality decentralizes gender as category of identity. This allows for theoretical consideration of other categories, such as race and class, the relationships between these categories, and how these relationships construct people's experiences. This is significant because it challenges the problem of essentialism in feminist political theory.

Crenshaw argues that black women are frequently absent from analyses of either gender oppression or racism, since the former focuses primarily on the experiences of white women and the latter on Black men. The aim of intersectionality within the Black feminist tradition has been toward building a stronger movement for women's liberation that represents the interests of all women. She argues that a key aspect of intersectionality lies in its recognition that multiple oppressions are not each suffered separately but rather as a single, synthesized experience. There are four analytic benefits of intersectionality as a research paradigm; simultaneity, complexity, irreducibility and inclusivity.

Intersectionality is extremely significant for feminist theory and has made an important contribution to feminist scholarship, however, there are some critiques about intersectionality. First, intersectionality's analytic promise to capture structural complexity without reducing or fragmenting simultaneous experiences of oppression(s). Another set of critiques concern the scalar reach of intersectionality. There is some debate as to whether intersectionality functions as a micro-, meso-, or macro-level heuristic. The third set of critiques of intersectionality involves the aforementioned distinction between intercategory and intracategory approaches. Finally, a fourth set of criticisms concerns the normative goal of 'inclusion' imputed to intersectionality.

Therefore, my main argument here is that intersectionality allows feminist theorists to account for the differences between women because intersectionality rejects the universalizing of women's identity. Intersectionality focuses on the issue of essentialism in feminist theory. When thinking about the category of women, it is vital to take under consideration the differences which exist within this social category. Intersectionality highlights how not only does the intersection of social categories produce lived experiences, but also how experience is very much dependent on the historical and cultural context within which a woman exists. Intersectionality allows women to maintain their underlying beliefs and works towards a better understanding of women's experiences whether they are a source of oppression or privilege.

I believe that women identity can be different from one society to another depending on the way the members of society evaluate the role of females and males. Our gender identity can be influenced from the ethnicity of the group, their historical and cultural background, family values, religion and other factors. These are the examples of puma woman's social conditions which are categorized by using the theory of intersectionality. These social conditions will differentiate my research from others. Even if a puma woman is in a vulnerable position, she still has some "conditions" to bargain with family, partner and society. The conditions that I will use in my research are class, race, gender roles, family background, social status, marital status, religion, life experience, occupation and education.



Being labeled as a puma seems not to be a problem for me but in fact, I suffer from social sanctions as violating social norms. Since having a younger boyfriend deviates from what is regarded as normal, my couple could be regarded as outsiders and receive less social support sometimes. I confirm that this could result in a less joyful and more stressful life, reduced health, and finally, increased mortality. My case studies might be a good example of

women oppression in this kind of relationship because in any relationship it is not about only two people, there are something more beyond that. I am a widow with one son and currently in the relationship with a younger man.

First, I am under reproduction discourse because scientific knowledge says that age is an important factor of a woman's fertility because women have a limited reproductive period of time. Women are only capable of reproduction from puberty until the onset of menopause and have peak reproductive capability in their twenties. Therefore, men have preferences for younger female partners, especially those who are in their reproductive years. For me, getting married or having children this is a personal matter. However, people still stick with the belief that being in a relationship means the couple must get married and have children. If I am much older than my boyfriend, it means that I have to wait until my boyfriend graduates, has a good job and a lot of money so that we can get married. At the time we get married, I might too old to have a child because my health declines.

From the traditional gender division of labor of Marxist and Socialist feminism, the sexes have resulted in women typically fulfilling the social role of homemaker (domestic labor) and men typically fulfilling the social role of provider (wage labor). A lot of people still believe in this perspective. In my relationship, I am a person who goes out and works due to my education and age. Sometimes, I was seen as a woman who "pays for an exchange" from young man because I have much money than my boyfriend.

Moreover, being a widow still suffer from the loss of social status and being marginalized. Discrimination against widows and divorced women appears to be a phenomenon of many countries, not just some traditional cultures. Most women are blamed when the marriage ends because they cannot be a good wife or a good mother. A good woman should do everything to maintain her marriage life. I am the one who ended from my marriage. My son lives with my ex-husband. Once again, I am suffered from the social sanction. I was asked a lot of questions about my marriage and being "not a good wife and mother" immediately. This can lead to the conclusion that a good woman should have only one husband. If that woman has more than one husband, she is considered not "morally good".

In addition, society highlights a women's virginity before marriage is an important thing. If a woman lost her virginity before marriage, she would become worthless, especially having a sexual relationship before being married. If other people know, it would lead to a serious reaction from people in society and thus she would be criticized or gossiped about as not being well-behaved. And again, I am a widow and already have a son but my boyfriend he is young and single therefore I am pressured by social norms. It is obvious that women are pressured one way or another. Women are controlled by sexuality discourse from many forms of power. If women do not perform their sexuality created by social norms, they will become "not good enough" women. However, we cannot see women's sexuality in one dimension but we should focus on diversity and their social location. Intersectionality can help us see women's oppression and discrimination from systemic injustice and social inequality occurs on a multidimensional basis.

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THE ROLE OF NGOS IN PROMOTING STATELESS REFUGEE CHILDREN'S RIGHT TO EDUCATION IN SOUTH KOREA

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ABSTRACT

The presence of refugees and related issues in Korea was not a well-known issue until recently when refugees from Yemen started arriving to Jeju Island in June 2018. Since then, refugee issues have attracted attention in Korea. This paper will discuss issues affecting stateless refugee children within Korea. There are about 30,000 refugees living in Korea, of which around 1,000 are children. About 300 of those children are stateless, without nationality. This in turn makes access to various services difficult. In particular, these children are not guaranteed the right to education. Education is one of the most important factors in shaping the present as well as the future of children. CRC clarifies children's right to education, and Korean law also guarantees equal educational rights for all children. All children should be able to enjoy educational rights without any difficulties. However, these stateless children have to overcome many difficulties just to attend school. The government should act as a duty bearer to guarantee these rights. Although the Korean government does not directly infringe the rights of children, there is an indirect infringement considering that these stateless children are unable to access education. This paper will look at the difficulties stateless refugee children are having in education, how the Korean government and NGOs are working to solve the problems, and what legal and institutional arrangements should be revised to actually solve fundamental problems. Refugee issues in Korea still do not have the attention they deserve, and the ones that suffer the most are the stateless children of refugees. This paper found out that there still are difficulties to fill the gaps to improve stateless children's right to education. NGOs do most of the work for stateless children and their right to education. However, even NGOs are working for stateless children, these children are not NGOs priority because of the small number of stateless children. Government is very indifferent to this issue. Stateless children are not receiving any attention from governments and organizations. Therefore, it is necessary to improve their perception to promote stateless children's right to education.

Keyword: Refugee, Right to Education, Stateless Children, South Korea.

AUTHOR'S BIO

Jeesoo Baek (jeesoo.baek77@gmail.com) is a student at Mahidol University in Thailand. She is pursuing an Asia Pacific Master of Arts (APMA), in Human Rights and Democratisation. Her thesis focuses on stateless refugee children's access to education in South Korea. She was born and raised in Seoul, South Korea. She completed the undergraduate degree at Seoul Women's University. Later, she studied international development. Since then, she has worked in the international development field both in Korea and Africa. Through her thesis research, she hopes to find solutions to real problems affecting refugee children in my home country.

1. INTRODUCTION

According to the 1951 Refugee Convention, a refugee is someone who is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion. It is estimated 25.4 million refugee men, women and children registered across the world (UNHCR, 2018). The number would be higher if it included the number of refugees who did not register yet. Those who have left their homes are struggling in other countries to find a new home for their lives.

With the Syrian civil war that took place in 2015, the world once again fell into a whirlpool of refugees. Many refugees from Syria and Afghanistan have flown into Europe, and a European migrant crisis has taken place. Korea, which was geographically distant from where the civil war broke out, was relatively ignorant of the refugees. But as the issue of refugees emerged in Europe, this issue was discussed everyday in Korean media too. Korea began to give a glimpse of refugees and the voice of interest in them has grown under the influence of the media. The majority of the public was indifferent to refugee issues, but some NGOs and human rights activists were working on refugees' human right in Korea. However, the situation of Europe has caused the general public to become aware of the existence of refugees living in Korea.

Although refugees were still strangers to the public, Korea moved one step faster than any other Asian country to refugee movements. Korea signed the refugee convention in 1991 and started accepting refugees from 1994. Most of the refugees who came to Korea at this time were from Africa, living in the neighboring countries of Korea, and those who could not return to their home country due to the civil war so they became refugees. Korea granted refugee status to an African man in 2001 for the first time. In addition, Korea is the first country to legislate refugee law in Asia. It is praiseworthy that Korea was the one of the first to enact refugee law in Asia, but there are still many aspects to be improved to protect refugees' rights in Korea. It is necessary to pay attention not only to better human rights of refugees but also to the alienated people who cannot enter the category of refugees in Korea.

The number of refugees who were granted refugee status is not many but the period since those refugees started living in Korea is quite long. According to Immigration Office data, there are about 30,000 refugees living in South Korea (Nancen, 2018). These numbers include refugee status applicants, humanitarian status holders and refugee status holders from all over the world. The number of refugee applicants did not exceed 3,000 by 2010. They were mainly African refugees in the 1990s and 2000s but recently they come from Southeast Asian or Central Asian refugees. In 2017, the number exceeded 9,000 and it increased to around 18,000 in 2018. Of course, the number of Syrian refugees from the Syrian civil war also increased during this period, but still the majority of them are mainly from Pakistan, China, Egypt and Nigeria. Although the number of refugees is significantly lower than in other European countries, the number of refugees entering Korea is rapidly increasing since the European refugee crisis. Most refugees come to Korea through third countries around South Korea. It is difficult to explain the direct connection between European refugee situations and Korean refugees, but it seems that the number of refugees from Syria has increased and those who have not been able to move to Europe have come to Asia.

The number of refugees is increasing but understanding and support for refugees is still lacking. To compensate for these shortcomings, it is pointed out that the refugee law was newly enacted in 2012 but there are still areas that must be improved for refugees in Korea. For refugees who are already living scarce lives, there is a need for help from government as well as from civil society because it is not enough by the power of the government. In order to fill these gaps, civil society needs to be paying attention to the refugee issue.

2. BACKGROUND

Norm and mechanism of human rights is based on citizenship/nationality. Strong citizenship power means that citizens' human rights are guaranteed by status very well. One way in which the government guarantees the basic rights of citizens is to have access to public services. Most people with citizenship in one country will be able to access basic services regardless of their gender, age or economic status. However, there are some people who do not enjoy basic services and they are stateless children. These children do not have nationality; therefore, they only have limited access to public services that can guarantee their basic rights. According to the convention on the right of the child (CRC), all children have civil, political, economic, social, health and cultural rights. However, these stateless refugee children are having difficulties in enjoying these rights. It is very hard to say that one right overrides the other right. All basic rights have their own significance, and each of them deserves to be provided and maintained. However, this paper will focus its discussion on refugee children's right to education. Education is essential for creating a better future, and it's especially critical for children born to such unfortunate circumstances.

These children have difficulties in accessing the right to education because they have no nationality. According to Hofstede (1983), nationality is very important for political, sociological and psychological reasons. Since each nation is based on political system it is very crucial to be part of its political system to be included in a nation. Stateless children are not registered with the government system and they are not likely to benefit from the government. Even in the case of primary education, it is possible for the child to attend school at any time but the government does not arrange for enrollment at the school for the child. Although the government does not deny the right to education, the administrative procedures that the child and his/her parents need to take care of are very complicated. Given the fact that the parents of children are refugees, it is almost impossible for parents to find their children's education rights by themselves. The government does not deprive them of their right to education, but it is preventing them in a passive way that does not actively guarantee their rights. This passive stance towards refugee children's education can be considered indirect discrimination by government. Thus, most stateless children go to school with the help of civil society, especially NGOs.

There are two main types of work done by NGOs working for refugee children. One is advocacy and the other is assistance of service delivery. The advocacy work is mainly done by NGOs that are working nationwide. These NGOs meet with stakeholders and relevant government departments to identify and try to improve the situation. Advocacy work that these NGOs are doing is usually done at the higher level. They strive to change government

policies or to enact laws for refugees. Assistance efforts are usually done at the bottom level. NGOs are providing financial assistance to refugee families or helping with various legal and administrative procedures.

In order for a stateless refugee child to go to school, he/she must undergo more procedures than other children who possess nationality. First, the child should find a school that will accept him/her and seek approval from the school principal. Then documents should then be reported to the Department of Education and other relevant ministries. However, refugee parents are faced with problems from finding a school. There are cases where the principal does not approve for a variety of reasons, and there are cases where parents of refugees are opposed by parents of Korean children. When refugee parents face these problems, NGOs help them solve the problem and help them to finish all administrative processes. Despite the bureaucratic and social challenges, these refugees would also be unable to complete these tasks without outside help due to the fact that all of the relevant information, required documents, and conversations would be in Korean. With all of this going against refugee families the majority of stateless children are having difficulties in enjoying the right to education even with the help of NGOs.

NGOs who work in advocacy are trying to change the current status quo for these families. The long term goal is to alleviate and eliminate these barriers for refugee children in receiving their basic right to education. The advocacy work of NGOs helps to improve the human rights of refugees in the long term and it is also very important to provide daily life assistance at the present time. This study will discuss what role NGOs are playing in the context of the overall stateless child refugee issue, what problems NGO and refugee children face, and how NGOs can help raise education rights for stateless refugee children.

2.1 Relevant Legal Background Information

2.1.1 International Framework on Refugee Law

Discourse relating to refugee law and refugee rights is increasing every day. This can be attributed to the fact that there is an influx of refugees in many states from their neighboring states. The international refugee law framework, although not a complete solution, does give the States and other stakeholders an outline of how the issue ought to be addressed. Many States are yet to ratify the Convention, while States that have ratified it are struggling to meet expectations. The first attempt to codify refugee law at the international level was in 1951 (Convention Relating to Status of Refugees), followed by the 1967 protocol to it. These were the first documents at international level to speak about the universality of the issue, to provide asylum/protection for those who are in danger in their own country, and flee to another country (Feller, Turk and Nicholson, 2003). The intention of the international instrument was to regulate the treatment of people classified as refugees under the convention. The international framework is conceived as a reasonable success, considering how it responded to the European refugees after the Second World War in the start and subsequently to situations caused by different regimes and other conflicts of the post-cold war period (UNHCR, 2000).

International law generally casts the responsibility on the state to protect the rights of its citizens. The State is the duty-bearer. However, in the case of refugees, their rights are violated and are forced to leave their native land

to seek refuge in another country. This is almost for the cause of survival to them. In such cases, the mother State has violated their rights, and no longer protects their rights; international law steps in to fill the gap by asking the host country to help protect the rights of these people (Jastram and Achiron, 2001).

As introduced earlier in this section, the 1951 Convention laid the foundation for international refugee law. The convention, for the first time defined “refugee” and set standards for their treatment in host countries. Article 1(A)(2) of the 1951 Convention states that, “the term ‘refugee’ shall apply to any person ... owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it”. Initially, the focus of the Convention was only on the people who found themselves outside their countries as a result of events happening in Europe before January 1951. However, in the wake of the early 60s, there was a new refugee crisis emerging across the globe. Due to this change in global climate, the definition of refugee needed to be extended in scope, both geographically and temporally. This was the main task of the 1967 protocol.

Although nations ratify these international conventions, further laws at the national level addressing the issues is a key to strengthening the framework domestically. This can make protection more effective and make the plight of the refugees in search for solution easier. This could also simplify the procedure in obtaining refugee status (Jastram and Achiron, 2001).

2.1.2 Stateless Persons

Stateless persons are persons who are not considered to be nationals of any State under its law. A stateless person may or may not be a refugee. The problem of statelessness is increasing in certain parts of the world and is specifically acute among children who are born to parents of mixed origin, parents who are refugees or parents who do not have a nationality and citizenship (Jastram and Achiron, 2001). This could be because the parents are originally refugees in the host state or because the parents are also stateless and have not attained the citizenship of the country of residence. To address this issue globally, the 1954 Convention relating to the Status of Stateless People regulates the treatment of stateless people in different states that are parties to this convention. There is also another convention, namely, the 1961 Convention on the Reduction of Statelessness. This convention defines ways in which stateless people can acquire nationality through links to the state of their birth or descent.

The issue of statelessness becomes serious when it affects children that are born in different circumstances so as to render themselves stateless. This hinders their access to any kind of public services both in the host country and in the country of their origin. The cause of their troubles is their statelessness. The idea of this paper will be to look at how exactly the right to education of these stateless children are affected because they do not have access to public services. The flaws in domestic law also attribute to the violation of the right to education of these children.

2.1.3 Korean Refugee Act

Korea signed the refugee convention in 1992. Since then, the Immigration Control Act of 1993 has been amended in order to establish the refugee-related provisions necessary to ensure the status of refugees and to improve and supplement the deficiencies in the existing regulations. The refugee policy under the Immigration Control Act has been regulated from the standpoint of national security, not the issue of human rights, despite the effect of the Refugee Convention, which Korea already signed (Kim and Kim, 2012). According to the Immigration Control Act, Article 2 (2) “Foreigner” means a person who has no Korean nationality and “Refugee” means a person who is subject to the Refugee Convention Article 1 or Refugee protocol Article 1. Even though the Act borrowed the exact definition of refugee from international convention, there is a flaw. If you look at non-Koreans through the lens of the Immigration Control Act, foreigners can only be seen as 'lawful people' or 'illegal people' (Kim and Kim, 2012). Hence, refugees without nationality are not properly protected.

In response to domestic and international criticism that the status and level of protection for refugees is too poor, the Korean government has begun revising refugee-related provisions in the Immigration Control Act and enacting a new ‘Korean refugee Law’. According to Korean refugee law Article 1 (2) "Refugee" refers to a person who is unable, or does not wish to be protected by nationality, due to racial, religious, national or ethnic origin or a fear that there is sufficient grounds to admit that he or she may be persecuted for political reasons or a foreigner who is a stateless person who does not want to return to, or return to, a country of residence (hereinafter referred to as "residence country") residing before entering Korea due to such fear. Although the law states that stateless persons can be acknowledged as refugees, there are still some gaps between stateless persons and refugees. In the context of Korea, it so happens that stateless persons are not naturally referred to as refugees.

2.1.4 Generating of Stateless Refugee Children:

Nationality Law Article 2 states that Korean nationality is only granted to a person whose father or mother is a Korean national. However, in case of refugees, they are not technically Korean because Korean Refugee Law does not grant nationality even if they are acknowledged as a refugee in Korea. Hence, when refugees give birth, the child does not have Korean nationality. Moreover, the child cannot receive refugee status at birth and therefore becomes a stateless person in Korea. Refugee law recognizes non-national refugees who were persecuted in their origin countries as refugees but these children were born and raised in Korea so it is difficult to be legally recognized as a refugee in these scenarios. For a fundamental solution, a related legislation is needed but no action has yet been taken to enact legislation for stateless refugee children. In Spain, there is a law that states a child born in Spanish territory is initially stateless, but the child can obtain a Spanish nationality (Gavrilenok, 2017). Since the child cannot acquire Korean nationality, the only option is to obtain one of his/her parents' host country nationalities then staying in Korea as a foreigner. However, it is not easy to do because of their reality. Some of the stateless children's parents are afraid of visiting their host country embassy for birth registration and the others cannot access there because the country embassy is not located in Korea.

Korea has joined the Convention on the Status of Stateless Persons, which is focusing on enabling stateless people to enjoy basic rights and freedoms, right after the Convention entered into force. However, despite Korea's entry into the Statelessness Convention, the Korean government has failed to take any action to fulfill the convention. The protection of stateless persons must originate from the inclusion of stateless persons in the definition of foreigners under domestic law. Scholars interpret that stateless persons are included in foreigners, but Korea's statutes and enforcement practices do not recognize stateless persons as a class of foreigners (Choi, 2009).

The current Nationality Law in Korea has reduced the number of stateless persons to a much smaller extent compared with the National Law before the revision in 1997. Previously, a child can achieve Korean nationality only if his/her father is Korean national but he/she would be able to obtain a Korean nationality in case only his/her mother is Korean after the 1997 revision. But there is a considerable difference between convention on the reduction of Statelessness. The first step in the protection of stateless persons should begin with the inclusion of stateless persons in the concept definition of foreigners under different laws (Choi, 2009). In case the law is enacted, the stateless children can be recognized as a foreigner and can access public services.

2.1.5 NGOs' intervention

In Korea, refugee protection has been filled by NGOs, and NGOs have acted as a protector of human rights before the enactment of the law. In the case of refugee-related nonprofit civilian organizations operating in Korea, there were a total of eight newly established organizations since the enactment of the Refugee Law in 2012. Most of the refugee support NGOs are based in Seoul and the metropolitan area and they provided legal support for refugee applicants and were supporting their lives. The newly enacted Korean refugee Law allows financial institutions to receive financial support from international organizations and governments in terms of private organizations (Kim, 2016). As support for NGOs grows, the role of NGOs in the field of refugee support seems to be increasing.

3. ANALYSIS

Interview method was chosen to figure out the current situation and hypothesis. The researcher selected four organizations; 2 from small local organizations and 2 from national organizations for broader data collection. In addition to the organization, researcher also interviewed the refugee bureau within the Ministry of Justice to hear the government side story about refugees.

3.1. Concept of Stateless

Many human rights activists, including the interviewed NGOs, believe that statelessness is not even an issue regarded by the general populace in Korea at the present. Even government officials seemed to have no awareness of statelessness as a problem for refugee children. After more than 20 year of joining the Refugee Convention, interest in refugees has risen because of Yemenis crisis in Jeju Island in 2018. More than twenty years have been with refugees

around us, but people now recognize their existence in Korea community. Since it took 20 years to attract people's attention, it is clear that it is hard to draw people's attention without big events or phenomena that can be the momentum. Statelessness is even in a worse situation. To attract people's attention, the number of people who are in statelessness is very few and there have not yet been noticeable events related to statelessness. There are many people who do not know what statelessness is. Hence, it would be a little early to discuss the solution for statelessness in this situation. It should be the first to let people know that there are people who are in this stateless crisis, but nevertheless, do not hesitate to make a voice for stateless people. In most cases, people tend to try to solve the problems after it occurs. But it is too late to try to deal with problems after it happens. The vast majority of organizations are not currently trying to solve statelessness problems. Statelessness problems are linked to many other issues so it is difficult to solve at once. Rather than solving the overall stateless issue at this time, the focus is on individually addressing the problems faced by stateless individuals. In addition, since the government does not want to face statelessness at present, it should be preceded by informing the public and the government about the statelessness issue.

3.2 Universal Birth Registration

As a part of the solution to the stateless problems mentioned above, there is universal birth registration. If a person does register his/her birth, even if he/she does not have nationality, he/she can have the minimum conditions to prove his/her existence internationally. Since it is impossible to register the birth of foreigners in Korea, it is impossible to confirm that they were born. Foreigners must go to their embassy in order to register their birth, but there are people who cannot visit their home countries's embassy for various reasons, such as refugees and undocumented migrant. In order to guarantee children's basic rights, universal birth registration should be implemented. However, due to the nature of Korean law, most people tend to equate birth registration with nationality. Because of the vague concern that a registration of birth will result in the granting of nationality, people try not to allow the birth registration itself. Apart from granting nationality, birth registration must be allowed to ensure that all children have a minimum of basic rights. If it is possible to register the birth, it is expected that it will be easier to acquire nationality in the future. In this sense, the first step in preventing statelessness is considered to be birth registration. At present, several organizations and human rights activists are gathering to form a Birth Registration Network to establish a universal birth registration system. In case of the second generation of refugees, the same visa that their parents have is granted without birth registration, and the government believes that there is no problem in accessing the social welfare system. However, the question is not whether or not you hold a visa. There is no way to prove their identity other than a visa, so children cannot take part in school trips, national competitions or contests. Some may say that these are not essential to life, but trivial things can come together and violate the basic rights of children.

The law on Universal Birth Registration is currently pending in the National Assembly. Congress woman Won Hye-yeon, a member of the national assembly, showed interest in the Network activities and prepared the bill together. The results are unknown because it is currently pending, but the group of organizations have done a great job just by encouraging lawmakers and enacting legislation. It is a pity that even if only one member shows interest, what has not been done for a long time.

3.3 Right to Education

Many organizations talk a lot about children's right to education. Although children's right to education is not guaranteed, it is hard to say that children's right to education is very well guaranteed and that children enjoy their rights to education. The government maintains that there are no problems with children's right to education, and even if several organizations raise questions, it does not seem to be well received. Anyone who wants to go to school can enjoy the right, but there are minor problems in the process. This is because children's rights are guaranteed in a passive rather than positive way. It is not just about being able to go to school, it is about how high quality education right children can get in school. As mentioned earlier, many organizations are making voices to ensure children's right to education by helping them when they face problematic situation. But, this is not more than just finding a school and registering so that children can attend school. Many refugee families are struggling economically, but there are not many sources of financial support for them. In the case of discrimination at school, small organizations are trying to solve the problem using their own source and knowledge, but in the case of economic problems, there are not many ways to solve it. One of NGOs that researcher interviewed provides financial support, but the amount is very small and the number of beneficiaries is very small compared to the total number of children who need support. In addition, the conditions for receiving this grant are difficult, and if there is no third party who can help the children to get it, they will not be able to get even this small amount of assistance. NGO B is also helping children who need to get money from NGO C. Small organizations are unable to provide economic support on their own, so they try to support them with the help of other large-scale organizations, but even this is not easy. In order to guarantee the ultimate right to education, the right to education of foreign children must also be stipulated in the law. This is because, by law, children are allowed to attend school without the approval of the principal, and the government is responsible for the education of the children.

3.4 Treatment of Refugees

When the Refugee Act was enacted as an independent law, its purpose was described in Article 1, Chapter 1 of the Refugee Act, which aimed to improve the treatment of refugees. Although legislation was expected to improve the treatment of many refugees, the rate of refugee recognition is still less than 5%(citation needed). In order to improve the treatment of refugees, the recognition rate of refugees should be increased first. This is because the treatment of refugee status holders, applicants, and humanitarian status holders is very different. The treatment of refugee status holders is not perfect, but it is better in many ways than applicants and humanitarian status holders. Government should not assume that they have fulfilled their obligations by being recognized as refugees and granting refugee status. Refugees need help to live in a new country with a different language and culture. However, the government only gives two pages guidelines to refugees. It makes no sense to live in a new country with two sheets of paper. Many parents do not know when and where they can send children to go to school, and sometimes they miss the enrollment period and some do not adjust well in the school even if they go to school because of language problems. Canada runs an ESL program for refugees, and Korea needs a similar program to help refugees adapt to Korea.

3.5 Public Awareness

Although refugees have lived in Korean society for over 20 years, most people do not know much about refugees. Many have learned about refugees since last year's Yemenis arrival in Jeju Island, but negative public opinion is dominant. Without knowing who they are, where they came from, or why they came, Korea society tries to push them out of our society. As negative public opinion continues to spread, it seems that the government's response is the biggest problem.

Yemeni refugees arrived in Jeju Island using the visa-free system introduced to revitalize Jeju's tourism industry. Jeju Island is a special tourist zone designated by the government, and anyone can enter without a visa. After the arrival of nearly 500 Yemeni refugees, when complaints about the visa-free system poured, the government responded by abolishing the visa-free system. The government's response was a simple and unresponsive way to deal with the issue.

In order to raise public awareness of refugees, private sectors were doing more than the government. NGO B has a blog and video platform that delivers news and information about refugees. Even if the organization B is sometimes attacked online and offline from people who have negative thoughts about refugees due to these programs for the public, they are constantly trying to provide a voice for refugees. Along with these private efforts, government-level initiatives such as public service announcements will help raise awareness.

4. CONCLUSION

The data collection through interviews and literature surveys are not 100% consistent.

with the hypotheses established by the researcher before proceeding the actual research. The researchers thought that the government played a part in the treatment of refugees and the right to education, and that the private sector was filling the remaining gap. However, as a result of the data collection, the government is consistent with indifference toward refugees, and even once again it is moving to revise the Refugee Act. At this point, it is not clear which direction the Refugee Act will be amended, but given the government's attitude and public opinion about refugees, it does not appear to be a positive direction.

The role of non-government organizations was not to fill in what the government could not do, but to fight for the rights of refugees and refugee children, mostly at the opposition side of government. While the private sector is quietly standing by refugees and doing things that they can do, it does not seem they can continue to work in opposition with the government. Confrontation cannot be an effective way of solving issues. Government and the private sector should continue to talk and work together to find a solution.

Korean society seems to value the things that can be seen and what can be presented.

It was a way to show that they had signed up for a refugee convention or had enacted an independent Refugee Act. In interviewing the organizations, everyone thought the same thing; it was surprising to join the Refugee Convention and to enact refugee law in the face of such a poor perception of refugees. Even after signing up for the convention and the refugee act was enacted, the reality did not change much. Refugee recognition rates are among the lowest in the world, and treatment has almost never improved.

Refugee children can all be educated on an equal footing with the people. However, because the law does not specify compulsory education, students often miss school enrollment due to lack of information. School enrollment is also approved at the principal's discretion, and if parents cannot enroll in the school as opposed to existing parents, they have to find another school. Many organizations point to this issue and many advocacy groups are working on the need to improve the legal system. In addition to advocacy activities, organizations would prepare the necessary documents for children with problems enrolling in school or find someone to help the enrollment process. Primary and secondary education is free of charge, but when children go to school, they may need to spend some expenses related to education. This can be a burden for economically difficult families. Families in need of financial assistance are also able to connect with financial aid so that they can receive financial assistance.

Organizations try to help refugees and stateless children in many ways, but sometimes it is not effective. Every situation is different, so organizations try to help one another respectively. Organizations are looking for the definition of statelessness to stateless children, finding schools for children who are not going to school, and introducing financial support groups to children who need financial assistance. The organizations do not engage in activities that directly benefit all refugees or stateless children, but are working to improve the overall legislation so that all children enjoy their rights.

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THE IMPACT OF PELICAN PARADISE PROJECT ON THE LIVELIHOODS OF COMMUNITY IN TASI-TOLU, TIMOR-LESTE

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ABSTRACT

Many post-conflict countries pay much attention to pursue national, economic, and human development. Timor-Leste, being the youngest nation in Southeast Asia, announced a Strategic Development Plan in 2011 through the Pelican Paradise project aiming to transform Tasi-Tolu into a tourism spot for the socio-economic development of the affected communities. However, in practice, the government paid little attention to the voice of local communities and evicted them forcefully, ultimately affecting their livelihoods. This study aims to examine the social, economic, and environmental impact of the government's development policy in regards to the evicted communities of Tasi-Tolu in Timor-Leste. The research planned a theoretical framework to assess social, economic, and environmental impact of the Pelican Paradise Project on the Livelihoods of Community in Tasi-Tolu, Timor-Leste by employing a semi-structured questionnaire, following a narrative approach through interviewing different stakeholders for narratives and observation used as a tool for data collection, and reviewing primary and secondary sources of literature on the social impacts of development projects. The study has primarily used social impact assessment tools to evaluate social, economic, and environmental impacts of the project. In addition, the research examines how local communities are affected differently in terms of risks, vulnerabilities, and securities between different groups. The findings of the study demonstrate a deplorable socio-economic effect due to the project which has affected the life and livelihood of the people and the community at large.

Keyword: Livelihood, Community, Impact Assessment, Timor-Leste, Pelican Paradise Project.

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1. INTRODUCTION AND BACKGROUND

“We will not enjoy development without security, we will not enjoy security without development, and we will not enjoy either without respect for human rights (UN Secretary-General, 2005).”

Many post-conflict countries pay much attention to pursue national, economic, and human development. One of these countries, Timor-Leste, became an independent nation-state on the 20th of May 2002 after 450 years of Portuguese rule followed by 24 years of Indonesian occupation. As a new country, Timor-Leste faced many developmental challenges such as conflict and fragility; lack of trained human resources; natural and environmental degradation; inadequate job opportunities for its growing population; and high levels of poverty. The livelihoods of Timorese people depend on a healthy and productive environment. Now, as an independent country, Timor-Leste is looking back to its history and is exploring ways in which it can harness its social, cultural, economic, and natural capital to move forward towards a sustainable and equitable future (Ministry of Economy and Development, 2012). In the context of a developing country like Namibia, assessing the wide range of impacts that tourism has on the livelihoods of rural residents shows how tourism’s contribution to livelihoods can be enhanced in ways that reflect people’s livelihood priorities by adjusting decisions on what is developed and how. This has implications for how tourism planners, other policy-makers, communities, businesses and nongovernmental organizations (NGOs) work. In this scenario, the ‘Sustainable Livelihoods’ framework was used for assessing the diverse positive and negative impacts that different types of tourism can have on people’s asset base, portfolio of diverse activities, specific outcomes which they seek, and their influence over external organizations. (Ashley,2000).

The international community and development partners of Timor-Leste have spent a considerable amount of money to develop the nation. Unfortunately, development aid has not brought much change to the lives and living standards of the majority of Timor, although some have benefitted. During the first decade as an independent nation, up to 50 percent of the population lived below the poverty line of USD0.88 per day despite ongoing international assistance (Blanchard and Higgins-Desbiolles, 2013, p. 2).

In spite of the myriad of projects and amount of aid spent in Timor-Leste since its independence, it remains a fragile ‘post-conflict’ state. Fighting amongst groups of youth is one of the telling manifestations of ongoing human insecurity and national instability. Timor-Leste has one of the youngest demographics in the world, with over seventy percent of the population aged less than thirty years old and approximately half the population under fifteen years (AusAID 2008; Ramos-Horta 2009c cited in Blanchard and Higgins-Desbiolles, 2013, p. 5).



Figure 1. Adapted from GO SOUTHEAST ASIA *Go Top Destinations in South East Asia*
<https://www.gosoutheastasia.com/blog/the-beauty-of-the-youngest-country-in-se-asia/>

Development projects often fail and trigger the sufferings of the locals, because these projects do not acknowledge the possible social impact over the community and livelihood. The study suggests that planning agencies, especially international aid agencies, should conduct social impact assessment (SIA) of possible harmful consequences of development interventions, so that corrective actions could be taken beforehand. Therefore, this paper is going to discuss the research objective and question of the proposed study and then describe briefly the methodology adapted to carry out the research. In the third and final section, the paper will focus on the conceptual framework and findings of the study with a concluding remark.

Research Question

This proposed research attempts to answer the following question: How does the Pelican Paradise Project's method of forced eviction impact the Tasi-Tolu community's socio-cultural and economic life?

Research Objectives

To identify the social impacts of Pelican Paradise Project on the life and livelihood of the people at Tasi-Tolu.

2. METHODOLOGY

This paper employed a qualitative social research where the researcher has used the narrative approach. Appropriately, interviews for narratives and observation will be used as a tool for data collection.

Research Focus and Sampling

This research focuses on the neighborhood of Comoro in Dili Municipality, Timor Leste, where the Timorese government has planned to build Pelican Paradise Timor-Leste in. Tasi-Tolu, Comoro, Dili is believed by the government of Timor Leste as a potential contribution to economic development, and tourism promotion.

Selection of Location and Research Site

The communities of Pelican Paradise Timor Leste project at Bairo Besimean, 12 De Outubro, Tasi Tolu, Comoro in Timor-Leste were affected by the eviction done by the government of Timor-Leste. The development site consists of 564 ha of the prime land strategically located between the Dili International Airport and the future Dili International Port. This location is a magnificent development site with mountains, lakes, beaches, diving sites, famous historical sites, and cultural sites.

Data Type and Source

This is a factual data of opinions, writings, or in the form of other words such as the respondents' reply in the questionnaire, the response of the questionnaire or interview items when interviewed, photographs, and other documented sources. The primary qualitative data will be collected by interviewing potential informants that include victims of the project, the members of rights organizations working in different non-governmental organizations and government agencies involved. This research will also draw on existing literature, documents, and policy papers on the project to serve as secondary research data.

Scope of Study/Unit of Analysis

The proposed research aims to reveal the process of forced eviction and its impact on basic human rights violations of the community in Tasi-Tolu that resulted from the Pelican Paradise Project's method of forced eviction.

Ethical Consideration

Written or verbal informed consent is obtained and the anonymity of interviewees have been offered. Absolute anonymity on any case discussed during the interviews has been also considered by the researcher. The researcher has also maintained a primary standard of professionalism, reliability, and awareness of the need to protect the privacy in delicate cases. All participants were offered full confidentiality in sharing their views and opinions. This includes ensuring anonymity and confidentiality in recordkeeping and report-writing and ensuring that participants understand that what they do and say in the group session will remain anonymous. Also, respondents will

be made to feel at ease and will correspondingly be encouraged to ask questions to the researchers. The importance of the research will be explained to the respondent. As an effort to secure the data and protect the participants, researcher, and the university, all the information - digital, documented, and other forms - will be preserved with a password and safe custody of the researcher after data is collected, information recorded, and note taken. It is of prime importance that all the information will be kept safe and would allow only the researcher to have access in case of loss or theft. Maintaining strict secrecy and confidentiality during the data collection process and entire fieldwork, the researcher can avoid possible restrictions from government agencies.

3. CONCEPTUAL FRAMEWORK

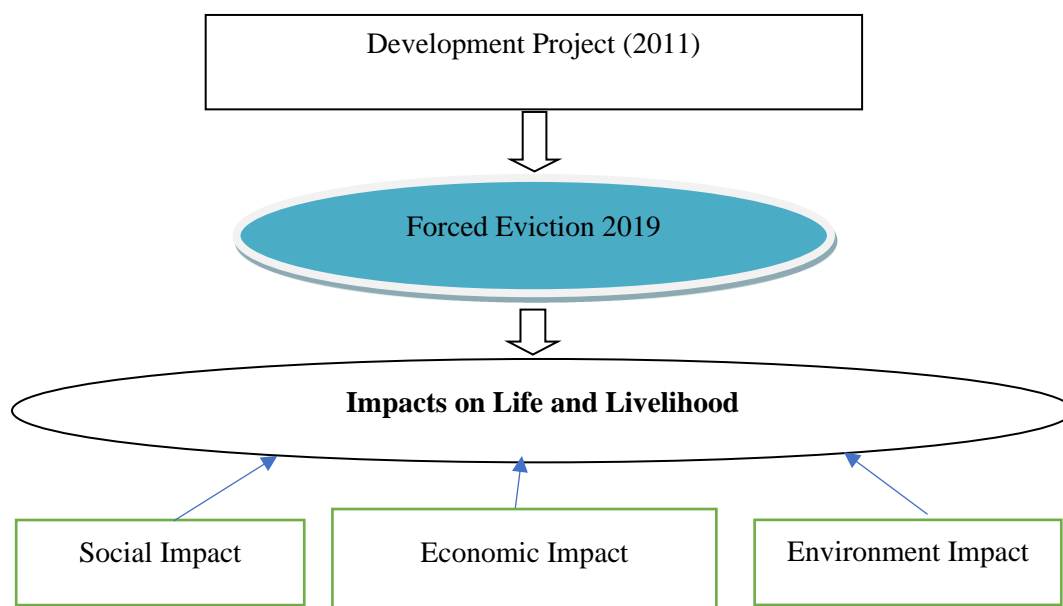


Figure 2. Conceptual Framework

Research on the impact of development projects on the evicted community appeared to show that the loss of land, livelihoods, and homes associated with displacement often have profound impacts on people and particularly the women who are vulnerable to violence, impoverishment, and marginalization (Bedi and Cea, 2019). However, it is suggested that development projects must incorporate and uphold human rights-based principles in its strategies. Therefore, this research conceptualizes that the development project at Tasi-Tolu that entails forced eviction of the community would negatively impact the livelihood and community in the project area, since the impact on life and livelihood of the people and the community at Tasi Tolu is still to be assessed by analyzing the social, economic, and environmental impact of the Pelican Paradise Project.

4. FINDINGS AND DISCUSSION

The subject research project is ongoing and the findings of the field work are the temporary reflection the study. However, the following are the key findings of the research:

- a. A large number of the people (around 67% of the respondents) in the affected community in Tasi-Tolu do not know about the Pelican Paradise Project, because the government did not involve the masses or their community leaders in the decision-making process of the project, implementation or planning. The community do not also know which land will be under government requisition for the Pelican Paradise Project.
- b. Most of the households which were evicted by the government in Tasi-Tolu, actually hold a permission letter from the local authority to build their houses. The local authority also acknowledges the presence of the community in Tasi-Tolu. Chefe Suco (one of the respondents) says that the central government does not let him, the local authority, know about the eviction.
- c. The students who came from the remote areas stay in Tasi-Tolu to study, but after the eviction those students have returned to the mountain because they have no place to stay and COVID19 affected their study.
- d. Many people came from the mountain to work as a laborer with their family, but after the eviction their wife and children have returned to the mountain because rental house is too expensive.
- e. The community was also willing to collaborate with the government to contribute to the national development. Nevertheless, the government did not include them in the decision-making and did not acknowledge the rights of local people.
- f. Before the eviction, the community living in Tasi-Tolu have many activities, such as street vending, fishing, farming, and doing the daily labor job, which are enough for daily food and other basic needs, because they had a place to stay for free.

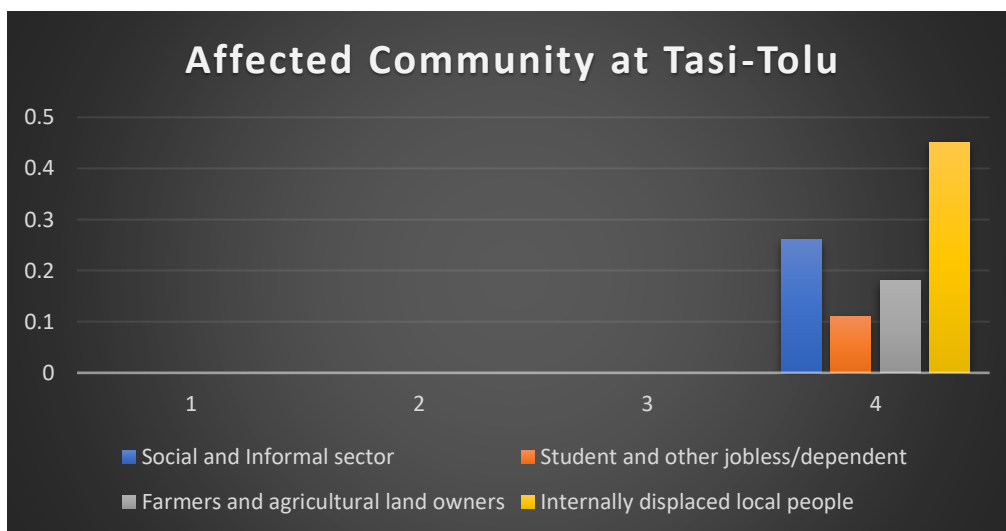


Figure 3. Affected Community in The Project Area Based on Occupation And Social Status.

From the above bar chart (based on field survey) it is found that in the social and informal sector (street vendors, food sellers, etc.), almost 26% of the respondent were found affected by the project while 11% among the students and other jobless/dependent were affected. Among the affected community, 45% were IDPs who migrated from other regions due to different social, political, and economic reasons. The farmers and those land owners of agricultural land are among the 18% of the total affected people. Overall, the condition after the eviction is deplorable. The communities in Tasi-Tolu are completely destroyed due to the unknown eviction process. The effect on the life and livelihoods are beyond expression. People have no place to stay.

5. CONCLUSION

The government of Timor Leste has adapted the Pelican Paradise project to transform Tasi-Tolu area to a tourist destination that would ultimately contribute to the socio-economic development of the affected communities. This research has assessed the social impact among the people of Tasi-Tolu's affected community and how the project is affecting the existing livelihoods of those people. It has been observed that mostly the people and their livelihood are affected due to land eviction not deliberately planned by concerned agencies. However, this research might contribute to a viable reform plan that can help in socio-economic development in the lives and livelihoods of the affected community. This study will also provide an insight that is viable and sustainable in protecting communities' human rights and would help to minimize the negative impact on their livelihoods.

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NARRATIVE POLICY ANALYSIS OF CORONAVIRUS OUTBREAKS: LESSONS LEARNED FOR PUBLIC POLICY AGENDA SETTING ON THE COVID-19

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ABSTRACT

The global experience of the COVID-19 pandemic has drastically changed ways how medical and public health experts, and policy makers look into its effects and It has also affected the creation of policies related to initial outbreak response, pandemic preparedness, and risk management. This paper will examine policy narratives of previous coronavirus outbreaks (SARS and MERS), and how they influence discourse, agenda and action. It will also look into how these narratives and experiences were observed in the current policy responses on COVID-19 in Southeast Asia, and how it shaped the emerging concept of Global Health Security in the context of a health crisis. Content and narrative policy analysis was performed to analyze enacted policies targeted to mitigate COVID-19 and potential health disruptions/outbreaks. The analysis has identified and summarized Initial Outbreak Response, as well as, Pandemic Preparedness and Risk Management as emerging themes from the policy narratives. The relevance of this study, and frameworks it will employ aims to contribute to the improvement of legislation and the enhancement of public health governance in light of COVID-19.

Keyword: Public Policy, Coronavirus Outbreak, Policy Agenda Setting, Narrative Policy Analysis, Policy Response, Public Health System.

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1. INTRODUCTION

There has not been a greater threat in modern history than a viral pandemic that has greatly disrupted social order and human life. The Coronavirus Disease 2019 or COVID-19 is caused by the Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-Cov2) and has already been detected in almost every country. The World Health Organization or WHO (2010) defines a pandemic as global spread of a disease. Several coronaviruses are known to have caused respiratory infections to humans, ranging from the common cold to more severe diseases such as Middle East Respiratory Syndrome (MERS) and Severe Acute Respiratory Syndrome (SARS) (WHO, 2020a; Van der Hoek, 2007). As of August 21, the WHO (2020b) has recorded 22, 536, 278 confirmed cases, 789, 197 confirmed deaths, and has affected 216 countries, areas, or territories. Southeast Asia has currently recorded 3, 040, 168 confirmed cases and 59, 875 confirmed deaths. These numbers reflect the global impact of COVID-19. (WHO, 2020c). Health experts all over the world are racing to discover a vaccine and cure, while States have been scrambling to craft policies to respond to the new coronavirus disease.

This pandemic has drastically changed ways how medical and public health experts, and policy makers approach a public health crisis through initial outbreak response, pandemic preparedness, and risk management. It allowed new discourses on its implications towards public policies related to health. Throughout time, different experiences in disease outbreaks have influenced literature and narratives on how an infectious disease should be dealt. The Previous coronavirus outbreaks like Severe Acute Respiratory Syndrome (SARS) and Middle East Respiratory Syndrome (MERS) brought about various lessons and recommendations on how policy frameworks should be drafted. These policy narratives allow policy makers to creatively and efficiently address current and future challenges. A number of literatures reveal different policy recommendations on how these narratives and experiences lead to the creation of policy ecosystems that tackle disease outbreaks (Kapiriri & Ross, 2018; TED, 2015).

This paper will look into policy narratives of past coronavirus outbreaks (SARS and MERS) based on existing literature. It shall examine how they had influenced policy agenda on initial outbreak response, pandemic preparedness, and risk management. Also, this paper will analyze how these narratives and experiences were observed in the current pandemic policy responses on COVID-19 in Southeast Asia. It seeks to address knowledge gaps from the past coronavirus outbreak policies, and contribute to improving frameworks of analyzing and articulating global public health security.

Policy Agenda Setting and Narrative Policies

In the policy cycle, agenda setting is as the starting point for policy creation. Problem recognition is the core of agenda setting, as it presupposes policy-making and highlights a social problem that requires state intervention (Jann & Wegrich, 2007). Agenda setting starts with the recognition of the problem, and if it needs to have the attention that it should get. Jan and Wegrich (2007) further explained that moving an issue from recognition to formal political agenda is a crucial step as it will have certain factors. This includes participation and impact on interest groups and how it will be selected from a pool of diverse issues. It shall also take into account how interested actors lobby for a

certain issue, and how it will be structured on potential strategies and instruments in the development of the policy. Mwijye (2013), cited Howlett & Ramesh (2003) and Savard & Banville (2012), explained that agenda setting is not automatic, since it involves generating public interest and influencing ideology. As such, problems are socially constructed. These reflect the structure and roles of government, which is, in most cases, dominated by elites. Dery (2000) has also emphasized that policy developments, as well as agenda setting, explain the result of dominant interests of policy actors. Capella (2016) cited Kingdon (2003) who argued that the conception of an issue becoming a political agenda also affects how political actors perceive the connection between problems, solutions, and political context.

The literature above summarizes how complicated policy agenda setting is, not only at the start of the policy making process, but also in the selection and recognition of problems. It is evident that interests of policy actors, as well as the contextualization of an issue in the policy ecosystem play a big role in putting forward problems into public policy agenda. These literatures revealed that the global pandemic being experienced as of this writing has shown all these factors. COVID-19 is a global emergency that requires urgent response. Policy actors are on scrambling to concoct effective policies to immediately mitigate it. However, policy responses should not only be taken based on what is happening at the moment. Most literature on agenda setting argue for the role of a policy ecosystem, which is constructed based on previous experience and efficient foresightedness. Although incomparable to the current data and scope of the COVID-19 pandemic, these points have clearly stated that past policies and regarding coronavirus outbreaks could shape future policies on risk assessment, as well as pandemic preparedness and response.

Health Security and Global Public Health

The concept of Human Security came to light through the United Nations Development Programme (UNDP) report entitled *Human Development Report*. As an emerging concept and approach, it identified seven areas: economic, food, health, environmental, personal, community, and political security (Acharya, 2007; United Nations, 2009). It also highlighted two major components – freedom from fear and freedom from want (Gomez and Gasper, n.d). Although there have doubts and debates over this, human security has become a sound approach in analyzing different cross cutting issues and policies related to development. The adoption of the United Nations on the Human Security unit approach changed how member states analyze and respond to challenges in key aspects of human life (United Nations, 2016).

Among areas and dimensions identified, COVID-19 definitely falls under remit of Health Security. It covers a wide range of issues, such as malnutrition, poor sanitation, lack of access to basic health care, all of which have significant influence on human security (United Nations, 2016; Chiu et al., 2009). Furthermore, there are contentions with regards to the common understanding and approach among. Although there have been challenge in operationalizing this concept, the extensive work of the UNDP and the Commission of Human Security (CHS) produced literature to better understand this rather novel concept. Aldis (2008) has identified four recurrent themes regarding Health Security – (1) *Protection against threats* which encompasses protection of vulnerable people against hunger, disease and repression, poverty reduction, and people empowerment, (2) *Emergence of new global conditions for which existing approaches are inadequate*, which includes challenges on providing medical aid and human

intervention on conflicted states, (3) *Engagement of new actors, including military establishments*, which discusses the role and involvement of military units in public health responses, and (4) *Linkage to foreign policy interests*, which builds on the idea that health is a valid foreign policy concern. These recurring themes visualize how health security is globally contextualized, especially in the realm of policy creation and implementation. Furthermore, this highlights the role of the international community in understanding and addressing the impacts of a pandemic on societies, political structures, and economies (Chiu et al., 2009). Based on policy narratives of past coronavirus outbreaks, these recurring themes in Health Security may expand perspectives on developing discussions on global public health in relation to the current COVID-19 pandemic situation and response.

2. METHODOLOGY

This study employs complementary qualitative methods of content analysis and narrative policy analysis. These two qualitative research methodologies are included in a more general method called narrative analysis which, as mentioned by Reissman (1993), “examines how the story is developed, organized, begins, and end” (as cited in Jackson, Drummond, & Camara, 2007, p. 24). Roe (1994) acknowledged that many public policy issues today are complex, uncertain, and polarized by certain factors where narrative policy analysis has been the starting point in the realization of these uncertainties, complexities, and polarization of public policy issues. In addition, reflections on these narrative policies have become a way for recognizing driving factors of issues. It also allows one to respond to criticisms brought by the discourse of these uncertainty, complexity, and polarization. Moreover, he highlighted the two-fold objectives of narrative policy analysis recognize its important role in the realm of public policy. It “establishes the usefulness of narrative analytical approaches that allow one to reformulate increasingly intractable policy problems in ways that then make them more amenable to the conventional policy analytical approaches of microeconomics, statistics, organizational theory, law, and public management practice” (Roe, 1994, p. 1). Since it encompasses both structural and functional forms of analyses, this will give an opportunity to gather insights on experiences of past coronavirus outbreaks and how they shaped both public policy and policy agenda setting. This also includes narratives of criticisms and evaluation on how past literature viewed policy making and agenda setting amidst of a Coronavirus outbreak.

This paper is based on the data, reports, and journal articles on SARS and MERS published online. Existing data on the cumulative cases of SARS, MERS, and COVID-19 published by the World Health Organization were extracted. On a similar approach, journal articles were accessed from three online databases – Journal Storage (JSTOR), Social Science Research Network (SSRN), and Taylor & Francis Online. The search was limited to articles published within 2009-2019 and was filtered through the domains of Public Policy, Public Policy & Administration, Health Policy, and Public. Also, search words such as “SARS and Policy Response” and “MERS CoV and Policy Response” were utilized to generate search results. A journal article is identified as a relevant result if it includes a discussion on SARS or MERS and policy response as reflected in its abstract, discussion, and/or conclusion. Emerging

themes from policy narratives were identified and summarized as Initial Outbreak Response, and Pandemic Preparedness and Risk Management.

3. RESULTS

Comparative Cumulative Cases: SARS, MERS, and COVID-19

Situation reports published by the World Health Organization (WHO) revealed the extent of the infection caused by Severe Acute Respiratory Syndrome Coronavirus (SARS CoV) or commonly known as SARS. A report published in 2003, recorded 8, 096 confirmed cases with 774 confirmed deaths that constituted to 9.6% fatality rate. SARS was found in 29 countries and territories mostly in Asia, some parts of Europe and isolated cases in the United States of America (USA), Africa, and Oceania. China recorded the greatest number of the SARS cases. China-Hongkong Special Administrative Region (SAR), China-Taiwan, Singapore, and Canada were also listed as top five countries. The first probable case was recorded in November 16, 2002 from China and the last probable case was recorded in July 3, 2003 from the United States of America. Scholars have sought that understanding these data in preparation for future outbreak of infectious diseases was deemed necessary.

A situation report posted by the World Health Organization (WHO) gave a clear picture of the extent of the outbreak caused by Middle East Respiratory Syndrome Coronavirus (MERS-CoV) or commonly known as MERS. The infection was first identified in Saudi Arabia in 2012. Its 2019 report recorded 2, 494 confirmed cases with 858 confirmed deaths that approximately had a 35% fatality rate. MERS affected 27 countries. The largest outbreaks were recorded in Saudi Arabia, United Arab Emirates, and the Republic of Korea. Compared to SARS outbreak, confirmed cases are much lower in MERS outbreak. Viral transmission is attributed to human-to-human transmission which infers that close contact with someone who has the disease will trigger an infection. Majority of those infected are healthcare workers attending to the needs of patients It has to be noted that the fatality rate of MERS is greater compared to SARS. Cumulative data summary for the cases of MERS is unavailable as this is an ongoing still an ongoing outbreak especially in the Middle East.

In recent data provided by WHO (2020b), COVID-19 confirmed cases reached 22, 536, 278 confirmed cases with 789, 197 confirmed deaths. Amongst the 216 affected countries, areas or territories, the United States of America has the highest number of confirmed cases with 5, 477, 305. This is followed by Brazil, India, Russian Federation, and South Africa (WHO, 2020d). Although the numbers are still growing, China, where the virus originated, was able to contain the spread of COVID-19.

Table 1: Comparative Cumulative Cases of SARS, MERS, and COVID-19

Cumulative Number of SARS, MERS, and COVID-19 Cases Worldwide			
<i>Outbreak</i>	<i>Total Cases</i>	<i>Number of deaths</i>	<i>Case fatality ratio %</i>
COVID-19	22, 536, 278	789, 197	3.5
MERS	2, 494	858	35
SARS	8, 096	774	9.6

Source: WHO (2003), WHO (2019), WHO (2020b)

Table 1 above summarizes the extent of the three coronavirus outbreaks. COVID-19 has exponentially surpassed the number of confirmed cases and confirmed deaths of both SARS and MERS. Despite this, it has the lowest cases fatality ratio. However, MERS has the highest case fatality ratio at 35%. These data have shown the nature and magnitude of the coronavirus outbreak and transmission of the disease.

Journal Articles Used for Analysis

Table 2: Search Results for SARS And MERS Cov Journal Articles

Database	Search Words	Domain Filter	Results	Relevant Results
JSTOR	SARS and Policy Response	Health Policy, Public Health, and Public Policy and Administration	128	13
	MERS CoV and Policy Response	Health Policy, and Public Policy and Administration	2	2
SSRN	SARS and Policy Response	NA	24	1
	MERS CoV and Policy Response	NA	2	1
Taylor & Francis	SARS and Policy Response	Public Policy	65	1
	MERS CoV and Policy Response	Public Policy	0	0
Total Accessed / Reviewed			221	18

Table 2 summarizes the number of search and relevant results per online database following the search words “SARS and Policy Response” and “MERS CoV and Policy Response”. It also features domain filters Public Policy, Public Policy & Administration, Health Policy, and Public Health based on the database. 221 journal articles were accessed and reviewed based on the conditions set to generate search results. Also, there are 18 journal articles identified as relevant in this study, which will be used for further examination and analysis.

Common Themes on Journal Articles Regarding Outbreak Response Policies

These emerging themes from 18 journal articles cover are Initial Outbreak Response and Pandemic Preparedness and Risk Management. Both Tables 3 & 4 provide an overview of these themes and the corresponding policy narratives found in these articles. Table 4 summarizes the emerging themes and the corresponding policy narratives present in the analyzed journal articles on MERS CoV.

Table 3: Emerging themes and narrative policies on journal articles about SARS

<i>Emerging Themes and Narrative Policies on SARS outbreak</i>	
Initial Outbreak Response	<ul style="list-style-type: none"> • Mobility Restrictions • Isolation / Quarantine • Social Distancing • Vaccination and Prophylactic Treatment
Pandemic Preparedness and Risk Management	<ul style="list-style-type: none"> • Creation of Pandemic Plans • Community Involvement and Participation • Positioning of Public Health System • Governance

Table 4: Emerging themes and narrative policies on journal articles about MERS CoV

<i>Emerging Themes and Narrative Policies on MERS CoV outbreak</i>	
Initial Outbreak Response	<ul style="list-style-type: none"> • Mobility Restrictions • Infection Control Guidance
Pandemic Preparedness and Risk Management	<ul style="list-style-type: none"> • Strengthening of International Health Regulation • Public-Private Sector Involvement

It is evident that the narrative policies on MERS are lesser compared to SARS. This perhaps is due to the greater magnitude of SARS compared to MERS outbreaks. This also suggest the extent of the policy studies done on both.

4. DISCUSSION AND ANALYSIS

The analyzed journal articles and the narrative policies have been clustered into two emerging themes – Initial Outbreak Response, and Pandemic Preparedness and Risk Management. The extent and magnitude of the spread of the disease might be one of the reasons as more countries are affected by SARS compared to MERS.

SARS: Narrative Policies on Initial Outbreak Response

Analyzed literature revealed common narrative policies that emerged from the initial outbreak response are on mobility Restriction, Isolation / Quarantine, Social Distancing, and Vaccination and Prophylactic Treatment.

Policies on mobility restrictions are common across examined articles. Mobility restrictions include travel advisory restrictions and screening of passengers. These interventions were deemed necessary to control the spread of the disease from one country to another. Hollingsworth (2009) has noted the spread of SARS on the 27 countries on its first onset has been carried out due to overseas travelling. The disease was introduced to different continents because of the movement of probable cases from a populated country. Despite such policy, the success of this measure still lies on the nature of the infection. On the other hand, travel advisories and screening of the passengers are found to less useful in identifying cases. Espinoza, Castillo-Chavez, and Perrings (2019) argued that it may not be an effective control measure for the outbreak if it is assessed by the overall final epidemic. An established independent mobility and trade decision may already be sufficient to contain the disease.

Isolation and quarantine have been effective initial measures to control an outbreak. This has been shown in the narratives presented by Bennett and Carney (2011). Asia and Europe had similar approaches but differ in terms of execution and ethical considerations. It is further noted that China had its belated quarantine policies as compared to its experience with later outbreaks. Skeptics raised ethical issues related to quarantine and isolation policies, as they directly impact one's freedom of movement.

Social Distancing is also an initial outbreak response applied by countries. In light of COVID-19, WHO primarily endorsed social distancing to slow down the spread of the disease and avoid more infections. It has been argued that social distancing could induce negative economic impacts. Bennett and Carney (2011) further explained that school closures and cancellation of public events have disrupted socio-economic activities.

Past narratives and literature about vaccines have given this study an overview on its impending production, availability and distribution. Hollingsworth (2009) noted that only those who are highly vulnerable and susceptible to the disease may have access to the vaccine. Priorities will be given to those most at risk, to high-risk individual and those working to contain an outbreak. Bennett and Carney (2011) flagged that vaccines and medicines can also show disparities, if mass vaccination is not performed. This is one of the challenges that the policy makers should take into consideration especially when allotting resources and opportunities for vaccination and treatment. It is noted that discussion on infectious diseases receive relatively low attention to law and bioethics.

SARS: Narrative Policies on Pandemic Preparedness and Risk Management

Analyzed literature revealed that common narrative policies include Pandemic Preparedness and Risk Management are Creation of Pandemic Plans, Community Involvement and Participation, Positioning of Public Health System, and Governance.

The creation of strategies and plans is deemed necessary for pandemic preparedness and risk management. This sets the expectations and guidelines when mitigating an outbreak. It is evident pandemic plans should be created considering several factors to make it holistic. DHHS (2007) as cited in French (2011) mentioned that community preparedness and leadership, disease surveillance, infection control, vaccine and antiviral distribution and use, public health communication, and public workforce support should all be included in the plan. Seale et al. (2012) highlighted that pandemic plans should not only include patient care but also condition and welfare of health care workers, as they are involved in public health education, epidemiological surveillance, quarantine management and other containment measures. A data driven pandemic plan will also provide clearer solutions. Knoppers et al. (2010) provided recommendations on how genomic information can be utilized for public health research studies and policies. The role of genomic data in national pandemic plans helps one to understand information can address ethical concerns on confidentiality and consent, and impacts on public opinion.

Articles also highlighted the role of the community in creation and implementation of outbreak measures. Mastroianni (2009) emphasized the important role of community participation in carrying out public health responses and community-based solutions. Even in the creation of evidence-based pandemic planning, Knoppers et al. (2010) stressed that community consultation and participation are imperative to achieve effective management of public health emergencies. Kinney (2008), as cited in French (2011), highlighted that citizen involvement captures valuable public insights on a health outbreak is governed. These considerations can help policy makers and implementors in carrying out plans, and reduce risks and further threats to the people.

The positioning of public health system has gained wide attention based on narratives analyzed. This further highlighted strengthening the public health system to successfully prepare and respond to any public health emergencies such as a coronavirus outbreak. Narrative policies underlined that similar outbreaks I will continue to pose threats and can reemerge from the original or new animal reservoir (Koh & Sng, 2010). Yoon (2010) elaborated that it is important to consider the contending set of interests and concerns on governing epidemics and not only be bounded by empirical realities of public health situations. Among these concerns are the readiness of the health workers, who will serve as front-liners once an outbreak emerges, capacity of the public health system to respond to a public health emergency, and ethical considerations in addressing outbreaks.

The emergence of SARS in China revealed its deficiencies in terms of responding to a public health crisis. However, t health workers in China are still ready to partake in an outbreak response, with the awareness of the risks and fears that it will cause them (Seale et al., 2012). Considering the challenges that public health system is facing, Bennett and Carney (2011) recognized the need to build capacities both locally and with the help of other countries.

This has been mentioned when they acknowledged the key role of the new International Health Regulation, which set requirements for assessing and responding to public health emergencies of international concern. Also, this puts forward the developments made when Taiwan was admitted in 2009 as an observer at the World Health Agency. This addressed difficulties in the transmittal of information about epidemic diseases and its participation in global health debates (Chang, 2011). The experience of Canada has tremendously changed its public health responses. Post-SARS reviews were made and it revealed that recruiting and retaining public health staff was a challenge (Goel, 2012). Considering these challenges, at least in the Canadian context, it also recognized the need to put forward an agenda on ethics when responding to public health crises (Viehbeck et al., 2011). Moreover, it also highlighted that public health improvement in Canada can be achieved through a more representative workforce and optimization of positioning of public health in a larger public system (Neudorf, 2009).

Governance is also a key theme present in narrative policies. Fung and Loke (2010) categorized the SARS outbreak as a disaster in Hong Kong. They highlighted the importance of government's preparedness to minimize damage of property, economic losses, and loss of life. The emergence of SARS has brought problems to political leaders, which prompted governments to closely work with public health experts, but while still being challenged by the evolving nature of the problem (Christensen & Painter, 2017). In the case of China, on the first onset of SARS, public health problems were not seen as a threat to political and social stability. The narratives also stressed the role of local governments responses to a pandemic. French (2011) shared that local government decision making and policy implementation are increased when administrators and officials are perceived to act ethically and responsibly.

MERS CoV: Narrative Policies on Initial Outbreak Response

Common narrative policies from analyzed literature include Mobility Restriction and Infection Control Guidance. Initial outbreak response narratives were mainly captured from experiences documented by the Center for Disease Control and Prevention (CDC). Williams et al. (2015) gave an overview on how United States initially responded to the MERS outbreak. Mobility restrictions were contextualized in monitoring travelers' health and dissemination of health recommendations through the use of technology (eg., social media, website). This tremendously improved surveillance of entry points to the country to monitor possible imported cases of the virus. In terms of infection control guidance, CDC successfully increased its laboratory capacities to improve testing and strengthen health departments ability to manage future infections. More, health staffs were deployed to identified surveillance areas to monitor situations on the ground.

MERS CoV: Narrative Policies on Pandemic Preparedness and Risk Management

Narrative policies include Pandemic Preparedness and Risk Management are Strengthening of International Health Regulation, and Public-Private Sector Involvement.

Emerging narratives on MERS as regards pandemic preparedness and risk management are actually applicable to other pandemics and public health emergencies. Gostin and Katz (2016) highlighted the International

Health Regulations (IHR) as a governing framework for global health security. This covered core measures such as outbreak assessments, health strategies, workforce development, committee transparency and governance, enhanced compliance mechanisms, and enhanced role of civil society.

With respect to Public-Private Sector Involvement, Heled, Rutschman, and Vertinsky (2020) argued that government policy interventions in the context of pandemics should narrow down private interests from public health needs. This is one of the reflections made from the case of the USA, where policy responses are unlikely to yield pandemic treatments. This is especially if policies heavily rely on increasing private market incentives within the existing pharmaceutical markets. It is further elaborated that this will be achieved through greater involvement of the public sector in pharmaceutical research and development.

Despite limited literature on MERS, a critical mass of data on narrative policies is present. Discussions on the emerging themes of MERS have validated literature on SARS has mentioned.

The COVID-19 Initial Crisis Response in Southeast Asia

Narrative policies from SARS and MERS outbreak have shown similarities with respect to responses to COVID-19. Due to its geographical proximity to China, Southeast Asia became one of the first regions to experience COVID-19 (OECD, 2020). This prompted countries to respond to the rapid spread of the disease and implement policies to contain the infection. Like the previous coronavirus outbreaks, Southeast Asian governments employed mobility restrictions, quarantine policy, and infection surveillance.

At the onset, different containment measures across countries were tried and tested. According to the Center for Strategic and International Studies (2020), countries in Southeast Asia have implemented border controls and movement, and different strategies on infection control Thailand, Laos, Vietnam, Malaysia and Singapore imposed a national lockdown while the Philippines and Brunei Darussalam imposed lockdown in key infected areas (OECD, 2020). Mobility restriction became a policy across the region. Mobility restrictions include local travels, which is guided by government's respective policies and guidelines. In addition to existing containment measures, countries set curfew to restrict public movement. There have also been banning of public gatherings such as cinema closures, cancellation of cultural and religious gatherings, and suspension of classes and non-essential work were placed. In terms of quarantine and infection surveillance, Southeast Asian countries applied two different strategies. Malaysia, the Philippines, Indonesia, and Myanmar maximized its military units to execute and monitor government policy responses such as quarantine rules and contact tracing, while Brunei Darussalam, Thailand, and Singapore maximized technology to continuously track and trace the spread of infection and the rise of confirmed cases. Among the Asian countries, Vietnam and Singapore performed the earliest surveillance and policy response implementation.

The initial crisis response reflected the narrative policy themes from the past coronavirus outbreaks. It is evident that similar measures were implemented to contain and mitigate the spread of the disease. Mobility restrictions, quarantine and isolation measures, and infection control have become the most common government policy responses

across the region. In the case of Singapore, the country's experience on SARS guided its pandemic strategy (Siahaan, 2020). As early as December, Singapore initially conducted its independent research regarding the virus, which eventually led to border surveillance. Although the scenarios on COVID-19 are still developing, governments across Southeast Asia continue to monitor outbreaks, and develop policies to respond to various forms of crisis.

Global Health Security and the Coronavirus Narrative Policies

The analysis of the narrative policies cited in this paper is clearly connected to the understanding on Global Health Security. Experiences related to SARS, MERS, and COVID-19 have undoubtedly changed the way governments respond through policy agenda setting and policy creation. This paper outlined Initial Outbreak Response, and Pandemic Preparedness and Risk Management as emerging themes on the narrative policies of coronavirus outbreaks. It also revealed various measures that to contain viral infections. Moreover, the discussion on the initial COVID-19 responses of Southeast Asian countries has shown similar and improved containment measures brought by previous studies, or the country's prior outbreak experiences.

Narrative policies of the Coronavirus outbreak also contributed to visualizing the four recurrent themes on understanding Global Health Security as mentioned by Aldis (2008).

(1) *Protection against threats* – past coronavirus narratives have shown that policies were created to respond to the outbreak at hand. In some cases, the process also included discussions on inclusivity and how human rights are integrated. This was evident in discussions on the access to vaccines and medications, and restrictions to one's mobility and freedom. Narratives highlighted the role of the community in the creation and administration of the government's public health policies.

(2) *Emergence of new global conditions for which existing approaches are inadequate* – these stresses on the intersection between the concepts of classical security and health security. This is manifested in how states used the military to administer public health policies. This has been observed in the case of Myanmar, where the government's military unit has become responsible for ensuring public compliance and delivery of medical services in conflict areas.

(3) *Engagement of new actors, including military establishments* – The role of military has become apparent especially in the case of COVID-19. Narratives of previous coronavirus outbreaks only mentioned how the government and the public health sector are involved in policy creation and implementation. In contrast, the situation on COVID-19 involved the military in administering containment policies. This is evident in the cases of the Philippines, Malaysia, and Myanmar. The extent and magnitude of COVID-19 are far greater than SARS and MERS. Hence, this must explain why the involvement of military units in an outbreak response became necessary for these countries.

(4) *Linkage to foreign policy interests* – Narratives clearly revealed how the experience of SARS shaped discussions around policies and agreements improve outbreak responses. Most countries acknowledged that a disease outbreak or a pandemic is a crisis that countries should solve together. This was evident in the narratives on the inclusion

of Taiwan in the global health debates during the time of SARS and the strengthening of the IHR. Moreover, regional organizations like ASEAN spearheaded series of meetings on responding to the current COVID-19 pandemic. This also includes its external partners like the United States of America, China, and the European Union (CSIS, 2020). This puts disease outbreak as one of the priority agenda of foreign policies at present and in the future.

Understanding these narratives have shown the importance of understanding the concept of Global Health Security in the context of a disease outbreak. Moreover, narratives also provided discussions on how varied responses were developed through time as seen in the current COVID-19 pandemic. This proved that previous narrative policies regarding coronavirus outbreaks may contribute to future preventive and responsive measures.

5. CONCLUSION

The analyses in this paper covered Initial Outbreak Response, and Pandemic Preparedness and Risk Management as emerging themes from policy narratives. These are important in identifying policy agenda for future legislation and policies aiming to strengthen public health systems and mitigate the spread of COVID-19. It also provided discussions on how these narratives visualized Global Health Security in the context of disease outbreak responses. . With the given number of studies and literature about disease and infection control, there are more lessons to elicit from these public health emergency experiences and policy narratives.

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ECONOMIC DEPENDENCE AND ITS CONSEQUENCES FOR YOUNG FEMALES EXPERIENCING EARLY PREGNANCY IN TIMOR-LESTE (AILEU MUNICIPALITY)

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ABSTRACT

This research was conducted in the Aileu Municipality of Timor-Leste. It was carried out to investigate the consequences of young mothers' economic dependence in Timor-Leste and its correlation. This research aimed to identify the issues of young women's economic situation and its consequences, and to provide critical analysis on women's economic freedom, including promoting and empowering women's rights in the social, cultural, and economic sphere. The scope of this paper focuses on young mothers' financial insecurity in the household which put them at risk and suffering from economic dependence and vulnerabilities. The research seeks to find answers to a specific phenomenon under young mother's economic dependency and its impact on women economic rights, and the existing strategy they use in addressing economic income-generating problems within the household. A qualitative research approach was applied during the process of data collection of this paper. The 10 participants consisted of both young mothers, and their young husbands was involved in the indebt interview. This analysis enables us to better understand that for those who are lacking in power of decision-making and who have limited access to education, a progressive mindset challenges young mothers in decision-making. Education can transform the mindset toward self-advancement decision-making. Apart from the social context, the researcher found that women's economic insecurity under marital status become an influential factor to young mothers' economic dependency in Timor-Leste. Vulnerability of choices and male domination through Patriarchal norms and beliefs are conservatively considered as a strong influence within a household. It is believed that creating space for young mothers to access education and empowering them in decision-making will potentially increase their confidence in decision-making and advance the self-development of young mothers' in Timor-Leste.

Keyword: Young Mothers Under Early Pregnancy, Economic Insecurity, Economic Freedom, Domestic Violence.

AUTHOR'S BIO

Juvita Pereira Faria (lotsoflovefitha@hotmail.com) is a youth motivational speaker and current Human Rights master student at Mahidol University. I have been working and volunteering with many different youth groups, organizations, agencies and governments' institutions. My professional work experiences started in 2008 with UNICEF in Timor-Leste, Ministry of Justice in Timor-Leste, and Youth Off the Street Overseas Relief Fund organization in Timor Leste. Founders of YLDP-TL (Youth Leadership Development Program – Timor Leste) and JPF-ECS (Educational Consultancy Service) agency. Volunteering work with RYLA-TL (Rotary Youth Leadership Awards). Apart from professional field of work, I have recently attended international events and conferences as a representative of Timor-Leste."

1. INTRODUCTION

Rebuilding a country after 400 years of struggling against Portuguese colonization and Indonesian occupation has been a significant challenge for Timor-Leste in terms of establishing gender-based roles, particularly economic gender roles in the community. Some of the studies show that even after Timor-Leste gained independence, the patriarchal norms and beliefs that were a practice among societies remain well settled and acceptable. Therefore, the economic, social, and cultural rights of women is still violated and discriminated accordingly with a social structure in society. According to the Health Policy Project survey (2013), many vulnerable women who participated in the process of Timor-Leste's independence were at risk of experiencing suffering, such as cruel gender discrimination and gender-based violence. They also tend to get married at a young age and were more likely to face health issues. This practice leads women and young women to become more vulnerable to different forms of violence, including marital abuses (AuSaid, 2013. P.4). These experiences have been gradually raised in today's young women's movements and have influenced women's decision-making process.

As stated in Article 17 of the Constitution of the Republic Democratic of Timor-Leste, "women and men shall have the same rights and duties in all areas of family, political, economic, social, and cultural life." Looking at the constitutional and legal framework of women's rights in Timor-Leste, it shows that human rights concepts are well written and contextualized from women's situations in the country; it is furthermore emphasized through international laws. However, it has been challenging for many human rights advocates, international agencies, and national and local organizations to implement women's rights in society due to the existing social norms and beliefs.

Furthermore, many young mothers who get married at an early age have very little power in exercising their sexual relationships and in sharing household responsibilities with their partners. Sexual decision-making is a crucial challenge faced by young women in Timor-Leste; young women lack the power to engage in a sexual relationship. The cultural values practiced in the community continue to consider females as a subordinate group in which women tend to be powerless in sexual decision-making. As a consequence, social attitudes toward pregnant teenagers continually blame women for not controlling themselves. Similarly, these circumstances lead to a young female's economic situation of dependence on a male's decision and power. In this scenario, the husbands are the power control in the household and are the ones who influence women's economic income, because they decide whether women or wives would go to work and earn money. In one hand, the practice of patriarchy has become a social norm to many women in the community, and it has become a core mindset for women to obey the male's decision and to be responsible for all the house work. Apart from that, limited economic resources create gender economic inequality. Therefore, limited economic freedom, an abusive marital relationship, unavailable market opportunities, and limited access to education among young mothers are likely to be an influential aspect for pregnant teenagers' economic dependency in society.

Understanding the financial instability of women based on gender role has been a challenge for women's access to economic equality. Therefore, the central concept in this paper is divided into two issues - limited economic freedom and economic insecurity under marital status. Apart from that, the specific issues from the main conceptual

framework will be discussed throughout the paper, such as gender economic inequality, gender-based violence, gender inequality, and economic empowerment, including the impact of economic dependency.

2. LITERATURE REVIEW

According to the literature review in this paper, the following are defined from specific sections as follows:

The Limitation of Young Mother's Economic Freedom

Although the idea of income-generating has been discussed within international human rights organizations and national organizations and has been advocated throughout communities, in practice women are constantly experiencing discrimination and certain limitations in the community. Groups vulnerable due to their limited economic freedom, such as conservative parents, young mothers, and teenage girls, believe that limited financial income can cause domestic violence and other cruel treatment from their marital relationship. Their limited educational background lead them to a problematic situation of not enjoying their financial freedom, particularly those who are dominated by male decision. It still means to be accepted by women due to a lack of economic income in a household

Gender-based economic inequality is part of the influential factor in women's economic freedom that could lead to discriminations and different forms of violation. According to the International Covenant on Economic, Social, and Cultural Rights, men and women are entitled to be equal in sharing economic, social, and cultural dimensions. However, economic inequalities continue to be problematic in many societies, including Timor-Leste. As an illustration, a study in Marocco (Sabbe, at all, 2014) found that financial dependence was one of the leading tools that caused early pregnancy or child marriage within the household. Girls are forced to marry due to insufficient family income and primary needs limitations.

In the case of child marriage, for example, young girls believe for their parents and family members that marrying a man who is their parents' choice promises a good and adequate living standard for them in their future. Family financial insecurity leads young teenagers unable to decide with their autonomy or for their interest. According to a study in an Urban Slum of Delhi, explaining the marital history of adolescent girls, about 58.1% of married girls mentioned that family financial problem was the principal motive for urging child marriage (Taneja, 2019). On the other hand, an older woman from a rural area in Marocco explains that a father was giving his child to early marriage due to lack of financial capabilities, believing that her husband will sustain her well in the future (Sabbe,2014).

Apart from gender inequality, gender-based violence is one of the various problems young mothers who are married at an early age usually have to face along with social pressure and economic disadvantages. Hampton (2010) claims that child marriage is often associated with gender-based-violence, where many pregnant teenagers are more likely to experience pregnancy complications, such as giving birth prematurely, delivering low-birth weight infants, and miscarriage. According to Hampton, it is challenging to address the issue of pregnant teenagers from a contrary

view, especially in the countries where child marriage is common. Traditional and social values formed the gender norms and behaviors that led to attitudinal power over women in general.

Regardless of the legal and constitutional framework that is positively available, there are still a majority of women who continue to face inequality and limited opportunity to access the market. According to Hampton (2010), 44.5% of women married at the age of 18 in India, with a high social expectation of living, live under male control. Apart from that, impoverished parents believe that giving their children to marriage earlier would be protecting their future. Nevertheless, it is contradicting reality.

Women Economic Insecurity Under Marital Relationship

One of the elements of economic insecurity described by Conner (2014, p.356) is "the economics of intimate partner violence; Power and control." Women's economic insecurity becomes an opportunity for men to underestimate and control their intimate partners. These groups of women are economically insecure and become more vulnerable due to the power control by their male partners, including limited access to economic resources for women.

During the colonial period in America, the status of the marital relationship is considered as a power relationship for a male to control women's finances, property, sexual activity, and liberty. Conner (2014) explains that women have faced challenges and struggled for economic freedoms in their marital relationships during the colonial period in America. As a result, many women were not allowed to access their social, economic, and cultural rights in the household. It is part of the belief that domestic violence and cruel treatment within marital relationships, sexual abuses, and other mistreatment for women are the consequences of women's financial instability in the family.

The notion of marital relationship for males is an opportunity to devalue women's freedom. Women who regularly experience abuse from their partners somehow have very little chance to escape. Regardless of the autonomy, legal assistance, and family support they receive, women's financial dependence and economic instability bind women to their abusers. In this case, women are more likely to be dependent on their partners due to their financial insecurity- no income, no market access, family pressure, and lack of education.

A recent study from UNFPA Timor-Leste identified that male domination and family pressure disallowed those young mothers from earning money and to take only domestic work, as they are expected to be responsible as a mother or wife (UNFPA, 2017). These groups of women have less opportunities to express opinions within their households. As a result, many women desperately choose to stay in an abusive relationship. They then tend to sacrifice their freedom only to ensure their family's primary needs and to save their relationships from social judgment. In this case, cultural values and religious values firmly emphasize the role of women in the household, which also create such limitations for women in decision-making continually.

Furthermore, about 47 percent of married women aged 15-49 in Timor-Leste are lacking economic resources and are facing various social issues among society. A study from Timor-Leste Country Diagnostic (2014) explains that many married women have experienced physical and economic abuse from their marital relationships. Those

teenage mothers are facing many different types of discrimination and are economically vulnerable. Apart from that, the majority of young mothers who married at an early stage are more likely to isolate themselves within a marital relationship.

According to a historian Julie Matthew (cited in Conner, 2014. p.344), marital relationships influence women's economic control and labor market access. Matthew's research shows that marital status also contributed to women's discrimination and inequality when it comes to sharing economic roles in a household. For instance, in the colonial period, only men's work was intended to earn wealth, whereas women's production and work were only to serve her family and were restricted to domestic work.

The Impact of The Young Mother's Economic Dependency

Less financial income in the family becomes a leading factor in sustaining family needs and for further child development. As a young mother who has not attained full maturity and is lacking market opportunity, they are more likely to rely on their husbands economically. This dependency leads girls who marry young suffer from psychological disadvantages and social pressure (Delprato et al., 2015).

With rising domestic violence, psychological violence, physical violence, social violence, and sexual abuse are the most prevalent experiences of many young women and adolescent girls who have married early. Also, they mainly find themselves in severe isolation and mistreatment from their partners. One of the participants in the study of Handa (2015) on the Impact of the Kenya Cash Transfer for Orphans and vulnerable children on early pregnancy and marriage of adolescent girls describes her deep feelings, saying "After two months of marriage, I experienced different types of violence. He has beaten me hardly, obliged me to have sex unwillingly, insulted me bad words, and sometimes I was left without food. I could not tell anyone about this and preferred to keep silent and bear his cruelty and discrimination in order to escape troubles. Two months of marriage were sufficient to turn my life upside down."

Some other studies show many different challenges of pregnant teenagers in accessing school or returning to school after pregnancy. The majority of teenage girls simply stopped going to school once they discovered their pregnancy. This minor mindset limited them to overcome the challenges of returning to school and giving up advancing their careers, dreams, and hopes. UNFPA report 2017 explains that the fundamental reason or belief of young women who excluded themselves from a school learning process are: "1). They do not have any more courage to go back to school after having sex. 2). They are concerned about their status in school and are afraid that boys or men will bully her as a single mother. 3). The husband does not allow them to go back to school, and they accepted it.

Having less financial income also becomes a significant factor in rising domestic violence, which leads to psychological violence and self-isolation to most of the young mothers. Another leading impact of economic dependence is school drop-out, where the situation of being pregnant at an early age discourages young mothers to develop their skills and to participate in economic decision-making within the household.

3. METHODOLOGY

Qualitative research approach was applied during the data collection process. The data relied on secondary data approach, Semi-Structure Interview (S.S. I.), and observation method with 10 key participants, including young mothers, young husbands, and community leaders who associated with young mothers' economic dependency. The researcher also applied the observation method during the data collection in Aileu Municipality. Aileu was chosen as the site of the field study because it is a rural area. In general, young mothers living in remote areas face greater disadvantages compared to those who are in Dili, the capital of Timor-Leste because there are minimal sources to build up their self-confidence, to have social engagement, and to access related sexual and reproductive health education. This study, therefore, wishes to explore the specific challenges faced by young mothers living in rural areas of Timor-Leste.

During the data collection, the researcher considered certain criteria such as age gaps between young mothers married before 18 years old and after 18 years old, who are possibly turning to 19-24 by the time of the conducting of this study.

4. FINDINGS AND DISCUSSION

The literature review in this research strongly reflects the reality of the young mothers, including their husbands' economic situations. Most of the participant in this research was identified as a vulnerable individuals and mothers who have less opportunity to control or manage their own home and families.

Customary Practices Have Negatively Influenced Young Mother's Decision-Making

The complexity of traditional belief system in the sense of patriarchy and gender stereotype was identified as a significant challenge of women's economic empowerment in the society of Timor-Leste. For those young mothers who are already being discriminated and underestimated due to their inexperience and limited educational levels that contributed so much in their internal decision-making process. According to the data collection from the participants in Aileu Municipality, there are strong traditional beliefs and practices such as Barlake, Fetosan-Umane or Lia-mate lia-moris that are consequently implicated to the life of a young family's financial development in the household. Barlake or Lia or both are customary practices for the foundation of family relationship, creating a mutual respect or support between families in the name of solidarity and harmony. These local practices themselves require different elements and character according to the needs of families, with prices given in the name of patriarchy.

During the data collection of this research, one of the female participants explained, "After married to my husband in 2016, we have collectively worked to sustain our family. We live with our parents and brothers-sisters. We both work as a vegetable farmer with a small amount of money. In one hand, my husband has a temporal job as a construction worker and earning daily rate of 5 dollars for a particular building, the project is not constantly available;

otherwise my husband stays at home only.” When the researcher asked a young mother on how they share housework responsibility. One of the participants was confidently explaining, “I do not allow my husband to help in the kitchen; housework is for females. Even I get tired of doing all the domestic works, I rarely ask my husband help because even I ask, he refuses to help. He does external job and some as a farmer only”. It is indicated that the traditional mindset has strongly influenced and is practiced in the household and the community as a whole. Therefore, gender inequality continues to be a problematic within the household.

Educational Qualification Challenges Income in The Household

Limited educational qualification disvalues the young family’s motivation in promoting economic sustainability and financial development. With only a high school education, they hardly find jobs in the community to sustain family needs. Furthermore, even \$15 dollars of income a month is still acceptable for many young families in Aileu Municipality. In many circumstances, young mothers in this research who already have more than two kids tend to experience difficulties earning economic income for the family. Small businesses such as vegetable farms are very common for many young families in this community, particularly for young mothers to manage and make a small amount of money from the agricultural production and from the raised vegetables themselves.

Majority of the participants in this research have only experienced going to primary school and receiving a high school education. In this case, there are many obstacles faced by young mothers in terms of literacy and other educational qualifications which contribute to how they overcome social pressures or psychological pressure in the community. In addition, the biggest challenge faced by these vulnerable groups is the limitation of shared gender roles in the family.

Marital Relationship Influence Women’s Economic Freedom

When asking about the future plan for financial income, husbands normally have objections to whether women can handle family finances or contribute. This is because young fathers are also unemployed and are working in an agricultural sector, where the income generation within the family is not guaranteed. Future financial planning in the family is not guaranteed. They are lacking in financial management, and financial planning is not considered in the root income in the household. One out of the ten research participants state that “earning \$ 150.00 dollars salary per month is not sufficient to sustain my family life. Even we have extra informal income, such as domestic workers, however, it has never been easy to financially stable in the family due to the influences of cultural practices. it is culturally, the fetosan-umane or Lia-mate lia-moris have strongly contributed to the economic sustainability of the family.”

5. CONCLUSION

The power control in the household influence women's economic income because the husbands are the ones who decide whether women or their wives will work and earn money; males in the family are controlling women's decision-making. Limited economic resources are predominantly the reason for the gap leading to economic inequality based on gender roles. It seems that teenage pregnancy increases economic dependency or insecurity due to their vulnerability, lack of decision-making, marital influences, and cultural attitudes. These cultural values and economic misconceptions about economic roles increase women's economic insecurity, making them more vulnerable to domestic violence and such marital abuse.

The most significant argument here is that women's economic rights have been misconceptualized among women, young mothers, and the community as a whole due to the social norms that are still strongly practiced in the community. For many women who participated in this research, the idea of less financial income associated with domestic violence is acceptable in the family. The idea of economic freedom, financial income in the family, and economic management within the family becomes misread and misconceptualized.

Therefore, the idea of women's economic independence becomes meaningless to those women who are lacking economic resources due to their less educational background and the strong social and cultural norms practiced within the household. For many reasons, it seems that many vulnerable women tie themselves to their marriage status due to financial insecurity.

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GENDERED KNOWLEDGE AND NEGOTIATIONS OVER LAND RIGHTS IN A TIBETAN HERDING COMMUNITY IN QINGHAI PROVINCE, CHINA

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ABSTRACT

With the advent of globalization, Tibetan herders have been confronted with various forms of challenges, difficulties, and unequal gendered power relations. These, include livelihood uncertainties, privatization and commercialization of land, and increasing market forces. In Ser Tang community of Qinghai Province, China. Tibetan herders are facing challenges such as land scarcity, grazing ban policy, inequality of land distribution and land commercialization. These transformations impose various issues for the traditional communal grazing of local Tibetan herders. There are a few cases where women who are either married, widowed, and/or divorced are able to inherit land or access their own land from their husband's family, and parents and siblings. Most women are involved in herding and pastoral food production mainly for family consumption and income generation. Women herders cannot produce traditional food and earn income for their families if they cannot access land and natural resources. This paper draws insights from feminist theories to explore changing gender relations and Tibetan women herders' negotiation over land rights and their participation in the process of ongoing land privatization initiatives. It employs qualitative research methods such as in-depth interviews, participant observation and non-participant observation. In-depth interviews focus on herders' past memories, women's life experiences and gendered property rights changes, mining and conservation policies impact on pastoralism, and women negotiations over land rights. Participant observations seek to identify and understand village activities and herders' mobility in different seasonal rangelands. Non-participant observations attempt to generate knowledge on herders' ecological movement and herders' daily conversation.

Keyword: Privatization, Conservation, Gendered Knowledge.

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1. INTRODUCTION

Garret Hardin's (1968) thesis on "tragedy of the commons" had a large impact on the understanding of pastoralism due to famine and land degradation in the world. Pastoralism on common land was seen as 'open access of common land,' where there no restrictions and customary law to manage the land. Thus, pastoralism is based on open access understood to be 'mismanagement,' which resulted in 'overstocking', 'desertification' and 'destruction of resources' (Fratkin 1997). In China, since 1980, the Government has been converting common lands into private lands. Furthermore, 'hu kou' system is implemented to promote individual rights in land privatization. Land privatization in view of pastoralism led to economic differentiation and social stratification amongst herders in Ser Tang village. Moreover, these powerless herders are re-marginalized due to unequal land distributions and resources sharing. Divorced women and single mothers are also facing the 'intimate exclusions' at their marital village. Due to the conservation policies on land privatization, herders are experiencing land shortage resulting in different forms of 'pastoral ways of life'. The 'pastoral way of life' is not essentialist, and pastoral way of life has many livelihood types even it's not related to pastoral activities (Adriansen 2006).

Research Site

In 1955, the local government established the Ser Tang State-owned Farm in Ser Tang area, which belonged to the Government of Hainan Prefecture. It had five teams, mainly the horse team, sheep team, yak team, deer team and agricultural team. During that time, the farm leaders hired herders from both inside and outside Xinghai county to work for the state farm. After the dismantling of state-owned, the Ser Tang eventually became an administrative 'village' in 2002. It is located in the southeast edge of Xinghai County, 70-80 kilometers from the county town, and its average attitude is about 4000 meters. Ser Tang village has three seasonal rangelands, winter, fall and summer. The winter rangeland's average attitude is 3000 meters, while fall and summer rangelands are around 4000 meters above sea level. Ser Tang village has 630000 mu of land. 415900mu is allocated for productive grazing land and 5700mu is agricultural land. Ser Tang village has 569 households with 2186 people. 98% of people are Tibetan, while a few of them are Mongolian and Han Chinese. These demographics make it as one of the country's biggest pastures.

2. LAND PRIVATIZATION

In Ser Tang village, herders' land and livestock were mainly controlled by the state-owned farm from 1955 to 2002. Land was given to herders when the local government implemented a land reform policy in 2002. However, Ser Tang herders didn't get equal access to land based on family composition and livestock population. A rich family could keep more livestock and a poor family could not have more livestock when the state-owned farm ceased to exist. Before the farm got dissolved, it distributed some of its livestock to workers, and sold the rest to individual herders who wanted to buy them. In short, a rich family that had its own livestock got more land when land was allocated to them. The opposite is the case for a poor family. The land reform policy in Ser Tang was based on family composition

and livestock population, so this was one of the main factors that created glaring economic gaps among the herders during the process of land privatization.

3. MINING AND CONSERVATION

In 2002, the mining company came to Ser Tang, at a time when it had not yet fully become a village. Herders back then still considered themselves as part of the state-owned farm. The state-owned farm took this opportunity to continue its leadership in Ser Tang. They also then allocated land to the mining company. A few years later, herders observed that their environment, livelihoods and health had been severely impacted by the mining activities. The mountains collapsed because of the tunnels, a large number of livestock died due to contaminated water, and the chemical powder from the tailing ponds polluted the rangeland ecosystem. Mining activities created negative impacts on caterpillar fungi, which is a main economic source for herders' after the animal husbandry. In response to these impacts, since 2008, local herders organized various ecological movements. It took eleven years, in 2019, that herders were to put an end to mining development.

Due to damaged cause by mining in Ser Tang village, and herders' summer rangeland was protected by the state conservation project, herders were not allowed to graze their livestock in the protected rangeland. Thus, many herders have to buy extra land and grass from other places. Some could no longer herd, because they didn't have enough land to feed their livestock. In this context, the powerless herders' land had been occupied by the powerful herders. This arrangement impacted women whose land has been occupied by her relatives, neighbors and others. However, women are not a passive group. They use their own gendered knowledge to negotiate with different actors to claim their land rights.

4. WOMEN'S NEGOTIATION OVER LAND RIGHTS

This section describes three women's experiences with negotiating land rights. The participants' backgrounds are as follows:

Name	Age	Village	Residency	Occupation	Marital Status	Educational Level
Drolma	48	Ser Tang	Ser Tang	Herder	Remarried	Never attended school
Drolpe	45	Ser Tang	Ser Tang	Herder	Remarried	Never attended school
Tsema	57	Ser Tang	Ser Tang	Herder	Single Mother	Never attended school

Each woman's land rights' story consists of five sections: background of family, negotiation over land rights, summary and significant themes and narrative analysis. In this section, women's marital status is also included in the analysis. Some are single mothers, while others are widowed and divorced women. The marital status reflects different women's life experiences and their struggles with land rights in different contexts. The following information will be shared from a first-person perspective.

Drolma

Family Background

I am a herder and I am now 48 years old. I was married to my former husband at the age of 20. My former husband was from Ser Tang village and we had our first son, when I was 25 years old. My family liked my son very much, because he was the first child in my family. Before I had a child, my husband and I stayed with my in-laws and his siblings. After we had our own child, my husband's family was willing to divide the livestock between us and they also allowed us to have our own house. However, my husband's family didn't divide their land between us, so we grazed our livestock on the family's common land. Without our own land, we were still under the control of my in-laws. For 16 years, my husband and I lived together with my in-laws. Unfortunately, my husband passed away in a motorbike accident when I was 36 years old. After my husband died, I stayed with his in-laws for three years, and I grazed the livestock with them on our family's land, but I faced many problems. My father-in-law didn't allow me to graze my yaks on the winter rangeland, because they had sheep that had to stay on lower land during the winter. I needed to use my own money to buy extra land from others every year. I felt that it was unfair, because my four children and I had our own land in the winter rangeland, which was big enough for us to graze our livestock.

Negotiation over Land Rights

In 2011, I went to see the village leader who I knew very well. I was a little bit nervous when I brought this issue up to him, but I told myself that I needed to tell the village leader about my situation, because it was related to my rights. If I didn't bring this issue to him, I could not get my own land from my father-in-law. After he heard about my situation, the village leader was willing to help me. He told me that he would discuss this issue to other village leaders, and they would make decision. A few days later, village leaders came to see my father-in-law to discuss this issue. My father-in-law was very surprised when he learned about this. He didn't make any statement in front of the village leaders, and he told them that he would consider this issue. After the village leaders left, my father-in-law got so angry with me, because he did not that I would report this issue to village leaders. He never thought that I had the courage to claim land back from him. He then blamed me for damaging the family's reputation in the village. My father-in-law told me that it was impossible to redistribute land to me, because he didn't want to break the family's land. If land was redistributed, I would need to put up fences which requires a lot of work. He also said that, as a woman, I couldn't do all the work myself. At that time, I thought that my father-in-law would give up my share of the land. However, he finally agreed to, because he wanted to keep a good relationship with village leaders. In 2011, I got my land back and I was able to lead my own life. Actually, my brother was my greatest supporter. He encouraged me

to communicate with the village leaders. My brother also told me that I have the rights to get the land back from my father-in-law. My brother used to be the village leader and so he taught me how to talk with the village leaders.

When my first husband was alive, we rented land from the village monastery, which is located on the border of Ser Tang village and another village. The village monastery has 30 monks. Monks wanted to sell their land, because they had large areas of lands near the border. Our family was the first group who came to this place and bought land 22 years ago. In the early years, we didn't need to pay rent, because the monastery had their own livestock, which were donated by herders. Some of these livestock were free, so the monks needed someone to take care of their livestock. They also needed milk, butter and cheese, so monks allowed my family to stay here to take care of their livestock.

Now, I have remarried. My current husband has a good relationship with the monastery. The monks don't have the livestock now, so we need to pay 11000 yuan to rent 3000 mu of land from the monks. We spend most of our time here, and I feel that the area is my home as we have stayed here for more than 20 years. We have a deep and familial relationship with the monks already. I often visit the elder monks when I have the free time, and I bring them milk and butter. Two years ago, 8 families came to this area to buy land, to graze livestock on the monastery rangeland. All families, then, need to pay 50000 yuan to the monastery each year.

Monks do not really trust the other families like they trust us. These families don't have a good relationship with the monastery, so they need to pay the money on time. But for us, monks can be a bit flexible when it comes to payment of rent. Monks can sell their land to any herder if they want to, so we need to keep a good relationship with them, because we need to renew our land contract every year. It is very risky if the monks change their mind. To guarantee use of our land, we give them the deposit before our contract expires.

Now, my son is married and his wife has to work, both have to move to the town. For me, I wanted to be a herder and graze the livestock to support my son, as he does not have a stable job. My current husband treats my son like his own son. As a wife, I trust my husband and I let him decide everything at home. I never use social networks like Wechat, because I feel that I should respect my husband. Social networks like WeChat cause trouble and damage personal relationships sometimes. My husband also feels that I am a good wife and he also respects me and asks me for my opinions whenever he needs it.

Summary and Significant Themes

Under the patriarchal system, a father has more power than his son. For Drolma, she had to live under her father-in-law's control. She and her husband had no rights to own her husband's family's land. Drolma played the role of a good daughter-in-law until her husband died in a motorbike accident. As the mother of three children, she had to rely on land and livestock to make a living. This compelled her to take her land from her father-in-law. In doing so, she was supported by her blood brother who shared information on land ownership policies and encouraged her to use the law to defend her rights. Drolma's blood brother used to be the village leader so he knew how to communicate

with other village leaders and the local officials. Drolma first approached a village leader who she knew well and she asked him to convince other village leaders to discuss this issue. She used the village leaders' power to challenge her father-in-law, and she successfully took the land from him. In order to get more land, she built a good relationship with the local monastery. She also used the monastery's rangeland as her winter rangeland. She now grazes her livestock there and pays low rental fees. Moreover, families from Ser Tang also needed to ask for Drolma's help to rent the land from the monastery. In this case, Drolma has built the social capital with all families and monastery. In sum Drolma challenged a land power holder, her former father-in-law and also defied, patriarchal system in Ser Tang village.

Drolpe

Family Background

I am now 45 years' old and I work as a herder. In 2002, when common land was divided up and allocated to individuals. I have 4 children, but only 2 children were given land. Children who were born after 2002 are unable to acquire land, so now we have 9 family members, but only 7 people have land. In short, 9 people depend on 7 people's land. So, I should have fenced my land in 2002, but I was too poor to accomplish it. Fences are very expensive for a poor family like mine. As the female head of the family, I have faced many difficulties in my life. Moreover, we didn't have a strong man in my family. My father was very weak, so his siblings always used their power over him. When my father passed away, his brothers started to grab my land. My uncle (my father's younger brother) told me that they didn't get enough land from the local government, and they didn't have the caterpillar fungi on their fall rangeland, so they wanted to take it from us. My family land and my father's brothers' land are in three different valleys. The three valleys are next to each other, so they can easily take my land from me.

Negotiation over Land Rights

When I was young, my family was very poor and we only had 9 yaks. I was paid to herd for neighboring families until the land allocated to individual families. When the government pushed for land reform, I was given a big piece of land as it was allocated according to my family's size (7 people). I also have caterpillar fungi on my fall rangeland, but I had no money so I cannot put fences up on my fall rangeland. In 2013, I finally put fences around my land. I had 300 mu of fall rangeland and I bought 19 fences. In 2013, one fence costs 250 yuan (1 fence is 100 meters long). In spring, I could collect and sell the caterpillar funguses that grew on my fall rangeland. I had 30 yaks and a total income of around 60,000 yuan per year. In 2009, my uncle (my father's younger brother) started letting his animals graze on my land. In 2015, my relatives on my uncle side broke down my fences and took over my fall rangeland. They told me that I have no livestock and that my land boundary was not clear. I am no longer able to get income from collecting caterpillar fungi, so my livelihood depends solely upon the income from my 30 yaks. I also need to take care of my 4 children and my disabled younger brother. My eldest son, who is 18 years old, is a monk and my youngest son is still in school, so they cannot help me get the land back from their uncle. If he was not a monk, maybe he could help me, but monks cannot become involved in family issues. Now, all I can do is to put fences up

again when my uncle breaks them. I can also take photos to show how my uncle damages the fences and uses my land and resources.

In 2019, my uncle and other relatives wanted to divide the land again. My uncle invited some elder relatives to come to my family home. They told me that they wanted to divide the land again, and that I will also get an equal share of land from them. But I do not trust them. I know that if I agreed to this, they will only give a small piece of unproductive land to me, so I kept silent. And I pretended to know nothing, I told them that “I am a woman, I don’t know anything about land, so let the government divide the land between us”. Finally, they could not do anything, so they left. I’m worried that they will come again in future.

Summary and Significant Themes

Drolpe has no father nor husband, so her uncle can easily take the land from her. Drolpe’s eldest son is a monk, so he is unable to take care of family issues as his mother would want. Because Drolpe’s first husband died, herders didn’t recognize her other husbands. The herders’ think that Drolpe had many boyfriends, so they view her as an ‘inauspicious woman’. In the village, Drolpe has no social position as the herders have constructed her identity as a widow, even though she has a boyfriend now. In this context, Drolpe could not get support from others. Her relatives are not on her side. Although, she once tried to invite some tribal leaders to solve land issues, but her uncle didn’t listen to them. Drolpe felt that dealing with relatives was much more difficult than dealing with non-relatives, because she needed to consider about the family’s reputation in the village. Drolpe’s strategy was she put fences on her fall rangeland to protect her land. Her uncle destroyed her fences, but she is determined to put them up again. This is one way to resist her uncle every time. Fences serve to define the land boundaries and land ownership rights. When her uncle wanted to re-divide the land among family members, Drolpe used her acquired identity as a powerless and illiterate woman to negotiate with her uncle. Without her agreement, her relatives could not divide the land.

Tsema

Introduction

Tsema is a senior herder who never got married. She has three children and her youngest son is still living with her. Tsema’s son could not get married until he reached the age of 30. His family is very poor, so he has no money to get a wife. Tsema’s daughter-in-law hails from another village. Tsema felt that her daughter-in-law would leave them one day, because she may not be able to adjust this kind of life. Tsema has little confidence in her son and daughter-in-law, as she felt that her son could not be the family head without her. Tsema always stays in her village and she had few chances to travel to other places, even to the county town. Every time the researcher went to her village, she tried to see her and about her land issues. Tsema hopes that the local government can see the inequalities in land allocation and that they will redistribute the land to poor herders in future.

Family Background

I am a 57-year-old herder in the Ser Tang village. After the Ser Tang state-farm was dismantled in 1999, its land was re-allocated to us. My family got large plots of land and we were very satisfied because we had enough to survive and thrive. During the first land reform, Ser Tang state-farm leaders allocated the land to herders regardless of their ‘family Guanxi’. Every herder got an equal share of land. This was because the leader at the state-farm came from another village. He had no any relatives in the Ser Tang village, so he divided the land amongst everyone equally and he didn’t use his power over the herders. I appreciate this leader, as he was a good one. However, during the second land reform, the leader came from the Ser Tang village. He gave more land to his relatives and people from his tribe. He only gave small plots of land to the poor herders. A poor woman like me is powerless. Now, we are six in the family, and all of us need to rely on 300 mu of rangeland to survive.

Negotiation over Land Rights

My family is poor, so we could not get the land from powerful families in the village. I didn’t have a husband and I didn’t have any relatives in Ser Tang. Neighbor A wanted to take my winter rangeland as they needed more land. They used their ‘guan xi’ to bribe the leader when they divided land again. Neighbor A has a good relationship with the village leaders and his family is very rich in Ser Tang village. They told the village cadres that my family not natives of Ser Tang. My 87-year-old mother’s ra (black tent) could be approved that we are native people and that we moved to this place a long time ago. We are the first family who settled down in this valley. My mother lost her husband during the Cultural Revolution and she became a worker at the state-farm in Ser Tang. Based on this, we are natives of Ser Tang.

One day, a group came to see me and forced me to accept the unequal land division they made but, I resisted. This because they only intend to give me small plots of land. Most of my land was allocated to neighbors A and B. My winter rangeland is sandwiched between neighbor A’s and neighbor B’s, so they wanted to take it from me. All the people in this group were Tibetans from Ser Tang village, except one person who was a Han Chinese from outside. The Tibetan leaders told me that if I didn’t cooperate with them, they would not invite the Han Chinese person, who was responsible for dividing the land, again. The Tibetan leaders told me that if I let the Han Chinese person go back, then he would not come back to allocate the land to me. In this case, I would need to invite another person to define my land boundary, and I would need to pay him 20,000 yuan. The village leaders clearly know that I didn’t have the money to pay, so they thought that I would have to agree.

I could not help but cry in front of these people. Despite my predicament, the village leaders in this group didn’t listen to my voice, and they didn’t tell the Han Chinese person about my situation. I felt that the Han Chinese person thought that something was wrong with me and he wanted to know why I was crying. At that time, the Tibetan leaders didn’t listen to me and my only hope was that the Han Chinese person could save me. However, I could not speak Chinese to him and he could not speak Tibetan to me. The Han Chinese person asked the village leaders to

translate as one of village leaders could speak Chinese. I told my real situation to the translator but he didn't tell the truth to the Han Chinese person. So, the village leaders took my land and gave it to my neighbors.

The majority of my winter rangeland has been occupied by neighbors A and B. Now, I have less than 300 mu of winter rangeland (I don't know the exact size of the land, and I don't know how to measure it). The grass on my winter rangeland is only enough to feed 40 yaks for two months, so I have to buy extra land and have to move to my fall rangeland and village common land for the rest of the year. A few years ago, neighbor A occupied some parts of my fall rangeland; they told me that this piece of land belonged to them according to the land map. The village leaders allowed neighbor A to see the land map. The village leaders never allowed me to see the land map even though I requested to. As uneducated woman, I don't know how to measure the size of my land and boundaries, so I had to give this land to neighbor A. Afterwards, neighbor C came to see me. They told me that part of my fall rangeland was their land according to the land map. They wanted to take this land from me. At that time, I wanted to struggle for my land rights. So, I raised my voice like last time. If neighbor C takes this land from me, then I have no land to survive, so I must fight against neighbor C. I told them that this land was granted by the government and that they do not have any rights to take it from me. If he still wants to take it, I asked him to take my life before taking my land. Finally, neighbor C didn't grab my land. I knew that my neighbors use the land map to occupy my land. These rich herders would say 'let maps speak', especially on behalf of rich people, who want to take the land from poor people.

Now, my family is facing land shortage. We are unable to buy the extra land, so I have to negotiate with other herders whose fall rangelands are next to mine. I asked these herders whether we could make our fall rangeland as a common land to be shared among the 7 families. The advantage of communal land is that herders will not put fences on the rangeland, so everyone can do their herding together without land boundaries. In the beginning, herders didn't agree, because they thought that my land is small while their land is big. However, I told them that if they wanted to keep their land private, then everyone needed to put the fences on their land in order to prevent livestock encroachment. Yaks often damage the fences if herders do not watch after them. Owners of these yaks have the responsibility of fixing fences or buying new fences. I always watch my livestock and I would not let my livestock damage other families' fences. Finally, my neighbors agreed to graze the livestock together. Seven families' fall rangelands had been turned into communal land. I hope that the local government will re-allocate the land to us again, otherwise, we, poor people, won't be able to make sustainable livelihood.

Summary and Significant Themes

Tsema, who identified herself as powerless and poor, used three forms of negotiation to defend her land rights. Firstly, she saw that her neighbors wanted to exclude her from Ser Tang village for their own benefit. They perceived her as the "other", who for them has no rights to own land. In response to this, Tsema used the black tent to prove her identity as a native herder. The black tent is related to territorial rights, as it shows that whoever occupied the land first has the rights to own it. Secondly, when Tsema's land was occupied by her neighbors, these neighbors used the land map as a strategy for taking her land. At first, Tsema had no idea about the land map, so she didn't resist when these herders took her land. The land map, apparently, speaks for the interests of rich people. So, when neighbor

C tried to use the land map to take her land, she defended her rights by saying that she felt that her land is her life, and that taking her land meant taking her life. Finally, Tsema encouraged 7 families to turn their private land into common land by saying that if their yaks damage other families' fences, the herders will need to buy the new fences. The herders agreed to share their land, and Tsema gained access to the other families' land.

Narrative Analysis

Narratives on three women's personal strategies over land rights proves that strategies applied are diverse based on the person's condition and level of power. Gendered knowledge is involved in various forms of negotiation when both men and women tried to gain their land ownership rights. The first case shows how a women tried to gain ownership over land from her father-in-law. The gendered knowledge Drolma used here was to mobilize village leaders to convince her father-in-law. She clearly knew that her father-in-law respects village leaders, so she buildt a good rapport with them to gain the land rights. She also sustained good relations with local monastery to gain land access rights.

The second case highlighted how a poor woman struggled her land rights with her uncle. Her uncle sees that Drolpe has no social position in the village, because she is a 'widow' and has 'many boyfriends'. However, Drolpe put up the fences to protect her land from her uncle. Even though she is powerless, she used fences as her weapon to defend her rights.

The last case featured how a single mother struggled with her neighbors. When her neighbors accused Tsema of not belonging to the village, she used the black tent as an evidence to go against her neighbors, she claimed that the black tent could prove her identity is a native herder in the village, so she linked the black tent and territorial rights to improve her social position at the village. Tsema tried to convert the private land into common land with her neighbors. Through this, she gained access to private land of seven families. All three cases show how women produce the situated knowledges to resist and negotiate with land rights.

5. DISCUSSION AND CONCLUSION

The land privatization in pastoralism highlighted issues of economic differentiation and social stratification amongst herders, especially, the woman herders who are re-marginalized in unequal land distributions and resources sharing. Divorced women and single mothers were confronted with 'powers of exclusion' within their relatives and village (Hall, Hirsch and Li, 2011). In Ser Tang village, there are 80 poor households that are part of state poverty reduction project. Female headed households make up 81.25% of the population. Hence, 'feminization of poverty' is prevalent in the village. This concept, first used by Diana Pearce in 1976, is defined poverty linked to inequality impacting women. This mean that women unable to participate in community life and economic development due to cultural, social and economic factors (Veeran 2015). Women's experiences and their all aspects in poverty including lacked food, shelter and land, make women are voiceless and powerless by economically and politically. As Bina

Agrawal argues, Indian women's lack of access to land is often linked to traditional systems of patriarchy, customary system and legal system, all of these factors that prohibited women to inherit land from their parents (Agrawal 1989). Similarly, Ser Tang herders' access to land is related to patriarchy wherein men have more power than women. This is also link to a customary system that only men could inherit. Despite the ability to inherit land, women can be deprived of their land rights powerful men herders.

Here, the 'feminization of poverty' is linked to 'gendered knowledge'. The 'gendered knowledge' is the 'situated knowledge' and 'hybrid knowledge', which is in the forms of resistance and negotiation when unequal power relations involved in land rights and natural resources (Thomas & Twyman 2004; Anan 2008; Prasert 2008). Furthermore, it is about an exchange of ideas between the people when they wanted to have a deeper understanding about their situation. The gendered knowledge is not only about the community knowledge, but can be both community's and individuals' knowledge.

Findings of the study don't support Haraway's statement about that the situated knowledge is only for community, but not for isolated individuals. In Ser Tang village, herders experience both mining and conservation impacts. Hence, they are compelled to use their knowledge to go against these. When woman herders face difficulties in terms of land issues, they use their situated knowledge to go against their husband, neighbors, relatives and village leaders, thus the situated knowledge produced by both community and individual level.

Research findings further show that women's experiences are different according to their family background, marital status, education and politics of location (Nightingale 2011). This had resulted in women's varied strategies on their land rights also varied. Three women's negotiation over land rights shows that women have different knowledges and strategies to resist and negotiate with their father-in-law, relatives, neighbors and village leaders at the community level and beyond. Women were able to build social capital with village leaders, local monastery and neighbors to gain the land access rights and land ownership, especially the black tent and fences are related to territorial rights. Women herders use them as a strategy to resist and negotiate with their land rights. In addition, women's flexibility is involved in gendered knowledge. As they have to be more flexible when they are negotiating their land rights with men. Flexibility is, therefore, related to dynamic relationships and multiple identities, and people can shift their identities to gain land rights from ethnicity identity to individual identity (Yos 2008). Ong also argues that less advantaged groups are must be flexible when they wanted to acquire cultural capital. Based on this study, woman herders are less advantaged than their male counterparts. This is why they have to be creative and strategic to acquire economic capital (Ong, 1999).

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INTERNATIONAL POLICY ASPECTS ASSOCIATED WITH THE EXCISE SUGAR TAX POLICY: IN THE CASE OF THAILAND

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ABSTRACT

The purpose of this study is to examine the significance of how well-intended inter-national policy influenced other Intermediate countries' national policy (Hurrell, Cooper, Gonzalez, Sennes, and Sitaraman, 2000) through excising sugar tax on Sugar-Sweetened Beverages (SSB). Interviews and analysis of data had been collected from the period of 2007-2019, ranging from pre-SSB policy to the implementation of excise tax on SSB. The paper clarified the paradox between the overall public health and economic concerns and discussed how well-intended international policy had influenced certain players to act accordingly to its will. The pressure came from certain International Organizations, including the World Trade Organization (WTO) and World Health Organization (WHO). The situation is analyzed through the theory of Institutional Isomorphism – which gives clearer perspectives of why and what made Thailand act the way they did.

Keyword: Sugar Tax Policy, International Relations, Institutional Isomorphism, International System.

AUTHOR'S BIO

Karntera Srimanote (karntera.s@gmail.com) is currently a Master of International Relations student at Thammasat University, as well as, an International Trade Specialist at Kasikorn Bank, Ratburana. Her interest has always been on social studies and development until these recent years where she found that International Relations and economic development plays a big role in influencing the direction of the nation's economy – that was when she decided to take a degree on International Relations as well as work as an International Trade specialist at a bank. Her interest on the excise sugar tax policy in Thailand happened back in 2018 when she gets to talk with some farmers and the fact that they are suffering by certain burden, coupled with news during that time regarding Thailand's implementation of the excise sugar tax policy on certain products in which she was interested in the paradox between the overall public health and the impacts toward the economy which led her to this thesis research.

1. OBJECTIVE

This paper aims to explain the significance of how well-intended international policy influenced other countries' national policy - especially the intermediate states.

2. INTRODUCTION

There is extensive literature exploring the type of states that obey international law and why they obeyed through the lens of classical International Relations (IR) theories, such as realism, liberalism, and constructivism. Going beyond these classical IR theories, this paper adopted the sociological theory of 'Institutional Isomorphism' for a deeper understanding of states' behavior within the global system. It aims to understand how it sometimes undermined the interest of individual states. As for the case in Thailand, in adopting the excise sugar tax policy specifically on Sweetened-Sugary Beverages (SSB), the policy liberated the domestic sugar price and ended the quota system by following the well-intended international policy, which placed an endless burden on the domestic agricultural sector or the sugar farmers - especially smaller ones.

3. LITERATURE REVIEW

The agricultural sector is Thailand's major source of national income. Sugarcane and sugar are included in the list of major agricultural products in the country. These had created more than THB250,000 Million or 21% of the total agriculture GDP (Preecha, 2017). Hence, sugarcane and sugar industries play a big role in Thailand's economic growth.

In Thailand more than half (40-60%) of Thai adolescents consume soft drinks daily. Studies argued for the direct correlation existing between Thai adolescents consuming SSB daily and the obesity rate in Thailand (Taxing on Sugary Drinks, 2017). Viewing SSB as the main cause of the problem, the Thai government introduced the excise sugar tax on SSB.

The 'Study on the Suitability and Impact of the Policy on Increasing the Excise Taxation on Non-alcoholic Beverages' by Dr. Attakrit Patchimnan (2018) had analyzed the outcomes of Thai government's adoption of excise tax on SSB to promote a better public health. However, the study proved that there is no clear evidence showing a positive result toward overall public health after the increase in SSB tax.

Approximately 44 countries around the world implemented taxes on SSBs (Prevention Tax and Pricing, 2020). Among the top five world sugar exports, three countries, including Thailand, implemented the specific excise sugar tax on SSB, where Thailand is the only country with ad valorem tax as well. The introduction of excise tax on

SSB in Thailand was due to the drastic increase in the diabetes rate and the projected scenario that highly impacts the overall public health, and the cost of it (Srivanichkorn, 2017).

An increase in SSB tax will result to higher costs for the government than benefits in the long-term, and possible outcomes for increasing SSB tax could lead to a decrease in the amount of investment that SSB industries, manufacturers, importers and other relevant industries – both local and foreigners – could do. Taxing on specific products do not reflect a wide approach towards the expected outcome, rather taxing any products with exceeding sugar content is the best approach (Francis, Marron, and Rueben, 2016).

4. METHODOLOGY

Qualitative Method with Inductive Approach

Method

To satisfy the objective of this paper, the qualitative method will be carried out. The qualitative method included a focus group discussion, a review of past papers, historical accounts and news, as well as an analysis of past figures and reports.

Subject	Amount	Explanation
Time-Frame	2007-2015 2016-2019	2007-2015: the supporting packages provided for the sugar industry were introduced. This include, 1) low production cost, and 2) low transportation cost (especially to China and Indonesia)
Focus Group (Interview)	1. Thai sugarcane farmers (from the North, Central, Northeastern, and Eastern parts of Thailand) 2. Thai sugar mills: Two major Thai sugar mills	1. Two farmers from the North, two from the Central, three from the Northeastern, and three from the Eastern parts of Thailand. 2. Confidential (mentioned during defense)
Data Collection	1. Historical Accounts: Case studies during the European Regime 2. Statistical data ranging from 2007-2015 and 2016-2019	

5. THEORETICAL FRAMEWORK

'Institutional Isomorphism'

According to the “The Iron Cage Revisited: Institutional Isomorphism and Collective Rationality in Organizational Fields” by DiMaggio and Powell (1983) various organizational structures and practices are very similar in many certain ways, and the reasons of these similarities had been explained under the three Institutional Isomorphic processes – coercive, mimetic, and normative.

These three isomorphisms tend to intertwine depending on certain situations and different outcomes. In this paper, the concept institutional isomorphism is used to explain the terms and policies of countries, of which, greatly depend on the position they are in, what pressure that certain countries received at a specific time, what forces it had received, and how the professionalization of other countries had influenced that certain country to do something or to decide on a certain policy.

Putting things to a clearer perspective in light of the case of the sugar tax policy, the intertwined relationship of the three Institutional Isomorphisms is shown in Figure 1. Coercive, Mimetic, and Normative Isomorphism occurred in different situations and gave different results brought out by various aspects. These consisted of the position that organizations are in.

The concept of ‘Country-Specific Characteristics’ (Jou & Techakehakij, 2012) is used in order to add a clearer explanation of the uniqueness of the social, economic, cultural differences of each countries and why one policy cannot apply to all.

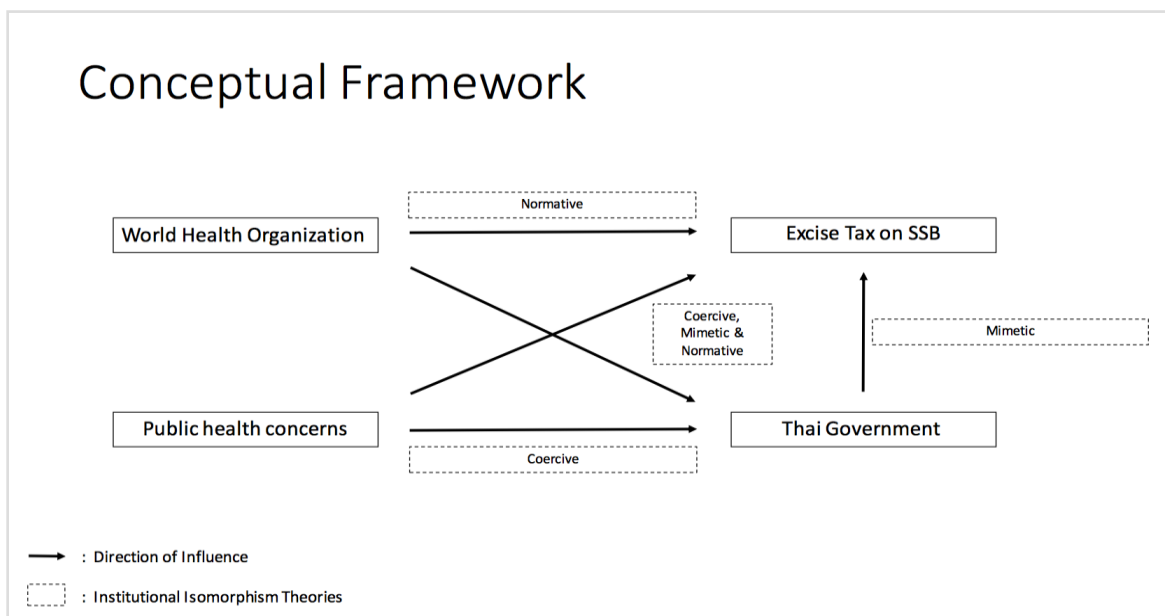


Figure 1: Institutional Isomorphism on Thailand's Sugar Tax Policy

In the *'International application of sugar-sweetened beverage taxation in obesity reduction: factors that may influence policy effectiveness in country-specific contexts'*, the author highlighted the uncertain influences that could impact the volume of SSB tax in different countries. The three influences raised by the author include population obesity prevalence, soft drink consumption levels, and existing baseline tax rates. In other words, each country has different backgrounds, where the author coined it as 'country-specific characteristics.' This proves that the same policy doesn't always result in the same outcome. In countries with baseline tax rates that are already high, policies might not directly impact the increase in SSB tax, and thus the increase in SSB tax does not always lead to its original goal of promoting better health while generating revenue.

6. RESULTS

The results point to no evidence on an overall improvement in public health from excise sugar tax policy on SSB. There have been no evidence showing whether consumers switch to other substitutes far worse than sugar. Therefore, implementing excise tax on SSB is not as effective because there is no systematic proof showing that the excise tax results in a better overall public health. Moreover, it had been stated that for the excise tax policy to reduce the consumption of SSB, the policy should aim for people with a high degree of elasticity of demand such as the low income. However, even those from low incomes can switch to other substitute products and unhealthy and sugary foods are still available in markets.

The overall Thai Sugarcane industry income and revenue fell due to the supply exceeding the demand. While Thailand remains as the world's second-largest sugar exporter with 11.04 million metric tons. The overall Thai sugar exports (as of August 2019) had decreased by 16.7%. This is the worst revenue fall since 2013. Meanwhile, the supply of sugar in Thailand remains high at 14.6 million tons as of 2018/2019, with a slight decrease by 0.9% from 2017/2018 at 14.7 million metric tons. As for the sugar mills in Thailand in 2016/2017, there were 52 sugar mills. In 2018, 2 mills had opened and had a capacity of 24,000 tons of cane per day. According to the USDA, many farmers had already shifted from cassava cultivation to sugarcane cultivation with the expectation of getting higher returns. While the Food and Agriculture Organization of the United Nations (FAO) stated that under several unfavorable kinds of weather during the growing seasons led to the decline in sugarcane prices, many sugarcane farmers, especially in the Northern parts, had shifted to other cultivation, mainly rice.

The case worsened as the Thai government ended the 70:30 practice, due to Brazil claiming that this profit-sharing system is an irregular subsidy which caused the global sugar price to fluctuate due to overproduction, which goes against the WTO (Subsidies Concerning Sugar, 2016). The sudden attack from Brazil against Thailand on the WTO dispute and the unexpected result from the WTO had brought Thailand's sugar industry into a downward position, which directly hit the majority of Thai sugarcane farmers who no longer have the agreed-upon profit sharing system to negotiate with bigger players in the market – sugar mills and high ranking governments.

Majority of sugar farmers' income had fell. According to the interview with 10 sugarcane farmers from the North, Central, Northeastern, and Eastern parts of Thailand, many had claimed that their income from sugarcane had been decreasing for decade, even though there has been aid from both public and private sectors. The government would subsidize once the situation turns for the worse and they tend to act a bit faster due to the fast-spreading of words. However, only three out of ten interviewed farmers stated that they have received such form of help, while the rest said that most subsidies have never really reached them in the amount that has been reported. The financial aid usually fell into the hand of the head of community and did not reach small scale farmers.

7. CONCLUSION

Ranging from the excise sugar tax policy to the response to WHO's concern over the quota and profit-sharing system, Thailand's short-term obstacle was solved but the long-term impact then fell upon the overall economy as a whole, which especially hit the farmers. By allowing the domestic sugar price to float accordingly to the global market, where the price was falling, the domestic sugar price fell to its lowest since the 1970s. Government's short-term compensation was not the answer, because there wasn't enough money from the sugarcane fund to compensate such loss. Overall, the hope for positive overall public health from excise sugar tax policy turned out negative, forcing people to turn to other substitutes.

8. RECOMMENDATIONS

Policy Recommendation (WTO's Dispute)

Thailand's immediate response to the WTO's concern by allowing the domestic sugar price to float accordingly to the global sugar price (Chuasawan, 2018) ended the quota system. Due to the pressure from international players, when the WTO announced that Thailand's quota system was the root cause of the global sugar price fluctuation (Ramangkul, 2018), the state ended such profit-sharing system immediately as it violated WTO's standard. Thailand ended its long-standing profit-sharing system and enabled the domestic sugar price to float in order to ease the global tension.

Instead of an immediate action to the International's concern by passing regulation to liberalize the domestic sugar price as according to the global price, the government could take a step back and request for more time in order to handle the domestic situation. This is necessary to give an advance notice to our domestic sugar farmers and other relevant players within the sugar industry. This can be done by leveraging the comparative advantages that Thailand has, as Thailand's land and environment is suitable enough to produce up-to-standard quality agricultural crops in comparison to the up-to-standard quantity of export products to other countries.

Policy Recommendation (WHO's Concern)

On the other hand, the Thai government's response to the WHO's concern on the high number of people with diabetes and overweight people (5 Year NCDs Prevention, 2017) was discussed. The projected future growth could lead to a huge burden for the government in terms of health treatment, especially when Thailand is moving towards the aging population problem (Helpageasia, 2019). As Thailand is one of the countries that consumes the highest amount of sugar per person per day (Kriengsinyos, Chan, and Amarra, 2018), it is reasonable for the government to do something. The decision was then to pass the policy to limit the sugar consumption in soft drinks, by taxing the sugar contained in each drink on the SSB companies. It would be effective if the policy directly benefits the overall public health, unfortunately, however, there had been no proof showing the positive correlation from the excise tax on SSB with a better public health. Only negative impacts toward the economy were observed.

Therefore, to ensure the effectiveness of the policy, the government should not focus on certain products especially when that product tends to play a big impact on the country's economy. Rather, it is important to research and revise other harmful ingredients contained in ready-to-eat meals and to control the sugar included in foods and drinks. This would ensure the effectiveness of the improvement of overall public health. Though at the cost of the economy, these may result to positive benefits toward public health. Due to the ineffectiveness of the excise tax sugar policy on SSB, which led to inadequate results in improving public health, and worse, led to more costs for the economy, with the current excise tax policy on SSB, other methods should be researched and implemented.

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TRACING THE THOUGHTS BEHIND XI JINPING'S INTERNATIONAL STRATEGY: A MANIFESTATION OF A CHINESE SCHOOL OF INTERNATIONAL RELATION?

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ABSTRACT

The purpose of this research is to understand the way of thinking behind Xi Jinping's international strategy that deemed existing Western-centric International Relations Theories (IRT) irrelevant and deficient in their attempts to analyze it. As many scholars believe Xi Jinping draws inspirations for his international strategy from teachings of Confucianism and Legalism, this research examined the key themes of Confucius's and Legalist's teachings and compare them with the key themes found within Xi Jinping's international strategy. The result indicates that Xi Jinping's international strategy reflects the characteristic of being "Outside Confucian, Inside Legalist" that many historians use to describe China's political tradition since ancient times. Xi Jinping's international strategy, although discourse-specific, aims at utilizing peaceful means in handling international relations, which can be said to hold similar characteristics to Confucius' teachings. The teachings utilized to ensure the ultimate world order where peaceful handling of international relations can exist, at least at the moment, reflect that of legalist teachings. Legalist means are employed to lay the foundational work in creating an international environment that adopts the Confucian way.

Contributing to the conceptualization of a Chinese School of IR, it is discovered that though there are noticeable similarities between Confucian and Legalist inspired way of thinking behind Xi Jinping's international strategy and existing western concepts, there are key differences, such as their views on the issues of equality, morality, and acceptable forms of government. These play a crucial part in producing an alternative understanding through existing international relations theories and concepts.

Keyword: Xi Jinping, International Strategy, Confucianism, Legalism, Chinese School of International Relation.

AUTHOR'S BIO

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1. INTRODUCTION

Although there are numerous IR theories in the world today, most of them were developed in the Western sphere. With this in mind, many are prompted to question the suitability of these existing theories as analytical tools for non-western countries who share a totally different history than that of the west. In the article entitled *Why Is There No Non-Western International Relations Theory? An Introduction*, an assertion is that “We start with the premise that there is now a substantial body of theory about international relations (IRs), but that almost all of it is produced by and for the West, and rests on an assumption that Western history is world history. The puzzle for us is that the almost exclusively Western sources of international relations theory (IRT) conspicuously fail to correspond to the now global distribution of its subjects (Acharya and Buzan, 2007, pg.288).” In light of this, many have begun to explore the possibility of there being non-western international relations theories.

According to Amitav Acharya (2014), non-western IR theory already exists in its early stage as ways of thinking that are different from the west but have yet to be developed or conceptualized into actual theories. Several scholars argue that amongst the different countries, China is the country most likely to be able to develop a Chinese School of IR in correspondence to its rise as a major power (Wang, 2009; Acharya, 2014; Zhang and Chang, 2016). According to Qin (2007, pg.35), “So far, the consciousness of developing a Chinese school of IR theory has been increasingly awakened.”

Under the leadership of Xi Jinping, this fact became more evident. Under Xi’s leadership, there is clear evidence of him rejecting western discourse, and instead, promoting and adopting the usage of ancient Chinese thoughts and practices of past leaders as basis for his way of thinking and way of conduct (Kawashima, 2019). Many scholars begin to witness existing analytical frameworks unable to produce an efficient analysis of China under Xi (Zhu & Lu, 2015; Zhang & Chang, 2016). With this in mind, this paper posits Xi’s international strategy as a manifestation of Chinese School of IR in its early stage that reflects a way of thinking unique to China, and which has deemed existing Western-centric IRT deficient in their attempts to analyze it. In governing China, rather than using any existing frameworks and/or theories, scholars believe that Xi Jinping is inspired most notably by the teachings of Confucianism and Legalism (Lin, 2018; Bougon, 2018). Relying on this information, this paper aims to look at the extent in which Xi Jinping’s international strategy reflects a way of thinking that is based on China’s own ideational legacies – on the teachings of Confucianism and Legalism.

This paper focuses on studying Xi Jinping’s (2014) “New Model of International Relations” as his international strategy. This paper looks at two aspects of this strategy – the discourse and the actual practice. As for the study of the teachings of Confucianism and Legalism, the focus is only on the aspect of their teachings relevant to the issue of governance to make it relevant to the study of Xi Jinping’s international strategy. It also looks at the kind of world these teachings aim at creating and what seems to be the ultimate goal of following through with their teachings. For both the study of Confucius’ teachings and Legalist’s teachings, this paper limits its scope on the English-translated versions of important texts where their teachings can be found due to the author’s limitations in reading ancient Chinese language and accessibility to materials. For the study on Confucius’ teachings, the focus is

on the translated versions of the Analects which is an ancient Chinese book collection of Confucius's teachings. This paper mainly focuses on the English-translated version of the Analects by Burton Watson, one of the world's best-known translators of the Chinese language. For the study of Legalist's teachings, there is no commonly acknowledged founder of the school. However, a scholar known as Han Fei is acknowledged as being the greatest Legalist and that his work represents the most complete and comprehensive body of Legalist teachings (Fu, 2015, pg.30). The teachings of Han Fei can be found in a book known as "Han Feizi." This paper focuses on studying the English-translated version of this book by Burton Watson as well.

2. XI JINPING'S INTERNATIONAL STRATEGY: THE NEW MODEL OF INTERNATIONAL RELATIONS

When Xi Jinping inherited China, one of the first few ideas that he promoted was the idea of obtaining what he termed as the Chinese Dream. According to Xi Jinping,

The Chinese Dream is a desire for happiness, similar to the dreams of the people of other countries. The people can attain happiness only when their country and nation thrive. China will thrive only when the world prospers. China provides positive energy for world prosperity and development by holding to the path of peaceful development (Xi, 2014).

To Xi, obtaining this dream is the ultimate goal. This is the ideal scenario and condition he wishes to create to further China's development. He wishes for a peaceful world as he believes this would be most beneficial not only for China's development but also for everyone else around the world as well. Xi has stated that not only will his vision of the Chinese Dream benefit the people of Chinese ethnicity, it will also benefit the people of the rest of the world. Xi wishes to create the ultimate world order favorable for everyone. According to Xi,

To realize the Chinese Dream, we must pursue peaceful development. We will always follow the path of peaceful development and pursue an opening-up strategy that brings mutual benefits. We will concentrate both on China's development and on our responsibilities and contributions to the world as a whole. We will bring benefits to both the Chinese people and the people of the rest of the world. The realization of the Chinese Dream will bring the world peace, not turmoil, opportunities, not threats (Xi, 2014).

With this in mind, under the leadership of Xi Jinping, China promotes an international strategy known as the "New Model of International Relations" that aims at creating this ideal world order and a shared beneficial future for all mankind, that revolves around the concept of a win-win cooperation. This international strategy is adopted to promote Xi's Chinese Dream vision to the world.

There are two key features to this "New Model of International Relations." The first key feature is to find the common interests, the common ground, between China and the rest of the world so that all parties can benefit from the

relationship, thus creating and sustaining the peacefulness of the world (Ministry of Foreign Affairs of The People's Republic of China, 2016). The second key feature of this strategy is to replace the more confrontational means of handling international relations with a more peaceful one (Ministry of Foreign Affairs of The People's Republic of China, 2016).

The Belt and Road Initiative is the project that puts Xi's new model of international relations strategy into practice and showcases to the world that China is really going to follow through with this international strategy. The Belt and Road Initiative is the project that really showcases China's vision of forging harmonious relationships with different countries around the world and their plan to create a world where everyone develops together and benefits together. According to Liang and Zhang,

Unlike the manner in which great nations historically rose to power, that is, using force to take advantage of other countries and adopting a "winner take all" strategy, the Chinese Belt and Road initiative upholds the idea of "letting oneself live well and also letting others live well." The belief is that the flame will be highest when everyone picks up firewood, and the thinking is that development is good only when everyone develops together. One must start from the fundamental basis of seeking mutual benefits and win-win situations for every country along the route. This idea fully reflects China's determination to achieve peaceful development and its sincerity in practicing the justifiable benefit concept of "being generous to the people in the world when one is rich" (Liang & Zhang, 2019, pg.4).

On a quick look, this international strategy may seem all idealistic and quite utopian-like. It paints China as this peace-loving country who aims at creating harmonious relationships with others. This is not false. Nevertheless, according to Xi, though China seeks the peaceful and harmonious road in handling international relations, they will not shy away from acting out when they feel like their national interests have been threatened (Xi, 2014). Peaceful handling of international relations can be adopted on the side of China under one condition that it must not come at the expense of China sacrificing their national interests and legitimate rights. National interests and legitimate rights must always be safeguarded and should not be ignored in the process of finding the common interest or common ground between China and the rest of the world.

China will never pursue development at the expense of others' interests, but nor will China ever give up its legitimate rights and interests. No one should expect us to swallow anything that undermines our interests. China pursues a national defense policy that is in nature defensive. China's development does not pose a threat to any other country. No matter what stage of development it reaches, China will never seek hegemony or engage in expansion (Xinhua, 2017).

3. THE CONFUCIAN ASPECT OF XI JINPING'S INTERNATIONAL STRATEGY

The Peaceful Development Promotional Discourse

Discourse-wise, drawn from what one can see and/or hear from China and even Xi Jinping himself, it can be said that the key aspect of Xi's international strategy is to promote a peaceful world order while utilizing peaceful and cooperative means. It has been repeatedly mentioned by the leader himself of how much he yearns to create a peaceful world order where different countries can co-exist peacefully with one another, and values the potential benefits that he believes the ultimate peaceful state of the world can bring about.

Xi Jinping's belief of peaceful development being the way to go in creating the ultimate world can be said to reflect Confucius's teachings about the means the ruler shall utilize when running the government in order to recreate the ultimate Tian-Xia world order. From what was discovered within the Analects, Confucius believed that a "just" ruler possesses the qualities of virtue, compassion, and conscientiousness, and promotes the usage of peaceful means – uplifting those who are good (raise the good people), promoting order, promoting virtue, promoting the practice of rituals, and promoting the trust of the people (Watson, 2007). This is the 'correct' way that will enable the ruler to recreate the ultimate world order of peace and harmony – the Tian-Xia world order, that China once enjoyed during the Zhou Dynasty period.

This ultimate world order that Xi Jinping's "New Model of International Relations" aims at achieving can also be said to hold similarities to the ultimate Tian-Xia world order that Confucius envisaged back in his days. The Tian-Xia world order back in Confucius's days entailed that all different ethnic tribes peacefully co-exist among one another under the rule of the Son of Heaven. The Chinese Dream world order of Xi's entails that all different countries peacefully co-exist among one another under the conditions provided by China. Xi Jinping's international strategy aims at creating this ultimate world order that Confucius had envisaged.

One other aspect of Confucius's teachings that Xi Jinping's international strategy can be said to reflect is in the beyond-territorial-boundary beneficial nature of its coverage. Xi's international strategy does not only aim at creating a peaceful world for China, but a world favorable to everyone. This is similar to Confucius's teachings that aim to establish a grand union that would be beneficial for the people of all ethnic tribes (Chan, 2008).

However, the world today is made up of different sovereign states with defined territory enforced by the treaty of Westphalia. The Westphalian order is the natural order of the world today. Interactions between one another is considered 'international' interactions defined by the "us versus them" sentiments. With this in mind, the obstacle that remains for Xi Jinping is how can he communicate this ultimate world order vision of his to the rest of the world and have them buy into this vision of his.

Xi Jinping assumed power at a time when China was already experiencing economic success (Naughton, 2006). Though the China Xi inherited may not have been one without challenges, it cannot be denied that the economic success story that China has experienced thus far had placed many in awe of the country's capability. This very fact

itself plays out in favor of Xi Jinping. People acknowledged China as the new rising star. This gives Xi Jinping the opportunity to voice out and showcase the ultimate international order of his ideal.

The Belt Road Initiative is Xi's attempt to showcase to the world the "what could be" scenario; the vision and the benefits that can be achieved if other countries work together with China. This is the project that emphasizes China's wish to utilize peaceful means in handling international relations to achieve a win-win cooperation with different countries. This is not only apparent via the Belt Road Initiative project, it can also be seen via China's foreign aid and help to other developing countries. It is an attempt to showcase to the world that the choice to interact with China, play by China's rules, and assist China in achieving this ultimate world order could also be beneficial to their countries.

Xi's vision may seem to be quite bias in its belief that the Chinese way is the correct way, that the Chinese-inspired world order is the ultimate world order. However, this is the natural order of the world we live in today. We live in a world where only major powers have voice and influence. China is a latecomer to this party. With China on the rise, they are now one of the superior countries of the world. Now, the opportunity is within their hands to attempt to set in stone a new world order of their vision – a new Chinese-inspired world order. This is just a fact of reality. This fact of reality is also adhered to by Confucians as well. According to Joseph Chan,

The classical Chinese political tradition never held the view of equality between the cultures and ethical systems of different nations. On the contrary, the culture of the people in the central regions of China, the zhu xia, was, according to the traditional Chinese view, superior to those of the barbarians living on the four quarters of the continent and the rest of the world. It was thought that the superior culture should be transmitted to the world, and that the world should be under one rule, the rule of the most wise and ethical man.... While Confucians adhered to the idea of tian xia being ruled by one culture and by one wise and ethical man, they typically favored peaceful persuasion and the setting of example by members of the culturally superior group (Chan, 2008, pg.67).

Though China may not go as far as considering themselves the "culturally superior" group, they do consider themselves capable and in possession of the means to create the ultimate world order. According to Xi,

A prosperous and stable world provides China with opportunities, and China's development also offers an opportunity for the world as a whole. Whether we will succeed in our pursuit of peaceful development to a large extent hinges on whether we can turn opportunities in the rest of the world into China's opportunities and China's opportunities into those for the rest of the world so that China and other countries can engage in sound interactions and make mutually beneficial progress. We must act in keeping with China's national conditions and stick to our own path. At the same time, we should acquire a global vision. In this way, we can both promote China's domestic development and open the country wider to the outside world and advance both China's development and the development of the world as a whole, as well as the interests of both the Chinese people and other peoples. In this way, we can continuously expand

mutually beneficial cooperation with other countries, be actively involved in international affairs, address global challenges together with other countries, and contribute our share to global development (Xi, 2014).

4. THE LEGALIST ASPECT OF XI JINPING'S INTERNATIONAL STRATEGY

Operational Level of the Peaceful Development Discourse

Discourse-wise, though China seeks the peaceful and harmonious road in handling international relations, at the operational level, however, China does not shy away from acting out when it feels like its national interests have been threatened. In this case, at the operational level, peace manifests itself as more of an option that China gives to their counterparts. At the operational level, more than being termed peaceful development strategy, Xi Jinping's international strategy manifests itself as more of a "conditional peace" strategy.

An example of this can be taken from China's more confrontational way of handling the South China Sea Conflict – whether it be with rejecting the Permanent Court of Arbitration's ruling or deploying troops and weapons to the area. This more confrontational handling of international relations in the South China Sea is happening at the same time as the promotion of the utilization of peaceful means to create peaceful and harmonious world order via the Belt and Road Initiative. At the first look, it may seem as if China's actions regarding the South China Sea conflict go against all that they preach of utilizing peaceful approaches in handling international relations. However, on the side of China, they believe that the actions undertaken to handle this dispute falls within the domain of what they preach as they consider the actions taken by the other claimant states as an attack against China's legitimate rights and national interests. According to Fu Ying, Chairperson of the Foreign Affairs Committee of China's National People's Congress Strategy,

For China, especially in the eyes of the general public, the focus of the concern is the sovereignty over Nansha islands and shoals and the surrounding water. Nansha is the most southern group of land of the four archipelagos in the South China Sea. Chinese people firmly believe that we own those land features since the ancient times...But the recent years saw increasing provocations by some claimant countries in disregard of the DOC spirit and in an attempt to make their occupation of the Chinese territory permanent and legal. China, frustrated by futile persuasion, decided to reinforce its own presence including keeping better vigilance and making enlargement construction...All this was happening against the back drop of the US Asian Pacific rebalancing which has growing military content and is giving greater emphasis on the interest of the alignment. This development added a new dimension. Tension started to heat up when the US sent navy ships and aircrafts to operate sometimes very close to China's land features, posing serious threat. More and more in China, people believe that the US is behind those countries who are undermining China's interest (China Daily, 2016).

China has been repeatedly criticized for not offering sufficient evidence for its claim over the area as China only uses history as evidence. Likewise, China believed that those criticizing China of not providing ‘sufficient’ evidence defines the term ‘sufficient’ using a western standard or criteria that does not apply to China as they work with a different understanding of the concept. According to Shicun Wu, President and Senior Research Fellow of the National Institute for South China Sea Studies,

China’s ancient records were criticized for not being sufficiently persuasive in supporting its claims of ‘routine occupation, effective administration or assertion of sovereign control’ over the Nansha Islands (Cordner, 1994: 64). However, one should note that the most important cause of such weakness of evidence was China’s ancient territorial concept. Sovereignty was based on the loyalty of the people being ruled rather than a clearly delineated national boundary as exemplified by the Westphalia system. The concept is intrinsically related to the political dimension of China’s ancient tributary system, which was established with the consent, or even free will, of the tributary state. The system was expanded to the shores of the SCS when the imperial court of China bestowed a title on the rulers of tributary states and these states submitted to China’s authority. Given that a Sinocentric tributary system was the dominant international order in ancient East Asia, China did not need to practice sovereignty based on the criteria of a modern international legal system (Wu, 2013, pg.38).

Under Xi Jinping, China is not working with a western-defined anything. They have their own ways of understanding that is different from that of the West. This is the reason why the use of western standards or criteria to analyze China will lead to the same understanding wherein China does not stay true to their words. On the other side, if observed from the perspective of China, this is the enforcement of their words. Although China wishes to create peaceful relationships with others, they will not forsake their own national interests. Common ground and common interest must be formed around their national interests. Xi Jinping had made it clear that China operates under their own unique way based on traditional Chinese cultures and not ways or ideas impose to them by foreign entities. This is what they ask the countries that wish to form relationships with them to respect – the Chinese way. It is one of the conditions to their peaceful development strategy.

In this case, rather than reflecting Confucius’s teachings, one can see the aspect of Xi Jinping’s international strategy which evidently reflects remnants of the key Legalist’s teaching of the ruler being the one who establishes the law as he sees fit. In the case of Xi, the ‘law’ that he sees fit are the ones based on Chinese cultures and traditions and not ones that mirror the will, standards, and criteria established by the West. This resonates with a key Legalist’s teaching, disclosed by Han Fei in his book Han Feizi, that presupposes that

The ruler occupies a position whereby he may impose his will upon others, and he has the whole wealth of the nation at his disposal; he may dispense lavish rewards and severe penalties, and by wielding these two handles, may illuminate all things through his wise policies (Han Feizi, Ch.49) (Watson, 2003).

To truly understand Xi's international strategy, one must continuously explore the Chinese definitions, standards, and criteria as it differs from the existing ones that are naturally practiced by several around the world today. In the case of the South China Sea conflict, China views the other claimant states supported by the United States as not aiming for a win-win situation, and is still infatuated with the Cold War mentality of the Zero-Sum game that China, under the leadership of Xi Jinping, aims to strive away from. By understanding this via a framework, a way of thinking, that is unique to China, one can gain insight into why China acted the way that they acted amidst the claim that they are pursuing peaceful development. It is because they believe this act of falls within the domain and jurisdiction of the diplomatic philosophy that they promote. Looking at it in this light, using the Chinese-defined standards, both their endeavors – whether it be China's promotion of the Belt Road Initiative or their actions in the South China Sea – are actually a part of the "New Model of International Relations" diplomatic philosophy that they promote.

Apart from being the creator of law, the means that China under Xi has taken to ensure that the ultimate world order can be achieved also reflect another key Legalist's teaching of using the rewards and punishments strategy to ensure that the law (rules) established are being adhered to. As China now holds bargaining power, they developed this "consider it for yourself" option for those who wish to form relationships with them. China is not forcing anyone to buy into this idea of theirs, however they will also not tolerate those who stand in the way. China does not force anyone to pursue a relationship with them, but if one chooses to, China expects them to adhere to the rules they have established. Relationships, in this case, do not only refer to the peaceful ones, but also the hostile ones. In this case, it seems that there are three options. The first option is not to have a relationship with China at all, therefore not standing in the way of China pursuing their goal. The second option is to develop a relationship with China, play by the Chinese established rules, and achieve a win-win situation together with China. The third option is developing a relationship with China, not playing by Chinese established rules and receiving China's wrath as this is acknowledged as standing in the way of China pursuing their goal. In pursuing relationships with China, there are rules that must be followed and these rules are enforced by the acts of rewards and punishments, with the reward coming in the form of a win-win situation, while the punishments are in the form of hostility and aggression. This can be witnessed from the way China handles the South China Sea Conflict. This conflict is an example of the third option. The other claimant states are pursuing relationships with China, however, do not play by the rules established in Xi Jinping's international strategy which clearly states that though China aims to handle situations regarding international relations using peaceful approaches, "No one should expect us [China] to swallow anything that undermines our interests (Xinhua, 2017)." As established earlier, China considers actions undertaken by other clamant states as not at all portraying the will of those states to peacefully settle this dispute with China and directly aiming at undermining the national interest of the country. Therefore, China's hostile attitude and approach in handling the South China Sea Conflict can be said to be a sort of punishment for those countries who do not abide by their established rules. This aspect of Xi Jinping's international strategy holds similar characteristics to a key legalist teaching in ensuring that the laws are adhered to, so that an orderly society can be created, those who deviate from the established laws must be punished, while those who adhere to the laws must be rewarded. China, under Xi Jinping, creates their own Chinese-inspired sets of rules based on their own traditions and cultures. Those who wishes to form relationships with them are expected to adhere

to these established rules. The response from China, whether it be utilizing peaceful means or confrontational means, solely depends on whether the counterparts are adhering to their rules. This is the principle that China under Xi Jinping seems to be following. According to Han Fei on how the ruler operates,

When those to his left and right have taken their places, he opens the gate to face the world. He changes nothing, alters nothing, but acts with the two handles of reward and punishment, acts and never ceases: this is what is called walking the path of principle (Han Feizi, Ch.8) (Watson, 2003).

5. XI JINPING'S INTERNATIONAL STRATEGY: THE COMBINATION BETWEEN LEGALISM AND CONFUCIANISM

As the influence of the West slowly declines, Xi Jinping does not hesitate to take up this opportunity to voice out his vision of the ideal ultimate world order. He sets in stones different measures, with the international strategy being a part of it, to achieve it. Xi Jinping has developed a governance strategy that reflects the ‘outside Confucian, inside Legalist’ characteristic that, according to Zhengyuan Fu, the author of the book “China’s Legalists: The Earliest Totalitarians and Their Art of Ruling,” many historians and scholars use to describe China’s political traditions. This does not come as a surprise as Xi Jinping has repeatedly emphasized the fact that he wishes to govern China using Chinese characteristics derived from past leaders and philosophers. Under Xi Jinping, however, as the opportunity now presents itself for China to do so, this governance model is taken to a new level. During the ancient times, the “outside Confucian, inside legalist” is only practiced in terms of governing the Chinese Empire. Under Xi Jinping, this model is extended beyond the defined border of the Chinese empire to lay down its root in the world, and adopted as the new international strategy of the country. Most often, people are not aware of the existing legalist nature of this model. However, if observed carefully, remnants of legalism can be seen lurking behind the beautiful idealistic Confucian discourse presented by Xi Jinping. Overall, it is discovered that, at the moment, Xi Jinping’s international strategy reflects the attempt to arouse the will of other countries to collectively create this ultimate world order characterized in Confucius’s teachings with China by, first, utilizing legalistic measures as the foundation to ensure that the preferred result can be achieved. Being at a stage where many are hostile towards China, legalistic means are employed as a method to ensure that the ideal scenario of their vision can be created. With this in mind, it does not entail that the peaceful development talks of Xi are lies. These merely imply that, with the given condition that many still have doubts about China, Confucius-inspired means may not yet be appropriate at this initial level of development. This is true for not every country, especially those who have been heavily influenced by the West, will trust in China’s vision. Nevertheless, it remains the goal China aims to work towards achieving – the ultimate peaceful and harmonious state of the world where every country practice utilizing peaceful means in handling international relations with one another. Still, before all of this can happen, now, people must see the appeal of this vision first. This is why, with the given condition, China under Xi has adopted what can be deemed as means deriving from legalist’s teachings to persuade the international community into seeing the allure of the ultimate Confucius-inspired world order vision. Legalistic means can be considered somewhat a sort of ‘necessary evil’ in the path towards developing the ultimate

peaceful world order that Xi Jinping envisaged. Looking at Xi Jinping's international strategy as a reflection of a framework inspired by the synthesis between Confucianism and Legalism, the paradoxical behavior of China under Xi can be understood. Via a framework solely unique to China, the international strategy undertaken by Xi Jinping, both the diplomatic philosophy and his actions which are comprised of both the more peaceful Belt Road Initiatives and the more aggressive actions toward the South China Sea Conflict, is able to be explain in a new light as both being a part of the peaceful development rhetoric China promotes.

6. A MANIFESTATION OF A CHINESE SCHOOL OF IR?

Now that a Chinese-inspired framework deriving from the teachings of Confucianism and Legalism, one that can be said to indeed manifest themselves within Xi Jinping's international strategy, one may still question whether this way of thinking is truly unique to China and/or truly does not have a western equivalent. It can be said that the findings of this paper contribute to the conceptualization of a Chinese School of IR in that it showcases unique aspects of the Chinese-inspired way of thinking that differ from existing concepts. Due to the noticeable similarities, many scholars normally associate Confucius's ultimate word order vision, the Tian-Xia concept, with the western concept of Cosmopolitanism and Legalist's teachings with the western concept of totalitarianism (Fu, 2015; Chen, 2016; Zhao, 2019; Chan, 2008). Even so, it would be unfair to label them merely extensions of these existing western concepts. In fact, Legalist's teachings predate its western equivalent for nearly around eighteen hundred years (Fu, 2015, pg.17). As for Confucius's Tian-Xia concept and the concept of Cosmopolitanism, there is around a 200 years difference with Confucianism, being developed around 551-479 BC, preceding the Stoic School, which according to Chen Yudan, was "created in the late fourth century BC and is always seen as the real origin of Western cosmopolitanism (Chen, 2016, pg. 325)."

As for the differences between the Tian-Xia concept and Cosmopolitanism, according to Joseph Chan, one key difference between the two lies in the fact that while the western concept of cosmopolitanism may suggest equality between nations in the ultimate world order, Confucius's teachings, on the other hand, remain on the other end of the see-saw regarding the issue of equality (Chan, 2008). Chen Yudan also added that the difference between the stoic cosmopolitanism and Confucius's Tian-Xia worldview lies in the fact that while the stoic sees cosmos as being the ultimate achievement, Confucius's teachings, on the other hand, sees family ethics, ethics practiced by the ancient sages, one that entails familial hierarchy and filial piety, as the ultimate achievement, in which the ultimate Tian-Xia worldview mirrors the practice of such ethics (Chen, 2016). This presupposes that in Confucius's Tian-Xia worldview, there is still a form of hierarchy in existence.

As for the differences between the teachings of Legalism and Machiavelli's concept of totalitarianism, according to Zheng Yuan Fu, there are three. The first key difference between Machiavelli and Legalists is in their understanding of the acceptable form of government. While the legalists believe in the absolute single rule of the Son of Heaven, Machiavelli proposed a republican form of polity (Fu, 2015, pg.162). Another key difference is with their

view regarding the issue of virtue and compassion. Legalists promote a step back from morality, Machiavelli, on the other hand, proposed that the prince (the ruler) have some moral qualities (Fu, 2015, pg.162). One other notable key difference between Machiavelli's totalitarianism and Legalist's teachings is in how Legalist's teachings actually formulate governance principles aiming at giving the ruler total control over the subjects. Machiavelli, on the other hand, is believed to have only developed tactics (Fu, 2015, pg.163).

7. CONCLUSION

With this in mind, though there are shared similarities between the way of thinking deriving from Confucianism and Legalism and existing western concepts, there are differences that should not be ignored if one wishes to truly understand actions that are believed to have been inspired by these ancient ways of thinking. This calls for a need to study each concept as having an identity of their own and not merely as extensions of anything. Having traced the thoughts behind Xi Jinping's international strategy back to their potential Chinese roots as speculated by several scholars, it is safe to say that a Chinese school of IR does exist in its early stage as ideas unique to China. It may exist in the form that shares certain similarities with existing concepts and theories, but nevertheless, is in possession of key differences that can create a different understanding of certain situations, which in turn creates variance and potential alternative to the analysis produced by existing international relations theories and concepts. These unique Chinese ways of thinking should be considered more of an addition to existing concepts and theories that hold the potential to make the understanding of existing concepts and theories more wholesome.

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YOUNG PEOPLE'S PARTICIPATION IN AGRICULTURE FOR THE ENHANCEMENT OF SUSTAINABLE LIVELIHOODS: A CASE STUDY OF THE PA-O SELF-ADMINISTERED ZONE, SOUTHERN SHAN STATE, MYANMAR

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ABSTRACT

The Agricultural sector contributes to 37.8 percent of Myanmar's GDP and employs about 50 percent of the labor force. However, it is not well developed and does not stand as a reliable and attractive livelihood for the people, especially for the young people, in rural areas. Hence, Young People in rural areas prefer to seek other options like leaving their farmlands and moving to other places for work. This situation has impacted both the employment scene and the agricultural sector which requires young people's skills and knowledge for its development. In this light, this study aims to explore the interrelationship between youth and agriculture, and the former's role in enhancing sustainable livelihoods in rural areas. For this paper, the concept of DFID's sustainable livelihood approach (SLA) is applied to understand how rural people achieve their livelihood outcomes through which assets and strategies under the influence of structure and agencies. This study is conducted through qualitative research methods focusing on the case study of Pa-O self-administered zone located in southern Shan state of Myanmar. The main findings reveal that the agricultural sector can be developed through active participation of youth. It also suggests to support Young People' participation in agriculture by strengthening their information capital, apart from five capitals mentioned in SLA, in order to enhance sustainable livelihoods for rural development.

Keyword: Agriculture, Youths, Sustainable Livelihoods.

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1. INTRODUCTION

70 percent of the Myanmar population is made up people living in rural areas, which rely on the agricultural sector for its economy. According to the Food and Agricultural Organization of the United Nations (FAO), agriculture contributes to 37.8 percent of the country's gross domestic product (GDP), accounts for 25 to 30 percent of total export earnings, and employs about 50 percent of the labor force. The development of the agricultural sector can be the major factor not only for the rural people to have access to sustainable livelihood opportunities but also for rural development in country as a whole. Myanmar has four key competitive advantages in terms of agriculture: abundant land, water, and labor resources; and proximity to major future food markets (ADB 2015). Therefore, it will be strategic for the country to focus on agricultural sector in its role to reducing poverty and enhancing sustainable livelihoods in rural Myanmar. Furthermore, it should be developed to fit the preferences and demand of young people seeking employment.

Youth is internationally defined as someone falling between the ages of 15 and 24 years old (UNGA 2001). In Myanmar, Young people are generally regarded as citizens between the ages of 15 and 35 years, although there is no official definition of Young People. this sector (The Global New Light of Myanmar 2018). Due to their adventurous and creative character, young people actively want to improve their capacities, show their talents and performances. Although their nature may differ depending on social contexts and norms, most of them would naturally repel from areas that lack opportunities for growth. In the rural areas of Myanmar, agriculture is regarded as the major source of livelihood. However, it has never been seen as a reliable, attractive option for the country's youth. Based on the perspectives of the young people in rural areas, agriculture is seen as cumbersome and challenging, in terms of earning money. Another narrative is that agricultural work is only for those who are not educated, qualified and skillful to access other livelihood opportunities. Hence, there should be some ways to connect the capacities and preference of young People, largest labour force population, with the agricultural sector, largest source of livelihood in rural Myanmar.

Pa-O self-administered zone (SAZ) located in Southern Shan State is deemed as an appropriate place to explore the role of young people and agriculture with regards to achieving sustainable livelihoods. This is because of the complexity of socio-economic issues within the geographical context and political significance. Pa-O SAZ covers three townships: Hopong, Hsihseng and Pinlaung. It was established under the 2008 Constitution and came into force by decree in 2011 (Knipe 2018). Being a self-administered zone, these three townships are administered not only by the government but also by Pa-O National Organization (PNO), which has its own development agenda. Moreover, there are also many agricultural development programs implemented and funded by local and international organizations to support the local people with livelihood opportunities. Pa-O National Organization (PNO), having some autonomy, also pursues it on policies and implements their development agenda, such capacity building on agricultural development trainings for local people (Knipe 2018). In addition, local people, including youth, also run their own farms to be able to contribute to the local economy.

However, the agriculture in Pa-O SAZ is still facing challenges r, as well as, young people, in terms of their employment chances. According to Food Security Policy Research Paper (2019), about 70% of migrants in southern Shan State left their former agricultural works to migrate internally or externally. Like many other people in the rural areas of Myanmar, most have to migrate for work due to the lack of job opportunities and agricultural development in southern Shan state. This situation reflects that need for the agricultural sector to be developed well enough to accommodate young people's desires and to create sustainable job opportunities.

For young people, especially those who cannot access higher education systems, the development of the agricultural sector is crucial to provide them with attractive and sustainable livelihood opportunities. Relatively, the capacities and participation of young people also play a vital role for agricultural and rural development. Therefore, focusing on enhancing sustainable livelihood in rural areas, this study seeks to explore the following: challenges to livelihood and agriculture for the people in Pa-O SAZ, ii) factors influencing their livelihood strategies and decision, as well as, means to approach the outcomes, iii) the role of young people in agricultural development and the challenges they face, and iv) ways to support young people's participation in agriculture. Based on the findings from this study, the youth can be seen as the major human capital for agricultural livelihood. They can be instrumental to the enhancement of sustainable livelihood in rural areas. Furthermore, this study suggests that youth's participation in agriculture should be promoted by strengthening the information capital, apart from five capitals mentioned in sustainable livelihood framework.

2. CONCEPTUAL FRAMEWORK

This study is based on the concepts of DFID's sustainable livelihood approach (SLA) focusing on livelihood assets, strategies, and structures in developing the research questions and in analyzing the data. DFID's SLA aims to 'eradicate poverty' and commits to 'policies and actions that promote sustainable livelihoods' to achieve this aim. (Carney et al., 1999). this research aims to enhance sustainable livelihoods for the people in rural areas, the concept DFID's SLA is applied to understand how people achieve their livelihood outcomes based on their knowledge, experiences, decision making and management of their rural communities. In addition, it is also important to know how they are influenced by external structures to understand how people struggle to achieve their livelihood outcomes. It is also focused on exploring how the young people approach their livelihood strategies.

SLA is way of thinking to analyze and change the lives of people who are experiencing poverty and other disadvantages. It also helps understand the livelihoods of the poor and to recognize that all people have assets and abilities which can be improved for enhancing their livelihoods. It is based on the connection between people and overall enabling environment influencing the outcomes of livelihood strategies. Moreover, it can help this research explore the livelihood assets and strategies of the people in target areas (Pa-O SAZ) and understand how those factors support in enhancing their livelihoods.

According to SLA, the vulnerability context frames the external environment in which people exit and gain their livelihood assets¹.

The conceptual framework of this research can be illustrated as follows:

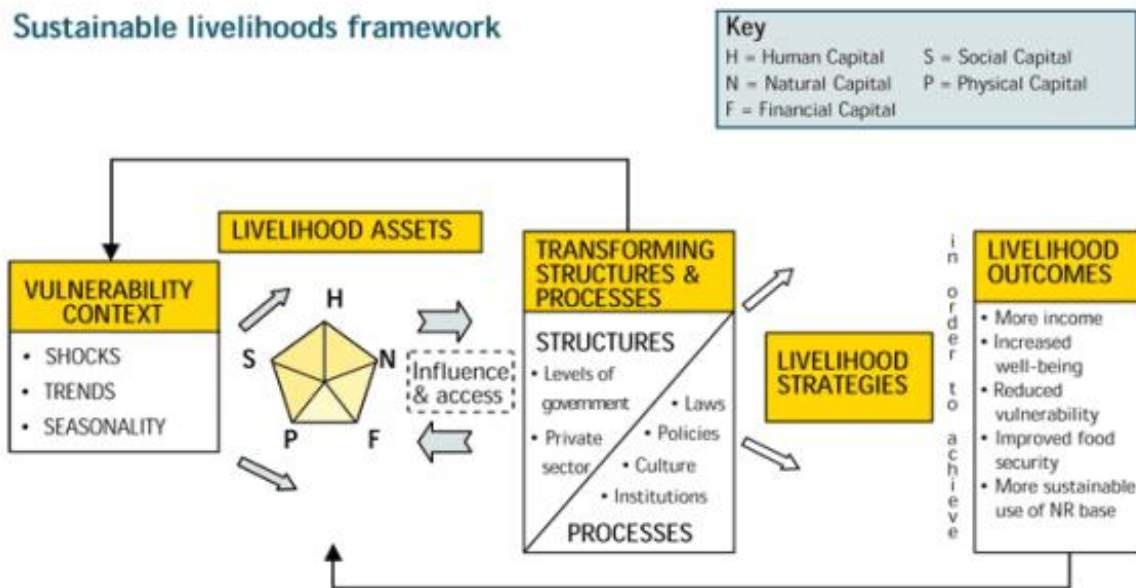


Figure 1. Sustainable Livelihood Framework (DFID 2000)²

The framework can be used in planning new development activities and assessing the contribution of livelihood sustainability made by existing activities (DFID 2000). It is based on the connection between people and overall enabling environment influencing the outcomes of livelihood strategies.

3. RESEARCH METHODS

This study identified and analyzed data collected from internet-based resources and qualitative research methods. Secondary data consist of academic papers, organizational reports, articles, websites and news focusing on the areas of youth, agricultural sector, sustainable livelihoods and rural development. The empirical data are collected from key informant interviews, in-depth interviews, informal interviews and observations. The study is conducted in

¹ The livelihood assets which can also be called people's strengths include human capital, social capital, natural capital, physical capital and financial capital. Under the influence of structures and institutions which operates all level of livelihood approach, the people use their own assets and attempt to get livelihood outcomes through the strategies: agricultural intensification or extensification relying on natural resource-based activities, livelihood diversification including off-farm activities and migration.

² The diagram was designed by Enoch Kwame Tham-Agyekum/ The Implications of the Sustainable Livelihoods Approach for Rural Development/ 2015/ Retrieved from https://www.academia.edu/24814084/THE_IMPLICATIONS_OF_THE_SUSTAINABLE_LIVELIHOODS_APPROACH_FOR_RURAL_DEVELOPMENT.

Pa-O SAZ in Taunggyi district, Southern Shan State of Myanmar with over 70% of its population living in rural areas. There are three townships in Pa-O SAZ: Hopong, Hsihseng and Pinlaung under the control of Pa-O National Organization (PNO).

Respondents include those from non-government organizations (NGOs) or civil society organizations (CSOs), community leaders, and young people working in the agricultural sector. Respondents were selected by using purposive and snowball sampling method. The interviews and discussions with the targeted stakeholders are conducted through in-person interviews and through online platform (skype) e. A local interpreter is hired during interviews and to connect with NGOs, CSOs and communities.

In Pa-O SAZ, most people can understand Burmese, though they are not be able to use it fluently. Data are collected from 1st week to the 4th week of July 2020. These interviews were conducted only after getting signed informed consent form from the respondents and recorded via note-taking and audio recorder with their permission. About 25 respondents were interviewed for this research and a few observations was also in the three townships.

Table 1. Background of the Stakeholders Studied

Type of Interviewee	Gender	Age	Work/ Organization	Educational level	Type of Interview
Community Leader	Male	NA	Pa-O National Organization	Graduate	Key Informant Interview
Civil Society Organization	6 Male, 1 Female	27 to 50	Parami Development Organization, Taunggyi Youth Center, DEMO, Naung Kar Community Development Center, Naung Kham Development Center, Ar Luu (Potato) Association, Shwe Kanbawza,	4 Graduates and 1 High School level	Key Informant Interviews
Youth working in the agricultural sector	12 Male, 5 Female	25 to 36	Farm Owners, Employees at Farms, Agricultural Businesses (Company staff)	10 Graduates, 6 High School Level and 1 Primary Level	13 In-depth Interviews, 4 Informal Interviews

In collecting the data, semi-structured questionnaires were pre-designed to efficiently guide interviews and obtain relevant answers. Follow up questions were raised for clarification or for further elaboration of responses/ The research's main question is, "How can sustainable livelihood opportunities be enhanced by promoting Young People's participation in agriculture in Pa-O SAZ? To answer the main question, the sub-questions were the following:

- What are the livelihood and agriculture challenges for the people in Pa-O SAZ and what kind of challenges do they have to access livelihood assets?
- How do the youth in Pa-O SAZ usually make decisions with regards to their livelihood strategy and approaches to their livelihood outcomes?
- What is the role of young people for agricultural development and how is it different between them and the elders while working on agriculture?

- How can youth participation in agriculture be promoted and supported in order to enhance sustainable livelihoods in rural areas?

The data collected were transcribed and processed in three steps: data validation, data editing, and data coding. Then, data are grouped according to the sub-questions of the research. Data prepared and grouped are analyzed by content analysis based on the concepts of sustainable livelihoods approach and structuration theory. In order to answer the main question of the research, data are analyzed using content analysis based on sustainable livelihood approach (SLA), by linking the challenges of livelihoods and agriculture and interrelation between young people and agriculture with the understanding of factors that influence livelihood decisions.

This study faced some limitations such as travel restrictions and conditions set to mitigate Covid-19 in Myanmar. Although the restrictions on travel are reduced during the data collection period of this research, it is still challenging to visit to targeted townships. As there have been concerns regarding accommodating outsiders, a local person who has adequate knowledge on the research was hired interpret and coordinate with the local people and organization.

3. YOUNG PEOPLE'S PARTICIPATION IN AGRICULTURE FOR ENHANCING SUSTAINABLE LIVELIHOODS IN PA-O SELF-ADMINISTERED ZONE

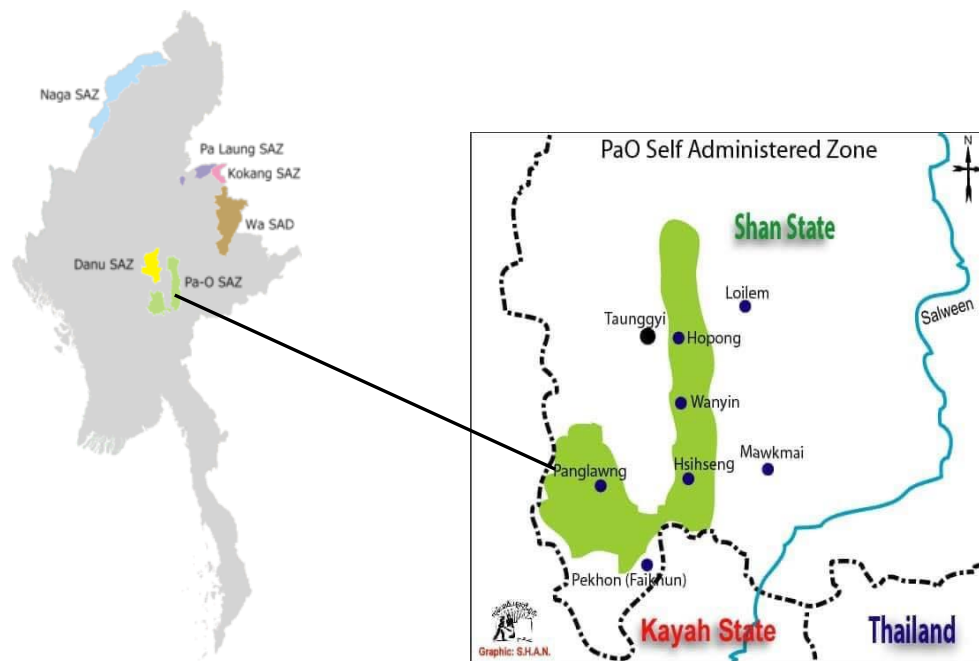


Figure 2. The Map of Pa-O Self-Administered Zone¹

¹ The maps are from https://en.wikipedia.org/wiki/Kokang_Self-Administered_Zone#/media/File:SAZs_&_SAD_of_Burma.png and <https://images.app.goo.gl/RPf7D64zhxGmPBvY9>.

The Pa-O self-administered zone (SAZ) is one of five SAZs in Southern Shan State of Myanmar with over 70% of its population living in rural areas. Among the seven states and regions in Myanmar, Shan State is the largest covering one fourth of the country area. It is also the most populous administrative unit with the population of 5,824 million residents (Myanmar Population and Housing Census 2014). It is bordered with China, Laos and Thailand, and is divided into three similarly sized regions – as Shan (North), Shan (South) and Shan (East). Shan state's economy includes agriculture, which heavily relies on on China and Thailand both for inputs and as market for agricultural products (Shan State Needs Assessment, 2018). Moreover, it is very common for Shan peoples to informally migrate to these two countries.

As one of five SAZs in Southern Shan State, Pa-O SAZ is said to be significant due to the complexity of its socio-economic issues within the context of geographical and political conditions. It was established under the 2008 Constitution and came into force by decree in 2011 (Knipe 2018). There are three townships in Pa-O SAZ: Hopong, Hsihseng and Pinlaung under the control of Pa-O National Organization (PNO). It has autonomy to administer these three townships and informally influence people's way of life. In Pa-O SAZ, the young people are defined as those aged between 18 and 40. This age range is regarded by PNO. According to a respondent from PNO, they think that people around the age of 40 can be the mediator between the young and the old.

PNO makes policies and implements their development agenda such as capacity building for locals (MIID 2018). In addition, local people especially Young People run their own farms with or without support of outsiders. According to finding, there are three main types of farming that the young people in Pa-O SAZ conduct with regards to improving value chains and quality of products. Those are avocado plantation with transplanting techniques, potato plantation with the new techniques from foreign countries and coffee plantation with new techniques from development organizations. There are few people who try to work on orchard farms of Lily flowers and vineyards.

3.1. The Challenges for The Young People with Regards to Agricultural Livelihoods



Figure 3. Avocado Farm at Pa-O SAZ

Located at the hill region, there are vast areas of farmlands due to good quality of soil in Pa-O SAZ. According to respondents of this study, most people in Pa-O SAZ own farmlands; some are with Form 7 and the others are without Form 7, but with customary landownership. However, owning farmlands does not automatically mean having security to own and right to land tenure. Many people are still facing threats of land grabbing—mainly sanctioned by the Military. A popular case related to these involved farmers in Hishseng Township face whose lands were seized and crops were destroyed by the Military.

Another issue is that young people find it difficult to own their farm land. Although most families of the youth own farmlands, it does not mean that they own those lands because most can have the properties including lands only as an inheritance. Therefore, young people are obliged to help their parents. Without this sense of ownership, it demotivates the young people to use their time and energy for such kind of arrangement. In terms of natural capital, some also mentioned about the shortage of water and bad quality of soil in some areas. Then, as most people in rural areas migrate to other cities and countries for work, there is labor shortage, especially amongst youth, in the agricultural sector.

According to respondents, they still need to get more information and opportunities to access reliable markets and modern techniques to obtain abundant and quality crops. Access to rich and reliable information is more necessary for the Young People as they are more interested in modern techniques of farming and value-chain for agricultural products. However, they still do not have enough access to information on agriculture like the type of soil, the price of crops and the mechanism for value-chain. These challenges can be defined as information capital

3.2. The Influencing Factors to The Young People in Deciding Their Livelihoods



Figure 4. A Pa-O Youth Grafting the Avocado Plants

Youth in Pa-O SAZ can be divided into two groups; the first one could access education, network and financial opportunities, while the second group are its opposite. This diversity does not mean to show which group

works on agricultural livelihood and which group does not. Those factors mainly influence how young people decide on their livelihood strategies and preferred outcome saving more exposures, networks and information provide them greater advantage. For instance, the youth who can start and operate business can get ahead in life, especially in contributing to agricultural development as they have the skills and knowledge, they can freely choose to engage in agricultural livelihood. Those who do not have educational and financial background do not have as many to decide on their means of livelihood. Furthermore, they would resort to migrating to other places for better employment or livelihood opportunities.

According to the youth respondents, access to agricultural training does greatly influence their decision to work in agriculture. Available programs are usually accessed by youth who are already interested in farming. Traditionally, youth living in Pa-O SAZ are somewhat influenced by their parents and guardians. They need to consider for their parent's conditions and preferences when on deciding their livelihoods. For instance, a girl from Pin Laung hesitated to go and work in Yangon as her parents live alone in her town. A man from Ar Lu (Potato) Association also shared that he supported his son to work on his potato plantation with new techniques. However, this can be regarded as emotional influence, as young people should have right to choose their livelihoods on their own. However, in the case of Myanmar, many are still compelled to take the desire and situation of their parents and guardians into consideration.

The other diversity of Young People in Pa-O SAZ can be between those who are under the influence of Pa-O National Organization (PNO) and those who are activists. Most in first group are the members of Pa-O National Youth. Although their decision making cannot be obviously different in terms of livelihoods, the difference between them can be seen in their political perspectives.

3.4. How to Support Young People' Participation in Agriculture?

Although the agricultural sector is not attractive and challenging enough, most of the there is a movement among young people in Pa-O SAZ which is becoming more interested to take this path. This is because they have access to farmlands and they are able to trade internally or externally due to the geographical location of Pa-O SAZ. Also, soil there is good enough for planting good-quality crops. This is also influenced by an increasing popularity of value-chain activities and business for agricultural products (E.g., Avocado farms, Eco-tourism). Despite their willingness, they are still facing a number of challenges such as access to land ownership, financial, and information capital.

Access to information capital is important to know how to access markets, what to plant in which soil, which technique to use to get good-quality products and how to approach value-chains for agricultural products. One of the objectives of sustainable livelihoods approach (SLA) is to improve poor people's access to information (DFID 2000). On the other hand, information is not just affected by its environment, but is itself an actor affecting other elements in its environment (Martin 1995). Therefore, the findings on the challenges for the Young People to work on agricultural livelihoods is proof that information should be included in the SLF. This way of thinking can be effective in enhancing

sustainable livelihoods in Pa-O SAZ and in other rural areas of Myanmar. This proposal is explained through the images below.

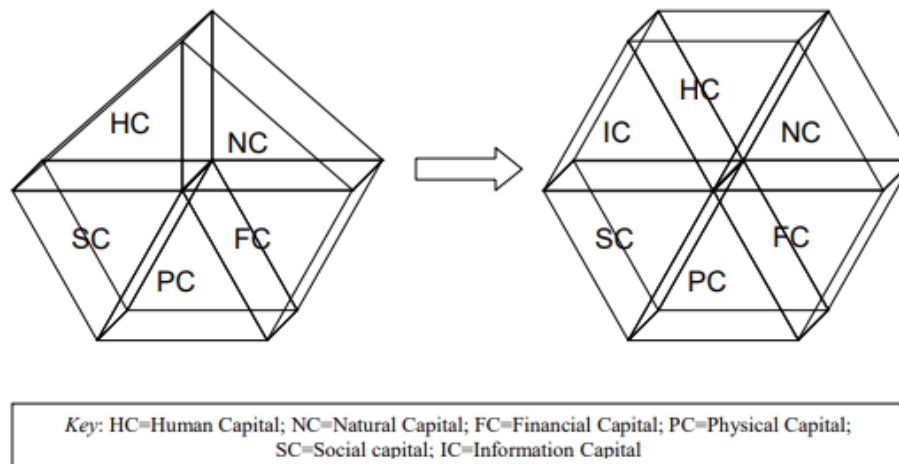


Figure 5. From Asset Pentagon to Asset Hexagon Of Sustainable Livelihoods Framework¹

According to the findings, the young people can deal with the challenges of access to land ownership and financial support on their own to some extent. But they cannot afford to solve the challenges in terms of access to right and enough information on their own. They need to have support from organizations and the government through relevant mechanism and policies. Therefore, the organizations that work on development and livelihood sectors should focus on access to information as one of the capitals for livelihood strengthening. Public policy making bodies need to prioritize on enhancing modalities to achieve access to information by all, especially young people.

4. CONCLUSION

According to the findings from the interviews and observations, it is obvious that the agricultural sector can be further developed with the participation of youth. In Pa-O SAZ, young people have been innovating ways to access value-chain, new techniques for farming (E.g., Avocado plantation) and expanding market areas. In Pa-O SAZ, the agricultural sector has been developed only in those ways. Relatively, developing agricultural livelihoods is also a way to enhance more opportunities in rural areas. For instance, having more farms can employ more local people living in rural areas. Moreover, as agriculture plays a vital role for eco-tourism, most young people have been including this in their long-term strategic plan.

Although some Young People are willing and trying to work on agricultural development as their main livelihood, there are also some Young People do not see the agricultural sector as a reliable and promising source of

¹ The diagram was designed by Kenneth Odera/ Information capital: 6th asset of sustainable livelihood framework/ 2006/ Retrieved from https://www.researchgate.net/publication/288954113_Information_capital_6th_asset_of_sustainable_livelihood_framework#:~:text=Information%20capital%20is%20a%20critical,framework%20area%20called%20livelihood%20assets.

livelihood for them. This is because challenges such as difficulties in accessing relevant information, land ownership and financial support are still present. Having exposures, network and information on agricultural livelihoods is the main influencing factor when young people decide on their livelihood strategies and outcomes. According to respondents, Information is key to level the playing field and empower them to contribute to agricultural development.

Therefore, the policy making bodies of the country and development practitioners should develop the policies, mechanisms and facilities to provide the Young People with access to information. Promoting youth participation in agriculture is a must not only for agricultural development but also for strengthening sustainable livelihood and employment opportunities for those living in rural areas.

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FEMINIZATION, VULNERABILITY, AND EMPOWERMENT OF LAOTIAN MIGRANT WOMEN IN THAILAND

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ABSTRACT

The purpose of this paper is to examine the migratory pathways of Laotian migrant women who travelled from Laos to Thailand for work. The problem statement focuses on feminization and its gendered implications on Laotian migrant women's vulnerability as migrant women in feminized work sectors. I aim to effect useful policy changes to labour migration policies for all migrant women working in Thailand. I use the main concepts of feminization of migration, vulnerability, and gender empowerment. My research methodology uses qualitative research design and participant observation. I conducted structured and semi-structured phone interviews with 11 Laotian migrant women in various feminized work sectors and with key informants, namely the employers of Laotian migrant women. This paper argues that Laotian migrant women are a vulnerable minority group of migrant workers. They face labour issues perpetuated by gender discrimination in feminized work sectors. As a result, they experience labour rights violations, and lack important healthcare services, including maternity and childcare. Their vulnerability is mainly caused by their lack of awareness of labour rights, and of the non-governmental and civil society organizations that help migrant workers. This paper concludes the importance of increasing Laotian migrant women's knowledge of labour rights and connecting them to relevant NGOs and civil society. It is also important to empower Laotian migrant women through skills training so that they may improve their present circumstances by moving away from low-skilled jobs in feminized work sectors. This serves as a first step in advancing their cross-border mobility and enables them to be better protected in terms of labour rights and policy as female migrant workers.

Keyword: Feminization, Vulnerability, Empowerment, Laotian Migrant Women.

AUTHOR'S BIO

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1. INTRODUCTION

The purpose of this paper is to examine the large-scale cross-border labour migration of women from Lao PDR (Laos) to Thailand, in the larger context of Thailand's economic dependence on migrant labour due to its ageing population. This phenomenon of the feminization of transnational migration is recognized by the International Labour Organization (2019), as it reported that 54% out of 1.3 million Lao nationals are women living and working overseas, which is not a small number. This paper focuses on that feminization and its gendered implications on Laotian migrant women's vulnerability as migrant women working in feminized work sectors in Thailand.

Research Objectives and Aims

My research objectives are to examine the feminization process of the cross-border mobility of Laotian migrant women, and to investigate the aspects of the vulnerability of Laotian migrant women vis-à-vis their feminization process. This paper focuses on the vulnerability of Laotian migrant women due to their positionality as women, namely in terms of wage differentials, weak labour protection rights and policy, and performing unskilled or low-skilled work. The significance of this paper lies in the contribution of the dearth of literature surrounding Laotian migrant women in feminized work sectors in Thailand. Focusing on Laotian migrant women provides a gendered and cultural lens to the labour migratory flows between Laos and Thailand, which has not yet been explored much in academic literature.

First, this research aims to contribute to the new notion that Laotian migrant women have a unique position as women. Second, this research aims to create useful policy recommendations for all migrant women in Thailand, and to improve their labour protection and rights as women. Last, this research aims to elevate Laotian migrant women's unique position by raising awareness about them at the intra-national level, so as to propel their social and cultural potential beyond themselves, in the larger political context of strengthening Thai-Lao state relations.

Research Questions

This paper examines the following research questions:

- 1) To what extent does the feminization process affect Laotian migrant women's cross-border mobility?
- 2) What are the consequences of the feminization process and the COVID-19 pandemic on Laotian migrant women's vulnerability?

2. LITERATURE REVIEW

This section reviews literature on the main concepts used in this paper, namely feminization of transnational migration, vulnerability, and gender empowerment.

Feminization of Transnational Migration

The term feminization of transnational migration is discussed in relation to work, specifically the feminization process of Laotian migrant women coming to work in feminized work sectors in Thailand. The implications of the feminization process vis-à-vis the gendered power relations between men and women in Laotian society and gender discrimination of Laotian migrant women in the workplace are analyzed in this paper.

Sassen (2000) discussed the consequence and impact transnational migration has on women in the form of women's burden and the feminization of survival that women endure. According to Sassen (2000:503), there is "a growing presence of women in a variety of cross-border circuits that have become a source of livelihood, profit-making and the accrual of foreign currency." My research follows Sassen (2000) to emphasize the importance of circuits and the dependence that Laotian migrant women have on these circuits for economic survival as migrant women. Similarly, Yeoh (2016:77) explains the feminization of transnational migration in the context of Southeast Asia, where "Southeast Asia is experiencing a feminization of migration flows as a result of changing production and reproduction processes worldwide. Women in the region are on the move – often across transnational space – in response to increasing demand from at least two fronts: export processing zones and industrial parks that depend on cheap and flexible labour with severely diminished rights; and globalizing cities and more developed regions with increasing care deficits, which are addressed by importing care and domestic workers." This suggests that there is an increasing demand for cheap female labour in feminized work sectors that are also informal work sectors.

The feminized work sectors reproduce the dominant patriarchal structure in society, which further limits migrant women's structure and agency (Rigg, 2007). Hence, this unintentionally sets the precedent for further gender bias and gender discrimination by focusing on gender-biased jobs for migrant women. Yeoh (2016) acknowledges the prevalence of the gender gap in various domains, despite the increasing phenomenon of feminization of transnational migration. The feminized work sectors that Laotian migrant women work in further limit them to gender-specific jobs and highlight the power disparity between men and women in Laotian society, based on the gendered division of labour in Laos. This also relates to the condition of the feminization process that reinstates gender discrimination and gender inequality in Laotian society.

Based on the literature review, Laotian migrant women are subject to the feminization process of transnational migration as they leave Laos for alternative employment opportunities in Thailand, as recognized by Sassen (2000). Laotian migrant women mainly find themselves in informal and feminized work sectors, such as caregiving and domestic work, as detailed by Yeoh (2016). The types of jobs that Laotian migrant women hold in Thailand are mainly low-skilled and low-paid, in addition to being mainly in feminized and informal work sectors. To add to the literature review, there is a research gap on the gendered implications of feminization on Laotian migrant women in feminized work sectors that are also formal work sectors, such as services and garment factory work, in addition to the gendered implications of feminization on Laotian migrant women in feminized and informal work sectors, such as domestic work. Hence, my paper seeks to fill in this research gap by analyzing the implications of the

feminization process on Laotian migrant women in both informal and formal work sectors that are mainly dominated by female labour.

Vulnerability

The term vulnerability in this paper is discussed in relation to the gendered implications of feminization on Laotian migrant women working in feminized work sectors in Thailand. The conditions of feminization of transnational migration, namely wage differentials, weaker labour protection rights and policy, and unskilled or low-skilled work, are exacerbated by the feminization process and increase the vulnerability of Laotian migrant women in feminized work sectors. The problem with informal and feminized work sectors is that they often fall outside official channels and deny these Laotian migrant women legal protection when working in informal and feminized work sectors. Aida (2006) reported that Laotian women frequently end up in the low-status, low-wage exploitation and service jobs, and are particularly vulnerable to exploitation and abuse, including sexual abuse.

This paper conceptualizes the term vulnerability using social sciences approaches, including socio-demographic vulnerability and socio-economic vulnerability. Elmhirst (2013: 72) terms “vulnerability as a quality held by human agents, while others give emphasis to vulnerability produced through the inequities of social structures.” Hence, I use the term vulnerability in the social sciences approach, specifically in the context of Laotian migrant women who migrate from Laos to Thailand in search of employment, and the vulnerabilities they face due to their positionality as migrant women in feminized work sectors. In defining the vulnerabilities that Laotian migrant women face while living and working in Thailand, I refer to Mustafa’s vulnerability assessment tool (cited by Elmhirst 2013: 72) where it “identifies levels of vulnerability and capacity within households or within communities in terms of material vulnerabilities (roughly equivalent in income, education and material assets), institutional vulnerabilities (social networks, kinship ties, infrastructure, warning systems, social exclusion or marginalization), and attitudinal vulnerabilities (including empowerment and knowledge).” Based on the definitions of vulnerability as mentioned, I discuss four aspects of vulnerability in this paper, namely physical vulnerability, economic vulnerability, social vulnerability, and cultural vulnerability of Laotian migrant women in feminized work sectors (i.e. domestic work, agriculture, services, and garment factory), within the context of the COVID-19 pandemic.

Based on the literature review, vulnerability is increased due to the conditions of the feminization process of transnational migration. Increased vulnerability of Laotian migrant women further limits their cross-border mobility in transnational migration. Laotian migrant women’s vulnerability is protracted when they have limited educational opportunities, which in turn limit their work opportunities. Vulnerability, as discussed by Elmhirst (2013), is used in the social sciences approach and is analyzed in four aspects. To add to the literature review, there is a research gap on the vulnerabilities faced by Laotian migrant women who are not only working in feminized work sectors, but who also come into Thailand with the incorrect type of documentation or through unofficial work channels. This applies to Laotian migrant women working in feminized work sectors, both informal and formal. Hence, my paper seeks to fill in this research gap by discussing the various aspects of vulnerabilities faced by Laotian migrant women in the four sectors of domestic work, agricultural work, services work, and garment factory work.

Gender Empowerment

Gender is an important concept in understanding the gendered implications of feminization and vulnerability. Peet and Hartwick (2015)'s feminist framework of gender and development focuses on the gender relations between men and women and the relative imbalance of power relations. Mahler and Pessar (2006) discuss the importance of drawing on gender as central in understanding the complexities of migration. Mahler and Pessar (2001) and (2003) also discuss the framework of "gendered geographies of power". The gendered lens perspective is useful in seeing how the dominant patriarchal structure in society is reproduced by delegating women to gender-specific jobs in the feminization of transnational migration, thereby creating gender inequality at various levels.

I use the term gender empowerment to discuss the possibility of elevating Laotian migrant women's situation in the informal and feminized work sectors perpetuated by the conditions of feminization and vulnerability. Gender empowerment is further used as an important tool to assess how the methods of empowerment as explicated by Mandal (2013) could facilitate various aspects of cross-border mobility for Laotian migrant women in Thailand and improve the lives and circumstances of Laotian migrant women through various types and methods of empowerment. Gender empowerment is used to assess Laotian migrant women's degree of different forms of empowerment, namely social empowerment, economic empowerment, educational empowerment, political empowerment, and psychological empowerment as discussed by Mandal (2013). Mandal (2013:24) also discusses methods of empowerment, such as "attaining education, increasing entrepreneurial qualities, acquiring land, participation in political process." In addition, UNHCR (2001) used the Longwe women's empowerment framework, in which there are five dimensions of women's empowerment: access, conscientization, mobilization, control, and gender equality mainstreaming.

Based on the literature review, gender empowerment is discussed using the feminist lens of gender and analyzing the imbalanced power relations between men and women in Laotian society, as discussed by Peet and Hartwick (2015) and Mahler and Pessar (2006). The feminist gendered lens is further used to see the reproduction of the dominant patriarchal structure and patrimonial system in Laotian society. The notion of gender empowerment, as discussed by Mandal (2013), is thus used as a concept to elevate Laotian migrant women out of their work situation in informal and feminized work sectors that is perpetuated by the condition of feminization and vulnerability. The concept of gender empowerment is re-conceptualized from the UNHCR (2001) Longwe women's empowerment framework, with four levels of access, self-awareness, mobilization, and control. Due to the scarcity of literature on gender empowerment of Laotian migrant women, my research contributes to this research gap and also looks at the role of other stakeholders, such as employers of migrant women, in possible initiatives to better empower Laotian migrant women in feminized work sectors.

3. METHODOLOGY

My research methodology uses qualitative research design and participant observation. For primary data collection, I conducted structured, qualitative phone interviews in Thai language with 11 Laotian migrant women in agriculture, garment factory, services, and domestic work sectors. I also conducted semi-structured, qualitative phone interviews with key informants, namely Thai employers of Laotian migrant women. For secondary data collection, I collected two types of information: academic-based articles, namely articles on feminization, vulnerability, and gender empowerment, and evidence-based articles, namely organizational reports on Laotian migrant workers in Thailand. I also sourced for news articles on the implications of the COVID-19 pandemic situation on migrant workers in Thailand.

In the table below is a summary of the changes made to my primary data and secondary data collection methods due to the COVID-19 pandemic:

Data Needed & Information Sources	Data Collection Method before COVID-19 pandemic	Data Collection Method during COVID-19 pandemic
<u>Primary Data</u> Interviews with Laotian migrant women	Conduct face-to-face structured and semi-structured qualitative interviews	Conduct structured qualitative interviews online (e.g. Facebook messenger call, Line call) or on the phone
	Observe Laotian migrant women in person and apply ethnographic methods	Use preliminary data that I gathered of some groups of Laotian migrant women prior to the COVID-19 pandemic to analyze as data for participant observation and ethnographic methods
<u>Primary Data</u> Interviews with employers of Laotian migrant women	Conduct face-to-face structured and semi-structured qualitative interviews	Conduct structured qualitative interviews online (e.g. Facebook messenger call, Line call) or on the phone
<u>Secondary Data</u> Academic articles on Laotian migrant workers Academic theories on feminization, vulnerability, and gender empowerment	Documentary research	Conduct more documentary research as supplementary information to make up for the limitations in doing primary data collection due to the COVID-19 pandemic

Data Needed & Information Sources	Data Collection Method before COVID-19 pandemic	Data Collection Method during COVID-19 pandemic
Organizational reports on Laotian migrant women News and articles on COVID-19 situation and impact on migration		

Research Limitations

I faced research limitations in terms of language, the political context of Laos, and the COVID-19 pandemic. First, as I am not a native Thai speaker, I acknowledged that I may not have grasped all the nuances of the Thai language throughout the interviews with the Laotian migrant women. The Laotian migrant women had their own limitations in understanding the Thai language, as it was also not their native language. I mitigated the language limitation by getting a Thai and English native speaker to help cross-check the accuracy of my translated questions and interviews in Thai language, and having a Thai and Laotian native speaker help facilitate my interviews with the Laotian migrant women. Second, it was difficult to gather research information from organizations and individuals based in Laos due to the political sensitivity of such research. I mitigated this limitation by narrowing the scope of my research to be conducted within Thailand. Third, due to the COVID-19 pandemic, I could not travel and conduct my interviews in person. I mitigated this research limitation by finding Laotian migrant women and key informants based outside Thailand online, and contacting them on various social media platforms before reaching out to them for interviews.

4. RESEARCH FINDINGS

Feminization and Cross-Border Mobility

This research argues that the feminization process affects Laotian migrant women's cross-border mobility to a large extent. This can be seen through the four indicators of feminization:

1. income (the factor of gender on the amount of income earned by Laotian migrant women);
2. work (the factor of gender on the type of jobs that Laotian migrant women do);
3. family (the factor of gender on the role that Laotian migrant women play in their families); and
4. social networks and resources (the factor of gender on Laotian migrant women's social networks and resources).

Gender and Income

From my interviews with 11 Laotian migrant women, a major push factor leading Laotian migrant women to leave Laos to find work in Thailand was mainly due to the nature of the primary form of work in Laos, which is agricultural work. Agricultural work is often more tedious and difficult for women compared to men, due to the demands of physical labour needed. In addition, the economy in Laos is not producing enough job alternatives to agricultural work, which necessitates these Laotian women to find employment in neighbouring countries such as Thailand. A more pressing push factor related to their positionality as women is that in Laos, women are paid less than men, even when they are doing the same job. The issue of wage differentials due to the factor of gender is also seen with migrant agricultural workers from other countries, including Myanmar and Cambodia. The Mekong Migration Network (2020) reported that Burmese and Cambodian women get paid less than their male counterparts despite doing the same job, and employers justified the pay difference by stating that men are physically stronger and are better workers than women.

In contrast, there are more jobs for Laotian migrant women to choose from in Thailand. In addition, these jobs are relatively easier for Laotian women to do as compared to farming in Laos. For example, a 21 year-old Laotian girl can earn 12,000 baht a month selling Thai desserts at a floating market in Bangkok, while back home in Laos she could only earn 4,000 baht a month from farming. Another 40 year-old Laotian lady who does the same farming job in the border province of Thailand can earn up to 9,000 baht a month as compared to only 3,500 baht a month in Laos. Hence, it is clear that the issue of wage differentials between Laotian men and women doing the same work in Laos contributes to the feminization process of Laotian migrant women migrating and working in Thailand.

Gender and Work

The economic landscape in Laos and the gendered segregation of work are external factors of motivation for Laotian migrant women to leave Laos for Thailand. The type of work that Laotian migrant women find themselves doing in Thailand is also done mainly by women like themselves. This can be seen especially in domestic work, agriculture, and services. For instance, a Laotian lady in her early 20s working as a waitress at an Isan restaurant in Bangkok shared that she only had female colleagues. Another Laotian lady in her 30s working as a chilli farmer in Mukdahan shared that most of the workers in her team are also women from Laos.

The preference for female labour in certain work sectors is also more obvious from the perspective of Thai employers. For the agricultural work sector, both male and female Thai employers shared that they preferred hiring female Laotian workers as they were more gentle, patient, and meticulous in picking bell peppers. In addition, female Laotian workers were more obedient and hardworking. In contrast, male Laotian workers were more difficult to handle as employees as they often drank and smoked a lot, which led to other consequences for the employers. In the garment factory sector, a male Thai employer indirectly stated his preference for hiring female Laotian workers based on how he talked about his employees. He shared that the Laotian women were more hardworking and could produce a higher volume of clothes daily, as compared to the Laotian men. Hence, this confirms that Laotian migrant women are mainly

working in feminized work sectors, based on the type of work they do and the employers' preference in hiring female labour. Hence, it is clear that agricultural work as the dominant form of work in Laos necessitates Laotian migrant women to search for employment outside of Laos and contributes to Laotian migrant women working in feminized work sectors in Thailand.

Gender and Family

Laotian migrant women have gendered roles in their families in Laos, such as the responsibility of remitting money back to their family members. A majority of the Laotian migrant women shared that they remit a substantial amount of their pay back home. Most of the time, they give the remittance to the female figure in the house, such as their mother. For others, they give the remittance to their dependents, such as their children living and studying in Laos. The way that the remittances are used by their family members differ. For some of them, their family members use the remittances to spend on daily necessities. For instance, Ms. B shared that “my mother uses my money to spend on farming necessities.” For others, their family members use the remittances for bigger purchases. For instance, Ms. N shared that “my mother uses the money to build the house in Laos.” A small number of the Laotian migrant women did not remit money back to their family members in Laos. The main reason was that they have children with their Thai partners and they are residing permanently in Thailand. Hence, for this small group of Laotian migrant women, they are mainly saving for the future of their children. For instance, Ms. M shared that “my wish is for me to be able to send my son to go to study well and give him a good job in future, I want to send my son to be a policeman or civil servant.”

The gendered role of remitting money back to their family members in Laos also extends to other women in the Laos family. For instance, Ms. K, who followed her elder sister to come and work in Bangkok, shared that “my elder sister came first (to Bangkok), she came here for a long time already. My sister wants to support our family so she comes to work here.” Hence, it is clear that the gendered role of Laotian migrant women taking care of their families in Laos contributes to the feminization process of Laotian migrant women working in Thailand for better pay and higher remittances.

Gender, Social Networks, and Resources

Laotian migrant women tap their own social networks and resources to come to work in Thailand. Their knowledge of job opportunities in Thailand is often from their social networks, including their Laotian friends and Laotian relatives living in Thailand. In addition, a majority of the Laotian migrant women whom I interviewed shared that they knew about job opportunities in Thailand from their female Laotian friends or female Laotian siblings already working in Thailand. Most of the time, they would also be accompanied by their female Laotian friends or female Laotian siblings to come and work in Thailand. For instance, Ms. P shared that “my friend recommended me to come and work here (in Thailand) 20 years ago...I come here with my friends, I am still in contact with them, through hand phone.” Ms. J shared that “my sister goes to Thailand by herself... my sister has experience, she went before, so I will ask her how she go... My sister have a lot of friends, so she introduce this

job to me.” Hence, it is clear that Laotian migrant women’s access to social networks and resources from Laotian family members and relatives working in Thailand facilitates and eases their feminization process of migrating and working in Thailand.

Vulnerability vis-à-vis Feminization Process

This research argues that Laotian migrant women face several consequences from the feminization process and the COVID-19 pandemic, which contribute to several aspects of their vulnerability as migrant women. This can be seen through the four indicators of vulnerability:

1. physical (the factor of Laotian migrant women’s physique and appearance as a woman, such as physical strength, health and safety, and how it attributes to their vulnerability as migrant women);
2. economic (the factor of Laotian migrant women’s type of work, amount of pay, and work benefits such as medical and healthcare, and how it attributes to their vulnerability as migrant women);
3. social (the factor of Laotian migrant women’s social networks, resources, and their knowledge of social organizations, and how it attributes to their vulnerability as migrant women); and
4. cultural (the factor of Laotian migrant women’s perception of their role in their Laotian families, and how it attributes to their vulnerability as migrant women).

Physical Vulnerability

From my research findings, some of the Laotian migrant women in the services and domestic work sectors expressed physical vulnerability by describing their physically intensive work, and also the lack of adequate rest hours and rest days at work. A majority of the Laotian migrant women whom I interviewed also worked more than 10 hours a day. For instance, Ms. B shared that she worked from 6am to 9pm everyday, with only one rest day every two to three months. This shows that Ms. B is exhausted by her work due to the lack of adequate rest and leave days. In addition, Ms. D who recently changed her job from services to domestic work shared that “I feel tired working in my new job, there’s more rest at my old job, no need to use so much strength.” This shows Ms. D had more rest time with less physically intensive work in the services sector than in the domestic work sector. A small number of the Laotian migrant women also expressed physical vulnerability in the form of how they were treated by their employers. For instance, Ms. J who worked as a waitress at an Isan restaurant, described in detail how she and her female colleagues were treated poorly by their employer. Ms. J said that “the owner of the shop is very fierce, I always get scolded, one of my colleagues spoil the mushroom and she get scolded by the employer... Turnover is very high in the place I work in, employees get fired almost all the time.” Based on Ms. J’s description, this suggests the employer took advantage of their physical vulnerability as women and verbally insulted them in the form of scolding. Hence, these examples show the existence of physical vulnerability experienced by Laotian migrant women in feminized work sectors, such

as domestic work and services work. This further suggests that Laotian migrant women are more liable to physical exploitation by their employers, and even sexual harassment, especially in the services sector.

In light of the COVID-19 pandemic, the physical vulnerability of these Laotian migrant women is protracted and heightened as some of them face unemployment and are stuck in Thailand as the international borders between Laos and Thailand have already closed. For instance, the Straits Times (2020) reported that “ten of thousands of jobless migrant workers from Laos, Myanmar, and Cambodia have been scrambling to leave Thailand since shops and retail outlets were shuttered in its major cities to contain the coronavirus outbreak, raising fears of a fresh wave of cross-border infections.” Laotian migrant women in the services work sector are the most affected as businesses in this sector have less customers, and hence, the employers require less labour.

Economic Vulnerability

From my research findings, Laotian migrant women faced economic vulnerability in specific work sectors, such as the domestic work sector. This is because domestic work is mainly done in the private sphere and is hidden from the public eye. As a result, exploitation is often prevalent in domestic work. For instance, Ms. D who started her new job as a domestic maid shared that “my documents get confiscated (passport and ID) away by my boss in my new job.” The fact that her employer withholds her legal documents is telling of her economic vulnerability and causes further difficulty if she desired to change her job, should she face any working issues with her employer. Some Laotian migrant women’s work was affected by the COVID-19 pandemic, meaning that some became unemployed or had less work to do, as businesses closed down, especially in the services sector. For the Laotian migrant women who had less work to do, they received less pay, while the Laotian migrant women who became unemployed had to go back to Laos. This demonstrates another aspect of economic vulnerability experienced by the Laotian migrant women in Thailand, as the COVID-19 pandemic resulted in the lockdown of international borders and travel, which further increased their economic vulnerability in the form of reduced wages or even a lack of wages.

Laotian migrant women also faced economic vulnerability in the form of lack of work benefits such as medical and healthcare. Most of the Laotian migrant women whom I interviewed did not have any healthcare or welfare benefits and had to rely mainly on themselves in the event that they fell sick. This also applies to those with two-year MOU contracts. As for the group of Laotian migrant women who came to Thailand without an MOU contract, they have had to rely fully on themselves whenever they fell sick. The majority of the Laotian migrant women also shared that their employers did not take care of them when they fell sick. This applies to Laotian migrant women across all the studied work sectors (i.e. domestic work, services, agriculture, and garment factory).

For the small number of Laotian migrant women who were pregnant at the time of interview, they faced even more economic vulnerability, as they lacked maternity and childcare benefits, on top of lack of healthcare and medical benefits. In addition, their employers did not provide any form of support for the safe delivery of their child. For instance, Ms. N worked at a garment factory in Nakhon Pathom and was already in her second trimester when I interviewed her. She said that “I don’t know if my employer will give me benefits when I give

birth.” This connotes a sense of uncertainty on her part regarding whom she could approach for help and support with the issues surrounding childbirth and childcare. Another woman who was pregnant at the time of interview, Ms. N, faced more dire consequences of her economic vulnerability when she was in her second trimester. Ms. N worked as a waitress in a café in Bangkok and shared that her boss dismissed her and indirectly related it to her pregnancy. Ms. N shared that “my boss doesn’t want me, because I am pregnant, cannot do anything.” These examples show that Laotian migrant women are liable to a lack of work benefits such as adequate number of leave and healthcare benefits, especially for those who are pregnant.

Social Vulnerability

Based on my research findings, a majority of Laotian migrant women in Thailand had primarily Laotian relatives and friends, but not Thai friends. This shows that their social networks in Thailand are very small and concentrated around their own local community. For instance, Ms. D said that “the people I know are from different families but not from the same place in Laos, but I just happen to know them, I don’t know any other people besides my friends.” In addition, Ms. M shared that “the (Laos) community is very small, so I don’t know any people.” This emphasizes the social vulnerability of Laotian migrant women, as their circle of social networks and resources are very limited.

In addition, their lack of social networks with Thai people highlights their social vulnerability, especially if they need help on issues related to Thai labour laws. For instance, Ms. B shared that “I don’t know much people here...I don’t have Thai friends.” The social vulnerability of Laotian migrant women increased alongside the COVID-19 pandemic, which forced most of their relatives and friends to go back to Laos. This means that for some of the Laotian migrant women, the social networks and resources that they are able to derive from their friends and family based in Thailand have changed drastically due to the COVID-19 pandemic. This would in turn have negative implications in the event that they need help and support while being stuck in Thailand due to the closing of international borders between Laos and Thailand. The majority of the Laotian migrant women interviewed also shared that they did not have any knowledge of social organizations that help migrant workers with issues relating to work or immigration. This relates to their social vulnerability as migrant women, especially when employers put them in less favourable work conditions or withhold their wage payments. This further relates to their vulnerability due to a lack of wide social networks and connections in Thailand. This is especially relevant if they need to deal with work-related issues and labour law issues in the context of Thailand.

Cultural Vulnerability

From my research findings, it is common that the majority of the Laotian migrant women recognize their familial roles and responsibilities, such as taking care of children or elderly in Laos. However, upon leaving Laos to work in Thailand, it can be seen that most of these familial roles and responsibilities are passed on to other family members in Laos, most commonly onto their mothers. This suggests that these Laotian migrant women face cultural vulnerability when they leave Laos to work in Thailand, as they cannot afford to continue taking care of the children

and elderly back home. In addition, the sense of independence of Laotian migrant women from their husbands is also a form of cultural vulnerability faced by married Laotian migrant women. For instance, Ms. N, who was heavily pregnant at the time of interview and working at a garment factory in Nakhon Pathom said that “I will depend on my employer to send me to the hospital.” This is despite the fact that her Laotian husband is also working at the same factory as her, which further suggests her cultural vulnerability due to her husband. These examples suggest the limited abilities of Laotian migrant women in performing their roles and responsibilities expected of them in Laotian culture, both as a woman and as a family member.

5. CONCLUSION AND RECOMMENDATIONS

This paper concludes that Laotian migrant women who travel from Laos to Thailand in search of better economic opportunities are often subject to the feminization process and become a vulnerable minority group of migrant workers within the feminized work sectors in Thailand. They face labour issues perpetuated by gender discrimination in the agriculture sector, domestic sector, services sector, and garment factory sector. They experience labour rights violations and lack important healthcare services, including maternity benefits and childcare, especially for those who become pregnant. As a result, they become physically, economically, socially, and culturally vulnerable, due to their positionality as migrant workers and as women. The various aspects of vulnerabilities that these Laotian migrant women face are protracted and heightened due to the COVID-19 pandemic, especially their economic and physical vulnerabilities, as the COVID-19 pandemic greatly limits their physical movement and affects their jobs and wages. The vulnerabilities experienced by these Laotian migrant women are mainly caused by their lack of awareness of labour rights, and of the non-governmental organizations and civil society organizations that help migrant workers. This results in poor protection of labour rights for migrant women.

It is thus important for civil society organizations and other stakeholders to improve Laotian migrant women’s limited levels of gender empowerment, and to help in their further cross-border mobility. First, it is important to legalize Laotian migrant women’s status with formal labour arrangements, which can be done with the support of employers. Second, it is important to provide knowledge, information, and education about labour rights and protections to both employers and Laotian migrant women, so that both parties are aware of the extent of such rights and protections. Third, it is important to encourage Laotian migrant women to attend skills trainings and workshops to learn new skills beneficial to their current jobs. It is also important to convince employers to send their workers for training by enabling them to see the mutual benefits. Through skills trainings, Laotian migrant women could have a chance to move away from low-skilled jobs in feminized work sectors to higher-skilled jobs in more gender-neutral work sectors. Last, it is important to connect Laotian migrant women to relevant civil society organizations and NGOs, as can be facilitated by migrant network leaders. These are my recommendations to effect useful changes to labour migration policies to further benefit migrant women working in Thailand, by using Laotian migrant women as an important case study. In doing so, this would enable all migrant women to be better protected in terms of labour rights and relevant policies.

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Accessibility of Justice for Intimate Partner Violence Victims in the Customary Court at Rohingya Refugee Camp, Bangladesh

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ABSTRACT

This paper explores the norms and mechanisms of access to justice regarding intimate partner violence (IPV), the constraints that affect refugee women when seeking measures against IPV, and the experiences and views of justice providers in giving access to justice to IPV victims in the customary court. This is a qualitative study where purposive sampling was applied. Five, eight and four in-depth interviews with IPV victims, Justice Makers from BMC/CMC, and other concerning organizations were conducted, respectively. Moreover, two key-informant interviews were also conducted. Data were analyzed utilizing thematic analysis. The findings revealed that the multi-sectoral approach is the framework in responding to IPV cases followed by each actor, including the BMC and CMC, who are protecting the rights of IPV victims. However, this community-based committee is the first spot to mitigate IPV cases, and the trial procedures are not consistent with national laws and international human rights standards; the committee uses their life experiences, religious norms, sociocultural values. IPV victims and the customary court experience obstacles in case reporting, trial processing, and denial of legal justice. Moreover, the committee is more active in keeping the family and societal harmony rather than in protecting the individual (women). UNHCR should accelerate efforts to protect, respect, and fulfill the needs of IPV victims at all sectors. Training on human rights and gender, the determination of the rules and regulations of customary court to protect IPV victims, the development of appropriate sanctions for perpetrators, and the remedies for victims are suggestions from the research to get the justice for the IPV victims.

Keyword: Accessibility of Justice, Intimate Partner Violence, Customary Court, Rohingya, Refugee.

AUTHOR'S BIO

The researcher, Korima Begum (korimahe@yahoo.com), is a current student of Mahidol University, doing a master program in Human Rights and Democratisation (International Program). Also, she completed four years honours and one-year master degree in Anthropology from a public university of Bangladesh. The researcher has worked with different NGOs and UNHCR, and now working as an assistant professor in a public university in Bangladesh.

1. INTRODUCTION

Violence against women is a regular issue across the world. This violation of women's human rights is seen especially in the case of intimate partner violence. About one-third of women worldwide have faced physical or sexual violence from their intimate partners in their lifespan (*Violence against women, 2019*). Around 137 women are killed every single day, but less than 40 percent of the victims ask for advice about it, from which only 10 percent seek help from law enforcement agencies and health services. (*Facts and figures: Ending violence against women, 2019*). Spouses killed about 152 women from January-September, 2019 (*Ain o Salish Kendra (ASK) A Legal Aid & Human Rights Organisation, 2020*).

This is the situation in general, but this is even worse in underprivileged areas, like a refugee camp. More than a million Rohingya refugees who do not have freedom to move have been provided shelter in refugee camps by the Bangladesh Government. As of now, there are two registered Rohingya refugee camps, in where 44,922 refugees (as of 28 February 2019) have been living for almost in a camp setting for more than 28 years. Since April 2019, more than one million Rohingya refugees have been living in a new makeshift camp in Ukhiya and Nayapara in Cox's Bazar, Bangladesh (*Situation Refugee Response in Bangladesh, 2019*). However, they have no freedom of movement. Limited space to move comes with lack of privacy and poor access to essential services, and these make them extremely vulnerable. Intimate partner violence is very common among them, especially against women, because they simply are not thoughtful of their rights.

According to BBC Media Action studies, both men and women accept such violence; this includes sexual, emotional and physical abuse. Most women do not even want to seek support. They are at risk of harassment, vulnerability, and discrimination at most stages of life. The report also shows that 71 percent of the occurrence of gender-based violence appeared in the survivor's home, and 74 percent of these cases are committed by their intimate partners (Mamun et. al., 2018).

There are 26 refugee camps in Cox Bazaar. Of these, the Kutupalong Rohingya Refugee Camp accommodates approximately 18,200 of the Refugees (*Situation Refugee Response in Bangladesh, 2019*). In case of intimate partner violence, victims should report by following the regulation of 'step by step' procedure, first to the camp-level committee (customary court) who are elected by the refugee people with the support of UNHCR and the camp authority of Bangladesh government. In case the matter is unsolved within the camp, it is referred to the Camp in Charge and followed to the police station. This structure is understood by everyone within the camp and recognized as an appropriate pathway. Veroff (2010) has described dispute resolution in the Meheba refugee settlement in Zambia as a diffuse environment where refugees select from a range of possible authorities to decide their case. The context of informal justice - social status, political influence, and economic context - play an important role in getting at least access to justice; and there are some judgments in the case of intimate partner violence (Krehm and Shahan, 2019).

Conceptual Framework: Six essential elements of Access to Justice: Justifiability, Availability, Accessibility, Good quality, Remedies, and Accountability - as identified by the CEDAW committee's general

recommendation No 33 - is adopted in this paper to uncover the accessibility to justice for Rohingya refugee women in the customary court.

Study Context: Kutupalong, located in the coastal district of Cox's Bazar, is currently the world's largest refugee camp. Like many other refugee camps in the world, it is co-run by the UNHCR. UNHCR is mandated to provide international protection to refugees and seek durable solutions to their problems. Thus, UNHCR and States share the responsibility to ensure that refugees are protected against sexual and gender-based violence. The rules of customary court and the reason for failure to make justice, as well as experiences of women victims in the cases of intimate partner violence, has to be known.

Research Approach: The study adopted a narrative understanding of the qualitative approach, which allows subjects to express their opinion according to their native point of view. Within the narrative perspective, this study has sought out the regulation processes, women's experiences, and its impact on the Rohingya refugees in the camp.

2. METHODOLOGY

The researcher's identity and the purpose of the study had been provided to the justice maker (BMC/CMC), IPV victims, Camp in Charge, UNHCR, and respective organizations, who were participants in the study, before collecting data. Data was collected through in-depth interviews in Bengali, which was then translated into English, with verbal consent of each participant. The interviews took place during the period of March 2020 to May 2020.

Analysis

- All the collected unstructured data have been converted to textual form by going back to research objectives and questions before being organized accordingly
- Recorded data have been put into sentences word for word and expressed under different themes, followed by the research questions and objectives
- Data were analyzed thematically based on participants' stories by using the process of restoring, and a rich description of the data was included

3. RESULTS

In this study, it was found that living in the refugee camp settings without the rights of freedom of movement, right to work, and inadequate livelihood things was the main reason for Intimate Partner Violence. With the support of leading organizations, the UNHCR, Bangladesh's government, and the other humanitarian national and international organizations were giving protection to the victim. Moreover, the refugee community-based committee in each Block and one camp committee formed for each year by the UNHCR and Bangladesh government, which used

to nurture the communal harmony, mitigate the various types of problems, in particularly IPV cases. Being a refugee community, both sides of the justice provider and justice seeker were struggling to get access to justice. Those living in camps may have their basic needs met by agencies, but they usually have their freedom of movement restricted, have limited opportunities to engage in economic activities, and have limited decision-making powers (Schmidt, 2003; Szczepanikova, 2005).

Following the Multi-Sectoral Protection/Response Approach: In Kutupalong registered refugee camp, the multi-sectoral approach is the framework followed in responding to IPV cases. The sketch below represents how different actors work together to respond to the victims.

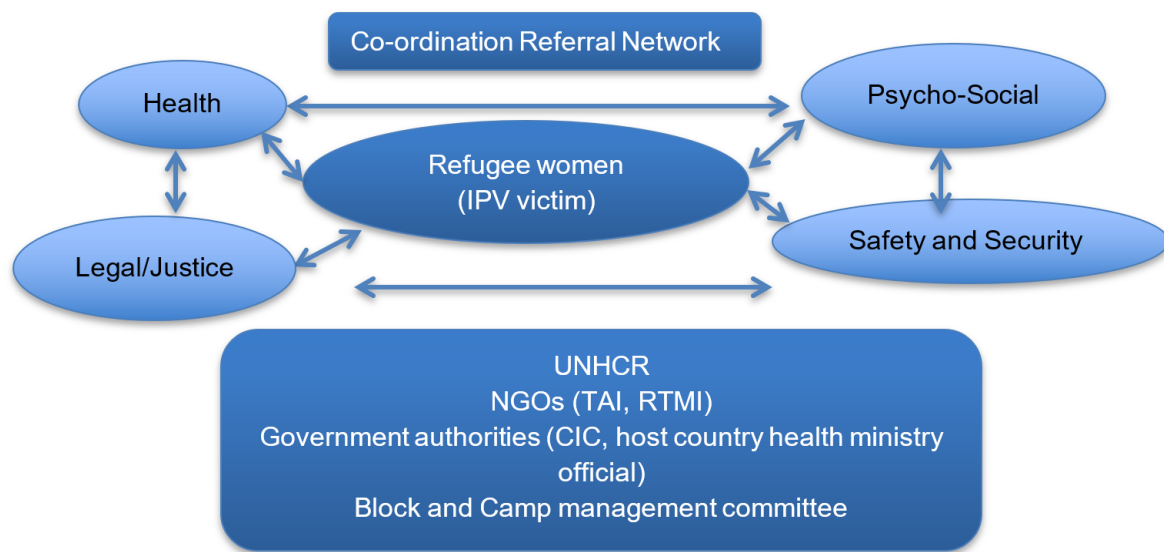


Figure 1. Multi-sectoral Framework for protection/Response to IPV

Health: Responds to the IPV for actions involving medical evidence of the victim taken by health sectors.

Psychosocial: Responds after an incident for mental health support of the IPV.

Safety and security: Respond to the IPV for actions involving safe shelter.

Legal/Justice: Responds to IPV involving access to Justice.

Structure of Customary Court: The Block and Camp Committees are at the core of refugee self-management within the refugee camps. The Block and Camp Committees are working in partnership with the Government of Bangladesh (GoB), UNHCR, IOM, and other partners. In the Kutupalong registered refugee camp, where last elections took place in 2019, seven Block Committees and one Camp Committee had been formed. Each committee has twenty (20) refugee representatives in different position, such as: Camp/Block Leader, Deputy Camp/Block Leader, 2 Helping Hand, SGBV Focal Point, Anti-Trafficking Focal Points, Child Protection Focal Point, Education Focal Point, Life Skills and Vocational Training Focal Point, Health and Medical Focal Point, Wash Focal Point, Care and Maintenance Focal Point, Persons with Specific Needs Focal Point, Women Group Focal Points, Youth Group Focal Points, Men Group Focal Points, Food Focal Point, and NFI Focal Point. Promoting and

maintaining harmonious relationships among camp residents and between the camp and the host communities are their responsibility.

The registration process for case filing in customary court: Reports can be filed anywhere through the Block/Camp committee, CiC office, NGO's, and UNHCR camp office. But the Block/Camp committee is considered the first spot. The step-by-step procedure the committee follows for filing an IPV case contains -

- Entering the subject in the register book after the incident being applied,
- Informing the incidence to CiC, UNHCR and respected NGOs, and
- Referring unsolved matters within the committee to the Camp in charge and followed to the police station

Physical Structure of Customary court: No specific office is available for customary court and it is held in a spot called 'Gool Ghar' - a brick shed with a bench in an open space present in all camps.

Case Documentation: Having the risk for the victim to be tortured again, she is kept in a safe home during the intervention, where she is provided mental support. With no time to spare, the intervention starts as soon as the case is filed, unless it takes longer to find the culprit. During this time, the survivor is counseled to improve their mental health. A female member of Block committee said:

"IPV victim reported their incident on time, but it is difficult to solve the victim's problem because of husband's unavailability. The camp is big and overcrowded, how and where we will find him. Sometimes, we seek help from CiC to find the husband." - Asma, 35.

Response to the medical needs of victims: To seek legal justice, it is very much essential to document medical evidence. The committees collaborate with medical staff to provide adequate primary support to victims.

Meeting the Psychosocial needs of victims: After an incident of intimate partner violence, with the victim having faced so many traumatic events, the committee offers counseling, such as listening and emotional support for victims. Victims are referred to psychosocial workers of respective NGO's, advocated with medical and security forces on behalf of victims.

Security and Safety Response: In some cases, after the incident, the victim is not safe to return to her shed. In that case, the customary court analyzes the incident data and ensures a safe house for the victims. If victims took divorce from husband, the customary court also searches for relocation to another block or camp for the victim's safety. But it is so difficult to relocate the shed because of the inadequate number of sheds, as one female member stated:

"In overcrowded refugee settings, we have no sufficient shelter. If a woman victim gets divorced from her husband, then it is very tough to relocate her. For this reason, sometimes CiC asked us to solve the problem within the committee by counseling." - Samirun, 40.

Legal/Justice Response: From the interviewees, it was found that, in customary court, the just maker tried to redress the victims. There is no written law, norms, and mechanisms, but only verbally implemented justice procedures. These procedures are not consistent with national laws and international human rights standards. For IPV cases, the customary court is responsible for mitigating the case through counseling both victims and perpetrators. If the victim disagreed with the decisions, then customary court assists the victim in applying for the next level – the CiC. They also accompany the victims to the police station, are present during all appearances and regularly update CiC and UNHCR protection staff.

Sanctions for Perpetrators: The study has found that there are no written laws against perpetrators of IPV. Most of the time, they are set free after verbal threat, kneeling down or a signature on paper. The customary court focuses on keeping family bonds rather than providing justice to individuals because if a family is torn apart after an IPV case, the children of that family will be facing much vulnerability. One member stated that:

"Family has four to six children. If we give decisions for divorce, then children faced vulnerable situations. After divorce, again, they engaged with another refuge and made a relationship and got married. After some days of the new relationship, women faced the same violence from the new partner. That is why we tried to solve the problem and keep the family together." - Saiyedur, 45.

One key informant interviewee from the refugee volunteers stated that the presentation of the respective staff in this procedure can reduce corruption. But most of the time, the representative does not present, and for that reason, the customary court member does not feel the accountability.

Monitoring and Follow up visits by customary court member: The female member of customary court regularly communicates with the victim after the reporting of an incident in order to monitor her situation. It is continued for two to three months. According to one of the female members:

"We follow up the case for a few months. In that time, perpetrator behaved well with the victim. But, when we have stopped follow up visits, after few days, victims again came and reported about violence again." - Ayesha-43.

However, there are victims who did not follow regular visits to the counselling centre. NGO's respondent reported that women victims were not much aware of their services, which was essential for them as they are in the more vulnerable position. An NGO's staff stated:

"After reporting the case, women victims rarely come in counseling sessions. They always prefer to go to CiC and UNHCR to get the solution. Again, CiC and UNHCR referred to customary court. So, all just moving in this chain for a long time and get tired and stopped to seek Justice." - Trishna, 39.

Inadequate time for customary court: It is the responsibility of the customary court to pacify all sexual and gender-based violence, except for rape cases. But since they receive incidents reported almost every day, they

hardly have time to respond to victims coming with new incidents. However, if a severe case comes, they break the queue to focus on that first.

No training or workshop on IPV case for customary court: TAI and UNHCR are respectively responsible for training the committee and explaining their work in camp management and monitoring the overall situation. It has been learned that the customary court has not been given specific training on IPV cases, neither by the government nor by the UNHCR. The customary court reported that they did not get specific training and workshop on SGBV cases, in particularly IPV cases, from the UNHCR, the Bangladesh government, or other humanitarian organizations. The entire respondent stated that:

"Training is needed; it is important to know how we can handle the case, fixed compensation for each type and level of incident etc."

Seeking help of the CiC by the customary court: When a committee fails to solve a case, they refer it to the CiC, the official representative of Bangladesh. The CiC does not want couples to be separated as it creates complications with living situations, security etc., so they just try to resolve IPV cases with counselling. One key informant from the refugee volunteers stated that:

"CiC does not want to separate the family, and that is why he always avoided the divorce matter and tries to keep family together. If victims got the divorce, then needs to relocate her with safety, separate shed, split the ration card, etc. To avoid these types of complicity, it is easy to keep the family together by counseling, threat."- Zia, 29.

Although the customary court tries to protect the victims' rights, it is impossible without the CiC's concern.

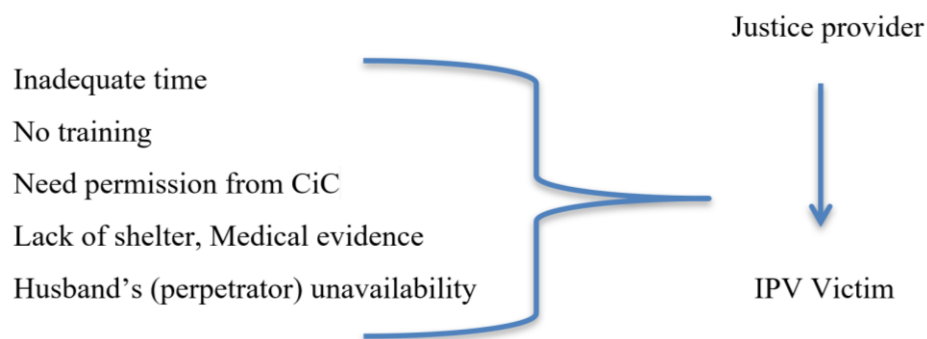


Figure 2. Constraints to giving Justice in IPV cases

Lack of medical evidence and witness: With most women not going to the hospital at the right time or with the medical authorities not caring enough to file documents, it becomes difficult to get justice after a physical injury. With lack of witnesses, most victims also fail to receive justice. Encountering difficulties in reporting the case and waiting for trial, uneducated victims fail to report cases with being unable to submit written applications. This takes a

while, and the physical evidence of abuse heals and the authorities get busy with new cases, resulting to no justice for the victim.

Struggles as a woman, as a refugee and a refugee woman (possible harassment for identity when seeking access to Justice; stigma, and discrimination): Being a refugee is being helpless in the first place. Besides that, the biological and Rohingya societal difference between men and women causes disadvantage to women. So, refugee women are quite vulnerable to abuse and have little freedom of speech. As a result, women have no scope or means to express their views. Moreover, a refugee woman suffers from other problems, including domestic violence. In addition to other family members, most women are also victims of violence by their husbands. One female refugee member stated that:

"Women are always weak - weak in the parents' house, weak in the husband's house. Everywhere they are vulnerable position and more victims of violence." - Asma, 35.

Experience of victims visiting a customary court: Kohinur, a 31-year-old refugee woman, said that once she had visited the authority offices several times for justice, they had been busy with other works and had not shown any concern to her. Also, in "Gool Ghar," there is no sitting arrangement for the victims and their companions.

Justice experience (fair/unfair): Sometimes the chiefs are partial during the procedure of justice. A 35-year-old victim, Asia, had stated that the committee members were not listening to her but to her husband only.

"Committee members stop us (victim) without listening to what we have to say, our incident in detail. But they listen to my husband." - Asia, 35.

Intimate partner violence is considered to be domestic violence and, as the court does not want to break marriages, they usually send back the survivor to the perpetrator only with words. This puts these women in risk of experiencing the same violence again.

Accessibility of Legal Justice: The authority does not charge money for providing legal justice to the survivors. Yet sometimes, community members try to get something for exchange for accompanies the victims, which makes the women not seek their help and face further injustice.

The difference between man and women in seeking justice: Rohima, a female member of the committee confessed that she wishes all women to get justice, but the women seem to think that they are destined to be oppressed and so do not file complaints. Women who do file complaints are often shamed by other refugees as "Nosto" women.

"It is always demanded that the victim gets justice. This is what is demanded as a woman. But women are everywhere in a weak position. They always blame their destiny. It is not possible to give justice to them, because they do not file the case very often." - Rohima, 40.

Men, on the other hand, do not seem to care and file any legal complaints as they wish. This has a lot to do with the patriarchal system of the Rohingya community. According to an NGO worker:

"After two years of marriage, the husband's behavior began to change, and he began to hurt his wife physically. They have a two-and-a-half-year-old child, and the wife has become pregnant again. In this case, the wife does not want a divorce, but the husband has arranged the divorce by paying money to the committee."- Sonia, 29.

Male-dominated customary court: The study found that the camp/block committees are male dominant with only one female member. It does not make any easier for women to seek justice.

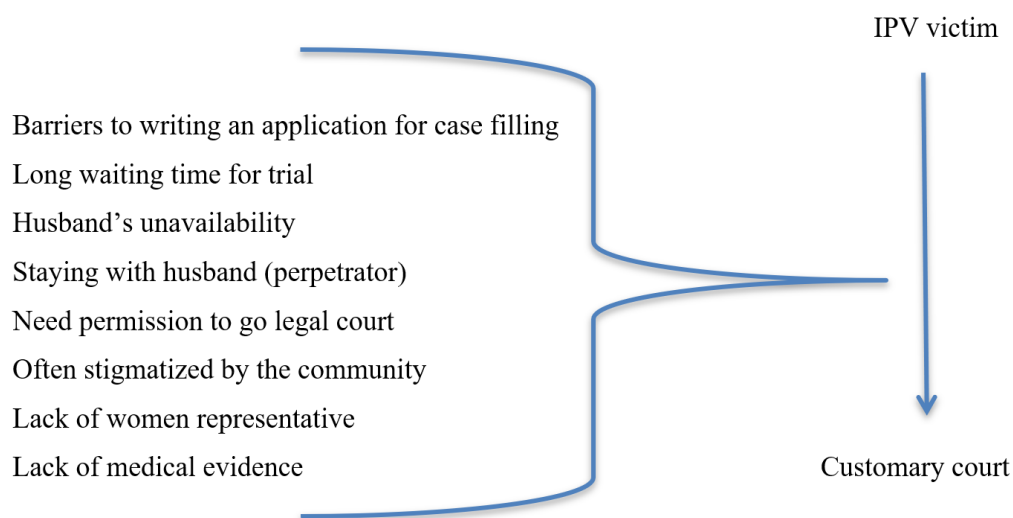


Figure 3. Constraints to seeking Justice in IPV cases

Hierarchical Governance: The customary court never does anything without informing the Camp in charge, who cannot undertake law enforcement action without authorization of the government. So the justice system for intimate partner violence is not that powerful and violates justice to the victims. McConnachie (2014) states that in the Karen refugee camps in Thailand, most disputes are addressed in the camp at the section level and similar hierarchical governance active.

In the area of study, the bottom-up nature of justice systems for intimate partner violence is present with the vulnerability of the customary court, who does not do anything without informing the Camp in Charge and UNHCR. A hierarchical governance system and their lack of power and insecure status causes a violation of Justice to IPV victims.

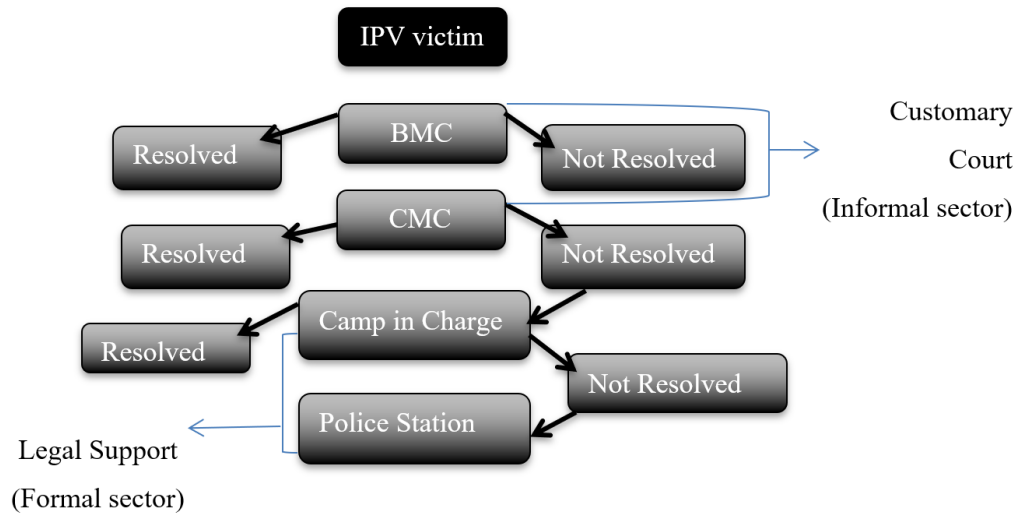


Figure 4. Hierarchical governance system in response to IPV victim

4. DISCUSSION

For the refugees in the Kutupalong registered camp, the customary courts in the camps are primarily responsible for providing justice when someone reports IPV incidents. In case the court is unable to do it, the CiC is referred to do so. Also, a victim can actually complain to anyone they like - the NGO workers, camp police or the camp committee. The multi-sectoral approach in IPV cases is to get the survivor out of the vulnerable situation and four sectors to work together in it - psychological, health, legal & security. However, no written law exists regarding IPV justice. Authorities just follow religious and social norms to deal with the problems. Men make the decisions and women depend on them. Also, men have easy access to everything outside the house, and this gives them more power. With more power to men, women dependency makes women more vulnerable to violence.

The ones who are being socially recognized are also blaming the women; for example, they do not want to share their problems with anyone or think of their destiny. It is a personal matter which is often ignored and should not be consulted in public spaces (Das, Bhattacharyya, Alam and Pervin, 2016). Women are not allowed to raise their voices in customary court (begum and Nirmal, 2017). There are no clear regulations against IPV cases and quite often the victims have no idea of the existing justice system either. This makes justice inaccessible for them. According to Guhathakurta (1985), women think that it is their matter and no one else should know about this. Sexual abuses are really common among refugee women and it comes from different sources. But, in fear of victim blaming, they do not make a move because whoever does gets shamed and isolated. They are stigmatized as "nosto" or degraded, and this stops them from seeking justice. Akhter and Kusakabe explored that Rohingya Refugee women do not want justice for anyone despite being helpless until the situation goes against them completely (Akhter and Kusakabe, 2014).

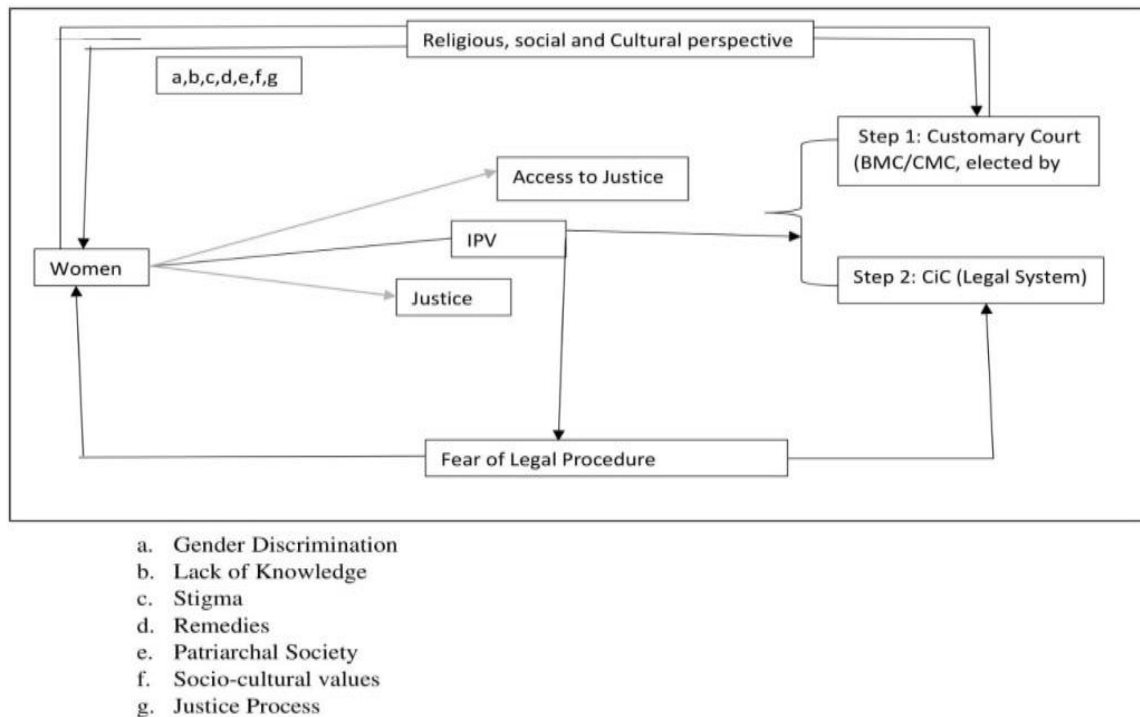
"After two years of marriage, the husband's behavior began to change, and he began to hurt his wife physically. They have a two-and-a-half-year-old child, and the wife has become pregnant again. In this case, the wife does not want a divorce, but the husband has arranged the divorce by paying money to the committee."

These words by Trishna (39) clearly explain how helpless these women feel. This deprives them of accessibility to justice. In Southern Sudan, customary courts are a male-subservient sphere and an adverse space for women. Battered women have to stay a long time in this abusive relationship until the court decides any decision for punishment or divorce (Mennen, 2010). In the case of Rohingya women, too, as part of a patriarchal society, a woman is accepting abuse by her husband as her destiny.

All refugee women in this study have experienced some form of abuse from their partners. Women who stand up to their partners are considered rude, and the partners leaving them after that is scary because women depend on men in their society. Men think it is okay to abuse their wives, so do the neighbors who never try to stop it from happening. In the Rohingya refugee camp, Mamun et al. (2018) found that the husband considers it authentic to torture his wife. Things only come out when the victim gets badly injured. Most of the time, the parents and community leader's decision is such that she has to return to her husband's home. Often, family members of the perpetrator bribe their leader to keep quiet (Mamun, et. al., 2018).

After fighting the societal fear, the victim files a report to the customary court, who only tries to settle things from a social and religious perspective. If the victim refuses to accept that, she is then sent to CiC who usually tries to convince her how troublesome the process will be. The victim gets scared and returns to customary court, and again the issue gets resolved informally. This structure was appreciated by everyone within the camp and acknowledged as a friendly way to solve any problem right away. This hierarchical, flexible, order-focused system seeks to solve a problem in the initial phase so that there is always a peaceful environment among the camp residents (McConnachie, 2014). Accessibility to justice remains questionable in this case.

The study has found that there are no written laws against perpetrators of IPV. Most of the time, they are set free after verbal threat, kneeling down or a signature in paper. The customary court focuses on keeping family bonds rather than in providing justice to individuals because, if a family gets apart after an IPV case, the children of that family will be facing much vulnerability. This practice is the focus of customary law, and it gives importance to the relationship between two families than individual relationships as it is a concern of Traditional Justice (Kovar and Harrington, 2013).



CEDAW Committee's General Recommendation on Women's Access to Justice: Access to justice refers to the "ability of people to seek and obtain a remedy through formal or informal institutions of Justice and in conformity with human rights standards" (UNDP, 2005) and concerns itself, not only with access to the mechanisms and institutions of the Justice, but also with the quality of justice accessed. The Rohingya refugee camps show that there are multiple arrangements for justice. In this case, the accessibility of Rohingya refugee women in the customary court has been seen by the six elements of CEDAW's 'Accessibility.'

In recommendation, No. 33, the CEDAW Committee identifies six essential elements of access to justice:

- **Justifiability:** the unhindered ability of women to access justice and claim their rights
- **Availability of the justice court**
- **Accessibility:** all justice systems be secure, affordable, physically accessible, and adaptable to women and tailored to women's needs
- **Good Quality:** a mixed phenomenon, such as resources, training, and the satisfaction of both duty bearer and rights holder
- **Customary court follows mainly on social, cultural, and religious norms and values.** Besides, the well-being of the family and children is also considered. As a result, the committee is asked to resolve or try to mitigate the issue. But it is questionable how effective and meaningful the remedy is.
- **Accountability**

The data shows that women used to report their incident to the customary court to demand justice. Still, in terms of their educational, economic, time-consuming, and multi-sectoral referral systems, women who feel complications eventually stop to seek justice after reporting. Though physically the block and camp management committee exist for IPV victims, the study found that this committee is responding to other activities in the camp provided by the CiC and UNHCR. This is why this committee is busier with keeping the peace in the overcrowded camp, and they do not respond to the victims on a priority basis. Sometimes, the victims lose their medical evidence. Undue delays in trial proceedings harm the victims. Moreover, the lack of willingness of the CiC and UNHCR also represents an obstruction to accessing justice. To file an IPV case, a written application must be submitted to the customary court when most Rohingya women cannot write themselves. In this case, the volunteers of the camp or any NGO worker can write. But most of the time they have to pay for it. As a result, it is not always affordable or accessible to women. This study found that the current block and camp management committee did not get any training on IPV cases, and they used their life experiences and religious norms for case proceedings. Besides, the well-being of the family and children is also considered. As a result, the committee is asked to resolve or to try to mitigate the issue. But it is questionable how effective and meaningful the remedy is. Though there is the presence of one representative from the UNHCR protection team or any other actors concerning service providers for the SGBV program in the trial preceding, the study found that many actors do not follow it. This is why the committee did not feel accountable to the victim and made a decision as they wished.

This research has argued that these six dimensions are not properly complied in refugee camp settings. Even if the block and camp management committee (customary court) is legally empowered in their process and mechanisms, this customary court is created for maintaining the social harmony rather than individual interest. Women are the more vulnerable group, especially in refugee settings, and their rights are violated by the male-dominated customary court in the name of social harmony.

5. CONCLUSION AND RECOMMENDATION

Bangladesh - neither a signatory of the 1951 Convention relating to the Status of Refugees nor of its 1967 Protocol and an enactor of any national legislation on asylum and refugee matters - not only recognized the Rohingya as refugees, but also, along with UNHCR, provided assistance since their arrival to this day (UNHCR 2012: 5).

The vulnerable refugee women affected by abusers of different forms lead a miserable life. The UNHCR and Bangladesh government jointly made the Block and Camp management committee to mitigate their problem by themselves, particularly sexual and gender-based violence, except for rape and murder cases. However, there is no written guideline on how they will mitigate the cases and ensure justice, especially for the IPV victims. The issues mentioned by CEDAW in the case of victim's access to proper Justice are not being properly met. With ongoing gender discrimination and lack of knowledge, accessibility of justice for these women is highly questioned.

Based on the findings and conclusion of this study, here are some recommendations to be considered:

- Working with the block and camp community in developing effective response strategies, such as laws, rules, sanctions, remedies, time-frame, etc.
- Establishing an effective system with the CiC so that the block and camp management committee redress for the victims who wish to seek legal assistance for the incident
- Establishing the monitoring system to play vital roles in trial proceedings in customary court for responding to the needs of victims
- Developing a system to find the perpetrators in time so that victims can also get justice in time, and monitoring the actions of perpetrators to ensure the safety and security of the victims
- Conducting training sessions for block and camp management committees on intimate partner violence
- Designing strategies for the protection of victims, such as shelter, security, and offering livelihoods

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COPING MECHANISMS IN FOOD INSECURE HOUSEHOLDS: A HUMAN SECURITY PERSPECTIVE

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ABSTRACT

Food insecurity is a persisting non-traditional security threat in countries around the world, specifically among low-income households and vulnerable communities. Shortages of supply affect the availability of food, yet physical availability of food does not guarantee access to end-users. During stressful periods, individuals and households react with personalized strategies or ‘coping mechanisms’ to survive. Thus, this paper aims to explore coping mechanisms for food insecurity in existing literature from the human security perspective. This review paper argues that a coping mechanism is often an approach established by a collective of individuals. Previous works on coping mechanisms have grouped the mechanisms into several groups based on their approach and impact on the household. Bringing in the concept of human security highlights the individuals as active security objects who possess agency and can creatively initiate strategies to survive in dire conditions. Despite the mainstream ‘top-down’ approach in human security, the opposite also plays an important role in building household and community resilience. A people-centered approach in food security should comprehensively empower the individuals as bottom-up actors in society. Their agency is an important element in attaining household resilience and wellbeing.

Keyword: Non-Traditional Security, Food Security, Human Security, Coping Mechanism.

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1. INTRODUCTION

The COVID-19 pandemic reminds us of the fragility of the globalized world system. The pandemic, which began as a public health threat, has morphed into political and economic threat in most countries. In some ways, it bears resemblance to the 2007/8 financial and food crisis, yet the disruption that it has caused has extended globally on a much larger scale. The global food security system that connects the majority of countries through a complex, interdependent supply chain is also affected as borders are closed and export bans are implemented.

As one of the non-traditional security threats in a state, food security plays an important role in determining the wellbeing and productivity of the citizens. Scarcity of food, or the threat of food insecurity at a large scale, may trigger fear and unrest. Yet, food insecurity does not only occur during a major crisis, but can also occur during peaceful periods when food access is disrupted. Previous research has found that under stressful conditions, people have devised strategies or mechanisms to cope and survive. This paper is an attempt to examine coping mechanisms as an application of human security during food insecure conditions in contemporary literature. In this paper, we argue that coping mechanisms during food insecure conditions are a manifestation of human agency and household resilience.

2. FOOD SECURITY AS A NON-TRADITIONAL SECURITY THREAT TO HUMAN SECURITY

‘Security’ is a contested concept and traditionally focuses on the state as its referent object. However, the aftermath of the Cold War drove security scholars to expand the conceptualization of security threats. Scholars called ‘broadeners’ and ‘wideners’ have contributed to the development of non-traditional security (NTS) issues in security studies (Hough, 2008). Both broadening and widening approaches have expanded the security discourse by including new and emerging threats, as well as threats affecting the state, society, and individual security (Caballero-Anthony, 2016). Despite ‘hard security’ issues and ‘high politics’ remaining at the forefront of strong states for global dominance, ‘soft security’ issues and ‘low politics’ have gained prominence among weaker states (Laki, 2006). Thus, the discussion of non-traditional security issues and human security are often interlinked.

Human Security

Human security is a concept that has shifted the state-centric focus of security to individuals (McCormack, 2008). This concept was introduced by the middle power states – Canada, Norway, and Japan- as an alternative to the existing approach of security. The comprehensive security concept introduced by Japan emphasizes the need to address issues other than national security threats that are also vital to national stability, such as food, energy, the environment, communication, and social security (Holliday & Howe, 2011). In the Human Development Report by UNDP (1994), human security is defined as, “safety from chronic threats” and “protection from sudden and hurtful disruptions in the patterns of daily life”. Seven elements are outlined in this document, including economic security, food security, health security, environmental security, personal security, community security, and political security. UNESCO (2003) later introduced cultural security as the eighth element. In the Malaysian context, a ninth element

of social security was introduced in the BAGHUS model of human security (Rashila Ramli, Zarina Othman, Nor Azizan Idris & Sity Daud, 2012).

Human security is a 'people-centered' concept that emphasizes human development and human rights in state processes such as nation building and development (Alkire, 2003). Alkire (2003) also emphasized that development can only be achieved when humans are provided with 'basic or fundamental set of functions related to survival, livelihood and dignity'. The role of the state should be focused on providing a guarantee to its citizens that their security in several priority areas will be protected and maintained, at least at the minimum threshold (Nishikawa, 2010; Gasper, 2011). Drawing from the 'people-centered' concept, Alkire (2003) also elaborated on the human agency of individuals. Despite the discussion of "people-centeredness" that often highlights either the role of the state/government or the citizen, other actors also persist in the ecosystem, such as the private sector and civil-society organizations.

Four main features are suggested to distinguish human security from other concepts. Firstly, the human security concept is universal by nature, multi-dimensional, and suitable to everyone regardless of place or time. Viewing security from this approach will include many threats that are common to all people, which are also referred to as non-traditional threats to security (NTS). Secondly, human security components are interdependent. Third, human security is easier to attain through early prevention. Fourth, human security is people-centered (Zarina Othman, Bakri Mat, & Ahmad Sharif Haron, 2018).

Security scholars have also highlighted the critiques of human security. Some view human security as too broad, arbitrary, and vague (Alkire, 2003); that it needs a more specific definition (Thomas & Tow, 2002); it is in possible competition with the national security agenda; and that it is redundant in protecting values which may have been protected by the traditional security approach.

The ASEAN Way is a methodology of dispute management based on Southeast Asian cultural norms. This methodology emphasizes consensus in decision-making and adherence to the non-intervention principle (Nishikawa, 2007). Local norms and historical events have influenced the adoption of human security in ASEAN countries. Until now, the discourse of security in Southeast Asia still lingers around the realist paradigm in maintaining regime security. Despite the acceptance of a comprehensive view of security and recognition of non-military issues in state security, the focus is still almost exclusively on the state. The region's colonial experience and post-colonial state building has, to a certain extent, influenced such state-centric discourse and approaches to security.

There has been a gradual shift toward acceptance of the human security concept in Asia, despite the scepticism regarding intervention by the United States under the guise of humanitarian aid (Evans, 2004). Aside from Japan, Thailand rapidly embraced the concept. In the Asian context, four major events have been identified as helping to propel the adoption of human security: the Asian financial crisis in 1997, the 9/11 attacks and the consequent terrorist bombings in Southeast Asia since 2001, the Severe Acute Respiratory Syndrome (SARS) outbreak in 2003, and the Indian Ocean Tsunami in 2004 (Acharya, 2007). These events pushed the countries to accept humanitarian assistance from agencies across the globe and slowly changed their perception on human security. Subsequently, the 2007/8

Asian Financial Crisis also influenced the national security discourse in ASEAN states, specifically regarding the implications on food insecurity (Kuntjoro & Jamil, 2008). In this light, the latest COVID-19 pandemic is expected to generate further acceptance of human security in the national security framework of the respective countries.

Food Security

Food security is defined by the FAO (1996) as a condition “when all people, at all times, have physical and economic access to sufficient, safe and nutritious food that meets their dietary needs and food preferences for an active and healthy life” (FAO, 1996). Scholars agreed to four basic dimensions, including availability, accessibility, utilization, and stability (FAO, 1996). The availability of food is the presence of food in the vicinity of household. Accessibility of food refers to the ability of individuals, households, and communities to obtain adequate food to meet the needs of their diet. The notion of access can be further elaborated to physical, financial, and socio-cultural access (Simon, 2012). Food utilization refers to the ability of households to obtain adequate nutrients through food intake. The fourth dimension, food stability, refers to the continuity of food supply.

Food security is a multidisciplinary field and is often discussed in relation to economic security. Global food security is characterized by a complex food supply chain and influenced by multiple factors, including climate change. Despite receiving intervention at various levels, famine and malnutrition still pose a big challenge to global food security. In the latest report by the FAO, there were 689 million undernourished people in 2019, and that number is expected to rise to a projected 841 million people in 2030 (FAO et al, 2019). This trend is further expected to worsen with the COVID-19 global pandemic. Food security does not only impact the national security of a state, but also societal and human security.

Researchers have attempted to draw a relationship between human security and food security. Liu (2009) argued that the multi-faceted nature of food security must be embraced, including its links to environment and health. Tadjbakhsh & Chenoy (2007) proposed a framework to apply the concept of human security to food security, emphasizing the role of the state in achieving the minimum thresholds by transforming critical fear (severe food insecurity) to critical want (food security). In the long run, the state should aim to achieve dignity, which is the end point of human security. At the national level, the concept of human security can be applied to food security policies by devising a long-term policy on national food security, enhancing sustainable development, and being selective in applying the comparative advantage concept for attaining food self-sufficiency (Bakri Mat, Zarina Othman, Rashila Ramli, 2012). The role of the state is emphasized in the provision of food security and the achievement of “freedom from fear” and “freedom from harm”. Simultaneously, the role of other actors, such as civil society organizations, businesses, and individuals, are also significant in achieving food security. Thus, the following discussion about coping mechanisms highlights bottom-up initiatives during times of food insecurity.

Coping Mechanisms

The concept of a coping mechanism is derived from Lazarus & Folkman (1984) in the field of psychological studies, explaining how individuals strategize their survival under stressful conditions. In food security studies, coping mechanisms are steps taken to reduce the impact of food insecurity during a shortage of supplies or in events such as famine, poverty, and drought, especially by marginal groups (Davies, 1993; Snel & Sterling, 2001; Gupta, Singh, Seth, Agarwal, & Mathur, 2015). The socioeconomic conditions of the household determine the extent of coping mechanisms applied, where the most critical will resort to abruptly shifting their consumption pattern (Bakri Mat, Ku Nurasyiqin Ku Amir, 2019). In contrast, households with a bit of flexibility will let go of assets and find additional sources of income (Corbett, 1988; Mjonono, Ngidi, & Hendriks, 2009; Ziaei, Shirani, Eshraghi, & Keramatzadeh, 2013). Certain coping mechanisms may cause detrimental impacts on the household, and are thus argued as ‘negative’ or ‘non-adaptive’ (Mjonono et al, 2009; Dhruva, 2014).

In practice, the understanding of coping mechanisms in a household provided researchers with the extent of food insecurity experienced by the individuals. Recent examples of coping mechanisms during crises can be seen from the increased practices of urban agriculture and home gardening (Lal, 2020). These strategies are not new, yet the pressing conditions require a reassessment of these small-scale practices. In addition, urban agriculture and home gardening are found to be crucial in achieving food security resilience (Barthel & Isendahl, 2013). Furthermore, the human agency shown by the households and individuals in devising strategies to survive during times of food insecurity can be argued as the bottom-up application of the human security concept.

3. CONCLUSION

The human security concept views security threats with a focus on humans as the referent object. Thus, the agency and capability of the individuals in managing security threats during challenging periods is highlighted. As a major human security threat, food security plays an important role in achieving a dignified life and overall wellbeing. The application of human security in food security policy, then, emphasizes the role of the state to provide suitable conditions for the wellbeing of its citizens as complementary to the role and agency of the individuals. Coping mechanisms are examples of human agency in facing dire circumstances. Despite their ability to survive, the state must be conscious of the plight of the people and must focus on the resources that allow the individuals to collectively build their resilience, as well as long-term solutions for food insecurity. Therefore, the involvement of other actors, such as CSOs and businesses, in the drafting of national food security policy must be strategically positioned with the aim of attaining long-term, sustainable human security.

4. WAY FORWARD

For future research, it is suggested that a deeper study be conducted on the application of human security in food security policies by inculcating both ‘top-down’ and ‘bottom-up’ approaches. Secondly, future studies should also aim to assess the strategic resources that can strengthen coping mechanisms within households and communities. Third, the role of CSOs and private sectors in building food security resilience and achieving human security should also be studied.

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ENHANCING WASTE SORTING BEHAVIOR: A COMPARATIVE STUDY BETWEEN MONETARY INCENTIVE AND NUDGE THEORY

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ABSTRACT

Waste that is not sorted at the source is the main cause of municipal solid waste management problems. When general waste mixes with wet waste in the same bin, it turns recyclables into contaminated waste that is then delivered to a costly waste management system, either incineration, open dumps, or landfills. The lack of incentives to separate solid waste for recycling is a critical issue in Thailand. This study hypothesizes that behavior change mechanisms can enhance waste sorting behavior, which improves waste management. Incentives can encourage behavior change, and both monetary and non-monetary incentives, like a nudge, can enhance waste management behavior. However, regression was found after the removal of monetary intervention, while non-monetary intervention tends to result in long-term changes. This research aims to compare the impact of mechanisms to enhance the waste sorting behavior of residents in Prawate district, which was reported in June 2020 as having the highest waste generation rate in Bangkok. This research is performed in an experimental field setting. The study focuses on a sample of people that live in high-density residential areas and are familiar with waste management practice. The test-control method is demonstrated with three groups of sampling: a control group; a monetary incentive application group – providing a deposit exchange machine; and a nudge application group – providing performance feedback. The study was conducted for eight weeks. The first four weeks measured the intervention's performance and the following four weeks monitored the sustained behavior after the interventions were withdrawn. Numbers of sorted substances were measured to compare the differences between the three groups. This study generates a discussion about behavior change mechanisms as an alternative waste management strategy with citizen engagement.

Keyword: Waste Sorting Behavior, Behavior Change Mechanism, Citizen Engagement.

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1. INTRODUCTION

Without serious action, the World Bank estimates that waste generation will reach 3.40 billion tons per year by 2050. Thailand is one of the five biggest producers of waste in the world (Hoornweg & Bhada-Tata, 2012; Kaza, Yao, Bhada-Tata, & Van Woerden, 2018). Unsorted waste at the source is the origin of waste management problems. Although the national waste management roadmap set out to increase recycling in Thailand since 2018, only 8 percent of Bangkok residents practice waste sorting at home (Pollution Control Department, 2018, February 2019). Lack of laws concerning recycling (Muttamara, Visvanathan, & Alwis, 1994), lack of trust in municipalities, lack of the knowledge to do it properly, and lack of accessible facilities were found to be barriers to effective waste separation (Johnson & Trang, 2019). Especially in Bangkok, the lack of incentives to separate solid waste for recycling is caused by the low and fluctuating price of recycling (Muttamara et al., 1994).

Mixed, contaminated, or dirtied objects are delivered to open dump landfills and incineration plants – which require expensive investment and operation (Pollution Control Department, February 2019). The local environment itself must provide the opportunity for waste sorting, and access to it should be effortless to minimize barriers as much as possible. External factors such as facilities, and internal factors such as subjective norms and knowledge, can trigger waste-sorting behavior (Ólafsson, 2016; Vassanadumrongdee & Kittipongvises, 2017). One essential factor for correct waste-sorting behavior is the accessibility of recycling bins (Ólafsson, 2016).

Behavior change and public participation is key to a functional waste system. Citizen engagement is a waste management strategy that works by designing incentives and an awareness system to motivate waste reduction, source separation, and reuse (Kaza et al., 2018). Monetary incentives are recommended as a method for motivating and improving people (Reschovsky & Stone, 1994). Moreover, they can be supplemented by the use of ‘nudges’ i.e. interventions that gently encourage changes in individual behavior - a choice architecture (Thaler & Sunstein, 2009).

This research aims to compare the impact of mechanisms that modify the waste-sorting behavior of residents in Bangkok with the field experimental setting. This study primarily focuses on changes in the amount of properly sorted waste, –and the dependent variables while examining the causes and effects of the behavior change mechanisms.

1.1 Research Question and Hypotheses

According to the secondary data analysis, accessible facilities such as plastic drop-off centers and information regarding waste sorting are provided in Bangkok; nonetheless, the recycling rate has still not increased accordingly. However, a lack of motivation to recycle is found to be the critical challenge for the Bangkok Metropolitan Administration (ThaiPost, 2019; Thitiphan Phatthanamongkol, 2018; www.matichon.co.th).

This study considers whether behavior change mechanisms can enhance waste-sorting behavior, thus improving waste management in the long term. It is founded on two central hypotheses: the provision of information and convenient facilities, and the provision of behavior change mechanisms can enhance waste-sorting behavior.

1.2 The Study's Conceptual Basis

This research begins by reviewing the literature in two areas to investigate the issue: understanding the behavior system through the COM-B framework, and behavior change mechanism. A behavior system is made up of capability, opportunity, and motivation (S. Michie, M. M. Van Stralen, & R. West, 2011b). An incentive refers to incremental behavior change, within the concept of motivation enhancement tools developed according to the COM-B framework (Michie, Atkins, & West, 2014; Michie et al., 2011b).

To study suitable approaches for behavior drivers, both monetary and non-monetary incentives were used to demonstrate the research. Monetary incentives drive motivation and individual behavior performance through the use of a penalty system, exchange system, and reward system (Clark & Wilson, 1961). Non-monetary incentives, a development from behavioral insights – commonly referred to as ‘nudges’ – are examples of choice architecture that gently encourage behavior changes (McCoy, Oliver Justin, Borden, & Cohn Scott, 2018; Thaler & Sunstein, 2009). Information is one of the effective environmental behavior interventions in waste management strategy by providing performance feedback for waste sorting. (Bernstad, 2014; De Young et al., 1993; Jagau Henrik & Vyrastekova, 2017; Tiew et al., 2019; Vining & Ebreo, 1990). In conclusion, the behavior change mechanisms are independent variables in this study.

Finally, to collect data and evaluate the effectiveness of the mechanisms, the experimental field setting measures the outcomes. The amount of properly sorted waste is considered to be an outcome of the interventions and behavior change. Evaluation is achieved by comparing the amount of properly sorted waste between the different interventions and the control group.

1.3 Process of The Study

The study consists in three processes; exploration, research design, and research execution (Bhattacharjee, 2012). Firstly, this research begins by exploring the waste management problem to define key problems and challenges. At the exploration stage, the researcher performs a literature review, a secondary data analysis, develops a research question and explores the theory behind the research topic.

Secondly, in the research design process, a phasing operation observes the effect of the intervention and subsequent effects. Moreover, the treatment-control group research method is designed to compare the results of interventions. A sampling strategy is designed for random sampling in high-rise residential homes in Bangkok. The outcome of the research design process is used to form and develop a research proposal.

Thirdly, in the research execution process, the research designs a field setting experimental study beginning with obtaining approval for the field setting and start pilot testing within the timeframe of the data collection process. It is followed by observation, data recording, and the generation of statistics for the dependent variables. In the data analysis process, an analysis of variance appraises the associated variables.

Finally, in the reporting process, the researcher summarizes the findings of the research and develops the discussion for further research. The following sections present the review of literature, research method, and summary of the research proposal.

2. REVIEW OF LITERATURE

This section aims to review the literature in two significant areas: first, waste sorting behavior and its costs; second, the behavior changes mechanism and its challenges for waste-sorting behavior changes.

2.1 *Waste Sorting Behavior and Its Costs*

Firstly, waste sorting behavior and its costs focuses on the rationale and importance of waste sorting behavior for city residents. The review represents a summary of the discussions about municipal waste management. It includes the origins of waste problems in Bangkok - unsorted waste at the source, and the costs of waste management in terms of environmental, social, and economic aspects.

Municipal Waste Management

The solid waste generated in a city refers to municipal solid waste (Ziraba, Haregu, & Mberu, 2016). Municipal solid waste is waste that is collected by the municipality or disposed of at the municipal waste disposal site. It includes residential, industrial, institutional, commercial, municipal, and construction and demolition waste (Hoorweg & Bhada-Tata, 2012).

Waste generation is the outcome of urbanization, economic development, and population growth (Kaza et al., 2018; Vij, 2012; Ziraba et al., 2016). Waste generated per person per day averages 0.74 kilograms. The world generates 2.01 billion tons of municipal solid waste annually, of which at least 33 percent is mismanaged through open dumping and burning (Kaza et al., 2018). Globally, the largest waste category is food and green waste or wet waste, representing 44 percent of total waste. The other 38 percent consists of dry recyclables, plastics, paper and cardboard, metal, and glass (Kaza et al., 2018).

Solid waste management includes the activities and actions required to manage waste from its inception to its final disposal including collection, transport, treatment, disposal of waste, monitoring, and regulation of the waste management process (Hoorweg & Bhada-Tata, 2012; Kaza et al., 2018). Globally, solid waste management is most commonly carried out by local services (Kaza et al., 2018). Local agencies are also responsible for identifying private sector partners that may build or operate services and site new landfills or other waste facilities.

The standard solid waste management practices include activities from origin to disposal, including source reduction, collection, recycling, composting, incineration, landfilling, and cost (Hoorweg & Bhada-Tata, 2012).

Generally, food and organic waste are transferred to composting. Dry and clean waste, or recyclables, are transferred to waste dealers for sale and delivery to the recycling process. Non-recyclable waste and other residue considered as general waste is disposed of in landfills and incineration plants (Johnson & Trang, 2019; Trang, 2017).

A waste hierarchy is a guide to determining the best practicable environmental option to addressing waste generation-related issues and social and economic costs (Gamage, 2011; Kaza et al., 2018). A hierarchy of waste management prioritizes preventing waste as the most favored option, followed by reusing waste; recovering waste or recycling and composting, and energy recovery and incineration. Disposal is the last option considered for waste management (Kaza et al., 2018; Papargyropoulou, Lozano, Steinberger, Wright, & bin Ujang, 2014). Understanding the inter-relationships among various waste activities makes it possible to create integrated solid waste management where individual components complement one another (Kaza et al., 2018).

According to the International Solid Waste Association, good practices in solid waste management follow the concept of the two triangles framework. The first triangle comprises three components: public health, the environment, and resource recovery. The second triangle is the three governance strategies framework: inclusivity, financial sustainability, sound institutions, and pro-active policies (Wilson & Scheinberg, 2010).

The Origins of Waste Problems in Bangkok

Bangkok is facing a proliferation of open dump landfills leading to problems caused by general waste, contaminated, mixed dry/wet waste, and non-recyclable municipal solid waste (Johnson & Trang, 2019). Waste is not all wasteful if sorted correctly. In Bangkok, food and organic waste can be transferred to composting. Dry and recyclable waste is transferred to waste dealers for sale and recycling processes. Non-recyclable waste and others forms of residue considered to be general waste are disposed of at landfills and incineration plants (Johnson & Trang, 2019; Trang, 2017). The phenomenon of limited waste separation at source is a critical challenge for residents of Bangkok (Johnson & Trang, 2019).

On the other hand, waste-sorting behavior is vital to waste management. Citizen engagement in behavior change is one of the keys to waste management (Kaza et al., 2018). Behavior change and public participation are the keys to a functional waste system comprising waste reduction, source separation, and reuse. To motivate citizens towards best practices in waste-practice behaviors, the government must gain citizens' trust by providing high-quality services and ensuring compliance with guidelines and regulations. For example, educational programs, citizen feedback, and financial incentives. The success of sustained solid waste management is critically linked to citizen engagement and trust (Kaza et al., 2018).

Costs of Waste Management

Waste management is a public service requiring financing for cost recovery, not an economic activity for generating income for the city (Levine, 2018). As reported in May 2019, Bangkok Metropolitan Administration paid 7,500 million baht for waste management operation annually. Although a plan to raise garbage collection fees was

announced, Bangkok still spent 6,500 million baht per year (TNN, 2019). Economic expense is not the only cost for waste management; social and environmental costs are also incurred in waste management.

Poor solid waste management can impact health directly. Exposure to it can cause infections, injury, non-communicable diseases, and negative emotional effects (Ziraba et al., 2016). Poorly managed waste serves as a breeding ground for disease vectors, contributes to global climate change through methane generation, and can even increase urban violence ("Solid Waste Management, World Bank,").

The World Bank's work reports that municipal waste management reduces environmental impacts, improves public health, and prevents crime. Moreover, it can develop residents' livelihoods (Kaza et al., 2018). Proper upstream management is better for the economy, people's health, and the environment than downstream management (Hornweg & Bhada-Tata, 2012).

The proper practice of waste separation at source is beneficial for the waste management system. It increases the amount of useful recycling products and improves livelihoods for both formal and informal waste workers. Besides, it reduces the amount of waste and landfills and minimizes operational costs and investment in facilities (Kaza et al., 2018).

2.2 Behavior Change Mechanism

This section focuses on the behavior change mechanism and the challenges it faces in enhancing waste sorting behavior. To do so, it focuses on the potential strategy of changing behavior via practical techniques. The review in the second section explores alternative behavior change mechanisms, monetary incentives, and the behavioral economics mechanism known as nudge theory. This section aims to investigate the theoretical frameworks that underpin research on waste-sorting behavior.

COM-B Behavior Model and Behavior Change Wheel

Michie et al. proposed a framework to understand the behavior system in 2011 in terms of the COM-B system. COM-B explains that the behavior system involves three essential conditions: capability, opportunity, and motivation (S. Michie, M. van Stralen, & R. West, 2011a). These are the core components of behavior change wheel frameworks (BCW) developed further by Michie et al. in 2014.

The behavior change wheel is a framework to facilitate intervention designers in creating evidence-based interventions (Michie et al., 2014; Michie et al., 2011a). It introduces nine interventions functions for changing behaviors, namely, education, persuasion, incentivization, coercion, training, restriction, environmental restructuring, modeling, and enablement (Michie et al., 2014).

Generally, incentives can be divided into two categories; monetary and non-monetary (Sheau-Ting, Sin-Yee, & Weng-Wai, 2016). These are related to incentive theory that proposes people are motivated to do things because of

external rewards (Clark & Wilson, 1961). Incentive theory proposes that people are pulled toward behaviors that lead to rewards and pushed away from actions that might lead to negative consequences (Clark & Wilson, 1961).

Monetary Incentives

Monetary incentives are suggested as a method for motivating and improving a person's performance (Reschovsky & Stone, 1994). Monetary incentive in waste management has significant motivation in waste sorting performance improvement. Examples include weight-based price in organic waste sorting (Boonrod, Towprayoon, Bonnet, & Tripetchkul, 2015); and the Pay-as-you-throw program (Buccioli, Montinari, & Piovesan, 2015). However, when the monetary incentive, pay-by-weight model is investigated in comparison with a fixed-fee control group, it was still found to be less beneficial in recycling and composting (Biswas, Licata, McKee, Pullig, & Daughtridge, 2000).

Nudge

Thaler and Sustien introduced the concept of nudge theory in 2008 (Thaler & Sunstein, 2009). A nudge is an intervention into human behavior that gently encourages change in individual behavior - a choice architecture (Thaler & Sunstein, 2009). The use of choice architecture, a nudge theory, substantially improved recycling programs, waste sorting, and waste reduction. Practical applications included providing educational information on pamphlets (Milford, Øvrum, & Helgesen, 2015), relocating recycling bins (McCoy et al., 2018), door-to-door canvassing (Cotterill, John, Liu, & Nomura, 2009; De Young et al., 1993); and door-to-door waste collection (Buccioli et al., 2015).

2.3 Summary of Literature Review

After conducting a wide-ranging literature review, this section aims to define the relationship between municipal waste management and residents' behavior changes i.e. the frameworks that made it possible to develop the question and hypotheses of this research.

This study examines whether behavior change mechanisms can positively influence waste sorting behavior. Furthermore, it looks at effective mechanisms for sustaining waste sorting behavior in the long term. Three hypotheses underlie the contention that such interventions can positively influence waste sorting behavior.

Hypothesis 1: to enable the capability of and opportunity for waste sorting behavior

H1A; providing waste sorting guidance information

H1B; providing a clear and straightforward classification, and clearly color-coded signage

H1C; providing accessible waste sorting stations – recycling bins, food waste bins

Hypothesis 2; to enhance behavior by enhancing the motivation to sort waste

H2A; providing a deposit-refund monetary incentive, , through a refund machine

H2B; providing a nudge mechanism with a performance feedback statistic board

Hypothesis 3; to maintain waste sorting behavior

H3; maintaining the behavior after treatments, even though the behavior change mechanism is withdrawn i

3. RESEARCH METHOD

This section demonstrates an experimental research design and process to examine the cause-effect relationship between behavior change instruments and waste sorting behavior.

3.1 Research Objectives

This research aims to evaluate the impact of behavior change mechanisms on waste sorting practices and to investigate the cause-effect relationship of the behavior change interventions. The result of this research will be to create an opportunity for a citizen engagement strategy regarding Bangkok's waste management system.

3.2 Research Method and Intervention Design

1. Operation

The study is carried out as treatment-control group research. The research is designed to observe the differences and similarities among the independent variables after the intervention's treatment. The first treatment group is conducted with monetary incentive intervention. The later treatment group is conducted with nudge theory intervention. The control group is conducted without behavior change interventions.

To enable the capability and opportunity for waste sorting behavior, waste sorting guidance information is provided. Clear and straightforward classification, clearly color-coded signage, and accessible waste sorting stations – recycling bins and food waste bin – were provided for both the treatment groups and the control group.

The monetary incentive group intervention employed a deposit-refund tool, a refund machine, which provides cash each time a plastic bottle is returned. Meanwhile, the nudge incentive group intervention employed a performance feedback tool, a statistic board which provides the daily report. The record of yesterday's performance is presented at the waste sorting station to provide information about the amount of properly sorted waste.

2. Location

According to the BMA solid waste statistics report for the 2020 fiscal year, Prawate district was reported to be the district that saw the highest increase in waste generation (5%) from January to June 2020. (Environment Bureau, 2020)

The research focuses on the high-rise residential community in Prawate district, with a cluster of buildings, the T 77 Community. By applying the same vision and policy of property management, the environment and its regulations are controlled, thus reducing the potential for errors relating to environmental factors. The on-scale, on-field setting interventions were carried out at a specific site – three highrise condominiums in the T77 Community. By avoiding creating new barriers to the informants, the intervention was set at the closest location to the existing bins i.e. set beside or next to them.

3. Sampling

The target population is residents who live in the high-density residential community with controllable environments. The study is strategized to minimize external factors such as differences in income level and socioeconomic status, lifestyles, and awareness of waste management level. Therefore, the sampling framework for this study was framed for the community residents with a probability sampling technique.

The T77 Community is a group of medium price range residential properties – prices per square meter ranging from 150,000-250,000 baht (Sansiri, 2019). Regarding residential development segmentation, the condominiums in this community are categorized as upper to high class (Thinkofliving.com, 2020). Therefore, it can be assumed that the participants' background is medium-to-high income, higher education level, and employed.

The informants are familiar with waste management. According to the Community's waste management policy, the property manager has provided waste separation facilities since the start of 2020 and it was reported that the residents cooperated successfully. From January to March 2020, 10,463 kilograms of waste were separated (Sansiri, 2020 ; Standard, 2020; ThaiPost, 2019). Furthermore, more than 55,000 used masks were found during the spread of the Covid-19 virus (Standard, 2020).

3.3 Data Collecting

The study execution was divided into two stages to observe the effects of the interventions, to enable and enhance behavior change and to sustain it.

During the first four weeks, interventions were carried out to enable and enhance behavior change. The data of each group was collected differently and daily observation of the amount of properly sorted waste was recorded across all groups by the researcher. While for the nudged group the records were presented on a statistics board, the other daily records were not made public.

In the subsequent four-week period, when the interventions were withdrawn from the setting, the daily observation of the amount of properly sorted waste was recorded across all groups by the researcher. No records were made public.

3.4 Measurement

Post-test research measurement was performed twice, in weeks four and eight. The research focuses on the data analysis to appraise the association of variables: a cause-effect method. The evaluation aims to identify the independent variables in two phases – the change of behavior and the sustaining of behavior. Furthermore, performance was compared across three dependent variables – control variable, monetary incentive application, and nudge application.

4. CONCLUSION AND DISCUSSION

This section aims to summarize the findings of the research and demonstrates that waste sorting behavior mechanisms impact the waste management system.

The research conclusion summarizes and discusses knowledge and facilities; monetary incentives to enhance behavior; and nudges utilized to enhance behavior. The synthesis focuses on the cause-effect of each factor that influences waste sorting behavior and discussion of the opportunity to effect behavior change as a long-term waste management mechanism. In terms of waste sorting at the source as an individual habit after the withdrawal of interventions, discussion and interpretation of the research findings is performed in the context of the Behavior Change Wheel framework (Michie et al., 2014; Michie et al., 2011a). The research discussion part discusses citizen engagement strategy in waste management. Citizen engagement in behavior change is one of the crucial strategies in waste management (Kaza et al., 2018). Since January 2020, public campaigns about the circular economy in Bangkok run by a private partnership of organizations are providing the impetus for waste sorting practices and the plastic recycling movement. As a report in June 2020 shows, there is empirical evidence that enhancing waste sorting behavior is a cost-effective approach to investing in waste management (Sansiri, 2020 ; ThaiPost, 2019; www.matichon.co.th).

For municipalities, it is at the local level that innovative waste programs are typically developed such as introducing bins of different colors for household source separation or local composting programs (Kaza et al., 2018). Waste sorting facilities should be provided along with buildings and public infrastructure development in the future. Besides, mass communication educational programs provide the opportunity to develop waste sorting practices on a national scale. Municipalities can develop trust with residents through a well-designed information and communication campaign. For example, by providing performance feedback, promoting proper practices, and reporting waste operation processes.

Moreover, to bring about sustained citizen engagement, municipalities should consider developing waste management policies with sustainable approaches that bring environmental, social, and economic benefits (UNITAR, 2013). Governments and companies that manage waste integration technologies at all stages help reduce costs, increase materials for energy recovery, and connect with citizens through data management, a social communication application, and sensor technology, for example (Silpa Kaza Lisa Yao Perinaz Bhada-Tata Frank Van, 2018; "Solid Waste Management, World Bank).

5. LIMITATION OF THE STUDY

Behavior change is a long-term measurement. The study was severely limited by its eight-week timeframe. Furthermore, the environmental and demographic factors at the site may have influenced the results of the study. For example, the already existing number of recyclers. Lastly, those who took part in this research may have affected the change of location setting and research role; for example, maids are a potential daily data recorder.

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UNRAVELING THE ROLE OF MIGRATION IN LIVELIHOOD STRATEGIES OF RESETTLED SAMPAN PEOPLE IN TAM GIANG LAGOON, CENTRAL VIETNAM

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ABSTRACT

This study focuses on the Sampan people living in Tam Giang Lagoon, who benefited from the resettlement program of Thua Thien Hue Province after the storm in 1985. Sustainable livelihoods can serve as a theoretical approach to examine the role of migration as a livelihood strategy in the context of environmental, social-ecological changes. This paper is based on a study of the resettlement village of Trung Chanh, located to the southern part of Tam Giang Lagoon. It examined the migration process between the first and second generation of Sampan people during and after the resettlement process. 14 information from eight Sampan households were chosen as case studies. Findings revealed that although mobile fishing is seen as a primary livelihood activity of the first generation, the second generation resorted to outward migration as the main livelihood activity. Environmental degradation and low income from fishing influenced decisions made by the second generation of Sampan people. Generally, there are two tendencies of migration as a livelihood strategy among resettled Sampan people. The first is the return of migrants to make a living in their hometown. The second is the development by Sampan households of livelihood capital for destination communities, in order to keep migration as the central strategy for their well-being. Migration provides three main profits for resettled Sampan people: (1) improved livelihood capital of Sampan households based in departure communities; (2) available opportunities and new livelihood capital for migrants in the destination societies; (3) sustained strategies in terms of reconstructing livelihood activities of Sampan households.

Keyword: Sampan People, Outward Migration, Resettlement Program, Tam Giang Lagoon.

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1. INTRODUCTION

Background of This Study

Throughout the globe, displacement and resettlement due to rural resources extraction and infrastructural development have led to massive deprivation and poverty. Since 1975, the Central Vietnamese government launched a policy for the relocation of people, and for the stable development of the national economy. These policies aimed at settling nomadic groups and redistributing labor from areas where land was not enough for agricultural production. It also covered new 'economic zones' accommodating settled agricultural communes such as upland and highland areas. Sampan people, known to be a nomadic community, were impacted by these policies (Hong and Thong, 2000). When a storm ravaged the Tam Giang (TG) lagoon in 1985, it left 600 deaths amongst Sampan people. Their resettlement Sampan became a priority, since they were both nomadic and landless people. The aim of resettlement or relocation of a nomadic community sought to address economic problems and help settled people access economic opportunities, mainly in food production (Hong and Thong, 2000; DaCosta and Turner, 2007). Furthermore, by settling communities in a new area, the government can regulate and address population registration and exploitation of the environment.

The Doi Moi policy (Renovation policies) in 1986, with its goal of creating a socialist-oriented market economy, has opened doors for Vietnam to international trade and support from international organizations. However, the open market brought about challenges to the old restrictive arrangements of population mobility. Although migrants have increased capacity to approach job opportunities, they are not guaranteed of their rights to sustainable employment, free education, or health security. This due to the loss of social protection that the Vietnamese state traditionally offered. Meanwhile, a noticeable feature of market transition is the growth of internal migration and population mobility, which indicate the poverty and unemployment in rural areas as well as the growing urban demand for rural labor. People have become aware of emerging economic opportunities and income improvements, so they attempt to change their motivation into migration behavior. Deficient income source and landlessness had been reported as the leading causes of rural poverty (Duong and Hong, 2008). Thus, outward migration labor is seen as a common strategy to increase household incomes.

Several studies indicated that the settlement program in TG Lagoon is considered a top-down development campaign of local government. This is because of the lack of sensitivity towards and consideration for Sampan Sampan people's cultural values and lifestyles. While the Sampan people voluntarily resettled onto land because of their fear of storms, they were still prone to climate disasters from 'slow-onset disasters' such as changes in rainfall, water availability and sea-level rise (Adamo, 2011).

The 1985 typhoon pushed for the creation of a resettlement program leading to the moving into a new area to live there permanently that can be seen as in-migration process of Sampan people. Outward migration is seen as an essential livelihood strategy in Sampan households for coping with risking from nature and improving livelihood incomes. There is a need to considering the mobile situation of Sampan people under the changes in policy and environment to have a profound understanding of their challenges and vulnerability. While previous studies narrowed

displacement impacts on the livelihood of first Sampan generation in the post-relocation period since the 1980s, this research attempt to describe the migration transition of resettled Sampan people generation from generation since the relocation stage. This study concentrates on evaluating the role of migration as a livelihood strategy during pre- and post-relocation stages.

The paper begins with the settling of Sampan people along the Tam Giang Lagoon. Sustainable livelihood and migration approaches are analyzed for understanding the migration process in Sampan communities. This is followed by a description of the mobility process before the relocation and migration process after resettlement among two generations of Sampan people. Then, the role of the social network in the research site is examined. This paper will conclude with the role and impacts of migration in livelihood reconstruction of Sampan households.

Sampan People in Tam Giang Lagoon

Sampan people¹ are mobile fishers who used to live on boats. They are considered as the poorest people in Tam Giang Lagoon, Thua Thien Hue Province. They² called "Dân thủy diên," which refers to people who live on boats passing through rivers, lagoons, and sea. In the past, a Sampan family with eight people live together on about that is about 6–8 m long and 1.6 m wide, totaling to an area of 8–10 m². They were seen as marginalized people who did not own land, and were isolated from the Kinh people.

There are three generations of Sampan people living in the relocation area for over three decades since the resettlement program was issued in Thua Thien Hue Province. The first generation of Sampan people covers the ages of 50 to over 80 years old. They still live on boats floating on the Lagoon. The newly married couples would live separately in their own boat. But they still practice mobile fishing with family members., travel together to fish different areas of the Lagoon, and gather on floating communities called "van." This organized group of fishers possess same residential registration, and using the same type of fishing gear (Nguyen and Ruddle, 2010). In 1975, the Socialist state collectivized all-natural resources that cause the shift from the management through "van chai" to local governmental organizations, such as the Commune or the District People's Committee (Hong et al. 2000).

The second generation of Sampan people covers age range between 20 to 49 years old. Differences in life experience exist among Sampan families with a lot of children, mostly from six to ten. Those born before the resettlement program had experienced all of their childhood on boats. However, they spent their adulthoods in on land-based communities. Younger members who were born after resettlement program were more used to life n land-based societies. They would have lesser memories of life on boats.

¹ The landless people have meaning in French as "Sampaniers" whose families lived and raised on boat generation for a generation. Thus, the origin of "Sampan people" is used as the name throughout this thesis (Brzeski and Newkirk, 2000). The Vietnamese language has some contemptuous words "Nóc" is a old word, meaning boat which is shelter of Sampan people. "Kê Nóc" means live in the boat which is seen as derogatory term used by most people (Hong and Thong, 2000).

Third generation covers those aged below 18 years old. Most of them were born after the resettlement program. They have not practiced mobile fishing, are most familiar with land-based communities.

The Research Approach for Migration as A Livelihood Strategy

The idea of 'sustainable livelihood' emphasizes the adaptation and resilience from the vulnerable situations among the rural poor to maintain their livelihood opportunities for the next generation (Chamber and Conway, 1992:26). Livelihood diversification is considered as the survival strategy of rural families in developing countries. This diversification is defined as the process in which rural families construct a diverse portfolio of activities and social support capabilities to survive and to improve their standards of living (Ellis, 2000). Similar to the work of Chambers (1995) and Ellis (2000), Scoones (1998) highlighted the importance of geographical diversification of livelihood. Thus, the sustainable livelihood concept is a valuable approach in artisanal fisheries that are exposed to uncertainty in terms of supply and demand. Several studies on rural livelihood portfolios attempted to classify livelihood strategies in terms of diverse income sources: farm vs. non-farm; on-farm vs. off-farm activities; local vs. migratory; self-employment vs. wage labor. This, too, reflects household's behavior seeking risk reduction, more effective use of available household assets, and better response to market opportunities (Ellis, 1998, 2000).

Different scholars sought to define the concept of migration distinctly. Eisenstadt (1953) considered migration as "the physical transition of an individual or a group from one society to another. This transition usually involves abandoning one social setting and entering another and permanent one". Eisenstadt emphasized on factors affecting mobility of communities and their resettlement in their host area. Others focused on 'changes in physical space' as suggested by Lee, E.S (1969) in "A Theory of Migration," which concentrates on various types of cyclical migration. His description pays attention on the distance of the move or the voluntary or involuntary nature of all activities. Still, no distinction has been made between internal or external migration. Fortes (1971), based on his study about the movement of the people of Ghana, tried to distinguish mobility from migration. Although mobility movement is defined within the boundaries, the case of immigration is narrowed to the person crosses the border. In this study, migration can be defined as permanent or semi-permanent movement of at least three months from the original communities to settling at the destination communities. The places of origin and destinations should distinctively be located in different geographic spaces.

Ellis (2005) pointed out that the manifestation of migration can be seen as one of the forms of livelihood diversifications. Migration is distinguished between the location of a resident household or family and one or more livelihood activities of a family member, related to human capital which involves mobility of labor, together with a person's experience, skills, educational levels and health status (Ellis, Frank and H.A. Freeman, 2005). Furthermore, De Haas (2014) considered the impact of migration decisions around family or individual migration. Migration is driven not only by push-pull factors but also by the ability to respond to forces and to realize aspirations.

Examining migration as part of a livelihood strategy includes the spatial component for the geographic dispersal of household members. This is normally related to poverty reduction and redistribution of resources within

families or households. The migration process is seen as an opportunity to improve the well-being of poor household as well as the enhancement of power relations and impacts of structures. Furthermore, this allows or prohibits access to resources, whether these are economic, social, political, or natural' (Whitehead 2002: 577).

In Tam Giang Lagoon, several studies use Sustainable Livelihood as the main conceptual framework to understand livelihood diversification among various actors, such as Sampan people, fixed fishers, aqua-culturists, and net-enclosed aqua-culturists, farmers, servicers. Livelihood strategies are diverse and flexible because each person has his/her/their lived realities, perceptions and expectation. Yet, this research focus on describing the migration in one of livelihood diversification, analyzing the reason and consequences of migration, but not concentrate on the role of migration as the main factor for livelihood reconstruction and livelihood decision making among two generations of Sampan people. Therefore, the transition of livelihood with migration as one of strategy among the first and second generation needs to be classified in the relocation process.

Research Site

The research was conducted in Tam Giang – Cau Hai Lagoon system, covering about 21,600 ha with a length of 67 km, located along the Thua Thien Hue Province's coast, Vietnam (16° - $16^{\circ}80'$ N latitude and $107^{\circ}80'$ - $108^{\circ}20'$ E longitude) (NEPA, 2006). The Lagoon is considered not only as the largest Lagoon in Southeast Asia but also is one of the most climate-vulnerable areas in Thua Thien Hue Province, Vietnam (Phong Tran, 2009).

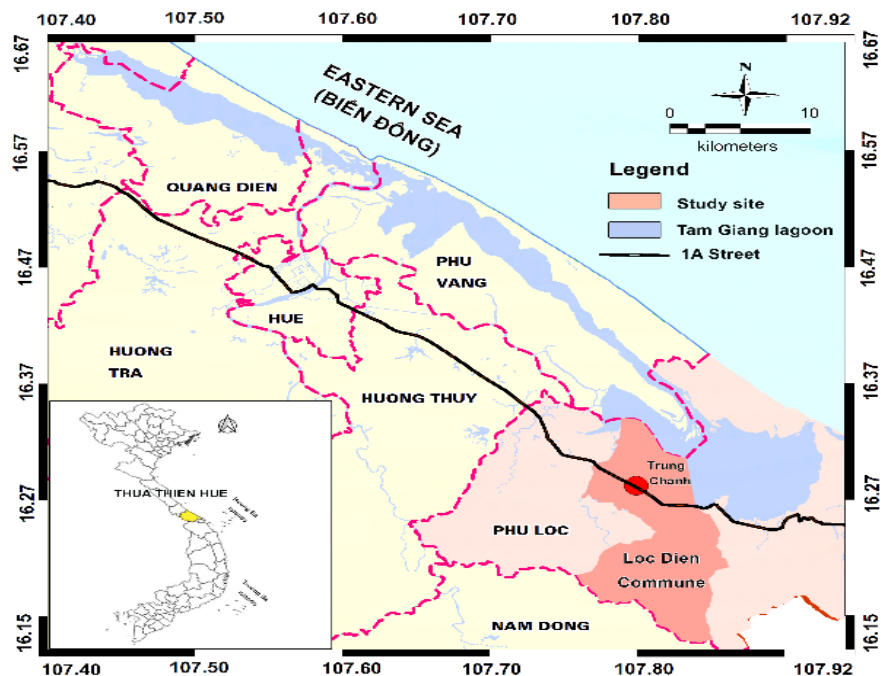


Figure 1. Tam Giang – Cau Hai Lagoon System, Vietnam

The Tam Giang - Cau Hai lagoon system is part of five districts in Thua Thien-Hue Province, including Phong Dien, Quang Dien, Huong Tra, Phu Vang, and Phu Loc (see in Figure 1). Trung Chanh villages is chosen as a research site in Loc Dien Commune of Phu Loc District, Thua Thien Hue Province, Vietnam. Fishing is the main livelihood in Trung Chanh village located in southern Lagoon. As mentioned, Sampan people are mainly preoccupied by mobile fishing, cage fish farming, and fish corral work.

Research Methodology

Life story interviews with 14 members associated with eight (8) of Sampan households were conducted for this study. The informants are mainly from both first and second generations. However, some from the third generation were also approached. Moreover, semi-structured interviews were conducted for five local authorities and experts.

2. FINDINGS

The Movement Process of Two Generations Before Resettlement

Before relocation, first and second-generation Sampan people were nomads on boats and practiced mobile fishing as their main livelihood activity. The movement of Sampan dwellers in the course of their everyday lives defined their mobility on Tam Giang Lagoon. They keep moving throughout the lagoon to "follow the fish's tail to earn a living. Sampan people were also called mobile gear fishers based on their fishing methods and are considered as landless people before resettlement. Mobile gear fishers change their fishing location to find a good position in the Lagoon, and based on water quality, bottom substrates, current tide characteristics, and fertile fish fields. The concept of "living together and working together" (liền canh liền ngư) was considered as norms to cope with uncertainties faced by "vans." Fishers anchored their boat and lived together in the same location on the lagoon. Groups migrated together to a new location following new fish schools.

Before resettlement, unmarried people in the first generation then migrated to the southern cities to seek jobs related to mobile fishing. As soon as they got married and had children, their mobile lifestyle brought about risks to their families. This led to decide to head back home and revert to mobile fishing on the lagoon.

The development of modern geographic inventions such as the global positioning system (GPS) can locate specific commune, district. Thus, the mobility to Lagoon indeed the movement through the water surface for fish catching, but now, we named that location as Tam Giang lagoon situated in Thua Thien Hue Province, which emphasizes on the ownership and management of the local authority.

Differences in Migration Process Between the First and Second Generation After Relocation

Mobile fishing still is considered as main livelihood activity of Sampan people in the first generation before and after the relocation. Many did not resort to outward migration process because they had been used to traditional mobile fishing. After resettlement, people in the first generation have already aged and have lesser chances to work in another place. This is despite the fact that mobile fishing had been affected by environmental degradation and other economic factors. However, the offspring of the first generation were encouraged to seek employment outside the resettled village. They appreciate the value of migration for economic purposes Outward migration. It has also become a way to distribute labor resources and diversify livelihood strategies.

"Nowadays, we have overpopulated the limited space. Many have also exploited natural resources. I want my children to seek better options for employment outside, particularly in land-based societies (First generation male, Trung Chanh village, Loc Dien commune)."

Outward migration has become an important livelihood strategy of Sampan households with many children. The need to improve income and living conditions are seen as the leading driver for their moving. The family member chooses to migrate to earn more. The change in resettlement patterns results in changing livelihood perceptions with respect to daily life activities.

People in the second generation enjoy their working and married lives in the newly relocated community. The norm of "staying closely together, working closely together" has been replaced ways to earn and save better for the future. Aside from challenges faced by mobile fishing, the scarcity of allocated land in the relocation area as well as healthy costs of expansion of properties push them to migrate.

As per the discussions above, there are two bases for migration as a livelihood strategy of resettled Sampan people. The first is the return of migrants after making a living in their hometown. The second is the To create livelihood capital for destination communities and strategy for their well-being. Temporary migration refers to migrating to Hue city and other towns in the province, which is seen as a supplemental to the usual modes of lifestyle and livelihood. Most long-term migrations are either within or outside the country. This depends on networks in these areas or opportunities for work and livelihood.¹

The Role of The Social Networks in The Migration Process

For second generation Sampan people, social networks greatly influence their migration planning and decision making According to the study of Massey et al. (2005:42), migrant networks are driven by kinship, friendship, and shared community origins. They are established among migrants, former migrants and non-migrants in origin and

¹ E.g. Migration to Ho Chi Minh city to work for clothing industries have been the usual strategy for households in Trung Chanh village.

destination communities. These relationships facilitate migrants in coping with costs and risks of migration by contributing useful information, resources, and shape the context of reception and assistance.

"I studied until the ninth grade, after quitting school, I migrate to Ho Chi Minh City for learning how to sew. I followed my uncle, who is owned a needlework factory. I came and started to master the work (The second generation, male, Trung Chanh village)."

In Trung Chanh village, households rely on their networks for labour migration to outward migration to Ho Chi Minh City. These people are seen as 'coordinators.' They were former migrants who built their own businesses in destination countries. They are instrumental to the migration plan and decisions of their relatives.

"My social network helped me pursue my career in HCM city. I was introduced to friends and relatives. They also helped build my clothing business (Second generation male, Trung Chanh village)."

Previous migrants serve as either employers or brokers connecting Sampan migration with business owners and other market players. They also guide, support during the early stages of migration in the destination area. Moreover, they become "representatives" and focal persons for building future relationships amongst community members.

The Role of Migration in The Livelihood Reconstruction of Sampan Households

Improvement and Development of Livelihood Capital in The Departure Communities

The rural-urban migration has changed not only the life of migrants but also inhabitants' life at the place of origin. Through remittances, both in cash and goods, outward migration provides access to additional income sources and asset accumulation in Trung Chanh village. Mobile fishing has been viewed as a weak option for in livelihood due to environmental and economic factors This decline pushes family members to seek livelihood and employment opportunities outside the community. Remittances have become a major source of income for aging households. Through this, they are able to cope with risks and decrease their dependence on the usual livelihood in the community.

Non-fishing activities such as running coffee shops and karaoke shops had become a more viable option to supplement remittances. Money is also used to fend for health and education needs in the community, Knowledge and hand-on skills accumulated throughout the migration process had led to livelihood diversification in Trung Chanh village. Migrant repatriation also provided more labor opportunities and social interaction in their destination communities. Second generation migrants have, in fact, become owners of clothing mills. These new factories have provided opportunities for younger generation to contribute to household income.

New opportunities and livelihood capital for migrants in destination societies

Outward migration creates opportunities for employment, livelihood, capacity building and social networking. Migrants are also able to accumulate knowledge, specialized skills, lived experiences to improve their social and economic standing. It also allows better access to education for their children.

“I had to work hard to master the craft of tailoring. I practiced every day. I earned minimum wages of five hundred VND per month. I also learned ways from my boss on how to communicate with clients and sell products. I tried to gain more experience and skills to building my own business in the future (Second generation male, Trung Chanh village, Loc Dien commune).”

Establishing livelihood strategies in terms of reconstructing livelihood activities of Sampan households

This study was able to identify three strategies outward migration towards the development of livelihood for Sampan households. The first is focusing on developing livelihood strategies in the origin communities. The income from labor migrants is used to fend for household needs and to augment household savings. This focuses on developing livelihood activities in the departure place where the first generation are seen to support and to depend on migrants. Labor migrants who cannot find long-term opportunities give up the settled intentions and make great efforts to increase their skills, knowledge and socio-economic capitals during this time. Upon their return, they would rather in new business ventures such as clothing and tailoring.

The second strategy pertains to livelihood investment in the place of destination. Those who chose this strategy intend to capture better opportunities, settled down and start their own businesses. Thus, this plays a crucial role when an individual decides to migrate. Second generation usually are the pioneers of this strategy. They would continue to guide and support their family members during this period. Social networks play a vital role in terms of supporting and guaranteeing the integration of migrants in the new areas. Most of these migrants do not intend to return their hometown. outward migration.

The third strategy is related to investing in both places of origin and destination. Its purpose is mainly to improve social and economic well-being of household members. Traditional livelihood activities are still preserved and promoted. This is also a way to address risks caused by environmental degradation towards mobile fishing and aquaculture in origin communities. They have substantial capital allow them to diversify their livelihood. While livelihood activities in their hometown provide a sufficient income, household still views outward migration as an essential strategy for livelihood diversification. In this way, the family can concentrate on expanding their sources of income and use these to improve their lives. Fishing diversification can enable flexible options for income improvement¹.

¹ The case of Mr. L's household can be seen as an example of this third strategy. His family has nine offspring in total, consist of eight sons and one daughter. They got married at all. There are three sons practice mobile fishing and aquaculture, stay at Trung Chanh village. Five sons and a daughter are tailors in HCM city. They decide to migrate to their uncle those do sewing job and have needlework factory, relocate to HCM city and occupy the sewing jobs. These six migrant offspring help each other in terms of integration to arrival places, introducing to the job offers,

Third generation's career orientation tend to approach jobs relating to land-based society than aquaculture. Sewing jobs have become an attractive occupation for them. Social networking with previous migrants has been a way to learn about ways to become successful and to be able to address existing and potential risks.

3. CONCLUSION

Generally, two tendencies of migration had been seen to have influenced livelihood strategies of Sampan People. The first involves returnees who intend to make a living in their home town. They make efforts to sustain and improve local livelihood. Remittances help increase household financial capacity and enable livelihood diversification. The second is developing livelihood capital for destination communities, while maintaining migration as the central strategy for their well-being. In this manner, pioneers have to consider quality of capital in order to decide best and most efficient ways forward.

finding clothes orders. Now, two sons have their own house, a son owns the land, so they permanently settle at HCM city. Another son and a daughter rent an apartment and do not have an idea to return to their hometown. Although Mr. L has old age, he still practices mobile fishing because Mr. L cannot rely on income contribution to his living cost from these three sons who follow mobile fishing. The income from mobile fishing affords for their family's expenditure. Yet, money remittance from five offspring migrants can be seen as a crucial addition to the household's business, such as the worshipping act. We can see that even though Mr. T's livelihood strategy focuses on supporting capital contribution in both places of origins and destinations, the migration process plays a vital role in terms of reconstruction strategies in the future.

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INDIGENOUS SELF-GOVERNANCE AND THE COVID-19 PANDEMIC: A CASE STUDY OF THE PHILIPPINE PROVINCE AGUSAN DEL SUR

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ABSTRACT

Amidst the COVID-19 pandemic, indigenous peoples are identified as both disproportionately vulnerable to the virus and as part of its solution. Both circumstances – whether indigenous peoples are marginalized and vulnerable as well as whether they can shape pandemic prevention measures – are closely related to issues of indigenous self-governance. The Philippines is celebrated for legally recognizing indigenous peoples' right to self-determination even before this was achieved with the UN Declaration on the Rights of Indigenous Peoples. The lived experiences of indigenous people in the Philippines, however, prove that the enjoyment of their right to self-determination continues to be limited by the interests of powerful state and non-state actors. The effects of the COVID-19 pandemic and measures taken in response to it add to these limitations on self-determination, while underlining the need for robust protection of the rights of indigenous peoples. By means of a case study of indigenous communities in three municipalities of Agusan del Sur, the Philippines, this paper traces the interplay between COVID-19 responses and indigenous governance structures. Based on interviews with indigenous leaders in these communities it assesses the effects of COVID-19 measures on indigenous self-governance and vice versa. The paper outlines not only how the pandemic affects existing structures of indigenous self-governance, but also approaches to dealing with the COVID-19 pandemic that arise out of indigenous governance and knowledge systems. Special attention is paid to the impact on indigenous conflict transformation mechanisms that have been disrupted by lockdown measures.

Keyword: Indigenous, Self-Governance, COVID-19 Pandemic, the Philippine.

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1. INTRODUCTION

The COVID-19 pandemic has brought the whole world to a pause. While almost all countries and territories are affected by the pandemic and everyone has the potential to contract the virus, the impact of the pandemic has been far from even. Instead, economic inequalities, discriminatory access to healthcare, and large informal economies have led to inadequate responses by the government to the pandemic, thereby exacerbating existing inequalities. In parallel, global discourse on the appropriate prevention and containment strategies has been controversial. Countries have varied in their imposition of lockdowns and quarantines, provision of testing facilities, and treatment recommendations. At the same time discussions about the origin of the virus have led to proposals for the prohibition of wildlife trade, renewed support for measures against deforestation, and generally the energization of climate change discourses.

Indigenous peoples play a role in these discussions in that they are often portrayed to be vulnerable to the effects of the pandemic. At the same time, they are a source of both short-term and long-term solutions. Whether or not indigenous peoples can practice these solutions and thereby increase their resilience seems to depend on the degree of recognition of their rights such as to their ancestral lands, self-governance, and practice of customs among others. While international organizations and experts have produced a range of general observations and recommendations, in-depth analyses of the concrete ways in which specific indigenous peoples are affected are rare. The following analysis traces the ways in how the Agusan Manobo of Mindanao, the Philippines, was affected by and reacted to the pandemic.

First, existing assessments of the situation and role of indigenous peoples in the pandemic are analyzed for common themes approximating an emerging consensus of how indigenous peoples are affected by and reacted to the pandemic. Based on these themes, the specific case of the Agusan Manobo is examined through literature review and qualitative interviews with indigenous leaders. Due to its central role in determining vulnerabilities and the capacity to offer solutions, indigenous self-governance of the Agusan Manobo is at the focus of this analysis. Practices of indigenous self-governance prior to the pandemic are outlined and contrasted with opportunities for and challenges to self-governance during the pandemic. By means of this in-depth case study, recommendations for strengthening of self-governance and consequentially for maximizing solutions offered by indigenous peoples are formulated.

2. INDIGENOUS SELF-GOVERNANCE AND THE PANDEMIC: AN EMERGING CONSENSUS?

Since the beginning of the pandemic several international and local non-governmental organizations as well as international mechanisms have drawn attention to the specific situation of indigenous peoples. In their reports, online articles, policy briefs, and expert panels, these institutions have laid out how the pandemic affects indigenous peoples globally and what measures indigenous peoples have taken to respond to it. While acknowledging the diversity of indigenous peoples and their contexts, several assertions are consistently raised in these documents.

First, indigenous peoples are deemed particularly vulnerable to the pandemic and its effects. Factors of vulnerability that are often mentioned include the remote and rural location of many indigenous communities that impair the access to healthcare services, the lack of culturally appropriate healthcare services, and the lack of access to information about the virus in indigenous languages (AIPP, 2020; Degawan, 2020; Keane, 2020; Nuorgam, 2020; Price, 2020; Smith-Morris & DeLuca, 2020; Tebtebba, 2020; Villacruel, 2020). For indigenous peoples in voluntary isolation, the lack of immunities to many diseases aggravates these factors (Tebtebba, 2020). Additionally, indigenous peoples' organizations have found that decades of marginalization and displacement cause indigenous peoples to be more vulnerable to the pandemic's impact on livelihoods and food security. Indigenous peoples are often disproportionately represented in the informal sector and among daily wage earners that lost their source of income during the pandemic (Smith-Morris & DeLuca, 2020). The livelihoods of nomadic people and those producing crops for the cash-market have been negatively impacted by lockdowns (Cunningham, 2020; Tebtebba, 2020). Exacerbating the economic suffering of marginalized indigenous peoples, several have reported experiencing discrimination when attempting to access relief operations (Tebtebba, 2020). In this interplay of vulnerabilities, indigenous elders are particularly affected. While intergenerational housing and their important role in the community make isolation difficult, they are particularly at risk due to their age and are oftentimes the single bearer of traditional knowledge. Thus, their sudden demise would threaten the cultural survival of some communities (Smith-Morris & DeLuca, 2020). Several organizations point out that the vulnerabilities of indigenous peoples to the pandemic compound other crises they are facing including deforestation, displacement, and the climate crisis (Smith-Morris & DeLuca, 2020). In fact, in several countries, lockdowns have been used to advance so-called development projects that encroach on indigenous lands, and international monitoring mechanisms are paused (Keane, 2020; Smith-Morris & DeLuca, 2020). Meanwhile, indigenous rights defenders that are often already threatened, face increased security risks due to aggressive lockdown enforcement, the inaccessibility of support networks, and suspension of protection measures (IWGIA, 2020).

A second theme in international discourse is the initiative of indigenous peoples in pandemic responses and solutions for prevention. Reports frequently mention examples of indigenous peoples taking the lead in imposing traditional forms of community lockdowns, traditional food production and barter systems, and community solidarity (Cunningham, 2020; Degawan, 2020). Furthermore, many indigenous communities seem to withdraw to remote forest areas which provide them not only with distance from rapidly spreading infection rates in urban centers but also with sufficient food resources and traditional medicines (Degawan, 2020). Indigenous communities that practice subsistence farming are unaffected by the interruption of production chains and the lack of access to markets (Tebtebba, 2020). Established community relationships have also enabled indigenous peoples' organizations to inform their communities in indigenous languages and provide relief goods and personal protective equipment to vulnerable sectors (AIPP, 2020; Mai Thin Yu Mon, 2020; Nuorgam, 2020; Fund for Global Human Rights, 2020). In Myanmar, inter-generational cooperation improved, and indigenous youth played an important role in translating information and connecting communities (Mai Thin Yu Mon, 2020). In Central America, indigenous peoples created a regional platform to monitor infection rates and provide information to the various indigenous peoples in the region (Cunningham, 2020). Additional to reacting to the current pandemic, indigenous peoples also offered solutions to

preventing future ones. It has been established that diminishing nature reserves have enabled the transmission of viruses such as COVID-19 from animals to humans. Indigenous efforts to protect biodiversity and wildlife are therefore long-term measures to prevent future pandemics (AIPP, 2020; Tebtebba, 2020). Indigenous commitment to the balance between human and nature, knowledge of traditional means of food production, pharmacological knowledge, and the fact that the majority of seeds are held by indigenous peoples, all point to the important role of indigenous peoples in developing solutions to some of the most pressing global issues (Keane, 2020). It was pointed out that while these practices and advocacies have a long tradition, the pandemic makes them more visible as viable solutions to identified root causes (Cunningham, 2020).

Lastly, several organizations and experts assert that indigenous peoples' resilience and capacity to provide solutions largely depend on the degree of self-determination they can exercise. Recognition of the rights to development, control over lands and territories, and the ability to practice their traditions have been identified as preconditions for indigenous peoples to manage the crisis effectively (Tebtebba, 2020; Villacruel, 2020). Specifically, whether or not their rights to their land and resources are respected is an essential factor (Nuorgam, 2020; Price, 2020). Many of the response strategies outlined above are not possible where ancestral lands are encroached on by international corporations, government projects, and militarization, or are severely affected by environmental degradation and the effects of climate change (Degawan, 2020; Villacruel, 2020). Control over ancestral territories furthermore allows indigenous peoples to manage these sustainably and to promote environmental protection (Villacruel, 2020). UN Special Rapporteur on the rights of indigenous peoples, José Francisco Cali Tzay, concluded that "indigenous communities that have managed to best resist the COVID-19 pandemic are those that have achieved autonomy and self-government" (Tzay, 2020 cited in Villacruel, 2020). Furthermore, for indigenous peoples to implement long-term solutions effectively, genuine participation of indigenous peoples in mainstream decision-making processes is needed (Cunningham, 2020). Consequentially, international organizations and experts agree that the pandemic highlights the need to respect and promote indigenous peoples' rights to self-determination, ancestral lands and resources, and to follow their traditions (Degawan, 2020).

It is evident in the global discourse on indigenous peoples and the COVID-19 pandemic that self-governance - understood to include control over ancestral lands and practice of traditions - is essential to enable indigenous peoples to effectively respond to the crisis. Examples of actions taken by indigenous peoples around the world show that traditional means of pandemic control rooted in their culture may offer more efficient avenues to curb the spread of the virus than nationally imposed lockdowns enforced by the security sector. This assumption informs the case study of the Agusan Manobo and is tested in the following.

3. METHODOLOGY

This research arises out of and is embedded in the conflict transformation projects of the forum Ziviler Friedensdienst (forumZFD), an international peacebuilding organization operating in the island of Mindanao in its

three offices in the cities of Davao, Cotabato, and Butuan. Among other projects, forumZFD conducts capacity development and accompaniment with indigenous peoples in the Caraga region in order to strengthen nonviolent conflict transformation practices. The findings of this research are based on experiences gathered in the framework of this project and on five qualitative in-depth interviews with indigenous partners.

The qualitative research design was created to capture the distinct experiences of Agusan Manobo communities in three different municipalities within the province of Agusan del Sur. Indigenous leaders within these communities that have partnered with forumZFD were contacted, and leaders from all three municipalities gave their consent to participate in the research. Targeted interviewees included indigenous leaders involved in the self-governance of the community in different positions such as a women's leader, a member of the Council of Elders, and an indigenous representative to the local government. While lockdown measures made in-person interviews impossible, the viability of phone interviews was further restricted due to many indigenous persons' withdrawal to remote territories with limited reception. Consequentially, accessibility was a major limitation in the selection of interviewees. Additionally, indigenous leaders in one municipality from the Agusan Manobo community, withdrew from this research due to the lack of a free, prior and informed consent process that is conducted in accordance with their traditions, which required face-to-face meetings. While the withdrawal of this indigenous community from the research presents a loss of multiplicity of perspectives for this paper, it is indeed an assertion of self-determination of this indigenous community. Free, prior, and informed consent processes for the Agusan Manobo communities in the other two municipalities have previously been conducted within the project activities of forumZFD.

The interview guide was developed based on the review of existing literature on indigenous peoples during the COVID-19 pandemic. It included thirteen open-ended questions that were translated to the local language of Bisaya and were assessed by one indigenous partner for cultural appropriateness and understandability. The interviews were conducted by employees of forumZFD, who are Bisaya native-speakers and who worked closely with indigenous partner organizations. Interviews were held with four indigenous leaders from one of the remaining municipalities and of one indigenous leader of the other. The unequal distribution of interviewees between the two municipalities is founded in comparatively more reliable reception in the less remote municipality. All five interviewees consented to have their interviews recorded. The recordings were then transcribed and translated to English for analysis. The findings are anonymized due to sensitivity of some of the issues discussed.

Limitations of the research design include the cultural distance between non-indigenous interviewers and indigenous interviewees, which is partially mediated by the experience of interviewers in working with these indigenous persons during which common understanding was developed and by the validation of interview questions by an indigenous partner. Additionally, the challenges of remote collaboration between the researcher, the interviewers, and the interviewees were addressed by frequent debriefings between the researcher and interviewers and flexibility regarding the timing of the interviews.

4. PRACTICES AND CHALLENGES OF INDIGENOUS SELF-GOVERNANCE

In the Philippines, the term ‘indigenous people’ refers to the people that have resisted Spanish and US colonialism often by withdrawing to hinterlands or who have maintained a close link to their ancestral past. Depending on the way of counting, 40 to 95 different indigenous peoples live in the Philippines comprising up to 22% of the population (Molintas, 2004). Approximately 60% of these are in Mindanao, the Southernmost part of the Philippines, and are jointly referred to as ‘Lumad’. In the Mindanaoan province, Agusan del Sur, the Agusan Manobo makes up approximately 15% of the population (Buendia et al., 2006).

Structures and practices of indigenous self-governance vary among the ethnic groups in the Philippines and have developed into complex dynamics of formal and informal authorities and decision-making processes over time. While some traditional governance structures were marginalized, duplicated, and replaced by the dominant government and by private corporations accessing indigenous territories, other practices survived and continue to coexist with modern state governance (Buendia et al., 2006). Indigenous self-governance is a broad concept that comprises systems of traditional authority and leadership, decision-making over economic, political, social, and cultural development, management of own lands and territories, and justice and conflict mechanisms (Buendia et al., 2006). One interviewee described it as the indigenous peoples’ “system [of] handling the economic, political, cultural, social heritage [...] inside the ancestral domain or territory” (Interviewee 1). Additionally, self-governance has been described as a way of resisting assimilation and of reaffirming customary law as the basis of survival of the tribe and the protection of ancestral lands (Interviewees 2, 3, & 4). Making indigenous voices heard and allowing their participation in the decision-making of the mainstream government were identified as further defining features of self-governance (Interviewees 3, 4, & 5).

When asked about current practices of asserting their self-governance, all interviewees referred to the indigenous rights provisions in Philippine domestic legislation, specifically to the Indigenous Peoples’ Rights Act of 1997 (IPRA). Despite several shortcomings, IPRA is one of the most progressive indigenous rights laws, and together with the 1987 Constitution signified a shift in the Philippine state’s approach from assimilation of indigenous peoples towards recognition of their inherent rights (Doyle, 2020). IPRA recognizes indigenous peoples’ self-governance and provides the legal framework for the realization of indigenous peoples’ rights. Accordingly, IPRA plays a role in any assertion of indigenous self-governance vis-à-vis the Philippine state.

Control over ancestral territory is essential to indigenous self-governance. Ancestral lands are not only the territory in which indigenous peoples have the legal right to self-governance. These are also its precondition because they are at the very essence of the indigenous peoples’ cultural and physical survival (Doyle, 2020; Interviewee 5). Ancestral lands are intrinsically linked with indigenous identity, culture, and beliefs, and are the sites of burial grounds and sacred places as well as the source of food, medicine, and other resources (Hirtz, 2003; Interviewee 2; Larson & Cronkleton, 2011). While IPRA recognizes the indigenous peoples’ inherent right to their ancestral domains, ensuring this right requires processing a Certificate of Ancestral Domain Title (CADT). Many indigenous peoples lack the capacity to engage the government bureaucracy in this regard (De Vera, 2007). In fact, the interviewees have

experienced a plethora of challenges in this process including complexity and length of processes, the sheer number of documents required, and interference of local politicians (Interviewee 1). While some indigenous peoples have exercised their self-governance without a CADT, all interviewees pointed to CADTs' effect of strengthening indigenous land claims against encroachment (Interviewee 1). In the absence of a properly registered CADT, interviewees described their vulnerability to land-grabbing, the entry of foreign corporations, and the sale of usufruct rights to outsiders (Interviewee 2). Particularly, the selling of access to indigenous lands by members of the indigenous community themselves is deplored by several interviewees. By selling the rights to use the land to 'outsiders' due to financial pressures, many Agusan Manobo have become tenants in their own lands (Interviewee 4).

The most important way in which indigenous peoples can control their lands and resources and therefore an essential component of self-governance is the process of free, prior, and informed consent (FPIC). FPIC is a legal safeguard against external interference that requires the consent of the indigenous people to the use of resources, development projects, or extractive activities within their ancestral domain (Buendia et al., 2006). However, all interviewees agreed that FPIC processes are not genuinely followed. Instead corporations and other 'outsiders' interested in the resources in their ancestral land directly engage local politicians and indigenous representatives appointed by these politicians with the effect of them entering the land without community consultation or consent (Interviewees 1 & 2). Interviewees reported that when consultations were held, these were held merely for compliance with legal proscriptions and they were presented with already made decisions rather than with genuine consultations (Interviewees 4 & 5). While free, prior, and informed consent is part of indigenous self-governance, the process prescribed by IPRA is different from traditional processes and foreign to indigenous peoples (Interviewees 1 & 2).

Despite challenges in asserting control over ancestral territories, indigenous dispute resolution mechanisms such as the practice of 'husay' in Agusan Manobo tradition remain vibrant and are often tolerated when not interfering with state interest (Capulong, 2012). Interviewees defined 'husay' as resolving conflict in accordance with customary law that is frequently used by traditional leaders to deal with land conflicts, killings, marital conflicts or abuse of children (Interviewees 1 & 3). The choice of leaders to perform 'husay' for a specific conflict is based on trust and expertise often reverting to leaders from other communities than the conflict parties (Interviewee 5). According to the interviewees, tribal justice mechanisms are recognized by the local government when they are applied to conflicts between indigenous people. For full recognition of the justice mechanisms, including for conflicts between indigenous and non-indigenous persons, official representation of the indigenous people in the local government is needed (Interviewee 4). However, representation in the local government comes with geographically limited jurisdiction and therefore undermines the traditional choice of mediator based on trust and expertise (Interviewee 1).

In fact, representation of indigenous peoples in the local government is another conflictive issue between mainstream government requirements, as formulated in IPRA and indigenous self-governance based on customary laws. IPRA provides for Indigenous Peoples' Mandatory Representatives (IPMR) to be chosen at different levels of government. However, IPMRs are often said to be appointed by local politicians to become their puppets in exchange for royalties from extractive industries or financial benefits from other business operations within the ancestral domain

(Interviewees 1, 2, & 4). Due to power dynamics within the indigenous communities and threats against those challenging them, legitimate traditional leaders rarely question the abuse of power of IPMRs or local politicians (Interviewees 2, 4, & 5). In one of the municipalities under review, competition for benefits of extractive industries divides the indigenous community and prevents the appointment of an IPMR (Interviewee 3). While the participation of traditional leaders in local government ideally allows indigenous issues to be considered at this level, interviewees described that traditional leaders' influence on local decision-making is often dependent on the benevolence of local politicians or even thwarted by local politicians to their own gain (Interviewees 4 & 5).

Several interviewees concluded that while the government claims recognition of indigenous self-governance based on IPRA, their lived experiences do not reflect this (Interviewee 1). Instead indigenous self-governance is disempowered by mainstream government's bureaucracy and culturally insensitive administrative processes (Buendia et al., 2006; Doyle, 2020; Hirtz, 2003). Lack of recognition by local government actors, illegitimate leaders in government-appointed positions, divisions within indigenous leadership, and loss of ancestral territory all undermine indigenous peoples' ability to assert their self-governance. Challenges to the exercise of indigenous self-governance are furthermore exacerbated by the loss of tradition among already assimilated indigenous youth (Interviewee 1).

5. THE IMPACT OF THE COVID-19 PANDEMIC

The Philippines was affected by the COVID-19 pandemic early on registering the first COVID-19-related death outside of China in February 2020 (Ramzy & May, 2020). Infections continue to spread at the time of writing and have affected the entire country with most cases registered in the National Capital Region. Measures to curb the pandemic have largely relied on security forces implementing restrictions of movement including in remote areas such as the province of Agusan del Sur. Indigenous communities in the municipalities under review were placed under community quarantine with the rest of the country. The effects of the pandemic and the government's response to it on the Agusan Manobo features several similarities to reports from indigenous communities in other parts of the world described above.

Interviewees reported devastating impacts on livelihoods of their community members. For indigenous farmers, the closing of markets and restrictions on movement have either led to their produce not being sold or them being forced to sell at extremely low prices (Interviewees 1, 3, & 5). Particularly, the prohibition of back-riding on motorbikes had a strong impact as it is the main method of transportation in remote areas (Interviewee 1). Members of the community who do not work in the agricultural sector often depend on daily wages as construction workers or house helpers. These were not able to work every day because of quarantine restrictions and have lost large portions of their income (Interviewees 1 & 3). Remittances from family members, who found work in urban centers, also stopped in many cases (Interviewees 3 & 4). While the national government-initiated relief operations, many members of the indigenous communities in Agusan del Sur did not receive any goods because they are not included in the lists of local governments or because relief goods were diverted by illegitimate leaders (Interviewees 1 & 4). This was

contrasted with traditional self-governance based on care for the tribe and accountability of the leaders towards community members (Interviewee 4). Due to the economic pressures of the pandemic, additional members of the community were forced to sell rights of access to their lands thereby further undermining the basis of indigenous self-governance (Interviewees 1, 3, & 4).

When asked about self-governance during the pandemic, all interviewees expressed their support to the measures taken by the national government. One interviewee even ascertained that “self-governance at this time is prohibited” signaling the understanding of the virus which requires a collective and general approach (Interviewee 1). In fact, several indigenous leaders described ways in which they supported the measures taken by the government such as volunteering to man checkpoints, closely monitoring the influx of outsiders, and encouraging community members to follow measures (Interviewee 5). Particularly, the control of outsiders coming into the community resonated with traditional ways of dealing with diseases such as infected members leaving the community together with their families to protect the communal health (Interviewees 1, 2, & 5). Simultaneously, however, interviewees described several ways in which traditional leaders compensated the shortcomings of government approaches. One indigenous peoples’ organization complemented the English-language information on the virus with material written in the local language and provided relief packs to indigenous people not included in government lists (Interviewees 1 & 3).

As predicted, control over indigenous territories proves an important factor in determining the ways in which self-governance is practiced during the pandemic. An interviewee from a community that practices self-governance over their ancestral territory reported that the community was able to care for itself through traditional ways of subsistence farming and sharing of harvests (Interviewees 1 & 2). The traditional leaders in this community continue their customs of harvest rituals and council meetings (Interviewee 2). Withdrawal to remote areas was mentioned as one of the traditional mechanisms to deal with community health crises that is now only available to those indigenous communities with control over large ancestral territories (Interviewee 1). Access to ancestral territories furthermore allows the practice of traditional healing techniques, while the destruction of ancestral territories in other areas led to the unavailability of traditional medicines and consequentially the loss of both the practice and traditional medicinal knowledge (Interviewee 4). Interviewees also identified environmental protection efforts as measures of self-governance taken in response to the pandemic. While not mentioning the causal relationship between deforestation and viruses spreading from animals to humans, interviewees rather connected environmental protection and disease control because of traditional beliefs. Diseases are traditionally attributed to the anger of a spirit over harm done to the environment and mediated by offerings and prayers to the spirits (Interviewee 4). Harmony of the environment is therefore closely related to the wellbeing of the community and the role of indigenous peoples to protect the environment was highlighted in the context of the pandemic (Interviewees 1 & 2).

The restrictions on movement - particularly for those over 60 years old who are not allowed to leave their residence – have restricted avenues for exercising self-governance. Since many traditional leaders are elderly, they were unable to consult with their communities and to travel to other communities to perform mediations or attend

meetings (Interviewees 1, 2, & 4). All interviewees reported that traditional justice mechanisms can only be performed at very local levels, but not on municipal levels. Trusted traditional leaders from other communities can no longer be called for difficult mediations, leaving some conflicts unaddressed and escalating. The inability of traditional leaders to perform their functions is particularly harmful as the pandemic has exacerbated issues like domestic violence and teenage pregnancy in the community that would normally be addressed by traditional leaders (Interviewee 1). Interviewees reported that the mainstream court system cannot serve as an alternative to tribal justice mechanisms as it is very costly and therefore favors those with more resources (Interviewee 2). Measures to address pre-existing limitations on indigenous self-governance such as lacking representation in local government units and CADT registration could not be pursued further due to the limitations of governance during the pandemic (Interviewees 1 & 2). In one locality, recently chosen IPMRs could not be confirmed in their mandate (Interviewee 2). Interviewees deplore how FPIC meetings could not be held because of the quarantine measures, but companies operating in indigenous territories were allowed to continue extracting resources (Interviewee 2 & 4).

In conclusion, indigenous leaders generally support and complement the effort of the mainstream government. While traditional leaders strive to cater to their communities within the framework of quarantine measures, important exercises of self-governance were nevertheless interrupted with the effect of escalating conflicts and deepening economic inequalities. Interviewees spoke about the destruction and diminution of ancestral lands as well as the presence of illegitimate leaders which undermine traditional responses to the pandemic. However, instead of enabling traditional responses by recognizing indigenous peoples' inherent right to ancestral domain, the national government plans to convert allegedly idle ancestral lands to food productions sites to ensure food security for the general population during the pandemic (Gayta, 2020).

6. CONCLUSION

The case study of the Agusan Manobo reflects several elements of the global situation of indigenous peoples during the COVID-19 pandemic identified by international organizations and experts. In line with the global effects of marginalization of indigenous peoples, the predominance of agricultural and daily wage labor has left indigenous peoples in Agusan del Sur vulnerable to the economic impact of the pandemic. Like other indigenous peoples, the Agusan Manobo can refer to traditional ways of dealing with community health crises, which are connected to environmental protection in traditional beliefs. Like other examples mentioned above, the Agusan Manobo have not only supported existing measures but have also taken the initiative to provide relief to their community members, thereby closing the gaps left by government efforts. As expected, access to land determined whether traditional responses such as the communal sharing of harvest, withdrawal to remote areas, and traditional healing practices are possible. The age of traditional leaders and the reliance on physical meetings and community consultations acted as restrictions to movement which seriously interrupted indigenous self-governance practices such as traditional justice mechanisms and the meetings of traditional leaders.

Additional to confirming some of the global trends, the case study points to the significance of pre-existing challenges to indigenous self-governance, which impacted the pandemic response in these communities and were exacerbated by the pandemic. The appointment of illegitimate leaders by local politicians to maintain their power and manipulate FPIC mechanisms has diminished accountability in the distribution of relief goods and led to a situation in which FPIC mechanisms are interrupted but extractive industries in the ancestral territories are allowed to continue. The loss of indigenous territories through sales, manipulated FPIC processes, and land-grabbing seriously impaired the continuation of indigenous self-governance even before the pandemic. With the economic suffering that comes with the pandemic and measures imposed to curb it, illegal sales of access to indigenous land have increased, therefore further diminishing ancestral land as the basis of indigenous self-governance.

In order to maintain and strengthen indigenous self-governance during the pandemic, interviewees identified the need to recommit to the values of traditional leadership as a means to unify the tribe and achieve authentic and independent representation towards the mainstream government (Interviewees 1, 2, 3, & 4). Instead of complying with disempowering and marginalizing requirements of IPRA processes, one interviewee called for commitment to customary laws, allowing indigenous communities to occupy ancestral domain without registration of land titles (Interviewee 1). When indigenous peoples can practice self-governance in their communities, they can become a voice for long-term solutions to pandemic prevention and response rooted in their traditional customs and knowledge.

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MEDIATED DISCOURSE AND FRAMING OF HUMAN RIGHTS ISSUES IN MALAYSIA

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ABSTRACT

Malaysia has recently seen a lot of rapid changes in its government. The 2018 Grand Elections has changed the status quo in many aspects of the country. During the pre-election campaigns, Pakatan Harapan (PH) had promised progressivism and a will to uphold human rights. When PH was elected in the government, human rights had been framed as a threat to the Malay-Muslim community by the then-Opposition party and detractors. In PH's time in the government, two Muslim women had been arrested and publicly caned under Terengganu state Syariah laws for allegations of same-sex relations. The representation of this case by mainstream media had an impact on discourse about LGBTQ+ rights and corporal punishment in the country.

This paper is primarily a literature review aimed at updating and challenging some ideas about media ownership and framing in Malaysia found in researches before 2018. The bulk of research before the election had been focused on matters of media ownership and agenda-setting. However, PH's time in power changed some of our understanding of the media landscape as some mainstream newspapers had shifted from politically-affiliated owners to private owners. While mainstream newspapers used to be perceived as a single cohesive unit that functioned to set political agendas, it could be observed that the newspapers were less cohesive in reporting the 2018 caning. There was an observable difference in the discourse in mainstream newspapers made by the Malay language papers compared to the English medium papers.

In light of these observations, this paper will also include a quantitative content analysis on three news outlets to examine keywords used in reports of the case study. The purpose of this is to uncover trends and understand the agenda and ideologies that these news outlets might have supported or capitalised on through the reports on the caning.

Keyword: Media analysis, Discourse Analysis, LGBTQ+ Rights, Corporal Punishment, Malaysia.

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1. INTRODUCTION

In May 2018, Malaysia had its first change of government since its independence from the former ruling coalition Barisan Nasional (BN) to the Pakatan Harapan (PH) coalition during the 14th Grand Election (GE14). In the years leading up to GE14, many Muslim-majority states in the country have seen a rise in conservatism (Kurlantzick, 2018), especially regarding LGBTQ+ rights. This can be observed through the caning of two women who were accused of having same-sex relations in Terengganu in August 2018 (Barron, 2018), which was the first prosecution of such a case in the country.

Previous research about media discourse before GE14 had centred on mainstream print newspapers as an agenda-setter, which functioned as a political tool wielded by the former ruling government BN and those affiliated with the party (Wong, 2013). However, there has been a polarisation of discourse in the reports of the case study: while the Malay language papers *Berita Harian* and the now-defunct *Utusan* had featured ideas against LGBTQ+ rights, the English language print newspapers *The Star* and *News Straits Times* had featured more centrist ideas that opposed corporal punishment (Kamali, 2018). This suggests that there have been significant changes in the media landscape that could potentially change how we understand media ownership and control in the country.

This paper will examine theories put forth in media research before GE14 and how media reports of the case study differ from these theories. Then, this paper will propose new areas of research on Malaysian news media. The purpose of this paper is primarily to update existing research and to identify areas where new research can expand upon media analysis of Malaysian news. This research is significant in updating existing studies which previously theorised media ownership to be a part of BN's regime in agenda-setting. Furthermore, the caning occurred months after a major change in government, which is a critical period when certain discourses can be used for political benefit.

A quantitative content analysis study has been conducted in three newspapers - *Berita Harian*, *The Star* and *Malaysiakini* - in order to examine trends and patterns in reports of the case study. The findings from the content analysis will aid in identifying further areas of content analysis research on this case study, as well as other research on Malaysian news.

2. MEDIA IN MALAYSIA

2.1 *Malaysia's Media Landscape Pre-Ge14*

Media analysis research on Malaysia mainstream newspapers before GE14 had largely theorised mainstream media as an agenda-setter, and that the BN coalition had control of media ownership in the country (Wong, 2013; Nain, 1996; Nain, 2002; Mohd. Sani, 2007). Due to certain laws, such as the Printing Presses and Publications Act 1984 and Malaysia Communications and Multimedia Act 1998, the Home Minister has control over which newspapers are allowed to print. Additionally, various parties or affiliated persons from the BN coalition had some degree of

ownership of the media (Wang, 1998; Zaharom and Anuar, 1998). In cases where sentiments that criticised the government were reported in mainstream news, laws such as the Sedition Act 1948 criminalised seditious messages inciting political dissent and these effectively suppressed the freedom of speech (Suaram, 2019). A combination of these laws and the ownership of the media has allowed the BN government the power to determine the hegemonic ideologies in media, or in other words, the political discourse and ideologies that are present in Malaysian news media (Mohd. Sani, 2007).

The level of control over the media held by the BN coalition was extensive. According to Nain and Wang (2004), due to draconian laws and the oppressive regime, the Malaysian mainstream media was expected to be a cohesive unit, producing messages that “reflected the aspirations of the government” (pg. 251) and placed the government and its policies in a good light. While Nain and Wang’s research in 2004 examined how policies dating as far back as the 1970’s were framed by the media, recent research conducted before GE14 suggested that the government’s influence on media discourse favorable to their regime is still observable. A large-scale media monitoring project conducted in 2015 (Houghton and Nain, 2016) about the media coverage during GE13 found that news media bias was still pervasive in mainstream media as of 2016.

The emergence of new media sparked a new focus in media research as *Malaysiakini*, an independent online news portal founded in the late 90’s, was researched extensively in comparative studies with other English medium newspapers (Fong and Leong, 2016; Lim, 2014; Fong and Leong, 2017; Steele, 2008). The comparative research conducted at this time was crucial in building the basis for arguments about media bias and framing in print newspapers. Additionally, new media such as social media, YouTube, blogs, and other online news portals were theorized to be crucial to the Democratisation process in Malaysia and served as an oppositional voice to mainstream media (Mohd. Sani and Zengeni, 2010) - the counter-hegemony to mainstream media in this period.

In summary, there has been a lot of research that theorized mainstream media in Malaysia to be a political tool of the BN coalition. BN’s influence over the media can be observed from as far back as the 70’s until sometime before GE14. The emergence of new media introduced a wave of comparative studies that examined media framing in print newspapers.

2.2 Media Ownership of *The Star*, *Berita Harian*, *Malaysiakini*

This paper will study the content in three newspapers: *Berita Harian* and *The Star* which are politically affiliated print newspapers, and *Malaysiakini* which is an independent online news portal. It is important to consider the ownership of these papers to gain some context into the media landscape at the time of the case study.

Berita Harian is a Malay language print newspaper that was formerly partially owned by United Malays National Organisation (UMNO, a party in the BN coalition) with an 11.09% stake in the parent company Media Prima. UMNO was formerly part of the ruling BN government until the 14th Grand Elections in 2018 when a change to the *Pakatan Harapan* coalition was seen. UMNO later sold its shares in Media Prima in 2019 (Bernama, 2019), handing

over its ownership of print newspapers - *Berita Harian* and News Straits Times - along with a number of television and radio channels to private investors and governmental agencies. At the time of the event of the caning, UMNO still held its shares in *Berita Harian*.

The Star is an English-language print newspaper owned by the Malaysian Chinese Association (MCA, a party in the BN coalition) with a majority 43.1% stake in the company (The Edge, 2009).

Malaysiakini is an online news portal that operates on a subscription basis and is published in English and Malay. The English articles on Malaysiakini require a subscription, while the Malay language articles can be accessed for free. 70% of Malaysiakini is owned by its co-founders, Steven Gan and Premesh Chandran, staff and former staff, respectively. The co-founders each hold a 30% stake in the company and do not represent any political interests. The Media Development Loan Fund, a New York-based non-profit organisation, holds a 29% stake in the company (Malaysiakini, n.d.).

3. CASE STUDY: CANING OF TWO WOMEN UNDER SYARIAH LAW

In August 2018, two women in Terengganu were found by religious officials in a car allegedly committing sexual acts, and this was escalated to the Terengganu state Syariah court. Terengganu is considered to be a fundamentalist Muslim state as it has only been ruled by two parties, both of which were champions of Malay-Muslim rights (Stark, 2004). In Malaysia's dual-track legal system, states have their own Syariah court and *fatwa* committee. Islamic law in the country only applies to Muslims and the laws are determined by the state's *fatwa* committee. This allows states some autonomy over its interpretation of Islamic law. Under the state's Syariah law for *musahaqah* or fostering a lesbian relationship, (Section 30, Syariah Criminal Offences (Takzir) (Terengganu) Enactment, 2001), the two women were sentenced to six strokes of the cane which was carried out in public and witnessed by over 100 people (Al Jazeera, 2018).

The constitutional guarantee of non-intervention on Islamic religious observances by individual states allowed for the women to be caned under Syariah law. Malaysia practices corporal punishment in the form of caning for criminal offences, but caning female persons is banned under Criminal Procedure Code Section 289. Due to the non-interventional guarantee, caning is allowed under Syariah law. While homosexual relations are illegal in the country under the colonial-era law Section 377A of the Penal Code, this is rarely enforced. A rare example of Section 377A being enforced was the case of Anwar Ibrahim under allegations of sodomy, although it is widely perceived to be a political arrest with the purpose of shaming and imprisoning a prominent political figure (Amnesty, 2012). The caning of the two women set a precedent for corporal punishment of female persons, as well as punishments for *musahaqah* under Syariah law (Al Jazeera, 2018; Lamb, 2018).

News reports and articles about this case set the tone for the discourse about LGBTQ+ rights and corporal punishment in the country. A study was conducted on a small sample of articles from three newspapers to determine these trends in discourse by:

- 1) Identifying trends in keywords used in reference to the case study
- 2) Identifying the broader context of the keywords
- 3) Determining the volume of articles with certain keywords

3.1 Methodology

For the purposes of this study's objectives, quantitative content analysis is used on a sample collected from three news outlets. Quantitative content analysis is the analysis of a large sample of text to determine the occurrence of certain words (Neal, 2012). Keywords of interest are clustered in the similarity of meaning and tabulated based on its category and significance to the parameters of observation in this paper (Kroger and Wood, 2000). The result of this study is numerical data on the use of certain words around the case study to help identify trends and patterns in the content found in these news outlets.

A sample is collected from three newspapers: *Berita Harian*, The Star, Malaysiakini. Malaysiakini publishes in both English and Malay which provides grounds for comparative study with *Berita Harian* and The Star. The sample is collected in two languages, Malay and English. The author of this paper who is fluent in both languages provided translations where necessary. The range of this sample is limited to reports, opinion-editorial pieces and press statements about the caning incident written between 3-5 September 2018. This excludes reader comments or other news events that are related to the case study, such as other states in the country that consider emulating Terengganu's Syariah caning of LGBTQ+ persons and the prosecution of the case which took place in August. The purpose of this is to ensure that the sample focused on the same news event, which is crucial in comparative studies, and removes variables that are outside the scope of this study.

This also means that there are limitations to this study, as it is limited to a single news event rather than all news events related to the case study which would yield better data and provide a more thorough picture of the discourse set about the case study. Further in-depth, qualitative studies are necessary to fully analyse the discourse on the subject; however, this small-scale study is adequate for the purpose of discovering broad trends.

3.2 Malay-Language Reports on The Case Study

The sample size of *Berita Harian*'s reports on the case study is 13 articles. The sample size of Malaysiakini's reports on the case study is 10 Malay language articles. The table below shows the frequency of the usage of certain keywords.

Table1: Comparison of Keyword Usage in Malay Language News Articles

Category	Keyword	Translation	Frequency	
			Berita Harian	Malaysiakini
References to the case/LGBTQ+ persons	Hubungan sejenis	Same-sex relations	4	3
	Hubungan songsang, seks songsang	Deviant relationships/sex	6	1
	Hubungan sex	Sexual relations	2	3
	Membendung amalan LGBT	Curb LGBT practices	3	1
	Lesbian	Lesbian	2	0
Legalities	(Mengikuti) undang-undang	In line with the law	5	4
	Mencampur tangan	Non-intervention	0	1
	Beza dari sebatan sivil	Different from civil caning	1	3
Descriptions of the caning	Tidak kejam	Not cruel	5	1
	Kekuatan sebatan	Strength of the caning	2	0
	Tiga minit	Three minutes (duration)	2	1
	Bukan untuk mencedera/menyakiti	Not to hurt	3	4
	Bukan untuk menyeksa	Not to torture	1	0
	Ringan/Tidak keras	Light/Not harsh	2	2
	Pertama dilakukan	Carried out for the first time	1	2
	Tatacara/Kaedah	Procedure	3	2
	Tidak wajar	Unreasonable	0	1
	Khalayak ramai	Among a crowd	1	1
Purpose of the caning	Mendidik	Educate	5	0
	Menghantar mesej	Send the message	1	1
	Memberi pengajaran	Teach the lesson	6	1
Religious	Maksiat	Sinful acts	1	0
	Zina	Unlawful sexual intercourse	1	0
	Norma masyarakat Islam	Islamic social norms	1	0
Rights	Menghormati hak beragama	Respect religious rights	1	0
	Hak asasi manusia	Human rights	0	1
	Kanun keseksaan	Penal Code	0	1
Misc.	Maruah	Dignity	0	1
	Belas ihsan	Compassion	0	1

3.3 English Language Reports on The Case Study

The sample size of The Star's reports on the case study is 10 articles. The table below shows the frequency of the usage of certain keywords. The sample size of Malaysiakini's reports on the case study is 18 English language articles. Out of the sample of 17 English language articles from Malaysiakini, 3 of them are from the Letters column, a platform provided for civil society organisations. Representatives of the organisations may submit either an opinion or an official statement to this column. The Star did not feature between September 3-5 2018 statements from op-ed civil society organisations on the case study, so findings from the Letters articles on Malaysiakini were segregated for reference. The table below shows the frequency of the usage of certain keywords.

Table 2: Comparison of Keyword Usage in English Language News Articles

Category	Keyword	Frequency	
		The Star	Malaysiakini
References to the case/LGBTQ+ persons	Same-sex relations	8	10
	LGBTI/LGBT people	5	6
	Curb LGBT practices	0	1
	Lesbian	3	4
	Marginalised/oppresed minority	2	4
	LGBT issues	1	2
Legalities	In line with the law/Jurisdiction	4	5
	Unlawful/Unconstitutional	2	1
	Justice	1	1
	Non-interference	1	5
	Different from civil caning	2	3
	Criminalised	2	1
Descriptions of the caning	Corporal punishment	1	2
	Six minutes (duration)	2	0
	Not meant to hurt	2	1
	Torture	1	2
	Light/Not forceful	3	0
	Carried out for the first time	2	3
	Procedure	1	1
	Humiliating, cruel, inhuman, degrading	3	2
	Public caning	1	6
	Prisoner	1	1

Category	Keyword	Frequency	
		The Star	Malaysiakini
Purpose of the caning	Educate	1	0
	Send the message	1	0
	Teach the lesson	2	2
Religious	Sinful	1	0
Rights	Women's rights/Gender discrimination	1	1
	Convention Against Torture	2	2
	Human rights	4	2
	International Human Rights Law	0	3
	Privacy	3	1
Misc.	Politicise	0	2
	Dignity	3	1
	Compassion	2	2
	Mercy	3	2

Table 3: Comparison of Keyword Usage in English Language News Articles

Category	Keyword	Frequency
References to the case/LGBTQ+ persons	Lesbianism	4
	Homosexuality	4
	Marginalised	1
	Consensual/Consenting adults	2
Legalities	Abolish	2
	Criminalised	2
Descriptions of the caning	Degrading, humiliating, torture, cruel	3
	Public caning	1
	Psychological, mental, emotional harm	2
	Deplorable, barbaric, travesty	2
Rights	International Human Rights Law	2
	UNCAT	2
	ICCPR	2
	Justice	1
	Equal before the law	1
	Non-discrimination	2
Misc.	Dignity	1

3.4 Findings: Discourse on The Case Study

Compared to any other paper, *Berita Harian* tended to refer to the case as a deviant relationship. *Berita Harian* also tended to mention more frequently compared to *Malaysiakini* the importance of curbing LGBT practices and caning as not cruel. Another trend is that Malay language papers tended to focus on the procedure of the caning compared to the English language papers. An interesting divergence between *Berita Harian* and *Malaysiakini*'s Malay language articles is that the former had mentioned the purpose of the caning to educate and to teach a lesson, while *Malaysiakini* tended to omit these comments. Malay language newspapers in the study had also omitted references to relevant human rights conventions and statements made by international organizations, such as one made by Amnesty, cited on both *The Star* and the English copy of *Malaysiakini*.

The English language papers often referred to the case as same-sex relations and did not mention deviancy when referring to the two women. The terms marginalized or oppressed, in reference to LGBTQ+ communities, were only used in English medium newspapers; its equivalent (*masyarakat terpinggir/tertindas*) has not been used in the Malay language newspapers. An interesting finding is that *The Star* mentioned that the caning took six minutes to be executed, while the Malay language papers mentioned that it took three minutes. Both English language papers mentioned more human rights conventions and human rights compared to the Malay language papers. Dignity, compassion and mercy are also mentioned more frequently in English language papers. The word politicize was mentioned twice in the English copy of *Malaysiakini* when citing a source who warned the public not to turn the caning into a political issue; this was omitted in the Malay language newspapers and *The Star* when citing the same source. *Malaysiakini*'s English publication was the only paper in the study that mentioned international human rights laws and state obligations.

All newspapers in the study had an equal tendency to emphasize that the caning had been in line with the law and was not cruel or intended to hurt. This is likely due to directly quoting from the same sources.

There are some key differences between reports made in *The Star* and *Berita Harian*. *The Star* reported a statement from MCA politician Heng Seai Kie who spoke against the public stigmatisation and violation of the women's privacy (*The Star*, 2018). Heng's statements made on 3 September 2018 were not cited in *Berita Harian*. UMNO politician Khairy Jamaluddin's comments against the caning made public were also featured in *The Star* (Tam, 2018) but not *Berita Harian*. Additionally, *The Star* stated that the caning took six minutes to be executed while *Berita Harian* stated it took three minutes. While *Berita Harian* would feature statements that defended the legalities of the caning, *The Star* had quoted sources as saying it was potentially unconstitutional on two occasions. Further, *The Star* would mention LGBT persons without mentioning deviancy (*hubungan songsang*) which is a description *Berita Harian* tended to use about the two women. Compared to *Berita Harian* which made mention of human rights in one article, *The Star* would mention a number of human rights conventions and human rights in several articles.

In summary, some broad trends have been identified in media reports of the case study. The differences between the discourse set by The Star and *Berita Harian* is observable, especially in terms of news value, with *Berita Harian*'s omission of statements made by two BN politicians.

4. DISCUSSION: MALAYSIAN MEDIA DISCOURSE AFTER GE14

According to the literature review in this paper, the media discourse found in The Star and *Berita Harian* should have been more or less cohesive and representative of the BN coalition in its best light. The Star's decision to feature certain articles about the case study that were not found in *Berita Harian* had been a conscious editorial decision and significantly changed our understanding of the Malaysian print media as a monolithic entity.

Some of the differences between the keywords found in these newspapers could be attributed to the language of the medium. However, many of these phrases are easily translatable and the bilingual Malaysiakini paper did not always feature the same news or represent the same subject in both languages in the same way. The omission of international human rights laws from Malay language newspapers has a significant impact on discourse among readers who primarily speak Malay. This suggests that editorial decisions on news value and discourse are influenced by the language of the medium and the audience.

It is also worth considering if MCA's standing with BN had been altered after GE14, which led to the party's paper choosing to align itself with values that did not necessarily represent the coalition's best interests. Issues that were put forth in GE14, such as the PH government's promises of progressivism, may also have an impact on The Star's decision to align itself with more centrist views, such as those found in Heng Seai Kie's statement. The lack of harmony between the views put forth in The Star and *Berita Harian* would invariably impact the media hegemony of certain societal ideals and norms under BN's control.

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THE CHALLENGES ON ETHNIC MEDIA IN BURMA: ANALYZING PRESS FREEDOM AND THE RIGHT TO INFORMATION UNDER BURMA TRANSITION

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ABSTRACT

After decades of military regimes, the quasi-civilian government came to power in 2011 through the result of General Election held in November 2010 in Burma. The newly government introduced a series of political reforms toward democratization that include press reform in its initial agenda. The government released political activists, journalists and human rights defenders jailed by the previous military regime. As a part of strengthening democratic changes, press freedom was initially improved by eliminating censorship on printed media and accommodating the return of exile media and ethnic media to take a foothold in Burma. One of the significances is the blossom of historically banned ethnic languages and media organization. Within the first three years of media liberalization, there is visibly increasing of press freedom, freedom of expression and information exercised by both media practitioners and individual citizens. In this context, media in Burma is functioning as a watchdog to help change, checks and balances on the administration to advance further improvement in the country reform process.

Despite the country's reforms followed with plausible international communities, the government resumes to impose restriction and limitations on the press and journalists especially those who are reporting and seeking information from ethnic areas. The situation of media environment does not improve even after the NLD government led by Daw Aung San Suu Kyi took the state power in 2016 after securing majority seats in 2015 General Election. They are under pressure in terms of lawsuits, charges, intimidation and threat that affect their work in promoting press freedom and the right to information in the transition period. This thesis argues that the oppression of press freedom is constraints for democratic change and media liberalization without democratization will not sustain in attempting democratic transition and genuine change in Burma.

Keyword: Burma Transition, Liberalization, Democratization, Press Freedom, Freedom of Expression, Right to Information, Ethnic Media.

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1. INTRODUCTION

Burma¹ is a multi-ethnic State founded by the Chins, the Kachins, the Shans and Proper Burma by signing Panglong Agreement on 12 February 1947 at a small village in Shan State called Panglong. The Panglong Agreement guarantees political, social equality and self-determination of all the ethnic States and people (Sakhong, 2000). Unfortunately, along with its independence, Burma was plagued by armed conflicts between the Burma Army and ethnic armed groups. In addition, the military coup in the name of the disintegration of the Union on 2 March 1962 escalated the conflicts within the country. The military had canceled the Constitution of Burma and began to oppress ethnic people in many forms including armed strikes. The Army denied the ethnic groups equal political and civil rights guaranteed by the Constitution and tried to solve the political crisis through military offensive strategy. In this political juncture, the oppression of military dictatorship targeted ethnic people by eliminating their culture, identity and religious as a process of Burmanization, especially of minority areas, as a way of manifesting the government's dominance over subordinated ethnic cultures and religions (Karlsson, 2009).

The oppression of ethnic people after *the coup de'tat* included the prohibition of teaching of their languages in government education system, commemorating of cultural days, national days in each States, and publishing of news, journal and books, being deprived of their rights of mother tongues based education that they had enjoyed since Burma independence (James, 2013). With the Media Law known as "1962 Printers and Publishers Laws" that established scrutiny board for media censorship, all printing newspapers were tightly restricted by the military regimes. Moreover, all of the daily newspapers and publications were later nationalized by introducing the Union of Burma as Burma Way to Socialism in 1969. Throughout the years of 'Burma Socialist Program Party' (BSRP) rule (1962 – 1988), and also under the SLORC – SPDC military regime (1988 – 2011), people living in Burma-majority area in the central part of the country often had little understanding of the conflicts and issues in the ethnic areas (Htwe, 2017).

During the successive military authoritarian governments, ethnic groups had been portrayed in State Television and Newspapers as separatists that threatened national unity through the form of federal and equal political rights demanded by ethnic leaders and armed organizations. In fear of the possible ethnic politics enlightenment among the general public, the military completely censored news and information about ethnic armed conflicts, politics and other politically sensitive issues. As a consequence, most of the ethnic people are uninformed, unaware of their right to information and their voices and issues have been rarely heard in Burma during the military regime era. The politics of ethnic people reached deadlocks on international and national agenda amidst the implementation of Burmanization. Therefore, the ethnic groups in Burma remained as voiceless people until the political reform embarked in late 2012.

After the quasi-civilian government led by former President Thein Sein came to power in March 2011, a series of political reforms such as peace-talking with ethnic armed groups and new laws toward democratization through the Parliament began. In the initial part of the reform, several of new policies regarding media freedom had

¹ Burma was officially the name of the current Union of the Republic of Myanmar until 1989 before the military regime changed it to Myanmar on 29 May 1989. The researcher prefers the term "Burma" since it was changed without the consensus of people by the military regime.

been introduced. These new policies included eliminating scrutiny and censorship board, the introduction of private printed media on a daily basis and permission to exile-based Burmese and Ethnic Media Organizations to operate in the country. At the same time, on 31 March 2013, in his monthly speech, President U Thein Sein demonstrated his commitment for change in media freedom as fourth pillars in which he called, “media as the fourth estate of our nation” (Aung, 2013). Criticisms over government, political comments or opinion, human rights issues, ethnic conflicts, and comments on peace-building and ethnic armed group’s policy and politics are allowed to be published. In this reformation process, people in Burma including the ethnic people became increasingly interested in accessing information from various kinds of newspapers, news focus journals and magazines via print or online media since the right to information and people’s right to know have been denied for many years (Yang, 2014). In this political shift and transition, media in Burma is functioning as a watchdog to check the government’s performance and make a suggestion for future improvements (Nyunt, 2014).

These press reforms have become more meaningful for ethnic people in Burma. Several bi-lateral ceasefire agreements signed by the government and ethnically-based armed groups contain important provisions regarding freedom of expression and media, although the Nationwide Ceasefire Agreement has not been signed by all ethnic armed groups. Information, comments and opinions about the transition process, peace-building, armed-conflicts and controversial related issues in ethnic areas disseminated by ethnic journalists are essential contributions to strengthening democratization and human rights improvement. The desire of people to know the transition process and awareness got increased. Increased demand for information from the general public requires media persons and journalists to work on a more investigative finding, accessing information from various stakeholders including the government and the ethnic armed organizations. Amidst this improvement, journalists and ethnic media organizations in the ethnic areas face many challenges in terms of access to information, limitation on media-related work, intimidation and other violations while carrying out their media work.

This research highlights the challenges of ethnic media in Burma transition by assessing press freedom and right to information through the reformation that occurred under civilian government from 2014 to 2017.

Statement of Problem

Media reform, including the emergence of ethnic media, is one of the most significant changes the quasi-civilian government promised after it took the State power in 2011. The censorship had been lifted, journalists jailed by the previous military have been released and the government allowed exile-based Burma media and ethnic media organizations to take a foothold within the country. They have been granted legal license to carry out their media industries in the country and ethnic media organizations in their respective States and areas. According to the Open Society Foundation’s (OSF) statistics on the ethnic media in Burma in 2016 February, there are 57 ethnic media organizations based the country and 40 ethnic media organizations legally registered with the Ministry of Information¹.

¹ <http://www.moi.gov.mm/moi:eng/?q=news/7/02/2017/id-9846>.

Amidst political transformation and peace negotiation between the ethnic armed groups and the government, the role of ethnic media became significantly crucial that they became a bridge between the government and the ethnic armed organizations (Brooten, 2016). Ethnic media mainly disseminate news and information about ethnic issues related to peace, politics, social, development and matters with peace-building to national and international audiences. Some criticism over government administration, political opinion or comments, human rights issues, armed conflicts, development issues and other socio-political related issues are allowed to be published in their printed and online publications. In this Burma transition, the general public including the government, the military, scholars, academicians and other concerned groups on Burma need to be informed about what is happening in the country. More importantly, diverse voices from different groups, sources and information provided by media should be enable Burma political, military, armed groups and civil organization leaders to tackle sensitive and controversial issues through negotiation toward better transition.

Democracy requires freedom of expression and media freedom that people have the right to know the activities of the government, especially the decision of the government which affects their life, liberty and prosperity. Information is vital for people to make choices regarding their participation in the State, the market and the civil society (OKOLO, 2014). Media has the power of influence over the general public and shape the opinion of people in their daily life. In a democratic country, media should be independent, pluralistic and free. The media should serve the country as a bridge between its citizens and the government.

The Constitution of the Union of Myanmar, Section 354 (A) states that everyone in Myanmar has the right to freedom of expression and opinion. Clause (a) of Section 354 in the 2008 Myanmar constitution states, “Every citizen shall be at liberty in the exercise of the right to express, publish and distribute their convictions and opinions freely.” In other words, media can freely publish news, information and opinions and, hence, distribute their publication to the public sphere and market. In the same way, Myanmar Media Laws of 2014’s purpose and the principle of adoption describe “media as the fourth estate of the country.” The Law guarantees freedom from censorship and allows media to publish freely, express and distribute and establish conciliatory dispute mechanisms through the Media Council. Even though the Constitution and Media Laws guarantee media persons and citizens to enjoy their freedom of expression in general, there still exist many controversial laws of restriction such as Official Secret Acts, Defamation, Trespassing, Communication Laws and Unlawful Association Acts that restrain media freedom, free flow of information and individual journalists for their freedom to access information.

In recent years even after the NLD government took state power, arrest and lawsuits of journalists under communication laws and criminal codes keep increasing. Under these existing laws, a fair criticism of the government policies and leaders could be presumed to be seditions, depending on the nature of the man in the saddle of leadership. In recent times, comments over the military, chief of armies and Aung San Suu Kyi led many journalists arrested for defamation under communication laws and criminal code. Many of them were detained no more than six months imprisonment and other journalists are still under trials.

With the laws that restrict individual journalists and media freedom in Burma reformation, the restriction of media freedom and risk for journalists differs in geographical sensitivity. Ethnic journalists or reporters who take responsibility to cover ethnic issues and concerns in the ground faced harsh challenges than other mainstream journalists covering issues happening in the central part of Burma. They try to impart ethnic news and issues to the government, ethnic leaders, international and general public to understand the issues of ethnic people, hoping the knowledge of ethnic issues would attribute to resolving conflicts and peace-building under Burma transition. Minority ethnic groups are well-represented in ethnic media in Burma (UNESCO, 2016). They are very enthusiastic about participating in the country transition and promoting their issues and political situation to local and international people. In the result, the ethnic media have been targeted by Nay Pyi Taw sometimes for spreading disinformation and sensationalism about the situation on the ground even when they said their reports were accurate and balanced (Chongkittavorn, 2014).

As already reported in national as well as international media outlets, journalists and reporters carrying their works in ethnic areas have faced many dangerous situations like: (1) murders of journalists, (b) seizures of press equipment or materials, (c) closure of media house, (d) arrest or detention and (e) imprisonment. Due to conflicts, natural resource exploitation, controversial development projects and other social and political sensitive factors where the ethnic armed-groups take a foothold, journalists and reporters find risk getting information and reporting news. In recent years, one of the journalists was shot dead, one female journalist was attacked physically and many have been arrested under the Unlawful Association Acts when they traveled to seek ethnic conflicts, government activities, armed group situation and human rights issues in the ethnic areas.

The daunting atmosphere around media works in some ethnic areas creates fear among individual media persons of allegation charges, unlawful arrest, shooting, etc. since ethnic media persons are covering and disseminating information which is politically sensitive. Even though the media censorship was lifted in 2013 and also the enforcement of the News Media Law in 2014 (where media persons or journalists do not need clearance from the government censor board about their news content), for ethnic media persons such reforms are still come as a challenge. Despite editorial independence granted under these reforms, the exercise of this right by the media persons is severely limited and curtailed by the censorship they placed upon themselves due to the fear of unwanted attention, e.g., charge of defamation¹. The existing laws such as the Communication Law, the Official Secret Act, Unlawful Association Act, the Electronic Transaction Law and the Criminal Code not only hinder media works but also work against ethnic media persons for reporting politically sensitive news.

¹ Although the News Media Laws provides freedom of accessing information and protect individual journalists from possible harm for their media works, there are still many challenges and risk to seek official information freely due to lack of right to information laws (RIT Laws). Under the Media Rules, there are no government-wide guidelines for what qualifies as confidential information. Instead, defining what can and cannot be shared is the internal work of each government department (UNESCO, 2016). Charges against journalists using the Official Secret Acts and Unlawful Association Acts are the most problematic to media workers by practicing access to information laws from many different administrations and institutions.

This study will examine how the Burma transition, media reform and the existing laws and policy effect ethnic media in practicing media freedom and explore how ethnic media houses and individuals manage to perform their tasks despite various challenges.

Research Objectives

- a) To identify the roles and the challenges of ethnic media institutions under Burma democratic transition and media reforms
- b) To study the effects of press reforms on ethnic media in promoting media freedom under Burma transition.
- c) To analyze how existing laws and policies contribute and, or hinder media freedom and right to information under Burma transition.

Research Questions

1. What changes have occurred within ethnic media industries since the media reform under Burma transition?
2. What are the challenges faced by ethnic media industries even after the media reform under Burma transition?
3. How are ethnic media industries exercising media works/cope under the current laws and policies on media works?

2. ETHNIC MEDIA IN BURMA TRANSITION

The minority ethnic groups are well-represented in ethnic media in Burma. They can impart ethnic issues to different segments of society. Ethnic diverse voices, situation and issues provided by ethnic media serve the growing awareness among various stakeholders in Burma transition and peace-building between ethnic armed groups and central government. In this regard, there are three key roles that media play at times of crisis and change: They act as agents of stability (often through development journalism), agents of restraint (providing checks and balances on government), or agents of change (helping to shape change) (Becker, 2015). With the political openness of Burma and under media reform sector, ethnic media in Burma also have pursued a chance to play an important role in shaping change and providing checks and balances on government administration through the capacity of their media professional work.

Amidst reformation, the Burma government and military apply new forms of methods to restrict media freedom and individual journalists. In early 2014, the government began to arrest and take journalists to Courts under the Criminal Code and the Official Secret Acts. Later, the government and military expanded its lawsuits towards journalists by applying other existing laws such as the Communication Laws, the Unlawful Associations Acts and restrictions of journalists over traveling and access to information significantly tightened. The government and military targeted ethnic journalists and journalists from mainstream media organizations covering ethnic issues since armed conflicts, human rights violations, and exploitation of natural resources in ethnic areas are viewed as politically sensitive issues in the current Burma transition.

Freedom to seek, receive and impart information together with the right to freedom of opinion and expression is included in the Universal Declaration of Human Rights (UDHR). It is a core fundamental human rights and Article (19) of the International Convention of Civil and Political Rights (ICCPR) also states that everyone shall hold the right to opinions without interference. The right to freedom of expression shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or print, in the form of art, or through any other media of his choice. Under this provision, the States are responsible to respect, promote and protect those rights and to uphold in their domestic and constitutional law. Democratization and transition in Burma also require the guarantee to respect and protect the rights of people on their free expression so that the restoration of democracy and sustainable peace in Burma would be achieved without delay.

As newly country in transition to democracy from the military dictatorship, Burma's growth of civil participation in the process is essential since democracy is a system that is watched by the people. Democracy can only be achieved if the general public is aware of their fundamental human rights. Media plays a very critical role in promoting public awareness. Media freedom and freedom of expression are the essence and foundation of democracy. Media are responsible for disseminating truthful information and having the right to investigate the activities of government without any restrictions. In an indeed democratic country, media must remain free of government control, but in exchange, the media must serve the public.

3. FINDINGS

Media freedom and freedom of expression can be said as the foundation and working force for democracy. The political reforms in Burma require press freedom to ensure journalists and media have the right to freely access information and exercise their media freedom to impart and disseminate information. It is also essential that the general public have freedom of association and assembly to express their opinion and participate in the country reform process.

In the context of transition in Burma, restoring democracy and political stability can only be achieved through all-inclusiveness and Daw Aung San Suu Kyi also calls for civil participation and all-inclusiveness in the transition process. All people in Burma need to be informed of the truth about the political, social and economic situation so that they will know how to participate in the process. At the same time, the voice of ethnic people and their issues which had been blocked by the successive military government for many decades are very vital to be understood by the international community, leaders of the Burmese government and other concern groups in Burma transition. In this scenario, accessing information and media freedom in the country is key to identify that democratization in Burma is smooth and embarking in the right direction. Therefore, this research study in analyzing press freedom and freedom of information in ethnic areas will contribute to advocating the importance of press freedom and the right to information in the Burma pathway to democratization.

4. LIMITATION OF THE RESEARCH

This study only focuses on the coalition of ethnic media organizations such as Burma News International (BNI) and other State-based network ethnic media like Southern Shan Media Network (SSMN), Southern Myanmar Journalist Network (SMJN) and Chin Media Network (CMN). The fact that the research cover BNI is that these consortium media members have had corporate in media work for many years by sharing news information, advocating for ethnic media situation and establishing network or coalition of State-based media organizations. The research will be mainly based on in-depth interviews and other kinds of media such as State-owned media, ethnic online and TV media and mainstream media which do not cover ethnic issues will not be included. Interviewees with the members of BNI, members of the network from various ethnic media, Media related organizations and Myanmar News Press Council will be focused on carrying out in-depth interviews for primary data collection and analysis. Their difference experiences might find the research incomprehensive and challenge while analyzing.

Interviews will be mainly conducted in Burmese and the researcher's native language known as Lai dialect of Chin. In this case, translation from two different languages to English will be another challenge and limitation. The interviews conducted and the transcripts will be translated into English and some transcripts might be misinterpretation. At the same time, some articles, documents and data shared by the interviewees might have some similar stories, and some could be omitted and failed to put in the translation text.

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IMPOVERISHMENT OF THE POOR AND DEROGATION OF HUMAN RIGHTS DURING THE COVID-19 PANDEMIC IN INDONESIA: TESTING THE SIRACUSA PRINCIPLES IN LARGE-SCALE SOCIAL RESTRICTION

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ABSTRACT

Focusing on the derogation of human rights during state health emergencies, this article examines the regulation of permitted restrictions imposed by the Government of Indonesia during the Coronavirus pandemic (COVID-19) to see whether it is compatible with restriction clauses set by the Siracusa Principles. The Large-Scale Social Restriction (PSBB) regulation has increased the level of poverty and unemployment, the loss of the livelihood and jobs, and has forced people to poverty. It does not meet the elements stipulated in the Siracusa Principles because it is disproportionate and causes other human rights crises - namely, the poor getting poorer.

Keyword: Restrictions of Human Rights, Siracusa Principles, Proportionality, Violations, Human Rights Crisis.

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1. BACKGROUND

The Coronavirus (COVID-19) outbreak has hit most of the world's population, including Indonesia. It is not only a national concern, but according to World Health Organization report, it meets the criteria of a Public Health Emergency of International Concern (PHEIC)-(WHO, 2020). In June 2020, the World Health Organization announced that Indonesia has 28,233 confirmed COVID-19 cases, 1,698 death cases and 8,406 recovered cases (WHO, June 2020). In terms of the number of people affected by COVID-19, it is one of the countries with the highest percentage of deaths (Worldometer, May 27, 2020). The numbers will continue to increase if there are no early efforts to stem its transmission.

Unlike China, Denmark, El Salvador, France, Ireland, Italy, New Zealand, Poland and Spain that have implemented the largest and most stringent mass quarantine in the world (Business Insider, March 20, 2020), Indonesia believes that the most effective way of stemming the outbreak of COVID-19 is not locking-down, but reducing people's mobility from one place to another (Republika, March 24, 2020). In anticipating the COVID-19 outbreak, Indonesia enacted Government Regulation Number 21 of 2020 on Large-Scale Social Restrictions ("PSBB regulation") in the Context of Accelerating Handling of Corona Virus Disease 2019 (COVID-19) applicable for 91 days, starting from February 29 to May 29, 2020. The Large-Scale Social Restrictions (PSBB Regulation) is actually not much different from a lockdown. Both reduce a person's mobility from one place to another. In addition, the PSBB Regulation is not only a restriction of the right for people to move from one place to another, but also a restriction from earning a living. For example, those who work with high mobility, such as online vehicle drivers (OJOL), street vendors, coffee shop owners, retail traders, and day labors in factories, are impossible to work without direct contact with other people.

Indonesia is a member of eight human right covenants; however, Indonesia has a set of laws allowing derogation of human rights in state emergencies. Those laws include the Indonesian Constitution (UUD 1945), Law No. 39 of 1999 on Human Rights, Law No. 6 of 2018 on Health Quarantine (UUKK), Presidential Decree (KEPRES) No. 11 of 2020 on Determination of the Public Health Emergency Corona Virus Disease 2019 (COVID-19), and the Government Regulation No. 21 of 2020 on Large-Scale Social Restrictions in the Context of Accelerating Handling of Corona Virus Disease 2019 (COVID-19). These regulations and their application in particular do not meet Specific Restriction Clause set by the Siracusa Principles as the International Human Right restriction standard.

Uniquely, the implementation of the PSBB Regulation does not show an effort to harmonize legal values by reflecting on the attitude and acting in the association for the sake of the realization of justice, legal certainty, and usefulness by applying sanctions. For instance, people ignore the PSBB Regulation because of being asynchronous to government policies (Kompas.com, May 21, 2020). The news further reported inconsistency of PSBB Regulation with the public's attitude and ignorance of the regulations, and this made the application of the regulations was less effective.

Furthermore, it is argued that a lack of government monitoring, government oversight, and public awareness also made the regulations ineffective. In addition to the problem of law ignorance, inefficiencies occurred because many people think that food is more important than health. Even if they obey the regulations, they may lose their life due to lack of food. Besides regulatory and public ignorance issues, deprivation of such basic rights increases because people are mostly not aware of the regulation.

It is not surprising that the implementation of the law restricting human rights during COVID-19 outbreak leads to another human rights crisis. The issues on the right to get food due to job loss and the right to health services are getting worse. As a result, the economic situation is getting worse and the number of poor people is increasing significantly. CNN Indonesia (2 June 2020) reported that during the COVID-19 outbreak, the number of Indonesian people below the poverty line will increase by 12 million people or 17.7 percent of the total population. This finding was further strengthened by the Indonesian Ministry of Manpower data on 2,084,539 workers from 116,370 companies who were laid off and terminated because of the Covid-19 pandemic (Indonesian Institute of Sciences “LIPI”, June 3, 2020). Since Coronavirus broke out, many Indonesian newspapers have massively reported the implementation of PSBB regulation as violating human rights (Kabar24, April 29, 2020; CNN Indonesia, April 29, 2020; Suara.com, April 29, 2020; Beritasatu, May 1, 2020).

It is really a new problem in legal science and this needs to be addressed in this study. Therefore, the research question will be: “Does the Large-Scale Social Restrictions (“PSBB Regulation”) governing human rights restriction during COVID-19 meet the restriction and derogation provisions in the Siracusa Principles?” This article argues that it does not.

To begin, Part II discusses how the requirements of human rights derogation must be included in the Constitution. In this case, derogation must also have a balanced ending and, importantly, be balanced between means and ends. In Part III, the regulation (Large-Scale Social Restriction, or “PSBB Regulations”) will be analyzed, beginning with the legal basis for the PSBB Regulation and the debate regarding derogation, which illustrate how the regulation have been applied. Then, it analyzes the impact of PSBB Regulation on different sets of freedom. Part IV examines the minimum standard of Siracusa Principles in Large-Scale Social Restriction (PSBB) Regulation. Part V is a conclusion to assert that PSBB Regulation was not the right solution to cut the spread of the COVID-19 pandemic because it caused a prolonged human rights crisis and a suggestion for the application of regulation because of the disproportionality of PSBB Regulation with the Siracusa Principles.

2. THEORETICAL AND CONCEPTUAL FRAMEWORK

The restriction of human rights during emergencies has attracted the attention of earlier scholars. Some scholars said that the derogation of human rights must be included in the Constitution with proportional standards (Osiatynski, 2009: 75; Parekh, 2009: 47; Webber, 2009: 3; Rosenfeld and Sajo, 2012: 739; Klatt and Meister, 2012:

8). Then, it must also have a relationship with the goals to be achieved, and the minimum rights or freedoms must be resolved with a balanced ending. Violations should not work with limited (Smith, 2012: 186).

Meanwhile, the concept of proportionality itself differs between writers. Huscroft, Miller and Webber (2014: 4) mention about proportionality, balance and proportionality between means and ends. State/government policies that conduct human rights restriction as a legitimate goal (Christoffersen, 2009: 36) and the main conditions for derogation of the right in all countries must be approved and completed according to their designation (Smith, 2012: 186).

The rules to determine the restriction and derogation of human rights in health emergency condition are clearly stated in the Siracusa Principles on the Restriction and Derogation Provisions in the International Covenant on Civil and Political Rights (International Commission of Jurists, 1984). It must meet the minimum standards, including being:

1. provided for and carried out by the law,
2. directed toward a legitimate aim,
3. strictly necessary in a democratic society to meet the aim,
4. the least intrusive and restrictive available to reach the aim,
5. based on scientific evidence and neither arbitrary nor discriminatory in application, and
6. of limited duration, respectful of human dignity, and subject to review (UN Commission on Human Rights, 1984).

When compared to human rights restriction and derogation set by Siracusa Principles, the restriction and derogation model in the PSBB Regulation looks more complicated and less applicable. The focus now is how the restriction of rights guaranteed by the PSBB Regulation did not give balanced ending and proportionality. It also examines whether the restriction of human right on the PSBB Regulation meet the specific restriction clauses specified by the Siracusa Principles.

3. RESEARCH METHODOLOGY

This study is an empirical normative research (Ian and Johns, 2007) on the derogation of human rights during the COVID-19 outbreak in Indonesia using a socio legal approach. Empirical normative legal research is basically a combination of normative legal approaches with the addition of various empirical elements. The normative-empirical research method concerns the implementation of normative legal provisions (laws) in its action on any particular legal event that occurs in a society.

To achieve the objectives of this article, a descriptive-normative analysis was used to further explore the problem of establishing regulations and their implementation related to the restriction of human rights in order to save the life of the nation from the COVID-19 pandemic. In addition, some related legal norms or doctrines were examined in complete context, including the practice of international legal norm adopted by the regulation. Such a combination

approach is desirable -strengthening the search for truth, exploring the existing problems happen, and trying to find more creative and liberating efforts.

Because this research departs from human rights violation issues arising from the PSBB Regulation not fulfilling the international restriction clauses set by Siracusa Principles, it is necessary for a new law, for changes in the existing law and for the difficulties that surround its implementation to be studied in a better way with sociological investigation (Singh, *et.al*, no date). Primary and secondary data of legal instruments both national and international were used, while the application of this regulation was examined.

4. THE LARGE-SCALE SOCIAL RESTRICTION REGULATION AND HUMAN RIGHTS CRISIS

Large-Scale Social Restrictions (PSBB) Regulation

It is difficult for the government of Indonesia to compromise between defending national interests and protecting individual rights during the COVID-19 outbreak. In such difficult situations, the derogation of rights and external measures must be carried out to save both the interests of the individual and nation. The extraordinary measures adopted for the purpose of saving the public interest substantially limit some of the fundamental rights guaranteed by the constitution and international human rights law. In particular, measures to save the public interest do not only allow the state to exercise arbitrary and unlimited power, but also seriously affect the protection of absolute rights.

This compromise is very reasonable because the COVID-19 outbreak in Indonesia is relatively fast and the Large-Scale Social Restrictions (PSBB Regulation) was not implemented earlier (Vivanews, April 2, 2020). Moreover, President Jokowi's decision to enact Government Regulation (PP) No. 21 of 2020 on Large-Scale Social Restrictions (PSBB Regulation) considered the characteristics of this nation, such as having islands scattered across the archipelago, population and demographics, as well as meeting the basic needs of the community (Republika, April 1, 2020). "Basic needs" of the community means the need for health services, food, and other daily needs (Article 2 paragraph (1) and paragraph (3) Government Regulation No. 21 of 2020).

The government's reason to apply the PSBB Regulation rather than a lockdown is basically to avoid its responsibility to meet the basic needs of people prescribed in Law No. 6 of 2018 on Health Quarantine. First, when applying the lockdown policy, the Government of Indonesia has to spend substantial funds to cover the community's basic living expenses. Meanwhile, the restriction with the PSBB Regulation scheme is not as strict as lockdown because the government does not have to bear the necessities of life for citizens as long as the PSBB Regulation is implemented. Second, the Law No. 6 of 2018 on Health Quarantine (Lockdown) strictly regulates the government responsibility in providing the basic needs of people during emergency. However, the government does not only want the corona virus to not spread, but they also do not want to meet the basic needs of the people. Third, the Ministry of Finance of the Republic of Indonesia calculated to spend the 2020 State Budget (APBN) for handling the COVID-19

pandemic, i.e. IDR255.1 trillion. This budget for the health sector is IDR75 trillion, for Social Safety Net, IDR 110 trillion, and for business support, IDR70.1 trillion (Ministry of Finance, 2020).

Article 79 of the Health Quarantine Act 2018 and Article 8 *juncto* Article 5 of Law No. 4 of 1984 on Infectious Disease Outbreaks (“Act of Outbreaks of Infectious Diseases 1984”) clearly states the rights of citizens to be fulfilled by the Central and Local Governments and related agencies when the outbreak of infectious diseases, emergency situations public health, and are in a situation of Regional Quarantine and Home Quarantine as well as in the status of Large-Scale Social Restrictions (PSBB Regulation). These include:

1. The right to get basic health services according to medical needs,
2. The right to get food and other daily needs.
3. The right to receive the same treatment in administering Health Quarantine.
4. The Government has the right to meet the basic needs for people’s lives and animal feed, and its implementation involves the Central Government, Regional Governments and related parties.
5. For every person who comes from a State and/or area of a Public Health Emergency entitled to receive services from the Health Quarantine Officer which includes: (1) Screening, (2) Health Alert Card, (3) Information on how to prevent and treat an outbreak, (4) Taking specimens/samples, (5) Referral, and (6) Isolation.
6. The right to receive compensation due to loss of assets caused by the effort to deal with the plague.
7. The right to obtain information on Health Quarantine as an effort to prevent and eradicate the entry and/or exit of events and/or risk factors that can cause a Public Health Emergency.

Referring to the 7 (seven) basic rights of citizens during an outbreak situation - the status of public health emergencies, home quarantine, and regional quarantine - the Central Government and Regional Governments must take into account the allocation of funds to fulfill the basic rights of the Indonesia’s poor and vulnerable groups. The government must also prioritize assistance and mitigate the disease outbreak, especially for vulnerable groups who are living in densely populated settlements, poor groups living in rural areas, women, children, homeless people, informal workers, ordinary traders and street vendors, disability groups, gender and sexual minority groups, and others groups who are often neglected and have difficulty in gaining access to basic rights. However, the Large-Scale Social Restrictions (PSBB Regulation) has contributed negative effects or risks to the lives of those working in the formal sectors. These include:

- a) The cessation or decline of government activities of government agencies towards the community, both in terms of transportation, banking, immigration, health, education, document management, and so on.
- b) The decline in business activity isolates people in their homes. Thus, economic growth will drop dramatically.
- c) The economy becomes sluggish; the country’s financial deficit will widen without economic growth figures.

- d) The government must agree on providing a budget for the basic needs of the community during the lockdown period.
- e) Distribution activities of basic needs will be disrupted, because workers are haunted by fears of being infected with a virus.

Finally, the enactment of the PSBB Regulation itself can only be possible insofar as the Government already has complete considerations regarding epidemiological aspects, magnitude of threats, effectiveness, resource support, operational technical, economic, social, cultural, and security. In considering the epidemiological aspects, the Government must have a strong study base related to the correlation between health and disease patterns, and related factors at the population level that are potential causes of a COVID-19 pandemic outbreak.

Half-Hearted Policy

The PSBB Regulation can also be interpreted as providing protection and legal certainty for the wider community, including health workers, from outbreaks of infectious diseases. The government must inform the public about the plans, steps, and policy strategies that have been and will be carried out, how the regulations are handled, how much funds are provided, and the worst possibilities to the society. The government set a PSBB Regulation with comprehensive literacy on PSBB Regulation and should inform the public so that they completely know the consequences that must be faced when the regulation is already enforced. In addition, the success of the policy must be supported by at least four main pillars, namely: the central government, the regional governments, the community, and the international support. Without the solidity of these stakeholders, the PSBB Regulation can be a boomerang and trigger other human rights crises.

Furthermore, the implementation of the PSBB Regulation is fully submitted and entrusted to the respective regional governments through Government Regulation No. 21 of 2020 on Large-Scale Social Restrictions in the framework of Accelerating the Management of COVID-19 on March 31, 2020 and, the Presidential Decree (KEPRES) No. 11 of 2020 on Establishment of COVID-19 Public Health Emergency. Implementation and sanctions against violations are strictly regulated in accordance with local regulations. For example, the Mayor of Bekasi issued Mayor Regulation (PERWAL) No. 29 of 2020 on Prevention of Dissemination and Acceleration in Handling COVID-2019 in Bekasi City for reprimanding sanctions up and imposing a fine of IDR50 million. In DKI Jakarta Province, PSBB is regulated with Governor Regulation (PERGUB) No. 41 of 2020, in which sanctions against violation of PSBB Regulation vary from written warnings to fines of IDR50 million.

In addition, the implementation of PSBB Regulation, as prescribed in article 2 of the Health Quarantine Act (*Undang-Undang Karantina Kesehatan*), must be based on: a. humanity, b. benefits, c. protection, d. justice, e. non-discriminatory, f. public interest, g. cohesiveness, h. legal awareness, and i. state sovereignty. This standard is in line with the conditions determined by the humanitarian and legal awareness requirements being the most important points for the successful implementation of PSBB Regulation to cut the spread of COVID-19.

However, the ambiguity of the PSBB Regulation occurred because the government itself did not implement it properly. The government was less transparent on information about the prevention of the COVID-19 outbreak. Transparency is the government's obligation to the public because the community has the right to obtain information about the real health situation. The community also has the right to be protected and the right to health guaranteed by the constitution, and these must be fulfilled by the state. The consistency of strategy in dealing with this global pandemic was not fully integrated. From the central government and regional government to the level of village office (*Kelurahan*) and Neighborhood Association (*Rukun Tetangga*), there were differences of opinion regarding sanctions applied to the violator of the PSBB Regulation (Merdeka.com, April 27, 2020).

Consequently, people do not have solid information about the rules. With the nature of most Indonesians who like to break the rules (Loop, February 10, 2016), violations occurred because the public did not know about the actual rules beforehand, and the communication crisis or fragmentation were found at the central and regional levels (Kompas, May 21, 2020). For example, with the issuance of the Circular Letter (Surat Edaran) of the Minister of Industry No. 4 of 2020 on the Implementation of Factory Operations in the Corona Virus Disease Public Health Emergency 2019, many factories/industries, including non-essential industries, were still going to run (Ministry of Industry, 2020). However, strict sanctions for those who violated these rules were not clearly implemented.

5. TESTING THE SIRACUSA PRINCIPLES IN GREAT SCALE SOCIAL RESTRICTION

State Emergency

It is agreed that the ground for the PSBB Regulation, which came into force on 30 March 2020, is to cut the spread of COVID-19 pandemic, because it threatens the life of the country (public health). The situation of state emergency is prescribed in the consideration of the formation of PSBB Regulation, namely:

“The spread of Corona Disease Virus 2019 (COVID19) with the number of cases and/or the number of deaths has increased and expanded across regions and cross the country and affected the political, economic, social, cultural, defense and security lives, as well as community welfare in Indonesia.”

The Government of Indonesia (Joko Widodo) responded to this outbreak by issuing Presidential Decree (PSBB Regulation No. 21 of 2020) stating that COVID-19 is a “Non-Natural National Disaster” (The Jakarta Post, April 14, 2020). One of the purposes of this decree is to fulfill state's positive duties to protect public life. The imposition of a state of emergency is important for saving the right to life from dangerous diseases (COVID-19) pandemic.

However, the decree imposed massive restrictions on personal freedom and restricted the movement of people from one place to another by promoting social distancing. It dismissed schools, prohibited worship and parties, and avoided people from crowding in places such as markets and other entertainment venues. There were systematic

violations of human rights by the state during the enforcing of the regulation, and the risks arising from this regulation was incomparable to the goal being pursued. In fact, the restrictions in the PSBB Regulation have given rise to the following human rights crises, namely:

- a) The school closure is the deprivation of freedom to get proper education as stipulated in Article 31 paragraph (1) of the 1945 Constitution, namely: “Every citizen has the right to get an education”. This is also a violation of the child’s human rights to get an education.
- b) The workplace closure is a violation of Article 27 paragraph (2) of the 1945 Constitution of the Republic of Indonesia, stating that “Every citizen has the right to work and a decent living for humanity”. The closure of the company’s operations also falls into this category.
- c) Restriction of religious activities is a deprivation of the right to freedom of worship as regulated in article 28 E paragraph 1 of the 1945 Constitution of the Republic of Indonesia.
- d) Restriction of activities in public places or facilities and restrictions on social and cultural activities are violation of Article 28 of the 1945 Constitution stating that: “Freedom of association and assembly, expressing thoughts with orally and in writing and so forth stipulated by Law”.
- e) Restriction of the mode of transportation is a violation of Article 27 paragraph (1) and (2) of Law No. 39 of 1999 on Human Rights.
- f) Restriction of other activities specifically related to the defense and security aspects is a violation of article 29 and article 30 of Law No. 39 of 1999 on Human Rights.

Article 4 of the ICCPR only recommends positive assignments to states to intervene where there is a real or direct risk to life. This is very different from the situation of the COVID-19 pandemic, where some scientific evidences show that Large-Scale Social Restrictions (PSBB Regulation) is needed to cut its spread, apparently exacerbating the above human rights conditions.

Threat to The Life of The Nation

Before considering threat to the life of the nation as the basis of enacted regulation to derogate human rights, it is necessary to look at whether the COVID-19 pandemic is really threat to the “life of the nation.” The Government of Indonesia preferred implementing Large Scale Social Restrictions (PSBB Regulation) to the lockdown policy to cut the spread of COVID-19. It, however, did not record valid evidences showing that the COVID-19 pandemic is threat to the “life of the nation.” The COVID-19 pandemic is considered very dangerous. However, it was still doubtful whether the death of 122 people (as of March 30, 2020 or before PSBB was enforced) can be considered a threat to the life of the nation when there were still some areas of Indonesia unaffected by the COVID-19 outbreak, such as the Gorontalo province of North Sulawesi (Kompas, April 9, 2020). In addition, the mortality rate reported by the government as the basis to enact PSBB Regulation may be engineered data. For instance, Chairman of the Indonesian Doctors Association (IDI) said the number of deaths due to COVID-19 was double the official data released by the government (VOA Indonesia, April 8, 2020).

Moreover, the PSBB Regulation, which derogated a number of other rights, did not meet the minimum elements of the Siracusa Principles for the derogation of rights stipulated in the International Covenant on Civil and Political Rights (ICCPR). The enactment of the PSBB Regulation affecting basic freedoms, with the ground of falsified data, constituted a violation of the “Legal rules limiting the exercise of human rights shall be clear and accessible to everyone” element. The fact that there are legal ineffectiveness, public disobedience, and controversy over sanctions are sufficient reasons as to why the regulation led to impairment of other human rights.

The impact between the restrictions on rights and freedoms must be proven so that the government can prove the proportionality of the regulation. The evaluation will not be proportional because it created an increasingly higher poverty crisis and the criminalization of citizens during the implementation of the regulation. Evidence of the success of the regulation was far more uncertain than the reality in society; in particular, uncertainty about the effectiveness of rights restrictions in holding the spread of COVID-19, death rates, and infected data. Vietnam provided an example of a policy that further limited the rights of citizens’ freedom, but showed the most effective evidence of zero death (Worldometer, June 12, 2020).

Prescribed by Law

The ‘prescribed by law’ element means that the state can limit individual human rights as long as it is based on Act (*Undang-Undang*). In other words, the state is not allowed to restrict human rights based on legal products that are hierarchically under the Act. In addition, the point prescribed by law also expressly state the validity of the principle of non-retroactivity in each application.

However, article 60 of Law No. 6 of 2018 on Health Quarantine states, “Further provisions regarding the criteria and implementation of Home Quarantine, Regional Quarantine, Hospital Quarantine, and Large-Scale Social Restrictions are regulated by Government Regulation.” There are three reasons why PSBB Regulation did not qualify as implementing regulations. First, the title of the PSBB Regulation was specifically for the acceleration of handling Corona Virus Disease 2019 (Covid-19), whereas the delegation from Article 60 of Law 6/2018 is for any situation and at any time that has been designated as a Public Health Emergency. Second, the considerations did not mention the PSBB Regulation as formed through the implementation/delegation of Article 60 of Law 6 of 2018. The PSBB Regulation should mention the basis for considering the implementation of the regulations of an Act. Moreover, this regulation was a delegation from certain laws, which were regulated in the attachment of Law No. 12 of 2011 on Formation of Legislation. Third, the contents of PSBB Regulation only turned out to include criteria/conditions and PSBB implementation. In fact, Article 60 of Law 6 of 2018 states that what is further regulated is not only large-scale social restrictions, but also the criteria and implementation of quarantine of homes, regions, and hospitals. Moreover, PSBB Regulation only set criteria and procedures for determining large-scale social restrictions and did not regulate how large-scale social restrictions should be implemented as mandated by Article 60 of Law 6 of 2018. Therefore, PSBB Regulation has not yet fully regulated the technical aspects of implementing PSBB and there were potential

obstacles in its implementation. Thus, it is enough to prove that this regulation does not meet the element “prescribed by law” of the Siracusa Principles.

In A Democratic Society.

Before determining whether the PSBB Regulation meets the element “in a democratic society,” this phrase must be reviewed first. The terms of “in a democratic society” must be interpreted as being attached to all other conditions of restriction of human rights in the Siracusa Principle. The burden of the state is to ensure that the functioning of democratic society has been fulfilled. There is no single model of democratic society. At least, the people who recognize and respect the human rights enshrined in the ICCPR are deemed to have fulfilled that definition.

The Large-Scale Social Restrictions (PSBB Regulation), which was enacted as part of a policy governing approval rights for the COVID-19 outbreak, failed to help the spread of COVID 19 and to balance the risks (public health) that would replace the hazards it issued. The government implemented an unprecedented PSBB Regulation that destroyed the livelihoods of millions of people and caused the community’s poverty levels to increase. Obviously, the crisis caused by the PSBB regulation created structural poverty rates to jump to 12.4 percent, making 8.5 million more people poorer.

Based on Scientific Evidence and Not Arbitrary or Discriminatory in The Application

Evidence of the efficacy and effectiveness of Large-Scale Social Restrictions (PSBB) Regulation as a proportional way to cut the spread of viruses is not true. This proves that the application of the Large-Scale Social Restrictions (PSBB) Regulation was the least effective way to manage COVID-19. It needs to be compared with the proof of locking even while no clear evidence has been achieved yet. In addition, there was higher level of criminality, seen in the cases of theft and hoarding of medical devices, sale of counterfeit drugs through organized crime, and theft in empty business premises. This hampers public order due to disputes on medical issues and to public misconceptions about the handling of COVID-19 during regulation.

The implementation of regulations was also discriminatory towards certain people. The PSBB Regulation officers were only strict with one group but were urged to be quiet toward certain groups. The local government did not provide a quick response if there were problems in the area. There was discrimination in the form of rejection of victims or medical personnel who treated Covid-19 patients. The most extreme example was the rejection of the funeral of the corpses of victims of Covid-19 by a number of villagers. The villagers did not only refuse the burial, but also threw stones at the medical officers who were tasked to carry the bodies of victims of Covid-19 by ambulance (Kompas, April 13, 2020). In the community, people who were potentially exposed to COVID-19 must also face isolation from neighbors despite having negative examination results (Manajemen Rumah Sakit, April 21, 2020). The government also allowed business people to use airplanes, whereas previously it was only permitted for the transportation of goods (Kompas, April 13, 2020). All of these examples prove that PSBB Regulation was discriminatory and arbitrary in practice.

Limited Duration, Loss of Respect for Human Dignity, And Can Be Reviewed

Large-scale Social Restrictions (PSBB) Regulation was carried out during the longest incubation period, i.e. 14 days. If there were still reports that are published containing new ones, it could be extended within 14 days of the discovery of the last case. The results of the evaluation of the implementation of the PSBB within the specified time span showed failure. In some cities such as Jakarta, Bogor, Depok, Tangerang, and Bekasi, they are threatened to fail because many people still avoided the regulation. Until the PSBB Regulation period ended, it turned out that the number of those positive with corona virus was still growing. As per June 12, 2020, there were 979 new corona cases, making the total number of people who have been infected by Covid-19 reach 35,295 people (Kompas, June 12, 2020). According to the Economic and Financial Developments (INDEF), the COVID-19 pandemic policy in Indonesia was the least successful, having worse success rates than neighboring ASEAN countries.

Failing to implement the PSBB regulation for three months, the Government of Indonesia shifts to the New Normal period. This means that people who are faced with “herd immunity” or those who are immune to COVID-19 will survive, and those who are not immune will die. However, the new normal is not clearly defined. There are questions on how people must behave and what health protocols to apply in order to be cleaner, healthier, more protected, and more obedient and disciplined in all sectors of life, so that they are safe from the threat of Covid-19 transmission and are better prepared to return to active and productive activities. Consequently, the death rate from COVID-19 continues to increase until it reached a rate of a thousand people dying every day (Merdeka, June 11, 2020).

All in all, the Large-Scale Social Restrictions (PSBB) regulation was the first time in Indonesia. This stopped all religious activities, parties, schools, political meetings and crowds without exception. PSBB regulations was carried out to stop COVID-19 reasons, however, it was not a proportionate response to this public health crisis. The PSBB regulation limited human rights to protect the nation from COVID-19 pandemic; on the other hand, it led to other human rights crises, increasing poverty and job losses.

6. CONCLUSIONS

The enactment of Large-Scale Social Restrictions (PSBB) Regulation, referring to the Health Quarantine Act 2018, was limited only to: a) school and entertainment workplace, b) religious activities, and/or c) activities at public places or facilities. The restriction was done solely to prevent the spread of the Disease of Public Health, whereas this application was in fact a wrong application of the law, a maladministration, and a more severe suppression of civil political rights of citizens. This is a serious violation of the mandate of Article 28H paragraph 1 and Article 34 paragraph 3 of the 1945 Constitution of the Republic of Indonesia, the Health Act of 2018, the Plague Act of 1984, and the Government Administration Act of 2014.

For this reason, the Government is urged to be consistent in taking steps to mitigate and prevent the COVID-19 virus pandemic outbreak by referring to the Health Quarantine Act of 2018, the Government Administration Act of 2014 and the Infectious Disease Act of 1984. The Central and Local Governments are obliged to fulfill the mandates of the Health Quarantine Act of 2018 and the Infectious Disease Act of 1984, specifically in terms of fulfilling the basic rights of citizens, in accordance with international standards for the need for a decent living. It is obligatory to be transparent and proportionate in implementing Large-Scale Social Restriction (PSBB) Regulation based on careful consideration of epidemiology, magnitude of the threat, effectiveness, resource support, operational technical, economic, social, cultural, and security considerations. The Government of Indonesia should stop all legal acrobatic efforts and this wrong application of the law through maneuvering the discourse of the enactment of the status of “Public Emergency Threatening the Nation’s Life” which seeks to avoid the state’s responsibility towards its people. In order to realize the effectiveness and conducive handling of the COVID-19 virus pandemic outbreak and fulfillment of rights basic citizen, the application of PSBB Regulation in Health Emergency status must meet the elements stipulated by the Siracusa Principles, so that the potential violations of civil and political freedoms of citizens can be calculated and will not cause a crisis for other human rights.

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BARRIERS OF RAPE VICTIMS' ACCESS TO JUSTICE IN TIMOR-LESTE

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ABSTRACT

Rape victims encounter many barriers in accessing justice. This research examines the barriers of rape victims' access to justice in Timor-Leste and intends to understand the practice, role and procedure through which the courts handle gender-based violence, especially rape cases. The researcher asks the question on what the legal and institutional barriers to the rape victims' in court proceedings are. By using the case study method, the research will reveal the barriers, problems, and concerns in court proceedings when handling rape cases. The study conducted interviews with court actors, such as judges, prosecutors and lawyers, as well as interviews with NGOs, the superior council of the judiciary and the public prosecutor. The study discovered that court proceedings focus on the integrity of the victim rather than the truthfulness of the incident. The courts' lack of gender responsive procedure was a barrier for rape victims in Timor Leste to access justice. This study recommends the amendment of the current definition of rape to introduce consent-based definition in the Penal Code, continuation of training on gender sensitivity and women's human rights for the judiciary actors such as judges, prosecutors, public defenders and lawyers, as well as the prompt implementation of the Witness Protection Law by preventing the victims from having to face the accused during trial.

Keyword: Rape Victims, Justice, Gender Barriers, Gender Stereotypes, Victim, Court Proceedings, Timor-Leste.

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1. INTRODUCTION

The courts of Timor-Leste do not release public information about their case-load. However, the local court-monitoring NGO Judicial System Monitoring Program (JSMP) found that 1036 criminal cases were heard in four district courts in 2018. JSMP reported that out of these 1036 cases, 60 were rape cases. These 60 cases all involved the alleged rape of a female victim by a male perpetrator. In 25 out of 60 rape cases, the defendant was convicted and sentenced to prison. In ten cases, the court acquitted the defendant with the reason that the victim had given consent because of having an intimate romantic relationship with the defendant. The other 25 cases were still ongoing when JSMP launched the report (JSMP 2019, pp. 42-46).

As data shows above, all the rape victims were female. Warner (2015), as a prevention coordinator for the Asia Foundation in Timor-Leste, explained that “women in Timor-Leste who experience violence are faced with system that does not always understand or respond adequately to their complex needs or protect them when they suffer ongoing violence” (Warner, 2015, para. 2). Despite of this, the Constitution of Timor-Leste guaranteed access to justice for all citizens. However, certain groups, like women and children, are still facing challenges in receiving fair, affordable and timely justice (ICNA, 2009, p.18).

Access to justice is defined in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) General Recommendation Number 33 (14.f) as the ensuring of the accountability of the justice system through the monitoring of the functioning of justice systems in accordance with the principles of justiciability, availability, accessibility, good quality and provision of remedies. Further explained, accountability refers to the actions of justice system professionals and their legal responsibility in cases where they violate the law. (CEDAW/C/GC/33 p. 6)

Studies show that legal and institutional barriers are challenges in receiving justice. By focusing on court proceedings and court handling rape cases, this paper will reveal some legal and institutional barriers encountered by the rape victims in accessing justice in Timor-Leste, and will focus on the rape cases that committed by the family member in Timor-Leste. The research will focus on legal and institutional barriers found in reviewing the existing literature.

2. LITERATURE REVIEW AND CONCEPTUAL FRAMEWORK

This study identified legal barriers as rules or laws that make it difficult or impossible for something to be achieved in relation to justice. This study focuses on understanding institutional barriers in the justice institution, in this case the court, in handling rape cases, through analyzing the practice, role and procedure that eliminate or reinforce barriers for the victims to receive justice.

Most of the studies show that the definition of rape that focus on force rather than consent is a legal barrier for the rape victim. As argued by the Amnesty International (2019), by focusing on sexual intercourse "with a person who is in a state or situation in which the person is incapable of resisting the act," the law emphasizes the victim's capacity to oppose the assault as opposed to a range of circumstances under which it would be impossible by definition for a person to consent freely. Furthermore, *M.C. v. Bulgaria* (2003) European Court of Human Rights (ECHR) 651 cited by Amnesty International states that "International human rights law provides that there should be no assumption in law or in practice that a victim consents because they do not physically resist the unwanted sexual conduct (Amnesty International, 2019).

Furthermore, O'Sullivan and Allgeier (1998) (cited in Beres 2007, p. 96) defined consensual participation in unwanted sexual activity as situations in which a person freely consents to sexual activity. Beres (2007) concluded that some scholars implicitly or explicitly define consent as 'any yes,' meaning that someone gives her/his consent to sex any time they express any agreement to have sex, regardless of the presence or absence of force, coercion, or threats (Beres 2007, p. 97). Studies also show that most of the countries are moving away from the definition that focus on force to the consent-based definition. By using the existing literature review, this research will analyze the current definition of rape in Timor-Leste.

Ensuring non-discriminatory practices in the judicial system, especially in court institution, is an important step against the social and legal conditions that perpetuate gender inequality. Furthermore, The Asia Pacific Forum on Women, Law, and Development (APWLD, 2005, p. 27) states, "interpretation of the law cannot be detached from the specific cultural context in which it located, norms and accepted practices profoundly affect the application and interpretation of the law." Jagannath (2011, p.45), through her research, found that the prosecutor did not believe the rape victim and he believed that she was bringing the case because she needed money from the accused. She further argues that "discriminatory attitude of the judicial actors poses a barrier to victims' desire to pursue justice (2011, p.45).

Another study conducted by Temkin and Krahe (2008, p.288) found that the court convictions can be based on attitude and perceptions of rape - the attitude influenced by stereotypes, bias, and gender prejudice rather than frequently cited factors such as evidential difficulties. Furthermore, research found by Ursua (2016) that most judicial decisions are based on stereotypical beliefs about the nature and roles of men and women, and the outcome was injustice. Moreover, the Special Rapporteur on the Independence of Judges and Lawyers identify Gender Stereotypes in the formal justice system as described below: 1). The procedure and rules of evidence in criminal cases, particularly in cases of rape and other forms of violence against women, producing gender-biased behavior on the part of court officials and resulting in discriminatory outcomes; 2). The laws defining rape and sexual assault, resulting in discriminatory treatment of victims, who are almost always female, leading to high levels of attrition and thereby contributing to the culture of impunity (Knaul, 2011, para. 46).

This research will use the concept of women's access to justice as defined by the CEDAW General Recommendation number 33 (14.f) to analyze the functioning of justice systems that are accordance with the principles

of justiciability, availability, accessibility, good quality and provision of remedies. The CEDAW General Recommendation number 19 on violence against women will also be used to analyze the findings.

This study also used the concept of gender stereotyping directly related to the adoption and/or implementation of laws and practices that discriminate against women based on stereotypical beliefs about the nature and roles of men and women in family and society.

Using gender responsive analysis in legal practice is important to examine this case study. As suggested by the International Commission of Jurists at the Bangkok General Guidance for Judges in Applying a Gender Perspective (ICJ, 2016, p. 5), gender perspective would allow equal access and equal outcome in the dispensation of justice to those persons whose rights are at risk of not being recognized due to their sex or gender.

This study used the terminology of victim as “a person who has suffered sexual, physical or emotional harm, as a result of a crime,” based on definition adopted by General Assembly resolution 40/34 of 29 November 1985 (OHCHR).

3. METHODOLOGY

This research uses qualitative research methods and involves the collection of primary and secondary data. The primary data are gathered through interviewed court actors (judges, prosecutors, and lawyers). In Timor-Leste, there are no specific courts or specialist judges for handling gender-based violence. Therefore, this research interviewed male and female court actors, three to five each, based on their availability. By interviewing male and female court actors, the researcher was allowed to understand the practices in handling rape cases among court actors, and their interpretation of laws in handling rape cases.

The researcher also interviewed two representatives from two local NGOs that provide legal assistance to gender-based violence victim and that conduct court monitoring, to seek their views on the barriers of rape victims’ in court proceedings and to understand the practice of the court in handling rape cases. These two NGOs have extensive experience and knowledge on gender-based violence situation in Timor-Leste, especially in formal justice system.

This research also conducted legal analysis of the court verdict accessed through online court dossiers from the Court of Appeal. The selection of rape cases from 2009-2019 are based on patterns identified, such as court reasoning for imprisonment and acquittal, circumstances for aggravating, mitigating factors considered by the judges in decision- making, and focus on relationship between the victim and the defendants in family relationship.

The secondary data collected were as laws, legal documents, NGOs report and relevant publication.

4. RESEARCH FINDINGS: UNDERSTANDING THE LEGAL AND INSTITUTIONAL BARRIERS

This research presented the findings through identification of legal and institutional barriers as elaborated below.

4.1 Legal Barriers: Definition of Rape

The Timor-Leste Penal Code defines a perpetrator of rape as "Any person who, by means of violence, serious threat, practices vaginal, anal, or oral coitus with another person or forces the same to endure introduction of objects into the anus or vagina, such a person unconscious or placed the same in a condition where resistance is impossible"(Decree-Law No.19, 2009.s.2(173). This definition emphasizes that physical force and violence are an important element in determining whether rape has taken place. The Penal Code also provides aggravation under Article 173(a)¹ if rape committed concerns the abuse of authority because of family relationship, guardianship, hierarchical, economic or labor-related dependence. Based on international standards, the recognition of rape is an issue of lack of consent rather than the use of force or violence (Ursua, 2016.p. 39).

Timor-Leste's current definition of rape was adopted from the Portugal Penal Code. Portugal has begun discussions on changing the definition from its focus on force and violence to the issue of lack of consent, following the seven EU countries that already passed consent-based rape definition, as reported by Demony (2019.para. 12). The same discussion was also happening in Timor-Leste in 2012 when two local civil societies-initiated discussion for the amendment of Timor-Leste's Penal Code to provide more protection for women and girls who were victims of sexual violence. However, the NGOs in Timor-Leste advocated and focused on including a specific article in Penal Code on incest rather than the changing to a more consent-based definition. This situation is due to increasing number of cases being heard in courts relating to rape committed by family members, as reported by the Judicial System Monitoring Program (JSMP, 2018, p. 5). Up until now, the provision on rape still has not changed.

Moreover, JSMP reported that forty-eight (48) sexual offences within family relationship (categorized as incest) was monitored by JSMP in four district courts in Timor-Leste from January 2012 until May 2018 (JSMP, 2018, p. 5). In the majority of cases, the perpetrator was the victim's father, followed by victim's adopted father, and then the victim's uncle (JSMP, 2018, p.5). This counts only the cases reported through the formal justice system, and does not represent the actual number of rape cases. Studies found that the victims are reluctant to report the case to the police because of fear of repercussions, lack of trust, pressure from family, lack of confidence, and self-blame (Timor-Leste Country Gender Assessment, 2014, p. 55). Furthermore, the Timor-Leste Country Gender Assessment identified that the factors leading to the higher number of gender-based violence, including rape, are because of social norms and attitudes that accept the violence; traditional beliefs and customs surrounding marriage and gender roles;

¹ Through abuse of authority arising from a family relationship, ward or guardianship, or hierarchical, economic or labor-related dependence, the perpetrator is punishable with 5 to 50 years imprisonment if the perpetrator committed the crime described in article 172 of the Penal Code.

limited capacity of the police and courts to respond, investigate, and hear cases; and lack of awareness of legal rights and ability to access the criminal justice system (Timor-Leste Country Gender Assessment, 2014, p. 56).

Based on the current Penal Code, the age of consent for sexual activities is 14 years old. Sexual abuse of a minor only becomes a crime if the victim under the 14 years old.¹ If the victim is above 14-years-old, there is the need to prove that violence, force, and serious threat occurred. This was confirmed by the judge in Dili District Court, that the elements that need to be fulfilled in the rape case were coercion, force, violence and threats of violence. If none of these elements are proved, it is not a crime (Interview, 6 May 2020). In addition, one of private lawyers stated that “in rape cases need to prove physical evidence, the lawyer will use lack of physical evidence to asks the court for free of charge to the accused” (Interview, 17 April 2020). He further explains that the current definition of rape in the Penal Code needs proof through physical evidence.

The law requires the proof of force and violence in rape cases. However, during the data collection, the author found that there also were different interpretations among court actors related to the definition of rape in the Timor-Leste’s Penal Code. This difference includes the need of physical injuries to determine that the rape occurred. As explained by the interviewees, mostly judges state that “not all the victims show the physical injures does not meant that rape not occurred Physical injures is not the only evidence for rape case.” However, in practice, as observed by the Judicial System Monitoring Program, the court decides to give the defendant prison sentence in some rape cases because the victim proved the element of physical violence or force, compared with the other rape cases where the court decided to acquit the defendant because there were no physical injures (JSMP, 2016). Furthermore, in other rape case the court decided to acquit the defendant because the victim did not physically resist the defendant, and the court interpreted that the victim gave consent (JSMP, 2018, p. 46).

Ursua (2016), through her research on gender stereotypes in laws and courts decision in Southeast Asia, argue that “not all cases of violence have physical evidence. Not all cases involved a weapon or physical violence. Not all cases where physical violence was used produced a physical injury”. (p.74) The CEDAW Committee, in deciding on the case *Karen Vertido v. The Philippines*, recommended to the Philippines to remove legislation requiring the use of physical force in the commission of rape or sexual assault, as the committee argued that “there should be no assumption in law or in practice that a women gives her consent because she has not physically resisted the unwanted sexual conduct, regardless of whether the perpetrator threatened to use or used physical violence” (CEDAW/C/46/D/18/2008, para 8.5)

The research findings show that definition of rape in the criminal code was one of the barriers of rape victims’ access to justice in Timor-Leste. As pointed out by the CEDAW Committee, the issue of lack of consent was not an

¹ Article 177 Sexual abuse of a minor

(1) Any person who practices vaginal, anal or oral coitus with a minor aged less than 14 years is punishable with 5 to 20 years imprisonment.
 (2) Any person who practices any act of sexual relief with a minor aged less than 14 years is punishable with 5 to 15 years imprisonment.

essential part in the current definition constituting a violation of women's right to personal security and bodily integrity, and therefore, the essential element should be the lack of consent (CEDAW/C/46/D/18/2008, para 8.7).

Timor-Leste is a part of the CEDAW Convention. As a part to this convention, the state has the responsibility to ensure that laws against family violence and abuse, rape, sexual assault and other gender-based violence give adequate protection to all women and respect their integrity and dignity as described in the CEDAW General Recommendation No. 19 on Violence against Women. (para.24. b) It is clear that gender stereotypes influence the justice system in practice and in the interpretation of the law, as this study found that the court argue how having no physical injuries means that the victim consents. As described by Ursua, (2016, p. 74) "Not all cases where physical violence was used produce a physical injury." Also, the lack of consent-based definition in the current Penal Code impede the rape victims from getting justice.

4.2 Institutional Barriers: Non-Gender Responsiveness

Under the Criminal Procedure Code of Timor-Leste, the proceedings for all cases related to sexual offence are closed from the public. As defined by the Law against Domestic Violence of Timor-Leste, in cases that involve family, including rape committed by family¹ members, the victims shall be accompanied in any proceedings by a lawyer.² However, in practice, very rare are the lawyers of the victim allowed to accompany the victim during the court trial. As explained by the lawyer from the local NGO that provide legal assistance to women and children, it depends on each judge if the legal assistance or the victim's lawyer is allowed to enter the court room to accompany the victim during the trial (interview, 16 April 2020). As in another study conducted by the International Commission of Jurist suggested, it is important to have dedicated legal assistance for the needs of the victim, where they could assist witnesses with difficult cross-examination, prepare witnesses for court and guide them through the entire trial process (ICJ, 2015, p.9). This is the Law against Domestic Violence already provided. However, the application of this provision was not uniform among the judges in Timor-Leste. This study found that, the reason judge did not allow the legal assistance or other social assistance to accompany the victim during the trial is because the judges believed that the presence of the legal assistance of the victim would influence the victim's testimony.

In other situations, when there was a contradicting statement or testimony between the accused and the victim without other support evidence, the court, during the cross-examination, requested both parties (accused and the victim) to debate about the incident. While doing this, the presiding judges would observe the attitude of both. This includes the language used to call each other or the victim's body language during the cross-examination, in order to determine if the accused is proved guilty. The example given by the judge during the interview was that "if the victim

¹ Article 2 (1) of Law Against Domestic Violence: Concept of Domestic Violence:

Acts committed within a family context, with or without cohabitation, by a family member against any other member of that family, where there is a situation of ascendancy, notably physical or economic, in the family relationship, or by a person with regard to another person with whom the former has had an intimate relationship which resulted, or may result, in physical, sexual or psychological injuries or suffering, economic abuse, including threats such as intimidating acts, bodily harm, aggression, coercion, harassment, or deprivation of freedom.

² Article 25(1) of Law Against Domestic Violence: The victims of domestic violence shall be accompanied in any proceedings by a lawyer or public defender

calls the accused use to be her uncle with not respectful way,” the judge will believe that the crime occurred (interview, 28 April). This practice was based on the Criminal Procedure Code. However, this practice would traumatize and re-victimize the victim, and may impact their ability to provide appropriate evidence, as highlighted by the International Commission of Jurist (ICJ, 2015, p. 9).

Another issue identified during this study was the court’s focus on the credibility of the victim rather than on the credibility of the incident. The interviewees explained that while the victim gives the testimony or declaration before the court, the judges also observe the age, intelligence and social economic background. They will say that the intelligent victim will show physical resistance. They will also look at the attitude of the victim after the incident, if the victim will show trauma. They believe that all the rape victim will have similar attitude after rape; for example, an interviewee stated that “the victim was fine during the trial, doesn’t look trauma” and this influenced the court to be lenient with the sentence (interview, 16 April 2020). In addition, once the victim has inconsistencies in her statement from the investigation to the trial court, the court believes that the victim is lying rather than trying to understand the circumstance surrounding the reason of changes in the declaration in court. It is noted that gender stereotypes influence the court in applying the law and their treatment to the victim.

Timor-Leste is a dominantly patriarchal society, and this patriarchy influences all of Timor-Leste society as well as judiciary, as highlighted in the initial state report to the CEDAW Committee in 2009 (CEDAW/C/TLS/1). This situation also happens in other countries in Southeast Asia. As reported by Ursua (2016), through her research on gender stereotypes in laws and court decisions in Southeast Asia, the patriarchy influences judicial institutions, including influencing the interpretation and application of the laws and handling of cases, especially on gender-based violence like rape.

5. CONCLUSION AND RECOMMENDATIONS

Lack of consent-based definition of the current Penal Code, gender stereotypes in court proceedings and practices, and lack of gender responsive procedures lead to injustice toward most of the rape victims in Timor-Leste. By fulfilling the state commitments to the International Human Rights Norms and Standards, this study would like to recommend the amendment of the current Penal Code and the introduction of consent-based definition in rape and other sexual offences in the Timor-Leste’s Penal Code. The Justice Institutions through the Superior Council of Judiciary, Superior Council of Public Prosecutor, the Ministry of Justice and other relevant development partner in Timor-Leste is recommended to continue to provide training on women’s human rights and gender sensitivity to all court actors, such as judges, prosecutors, public defender and lawyers. Also, the prompt implementation of the Witness Protection Law is recommended to prevent victims from having to face the accused during trial through the use of teleconference procedures.

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THE RATIFICATION PROCESS OF THE CONVENTION OF THE RIGHTS OF PERSONS WITH DISABILITIES BY THE GOVERNMENT OF TIMOR-LESTE

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ABSTRACT

Timor-Leste has already ratified seven Human Rights Conventions. There are pressures from international and national bodies for Timor-Leste to ratify the pending conventions, such as the International Convention for the Protection of All Persons from Enforced Disappearance and the Convention on the Rights of Persons with Disabilities (CRPD). Most pressures are through the Universal Periodic Review (UPR), the Special Rapporteur report, and other United Nations (UN) mechanisms. Pressure also come from national stakeholders, such as the national human rights institutions and national NGOs, which recommended to the Government of Timor-Leste the ratification of the CRPD through shadow reports for the UPR and treaty bodies. The study aimed to identify the reasons and challenges faced by the Government of Timor-Leste to ratify the CRPD through its recommendations during the first and second UPR by the United Nations Human Rights Council (UNHRC). Furthermore, this study also aims to present the findings regarding why the Government of Timor-Leste delays the ratification of CRPD. The researcher is willing to recommend to the Government of Timor-Leste the advantages of the ratification of human rights treaties, reasons why the ratification of the Convention should be done, and the benefits in ratifying the human rights treaties to the Government of Timor-Leste. Also, this paper identified the efforts made by the Government of Timor-Leste for the ratification process of CRPD. The study focused on the ratification of the CRPD by the Government of Timor-Leste. The analysis was on who supported and who did not support the ratification process of CRPD. The study also explored gaps between recommendations and performances by the Government of Timor-Leste in response to Persons with Disabilities in Timor-Leste. Furthermore, the analysis will focus on the Government of Timor-Leste's efforts to ratify the CRPD, who supports and does not support the ratification process of CRPD, and finally, gaps between recommendations and performances by the Government of Timor-Leste in response to addressing the rights of Persons with Disabilities in Timor-Leste. This research used the narrative approach with a qualitative research design. It also investigated why the Government of Timor-Leste delays the ratification of the Convention on the Rights of Persons with Disabilities. In this research project, the researcher used two data collection steps – with primary data from online interviews with different stakeholders, and secondary data from access to available reports by the UN, NGOs, and the state. After conducting a field study that showed that the Government of Timor-Leste commits to ratify the CRPD soon, the only concern is that the State has not yet entirely created a sufficient condition for persons with disabilities to fulfill the principles of accessibility before deciding to ratify the CRPD.

Keyword: Ratification, Efforts, Recommendations, Pressures, Persons with Disabilities.

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Maria Rosa Xavier (maria.xavier@mj.gov.tl) has graduated from the National University of Timor-Leste on social and political science and holder an International diploma on Humanities Study-Collective Memory and Divided Society from Cape Town University and currently a master candidate of Human Rights and Democratisation (APMA), 2019 program at Mahidol University. Maria Rosa Xavier have experience in human rights for more than 20 years since the Timor-Leste struggle for its independence as an activist. Maria Rosa Xavier has worked with different institutions on the professional carrier with UN agencies, NGOs, and human rights technical persons to the Ministry of Justice of Timor-Leste.

1. INTRODUCTION

The phenomenon of disability is considered a global problem for many countries in the world. There are growing debates within the academic literature on disability studies on approaches to the analysis of disability. These debates have contributed not only to understand disability but also the way how to frame and address disability problems. These debates have an impact far beyond academic circles on how the causes and outcomes of disability affect the everyday life of disabled people. For example, the emergence of the Social Model of Disability has politicized disabled people to bring about political change in every country. It has brought disability onto the international political agenda.

The issues associated with disability are also discussed in Timor-Leste. Based on the Demography Health Survey by the Government of Timor-Leste (TLDHS, 2016), disabilities are related to walking, visual, hearing, and intellectual/mental impairments. The causes behind these disabilities include congenital factors (at birth), short term health conditions, long-term health conditions, conflicts, accidents, occupational injury, or age. The survey also shows that the majority of Persons with Disabilities from the age of 5 years have different levels of disability. For example, 2 percent of the total numbers of Persons with Disabilities have difficulties and challenges functioning in at least one category or could not perform in one or all. The vision category is a prevalent category where many of them have high difficulty levels with 16% for both women and men of ages 15 years old and above. There is also a disability by education which consists of 6% of people ages 15 years old and above with no knowledge of having many difficulties. Again, based on the Demography Health Survey, "Two percent of the population reported having either a lot of problems functioning in at least one category or performing in all types. At the same time, this is true for 1 percent of those under the age of 40 and 10 percent among those ages 60 and above. The most common difficulty is with seeing where 10 percent have at least some problem, and one percent has a lot of issues of 0.8 percent or cannot see at all 0.1 percent (TLDHS, 2016, p.326-227).

To better understand the problems of persons with disabilities in Timor-Leste, further exploration of the social and political contexts is required. This is true as the issue of Persons with Disabilities is highly related to socio-political settings and the social construction of disability. Based on this assumption, it is essential to explore the State's role in handling the problems of disability. The State has the primary responsibility to formulate better legislation and policies to guarantee that persons with disabilities are respected, protected, and fulfilled.

Moreover, as duty-bearer, the State is mandated to fulfill its obligations to ensure all Persons with Disabilities are enjoying all their human rights. All the states need to have the political will to the fullest implementation of the Rights of Persons with Disabilities. Therefore, the ratification of CRPD is recommended to the Government of Timor-Leste to ratify the CRPD. This particular Convention is essential to the State to fulfill its obligation to respect, protect, and fulfill the Rights of Persons with Disabilities.

To meet the research objectives, the researcher formulates two research questions: 1) How are the political dynamics of the ratification process of CRPD in Timor-Leste? What are the efforts made and challenges faced by the

Government of Timor-Leste in the ratification process of CRPD?, and 2) How do the power relations between state institutions influence the Government of Timor-Leste in delaying the ratification of the CRPD?

The importance of the research is to see the dynamics of the political commitment of the Government of Timor-Leste, and other stakeholders to ratify the CRPD for better protection of the Rights of Persons with Disabilities in Timor-Leste. The research could also tell us the efforts made by the Government of Timor-Leste before the ratification.

2. RESEARCH METHODOLOGY

This research used a narrative approach with a qualitative research design. The study investigated why the Government of Timor-Leste delays to ratify the Convention on the Rights of Persons with Disabilities? Primary data was obtained through online interviews from different stakeholders, namely, state institutions like the 1) the National Parliament, particularly Commission A that deals with Justice and Human Rights, and 2) Government representatives from the Ministry of Social Solidarity Inclusion, National Human Rights Institution, United Nations, and national NGOs. Furthermore, secondary data was obtained through desk research, where the researcher accessed different reports such as government reports, UNCT reports, SP reports, NHRI reports, as well as NGO reports regarding the ratification process.

Data collection was conducted through online interviews with government officials, a member of the National Parliament, representatives of the National Human Rights Institution, NGOs, and United Nations in Timor-Leste. The interview used open ended-questions (what and why) to prompt informative responses from the participants. The interviews were conducted in Tetun as the official language of Timor-Leste. All the respondents identified can read and understand English, so all recruitment materials, informed consent, and data collection tools were in English and Tetun translation. Responses were then retranslated from Tetun to English to establish accuracy of content and meaning. In this study, the participation of the respondents were voluntary and they did not get any economic benefit. Before conducting interviews, the researcher provided a description about the study. The study also considered the schedule time that is convenient for them. During the interview session, the respondents could refuse to give information at some points and withdraw at any time if they feel uncomfortable. Most of the data collected from primary sources are through Key Informant Interviews (KIIs).

3. LITERATURE REVIEW AND CONCEPTUAL FRAMEWORK

Introduction

The literature review explored the discussion between the scholars regarding the ratification of international treaties and the application at the domestic level. The literature review also showed how the scholars described the challenges faced by the states in the ratification process and how the political dimension conflicted at the domestic level, especially before the ratification process of the international human rights treaties. It also looked at pertinent ideas and analyses suggested by some international relations scholars as to why the State either ratifies or not the treaties on human rights and the state's roles in addressing Persons with Disabilities. It also reviewed the ratification process for the Universal Periodic Review (UPR) and the reasons and gaps in ratifying the Convention on the Rights of People with Disabilities. The research reviewed these concepts discussed in the literature of international relations, international laws, and mobilization for human rights.

States Roles in Addressing Persons with Disabilities

In every aspect, the State's role is significant as a duty bearer. In this particular study, the State's role is essential in addressing the issues of Persons with Disabilities, mainly based on normative responsibilities. Furthermore, the role of the State is to make favorable laws and policies that enable various arms of the State to explore and achieve their potential while maintaining a high standard of operations to protect the rights of Persons with Disabilities.

Some scholars discussed the issues of Persons with Disabilities and the State's role to guarantee and protect the Rights of Persons with Disabilities. For instance, this can be found in Toritsyn & Kabir (2013) as they describe the "roles and responsibilities" of states in addressing Persons with Disabilities. Their study discusses different approaches to promote the human rights of Persons with Disabilities as innovative strategies of the implementation of Human Rights-Based Disabilities, manifested in every policy and program for Persons with Disabilities. They argue that the State's role is to ensure that all the development programs are respecting the Rights of Persons with Disabilities. The State also has the responsibility to promote the accessibility for Persons with Disabilities in the physical structures of public buildings and the equal access and participation in all development sectors without any form of discrimination in all settings (p.9-11).

Ratification

Human Rights treaties are essential normative teachings. The ratification of Human Rights treaties are considered the best way to change the behavior of the Government and have a significant influence on countries that ratify these Human Rights treaties. From the perspective of a sociologist about the concept of "world culture," Simmons (2009), in a book he wrote, says that ratification is value, norms, and ideas as the basis that can change globally (p.61-62)

The importance of the ratification of Human Rights treaties is seen on how the State has been part of the "macro-sociological" context. The State that ratifies the Convention can show to the international communities and to its citizens how the State upholds the values of human rights and guarantees every citizen's rights. Simmons (2009) argues that ratification is a modern view where a country that ratifies Human Rights is part of the international community's structure. However, for countries in other continents, including Timor-Leste, there is no firm commitment to Human Rights Treaties, unlike European countries that are more sensitive and committed to human rights treaties (p.62-63).

Why Ratify?

The International Human Rights Conventions of the United Nations are the international laws established to guarantee and to ensure that all the States fully respect, protect, and fulfill their citizens' rights. After the Second World War, the United Nations has produced the Universal Declarations of Human Rights (UDHR) on 10th December 1948. Even though the UDHR is just a declaration and is considered as a soft law, it has the power to encourage all the States to promote Human Rights from the national to the global level. This supports all States to develop the domestic laws as reflected by the international laws. UDHR and the International Covenant on the Political and Civil Rights and the International Covenant on the Economic, Social, and Cultural Rights are considered Bills of Rights.

From a legal perspective, when the State has ratified the International Human Rights laws, the respective State as duty bearer agrees to fully implement all the obligations written in the Convention to guarantee the fulfillment of the citizens' rights. The State thus agrees to integrate the fundamental principles of Human Rights into the National laws. Furthermore, International laws consider the second net of life to ensure that national laws are not fully implemented if there are any human rights violations. Other stakeholders and the victims can use the international laws, norm and mechanism to complain against the guarantee of the State to adequately fulfill its obligations as duty bearers - to respect, protect and fulfill the Human Rights.

Human Rights norms and mechanisms are presented from the various points of view of experts with different perspectives. Some scholars argue that the ratification of international human rights treaties is the United Nations' strategy to interfere at the national level. The international mechanism's intervention in the national level from a political perspective means disrespecting the Sovereignty of each country by the ratification of the International Human Rights. It allows the International community to interfere at the national level. Thus, different scholars have a different perspective on the importance of the international human rights treaties' ratification.

Some experts discuss Human Rights norms and mechanisms through political, sociological, and legal aspects. The authors describe the transformation of Human Rights standards that are applied universally. Human rights norms and mechanisms in the domestic level are constructed through three essential angles:

first, the influence of the international community; second, the importance of comparative studies between countries that use different disciplines to prove which State is appropriated with which political or legal system because different countries have different approaches; and third, the importance of domestic actors in pursuing Human Rights Norms and Mechanism at the national level.

The application of human rights norms and mechanisms, particularly the ratification of international human rights laws, use different approaches. For example, from the political science approach described by Landman (2008), Human rights are inter-disciplinary, involving a variety of disciplines from the "legal, social, and human sciences including traditional and critical legal studies, political science, philosophy, anthropology, sociology, history, psychology, economics, and environmental sciences." Therefore, it is relevant to link how political science and normative and empirical studies seek to establish rational, cultural, and structural foundations for human rights and democracy. The field of comparative politics, which combines the theory and practice of human rights based on multi-cultural comparison or individual in different states, is essential to explain the different promotion approaches and protection of human rights (p.890-895).

Besides, two scholars have the same view regarding ratification, particularly the ratification of the CRPD. Lord and Stein (2008) describe the CRPD as a "transformative vision and a vehicle for fostering national-level" on disabilities laws. They also present the challenges and opportunities in advocating for effective implementation of the Convention as guides in a new era of international human rights law and practice. In this transformative process, the international human rights treaties have played a role as the basic normative idea which creates international obligation for global concepts to be incorporated at the national level. The CRPD provides a tremendous and essential transformative source to People with Disabilities for both International and National Stakeholders and National Human Rights Institutions to support the State-party with a holistic approach through advocacy action for Persons with Disabilities Rights at the national level.

Why Not Ratify?

Some of the authors provided a significant argument why some state delays sign and ratify human rights treaties. For example, according to McBain (2013), the United States of America's most significant barriers for the country to sign and ratify human rights treaties are fears that they will interfere with US sovereignty. She highlights that the signing would politically give some difficulties as the US has been involving in infringing on other countries' Sovereignty by using hard power in human rights (p.1).

However, some scholars like Wotipka and Tsutsui (2008) argue that international and other national factors could influence state decisions to ratify human rights treaties. The sensibilization on the importance of the ratification of human rights treaties at the international level by an international Non-Governmental

Organizations (NGOs), by the UN, by the national standards by National Human Rights Institutions, by National NGOs, and by other stakeholders will accelerate the ratification process (p.726).

Conceptual Framework

After reviewing several literature reviews from the different scholars' perspectives on why countries ratify the Human Rights treaties, several things that affect the ratification process are found. After reviewing some opinions about ratification, the recommendations from various parties, and the basic concept of UPR as a new mechanism for monitoring the human rights situation in countries, these are now three fundamental concepts as foundation to support this research on the ratification processes of the CRPD by the Government of Timor-Leste, namely, political will and patterns of commitment.

The three fundamental concepts above are closely related to the ratification process, why a state ratifies or does not ratify the Human Rights conventions. This conceptual framework describes thoroughly the political will and patterns of commitment that contributed to State decisions of Ratifying the International Human Rights conventions.

Political Will

According to Raile & Raile (2010), political is defined as a collective effort, since a political community, as such, constitutes a collective. Understood this way, political will (tentatively) may be defined as the "extent of committed support among key decision-makers for a particular policy solution to a particular problem." Within that framework, the authors explain the following components and sub-conceptual areas of the proposed definition of political will: 1) A sufficient set of decision-makers; 2) with a common understanding of a particular problem on the common plan; 3) is committed to supporting 4) a commonly perceived, potentially effective policy solution. The research makes the first touch on the political will of the Government of Timor-Leste in complying with its obligation as State member of the United Nations to implement the United Nations Human Rights Council's recommendations from the UPR mechanism.

Furthermore, Raile & Raile (2010) describe that political will is defined as a sufficient decision-making set or an adequate set of decision-makers. It provides an opportunity for the Government to take a proportional decision and respect its citizens' rights, including people with disabilities. Political will also considers interpreting a shared understanding of a particular problem. Having a common plan will help the Government of Timor-Leste to be responsible and to know the interests of Peoples with Disabilities. If the Government has a political will, the Government will continue to commit to helping People with Disabilities and consider partners from a development perspective. If peoples with disabilities are economically empowered, they will also contribute significantly to the nation's national development without any discrimination. And the last is a commonly perceived and potentially effective policy solution to ensure that no one is excluded and left behind, including Persons with Disabilities.

Patterns of Commitment

As described by Simmons (2009), historical context gives rise to the commitment and development of the legal regime to ratify particular human rights treaties. The author also provides three categories of the complex agreement in a states' decision to ratify Human Rights treaties; such as: first, the sincerity of the ratification of the values and contents of the treaties and the anticipation of compliance to the treaty itself; second, the Government consideration on the Convention as a false negative, where the State is committed in principle but unwilling to ratify the human rights treaties; and finally, the avoidance of criticism and pressures from inside and outside the country because other countries ratified the human rights treaties (p.58).

Linking to what Simmons describes regarding ratification, why is the State committed to ratifying the Human Rights treaties? There are many ways to think of how the Government is influenced to commit to ratifying Human Rights treaties. Possibly, ratification is all about treaty commitments as an opportunity to access international support. However, there is another opinion regarding ratification by another author. Hathaway (2009) says that the Government ratifies treaties because ratification sometimes expresses the costlessness of the principles contained in the conventions, and those countries ratify human rights treaties as "expressive" of the benefits but not for the effectiveness (p.59).

4. FINDINGS AND ANALYSIS

The Government of Timor-Leste's Efforts to Ratify The CRPD

The signing and ratification of international treaties, including the Human Rights treaties, is the responsibility of the State. Timor-Leste is one of the countries in South East Asia that has ratified most of the Human Rights treaties since it restored its independence in 2002. From nine of the Human Rights treaties, the State of Timor-Leste has ratified seven Human Rights conventions, except the Convention of Persons of Disabilities and the Conventions of Forced Disappearances.

As a member of the United Nations and a state-party to most of the Human Rights Conventions, Timor-Leste should take an appropriate measure to fulfill its obligations to respect, protect and fulfill the rights described in conventions. Besides, a UN member also reports the development of the Human Rights situation in each country through a state report through the UPR mechanism conducted every four and a half years. The UPR mechanism is a forum to monitor and evaluate the human rights situations in each State, aiming to improve the human rights situation through a constructive dialogue between member states and the human rights council. As a member of the United Nations, Timor-Leste has already completed two State reports and has reviewed in two cycles of the UPR mechanism, first in 2011 and the second in 2007. Of the two UPR cycles, the members of the human rights councils, through concluding observation, recommended to the Government of Timor-Leste to ratify as soon as possible the Conventions of Persons with Disabilities.

Aside from the recommendations to ratify the Conventions of Persons with Disabilities from the UPR mechanism, Timor-Leste has also been submitted a core report periodic report to the CEDAW and CRC committee as a state-party. They have conducted a constructive dialogue with the two treaty bodies committee. The two committees also recommend to Timor-Leste through concluding observations to ratify as soon as possible the Convention on Persons with Disabilities.

During the constructive dialogue with the United Nations of Human Rights Council and the Human Rights Treaty Bodies, the State of Timor-Leste is committed to ratifying the pending human rights conventions, including the Convention on Persons with Disabilities. However, after two cycles of the UPR mechanism and two times of constructive dialogue with the CEDAW and CRC committees, the State of Timor-Leste has not yet ratified the Convention on Persons with Disabilities. The Government of Timor-Leste has committed since the fourth government cabinet, and the current government cabinet eighth also commits to ratify the Conventions of Persons with Disabilities. However, there are obstacles faced by the State of Timor-Leste and they delay the ratifying of the Conventions of Person with Disabilities. There are specific reasons why the State of Timor-Leste has not yet ratified the CRPD. Nevertheless, Timor-Leste has done some processes through the Ministry of Social Solidarity and Inclusion as part of the preparation process before ratification.

Furthermore, the Government of Timor-Leste has taken an important step to prepare the National Action Plan for the Rights of Persons with Disabilities (NAPPD) for four years. The NAPPD is a comprehensive guarantee of the rights of Persons with Disabilities and is used as a practice to improve the lives of Persons with Disabilities in Timor-Leste. The Council of Ministry approved the NAPPD with the Government Resolution number 14/2012, May 2012. Furthermore, the political section of the financial of NAPPD (2012) affirmed: "to ensure the implementation of all the strategies provided in the NAPD, all the Government departments and the State Institutions include the NAPD in their annual action plan. And carry out activities to promote the Rights of Persons with Disabilities and the budget for each objective."

Delay in the Ratification of CRPD

Timor-Leste recognized that the CRPD is a crucial convention to promote and protect the rights of Persons with Disabilities. However, the CRPD requires the state to fulfill the Persons' Rights with Disabilities when ratifying the Convention. Therefore, the State of Timor-Leste is still considering various things, aware that many things have not been prepared by the Government of Timor-Leste to fulfill the State's obligation on the rights of Persons with Disabilities as described in the CRPD. For example, infrastructure in various sectors can facilitate the needs of Persons with Disabilities, especially with the principle of accessibility. There are educational facilities that do not meet the standards to assist Persons with Disabilities to exercise their rights fully.

In response to the reasons stated above, the Timor-Leste State is still in the preparation stage before deciding to sign and ratify the CRPD. There are still many things to be done, primarily to provide at least the minimum standards and minimal conditions to facilitate Persons with Disabilities. The Government of Timor-Leste is aware that the most

important thing is not just to ratify the CRPD, but to implement the CRPD as state-party to the Convention by fulfilling the rights of the Persons with Disabilities to enjoy all their rights as guaranteed by CRPD fully. Therefore, as part of the preparation process, the Government of Timor-Leste has prepared and elaborated the National Council for Persons with Disabilities (NCPD) and has presented it to the Council of Ministry. Unfortunately, the Council of Ministry still has not approved the proposal of the establishment of NCPD. Besides, it must also prepare administrative and legal processes and all necessary things before signing and ratifying the CRPD.

Furthermore, the arguments showed above clearly describe that the delays of the ratification is because lack of resources (financial). The implementation of CRPD is costly/expensive. Having no political will also influences the changing of the government structure as different people contribute different perspectives on the ratification of Human Rights treaties. There is also incompatibility between the recommendation of the Human Rights Councils and treaties body and the national development plans and priorities.

5. CONCLUSION

The ratification of the International Human Rights treaties is the responsibility of the State. Therefore, the State is responsible in ratifying the treaties. Human Rights treaties are important for developed countries and developing countries because human rights treaties include the State's obligation to respect, protect, and fulfill every citizen's fundamental rights. However, the views of each country regarding the importance of ratification of international Human Rights treaties differ. Therefore, this research aimed to find the country's commitment to ratify human rights treaties.

Timor-Leste re-affirmed its commitment to ratify the CRPD. Many things have been done by various parties, such as NGOs, UN representatives in Timor-Leste, and the National Human Rights Institutions, for the ratification process. Through lobbying and negotiation to determine which parties are pros and against the ratification of CRPD, the rights of Persons with Disabilities can be protected well.

In conclusion, the delay of the ratification of CRPD by the Government of Timor-Leste is because of lack of resources (financial, as the implementation of CRPD is costly/expensive), the lack of political will, and the incompatibility between the recommendations by the Human Rights Councils and treaties body and the national development plans and priorities.

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INTEGRATING GENDER INTO DISASTER GOVERNANCE IN NORTHERN THAILAND: OPPORTUNITIES AND CHALLENGES

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ABSTRACT

There have been several frequent small to moderate earthquakes that occurred in the mountainous Northern part of Thailand, which is found on the active Phayao fault zone. The largest instrumentally recorded earthquake in modern Thai history in Chiang Rai was felt on May 5, 2014 at 18.08 pm with a magnitude of >M.6.0. The earthquake disrupted the lives of inhabitants, caused large damages in affected areas, and generated high casualties mostly among women and girls. Natural disasters affect the life of men and women differently. Nevertheless, there was gender-based assistance for female victims. There is a risk that women and girls become more disadvantaged in years after the earthquake. The purpose of this paper is to analyze disaster governance in Thailand and examine the mechanism to integrate gender perspective into disaster management policy. An investigation of its emergency preparedness and disaster response operations reflected from the Disaster Prevention and Mitigation Act 2007 will be performed. The Act has been applied as a legal framework to regulate, plan, strategize, and administer work in disaster management, which aim to empower government agencies in the central, provincial, and local areas to manage unprecedented disasters that might occur. An exploratory case study is used to explore the various dimensions of gender vulnerability within post-earthquake in Tambon Sai Kao in Amphoe Phan, Chiang Rai Province, which was as the epicenter of the 2014 Northern Thailand earthquake. Data were collected through an in-depth interview with the local chief SAO in Amphoe Phan and women beneficiaries who were involved during and after the earthquake. The findings revealed a number of challenges at the local level to disaster governance with respect to emergency preparedness and disaster response operations that integrates assessment to gender vulnerability. Integrating gender perspectives into disaster governance can transform women to contribute to building resilient societies.

Keyword: Gender Perspective, Disaster Governance, Resilience, Earthquake, Chiang Rai.

AUTHOR'S BIO

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1. INTRODUCTION

Chiang Rai, a northernmost province of Thailand, is known as the place where the borders of Thailand, Laos, and Myanmar congregate. Along the area, the Mekong River forms the state border, which three neighboring countries. The province has 18 districts (*Amphoe*), which are subdivided into 124 sub-districts (*tambon*) and 1510 villages (*moobaan*). Most areas in Chiang Rai are typified by mountains. This geographical characteristic makes it prone to seismic activities such as earthquakes (Tanchaisawat & Hirano, 2018).

Thailand has experienced several earthquakes in the past. The earliest recorded earthquake was in 1545 AD, which was strongly felt in Chiang Mai. In the 20th century, several earthquakes in Thailand were recorded on February 17, 1975, with the epicenter in Thailand-Myanmar border, at a magnitude of 5.6 SR and on April 22, 1983 in Kanchanaburi with a magnitude of 5.9 SR. On September 11, 1994, *Amphoe* Phan in Chiang Rai felt a 5.1 SR magnitude earthquake. A decade after, it was again hit by the strongest earthquake ever recorded in Northern Thailand (Lukkunaprasit, 2006). Evidently, Chiang Rai is located in several active fault zones, namely, the Phayao Fault, the Mae Chan Fault, and the Mae Ing Fault (Tanika, et.al 2018). Images below feature the tectonic map of Thailand and the tectonic setting in Chiang Rai (Pananont, et.al, 2017):

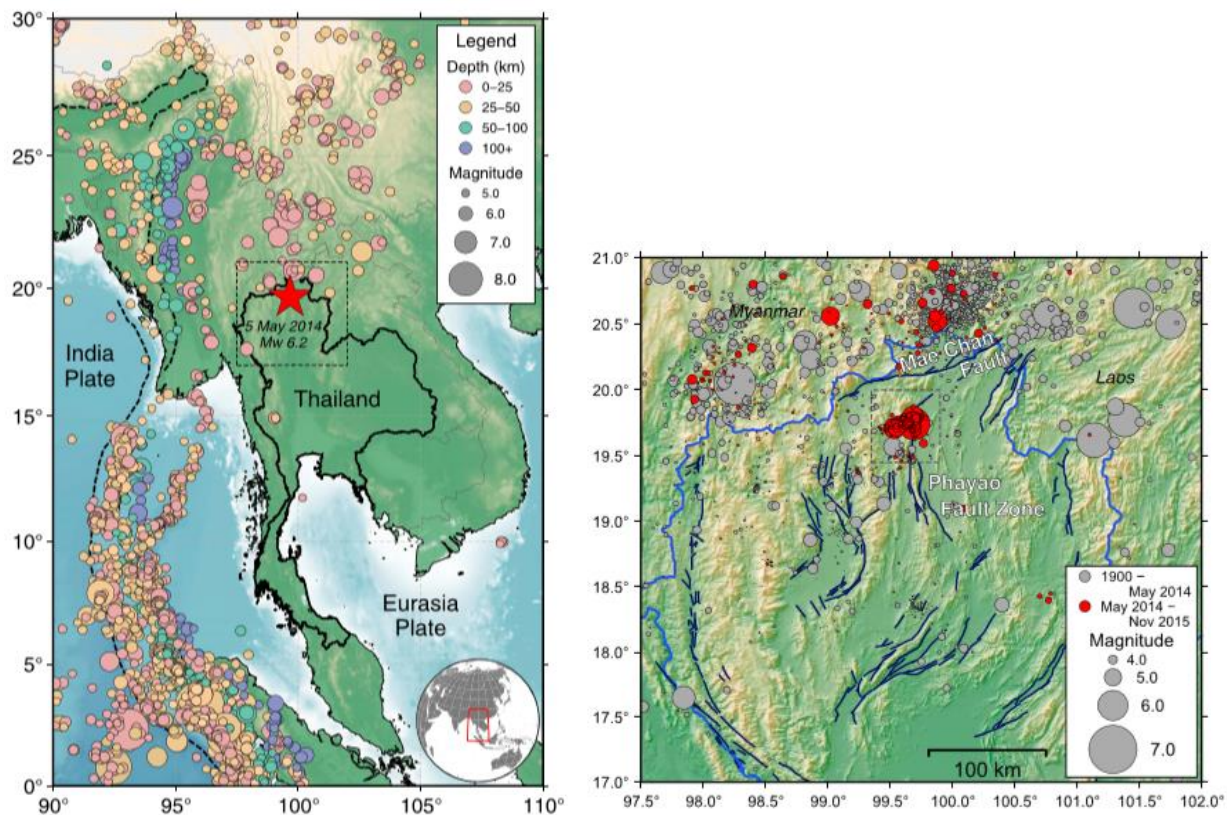


Figure 1. Tectonic Map of Thailand and the Tectonic Setting in Chiang Rai Province

The 2014 Phan earthquake occurred on May 5, 2014, at 6:08 pm at latitude 19.685 °E longitude 99.687 °N. The national recording instrument identified *Tambon Saikaow, Amphoe Phan* in Chiang Rai Province as the epicenter. It has a magnitude earthquake of 6.3 at 7 km depth from the ground (Tanchaisawat & Hirano, 2018). It was reported that the earthquake damaged structures throughout Northern Thailand, including Chiang Mai province, Tak Province, Nan Province, Phayao Province, Phrae Province, Lampang Province, Lamphun Province, and Mae Hong Son Province (Jintaprasat & Thitimakorn, 2017). In Chiang Rai, the earthquake resulted in a number of collapsed buildings, large surface cracks and liquefaction. Apart from the injured, one person died from this natural disaster.

Chiang Rai is located about 785 km from Bangkok with a population of more than 1.2 million people inhabiting 12,000 km per square land. According to the Thai statistical data (NSO, 2000), Amphoe Phan has around 120,000 population, with almost equal ratio between male and female. For the purpose of this study, *Tambon Saikao* in *Amphoe Phan*, the epicentre of the 2014 earthquake was chosen as the location of the research. *Tambon Saikao* has around 17 villages, a female population around 4,000-5,000 people. Most of population in *Tambon Saikao* are older people working in the agricultural sector.

Data was collected from in-depth interviews with those working in local government agencies and women beneficiaries who were involved during and after the earthquake. This study was also augmented by document analysis of national reports and literature related to disaster management in Thailand. It investigates the opportunities and challenges that Thailand undertakes in disaster governance, by reviewing the country preparation for natural disasters. It also examines the role of local government during an emergency situation. It also recognizes the gender vulnerability gaps and coordination challenges that need to be delivered to improve disaster governance in Thailand. Integrating gender perspective to disaster governance could potentially empower women to contribute to building resilient societies. Furthermore, in order to reduce or eliminate future disaster risk and threats to vulnerable groups, earthquake readiness strategies must be developed and improved.

2. RESEARCH METHODOLOGY

This paper employs qualitative methodologies to explore the various dimensions of gender vulnerability and assess existing local government institutions and mechanisms in *Tambon Saikao, Amphoe Phan* in Chiang Rai. Data were collected through document analysis, literature review, and semi-structured field interviews.

A total of 10 local women participants from Saikao who experienced earthquake in *Amphoe Phan* and one Deputy Chief of local SAO in *Amphoe Phan* were involved in this research. The interviewer posed nine questions to assess the demographic characteristics, such as age, gender, occupation, income, education, caregiver status and previous earthquake experiences of the participants. For the local government officer, questions sought to capture general knowledge and information on practices on earthquake emergency response and mitigation. The interviews were done two times in 25 May and 8 June 2020. The questions were mostly about the participants' views and opinions

about gender vulnerability situations that might experience during the emergency time after the earthquake and the roles of local government to support local women. However, along with the process of the field research, there was a language barrier due to researcher's insufficient proficiency in both Northern and Central Thai languages. In order to cope with the local language barrier, two native interpreters assisted the study. There would be a chance of dropping information, however, the lack of language proficiency was inescapable.

3. GENDER PERSPECTIVE IN NATURAL DISASTERS FRAMEWOK

According to Fischer (1998), disaster refers to collective events that, at least temporarily and often for years afterwards, suspend normal daily life routines owing to widespread damage. Moreover, Sivakumar (2005) argues that natural disasters are classified into two types: hydro-meteorological and geophysical disasters. Earthquakes are included in geographical type of disasters. From an international development lens, on the one hand, Sivakumar (2005) argued that natural disasters play a major role in shaping or disrupting people's security and development. On the other, Birkmann, et.al. (2008) stated that instead of defining disasters primarily as physical occurrences, disasters are better viewed as a result of the complex interaction between a potentially damaging physical event, like earthquake, and the vulnerability of a society, including its infrastructure, economy, and environment that are determined by human behaviors.

In contrast, Nigg (1995) took another perspective regarding post-disaster recovery. According to the study, recovery from disaster is not merely concerned with the reestablishment of physical or built environment; that is, community recovery should not be conceptualized as an outcome, but rather as a social process (decision-making concerning emergency response, restoration and reconstruction activities following the disaster). Following such argument, Nakagawa & Shaw (2004) asserted that social capital is the missing link to disaster recovery. The study defined social capital as a function of trust, social norms, participation, and network. Moreover, Tatsuki (2006) suggested that reconstruction is less a technical problem than a social one due to the fact that post-disaster recovery cannot be captured through simple economic measures. Instead, recovery, especially for many survivors, involves an associational, mental transition from victim to citizen.

The Hyogo Framework for Action (2005-2015,) a ten-year global roadmap for disaster risk reduction, recognizes both the significance of community participation and gender-sensitive disaster risk management. Gender is a principle that cuts across this strategy. Enarson and Chakrabarti (2009), in their review of disaster reconstruction across developing countries, found evidence that gender-based perspective is addressed marginally and is often missing in the disaster reconstruction phase. Enarson (2002) found that gender inequality and women's subordination are the root causes of women's disaster vulnerability; for instance, ideological constraints on female mobility may limit access to life-saving information, shelter, or relief goods. Ariyabandu and Wickramasinghe, (2003) stated that it is crucial to deliver the role of women within a post-disaster context because during reconstruction many organizations fail to deliver the facilities according to the needs of affected women.

4. DISASTER MANAGEMENT IN THAILAND

Thailand has encountered natural disasters in the past such as flood, rainstorms, and seasonal drought. However, in the recent two decades, it experienced huge disasters like tsunami, big floods, and earthquakes. For that reason, Thailand is eagerly aware of the need for public policy to cope with disasters. Moreover, public awareness, opportunities for voluntary work and continuous learning are key to improving disaster management system within the country.

Disaster Management can be defined as the entire process of planning and intervention to reduce disaster as well as the response and recovery measures, which is usually neglected in development planning. The Disaster Prevention and Mitigation Act 2007 is a specific law that empowers all levels of government to manage current and future disasters. The Disaster Prevention and Mitigation Act (2550 A.D.) is in the legal framework to administer disaster management. It set regulations for planning and making strategy. A subcommittee was established under the said act which set direction for all agencies towards a national disaster prevention and mitigation plan 2010 – 2014.

In the past several years, the said plan was used for management and solving large-scale problems the Great Flood of 2011, the 2014 Northern Thailand earthquake, and other disasters. The current strategic framework is the National Disaster Prevention and Mitigation Plan 2015. This is being implemented to guide the improvement and resiliency of prevention, readiness and immunity systems. This done by developing knowledge and strengthening capacities for surveillance and coping with disasters, coexistence with nature and building immunity amongst community members. This also covers the evolving concept of risk mitigation, from disaster to prevent the danger according to international standards. This cycle of "awareness-adaptation-resurrection-sustainability" (resilience) is brought about by raising awareness of reducing risks It also supervises the drive to ensure State compliance with the Disaster Prevention and Mitigation Act 2007 and Sendai Framework for Disaster Risk Reduction 2015-2030. However, women, as a vulnerable sector, have not yet been recognized in the national legal framework.

5. GENDER VULNERABILITIES IN THE 2014 EARTHQUAKE EMERGENCY

According to Narieswari, *et. al* (2014), one should be aware that the same disaster could bring different impacts for different gender groups. This is primarily caused by socially constructed barriers that often make one more vulnerable than the other during disasters. Moreover, a study by Yumarni, *et.al* (2014) explained that gender vulnerability can be examines through different dimensions: physical dimension (women with disabilities, pregnant women, elderly women), social dimension (homeless women, violence against women, widow with dependents, women heading households), and economic dimension (women with debt burdens and women with lack of productive assets).

While women-respondents share geographic location, which is *Tambon Saikao, Amphoe Phan* in Chiang Rai, their socio-demographic information differ from another. Below is the table 1 of Socio-Demographic Information in Amphoe Phan (Note that for privacy reasons, the names of respondents are undisclosed.)

Table 1: *Gender Dimensions and Socio-Demographic Information of Respondents from Amphoe Phan*

Respondent	Age (year old)	Marital Status	Monthly Income	Education Background	Occupation
Woman 1	Over 50	Married	≤10,000 THB	Elementary School	Agriculture
Woman 2	41-50	Widowed	≤10,000 THB	Elementary School	Agriculture
Woman 3	41-50	Married	10,001 - 20,000 THB	Bachelor Degree	Housewife
Woman 4	Over 50	Married	≤10,000 THB	Elementary School	Agriculture
Woman 5	41-50	Married	≤10,000 THB	Senior High School	Self-Employed
Woman 6	Over 50	Never Been Married	≤10,000 THB	Elementary School	Agriculture
Woman 7	41-50	Married	≤10,000 THB	Bachelor Degree	Self-Employed
Woman 8	Over 50	Divorced	≤10,000 THB	Elementary School	Agriculture
Woman 9	41-50	Married	10,001 - 20,000 THB	Bachelor Degree	Housewife
Woman 10	41-50	Divorced	10,001 - 20,000 THB	Senior High School	Agriculture

Based on information present above, some variables of gender vulnerabilities (physical, social, and economics) were found from women beneficiaries in *Tambon Saikao, Amphoe Phan* in Chiang Rai. Many of whom have worked in the agriculture sector and were elderly women over 50 years old, living alone (either widowed, divorced, or single), monthly income of under 10,000 THB, and elementary school educated.

Based on the interviews, when the 2014 earthquake happened, 50% of the local women were compelled to seek help from a male person to either rescue them or instruct on what to do next. Moreover, 90% of the women agreed that the role of women after the earthquake is related to care-work, such as looking after the injured or cooking food for others.

Women in villages are traditionally expected to follow instructions from men. Moreover, the usual profile includes being confined within the house, engaging in nurturing activities, and protecting the family at home. In contrast, men are expected to be less emotional, more rational and goal-oriented, and more visible and active in public. Furthermore, after the earthquake, 70% of the women, while conforming to gender stereotypes, have to also assume leadership and economic responsibilities for their families.

Murtakhamah (2013) explained there are several types of vulnerable situations that a woman may face, which include gender stereotypes, subordination, marginalization, double burden, and gender-based violence. As gathered from a case study, local women in Saikao were still subjected to gender stereotypes and double-burdens. Women's multilayered work roles included productive, reproductive, and community labor. Furthermore, there was division of labor at home. It could likely increase a woman's pre-disaster vulnerability and place additional burdens during recovery. Ariyabandu and Wickramasinghe, (2003) stated that it necessary to acknowledge roles of women within a post-disaster context. This mainly due to organizations failing to deliver for the particular needs of affected women. Moreover, the lack of equal and meaningful involvement of womenn in disaster decision-making has exposed them to potential dangers (Enerson, 2000). However, while disasters are seen as development opportunities, capacities must be increased by promoting women's participation, empowerment, and leadership (Enarson, 2002; CEDPA, 2004).

6. ROLE OF LOCAL GOVERNMENT IN EMERGENCY

The Disaster Prevention and Mitigation Act 2007 is also known as the Public Disaster Prevention and Mitigation Act in Thailand. This Act replaced the Fire Prevention and Extinguishing Act 1999 and Prevention of the Civil Disaster Act 1979. The Ministry of Interior was designated to establish a Strategic National Action Plan (SNAP) on Disaster Risk Reduction in 2010. This framework was used to manage disaster situations in Thailand from 2010 to 2019. According to SNAP, Thailand has designed main actors and supporters to coordinate the national policies into the provincial and local government level. Most activities and strategies stated in SNAP are coordinated by Department of Disaster Protection and Prevention (DDP) as the main actor with Province, *Amphoe*, and Municipality as the main supporters.

The local government in *Amphoe* Phan applied the traditional disaster management, which features bureaucratic command and control during emergency situations. The government is normally considered as the most reliable actor in order to avoid social chaos in time of disaster. Therefore, disaster management still relies on hierarchy (vertical relationship) and adhere strictly to standard operating procedures. This is based on applied Act or laws initiated by the government in disaster management projects. According to McEntire (2007), this approach of public administration towards disaster response is still not included in professional approach. These characteristics include public collaboration, horizontal relationship as people work together to overcome challenge of disaster, and assume that no single individual, group, or organization can respond to the emergency situation from a disaster alone.

In *Amphoe* Phan, there are private and public organizations that were already working collectively to assist people from disaster damages. According to the Deputy Chief of SAO in *Amphoe* Pham, all departments and divisions are responsible for disaster recovery assistance one way or another depending on their ability and commitment. Moreover, the Deputy Chief of SAO also mentioned that existing policies that Chiang Rai Province are already sufficient to a certain extent, because the local governing body will provide assistance, remedy, and survey the damage caused by the disaster. These remedies and assistance are rights that those affected by the disaster should be enjoying.

However, while Chiang Rai has already got a good structure, , implementation of measures usually miss the mark. The problem normally lies in the lack of adequate financial and human resources.

7. CHALLENGES AND OPPORTUNITIES

According to the ERRA Gender Team (2007), a gender-based policy is heavily reliant on integrating equality in all aspects of programmes and activities. In Chiang Rai, the local government has yet to adopt international standards for recovery policy. It also needs to integrate gender frameworks into their work.

A fundamental barrier to achieving a gender based disaster recovery policy in Chiangrai province is lack of personnel with sound knowledge and skills to address gender-based issues and challenges. In the disaster recovery work of the local government sector, there are not enough staff to assist in all aspects. Therefore, disaster recovery should recover in the overall part, not specific in other parts, in order to be in accordance with the number of staff. Moreover, the perspective and view to assist to women are seen as a duty of men. Women are still stereotyped as the more inferior gender. Furthermore, in the context of disaster management, policies have yet to address the needs and concerns of women. For instance, when an earthquake occurs, ideally, responses should distinguish interventions based on gendered conditions. Nevertheless, the problem is that there are not enough personnel who could effectively understand intersectional realities and needs.

On the other hand, based on the development perspective, women should be more aware of varied forms of earthquakes. These sets of knowledge would greatly affect women's ability to assess risks and be able to address concerns of their fellow women in the community According to Ikeda (1995), women are deprived of the capacity to cope with disasters by being kept in dependent positions in terms of accessing information from the world outside and by being denied their right to take major decision. However, when disasters are seen as development opportunities, women capacities must be increased by promoting women's participation, empowerment, and leadership (Enarson, 2002; CEDPA, 2004).

8. CONCLUSION

Based on this, women affected by disasters have lesser access (distant) to source of information compared to men. Since women are more confirmed at home, they are usually excluded from decision making processes concerning their communities. In light of disasters, the contributions of both male and female members are equally essential for the survival and growth of their respective households, communities, and societies. This study took place in *Tambon Saikao, Amphoe Phan, Chiang Rai* as the epicenter of the 2014 earthquake. Based on interviews conducted, it was found that there are a number of challenges related to gender-based emergency preparedness and disaster response., This is primarily due to approaches applied by local government, which is still very much traditional in terms of its

perspectives and procedures. Moreover, it was found that there is a glaring lack of personnel that have the capability and knowledge about gender and disaster management. Even though women's involvement in national socio-economic development is integral for the growth of Thai society, women are still viewed as the inferior gender, and are unable to access decision making opportunities. This will definitely hamper the aspiration of achieving resilient societies and communities in light of natural disasters in the future.

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HEDGING HYDRO-HEGEMONY: THE CANALIZATION OF THE LANCANG-MEKONG & AGENCY THROUGH LOCALISM

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ABSTRACT

Since the first upstream dam was constructed on the Lancang-Mekong River 25 years ago, the Chiang Khong community in Northern Thailand has been on the frontline of the ecological changes affecting the entire Mekong River. Due to a lack of transboundary management, adapting to the changing environment has been the community's only sense of agency. Yet, for the planned rapids blasting of the Thai-Laos stretch of the Mekong River that is central to the navigability development, local conservation groups have been successful in articulating the looming social and ecological effects and stemming this further development. Although an agreement to develop the river's navigability was signed twenty years ago, the blasting of the rapids within Thai territory that was central to these plans has yet to happen.

Chiang Khong community's movement to preserve their local environment occurs at the intersection of a macro and micro phenomenon. At the macro-level, the growing regional influence of China—and changing nature of the Mekong that has accompanied this rise—provides the larger context for the significance of this local movement. The navigability development of the Lancang-Mekong is part of much broader changes that are reshaping the geographic, political, and economic landscape of Southeast Asia. The concept of hydro-hegemony, dominance over a river basin, captures this macro phenomenon.

At the micro-level, the Chiang Khong community has found their voice through localism, emphasizing the salience and significance of local identity and ecology. Imbued with a sense of agency and empowered through the capability of capturing and articulating local knowledge, the community has been effective to-date in their campaign to prevent the local rapids blasting that is central to the plans for navigability development. Based on interviews with the leaders of local conservation movements and community members, this paper explores the intersection of these phenomena, discussing the geopolitical and environmental significance of one community's campaign to preserve their local ecology.

Keyword: Mekong River, Lancang-Mekong, Navigation, Dams, Localism, Chiang Khong, Development, Belt and Road Initiative, Hydro-Hegemony, Hegemony.

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1. INTRODUCTION

It is a cool day in late February on the Thai bank of the Upper Mekong in Chiang Khong district of Chiang Rai province. The haze pollution obscuring the not-too-distant Laos hills and low water-level of the river indicate the season at an event celebrating the 60th birthday of Niwat Roikaew, affectionately known as Kruu Thii. The sign behind the stage calls attention to the birthday celebration in the Northern Thai dialect of *hoi pui*, and to Kruu Thii's 20 years of involvement in protecting the Mekong. Dressed in loose denim and a black "Justice for Mekong" t-shirt, with a ponytail, long mustache, and an easy-going, sincere demeanor, Kruu Thii's outward appearance fits his role as an activist and speaks to an identity born of the land itself. This leader of the local conservation group *Rak Chiang Khong* (Love Chiang Kong) has become inextricably intertwined with the health of this section of the Mekong and, in consequence, the entire river.

The guests and speakers congregating under the bamboo hut include academics, social and environmental activists, and local villagers. The themes of the speeches range from the context of a new age of colonialization to a call for transboundary management and responsibility to restore the local ecosystem. Kruu Thii's stories about local life has the crowd rolling and points to both the leader's charisma and the sense of unity within the community.

As a leap day and a party, the day is indeed rare and one to celebrate. The headline from a recent *Bangkok Post* article captures why, "The 97km that Frustrate China's Mastery of the Mekong" (2020). For 20 years, this riverside community has been at the heart of a struggle for their local environment and livelihood that has geopolitical implications. This party—from the setting on the section of the Mekong River that is the Thai-Laos boundary, to the diverse crowd it brings together, to the exhibition of a sense of solidarity within the local community—reflects the important dynamics of this 20 year struggle, a movement that has been geopolitical, regional, and local all at once.

A set of Thai communities along the Upper Mekong, a population consisting of five villages that are comprised of nine ethnic groups, have been fighting for 20 years to prevent the navigability development that would further damage a local ecosystem already made fragile by upstream dam construction. Theirs is a David-and-Goliath tale, but the struggle is far from over.

The local conservation movement to preserve the environment occurs at the intersection of a macro and micro phenomenon. At the macro-level, the growing regional influence of China, and changing nature of the Mekong that has accompanied this rise, provides the larger context for the significance of this local movement. The navigability development of the Lancang-Mekong is part of much broader changes that are reshaping the geographic, political, and economic landscape of Southeast Asia.

The concept of hydro-hegemony, defined by Zeitoun and Warner (2006) as "hegemony at the river basin level, achieved through water resource control strategies such as resource capture, integration, and containment" (p. 435), is appropriate for conceptualizing this broad context. China's growing position as a regional hegemon can be observed in a number of ways, from undue influence on national governments like Laos and Cambodia, to aggressive

behavior in the island construction and fortification in the area of competing territorial claims in the South China Sea. China's role as a hydro-hegemon on the Mekong River, referred to by the Chinese as the Lancang River, results from three major facets: the environmental consequences of upstream dam construction, the stifling of transboundary management, and providing the impetus for additional Mekong development projects as part of the Belt and Road Initiative (BRI), to include both the navigability development of the river and downstream dam construction.

At the micro-level, the Chiang Khong community has found their voice through localism, emphasizing the salience and significance of local identity and ecology. Imbued with a sense of agency and empowered through the capability of capturing and articulating local knowledge, the community has been effective to-date in their campaign to prevent the local rapids blasting that is central to the plans for navigability development, important in an era when one of the world's great rivers is quickly being transformed in the name of economic development.

Based on interviews with the leaders of local conservation movements and community members and on the analysis of Thai Baan reports created by these local communities, this paper explores the intersection of the micro and macro phenomena by describing how the members of local movements understand and frame their opposition to further development of the Lancang-Mekong inside of the broader geopolitical context. Important aspects of this movement include the tactics used by local actors to effectively position themselves when hegemonic forces and broader geopolitical issues are driving the Mekong's development, the way a sense of agency is retained in the local community despite experiencing two decades of dramatic ecological change, and the way involvement in the opposition has affected the saliency of the community in Chiang Khong, altering the local community's relationship with their environment and with each other.

2. THE MEKONG RIVER: THE HEART OF A REGION

The Mekong River is the primary artery running through mainland Southeast Asia. Shared by six riparian countries—China, Myanmar, Thailand, Laos, Cambodia and Vietnam—the geography of the river is indicative of its political importance in the region. Flowing from the ice caps on the Tibetan Plateau, “the roof of the world,” and meandering through Southern China and the heart of Southeast Asia before spilling into the South China Sea from the delta in Vietnam, the river is a resource shared by disparate countries and cultures. At nearly 5000 km, the Mekong is the twelfth longest river in the world and one of the world's top ten rivers in terms of volume of water carried. It is difficult to overemphasize the social and ecological importance of the river. In terms of food security, an estimated 80 million people live in the Mekong Basin and rely on the fertility of the water and adjacent land to provide their sustenance.

The biological diversity of the Mekong is rivaled only by the Amazon and Congo. As Hortle (2009) documents, the combination of warm waters and the rich flood pulse of the monsoon season allows it to host 1100 different species of fish, including the freshwater dolphin and the fabled Mekong Catfish, *blaa beauk*. This large breed

of catfish is endemic to the stretch of the Upper Mekong that passes through Northern Thailand. It grows as large as 290kg and has come to stand as a symbol of the health and sacredness of the river, as well as a symbol for the Chiang Khong community. The numerous Mekong Catfish statues lining the town's waterfront demonstrate the centrality of this species to local identity.

In terms of geographic superlatives, sustenance provided to local populations, and as a habitat of biodiversity, the Mekong is one of the world's great rivers. Yet, the river is also the site of a major environmental disaster. Development—most significantly in the form of upstream dam construction but also downstream dam construction, industrial farming, and commercial navigation—is transforming the Mekong from the dynamic, abundant river it was in the very recent past. One of the world's most biologically diverse rivers is being transformed into a segregated set of polluted tributaries whose value is being assessed through the narrow lens of development. For those who depend on the health of the Mekong and the adjacent land for their livelihood, life along the Mekong is being profoundly affected by these environmental changes.

3. HYDRO-HEGEMONY: THE LANCANG DAMMED, THE MEKONG BE DAMNED

The changing shape of the Mekong is closely related to the rise of China, and the nation's geographic position as an upstream hegemon, resulting in hydro-hegemony. China's transition from an inward-looking state to one seeking ever more regional engagement in order to sustain its rapid economic growth has changed the nature of politics about the Mekong in the matter of a couple of decades. The changing characteristics of the Mekong River are indicative of China's economic rise and the incursion of Chinese influence into the downstream area. Up until the 1980's China's engagement in the hydropolitics of the Mekong River was very limited, as the rugged geography of the upstream river isolated China from those downstream nations that shared the river. Elance (1999) explains how the demands of the growing industrial sector in China's south and the pollution from coal-fed electrical plants incentivized the Chinese government to begin developing dams on the Lancang at the turn-of-the-century (p. 197).

The first of China's dams on the Lancang was completed in 1996, which signified China's coming influence on the geography of the river and on downstream riparian communities. This dam construction was aimed at supporting domestic economic growth, but the environmental and social consequences it had on downstream nations caused China to become an important player in Mekong's hydropolitics. Less than 25 years later, there are 11 dams in operating in China's section of the Mekong, with another 8 dams planned for this upstream area.

The changes that upstream dam construction has had on riparian communities have been pervasive and dramatic. Dams have come to alter the ecology of the river, regulating water levels and reducing the sediment and nutrients that flow downstream. These simple changes affect the entire ecosystem. The monsoon-driven seasonal flood pulse is an important characteristic of the Mekong that dam construction dampens, inhibiting the seasonal flooding

that is a source of fertility replenishment for lands adjacent to the Mekong. As dams lessen the seasonal flood pulse of the river, the fertility of the soil decreases.

The seasonal flood pulse is also an important signal for migratory fish to begin their migration in order to spawn upstream. Inhibiting the migration of fish both as a physical barrier and by altering the river's natural rhythm has a detrimental effect on the reproduction patterns of fish. Dams also reduce the nutrients flowing downstream, affecting the food chain these fish feed on. All of these impacts from dam construction cause a reduction in fish numbers at a time when the human population that relies on this food is quickly increasing.

The effect of upstream dam construction on downstream water levels has been a matter of contention, with China claiming that dam construction could help smooth out water levels, mitigating effects of floods and droughts and downplaying the dams' effect on downstream levels. Particularly during times of drought, such as 2010 and 2019, downstream nations have come out to criticize the way the dams contribute to drought conditions. As an official statement by the Chinese Embassy in Bangkok (2020) demonstrates, the Chinese government attempts to mitigate this criticism by claiming solidarity in experiencing the same drought conditions and downplaying the amount of the river's flow that originates in China's territory.

A 2020 study from Eyes on Earth (Basist and Williams) that used a 1992-2019 comparison of satellite data modeling natural flow and a water level gauge at Chiang Saen, Thailand revealed that China's upstream dams were responsible for 126 meters of river height missing over the study's period (p. 4). Significantly, the study showed that the record water lows experienced downstream during the 2019 wet season occurred despite above-average natural flow in China's area of the Upper Mekong during that same period, indicating that the lower levels were due to upstream dam retention (p. 4).

Although dam construction has been ongoing for a quarter century, the dams having the most severe impact on downstream nations have been constructed in the past decade. As evidence from the Eyes on Earth study (Basist and Williams, 2020) demonstrates, the Xiaowan and Nuozhado dams, beginning electrical production in 2009 and 2012 respectively, retain over ten times the amount of water as the other nine upstream dams combined (p. 12). The enormous retaining capacity of these two dams explains why in the study of the relationship between downstream water levels and natural upstream flow dramatically deteriorated in 2012 (p. 4).

Dams retain sediment as well as water. Osborne (2009) discusses how the portion of the Lancang-Mekong that passes through China provides the majority of the sediment to the Mekong. This loss of sediment has severe consequences for the Mekong ecosystem. Sediment is an important source of nutrients for the soil and for the entire ecosystem that is sustained by the river. In addition, when the water approaches the Mekong delta and current slows, sediment is deposited on riverbanks, maintaining the integrity of the land and inhibiting erosion.

In short, the effects of dam construction have dampened the seasonal flood pulse that the flora and fauna of the Mekong ecosystem rely on, exacerbating drought conditions and decreasing the fertility and stability of the land

and water. These environmental changes have had a profound effect on the way of life of those whose livelihoods are connected with the river.

One of the more significant effects of Chinese upstream dam construction was not only that it created tangible environmental and social effects on riparian communities, but also that it set the precedent for the success of this type of development on the Mekong. As Biba (2018) points out in his book on China's hydropolitics on the Mekong, while local communities suffered the environmental effects of upstream dam construction, the governments of the downstream nations have gotten onboard with this development scheme. As consumers of vast amounts of power, Vietnam and Thailand have come to depend on the hydroelectric power generated by the Lancang dams, while Laos and Cambodia have turned to China for investment in the construction of downstream dams (pp. 80-81).

These types of development schemes that are done solely for the national interest at the expense of the river's holistic ecology run contrary to any push for effective transboundary management. Despite the Mekong River being an international river that passes through six countries, no international law governs the river. The upstream dam construction undertaken by China was legally a domestic issue completed within China's borders. Riparian Mekong communities were confronted with the *fait accompli* of dam construction. Adapting their way of life was the only form of agency for coping with these environmental changes.

There have been many attempts at the transboundary management of the Mekong, but all have failed to stop the environmental destruction affecting the river. The Mekong River Commission (MRC) was created in 1995, but the main factor that has limited the effectiveness of the MRC is the absence of China as a member. Both China and Myanmar are merely "dialogue partners." Without a means to stem the major development that was changing the ecological landscape, namely upstream dam development within China's borders, it is no wonder that the MRC has remained ineffective at bringing about a shared good. Instead, as Hensengerth (2009) concludes, domestic economic agendas have continued to drive development schemes.

As a means of co-opting the power of the MRC while still paying lip-service to the idea of transboundary management, China founded the Lancang-Mekong Cooperation (LMC) in 2016, which includes the other riparian nations as member states. In a recent *New York Times* article, Beech (2020) discusses some of the criticism of the LMC: headquartered in Cambodia, where the national government is heavily influenced by PRC interests, critics charge that the LMC has become a mouthpiece for the PRC's position on the Mekong rather than serving any real purpose towards cooperating to preserve the river's ecology.

China's dominance of the Mekong River through hydro-hegemony is multi-faceted. The country's rapid economic growth drove domestic development projects that have altered the ecology of the river for all riparian nations. Efforts at transboundary management have been stifled by China's absence as a full member of the MRC, and by the creation of LMC, which serves to promote the PRC's interest at the expense of genuine transboundary management. Finally, through the BRI China is driving a lot of the regional infrastructure projects that will accelerate the destruction of the river's ecosystem.

4. NAVIGABILITY DEVELOPMENT: A BELT OR A ROAD?

Understanding the effects of upstream dam construction is important when discussing the navigability development of the river because all of these previously listed impacts that came with dam construction are part of the same changes that enable navigability development. Upstream dams have enhanced the ability to navigate on the waterway by providing more stable water levels, slowing currents, evening out flow, and reducing the amount of sediment flowing downstream, which aids the deepening of channels. Now that the water-level can be regulated year-round via upstream dams, the river can more easily be used as an artery of trade. Further, the same domestic changes that drove dam construction have led to the geopolitical changes that are behind the push for navigability development.

Long-range, large-scale navigation is a relatively new phenomenon on the Mekong. In the long history of human civilization on the Mekong, the river was not a major artery of trade for long-distance, due primarily to the rugged geography of the river. An era of relative peace in the region coupled with the political will that comes from a rapidly expanding China have combined to make this type of navigation a possibility for the first time.

In 2000, China, Myanmar, Thailand, and Laos signed the “Agreement on Commercial Navigation”. Although the agreement was signed twenty years ago, the tangible effects of this agreement are still coming into fruition. The second phase of this development includes efforts to make the 600 kilometer stretch of the Lancang-Mekong from Simao, China in southern Yunnan to Luang Prabang, Laos navigable for ships up to 500 DWT (dead weight tons). The effect of this agreement will usher in a new type of development of the Mekong. Development projects over the past three decades have primarily focused on using the river as a source for the electric grid, while this development aims to increase regional trade by increasing the navigability of the river through a number of development projects and coordinated efforts: rapids blasting, navigation markers, port infrastructure projects, and joint patrols. This development will require coordination and cooperation among the Mekong nations, which upstream dam construction did not involve.

The navigability development of the Mekong is part of the primary foreign policy initiative to come out of China in recent years, the “One Belt, One Road” or “Belt and Road Initiative” (BRI), through which China seeks to increase greater connectivity between all regions on its periphery, all the way to Europe, with land infrastructure being the “One Belt” and sea lanes being the “One Road”. As such, this navigability development is a part of the numerous other infrastructure projects increasing connectivity in the region. The most obvious reason to increase the navigability of the Mekong is for trade. The increased infrastructure for trade will increase prosperity in the region and will also inevitably increase China’s political influence.

The BRI has become the centerpiece of China’s foreign policy. The most immediate goals of the Belt and Road Initiative are to increase trade and for related projects to serve as a source for investment and work for Chinese firms. As a special report from *The Economist* (2020) describes, the Belt and Road Initiative was unveiled by a speech by Xi Jinping in 2013, and the timing demonstrated a coming together of a number of factors that made this foreign policy opportune: supply chains to China that had already been growing regionally and globally; a need to open up

new markets for Chinese goods following the 2008 global financial crisis; a means to find a source for China's overcapacity in producing steel, cement, and other construction materials; and finally a way to find a role for global leadership at time when Western leadership was faltering. With navigability development aimed at increasing the volume of trade on the Mekong between China and the downstream nations, this project falls squarely in line with the overall goals of the 'One Belt, One Road' initiative.

In one sense, it is easy to see development of navigability of the Mekong as relatively benign when compared with the changes that have already come from upstream dam construction. The water level has already changed drastically, and local communities have already begun to adapt to the new normal. Industrial farming is replacing a lot of the sustenance farming on the fertile soil that the river's flood pulse once replenished annually. Local fishermen are abandoning the practice to find another livelihood. There is a sense of inevitability to this continued development and an economic logic to taking advantage of the new trade opportunities that come with a tamed Mekong.

Yet, the key difference between the two types of development—dams and navigation—is that navigation requires the cooperation of the Lower Mekong countries. Upstream dam construction took place within the sovereign borders of China. There is no international law governing the river that downstream nations can take recourse too. Further, these are not necessarily two separate developments, as one enabled the other. Opposition to further development for commercial navigation is still very much a part of the opposition to the continued development along the model of 'every country for itself.'

For communities that rely on the natural flood pulse and catch from the river to support sustenance farming and sustain a way of life, the transformation of the environment for the purposes of the regional electric grid and trade between nations means the loss of an identity and a livelihood. Environmental changes that accompanied dam construction incited conservation movements within the communities that sit astraddle where the navigation development projects will take place, banding together to call for the transboundary management of a resource that affects all riparian nations. Their opposition has the potential to affect the continuation and completion of the commercial navigation project and further development of the river.

5. AGENCY THROUGH LOCALISM

In an article discussing the many layers of agents involved in the 'territorialisation' of Thailand, Buch-Hansen (2002) discusses whether localism, de-centralizing environmental management to empower local communities, could lead to greater local autonomy in the use of natural resources. Some critics charge that localism's emphasis on local discourse can be an attempt to regress to the past while others perceive that a broader understanding of political ecology that accounts for access to natural resources and environmental consequences can lead to a coalition of "like-minded actors in encouraging grassroots actors to develop alternative environmental management practices premised

on socially just and sustainable livelihoods,” with this type of localism very much tied to a community-based model development that helps stem dehumanizing economic policies (pp. 329-30).

The fate of the Chiang Khong community has certainly been influenced by the structural context of the expanding power of China and the changing Mekong that has accompanied this rise, as environmental effects have had a significant impact on the local way of life. But there has also been a capability at the local level to assess this context and respond appropriately in order to alter the discourse of development, ensuring the voice of the local community is not drowned out within the discourse of the positive gains touted by participatory governments.

For the quarter-of-a-century since the first upstream dam was constructed, the Chiang Khong community has been on the frontline of the ecological changes affecting the entire Mekong River. They have been faced with the need to adapt their livelihood to adjust to the changing environment. Yet, for the planned rapids blasting of the Thai-Laos stretch of the river that is central to the navigability development, the conservation groups have been successful in making their voices heard and articulating the looming social and ecological effects that would come from this development. Although the agreement was signed twenty years ago, the blasting of the rapids within Thai territory has yet to happen. The 2020 *Reuters* article, “Thailand Scraps China-Led Project to Blast Open Mekong River” attributes the Thai Cabinet’s 2020 resolution to discontinue the plans for rapids blasting to the protests of locals and environmental groups.

The success of this conservation movement is significant because it was born out of the concerns of the local community and draws its success through empowering the local community. The collection and articulation of local knowledge has become a weapon to alter the discourse of development, including publishing this knowledge in ‘Thai Baan’ reports and disseminating it throughout the media and other networks. Kruu Thii of *Rak Chiang Khong* emphasizes how the power of the use of local knowledge is two-fold: it provides data for a more equal dialogue with the powers touting the benefit of the development, and the research that goes into creating this knowledge creates a sense of power and confidence in the local community. The focus on local identity and local ecology has been an effective means to shape the discourse about development and to empower the local community.

When discussing hydro-hegemony, Zeitoun and Warner (2006) detail a number of hegemonic compliance-producing mechanisms to include knowledge construction and sanctioned discourse (pp. 448-50). Interestingly, many of these same mechanisms are the ones that conservation movements have used to fight against the campaign to develop the river’s navigability. Both knowledge construction and sanctioned discourse refer to the way that the discourse about a topic comes to be influenced by the way hegemonic powers frame the issue.

A telling example of this disparity in the benefits touted by development with the reality of the cost at the local level is demonstrated in Mark’s and Zhang’s article “Circuits of Power” (2019). This study documents how some of the shopping malls in Bangkok use as much power as Thailand’s peripheral provinces, calling into question the necessity of the devastating effect on local life that the generation of power for these venues relies upon. Similarly, the trade benefits of navigability development have guided much of the prevailing discourse about this type of

development, until this narrative was challenged by conservation groups that articulated the challenges to the ecology and local livelihood that this development would pose.

One of the most powerful tactics in stemming further development has been the articulation of local knowledge, used to document the social and ecological impact of development, which has helped shift the discourse so that further development is not accepted as the unqualified good touted by national governments. For example, through *Thai Baan* research conducted by locals, Living River Siam (“Mekong Navigation Improvement Project, 2019) documents the potential social and environmental effects of the navigability development of the Upper Mekong: habitat loss for both fish and birds that will come directly from the destruction of rapids; increased riverbank erosion that will follow the deepening of channels; a decreased capacity to rely on the fish of the Mekong for sustenance due to reduced fish numbers from habitat destruction and chemical and noise pollution from increased commercial traffic, as well as from the loss of fishing gear that is damaged by passing traffic; and altering the river’s hydrodynamic characteristics, to include current speed and direction, which will affect other habitats that are not directly impacted by rapids blasting. Navigability development will exacerbate the destruction that upstream dam construction has already brought and create further challenges to local culture and local way of life.

This same publication (“Mekong Navigation Improvement Project, 2019) not only points out local effects, but sees the issue from the side of the developing powers, arguing that other BRI projects that have come online since the navigation agreement’s inception have decreased the urgency for this connectivity, contesting that highways connecting Southern China through Laos and into Thailand via a bridge across the Mekong are faster, cheaper, more convenient corridors of trade, which decrease the need for transport via this waterway. This ability to see from the perspective of hegemonic powers and engage with these powers through an open dialogue has allowed local actors to transcend the disparity in power roles.

As a further example, *Rak Chiang Khong* sent a letter (“Letter to China,” 2017) to China’s ambassador in Bangkok and to Xi Jinping in 2017 discussing the river as a shared resource, documenting the ecological changes already experienced from dam construction and to come from navigability development, and pointing out alternatives that make navigability development unnecessary. This same conservation groups invited the Chinese engineering company conducting the survey for rapids blasting to their office to have an open dialogue regarding the perspective of the Chinese government and their perspective as locals that must adapt to the ecological changes.

The localism of this conservation movement is an example of grassroots knowledge construction, with community members of the Chiang Khong community coming together to learn and share about their local ecology and history and articulate recent and potential ecological consequences. This construction of knowledge may be local but the way it is presented allows it to have an effect beyond the community. For example, through ‘*Thai Baan*’ research the local community has been given the tools and opportunity to conduct studies of their local ecology and present them in an academic setting.

Rak Chiang Khong focuses on the environment and rights of citizens, which has allowed the group to frame a local issue in a way that resonates in different contexts. Originally founded in 1996 to conserve a section of forest, the group became active in opposing the rapids blasting after the plans for navigability development were finalized in 2000. Kruu Thii was a local teacher when he founded the group, bringing together local villagers from many different professions. The group has been very active in protesting the navigability development through networking with other environmental activists, meeting with government officials, physically protesting, and petitioning the Thai and Chinese governments. The group has demanded for participatory governance, which includes locals having a role in assessments and decisions about the process of development.

The group has maintained an open dialogue with all of the various entities associated with the development of the river. An example of the many tactics that have been used to protest the blasting of rapids includes networking with academics and other environmental groups, sending letters of concern to Chinese and Thai officials, having in-person engagements with the Chinese Engineering company charged with surveying the river and conducting the rapids blasting, physically protesting the blasting of rapids by occupying rapids in the river and harassing survey ships, raising awareness about the looming social and environmental impacts through the media, facilitating local Thai Baan research, and creating a space for learning and sharing.

The local discourse surrounding the threat of dam construction and navigability development to the local way of life is presented through a variety of mediums, including messaging through the media, discussions with national government officials, open discussions with the Chinese company conducting surveying, and networking with academic groups, which has enabled the local discourse to be shared outside of the community. Further, the local community has not only conducted local studies and discussions within different venues but has been involved in physically protesting further development, to include occupying the rapids under threat and harassing the boats conducting the survey while holding signs that articulate the message of conservation. These physical protests offer a visceral message that can be framed through visual images and presented through photography and video in the media.

The *Rak Chiang Khong* office is a space that has brought together actors from all levels: local villagers to learn and articulate their local ecology, a place shared by activists from around the region, and even a place to have an open-dialogue with government officials and with the Chinese engineering company who is tasked with the rapids blasting, facilitating a more equitable space for the disparate power relations that are involved with the navigability development and building a network that has come to impact the entirety of the Mekong. It is within this space that the structure of hydro-hegemony and agency of localism have come together, both spatially and temporally.

6. CONCLUSION: A SINGULAR SUCCESS?

The case of a local conservation movement in Thailand helping delay an internationally agreed upon development has implications far outside of the scope of these local riparian communities, especially in an era when

development is quickly transforming the Mekong River. Undoubtedly, the democratic features of Thailand and relative autonomy of the Thai government have allowed for the success of this type of civil society movement. This type of success is not likely in countries like Laos and Cambodia that are less democratic and where the national government is more beholden to the PRC. The manner of campaigning is just as important as the political context. *Rak Chiang Khong* has managed to consistently campaign for conservation despite twenty years of turbulent politics at the Thai national level. The conservation group's emphasis on the environment and rights of citizen is aimed at educating the Thai public and reshaping the all-encompassing discourse of development, which has enabled successful networking while transcending the turbulence of national politics.

The importance of networking is another important lesson out of this conservation movement. The message out of the local communities would not go far if they had not established a regional network and did not have a way to engage with the Thai government. Working closely with the media and sharing information through multi-visual media has given these local members a voice beyond their local setting.

The 20-year delay in navigability development also demonstrates how the need and purpose of development can change but the negative effects remain irreversible. Other BRI projects that have come online since 2000 when the agreement was signed have decreased the need for navigability development as an artery of trade, but any ecological damage would not be able to be undone, demonstrating how the delay of development to allow for a full assessment of the costs can prove effective in the long-term.

Further, understanding and altering the discourse of development can be effective at ensuring all relevant parties are heard. Understanding the impetus for development from the government's perspective, while also having the data and local knowledge to articulate the detrimental social and ecological effects, can be an effective means of closing the gap of disparate power relations that an all-encompassing discourse reflects.

Finally, the use of localism is an important tactic because the communities that are affected by development are not only an important source of information for the potential social and ecological consequences—grounded in local knowledge and having the most vested interest in stemming further development—but campaigning by the local community instills a sense of agency and confidence that can shape a new identity, deepening the relationship both with the local ecology and with each other.

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BUILDING RESILIENT COMMUNITIES: THE IMPORTANCE OF SOCIAL CAPITAL IN TOURISM DEVELOPMENT – A CASE-STUDY IN NORTHERN THAILAND

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ABSTRACT

Tourism as a development tool is omnipresent, particularly in rural areas within lesser developed countries. However, tourism development, particularly alternative forms of tourism such as Community Based Tourism (CBT), continue to face a multitude of barriers. As communities all over the globe face greater uncertainty and stressors in their local systems, it is imperative to build resilient communities. Thus, community resilience should not be an end-goal, but an iterative process for such to absorb, adapt, and ultimately transform in the face of and after the change. However, the ability to enact change and transformability is contingent on an equal and inclusive agency. The case-study of Mae-Kampong allowed for an analysis of the conceptual framework through the utilization of data source triangulation. Specifically, this research provides a thorough contextual analysis of the community's development of CBT from a mixture of literature reviews and semi-structured interviews with experts, residents, and external stakeholders (n=18). The paper mainly argues that social capital, and its domains, form the precursor to the implementation of CBT, which in turn, may enable or hinder the resilience of communities. Utilizing resilience thinking as a lens and channel, this research offers an insight into how these concepts can describe how Mae Kampong was able to transform in the context of CBT and how the feedback from the implementation of CBT reinforced both positive and negative nodes of social capital within the community. Hence, the starting point of sustainable tourism development, including CBT, must first look at the local social assets, attributes and capabilities. Still, a fine line must be drawn between the importance of shared history and what has worked in the past and structural embeddedness in order to foster a stronger foundation for CBT development.

Keyword: Community-Based Tourism, Tourism, Development, Social Capital, Resilience, Community Resilience.

AUTHOR'S BIO

Originally from Melbourne, Australia, Michael John Young (mickyjyoung22@gmail.com) is an avid traveller, whereby his travels have taken him to over 60 countries, motivated by the experiences, mutual learning and personal development derived from meaningful interactions with diverse people and cultures. These experiences, combined with his academic and professional experience in the tourism industry, have mutually informed his passion in people and the making of place. Through MAIDS, he has been able to combine his academic career with personal interests, whereby his travel history has not solely been performed through the tourist gaze, yet through a lens complemented and complementary of his academic interests.

1. INTRODUCTION

1.1 *Community Based Tourism (CBT)*

Tourism is often a quick fix development tool toward achieving economic growth and poverty alleviation in rural communities (Lacher & Nepal, 2010). This trend is evident in Thailand. As one of the world's most prominent tourism destinations, it has attracted around 38.28 million visitors in 2018, which equates to \$63 billion in tourism receipts (UNTWO, 2019). Tourism contributes almost double the global average of 9.8% to national GDP whilst employing over 11% of Thailand's population, signalling the importance of tourism to the nation (The Ministry of Tourism & Sport, 2017; WTTC, 2019). The proliferation of tourism in Thailand is subsequently met by social, economic, and environmental inequalities, leading to the mismanagement of resources and cultural exploitation/deterioration. These socio-ecological impacts are overlooked due to the economic significance of tourism (Pforr, 2001). The impacts are largely felt in rural communities, leading to drawbacks of economic leakages and exclusion from tourism activities or resources due to limited community capacity (Lacher & Nepal, 2010; Laverack & Thangpet, 2009). Hence, a paradigmatic shift toward local community development and involvement emerged under the sustainable development discourse in the 1990s, leading to the emphasis on alternative forms of tourism to rectify these ill-effects. However, the current climate surrounding the Covid-19 pandemic places tourism and its importance into the spotlight.

CBT, an alternative form of tourism, is generally agreed to constitute tourism that is owned and/or managed by local communities, with the aim of extending wider community benefits (Goodwin & Santilli, 2009 & Boonratana, 2009). CBT encourages proactive control over decision-making, thus, allowing communities to direct tourism development toward their values and interests, empowering local communities and diversifying local economies (Johnson, 2010). When implemented where philosophy meets practice, the benefits of CBT should positively reach across all community capitals. However, barriers ranging from the inability of communities to manage tourism activities to the willingness, ability, or accessibility of participation exacerbates the aforementioned negative impacts and inequalities and widens the gap between CBT philosophy and practice (Kontogeorgopoulos et al., 2014). CBT in its philosophy, however, should prevent these from happening, by encouraging participation and equitable access to socio-economic opportunities that enhance community capitals (seen in *figure 1*). Thus, diversification, including CBT, can create a buffer to external shocks and stresses.

Therefore, recognizing that we live in societies under threat of constant change, building resilient communities is a critical issue. The question is, however, how are communities resilient? And how is resilience built or enacted to cope with and either adapt or transform to and from change?



Figure 1: Core Components of CBT (devised from APEC, 2010)

1.2 Resilience, Social Capital and CBT

Resilience thinking, and its application to tourism research, is relatively nascent and is widely overlooked when coupled with social capital, thus presenting a theoretical and research gap. Resilience, as a systems-level concept, refers to the ability of a system to anticipate, absorb, accommodate, or recover from shocks or disturbances, whilst preserving, restoring, or improving a system's basic structures and functions (Chapin et al., 2009 & IPCC in World Bank, 2013). Resilience thinking has witnessed three paradigmatic shifts in its focus; ecological resilience (see Holling, 1973), socio-ecological resilience (SES) (see Chapin et al., 2009), and social resilience (within the context of SES, see Adger, 2000). The latter places the aforementioned definition to the application of communities and local scale resilience (Adger, 2000).

Social capital is the development, deployment, or promotion of social resources developed through networks, thus, providing benefits that extend beyond the individual (Coleman, 1988 & Putnam, 1995). Networks, and individuals operating within them, are shaped by structural and cognitive factors (see Sherrieb et al., 2010 & Jones, 2005), and enacted through bonding, bridging, and linking associations (see Aldrich & Meyer, 2015 & Pfefferbaum et al., 2017). Social capital is characterized by trust, reciprocity, collaboration, and participation, leading to communally beneficial action or collective efficacy (Ledogar & Fleming, 2008). Thus, social capital is a set of assets present in a social system - structures (intangible) being realized into tangible resources to be used by individuals within a community (Coleman, 1988). Hence, this text suggests that social capital is the foundational resource in

building the resilience of a community, which in turn builds upon community capital and the effective development of alternative forms of tourism (Flora, 2004).

An inextricable link between social capital and community resilience can be deduced, as highlighted by Magis (2010) & Skerrat (2013), who identify community resilience as not only the ability to act but also the actions taken in the face of and to change. The actions taken, are therefore deemed reliant on the ability of communities to mobilize its resources, where the process and ability of doing so is rooted in the level of a community's social capital; enacted through bonding, bridging, linking capitals, informed by the structure/agency nexus (Flora, 2004). Thus, as important as social capital is to take action (agency), agency is either enabled or constrained by social structure(s) (*lock-in* effects) (Giddens, 1984, Wilson, 2012 & Malakar et al., 2018). Hence, utilizing this coupled concept, one must look at the endogenous characteristics of a given community that form the structural and cognitive nodes of behaviour and what influences these. This analysis is a lens to understand the development of CBT in a given community and a channel, to inform the better development and management of CBT, by highlighting the enabling or constraining factors that (dis)allow the effective implementation of CBT.

The objective of this research is to use this novel approach in tourism research to understand the development of communities and the building of greater resiliency, beside the applicability of these findings to contribute to the better planning and management of CBT. Thus, borrowing from a multi-disciplinary application of resilience thinking, it is proposed that the platform for *successful* CBT development is built from a strong base of social capital rooted in the shared history and practices of a community (rules and norms informing social structure). Hence, communities exhibiting a stronger base of social capital should then be able to mobilize its social resources in order to adapt to and from change, proving paramount importance in the development of CBT, as exemplified by Mae Kampong. However, it is acknowledged that increased risks and uncertainties, comprising internal and external stressors either constrain or enable the agency of and within communities, which in turn foster or inhibit resilience. Additionally, resilience is not limited to a fixed end-goal nor understood as a linear process, yet, as a process acknowledging that communities operate in a system experiencing constant change (Wilson, 2012).

The following section will introduce the research's methodology, succeeded by the presentation of this research's findings and discussion, before offering concluding remarks and implications. The significance of this research proposes that the starting point of new CBT development or CBT facing operational issues (i.e. management) must focus and build on the community's social capital. Strengthening such can foster greater community resilience.

2. METHODOLOGY

2.1 Research Approach

The current climate amidst the Covid-19 pandemic led to a creative undertaking of this research, as travel restrictions prevent site visitation. Hence, the following research was conducted through a thorough desktop review

of literature. Mae Kampong was chosen due to the village's accessibility in both; the wealth of previously documented literature, as well as the exposure of residents to research interests in the past, minimizing the risk of participant non-compliance and trust. Participation and trust were improved amongst residents through the offering of an honorarium for the participant's time (THB 500 or USD 22.50), which had an acceptance rate of 70%.

2.2 Research Instruments

A qualitative approach and a case-study method were used to achieve a thorough understanding of the phenomena. Primary data collection was through key-informant and semi-structured interviews with relevant stakeholders. Utilizing secondary data through a thorough review of literature provided the depth of knowledge and the shaping of research questions needing to be addressed. This approach is fit for three reasons. First, it yielded an in-depth understanding and contextual interpretation of the phenomena. Second, it provided a mutually informed capacity to address the research questions. And lastly, it allowed iteratively to readdress the research questions and verify and validate the research findings.

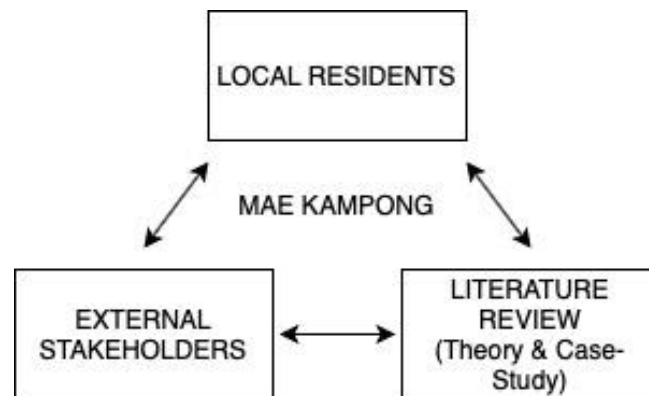


Figure 2: Data Source Triangulation (DTS)

Thematic analysis (TA) was the primary instrument used to analyse the data collected, with the interpretation of findings produced via data source triangulation (DST, refer to *Figure 2*). TA was used as it minimally organizes data into prominent themes in rich detail (Braun & Clarke, 2006). Following Braun & Clarke's (2006) TA guide, interviews were recorded, and notetaking was conducted throughout interviews. Recordings were later revisited; notetaking was extended and coded. Coding then led to the creation of prominent themes. According to Patton (1999), key informant, in-depth interviews, and DST derived from a range of stakeholders increase the validity of the data collected and presented. Researching the phenomena from multiple, mutually informing angles aid in corroborating, elaborating or illuminating the research problem (Decrop, 1999). Thus, researcher bias, the validity of data, and the limitations to the validity of case-study approach methods were addressed through continuous DST between primary and secondary data to best eliminate *blind faith*. (Robson, 2002).

The interviews were conducted by the author with the aid of a Thai research assistant. The research assistant was selected on previous experience in social research, with direct training provided on the research's aims and objectives, conducting interviews with residents who only communicated in Thai. Interviews were conducted through computer-mediated communications, primarily videoconferencing applications - Skype and Zoom. Videoconferencing allowed for the best replication of face-to-face interviews, allowing the author to observe verbal and non-verbal signals (Salmons, 2016). Additionally, interviews and data collection also included other means, including cellular phone messages and e-mails for pre- and follow-up questioning (Salmons, 2016).

Semi-structured interviews were conducted using a list of guide questions, that were themselves thematized to include; general background information, social capital, and resilience-based questions. This method allowed for both the elicitation of responses to the research questions and the ability to explore new and interesting leads (Merriam, 2009). Questions were developed through DST. Additionally, these were based on previous research (Marshall & Marshall, 2007, Guo et al., 2018 & Steiner and Markantoni, 2013) and preliminary interviews with key informants.

2.3 Research Participants

The total number of research participants is 18, with 9 residents and 9 external stakeholders. The participants were selected through judgment (purposeful) and convenience sampling. As per Marshall (1996), judgment sampling is the most used sampling tool and most effective for selecting participants in this research. Key informants were identified due to their direct involvement in the development of CBT in Mae Kampong; including the current and former village heads (por luang) and academics/scholars with combined expertise within the field of research and Mae Kampong itself. In-depth interviews were then conducted with residents and external stakeholders to obtain varying degrees of responses and perceptions. The utilization of judgment sampling also allowed the ability for participants to recommend other possible participants from the local community and among the scholars; snowballing into further participants, thus, leading to convenience sampling.

3. FINDINGS

3.1 Introducing Mae Kampong, Thailand

The case study of Mae Kampong, widely considered as a CBT *success* and model (Kontogeorgopoulos et al., 2014 & Boonratana, 2011), proves to be an interesting site of observation through this novel approach. Located an hour's drive from Chiang Mai (c. 60km), the village consists of 6 hamlets, comprising a population of c.346 inhabitants. Officially settled in 1914, inhabitants migrated from nearby Doi Saket in search of arable land.

The primary source of agriculture was initially opium, followed by miang (fermented tea leaves) in the 1960s, and later coffee. The village's climate and topography (avg. 1300m above sea level) are conducive for the effective cultivation of the aforementioned goods (Kontogeorgopoulos et al., 2014). Miang was the primary economic and

employment driver, however, the demand and price reduction of such products began to dissipate in the 1990s, leading to environmental (abandonment) and economic issues (Khaokhruamuang, 2013 & Jitpakdee et al., 2016). Due to the abundance of natural and cultural capital, the community turned to tourism as an economic driver in the community under the foresight of Por Luang Teeramate (formerly Prommin).

Through exploring social capital and CBT in the application to assess the resilience in Mae Kampong, four prominent themes emerged; transformational leadership, rules and norms, participation, and equitable distribution.

3.2 Transformational Leadership

The most prominent theme that emerged from the research was the role of Por Luang Teeramate. The former village head was identified as the visionary headman that directed the development of CBT in the community from 1996 to 2012. The overwhelming response, amongst all research participants was the influential nature of the former head. Participants were asked how and why the former village head was able to achieve the transformation and obtain the support for directing the community's growth trajectory. Trust was the resounding response among the participants. Trust in Teeramate is earned through three methods; merit-making, competency, and respect developed over years of benevolent action. Additionally, infrastructural upgrades led to an increase in trust as these benefited both individuals and the community, fitting each household with a working toilet and paving the road to increased connectivity. The village leader that followed was infamous for the lack of positive influence, output, and direction. During his term (2012-2017), community rules such as banning foreign ownership were bent – leading to unmet ideals in the CBT. Por Luang Pradit, the current village head, set to rectify these issues, formally assuming his position in 2017. Por Luang Pradit spoke of his close relationship and admiration of Teeramate. His philosophy is evident as he extends the support and trust amongst the community at large. Villagers demonstrated strong support and belief in the current and former village heads, believing their leadership was fashioned by the community's best interests.

3.3 Rules and Norms

Mae Kampong has a well-defined set of rules, norms, and values that direct how decisions are made and how the village operates. Such characteristics are important to the domains of structural and cognitive capital. The village has an observable adherence to the local rule of law. This adherence manifests in the form of a handbook that resembles a locally binding social contract for all residents. The handbook clearly outlines the community guidelines as based on mutual respect for one another and the environment.

Por Luang Pradit takes pride in institutionalizing these regulations. In an interview, Por Luang Pradit emphasized the involvement of other community members and external agents (Chiang Mai University) in the formation of the community rules and guidelines. In hindsight, the process behind institutionalizing these regulations was democratic. Ultimately, this guide was developed so the village would operate in “harmony, conformity and community.”

The adherence to these rules and the disciplinary actions taken were a prominent theme amongst interviews. The emphasis on disciplinary action across interviews indicates the compliance of residents to these rules. Breaches of the social contract result first in a warning, before being cut off from the village water supply, then, later the electricity grid, and then access to community welfare. Non-compliance could be in the form of noise pollution (music/noise after curfew), not paying fees into the community fund (or late payment), or non-participation in community tasks (cleaning water reservoirs). Interestingly, a non-local resident and guesthouse owner informed that it was usually *outsiders* (non-Mae Kampong native) that don't conform to community these rules. Also, settling conflicts amongst locals were usually done with the consultation of the village head or committee, however, outsiders would use other non-local means (i.e. hiring lawyers).

3.4 Participation

Participation was crucial to the effective implementation of CBT in Mae Kampong. Participation implies both that of residents, and external stakeholders such as local government authorities, academics/scholars, tourism planning authorities/initiatives, and tourism operators. Amongst academics, participation was deemed “more participative than most”, and “authentic” amongst residents, with no observable gendered division of labor nor prevention of access to opportunity. Amongst the locals, residents unanimously proclaimed their ability to voice out their concerns at the open forums at the monthly meetings. However, decision-making is largely dependent upon those with a position of power or influence (i.e. village head, a former village head, and tourism committee). A resident of Mae Kampong, who is a coffee plantation and homestay owner, explained that if someone is in opposition to a decision, a member of the village committee will visit them in their home to ensure they understand the decision or implementation of change. This observation illustrates that intervention by a person of authority could coerce villagers into supporting the said decision. Trust was formed with external stakeholders as they were often seen as supporters of the philosophy of the village heads. The external stakeholders supported the community initially through community-based research by external stakeholders in the initial development of CBT to help increase their livelihood.

3.5 Equitable Distribution

One of the core principles of CBT is the equitable distribution of economic benefits within the community. This is considered one of the most prominent assets and institutions within Mae Kampong as it is repeated throughout the interviews with the respondents.

The circulation of income is derived from tourism revenue generated from homestays and all tourism programs. The generated income is then reallocated toward village development. This is divided into six allocations: (1) Tourism Management, (2) Electricity Fund, (3) Community Development Fund, (4) Welfare Fund, (5) Community Administration Fund, and (6) Natural Resource & Environment Fund.

The distribution of economic benefits is closely associated with the theme of *rules and norms*, as both the access to and receiving of distribution benefits are contingent on a local's adherence to the community's rules. The

consensus amongst residents was that the distribution system is fair, and that everyone benefits directly by contributing to the system. Por Luang Pradit believes that it is now a naturally occurring phenomenon that people are participating and contributing to the system, either by payments from tourism receipts or time supplied for communal labour.

Por Luang Pradit also emphasized the disciplinary action for non-compliance. From multiple interviews, it was noted that the restriction of access to communally beneficial funds for non-compliance led to active participation and contribution by the residents as everyone receives benefit(s) from the circular economy. Interestingly, it was noted by a villager that those who do not contribute were *outsiders*, and the ones who did not comply have left. Thus, it can be said that the social norms and values regarding equitable distribution is a major contributor to reinforcing social capital amongst community members, which then reinforces locals to act in communally beneficial means.

4. DISCUSSION

4.1 Reinforcing Social Capital in Early CBT

It is suggested that the community's shared experience of *communally beneficial action* was enhanced through said micro-hydropower in the 1980s and the formation of the hydropower *cooperative*. This cooperative model was found to be altered to the development and management of CBT. Key characteristics of social capital such as trust, collaboration, reciprocity, and sharing are then deemed central tenets in the creation and sustaining of the micro-hydro project. These characteristics were later reinforced through the transformational leadership of Teeramate, who capitalized and built on these factors, implicating the core tenet of CBT – equitable distribution of economic benefits. Through interviewing an academic familiar with the introduction of hydropower in Mae Kampong, it was noted that the hamlets had previously experienced limited collective action. In connection to this, collaboration within this context aided in supporting bridging capital, enhancing relations amongst those with weaker associations. Additionally, borrowing from resilience thinking in its application to peacebuilding, this shared historical experience and development of hydropower in the community reinforced the characteristics of social capital, lending to increased community capacities, forming an asset that was mobilized into tourism development. This corroborates with research undertaken by Jones (2005), who attributed the success of tourism development in The Gambia in a dual site case study to similarities with Mae Kampong, one that is ethnically homogenous with a history of communally beneficial action (farming/hydropower). Additionally, the consequences of non-compliance of participation in required community tasks also reinforces social capital whilst encouraging collective participation.

4.2 Social Structure & Agency

Leadership is viewed as both the enabler of transformation, as well as a potential constraining factor in the resilience of Mae Kampong. Por Luang Teeramate acknowledged the level of influence that he has within the community. Particularly, when issues or suggestions are raised within the community:

“If I agree to an agenda, that means there is an immediate 50% chance of increased consensus” –Teeramate (2020)

That statement signifies and reinforces trust in the decision-making of those with greater authority. Teeramate extends this, noting that the ability to maintain trust was contingent on a good track record, whereby “*one failure will lose people’s trust and respect*”. However, leadership could also inhibit original thoughts, amendments, or challenges to issues or suggestions in the community; socio-political lock in effects (Wilson, 2014). Thus, in this regard, power-relations act as a structural factor that can constrain changes in the community, and as a factor that potentially instils a lock-in effect preventing change, mainting steady-state stasis, if new ideas are not injected or implemented, reinforcing structural embeddedness due to Teeramate’s power and influence.

The prominent issue surrounding Teeramate is what will entail when he is no longer present in Mae Kampong. This sentiment is also present in previous literature (Kontogeorgopoulos et al., 2014 for example), however, this was addressed through one interview of a research participant representing the younger population. She emphasized that the philosophy set out by Teeramate in regard to CBT needed to remain, and this was generally agreed upon amongst her peers. Hence, forming again as both an enabling and constraining factor toward implementing change in the community. Under new leadership, going against the grain could be met with discontent. Whereas, following suit would again entail steady-state operation.

4.3 Feedback(s) of Formed Social Institutions

The formation of one of the founding principal social institutions in the community and the circulation of economic benefits have contributed to the development of the community in the most interesting circumstance. The access and support derived from community funds helped support the younger generation to further their education. The benefit of this is now evident through the knowledge and skills obtained through gaining further education to the application of business and community business diversification. A concern in past research presented by Harada (2016) was the gradual shift away from the cultural heritage of miang (cultural deterioration) and how this could be harnessed to prevent cultural drain as modernization progresses in the community. Harada (2016) emphasized this more so in the application of tourism-related activities, however, the onset of Covid-19 and travel restrictions (domestic and international) were found to present new and creative means for the residents of Mae Kampong to increase income capacity. Hence, interviews with residents illustrated that the younger generation helped the village to market products through online platforms. Products sold were manufactured locally, such as pillows filled with tea leaves used in aromatherapy. This new approach is viewed as a mechanism that can improve communally beneficial across three fronts;

1. Diversify economy; creating a buffer from external shocks in the future, whilst filling the tourism void in the present.
2. Enhance cultural capital; encouraging tea leaf cultivation in tourism downturn, reinforcing attachment to cultural heritage.
3. Enhance social capital, reinforcing social capital through collaborative manufacturing of associated goods.

Furthermore, the role of external agents will also be paramount in further development and support for such products to reach market. Similarly, the input from the Royal Projects regarding the production and logistical support of coffee and miang products in the past to the increase in economic benefit derived from new products, leads to greater access to forms of linking capital with external agents that will aid in the sales, marketing, logistics, and demand for such products.

5. CHALLENGES & IMPLICATIONS

Tourism development in Mae Kampong has undoubtedly transformed the community through increased economic, human and infrastructural capital, as well as increased environmental consciousness. The ability to implement an effective CBT model can be, in part, delineated from the endogenous assets built over time, whereby social capital was built from collective beneficial action stemming from miang production (also cultural capital), and the implementation of the micro-hydropower cooperative, building the assets of trust, reciprocity, and sharing. The transformational leadership of Teeramate was, and still is, paramount to mobilizing these assets into beneficial collective for the community in Mae Kampong. The social institutions developed from the installation of micro hydropower and through CBT provided the foundation for the community to absorb the effects of Covid-19 effectively.

Teeramate's vision for the development of Mae Kampong at a time of economic disruption within the community, identified tourism as development tool in creating communal benefits. The adoption of CBT as an economic diversification tool was the community's *bounce-forward* in the face of change. The ability to bounce forward and guide this development are attributed to the community's trust and belief in Teeramate as their leader, and the social institutions that were mobilized from the village's history of collective action. Hence, social capital was built upon and capitalized via strong leadership and structure.

Overall, the application of this novel approach has better informed the initial phases of CBT development. Not diverging from the previous literature that emphasizes leadership as the key obstacle toward effective CBT, the collective assets of and within a community and the reinforcement of such ideals may have the ability to bridge the gap in identifying the leadership barrier, as the community itself can mobilize around the base of its shared history. Of course, not all communities have had a shared history of collective action, however, a deeper analysis through incorporating aspects of the '*Framework for Assessing Resilience*' model (see Interpeace, 2016) emphasizes the endogenous capacities, assets, attributes, and action(s) within a community that can instil truly participative processes in the early development of CBT.

However, CBT development in Mae Kampong has also produced constraining factors that can potentially hinder the resilience of the community. Primarily, the mode of socio-economic transaction has changed since its inception. As economic capital has grown, an observed shift from sharing without economic function now presents

economic transactions as a social norm. This can be viewed as a mechanism that has eroded the level of social capital experienced in the past.

Additionally, the counter position of strong leadership and its accepted rules, values, and norms created in the community can also constrain the reflexivity of the community. Hence, external stakeholders remain imperative in the effort of positively reinforcing and exchanging new ideas and strategies in order to remain flexible and attentive to enact change or transformation, not just in the anticipation of changes, but also to these stressors. Hence, generational change and the diversification of livelihood portfolios pose are challenges to the community's vision.

As the tourism practice in Mae Kampong may have strayed from the initial philosophy and practice of CBT in its inception, there is a possibility to rectify this through limiting tourist capacity and offsetting this by value-adding to the tourist experience through increased prices. Thus, for example, limiting visitors but charging them a premium on current minimal charges, increased revenue that can be circulated back into the economy through infrastructural upgrades (enhancing the tourist experience), and increased economic distribution to community members. Limiting capacity will see environmental benefits (less pollution, waste, noise, and environmental degradation to natural forests), and physical economic increases will strengthen the rules and norms of the community toward ensuring that the community's ideals are met.

6. CONCLUSION

The Covid-19 pandemic may have the ability to emphasize and increase attention toward local development in the economic recovery from the pandemic, with CBT and its ideals, if implemented effectively, providing the mechanism to create an effective buffer to external shocks. The diversification of local economies to include CBT has a low-cost entry point, with benefits reaching across livelihood domains, where social.

Although CBT in Mae Kampong may have moved to a more unconventional form, the social institutions underpinning effective CBT are present such as the distribution of benefits, community participation, environmental education, and sustainable management. These institutions aided in the resilience of Mae Kampong through the Covid-19 pandemic, and the lessons learnt from this may prove beneficial toward increasing community capitals through adhering to these principles, diversifying their economy, and increasing the reach of locally manufactured goods through online sales. For CBT and new business ventures, social capital will remain the utmost importance to uphold these ideals and provide the foundations for a community's ability to absorb, adapt, or transform, and most importantly, mobilize a next bounce-forward.

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THE ROLES OF NGOS IN THE DEVELOPMENT OF INCLUSIVE HIGHER EDUCATION FOR PERSONS WITH DISABILITIES IN THAILAND

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ABSTRACT

Persons with disabilities have been discriminated against throughout the years and the education sector is no exception in that regards. The right to education for people with disabilities are recognized in Convention on the Rights of the Child (CRC) and Convention on the Rights of Persons with Disabilities (CRPD,) two international human rights conventions to which Thailand is a State Party. Prior to that, the Thai government had passed several acts that promoted educational equality for people with disabilities. The current constitution and the national legislation recognize and guarantee the right for persons with disabilities to have equal access to formal education as those without a disability. Despite this, little has been done to elevate the current situation with regards to inclusive education, especially at the tertiary level. This is evidently seen in academia, where there is a lack of students with disabilities that are enrolled in higher education institutions. The difficulties in implementing these policies stem from the lack of public resources and lack of social awareness, as well as, visibility surrounding positive portrayals of persons with disabilities. This is when non-government organizations (NGOs) can step in and fill the gaps. In this light, this research focuses on the roles that NGOs play in the pursuance of inclusive higher education for persons with disabilities. The main objectives of this study are, 1) to examine and evaluate the roles that NGO assume for advocating and implementing inclusive higher education for persons with disabilities, and 2) to identify the challenges and strengths of NGOs in this regard. Data was collected from interviews with participants working in selected NGOs, the government and academia. The findings were used to analyze the services provided by NGOs, the challenges they face in promoting, advocating and implementing disability rights policies, specifically related to inclusion education, in Thailand.

Keyword: Persons with Disabilities, Inclusive Education, Non-Governmental Organizations (NGOs), Advocacy.

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1. INTRODUCTION

1.1 Background

According to the United Nations' (UN) world report on disability¹, persons with disabilities (PWDs) are considered to be the largest marginalised group as acknowledged by the (World Health Organisation 2017). They face discrimination based solely on their disabilities and are often denied enjoying their fundamental freedoms and human rights. While other types of international human rights treaties have gained remarkable progress, people with disabilities are unable to acquire benefits they so rightly deserve. The World Health Organisation (WHO) points out that throughout history, persons with disabilities are not just the 'silence of the poor', but are considered as 'the poorest of the poor.' Historically, disability has been heavily misunderstood and people with disabilities have long been excluded from the norms of social acceptability. They were marked as socially incapable of many aspects of life based on their "limitations." In this sense, persons with disabilities are viewed as those who are incapable of taking care of themselves, and should be dependent on their families and the government.

There are over 650 million people around the world who are living with disabilities, and if their immediate and extended families are taken into account, then this number would be up to two billion people. (OHCHR, 2007). On top of that, 20% of the world's poorest population live with some form of disability. The situation is much direr in the developing world, where up to 98% of children with disabilities could not attend schools (OHCHR, 2007). In spite of this, the rights for children and young people (under 18 years old) with disabilities were embraced in the United Nations Convention on the Rights of the Child (CRC) (1989). Such recognitions cover the provision of free assistance and financial resources for the parents, and the assurance of equally receiving fair education as children without disabilities. Moreover, the international recognition for persons with disabilities is more recent compared to other major treaties such as Convention against Torture (CAT), and Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) , as the Convention on the Rights of Persons with Disabilities (CRPD) was only brought into force in 2008.

As of May 2019, the Department for Empowerment of Persons with Disabilities (DEP) recorded that there were 2,024,400 people in Thailand who are living with a disability. They are divided into nine categories: People with visual impairment (197,635); people with hearing impairment (377,504); people with physical disability (1,003,640); people with psychosocial disability (153,484); people with intellectual disability (136,113); people with learning difficulties (10,741); people with autism (13,199); people with multiple disabilities (125,290); and 6,854 people with

¹According to the World Health Organisation, 'disability' is an umbrella term that covers a wide range of conditions that deals with "impairments, activity limitations, and participation restrictions". The problem of an impairment in the functions and/or structures of the body which causes limitations and difficulties on an individual in life situations is considered a 'disability'.

unspecified disabilities (DEP 2019). However, in 2010, the World Health Organization (WHO) estimated that the numbers could be much higher with up to around 6.7 million people in who are living with a disability in Thailand ¹.

According to the Report of Disabilities Situation in Thailand (2016,) 43.47% of the population of people with disabilities never received any form of education, while 46.21% have received primary education, 9.48% graduated high school, and only 0.84% have completed higher education. Unfortunately, this is the reality throughout the world. Furthermore, according to the 2007 report by the Office of the United Nations High Commissioner for Human Rights (OHCHR,) 19% of less-educated people in the world have disabilities, in comparison to 11%, who are among better-educated people.

Education is the backbone of every nation. Furthermore, it helps improve the quality of life of people with disabilities by providing proper educational supplements, assistive technologies, and supportive disability-friendly resources in schools. These in turn could contribute to better educational access and wider career opportunities. The relatively low figures of persons with disabilities who have received higher education in Thailand suggest the lack of awareness among the public and government officials in promoting and protecting the rights of disability rights and the advancement of inclusive education².

Past records revealed that the progress toward inclusive education would not be possible without the contributions of non-government organisations (NGOs)³. They are known for facilitating educational goals established by the government and, thereby, filling the gaps in policy and implementation. NGOs have performed their duties in the absence of government involvement. Many have taken an institutional, charity-based approach at the outset, but have gradually moved to a more participatory- and community-based approach, liaising with Government plans and services for contemporary developments (Chakraborty 2015). Although states are responsible for laws and policies, they do not have the capacity to carry out or monitor their implementations both rural and urban areas, as evident in the lack of accessible⁴ facilities in the Bangkok Metropolitan area. Hence, a lot of people who are in need of the

¹ Based on the Persons with Disabilities Empowerment Act (2007) of Thailand, the definition of 'disability' in the Thai context is as follows:

"[P]ersons who encounter certain limitations in performing their daily activities or social participation due to their impairment in vision, hearing, mobility, communication, mind, emotion, conduct, intellect, learning or any other impairment/disabilities along with various difficulties, and specifically need some assistance to enable them to perform their daily activities or social participation as ordinary persons. The types and prescriptions of disabilities shall be determined and announced by the Minister of Social Development and Human Security."

² In broader terms, 'inclusion' for people with disabilities means including them in everyday activities and supporting them to participate in roles similar to their peers who do not have a disability. According to Section 3 of the Education Provision for Persons with Disabilities Act of 2008, 'inclusive education' in the Thai context means "providing persons with disabilities access to general education system, at any level and in various settings, including enabling education provision to enable schooling for all groups of persons, including persons with disabilities"

³ An NGO is founded and operated by legal persons who are by no means related to any governmental sections. Despite the fact that NGOs do get funds and support from governments, they are relatively independent and are not under government councils. NGOs are a subset of civil society organisations (CSOs) and these two terms are used interchangeably. It is noteworthy to understand that CSOs were commonly used before the term for NGOs became popular in the mid-to-late 20th Century.

An NGO is also a part of the non-profit organisation (NPO) pool. However, the major differences between these two stems from their goals and objectives. NPOs are generally smaller than NGOs and are heavily based on promoting culture, science, education, religious activities, and other forms of social benefits through donations. On the one hand, advocacy and taking actions for the betterment of the society are the foremost characteristics of NGOs in general.

⁴ Accessibility for people with disabilities means to freely navigate, think, learn, work, perceive, interact, and understand with daily life situations without barriers, and are able to do so such as how people without disabilities have access to. While accessibility focuses on people with

government support are left with little to no facilities and resources. NGOs in Thailand have become increasingly involved at varying levels and scales to execute disability-friendly and inclusive education practices (Vishwakarma & Sthapak, 2017).

In this light, this research attempts to explore and investigate the roles that NGOs play in promoting inclusive education, specifically higher education, for persons with disabilities through their advocacy¹ efforts in Thailand. To narrow down the scope, this study attempts to focus on NGOs that are based in the Bangkok Metropolitan area. Choosing this area is of particular interest because Bangkok, Thailand's capital city, is considered the most advanced and developed part of the country. This study will heavily rely on the responses and insights of people, including activists with disabilities, from disability-based NGOs who are involved in advancing inclusive education.

1.2 Significance of the Problem

Studies highlighting the contributions that NGOs have made in Thailand with respect to inclusive education are very limited. With regards to the disability rights, Thailand is one of the most liberal countries in the ASEAN region since the country was one of the first to implement legal frameworks regarding this issue.

Not enough research has been undertaken to explore and evaluate challenges to inclusive education for disability-friendly environments at the tertiary level. Data reflecting voices of actors who are part of both non-State and State agencies, people with disabilities, and individuals from CSOs who are working on disability educational rights are also bleak. As stated in existing literature, the Thai government highly values the rights of persons with disabilities to enjoy inclusive education, but little is known about the status of their policies. In addition, there has also been a lack of literature analysing the roles of NGOs and the successful outcomes of implementing inclusive education for persons with disabilities.

Despite the fact that the Thai constitution acknowledges education equality for all and that discriminating people with disabilities is a rights violation, little action has been done to put their laws and policies into effect. The public disability rights discourse usually carry the weight on 'rights' and 'justice', but they do not explore the pragmatic issues that stand as obstacles for persons with disabilities to reach the rights and justice as embedded in the CRPD and the national legislative framework. Therefore, the efforts of the Government to enrich its perspectives and discourses have largely been underwhelming. Likewise, the efforts of NGOs in advocating and protecting the rights of people with disabilities in access mainstream education do not receive the attention they rightfully deserve in the field of academic research.

disabilities, many accessibility requirements also improve usability for everyone. Accessibility especially benefits people without disabilities who are in limited situations, such as using the web on a mobile phone when visual attention is elsewhere, in bright sunlight, in a dark room, in a quiet environment, in a noisy environment, and in an emergency.

¹ According to UN Women, advocacy is a set of actions that aim to generate support for a policy or proposal. The objectives of an advocacy campaign vary from drafting and passing a new or amended law against a specific human rights violence; to reforming the judicial system; to litigating a test case using international human rights standards in domestic courts; to monitoring the implementation of international human rights standards in a local context.

In this regard, this research aims to (1) to fill the gaps in literature regarding the role of NGOs on their actions towards helping people with disabilities have access to inclusive education and (2) to fill the gaps in voices from the aforementioned stakeholders who are both directly and indirectly involved in pursuing inclusive education for persons with disabilities. More than a dozen disability-based NGOs in Bangkok were tapped as case studies for this research. The researcher is based in Bangkok and is aware that the lack of inclusive education is rampant throughout Thailand. However, due to limitations of time and research, Bangkok is the only feasible choice for this research.

2. RESEARCH OBJECTIVES

- 1) To examine and evaluate the roles of non-government organisations (NGOs) in advocating and implementing inclusive higher education for persons with disabilities
- 2) To identify the challenges and strengths of NGOs in advocating and implementing inclusive education for persons with disabilities
- 3) To evaluate suggestions from NGOs, with regards to making inclusive education more visible and accessible in the tertiary educational level for persons with disabilities.

3. RESEARCH QUESTIONS

- 1) What are the roles played by NGOs in Thailand for the development of inclusive higher education for persons with disabilities, and what have they done in promoting and enforcing inclusive higher education in Thai universities?
- 2) What are the challenges faced by NGOs in promoting inclusive higher education for people with disabilities in Thailand?
- 3) How can NGOs assist universities and policy makers to make higher education more accessible and disability-friendly?

Semi-structured interview questions were accessed based on Advocacy Strategy Framework as highlighted below as part of this paper's conceptual framework. Each point of the framework was correlated in accordance with the interviewees' answers as they deem fit.

4. CONCEPTUAL FRAMEWORK

An Advocacy Strategy Framework, developed by Coffman & Beer (2015), is applied to understand the importance of NGOs in advocating and promoting inclusive education for people with disabilities.

The fundamental objective of this research is to highlight the contributions of non-NGOs to the development of inclusive higher education for persons with disabilities in Thailand. Apart from government, other actors in the education system have been contributing to the well-being of persons with disabilities and have been promoting inclusiveness in higher education institutions. Furthermore, NGOs have been a key player in this space. Advocacy is a traditional strength of NGOs, who normally have been working on policy and structure reform.

Hence, to clearly assess and evaluate the roles of NGOs in the areas of inclusive higher education, ASF will be used in this paper.



Figure 1. Conceptual Framework

The framework is orchestrated in two dimensions of an advocacy strategy: the audiences targeted (x-axis, horizontal) and the changes desired (y-axis, vertical) with those audiences.

- Audiences represent the main actors in the policy process, and are individuals and/or groups that advocacy strategies target and attempt to influence or persuade. These main actors include the public (or specific segments of it), policy influencers (e.g., media, community leaders, the business community, political advisors, NGOs, etc.), and decision makers (e.g., elected officials, administrators, judges, etc.). Strategies may focus on just one audience or target more than one simultaneously.

- Changes are the outcomes an advocacy effort, which aim for with audiences to proceed toward a policy goal. There are three points that are presented here in terms of how far an audience is expected to engage on a policy issue. It starts with basic awareness or knowledge. Initially, the goal is to make the audience aware that a problem or potential policy solution exists. The second step is when the audience has built a sense of urgency and relevance, that is the precursor for them to act once the opportunity arises. Going beyond awareness, advocates and social change makers would try to convince the audience that the issue is important enough to warrant action and that any actions taken will in fact make a difference. The third point pertains to action. Here, policy efforts actually support or facilitate audience action on an issue. Furthermore, advocacy strategies may pursue change/s with an audience or more than one simultaneously.
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5. RESEARCH DESIGN

This qualitative study employs a descriptive case study design to analyse the advocacy work of NGOs based in Bangkok concerning the rights of persons with disabilities and inclusive education. Semi-structured interview questions were used to gather data on programmes, activities and insights related to these issues. This case is primarily concerned with answering how they advocate for inclusive education, and why there are challenges for people with disabilities to have access to academic success at higher education institutions in Thailand. Furthermore, suggestions and/or recommendations will be taken from the interviewees with regards to enabling an inclusive society and at the university level.

6. LIMITATIONS

Since the topic on the advocacy roles of NGOs in promoting inclusive education for people with disabilities is limited in existing the literature and public discourse, , a more realistic and a more grounded approach to this study will focus mainly on interviews gathered with CSOs/NGOs, State agencies, and academics, who are either living with or without disabilities.

Due to time and resource constraints, the research could only cover one university, four non-governmental organisations, one social enterprise and one government body. Time constraints have also limited profiles of persons with disabilities. These include people with hearing impairment, visual impairment, and autism. Notwithstanding, one social enterprise that was interviewed focuses on all types of disabilities

7. CONCLUSION AND RECOMMENDATIONS

Based on the findings, the progress NGO contribution to for the promotion and development of inclusive education in Thailand could be summarised as ‘slowly developing.’ National statistics have shown that the majority of those living with a disability did not proceed into higher education, with a significant number of them dropping out of high school. While the Government is the foremost duty bearer, NGOs have always been an instrument for the marginalised and the forgotten. NGOs are responsible for numerous reforms in societies, specifically in ways rights and freedoms are enjoyed. For this reason, NGOs should not be undermined and their contributions deserve much more credit than the government. Most NGOs that were interviewed for the research are not involved in any campaigns or movements that aim to directly impact national affairs and policies. They work mostly at the grassroots, and with academia. Their work includes a variety of assistance, ranging from financial assistance, providing educational facilities and materials, and working with DSS to advocate for inclusive schools. Their advocacy activities are mainly related to awareness raising, seminars and capacity building of stakeholders. A number of NGOs also served as consultants for governments and foreign agencies working on inclusive education policies.

Most NGOs work in silo, and there has not been much collaboration and solidarity amongst these organizations. Existing literature highlighted a few recommendations to create and sustaining strong NGO networks. Combining efforts do not only increase visibility and power, but they also save resources and energy. Be that as it may, Klondinsor mentioned that they will build up connections with other NGOs working on inclusivity for people with disabilities as soon as they get their registration status approved by government.

According to the findings, the lack of collaboration is just one of the reasons behind the setback. The major issue they are facing now is the social mind-set and attitude towards persons with disabilities. Respondents noted that changing traditional attitudes towards disability, which has been embedded for so long in Thai culture, would take a long time. Societal attitudes have definitely affected work being done by NGOs

Those who were interviewed admitted that changing social attitudes is the foremost problem they are all facing. Another issue concern limited resources to conduct programmes and projects. Budget restrains means that they have to limit their works to certain aspects and locations. It should be noted that the challenges they face do not stand as a complete hindrance to attaining their objects. All NGOs interviewed are rather optimistic despite their current situation. Even those interviewed at the Ministry of Education are enthusiastic about NGOs participation in promoting inclusive education throughout the country. In light of this discussion, below are some recommendations to strengthen NGO participation for inclusive education at the tertiary level:

- 1) NGOs solidarity is key. Existing groups should find ways to collaborate and bulding stronger networks to achieve long lasting goals for persons with disabilities and the rights to access education.
- 2) Strategically cooperate with government. This can be done by: conducting capacity building programmes for government personnel and university faculty stuffs; advocate for a universal learning design system in

universities; jointly conduct public awareness campaigns; and highlight best practices and success stories of persons with disabilities studying in universities.

- 3) Strengthen will and capacities of universities in promoting the rights of persons with disabilities.
- 4) Educate students with disabilities about their rights and encourage them to study further beyond high school. Empowerment is a very crucial part because students with disabilities may feel discouraged to enrol at universities due the lack of facilities and social stigma. As Ms. Kukreja from Klongdinsor put it:

“NGOs should also encourage people with disabilities to manifest their potentials, capabilities, and abilities in higher education.”

Last but not least, Klongdinsor recommended NGOs need to have targeted goals and be able to achieve solutions for persons with disabilities who aspire to study in colleges and/or universities.

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MAJORITARIAN NATIONALISM IN SOUTH ASIA VIS-À-VIS AN EGALITARIAN WORLD

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ABSTRACT

Universal Declaration of Human Rights along with other relevant international standards have become dead letter for an alarming number of religious persecutions and discrimination. The right of nationality for minorities is facing acute challenge across the world. Various studies conducted in the past years establish the fact that there has been a rise in hatred and injustice towards various minorities led by the political leadership of the countries. North Korea, China, Sri Lanka, Pakistan, Cambodia etc. are amongst those countries known for oppressing and marginalizing the minorities. The International Freedom Religious Report in 2020 highlights the violence against the minorities in a number of countries. The South Asia State of Minorities Report, 2019 affirms the instances of violence against the linguistic and religious minorities in South Asia. Actions such as mob-lynching, passing of the Citizenship Amendment Act, false legal cases etc. against the religious minorities, especially Muslims are on a rise in India. Sri Lanka follows the State-sponsored Sinhala colonialization of lands in the North and East since decades. Bangladesh has reported cases of attacks upon Hindus and atheists. Pakistan manifests attacks upon the Hindus, Christians and sectarian minorities. Afghanistan, Nepal, Bhutan, Myanmar and Maldives also join the list of oppressive majoritarian governed countries. The governments of these countries are utilizing the global COVID-19 pandemic as a cover for the arbitrary arrests and denial of fundamental rights of religious minorities. The policies of the Governments of different countries reflect a strong fundamentalist approach towards the majoritarian religions. The ranking of the countries of the world in terms of violation of the rights of persons belonging to different minorities is an indicator of the inhuman decisions taken by the people having power to take decisions on political, governance and international relations. The present world facing and fighting against the pandemic Covid-19 needs inclusive policies by all the countries of the world. The right approach is to embrace each human, irrespective of his community, ethnicity or religion. The international community should make the governments of such countries accountable for the brutal treatment against the minorities. The present paper has made use of secondary data in the form of reports and studies by various think-tanks and independent organisations, news and other relevant legislative provisions.

Keyword: Constitution, Minorities, Religious Freedom, South Asia.

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1. INTRODUCTION

Religion or belief, for anyone who professes either, is one of the fundamental elements in his conception of life and that freedom of religion or belief should be fully respected and guaranteed. The disregard and infringement of human rights and fundamental freedoms, in particular of the right to freedom of thought, conscience, religion or whatever belief, have brought, directly or indirectly, wars and great suffering to mankind, especially where they serve as a means of foreign interference in the internal affairs of other States and amount to kindling hatred between peoples and nations. Almost all States have one or more minority groups within their national territories, characterized by their own ethnic, linguistic or religious identity which differs from that of the majority population. Harmonious relations among minorities and between minorities and majorities and respect for each group's identity is a great asset to the multi-ethnic and multi-cultural diversity of the global society. The countries of South Asia contribute to the global and regional refugee population. No country from South Asia is party to either the 1954 Convention on Stateless Persons, 1954 or the Convention on the Reduction of Statelessness, 1961. The fundamental right to equality of the minorities in various parts of the world are often deprived of in a way adversely affecting their enjoyment of a range of human rights. The countries across South Asia have not signed international conventions forming key elements of the legal and normative framework concerning the right to nationality. Systematic, ongoing, and egregious violations of religious freedom are increasing in this part of the world. The refugee and migratory trends are intimately woven to the overall problem of statelessness in South Asia. South Asia has recent and long-standing laws, practices and policies, causing the exclusion of national or ethnic, religious, and linguistic minorities, Dalits and indigenous peoples. An increasing politicization of minority rights protection in South Asia, particularly concerning the movement and protection of refugees suffering religious persecution has been seen. Religious minorities are at mostly high risk of violent attacks, hate speech, and intimidation, and these violations are frequently met with lack of accountability. (South Asia Collective, 2020). Peoples Under Threat Data in 2020 has placed two countries of South Asia in its top ten list – Afghanistan at four, Pakistan at nine. The rest are India at fifty-four, Sri Lanka at forty-one, Bhutan at one and six, Maldives at nine six, Myanmar at twelve, Nepal at sixty-nine. The list ranks countries on the basis of various factors such as self-determination conflicts, refugee rights etc. This year's Peoples Under Threat index highlights the impact of Covid-19 that some threatened minority and indigenous communities are systematically more exposed to the illness, others are scapegoated in conspiracy theories regarding the origin of the pandemic, while yet others face difficulties accessing healthcare services due to their remote locations or systemic discrimination.

“Religion is a key component of political oppression in Afghanistan and Indonesia. In Bangladesh, Malaysia, Pakistan and Nepal, it is the assertion of national identity. While in China, political oppression denies people their freedom of expression and of the right to association. In India, the extreme Hinduizing of the national identity, denies the secular state constitution. In these and other cases, there are threatening implications for religious minorities, for civil society and human rights in general, and especially for women and other vulnerable groups within minorities.” (Amnesty International, 2005) Against this backdrop, the present paper discusses some of the incidents of violence and discrimination targeted against the minorities in South Asia. The paper uses the terms ‘country’ and ‘State’ synonymously.

2. INTERNATIONAL LEGAL INSTRUMENTS

A number of provisions exist under various Conventions etc. regarding the rights of minorities and refugees. The United Nations has an important role to play regarding the protection of minorities. Significant work has been done by the Commission on Human Rights, the Sub-Commission on Prevention of Discrimination and Protection of Minorities and the bodies established pursuant to the International Covenants on Human Rights and other relevant international human rights instruments in promoting and protecting the rights of persons belonging to national or ethnic, religious and linguistic minorities.

2.1 *Rights of Minorities*

One of the basic principles of the Charter of the United Nations is that of the dignity and equality inherent in all human beings, and that all Member States have pledged themselves to take joint and separate action in co-operation with it to promote and encourage universal respect for and observance of human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion. Article 18 of the Universal Declaration of Human Rights, 1948 provides that everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 27 of the International Covenant on Civil and Political Rights states 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 practise their own religion, or to use their own language. The Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, 1981 has eight articles covering various aspects of right to religion. Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities was adopted by General Assembly resolution 47/135 on 18th December 1992. It has nine Articles imposing various obligations upon the States.

2.2 *Rights of Refugees*

The Convention relating to the Status of Refugees, 1951 and the Protocol, 1967 thereto are the foundation of the international refugee protection regime. The Convention was originally put in place to protect post-World War refugees in Europe. It provides an internationally accepted definition of who qualifies as a refugee and who does not. It specifies certain rights that accrue to all those who qualify as refugees, some of which are: the rights to access employment, housing, education, public relief and assistance, freedom of religion, access to courts, movement, identification and travel documents. The Convention relating to the Status of Stateless Persons, 1954 and the Convention on the Reduction of Statelessness, 1961 provide the foundation for the international regime to end statelessness.

3. POSITION OF RIGHTS OF MINORITIES UNDER THE CONSTITUTIONS

This Part discusses in brief the constitutional framework vis-à-vis religious freedom in the countries of South Asia.

Table 1: Constitutions in South Asia And Rights of Minorities (Compiled by Researchers)

No.	Country	Year of Adoption of Constitution	Relevant Provision Under the Constitution	Rights Under the Relevant Provision	A State Religion/ or Not
1.	India	1950	Preamble, Part III of the Constitution	Secular, Equality, irrespective of difference of religion etc. Rights of minorities under Articles 25-29	No
2.	Bangladesh	1972	Article 12 Article 28(1) Article 41	Secularism and freedom of religion; No discrimination against any citizen on grounds only of religion, race, caste, sex or place of birth; Freedom of religion	Yes
3.	Sri Lanka	1972	Article 10 Article 14(1) (e)	Freedom of thought, conscience and religion; Freedom to manifest his religion or belief in worship, observance, practice and teaching	Yes
4.	Pakistan	1973	Article 20	Freedom to profess religion and to manage religious institutions	Yes
5.	Afghanistan	2004	Article 6	The State shall be obligated to create a prosperous and progressive society based on social justice, preservation of human dignity, protection of human rights, realization of democracy, attainment of national unity as well as equality between all peoples and tribes and balance development of all areas of the country.	Yes
6.	Maldives	2008	-	-	Yes
7.	Bhutan	2008	Article 7(4) Article 7(15)	Right to freedom of thought, conscience and religion; Equal and effective protection of the law, irrespective of religion etc.	Yes
8.	Nepal	2015	Preamble, Article 4 Article 18 Article 26 Article 29 Article 51	Secular, Right to equality, Religious freedom, Right against exploitation, Directive Principles	No

The table enumerates that the above eight countries have provisions under the Constitutions to protect the rights of the minorities, freedom of religion etc. Even where a country has an official religion, such country under law is granting rights to the minorities. The next part shall outline the cases of continuing violence, discrimination and inequality against all minorities in the aforesaid countries.

4. INSTANCES OF DISCRIMINATION AGAINST MINORITIES ACROSS SOUTH ASIA

The political leadership is a major factor in any country to determine the policies and laws. The political decisions taken by the leaders of any country should not be a ground to blame the country as a whole for discriminatory policies. There is a need to understand that embracing humanity is the basic norm of life. The presence of people in power indulged in a wave of promoting own religion at the cost of harming the minorities in that country shall not decide how the citizens of the country feel for each other. Average masses want to live peacefully without any real interest in the subject who is ruling the country. Their prime interest consists of prosperity of country with fulfillment of basic needs.

The instances of discrimination in the various countries of South Asia are evident from the two Reports namely International Religious Freedom Report 2020, released in June 2020 (U.S. Commission on International Religious Freedom ,2020) and South Asia Collective released in 2020 on the state of Minorities. (South Asia Collective, 2020). The report of U.S. Commission is issued annually for last several years. It bases these recommendations on its statutory mandate and the standards in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and other international documents. The Report recommended for “country of particular concern” (C.P.C.) designation under the International U.S. Religious Freedom Act of 1998 every year since its first set of C.P.C. recommendations in 2000. In 2020, a new designation of SWL for countries where the government engages in or tolerates “severe” violations of religious freedom started as per the Frank Wolf International Religious Freedom Act of 2016. The 2020 Annual Report assesses religious freedom violations and progress during calendar year 2019 in twenty-nine countries. Amongst the all countries of South Asia, as per the recommendations of latest Report on International Religious Freedom, three countries fall under C.P.C. or S.W.L. category. It is recommended to redesignate Pakistan as C.P.C.; designate India as C.P.C. and include Afghanistan as S.W.L. (U.S. Commission on International Religious Freedom ,2020). The remaining four countries are not included in twenty countries. This reflects how the governments in South Asia are becoming centered towards the majoritarian interests. Similar findings have been reported in the various studies of the Amnesty International over the years in these countries. (Amnesty International, 2018)

Pakistan is a highly diverse country, specifically in terms of religious beliefs. According to available statistics, as recorded by the National Identity Card (NIC) registrations, the Hindu community is the largest religious group after Muslims, with 1.4 million adherents. Second is the Christian community with 1.3 million followed by Ahmadiyas declared to be non-Muslims in the 1970s. The religious and sectarian minorities such as Christians,

Hindus, Ahmadiyahs and Shias suffer frightening attacks by militant groups, individual targeted attacks and vigilante violence in Pakistan. In March 2019, a student murdered Professor Khalid Hameed over perceived “anti-Islamic” remarks. Protestors in Sindh attacked and burned Hindu shops and houses of worship following two incidents: in the first, a cleric accused a Hindu veterinarian of wrapping medicine with paper printed with Qur’anic verses; in the second, a student levelled blasphemy charges against a Hindu principal. A mob also attacked a Christian community in Punjab after a mosque claimed over its loudspeaker that the community had insulted Islam. In another incident, nearly 200 Christian families in Karachi were forced to flee their homes due to mob attacks after false blasphemy accusations against four Christian women. After spending five years in solitary confinement for allegedly posting blasphemous content online, Junaid Hafeez was given the death sentence in December 2019. Many ongoing trials related to blasphemy experienced lengthy delays as cases were moved between judges. Moreover, these laws create a culture of impunity for violent attacks following accusations. The boundary wall of the site where the temple is supposed to be constructed has a been torn down by a mob recently. (Amnesty International,2020).

Sri Lanka’s population of 21 million is dominated by the Sinhala community, which makes up 75 per cent of the population. The next two largest ethnic groups are Sri Lankan Tamils at 11 per cent and Sri Lankan Moors (Muslims) at 9.3 per cent. Buddhism is the predominant religion with 70 per cent of the population while followers of Hinduism and Islam make up 12.6 per cent and 9.6 per cent respectively, and Roman Catholic and other Christian denominations make up 7.6 per cent. Sri Lanka has become infamous for hate speech, discriminatory practices, destruction of property, threats and intimidation, and physical violence perpetrated by both state actors and Buddhist nationalist groups against Christians (7.6 per cent) and Muslims (9.7 per cent). The situation for Muslims has deteriorated since the Easter bombings of April 2019 of Christian places of worship by radical Islamists.

Religious minorities including atheists and in particular Hindus are often object of reprisals and attacks in Bangladesh. Such incidents increased particularly during election cycles, with the highest levels of such violence recorded during national level elections in 2014.

The Afghan Constitution, 2004 is believed to be a rather progressive document since it protects the rights of all Afghans irrespective of their ethnicity, religion, and language. According to Article 6 of the Constitution, ‘The state shall be obligated to create a prosperous and progressive society based on social justice, preservation of human dignity, protection of human rights, realisation of democracy, attainment of national unity as well as equality between all peoples and tribes and balanced development of all areas of the country.’ Article 7 states: ‘The state shall observe the United Nations Charter, inter-state agreements, as well as international treaties to which Afghanistan has joined and the Universal Declaration of Human Rights.’ The result of the September presidential election in Afghanistan has finally revealed that the incumbent Ashraf Ghani has been re-elected and the current Chief Executive Abdullah Abdullah has promptly contested the result. The dispute over the election results marked the deep ethnic polarisation and has raised fears of instability with dire implications on minorities. The government of the current president has been accused of fuelling ethnic tensions and of favouring his own ethnic group over other ethnicities, causing widespread resentment among other ethnic groups. The minorities including Hazara Shi’a, and the small numbers of

Christians, Sikhs, and Baha'i populations in Afghanistan. The regime of President Emomali Rahmon maintained its repressive policies, suppressing displays of public religiosity by individuals of all faiths and persecuting minority communities—especially actual and alleged Salafists, a term that is broadly applied. Authorities pursued a crackdown on various attributes of faith, including restrictions on wedding and funerary banquets, and pursued extra-legal bans on beards and hijabs. Under the guise of a struggle against religious extremism, the government continued to torment former members of the banned Islamic Renaissance Party of Tajikistan, sentencing rank-and-file former party members to extensive jail time and extraditing former party elites from abroad. Tajikistani authorities harassed family members of imprisoned IRPT members for speaking at the Organization for Security and Cooperation in Europe Human Dimension Implementation Meeting in Warsaw in September, earning Tajikistan a rebuke from the U.S. delegation in its closing remarks. On July 29, 2019, President Rahmon signed an order prohibiting the import and sale of clothing representing a “foreign national culture.” The ban is widely perceived as a further assault on female Islamic dress. Women are already forbidden from wearing hijabs in numerous public places, including hospitals and schools. Locals report that officials stop women in hijabs, record their personal information, and force them to wear their headscarves in the “Tajik fashion” (shortened and pulled back to reveal hair). The Jehovah’s Witness community has been deemed illegal since 2007, and on September 10, 2019, Shamil Hakimov was sentenced to seven and a half years in prison—followed by three years prohibition from working in a religious organization for sharing his beliefs as a Jehovah’s Witness.

While Tibetan and Bhutanese refugees account for almost all of Nepal’s refugee population (64 % and 31 % respectively) more than 500 refugees and asylum-seekers from other countries have been living in Nepal since the early 1990s. She has also been hosting a small community of Rohingya refugees who have made their way into Nepal since 2012. She despite being declared a secular state in 2006, Article 26(3) of the 2015 constitution has carried over provisions from previous constitutions criminalising all forms of proselytization. The Criminal Code, adopted in 2017, bans religious conversion. A reported increase in police harassment of Christians accused of conversion activities continues. In October 2017, the Nepalese government passed legislation that criminalizes religious conversion which states that no one should either be involved in or encourage conversion of religion. Those arrested and found guilty in violating this law can be imprisoned for five years and fined \$500 USD. Whether someone is a Muslim or Christian or Hindu or Buddhist they are expected to stay that way. Anti-minority movements have since gained boldness and have ramped up persecution of Christians and Muslims at alarming speed.

Many of the violations whether in the form of denial of rights such as the deprivation of citizenship and freedom of movement for the Rohingya community or the military’s ongoing violations against ethnic Rakhine, Shan, Ta’ang, Kachin, Chin and other communities living in conflict-affected areas are common in Myanmar. Unfortunately, Myanmar’s authorities, including the current civilian-led administration, have often been among those fostering rather than challenging narratives of hate, intolerance, hostility, and violence. (Amnesty International, 2020).

In November 2019, the government of Maldives shut down the most prominent human rights organization in the country in response to complaints from religious leaders that it had insulted Islam. Extremist groups continued to

pose a threat to human rights defenders and activists whom they accused of being “too secular,” and to exert influence over the police courts, and other government institutions.

India inherits an ancient civilization, the result of diverse forces operating for many millenniums. Many races that found their way to this country contributed consciously or unconsciously to its evolution from time to time. The Indian culture in all ages has been fundamentally the same, and differences at different times are generally speaking, those of detail and not of the essence. (Chopra, 1963) The seed of British rule in India, was sown by the hand of aggression, in an atmosphere of social degeneration and political decay of the dominant race. The history of the Muslims in India is read with much prejudice. The absence of an authentic history free from communal or political bias has led to considerable misunderstanding, with the result that the gulf between the two communities has become wider with the passage of the time. (Noman, 1942) A rise in vigilante violence is manifested in India since coming into power of the Bharatiya Janata Party (BJP) in 2014, particularly targeting the Muslim (14.2 per cent) and Christian (2.3 per cent) populations. The measures such as the implementation of the National Register of Citizens (NRC) in the state of Assam and the federally mandated Citizenship Amendment Act (CAA) reflect the bias policies of the Government. India took a sharp downward turn in 2019. The national government used its strengthened parliamentary majority to institute national-level policies violating religious freedom across India, especially for Muslims. Most notably, it enacted the Citizenship (Amendment) Act, which provides a fast track to Indian citizenship for non-Muslim migrants from Afghanistan, Bangladesh, and Pakistan already residing in India. During 2019, discriminatory policies, inflammatory rhetoric, and tolerance for violence against minorities at the national, state, and local level increased the climate of fear among non-Hindu communities. After the reporting period, India continued on this negative trajectory. In February 2020, three days of violence erupted in Delhi with mobs attacking Muslim neighbourhoods. The BJP has distanced itself from the country’s founding commitment to pluralism and individual rights, without which democracy cannot long survive. (Repucci, 2020).

Several incidents of violence against minority communities took place all over Bangladesh. An Italian Catholic priest and a Protestant pastor narrowly escaped murder allegedly in the hands of Islamic militants. More than two dozen Catholic priests, Protestant pastors and Christians aid workers have received death threats through mail, phone calls and text messages. There has been a similar pattern to many such episodes hacking the Facebook ID of a minority person and posting images or messages hurting religious sentiments, the post going viral, the resultant outrage on social media and streets, which finally ends in attacks on minority communities. The clash between the police and religious bigots in Bholra, following social media propaganda could be seen as a consequence of the administration and police’s failure in previous incidents. The Ahmadiya community also experienced scattered violence in different places of the country. In February 2019, Ahmadiyas in Panchgarh District came under attack when they were arranging a Jalsha (the annual conference of the Ahmadiya Muslim Jamat) when supporters of three Islamist organisations urged the government to prohibit the conference as well as declare Ahmadiyas as non-Muslim.

These are some of the instances across South Asia where different minorities’ rights have been openly violated. The rights under the national and the international laws no longer serve as the guide to the people in power.

5. CONCLUSIONS AND SUGGESTIONS

Various indexes and the studies by independent think tanks and organisations affirm the prevalence of discrimination and other human rights violations in almost all the countries of South Asia. Despite strong provisions of the equality rights under the respective Constitutions, these rights are not granted in practice. A brief overview of the situation of religious minorities in Asia reveals complexity and diversity in the identity of religious minorities. However, these minorities have issues in common - subject to severe physical, political, social, economic and cultural oppression and violation of rights within their community and by their nation-states. Many Asian countries are beset with violent conflicts involving minorities. A lot of positive role has been played by the intergovernmental and non-governmental organizations in protecting minorities and in promoting and protecting the rights of persons belonging to national or ethnic, religious and linguistic minorities. Manifestations of intolerance and by the existence of discrimination in matters of religion or belief still in evidence in some areas of the world. Freedom of religion and belief should contribute to the attainment of the goals of world peace, social justice and friendship among peoples and to the elimination of ideologies or practices of colonialism and racial discrimination. Each country must start to recognize the need to ensure even more effective implementation of international human rights instruments with regard to the rights of persons belonging to national or ethnic, religious and linguistic minorities.

The failure of authorities to prevent or investigate attacks against religious minorities continue to create a climate of impunity across various parts of the world. The governments must ensure existing legislations protecting the rights of all religious communities are strictly enforced. In some cases, the legislations need to be strengthened with the full commitment of police, judiciary and other actors. Ensuring accountability to the victims of attacks also requires more comprehensive documentation and prosecution of incidents, and broader efforts to address widespread discrimination across India towards its religious minorities. There is a need to accept that the promotion and protection of the rights of persons belonging to national or ethnic, religious and linguistic minorities contribute to the political and social stability of States in which they live. It is equally important to start believing that the constant promotion and realization of the rights of persons belonging to national or ethnic, religious and linguistic minorities is as an integral part of the development of society as a whole. Within a democratic framework based on the rule of law, such equality would contribute to the strengthening of friendship and cooperation among peoples and States. It is essential to promote understanding, tolerance and respect in matters relating to freedom of religion and belief. The true meaning of nationalism is not propagating the majority religion of the State rather treating all minorities equally. It is a feeling for the nation, not dependent upon the religion or ethnicity of the person. The key is sensitising the media in the countries which misinforms the public and lead to feeling of hatred amongst them. The political parties also need to think on a larger perspective considering the interests of the country as whole, not limited to own political interests. Since these countries of South Asia are inhabited by people

following different religions, speaking various languages and observing customs which are not common to all, communal unity is an absolute necessity to live in peace and amity. Communal unity requires that the people

belonging to any particular group should have toleration for the religion, language and customs of others. Same principle applies to the political leaders and the workers of the political parties.

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THAILAND'S ENGAGEMENT WITH THE UNITED NATIONS GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS (UNGPS): MOTIVES BEHIND THE IMPLEMENTATION OF THE ACTION PLAN

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ABSTRACT

This paper has studied the motives behind Thailand's commitment towards the implementation of the United Nations Guiding Principles on Business and Human Rights (UNGPs) under an authoritarian government. It poses the question - why has Thailand made concerted efforts and commitment towards the UNGPs through the implementation of the national action plan on business and human rights (NAP)? The historical background of business and human rights has been addressed and the role of the authoritarian government in implementing UNGPs by adopting the first NAP in Asia has been examined. The study is conducted through a qualitative case study, which is analyzed by an analytical framework through the multiple theoretical schools of thought, to investigate the motives of Thailand to implement the UNGPs. The data gained from important documents and semi-structured interviews with the key informants has been analyzed to shed light on a comprehensive understanding of this particular issue. The gathered data revealed that the core motive behind the implementation of UNGPs by the Thai government has not been in line with moral obligations, but has been characterized by strategic motive. Notably, the motivation was often referred to as being not only beneficial for society or the country as a whole, but also for the stability of the authoritarian government itself. Consequently, the study has proven that Thailand was economically and politically pressured by powerful states, and the motive behind the implementation of UNGPs by the Thai government is derived essentially from national self-interest, particularly the interest of authoritarian regime, during which the government wanted to seize the right moment to restore a prominent reputation. Lastly, the knowledge gained from this study should be regarded as part of a larger body of research on state compliance with international human rights obligations.

Keyword: United Nations Guiding Principles, Business and Human Rights, National Action Plan, Thailand, Authoritarian Government, National Interest.

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1. INTRODUCTION

Academic concern on the impact of international human rights treaties on the “de jure” and “de facto” legal position of the state parties has been growing in recent years (Heyns & Viljoen, 2001). This finally brought the more challenging questions on the character of states’ obligations under the international law, as well as those derived from “nonbinding norms,” particularly their compliance to such norms (Chayes, 1995). Since human rights’ promotion and protection turned to be the legitimate objectives and principles for the domestic and foreign policy of states, human rights have been placed “as a regular and well-established part of international relations” (Donnelly, 1999, p.78). In the 20th century, global policy documents, national development policies, UN development assistance frameworks, international development planning, regional action plans, and national action plans are integrated with human rights standards positively (Mokhiber, 2016). The violation of human rights tends to cause a negative impact in many parts of the world, as it hinders the long-term development and growth of the state (Marslev & Sano, 2016). However, the increased recognition of the link between business and human rights in the 21th century becomes one of the most significant transformations in the human rights issue. Before the Cold War, human rights were considered to be an issue involving the action of the state rather than of the business sector. The momentum of debate after the Cold War turned to place them on the business correspondingly (UNCHR, 2000).

Although the United Nations Guiding Principles on Business and Human Rights (UNGPs) has no binding status, it became an authoritative guidance for both states (whose duty is to protect human rights from abuse and provide access to remedy by third parties) and businesses (whose responsibility is to respect human rights) to prevent and address business-related human rights harms (Davis, 2012). In Thailand, despite the increasing number of human rights violations after the military coup in 2004 (Rujivanarom, 2018), the government of Thailand announced its intention to bring about business and human rights issue as its key national agenda, particularly by accepting national and international demands to officially implement UNGPs and adopt the national action plan on business and human rights (NAP) as an important mechanism to protect and respect human rights. With the launch of its 1st NAP in October 2019, Thailand became the 1st country in Asia and the 23rd country in the world to have officially adopted the NAP at the national level (RLPD, 2019). Undeniably, the initiative of the Thai government to implement UNGPs and adopt the NAP as an important implementing process marked a crucial step to guarantee the respect of human rights from all relevant stakeholders and to reiterate the will and commitment of the government to protect human rights. This study deeply explores Thailand’s engagement and motives in implementing UNGPs during the authoritarian regime after the military coup in 2014 to 2019 to shed some light in the future study on the state’s compliance with the international human rights norms. More importantly, although many academic works exist on the human rights issues in Southeast Asia, to date little interest and attention have been given to the attempt and motives of states to comply with the international human rights norm, particularly UNGPs. The objectives of the study are to enhance the understanding of Thailand’s approach towards the international principles of the United Nations related to the human rights value; and to explore the rationale behind the motives of Thailand to comply with the international human rights norm such as the UNGPs and adopt it into a NAP on BHR. The question guiding this research is “*Why has Thailand made concerted efforts and commitment towards the United Nations Guiding Principles on Business and Human*

Rights (UNGPs) through the implementation of the National Action Plan?” and the research hypothesis is “Thailand has developed the national action plan in accordance with the United Nations Guiding Principles on Business and Human rights in order to pursue its national interest”.

2. THEORETICAL PERSPECTIVE

As a single approach is inadequate to provide thorough understanding and explanation, the use of different approaches, particularly realism, liberal institutionalism, and constructivism, would serve the essential objective of this study and help analyze the states’ motive to comply with the international human rights norms. Scholars of IR tend to treat the foreign policy on international obligations as more or less epiphenomenal to the self-interest of the states, especially the way realists analyze the international politics (Sutch & Elias, 2007). Realists are skeptical about international law since the rules are always broken.; the agreements will last only as long as the state benefits from them and universal values will be recognized when it is within the states’ national interest (Morgenthau, 1940). It is interesting to note that self-interest is the key factor advanced by realism. As one of the prominent realists, Mearsheimer, stated, “if states comply with the standard of an international treaty, they do so because it is in their interest even if the treaty did not exist” (Mearsheimer, 1994-95). As such, the cornerstones of realism is power and national self-interest, because the characteristics of human nature are assumed to be egocentric, as mentioned by Wagner, that “realism sheds a light on the fundamental differences between domestic and international politics, in which domestic issues involve the monopoly of violence and states interact without the presence of any higher authority in the international arena.” (Wagner, 2014, p. 106). Hence, Goldsmith and Posner suggest one important dilemma - that states may have obligations under international law, but these obligations would have no influence over the behavior of states except in the interests of the people (for a democratic type of regime) or autocrats (in the autocratic type of regime) (Goldsmith & Posner, 2005, p. 188). In this sense, the national self-interest is likely to be an important motive of the state in compliance with international law and human rights obligations from a realist perspective. Therefore, the foreign policy setting of a state on the international obligation seems to be highly involved with ‘national self-interest.’

Robert Keohane, a prominent scholar, explains that for the most part, liberal institutionalism views states as “the unified principle actors that behave on the basis of self-interest similar to realism” (Keohane, 1984, pp. 269-71). Institutionalists assume that “states are the principal actors in world politics and that they behave on the basis of their conceptions of their own self-interests” (Baldwin, 1993). Furthermore, liberal institutionalists view the world as a pluralistic place, where various actors are engaging in international interactions, and global governance is an effective system to promote cooperation and foster collaboration among international institutions to address the global problems. Therefore, international institutions are considered more important than the realists suggest as they could bring states to cooperate with each other in preventing each state to take advantage over other states and to avoid anarchy and unequal gains from cooperation (Keohane & Martin, 1995, p. 394). In the end, the rules and norms

established by institutions reform the decision-making process of a state to encourage the state to cooperate by abandoning certain short-time goals to achieve greater benefits of long-term gains (Powell, 2002, pp. 421, 425).

Unlike realism and liberal institutionalism which treat self-interest as fixed, constructivists argue that states and their interest are socially constructed by “commonly held philosophic principles, identities, norms of behavior, or shared terms of discourse” (Koh, 1997, p. 2633), as the norms establish standards of appropriate behavior that are socially created to guide states to expected levels of conduct (Simmons, 1998, pp. 75-93). Wendt believes that shared understandings are highly valued by states, because states comply due to the respect of norms rather than the actual treaties (Wendt, 1992), while Finnemore contends that the utility of force hinges on legitimacy, because states are likely to comply with the international law and norms when it is considered acceptable behavior, particularly when the states calculate their interest according to what is considered acceptable (Finnemore, 2004).

3. LITERATURE REVIEW

For a comprehensive foundation of understanding, the section explores the previous existing scholarship on state compliance with international obligations for both strong and weak democratic states. Scholars have focused on the area of human rights as it became one of increasing interest. One of the earliest empirical works, the origins of the post-war European human rights regime examined by Moravcsik (2000), drew the counterintuitive advocates for a binding human rights regime by pointing out that the unstable democratic states are likely to be the strongest advocates for a binding human rights regime, whereas established democratic states and dictatorships are likely to resist such a regime because of the relative balance in each group of countries of sovereignty costs against the marginal benefit of enhanced political stability (Moravcsik, 2000). On the other hand, two particular groups of the state have been classified by Trachtman (2011), namely “high depth states” and “low depth states,” with “depth” referring to the extent of compliance in which the commitment would cause a state to take action or refrain from taking action aligned with their domestic preferences, as it is likely that the international commitment will be more politically costly for some states to accept and to carry out than other states. This is because the human rights obligations tend to be framed in a way that is consistent with liberal democratic states’ purely domestic preference, but is inconsistent with the authoritarian states’ purely domestic preference (Trachtman, 2011). Moreover, Simmons demonstrates that the states playing an active role in the international community mostly emerged from either a period of non-democracy or closed behavior (Simmons, 2000, pp. 819-35), while Gurowitz suggests that the insecurity of states on their status might lead them to strongly support the international norms (Gurowitz, 1999).

On the other hand, several works have also explored that “international reputation” is one of the major factors and becomes the driving force behind the state’s behavior in the international system. This is especially in the case of state compliance with international human rights agreements, where states seek benefits from the international community, as Simmons stated that “the central mechanism for securing compliance of the states is undeniably related to the reputation” (Simmons, 1998, p. 81). Meanwhile, Axelrod stated that “if the player can observe each other

interacting with others, they can develop reputations: and the existence of reputations can lead to a world characterized by efforts to deter bullies” (Axelrod, 1984, p. 168). Therefore, the role of reputation has also become a significant explanatory variable in the study of states’ compliance with international obligations. In this regard, the developing states are highly concerned about their status in the international community, particularly their reputation, because if they do not respect the rule of law and international norms, the negative reputation will affect their economic integration (Eyre & Mark, 1996). The states will use their international reputation to receive the bargaining position in the international community, as the states tend to improve their reputation in two circumstances: first, when they become a member of a regional organization or when they seek to join in a regional organization, and second, when they seek “foreign assistance” from countries which place the human rights value as the conditions to receive international support (Ramos & Falstrom, 2005, pp. 1-25).

Since the regional civil society is also the important actor playing a significant role in promoting the human rights and democracy in Southeast Asia, it is significant to observe a study of Clark, who investigated how CSOs (such as Amnesty International) has helped transmit international human rights norms to domestic settings. The study explored that human rights issues have progressively shaped states’ agendas when the legitimacy of these norms and of Amnesty itself has increased (Clark, 2001). In the case of Thailand, a cabinet resolution on business and human rights agenda recommending compliance with the UNGPs by the Thai government in 2016 is undeniably due to the influence of civil societies’ determined call on the government to regulate the outbound investment (Middleton, 2018, p. 92). Thus, the engagement of CSOs in pushing the human rights agenda at the national and regional levels should also not be ignored, although the major scholars have assumed that the core motive is the national interest whether in the form of economic benefit, reputation, foreign assistance, or the legitimacy of the government.

Another study also examined the state compliance of African countries (Angola, Burundi, Cameroon, Mauritania, Nigeria, etc.) with the recommendations of the African Commission on Human and Peoples’ Rights during 1994 – 2004. It identified the factors that have affected state compliance and found that the “maturity of the African regional human rights system,” “involvement of civil society originations” and “international pressure” are some of the main factors that have influenced the state compliance with the recommendations of the African Commission. While CSOs contributed significantly to contextualize in increasing the prospects for compliance, the international pressure also played an important role in persuading other states to implement the Commission’s recommendation (Viljoen & Louw, 2007). The results of the above-mentioned cases are very significant for the analysis of this study since it also investigates the factors behind the state compliance with international norms and obligations, particularly by some authoritarian states in Africa. Consequently, the gap in the literature has been observed, that the previous researches mostly focused on the interaction and response of the state to international obligations. Furthermore, it also investigates similar aspects of states’ motives to comply with the international obligations in the general context. The previous literature does not provide enough debates and arguments over the issue of states’ motives to implement the framework of UNGPs. Therefore, this study will be able to provide new literature on the motives behind the state’s efforts to implement UNGPs and adopt the action plan on BHR. The literature on this issue is also expected to shed some light on the knowledge on the interaction of authoritarian regime on the international human rights obligation.

4. RESEARCH DESIGN

The main objective of the study is to analyze the rationale behind the motives of Thailand to implement UNGPs by adopting the NAP on business and human rights. This could appropriately be conducted by a qualitative method through a case study design to increase the knowledge on this issue by using IR theoretical approaches. This would make it possible to study and analyze deeply the case and identify the tangible motives behind Thailand's implementation of UNGPs. By the qualitative method, the data collection of this study has been conducted through semi-structured interviews and documentation of primary and secondary materials, because the semi-structured interview is also known as one of the most dominant and widely used methods of data collection within the social sciences (Bradford, & Cullen, 2012). Furthermore, the content analysis method, as defined by Hsieh & Shannon as "a research method for the subjective interpretation of the content of text data through the systematic classification process of coding and identifying themes or patterns" (Hsieh, & Shannon, 2005, p. 1278), was conducted to analyze the data to be consistent with the research objectives and question, as it made possible for the author to understand the deepest sense of a text and how the interviewees understand the phenomenon. The interviews have been conducted with the key participants, who are the holders of knowledge in the area the author intended to investigate, and were conducted with six representatives from important organizations, namely: a representative from RLPD, the former Representative of Thailand to the AICHR, the representative from CSOs, and Representatives from NHRCT and representative from UNDP. On the gender consideration, the interviews were conducted with two male representatives from intergovernmental organizations and four female representatives from the government agency, NHRCT and CSOs respectively.

5. RESEARCH FINDINGS

This section exposes the research findings on the motives in implementing UNGPs by exploring various factors for the understanding of the mechanisms that drove the Thai government to reach a crucial step in the NAP adoption. To do so, the first foundation for the analysis will be laid down by focusing on the political motive of the authoritarian government, foreign and domestic coercions to implement UNGPs, and economic incentives on domestic export, transnational investment, and socialization and multi-stakeholder engagement of important actors in Thailand.

5.1 Political Incentive: Legitimacy and Reputation

According to Seree Nonthasoot, it is likely that the Thai government might consider BHR as a less sensitive issue of human rights that mainly involves business, and that it is the responsibility of the business to pay attention and work on, although BHR is a responsibility of all stakeholders encompassing both economic rights, and civil and political rights. (personal communication, August 20, 2019). For Sor Rattanamanee Polkla, both the government and the business have perpetrated human rights abuses in Thailand over the last few years in one way or another. This is

why the government wanted to improve the human rights violations to gain better reputation, especially by making a strong advocacy to implement UNGPs (personal communication, July 7, 2019).

After coming into power, the military government was concerned about their reputation, so they wanted to include the democratic norms and human rights values in the foundation of its policy. These new norms could very well have been adopted in line with the policy process aiming to restore the deteriorated human rights record. It also could be said that Thailand has made a strong commitment in implementing UNGPs and took an initiative to draft its NAP because it involved both the issue of business and human rights; the Thai government considered it as a win-win situation to bring about the policy for greater respect of human rights and to manage the risk of a human rights violation by Thai companies. The government was concerned about the reputational issue, particularly on the allegation of modern slavery in the fishery industry that has caused a negative image of the government and the business enterprises. Therefore, the government wanted to demonstrate its willingness to solve the human rights issue (L. Sarandrea, personal communication, June 11, 2019).

Thailand has reached a final process of implementing UNGPs by adopting the NAP, which indicates that a non-democratic government could also implement the liberal-democratic value. Hence, focusing on BHR, the Thai government has demonstrated a strong commitment to prove that the human rights abuses are not ignored in Thailand, perhaps with the government wanting to take the right moment in pursuing its legitimacy of power (S. Nonthasoot, personal communication, August 20, 2019). Therefore, this could be seen in the fact that both government and business also wanted to pursue their benefit by advocating BHR agenda at home to gain reputation abroad. After all, the Thai government has been trying to adopt 'new' more liberal sets of norms such as the UNGPs in an attempt to gain the legitimacy of the military government while being sensitive to the civil and political issue.

5.2 Foreign and Domestic Pressures

The business and human rights agenda has been raised and paid attention to when the report of human rights abuses concerning the Thai companies violating business-related human rights along with the twelve resolutions was submitted by NHRCT in 2016 to the Cabinet (NHRCT, 2018). This can be considered as an important starting point that attracted the government's attention to respond to the BHR agenda, particularly the implementation of UNGPs by drafting the action plan. The government became aware of this issue after receiving the complaints from NHRCT before approving the resolutions to implement UNGPs (S. Nonthasoot, personal communication, August 20, 2019). NHRCT decided to publish the report of business-related human rights abuses along with the twelve resolutions. Among them are the transformation of legislation and the implementation of UNGPs by drafting a NAP, and the submission to the Cabinet in 2016. As a result, the ministers accepted all twelve resolutions from NHRCT and urged the relevant agencies to make the action plan to solve this issue, particularly by appointing RLPD of MOJ as the government focal point to work on a NAP drafting process (P. Thontiravong, personal communication, July 2, 2019).

During the second cycle of the UPR process in May 2016, Thailand received from Sweden a recommendation to "*develop, enact and implement a National Action Plan on Business and Human Rights in order to implement the*

UN Guiding Principles on Business and Human Rights” (OHCHR, 2016). The recommendation made by Sweden during the UPR process has urged and rushed the authoritarian government to officially implement UNGPs by drafting a NAP on BHR. It also drew the attention of various relevant stakeholders, such as the government agencies, business sector, and CSOs, to discuss the BHR issue in various conferences and workshops (S. Nonthasoot, personal communication, August 20, 2019). The recommendation from Sweden during the UPR meeting has been made after NHRCT submitted a report to the Cabinet. It is not surprising that the government has immediately accepted the recommendation made by Sweden during the UPR meeting. The review of the human rights record of Thailand by the UPR process commenced on a positive note, as the delegation appeared to be willing to cooperate by immediately accepting the recommendation from Sweden. Even though the authoritarian government showed its willingness to implement UNGPs, the implementation stage has largely fallen short of these promises.

5.3 Economic Incentive: Domestic Export & Transnational Investment

Economic inducements, just as other means of coercion through sanctions, could be regarded as one of the motives driving the decision of the Thai government to accept the implementation of UNGPs at home. In fact, the EU and the US have sanctioned Thailand for the violation of human rights in its fishery industry, so it is likely that the government might be afraid of losing economic gain from domestic exports (Thai PBS, 2018). The military government realized it as another threat to the regime’s stability, aside from the military coup in 2014, so the authoritarian made use of its absolute power to solve the problem with due course. It can be said that the UNGPs was implemented in a quick process because of the absolute power of the authoritarian, particularly in the decision-making process, because of the pressure of external power, such as the IUU warnings from EU and the TIP report from the US, that has pushed the government to make a prompt decision as it brought many trading restrictions for domestic fishery exports and caused a huge problem for the domestic business in exporting products and operating a business abroad (A. Pongsapich, personal communication, June 20, 2019).

On the other hand, it is expected that the positive image of Thailand to the international community for its commitment in solving the domestic human rights issue by implementing UNGPs and adopting a NAP could guarantee the domestic enterprises the ability to operate their business as usual, because the business sector would gain the trust from the trade partners abroad (N. Paechaiyapum, personal communication, June 26, 2019). As a result, the national interest and interest of the business enterprises lay in the implementation of UNGPs from economic growth. In fact, there is a cost to pay in implementing UNGPs and adopting a NAP for the government, such as the cost of organizing training, workshop, meeting, etc., and of business enterprises on the internal policy adaptation in conducting the responsible business. In doing so, the Thai government might expect that the domestic economy will be increased. This is because the pressure from social movement and sanctions from international community has damaged the reputation of Thailand as a whole, which finally worsened the domestic economy when the companies could not operate their business as usual and bring the venue to the country (A. Pongsapich, personal communication, June 20, 2019).

5.4 Socialization and Multi-stakeholder Engagement

The Thai government has made good progress in implementing UNGPs due to the effective multi-stakeholder engagement during the NAP drafting process. The strong stakeholder engagement is considered as the outcome of capacity building programs by the relevant actors, which finally has pushed and urged the Thai government to be committed to implementing UNGPs and adopting the NAP. These important actors have played significant roles in various aspects. NHRCT has organized many important events to mainstream the BHR agenda in Thailand, particularly the conference organized in UNESCAP in 2017 that brought the important stakeholders to sign the Memorandum of Cooperation to work together on the implementation of UNGPs in Thailand (N. Paechaiyapum, personal communication, June 26, 2019). RLPD has organized the various workshops that conducted the baseline study of BHR before starting to draft a NAP (L. Sarandrea, personal communication, June 11, 2019).

Meanwhile, the government officials from RLPD were also committed to work on a NAP drafting process, whose efforts could not be ignored, particularly in organizing various training programs to the government agencies and business sector and raising awareness among the policymakers (S.R. Polkla, personal communication, July 7, 2019). For Intergovernmental organizations, AICHR Thailand was considered as a strong advocate of BHR both at the national and regional levels by playing the important role in organizing various conferences and workshops on BHR and UNGPs (S. Nonthasoot, personal communication, August 20, 2019). Meanwhile, UNDP has facilitated the organizing of consultations and workshops with the relevant stakeholders, especially in coordinating with the relevant UN agencies such as ILO and UNICEF, to provide some comments and inputs on the drafting NAP and to support RLPD for the technical terms (L. Sarandrea, personal communication, June 11, 2019).

6. DISCUSSION AND ANALYSIS

The study has brought a comprehensive insight into the tendencies of the Thai government toward accepting and implementing UNGPs, which shed a light on the details of compliance with international human rights obligations. The gathered data revealed that the strategic motives behind the Thai government have been in line with national self-interest. Therefore, the research findings fit with the realist framework, because the states are primarily driven by national interests to preserve their sovereignty, and self-reliance is inherited from the realist school of thought.

Furthermore, realists also put a special emphasis on international anarchy and assume that a state will comply with international law only when compliance is in the state's self-interest. With this notion, the states decide to abide by the international obligations only when it is in their self-interest to do so (Burgstaller, 2005). As a result, the states make a cost-benefit analysis in determining whether the cost of complying with the human rights obligations and of noncompliance outweigh the benefits. In fact, realists expect human rights violations to be widespread, because "it is not in most states' material interests to attach sufficiently high costs to non-compliance" (Cardenas, 2004, p. 219). Therefore, military intervention and sanctions are often necessary to coerce a noncompliant state into compliance

(Yang, 2006, p. 1131). Thus, from a realist perspective, powerful states, through the economic sanction from the EU and the US and also the recommendation from Sweden during the UPR process, have pressured the Thai government to do something to restore their reputation in order to avoid and end the economic sanction. In this sense, if the cost of compliance is lower than the significant sanctions and a state would incur high financial costs from failure to comply with international law, realists argue that a rational state will choose cooperation and compliance in order to avoid the economic loss (Helfer, 2002).

Moreover, it appeared that the initiative to implement UNGPs by Thailand could also be seen as the government's engagement policy to raise the country's business benefits from broader investment abroad and the domestic exports to gain greater market access. It can be seen that the increasing business-related human rights violations have caused a negative impact on national economic growth. From the realist perspective, a state is more likely to comply with international obligations when the calculation of compliance is economically beneficial (Elvy, 2013, p. 106). The contemporary realists also believe that "the interest in the reciprocal observation of treaty norms by other parties or a more general interest in the state's reputation as a reliable contractual partner should be counted in the trade-off of costs and benefits on which a decision is based (Caporaso, 1992)."

The study also reveals that socialization and multi-stakeholder engagement of important actors has pushed the Thai government to be committed to the NAP drafting process. In fact, these actors are engaged in one way or another in order to advance the implementation of UNGPs in Thailand. What is at issue is whether these institutions have been living up to their potential. However, it is clear from the empirical assessment that these actors can be effective in actualizing their mandates on business and human rights under a given set of enabling factors. Therefore, socialization is not the core motive behind the Thai government's committed efforts to implement UNGPs. The study argued that the Thai government has utilized the cost-benefit analysis and has been driven by self-interest logic of consequentialism to pursue its national interest in implementing the UNGPs framework at the national level. On the other hand, the authoritarian is likely to promote a liberal-democratic principle when it comes to its national interest, particularly the interest to its regime.

7. CONCLUSION

The study has highlighted that the authoritarian government has made a committed effort in order to pursue the realist incentive of self-interest, especially the interest of the authoritarian regime, and to uphold its reputation as a high-standing model of human rights with the implementation of UNGPs as a tool. At first look, its attitude seemed to reflect more liberal traits than realism egoism. The outcomes of gathered data have proven that the authoritarian government has made the cost-benefit analysis to pursue its own agenda and has only acted when national self-interest could be derived from the matter. Therefore, the core motives do not stem from the moral issues, but rather from striving to uphold its national self-interest, especially when the Thai government was pressured by more powerful states and wanted to restore its credibility for political legitimacy and to pursue economic benefit. This is related to

what Hathaway has argued that “*Compliance does not occur unless it furthers the self-interest of the parties by, for example, improving their reputation, enhancing their geopolitical power, furthering their ideological ends, avoiding conflict, or avoiding sanction by a more powerful state* (Hathaway, 2002, p. 1944).”

However, a couple of hypotheses should be explored further in other contexts. First, countries facing a sanction and pressure by the powerful states might be more likely to comply with international human rights norms than those where the threat comes from internal sources or where there is no perceived threat. Second, the change of government might also influence state compliance to the international human rights norm, especially the authoritarian state, in order to improve its human rights record. Third, a half-authoritarian and half-democratic state, when facing the pressure from powerful states and civil society movement, would be more likely to enter the international human rights norms than a full-authoritarian state or otherwise. Since the knowledge gained from this study is regarded as part of a larger body of research on state compliance with the international human rights obligations, the limitations of this study must be recognized - that it has only been conducted on the motives of Thailand during the authoritarian regime in the implementation of UNGPs. Therefore, further research should be focused on expanding the number of case studies, and more interviews with various backgrounds should be conducted for the future study.

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BARRIERS TO RECOVERY SUPPORT SERVICES FOR CHILD VICTIMS OF SEXUAL ABUSE: A CASE STUDY OF MAE LA CAMP, TAK PROVINCE, THAILAND

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ABSTRACT

The growing atrocities in the world cause immense suffering on refugee children, especially those confined in refugee camps. Child sexual abuse is prevalent in refugee camps, where both male and female children are at risk. NGOs in the camps provide essential services such as food, shelter, livelihood training, and also focus on protection mechanisms for the refugees. Programs focusing on strengthening camp governance mechanisms including codes of conduct, child protection, and sexual and gender-based violence are formulated to give refugees some scope of protection. But their efforts are witness to setbacks. Lack of adequate funds allow limited protection mechanisms for child survivors of sexual abuse. The researcher uses a case study approach and looks at a couple of organizations' viewpoints on the issue of child sexual abuse in the camps. This paper looks at the challenges NGOs face in providing recovery support and conclude that due to structural, financial and cultural barriers, children in the camps are neglected and not provided with adequate health and mental recovery services.

Keyword: Sexual Abuse, Refugee, Mae La, Safehouse, Tak Province.

AUTHOR'S BIO

Natasha Rahman (natasha.rahman11@gmail.com) developed a keen interest in the humanities when she was volunteering for a non-profit for persons with disabilities in Dhaka, Bangladesh. After completing her bachelors in English Language from North South University, she decided to pursue a subject that would enhance her understanding on the theoretical and practical knowledge of the protection of human rights. This drove her to join the Master of Arts program in Human Rights at Mahidol University. Her thesis is focused on the barriers NGOs face while providing recovery support services to refugee children in the refugee camps along the Thai-Myanmar border.

1. INTRODUCTION TO THE CONTEXT

In the 1940s, conflicts between Karen separatists and the Burmese army displaced many families who had no choice but to evacuate their homes in Myanmar to save themselves from the suppression of the military junta. Many refugees fled Myanmar and took refuge in Thailand. Around 80,000 refugees are now situated and are dispersed among the nine major refugee camps in the Tak Province of Thailand. Refugee children in the camps are born with inadequate medical facilities and a lack of livelihood and education opportunities.

Mae La is the largest camp for Burmese refugees and is at a particular risk of sexual abuse for children. Children below 18 years are usually subjected to sexual abuse. According to the respondents, by the time child survivors raise their voices against the perpetrator, either to a family member or guardian, they are reported to be terrified and have suffered from emotional trauma for months before they decide to speak up.

The camp now has over 50,000 refugees. Opportunities for mental, physical and emotional growth is minimal. Many young refugees are uninformed of life outside the camps and are penalized if caught outside the borders of the camps. This makes child protection issues a challenging task for the camp committee and camp section leaders. Camps also do not have easy access to basic needs such as shelter, medicine, food, water, and education.

The Committee for Coordination of Services to Displaced Persons in Thailand (CCSDPT) is a coordinating committee for 13 NGOs. They provide food, shelter and medical assistance to refugees in the camps. The CCSDPT is the coordinating body for the NGOs alongside the MOI (Ministry of Interior). The local agencies under the CCSDPT safeguard essential services, while the local personnel at the MOI oversees all operations (CCSDPT, n.d.). The NGOs provide essential services such as food, and basic shelter plus livelihood training. Local and international NGOs also focus on protection mechanisms for the refugees and create systems to strengthen camp governance mechanisms which include codes of conduct, child protection, and sexual and gender-based violence. However, NGOs' primary focus remains on fulfilling basic needs first. Hence, recovery support for child survivors of sexual abuse does not take precedence which leads to inaccessibility of services for child victims.

The paper is structured as follows: The first section provides an overview of the problem of sexual abuse in the camps in Thailand. This is followed by the literature review which discusses the gaps in the literature in terms of barriers to recovery support for child victims and how these barriers affect the children in the camps. The document then looks at the methodology and a discussion of findings. The paper concludes with remarks on possible future solutions to the problem.

2. LITERATURE REVIEW

The paper relies on available secondary data, particularly on existing literature and reports on the topic of child sexual abuse in refugee camps. The emphasis is on the role of the NGOs and the challenges they encounter when

providing recovery support. The researcher looks at a few concepts, such as ‘child sexual abuse’ and ‘barrier,’ that will further explain the context of the research question. According to UNICEF, Child Sexual Abuse is an activity between a child and an adult or another child who by age or development is in a relationship of responsibility, trust or power, the activity being intended to gratify or satisfy the needs of the other person (International Rescue Committee, 2012). The researcher uses the concept of barrier to look at it as a barrier to care, to identify how care services and recovery measures are inadequately provided for child victims of sexual abuse. Barrier to care limits people’s access to adequate healthcare. Existing literature on the topic (P Wispelwey et al., 2019) suggest that barrier to care is affected by geographical factors, social determinants, psychological impact and donor funding. For instance, when a child victim needs medical assistance, the child is taken to the nearest government hospital in Mae Sot, which is a 1.5-hour drive away from the camp.

More in-depth research is needed to study factors, such as victims’ social setting, their upbringing, and the overall relationship with family and the community they are a part of (Clark, 2018). There is a dearth in literature on specific methods of care for child victims, especially in a refugee camp setting. As protection mechanisms are minimal, children in Mae La camp are at risk of abuse. The environment they grow up in is unsafe. A UNICEF report (2012, p.24) pointed out that children in refugee camps are already in a vulnerable position as they are stateless. They are not in a position to question or challenge authority. Children are dependent on the adults for shelter, food and healthcare. This dependency makes it difficult for children to speak against the perpetrator.

Although there is some available literature on recovery of refugees and trafficking victims, the gaps lie in the rehabilitation and reintegration processes that NGOs and CBOs use in order to alleviate the child’s physical and emotional trauma. Slade (2012) gives a general description of how recovery services operate in camps. He reports that “recovery-oriented systems should focus on partnerships, inclusivity, personal control, and choice to enhance empowerment and self-determination.” Thus, NGO strategies should have a collective focus on building and facilitating inclusive programs that support child victims of sexual abuse.

In the refugee camps at Mae La, health-related services are provided by the member agencies within CCSDPT. However, these health services are not adequate to cater to refugee children who suffer from sexual abuse. When refugees first came to the camps in 1984, Thai authorities did not estimate this prolonged settlement of the refugees, hence provision relating food, education and healthcare were maintained at a minimal level.

Grants and funding are provided by organizations such as ZOA Refugee care and Australian Karen Organization for the maintenance of safehouses. However, the donor funds are first geared towards food, sanitation and shelter first hence children are stuck in overcrowded safe houses which makes it physically and emotionally taxing for their health. These aspects affect the children and act as a barrier to care for child victims of sexual abuse.

Children born in the camps are also deprived of medical and physical protection and lack access to education. Williams, Chopra & Chikanya (2018) states that refugee camps are “sites of disempowerment.” Similarly, limited access to education and employment leads to a loss of self-worth and isolation with nothing to look forward

to (Peterson, 2011). Many children in the camps are used to a life dependent on donor funds or relief. With insignificant provisions of physical and psychological growth, children are more at risk of physical and mental abuse (Karen Outreach, 2017). These limited access to education and medical care is a barrier to care for child victims of sexual abuse.

Lastly, the dynamics of power within the camp authorities and the conflicting interests with the Thai authorities influence the mechanisms in the camps. Governance of refugee populations in the camps involve multilayered relationships between the Thai authorities and the camp management actors (Olivius, 2017). This iron-grip over the administration of the refugee camps prevents NGOs to operate smoothly and denies recovery support for children. Moreover, as Thailand is not a signatory of the 1951 Refugee Convention, access to healthcare to refugees is limited. According to Chuah (2018), ‘inclusive policies, language, and cultural barriers, financial ability to afford and legal status’ are all barriers to care.

3. RESEARCH METHODOLOGY

The researcher has followed a narrative, qualitative research format. Apart from reviewing existing literature, the researcher has relied on interviews conducted with 6 research participants that are working in coalition with CCSDPT. The sample size looks at the in-depth scenario of the problem as experts in the field have been interviewed. The six participants work for the protection, legal and recovery support initiatives for refugees in the camps around the Thai-Myanmar border. Two respondents are Thai; one works in the legal services department whereas the other serves in women protection rights in Mae Sot for several years. One respondent is British and serves as a facilitator and coordination manager for the rights of displaced refugees in the Thai-Myanmar border camps for over 7 years now. One respondent is a member of the camp committee, of Karen background, and is living in Umpiem camp. The last respondent is of Burmese background and works with the SGBV committee in the camps for a couple of years. The paper is written on the basis of the findings and the data is analyzed using concepts. The paper follows a method of inductive reasoning: analyzing the observations, deciphering patterns and formulating an assumption to reach the final conclusion.

The research questions that this paper will address is;

How do the barriers impact these recovery needs of children affected by sexual abuse, and what needs to be done?

The objective of this paper is to show that, due to a combination of barriers such as governmental barriers, fragmented policy objectives, basic community structures, and weak reporting mechanisms in place, children who have been sexually abused do not receive the acceptable standards of medical, physical and emotional support that they require.

4. FINDINGS AND ANALYSIS

The researcher studied how external and internal barriers in the camps limit access to recovery services. In order to understand this, the paper took a rights-based approach. The researcher linked this approach to the international human rights standards to address the protection of children from abuse rights and their access to the best quality healthcare. The concepts of best interest of the child (article 3) and protection from abuse and neglect (article 19) in the Convention of the Rights of the Child (CRC) is used to analyze the data. The data collected is linked to the CRC principles and includes quality and accessibility of healthcare services as an indicator. This determined the challenges faced by NGOs in providing services to child survivors of sexual abuse. The researcher then described the concept of barrier that hinder recovery services. The researcher studied how child victims of sexual abuse are getting inadequate services due to the barriers NGOs face while providing recovery services. During the interview process, the researcher asked respondents to discuss the challenges that NGOs face in the camps when providing recovery services and suggested future solutions to the issue.

The researcher gauges how the external and internal barriers have an impact on the recovery support services for children in the refugee camps. The main argument in this section is that the various barriers mentioned by the respondents hinder the recovery support process for child survivors of sexual abuse. The section will start by explaining the challenges described by the respondents. Then, the researcher will link the services to the concept of best interest of the child. Finally, the researcher will move into the analysis of the findings to reach the conclusions on the research question.

The respondents mention that the crowded camp conditions are a hindrance in the camps. Basic sanitation facilities are a challenge, especially in a camp like Mae La which houses around 50,000 refugees. Hence, community programs for protection and prevention of CSA are not given topmost priority. The respondents also mentioned the lack of availability and access to safe houses, and its link to the protection of refugee children in the camps. With only one government-run shelter in the camp and 7 in Mae sot city, it gets difficult to house so many women and children in the dilapidated safe houses. These safehouses have minimal provisions in terms of mental health counselling support. Most of the respondents agreed that basic food, sanitation, and different needs are met by the safehouses, despite the stretching of resources. However, in terms of safety, the safe houses are made of bamboo enclosures and can house less than 80 people. Child survivors fear further attack in the safehouses as well. One respondent observes, “children usually under the age of 15 are victims of abuse. When they speak out about the perpetrator, they are reported to be terrified and have suffered from emotional trauma for months before they decide to confide in a family member.”

The respondents then describe the camp’s socio-cultural environment as a barrier. The respondents discussed the conservative belief system in the camps that further dent the response programs and initiatives for empowering children. Given the communal setting in the camps, children were afraid to report abuse in fear of their parents’ or neighbours’ reactions. Another respondent said that “sometimes, the cases that do get reported initially never plan to disclose the abuse at all, but the severity of abuse pushes them to report to authorities. Sometimes, the perpetrators are

their family members which complicates the power dynamics of that relationship, disallowing them to report immediately.” Respondents also pointed out that schoolteachers are either from the Burmese or the Muslim refugee community and are trained by the local community-based organisations that run on donor funds. However, they do not get trained on mental health services and are ill-equipped at observing children’s behaviours in schools. Also, respondents mentioned that camp residents are not open to the idea about learning about reproductive and sexual health rights. Hence, these factors act as barriers for NGOs to create proper intervention and awareness programs for the camp residents.

Through the findings, the researcher establishes that sexual abuse is prevalent in the camps, despite the active presence of NGOs and CBOs. As sexual abuse is a violation of the best interest of the child, this section addresses the principles of the best interest of the child, article 3, to highlight how the principles of best interest of the child are not met. The ‘best interest’ of the child includes physical, mental, and emotional needs. Most respondents agreed that there is a substantial number of children in the refugee camps that are victims of sexual abuse and have suffered immense physical and emotional trauma. They acknowledged that access to healthcare and psychological diagnosis is available but inadequate. Some of the respondents noted that there are healthcare providers, legal services and safe houses for children; however, these services are rudimentary and fail to serve the number of children facing sexual abuse in the camps. The principles in article 3 states that any action for children taken by public or private social organizations, courts, and other authoritative bodies should keep the best interest of the child under consideration. State parties also need to ensure a child’s wellbeing by taking into consideration the rights and responsibilities of the legal guardians and ensure appropriate legal and administrative measures. Correspondingly, the respondents’ thoughts on the topic can be connected to the factors in the camps that affected these criteria. Most respondents mentioned that as Thailand is not a signatory of the 1951 UN Convention on Refugees, Karen refugees are considered to be “illegal immigrants.” However, they do commend the Thai government for recognizing refugees as ‘displaced people fleeing fighting’ with a real claim to asylum in the refugee camps at the border and provided them temporary shelters. Vaghri,Z et al., 2019 argued that state parties, when fulfilling their obligations under the CRC, ‘must implement structural commitments,’ such as overarching policies in order to support refugee children that they are hosting. Moreover, they should align the general principles under the CRC to promote and protect the rights of refugee children to their maximum potential.

It is established that sexual abuse is a violation of a child’s right to be protected under the principles of Article 19, CRC which should ensure protection from abuse and neglect. The Article also addresses violence against children. Respondents discuss various reasons that affect the principle. They revealed that child survivors of sexual abuse did not receive protection from abuse and neglect.

The respondents indicated that cases of sexual abuse are of concern, and protective measures and traditional justice systems deny children the right to be protected under Article 19. To break down the principles of Article 19 further, the article outlines the right to respect all the other convention rights and introduce measures that address cases of child mistreatment. For instance, most respondents alluded that the structure of the camps are set up in a

bottom-up approach, so decisions to address cases of sexual abuse and punish perpetrators are made at the camp level and lead up to the government level. This becomes a long cumbersome process for refugees. The respondents pointed out that the judicial structure of the camps is not an independent body and face several instances of interferences from the camp administration bodies and the Thai authorities. This results in the dismissal of cases in the camps where child survivors of sexual abuse do not get justice even after reporting. Cases as such further discourage families to report. They alluded that in Karen camps, the authoritative figures were part of the camp committee and also the judicial system, hence justice gets denied for child survivors.

In terms of solutions, some of the respondents said that a stronger network between the CBOs, the NGOs, the camp committee and the Thai authorities needs to be established in order to resolve the issues of child protection and care. They emphasized the need of having sex education classes and awareness building programs for health-workers and families. Policy level change needs to be brought forward and strictly implemented in the camps. Respondents felt that customized measures to reduce the risk of sexual abuse in the camps need to be planned by the government and the camp authorities. For instance, NGOs need to focus more on post-medical services, such as psychological diagnosis specific to the case, on creating personalized family counselling and building safe houses that have designated protection personnel to protect the child from further violence and abuse. One respondent quoted that “Children are placed in safe houses to prevent further attacks, but are left in an unsafe setting, scared for their safety due to attackers lurking nearby. It questions the very nature of safe houses.” Also, the respondents mentioned that health professionals need to create assessment plans in a safe atmosphere where child survivors of sexual abuse can be given psychosocial support and counselling to alleviate their trauma.

5. CONCLUSION

The researcher found that in the context of the refugee camps in Tak province, there are discrepancies in the efforts made by the state and the NGOs. State efforts to realize the human rights obligations towards child survivors of sexual abuse, particularly in terms of health services, are lacking. Through the responses, the researcher found that health care workers and camp management are not in sync when it comes to having a structural system of protection for child victims. However, the researcher noted that despite all the setbacks, NGOs are trying to put their best foot forward.

Although Thailand has adopted the Child Protection Act in the national laws and ratified the CRC, Thailand’s commitment to protect refugee children from sexual abuse and ensuring their rights under the principles of the best interest of the child is not adequately met. In recent years, however, there have been some development in the refugee camps for the protection of children. Respondents believe that a more robust role needs to be adopted in order to ensure continued access to medical and health services and support children who have been victims of sexual abuse.

The researcher grounds this research project on a human-rights based approach. Thailand, as the host state, is the duty-bearer and is obligated to meet the requirements under the CRC, towards the rights holders, in this case, the children. For instance, the state should take an active role to make provisions for funds for NGOs and ensure that funds are properly allocated to rehabilitative services for children. The NGOs also need to create awareness-building programs and workshops to minimize the cultural notions around sexual abuse. Also, children in the refugee camps need a strong educational system to feel empowered. Community programs on consent, sexual health and options for reporting mechanisms should be made to inform the camp residents. Lastly, the researcher finds that, to minimize sexual abuse in the camps, it is necessary to hold states, NGOs, and CBOs accountable for the protection and prevention of sexual abuse. Sexual abuse is a gross violation of children rights, which are further denied due to governmental, social, and camp structure barriers that still exist in the camps, which underlines the cause of sexual abuse in the camps. Therefore, the researcher describes the challenges and discusses the solutions. With this, the researcher has answered the research question.

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SOUTH KOREA'S FOREIGN POLICY AS A MIDDLE POWER

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ABSTRACT

From President Lee Myung-Bak onward, South Korea has continually pursued various middle power policies. The Lee administration proceeded not only in self-identifying as a middle power, but also as a high-profile role in the international arena. Korea's middle power has continued in the following administrations.

Several previous pieces of research study Korea's middle power, especially on foreign policies, by applying various middle power concepts. Nonetheless, none of them has clarified the characters and qualifications. This study thus employs two concepts on middle power to analyze the characters of Korea. One is the concept that distinguishes traditional and emerging middle powers (Jordaan, 2003); another is on the five characteristics of middle power (Swielande et al, 2019).

Arguably, Korea can be characterized as a "hybrid" middle power, as it has mixed elements of both traditional and emerging middle powers. For the five criterions. Korea fits in only three of them, namely: capability, self-conception, and status. In regard to the regional impact, Korea has hardly achieved these qualifications. Such shortcoming is stemmed from both internal and external limitations. Internal constraints include the discontinuity of policy causes by presidential change and domestic politics, as well as the economic problems. External limitations are represented by great powers' rivalry in the region and the North Korea issues.

Moreover, Korea does not qualify for its systemic impact, but this seems to be the case for all middle powers, as this qualification is quite doubtful and should not be enlisted as a characteristic of a middle power.

Keyword: South Korea, Foreign, Middle Power, Characters, Qualifications, Foreign Policy.

AUTHOR'S BIO

Natchaya Chawalitchaikun (cnatchaya133@gmail.com) is a graduate student from the Faculty of Political Science, Thammasat University, who has a major in International Relations. Since her bachelor's study, Natchaya has always passionate to learn about East Asia studies, especially in South Korea. Furthermore, during the master coursework, she grew some interest in the middle power concept. Hence, she decided to explore and study more about this field. Then, she finally decided to combine two of her affection topics together and pursued a master thesis on "South Korea's Foreign Policy as a Middle Power."

1. INTRODUCTION

Global Korea Strategy reflected Korea's intention to become a leading international player. It referred to the vision of Korea to leave behind a habit of the diplomacy that narrowly focused on the Korean Peninsula and started to perceive the global arena as a platform for foreign policy and national interest.

Global Korea was a foreign policy strategy under President Lee Myung-Bak. According to the Korean Vice-Foreign Minister during that period, Kim Sung-Han, Korea has demonstrated the influence that a middle power may have on global governance through this initiative (Jojin, 2014, p.330). In short, Korea's middle power officially began under the Lee administration. This aspiration has continued until the present. Considering the development of Korea's middle power policies, Korea emerged as a middle power after the cold war and officially identified himself as a middle power under the Lee government. Nonetheless, Korea appeared to be like a middle power for the first time around the 1980s for its capability, while the aspiration and behavior were somewhat vague.

The Early Stage of Korea's Middle Power

It was not until President Kim Yong-Sam that Korea came to show its middle power aspiration. Korea implemented the Segyehwa Policy, along with joining the United National Peacekeeping Operation (UNPKO) and Organization for Economic Co-operation and Development (OECD) (Saxer, 2013, p. 400 - 401). The next administration, Kim Dae-Jung advocated the performance as a middle power more purposively, trying to play a leading role in the region and encourage cooperation and Initiative such as the ASEAN+3, East Asia Vision Group, and Third ASEAN-Europe Meeting. Importantly, Seoul pursued the Sunshine Policy to create dialogue and groundwork for the peace process on the Korean Peninsula (Levin & Han, 2002, p. 23 - 24). Meanwhile in the following government, Roh Moo-Hyun launched the Northeast Asia Initiative to facilitate cooperation in the region and to position Korea as financial and transportation hubs (Kim, 2016, p. 4). These three administrations can be classified as the "early stage of middle power," whereby Korea's capability was apparent, and the aspiration and behavior as a middle power began to take shape.

A Period of a Rising Middle Power

Under Lee Myung-Bak, Korea can be recognized as in a period of a rising middle power. Its middle power capability was matched by its aspiration and behavior. It was during this government that Korea's self-identification as a middle power began to be more explicit. This identity was prominent and influenced Korea's foreign policies. Global Korea was implemented, aiming to expand the scope of foreign policy to the global level. Korea paid attention to various international issues: international security, development cooperation, and green growth.

Seoul hosted a high-profile summit, such as the G20 Summit and the Nuclear Summit, and was actively playing a role as a good international citizen and pursuing a niche diplomacy (Kim, 2016, p.6). Moreover, Korea

enriched its middle power's position at both regional and international levels. It attempted to take a role as a convener, conciliator, and proactive agenda-setters in international forums as well (Kim, 2016, p. 5).

In short, the middle power element in Korea's foreign policies and its performance as a middle power seemed to be most prominent in this period. This posture has continued to the following administrations as most middle power policies have been sustained.

Continuity of Middle Power Diplomacy

The Park Geun-Hye and Moon Jae-In presidencies can be labelled as the continuity of middle power diplomacy. Under the Park administration, responsible middle power represents a key objective in Korea's foreign policies (Kang, 2013, p. 1). Middle power aspiration persisted as a few relevant foreign policies were carried out, though in different scope. There were three sub-policies under the philosophy of trustpolitik. Two of them were focused on the regional arena, namely Trust-Building Process on the Korean Peninsula and Northeast Asia Peace and Cooperation Initiative (NAPCI), while the middle power diplomacy got the least attention, as a result of the great power rivalry in the region (Kim, 2016, p. 6).

Nonetheless, Korea, along with Mexico, Indonesia, Turkey, and Australia, agreed to launch MIKTA, a cross-regional informal consultation group, intending to cooperate and address the complex challenges in the international community. As a chair of MIKTA, the Park government tried to consolidate cooperation and understanding among the member states through the first Senior Officials' Meeting (SOM), the fifth MIKTA Foreign Ministers' Meeting, and MIKTA Young Professional Camp (Ministry of Foreign Affairs, 2015).

In the current administration, the foreign policies under Moon Jae-In are aligned with middle power diplomacy, though without an official declaration of a middle power. The scope of foreign policy is regionally oriented, owing to heightened tension between the two Koreas. The Moon government pays more attention on North Korea, rendering other policies into a lower priority and limiting progress. Nonetheless, Korea was able to shine in handling the COVID-19 quite effectively. As a middle power, it committed to provide international contributions and assist other countries in coping with the pandemic (Khaliq, 2020; Park, 2020).

In brief, the Park and Moon administrations have continually pursued several middle power policies. Nonetheless, these foreign policies seem to be less prominent compared to Lee Myung-Bak. Apparently, middle power was less articulated and less emphasized during both presidencies.

This paper aims to investigate the characters and qualifications of Korea's middle power by applying the two middle power concepts, with the time frame of emphasis from 2008 to the present, covering Lee Myung-Bak, Park Geun-Hye, and Moon Jae-In. Moreover, this paper will be divided into three main sections; methodology, Korea as a "Hybrid" Middle power, and Korea and Its Limited Middle Power Qualifications.

2. METHODOLOGY

This study is a qualitative research which is based mainly on documentary and descriptive analysis. In terms of data collection of this study, it would be gathered from both primary and secondary sources.

1. *Primary Sources*

Korea's policy statement, the president's speeches, and the official government report.

2. *Secondary Sources*

Existing academic works, textbooks, papers, articles, and past government interviews.

Accordingly, this study would deepen the understanding on Korea's middle power. It would give priority to analyzing the characters and qualifications of Korea by applying the two middle power concepts. One is the constitutive and behavior differences between the traditional and emerging middle powers by Jordaan (2003), with the aim to answer the question, what kind of middle power is Korea? Another concept is the five characteristics of middle power by Swielande et al. (2019), intending to assess Korea's middle-power qualifications.

3. KOREA AS A "HYBRID" MIDDLE POWER

This section applies the middle power concept by Jordaan (2003) in assessing Korea's characters. It would consider both constitutive and behavior differences. Thus, this concept should analyze and answer the question "What kind of middle power is Korea?"

Distinguishes of Traditional and Emerging Middle Power by Jordaan (2003)

In the Concept of a Middle Power in International Relations: Distinguishing between Emerging and Traditional Middle Powers (2003), Jordaan represents the constitutive and behavior differences between the traditional and emerging middle powers, which could be explained as follows;

Table 1: Constitutive and Behavior Differences of Traditional and Emerging Middle Powers

	Traditional Middle Power	Emerging Middle Power
Constitutive Differences		
position in political economy	Core	semi-periphery
political system	stable democratic states	newly democratic or non-democratic states
timing of emergence	during the Cold War	after the Cold War
regional integration and influence	less active in regional cooperation, low influence in the region	Always active in regional cooperation, highly influential in the region.
Behavior Differences		
behavior	pursues humanistic values and activities/ good international citizenship	seeks to play a dominant role at the regional level.

Source: Jordaan, 2003, p. 165 – 177

Korea And Its Characters as A Middle Power

Constitutively, Korea emerged as a middle power after the cold war from a semi-periphery. It thus fulfills two elements as an emerging middle power, namely timing of emergence of a middle power and position in political economy. Nonetheless, while taking the political system and regional integration and influence into consideration, it could be said that Korea possesses some traditional middle power elements as well.

For the political system, Korea could be regarded as a stable democratic country. One of the examples is the political chaos during the Park government. Public opinion mattered. Moreover, there was no force power to intervene. Thus, the impeachment process went according to the system. In regard to regional integration and influence, during the last three presidencies, Korea has attempted to play some roles at the regional level. Nevertheless, by cause of the difficulty posed by its geopolitics and the preoccupation with North Korea, Seoul's position and activities in the region are somewhat limited. Its influence in the region is relatively low. Hence, by considering this aspect of constitutive differences, Korea obtains an element as a traditional middle power.

For behavior differences, Korea's behavior represents the traditional middle power element. It has acted as a good international citizen and pursued globally oriented foreign policies. Seoul has also paid attention to various rising global problems such as international development, environment, and security. For instance, Korea actively

implements the ODA Policy in providing international assistance and sharing its economic development experiences with others. Importantly, Korea also takes an active role in several international forums, especially in hosting the G20 summit.

Although Korea sometimes tries to pursue some roles at the regional level and attempts to implement some regionally oriented foreign policy, nevertheless, Korea is rarely capable of playing a ‘dominant’ role in the region. This results mainly from constraints generated by its geopolitics, specifically large regional players such as China and Japan, and the preoccupation with North Korea. Accordingly, there is quite limited emerging middle power element in Korea’s behavior.

In short, Korea corresponds to the elements of both traditional and emerging middle powers. Accordingly, Korea does not specifically qualify as any kind of middle powers. It could be recognized as a “hybrid middle power.”

4. KOREA AND ITS LIMITED MIDDLE POWER QUALIFICATIONS

This section considers the five characteristics of middle powers by Swielande et al. in analyzing Korea’s qualifications as a middle power.

Five Characteristics of Middle Power by Swielande et al. (2019)

There are many definitions and approaches toward middle power. Importantly, there is no universal concept in explaining this phenomenon. Many of them consist of weaknesses and loopholes. Some have already been applied to study Korea and its middle power. Thus, this paper aims to apply the new middle power concept by Swielade et al. in assessing Korea’s middle power qualifications, as it might bring into light aspects of Korea’s middle power.

On the Rethinking Middle Power in the Asian Centuries: New Theories, New Cases (2019), by Swielande, Vandamme, Walton, and Wilkins, they present a new definition of middle power which consists of five characteristics;

1. Capability: middle power own medium-range capacities both material and non-material.
2. Self-conception: middle power has to consider oneself as a middle power.
3. Status: middle power should be recognized and respected by others.
4. Systemic impact: middle power should have an ability to adapt, affect, or influence the specific element of the international system.
5. A country’s regional impact: middle power should effectively perform as a middlepowermanship regionally or manage its relationship with the superpower in the region. (Swielande et al., 2019, p. 19 - 23).

These characteristics would study and analyze Korea and its middle power qualifications.

Capability

Capability indicates that middle power should own medium-range capacities, both material and immaterial (Swielande et al., 2019, p. 19). Although by adhering to this characteristic alone, it might be inadequate to appropriately identify one as a middle power. But capability could not be overlooked, as it is an important resource that enhances middle power status and at the same time, supports foreign policy implementation. For Korea, it fulfills this qualification as a middle power on both material and immaterial capacities.

1. Material Capacity

Korea possesses financial resources, population, human capital development, military capabilities, and technological advancement. All of them assist Korea in enhancing its middle power position and supporting its foreign policies. In terms of financial resources, it is one of the significant assets for Korea in behaving as a middle power and strengthening its status at the international level.

Although in terms of its territorial size, Korea is a fairly small country, but as it reached a number of 50 million in 2012, its population is considerably large (Lee, 2012, p. 1). Currently, Seoul is listed as the 28th world most populous (World Population Review, 2020). Korea also improves the quality of living, education, and healthcare system for its population. It thus came in as 2nd in Human Capital Index (HCI), showcasing its competency and productivity for the next generation (World Bank, 2018, p. 32).

Korea also holds some military capabilities. In 2010, Korea had the 12th largest military expenditures, ahead of other middle powers such as Australia and Canada. At present, Korea is among the top six world's most powerful military nations (Global Firepower, 2020). Moreover, Korea continually sent military personnel to the UNPKO. Technological advancement is part of Korea's material capacity. It is utilized to support economic development and infrastructure improvement domestically. Moreover, Korea has applied its technological advancement to further several foreign policies and oversea projects.

2. Immaterial Capacity

Korea possesses some immaterial capacities. One of the most explicit examples is its soft power resources. These resources apply to support Korea's foreign policies as a middle power. Korea's soft power resources are quite notable and unique. It acquires powerful cultural resources, especially the Korean Wave or Hallyu. These cultural resources were applied, in the aims to recover Korea's national image, adjust the other perceptions toward the country, and at the same time, enhance its position and influence at the global level.

Its values, such as green growth and model for economic development, allow Korea to expand its foreign policies as a middle power and pursue some roles in several international problems, along with creating some

opportunities for Korea to actively participate in international forums. Moreover, Korea applied foreign policy as a soft power by making several official visits to other countries. These soft powers resources assist Korea in strengthening its middle power position and effectively connecting with various countries.

Self-Conception

To identify one as a middle power, self-conception is considered a necessary condition. Self-conception explains that middle power has to consider oneself as a middle power. This characteristic represents that the self-perceived role of each country would influence its position in the international community. Thus, it is significant to assess and consider self-conception as a middle power when studying middle power (Swielande et al., 2019, p. 20).

During the last three administrations, it can be argued that Korea has always had self-conception as a middle power. All of these could be explained as follows;

1. Self-Conception under Lee Myung-Bak

It was during Lee Myung-Bak that Korea's self-conception began to be more explicit. The initiation of Global Korea Strategy is one of the strong pieces of evidence supporting Korea's middle power identity, as Korean Vice-Foreign Minister in that period, Kim Sung-Han, stated, that Korea demonstrated the influence that middle power may have on the global governance through this initiative (Jojin, 2014, p.330).

This identity encouraged Korea to take a position in dealing with rising global problems and to become more alert in international forums. Korea also actively pursued a role as a convener, conciliator, and proactive agenda-setter in the international forums, namely the G20 Summit, the Nuclear Security Summit, and Fourth High-Level Forum (HLF) on Aid Effectiveness. In addition, this middle power conceptualization has been endured to the following administrations.

2. Self-Conception under Park-Geun-Hye

Park Geun-Hye also has a self-conception as a middle power. Being a responsible middle power was part of Korea's foreign policy objective, though it was not as strong as the previous administration. Under the philosophy of the trustpolitik, the middle power diplomacy was also launched in response to its aspiration. Nonetheless, this policy was not prioritized by the government, as a result of the fear to provoke any misunderstanding between China and the United States.

Importantly, Korea joined with other middle powers - Mexico, Indonesia, Turkey, and Australia - in the MIKTA, aiming to create a mutual understanding, support the bilateral ties, find a common ground for cooperation, and carry out the initiative on international matters. In short, Korea expressed its middle power aspiration by cooperating with other middle powers through this platform.

3. Self-Conception under Moon Jae-In

Moon Jae-In does not officially claim itself as a middle power. Nonetheless, in some of his speeches, President Moon Jae-In has mentioned middle power several times. This thus accentuates that this administration still concedes its position as a middle power. Furthermore, the main themes of Korea's foreign policy include peace, prosperity, well-balanced development throughout the region, multilateralism, and values. In accordance with Howe and Park, this could be recognized as a characteristic of a middle power in the international community. Accordingly, Korea's foreign policy strategies are largely wedded to middle power diplomacy (Howe & Park, 2019, p. 125).

Status

By perceiving oneself as a middle power, it is not sufficient to identify a certain country as a middle power. Middle power must be accepted and acknowledged by other countries as well. The third characteristic of a middle power, "status", refers to the recognition and respect as a middle power in the international community (Swielande et al., 2019, p. 20).

Korea's status as a middle power is not that recognizable compared to established middle powers such as Australia and Canada. However, under the last three presidencies, there are various shreds of evidence supporting that Korea's status is respected by the international community. After its middle power aspiration became explicit, Korea's middle power status was strengthened when it hosted and participated in various international negotiations and meetings, especially the G20 Summit. It was perceived by the United States as an ideal candidate to be the first non-G7 member and also the first Asian country to host this summit.

Korea also organized the Fourth High-Level Forum on Aid Effectiveness (HLF-4) in 2011. This summit provided an opportunity for Korea to share the development experiences and potential for leadership, along with attempting to accomplish the aid effectiveness (Green, 2017, p. 25 - 27). Accordingly, Korea's accession to the G20, joining the Development Assistance Cooperation (DAC), and participation in the various multilateral platforms were a confirmation of Korea's status as a middle power (Watson, 2016, p. 1).

The status was built up when the Global Green Growth Institute, a global environmental organization, was established in Seoul in 2010. This is the first kind of UN-led international organization hosted by Korea. During the Park administration, Korea's middle power status was realized by its international community as Korea engaged in MIKTA and coordinated with other middle powers to solve the rising international problems.

Under the current Moon administration, the status as a middle power is bolstered as Korea actively offers both financial and humanitarian assistance to the countries that suffered from the COVID-19. In addition, Seoul ranks 14th in the Global Soft Power Index, entailing that Korea's capability, position, and influence in the international community is apparent (Brand Finance, 2020, p.4).

Systemic Impact

Systemic impact is defined as the ability to alter or affect specific elements of the international system. This concept emphasizes that middle power would have better knowledge and expertise on specific issues especially the regional tension and reality. It is capable of detecting opportunities and developing approaches more quickly than a great power. Apart from being a follower, a middle power could take a role as a reformist, creating new innovation to change the international order. Accordingly, middle power would generate the systemic impact, along with influencing both great and small powers (Swielande et al., 2019, p. 20).

This concept is doubtful, as it is not likely for any middle power to change or affect the existing international order, not to say it has ability to influence great powers. There are rarely any examples/cases in explaining or clarifying this concept either. Furthermore, it is quite dubious to include such a concept as one of the characteristics of a middle power. It is hardly possible for any middle power to fully qualify as one if it has to fulfill this criterion.

Accordingly, as the concept of systemic impact is quite vague and not that realistic, this study would not apply this criterion in assessing Korea and its qualifications as a middle power.

Regional Impact

The regional impact is the last characteristic of a middle power, meaning that middle power should either be capable of performing the middle powermanship in the region or, in the worst-case scenario, should at least successfully manage its relationships with the great power in the region (Swielande et al, 2019, p. 23).

1. Regional Impact as Ability to Perform as a Middle power Manship in the Region

When it comes to the question whether or not Korea has a regional impact, the answer would probably be “NO,” in consideration of its capability to act as a good international citizen in the region. Although there is some aspiration to pursue some roles and act as a good international citizen in the region, nonetheless, Korea rarely creates any regional impact.

This is mainly by cause of its geopolitics; Northeast Asia is home to countries with strong economic and military capability such as China and Japan. When comparing to these countries, Korea’s capability is not as strong and its position. At both the global and regional levels, Korea is more inferior (Lee, 2016, p. 6). Moreover, the relationship between Korean and the other Northeast Asia countries is not really in a good term. This resulted from historical context and territorial disputes. Any regionally-oriented initiative or foreign policy came up by Korea is not likely to receive an adequate attention from the other countries. Thus, this can be considered as a constraint for Korea to actively implement its foreign policies and generate regional impact.

Moreover, its preoccupation with North Korea is considered as one of the constraints for Korea to have a regional impact, as it takes away the essential resources and attention that could be applied to support the foreign

policy. Thus, when tension with the North arise, other policies are likely to slip to the lower priority and barely have any further progress.

Korea also confronts some international constraints. Firstly, as a result of the five-year term of the president without any other term being allowed, Korea's foreign policy lacks continuity. Seoul often comes up with many foreign policies and initiatives that would soon fade away. Furthermore, Korea's government sometimes do not implement its foreign policies seriously. Most policies were initiated, but rarely fully supported by the government. Some of them did not receive adequate financial support, while some faded away by cause of political problem or lack of attention in the particular period. Accordingly, Korea is not capable of effectively implementing policies or carrying out activities. In other words, Korea could not perform as a middle power manship in the region, entailing that Korea rarely has a regional impact.

2. Regional Impact as Ability to Manage Relationship with the Great Power in the Region

Considering another aspect of the regional impact, whether or not Korea could manage its relationship with the great powers in the region, this concept might be problematic, as there is rarely any case of a middle power who can successfully manage the relationship with great powers. However, in respect to this element, as great powers' rivalry always lays as a constraint for Korea's middle power policies, it could be argued that Korea hardly has ability to manage a relationship with the great powers in the region, although Korea sometimes uses the hedging strategy in response to great power rivalry.

For example, under the Park Geun-Hye administration, Korea maintained its relationship with the United States and simultaneously restored its ties with China. It expressed the willingness to join the Trans Trans-Pacific Partnership (TPP) and, at the same time, also decided to enter the Asian Infrastructure Investment Bank (AIIB) as a founding member (Park, n.d., 63). Thus, Korea pursued a hedging strategy in this kind of situation to maximize benefits and minimize risks that might occur. The other example is when the United States military threatening against North Korea and Japan moving toward remilitarization, the Moon Jae-In government then pursued a hedging strategy toward China to create space from these problems (Fowdy, 2017).

It seems that the hedging strategy is the best Korea can do to protect its national interest. However, Korea is incapable of managing the relationship with the great powers in the region. Korea has not effectively handled this relationship. Therefore, great powers rivalry remains one of the limitations of Korea's foreign policies until the present.

According to two aspects of regional impact, though there is always an attempt to deliver a foreign policy and encourage some cooperation at the regional level, Korea could however not pursue a leadership or good international citizen role in the region. It could not manage a relationship with the great powers either. All of these mainly result from both internal and external limitations that Korea has encountered. Accordingly, it is quite clear that Korea's regional impact is somewhat lacking.

5. CONCLUSION

In accordance with the concept that distinguishes traditional and emerging middle powers by Jordaan, Korea can be classified as a hybrid middle power. It obtains the attributes of both kinds of a middle power. On one hand, Korea emerged as a middle power after the cold war from the semi-periphery. Thus, it renders some characters as an emerging middle power. On the other hand, Korea corresponds to the traditional middle power. Seoul is a stable democratic state who has quite limited regional influence. Its behavior is also in-line with the traditional middle power, as Korea actively pursues some role at the global level through various high-profile summit, positions as a good international citizen, and pays attention to various rising international problems.

For the five characteristics of a middle power, Korea could be regarded as a limited middle power. It qualifies as a middle power for three elements, namely capability, self-conception, and status.

Being a country that is full of both material and immaterial capacities, along with having a self-conception as a middle power. Even though its scope of foreign policies is changed according to the president, Korea has always enthusiastically behaved as a middle power from president Lee Myung-Bak until present. Several foreign policies and oversea activities related to middle power are thus carried out at both regional and international levels through various policy implementation structures. Korea is also respected by the international community as a middle power.

For the systemic impact, Korea is not qualified for this qualification, but this is always the case for other middle power as there is virtually no middle power that can shape the international order. Therefore, this element should not be enlisted into a middle power's qualifications.

However, Korea is a middle power that rarely generates any regional impact, mainly by cause of its internal and external constraints, such as geopolitics, preoccupation with North Korea, lack of the continuity, and lower priority on foreign policies.

Some limitations should be noted, as the systemic impact and some aspects of regional impact are somewhat problematic. The concept on systemic impact is quite doubtful, whether or not this concept is appropriate to be considered as a characteristic of a middle power. In terms of regional impact, one aspect of the concept, ability of middle power to manage the relationship with the great power, is questionable as well. Accordingly, there are some loopholes within the middle power concept presented by Swielande et al.

Combining the two middle power concepts, it shows that Korea is a hybrid middle power when its characters are considered and could be respected as a limited middle power for its incomplete qualifications. This highlights Korea as a different case of a middle power. Importantly, it also implies that the existing concepts on middle power might not be able to capture the middle power completely.

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RETHINKING THE FUTURE OF THAI FISHERIES: COVID-19 AND VULNERABLE GROUPS IN THAI FISHERIES SECTOR

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ABSTRACT

Fish and fish products are one of the most traded food products in the world, with 38 percent of fish and fish products in global trade. Therefore, fisheries are important to the livelihoods of many fishery dependent communities. In the face of the crisis, fisheries sector has been impacted quite early during the spreading of COVID-19 pandemic from the restrictions and closures of seafood supply chains in both global and domestic markets.

Thailand has been one of the top seafood exporters for over decades, which its sector has heavily relied on migrant labours from neighboring countries. Throughout 2010s, Thailand had been watched on situations of labour exploitations in seafood industries. Although the situations have been improved, however, it was stated in 2020 Trafficking in Persons Report that migrants working in fisheries are still in vulnerable situations. Moreover, since 1960, the Thai government has emphasized on supporting commercial fisheries. Thus, makes small-scale fishers have lacked of sufficient support.

Since the crisis has highlighted vulnerabilities, this presentation attempts to (1) examine impacts of COVID-19 pandemic to migrant labours in Thai fisheries and small-scale Thai fishers, who are vulnerable groups in the sector, as well as (2) to discuss the Thai fisheries prospects.

Keyword: Thai Fisheries, COVID-19, Vulnerable Groups, Thai Fisheries Sector.

RIGHT TO CITIZENSHIP OF BURMESE MUSLIM MINORITY: AN ANALYSIS OF MYANMAR DEPARTMENT OF IMMIGRATION'S DISCRIMINATORY CITIZENSHIP POLICY

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ABSTRACT

With Myanmar's current population of 53.37 million, almost a third do not have a citizen card. Among them are the four Muslim minority groups, who are not even acknowledged in the 135 known ethnic groups in Myanmar. The country's Muslim population are considered stateless.

This study questions Burma's Muslim minority plight in their attempts to acquire their citizenship through the application of a citizenship card (pink card). The study analyzes the practice of acquiring citizenship rights among Burma Muslim minority groups, who have low chances of acquiring the pink card from the Immigration Department of Yangon, Myanmar. The method used for this study is the qualitative research method done through a case study design approach that analyses and observes both secondary and primary data. The study argues that discrimination in legal practice against the Burmese Muslim minority is empirically existing.

The possession of citizenship assures access to other fundamental human, political, economic, and social rights. The Burmese Muslim minority is a particular case in where the deprivation of the fundamental human right of nationality leads to persecution and discrimination. Therefore, the right to have nationality is often regarded as the "right to have rights."

Keyword: Citizenship Right, Violation of Legal, Political and Social Analysis, Experiences of Getting and Not Getting Citizenship Card, Statelessness.

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1. INTRODUCTION

Myanmar (formerly Burma) is the second biggest country of mainland Southeast Asia and has a current population of 53.37 million. As a Buddhist religious country, Burma has a Muslim population of 6 to 10 percent, according to the US State Department's 2009 International Freedom Report. For a long time in the country's history, the Myanmar government has not respected and taken responsibility for the members of Burma's Muslim community. More than 200 years ago, before Myanmar's independence from the British, Burma's Muslim community settled in the different states of Myanmar without having their own. Until now, they continue to be a stateless community in Myanmar.

Burma's Muslim population has four ethnic minority groups:

- (1) Pantay as the largest group, including the Rohingya of Arakan;
- (2) Burma Muslims, who converted to Islam in the time of the Burma Kings;
- (3) Indian Muslims, who were born in Myanmar of both Indian parents; and
- (4) Zerbadee, from mixed marriages between Indian Muslim fathers and Burmese Mothers, (Mason, 2016).

Background

General Ne Win began his rule of Myanmar in 1962 when the country was still known as Burma with the so-called Burmese Socialism as the type of rule. At that time, he divided the Myanmar people into 135 ethnic groups without taking into account religious identities. This categorization of ethnic groups became part of the 1982 Citizenship Law and was announced by the Myanmar government in 1982 (Salloum, 2013). As a result, this law discriminated against the minorities who include not only Burma Muslim groups but also other minority religious groups such as Christians and Hindus living in Burma for 400 years.

Legal Discrimination

The legal basis that defines citizenship in Myanmar is the 1982 Citizenship Law. This law has three different types of classifications of citizens which define the specific rights and benefits allowed to each. Each category is assigned a different color on the citizen card.

- 1) True citizenship, Citizenship Scrutiny Card (CSC) (pink card); basic education, health care, driver's license, property ownership, higher education, passport;
- 2) Associated Citizenship, Associated Citizenship Scrutiny Card (ACSC) (blue card);
- 3) Nationalized citizenship, Naturalized Citizenship Scrutiny Card (NCSC) (white card);

However, it is unclear where Burma's Muslim community fit into these categories. As a result, when people from Burma's Muslim community get their national identification cards, they do not receive the pink cards, which are the true citizenship card.

The 1982 law does not specifically identify the Burmese Muslim community as citizens. Before the 1982 law, citizenship was granted to those who were in the country before 1947. Burma's Muslim community was entitled to citizenship if they could prove their ancestors were in the country before 1947 (Myanmar Constitution, 1947 and 1974). This citizenship is based on the colonial British's definition of citizenship as those primarily belonging to the "national race." However, this 1982 law changed the citizenship status of Burma's Muslim community without a clear criterion for deciding the type of citizenship entitled to the Muslim community. As a result, some members of Burma's Muslim community are restricted from moving around the country and from access to education and social services. The law and its three categories of citizenship have resulted in negative consequences for Burma's Muslim community. For instance, if a Burmese Muslim completes a degree program but does not have a True citizen card, they will not be awarded a degree of completion and will not be able to continue their education at the graduate level. These are human rights violations of the Right to Citizenship amendment of 1982 (Justice, I.C, 2019).

Political Elements of Legal and Non-Legal Barriers

The documentation requirement, the 2008 Constitution, and the 1982 Citizenship Law have created barriers and discriminatory practices for the Burma Muslim minority groups in Yangon, Myanmar to obtain a true citizenship card (UNHCR, 2018). The Ministry of Labor, Immigration, and Population (MoLIP) is responsible for protecting the Right to Citizenship Laws, removing legal and practical obstacles concerning the required documents and assisting with the citizenship application process which includes the gathering of evidence to prove residency of 10 or more years. In this situation and context, the researcher aims to expand the existing knowledge on who applied for a citizenship card and the experience of receiving or not receiving a citizenship card.

Another problem with the 1982 citizenship definition is that it provides the basis for the legal discrimination of people based on their religion. The categorization has left Burmese Muslims a stateless people by preventing them from obtaining a citizenship card in Burma. When a Muslim applicant goes to make a claim as a Burmese by birthright, the Department of Immigration personnel tells the applicant that they will not issue them a citizenship card. Instead of revising the categorization system, the Department of Immigration asks Muslim applicants to claim foreign countries as their bloodline, making them a Missed Blood Person. They must choose from four countries: India, Bangladesh, Pakistan, and Malaysia. Burmese Muslims are facing human rights violations because of this institutionalized practice that has become legalized social and religious discrimination (Taylor, 2016).

Social Stereotype and Discrimination

Myanmar (Burma) has been a Parliamentary Republic of a Unity Government since the 2008 Constitution. However, the 50 years of the military government system remains a part of the present government system. This is a problem the National League Democracy (NLD) government finds difficult to control. The military still holds a large amount of power in the government sector because 25 percent of the military leaders participate in the State, Regions, and Union Parliament sessions. Most of the ministries, such as the Ministries of Labor, Immigration, and Population Officers (MoLIP), are composed of military officers. The military has employed the following slogan as its motto

since 1995: "The earth will not swallow a race to extinction but another race will" (<http://www.mip.gov.mm/>). This idea could be propaganda instituted at the local level of the immigration process of receiving a citizenship card. Burma does not recognize dual citizenship; naturalization in another country immediately voids Burmese citizenship. Furthermore, "foreigners" cannot become naturalized citizens of Burma.

Economic, Social, Mental Problems

The three categories of citizenship of the 1982 Right to Citizenship Law is the legal basis used by the immigration office to discriminate against the Burmese Muslim community in Myanmar. The 1982 law does not clearly explain the classification of the three types of citizenship, and this has caused confusion among Burmese Muslims and the government officials of the Immigration Department in Thingangaung Township, Yangon Region (Win, 2018). If Burmese Muslims want to get a citizenship card, the process is confusing because the immigration officers are inconsistent in applying the 1982 Citizenship Law. This form of discrimination impacts their ability to advance professionally and academically in society, and limits their access to basic living needs, which leads to economic and social problems. The right to work in the government sector and other rights are among those ignored by the Department of Immigration and Passport Office due to the lack of knowledge of human rights, human dignity, and human security. This is the reason for the Burma Muslim community's economic problems.

Nevertheless, the Government's Department of Immigration takes the position that Burma Muslims are mixed-blood persons, and therefore they do not belong to the citizenship of Myanmar (Burma). On the contrary, they are assumed as citizens or descendants of other group of countries such as India, Bangladesh, Malaysia, and Pakistan. The 1982 Citizenship Law does not identify a clear position on these issues.

Social discrimination is the second problem of the citizenship card because the applicants' religious identity on the card distinguish them as a Muslim. As a result, Burma Muslims are also facing discrimination issues based on the citizen's card. When they apply for jobs in the public and private sectors, they cannot quickly get the jobs. On the issues around their citizenship cards, they would like to remove religious identification from their citizen cards (Mason, 2016).

The objective of the study is to analyze the practice of fulfillment of rights to citizenship among Burma Muslim minority groups who try to acquire the true citizenship card (pink card) from the Immigration Department of Yangon, Myanmar.

2. GREETING THE EXPERIENCES OF APPLYING FOR THE CITIZENSHIP CARD

Khin Ma Ma explained that a man in her village wished to migrate to Thailand for work. He paid 3,000,000 MMK (approximately USD 2,200) in "unofficial fees" to an authority at the township level and obtained a CSC in two days, whereas this process usually takes at least two months. Ma explained that her fellow villager "did not have

to provide information as to his ancestor's citizenship because of the unofficial fees that he paid." Her mother was born in a remote area and is identified as Burma Buddhist. She lost her CSC over a year ago but still has not been able to obtain a replacement. She had to take a week off from work to travel back to her mother village and then wait for the village township administrator to provide her with evidence as to her parent's citizenship through a "recommendation letter." Since obtaining the "recommendation letter," she has taken additional days off work to attend various appointments with a MoLIP at the township level in Thingangaung. Still, the relevant officer has canceled both of their appointments. She cannot afford to take further time off work to complete the process and cannot afford "unofficial fees." As a result, she remains undocumented. As outlined above, marginalized male and female participants explained that they rarely could pay "unofficial fees." They struggle to find the resources necessary to pay the required official fees, to take time off work to attend the appointments with MoLIP, and to travel back to their home villages to obtain information confirming their ancestor's citizenship, as is often required.

Participants also described good relationships with MoLIP officers and "agents" who have the capacity to engage in overcoming barriers to accessing citizenship documentation. "Agents" were expressed by participants as those who negotiated directly with MoLIP on an applicant's behalf regarding an application for citizenship and other documentation. The fees charged by "agents" are reported as being prohibitively expensive for more impoverished communities in Myanmar.

Participants said that if their parents and grandparents were deceased, this could provide yet another barrier to obtaining proof of their ancestor's citizenship, even if they travel back to their village to receive a "recommendation letter" from the village head. Participants outlined that this is sometimes because the village head refuses to provide such information.

Ko Hersan (34), called Ko Myo, was not asked if he wanted to be labeled as a Bengali. After the usual delays and bribes, when he finally collected his new pink Citizenship Card at an immigration office, he was stunned to see it describing him as "India/ Bamar + Bengali + Islam." The first two entries were no surprise because his parents are listed as both Burma and Indian due to an Indian grandfather. But the family has no connection with Bangladesh. He protested but quickly gave up. It would be "wasting the air out of my mouth," he said, "I do not even know what I am now for my future generations; what do I say? Indian, Burma, or Bengali?"

Ma Aye (34) received an empty leather folder in place of her degree when she graduated with a Bachelor of Technology in 2016. She first applied for a citizenship card in 2011, but she faced repeated delays. She was born to a Burmese father and a Muslim mother. She suspected immigration officers had no interest in processing his application because of both her religion and "darker complexion." The local immigration office needed confirmation of her citizenship from Nay Pyi Taw, but her father had a complication and her mother lost her NRC - often referred to as a "three-fold card". The approval was obtained, but then the immigration office said it needed more information from an archive in the Yangon State Immigration office. So far, it has been six years.

One of the young Burmese Muslim men replied that he could not become a Myanmar citizen unless he agrees to be called "Bangali." He finds the label offensive, but without citizenship he cannot complete the business law degree. If he cannot graduate, he cannot become a lawyer, his chosen profession. Immigration officials insist he cannot be both Burma and Muslim, and he must register as Bengali. He refused. "It's quite disgusting," he said, "Why should I be treated as an alien in a country I was born in? That my ancestors died in?"

Although they identify as Muslims of Burmese ethnicity and their previous CSC listed their ethnicity and religion as "Burmese Islam," most of the participants explained that when they applied for the renewal of their citizenship documentation with MoLIP, they were provided with replacement documentation that lists their ethnicity and religion as "Bengali Islam" or "Pakistani Islam." Such practices caused concern in the community as they felt this was a policy of increasing exclusion rather than cohesion. Participants whose parents adhered to different religions and the long waiting times to obtain citizenship documentation - these barriers linked to religion and ethnicity could often be overcome by paying "unofficial fees."

The Experience of Applying and not Getting a Citizenship Card

When obtaining citizenship documentation, ethnic and religious minorities were requested to provide information that is additional to what is required of those who are Burma Muslim. Muslim participants of Burma ethnicity explained difficulties in obtaining citizenship documentation that accurately reflects their religion and ethnicity. Very few of the participants in this study indicated that they were able to pay such fees.

The 1982 Citizenship Law does not allow a Myanmar citizen to pass their "citizenship" or "associate citizenship" status to their child if the child's other parent is not a Myanmar citizen. If the Myanmar authorities consider a non-national father or mother to be a "foreigner" as per the 1982 Citizenship Law, the child will only be eligible for "naturalized citizenship." If the Myanmar national mother or father is a "citizen" or "associate citizen," the child is required to fulfill the criteria for "naturalized citizenship." Under section 44 of the 1982 Citizenship Law, the rules before acquiring or confirming "naturalized citizenship" are that the applicant is eighteen years of age, can "speak well one of the national languages," and is of "good character" and "sound mind." A child who acquires "naturalized citizenship" via this mechanism will not enjoy the same rights attached to "citizenship" or "associate citizenship" as experienced by their Myanmar national father or mother.

The operation of these provisions concerning non-national fathers and mothers are detailed in this report in light of the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) Committee's concluding observations in 2008 and 2016, which noted the limited available information as to the ability of women to pass Myanmar citizenship for children with non-national fathers. These findings reveal that lack of documentation is in itself a barrier to accessing documentation in Myanmar. From remote and hard to back rural areas, the applicants reported facing difficulties in accessing citizenship documentation, in addition to those listed above, due to their remoteness from relevant authorities. They often have limited access to information about the process for applying for citizenship documentation. Interviewees also reported that many of those in remote and hard to back rural areas are

likely to be illiterate. They may not be able to complete the required written application process for citizenship documentation.

Htay, a young man living in Thiangaung township, said that his parents and grandparents were born in a remote area of Mon State. Like him, many people in his remote village in Mon State are illiterate and face difficulty in applying for citizenship documentation. He says, "Immigration does not help them to complete the paperwork. So many illiterate people in my village do not have any citizenship documentation."

Zin traveled to the village where he was born to obtain evidence of his ancestor's citizenship. His parents and grandparents are deceased. The village head refused to provide this information, citing that he had been away from the village too long. Persons without citizenship documentation are not allowed to move freely within Myanmar and may face the risk of arrest and detention because of their undocumented status. This impacts their ability to travel to their home village to obtain information in support of their citizenship documentation applications. Undocumented persons can apply for a "travel authorization" from their local township administrator to travel. However, participants described the process as being at the discretion of the township administrator.

Aye does not have a citizenship card because she cannot provide evidence of her parent's citizenship cards. She has tried several times to obtain a "travel authorization" to travel to her village to receive a "recommendation letter" from the village township administrator as to her parent's citizenship. However, this has been refused by the township officer several times. She was securing a "travel authorization" from the township administrator, who often took "unofficial fees". However, undocumented people in Myanmar are usually paid less than those with citizenship documentation and will have limited capacity to pay "unofficial fees". Participants also reported that travel by public transport in Myanmar usually requires the provision of citizenship documentation. Such documentation is also required when traveling through checkpoints or to stay at a hotel or guest house.

Civil Society Organization Leader's Experience

The Nu-Attlee Agreement was fundamental to the nationality status of the peoples and races in Burma (now called Myanmar). One of the members of parliament explained about the Nu Attlee agreement letter. The day U Nu and Clement Attlee of the United Kingdom signed formally for the recognition of the independence of the Union of Burma Treaty between the Government of the United Kingdom and Provisional Government of Burma is known as the Nu-Attlee Agreement within the United Nations Charter on the principle of decolonization. In Article 1 of the Nu-Attlee Agreement, the United Kingdom recognized the Republic of the Union of Burma as a fully Independent Sovereign State.

Article 3 of the Nu-Attlee Agreement defined very clearly who a citizen of Burma is. Under Article 3 of the said agreement, those who became citizens of the independent country of Burma had the right to vote on their citizenship. In general, no minority in Myanmar had the option to be refused the new nationality on the date of decolonization. Thus, the citizenship matter was a settled matter, and the Muslims of Arakan and the Muslims of

Burma were also a paid matter. Muslims in Arakan who identify themselves as Rohingya also are a citizen by birth. Therefore, it is an undeniable fact that according to the law of Myanmar, all Muslims by birth are bona fide citizens of Myanmar and have the right to have citizenship in Myanmar.

One of the NGO leaders replied that citizenship is trying to deny heritage of Burmese Muslim Community, and thousands of young Burmese Muslims are facing widespread but mostly unacknowledged denial of ethnic culture and access to citizenship. Before 1988, Burmese Muslims were relatively free to describe their ethnic identity on their National Registration Cards, leading to a wide range of ethnic designations. In 1989, the state law and order Restoration Council began replacing NRCs with the pink-colored Citizenship scrutiny Cards now in use. "At that time, volunteers and immigration officers always put "Bengali" on the Muslims' cards," the deputy head of one township immigration office said, "I was a staff officer in the immigration department then, and we standard to use the terms 'Bengali' and mixed blood." The Bengali legal has assumed a sinister dimension in recent years because it is used to describe the Muslims in Myanmar.

One of the NGO leaders replied that they helped those who want to apply for a citizenship card. The leader noticed that one person was applying for the citizenship cards, but got it five years after. She doesn't like to put "Bengali" for her citizenship card, but her options are limited. At that moment, the word "Bengali" was applied in a racist way, so she does not want to be Bengali on her citizenship card. Her family practices Islam, but culturally she is Burmese. Her faith is not obvious because she does not wear a hijab and prays in the Buddhist way. The leader said that citizenship should be a certainty for her. Both of her parents are full citizens; her mother is a Burmese Buddhist and her father, a Burmese Muslim.

However, 30 years ago, her father submitted to pressure from an immigration official in his hometown, and he listed as a Bengali. So, when his daughter first applied for a citizenship card in 2012, the immigration officer loudly announced to the room "We cannot give you the citizenship card because your father is a Bengali." She many times attempted since then to register as a Burmese Muslim; involving persuasion and bribes have been in vain. She also graduated with her first law degree in 2013 after persuading immigration officers to issue a letter explaining that she was obtaining citizenship. But without a citizenship card, she cannot complete the mandatory internship in a court or receive a license to practice law. Companies do not want to hire non-citizenship, so she's unable to get a job. She had no foreign overseas scholarships because she cannot get a passport. She is not the only one having this issue. The leader said there are many people like her.

Discrimination against Muslims in the citizenship process is in rife. The Leader organization is aware of many cases of delayed, withheld, or inaccurate citizenship cards for residents who qualify to receive one under the 1982 Citizenship Law. According to NGO representatives in Yangon, sometimes they offer their names and citizenship documentation identification numbers to applicant single mothers. Alternatively, single mother applicants list their father as the child's father if their father has citizenship documentation. One of the NGO representatives explained that there is a growing trend where men - sometimes community or religious leaders - volunteer their name and the identification number on their citizenship documentation for single mothers if the father is unknown or

otherwise absent, so that they can register the birth of their children and obtain a birth certificate. One interviewee revealed that he was officially the father of ten children because he provided his name and citizenship card identification number to an NGO that assists single mothers in obtaining birth registration and birth certificates. In these circumstances, when the child reaches the age of 10 and applies for citizenship documentation and the person named on their birth certificate as the child's father is no longer available or willing to vouch for being the child's father, then that child will face significant problems proving the father's or purported father's citizenship.

However, children in such circumstances will also face the same difficulties as listed above in inheriting their mother's and father's citizenship if they cannot provide sufficient evidence of the father's citizenship to support their application. In the Department of Immigration, undocumented parents and single mothers, where the father is unknown or otherwise absent, reported being able to register a birth and obtain a birth certificate without the requirement that both parent's names and citizenship documentation's identity numbers be listed. Although this allows children to access birth registration and certificates more efficiently, similar to those described above, if they cannot provide evidence of their father's identity or citizenship, they will have difficulty obtaining citizenship documentation and citizenship. They will also have trouble inheriting their mother's nationality.

A religious community leader reported that when a child applies for citizenship documentation at ages 10 and 18, in some cases, MoLIP requests an affidavit from both parents confirming that they are, in fact, the birth parent as per the birth certificate. This is especially the case if the parents are from an ethnic or religious minority. When such documentation is requested, children who are unable to obtain an affidavit from the person listed as the father on their birth certificate will face difficulties obtaining citizenship documentation and acquiring and confirming citizenship. These will also hinder the ability of women to confer nationality to their children in such circumstances.

Thinzar works on a remote farm and she has not been able to register the births of her children because government authorities visit her village to register births when she and her husband are working on a farm far from their village. Thinzar and her husband do not have the financial resources to take time off work when the government authorities visit. It is reported that in rural areas, authorities often do not accurately update household registration lists to include newborn children.

The NGO leader U Khin Maung Cho said that "the World only knows about the discrimination of the Rohingya, but the world should know about discrimination of Burmese Muslims." He is a prominent Muslim lawyer that has participated over the past years in a series of high-level meetings with immigration officials in his capacity to discuss the citizenship process. He is a representative of five Muslim organizations who met first with senior immigration officials in Yangon and department of heads ahead of a meeting in 2017 with the Minister of MLOP U Thein Swe, a member of the former ruling Union Solidarity and Development Party. At the meeting, the Muslim community representatives urged that officials adhere to the letter of the 1982 Citizenship Law, of which they are critical but reluctant to condemn publicly. The 1982 law defines a citizen as someone whose parents each have a form of citizenship. Those who do not meet these criteria qualify for either associate or naturalized citizenship with fewer rights than full citizens.

Policy and paperwork have changed many times since 1982, and each change has relegated Muslims closer to second-class status. For example, after the 1982 law took effect, most Buddhists who were issued with the old, tri-folded NRCs were changed to the pink card, but most of the Muslims were unable to make the change. NGO leader U ohn Maung, a lawyer, is the general secretary of Peace Cultivation Network, an organization aiming to reduce communal violence and develop peace processes. He replied that he has a stack of case files on his desk about residents who are entitled to citizenship but are "pushed to get the naturalized citizenship card." The change from a single citizenship category to three created much room for discrimination. "The immigration officer said, 'Okay, you are Muslim; you can be called 'mixed-blood,' come back in six months.' The people became frustrated, so they still hold the tri-folded [NRC] card," he said. If students who are the age of ten apply for a citizenship card at secondary schools and they call themselves Buddhist, they become citizens. But the mixed-blood child struggle to get citizenship whether their parents have citizenship or not. They do not get equal rights and access. Those who acquired a citizenship card with the ethnic designation "Bangali" or "mized-blood" now find that their children are unable to access citizenship.

U wanna Shwe, joint secretary-general of the Republic of the Union of Myanmar Islamic Religious Affairs Council, said that "even squatters" are issued with citizenship cards, while Muslims are neglected. They asked immigration officials, "do not call us mixed-blooded people.it is taboo and rude, and everyone is mixed-blooded when you look at it." He said that the discrimination persists and few Muslims have received citizenship cards under the National League for Democracy government.

U Kyaw Nyein, a lawyer for Muslim group Jamiat Ulama EI-Islam Myanmar, is nostalgic of what he calls the olden days of the early 1970s. There was little hate speech then and no attacks on mosques. He said, "[W]e are born in Myanmar, we are eating the same rice, we are the same." The deputy head of the Yangon township immigration office, who spoke in anonymity, said that immigration officials are supposed to examine before deciding on an ethnic designation such as Bengali, Indian or Pakistani. He explained further that they do not always put only Bengali on their cards because if the officers do that, they never accept it and will probably complain. He added that there is a need to check their background and their documents to see who they are and their ethnic heritage.

The citizenship process is delayed if an applicant's parents are not full citizens. In such a case, the application has to be decided at the state or regional level. The immigration officer stated that sometimes the process takes a long time for Muslims and also for other people whose parents are not full citizens. U Myint Kyaing, the permanent secretary of the Ministry of Labor, Immigration, and Population, said delays or corruption could be reported to higher-ranking officers. He said the ministry had taken action against the immigration department since the NLD government took office in 2016 but did not say why they punished. Myint Kyaing defended the use of the term "Bengali." It was nothing that it was used to describe some Muslims in censuses conducted by the British colonial authorities in 1921, 1932 and 1941 census of 1983.

Legal and Political Discrimination Against Applicant's Experiences

The different treatment between Buddhist Burmese citizens and "mixed blood" applicants is often subtle and arbitrary. Inconveniences and difficulties are often established both to discourage non-Buddhists and Non-Burmese while also cementing a racial and religious hierarchy in Burmese society.

Thant Zin explained that aside from inconveniencing minorities for time and status, authorities witnessed frequently forcing minority applicants to pay bribes while they apply for a citizenship card. Bribes serve on a different level in government offices like this. They both enrich those authorities working there and create hurdles for minority wishing to apply for a citizenship card.

3. RECOMMENDATION

With regard to the 1982 Citizenship Law, the following steps should be taken: Identify loopholes in the 1982 Citizenship Law and adopt a rule that ensures equality for Burmese Muslim minority people. Increase access to information relating to qualifications for citizenship and process of applications and remove barriers to ensure efficient application processes. Ensure all rules and producers relating to attending Citizenship cards are simple, easy to understand, and accessible. Adopt and implement a unified policy for the Citizenship card application process. Improve management system concerning Citizenship card application and upgrade into a smartcard e-from application system. Prevent statelessness by reducing the number of required documents for those who are potential citizens. Ensure to correctly describe the name of race and remove the religious origin of the Citizenship Card. Seek technical assistance in the computing system to archive data and information of citizens. Improve and promote capacity building of civil services of relevant ministers to prevent discrimination against the Burmese Muslim minority.

4. CONCLUSION

The process should be made simpler and enable individuals to apply for citizenship simultaneously as they apply for Citizenship Card. The process to increase the use of an uncle or aunt's documents (or other family members) should be permitted when the parent's documents are missing. The Government should ensure that the verification process be adequately resourced. The Government should clarify the status of those whose citizenship application are not accepted. Like all countries, Myanmar will need a state for those who reside in Myanmar without being citizens. The rights of non-citizens who live and work in Myanmar need to be regulated. The Government should clarify residency rights and provide associated documentation, a common practice around the world.

While Muslim communities work constructively with the Government to revitalize a Citizenship card application process, the Government should also create proper incentives to encourage people to participate.

Complaints related to the on-going verification process should be addressed swiftly by a Government authority independent of the institutions responsible for the verification processes' implementation.

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SOCIAL ENTERPRISES: A CASE STUDY OF THE ECONOMIC EMPOWERMENT OF WOMEN ARTISANS IN SRI LANKA

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ABSTRACT

After decades of civil war, Sri Lanka stepped up the economic ladder from a rural-based economy towards the manufacturing and services economy. The formal labor force statistics of Sri Lanka reveals that even though the literacy rate is almost equal, participation rates are 73 % for males and 33.6 % for females. Participating in the labor force is a prerequisite of bridging the gender gap. In recent decades, research has shown that there has been increasing visibility of women in the formal sectors, especially in the garment industry in Sri Lanka. However, women are still vulnerable to labor exploitation and low wages, due to cultural trends which adversely affect meaningful participation. In the informal labor sector, there has not been adequate research because assessing women's participation in the informal economy has been challenging to researchers, including the author. This gap is especially prominent because, in recent times, there has been a boom of social enterprises in Sri Lanka. Historically, Sri Lanka has adopted welfare policies in business, but the social enterprises are relatively new models with no legal recognition. This paper focuses on social enterprises that contribute mainly to women's empowerment. The strategy used for this research is a case study. The paper is based on the primary data taken from in-depth online interviews. It uses the lens of economic empowerment—drawing from the experience of six social enterprises of Sri Lanka. Out of six, this paper explicitly draws the experience from two social enterprises - Selyn and Cally Reusable Bags. The paper elucidates a critical assessment of social entrepreneurs and social enterprises' experiences and reflects on women artisans' journey towards economic empowerment in Sri Lanka.

Keyword: Economic Empowerment, Social Enterprise in Sri Lanka, and Women Artisans.

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Ojaswi K.C (kcojaswi@gmail.com) is a lawyer based in Nepal. She worked as a legal trainee at Nepal Red Cross Society (NRCS) where she was involved in Protection, Gender, and Inclusion (PGI) assessment in the works of NRCS. Currently, she is pursuing her master's degree in Human Rights and Democratisation from Mahidol University, Thailand. As part of her master's dissertation, she is conducting research on "*Social Enterprises: A case study of the Economic Empowerment of Women Artisans in Sri Lanka.*" Her interest lies in human rights, disaster risk management, and constitutional law.

1. INTRODUCTION

The English writer Virginia Wolf, in one of her essays, penned, '*a woman must have money and a room of her own if she is to write fiction*' (Wolf, 1928). Even after a century, this statement shares the sentiments of today's women and their sense of independence beside the realm of writing fiction. Despite variations in looking at the issues of women's rights by the lens of women's studies, scholars agree on the importance of women's financial independence for their well-being. They further asserted that, as one of the ways to the uplift of women's role in the status of the society, women should be economically independent. However, it is crucial to recognize the nuances presented in the past and in contemporary dialogue regarding women's rights, financial independence, and facets.

One such prime example can be seen in Sri Lanka's women's movement and their struggle for liberation and empowerment. After two decades of civil war, Sri Lanka stepped up in the economic ladder from a '*rural-based economy towards a more urbanized economy oriented around manufacturing and services*' (World Bank, n.d). Sri Lanka is classified under the 'high human development' category in Human Development index (HDI).

Sri Lanka's legal system's approach to gender equality has mainly been formalistic in its approach. It was one of the first South Asian countries that ratified the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) without reservations. Its laws and policies regarding genders are neutral through the lens of heteronormativity. The Sri Lankan legislation draws picture-perfect gender equality.

However, various studies have shown that the realities on the ground are quite different, showing a huge gap in the black-and-white letters of the law and the lived experiences of women in Sri Lanka. From parenthood to employment opportunities, gender roles' status quo has affected the life decision making choices. They reflect patriarchic norms and values with the dominance of masculinity, creating a gender disparity. This gender disparity has shaped the families, but has also been transcending in public.¹

It is often highlighted that Sri Lankan women enjoy equal opportunities under the laws for health and education to employment, credited to the country's social welfare policies in place. Sri Lanka's female adult literacy rate is 90.80% (UNESCO, 2019). However, according to the statistical data of Sri Lanka (2019), the labor force participation rate is 73% for males and 33.6% for females (Department of Census and Statistics of Sri Lanka, 2019); whereas the unemployment rate for males is 3%, and 7.1% for females (Department of Census and Statistics of Sri Lanka, 2019). The above labor force statistics reveal gender disparity in the participation of women in the labor force. It shows that female participation in the labor market is 35.1%, lower compared to 74.1% for men. (UNDP, 2018).

It should also be noted that in the women's labor force participation of 51.3%, the highest is from the ages of 45- 49 (WMC, 2018). According to the WMC shadow report to CEDAW, one of the factors is that after the age of 45,

¹ Despite its female adult literacy rate at 90.80 % (UNESCO, 2019), women's representation in politics in Sri Lanka is one of the lowest in the world. Before the parliament was dissolved by President Gotabaya Rajapaska on the 2nd of March, 2020, the parliament only had 12 female legislators out of 225 members. However, Sri Lanka is credited for having the world's first female Prime Minister, Mrs. Sirima Bandaranaike, in 1960.

women can work outside the peripheries of their family responsibility of rearing and caring for their children. Here, one can see how patriarchic values and norms play the narrative of a woman in both the private and public sphere as a nurturer in rearing and caring of the children and how this play in her life.

Women of all ages should have the possibility and the right to work. However, due to various social-cultural norms, women are not able to participate in the labor force. Not participating in the labor force affects their access to their rights stipulated in the Women's Charter.¹ One of the key rights is the right to economic activity and benefits.² The statistics of labor force disparity shows that women are far from reaping the benefits of the right to economic activity and benefits.

With that in mind, there has been a blooming of Social enterprises in Sri Lanka. According to the studies done by UNESCAP with the British Council, there are around 6,000-15,000 Social enterprises in Sri Lanka³ (UNESCAP, British Council & Sri Lanka Venture, 2018). The concept of Social enterprises is rooted in Sri Lankan business practice; however, the term was not in use. But now, the terminology is slowly being adapted to the country's business model vocabulary, that they are engaging in livelihood development and social service (ibid, 2018).

Social enterprises give vulnerable groups a platform to work and earn income. One such rising type of social enterprise is the handloom textile industry. The handloom textile industry is a century old (Export Development Board Sri Lanka, 2013). Examples are the six social enterprises⁴: Cally Reusable Bags, Kantala, Lonali, Rice & Carry, Selyn, and Via Village. The six social enterprises are distinct in their organizational working model, but both organizational business models are based on the vision for social service. This paper will focus on Selyn and Cally Reusable Bags more.

Selyn highlights as one of its achievements the handing back of agency to women's life, which is helping to end the vicious cycle of oppression of women's role in society. Whereas, Carry Reusable Bags feels like the enterprises have helped her not only to find her footing in her house, but also in society. Although the enterprises have not been profitable, they are still new. In this regard, it is vital to see how enterprises help them to do that. Social enterprises provide an income to women; and it is important to see how a woman is empowered to change her status in her community and society.

¹The Women's Charter was created to 'endorse international standard and its international obligation under the CEDAW' (Preamble, Women Charter, 1993). The Women's Charter is not legally enforceable, but was an exemplary document for Sri Lanka's march for gender equality and state eagerness for upholding its CEDAW responsibilities. The Charter is primarily based on the structure of CEDAW, and is a founding document for the establishment of the National Committee on Women, which operates within the Ministry of Women Affairs.

²In the Charter, seven areas are specified for gender equality, including the right to economic activity and benefits (Women's Charter, 1993). The right to economic activity and benefits states that opportunities and access to those opportunities should be given without gender discrimination. It also recognizes women's contribution to the household.

³ The study, published in 2018, was done by UNESCAP, British Council, and Sri Lanka Venture in 25 districts and nine provinces of Sri Lanka, and were carried out between April and September 2017 with 416 organizations.

⁴ This paper is a part of my research for the dissertation for the Master's Programme in Human Rights and Democratisation, Mahidol University, Thailand (2019/2020), in which I have chosen the six social enterprises to study about economic empowerment of women artisans in Sri Lanka.

2. LITERATURE REVIEW

2.1 *Social Enterprises and Social Entrepreneurship*

Social enterprises and Social entrepreneurship are used interchangeably in the literature. However, there is a thin line of separation between them because share more commonalties (Galera & Borzaga, 2009 and Huybrechts & Nicholls 2012). They are distinct to one another as ‘not every enterprise (social or otherwise) is entrepreneurial’ (Luke & Chu, 2013).

The social enterprise is founded in the colossal combination of participation, social mission, and market methods to achieve social transformation (Chell, 2007). In recent years, it has received attention as being a game-changing way of approaching social problems (Brine, 2010). Most of the literature overlap the definition of social enterprises as a business and as a charity-based organization. The Social enterprise uses business methods to achieve financial sustainability for organizations seeking to create social impact (Brine, 2010). There needs to be a distinction between Social enterprises, social service provision, and social activism (Martin & Osberg, 2007).

In Sri Lanka, the concepts of social enterprises and social entrepreneurship are emerging. In the academe, the Department of Entrepreneurship of the University of Sri Jaywardenepura provides special and master’s degrees in entrepreneurship. In the media, television programs like ‘*Ath Pavura*’ give a platform for social entrepreneurs to pitch their ideas. The social enterprises in Sri Lanka have been reflected ‘*in the form of cooperatives, thrift societies, and welfare and development societies*’ (UNESCAP, British Council, & Sri Lanka Venture, 2018). However, there is no formal legal mechanism to identify them. Sri Lanka does not legally recognize social enterprises in its legal framework. For their legal reference, they branch out to other legislation like the Companies Act (2007), the Cooperative Act [Co-operative Societies (Amendment) Act (No. 11 of 1992)], the Societies Ordinance of 1891 (Amendment Act 11 of 2005), and the Voluntary Social Service Organizations [Registration and Supervision] Act Number 31 of 1980. This legislation helps social enterprises to register and work in their chosen field. There has been no formal separate legal mechanism where social enterprises in Sri Lanka can enlist themselves. Most of the Social enterprises in Sri Lanka do not categorize themselves as social enterprises and they ‘adopt a broad range of legal structure’ (UNESCAP, British Council & Sri Lanka Venture, 2018).

In recent years, there have been some steps taken by the government to develop some policy which mentions explicitly some features of Social enterprises and entrepreneurship. Such an example can be seen in the National Policy Framework for Small and Medium Enterprises (SMEs) Development (2015) and in the National Policy on Cooperatives (2019). It shows that the government has been supporting the enterprise that generates economic, environmental, and social benefits (UNESCAP, British Council, & Sri Lanka Venture, 2018).

2.2. *Empowerment, Women’s Empowerment and Economic Empowerment*

In literature regarding empowerment, there has been a presence of bipolar views on the term ‘empowerment’, especially on women's empowerment. The term empowerment has been “*overused and misused in recent decades*’

(Stacki & Monkman, 2003). In their words, empowerment '*has become a synonym for participation, for speaking out, or for feeling that one can accomplish an important task*' (ibid, 2003). They further assert that in the core of empowerment lays the concept of power. Furthermore, the debated connotation of empowerment is the acquisition of 'agency and voice' (Sen, 1999). With this, some scholars see women's empowerment as more of development indicators created by the government, INGOs, and NGOs and a 'buzzword' (Larsson, 2016) in the programs and national policies and in the importance studies in the academe (Stromquist, 2015).

This can be seen through 'women perceived empowerment.' According to Ambepitiya and Gao, it '*is about strengthening women's education, income opportunities, access to employment, consumption, participation in politics, control over assets and personal security to improve their well-being*' (Ambepitiya & Gao, 2019). This definition shows the web of interconnection and interdependence between different factors. Women-perceived empowerment provides the lens to see plans and programs design for the effectivity of women's empowerment.

Women's empowerment is an active, multidimensional process that enables women to realize their full identity and power in all spheres of life (Sharma, Dua, & Hatwal, 2012). There are three levels of Women's empowerment: the basic being the sense of self-hood and identity; the intermediate, the rules and relationships in different spheres of life; and the deeper, structural relations of power (Kabeer, 2000). The Kabeer categorization shows the layers of empowerment in women's life depending on power within oneself toward the power relations to social structures and hierarchy. The different categorizations of women's empowerment from economic, political, knowledge, and psychological empowerment (Stromquist, 2015) have layers and are co-dependent.

However, in recent decades, much of the women's empowerment programs and discourses have focused on the political empowerment and economic empowerment of women (Larsson, 2016). As many feminist scholars argue, the danger of this slides the limelight away from the interpretation of empowerment based on human rights and solidarity. (Eyben & Napier Moore 2009). But at the same time, like other forms of empowerment, Economic empowerment allows women to reach all three levels of empowerment. Economic empowerment '*is the ability to earn and control economic resources*' (Stromquist, 2015). The conceptualization for the dimension of empowerment is the resources, agency, and achievement (Sida Studies, 2000). Amartya Sen further elaborates on the concept of agency and resources in his idea of capability. It can be conceptualized as the capability for a person in living the life in their terms and 'achieving valued ways of being and doing' (Kabeer, 2000). He referred to this as a '*functioning*.' '*Functioning achievements*,' on the other hand, are the process of people achieving their ways of being and doing.

The critique of women's empowerment in international and national policies and programs point out how women's empowerment has been used as a buzzword. There has been no substantial progress regarding women's role and status in society. Notably, the proponents of women's empowerment claim that it is a necessary evil to use women's empowerment as a buzzword. For them, the oppression of women's status in society is systematic and historic; therefore, women's empowerment must be asserted in these plans, policies, and programs. Scholars in the field have identified that women's empowerment de facto requires changes in all the facets of women's lives. This ranges from

economic, political, knowledge, and psychological empowerment (Stromquist, 2015) which are interdependent with one another.

This research focuses on economic empowerment. Economic empowerment, in the umbrella approach, covers a wide range of economic factors that involve making women active participants in the economy. Various international and national plans, programs, and standards recognize that women must have financial literacy and a support system to make their economic choices available and feasible. Women's economic empowerment has been limited to national and international organizations and taken by social enterprises. Social enterprises are the cross-over of business ventures with the foundations of eradicating social issues and problems.

Economic empowerment is one of the branches of empowerment which provides the acquisition of 'agency and voice' (Sen, 1999). This agency's freedom is the capacity '*to do and achieve in pursuit of whatever goals or values he/she regards as important (Sen, 1985).*' Agency and freedom are essential in women's lives, as they have been treated as passive dependents (Nussbaum, 2003). The capability approach points out that functioning is necessary for a well-lived life, which requires being related to various spheres of life like Labor participation (Hick, 2002). Labor participation provides a woman agency to change her status quo from the receiver of economic assistance to the giver of economic growth and development.

The discourses on women's labor participation have been in fluctuation in the feminist discipline. The second wave of feminism rose to demand and fight for equal legal and social rights for women around the world. The third wave of feminism was the continuation that asked for equal pay and representation of women in the workforce. It is essential to note that, due to the intersectionality presented in women's lives, each woman has a different experience. Still, it should be acknowledged that all women share some common ground of similarities with one another; this could be how women are seen as the primary caregiver to the family and the role of a mother. The feminist scholars agree that this holds women back from advancing in their career and economic growth.

After the industrial revolution, one could see the visibility of women in the formal sectors and the increasing marginalization in wages and labor conditions (SAAPE, 2013). In the informal sector, various statistics reveal that women's role in the household and other's informal labor work, such as women's work in the agricultural farm, are not counted as a participation in the labor force, even though this helps in economic growth.

2.3 Empowerment, Human Rights and Social enterprises

Guiding Principles on Business and Human Rights: Implementing the United Nations' Protect, Respect and Remedy' Framework Resolution asserts and emphasizes that '*business enterprises have a responsibility to respect human rights (HRC, 2017).*'

Social enterprises fall in the gray area in the business sector. Unlike in the business sector, the core visions in the social enterprises are not about profit maximization. Social enterprises use business methods to achieve financial

sustainability for organizations, seeking to create social impact. At the same time, these organizations often operate in areas that are traditionally administered by governments.

Social enterprise programs focus on uplifting the status of marginalized groups of people. The vision allows the solving of social problems by taking ground action to protect and promote human rights and by meddling in solving human rights issues, gender inequality, labor inequality, poverty reduction, etc. Human rights in social enterprises '*provide a framework for action which social enterprise needs*' (Brine, 2010).

3. RESEARCH METHODS AND METHODOLOGY

The strategy used for this research is a case study. The process of economic empowerment in women's lives may be similar to each woman, but there might be nuances present. The case study strategy allows the researcher to narrate individual stories more comprehensively and in a detailed manner.

The researcher tried to get insight into economic empowerment from a social enterprise viewpoint. The paper does not have enough evidence or coverage to make wider generalizations. It is based on the qualitative data, i.e. field notes based on selected in-depth interviews of individuals from the Selyn and Cally Reusable Bags, and literature review. From Selyn, along with the social entrepreneur, one employee was interviewed. Since Cally Reusable Bags is a sole proprietorship; only the social entrepreneur was interviewed. The mentioned names have given consent. The selected notes were coded thematically and analyzed.

Selyn Handlooms was founded in 1991 by Sandra Wanduragala in her home garage with 15 women in the village of Wanduragala in Kurunegala, North Western Province, Sri Lanka. Now, they employ 1000 people, 400 of which are working in their houses. Her daughter, Selyna Peiris, is now running Selyn. They work with a diverse age range from 30-60 years, mainly focusing on creating new products and replicating new technology in traditional handcraft knowledge. On the other hand, Carry Reusable Bags was founded in 2018 by Varie Balthazar, the sole owner. Her brand is about sustainable tote bags. She was influenced by the Meethoramulla landslide.¹

The two social enterprises taken as a focal point for this paper are distinct in its feature yet similar with the vision of social enterprises. They showcase the dynamic range of social enterprises in Sri Lanka. Selyn works like a big company with its employees and has branches all across Sri Lanka, whereas Cally Reusable Bag is founded and run by only one entrepreneur. While comparing the two social enterprises, Selyn's credibility is exponentially higher in both local and international media. Nonetheless, the works of Cally Reusable Bag has extended the landscape of social enterprises in Sri Lanka.

¹ The landslide was a garbage landslide of a section of the massive dump at Meethoramulla in the Colombo District of Sri Lanka on 14th April 2017.

Furthermore, this research stems from the researcher's interest in understanding women's empowerment in international and national development dialogue narratives from the policy level to the country's ground reality. The researcher uses Sri Lanka as the research area to see these implications. This research is based on the ground that rising social enterprises in Sri Lanka provides a platform for women artisans to be economically empowered. For this purpose, six social enterprises based in Sri Lanka are taken as a sample piece to decipher the research area interest. The six social enterprises are Cally Reusable bags, Kantala, Lonali, Rice & Carry, Selyn, and Via Village. The social enterprises were selected based on employment, entrepreneurship, training, establishment date and its impact on the artisan's life. The purpose of this research is to see whether these social enterprises support women artisan to be economically empowered.

During the research, the world was struggling with the novel virus COVID-19. At the Sri Lankan front, the government put the country in three months of lockdown. Due to this, the researcher had to pivot from the original data method for the research. The research was initially based on the observation and interview method from women's artisan, heavily relying on the interview data from the social entrepreneurs of social enterprises. The interviews were now taken from the online application Zoom, which made it possible for the researcher to discuss the social entrepreneurs' works in their social enterprises. However, due to lockdown, the researcher could not meet the women artisans or talked to them.

4. LESSONS FROM THE SOCIAL ENTERPRISES

The study is based on the women artisans' economic empowerment through the vocational training provided by social enterprises. It is also based on how social enterprises consider women's economic empowerment as an important strategy for their enterprises. Selyna Peiris from Selyn, when talking about the business model of her mother's social enterprise, shares, "*There is always a business case on what we do. We go out of the way to ensure that the social and environment has the same weightage as the business.*" In the same line, Varie from Carry Reusable Bags shares the same sentiment regarding how business ventures should adopt the ethos of uplifting the vulnerable groups and being mindful of the environment and resources.

In terms of vocational training, Selyn provides 4 to 6 weeks of training and gives 10,000 Sri Lanka rupees for the trainer as training allowance. Those trained would pay through the pieces they produce. Another core aspect of economic empowerment is the ability to make informed and autonomous economic choices. For this purpose, Selyn has a micro-financing system that gives loans and teaches women about saving their income. Through the micro-financing system, women artisans save their income and are facilitated for better understanding of finances.

As per the experiences of working with the woman artisan, Selyna says that women are fearful of their male members in the family. Sometimes, their employment creates altercation. One such instance is when Selyn introduced the financial literacy program in 2018 in collaboration with Sanasa Development Bank, Sri Lanka. The program

targeted the women artisans employed by Selyn. One woman was beaten by her husband when she tried to save their money in the bank. Due to this, Selyn invited 80 women artisan's husbands to participate in the training. However, out of the 80 husbands of the woman artisans, only two showed up in the workshop. The women did not want their husbands to know about their work in Selyn and their earnings.

For Varie, who single-handedly runs her social enterprise, she has to jump over major hurdles to get any economic benefits. For the establishment of her social enterprise, her loan application was denied two times by her commercial bank, in which she has been a member for 15 years. Having an academic background in design, her vision of social enterprises is to create a plastic-free culture from her community. She gives her orders to women in the community. She has now trained 16 women. The process, however, is arduous.

In terms of women's economic empowerment, Selyn founder Sandra's daughter Selyn thinks that her mother established her social enterprise with the idea that it was not about economic empowerment, but survival. In survival itself, they found empowerment. For Selyn, although times and perspectives have changed in the understanding of gender equality, society still has the same old problem - mainly women not being able to work due to various constraints and restrictions from their families and loved ones. To fill that gap, Selyn provides a platform for women to work in their own homes. With this, the women's community grows. By working, they earn money. It is not lost without caveat; the women need to be able to make informed economic choices. But this, as Varie says, requires not only a tentative plan, but also convenience for women.

5. CONCLUSION

The business centers, in economic matter and discussion of human rights responsibilities, '*tended to be controversial*' (HRC, 2017). Social enterprises fulfill human rights responsibilities by centering on their work in the economic matter. They promote marginalized rights by giving agency back to people. The emerging literature and policy framework in International Human Rights Law's area of business and human rights state that business ventures are also actors that should protect, promote and fulfill human rights (UNHR, 2011). Social enterprises fulfill that void. It is a combination of business and protection of human rights. However, Social enterprises are just emerging in the field and require extensive study. For this, legal recognition is vital in studying its impact on the economy and its beneficiary groups.

Sri Lanka has a rich history of textile and handicraft industry. In this area, social enterprises are changing the narratives of what business should be like and how it helps to bring progressive changes in society. Compared to Carry Reusable Bags, Selyn has an impressive social enterprise profile. But due to the lack of human resources and capacity, their works are overshadowed. The state has not come up with adequate standards and mechanisms to monitors their works. Economic empowerment of women artisans through social enterprises is multi-dimensional and can be seen in their lives, but it also requires much more extensive study. The Sri Lankan state can shift their corporate lens here.

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UNDERSTANDING OF MULTI-DISCIPLINARY PRACTITIONERS INVOLVING IN VICTIM IDENTIFICATION OF FORCED LABOUR

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ABSTRACT

In pursuance to the review of the Anti-Trafficking in Persons Act 2008 in compliance with the Protocol of 2014 to the ILO Forced Labour Convention No. 29 (1930) and the ILO Abolition of Forced Labour Convention No.105 (1957) acceded by Thailand. The Royal Ordinance on the Amendments of the Anti-Trafficking in Persons Act 2019 was published in the government gazette. The Royal Ordinance's major provisions include the criminalization forced labor in work or service and forced labor victim protection. The law on procedures for human trafficking cases shall apply to the procedures for forced labour or services cases mutatis mutandis. The data were collected by document research and semi-structured interviews with eight participants selected according to their relevant experiences in the area of victim identification in accordance with human rights based-approach. The interviewees consist of labour inspectors of Samut Sakhon Provincial Labour Protection and Welfare Office, Social worker and psychologist of Pathumthani Welfare Protection Center for Victims of Trafficking in Person, Investigation officers of Anti-Trafficking in Persons Division, Royal Police Headquarter and lawyer with translator from non-governmental organization (NGOs) in Samut Sakhon.

The results illustrate the government's current efforts to criminalization forced labor in work or service including the improvement of form of preliminary interview for victim of trafficking and victim of forced labor or services. The study also shows that multidisciplinary practitioners have not enough training to assessing forced labour indicators, lack of work manual and the number of interpreters is not enough. This study recommends solutions for specify clear guideline for victim's identification and modify training courses for make better understand of the pattern of forced labor or services, develop a complaints mechanism for victims of forced labour, for victims of forced labour and establish network for victim's identification of forced labour.

Keyword: Forced Labour, Victims' Identification, Multi-Disciplinary Practitioners.

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Pakpoom (pakpoom.sw@gmail.com) graduated from Thammasat University with bachelor Degree in Laws and currently studying for a master's degree in Institute of Human Rights and Peace Studies, Mahidol University. Through thirteen years in the human rights fieldwork with Raks Thai Foundation, He has experiences in providing legal assistances to vulnerable population in Thailand such as human trafficking victims, migrant population, stateless person, people who injection drugs (PWID) and people with HIV/AIDS. Nowadays, he is founder and president of Proud Association that empower vulnerable groups through social protection. His areas of interest include write and publish articles regarding human rights and anti-human trafficking policy.

ความเข้าใจของผู้ปฏิบัติงานสหวิชาชีพที่เกี่ยวข้องต่อการคัดแยกเหยื่อแรงงานบังคับ

บทคัดย่อ

ในปี 2562 ประเทศไทยบัญญัติความผิดฐานการบังคับใช้แรงงานหรือบริการในพระราชบัญญัติป้องกันและปราบปรามการค้ามนุษย์ พ.ศ. 2551 (แก้ไขเพิ่มเติม พ.ศ.2562) เพื่อให้สอดคล้องกับการให้สัตยาบันต่ออนุสัญญาองค์การแรงงานระหว่างประเทศฉบับที่ 29 ว่าด้วยการเกณฑ์แรงงานหรือแรงงานบังคับฉบับที่ 29 ค.ศ. 1930 และอนุสัญญาว่าด้วยการยกเลิกแรงงานบังคับฉบับที่ 105 (ค.ศ.1957) โดยกำหนดนิยามความผิดรวมถึงการให้ความช่วยเหลือคุ้มครองผู้เสียหายจากการถูกบังคับใช้แรงงาน โดยอาศัยแนวทางพิจารณาและการคุ้มครองเช่นเดียวกันกับผู้เสียหายจากการค้ามนุษย์ งานวิจัยนี้ประกอบด้วยการวิจัยเอกสารและรวบรวมข้อมูลด้วยการสัมภาษณ์เชิงลึก โดยสัมภาษณ์ผู้ปฏิบัติงานสหวิชาชีพที่เกี่ยวข้องต่อการคัดแยกเหยื่อแรงงานบังคับภาคประมงทะเลตามแนวทางฐานสิทธิมนุษยชน (Human Rights - Based Approach) 8 คน ประกอบด้วยพนักงานตรวจแรงงานของสำนักงานสวัสดิการและคุ้มครองแรงงานจังหวัดสมุทรสาคร นักสังคมสงเคราะห์และนักจิตวิทยาในสถานคุ้มครองสวัสดิภาพผู้เสียหายจากการค้ามนุษย์จังหวัดปทุมธานี พนักงานสอบสวนสังกัดกองบังคับการปราบปรามการค้ามนุษย์ ตลอดจนนักกฎหมาย และล่ามขององค์กรพัฒนาเอกชนในพื้นที่จังหวัดสมุทรสาคร

การศึกษาพบว่า รัฐมีความพยายามกำหนดนิยามความผิดฐานบังคับใช้แรงงานและบทลงโทษ รวมถึงการปรับปรุงแบบสัมภาษณ์คัดแยกเบื้องต้น เพื่อการคัดแยกผู้เสียหายจากการถูกบังคับใช้แรงงานหรือบริการ ผลการวิจัยชี้ให้เห็นว่าผู้ปฏิบัติงานสหวิชาชีพยังไม่ได้รับการฝึกอบรมเพื่อสร้างความรู้ความเข้าใจและทักษะในการประเมินข้อบ่งชี้การเป็นผู้เสียหาย อีกทั้งยังขาดคู่มือสำหรับผู้ปฏิบัติงาน และจำนวนล่ามไม่เพียงพอ งานวิจัยฉบับนี้จึงเสนอให้มีการกำหนดแนวปฏิบัติการคัดแยกผู้เสียหายให้มีละเอียดความชัดเจน และแก้ไขหลักสูตรอบรมสหวิชาชีพให้มีความเข้าใจรูปแบบของการบังคับใช้แรงงานหรือบริการอย่างแท้จริง ตลอดจนการพัฒนากลไกการรับเรื่องร้องเรียนของผู้เสียหายจากการบังคับใช้แรงงาน และยังเสนอให้มีการพัฒนาโครงการฝึกอบรมทักษะวิชาชีพให้สอดคล้องกับบริบทผู้เสียหายจากการบังคับใช้แรงงานและการสร้างเครือข่ายคัดแยกผู้เสียหายด้วย

คำสำคัญ: บังคับใช้แรงงาน, การคัดแยกผู้เสียหาย, ผู้ปฏิบัติงานสหวิชาชีพ.

1. ที่มาและความสำคัญของปัญหา

ปรากฏการณ์แรงงานย้ายถิ่นทั่วโลกก่อให้เกิดการแสวงหาประโยชน์จากแรงงานที่เข้าข่ายเป็นทาสยุคใหม่ (Modern-day slavery) กว่า 40 ล้านคน โดยจำแนกเป็นการค้ามนุษย์ และแรงงานบังคับ เฉพาะรูปแบบแรงงานบังคับ (Forced Labor) คาดการณ์ว่าทั่วโลกมีจำนวนกว่า 24.9 ล้านคน ในจำนวนนี้เป็นแรงงานข้ามชาติจากประเทศเพื่อนบ้านที่ทำงานในภาคอุตสาหกรรมประมงทะเลของไทย ที่พบสภาพปัญหาการละเมิดสิทธิมนุษยชนอย่างร้ายแรงและการแสวงหาประโยชน์ด้านแรงงานตามรายงานของการค้ามนุษย์ประเทศไทย ของกระทรวงการต่างประเทศสหรัฐอเมริกา (US Department of State) ตั้งแต่ปี 2553 เป็นต้นมา ที่ระบุถึงปัญหาแรงงานบังคับในภาคประมงของไทย สอดคล้องกับรายงานของกระทรวงแรงงานสหรัฐอเมริกา (US Department of Labor) ในปี 2561 ที่ระบุว่ารายการสินค้าของไทยถูกระบุในบัญชีรายชื่อสินค้าที่มีเหตุผลเชื่อได้ว่าผลิตโดยการใช้แรงงานเด็กหรือแรงงานบังคับ (List of Goods Produced by Child Labor or Forced Labor: TVPRA List) โดยสินค้ากึ่งผลิตจากแรงงานเด็กและสินค้าปลาผลิตจากแรงงานบังคับ นับว่าสถานการณ์ดังกล่าวส่งผลกระทบต่อภาพลักษณ์ของประเทศไทยและอาจเป็นอุปสรรคทางการค้าการส่งออกที่เป็นรายได้สำคัญของประเทศไทยตลอดมา จึงจำเป็นต้องมีมาตรการป้องกันและแก้ไขปัญหาค้ามนุษย์และแรงงานบังคับ ทั้งนี้ ประเทศไทยลงนามให้สัตยาบันอนุสัญญาองค์การแรงงานระหว่างประเทศฉบับที่ 29 ว่าด้วยแรงงานบังคับ ค.ศ. 1930 และอนุสัญญาว่าด้วยการยกเลิกแรงงานบังคับฉบับที่ 105 ค.ศ. 1957 ต่อมาวันที่ 7 เมษายน พ.ศ. 2562 มีการประกาศลักษณะความผิดฐานบังคับใช้แรงงานหรือบริการโดยเฉพาะในพระราชบัญญัติป้องกันและปราบปรามการค้ามนุษย์ พ.ศ. 2551 (แก้ไขเพิ่มเติม พ.ศ. 2562) รวมถึงการช่วยเหลือและคุ้มครองสวัสดิภาพผู้เสียหายจากการถูกบังคับใช้แรงงาน โดยอาศัยแนวทางพิจารณาคดีและวิธีปฏิบัติเช่นเดียวกับความผิดฐานค้ามนุษย์ อย่างไรก็ตาม เนื่องจากการผนวกรวมลักษณะความผิดฐานบังคับใช้แรงงานไว้ในพระราชบัญญัติป้องกันและปราบปรามการค้ามนุษย์ โดยเฉพาะการช่วยเหลือและคุ้มครองผู้เสียหายและการคัดแยกผู้เสียหายเบื้องต้น ยังมีช่องว่างจากการที่ไม่สามารถนำอนุบัญญัติเดิมของกฎหมายป้องกันและปราบปรามการค้ามนุษย์มาปรับใช้กับกรณีบังคับใช้แรงงาน รวมถึงปัญหาแนวทางการระบุนการสัมภาษณ์เพื่อคัดแยกผู้เสียหายจากการกระทำความผิดฐานบังคับใช้แรงงานที่ไม่ชัดเจน ทั้งในแง่มาตรฐานหรือแนวทางการคัดแยกผู้เสียหายที่อาจแตกต่างกัน ขึ้นอยู่กับความเข้าใจและดุลพินิจของผู้ปฏิบัติงานสหวิชาชีพ ดังนั้น ผู้วิจัยจึงสนใจศึกษาถึงความเข้าใจของพนักงานเจ้าหน้าที่ผู้ปฏิบัติงานสหวิชาชีพต่อความผิดฐานบังคับใช้แรงงาน ตลอดจนรูปแบบการปฏิบัติงานตามฐานสิทธิมนุษยชน โดยมุ่งเน้นทำความเข้าใจถึงรูปแบบกลไกทำงานของผู้ปฏิบัติงานสหวิชาชีพในการคัดแยกผู้เสียหายจากแรงงานบังคับให้ตามหลักการกฎหมาย ทั้งนี้ไปสู่การพัฒนาวิธีการคัดแยกผู้เสียหายและการคุ้มครอง การจัดบริการและสิทธิประโยชน์ที่เหมาะสมต่อไป

2. วัตถุประสงค์การวิจัย

1. เพื่อทราบว่าเจ้าหน้าที่ผู้ปฏิบัติงานสหวิชาชีพที่เกี่ยวข้องกับการคัดแยกเหยื่อแรงงานบังคับมีความเข้าใจตามหลักของกฎหมายระหว่างประเทศและกฎหมายภายใน
2. เพื่อทราบว่ารูปแบบการปฏิบัติงานเจ้าหน้าที่สหวิชาชีพที่เกี่ยวข้องกับการคัดแยกเหยื่อแรงงานบังคับ เป็นไปตามแนวทางการสิทธิมนุษยชน (Human Rights - Based Approach) หรือไม่ อย่างไร
3. ทราบแนวทางการพัฒนาการคัดแยกเหยื่อแรงงานบังคับของทีมสหวิชาชีพ

3. ที่มาของการคัดแยกผู้เสียหายจากการกระทำความผิดฐานบังคับใช้แรงงาน

มติคณะรัฐมนตรี วันที่ 14 มิถุนายน 2548 ให้จัดตั้งศูนย์ปฏิบัติการป้องกันและปราบปรามการค้ามนุษย์จังหวัด หรือศป.จ.จังหวัด (Provincial Operation Center on Prevention and Suppression on Human Trafficking (POHCT) ซึ่งมีอำนาจหน้าที่จัดตั้ง “ชุดปฏิบัติการช่วยเหลือเหยื่อการค้ามนุษย์ในรูปแบบสหวิชาชีพ” อันอาจประกอบด้วย พนักงานอัยการ เจ้าหน้าที่ตำรวจ พนักงานเจ้าหน้าที่ตามพระราชบัญญัติป้องกันและปราบปรามการค้ามนุษย์ พนักงานฝ่ายปกครอง แพทย์ นักสังคมสงเคราะห์ นักจิตวิทยา นักกฎหมาย เจ้าหน้าที่สำนักงานจัดหางานจังหวัดและผู้แทนหน่วยงานภาคเอกชนที่เกี่ยวข้อง ล่าม รวมถึงบุคคลอื่นที่เกี่ยวข้องและเหมาะสม เพื่อดำเนินการเชิงรุกและเชิงรับ ทั้งนี้ ศป.จ.จังหวัดยังอาจจัดตั้งชุดปฏิบัติการช่วยเหลือเหยื่อการค้ามนุษย์ในรูปแบบสหวิชาชีพในระดับอำเภอที่มีความจำเป็นได้อีกด้วย

ผู้ปฏิบัติงานสหวิชาชีพ (Multi-disciplinary Practitioners) หรือที่มักนิยมเรียกกันทั่วไปว่า “ทีมสหวิชาชีพ” (Multi-disciplinary team : MDT) หมายถึง กลุ่มบุคคลที่มีความรู้ มีทักษะและมีความสามารถเฉพาะด้านที่แตกต่างกันมาทำงานร่วมกัน เพื่อมุ่งสู่การแก้ไขปัญหาพร้อมกันอย่างเป็นระบบ และเป็นกระบวนการอยู่บนพื้นฐานของเป้าหมายและวัตถุประสงค์เดียวกัน โดยประเมินสภาพปัญหา วางแผน และปฏิบัติงานร่วมกัน ซึ่งมีการสื่อสารระหว่างกันอย่างต่อเนื่อง และมีความรับผิดชอบร่วมกันตั้งแต่ต้นจนสุดกระบวนการ การดำเนินงานแบบสหวิชาชีพในการสัมภาษณ์คัดแยกผู้เสียหาย ให้ความสำคัญต่อการซักถามข้อเท็จจริงเพื่อใช้ประกอบการคัดแยกผู้ตกเป็นเหยื่อการค้ามนุษย์ รวบรวมข้อมูลให้เป็นระบบและเชื่อมต่อหน่วยงานที่เกี่ยวข้อง โดยมุ่งเน้นการประเมินสภาวะทางด้านร่างกาย จิตใจและสังคมของผู้นั้นตามแนวคิดยึดผู้เสียหายเป็นศูนย์กลาง (Victim-Center Approach) การสัมภาษณ์คัดแยกผู้เสียหายถือเป็นต้นทางที่จะนำไปสู่การช่วยเหลือและคุ้มครองสวัสดิภาพของผู้เสียหาย ทั้งการดำเนินคดีอาญาและการดำเนินคดีแรงงานที่เกี่ยวข้อง การพ่อนผันให้อยู่อาศัยในประเทศเป็นการชั่วคราว การเรียกค่าสินไหมทดแทน ตลอดจนกระบวนการส่งกลับผู้เสียหายคืนสู่ประเทศต้นทางและคืนสู่สังคม

ทั้งนี้ ประเทศไทยเริ่มมีการใช้กระบวนการทีมสหวิชาชีพเป็นครั้งแรกเมื่อปีพ.ศ.2549 ในกรณีคัดแยกแรงงานข้ามชาติที่ตกเป็นผู้เสียหายจากการกระทำความผิดฐานค้ามนุษย์ ซึ่งทำงานในสถานประกอบการต่อเนื่องประมงทะเลในจังหวัดสมุทรสาคร ต่อมาเมื่อมีการประกาศใช้พระราชบัญญัติป้องกันและปราบปรามการค้ามนุษย์พ.ศ.2551 จึงนำรูปแบบสหวิชาชีพมาใช้ในการคัดแยกผู้เสียหายจากการกระทำความผิดฐานค้ามนุษย์และความผิดฐานบังคับใช้แรงงานหรือบริการตามลำดับ

4. วิธีการศึกษา

การศึกษาความเข้าใจของผู้ปฏิบัติงานสหวิชาชีพที่เกี่ยวข้องต่อการคัดแยกเหยื่อแรงงานบังคับ โดยใช้การวิจัยเอกสาร (Documentary Research) ที่เกี่ยวข้องกับนิยามของแรงงานบังคับตามกฎหมายระหว่างประเทศและกฎหมายภายในประเทศ และการสัมภาษณ์เชิงลึก (In-depth Interview) ผู้ปฏิบัติงานสหวิชาชีพที่เกี่ยวข้องรวมทั้งสิ้นจำนวน 8 คน ประกอบด้วย พนักงานตรวจแรงงานของสำนักงานสวัสดิการและคุ้มครองแรงงานจังหวัดสมุทรสาคร จำนวน 2 คน พนักงานสอบสวนสังกัดกองบังคับการปราบปรามการค้ามนุษย์ จำนวน 2 คน นักสังคมสงเคราะห์และนักจิตวิทยาจากสถานคุ้มครองผู้เสียหายจากการค้ามนุษย์จังหวัดปทุมธานี จำนวน 2 คน นักกฎหมายที่ปฏิบัติงานให้ความช่วยเหลือและล่ามแปลภาษาจากมูลนิธิเครือข่ายส่งเสริมคุณภาพชีวิตแรงงาน (LPN) จังหวัดสมุทรสาคร จำนวน 2 คน

5. ข้อค้นพบจากงานวิจัย

5.1 ความผิดฐานแรงงานบังคับและการคัดแยกผู้เสียหายจากการบังคับใช้แรงงาน

ความผิดฐานแรงงานบังคับหรือบังคับใช้แรงงานหรือบริการ ตามอนุสัญญาองค์การแรงงานระหว่างประเทศ ว่าด้วยการเกณฑ์แรงงานหรือแรงงานบังคับ ฉบับที่ 29 (ค.ศ.1930) ให้นิยามของคำว่า “แรงงานเกณฑ์หรือแรงงานบังคับ” หมายถึง งานหรือบริการทุกชนิดที่เกณฑ์เอาจากบุคคลใดๆ โดยการขู่เชิญลงโทษ และบุคคลดังกล่าวมิได้สมัครใจที่จะทำเอง

มาตรา 2 (1) ของอนุสัญญาว่าด้วยการเกณฑ์แรงงานหรือแรงงานบังคับ ฉบับที่ 29 กำหนดองค์ประกอบ “แรงงานเกณฑ์หรือแรงงานบังคับ” รวม 3 ประการ ได้แก่

1. การบังคับใช้แรงงานหรือบริการ: งานหรือบริการทุกชนิดงานบริการทุกประเภทและการจ้างงานที่เกิดขึ้นในกิจกรรมอุตสาหกรรมหรือภาคส่วนใดๆ รวมถึงเศรษฐกิจนอกระบบ การบังคับใช้แรงงานสามารถเกิดขึ้นได้ทั้งในภาครัฐและเอกชน
2. มีการขู่เชิญลงโทษ: ช่วงของการลงโทษที่ใช้บังคับให้คนทำงานหรือบริการรวมถึงบทลงโทษและการบีบบังคับรูปแบบต่าง ๆ ทั้งทางตรงและทางอ้อมเช่นความรุนแรงทางกาย การคุกคามทางจิตวิทยา หรือการไม่จ่ายค่าจ้าง “การลงโทษ” อาจประกอบด้วย การทำให้สูญเสียสิทธิหรือสิทธิพิเศษ (เช่นการปรับเลื่อนขั้นหรือการเข้าถึงการจ้างงานใหม่)
3. มิได้สมัครใจ : เสรีภาพและการแจ้งความยินยอมแก่แรงงานเพื่อเข้าสู่ความสัมพันธ์ในการจ้างงาน และเสรีภาพในการออกจากการทำงานได้ตลอดเวลา ตัวอย่างเช่นนายจ้างหรือนายหน้าอาจลิดรอนเสรีภาพนี้โดยการทำผิดสัญญาเพื่อชักจูงแรงงานให้ทำงานที่ไม่ยอมรับ

องค์การแรงงานระหว่างประเทศ กำหนดตัวชี้วัดแรงงานบังคับ 11 ประการ ให้มีเนื้อหาครอบคลุมองค์ประกอบสำคัญของสถานการณ์การใช้แรงงานบังคับ เพื่อประเมินและตัดสินว่าแรงงานคนใดตกเป็นเหยื่อของการใช้แรงงานบังคับหรือไม่ ประกอบด้วย

1. การละเมิดอันเนื่องมาจากความเปราะบางของแรงงานที่เป็นกลุ่มเสี่ยง (Abuse of Vulnerability)
2. การหลอกลวง (Deception)
3. การจำกัดเสรีภาพในการเดินทาง (Restriction of Movement)
4. การถูกโดดเดี่ยวจากสังคม (Isolation)
5. ความรุนแรงต่อร่างกายและความรุนแรงทางเพศ (Physical and Sexual Violence)
6. การขู่เชิญและการข่มขู่ (Intimidation and Threats)
7. การยึดเอกสารประจำตัว (Retention of ID documents)
8. การไม่จ่ายค่าจ้าง (Withholding of Wages)
9. แรงงานขังหนี้ (Debt Bondage)
10. สภาพการทำงานและสภาพการดำรงชีพที่เลวร้าย (Very Bad Living and Working Conditions)
11. ชั่วโมงการทำงานล่วงเวลาที่ยาวนาน (Excessive Overtime)

บางกรณี แม้มีการกระทำที่เข้าข่ายตัวชี้วัดเพียงประการเดียว ก็อาจถือว่าเป็นสถานการณ์ใช้แรงงานบังคับ แต่หลายกรณี อาจต้องพิจารณาหลายตัวชี้วัดประกอบกัน เพื่อจะตัดสินได้ว่ามีการใช้แรงงานบังคับเกิดขึ้น

มาตรฐานแรงงานระหว่างประเทศ (International Labour Standard) ที่กำหนดให้แรงงานข้ามชาติต้องได้รับอิสรภาพ จากการเป็นแรงงานบังคับ ไม่ว่าจะอยู่ในสถานะใด ตามอนุสัญญาว่าด้วยการยกเลิกแรงงานระหว่างประเทศว่าด้วยการเกณฑ์แรงงาน หรือแรงงานบังคับฉบับที่ 29 (ค.ศ.1930) และอนุสัญญาว่าด้วยการยกเลิกแรงงานบังคับฉบับที่ 105 (ค.ศ.1957) กำหนดพันธกรณี ให้รัฐสมาชิกที่ให้อนุสัญญาดังกล่าวไว้จะดำเนินการระงับหรือดำเนินการมาตรการที่มีประสิทธิผล เพื่อประกันให้มีการยกเลิกการเกณฑ์ แรงงาน หรือแรงงานบังคับไม่ว่ารูปแบบใด ๆ รวมถึงการคุ้มครองเหยื่อและจัดให้เข้าถึงการเยียวยา

ขณะที่กฎหมายไทยกำหนดองค์ประกอบความผิดหรือตัวชี้วัดแรงงานบังคับ 6 ประการ ดังนี้

มาตรา 6/1 แห่งพระราชบัญญัติป้องกันและปราบปรามการค้ามนุษย์ พ.ศ.2551 (แก้ไขเพิ่มเติม พ.ศ.2562) บัญญัติว่า “ผู้ใดข่มขืนใจผู้อื่นให้ทำงานหรือให้บริการโดยวิธีการอย่างหนึ่งอย่างใด ดังต่อไปนี้

1. ทำให้กลัวว่าจะเกิดอันตรายต่อชีวิต ร่างกาย เสรีภาพ ชื่อเสียง หรือทรัพย์สินของบุคคลนั้นเองหรือของผู้อื่น
2. ขู่เข็ญด้วยประการใด ๆ
3. ใช้กำลังประทุษร้าย
4. ยึดเอกสารสำคัญประจำตัวของบุคคลนั้นไว้
5. นำภาระหนี้ของบุคคลนั้นหรือของผู้อื่นมาเป็นสิ่งผูกมัดโดยมิชอบ
6. ทำด้วยประการอื่นใดอันมีลักษณะคล้ายคลึงกับการกระทำดังกล่าวข้างต้น

ถ้าได้กระทำให้ผู้อื่นนั้นอยู่ในภาวะที่ไม่สามารถขัดขืนได้ ผู้นั้นกระทำความผิดฐานบังคับใช้แรงงานหรือบริการ

มีข้อสังเกตว่าความผิดฐานบังคับใช้แรงงาน ตามมาตรา 6/1 และบทกำหนดโทษตามมาตรา 52/1 แห่งพระราชบัญญัติ ป้องกันและปราบปรามการค้ามนุษย์ พ.ศ. 2551 (แก้ไขเพิ่มเติม พ.ศ. 2562) บัญญัติความผิดฐานบังคับใช้แรงงานหรือบริการเฉพาะ ให้มีอัตราโทษต่ำกว่าความผิดฐานค้ามนุษย์ด้านแรงงาน(บังคับใช้แรงงานหรือบริการ) ตามพระราชบัญญัติป้องกันและปราบปราม การค้ามนุษย์ พ.ศ. 2551 (ฉบับที่ 3) พ.ศ. 2560 กล่าวคือ

มาตรา 52/1 แห่งพระราชบัญญัติป้องกันและปราบปรามการค้ามนุษย์ พ.ศ.2551 (แก้ไขเพิ่มเติม พ.ศ. 2562) ระบุว่า “ผู้ใดกระทำความผิดตามมาตรา 6/1 ต้องระวางโทษจำคุกตั้งแต่หกเดือนถึงสี่ปี หรือปรับตั้งแต่ ห้าหมื่นบาทถึงสี่แสนบาทต่อ ผู้เสียหายหนึ่งคน หรือทั้งจำทั้งปรับ”

ส่วนในมาตรา 52 แห่งพระราชบัญญัติป้องกันและปราบปรามการค้ามนุษย์ พ.ศ. 2551 (ฉบับที่ 3) พ.ศ. 2560 ระบุว่า “ผู้ใดกระทำความผิดฐานค้ามนุษย์ ต้องระวางโทษจำคุกตั้งแต่สี่ปีถึงสิบสองปี และปรับตั้งแต่สี่แสนบาทถึงหนึ่งล้านสองแสนบาท”

การคัดแยกผู้เสียหายจากการบังคับใช้แรงงาน

การคัดแยกผู้เสียหาย (Victim Identification) มีที่มาจากอนุสัญญาสหประชาชาติเพื่อต่อต้านอาชญากรรมข้ามชาติที่จัดตั้งในลักษณะองค์กร (United Nations Convention Against Transnational Organized Crime - UNOTC) และพิธีสารเพื่อป้องกัน ปรามปรามและลงโทษการค้ามนุษย์ โดยเฉพาะสตรีและเด็ก เพิ่มเติมอนุสัญญาสหประชาชาติเพื่อต่อต้านอาชญากรรมข้ามชาติที่จัดตั้งในลักษณะองค์กร (Protocol to Prevent, suppress and punish trafficking in persons, especially women and children, supplementing the united nations convention against transnational organized) United Nations Convention Against Transnational Organized Crime - UNOTC และ (Protocol to Prevent, suppress and punish trafficking in persons, especially women and children, supplementing the united nations convention against transnational organized) สารสำคัญของพิธีสารเพื่อป้องกัน ปรามปรามและลงโทษการค้ามนุษย์ โดยเฉพาะสตรีและเด็ก กำหนดให้รัฐภาคีต้องดำเนินการกำหนดให้การค้ามนุษย์เป็นความผิดอาญา กำหนดการให้ความช่วยเหลือและคุ้มครองป้องกันเหยื่อจากการค้ามนุษย์ และการให้ความร่วมมือในการส่งกลับเหยื่อจากการค้ามนุษย์โดยเคารพหลักการสิทธิมนุษยชน

ในระดับภูมิภาคหรือสมาคมประชาชาติแห่งเอเชียตะวันออกเฉียงใต้ยังกำหนดอนุสัญญาอาเซียนว่าด้วยการต่อต้านการค้ามนุษย์ โดยเฉพาะสตรีและเด็ก (ASEAN Convention Against Trafficking in Persons, Especially Women and Children) ที่มีหลักการสอดคล้องกับพิธีสารเพื่อป้องกัน ปรามปรามและลงโทษการค้ามนุษย์ขององค์การสหประชาชาติ โดยเฉพาะในหมวด 4 การคุ้มครอง ข้อ 14 ว่าด้วยการคุ้มครองผู้เสียหายจากการค้ามนุษย์ ที่รัฐสมาชิกหรือภาคีต้องจัดทำแนวปฏิบัติระดับประเทศ หรือวิธีการในการคัดแยกผู้เสียหายจากการค้ามนุษย์ที่เหมาะสม และอาจร่วมกับองค์กรช่วยเหลือผู้เสียหายที่ไม่ใช่องค์กรภาครัฐที่เกี่ยวข้อง รวมถึงการดูแลสุขภาพความปลอดภัยของผู้เสียหาย การพิจารณาไม่ให้ผู้เสียหายต้องรับผิดทางอาญาหรือทางปกครองจากการกระทำผิดกฎหมาย การดำเนินถึงวัย เพศ และความต้องการพิเศษของผู้เสียหาย ตลอดจนมาตรการให้ผู้เสียหายสามารถได้รับการชดเชยความเสียหายที่เกิดขึ้น

แนวคิดการคัดแยกผู้เสียหายหรือเหยื่อไม่ให้ตกเป็นอาชญากร เพื่อสามารถกำหนดสถานะและมาตรการคุ้มครองที่เหมาะสมต่อการให้ความช่วยเหลือในฐานะผู้เสียหายจากการค้ามนุษย์ที่แท้จริง มีผู้ใช้ที่ลักลอบเข้าเมือง (People Smuggling) หรือผู้โยกย้ายถิ่นฐานแบบไม่ปกติ (Irregular Migration) หรือบุคคลกลุ่มอื่นที่กำลังอยู่ในสถานการณ์ถูกกระทำทารุณกรรม หรือมีความเสี่ยงซึ่งจำเป็นต้องได้รับการช่วยเหลือหรือคุ้มครอง กระบวนการคัดแยกผู้เสียหายเบื้องต้น (Initial Victim Identification) ยังส่งผลถึงมาตรการให้ความช่วยเหลือและความคุ้มครองต่างๆ ตามหลักสิทธิมนุษยชน เช่น ความปลอดภัยและสวัสดิภาพส่วนบุคคล ยารักษาโรคและบริการสุขภาพอื่นๆ ที่พักอาศัย อาหารและปัจจัยขั้นพื้นฐาน การให้คำปรึกษาและการดูแลทางจิตสังคม การเยียวยา กระบวนการยุติธรรมทางอาญาในแง่การเป็นเหยื่ออาชญากรรมและพยาน การไม่ถูกคุมขัง การจัดสิทธิประโยชน์และบริการเพิ่มเติม เช่น การให้เป็นผู้มีถิ่นที่อยู่ชั่วคราวหรือถาวร

รัฐบาลมีความพยายามในการคัดแยกผู้เสียหายจากการค้ามนุษย์ในภาคแรงงานประมง โดยกระทรวงแรงงานมีข้อสั่งการให้พนักงานตรวจแรงงานประสานทีมสหวิชาชีพ เพื่อร่วมเข้าสัมภาษณ์คัดแยกผู้เสียหายทุกราย หากพบการกระทำที่ละเมิดกฎหมายคุ้มครองแรงงาน การกระทำความผิดที่ใช้แรงงานเด็กในลักษณะอันตราย เข้าข่ายแรงงานบังคับหรือแรงงานขัดหนี้ การปรับปรุงกฎหมายและมาตรการที่เกี่ยวข้องกับกรมประมง กรมเจ้าท่า และกระทรวงแรงงาน และกำหนดมาตรการทางปกครองและทางอาญาให้สูงขึ้น การดำเนินการตามแผนบูรณาการเพื่อเพิ่มประสิทธิภาพในการคัดแยกผู้เสียหายตั้งแต่ปี 2560 ประกอบด้วย

สถานที่สัมภาษณ์/คัดแยก ความรู้ความสามารถของสาขาวิชาชีพ แบบสัมภาษณ์คัดแยก ผู้ประสานงานด้านภาษา(ล่าม) และการบริหารจัดการแบบบูรณาการระหว่างหน่วยงานปฏิบัติที่เกี่ยวข้อง การปรับปรุงหลักสูตรฝึกอบรม รวมถึงกำหนดแนวปฏิบัติการตรวจแรงงานในสถานประกอบกิจการกลุ่มเสี่ยงและ/หรือเข้าถึงยาก โดยเฉพาะกิจการประมงทะเล ทั้งบนฝั่งและกลางทะเล ตลอดจนนำเทคโนโลยีมาใช้ตรวจสอบอัตลักษณ์บุคคลของลูกเรือประมงทะเล เช่น เทคโนโลยี Biometrics ด้วยวิธีตรวจสอบม่านตาและภาพใบหน้า (Iris Scan System)

นอกจากนี้ รัฐบาลไทยยังร่วมกับภาคประชาสังคมและองค์กรพัฒนาเอกชนในการทบทวนปรับปรุงแบบสัมภาษณ์คัดแยกผู้เสียหายเบื้องต้นจากการการค้ามนุษย์และผู้เสียหายจากการถูกบังคับใช้แรงงานหรือบริการล่าสุดเป็นฉบับที่ 3 และกำหนดให้กระทรวงพัฒนาสังคมและความมั่นคงของมนุษย์พัฒนาแนวทางสัมภาษณ์และฝึกอบรมเจ้าหน้าที่ผู้ปฏิบัติงานที่เกี่ยวข้อง อย่างไรก็ตาม ทางปฏิบัติยังพบว่าคดีค้ามนุษย์ด้านแรงงานมักถูกส่งไปดำเนินคดีที่ศาลแรงงานมากกว่าการดำเนินคดีอาญา ขณะที่กลไกศูนย์รับบริการเพื่อช่วยเหลือแรงงานข้ามชาติ หรือกลไกพนักงานแรงงานของศูนย์แจ้งเข้าออกเรือประมงไม่เคยรายงานว่าการตรวจแรงงานสามารถส่งผลถึงการคัดแยกเหยื่อค้ามนุษย์ โดยเฉพาะการที่ไม่นำตัวชี้วัดมาตรฐานค้ามนุษย์ด้านแรงงาน (Labour Trafficking) มาใช้ในกรณีลูกเรือสูญหายไปทะเล

5.2 การสัมภาษณ์ผู้ปฏิบัติงานสาขาวิชาชีพ

หลังจากความผิดฐานบังคับใช้แรงงานหรือบริการประกาศใช้เมื่อปีพ.ศ. 2562 ผู้ปฏิบัติงานสาขาวิชาชีพที่มีภารกิจในการคัดแยกผู้เสียหายจากการถูกบังคับใช้แรงงาน ส่วนใหญ่ยังไม่ได้รับการฝึกอบรมความรู้ความเข้าใจและทักษะการคัดแยกผู้เสียหายเฉพาะอย่างเพียงพอ ส่วนหนึ่งผ่านการอบรมคัดแยกผู้เสียหายจากการค้ามนุษย์เป็นหลักก่อนปรับปรุงเพิ่มฐานความผิดแรงงานบังคับ จึงมักเกิดอุปสรรคปัญหาจากความเข้าใจคลุมเครือระหว่างความผิดฐานบังคับใช้แรงงานและการค้ามนุษย์และการแสวงหาประโยชน์ด้านแรงงาน ปัจจุบันยังขาดคู่มือสำหรับผู้ปฏิบัติงานเพื่ออธิบายนิยาม องค์ประกอบความผิด แนวปฏิบัติสำหรับคัดแยกผู้เสียหายแรงงานบังคับชัดเจนโดยเฉพาะ ส่วนแบบสัมภาษณ์คัดแยกผู้เสียหายเบื้องต้นจากการค้ามนุษย์และผู้เสียหายจากการถูกบังคับใช้แรงงานหรือบริการ (ค.ม.1) ที่ปรับปรุงล่าสุดและยกเลิกฉบับเดิมเมื่อเดือนมีนาคม พ.ศ.2563 โดยกระทรวงการพัฒนาสังคมและความมั่นคงของมนุษย์ ถือว่าเป็นเครื่องมือบันทึกข้อเท็จจริงด้วยการสัมภาษณ์คัดแยกตามองค์ประกอบของกฎหมาย และระบุความเห็นจากการสัมภาษณ์ ที่มีการส่งเวียนแบบสัมภาษณ์ไปยังส่วนราชการที่เกี่ยวข้อง กลับยังไม่ถูกนำมาฝึกอบรมและใช้ปฏิบัติงานคัดแยกผู้เสียหายอย่างแพร่หลาย นอกเสียจากจะมีโอกาสให้ความช่วยเหลือผู้เสียหายเสียก่อน

ในแง่มาตรการหรือรูปแบบการคัดแยกผู้เสียหายจากการบังคับใช้แรงงาน เจ้าหน้าที่ผู้ปฏิบัติงาน โดยเฉพาะนักสังคมสงเคราะห์ นักจิตวิทยาและล่ามแปลภาษามีทักษะในการสร้างสัมพันธภาพและความไว้วางใจ เพื่อสามารถคัดกรอง ประเมินสภาพร่างกายและจิตใจของผู้เสียหาย วิเคราะห์ปัญหาและความต้องการที่แท้จริงของผู้เสียหาย ทั้งนี้ ข้อสังเกตความแตกต่างระหว่างผู้เสียหายจากการค้ามนุษย์และผู้เสียหายจากการบังคับใช้แรงงาน โดยเฉพาะในกลุ่มแรงงานข้ามชาติ ที่เข้ารับการคุ้มครองสวัสดิภาพ มักพบประเด็นเรื่องการบังคับและความไม่ยินยอม ถูกใช้ข่มขู่โทษที่ไม่ถึงขั้นประสบันตรายแก่ร่างกาย ส่วนสถานภาพการเข้าเมือง ยังมีทั้งสิทธิอาศัยและสิทธิทำงานในประเทศไทยชัดเจน ทั้งมีทางเลือกในชีวิตมากกว่าเช่นหากมีวีซ่าและใบอนุญาตทำงานย่อมสามารถแจ้งความประสงค์ต่อสำนักงานจัดหางานในพื้นที่จังหวัด เพื่อเปลี่ยนย้ายนายจ้างไปทำงานกับนายจ้างใหม่ระหว่างดำเนินคดีอาญาหรือคดีแรงงาน ไม่ต้องขออนุญาตผ่อนผันอยู่ในประเทศเพื่อการทำงาน หรืออาศัยระยะเวลายาวนานในการประสานส่งกลับประเทศต้นทาง หรือคืนสู่สังคมเช่นผู้เสียหายจากการค้ามนุษย์ แต่ในอีกแง่หนึ่งกลับกลายเป็นอุปสรรคของ

ผู้ปฏิบัติงาน ที่ต้องเผชิญความยากลำบากในการอธิบายสถานการณ์ขั้นตอน กระบวนการ ระยะเวลาคุ้มครองยาวนาน โดยเฉพาะผู้เสียหายกลุ่มบังคับใช้แรงงาน ถึงเหตุผลที่ต้องเข้ารับการคุ้มครองในสถานคุ้มครอง ทั้งที่ตนเองอาจไม่ได้ถูกกระทำเช่นสภาพของผู้เสียหายจากการค้ามนุษย์ที่เผชิญสถานการณ์ต่างๆรุนแรงกว่า

ในแง่ข้อการประเมินปัจจัยของการคัดแยกผู้เสียหายจากการถูกบังคับใช้แรงงานมีความยากลำบากกว่าการคัดแยกผู้เสียหายจากการค้ามนุษย์ ผู้ปฏิบัติงานให้ข้อมูลว่าเข้าใจและคุ้นชินกับการประเมินโอกาสการเป็นผู้เสียหายจากการค้ามนุษย์จากข้อบ่งชี้ต่างๆโดยเฉพาะหลักฐานจำพวกบาดแผลทางร่างกายหรือสัญญาณภาษากายที่ชัดเจน จึงส่งผลถึงการดำเนินคดีในชั้นสอบสวน พนักงานอัยการและศาลที่จะต้องนำสืบถึงความเสียหายให้ชัดเจนเป็นที่ประจักษ์ เพื่อสามารถกำหนดค่าสินไหมทดแทนแก่ผู้เสียหาย

ในแง่การใช้ล่ามแปลภาษาคัดแยกผู้เสียหายจากบังคับใช้แรงงาน ที่ส่วนใหญ่เป็นแรงงานข้ามชาติจากประเทศเพื่อนบ้าน ล่ามจำเป็นต่อการสื่อสารความต้องการของผู้เสียหายถึงความเชื่อ อาหารการกิน กฎระเบียบ ยังพบข้อจำกัดที่มีเฉพาะบางหน่วยงานที่มีล่ามแปลภาษาเมียนมาและกัมพูชาเช่น สำนักงานสวัสดิการและคุ้มครองแรงงาน และมูลนิธิเครือข่ายส่งเสริมคุณภาพชีวิตแรงงาน (LPN) ส่วนหน่วยงานที่ไม่มีล่ามประจำต้องอาศัยการขอสนับสนุนล่ามจากองค์กรพัฒนาเอกชน หรือกรณีฉุกเฉินต้องใช้วิธีให้ล่ามแปลทางโทรศัพท์ อุปสรรคปัญหาในการแปลหลายครั้ง เกิดจากกรณีผู้เสียหายเป็นกลุ่มมีจำนวนมาก แต่ในระดับจังหวัดมีจำนวนเจ้าหน้าที่สหวิชาชีพและล่ามปฏิบัติงานไม่เพียงพอ หรือหากในกรณีสัมภาษณ์คัดแยกผู้เสียหาย โดยอาศัยล่ามที่มาจากหน่วยงานภาครัฐกับภาคเอกชน ต้องมีการประชุมกำหนดแนวทางระหว่างล่ามของหน่วยงานรัฐกับภาคเอกชนในการถ่ายทอดคำถามและสรุปประเด็นข้อเท็จจริง นอกจากนี้

6. ข้อถกเถียง

ความทับซ้อนระหว่างการกำหนดนิยามของแรงงานบังคับ การค้ามนุษย์และทาสยุคใหม่ ส่วนหนึ่งมาจากมุมมองทางเมืองที่ต้องการออกกฎหมายภายใน เพื่อรับรองว่าการกระทำใดจะเป็นความผิดอาญา นอกจากนี้ ยังขึ้นอยู่กับผู้บังคับใช้กฎหมายที่ต้องการมุ่งเน้นที่ความยุติธรรมทางอาญา(criminal justice)ลงโทษผู้กระทำผิด หรือความยุติธรรมทางแรงงาน (labour justice) ที่มุ่งเน้นการคุ้มครองหรือชดเชยค่าเสียหายแก่ผู้เสียหาย นิยามของการค้ามนุษย์มุ่งเน้นที่การแสวงหาประโยชน์โดยมิชอบ ลักษณะอาชญากรรมข้ามชาติและหลักการป้องกัน การคุ้มครองและการดำเนินคดี ขณะที่แรงงานบังคับนั้นเกี่ยวข้องกับธุรกิจห่วงโซ่อุปทาน (supply chain) ตัวอย่างที่เห็นชัดเจนเช่น แรงงานข้ามชาติที่ในภาคประมงทะเลมักจ่ายเงินแก่ตัวแทนจัดหางานเป็นค่าใช้จ่ายที่อธิบายไม่ได้ ชั่วโมงการทำงานยาวนาน สภาพความเป็นอยู่และสภาพการทำงานเลวร้ายเป็นตัวอย่างรูปแบบของการหลอกลวงและการบังคับ กลายเป็นความคลุมเครือที่จะดำเนินคดีอาญาฐานแรงงานบังคับหรือการค้ามนุษย์ด้านแรงงาน ส่วนความผิดฐานยึดเอกสารสำคัญประจำตัวของบุคคลเกี่ยวข้องกับความผิดฐานบังคับใช้แรงงานตามพระราชบัญญัติป้องกันและปราบปรามการค้ามนุษย์ พ.ศ.2551 ในมาตรา 6/1 (4) และยังถือเป็นความผิดตามพระราชกำหนดบริหารจัดการการทำงานของคนต่างด้าว พ.ศ.2561 ที่มาตรา 131 ระบุว่า “ผู้ใดยึดใบอนุญาตทำงานหรือเอกสารสำคัญประจำตัวของคนต่างด้าวไว้ ต้องระวางโทษจำคุกไม่เกินหกเดือนหรือปรับตั้งแต่หนึ่งหมื่นบาทถึงหนึ่งแสนบาท หรือทั้งจำทั้งปรับ” จึงเป็นข้อสังเกตว่าการยึดเอกสารประจำตัวเป็นความผิดตามกฎหมายสองฉบับ ผู้เสียหายจะร้องทุกข์ต่อหน่วยงานใดระหว่างกรมสวัสดิการและคุ้มครองแรงงาน และกรมการจัดหางาน

ความท้าทายในการบังคับใช้กฎหมายว่าด้วยความผิดฐานบังคับใช้แรงงาน ยังมีข้อถกเถียงว่าควรกำหนดให้หน่วยงานใด เป็นเจ้าภาพหลัก ระหว่างกระทรวงแรงงาน กระทรวงการพัฒนาสังคมและความมั่นคงของมนุษย์ หรือสำนักงานตำรวจแห่งชาติ จากการสัมภาษณ์พบว่าตั้งแต่ในขั้นรับฟังความเห็นร่างกฎหมายนี้ หลายภาคส่วนที่เกี่ยวข้องแสดงความไม่เห็นด้วยที่จะออกกฎหมายต่อต้านการบังคับใช้แรงงานเป็นการเฉพาะ ด้วยเห็นว่ามิได้มีประมวลกฎหมายอาญา กฎหมายคุ้มครองแรงงาน และ พระราชบัญญัติป้องกันและปราบปรามการค้ามนุษย์ พ.ศ.2551 ทำให้กระทรวงแรงงานต้องนำความผิดฐานบังคับใช้แรงงานมา พิจารณาในพระราชบัญญัติป้องกันและปราบปรามการค้ามนุษย์ พ.ศ. 2551 ทั้งที่มา หลักการ และแนวคิดของการบังคับใช้แรงงาน มีความแตกต่างจากองค์ประกอบของการค้ามนุษย์

ขณะที่ธรรมเนียมปฏิบัติมุมมองของผู้ประกอบการเจ้าของเรือหลายพื้นที่ ถือเป็นความ

ท้าทายของผู้ปฏิบัติงานสหวิชาชีพต่อการตรวจแรงงานและคัดแยกผู้เสียหาย ด้วยภาวะขาดแคลนแรงงานภาคประมง เจ้าของเรือ อาศัยการคัดเลือกและรักษาแรงงาน ด้วยวิธีการสำรองค่าเดินทาง และการหักค่าจ้างภายหลังเพื่อผ่อนชำระค่าใช้จ่ายในการจัดหา งาน ค่าธรรมเนียมหนังสือเดินทาง ใบอนุญาตทำงาน และค่าตรวจประกันสุขภาพแรงงาน หลังหักค่าใช้จ่ายจากหนี้สินต่างๆ จึงจะ จ่ายเงินที่เหลือสำหรับปีนั้น จึงอาจเข้าข่ายทำให้แรงงานประมงตกอยู่ในภาวะแรงงานขัดหนี้ที่นำภาระหนี้ของบุคคลเป็นสิ่งผูกมัด โดยมิชอบ

ความยากลำบากในการประเมินชั่วโมงการทำงานของลูกเรือประมงที่จะถือเป็นการบังคับ โดยเจ้าของเรือและได้แก่เข้าใจ ว่าช่วงเวลาการทำงานของลูกเรือประมง คือช่วงเวลาที่ทอดอวนหรือดิ่งขึ้นเท่านั้น แม้ระหว่างนั้นแรงงานประมงจะทำงานอื่นๆ ที่ เกี่ยวข้องขณะทอดอวนลงในน้ำก็ตาม กลับถูกเจ้าของเรือและได้แก่นับว่าช่วงดังกล่าวนับเป็นช่วงเวลาที่พักของลูกเรือ โดยระบุว่า ลูกเรือทำงานวันละ 5-8 ชั่วโมง โดยเน้นขอบเขตลักษณะงานที่ลูกเรือต้องทำระหว่างอยู่บนเรือ ได้แก่ การดิ่งอวนขึ้นจากน้ำ การคัด แยกและขนสัตว์น้ำเข้าห้องเย็น ไม่ได้ระบุถึงงานปลักย่อย การบำรุงรักษา เช่นการซ่อมอวนหรืออุปกรณ์

7. ข้อเสนอแนะ

ข้อเสนอแนะต่อรัฐบาล

รัฐบาลควรจัดสรรงบประมาณเพื่อพัฒนาศักยภาพของผู้ปฏิบัติงานสหวิชาชีพ กำหนดแนวปฏิบัติการคัดแยกผู้เสียหายให้ มีความชัดเจนและแก้ไขหลักระบบสหวิชาชีพให้มีความเข้าใจรูปแบบของการบังคับใช้แรงงานหรือบริการอย่างแท้จริง สร้างกลไกร้องทุกข์สำหรับผู้เสียหายบังคับใช้แรงงาน การสร้างเครือข่ายคัดแยกผู้เสียหายที่เกี่ยวข้อง การสนับสนุนให้เกิดสหภาพ แรงงานประมงทะเล สนับสนุนงบประมาณในการจัดตั้งสถานคุ้มครองสวัสดิภาพผู้เสียหายจากการค้ามนุษย์ภาคเอกชน

ข้อเสนอแนะต่อภาคประชาสังคมและองค์กรพัฒนาเอกชน

ควรพัฒนาโครงการฝึกอบรมทักษะวิชาชีพให้เป็นทางเลือกที่สอดคล้องกับบริบทผู้เสียหายจากการกระทำผิดบังคับใช้ แรงงาน การดำเนินงานไตรภาคีสร้างความร่วมมือกับรัฐและผู้ประกอบการสมาคมประมง เจ้าของเรือผู้ประกอบการ ได้ทั้ง

การสร้างเครือข่ายความร่วมมือจัดการล่ามแปลภาษาสนับสนุนการคัดแยกและการจัดบริการให้คำปรึกษาและกิจกรรมแก่ผู้รับการคุ้มครองในสถานคุ้มครองสวัสดิภาพผู้เสียหายโดยเฉพาะผู้เสียหายชาวต่างชาติ

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INDONESIA: DOMESTIC POLITICS AND ITS INFLUENCE ON FOREIGN POLICY TOWARDS CHINA'S BELT AND ROAD INITIATIVE

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ABSTRACT

China's rise and the influence of its Belt and Road initiative, both regionally and globally, has impacted the foreign policy of many countries such as Cambodia and Laos, which fall within China's sphere of influence. Indonesia, as an emerging power in the Southeast Asian region, also views China's Belt and Road Initiative as appealing to its national development plan. The current President Joko Widodo or Jokowi, whose vision is to promote Indonesia as a maritime-oriented state by proposing a program called "Global Maritime Fulcrum", has stated that this program is highly complementary with those of China's BRI. However, there are some major concerns over, for instance, the South China Sea dispute, and the overlap between China and Indonesia in its exclusive economic zone (EEZ). There are a number of literature studies on this topic, most of them using IR theories, both the mainstream theories and the English school approach to investigate how Indonesia reacts towards China and the South China Sea conflict. And there are also a number of articles that shed light on its importance to domestic politics. It was, therefore, for this reason that I found it interesting to study how those domestic politics play a role in terms of Indonesia's foreign policy making by employing the domestic politics approach and Vinsension Dugis' explanation in his article "Domestic Political Structure and Public Influence on Foreign Policy, A Basic Model" as well the article by Bojang As "The Study of Foreign policy in International Relations". Thus, to study this topic, the researcher will conduct primary research from historical data and secondary research from scholarly material available to analyze the influence of domestic politics as well as highlight the importance of the selected factors.

Keyword: Indonesia, Foreign Policy Making, Domestic Politics, Global Maritime Fulcrum, And Belt and Road Initiative.

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1. INTRODUCTION

The rise to prominence of Indonesia regionally and globally is the result of several factors including its large population, historical presence and plentiful strategic resources. Moreover, during the post-colonial period, its intelligence, comprehensive vision and ample resources have enabled Indonesia's leadership to realize their plans for national development. Along with the Pancasila – the five basic principles of an independent Indonesian state: (belief in one supreme God, humanitarianism, nationalism expressed in the unity of Indonesia, consultative democracy, and social justice) these factors have become the basis of its “Independent and Active” or “Free and Active” foreign policy. Despite being the nation with the largest Muslim population in the world, Indonesia is neither an Islamic state nor a secularized one, and the country's foreign policy has never had any religious basis (Sukma 2006; Azra 2006). However, internal instability such as poor infrastructure development has weakened the country's reputation. Therefore, the current President Joko Widodo or Jokowi's vision is to promote Indonesia's maritime development as well as prioritizing improvement of its domestic situation and so-called “Pro-people diplomacy”. Moreover, he has tried to push Indonesia's aspiration to become a more maritime-oriented country as stated in his program of Global Maritime Fulcrum (GMF), which later became a basis of Indonesia's maritime policy under Jokowi's tenure.

According to Thompson (2014), its leaders vision somehow reflected their perspective on nationalism and independence and these perspectives backed up Indonesia in interacting with the international community. Although Indonesia recognized that there are unsolved issues in regard to maritime borders, there have been no serious military confrontations along the coastline. Apart from that, Sukma argued that there are three main challenges to Indonesia in terms of its maritime security: the increasing rivalry between China and the United States, the South China Sea dispute, and territorial disputes between Indonesia and other countries such as China. Indonesia does have an additional maritime boundary dispute, for instance, an overlap between its Exclusive Economic Zone (EEZ) and China's claimed ‘nine-dash line’ in the South China Sea. This overlap has resulted in several incidents in which Chinese vessels have successfully demanded the return of detained Chinese fishermen from Indonesian patrol vessels within Indonesia's EEZ.

The South China Sea, moreover, is one of the major challenges that Sukma emphasizes, namely the “emerging reality” of rivalry between the United States and China in South-East Asia. As these challenges have the potential to impact regional stability, the ASEAN's compromising role as a ‘manager of regional order’ has been one of the goals that Indonesia has prioritized. ASEAN, from Indonesia's perspective, is strategically important because Indonesia utilizes ASEAN as a platform for strengthening and broadening regional and global roles.

The current President Jokowi and his economic diplomacy has emphasized that its partnership with both the United States and China is important to Indonesia. However, Indonesia's relations with China have posed some challenges to Indonesia's foreign policy in terms of an ambiguous perception of China's intentions in the region. Unsolved problems such as territorial disputes among ASEAN member states and China have further destabilized relations between them. On the other hand, Indonesia also sees China as an opportunity for its national development plan and its charming diplomacy or charm offensive toward this region is attractive to Indonesia's national interests.

As mentioned earlier, President Jokowi's Global Maritime Fulcrum (GMF) program, which aims to enable Indonesia's sea lanes and maritime traffic between the Pacific and Indian Oceans, is based on Indonesia's location at the center of the shift of power the West to East Asia. This Global Maritime Fulcrum policy potentially provides a new coherence to Indonesian foreign policy and, at the same time, it also has potential in terms of synergizing Indonesia's GMF and China's Belt and Road Initiative. As evidence, the joint statement between the two countries issued after Jokowi's visit to China in March 2015 ad declared the two grand policies to be highly complementary to each other and declared the two sides had agreed to explore synergies between the two plans in developing a maritime partnership together.

From all the above considerations, therefore, the researcher found it interesting to examine how, in this situation of uncertainty, Indonesia can conduct its foreign policy in terms of cooperating with China's Belt and Road Initiative despite its bilateral problems with China and the conflict in the South China Sea, in which, although Indonesia is not an official claimant state, its fellow ASEAN members are apparently involved.

This paper will highlight the importance of domestic political factors in the country's foreign policy decision making. Since some literature stated the significance of Indonesia's foreign policy in the context of domestic politics and President Jokowi himself tends to emphasize domestic development as his main policy program for the GMF, this paper will therefore investigate how its foreign policy has changed or continued within the framework of domestic politics. Besides the fact that a limited number of studies on Indonesia's foreign policy decision have been made by using the domestic politics approach, the researcher decided to employ the domestic politics model of Vinsensio Dugis "Domestic Political Structure and Public Influence on Foreign Policy, A Basic Model" and the domestic politics factors as laid out by Bojang AS in "The Study of Foreign policy in International Relations."

Statement of Problem and Research Question

Because the concept of "Independent and Active" or as it is also known in Bahasa Indonesia, "bebas dan aktif" has been the main principle in Indonesia's foreign policy, it has also become the country's doctrine when interacting with other countries both in the region and on the global stage. From the term "free and active", Indonesia has always emphasized independence from any alliance or political block with any superpowers that exist in the global arena. Apart from that, this kind of policy by Indonesia implies the country's willingness to increase its role in international affairs.

However, in a situation like the South China Sea dispute that has long been a major conflict between ASEAN member states and China, Indonesia itself also has concerns over China's territorial claim to Natuna Island and its illegal fishing. The ASEAN member states tend welcome the grand strategy of China, its "Belt and Road Initiative." Moreover, some areas of Indonesian territory are important positions for China in terms of its expansion of power in the "Malacca Strait."

In terms of the economy, China's economic growth has led to a rapid escalation of trade and investment links with Indonesia and China has become Indonesia's most important market since the early 2000s. China has been one of Indonesia's largest donors and trading partners, and President Xi's offer of a maritime partnership and financial support for infrastructure projects under the umbrella of the maritime Silk Road has been a great help to Jokowi's prospects of achieving his maritime goals. However, the partnership between China and Indonesia is not free from conflict. China's nine-dash line, marking out its claim to most of the South China Sea (SCS), clashes with Indonesia's sovereignty and Exclusive Economic Zone (EEZ) claim over the Natuna Islands. Therefore, this question leads the researcher to examine the differences in its direction in terms of cooperating with China.

- How does domestic politics factors determine Indonesia's foreign policy decision-making for joining the Belt and Road Initiative despite the South China Sea conflict?

Objective and Scope of Study

This paper aims to contribute to the study of foreign policy decision-making for those who are interested in Indonesia and to see how domestic politics plays a significant role for Indonesia in making a decision in this particular situation in which it has to balance security and economic interests.

In addition, this study can supplement what International Relations theories have overlooked. The scope of this paper will cover the early years of Joko Widodo's Presidency and will touch upon some of the significant policies of former President Susilo Bambang Yudhoyono to make it clear how foreign policy has changed or continued and how domestic politics play their role. Moreover, this study can, to some extent, be a basis for those who are interested in studying this topic further.

Paper Structure

This paper consists of three main parts. The first part is the introduction that talks about the background of the topic, the statement of the problem, the research question, and the objective of the study. The second part will be a literature review for this paper covering Indonesia's response to China's Belt and Road Initiative and the South China Sea conflicts as well as the territorial overlap between them. Moreover, the articles related to this topic as viewed through the IR theories perspective will also be discussed to see how the domestic politics approach could fill the gap that the IR theories have overlooked.

In the third and last part, there will be a discussion of the theoretical framework, the domestic politics approach. One section in this part will then lay out the methodology with which the researcher studied this topic including the method, data collection and data analysis.

2. LITERATURE REVIEW

In this part the researcher will discuss the literature related to the topic as well as identify how it is important to study Indonesia's foreign policy-making through the domestic politics approach. This part will be structured as, first, Indonesia's response to China's Belt and Road Initiative; the second section will focus on the literature that studies this topic by using the IR theories. Finally, the last section will focus on the findings of the literature.

Indonesia's response to China's Belt and Road Initiative: the researcher will divide into three subsections. First, Indonesia's perception toward China's Belt and Road Initiative, which includes two related works, namely "China's BRI: an Indonesian perspective", a research paper by Evi Fitriani, and "Perception and readiness of Indonesia towards the BRI" by Yose Rizal Damuri, Vidhyandika Perkasa, Raymond Atje, and Fajar Hirawan. These works illustrated that Indonesia is still concerned about China's intentions in the South China Sea and investment and wants China to show good intention and commitment to win-win solutions. Therefore, Indonesia has offered several broad areas for cooperation under the BRI framework and carefully selected project locations to minimize political risk. Moreover, Indonesia's aspiration to become a more maritime-oriented country as stated in President Joko's Global Maritime Fulcrum (GMF) program, later became the basis of Indonesia's maritime policy. Nevertheless, Indonesia still has concerns about both economic and political aspects as well as domestic political ones. Some have argued from the standpoint of identity and domestic politics that it would be better if the current government's policies would take into consideration Muslims' interests instead. They believe that the current government is being influenced by 'foreign' interests at the expense of national and Muslim's interests.

Moreover, according to Wirajuda, the democratic transition in the country has changed the way policies are made, as the foreign policy decision-making process is open to more anticipated actors; apart from top-notch foreign policy actors, it usually includes the parliament and interest groups (Mearsheimer and Walt 2007; Risse-Kappen 1995). The role of the government in determining policy actions towards certain foreign policy questions is, to a certain extent, also compromised by the prominence of non-governmental actors. Therefore, Wirajuda, the former foreign minister, further argued that in the case of Indonesia, non-authoritative actors including parliament (DPR) and bureaucracies, especially the parliament, are more likely to be able to influence some decision-making processes when their ideas are different from the existing one initiated by the main foreign policy actors. Parliament and some entrepreneurs, to a certain degree, are prominent foreign policy observers and have been influential in shaping Indonesia's foreign policy agenda. Although in principle parliament is a non-authoritative actor because it does not have the formal authority to make and execute state foreign policy, it can affect foreign policy making through its power to scrutinize government's decisions through policy consultations and policy coalition. In terms of foreign affairs, parliament (DPR) has been very active on several issues, in particular issues that have generated nationalist sentiment, for instance, in cases regarding issues of sovereignty or concerns about human rights. Parliament's increasing role in foreign policy decision-making is most obvious in the issue related to political challenges such as the ratification of international agreements.

Second, challenge and opportunities., Two articles, namely, “Review of The Chinese Belt and Road Initiative: Indonesia-China Cooperation and Future Opportunities for Indonesia’s Port cities development” by Hermaputi Roosmayri, Gong Jiajia, and Hua Chen, and another work, “Indonesia and China’s Belt and Road initiatives: Perspectives, Issues and Prospects” by Siwage Dharma Begera and Leo Suryadinata, argue that, for Indonesia, which is keen to accelerate its infrastructure development, the Belt and Road Initiative (BRI) is seen as an opportunity to tap into China’s huge financial resources and technological capability. What appears to hamper progress are four key issues: the perception of China’s economic domination, the ethnic Chinese issue, the Natuna issue, and the mainland Chinese workers issue.

Third, the literature talks about Indonesia’s Maritime policy. The following two articles, “China’s Maritime Silk Road and Indonesia’s Maritime Nexus Policies: Towards policy convergence?” a paper by Meidi Kosandi, and another media release, “Belt and Road Initiatives to Further Bolster Indonesia and China Economic Cooperation”, stated that under the Jokowi administration, maritime sector development was among the top priorities of Indonesian national development. With the vision to promote Indonesia as a “global maritime nexus”, the Nawacita proposes maritime development in three strategic policies: maritime infrastructure development, building capabilities in the maritime industry to support national maritime development and connectivity, and increasing maritime cooperation and connectivity in the Indo-Pacific region. However, according to Meidi Kosandi’s work, he stated that there are two uncertainties for Indonesia. First, the strategic relations that have been the core of Indonesian foreign relations might be undermined under a future maritime regime under China’s leadership. Successful implementation of the maritime policy may strengthen Chinese leadership among the cooperating parties of the Maritime Silk Road. Indonesia’s ties with ASEAN and the US may change under the future regime. Second, Indonesia’s capability to respond and contribute to the settlement of regional disputes may also change under the new maritime regime. If the policy fails to induce South China Sea claimants such as Vietnam and the Philippines to peaceful economic cooperation and drives the two claimants to unite to balance China with other powers, Indonesia’s role and contribution in maintaining the new regional order may be undermined.

Indonesia’s Action Towards China: International Relations Theories Perspective

In this section, the researcher will discuss the literature that studies this topic through the lens of IR theories including Realism, Liberalism, Constructivism and the English School.

First, Realism, Most of the Realist literature has examined Indonesia’s behavior toward the South China Sea conflict by shedding light on the importance of national and international security as well as the concept of the ‘balance of power’, which is the main aspect for Realist scholars in considering security in Southeast Asia. A Realist scholar named Misalucha (2014), mentioned in the thesis of Febrianti Tentyana S Tarno, stated that the balance of power in this region by the major powers, namely, China, the U.S. and Japan played an essential role particularly in peace building and peace settlement. Moreover, the study mentioned that the relations between the powers and the tension of maintaining international security indicated a win-lose relationship. From this aspect, her finding indicated from the Realism’s point of view that one state sees another one as a threat; however, in reality, since democratization,

Indonesia has not perceived China as a major threat despite the existence of some maritime overlaps between them. Indonesia could somehow feel insecure owing to Chinese action in the Natuna Islands, and interruption by Chinese illegal fishing activity, but it prefers to see it another way round. Indonesian foreign policy's official viewpoint stated that it is not necessary to feel threatened by China over territorial issues and that it was thus unnecessary to take any action to counterbalance China. Therefore, Realism theory is unable to explain the key factors of Indonesia's behavior toward China or the issue of the South China Sea dispute. On the other hand, Ramadhani (2015) studied Indonesia's vision regarding the South China Sea dispute by using a Neorealism approach, arguing that power and security competition among superpower countries leads to a security dilemma in the international environment. She also focuses on superpower influence, mainly the United States' attempt to rebalance Asia. However, she pointed out that Indonesia is keen to promote economic cooperation and mutual benefit, and there is no further study on this issue (Ramadhani, 2016, pp. 84-86). In sum, both Realist and Neorealist approaches emphasize palpable factors, for instance, military power and arms in order to express power domination and threats to opposing states. However, in the case of Indonesia, its approach is apparently based on the notion of "Free and Active" foreign policy to ensure its tradition of non-alignment.

In terms of Liberalism, according to the thesis of Febrianti Tentyana S Tarno, she mentioned the work of Djalal (2001) who stressed the openness of the cooperation among ASEAN countries and other countries outside the region (Djalal, 2001, pp. 98-104). Djalal's basic principle concentrates on the importance of interstate cooperation rather than seeing each other as a threat. In terms of conflict resolution, in particular the South China Sea dispute, he argues that countries in the region should support coordination and adherence to international law, especially the 1982 Law of the Sea Convention which is open to negotiation among states in the dispute. Moreover, the author also mentions a diplomat who has investigated Indonesia's foreign policy toward the South China Sea dispute, named Aplianta (2015), who described the escalating role of Indonesia in maintaining peace and security as Indonesia is playing a key role as mediator between China and ASEAN countries. The studies of both Djalal (2001) and Aplianta (2015) found that Indonesia prefers peaceful stability in the region by deemphasizing threats of superpower domination. In addition, Indonesia acts as a middleman by contributing the Code of Conduct (CoC) and Declaration of Conduct (DoC); in 2011, Indonesia eagerly urged ASEAN member states and China to implement the DoC and later to continue setting up the CoC before the meeting in Beijing (Aplianta, 2015).

From the Constructivism perspective, the emphasis is on the existence and preservation of national identity and value in which the historical issue of Indonesia also plays a role in determining the country's behavior. According to Sukma (1995), the expert on Indonesian foreign policy highlights the phrase "free and active" doctrine as a reflection of Indonesian historical, cultural, and political experience which primarily illustrated the national and foreign policy. Therefore, in order to explain this circumstance of Indonesia's behavior in the region in terms of the territorial dispute in the South China Sea and many other conflicts in the region, Indonesia has utilized "free and active" diplomacy as it has claimed its role as a neutral state and mediator in many negotiations. The Constructivist framework of foreign policy can be seen in the attempt by the Indonesian government to establish its neutral posture in the South China Sea. According to Ruggie and Wendt, they stated that not only leaders or heads of state determine

policy but that the nature of norms, values, culture and identities are also key factors in determining a country's national policy and foreign policy.

Moreover, Indonesian foreign policy analysts have argued that Indonesian identity as a Muslim majority state influences the formulation of both domestic and foreign policy. Therefore, according to Al-Anshori (2016) and Anwar (2010), they reveal that religion, which is an impalpable aspect, succeeds in shaping Indonesia's approaches and reactions toward both regional and global issues. In Anwar's study of Foreign Policy, Islam, and Democracy in Indonesia, she has mentioned that according to Yudhoyono, stating that "Indonesia's free and active foreign policy should have a constructive approach to prevent the country from tapping into military alliance and being characterised by connectivity which would compel Indonesia to have a healthy engagement with the outside world" (Anwar, Foreign Policy, Islam and Democracy in Indonesia, 2010, p. 39). In this sense, it is important to understand Indonesian foreign policy toward international issues as a national reflection and image of a Muslim-majority state.

Moreover, in Febrianti Tentyana S Tarno's study of Global Maritime Fulcrum (GMF) Performances o Deal with Tension in South China Sea Disputes: A Constructivist Analysis of Indonesia's Strategic Culture, under Constructivism, she uses strategic culture in explaining international security by examining the nation's idea, identity, and behavior toward external dispute. She mentioned that Strategic Culture is useful to examine the constructed idea of Indonesia's neutrality in the realization of its "Maritime State" identity. In her findings, she laid out that the mediating role of Indonesian neutrality came from its old foreign policy doctrine of "Free and Active", whose image and identity is carried by the current maritime "GMF" promoted by President Jokowi, in maintaining peace and security in maritime and border issues. In terms of the South China Sea Dispute, Indonesia has been active in pushing forward the ratification and implementation of the Code of Conduct between ASEAN member states and China.

However, the emphasis on GMF is very strong to the point that Indonesia needs to secure its maritime resources and build its maritime power in order to reclaim the maritime state idea and identity. Thus, to conclude, the mediating role that Indonesia has been playing in both regional and global issues is a constructed idea and identity which it has cultivated as a culture and tradition in its foreign affairs and this mediating role was believed to be a continuation of Indonesia's tradition and culture, which aims to preserve national peace while remaining active in maintaining global security and stability. In addition, in terms of the Natuna Islands that have been an ongoing maritime issue between Indonesia and China, it is obvious that Indonesia tends to avoid any possible confrontation with China in this regard and Indonesia's active role in international affairs is to assure its neutrality stance as a country. For the South China Sea Dispute, although Indonesia is not an official claimant state, its policies over the disputes and maritime affairs are projected to maintain the status quo with the realization of the Global Maritime Fulcrum as its national maritime strategy. The author emphasized that the GMF is a part of Indonesia's identity that supports Indonesia's neutral behavior in dealing with the South China Sea disputes.

In addition, in the article of Fuadi Pitsuwan, "Indonesia's Foreign Policy and the International Politics of the Islamic World", he stated that, unlike Realism and Liberalism, which tend to give priority to material factors such as power and materials, social constructivism opens the way for the impacts of norms, beliefs, ideas, culture and

perceptions which influence a state's interests and identities and also determine its foreign policy. He, therefore, employs the concept of John Ruggie, who identifies an international order as "heteronomy". Ruggie, uses this concept to explain that *Republica Christiana* was held together by mutual moral and spiritual ideals underpinned by a common religion, the Catholic Church. Hence, the author argues that in order to understand the Ummah and how states act within it, we must treat Islam as an element of Ruggie's heteronomous relationship that influences a Muslim state's behavior. He further stated that Islam and its tradition dictate what states can and cannot achieve within the international Islamic political community.

The English School. In the article by Obsatar Sinaga and Verdinand Robertua "Indonesia in the South China Sea Dispute: Humble Hard Power" they employed this concept from Adam Nieves-Johnson, who invented the concept of humble hard power in his book "A Bilateral Analysis of the South China Sea Dispute: China, the Philippines, and the Scarborough Shoal". In it, he stated that humble-hard power is a new form of hard power without intimidating others (Johnson 2012,45). Moreover, Johnson argues that this concept is neither threatening militarily nor is it peacefully diplomatic, and employing this kind of power can achieve goals without creating international condemnation. Johnson's humble-hard power focuses on non-military means which can be economic aid, technological improvement, or in the case of South China Sea conflict, victory in the international legal dispute. This article argues that mainstream International Relations theories such as Realism and Liberalism are not adequate to explain the theoretical consequences of humble-hard power. The authors, therefore, grasped the English School theory which has been revived by Barry Buzan (2004) to be able to understand contemporary international issues such as the South China Sea dispute. By this, Barry Buzan combined the classic debate of pluralism and solidarism and the need for a new conceptual construction through primary and secondary institutions. Linda Quayle (2012) has used the English School to investigate the International Relations of Southeast Asia with the focus on state and non-state interaction. The authors of this article agree with Miles Kahler (2013) that in order to counterbalance the risk of conflict, it needs three institutions, namely, democracy, economic interdependence and international organizations. Kahler has applied these three institutions to the context of emerging Asian powers including Indonesia. The authors see the strength of the English School in its ability to construct the concept and become fundamental because it will differentiate the English School from other International Relations theories. Moreover, the authors suggested that, for Indonesia, in order to realize the humble-hard power approach, it should capitalize on the tribunal ruling that rejected China's nine-dash line claim so that Indonesia could file a case against China.

However, Indonesia's role in the South China Sea has confused scholars due to its neutrality and the free and active policy in pursuing peaceful solutions among states in the dispute. Nonetheless, according to Kahler (2013), there are three circumstances in this region that prevent the war: democratization, increasing economic interdependence, and connecting to the international institutions. In the case of Indonesia, its foreign policy in the South China Sea conflict clearly reflects democracy, economic interdependence, and international institutions. Indonesia plays a role as mediator and openly discussed a possible solution to the South China Sea dispute with the claimant states as well as other related public stakeholders. In terms of economic interdependence, it is evident that China and other states in dispute are important trade partners for Indonesia. In this sense, Indonesia has prioritized

economic cooperation and its diplomatic agenda with China and other claimant states in order to restrain the increasing tensions in the South China Sea. Furthermore, Indonesia is very enthusiastic in promoting the capacity and capability of ASEAN institutions in dealing with and managing regional problems, especially in the South China Sea.

Finding from The Literature

In the first section of Indonesia's response to China's BRI, the works reflect some kind of domestic concerns over the issue of the South China Sea conflict and China's intention to influence the country, from which it can be inferred that Indonesia is, to some extent, afraid of falling into the debt trap that Cambodia and Laos have faced. Moreover, the democratization process in Indonesia has a large impact on the way foreign policies are made, opening more space for several actors to participate. In turn, this reflects the desire of domestic politics in the sense that there could be internal conflict between the actors who make or initiate the policy. Furthermore, the parliament of Indonesia has become an important actor in the policy-making process as it was given more power to ratify or reject the agreement, unlike the New Order under authoritarian rule in which policy was made directly by a small elite group with no checks and balances. The second and third sections discussed the challenges and opportunities for Indonesia. In my view, in terms of the economy, Indonesia could reap enormous economic benefits from cooperating with China's BRI and, at the same time, respond to the desire of President Jokowi to develop infrastructure in the country. However, in the political aspects, mainly that of national security, Indonesia's nationalists might not be impressed to see China's influence in the maritime territory and want to ensure Indonesia's sovereignty over its own waters. Therefore, President Jokowi's main policy of Global Maritime Fulcrum should give a clear explanation of how the country will conduct this policy toward China and other countries in the Pacific and Indian oceans while, at the same time, responding to the domestic desire and balance in his own government in which there are those who agree and disagree with this policy.

In terms of IR theories, it can be concluded that, the Realist proponents are convinced that Realism is highly applicable by means of its explanatory power, which is a vital element in the state's international relations. Therefore, in this sense, Realist theory is considered to be able to only provide a reliable and plausible source of policy options. However, it provides almost no space for elaborating on other social aspects or discourse that happen in the contemporary world. For Liberalism, claims over peace and stability in the region, however, are inadequate to explain the existence of President Jokowi's new maritime doctrine for Indonesia. of. The current president is trying to turn back its national reputation as a 'maritime state' (Chen, 2014, p. 68). Therefore, in the sense that Indonesia is trying to shift toward a geo-strategic focus in the Indo-Pacific region, it implies that Indonesia wants to maintain its 'middle power' status and reconstruct sea lanes in its territory. Nonetheless, the GMF policy, which mainly aimed to extend the maritime regional leadership and expansion of its maritime power, is irrelevant to the Liberalism theory. Therefore, the nature of Indonesia's foreign policy cannot be explained by either Realism or Liberalism. Under the Constructivist approach, the emphasis is on the importance of having a set of norms and values that could prevent violence and conflict. However, through the Constructivist approach, foreign policy is often placed on high level politics and lacks roots in domestic aspects. In terms of the English School, in his work "International Society: the social dimensions of

Indonesia's foreign policy", I Gade Wahyu Wicaksana suggested that the English School's theoretical approach can help open up a new dimension to understand the ideas and processes of diplomacy in Indonesia. The author further argues that the Realism perspective has only focused on the significance of national interest as the main factor in Indonesia's foreign policy making. Meanwhile, in the case of Indonesia's membership of international society, for example, Asian and African states and ASEAN have explained the role of Indonesia in setting up multilateral diplomacy and emphasis beyond national interest.

3. THEORETICAL FRAMEWORK AND METHODOLOGY

From the finding of the literature in the previous part, there was a need to study further regarding this issue by using a more concrete approach to fill the gap between the intellectual and practical realm: the domestic politics approach will be used to analyze Indonesia's foreign policy decision-making. Due to the limited sources of Indonesia's foreign policy decision-making through the domestic politics approach, the researcher therefore adopted the domestic politics model from Vinsensio Dugis, a lecturer at the International Relations Department, Airlangga University. His article, "Domestic Political Structure and Public Influence on Foreign Policy, A Basic Model", as well as this study, will also take into account the three main factors that play a vital role in foreign policy making in this situation based on the existing literature that often mentions these prominent domestic political factors regarding this topic and the study of Bojang AS "The Study of Foreign policy in International Relations". All these will be discussed below.

Domestic Politics Approach

In the article, Dugis mentioned Hagan's work which laid out the basis foundation for understanding how domestic politics and foreign policy are linked. Moreover, as explained by Hermann (1990,5), foreign policy change can be divided into, first, change that results from regime change or state transformation. For instance, in Indonesia, democratization from authoritarian rule to a democratic regime in which the foreign policy of the country was altered and the process of decision making was dramatically changed in the sense that it was not restricted to the ruler and the leader alone, but rather involved many other actors . Under the democratic regime, policy making allowed, to some extent, public participation. Second, the change that happens when the existing government decides to push in different foreign policy directions. Moreover, Goldman's work (1988) provides a clear explanation of this issue. He argues that three dimensions matter when it comes to a state's domestic politics and its foreign policy.

First, the matter of a state's degree of institutionalization, which means the extent to which the government of a state is committed to foreign policy, meaning that the struggle for domestic political power becomes central to foreign policy issues. Competing political leaders and groups use foreign policy issues as means to differentiate themselves from other leaders or groups. In this situation, the incoming leader with new supporting groups could lead foreign policy changes. In this sense, the researcher will look at the "Leadership" of the current President Jokowi and

his predecessor, President Susilo Bambang Yudhoyono or SBY, in terms of foreign policy. In other words, this matter will highlight the importance of leadership in a country's foreign policy making. This study will indicate how the foreign policy of SBY and that of Jokowi are markedly different. As the leader plays a great role in foreign policy formulation, it can be assumed that decision making is the result of individuals who make decisions, not the state. For instance, during the term of President Susilo Bambang Yudhoyono, he emphasized the slogan of “A Thousand Friends and Zero Enemy” and also aimed to widen bilateral and multilateral cooperation as much as possible. Whereas the current President Jokowi tends to be more inward-looking than his predecessor. Jokowi’s vision is to develop the maritime sector by launching the so-called “Global Maritime Fulcrum” and trying to make Indonesia a maritime state.

Second, the matter of a state’s degree of support. This refers to the extent to which various actors in domestic politics support or oppose the government’s foreign policy. This occurs when the beliefs and attitudes of the dominant constituency drastically change, as they could be used as sources to explain why foreign policy has to be changed. Foreign policy decision makers build domestic political support in order for any of their proposed foreign policy initiatives to be implemented. Thus, foreign policy decisions become political results reflecting necessary political strategies to build agreement within the domestic structure in order to support the implementation of foreign policy. From this matter, the researcher will use it to analyze the interest groups involved in Indonesia’s foreign policy making, including Parliament, opposition parties, and the oligarchic elites that play a role as push and pull aspects for the President to conduct foreign policy. For instance, Benjamin Nathan has summarized that maritime policy under President Jokowi has gone in two directions. On one side, they are concerned over the assertive stance on retaining sovereign rights over Indonesia’s waters, but at the same time, the President and members of his inner circle have limited themselves to an extremely cautious rhetorical approach to territorial disputes in the South China Sea. Therefore, these divergencies indicate an internally divided foreign policy initiative that has impacted Indonesia’s populist voting base regarding the policymaker’s decisions.¹

Third, the degree of salience points to the significance of the issue in the domestic power struggle, which happens when transformation of the political system takes place, potentially leading to various political changes including in the area of foreign policy (Goldman 1988). Therefore, it is essential to consider the importance of the political regime of Indonesia which determines the scope and the power of leaders in foreign policy decision-making and government structure. SBY tended to form a large coalition to support him while Jokowi strives to make his government coalition and his style is a kind of mixed ideology with his own definition of a political regime. According to studies by Clapham (1977) and Calvert (1986), the most significant actors in foreign policy decision-making in developing countries are their top policy makers. Therefore, to explain and identify foreign policy and actors involved in the decision-making process, the domestic structure should be taken into consideration. Based on their studies, domestic structure means the changes to a political system experienced by a state at a particular time that lead the state to change or alter its foreign policy. Moreover, Hermann (1990) posits that foreign policy change can be divided into

¹ Nathan, B. (2016). Domestic Forces behind Indonesia’s Paradoxical Maritime Policy. Retrieved 2020, from <https://www.eastwestcenter.org/system/tdf/private/apb341.pdf?file=1&type=node&id=35616>.

two means: first, change that results from regime change or state transformation, and, second, change that happens when the existing government decides to push in different foreign policy directions. Therefore, the change in foreign policy is related to the change in political system, also called foreign policy redirection (Hermann 1990,5). For instance, Indonesia after it declared itself independent from the Netherlands in 1945. The country's post-independence President Sukarno was toppled in 1967 by General Suharto. During that period, the country was ruled by an authoritarian "New Order" regime that lasted until 1998, when, thanks to an economic crisis and a domestic uprising, he was forced to step down. Since then, Indonesia has been democratized and adopted democratic principles causing dramatic changes to the political system and the nation's policies. However, although the country has been democratized, each democratic president also has a different ideology regarding their regime; for example, SBY tended to emphasize democratic principles. It can be said that his political regime was Muslim Democracy, which was mostly concerned with international reputation rather than domestic affairs. While the current president has his own definition of democracy, some scholars have stated that Jokowi's political regime can be called 'spiritual democracy', which combines aspects of democratic sentiment and technocratic populism as apparently visible in his inward-looking policy.

Methodology

This study will use a qualitative approach combined with the descriptive and analytical method. The reason why the researcher uses a qualitative approach is because the study of how domestic politics affects or influences foreign policy requires in-depth study. Moreover, qualitative research intends to understand the phenomena of what is experienced by research subjects such as behavior, perception, motivation and action. The descriptive research method describes the environmental situation around the time of study.

The study aims to analyze the basis of Indonesian foreign policy through the perspective of a domestic politics approach, focusing on how Indonesia conducts its foreign policy in regard to its participation in China's Belt and Road Initiative despite the South China Sea conflict. Moreover, this research aims to explain how and what factors of domestic politics relate to foreign policy making and Indonesia's national interest under President Joko Widodo, who has promoted the so-called "Global Maritime Fulcrum" (GMF) as an Indonesian national development strategy, especially in the maritime sector.

Data Collection

In data collection, this thesis was based on online database and library research as well as primary and secondary sources that were gathered from existing literature, official government reports, agreements, declarations, books, academic research and articles, news and electronic websites.

Data Analysis

The data was analyzed through the domestic politics approach. The factors that will be investigated are selected from the literature which the researcher sees as the most significant factors for a country in conducting foreign

policy including: political regime, leadership, and interest groups. However, due to the limited number of articles that focus on this topic and using domestic politics to analyze them, the researcher therefore adopted the model from the article of Vinsensio Dugis “Domestic Political Structure and Public Influence on Foreign Policy, A Basic Model” and that of Bojang AS “The Study of Foreign policy in International Relations.”

3. CONCLUSION

This research proposal aims to give an explanation of the topic that the researcher is going to study. From all the points discussed above, it can be concluded that there are a number of articles and academic papers that examine Indonesia’s foreign policy-making process by using such IR theories and some have shed light on other methods. However, the researcher aims to close the gap between the pragmatic and intellectual realms by using the domestic politics approach to conduct the study. Those domestic political factors are based on the study of Dugis on Domestic Political Structure and Public Influence on Foreign Policy, A Basic Model” and that of Bojang AS “The Study of Foreign policy in International Relations”, in which the author provided an explanation of each domestic political factors and how domestic politics are linked with the foreign policy of a country. Nonetheless, there are some limitations such as inadequate information regarding this topic in which the researcher might not be able to go into detail in some parts of each selected factor, for example, the factor of the interest groups in which there might be various actors involved but which could not be revealed to the public, or the military factor for which the researcher is not able to get access to the information. Therefore, this study will be based mainly on the existing literature, available academic papers and official government reports as well as online newspapers and will analyze the question through the approach discussed above.

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STATE LEGITIMIZATION AND CITIZENSHIP: REFLECTION FROM THE RETURNING TO HAPPINESS PROGRAM

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ABSTRACT

This research studies the television program called “Returning Happiness to The People” produced by the National Council for Peace and Order (NCPO)’s government led by General Prayuth Chan-ocha. The study reviews and analyses the content of all the 252 episodes using the conceptual framework of legitimacy, demonization, and citizenship and analyses how the government claims its legitimacy and constructs state-desired citizens. The study finds that the NCPO claims its legitimacy based on five grounds, namely, the government comes to stop violence and to keep peace and order; the government is loyal to the Monarchy; the government solves the problems created by its predecessors; the government is working toward complete democracy; and the government is building national reconciliation. Such legitimacy claims are presented along with five forms of desirable citizens, namely, the citizens who do not use social media to criticize the government; the citizens who respect the law and order; the citizens who are moral and be conscious of Thai history; the citizens who prioritize security over democracy; and the citizens who are loyal to the Monarchy. The research argues that the government uses legitimacy claims to produce obedient citizens. Civil and political rights are significantly limited in this process.

Keyword: Human Rights, Returning Happiness, NCPO., Citizenship, Legitimacy.

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การสร้างความชอบธรรมและภาพสะท้อนรูปแบบพลเมืองของ คสช. ในรายการคืนความสุข¹

บทคัดย่อ

งานวิจัยชิ้นนี้ศึกษาเรื่องการสร้างความชอบธรรมในการครองอำนาจของรัฐบาลและวิเคราะห์รูปแบบของพลเมืองที่รัฐต้องการผ่านเนื้อหาของรายการ “คืนความสุขให้คนในชาติ” ซึ่งเป็นช่องทางการสื่อสารสำคัญของรัฐบาลคณะรักษาความสงบแห่งชาติ (คสช.) ที่นำโดยพลเอกประยุทธ์ จันทร์โอชา ที่ออกอากาศทั้งหมด 252 ตอน โดยใช้กรอบคิดเรื่องการสร้างความชอบธรรม (legitimacy) การสร้างภาพความเป็นศัตรู (Demonization) ผ่านการโฆษณาชวนเชื่อ และการสร้างภาพความเป็นพลเมือง (Citizenship) จากนั้นจึงวิเคราะห์นัยสำคัญต่อสิทธิมนุษยชน ผลการศึกษาพบว่า คสช. ได้ใช้ข้ออ้างเรื่องความชอบธรรม 5 ประการเรียงตามลำดับความถี่ที่ถูกพูดถึง คือ การเป็นรัฐบาลที่เข้ามายุติความรุนแรงและรักษาความสงบ เป็นรัฐบาลที่มีความจงรักภักดีต่อสถาบันพระมหากษัตริย์ รัฐบาลเข้ามาแก้ไขเปลี่ยนแปลงปัญหาเดิมที่มีผู้สร้างเอาไว้ รัฐบาลกำลังพัฒนาประชาธิปไตยที่สมบูรณ์และเป็นตัวกลางในการสร้างความปรองดอง ความชอบธรรมลักษณะดังกล่าวถูกนำเสนอไปพร้อมกับรูปแบบพลเมืองที่รัฐต้องการ 5 รูปแบบ คือ พลเมืองผู้ไม่ใช่โซเชียลมีเดียโจมตีรัฐบาล เคารพกฎหมายและร่วมมือสร้างความปรองดอง มีศีลธรรมเชิงศาสนาและมีสำนึกในประวัติศาสตร์ชาติไทย ให้ความสำคัญกับความมั่นคงมาก่อนประชาธิปไตยและจงรักภักดีต่อสถาบันพระมหากษัตริย์

งานวิจัยชิ้นนี้เสนอว่ารายการคืนความสุขสะท้อนว่ารัฐบาลต้องการพลเมืองผู้เชื่อฟังและปฏิบัติตามคำแนะนำของรัฐบาลอย่างเคร่งครัด โดยอ้างถึงความจำเป็นของรัฐบาลในการรักษาความสงบเรียบร้อย ภายในกระบวนการนี้สิทธิพลเมืองและสิทธิทางการเมืองต่าง ๆ จึงถูกจำกัดอย่างสำคัญ

คำสำคัญ: สิทธิมนุษยชน, คืนความสุข, คสช., ความเป็นพลเมือง, การสร้างความชอบธรรม.

¹ บทความชิ้นนี้เป็นส่วนหนึ่งของวิทยานิพนธ์ หลักสูตรศิลปศาสตรมหาบัณฑิต สาขาวิชาสิทธิมนุษยชนและสันติศึกษา เรื่อง “การใช้สื่อของรัฐกับการสร้างความเป็นพลเมือง : นัยต่อสิทธิมนุษยชนในรายการคืนความสุข” มหาวิทยาลัยมหิดล ปี พ.ศ. 2562

1. บทนำ

ภายหลังการรัฐประหารในวันที่ 22 พ.ค. 2557 นำโดยพลเอกประยุทธ์ จันทร์โอชา กฎหมายหมิ่นพระบรมเดชานุภาพได้ถูกนำมาใช้เป็นจำนวนมากขึ้นอย่างมีนัยสำคัญโดยเฉพาะหลังการรัฐประหารปี 2557 โดยมีผู้ถูกแจ้งความดำเนินคดี จนถูกตัดสินลงโทษ ไปจนถึงผู้ที่ต้องลี้ภัยไปต่างประเทศเพราะถูกแจ้งความในข้อหาหมิ่นพระบรมเดชานุภาพ ตามประมวลกฎหมายอาญา มาตรา 112 ซึ่งตามรายงานของศูนย์ทนายความเพื่อสิทธิมนุษยชนพบว่า มีผู้ถูกดำเนินคดีหมิ่นพระบรมเดชานุภาพ อย่างน้อยกว่า 169 คน นอกจากนี้ยังมีผู้ที่ถูกดำเนินคดีในข้อหาอุบายปลุกปั่น ให้เกิดความกระด้างกระเดื่องในราชอาณาจักร ตามประมวลกฎหมายอาญา มาตรา 116 อีกอย่างน้อยกว่า 121 คน ภายใต้การปกครองระยะเวลาเกือบ 5 ปี ของ คสช. (ศูนย์ทนายความเพื่อสิทธิมนุษยชน: 2562)

บุคคลจำนวนหนึ่งที่ถูกดำเนินคดีในข้อหาข้างต้น เป็นกลุ่มคนที่มักออกมาวิพากษ์วิจารณ์และต่อต้านรัฐบาล จึงมีข้อกังขาว่าการดำเนินคดีด้วยข้อหาร้ายแรงเช่นนี้เป็นการดำเนินคดีเพื่อกลั่นแกล้งศัตรูในทางการเมืองของรัฐบาลหรือไม่ รวมถึงการเรียกร้องรายงานตัวบุคคลจำนวนมากถึง 472 คน ทั้งนักการเมือง นักวิชาการผู้มีส่วนเกี่ยวข้องกับการเคลื่อนไหวทางการเมืองและอดีตนักโทษการเมืองภายหลังรัฐประหารรวมเป็นคำสั่งกว่า 37 ฉบับ (ศูนย์ทนายความเพื่อสิทธิมนุษยชน: 2559) ซึ่งในจำนวนดังกล่าว มีผู้ที่ฝ่าฝืนคำสั่ง คสช. ไม่ไปรายงานตัวและถูกดำเนินคดีกว่า 14 คน (ศูนย์ทนายความเพื่อสิทธิมนุษยชน : 2562)

ตลอดระยะเวลาการครองอำนาจที่ต่อเนื่องยาวนานของ คสช. ปรากฏข้อมูลรายงานการละเมิดสิทธิมนุษยชนในรูปแบบต่างๆ ออกมาจำนวนมาก เช่น การจับกุม ควบคุมตัวประชาชนที่ออกมาต่อต้านการรัฐประหารหรือการใช้อำนาจรัฐสั่งปิดงานเสนาที่วิพากษ์วิจารณ์สถานการณ์บ้านเมืองในช่วงเวลานั้น ท่ามกลางบรรยากาศข้างต้นสิ่งหนึ่งที่คณะรักษาความสงบแห่งชาติ (คสช.) พยายามทำอย่างแข็งขันคือการสร้างความเข้าใจและการสร้างการยอมรับต่อสังคม ซึ่งวิธีที่รวดเร็วที่สุดคือการใช้ช่องทางสื่อสารจำนวนมากในการพูดคุยกับประชาชนผ่านทางสื่อวิทยุ โทรทัศน์และสื่อออนไลน์ นับตั้งแต่วันที่ 30 พฤษภาคม 2557 หรือหลังจากการยึดอำนาจ 8 วัน มีการจัดทำรายการพิเศษซึ่งมีชื่อว่า “รายการคืนความสุขให้คนในชาติ” โดยออกอากาศทุกวันศุกร์ ทางวิทยุและโทรทัศน์รวมการเฉพาะในระยะเวลา 20.15 น. ซึ่งเป็นเวลาไพรม์ไทม์ (prime time) หรือช่วงเวลาที่มีคนดูโทรทัศน์มากที่สุด โดยออกอากาศจนถึงวันศุกร์ที่ 29 มีนาคม 2562

นอกจากรายการจะโดดเด่นในแง่ของวันและเวลาออกอากาศแล้ว ยังเป็นรายการที่ดำเนินการตั้งแต่ต้นจนจบโดยหัวหน้าคณะรัฐประหารซึ่งภายหลังขึ้นมาดำรงตำแหน่งนายกรัฐมนตรี แม้จะมีการปรับรูปแบบของรายการให้มีลักษณะการพูดคุยถามตอบบ้างในบางช่วงบางตอน แต่โดยส่วนใหญ่เป็นการออกมาพูดเนื้อหาที่มีความสำคัญผ่านตัวนายกรัฐมนตรีเอง และถึงแม้ว่ารัฐบาลพลเรือนในสมัยก่อนหน้าจะมีการจัดรายการด้วยตนเองเช่นเดียวกัน นับตั้งแต่ยุคที่มีการใช้สื่ออย่างโดดเด่นอย่างยุคของรัฐบาลทักษิณ ชินวัตร (พ.ศ.2544-2548) แต่รายการหลักของแต่ละรัฐบาลกลับเป็นเพียงการจัดรายการวิทยุในเช้าวันเสาร์ทางสถานีวิทยุกระจายเสียงแห่งประเทศไทยและช่อง NBT เท่านั้น โดยไม่ได้มีเผยแพร่ผ่านโทรทัศน์รวมการเฉพาะกิจแต่อย่างใด

เกือบ 5 ปีของการปกครองภายใต้คณะรักษาความสงบแห่งชาติอาจเรียกได้ว่า รายการคืนความสุขเป็นรายการที่สำคัญที่สุดในบรรดาสื่อที่รัฐบาลผลิตออกมา เนื่องจากมีช่วงเวลาออกอากาศยาวนานกว่ารายการอื่น ๆ และดำเนินรายการโดยนายกรัฐมนตรีเอง รายการคืนความสุขออกอากาศตอนสุดท้ายในวันที่ 7 ตุลาคม 2559 รวมทั้งสิ้นออกอากาศ 124 ตอน ภายหลังการสวรรคตของพระบาทสมเด็จพระปรมินทรมหาภูมิพลอดุลยเดช ในวันที่ 13 ตุลาคม 2559 ได้เปลี่ยนชื่อเป็น “รายการศาสตร์ของพระราชา เพื่อการพัฒนาที่ยั่งยืน” (ในที่นี้ขอเรียกรายการทั้งสองช่วงโดยรวมว่ารายการคืนความสุข) ออกอากาศตามวันและเวลาเดิมจำนวน 128 ตอน ออกอากาศรวมทั้งสิ้น 252 ตอน ก่อนยุติการออกอากาศในวันที่ 29 มีนาคม 2562 รวมออกอากาศนานกว่า 4 ปี 10 เดือน

รายการคืนความสุขยังเป็นสื่อกลางที่มีข้อมูลถูกต้องและเป็นทางการที่สุดรายการหนึ่งของรัฐบาล เราจึงไม่อาจปฏิเสธได้ว่าเนื้อหาของรายการคืนความสุขถูกส่งต่อและพูดถึงอย่างสม่ำเสมอจากทั้งสื่อของรัฐและเอกชนเพราะสิ่งที่ถูกนำเสนอผ่านรายการคืนความสุขล้วนมีผลในลักษณะคล้ายคำสั่งของคณะรักษาความสงบแห่งชาติ กล่าวคือเมื่อรายการออกอากาศไปแล้ว สิ่งปรากฏในรายการมักถูกนำไปพัฒนาต่อจนกลายเป็นนโยบายและบางกรณีเป็นกฎหมายในที่สุด โดยผู้วิจัยพบเอกสารสั่งการของหน่วยงานราชการให้มีการถอดเทปรายการคืนความสุข และนำเอาถ้อยคำที่เกี่ยวข้องกับกระทรวงหรือหน่วยงานของตนเองไปขยายต่อ ยอดเป็นภาคปฏิบัติ อาทิ ในปี 2559 กระทรวงศึกษาธิการเคยมีการพิมพ์หนังสือรณรงค์นโยบายการศึกษา ของพลเอกประยุทธ์ ที่เกิดจากการถอดความเนื้อหาในรายการคืนความสุข หรือเรื่องการดำเนินนโยบายการศึกษาและเผยแพร่เกี่ยวกับเรื่องค่านิยม 12 ประการ ซึ่งเริ่มจากพูดถึงในรายการคืนความสุข จนนำไปสู่นโยบายการเผยแพร่และสั่งการให้มีการเรียนและจัดสอนเพิ่มเติมในเรื่องค่านิยมดังกล่าว เป็นต้น

2.วัตถุประสงค์ของการวิจัย

1. เพื่อวิเคราะห์หัวข้อในการสร้างความชอบธรรมของรัฐและนัยสำคัญที่มีต่อเรื่องสิทธิมนุษยชนซึ่งสะท้อนผ่านการรายการคืนความสุข
2. เพื่อวิเคราะห์ว่ารายการคืนความสุขได้สะท้อนมุมมองเกี่ยวกับบุคลิกลักษณะที่ไม่พึงประสงค์ของประชาชนและรูปแบบความเป็นพลเมืองไทยขึ้นมาหรือไม่ ในรูปแบบใดบ้าง

3. ทบทวนวรรณกรรม

จากการทบทวนวรรณกรรมผู้วิจัยพบว่า การสร้างความชอบธรรมผ่านการสร้างภาพความเป็นศัตรูนั้น อาจเปลี่ยนแปลงไปโดยไม่ได้มีความโจ่งแจ้งชัดเจนเหมือนการโฆษณาชวนเชื่อได้อย่างในสมัยก่อน เนื่องจากโลกได้ก้าวเข้าสู่ยุคอินเทอร์เน็ต ซึ่งเป็นเทคโนโลยีที่บันทึกเชื่อมโยงข้อมูลเหตุการณ์ต่าง ๆ ไว้เหมือนโลกจำลองขนาดใหญ่ ที่ผู้รับสารสามารถกระจายข่าวสารและ

ตรวจสอบข้อเท็จจริงได้อย่างรวดเร็ว ถึงกระนั้นภายหลังการรัฐประหารปี พ.ศ.2557 การสร้างภาพความเป็นศัตรูโดยรัฐก็เด่นชัดขึ้นมาอีกครั้ง เพราะรัฐบาลใช้วิธีการสื่อสารโดยตรงถึงประชาชนในทุกช่องทางอย่างไม่เคยปรากฏมาก่อน แม้ในการรัฐประหารปี พ.ศ. 2549 ก็ไม่ได้กินเวลาการรักษาการที่ยาวนานเท่ารัฐบาลชุดปัจจุบัน และสื่อที่รัฐบาลใช้อย่างรายการคืนความสุขที่ผู้วิจัยกำลังทำการศึกษานี้ มักกล่าวถึงสิ่งที่รัฐบาลเห็นว่าเป็นปัญหาของชาติอย่างสม่ำเสมอ โดยส่วนหนึ่งมีการใช้ข้ออ้างเช่นเดียวกับการต่อต้านคอมมิวนิสต์ในยุคสงครามเย็น กล่าวคือใช้เป็นข้ออ้างในการปราบปรามผู้ที่ต้องการทำลายชาติและสถาบันพระมหากษัตริย์

การทบทวนวรรณกรรมในเรื่องรัฐและการใช้ความรุนแรงกำจัดผู้ที่รัฐมองว่าเป็นศัตรู รวมถึงเรื่องการใช้สื่อเพื่อสร้างความชอบธรรม ทำให้ผู้วิจัยมองเห็นทิศทางและปฏิบัติการที่รัฐจะกระทำ รวมถึงแนวคิดเบื้องหลังของรัฐ ซึ่งในงานวิจัยชิ้นนี้ผู้วิจัยเลือกศึกษามุมมองที่น่าเสนอจากการสื่อสารของรัฐเพื่อหาร่องรอยของการสร้างความชอบธรรมลักษณะดังกล่าวในรายการคืนความสุข แม้ว่าตลอดรัฐบาลประยุทธ์ 1 จะไม่เคยมีการชุมนุมที่มีผู้เสียชีวิตและบาดเจ็บล้มตายจำนวนมากอย่างการชุมนุมต่อต้านรัฐบาลเผด็จการในอดีต แต่มีการปราบปราม จับกุมและคุกคามสิทธิ เสรีภาพของประชาชนอย่างต่อเนื่องตลอดระยะเวลาเกือบ 5 ปี ในแง่นี้มุมมองที่ว่ารัฐมองประชาชนอย่างไร จึงมีผลอย่างยิ่งต่อปฏิบัติการของรัฐต่อผู้ที่ถูกมองว่าเป็นประชาชนที่มีลักษณะไม่พึงประสงค์ โดยรัฐเองมักฉวยใช้การสร้างบรรยากาศความไม่มั่นคง ไม่ปลอดภัยในการจัดการกับกลุ่มประชาชนที่มีลักษณะไม่พึงประสงค์นี้

4.กรอบทฤษฎีและแนวคิดในการศึกษา

ผู้วิจัยแบ่งกรอบแนวคิดที่ใช้ในการทำความเข้าใจรายการคืนความสุขออกเป็น 3 ส่วน ประกอบด้วย

1. กรอบคิดเรื่องการสร้างความชอบธรรมทางการเมือง (Political Legitimacy) ซึ่งการให้คำนิยามที่เป็นที่ยอมรับและเป็นบรรทัดฐานเกี่ยวกับเรื่องความชอบธรรมจะเป็นเรื่องที่ไม่ถกเถียงกัน หัวใจสำคัญของความชอบธรรมทางการเมือง (Political Legitimacy) จึงคือการสร้างการยอมรับ (consent) (Jean-Marc Coicaud : 2002) เนื่องจากสถาบันทางการเมืองเป็นเสมือนตัวแทนของปัจเจกในการใช้อำนาจการปกครองผ่านทางกฎหมาย ยิ่งสถาบันทางการเมืองมีความชอบธรรมมากเท่าไรก็ย่อมหมายถึงการมีสิทธิอำนาจในการปกครองมากเท่านั้น ความชอบธรรมทางการเมืองจึงแตกต่างจากเรื่องความถูกต้องทางกฎหมาย (Legality) เพราะในทางการเมืองและทางรัฐศาสตร์นั้นความถูกต้องตามกฎหมายแต่เพียงอย่างเดียวยังไม่เพียงพอ จะต้องมีความชอบธรรมทางการเมืองอันหมายถึงการยอมรับโดยคนทั่วไปว่าสิ่งที่ถูกต้องตามกฎหมายนั้นนอกจากถูกต้องแล้วยังต้องมีเหตุผลเป็นที่ยอมรับได้ มีความพอเหมาะพอดิบกับกาลและเทศะ (ลิขิต ธีรเวคิน : 2549) ในที่นี้ผู้วิจัยสนใจการกล่าวถึง การสร้างความสมเหตุสมผล (justification) โดย David Beethman (อ้างใน มนตรี เจนวิทยากร : 2549,น.3-6) ซึ่งผู้วิจัยเน้นไปที่เรื่องการสร้างความสมเหตุสมผลที่รายการคืนความสุขได้ช่วยสร้างให้แก่การครองอำนาจ เพื่อให้ประชาชนเกิดความเชื่อร่วมกันว่ากฎของการครองอำนาจ (ในแง่นี้หมายถึงการรัฐประหาร) ที่ถูกสร้างขึ้นนั้นชอบธรรม โดยนำเอากรอบเหตุผลของการรัฐประหารที่ถูกประกาศอยู่ในประกาศคณะรักษาความสงบแห่งชาติ ฉบับที่ 1/2557 มาเป็นตัวกำหนดชุดรูปแบบที่จะศึกษา

2. กรอบคิดเรื่องความเป็นพลเมือง (Citizenship) รวมถึงการนิยามความหมายของคำว่าราษฎรและประชาชน เพื่อทำความเข้าใจวิธีการมองและการสร้างพลเมืองของไทยในสมัยรัฐบาลพลเอกประยุทธ์ผ่านรายการคืนความสุข

3. กรอบคิดเรื่องการทำให้เป็นศัตรูโดยรัฐ (Demonization by the state) เพื่อการทำความเข้าใจเกี่ยวกับวิธีการสร้างภาพบุคคลที่พึงประสงค์และไม่พึงประสงค์ของรัฐผ่านรายการคืนความสุข การมีภาพของศัตรูทางการเมืองที่ชัดเจน มักนำไปสู่การสร้างพันธมิตรทางการเมืองหรือการแบ่งออกเป็นฝักฝ่ายเนื่องจากการรับเอาภาพของความเป็นศัตรูเข้ามาเสมือนว่ามีศัตรูร่วมกัน (ไชยรัตน์ เจริญสินโอฬาร: 2556, น.372-375) โดยผู้วิจัยเห็นว่าการใช้ “สื่อ” เป็นเครื่องมือหนึ่ง ที่ช่วยสร้างภาพดังกล่าวให้เกิดขึ้นได้ นอกจากนี้การใช้ภาษาในสื่อยังมีความสำคัญอย่างยิ่งในเรื่องกระบวนการการสร้างภาพความเป็นศัตรูซึ่ง ไชยรัตน์ เจริญสินโอฬาร (2556, น.351) ได้กล่าวถึงภาษาของอำนาจ (Languages of Power) ไว้ว่าอำนาจนั้นสามารถแสดงผ่านการใช้ภาษารวมถึงสื่อได้ โดยการสร้างและตอกย้ำลักษณะแบบฉบับ (typicality/stereotype) ในเรื่องนั้น ๆ ขึ้น โดยภาษาของอำนาจมีจุดมุ่งหมายสูงสุดในการสร้างการยอมรับให้เกิดในหมู่ประชาชน

ไชยรัตน์ยังชี้ว่าภาษาของการสร้างศัตรูทางการเมืองไม่ใช่ภาษาที่สื่อสารหรืออธิบายเพียงเท่านั้น แต่เป็นภาษาของการกระทำที่ตอกย้ำระบบอำนาจซึ่งดำรงอยู่ ให้อยู่ในการรับรู้ของประชาชนส่วนใหญ่ เพื่อที่จะได้ไม่เกิดการต่อต้านขัดขืนระบบ (เพ็งอ้าง, น.364) หรือพูดอีกแง่หนึ่งคือภาษาของอำนาจ มีจุดมุ่งหมายในการสถาปนาความชอบธรรมให้กับเรื่องราวต่าง ๆ และคำลักษณะนี้ยังมีหน้าที่สำคัญในการสร้าง “สภาวะผิดปกติธรรมดา” ขึ้นในสังคมในฐานะที่เป็นตัวกำหนดการแบ่งแยกการรับรู้ของคนในสังคม ทั้งนี้ผู้วิจัยเห็นว่า กระบวนการเช่นนี้อาจเรียกได้ว่าเป็นการทำให้เป็นศัตรูโดยรัฐ โดยวิธีการทางการเมืองอย่างหนึ่งในการลดความชอบธรรมของฝั่งตรงข้ามที่กระทำผ่านการโฆษณาชวนเชื่อ (Propaganda) (Lee : 1939) ซึ่งประกอบด้วย 1) การปะป้ายหรือการให้ชื่อ (Label/Name calling) 2) การใช้คำแบบกว้างๆ (Virtue words / Glittering Generally) 3) การเชื่อมโยงสัญลักษณ์ที่ได้รับความนิยมน่าเชื่อถือเป็นทุนเดิมมาใช้เป็นตัวแทนหรือส่วนประกอบในการพูด (Transfer) 4) การใช้บุคคลมีชื่อเสียงในการโฆษณาชวนเชื่อ (Testimonial) 5) การอ้างถึงความเป็นคนธรรมดาสามัญ (Plain Folk) 6) การให้ข้อมูลด้านเดียว (Card-stacking) และ 7) การใช้คำอ้างถึงคนส่วนใหญ่ (Band Wagon) โดยการพยายามทำให้ศัตรูหรือภัยคุกคามของรัฐมีภาพของไม่น่ากลัวราวกับปีศาจร้ายที่จะเข้ามาทำลายความมั่นคงของรัฐลง (Danielle Rowell : 2011, P.162)

5.วิธีการศึกษา

งานวิจัยเรื่อง การสร้างภาพความเป็นพลเมืองไทยในรายการคืนความสุข เป็นงานวิจัย เชิงคุณภาพ (Qualitative Research) ซึ่งประกอบด้วยการวิเคราะห์ คัดแยกเนื้อหาที่ได้รับการถอดเทปจากรายการคืนความสุขจำนวน 252 ตอนในเว็บไซต์ของรัฐบาล <http://www.thaigov.go.th/> (ปัจจุบันไม่สามารถเข้าถึงได้แล้วเนื่องจากรัฐบาลได้ลบเนื้อหาทั้งหมดออกไป) นับตั้งแต่เทปวันศุกร์ที่ 30 พฤษภาคม 2557 ถึง วันศุกร์ที่ 29 มีนาคม 2562 รวมทั้งสิ้น 252 ตอน โดยแบ่งเป็นเทปรายการคืนความสุขจำนวน 124 ตอนและภายหลังเปลี่ยนชื่อเป็นรายการ ศาสตร์ของพระราชา เพื่อการพัฒนาที่ยั่งยืน อีก 128 ตอน และการค้นคว้า

เอกสารในบริบทที่เกี่ยวข้องกับรายการคืนความสุขและสถานการณ์ทางการเมือง รวมถึงการดำเนินนโยบายกับผู้เห็นต่างทางการเมืองในช่วงเวลาเหล่านั้น สำหรับวิธีการดำเนินการวิจัย ผู้วิจัยเลือกวิธีการศึกษาและวิเคราะห์จากเอกสาร (Documentary Research) ทั้งหมด แต่เป็นเอกสารที่มีลักษณะที่แตกต่างกันออกไป ดังนี้

5.1 คัดแยก เนื้อหาประเด็นสำคัญที่เกี่ยวข้องกับการสร้างความชอบธรรมทางการเมืองของรัฐบาลและหัวข้อที่ถูกเอ่ยถึงบ่อยครั้ง นำเนื้อหาแต่ละตอนมาคัดแยกเก็บไว้เป็นเดือนและปีตามลำดับ โดยอาศัยการอ่านเอกสารถอดเทปและจัดกลุ่มประโยคต่าง ๆ ที่ถูกพูดถึงลงในตาราง จนครบทั้ง 252 ตอน พร้อมกำหนดตารางซึ่งระบุวันที่ออกอากาศกำกับไว้ ประโยคที่พลเอกประยุทธ์กล่าวถึงข้ออ้างในการสร้างความชอบธรรมและลักษณะของบุคคลที่ไม่พึงประสงค์

5.2 ศึกษาจากรายงานสรุปผลงานของรัฐบาล ซึ่งเป็นเอกสารเริ่มต้นจากเว็บไซต์ของสำนักเลขาธิการนายกรัฐมนตรี <http://www.soc.go.th/>

5.3 ศึกษาจากเอกสารทั่วไป (Documentary Research) หนังสือ เอกสารทางวิชาการ วิทยานิพนธ์ ข่าวบทความในสื่อออนไลน์ และบทสัมภาษณ์ออนไลน์ของนักวิชาการหรือบุคคลในรัฐบาล ที่เกี่ยวข้องกับบริบทสถานการณ์ทางการเมืองในช่วงก่อนและตลอดระยะเวลา 5 ปีที่ คสช. ครองอำนาจ รวมไปถึงเอกสารที่เกี่ยวข้องกับเรื่อง การทำให้เป็นศัตรูโดยรัฐ (Demonize by the state) กรอบคิดเรื่องความเป็นพลเมือง (Citizenship) และการสร้างความชอบธรรม (legitimacy) และรายงานขององค์กรสิทธิมนุษยชน ซึ่งโดยส่วนใหญ่เป็นเอกสารชั้นรอง

6. ข้อค้นพบ

จากการอ่านเอกสารเนื้อหาในการถอดเทปจำนวน 252 ตอน ซึ่งส่วนใหญ่ความยาวของแต่ละตอนอยู่ที่ 10-20 หน้ากระดาษ ผู้วิจัยพบว่าเนื้อหาที่อยู่ในขอบเขตการศึกษาของผู้วิจัย เป็นเนื้อหาบรรยายร้อยละ 30 ของสิ่งที่ถูกนำเสนอในรายการ โดยอาจจะมีเพียงหนึ่งย่อหน้า หรือเกิดจากการพูดถึงขึ้นมาไม่กี่ประโยค ในตอนต่าง ๆ ที่ออกอากาศ เนื่องจากส่วนใหญ่รัฐบาลมักเน้นเรื่องการกล่าวถึงนโยบายเศรษฐกิจ และการปกครองในงานราชการต่าง ๆ เดิมทีการศึกษานี้ตั้งต้นจากความสงสัยใคร่รู้ในตัวรายการโดยมีข้อสันนิษฐานว่าเนื้อหาในรายการจะมีการกล่าวถึงบุคคลที่ไม่พึงประสงค์สำหรับรัฐบ้างหรือไม่ โดยหากมีการกล่าวถึงบุคคลเหล่านั้นจะมีลักษณะอย่างไรบ้าง

อย่างไรก็ตามผู้วิจัยพบว่ารายการคืนความสุขมักนำเสนอเนื้อหาด้านบวกเกี่ยวกับรัฐบาลและนำเสนอภาพความร่วมมือของประชาชนมากกว่าที่จะนำเสนอภาพความเป็นศัตรูหรือเรื่องราวด้านลบเกี่ยวกับสถานการณ์ประเทศชาติ แม้ไม่ได้คิดคำนวณออกมาเป็นเปอร์เซ็นต์อย่างแน่ชัดว่าการนำเสนอภาพในเชิงบวกมีปริมาณมากเท่าใดแต่เห็นได้อย่างชัดเจนว่าเนื้อหาที่ผู้วิจัยสนใจ

รวบรวมเป็นเนื้อหาส่วนน้อยในแต่ละตอนที่ออกอากาศ โดยในบางตอนของรายการ ผู้วิจัยไม่พบการกล่าวถึงลักษณะไม่พึงประสงค์ หรือสิ่งที่รัฐบาลกังวล และจับตามองอยู่เลย

ผู้วิจัยพบว่าลักษณะการสื่อสารและเนื้อหาในรายการคืนความสุข ใช้เทคนิคการโฆษณาชวนเชื่อ ซึ่งสามารถจำแนกออกเป็น 7 รูปแบบ (Lee : 1939) โดยการใช้เทคนิคการพูดแบบโฆษณาชวนเชื่อนี้อาจจะช่วยให้ผู้คนที่ได้ฟังเนื้อหาในรายการซ้ำ ๆ อย่างต่อเนื่องเกิดความเชื่อถือว่าสิ่งที่รัฐพูดเป็นความจริง ส่งผลให้รัฐหรือผู้มีอำนาจได้รับการยอมรับมากขึ้น สิ่งเหล่านี้ส่งผลให้รายการคืนความสุขกลายเป็นส่วนหนึ่งของเครื่องมือในการสร้างความชอบธรรมให้ คสช. ในส่วนของการสร้างความสมเหตุสมผล (justification) เพื่อมารองรับการใช้อำนาจ ตามกรอบคิดของ Beetham (2013) โดยรายการได้ทำงานในส่วนของสิ่งที่เรียกว่าการสร้างความสำเร็จร่วมกัน (shared beliefs) ว่าผู้ครองอำนาจนั้นมีความชอบธรรม

ในทฤษฎีของ Beetham ความชอบธรรมทางการเมือง (Legitimacy) จะเกิดขึ้นไม่ได้หากปราศจาก 3 ส่วนหลัก ๆ คือ 1. การสร้างกฎแห่งอำนาจ (Rules of Power) ซึ่งในที่นี้ผู้วิจัยเห็นว่าในที่นี้กฎแห่งอำนาจคือการรัฐประหาร แม้การใช้อำนาจทางการทหารเพื่อรัฐประหารจะสำเร็จลงแต่ไม่ได้หมายความว่าทหารจะมีความชอบธรรมในการครองอำนาจได้ในทันที โดยผู้วิจัยเห็นความพยายามของรัฐที่ต้องการสร้างองค์ประกอบของความชอบธรรมส่วนที่ 2 คือ ความสมเหตุสมผล (Justification) ให้การครองอำนาจผ่านการใช้รายการคืนความสุขในการสื่อสารกับประชาชน แม้ไม่อาจวัดผลความสำเร็จได้ว่ารายการมีส่วนสำคัญในการช่วยสร้างความสมเหตุสมผลให้การใช้อำนาจได้มากเพียงใด แต่อย่างน้อยรายการเป็นสิ่งที่สะท้อนให้เห็นถึงกระบวนการและมุมมองในการให้เหตุผลของรัฐในการใช้อำนาจและการพยายามสร้างความเชื่อร่วมกัน (shared beliefs) ให้เกิดขึ้นแก่ประชาชน ซึ่งการมีความเชื่อร่วมกันของประชาชนว่ารัฐบาลมีอำนาจที่ชอบธรรมนั้น จะนำไปสู่ความยินยอมของประชาชนที่จะให้รัฐบาลครองอำนาจ ในที่นี้ก็คือการที่ประชาชนไม่ออกมาต่อต้านรัฐบาลอย่างล้นหลามจนรัฐบาลไม่อาจครองอำนาจอยู่ได้เพราะประชาชนเชื่อในอำนาจการปกครองของรัฐนั้น ๆ

7. อภิปรายผลการศึกษา

แม้งานวิจัยไม่อาจให้ภาพที่เชื่อมโยงและอธิบายทฤษฎีข้างต้นได้ทั้งหมดเพราะรายการคืนความสุขเป็นเพียงเครื่องมืออย่างหนึ่ง ที่สะท้อนถึงความพยายามในการสร้างความชอบธรรมให้รัฐ แต่ผู้วิจัยค้นพบว่าเรื่องที่ถูกล่าม้างเพื่ออ้างความชอบธรรมล้วนอยู่ในกรอบข้ออ้างที่ถูกล่าม้างไว้ในประกาศคณะรักษาความสงบแห่งชาติที่ 1/2557 ลงวันที่ 22 พฤษภาคม 2557 โดยมีอยู่ด้วยกัน 5 ข้อใหญ่ ประกอบด้วย ข้ออ้างที่ 1. รัฐบาลตั้งใจเข้ามายุติความรุนแรง รักษาความสงบและความมั่นคงด้วยกฎหมาย จำนวน 115 ตอน คิดเป็นร้อยละ 45.63 ของการออกอากาศทั้งหมด ข้ออ้างที่ 2. รัฐบาลมีความจงรักภักดีต่อพระมหากษัตริย์ จำนวน 113 ตอน คิดเป็นร้อยละ 44.84 ของการออกอากาศทั้งหมด ข้ออ้างที่ 3. รัฐบาลเข้ามาแก้ไขเปลี่ยนแปลงปัญหาเดิมที่มีผู้สร้างเอาไว้ จำนวน 94 ตอน คิดเป็นร้อยละ 37.30 ของการออกอากาศทั้งหมด ข้ออ้างที่ 4. รัฐบาลกำลังพัฒนาประชาธิปไตยที่

สมบูรณ/ปฏิรูปประเทศจำนวน 91 ตอน คิดเป็นร้อยละ 36.11 ของการออกอากาศทั้งหมด ข้ออ้างที่ 5.รัฐบาลคือตัวกลางในการสร้างความปรองดอง จำนวน 51 ตอน คิดเป็นร้อยละ 20.24 ของการออกอากาศทั้งหมด

ในส่วนข้อค้นพบเกี่ยวกับลักษณะอันพึงประสงค์และไม่พึงประสงค์ที่ถูกกล่าวถึงในรายการคืนความสุขก็ปรากฏออกมาใน 5 รูปแบบเช่นกัน เรียงตามความถี่ของการออกอากาศในรายการคืนความสุข 252 ตอนประกอบด้วย รูปแบบที่ 1.ประชาชนที่ไม่ใช้โซเชียลมีเดียโจมตีรัฐบาลบิดเบือนข้อเท็จจริงและคล้อยตามสื่อ/ผู้ไม่หวังดีทางการเมืองทางในอดีต จำนวนรวม 108 ตอน คิดเป็นร้อยละ 43.25 ของการออกอากาศทั้งหมด รูปแบบที่ 2.ประชาชนที่ร่วมมือกับรัฐสร้างความปรองดองจำนวนรวม 51 ตอน คิดเป็นร้อยละ 20.63 ของการออกอากาศทั้งหมด รูปแบบที่ 3.ประชาชนที่มีศีลธรรมเชิงศาสนา (เป็นคนดี) มีสำนึกในเรื่องประวัติศาสตร์ชาติไทย จำนวนรวม 49 ตอน คิดเป็นร้อยละ 19.84 ของการออกอากาศทั้งหมด รูปแบบที่ 4.ประชาชนที่เห็นความมั่นคงมาก่อนประชาธิปไตย 48 ตอน คิดเป็นร้อยละ 19.44 ของการออกอากาศทั้งหมด รูปแบบที่ 5.ประชาชนผู้จงรักภักดีต่อสถาบันพระมหากษัตริย์ 22 ตอน คิดเป็นร้อยละ 8.73 ของการออกอากาศทั้งหมด

ผลการวิจัยข้างต้นผู้วิจัยพบว่าเรื่องที่ถูกใช้มากที่สุด 5 หัวข้อ คือเรื่องการพูดถึงความตั้งใจของ คสช.ที่จะเข้ามายุติความรุนแรง รักษาความสงบและความมั่นคงด้วยกฎหมาย โดยรัฐบาล คสช.ได้พูดเรื่องความมั่นคงมากถึง 115 ตอนจากการออกอากาศ 252 ตอน การเน้นย้ำเรื่องเหล่านี้บ่อยครั้ง นำมาซึ่งการสร้างภาพของตนเองให้เป็นผู้ปกป้องประชาชนจากภัยอันตรายและความไร้เสถียรภาพ ซึ่งในหลายช่วงหลายตอนถูกเน้นย้ำว่าเกิดขึ้นจากผู้ต่อต้าน ผู้สูญเสียอำนาจในอดีต อาทิ

“กองทัพได้ติดตามสถานการณ์มาอย่างต่อเนื่อง มีความจำเป็นต้องเข้ามาแก้ไขสถานการณ์ดังกล่าวให้ได้โดยเร็ว สิ่งแรกที่เราทำได้คือยุติการใช้ความรุนแรงต่อกัน ยุติการประท้วงที่มีมาอยู่อย่างยาวนานได้ทันเวลาที่ หลีกเสียดสถานการณ์นองเลือด สงครามกลางเมืองไว้ได้”

(รายการคืนความสุข วันที่ 18 กรกฎาคม 2557)

“ดังนั้น สิ่งที่เราคนไทยควรระลึกถึง คิดให้ถูกต้อง ก็คือ ความมั่นคง ความมีเสถียรภาพศักยภาพความสงบเรียบร้อย เป็นพื้นฐานสำคัญในการพัฒนาประเทศ ถ้าบ้านเมืองไม่มีความมั่นคง ไม่มีเสถียรภาพ เราก็จะทำอย่างอื่น ๆ ไม่ได้เลย”

(รายการคืนความสุข 22 กุมภาพันธ์ 2562)

มุมมองเหล่านี้สะท้อนความคิดเบื้องหลังที่อาจมีส่วนทำให้เกิดการออกกฎหมายเพื่อรองรับการใช้อำนาจและสืบทอดอำนาจจำนวนมาก อาทิ การออกประกาศคำสั่งฉบับต่าง ๆ แทนกฎหมาย การเขียนเรื่องร่างยุทธศาสตร์ชาติ 20 ปี และการเขียนรัฐธรรมนูญให้อำนาจ สว. เลื่อนนายก เป็นต้น ผู้วิจัยมองว่า แม้ข้ออ้างที่ 1 จะถูกพูดถึงอย่างโดดเด่นและทิ้งห่างข้ออ้างที่เหลือ แต่

เรื่องที่ถูกพูดออกอากาศในข้ออื่นที่รองลงมาไม่ได้ถูกให้ความสำคัญน้อยลงไปกว่ากัน- โดยแต่ละข้ออ้างมีช่วงเวลาในการนำเสนอที่แตกต่างกันไปตามบริบทการเมืองในช่วงเวลานั้น ๆ

ผลการวิจัยชี้ว่าเนื้อหาในรายการคืนความสุขในส่วนของข้ออ้างในการสร้างความชอบธรรม มีความเชื่อมโยงกับการนำเสนอเรื่องลักษณะที่พึง/ไม่พึงประสงค์อย่างใกล้ชิด เช่น ในหัวข้อการเข้ามาของ คสช. เพื่อสร้างความปรองดอง แม้ คสช. ถูกจัดอยู่ในลำดับสุดท้ายของข้ออ้างในการสร้างความชอบธรรม แต่ในส่วนของการสะท้อนภาพพลเมือง พลเอกประยุทธ์มักเน้นย้ำถึงความต้องการพลเมืองที่ให้ความร่วมมือเพื่อนำไปสู่การสร้างความปรองดอง ซึ่งทำให้บทบาทหน้าที่ในการสร้างความปรองดองตกไปอยู่ที่ประชาชน โดยการเน้นเพียงเรื่องการให้ความร่วมมือกับรัฐ โดยไม่เข้ามาสร้างความวุ่นวายหรือขัดขวางการดำเนินงานเพื่อให้ประเทศได้เดินหน้าต่อไป

แม้ผลวิจัยพบว่าการพูดถึงบทบาทของ คสช. ในการเข้ามาพัฒนาประชาธิปไตย รักษากฎหมายความมั่นคง ถูกกล่าวถึงอยู่ในลำดับที่ 4 แต่ข้ออ้างข้างต้นถูกกล่าวถึงในความถี่ที่ล้าไปกับการย้ำเรื่องประชาชนต้องให้ความสำคัญกับเรื่องความมั่นคงก่อนเรื่องประชาธิปไตย โดยผู้วิจัยพบว่า คสช. ได้กล่าวถึงข้ออ้างเรื่องการเข้ามาพัฒนาประชาธิปไตยเป็นอันดับต้น ๆ ตลอด 4 ปีแรกของรัฐบาล คสช. สอดคล้องกับการกล่าวถึงความต้องการประชาชน/พลเมืองที่เข้าใจเรื่องความมั่นคงก่อนเรื่องประชาธิปไตย ปฏิเสธไม่ได้ว่ากระแสประชาธิปไตยมีความสำคัญแม้กับรัฐบาลที่มาจากพรรคการเมืองที่ก็ยังต้องอ้างว่าตนกำลังเข้ามาปรับปรุงพัฒนาประชาธิปไตย อย่างไรก็ตามพลเอกประยุทธ์พยายามเน้นย้ำข้อเสียและปัญหาต่าง ๆ ของระบอบประชาธิปไตยหลายครั้งในรายการและการกล่าวถึงข้ออ้างเรื่องการเข้ามาพัฒนาประชาธิปไตยข้างต้น ก็เป็นการพยายามถ่วงดุลรูปแบบของประชาธิปไตยแบบไทย ๆ ในฉบับของรัฐบาล คสช. เอง สิ่งที่สะท้อนออกมาผ่านรายการจึงมิได้เป็นการนิยามทั้งพลเมืองและประชาธิปไตยในแบบสากล เนื่องจากมักมีการนำเสนอว่ารูปแบบของตะวันตกนั้นอาจจะไม่เหมาะกับสังคมไทย ซึ่งเห็นได้ชัดในช่วงเวลาหลังการสวรรคตของรัชกาลที่ 9 มีการกล่าวถึงความต้องการพลเมืองที่เห็นความมั่นคงมาก่อนประชาธิปไตยน้อยลงและกล่าวถึงเรื่องประชาชนที่สมานความปรองดองและเป็นไทยและภูมิใจในชาติเพิ่มขึ้น อาทิ

“สิ่งหนึ่งที่ผมเห็นว่า เป็นธรรมะที่สำคัญ แต่หลายคนอาจจะถูกลืมนั่นก็คือคำว่า “หิริ-โอตฺตปปะ” หรือ คำที่มีความหมายว่ามีความละอายและเกรงกลัวต่อบาป ที่อยากให้พวกเราทุกคนได้ยึดถือปฏิบัติในชีวิตประจำวัน เพราะว่าถ้าหากว่าเราขาดคำว่า “หิริ-โอตฺตปปะ” แล้ว ความชั่ว สิ่งไม่ดี ก็อาจจะเข้ามาครอบงำจิตใจได้”

(รายการศาสตร์พระราชาฯ 17 กุมภาพันธ์ 2560)

“เราต้องผลิตคนให้เป็นคนดี มีศีลธรรม จริยธรรม ทั้งนี้ เมื่อคนในสังคมมี “จิตสำนึกที่ดี” องค์กรก็จะมี “ธรรมาภิบาล” แล้วประเทศชาติก็จะแข็งแรงได้ในแบบไทย ๆ ในที่สุด”

(รายการศาสตร์พระราชาฯ 23 มิถุนายน 2560)

สำหรับข้ออ้างที่ 2 ซึ่งกล่าวถึงบทบาทของ คสช. ในการปกป้องสถาบันพระมหากษัตริย์ซึ่งมาพร้อมกับความต้องการประชาชนที่จงรักภักดีนั้น มีลำดับความถี่ในการนำเสนอที่สวนทางกัน กล่าวคือเรื่องการแสดงความจงรักภักดีของประชาชนนั้น ไม่ได้ถูกเน้นย้ำในรายการมากนักเพราะถูกสะท้อนออกมาในลำดับที่ 5 หรือลำดับสุดท้ายที่ถูกกล่าวถึงหากเทียบกับหัวข้ออื่น ๆ ขณะเดียวกันรายการกลับเน้นการพูดถึงความจงรักภักดีของรัฐบาลต่อสถาบันพระมหากษัตริย์เนื่องจากความถี่ในการพูดถึงเรื่องดังกล่าวมาเป็นอันดับที่ 2 ของข้ออ้างในการสร้างความชอบธรรม โดยการพูดถึงสถาบันพระมหากษัตริย์ตั้งแต่ช่วงแรกที่มีการรัฐประหารและเพิ่มปริมาณมากขึ้นหลังจากการสวรรคตของพระบาทสมเด็จพระเจ้าอยู่หัวรัชกาลที่ 9 อาทิ

“เรื่องขบวนการละเมิดสถาบันพระมหากษัตริย์ หลายคนวันนี้ที่แรงขนาดนี้ หลายวันมานี้ผมได้รับแจ้ง ที่จริงผมทราบแล้ว มีการทำงานอยู่แล้ว หลายคนถูกดำเนินคดีและออกหมายเรียกหมายจับไปแล้ว แต่หนีไปต่างประเทศ บางประเทศที่ใหญ่ ๆ และเขาไม่มีกฎหมายพวกนี้และเขาไม่เห็นความสำคัญของเรา ในเรื่องของกฎหมายหมิ่นฯ ถือว่าเป็นการยากเหมือนกัน ผมเอ่ยชื่อเลย นาย ชูพงษ์ ถีถ้วน นายอเนก ชัยชนะ นายเสน่ห์ ถิ่นแสน นายอำนาจ แก้วชมพู นายองอาจ ธนภมลินันท์ และอื่น ๆ อีก พอสมควร รวมทั้งกลุ่มต่อต้านอะไรต่าง ๆ นี้ด้วย มีหลักฐานเชื่อมโยงกันอยู่ มีรูปถ่ายมีอะไรเจอกันอยู่ ฉะนั้นคนเหล่านี้ ใช้ไม่ได้ ทุกคนมีคดีอาญา ฉะนั้นจะต้องถูกดำเนินคดี ก็พยายามจะทำหนังสือส่งผู้ร้ายข้ามแดนอาจจะยาก แต่การเผยแพร่ทางโซเชียลมีเดียมีปัญหา เพราะบางอย่างเปิดที่ต่างประเทศ ไปปิดที่ต่างประเทศ ซึ่งทำไม่ได้ เพราะมีกฎหมายของเขา เพราะเราทำในประเทศไทยต้องใช้กฎหมายดำเนินการ”

(รายการคืนความสุข 8 สิงหาคม 2557)

“...ที่กล่าวมานั้น ผมสนับสนุนให้สอนเยาวชนด้วยหลักวิชาการ ควรจะยกกรณีความสำเร็จ ความล้มเหลวของต่างประเทศ มาเปรียบเทียบ แต่ก็ไม่ได้ให้ “เดินช้ารอยความผิดพลาด” ให้เด็กได้คิด ให้มีพื้นฐานหลักคิดที่ถูกต้อง ว่าประเทศชาติจะสงบสันติได้อย่างไร ด้วยวิธีการอย่างไร ไม่ใช่ให้เอาเยี่ยงอย่าง การล้มล้างสถาบัน การเปลี่ยนแปลงการปกครอง โดยที่ประชาชนยังไม่พร้อม จนต้องบาดเจ็บ ล้มตาย ตามที่หลายประเทศล้มเหลวมาก่อน เราก็ได้รู้ เราได้เห็นแล้ว ก็ไม่จำเป็นต้องให้ประวัติศาสตร์เหล่านั้นซ้ำรอยอีก หรือเจ็บแล้วลืม จนต้องล้มแล้วล้มอีก..”

(ศาสตราจารย์ราชบัณฑิตยสถานที่ยั่งยืน 23 กุมภาพันธ์ 2561)

ลักษณะข้างต้นสอดคล้องกับสิ่งที่ Panuwat Panduprasert (2017) กล่าวว่า ว่ายุทธศาสตร์หนึ่งของ คสช. คือการสร้าง ความชอบธรรม (Legitimacy) ทางการเมืองโดยใช้ royal legitimacy บทบาทหนึ่งที่ คสช. ได้วางให้กับตนเองผ่านกระบอกเสียงอย่างรายการคืนความสุข คือการเป็นผู้ปกป้องและเทิดทูลสถาบันกษัตริย์ โดยได้อาศัยความเชื่อความศรัทธาและวัฒนธรรมการให้ความเคารพต่อสถาบันกษัตริย์ที่มีมาอย่างยาวนานของชาวไทย สถาบันกษัตริย์ถูกสถาปนาและใช้เป็นข้ออ้างที่สำคัญในการสร้างความชอบธรรมนับตั้งแต่ยุคสงครามเย็นเพื่อการต่อต้านกลุ่มคอมมิวนิสต์ในประเทศไทย (ณัฐพล ใจจริง : 2552, น.135-148) ทั้งยังเป็นส่วนประกอบสำคัญที่ถูกนำมาใช้ในวาทกรรมโค่นล้มรัฐบาลของกลุ่มพันธมิตรประชาชนเพื่อประชาธิปไตย จนก่อให้เกิดการรัฐประหารในปี พ.ศ.2549 (Marc Askew : 2010, P.14-15)

นอกจากนี้การอ้างถึงสถาบันกษัตริย์ไม่ว่าในแง่ใดแห่งหนึ่งได้นำไปสู่นโยบายที่เข้มข้นในการปราบปรามผู้ที่ทำตัวเป็นศัตรูกับสถาบันกษัตริย์ด้วย โดยเราสามารถเห็นการเพิ่มขึ้นของการใช้มาตรา 112 ในยุคของรัฐบาล ศสช. โดยหลังจากการรัฐประหารมีการดำเนินคดีอย่างเคร่งครัดกับผู้ที่กระทำความผิดตามประมวลกฎหมายอาญา มาตรา 112 หรือข้อหาหมิ่นพระบรมเดชานุภาพองค์พระมหากษัตริย์ ราชนิ และรัชทายาท มีการเรียกรายงานตัวบุคคลที่เป็นอดีตผู้ต้องหาหมิ่นพระบรมเดชานุภาพ รวมถึงผู้ที่เคยเคลื่อนไหวเกี่ยวกับการรณรงค์แก้ไขมาตรา 112 อีกทั้งมีการโอนย้ายคดีเกี่ยวกับความมั่นคงเข้ามาอยู่ในอำนาจพิจารณาของศาลทหาร ทำให้พลเรือนที่กระทำความผิดและถูกจับกุมในช่วงเวลาดังกล่าวจะต้องขึ้นศาลทหาร ตามประกาศคณะรักษาความสงบแห่งชาติฉบับที่ 37/2557

โดยเฉพาะอย่างยิ่งการถูกจับกุมในช่วงเวลาที่ยังมีการประกาศใช้กฎอัยการศึก ทำให้ผู้ต้องหาไม่สามารถสู้คดีโดยการยื่นอุทธรณ์หรือฎีกาได้ แม้กฎอัยการศึกได้ถูกยกเลิกไปเมื่อวันที่ 1 เมษายน 2558 แต่การประกาศใช้กฎอัยการศึกมาเกือบ 1 ปี ทำให้มีผู้ตัดสินไต่รับสารภาพจำนวนหนึ่ง โดยมีประชาชนถูกจับกุมและนำตัวฟ้องต่อศาลทหารอย่างน้อย 30 คดี โดยที่ศาลทหารได้มีคำพิพากษาแล้ว 6 คน (ศูนย์ทนายความเพื่อสิทธิมนุษยชน : 2558) และในปีต่อ ๆ มาจากรายงานของศูนย์ทนายความเพื่อสิทธิมนุษยชนพบว่าตลอดช่วงที่รัฐบาล ศสช. บริหารประเทศก็มีผู้ถูกดำเนินคดีในข้อหาหมิ่นพระบรมเดชานุภาพอย่างน้อย 169 คน แบ่งเป็นผู้ถูกตั้งข้อหาจากการแสดงออก อย่างน้อย 106 คน และแอบอ้างสถาบันพระมหากษัตริย์เรียกรับผลประโยชน์ อย่างน้อย 63 คน (ศูนย์ทนายความเพื่อสิทธิมนุษยชน : 22 พฤษภาคม 2562)

ข้ออ้างในเรื่องการสร้างความปลอดภัยของรัฐบาลผ่านรายการคืนความสุขบางข้อมีความเชื่อมโยง สอดคล้องไปกับผลการวิจัยเรื่องการนำเสนอภาพประชาชนที่พึงประสงค์และไม่พึงประสงค์ในรายการ ดังที่ผู้วิจัยได้อภิปรายไว้ข้างต้น แม้ว่าโดยส่วนใหญ่แล้ว พลเอกประยุทธ์จะพูดถึงสิ่งที่ประชาชนควรเป็น ควรทำ ซึ่งเป็นข้อมูลเชิงบวก มีการกล่าวถึงตัวอย่างของคนดี พลเมืองดีหลายครั้งและมีความพยายามสร้างภาพหรือให้คำอธิบายความหมายว่าพลเมืองไทยต้องมีลักษณะอย่างไร โดยบางเรื่องมีการพูดถึงการใช้กฎหมายเข้ามาช่วยกำกับให้ทุกคนปฏิบัติตามภายใต้ข้อบังคับนั้น ๆ และบางเรื่องเป็นการพูดในเชิงประเพณีปฏิบัติไม่ได้มีกฎหมายใด ๆ มากำกับแต่เป็นเรื่องที่ผู้คนควรปฏิบัติตาม

ผู้วิจัยเห็นว่าภาพสะท้อนจากรายการของรัฐเกี่ยวกับสิ่งที่เรียกว่า พลเมืองดี/ประชาชนที่ดี อาจก่อให้เกิดการสร้างภาพด้านกลับกับผู้ปฏิบัติตนแตกต่างไปจากกรอบที่ถูกวางเอาไว้ และนำไปสู่การเลือกปฏิบัติหรือกีดกันต่อผู้เห็นต่าง นอกจากนี้อาจเป็นการสร้างความชอบธรรมให้กับการใช้ความรุนแรงทั้งในเชิงกายภาพและเชิงกฎหมาย การสื่อสารของตัวแทนของรัฐไปถึงประชาชนผ่านสื่อจึงจำเป็นต้องมีความระมัดระวังอย่างยิ่งโดยเฉพาะอย่างยิ่งในยุคสมัยที่ผู้คนเข้าถึงข้อมูลข่าวสารและส่งต่อกันได้อย่างรวดเร็ว

เนื้อหาของรายการในบางช่วงบางตอนได้นำเสนอภาพบุคคลที่ไม่พึงประสงค์เช่นเดียวกัน โดยมีทั้งการระบุชื่อ นามสกุล หรือกลุ่มอย่างเจาะจงหรือกล่าวอย่างรวม ๆ การกล่าวอย่างเจาะจงไปถึงคนบางกลุ่มนั้น สามารถพบได้ในหลายตอนของการออกอากาศ โดยมักจะพูดถึงนักการเมือง เนื่องจากนักการเมืองคือกลุ่มหลักซึ่งถูกลดอำนาจภายหลังจากการรัฐประหาร จึงถือได้ว่าเป็น

คู่ขัดแย้งสำคัญของรัฐบาลทหาร การกล่าวถึงนักการเมืองไม่ดีหรือตีอันเลวร้ายของรัฐบาลชุดก่อนคือการลดทอนความชอบธรรมของศัตรูทางการเมืองของทหารไปในตัว อาทิ

“อันนี้ผมได้สั่งการไปแล้วสำหรับบุคคลเหล่านั้น ทุกคนทราบดีว่าใครพูดอะไร อย่างไร ก็จะทำให้ คสช. ได้ประเมิน แล้วก็ดำเนินการอย่างระมัดระวังโดยทันทีกับผู้ที่มีการกระทำดังกล่าว ก็ไม่ยากให้ใครเดือดร้อนโดยเฉพาะครอบครัว ลูกเมียต้องเดือดร้อนทุกคน เสร็จแล้วก็ไว้วางใจว่า เป็นเรื่องของการเมือง เรื่องของการที่จะต้องการทำลายใคร ผมจะต้องการทำลายใคร ถ้าท่านไม่พูดอะไรผิดหรือทำอะไรที่ผิดกฎหมาย แล้วใครจะทำอะไรท่านได้ แสดงว่าท่านผิด เมื่อท่านผิดก็ต้องดำเนินการ”

(รายการคืนความสุข 30 มกราคม 2558)

“เรื่องปรับทัศนคติ เป็นเรื่องของกฎหมาย ทุกคนรู้กฎหมายใครจะบอกไม่รู้กฎหมายไม่ได้ รัฐธรรมนูญก็เขียนไว้ อะไรก็เขียนไว้ทั้งหมด คนไทยทุกคนต้องรู้กฎหมายนะครับ รู้ข้อห้าม แต่หลายคนก็ยังทำ ทั้งนี้เพื่อมุ่งหมายจะสร้างความขัดแย้งบิดเบือนโจมตีรัฐบาลในสิ่งที่ไม่ใช่ข้อเท็จจริง โจมตี คสช. อ้างคำว่าประชาธิปไตย สิทธิมนุษยชน ผมพูดมาหลายครั้งแล้ว คนละเรื่องกัน ถ้ากฎหมายมีไว้แล้ว ท่านฝันท่านก็ผิดกฎหมาย เมื่อถูกจับกุมดำเนินคดี ท่านก็บอกว่าละเมิดสิทธิมนุษยชน ผมว่าไม่น่าใช่”

(รายการคืนความสุข 1 เมษายน 2560)

ผู้วิจัยเห็นว่านอกจากลักษณะพลเมืองที่พึงประสงค์หรือไม่พึงประสงค์จากผลการศึกษามีส่วนช่วยเสริมสร้างความสมเหตุสมผลของการครองอำนาจให้ คสช. ซึ่งสอดคล้องกับผลการวิจัยเพื่อตอบคำถามวิจัยข้อแรกเกี่ยวกับข้ออ้างในการสร้างความชอบธรรมแล้ว ลักษณะข้างต้นยังนำไปสู่การสร้างผลสมเหตุสมผลในการใช้กฎหมายต่อประชาชน โดยเฉพาะผู้ที่ต้องการแสดงออกทางการเมือง ทั้งนี้เนื่องจากรัฐบาลเข้ามาปกครองประเทศด้วยวิธีการรัฐประหารซึ่งเป็นการขึ้นสู่อำนาจที่ขัดกับวิถีทางในระบอบประชาธิปไตย ทำให้หลายครั้งที่ คสช. ออกกฎหมาย ประกาศ คำสั่ง และออกนโยบายบริหารประเทศ ต้องมีผู้ออกมาคัดค้าน ทัดทาน ไปจนถึงจัดการประท้วงตลอดช่วงปี พ.ศ. 2557– 2562

แม้งานวิจัยไม่สามารถแสดงผลที่ชัดเจนได้ว่า การออกอากาศของรายการเกี่ยวพันโดยตรงกับการใช้กฎหมายปราบปรามผู้เห็นต่างจากรัฐ แต่การพูดถึงคุณลักษณะอันไม่พึงประสงค์ตามที่ผู้วิจัยพบ ได้สะท้อนแนวคิดของรูปแบบประชาชนที่รัฐต้องการและไม่ต้องการอย่างชัดเจน ซึ่งประชาชนที่อยู่ในฝั่งคัดค้าน ทัดทานรัฐ รวมไปถึงกล่าวโจมตีรัฐในเรื่องต่าง ๆ เป็นบุคคลที่รัฐไม่พึงประสงค์ อีกทั้งรัฐไม่ประสงค์ให้ประชาชนใช้โซเชียลมีเดียในการติดตามและกระจายข้อมูลข่าวสารที่ไม่ได้มาจากรัฐอีกด้วย รูปแบบการสื่อสารผ่านรายการในลำดับที่ 1 เรียกได้ว่าเป็นสิ่งที่รัฐมีความกังวลอย่างที่สุดและดูเหมือนว่าแม้รัฐพยายามใช้สารพัดวิธีในการควบคุม ก็ยังไม่สามารถควบคุมการกระจายของข่าวสารทางอินเทอร์เน็ตได้ ทำได้เพียงการใช้กฎหมายปราบปรามเท่านั้น อาทิ

“การเสพข้อมูลต่าง ๆ ของสื่อ แล้วก็โซเชียลมีเดีย ที่ไม่มีคุณภาพอย่างเดียว อาจจะไม่เพียงพอ ที่มีคุณภาพผมคงไม่ไปกล่าวถึง เพราะว่าบางครั้งที่กล่าวมานั้นมีเรื่องดีบ้าง ไม่ดีบ้าง เรื่องจริงบ้างไม่จริงบ้าง ก็ขอให้ทุกคนได้พิจารณา กันด้วยเหตุด้วยผล ก็อย่าให้โซเชียลมีเดีย หรือสื่อที่ไม่ดีมาชี้นำ ประชาชนเราถูกชี้นำมามากแล้ว วันนี้ผมก็อยากจะพูด เพื่อจะสร้างความเข้าใจให้มากขึ้น ก็คงไม่มีใครมาพูดให้ฟังมากเท่าผม”

(รายการคืนความสุข 7 สิงหาคม 2557)

จากผลการศึกษา ผู้วิจัยเห็นว่ารายการคืนความสุขเป็นช่องทางที่พลเอกประยุทธ์ ในฐานะผู้นำรัฐใช้แสดงออกถึง ความหวังที่จะได้รับความร่วมมือและไม่ถูกขัดขวางการทำงาน ซึ่งมักสอดแทรกอยู่ในทุกลักษณะที่ถูกนำเสนอข้างต้น อาทิ

“การต่อต้านต่าง ๆ นั้น ขอร้องอย่ามาอ้างเหตุผลเลย อย่างมาโยงความคิดให้คนอื่นปรองดองกันไม่ได้ ทรอกถ้ายังไม่หยุด เรื่องของ นิลิต – นักศึกษา ผมก็ได้ให้คนไปคุยกับครู อาจารย์ต่าง ๆ ขอร้องกันกรุณานึกถึง ประเทศชาติด้วย อย่าเสียเวลากับเรื่องไม่เป็นเรื่องเลย วันหน้าก็เป็นประชาธิปไตยที่ทุกคน ต้องการอยู่แล้ว วันนี้ท่านต้อง รู้ว่าปัญหาประเทศอยู่ตรงไหน”

(รายการคืนความสุข 30 ตุลาคม 2558)

โดยส่วนใหญ่รัฐมิได้มีความมุ่งหมายให้ประชาชนกระทำการใดเป็นพิเศษแต่มุ่งหมายให้ไม่กระทำการที่กระทบต่อรัฐเป็น สำคัญ โดยเฉพาะอย่างยิ่งรูปแบบการนำเสนอภาพของพลเมืองที่สะท้อนออกมาผ่านความต้องการประชาชนผู้ที่เห็นความมั่นคงมา ก่อนประชาธิปไตย- โดยส่วนใหญ่แล้วมักจะเป็นการเอ่ยถึงผู้ที่มีลักษณะไม่พึงประสงค์ มีการกล่าวถึงนักการเมืองและผู้ต่อต้าน รัฐบาลซึ่งมักออกมาเรียกร้องให้ประเทศมีการเลือกตั้งเพื่อให้กลับมาสู่การปกครองในระบอบประชาธิปไตย อาทิ

“วันนี้รู้สึกจะบางที่ บางอาจารย์จะสอนเรื่องสิทธิเสรีภาพ ประชาธิปไตยอยู่นั้นแหละขัดแย้ง ต้องคิดเห็นต่างทุก เรื่อง ผมไม่ได้บอกว่า เห็นต่างไม่ได้ แต่ต้องร่วมมือ เห็นต่างทุกเรื่อง ไปอย่างไร อย่ามาใช้นักศึกษาเป็นเครื่องมือทาง การเมือง นักศึกษารู้หรือเปล่า ว่าเป็นเครื่องมือ”

(รายการคืนความสุข 1 มกราคม 2559)

จากเนื้อหาของรายการพลเอกประยุทธ์เห็นว่าช่วงเวลาดังกล่าวยังไม่ใช่เวลาที่ถูกต้องในการออกมาเรียกร้องเรื่องเหล่านี้ เนื่องจากประเทศจะเดินหน้าไม่ได้หากยังมีกลุ่มคนที่คอยขัดขวางและสร้างความขัดแย้งแตกแยก การเน้นย้ำถึงความร่วมมือในการ สร้างเสถียรภาพและความมั่นคงของประเทศชาติ มักจะถูกขบขันไปสื่อสารกับที่ผู้ต่อต้านรัฐเป็นหลัก โดยความมั่นคงที่ถูกกล่าวถึง ในรายการนั้น ไม่มีการอธิบายอย่างชัดเจนว่ามีลักษณะอย่างไร แต่จากสิ่งที่สะท้อนผ่านรายการนั้นอาจกล่าวได้ว่า รัฐบาลได้รวมเอา ประเทศชาติและคณะของตนเองไว้ด้วยกัน เมื่อเอ่ยถึงความมั่นคงและความมีเสถียรภาพข้างต้น จึงหมายรวมถึงความมั่นคงในการ ครองอำนาจและความมีเสถียรภาพของรัฐบาล คสช. ด้วย อาทิ

“วันนี้ก็ยังจะกลับไปอยู่ที่เก่านั้นแหละ เพราะฉะนั้นไม่อยากให้เกิดขึ้นมาอีก การใช้ความรุนแรง อาวุธสงคราม เจ้าหน้าที่ทำงานไม่ได้ จะทำอย่างไร เกิดมาแล้วทั้งหมด อย่าบอกว่าไม่เคยเกิด แล้วจะไม่เกิดอีก ถ้าประชาชนคิดเองยังไม่ได้ ไม่ทำความเข้าใจ แล้วให้บรรดานักเคลื่อนไหวทั้งหมด หรือนักการเมืองที่ไม่ได้มาขึ้นำประเทศ ย่อมไปไม่ได้ ไม่หลุดพ้นกับ ดักประชาธิปไตย กับดักประเทศที่มีรายได้ปานกลาง กับดักความล้มเหลว ไม่มีพื้นที่ ไม่มีใครแก้ไขได้”

(รายการคืนความสุข 12 กุมภาพันธ์ 2559)

8.บทสรุป

ผู้วิจัยเห็นว่าความก้าวหน้าของประเทศนั้นขึ้นอยู่กับความกระตือรือร้นในการแสดงออกซึ่งสิทธิและเสียง รวมถึงการหมั่นตรวจสอบรัฐของประชาชน แต่ในรายการคืนความสุข ไม่ได้สะท้อนการมองภาพพลเมือง ตามความหมายของพลเมืองในระบอบประชาธิปไตย ซึ่งเน้นการเคารพผู้อื่น เคารพสิทธิผู้อื่น เคารพความแตกต่าง เคารพความเสมอภาค, เคารพกติกาและการมีส่วนร่วม รับผิดชอบต่อสังคมและตนเอง (ปริญญา เทวานฤมิตรกุล อ้างใน รงค์ บุญสวย : 2557 ,น.) หรือหากจะมองว่าลักษณะข้างต้นคือลักษณะของพลเมืองเช่นกัน ก็เป็นพลเมืองแบบเก่าที่จะต้องอยู่ภายใต้ผู้นำซึ่งถือว่าตนมีคุณธรรมและปัญญาเหนือผู้อื่น โดยคนไทยจะต้อง “ยอมรับอำนาจเด็ดขาดสูงสุดของผู้นำโดยคุณธรรม และ เต็มใจทำ “หน้าที่” ของตนโดยไม่ก้าวก่ายหน้าที่ของผู้อื่น รวมทั้งไม่ก้าวก่ายหน้าที่ของผู้ปกครอง” (สายชล สัตยานุรักษ์ : 2554 , น.14)

ข้อค้นพบที่สะท้อนผ่านรายการข้างต้นไม่ได้แสดงให้เห็นถึงความเคารพเชื่อมั่นพลเมืองไทยและไม่ได้เป็นหนทางสื่อสารที่นำไปสู่ความก้าวหน้าของประเทศ เนื่องจากรัฐเพียงกำหนดบทบาททางการเมืองของประชาชนให้อยู่ในขอบเขตของการเป็นผู้ตาม หรือที่เรียกว่า “ราษฎร” (Subject) ซึ่งหมายถึงผู้ที่เสียภาษีให้กับรัฐและต้องยึดถือปฏิบัติตัวตามกฎหมายของบ้านเมือง (เอนก เหล่าธรรมทัศน์ : 2556) สำหรับผู้วิจัยแล้ว หนทางที่จะทำให้ประเทศชาติมั่นคงและมีเสถียรภาพอย่างแท้จริง ควรเริ่มจากการเปิดโอกาสให้มีการถกเถียงเรื่องการเมืองอย่างสร้างสรรค์ จนนำมาซึ่งการปรับปรุงเปลี่ยนแปลงคุณภาพและวิธีการบริหารงานของรัฐ นอกจากนี้รัฐควรมองประชาชน ในฐานะพลเมืองผู้ที่มีสิทธิ เสรีภาพที่จะคิด วิพากษ์ ได้แย้งรัฐมิใช่มีเพียงแต่การพยายามกำหนดกรอบให้ประชาชนรู้จักเพียงการเคารพหน้าที่และต้องถูกควบคุม กล่อมเกลายให้ยึดติดอยู่กับความภูมิใจในชาติในลักษณะรัฐบาลอำนาจนิยม

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SOCIAL CONSTRUCTION OF SHAN NATIONALISM: A CASE STUDY OF THE SHAN STATE ARM (SSA-SOUTH)

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ABSTRACT

The ethnic clashes in Myanmar are some of the most enduring conflicts in the world. This situation continues to threaten lives and hinder developments in Myanmar while benefitting networks involved in the illicit drugs and illegal arms trades. Many ethnic insurgents have turned into interest groups who are financially better-off through outlawed activities. However, a nationalist group such as the Shan State Army-South (SSA-South) decided to continue fighting against the Government of Myanmar despite their lack of income and external support. In this spirit, Shan nationalism has been used as a fundamental core of their continuous fight. To sustain Shan nationalism, the SSA-South's leaders and members have been using multiple channels of communication including social media, news, social gatherings, and education. Based on the concept of social constructivism, data was collected from interviews with the SSA-South's leaders and members to illustrate how Shan nationalism is sustained. This paper argues that Shan nationalism does not exist by itself but rather that it has to be maintained by channels of communication. Moreover, this paper concludes that nationalism also offers a reason to fight apart from economic needs.

Keyword: Shan Nationalism, Identity Construction, Shan State Army – South.

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1. INTRODUCTION

Southeast Asia is one of the most ethnically diverse regions in the world. This ethnic diversity frequently degenerates into ethnic conflict that produces numerous negative effects. Many ethnic insurgents have taken up arms such as those in Thailand's southern border provinces, Mindanao (in the Philippines), as well as the Shan State (in Myanmar). The resulting conflicts continue to threaten lives and livelihoods, challenge state governance and hinder social and economic development. As the majority of ethnic conflicts have emerged since independence, many groups have chosen to involve themselves in illicit trafficking of drugs and arms to fund their continuous fight against the central government. However, paradoxically, there are also some cases of armed ethnic movements that lack financial resources but have illustrated the ability to keep on fighting. The Shan State Army-South (SSA-South) is a case that lacks both income and external support, yet it continues to fight against the Myanmar government and the *Tatmadaw* (Myanmar army).

Because of the reduction in external support due to the Nationwide Ceasefire Agreement (NCA), the SSA-South has been compelled to use Shan nationalism as a main core of its continuous fight. Shan nationalism arises from differentiation of the Shan national identity from the others in Myanmar rather than having meaning on its own. In constructing Shan nationalism, various communication tools are utilised by political elites who selected certain narratives that support their nationalist claim such as a belief that the Shan nation has long been independent. Communication tools, in this place, become dissemination channels that help the elites in sustaining Shan nationalism, which is used as a reason for the fight despite a lack of economic support.

Upon closer examination of most studies related to the SSA-South, only two studies have made the SSA-South the main focus of their studies: Amporn (2011) and Thitiwut (2018). Amporn (2011) explores the relations between SSA-South and the mass media in igniting Shan nationalism from afar. She demonstrates that militarised images affect the audience's Shan nationalist sentiment. Shan nationalism thus derives from consumption of Shan nationalist content. Furthermore, for Thitiwut (2018), Shan nationalist content also stems from their leaders' decision to promote certain elements as 'Shan national identity'. For instance, the SSA-South under Chao Yawd Serk, 'anti-ethno narcotic culture' has become the epitome of what it is to be a Shan nationalist whereas other generation of leaders did not view drugs as a threat to Shan national liberation as perceived by Chao Yawd Serk.

This anti-ethno narcotic culture not only distinguishes the SSA-South from Shan drug trading insurgents but also illustrates that the SSA-South is a part of the Thai State's drug eradication program as well as Thainess (*Kwam Pen Thai*). The two studies inspire me to explore the theory of nationalism more closely and constructively. Up to this point, there has been no existing literature that has explored the SSA-South and their nationalist sentiment through social constructivism to explain the nationalism that the SSA-South and Chao Yawd Serk use as a primary reason for their nationalist fight.

Though Thitiwut (2018) has found that the SSA-South has developed its own identity by attaching itself with 'Kwam Pen Thai' or Thainess and by engaging in the 'war against drugs' and Amporn (2007) points out that Shan

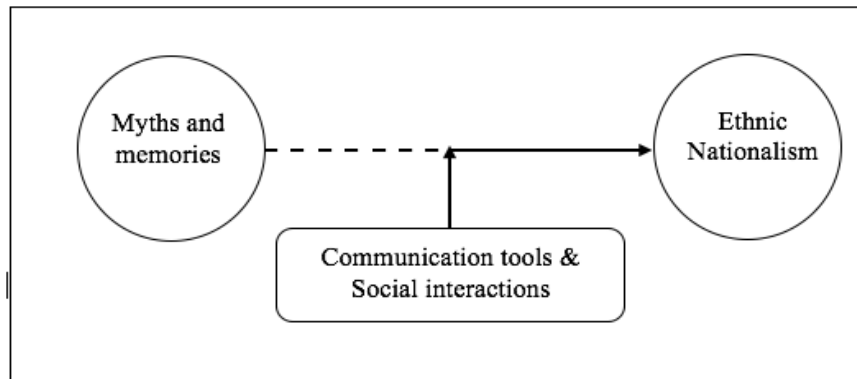
nationalism is a result of consumption of Shan nationalist content, their work barely mentioned how the SSA-South is funded nor other channels used to fortify Shan nationalism.

On the subject of nationalism, there are two main groups: primordialism and modernism. For the primordialists, the nation is natural, transmitted, and tied to blood and genes. They argue that national identity is unchangeable and inevitable, meaning the individual has no control over it (Geertz, 1963; Shils, 1957). Primordialism, however, has been regarded as unhelpful in analyzing nationalism among those whose affiliations do not match with their physical appearances. On the contrary, the modernists view national identity as a result of modernity including industrialization which requires a national language, standardization in order to create a new political unit (Gellner, 1983), and a printing press that formed an ‘imagined community’ of shared social, cultural, and national codes (Anderson, 2016). In other words, collective myth and national symbol are strong features of national identity. Therefore, social storytelling processes are crucial to give meanings and orientations to the audience (Hutchinson, 2001). Some stories may have roots in the past, but every story has to have the ability to bind a nation or an ethnic group together through certain ‘sacred foundations’ which are usually relatable to older beliefs, symbols, and rituals from traditional religions (Smith, 2003). Nonetheless, Smith’s ethno-symbolism does not explicitly emphasize how nationalist sentiment is disseminated. Therefore, this paper aims to explain how national sentiment is dispersed through multiple channels in the case study of the SSA-South.

2. METHODS

Data collection was principally reliant on qualitative data. Sources of primary data included documents and clips from and about the SSA-South as well as Chao Yawd Serk since their nationalist ideas are compressed in many interviews and the media they utilized. In addition, I refer to interviews by other SSA-South members including the people who join the movement as it proves that national identity is a social construct rather than a primordial one. I view that data taken from people is also fitting since those SSA-South members were able to provide me with an idea of the main incentives behind the nationalist fight whether it is to fight or to reach a ceasefire.

Communication tools are media to disseminate nationalist information, yet they have no capacity to force people to believe in their agenda unless the people prefer to believe it. Beliefs, in this place, are not modern but are the products of older generations. Hence, certain myths and memories are always relevant for nationalist construction even after the time of the printing press and industrialization. Hence, there is a constant need for national identity maintenance by inciting members through the use of nationalist narratives including reproduction of ethnic glory and nationalist goals.



Source: Phanuphat Chattragul

Figure 1. Role of communication tools and social interactions in igniting nationalism

Having communication channels alone is not enough since any instrument needs an input to function. Therefore, myths and memories become an input to generate ethnic nationalism. These pre-modern beliefs are intensified and properly recorded through the usage of multiple communication tools. According to Gergen (2001), modernity facilitates connections among people who reside in different places while also contributing to transboundary shared realities, values and agendas (Gergen, 2001: 192). This also eases social interactions in scattered communities who perceive themselves as parts of shared myths and memories.

3. SHAN NATIONALISM

Considering the Shan, Shan State is of course not as modern as American, Australian or settler colonies of Latin America. Like China, Japan, nations in the Old World and ‘natives’ of the New World, the Shan State has its own distinct culture tied to the Shan language and beliefs. If we situate a Shan next to a Burmese, we could observe a difference similar to that between an Englishman and an Irishman. This means that we cannot reduce all of Shan history to a product of economic industrialization. However, for the SSA-South, ideology may have the capacity to explain an anti-ethno-narcotic identity (Thitiwut, 2018). Moreover, promotion of other characteristics in maintaining Shan national identity as a ‘war against drugs’ could increase its legitimacy and recognition.

In the Shan State, the people associate themselves with their own sets of distinct culture, but their beliefs are colonized and altered by the West. Therefore, for legitimacy, those ethnicities will seek to establish their own nation-state since the collapse of the old set of cultural practices such as Mandala or *Chao Pha* system. Notwithstanding, in essence, Shan nationalism is still a form of ethnic nationalism since it is a commitment to a group of (imagined) common communities not to the colonizing state of either Britain or Myanmar (Breuilly, 2017).

As the exact birth of Shan nationalist consciousness is unknown, we then have to rely on existing information from various academics. Nevertheless, we have to bear in mind that the pre-modern nationalist consciousness here is

accessible by modern materials, which means that there is a limitation to claims that all recorded history is valid. Nevertheless, I, instead, think that the validity of the material depends on the acceptance rather than being real. Hence, I will not treat the recorded ‘pre-modern’ as ultimate truth, but rather as an ‘accepted reality’ that is used to support and legitimate modern actions. From my perspective, Shan nationalism and political mobilization can be divided into two eras considering the growth of Myanmar: pre-colonial and post-colonial (post-WWII and post-Cold War) era.

From the period after the fall of the Kongbaung (Alaungpaya) dynasty, Myanmar was not only brought into the global economy at full scale, but the administration and the concept of nation had also been changed completely. At that time, tributary kingdoms in the frontier areas including the Shan State were granted permission to remain autonomous as princely states under the British who replaced their local masters following the pattern of colonial administration in British India (the British Raj). This illustrates that the influences of Scottish authorities from either lower or upper Burma had minimal control over princely states’ affairs. Shan *Saophas* and their people not only managed to secure their rule, but their untouched national identity also remains unattached to the Burmese one thanks to the geographical and artificial boundaries. According to Chao Tzang (1987), similar to Burmese consciousness of nationalism that was engendered only after a period of British rule, Shan nationalism was officially born after World War II intruded into their motherland and forced them to rise and fight to expel alien rulers and invaders (Chao Tzang, 1987: 50-52). This is the period when Shan nationalism was taken seriously as distinct from other ethnic groups in Myanmar and when Shan national identity had to be ‘re-invented’. One of the important ingredients includes the belief of Tai people including Thai, Lao, and Shan that they believed they were descended from Khun Lu and Khun Lai (Chao Tzang 1987: 12). Based on this common myth, Shan people can be certain that their nationality is not Burmese.

4. GENESIS OF THE SSA-SOUTH

Table 1: Timeline of Shan State history (1939 -)

1939	Beginning of World War II in British Burma
1942	Japanese troops advance into the Shan State
1945	The End of World War II
1947	Shan, Kachin and Chin committee participated in the Panglong Agreement in Panglong, Southern Shan State with General U Aung San, the Burmese government’s representative on 12 February
1948	The four ethnic groups joined in ‘the Union of Burma’ and gained independence. The parliament selected Sao Shwe Thaik, <i>Saopha</i> of Yawnghwe as the first President of the Union under the first constitution, reserving the right for the Shan to secede from the Union after 10 years (1958)
1949	The Karen National Liberation Army (KNLA) occupied Karen State (now Kayin State), Shan State, and parts of Burma. The Burmese government sent the <i>Tatmadaw</i> to suppress it and took this opportunity to establish permanent bases in Taunggyi.

1949-1953	Kuomintang (Chinese Nationalist) Army (KMT) retreated from China into Shan State. Burmese central government sent troops all over Shan state to repel the KMT. Since then, the <i>Tatmadaw</i> has been engaging in land grabbing and other violent crimes including ransacking, extrajudicial killing, and rape in Shan State.
1950	Under Prime Minister U Nu, Shan Government maintained a certain degree of autonomy.
1957	Shan <i>saophas</i> held a meeting in <i>Mueang Hai</i> , northern Shan state.
1958	<i>Chao noi</i> (Zaw Yanda) established Num Siek Han army (NSH) in southern Shan state.
1959	Shan <i>saophas</i> transferred all administrative power to the Shan government in late April.
1960	Shan State Independent Army (SSIA) was founded.
1961	<ul style="list-style-type: none"> - Shan National Union Force (SNUF) was founded - A conference for the inclusive Union was held in Taunggyi, southern Shan state - <i>Chao khung tara</i> (Sao Nga kham) established Shan National Army (SNA)
1962	General Ne Win arrested Shan <i>saophas</i> in the state council meeting including Sao Shwe Thaik, the first president of the Union who later passed away in prison.
1964	<ul style="list-style-type: none"> - Sao Nang Hearn Kham, <i>Mahadevi</i> of Sao Shwe Thaik established Shan State Army (SSA) - Khun Sa (Zhang Qifu) and Burmese <i>Ka Kwe Ye</i> (Home guard) formed Shan United Army (SUA)
1968	Burmese Communist Party (BCP) expanded their influences in Shan state by occupying parts of eastern and western Salaween region
1969	Sao Konjung founded Shan United Revolutionary Army (SURA)
1971	SSA founded State State Progress Party (SSPP) in northern Shan state
1972	SSA and SURA fought in central and southern Shan state
1973	SSPP/SSA allied with China
1975	SSA, northern Shan state, and southern Shan state fought because of political disagreements between communism and liberalism
1978	<ul style="list-style-type: none"> - SSA re-united - Sao Charm Mueang, a high-ranking SSA leader, left northern Shan state for southern Shan state to form a new alliance with Khun Sa (SUA) at Baan Hin Tieak but later mysteriously disappeared
1979	SSA joined Burmese Communist Party
1982	Royal Thai Army occupied Baan Hin Tieak where SUA was based

1983	Sao Konjung demanded Shan solidarity from fragmented Shan nationalist groups
1984	SURA, SSA, and southern Shan State formed Thailand Revolutionary Council/ Thailand Revolutionary Army (TRC/TRA)
1985	SUA and Khun Sa (Zhang Qifu) joined TRC and together formed Shan State Restoration Council/ Mong Tai Army (SSRC/ MTA)
1988	The Nationwide Popular Pro-Democracy Protests (8888 Uprising) demanded the resignation of General Ne Win, who had ruled the country for 26 years
1989	<ul style="list-style-type: none"> - Burmese Communist Party (BCP) dissolved - United Wa State Army (UWSA) signed a ceasefire with Myanmar - Establishment of Shan Nationalities League for Democracy (SNLD) party
1990	Election under democratic regime in Myanmar; SNLD party won the highest number of seats in Shan state
1991	Sao Konjung passed away. His testament calls for unity and cooperation among Shan revolutionary groups
1993	Golden Age of Mong Tai Army (MTA) under the leadership of Khun Sa
1995	Chao Kan Yod, commander of northern Mong Tai army regiment, separated from Mong Tai Army (MTA) due to inequality and discrimination between Chinese and Shan in Mong Tai Army
1996	<ul style="list-style-type: none"> - Mong Tai Army (MTA) disarmed and surrendered to Myanmar - SSA, northern Shan state, and Shan State National Army (SSNA) founded the Shan State Peace Council (SSPC) - Chao Yawd Serk separated from MTA and restored SURA following the way of Sao Konjung. He travelled north to meet SSA and SSNA - Chao Yawd Serk (SURA), Chao Kan Yod (SSNA) and Chao Ser Tean (SSA) met at Seangkeaw in northern Shan state and declared that they would cooperate under the name of Shan State Army (SSA) as well as creating Shan State National Organisation (SSNO) - Chao Yawd Serk led SSA in a military campaign to the West of Salaween River, central Shan state. Myanmar government brutally suppressed the movement and forced 300,000 civilians in central and southern Shan state to leave their homes. The area was later declared as a 'Free Shooting zone' where killing is permitted. - Overseas Shan founded Shan Democracy Union (SDU) - Shan State was admitted as a member of Unrepresented Nations and Peoples Organisation (UNPO)
1997	Mass killing of Shan civilians in central Shan state by Myanmar troops
1998	SSNO changed its name to Joint Action Committee (JAC)

1999	General Chao Yawd Serk relocated SSA headquarters to Doi Tai Laeng opposite to Pang Mapha district, Thailand. He declared an anti-narcotics policy.
2000	SSA under Chao Yawd Serk formed Restoration Council of the Shan State (RCSS)
2001-2002	SSA's drug eradication programme caused conflict with Myanmar. Myanmar closed all its borders with Thailand
2005	Chao Chai Yi of SSNA, who was in the 10-year-ceasefire with Myanmar, joined General Chao Yawd Serk's SSA to mobilise across Shan state through both military and political means
2011	SSA under Chao Yawd Serk signed a ceasefire with Myanmar on 2 nd December

Note: Reprinted from *Plai Khob Fa Shan* [Shan's horizon] (2012) by Lieutenant General Chao Yawd Serk, Nipatporn Pengkeaw and Nuankeaw Buraphawat (pp. 9-15), Bangkok: Siam.

From table 4.1, it can be seen that, throughout the history of the post-World War II Shan state, the Shan nationalist movement has fragmented into various sub-groups. Notwithstanding, all Shan nationalist movements and armies were born after the expiration of the 1947 Panglong agreement in 1957. From the NSH in 1958, only two decades passed before of the TRC/TRA and the SSRC/ MTA merged in 1984 and 1985 respectively, following Sao Konjung's demand for Shan solidarity in 1983. Even if we consider it at the individual level alone, it shows that only a strong military figure is capable of calling for Shan unification after the age of *Saophas*. In addition, I think that Myanmar and external threats are another two variables to affect Shan nationalist groups' decision-making processes.

According to Myanmar Peace Monitor, there was an attempt in 2008 to transform ceasefire groups into border guards. Meanwhile, the Myanmar government and the *Tatmadaw* were gradually able to exert more influence in the ceasefire regions. After the presence of central authority in those resource-rich areas, the Myanmar government used that opportunity to attract foreign investments and employment to substitute for and diversify the region's over-reliance on illicit trades (Meehan, 2015). Moreover, this is seen by Woods (2011) as a part of 'military-state-building campaign' which tightens Myanmar's grip over the former insurgent zones. From both narratives, it can be seen that in the post-Khun Sa era, the central government is gaining control over those zones which they could not have done before. Nevertheless, the new employment opportunities and the new way of life could not satisfy the SSA enough to surrender despite its series of ceasefires.

According to one of SSA's leaders, Colonel Chao Gun Juan, 'peace for the SSA is sovereignty, education, economy and politics' (Prachathai, 2020). This could be a product of a deep and complex sense of distrust about placing their future in the hands of the Burmese. Despite the importance of economic benefits, the SSA's agenda has never diverted from 'national sovereignty'. This derives from the Panglong Agreement which promised the right of the Shan State to secede from the Union. As the agreement was declared null and void, the sense of entitlement persists since the Panglong Agreement is the only arrangement that included the Shan on the negotiation table whereas other

post-Panglong actions by the Myanmar government were purely for Myanmar's interests without any consultation with other ethnic groups.

The sense of mistrust towards the Myanmar government remains strong. Prior to the Nationwide Ceasefire Agreement (NCA) in 2015, there were series of bilateral ceasefires between the Myanmar government and ethnic insurgent groups, yet those ceasefires could not bring 'peace' i.e. sovereignty to the region. As I have researched, many ceasefire agreements including the NCA are temporary as they are perceived as unfair and unsatisfactory not only by the SSA but also other ethnic groups (Radio Free Asia, 2015). In the case of the NCA, only 10 out of 19 insurgent groups signed while the rest observed it from afar and later dropped out of the agreement. However, by being outside the NCA, the agreement becomes ineffective as ethnic insurgents' opinions are not heard. Hence, ultimately, the fight may endure indefinitely owing to the nature of the ceasefire agreements and of the SSA, whose 'peace' demands the Myanmar government, a legitimate, recognized nation-state, could not provide them. Shan nationalism thus remains a reason for fighting despite the changing mode of negotiation.

5. HOW IS SHAN NATIONALISM SUSTAINED?

The SSA-South has been continuously promoting Shan nationalism through uses of channels of communication and social interactions. From my documentary analysis, Shan nationalism is sustained by four elements: first, news and song broadcasting expressing loss and nationalist sentiment; second, the failure of Myanmar in building trust and protecting Shan civilians; third, education and story telling that foster Shan nationalism; and fourth, abundant natural resources in Shan state that nourish the SSA-South as well as donations.

"I recruited in the SSA-South Army because I believe that our country exists and it must be taken back. I must come back to save it."

Daw Leang, SSA-South member
Gon Tawan Cha Chai Shan [Before sunrise on Shan state] (2007)

Daw Leang, who was a Shan painter in Bangkok, went back to his native Shan state in order to join the SSA-South to fight against the Burmese. The interview has illustrated that he strongly believes in the existence of the 'Shan country' that was occupied by Myanmar. He told Nipatporn in the interview that there are two forces that drove him to join the army: first, news about Chao Yawd Serk's unwearying fight against Myanmar; second, Carabao's song about the Shan state which made him cry after listening to it, as did other Shan workers on every construction site (Nipatporn, 2007: 73). From this case, it can be seen that Shan nationalist sentiment still remains alive to those who consume Shan nationalist media content. News and songs with nationalist lyrics therefore have capacities to be two effective channels to disseminate Shan nationalism. That content has underlined the message to the audience that the Shan are not the Burmese.

“Shan people have to develop our country, support self-governance as well as repel Burmese occupation. Myanmar always claims that it engages in drug eradication programme in Shan state, yet in reality, drugs are still on the rise. UNDC (United Nations Development Corporation) and DEA (Drug Enforcement Administration) inspection in Shan state did not see this and blindly support Myanmar. They do not listen to Shan people.”

Lieutenant General Chao Yawd Serk
Ban Tuek Chak Sanam Rob [Diary from battlegrounds] (2005)

Furthermore, the failure of the Myanmar government to eradicate drugs in Shan state is what legitimizes the SSA-South’s actions. As narcotics have been universally designated as illegal, the SSA-South’s will still be proven right in their fight. Additionally, considering the negligence of the central government with regard to protecting their citizens from forced resettlements, extrajudicial killings and rape, Shan civilians hence chose to rely on the SSA-South’s protection which, in turn, raises support for SSA-South.

“Mae Sa only know Shan history and language after joining the SSA-South. In 1981, the nationalist army needs a teacher, so Mae Sa came to teach Shan writing and translated English and Mathematics from Burmese to Shan language. Moreover, she also teaches Shan history”

Nipatporn Pengkeaw’s interview of Mae Sa
Gon Tawan Cha Chai Shan [Before sunrise on Shan state] (2007)

Education is one of the most effective methods in igniting a sense of nationalism. Since education contains certain narratives, the author who wrote the curriculum may have already embedded some values into the books. These values also mutually form ‘reality’ for their learners. With this perceived reality, the Shan national identity will be recognized by both the learners who, in subsequent social interactions, will communicate this set of perspectives to with others. Moreover, as time passes by, this reality will extend to larger crowds and become ‘fact’.

“Chao Yawd Serk: ‘Though our people live with difficulties, they always have enough to eat because of abundant resources in our mountainous country where Burmese cannot yet reach. Another part is from Shan people abroad. Some people are very rich and ready to fully support us since they see that the SSA-South fight for our nation, but I prefer not to say their name. Some are from Mandalay and prosperous entrepreneurs. If we only rely on taxation in Shan state, it is not enough”

Nuankeaw Burapawat’s interview of Lieutenant General Chao Yawd Serk
Ban Tuek Chak Sanam Rob [Dairy from battlegrounds] (2005)

Funding is another paramount variable in continuous fighting that should be taken into account. Nonetheless, comparing to the MTA and the UWSA, the SSA-South has benefited little from ongoing conflict with the central government of Myanmar. According to Nuankeaw's interview, Chao Yawd Serk had admitted that his people were living with difficulties, but with the abundant natural resources of Shan state as well as funding from Shan people abroad, the SSA-South has thereby managed to survive while also supporting their nationalist programmes such as education.

In conclusion, the four elements mentioned are enablers for the SSA-South not to cease their struggle. Education, historical records, news, nationalist song, and social gatherings are channels that encourage Shan nationalism, which is used as a main reason for the fight. As a result, national identity becomes no longer a state asset under a state's monopoly, but rather one that is rivalled by non-state actors such as the SSA-South.

6. CONCLUSION

This paper substantiates that nationalism does not necessarily have to always exist in parallel to nation-states. Since there are many nationalist groups who possess their own national identity, it would be very unfair to exclude and overlook their national identity for the sake of 'nation-state' national identity only. National identity is preserved by nationalism, and this is also true in the case study of the SSA-South. The SSA-South has been using multiple channels of communication and social interactions to disseminate Shan nationalism and distinguish Shan national identity from other groups.

This paper has shown that national identity is still relevant or even more important in this modern era. Just as Chanintira (2009) claimed when she posted that 'nationalist sentiment remains alive in most part of the world, though modernisation theorists claimed it would decline', nationalist identity is also growing in the more complex one based on ancient foundations. What modernity brings is the tools that facilitate the globalisation of information, yet it does not also make the world have one common identity. It can be seen that even globalisation of information has been reaching a greater part of the population regardless of their ethnicity, nationality, citizenship or where they live based on the increasing range of internet coverage and ownership of digital devices. National identity and nationalism are proven to be alive or even on the rise as globalisation makes it possible for multiple channels of communication to disseminate nationalist content on a larger scale.

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THE DEROGATION OF RIGHTS DURING THE COVID-19 PANDEMIC: A CASE STUDY OF THAILAND

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ABSTRACT

This paper aims to examine the derogation of rights implemented by the Thai government during the COVID-19 pandemic. The paper is a case study of Thailand, which declared the state of emergency to derogate rights and pursue legitimate aim for public health under international human rights laws, especially Article 4 of International Covenant on Civil and Political Rights (ICCPR) for the period of 25th March 2020 to 15th June 2020. The research focuses on documentary review of policy and legal measures enacted by the Thai government to combat the COVID-19 following a declaration of the Emergency Decree on Public Administration in Emergency Situation B.E. 2548 (2005). It then assesses its impacts on rights recognised by the ICCPR, especially the right to freedom of movement, the right to freedom of expression, and the right to freedom of peaceful assembly, with the principles of necessity, proportionality, and non-derogable rights. The research finds that, first, the Thai government limits three rights by enforcing nationwide curfew, banning Thai citizens from entering their country, and prosecuting peoples who gather for a political purpose or express their concerns over measures adopted over the pandemic period. The research observes that those operations are not strictly applied as the least restrictive measures, and those were disproportionately applied to achieve the need for the public health. Second, the consequences of those repressive measures imposed across the country led to the prosecution over individuals, including homeless people, while illegal migrants are also not prohibited to access the alternative detentions during the pandemic. The research thus concludes that the derogating measures deprive certain non-derogable rights, in particular, the right to life and the freedom from torture or ill-treatment, which literally can never be restricted even in a state of emergency.

Keyword: Derogation, State of emergency, COVID-19.

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1. INTRODUCTION

Thailand has experienced thirteen successful coups since the revolution in 1932.¹ However, the latest coup, which occurred on 22nd May 2014, led the military government to declare the state of emergency under article 4 of International Covenant on Civil and Political Rights (the ICCPR), and it took almost six years for Thailand to return to the situation of normalcy.² Nevertheless, laws and regulations which have been enacted during the military regime period not only currently affect people's rights and liberties, but also ruin the rule of law principle and its separation power which mostly need to be implemented during the time of crisis. The COVID-19 pandemic, therefore, comes to assess Thailand's rule of law and how the Thai government handled it with or without respect to human rights and democracy.

Although the Thai government officially submitted the notification to the UN General-Secretary on the derogation of rights implemented by the state officials during the COVID-19 outbreak, there are certain requirements which states must comply with if they need to derogate rights under article 4 of the ICCPR. First, the Thai government must officially proclaim to the UN Secretary-General the existence of the emergency, which threatens their people's lives and liberties. Second, measures which the Thai government adopted must be temporary and not exceed those strictly required by the exigency situation. Third, those measures must be consistent with the non-discrimination principle and not contradict with other international law. Forth, the Thai government must ensure that the measures employed by the state officials have not violated non-derogable rights, which include the right to life and the prohibition of torture or cruel, inhuman or degrading punishment.³

This paper, therefore, aims to examine the lawfulness of the derogation process the Thai government declared to suspend certain rights recognised by the ICCPR in order to tackle the COVID-19 pandemic. The first section will focus on the proclamation of derogation and steps to invoke the public health emergency as the legitimate ground for limiting rights and liberties. Then, the second section will describe derogating measures which the Thai government implemented to restrict the right to freedom of movement in order to clarify whether or not the measures are necessary and proportional to achieve the desired result. While the third section will explain the lawfulness of derogating the rights in the freedom of peaceful assembly and the freedom of expression, the fourth section will focus on the impact of measures enforced during the time of crisis, providing analytical argument whether or not non-derogable rights, especially the right to life and the prohibition of torture or cruel, inhuman or degrading punishment are violated by the Thai government.

¹ Janjira Sombatpoonsiri. (2017). The 2014 Military Coup in Thailand: Implications for Political Conflicts and Resolution, *Asian Journal of Peacebuilding*, 5(1) p. 135.

² see <https://www.aljazeera.com/news/2019/01/thailand-hold-election-2014-coup-190123105406403.html>

³ Article 4 of the ICCPR

2. THE PROCESS OF DEROGATION AND THE THAI GOVERNMENT'S RESPONSE TO THE EMERGENCY SITUATION

The endorsement of the Emergency Decree and measures adopted by the Thai government to reduce the Covid-19 pandemic had been considered as the derogation of rights under international human rights law.¹ Emilie Hafner-Burton et al. defined derogation as the 'rational response to [the] uncertainty, enabling governments to buy time and legal breathing space from voters, courts, and interest groups to combat crises by temporarily restricting civil and political rights.'² However, among several human rights conventions, there are one international human rights treaty and two regional documents that contain the derogation clause. This includes the International Covenant on Civil and Political Rights (the ICCPR), the European Convention on Human Rights (the ECHR), and the American Convention on Human Rights (the ACHR).³ Therefore, Thailand, as the signatory state of the ICCPR, is legally bound by article 4, which describes the definition of derogation as the following;

1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin

2. No derogation from articles 6, 7, 8 (paragraphs I and 2), 11, 15, 16 and 18 may be made under this provision.

3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

Although the existence of a situation amounting to a public emergency which threatens to the life of nation is the first condition that allows the state to invoke article 4, there is no explicit definition of 'public emergency' provided by the Human Rights Council (the HRC). As '[not] every disturbance or catastrophe qualifies as a public emergency which threatens the life of nation...'⁴, the HRC further pointed out that the situation of public emergency can cover international and non-international armed conflict, a natural catastrophe, a mass demonstration, including an instance of violence or a major industrial accident.⁵ While natural disasters are usually disqualified from being a

¹ Thailand: Notification under article 4 (3). Retrieved from https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg_no=IV-4&chapter=4&clang=_en

² Lebret, A. (2020). p 2.

³ Doswald-Beck, L. (2011). p 79.

⁴ CCPR General Comment No.29 Article 4 para 11.

⁵ McGoldrick, D. (2004). pp 392-393.

public emergency,¹ Gross and Aolain argue that health crisis and the pandemic should be defined under the criteria of emergency.²

However, the state is in the position not only to invoke the public emergency, but also to justify whether an exceptional situation is an actual or imminent threat to the life of nation for the whole geographical or particular part of the state.³ At the moment, the Covid-19 pandemic is justifiable as the exceptional situation with an actual or imminent threat (depending on the country) to all individual's right to life and right to health.⁴ As of 14th April 2020, at least eighty-four states officially proclaimed a public emergency or a state of emergency to derogate their obligations under the ICCPR, the ECHR, and the ACHR, in order to confront it.⁵

In Thailand, the Thai government noticed and gradually assessed the transmission of the Covid-19 virus since January 2020, but declared the state of emergency on 25th March 2020 as nine hundred and eighty-four infected cases in total had been informed to the Ministry of Public Health.⁶ As the derogating state, the Thai government must immediately notify the relevant official of organisations concerning their process in suspending rights, the reason for derogation and the measures taken, as well as when the measures will be terminated.⁷ Nevertheless, the Thai government had submitted the official notification under article 4 of the ICCPR to the UN Secretary-General on 4th June 2020, after the third extension of the Emergency Decree on Public Administration in Emergency Situations B.E.2548 (the Emergency Decree). The Thai government also clarified the temporary measures employed to derogate their obligations under the ICCPR, particularly article 12, based on the ground to protect the public health, safety, and peaceful living of people, as well as to suppress the spread of Covid-19.⁸

In addition, the state must ensure that the derogating measures are not inconsistent with the state's other obligations under international law,⁹ such as the United Nations Charter, humanitarian law treaties, regional human rights, and customary laws.¹⁰ The HRC also includes certain peremptory norms to be safeguarded under article 4 of the ICCPR, such as the prohibition of crimes against humanity, the respectfulness of a detained person's dignity and humanity, and the restriction of collective punishment, arbitrary deprivations of liberty, or deviation from the fundamental principles of fair trial, including the presumption of innocence.¹¹

¹ Zwitter, A. (2012). p 97.

² Gross, O. & Aolain, F. N. (2006). p 4.

³ MacDonald, R. St. J. (1998). p 241.

⁴ Supra note 5.

⁵ see <https://datastudio.google.com/u/0/reporting/1sHT8quopdfavCvSDk7t-zvqKIS0Ljuu0/page/dHMKb>

⁶ see <https://pr.moph.go.th/?url=pr/detail/2/04/140401/>

⁷ Supra note 6. p 81.

⁸ Supra note 4.

⁹ Lawless case (the ECtHR)

¹⁰ Siracura Principles, para 66.

¹¹ Supra note 7. para 12-13.

Moreover, measures derogated from the ICCPR obligations must not involve discrimination solely on the ground of race, colour, sex, language, religion, or social origin. Higgins argues that only intentional or direct discrimination is covered by article 4, while indirect impact on a particular group will not be considered as discrimination.¹ Therefore, when derogating measures affect vulnerable groups, including older people and people with pre-existing medical conditions disproportionately, it cannot be justified that the state indirectly discriminates those people's rights and liberties. However, this disproportionate result might violate the principles of necessity and proportionality.² While the clause 'of national origin' is excluded from the ground of prohibition, it should be underlined that any derogation that makes a distinction based on nationality will need to prove that measures employed by the state is 'strictly necessary' to achieve the desired results.³

The Thai government explicitly states that its recent derogation complied with international human rights and other international laws.⁴ They also reaffirmed that measures which applied for all nations under their territory were not discriminatory to individuals based on the grounds of race, colour, sex, language, religion, or social origin.⁵ However, the policy implemented to lift bans on public travelling grant access only to Thai nationals to take the public bus, while foreigners, including migrant workers, are not allowed to use that transportation.⁶ Certain tourist attractions also prevented non-Thai citizens from entering the areas due to the COVID-19 virus.⁷

Although there are a set of rights which are acceptable to be derogated during the time of crisis, including the right to freedom of movement, freedom peaceful assembly, and freedom of expression, the state is obligated to reflect the principle of necessity and proportionality and to not implement derogations beyond what is strictly required by the exigencies of the situation.⁸ In addition, article 4 paragraph 2 explicitly stipulates that derogations must not be made from specific articles, regardless of any legitimate grounds, which include article 6 (right to life), article 7 (prohibition of torture or cruel, inhuman or degrading punishment), article 8 paragraphs 1 and 2 (prohibition of slavery, slave-trade, and servitude), article 11 (prohibition of imprisonment because of inability to fulfil a contractual obligation), article 15 (the principle of legality in the field of criminal law), article 16 (the recognition of everyone as a person before the law), and article 18 (freedom of thought, conscience and religion).⁹ Although Thailand is only one country among others in Southeast Asia which officially derogated rights and liberties under the ICCPR, the adopted measures imposed domestically by Thai institutions should not only comply with international regulation,¹⁰ as 'states

¹ Higgins, R. (2009). p 287.

² IACHR, Pandemic and Human Rights in the Americas, Resolution 1/20202, 10 April 2020.

³ See case of A and others v UK (the ECtHR)

⁴ Supra note 4.

⁵ *ibid.*

⁶ see <https://www.khaosodenglish.com/news/crimecourtscalamiy/2020/06/11/bus-operator-confirms-ban-on-foreign-travelers-in-pandemic/>

⁷ see <https://www.khaosodenglish.com/news/bangkok/2020/06/11/officials-say-temples-can-deny-entry-to-foreigners-because-virus/>

⁸ Supra note 8. p 407.

⁹ Supra note 3.

¹⁰ Supra note 13.

have various reasons to accede to international human rights laws and in actual fact, authoritarian regimes are more likely to ratify treaties than those allowing more democratic space.' Thus, it cannot be assumed that, while the Thai government complied with the treaties, its results are automatically legitimate without further examinations needed.¹

Therefore, the next section will be the examination of the lawfulness of Thailand's derogation of certain permissible rights while imposing the Emergency Decree and its Regulations to alleviate the impact of Covid-19 pandemic, especially the right to freedom of movement, freedom of peaceful assembly, and freedom of expression. Then, particular non-derogable rights, especially the right to life and the prohibition of torture or cruel, inhuman or degrading punishment, will be assessed according to policies the Thai government has adopted based on their legitimate ground of public emergency.

3. DOES THE THAI GOVERNMENT NECESSARILY AND PROPORTIONALLY DEROGATE THE RIGHT TO FREEDOM OF MOVEMENT?

Since the wide transmission of Covid-19 affected every part of the world, several countries significantly derogate rights according to article 4 of the ICCPR, article 15 of the ECHR, and article 27 of the ACHR.² According to the UN Secretary-General, only eighteen states had submitted their depositary notification to announce their will in derogating rights prescribed by the ICCPR, including Thailand.³ Among other qualified rights, the right to freedom of movement is substantively subject to suspension in different forms, including implementing lockdown measure, announcing the curfew, closing borders, schools and businesses, and limiting public gathering.⁴ On 8th June 2020, the Oxford Coronavirus Government Response Tracker reported that at least one hundred and thirty-three countries introduced these extra measures, as there has been an international consensus that limiting both movement and interaction with each other will protect people's lives and break the chain of infection.⁵

Although states can derogate the right to freedom of expression and other qualified rights, the HRC advised that measures taken to combat the crisis should proceed as required by the 'duration, geographical coverage and material scope of the state of emergency and any measures of derogation resorted to because of the emergency.'⁶ In addition, the principle of proportionality should be respected, not only by the law that frames the restrictions, but also by the administrative and judicial authorities in applying the law.⁷ Moreover, the ECHR issued the guidance for

¹ Sriprapha Petcharamee. Authoritarianism in Southeast Asia and its impacts on the ratification and implementation of international human rights treaties in *The Spectra of Authoritarianism in Southeast Asia*. p 10.

² see <https://www.hrw.org/news/2020/04/14/covid-19-human-rights-checklist>

³ see <https://datastudio.google.com/u/0/reporting/1sHT8quopdfavCvSDk7tzvqKIS0Ljiu0/page/dHMKb?fbclid=IwAR2CA4MjArjy0n-djdAzquTAETUrA42EeK8Dmn01JbS5bh3EaRr4omf8wt4>

⁴ Supra note 5. p 6.

⁵ see <https://ourworldindata.org/policy-responses-covid>

⁶ CCPR General Comment No.29 para 4.

⁷ CCPR General Comment No.27 para 14 and para 15.

member states to examine whether the extra legislative would be necessary, as ordinary laws sometimes are effective in dealing with the crisis.¹

Thailand, as one of signatory state of the ICCPR, explicitly derogated the freedom of movement by promulgating the Emergency Decree and its Regulations to ban all international flights and restrict domestic travel since March 2020.² For the first measure, the government, through the Civil Aviation Authority of Thailand (the CAAT), issued the Regulation on 19th March 2020 to prohibit all passengers who were willing to enter Thailand, with the exception of Thai citizens who carried the fit-to-fly document and certificate issued by the Thai embassy located in the country of origin and of foreigners who presented an additional medical certificate to demonstrate that he/she was tested negative for the Covid-19 virus.³ Less than twenty-four hours after the first Regulation had been announced, its effect dramatically impacted the Thai people who lived and travelled abroad, including students and tourists who had struggled to collect their essential documents within few hours before their departure.⁴ Later, a Thai PhD student at Trinity College Dublin had filed a complaint to the Administrative Court of Thailand, calling for the cancellation of the travel restrictions and citing that the CAAT's requirements infringe upon the rights and liberties enshrined in the Constitution, cause a burden in terms of finance and time, lead to additional health risk, and do not benefit the public.⁵ However, the court dismissed his request, stating that the CAAT's Regulation issued under section 9 of the Emergency Decree was legally exempted from the administrative court's jurisdiction to oversee its Regulation, as stipulated by section 16 of the Emergency Decree.⁶ Moreover, the Civil Court also dismissed his case once he attempted to sue the prime minister and demanded compensation. The latter court reaffirmed that the prime minister and the CAAT legally invoked this Regulation; therefore, he was unable to call for their responsibility to remedy his damages and repeal the CAAT's Regulation.⁷

While the restriction of international travel excessively affected Thais living outside the country, the enforcement of nationwide curfew, which carries criminal punishment for those who violate the measure, significantly attacked not only the general public but also the marginalised populations. As measures implemented to limit the right to freedom of movement explicitly affected people's right to life, liberties, and securities, the European Council issued recommendations that member states are expected to control the existence of a relevant legal basis and 'consider whether measures amounting to a deprivation of liberty are strictly necessary against any less stringent alternatives,

¹ ECHR Guide on Article 15 of the European Convention on Human Rights: Derogation in time of emergency, updated on 31 December 2019

² The Regulation issued under Section 9 of the Emergency Decree on Public Administration in Emergency Situation B.E. 2548 (2005) (No.2). Retrieved from <http://www.mfa.go.th/main/contents/files/news3-20200403-172644-254060.pdf>

³ The Notification of the Civil Aviation Authority of Thailand on Practical Guideline for Air Operators Performing Flights into the Kingdom of Thailand. Retrieved from https://www.caat.or.th/wp-content/uploads/2020/03/CAAT_Announcement-19-Mar-20_1-2.pdf

⁴ see <https://prachatai.com/english/node/8544>

⁵ see <https://prachatai.com/english/node/8433>

⁶ see <https://www.bangkokbiznews.com/news/detail/874190>

⁷ see <https://ilaw.or.th/node/5612>

including the length of compulsory confinement and the way it is enforced in practice are relevant in this context.¹ The Special Rapporteur on the right to adequate housing additionally urged states to ensure that homeless people are not criminalised, fined, or punished in the enforcement of curfew or containment measures.² Also, states must immediately provide accommodation to all homeless people living 'rough' or on the streets to transition them to permanent housing so that they do not return to a situation of homeless once the pandemic is over.³

However, the Thai government estimated that at least 40,000 cases were brought to the courts, in which violators might be punished up to two years in prison or be given a fine of up to 40,000 baht (roughly 1,268 USD).⁴ Thai Lawyers for Human Rights additionally reported that at least ten homeless persons were arrested, fined, and imprisoned by the Chiang Mai Court as they lost jobs and became incapable of shelter while the curfew regulation was imposed.⁵ The imposition of curfew also led to an unemployment crisis, which affected not only the unemployed people but also their dependents, especially children and older people.⁶ The Bangkok Post further reported that one man and a monk had been shot dead by the state officials in Surat Thani province after the head of villager found them out of their places during the curfew time and were detained shortly by the perpetrator;⁷ however, further interrogation is still needed to examine the cause of death. The arbitrary arrest of people who are exempted from the curfew regulation are also found, as with the case of fifteen migrant workers who were permitted to work at night and were able to present their official document to the state official.⁸ At the same time, the fishermen in Songkhla province was intently captured by the volunteer defense corps, although they argued that the Regulation No.3 legally allowed them to work during the curfew period.⁹

On 15th June 2020, the Thai government eventually lifted the nationwide curfew, while the closure of certain enterprises was still imposed to reduce risks in transmitting Covid-19 virus.¹⁰ International flights have not resumed yet. Therefore, Thai citizens who prefer to travel back to their homeland need to reserve repatriation flights with the Thai embassies.¹¹

¹ Council of Europe. Respecting democracy, rule of law and human rights in the framework of the COVID-10 sanitary crisis: A toolkit for member states. (7 April 2020). Information Documents SG/Inf(2020)11. p 6.

² UNHR Special procedures. 'COVID-19 Guidance Note Protecting those living in homeless' Leilani Farha special Rapporteur on the Rights to Adequate Housing Updated 28 April 2020. para 8.

³ *ibid.* para 1.

⁴ see <https://www.bangkokpost.com/thailand/general/1891910/curfew-starts-today>

⁵ see <https://prachatai.com/english/node/8488>

⁶ see <https://www.bangkokpost.com/business/1898955/covid-19-outbreak-could-kill-10m-thai-jobs>

⁷ see <https://www.bangkokpost.com/thailand/general/1894925/village-chief-kills-monk-layman-detained-for-curfew-violation>

⁸ see <https://www.posttoday.com/social/general/621660>

⁹ see <https://www.facebook.com/iLawClub/photos/a.10153394320770551/10163655721120551/>

¹⁰ see <https://prachatai.com/english/node/8587>

¹¹ see <https://www.bangkokpost.com/thailand/general/1936052/overseas-commercial-flight-ban-might-not-end-on-july-1>

As the right to freedom of movement is subject to restrictions for public health reasons, this measure was however not consistent with certain principles, which was later guided by the Office of the United Nations High Commissioner for Human Rights (OHCHR).¹ First, this extraordinary measure, as was proclaimed by the Thai government in their official notification submitted to the UN Secretary-General, must be provided by law under the Emergency Decree. This is enacted under the 1997 Constitution and has been active since the prime minister proclaimed it. However, this Decree places the prime minister totally outside the preview of parliament and the judiciary bodies; thus, the measure issued under the Emergency Decree, including the restriction of both international and domestic travel, are not subject to parliamentary supervision and judicial control.² Second, the Thai government obligated to limit the right to freedom of movement to what is strictly required by the exigencies of the situation; therefore, measures adopted by the Thai government must comply with the principles of necessity and proportionality.³ Although these measures are legally invoked based on the ground of public health, which is permissible according to article 12 of the ICCPR and is an effective response to a pressing social need as Covid-19 is moderately transmitted over Thailand and seriously threatened people's life and health, the enforcement of curfew and the prohibition of all international flights are disproportionate to achieve the desired results. As the Thai government has a highly-developed COVID-19 testing measure for people, especially for those that enter the country,⁴ there is no scientific evidence to reaffirm that the imposition of the curfew is the best measure to prevent the Covid-19 transmission. In addition to the existing legal framework, there is the Communicable Disease Act of 2015, of which its legitimate purpose and function are more appropriate to stabilize and control the disease instead of this Emergency Decree.⁵ Also, the criminal punishment introduced to those who violate the curfew subjected a large number of individuals to arrest and detention, while some were arbitrarily prosecuted and extrajudicially killed by the state officials.⁶ Moreover, the issue of proportionality might be raised on the excessive impact of the measures to certain vulnerable groups, such as older persons and children, without the regard for their fundamental rights which the state need to fulfill during the time of emergency. Thus, the measure is not the least intrusive option among those that might accomplish the desired result - combating the Covid-19 pandemic. Third, as measures issued under the Emergency Decree are exempted from legal challenges and timely review by the parliament, the implementation of measures, including the banning of Thais from legally entering the country since 25th March 2020, is thus unable to be parametered of its necessity and proportionality by the judicial institution or legislative body. The exclusion of judicial safeguard, aimed at ensuring a return of ordinary laws as soon as the emergency is over, also reveals the intention of the Thai government to not only grant impunity for those state officials, but also maintain to be permanent regulations the measures declared as temporary.

¹ Supra note 7.

² Article 5 and Article 16 of Emergency Decree on Public Administration in Emergency Situation B.E. 2548 (2005).

³ Supra note 27.

⁴ see https://www.ohchr.org/Documents/Events/EmergencyMeasures_COVID19.pdf

⁵ see <https://crcfthailand.org/2020/04/21/crcf-statement-lift-the-state-of-emergency-enforce-the-2015-communicable-diseases-act-and-increase-public-health-funds-to-cope-with-covid-19/>

⁶ Supra note 7. para 27.

4. DOES THE THAI GOVERNMENT LAWFULLY DEROGATE FREEDOM OF PEACEFUL ASSEMBLY AND FREEDOM OF EXPRESSION?

Another set of rights the Thai government suspended by the enactment of the Emergency Decree during the public health emergency period is the right to freedom of peaceful assembly and freedom of expression.¹ However, according to the official statement the Thai government had submitted to the UN General-Secretary on 4th June 2020, there is no explicit information related to the derogation of these rights and their termination. The Thai government's notification letter solely stated that 'It wishes to inform that some of these temporary urgent measures may involve a derogation from some of its obligations under the ICCPR, particularly article 12.'² As the Siracusa Principles requires states to provide sufficient information, which includes the detail of provisions, the effective date of the imposition, an explanation of the reason to derogate, and the anticipated effect of the derogation measures on the rights recognised by the ICCPR,³ the government does unlawfully derogate the right to freedom of assembly, including the freedom of association and the freedom of expression according to article 4 of the ICCPR.

As of 26th June 2020, the Internet Law Reform Dialogue reported that at least twenty-three persons are prosecuted for unlawful assembly, as Regulation No.1 issued under section 9 of the Emergency Decree bans all activities and gatherings of people which might cause Covid-19 transmission or public unrest.⁴ The state officials have targeted political opponents and human rights defenders who organised public assembly related to a wide range of human right deterioration issues. For example, the former red-shirt activist, Anurak Jeantawanich, was arrested with the violation of public assembly as he organised a commemoration of the 10th anniversary of the assassination of Maj Gen Khattiya Sawasdipol⁵ and the 6th anniversary of the May 2014 military coup.⁶ At least ten individuals have also been prosecuted with the same charge while they gathered outside the Cambodian embassy in Bangkok, calling for Thai and Cambodian governments to take their accountability and investigate the recent Thai's political exile case - Wanchalearm Satsaksit, who was forced to disappear in Phnom Penh on 4th June 2020.⁷ Moreover, students from the Student Union of Thailand were also arrested and threatened with charges under the Emergency Decree after they tied white ribbons at various locations in Bangkok as part of their campaign on 'White Ribbon Against Dictatorship.'⁸

Notably, there are several cases where people were suddenly not charged with illegal gathering but were harassed to halt their activities. These included the incident in which the police in Songkhla denied a request from a

¹ Regulation No.1 issued under article 9 of the Emergency Decree on Public Administration in Emergency Situation B.E. 2548 (2005). Retrieved from <http://www.mfa.go.th/main/contents/files/news3-20200329-164122-910029.pdf>

² Supra note 4. para 2.

³ Supra note 18. para 42-50.

⁴ see <https://ilaw.or.th/node/5712>

⁵ see <https://prachatai.com/english/node/8521>

⁶ see <https://prachatai.com/english/node/8538>

⁷ see <https://prachatai.com/english/node/8597> and <https://prachatai.com/english/node/8590> and <https://www.khaosodenglish.com/politics/2020/06/15/activists-protest-at-cambodian-embassy-for-disappeared-activist/>

⁸ see <https://prachatai.com/english/node/8577>

beach conservation network to hold an anti-seawall protest on Muang Ngam Beach, claiming that the protest would violate the Emergency Decree.¹ Rayong students also faced charges over a rally for missing activists under the Emergency Decree.² Police officers from Wan Saphung district prohibited the Kon Rak Baan Kerd group to organise the event for the sixth anniversary of 'The Day of Illegal Ore Transfer', in Loei Province.³ Moreover, police in Khon Kean province appeared to prevent illegal assembly during the memorial of the Siam revolution in 1932.⁴ However, the first case found on violators being jailed is a case of the four migrant workers who were allegedly charged with the violation of gathering as the police found them playing 'domino' at their residence. All of them were punished with three months in jail.⁵

On 9th July 2020, the civil society group called 'People GO Network' and affected people sued the prime minister at the Civil Court, requesting for the abolishment of the Emergency Decree. They also demanded the court to issue the injunction order to restrain the prime minister's power under the Decree. However, the court ruled that the protection of public health prevailed over the right to freedom of peaceful assembly, even though the number of infected people remained 'zero' since 16th May 2020.⁶

In addition to the right to freedom of expression, Regulation No. 1 contains a vague and overbroad restriction on fake news and carries criminal punishment with the same amount as breaching the nationwide curfew.⁷ While access to information and freedom to hold opinion is among the integral components of the right to health, especially in the context of a global pandemic, on 23rd March 2020, the police arrested an artist, Danai Ussama, who posted his opinion on his Facebook regarding the weakness of preventative measure he found at Suvarnabhumi airport.⁸ Danai was charged with violating section 14 (2) of the Computer-Related Crime Act, which is not the measure intended to derogate right to freedom of expression issued by the Emergency Decree, if found guilty, he might be punished up to five years in prison and a fine up to 100,000 baht (approximately 3,050 USD).⁹ Furthermore, on 29th June 2020, the state officials, led by the Minister of Public Health and others, made public on their prosecution of seven individuals who allegedly shared misinformation related to the Covid-19 pandemic.¹⁰

Although those measures adopted to ease the pandemic appeared to violate people's rights and liberties, many people consider those tools as the practical and legitimate means to control the disease, thereby achieving social

¹ see <https://prachatai.com/english/node/8546>

² see <https://prachatai.com/english/node/8597>

³ see <https://www.tlhr2014.com/?p=18582&lang=en>

⁴ see <https://www.khaosodenglish.com/politics/2020/06/22/police-surround-political-sites-ahead-of-revolt-anniversary/>

⁵ see <https://prachatai.com/journal/2020/07/88431>

⁶ see <https://prachatai.com/english/node/8642>

⁷ Supra note 61. article 6.

⁸ see <https://prachatai.com/english/node/8432>

⁹ Supra note 62.

¹⁰ see <https://news.thaipbs.or.th/content/288439>

stability.¹ This phenomenon can be described in an authoritarian theoretical framework, as Altemeyer argues, that in troubled times, laws have to be enforced without mercy, while people have to crack down harder on deviant groups and trouble makers ‘if we are going to save our moral standards and preserve law and order...’. When the number of domestic transmissions has dramatically declined, the legitimacy concealed by the success of controlling the infection is questioned.

Although Thailand has a good record in ratification, Petcharamesree argues that the decision to ratify human rights instrument ‘may be more linked to other reasons’ rather than the compliance of human rights.² As Thailand is only one country in Southeast Asia which submitted the official notification to the UN Secretary-General, its willingness to commit to human rights treaties is primarily determined by domestic enforcement.³ However, the examinations clearly show that domestic institutions have not fully corresponded to international obligations with its illegitimacy in implementing measures which deprived people’s rights and liberties. While the monitoring mechanism under the ICCPR is weak, the only reason left to explain the enforcement of treaties is that it allows the state into the circles of the most respected countries in the world.⁴

5. DOES THE THAI GOVERNMENT VIOLATE NON-DEROGABLE RIGHTS, ESPECIALLY THE RIGHT TO LIFE AND THE PROHIBITION OF TORTURE?

Although several rights are legally subject to be derogated during the time of crisis, there are a certain set of rights protected by article 4 of the ICCPR as those [are] essential to our self-respect as well as to the respect for other persons,⁵ where the right to life and the prohibition of torture or cruel, inhuman or degrading punishment are included. The Thai government explicitly stated in their official notification that ‘the non-derogable rights as set forth in article 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16, 18 of the Covenant have not been affected by the above-mentioned temporary urgent measure.’⁶ However, measures employed by the state officials disproportionately affect people’s rights and liberties in the country, especially marginalised groups, such as illegal migrant workers and vulnerable populations including older people, children, women, and those employed in the informal sector.

The right to life is considered a fundamental right, and its nature could never be justified by derogation.⁷ As the nationwide curfew, implemented since 26th March 2020 and recently abolished on 15th June 2020, affected all

¹ Eakpant Pindavanija. Military Coups D’etat; The 2019 Election, and Popular Acceptance of Authoritarianism in Thailand in *The Spectra of Authoritarianism on Southeast Asia*. p 129 – 130.

² Supra note 30. p 23.

³ *ibid.* p 22.

⁴ Supra note 80.

⁵ Supra note 11. p 230.

⁶ Supra note 4.

⁷ Supra note 7.

people living in their territory, the Thai government must respect, protect, and fulfil people's right to life while the Emergency Decree is enforced. Hence, the extrajudicial killing of two villagers, who allegedly violated the curfew in Surat Thani province, reveals that the right to life is not only unprotected but also violated by the government. Moreover, as the Covid-19 pandemic is highly widespread in crowded places, the Thai government did not grant temporary release to vulnerable detainees, including those in the immigration detention centres which shelter undocumented migrants and asylum seekers, invoking this prohibition not based on the ground of limited space. In addition, some of those detained in the immigration detention facility were also tested positive for the Covid-19.¹ Although those infected people were separated and eventually given access to proper medical treatment, the Thai government cannot deny that their right to life was threatened because of the lack of adequate healthcare, food, water, sanitation and hygiene.

The Thai government was successful in protecting the right to life of the general public, as the number of infected persons is maintained at a low level since 1st May 2020.² However, the rate of unemployment and those affected by the preventative measures, especially with the imposition of curfew and the closure of businesses, are unpredictable. The World Bank released a report on 30th June 2020, saying that at least 8.3 million workers would lose jobs or income,³ and this will affect their living conditions and dependents. At the same time, the number of people committing suicide after the imposition of these measures were raised to thirty-eight cases as of 30th April 2020.⁴ Therefore, all people's right to life is not respected, protected, and fulfilled by the Thai government.

Moving on to the prohibition of torture, inhuman and degrading treatment, as this right is considered a peremptory norm of international law, the Thai government is not permitted to suspend it during the time of emergency.⁵ According to the statement issued by the UN Anti-Torture mechanism, those people deprived of liberty are subject to the risk of cruel, inhuman and degrading treatment,⁶ especially when the Thai government is holding more than 1,500 detainees in four immigration detention facilities nationwide.⁷ At times, the conditions of detention are so deficient that they cause suffering. These may give rise to the level of cruel, inhuman, or degrading treatment and severe overcrowding, and can amount to prohibited ill-treatment as well.⁸ As the Thai government has not yet released detainees based on the ground of public health emergency and has criminalised those who violated both the imposition of curfew and border seal, the number of individuals pushed into the jail has significantly soared. This

¹ see <https://www.fortifyrights.org/tha-inv-2020-05-01/>

² see <https://www.thaipbsworld.com/thailands-sees-the-lowest-number-of-new-covid-19-infections-for-a-month/>

³ see <https://www.worldbank.org/en/news/press-release/2020/06/30/major-impact-from-covid-19-to-thailands-economy-vulnerable-households-firms-report>

⁴ see <https://www.tlhr2014.com/?p=17399> <https://www.tlhr2014.com/?p=17399>

⁵ *Supra* note 7.

⁶ see <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25995&LangID=e>

⁷ see <https://www.bangkokpost.com/opinion/opinion/1925572/abuse-of-migrants-refugees-counterproductive>

⁸ *Kalashnikov v. Russia*, (the ECtHR) Appl. No.47095/99, 15 July 2002, paras.96-97

resulted in increased risks for those being detained from the policy adopted to tackle the COVID-19 pandemic.¹ This phenomenon shows that the Thai government endangers particular marginalised group, including those punished by law which enacted without parliamentary supervision and judicial review into the form of ill-treatment. Notably, if detained persons are not treated with humanity or respect for their inherent dignity as human beings, as reflected in article 10 of the ICCPR, it reveals that the Thai government infringes another fundamental right recognised by the international laws.²

As persons prosecuted by the regulations issued under the Emergency Decree are raised to 40,000 cases, it can be assumed that the Thai government imposed collective punishment over those who violated the curfew.³ Moreover, the cases filed against those who are homeless, people who are not subject to curfew regulation, or groups who organised and participated in the political assembly has increased. This goes to show how the Thai government unlawfully derogates the right to peaceful assembly during the time of crisis. Therefore, the criminal punishment imposed on them are also considered as arbitrary deprivation, which is prohibited under international law.⁴ Lastly, the Emergency Decree itself is not subject to parliamentary supervision or judicial oversight. It also grants impunity for those officials who operated with 'good faith.' Therefore, people who are disproportionately affected or arbitrarily deprived rights by measures issued under the Emergency Decree could not access judicial remedy, which is another non-derogable right according to article 4 of the ICCPR.⁵

6. CONCLUSION

Thailand officially proclaimed its derogation under article 4 of the ICCPR to the UN General-Secretary. However, the Thai government has not legally provided sufficient information related to provisions during the state of emergency caused by the COVID-19. As a result, the right to freedom of peaceful assembly and the freedom of expression were unlawfully suspended for the last three months. In addition to the right to freedom of movement, there have been found at least two measures that are disproportionately imposed and has dramatically affected vulnerable groups. Moreover, the criminal punishment the Thai government introduced to those who breached the curfew and the prohibition of Thais for entering the country also reaffirmed that those measures are not the least restrictive instruments which the Thai government can invoke to prevent the COVID-19 widespread. As a consequence, the unequal impact in Thai society additionally discloses that measures are not only invoked based on the ground of public emergency, as the Thai government stated in their official notification, but also to maintain their power over domestic institutions by suppressing certain particular group of people while political is uncertainty.

¹ see <https://www.bangkokpost.com/thailand/special-reports/1957543/migrants-struggle-to-return-despite-sealed-borders>

² Supra note 7. para 12

³ Supra note 7. para 11

⁴ *ibid.*

⁵ McGoldrick, D. (2004). p 418.

Furthermore, the delay of notification indicted that the Thai government does not intend to maintain the principle of legality and the rule of law at times when they are most needed. Evidence which underpinned this argument is the lack of parliamentary supervision and judicial review as prescribed by the Emergency Decree when it allowed the state official to enjoy their impunity and affected people are not guaranteed the right to remedy under the law.

Moreover, several measures imposed to protect people's lives reversely impact the right to life of unemployed people and their dependents and other vulnerable groups. Although the high number of COVID-19 tests for people and a low level of infected people can show that the Thai government effectively handled the virus transmission, there is no scientific evidence to assess that those statistics are resulting from measures imposed by the Thai government. Lastly, another non-derogable right, the prohibition of torture or cruel, inhuman or degrading punishment, was not lawfully respected as the life of detained persons, especially migrant workers and some asylum seekers, are at risk in the immigration detention centres. While certain policies were adopted to protect people's life outside the detention, the imposition of criminal sanction caused the detainees to face ill-treatment. Therefore, the derogation of rights implemented by the Thai government is not only invoked on the ground of public health emergency, which was aimed at perpetuating the rule of law and democracy, as it resulted in deteriorating people's rights and liberties during the time of crisis.

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MOTIVES OF JAPAN'S OFFICIAL DEVELOPMENT ASSISTANCE (ODA) IN RURAL NORTHERN THAILAND: A CASE STUDY OF JAPAN INTERNATIONAL COOPERATION AGENCY'S MODEL SERVICE IN AMPHOE KHUN TAN, CHIANG RAI PROVINCE (2013-2017)

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ABSTRACT

Japan initiated the Model Service project in Chiang Rai Province, a rural northern area of Thailand, as part of Japan's Official Development Assistance (ODA) under the Japan International Cooperation Agency (JICA). The model service, called the L-TOP project, ran from 2013 to 2017, and it was aimed at raising public awareness about ageing society and caring for the elderly. The project also planned to develop human resources in Care Management, including care managers, care workers, nurses, and volunteers in Khun Tan hospital in Amphoe Khun Tan, Chiang Rai Province. The purpose of this research is to investigate Japan's motives for implementing the Model Service ODA project to develop human resources in Amphoe Khun Tan, Chiang Rai Province. Japan's ODA is provided in the form of capital, goods, and knowledge from developed countries and international institutions in order to improve the economic and social conditions of developing countries. This research applies a descriptive qualitative approach and document analysis. A systematic procedure is applied to analyze reports from the local government and JICA's official publications from 2013 to 2017. Collected data was reviewed, examined, and interpreted to gain an understanding of the assessment topic. The results discovered three principal motives, including: the motive of humanitarian and moral considerations, the motive of economics, and the motive of politics. For the case study of the implementation of human resource development via the L-Top Model Service in Amphoe Khun Tan, among the three motives analyzed, the motive of politics was what determined Japan's assistance to the region. Considering the Chiang Rai's geographical location as the door of the Mekong region and ASEAN regional integration, ODA serves as Tokyo's primary foreign policy tool, utilized as a form of investment, a confidence-building measure, a solution for bilateral problems, a manifestation of economic power and global leadership, and as a tool for buying power and influence in various international organizations, especially in political rivalry with China.

Keyword: Japan's ODA, Human Resource Development, L-Top Service Model, Aid Motives, Chiang Rai.

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1. INTRODUCTION

The proportion of older people in all Asian countries is projected to grow at an average of 20 per cent by 2030 (The Jakarta Post, 2018). Particularly in the East Asia region, Japan is acknowledged as the "ultra-age" fast track country, where the predicted ratio of the population aged 65-years old would reach 30 per cent of the total population by 2030 (Oguro, 2011). As a consequence, the ageing population phenomenon has been impacting the already shrinking economy, as well as the rise in unemployment (Sakamoto et al., 2018). However, to cope with this situation and to mitigate the socio-economic consequences, Japan has created advanced technology and the pioneering theory and practice of Aging Society Management. Japan has been conducting an active and quality ageing program, health care (HC) policy, and long-term care insurance (LTCI) system (Junthothai, 2018; Akiyama et al., 2018). Therefore, this model of management benefits other countries that have been dealing with a similar problem, particularly within the Southeast Asia region.

Among the countries in Southeast Asia, Thailand faces the most rapid growth of its ageing population, with an estimated increase of 29.9 per cent by 2030 (Global Age Index, 2015). The population of those aged over 60 has reached 12.3 per cent of the total population, while the number of persons aged 80-years old has increased from 10.1 per cent in the year 2000 to 12.7 per cent in 2010. This scenario is followed by Vietnam, where more than 30 per cent of the total population will be considered ageing within the next decade (Global Age Index, 2015). In comparison, while other ASEAN countries, such as Cambodia, Lao PDR, Indonesia, and the Philippines, are also facing the growth of an ageing population, their growth percentage is 20 per cent lower than that of Thailand and Vietnam (The Jakarta Post, 2018). Nevertheless, Thailand's upper-middle-class GDP focuses on economic development and requires a large labor force. Therefore, the issue of ageing has raised concerns about social security, human resource development in correlation to productivity, and competitiveness in the global market, as well as the country's own average growth (World Bank, 2016, 2019; NIA, 2007).

The more the ageing population grows, the more health care services for the elderly are required (World Bank, 2016). According to the Organization for Economic Cooperation and Development (OECD), many developed countries have incorporated healthcare (HC) policy and long-term care insurance (LTCI) into their national policy, including Japan. Japan has been concerned about HC and public health insurance since 1922, with the impetus to provide free medical care for the elderly starting in the 1970s (Fukuwa, 2002). Such investment has helped Japan to become one of the developed countries that has attained success in health care and, most importantly, to accomplish the world's highest life expectancy (Akiyama et al., 2018; Sakamoto et al., 2018). As a result, in parallel with the increased ageing population, the government of Japan amended the LTCI act in 2012 and introduced the "Integrated Community Care System" to center elderly care at home (UNESCAP, 2015). In the same year, the number of health workers in Japan, particularly nurses, reached 11.39 per cent of every 1,000 persons, which was significantly higher than the OECD average of 8.8 per cent in 2011 (WHO 2017).

In regard to the growth of the ageing population, both the care system and community volunteers have become crucial. Moreover, enlisting volunteers to care for the elderly, particularly in the local area, is one way to

support long-term care as a central part of social services (Whangmahaporn, 2016). Due to the importance of the issue, the Thai government and the Japan International Cooperation Agency (JICA) collaborated in the conduction of a project, Long-term Care Service Development for the Frail Elderly and Other Vulnerable People (L-TOP), which ran from 2013 to 2017. The purpose of the L-TOP model was to develop health workers, healthcare skills, and a new Model Service in Thailand to care for vulnerable people; especially the frail elderly who require long-term care at the community level. The service is focused on providing for vulnerable elderly persons who cannot perform daily activities due to chronic disease, and to help reduce the burden on their families in the local area (JICA, 2015). The L-TOP project was implemented in Northern Thailand, at Khun Tan hospital in Amphoe Khun Tan District, Chiang Rai Province.

Overall, Thailand has received support from Japan in infrastructure, economics, and human resource development for many years, which has led Thailand to achieve faster growth than other ASEAN countries, particularly within Greater Mekong Sub-Region (GMS). Nevertheless, empirical evidence has pointed out that the donor country's motives in allocating Official Development Assistance (ODA) plays a vital role in foreign aid decisions (Cooray & Shahiduzzaman, 2004). As a consequence, Japan has become relatively responsive with its official motives toward Thailand. Such motives also leverage other donor countries that have invested in Thailand, like China. Therefore, according to Nagatsuji (2016), Japan's ODA motives have recently become more closely aligned with its national interests due to the rising power of China in the region.

Henceforth, this article will analyze the motives of Japan's ODA in Northern Thailand, Chiang Rai Province, according to the three types of motives determined by Allan Rix in 1993 as follows: humanitarian and moral consideration motive, economic motive, and political motive. The conceptual framework is detailed in the diagram below:

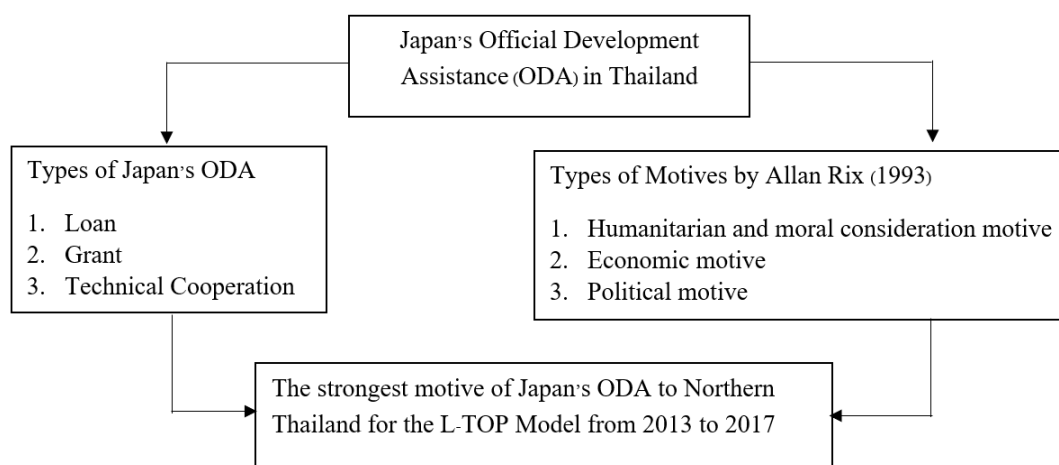


Figure 1. Conceptual Framework

2. RESEARCH METHODOLOGY

The article utilizes qualitative methods to investigate the phenomenon and to observe the process (Rahmat, 2009; Rusmila, 2005). The focus of this article is to identify the motives of Japan's ODA through the case study of JICA's L-TOP model program in Northern Thailand, Khun Tan district, Chiang Rai Province from 2013 to 2017. This article uses the theory of motives from Alan Rix (1991) comprising: 1) humanitarian and moral consideration motive, 2) economic motive, and 3) political motives. The data was derived from reports and publications from JICA, the Ministry of Foreign Affairs of Japan, and the relevant ministries of Thailand, as well as academic journals related to Japan's ODA and its motives. The data was selected, repeatedly reviewed, examined, and interpreted to gain an understanding of the assessment topic. Eventually, the data was analyzed and verified in order to present valid and accurate findings.

3. MOTIVES OF THE OFFICIAL DEVELOPMENT ASSISTANCE (ODA)

Official Development Assistance (ODA) is utilized to help, support, and provide relief to others who are in need, and it bespeaks the generosity of the donor (Jain, 2014). ODA is acknowledged as one of the most 'baffling' concepts of international politics (Sen, 2018). Moreover, according to Carbonnier (2010), aid becomes a tool of foreign policy that is guided by self-interest, through which donor countries can enhance their sphere of influence, broaden their access to markets, and promote the interests of their ruling class.

In the context of ODA, the motive is a significant issue for both the donor and recipient countries. For donor countries, the motive is typically to create a strategy to allocate aid, while for recipient countries; ODA is vital as it addresses the issues of poverty and famine (MOFA, 1991). According to Allan Rix in his 1993 book, "Japan's Foreign Aid Challenge: Policy Reform and Aid Leadership", there are three motives of ODA, including humanitarian and moral considerations, economics, and politics. Firstly, the motive of humanitarian and moral considerations is focused on poverty eradication. Additionally, the economic motive is related to the stability of the nation, and lastly, the political motive is recognized as a symbolic claim to power and influence. Likewise, Alan Rix, Bandyopadhyay & Vermann (2013) have also asserted that donor nations possess motives for providing foreign aid, which affects the decision making processes of donor agencies based on economic interests, political strategy, and humanitarian concerns.

ODA is significantly associated with national interest aid targets in both donor and recipient countries. Likewise, Gulrajani & Calleja (2019) describe that the motives or motivation for providing ODA align with national interests in correlation to need, global cooperation, and public-spiritedness, aiming to achieve commitment. On the other hand, ODA does not only benefit the donor countries, but it also supports the achievement of global development objectives and the interests of all states. However, if ODA impacts geopolitical influence (Jain, 2014), the donor country's motives should be questioned as to whether the "national interest target" and "foreign aid" have overlapped,

if the donor country's objectives are still in parallel with the 'vis-à-vis' commitment, or if the ODA is allocated to counter the presence of another major power in the recipient country.

4. JAPAN'S OFFICIAL DEVELOPMENT ASSISTANCE: ITS HISTORY AND ITS ODA TO THAILAND

ODA is assistance provided in the form of capital, goods, and knowledge to improve the economic and social conditions of developing countries (Yanagihara, 2017). Japan, one of the largest donors globally, has established various types of cooperation through its ODA allocation, such as providing funds, transferring technologies for social and economic growth, and assisting with disaster relief, among others (MOFA, 1999). Japan's ODA is mainly undertaken by the Government sector with three primary schemes, namely 1) ODA Loan, 2) Grant Aid, and 3) Technical Cooperation (JICA, 2012). As mentioned above, in the context of Japan, ODA serves as Tokyo's primary foreign policy tool and is utilized as a form of investment, confidence-building, and bilateral solutions, as well as a manifestation of economic power and global leadership, especially for acquiring power and influence in various international organizations (Menocal et al., 2011).

Japan's ODA Charter was first created in 1992 and focused on supporting developing countries' economies and self-help efforts, alongside humanitarian assistance, inter-dependence, and environmental conservation (Ohno, 2014). The government of Japan revised the ODA Charter in 2002 due to changes in the global economy and political context. According to Sunaga (2004), there were two main reasons that the ODA charter changed. The first was to reshape Japan's ODA mandate, incorporating new ideas and approaches to international development while addressing some challenges that had emerged with the changes in global politics and economics after the end of the Cold War. The second reason was to respond to increased demands from the Japanese public for a stable policy framework that would make Japan's ODA more efficient and transparent.

The new ODA Charter, approved in 2003, states that the objective of Japan's ODA is to contribute to the peace and development of the international community, and thereby to help ensure Japan's security and prosperity. To this end, the charter establishes five necessary policies, as follows; (i) supporting self-help efforts of developing countries; (ii) incorporating "human security" perspectives; (iii) assurance of fairness, considering vulnerable groups; (iv) utilizing Japan's experience and expertise; and (v) partnership and collaboration with the international community (MOFA, 2003). In 2005, Japan revised the ODA policy further, calling the revision "The Medium-Term Policy on ODA" in order to elaborate on the concept of human security. It also states that Japan addresses four priority issues, including poverty reduction, sustainable growth, global issues, and peace-building (MOFA, 2005).

Japan's ODA has been present in Thailand since the Japanese cabinet joined the Colombo Plan in 1954 to build the peace of the nation (MOFA, 1994). Japan's ODA was not only focused on paying war reparations, but also on providing technical assistance and trainers to foreign countries as a mission to integrate with the international community (Huda, 2016). Specifically, Japan's ODA to Thailand, has emphasized technical cooperation since the

1970s (MOFA, 1994). Therefore, Japan is acknowledged as an agent of change by adding the value of sustainable growth. Moreover, Japan has employed Thailand as a partner in joint assistance projects for third countries (MOFA, 2006). As the largest of all foreign investment in Thailand, Japan has accumulatively invested 2.9 trillion baht, or 43 per cent of the total of all foreign direct investment, between 1985 and 2016 (Hartley, 2017). As a result, Japan's ODA has transformed Thailand into a donor country, assisting the development of neighbouring countries in the Mekong Region with technical assistance, fellowship, and training, in line with the pattern of North-South-South (NSS) cooperation (TICA, 2009).

5. JAPAN'S OFFICIAL DEVELOPMENT ASSISTANCE MOTIVES IN THAILAND

The ODA allocated by donor countries can be categorized by three type motives: humanitarian and moral consideration, economics, and politics. According to JICA's report, Japan has contributed to the socio-economic development of Thailand within three main priority areas: 1) sustainable economic development and coping with an ageing society, 2) coping with common issues in ASEAN countries, and 3) promotion of cooperation with countries outside of the ASEAN region. Following over sixty years of Japan's contribution, Thailand's GDP is 6502.60 USD, or equivalent to 51 per cent of the world's average, and its Human Capital Index (HCI) of 0.59 per cent ranks fourth at 0.6 per cent above the average in ASEAN (World Bank, 2019). As a result, Japan's two main motives of allocating ODA to Thailand are humanitarian and moral considerations and economics.

After the economic and humanitarian and moral consideration motives are achieved, the political motive for allocating ODA is often sought (Trinidad, n.d). The political motive is frequently acknowledged as the strongest motive in deciding to offer foreign aid. In other words, the presence of other donors in the recipient country becomes a threat against national policy targets. As a result, according to Yoshimatsu and Trinidad (2010), ODA has become an explicit tool for the "accommodation and balance" of encountering other significant powers in recipient countries. In the case of this article, ODA has become a tool in the rivalry between Japan and China within Thailand.

Before China emerged as a donor country in the 1970s and before their normalized relationship following the war, Japan aided China in its economic rejuvenation and development of four economic areas, including maritime transport, civil aviation, trade, and fishing (Reilly, 2013). In the 1990s, when Japan established its first ODA Charter, prioritizing environmental conservation, promotion of democracy and human rights, restraints on military expenditures on the development of weapons of mass destruction and arms transfers, and introduction of a market-oriented economy, Japanese citizens protested against allocating ODA to China as it would enable China to reinforce its military power (Yoshida, 2013; Reilly, 2013). As a result, Japan decreased its ODA to China, citing national security concerns.

The presence of Chinese ODA in Thailand began in the 1970s when Japan became the most significant donor country to China. Both Thai and Chinese governments signed the first agreement in 1978 to include economic,

scientific, and technical cooperation schemes (Manarungsan, 2009). China then began to increase its role as a provider of foreign aid, allocating ODA as part of its 'soft power' to improve the nation's international profile as a leading economy with a national focus on infrastructure and energy development (Tungkeunkunt, 2016; Trinidad, 2013). In comparison with Japan, China's ODA emphasized mutually beneficial economic aid that established a good environment in recipient countries for Japanese investors (Noriyuki, 1998). Japan's ODA, however, was more focused on the principle of self-help (Sawamura, 2004).

Nevertheless, ODA has transformed into a combination of economic and social infrastructure, including ODA for human resource development as allocated under JICA in 2008. Moreover, the ODA from both countries is related to the South China Sea dispute. From Japan's perspective, ODA can support Thailand to strengthen its capabilities in coastal defense, as both Japan and ASEAN seek to establish a unified stance to counter China's assertiveness (Shoji, 2014).

On the other hand, these two major donors of foreign aid in Thailand run a substantial risk of competing for influence. For them, Thailand has become an important ODA recipient due to its strategic relevance and location in mainland Southeast Asia that connects as many as seven ASEAN countries, providing donors with more leverage in the region (Carminati, 2020). For example, in Northern Thailand, Chiang Rai Province borders Lao PDR, Myanmar, China's Yunnan province, and Guangxi Zhuang. Therefore, Chiang Rai can maximize donor countries' potential trade links with other GMS countries, especially for China (Fongissara, 2015). As a result, China's foreign aid is primarily invested in building infrastructure connectivity under the "One Belt One Road (OBOR)" project, including the 2013 construction of the "Thai-Laos Friendship Bridge IV-Chiang Rai", aiming to manage the supply chains that are then distributed to Kunming, Yunnan Province, and Guangxi Zhuang Province in China (Pootrakool, 2018).

Utilizing a different approach, Japan provides ODA in an effort to support nation building in the areas of development, politics, and governance to further increase awareness, confidence, responsibility, leadership, democracy, rule of law, and the market economy. Rivaling China's ODA in Chiang Rai, Japan's ODA is directed at the development of elderly well-being under the L-TOP model, elderly economic empowerment under the OTOP (One Tambon One Province) program, and tourism (JICA, 2015; Pootrakool, 2018; NESDB-World Bank, 2006; Claymore & Jaiborisudhi, 2011).

Thailand has enjoyed the advantage of partnering with Japan to provide assistance to third countries, particularly Vietnam. Additionally, JICA runs technical cooperation projects with Thailand on Seamless Health and Social Services Provision for Elderly Person (S-TOP), which is scheduled from November 9, 2017 until October 31, 2022, and includes Thailand in the program in order to enhance participation, synthesize the knowledge into policy recommendations, and develop a service model (JICA, 2019b). Another example of joint project assistance to a third country is the Third Country Training Program (TCTP), supported by JICA and TICA. In 2017, JICA, along with TICA and Kasetsart University, held a TCTP project entitled "Environmental Friendly Rice Production". The project was held from June 1 to August 10 and included activities such as 1) Study Visit for Policy Maker Level during 1 – 22 June 2017, and (2) Training of Trainers (TOT) course during June 1 - August 10, 2017, for a total of 26 participants

from eight of Africa's Francophone countries including Benin, Burkina Faso, Cameroon, Congo, Guinea, Madagascar, Mali and Togo (TICA, 2017).

6. THAI ELDERLY AND JAPAN'S L-TOP MODEL IN KHUN TAN DISTRICT, CHIANG RAI

In Thailand, the elderly population is defined as persons aged 60 and over. The age of 60 has traditionally been the legally required age of retirement for government officials, especially for men. However, this may also reinforce the widespread view that old age starts at 60. The elderly have important needs, such as material and financial support, and as Thai people generally expect that the elderly will be taken care of by their children, at least one child will live together with them in order to maintain the family's wellbeing, especially in a more local area (Knodel, Chayovan, & Siriboon, 2012). However, this traditional expectation is facing a dilemma. Recently, more Thai people who live rural areas have migrated to the city, reducing the family size; additionally, urban households tend to have fewer children than rural ones (Amornvivat et al., 2015).

Furthermore, in some provinces in Thailand, like Chiang Rai, the number of elderly people (age 60 and above) is around 11.2 % of the total population of approximately 1.2 million people. Over one decade, from 2005 to 2015, the number of elderly people increased from 18.9% to 24.9%. Therefore, it is expected that the ageing population in this area will continue to increase rapidly throughout future decades (Thicumpa et al., 2018; Khantawee, 2014). For this reason, it is important to develop a long-term care system in Thailand, including professional healthcare, considering the fact that professional health care workers in Thailand have not yet put much effort into the rehabilitation of elderly homes, nor the systems of care to implement in such homes (JICA, 2019).

The Thai government, including the Ministry of Public Health, Ministry of Social Development and Human Security, and other relevant ministries, has requested assistance from JICA to carry out projects that underpin elderly well-being in Thailand. In response, JICA initiated The Project of Long-term Care Service Development for the Frail Elderly and Other Vulnerable People, or L-TOP Model. This project officially started on January 14, 2013 and ran for four years and seven months until August 31, 2017. JICA's agenda is to invite professionals from Thailand to visit Japan in order to observe and take part in hands-on trainings in community-based comprehensive care services that are provided in the world's foremost super-aged society (JICA, 2019a). The L-TOP Model was implemented in five Thai provinces as follows: Bangkok and Nonthaburi for Central Thailand, Surat Thani for Southern Thailand, Khon Kaen for Northeastern Thailand, and Chiang Rai for Northern Thailand. In Chiang Rai, the L-TOP Model was implemented at Khuntan Hospital, which involved long-term care teams, including care managers, care workers, nurses, and volunteers.

Furthermore, the L-TOP Model was developed with the goal that it would be centered at home. Municipal governments, Tambon Health Promotion hospitals, and care managers have are responsible for care planning, coordination, management, and evaluation. Nurses, Doctors, PT, and OT, along with healthy volunteers and care

workers, visit elderly homes to support rehabilitation, bathing, etc. In the daycare center, the health volunteer's role is in communications, providing a call-in service center that also visits elderly houses.

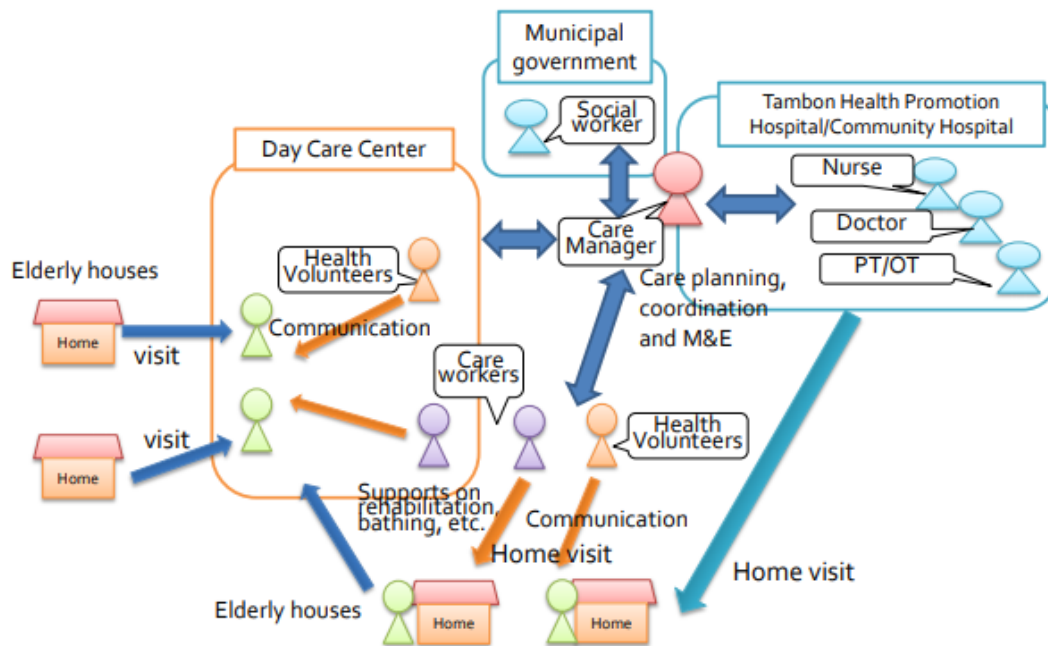


Figure 2. The L-TOP Model

Source: JICA (2016); <http://pubdocs.worldbank.org/en/734201464663747100/053116-aging-EAP-JICA-Shintaro-Nakamura.pdf>

The L-TOP Model project is an extension of the former C-TOP Project (Community Health Care and Social Welfare Services Model for Thai Older Persons, 2007-2011). The L-TOP Model aims to raise public awareness about ageing society and care for the elderly, to facilitate collaboration among related organizations, and to prepare Thailand as a learning center on the issue of ageing in ASEAN, particularly in preparation for the forthcoming ASEAN Community. The L-TOP Project also focused on developing human resources in Care Management and disseminating the Operational Manual for Model Services and Policy Recommendations (JICA, 2015; World Bank, 2016). The results of the L-TOP Model project concluded that the project was implemented as planned and achieved the project's purpose. It was expected that the purpose would be achieved if relevant ministries and stakeholders took collective action and followed recommendations throughout the latter half of the project period. The L-TOP Model project was reviewed using five evaluation criteria as follows: 1) Relevance: "high", 2) Effectiveness: "high", 3) Efficiency: "general", 4) Impact: "several positive impacts have been observed", and 5) Sustainability: "expected to a certain extent" (JICA, 2015).

7. CONCLUSION

Japan's strongest motive in allocating ODA to Thailand is the political motive. For Japan, the presence of China represents a threat to its national interest. Although China is a recipient of Japan's ODA, it has eventually proven itself as a rising major power that can influence the international community, and particularly the dispute of the South China Sea. However, the objectives of each country's ODA are relatively different. While Japan's ODA emphasizes socio-economic development, China's ODA focuses on the development of economic infrastructure. Chiang Rai province, as a case study in foreign aid from both major powers, has shown that Japan's ODA is directed at Human Resource Development (HRD) under the L-TOP Model of technical cooperation, while China's ODA is focused on infrastructure connectivity under the OBOR project, specifically the Chiang Rai-Laos-Kunming route through the construction of the Friendship Bridge in 2013. Therefore, according to OECD, the concept of ODA is under pressure and debatable. This research concludes, then, with three recommendations: development of a technical ODA definition, that increases the volume of allocated ODA; non-reliance on ODA contributions from developed countries; and the clarification of goals pursued through ODA allocation, which relates to the motives of donors (Die, 2014).

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UNDERSTANDING THE RIGHT TO CHANGE LEGAL GENDER: A CASE STUDY OF TRANS WOMEN IN SRI LANKA

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ABSTRACT

In Sri Lanka, trans women have faced discrimination, stigmatisation, marginalisation, and criminalisation. These legal, administrative, and socio-cultural factors urge the state authorities to contribute to the policy on the right to change legal gender in 2016. In theory, this policy is aimed to enhance the lives of transgender people in different aspects. However, in reality, trans women in Sri Lanka experience challenges brought about by policy implementation. At the same time, these challenges impact the lives of trans women in Sri Lanka. Drawing upon semi-structured interviews with four Sri Lankan trans women who experienced the implementation process, and in-depth interviews with legal and government officers working on trans women's right, the research finds that although trans women are appreciated and pleased with the policy as it upholds their human rights through the new identity, they continue to face difficulties during application. Because of the bureaucratic process, the right to change legal gender in Sri Lanka is inaccessible and unaffordable. Additionally, the policy is not a legal provision. As a result, trans women are forced to follow the discretion of the officers. Also, their birth certificate still designates the holder their previous gender because the state authorities refuse to issue the new document. In addition to that, the policy lacks standard procedures and protocols, which allow unequal treatment to take place during the service. They must follow the medical treatment before they are able to receive the Gender Recognition Certificate, which is time-consuming and expensive. Last but not least, trans women do not have other alternatives, besides male or female gender. With regard to these challenges, the research suggests that the country demedicalises transgenderism as it establishes standard guidelines and protocols for the procedures under the enacted legal provision. It also urges the state authorities of Sri Lanka to decriminalise all laws that discriminate against the LGBTIQ+ community, as well as to protect and promote their fundamental human rights. This research not only enables us to understand the right to change legal gender in Sri Lanka but also contributes to the knowledge gaps in gender and sexuality studies and LGBTIQ+ issues in Sri Lanka.

Keyword: Right to Change Legal Gender, Trans Women, Sri Lanka.

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1. INTRODUCTION

In Sri Lanka, criminalisation against consenting adult same-sex sexual relationship, according to Articles 365 and 365A in the Penal Code (1883), is still enforced since the British colonial period. LGBTIQ+ individuals, thus, become the main target of the state authorities due to their sexual orientation and gender identity and expression (SOGIE). In particular, transgender persons are vulnerable to socio-cultural stigma and discriminatory legal provisions (Amnesty International, 2019, p.1). Moreover, transgender persons are subject to Section 399 in the Penal Code (1883) when found identifying with a different gender identity and expression from the gender assigned at birth. In addition, as stated in Section 07/1841 in the Vagrants Ordinance (1841), trans women may be subject to arbitrary arrest or detention due to the acts of soliciting or indecency in public spaces. Although the state authorities currently refuse to use these charges against them, trans women have long been stereotyped as sex workers (Equal Ground, 2019, pp.6-7). While the debate on criminalisation targeting LGBTIQ+ community was ongoing, the Human Rights Commission of Sri Lanka introduced the right to change legal gender to the general public in 2015 (Parakrama, 2018). Later, this policy was implemented by the Ministry of Health and Indigenous Medical Services in 2016, to allow transgender persons to apply for the Gender Recognition Certificate (GRC). This Certificate recognises the identity of transgender persons in Sri Lanka and allows them to legally change their gender (Parakrama, 2018). Furthermore, transgender persons are permitted to obtain amendments to the national identity card (NIC) and other official documents. Thus, this research aims to analyse the challenges of the existing right to change legal gender that impacts the lives of trans women in Sri Lanka.

2. METHODOLOGY

The time frame of this study starts from the legal gender change policy formulation in 2015 until 2020. This research employs a qualitative research methodology, which aims to understand the contemporary situations through individuals, organisations, and documents. This research uses both primary and secondary sources. It selects the participants that include: four trans women, two human rights advocates working on assisting trans women for legal gender change, and one government official working on human rights. Prior to the data collection, this research was approved by the Institutional Review Board of the Institute for Population and Social Research, Mahidol University. All participants' identities remain confidential for privacy and security. The researcher collected data in the field from March to May 2020 in Sri Lanka, using semi-structured interviews with four trans women, and in-depth interviews with human rights advocates and the government official. Due to time limits and the COVID-19 pandemic, the researcher communicated online with the respondents.

3. RIGHT TO CHANGE LEGAL GENDER IN SRI LANKA

Transgender is a term for a person whose gender identity does not belong to the sex assigned at birth. Transgender people are marginalised and vulnerable throughout different aspects ranging from legal, political, economic, to social conditions. It is necessary for transgender people to amend the sex assigned at birth in the official documents to reflect their current gender identity and expression so that they can live their lives as usual (World Health Organization, 2015 cited in Issuing of Gender Recognition Certificate for Transgender Community, 2016). Moreover, transgenderism is no longer considered gender identity disorder, according to the World Health Organization's 11th version of the International Classification of Diseases (2015).

In 2015, the Human Rights Commission of Sri Lanka suggested to the Ministry of Health and Indigenous Medical Services to permit transgender persons for legal gender change in their official personal documents, such as national identity card (NIC), driving licence, birth certificate, and passport (Equal Ground, 2019, p.22). As a result of the previous suggestion, the Ministry of Health and Indigenous Medical Services issued the General Circular No. 01-34/2016, dated 16 June 2016, to eight health departments in Sri Lanka on "Issuing of Gender Recognition Certificate for Transgender Community." Even though the right to change legal gender is not a law, a person can amend his or her gender and name on the official documents. The Circular No. 06/2016, dated 28 July 2016 was later issued by the Registrar-General's Department to instruct all registrars in the district level to change the gender and name in the birth certificate of any transgender persons, who obtain the Gender Recognition Certificate (Parakrama, 2018). This amendment follows Sections 27(I) and 52(1) in the Birth and Death Registration Ordinance (1954) that allow citizens to correct their information on the birth certificate.

Wijayath (2018, p.60) states that transgender persons must follow two steps to obtain the Gender Recognition Certificate. First is that they must be older than sixteen years old and meet the consultant psychiatrist for psychiatric assessment and physical readiness (Parakrama, 2018). In case the person is not ready, the psychiatrist will prescribe what to be supplemented. At this stage, the psychiatrist will certify that "*the person was referred for hormonal therapy and necessary surgical treatments.*" After the diagnosis by the psychiatrist, trans women have to undergo the appropriate hormone therapy and sex reassignment surgery for a specific period. These may take a few months or over a year in some cases (A lawyer, interview, 16 March 2020). Eventually, they will later be assessed and certified that they "*underwent the gender transformation process,*" and the Gender Recognition Certificate will eventually be given. (Wijayath, 2018, p.60). However, sex reassignment surgery can be completed at some government clinics (Parakrama, 2018). Despite this fact, government clinics for transgender persons are not accessible nationwide. Although sex reassignment surgery is possible in Sri Lanka, Chamara (2020) suggests that it is hardly carried out, due to the lack of practitioners' experience and access to resources and facilities.

When their Gender Recognition Certificate is ready, trans women must visit their hometown to amend their birth certificate and other related documents. In order to amend their sex and name on the birth certificate, there are

specific steps that they must comply with, according to the Births and Deaths Registration Ordinance (1954), which is under the responsibilities of the District Registrar in amending the errors. After the amendment is approved, transgender persons will receive a copy of the birth certificate. Nevertheless, it is not an entirely new certificate because it is an original certificate that describes their previous gender in the history section (Interview with the lawyer, 16 March 2020). Some trans women experienced the officers crossed out the previous gender and wrote their preferred gender as a substitute (Human Rights Watch, 2016, p.26).

4. CHALLENGES AND IMPACTS OF THE RIGHT TO CHANGE LEGAL GENDER IN SRI LANKA: EXPERIENCES FROM TRANS WOMEN

In this research, four trans women were interviewed to provide their experiences with the right to change legal gender in Sri Lanka. Moreover, two human rights advocates and one government official participated in the in-depth interviews.

4.1 Is a New Identity a New Life?

A Gender Recognition Certificate does not only provide transgender persons in Sri Lanka the opportunity to change their legal gender on the official documents and obtain a new life, but also reduces the feeling of gender dysphoria among the group (Ginige and Malalagama, 2018, p.7). During an interview, the lawyer supports the success of this policy. She mentions that even though it is medically accepted, people would not accept them because trans women are not yet included into the community (Interview, 16 March 2020). One respondent criticises that society and culture in Sri Lanka still influence how the policy is implemented. She also agrees that the policy on legal gender changes enables trans women to fully transform themselves into women. When their gender change is fulfilled, they are less likely to face problems, such as false charging or threatening. However, many issues remain (Interview, 5 May 2020). During the interview with the government officers, the right to change legal gender in Sri Lanka is seen as a progressive step by the state authorities that protects and promotes the rights of trans community members, and to some extent, the entire LGBTIQ+ community.

The first respondent learnt about the procedures of legal gender change from the trans woman community. After she had learned about this right, she spent six months thinking before making her decision to change her legal gender. She says that she always wanted to live as a normal woman in the community, and that she should change her identity first. Six months after her application, she received the Gender Recognition Certificate without any assistance. She informs that it is compulsory for her to take hormone medicine, which is hardly affordable and accessible. Nevertheless, she supports hormone therapy and sex reassignment surgery, regardless of the obstacles, because both processes enable trans women to fully become women. When she has changed all her documents, she feels that she is legally a woman (Interview, 26 April 2020).

As a person working with trans women community in Sri Lanka, the second respondent has seen positive impacts of the right to change legal gender. She states that it fulfils civil rights, such as the right to vote. When trans women obtain national identity cards that reflect their own identity, they no longer hide themselves. Thus, they feel that they can exercise full citizenship. Furthermore, they have freedom of movement because they are no longer afraid when they are asked to present their official identity to the officers. The change of legal identity allows trans women to practice partial feminine identity in their daily life in the community and workplace. Unfortunately, the right to employment is not yet protected. Even though they obtain a new identity, many of them are still unemployed. Applying to government employment is always challenging because they must present the birth certificate, where the previous gender is written (Interview, 5 May 2020).

The third respondent decided to follow the process after her friend, who had completed it beforehand. She explains the reason behind her decision was that while she looks like a woman in gender identity and expression, her legal identity contrasts. She is worried when someone asks for her national identity card that they would be confused. As a Tamil minority, she is afraid that her mismatched gender identity would further marginalise her. Therefore, having a legal identity that reflects her gender identity and expression would enable her to guarantee her safety and security in society. However, her pathway throughout the process was not easy as she struggled for a year and a half with the medical procedure; from when she received hormone treatment to when she received her Certificate. Later, she went to the divisional secretariat to hand over the Certificate for birth certificate amendment, where she waited for one month to complete the process. Nonetheless, even though she has experienced challenges and difficulties during the process, she claims to live an enjoyable life after the change of her legal gender (Interview, 29 May 2020).

The last respondent knew about the right to change legal gender from her friend. It took her approximately six months before she delivered her decision by visiting the clinic by herself. She sees the significance of the Gender Recognition Certificate as a legal document to prove her transition from male to female. Also, having the new official document can prove that her gender identity and expression is not illegal. Moreover, she wants people to recognise trans women as normal persons and not mentally affected persons by pursuing a new legal identity. She, at the same time, finds this policy helpful in terms of handling legal issues, in case any trans women would encounter them. At this moment, she is still in the process of acquiring the Gender Recognition Certificate, where she continues to receive hormone therapy. She is the only respondent that does not agree whether hormone therapy and sex reassignment surgery must be compulsory for all trans women. Still, she does not specify her reason behind this claim. Furthermore, she is more appreciable living as a trans woman compared to being a woman. She explains that although she is on the legal gender change process to being female, her gender identity remains as a trans woman (Interview, 12 May 2020).

4.2 Problematic Procedures: Trans Women are Retraumatized

A Gender Recognition Certificate issued by the relevant organisations is problematic because it requires a psychiatric evaluation or parental confirmation (Law and Society Trust, 2017). This creates negative stereotypes toward transgender persons in Sri Lanka as they are perceived as people with mental illness. Even the Gender Recognition Certificate itself must be issued and kept in the different system at the Directorate of Mental Health.

Some transgender persons, who have left home for such a period, also find it challenging to return to their hometown after the officers requested parental consent (Human Rights Watch, 2016, p.2). First, of the respondents mentioned that all trans women who expect to receive legal gender change service are initially required to visit Colombo because hospitals in other districts do not have enough facilities and personnel. Second, doctors in district hospitals are reluctant to accept trans women for sex-change treatment. Likewise, some doctors have insufficient knowledge of transgenderism. Therefore, travelling to Colombo requires a high transportation budget (Interview, 5 May 2020). The results also show that some trans women faced additional expenses when they visited the divisional secretariat when they amended their birth certificate (Interview, 29 April 2020). At the same time, many doctors are unaware of the delayed process and high cost, which occur at all times (Interview, 5 May 2020).

Third, discrimination may also be due to the lack of awareness and understanding of transgenderism (Chamara, 2020). Some doctors may inquire about the personal information that can retraumatise transgender persons concerning their sexual orientation and gender identity and expression. This factor can also lead to a further delay to the legal gender change process which will prolong societal discrimination and social stigmatisation against particular transgender persons (Chamara, 2020). It is found that when trans women approach them for government affairs, issues always come up (Interview, 12 May 2020). The lawyer adds that some of the trans women, who go back to their hometown for legal gender change, experience traumatisation again. Since they left the place for a long period of time or were expelled from their families before, many trans women were reminded of their bad childhood experiences (Interview, 16 March 2020). As a result, some of them end up not visiting their hometown for the sex and name changes. Fourth, the official documents, in themselves, are problematic. Even though transgender persons are happy to receive their new documents, following their legal gender change, the previous gender is still written in the new documents (Frontpage, 2016). After all, the right to change legal gender would initially mean nothing. However, this may make them more vulnerable and susceptible to discrimination in various situations, such as job interviews, public or banking services, or educational applications. Two respondents still feel that they are discriminated against when people realise their previous identity at work or community (Interview, 27 and 29 April 2020).

4.3 Sex and Gender under Official Discretion and Regulation

Besides its unclear description, it is criticised as a long and complicated process (Australian Government Department of Foreign Affairs and Trade, 2019, p.50 and Human Rights Watch, 2016, p.22). Nevertheless, it is not easy to receive sex reassignment surgery as it is expensive, inaccessible, and of poor quality (Wijayath 2018, p.60 and Independent Advisory Group on Country Information, 2018, p.14). Trans-friendly medical practitioners, such as plastic surgeons and endocrinologists in Sri Lanka, are also rare in both public and private hospitals (Chamara, 2020).

It is found that trans women are required to drink hormonal drugs despite its market shortage (Interview, 5 May 2020). Necessary hormone therapy for internal replacement is scarce, while some hormones cannot be found in any local drugstores (Chamara, 2020). Even if one has health insurance; it does not cover sex reassignment surgery, which costs approximately four million rupees (Institute for Participatory Interaction in Development, 2016, p.6 and

Jayasinha, 2016). Without the hormone therapy, the application for Gender Recognition Certificate by transgender persons will be rejected by the authorities, which is the pass for the amendment of their official documents.

As the procurement of a Gender Recognition Certificate depends on the discretion of the authorities, sometimes, the officers add on other charges or state that do not know the procedures. One respondent describes the process as bureaucratic and, of which, causes delays at the municipal council level in transferring the Gender Recognition Certificate to the birth certificate amendment (Interview, 5 May 2020). In some situations, the officer, who is unwilling to process the request, even tries to convince them not to proceed (Jayasinha, 2016). Similarly, due to the lack of standard procedures, the officers can request transgender persons to submit different documents. At the same time, some are even told to take hormones, prior to their psychiatrist certification by the officers. These results are seen to be time-consuming (Human Rights Watch, 2016, p.23). When trans women successfully obtain the official documents that reflect their gender identity, sometimes they still face vulnerability, humiliation, discrimination, and harassment (Wijayath, 2018, p.61). This is especially true at public institutions where everyone is required to identify themselves using the official documents. Transgender persons are likely to encounter an uncomfortable environment.

One respondent asserts that the society in Sri Lanka is not ready to welcome trans women at some situations because some trans women still face a lot of problems when they try to obtain a job, medical service, and other legal services. She adds that even when trans women make a complaint at the police station, the police are not ready to protect them or offer them the service. On the contrary, sometimes the police misbehave against trans women (Interview, 12 May 2020). Similarly, when they apply for job positions, their employers suspect their use of a falsified document (Interview, 5 May 2020). Another respondent describes her experience when her male gender and name were still written on the election card that she uses during the election period. However, her national identity card reflects her female identity. She says, “People saw me differently when I presented my ID for the voting officers” (Interview, 29 April 2020).

4.4 Right to Change Legal Gender: Policy, Not Law

First, the right to change legal gender in Sri Lanka is an administrative policy that later can be amended and is therefore, unsustainable (Law and Society Trust, 2017). It is also criticised as it does not enable a clear path because it is under the State’s policy and is not a law (Wijayath, 2018, p.60). As a result, the officials’ discretions are influential throughout the process, which suggests that the legal gender change procedure in Sri Lanka is complicated (Equal Ground, Sri Lanka and Centre for International Human Rights of Northwestern Pritzker School of Law, 2017, pp.10-11). Moreover, the right to change legal gender depends on the discretion of the registrar. Thus, there might be different requirements depending on different local authorities. This difficulty may also encourage the abolishment of the policy in the future. During the interview with the government official, he says that to make the ordinance a law is difficult as it requires two steps to do it – pass with two-thirds or pass with the referendum (Interview, 3 March 2020).

Another issue is that the policy on the right to change legal gender results from the exclusion of other stakeholders (Ginige and Malalagama, 2018, p.4). The lawyer says that there is currently only the National

Transgender Network that tries to push for the Bill (Interview, 16 March 2020). Besides, the right to change legal gender has never been publicised by the authorities. Thus, some transgender persons do not realise their rights (Parakrama, 2018). This factor also raises a question on the right to access information in Sri Lanka, as information on the ordinance has failed to reach its people. However, two legal documents specify this right. One is Article 14A(1) of the Constitution of Sri Lanka (1978), whereas the other is the Right to Information Act No.12 of 2016. Both of these documents affirm that every citizen shall have the right to access information, which protects citizen's right. The results also find that many trans women are not aware of the existence of this right, especially those who do not live in Colombo or are an ethnic and religious minority, such as the Tamil-speaking community in Northern Sri Lanka.

4.5 Is Legal Gender Change What All Trans Women Want?

Discrimination remains against trans women, even as Gender Recognition Certificates have been issued (Sekaram, 2019 and Jayasinha, 2016). Parakrama (2018) adds that the right to change legal gender shows that Sri Lanka is not yet ready to go beyond the existing gender norms of binarism. However, the policy seems to be a revolutionary advancement for transgender communities in the country. Because Sri Lanka is a gender binary society, heteronormative practice and value are primarily influenced by society (Wijayath, 2018, p.61). Consequently, it is challenging for some transgender persons as they may be unwilling to choose to become either male or female. As Wijayath (2018, p.61) mentions, third gender category is hardly accepted, compared to India, where the roles of hijra are visible in the society. This correlates to what R.M.S. Sarath Kumura, Commissioner of the Department of Registrations of Persons, which is a government institution in Sri Lanka that issues national identity cards, explains toward his interview with Daily Mirror Sri Lanka (2016) that the government also does not accept the third gender concept, due to its effect to culture. The lawyer questions the support of the third gender category as it is not in the culture. She observes that the third gender category is not popular and visible in Sri Lankan gender binary society (Interview, 16 March 2020). In the same way, one of the respondents does not support the third gender category, as the community only wants the female identity (Interview, 5 May 2020). Likewise, two more respondents agree that living themselves as a woman is better than as a trans woman (Interview, 27 and 29 April 2020). "Transgender people are more oppressed. The community refuses to accept. So, being a woman is partly accepted by the society," says one of the respondents (Interview 29 April 2020).

5. CONCLUSION AND RECOMMENDATIONS

Lives of trans women in Sri Lanka are challenging. Not only are they not legally recognised in any legal document, but they also may be subject to criminalisation. In addition to that, they have encountered discrimination, stigmatisation, and marginalisation, due to its socio-cultural influence. Despite these challenges, trans women have enjoyed the right to change legal gender as they can obtain the Gender Recognition Certificate since 2016, which allows them to change their name and gender on the official documents to reflect their current gender identity and expression. Nevertheless, the research finds that there are five challenges to this policy. At the same time, these

challenges impact the lives of Sri Lankan trans women. As one of the most vulnerable groups of people on the island, this research suggests that better legal and social understandings toward gender diversity should be pushed forward in society. The authorities should repeal all legal provisions that criminalise LGBTIQ+ community. Moreover, social acceptance should be encouraged, while open discussion on gender diversity should be normalised. The policy should be legalised as a law with standard guidelines and protocols in order to make the procedures simple. This includes de-medicalisation of legal gender change and self-identity verification based on international standards. However, the authorities should guarantee that all medical requirements are accessible and affordable island wide without any division, especially language barriers. Also, the authorities should issue a new birth certificate, instead of amending it, so that trans women may fully obtain a new identity. Lastly, the state authorities should collaborate with non-state actors to assist trans women from the beginning to the end of the process.

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DOMESTICATION OF PALERMO PROTOCOL AND CONVENTION ON THE RIGHTS OF THE CHILD IN NEPAL: THE CHALLENGE OF ENSURING CHILD VICTIM'S MEANINGFUL PARTICIPATION IN THE CRIMINAL JUSTICE SYSTEM

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ABSTRACT

Nepal is currently undergoing political and social transition after the overthrow of the monarchy and the end of a decade long civil war. Despite social and political changes women and girls have a subordinate status to men regardless of caste and ethnicity. Gender inequality and discrimination led to a lack of social investment for girls, leaving them vulnerable to human trafficking. Since 1963, Nepal criminalizes slavery and trafficking in persons. Still, it remains a thriving and lucrative criminal enterprise. It is estimated that there are 26, 574 women and girls are working in the Adult Entertainment Sector in Kathmandu Valley, and over half of this are below 18 years old and trafficked for commercial exploitation (Bauman and Dharel, 2014). In an interview conducted with the Anti-Human Trafficking Bureau of Nepal Police only 37 cases of child trafficking and only one case involving commercial sexual exploitation were registered for 2018-2019.

This paper examines the role of legal aid in prosecuting child trafficking cases in Nepal and how they ensure the meaningful participation of child victims in the criminal process. National legislations were reviewed and analyzed as to how Nepal effectively translates its treaty obligations into domestic law. Procedural laws were also examined as to how it effectively incorporates child protection in the criminal justice system. Interviews were conducted with police officers, retired Deputy Attorney Generals, District Attorneys, legal aid lawyers from Non - Government Organizations, and social workers. It concludes that experience on the field demonstrates the need for a shift from a purely criminal justice approach in prosecuting trafficking cases towards a more child-friendly and human rights base-approach.

Keyword: Child Trafficking, Victim Participation, Child Empowerment, Legal Aid.

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1. INTRODUCTION

Nepal is a country in South Asia situated between two economic giants – China and India. It is the second poorest country in Asia, with a quarter of its population (25.2%) living below the poverty line or less than US\$1 a day (World Bank Group, 2019). Nepal joined the United Nations in 1955. In 2008, after more than a decade of civil war, Nepal's monarchy was overthrown, establishing a democratic Republic. Nepal is a country in transition politically, economically, and socially. In 2015, Nepal adopted a new Constitution which ushers the transformation of the country from a Hindu Kingdom to a secular, democratic, and socialist federal republic. Nepal's parliament recently amended the country's Civil Code and Criminal Code. Then, Nepal enacted its child protection law-the Act Relating to Children (2018). On March 13, 2020, Nepal acceded to the United Nations Protocol to Prevent, Suppress, Punish Trafficking in Persons Especially Women and Children (otherwise known as the Palermo Protocol).

The end of the civil war brought political and social changes to the country, however, despite these changes gender inequality persists, Nepal ranks 101st amongst 183 in countries in the 2020 Global Gender Gap Report. Social norms perpetuate gender inequality and discrimination against women which led to non-investment in the education of girls, consequently making them vulnerable to violence and abuse, including the risk of being trafficked. Human Trafficking is both a criminal offense and a grave human rights violation. It is the second most lucrative transnational crime after drug trafficking. The United Nations Office of Drugs and Crimes (UNODC) considers human trafficking to have the lowest risk of detection and the lowest rate of successful prosecution amongst transnational crimes (2019).

The paper examines how Nepal translates its international obligation under the Palermo Protocol and international human rights treaties to eradicate child trafficking in its domestic law. It also examined whether Nepal's criminal procedure incorporates child victim's rights including the right to meaningful participation in the criminal proceeding. The paper incorporates results of field interviews with, a police officer, lawyers from the Attorney General's Office, District Attorneys, lawyers from NGOs, and NGO workers on the challenges of prosecuting child trafficking and ensuring child participation in the criminal proceeding. The paper finally concludes with the recommendation for the need to shift from a pure law enforcement approach to human rights based-approach in addressing child trafficking, putting the rights of the child at the center of the counter-trafficking response.

2. RESEARCH OBJECTIVES AND QUESTIONS

The research examines how Nepal translates its international obligation to prevent and combat child trafficking into its national law. It also looks into the practice of District Attorneys and NGO Legal Aid lawyers on how they incorporate child protection in their legal practice, ensuring child participation and empowerment during the criminal proceeding.

3. METHODOLOGY

Secondary data collection consists of a desk review of national laws, policies and relevant literature from books, academic journals, publications of NGOs focused on the rescue and rehabilitation of trafficked children and Legal Aid organizations engaged in the prosecution of child trafficking cases. Primary data collection is composed of interviews with the Anti-Human Trafficking Bureau and the spokesperson of the Nepal Police. Additionally, Former Deputy Attorney Generals of Nepal, District Attorneys, licensed lawyers of NGOs engaged in legal aid, and officers of NGOs who conduct counter-trafficking programs were also interviewed for this research. All interviews were conducted in English.

4. BRIEF HISTORY OF CHILD TRAFFICKING IN NEPAL

Child trafficking in Nepal traces its roots to as early as 1846 during the Rana regime (1846-1951) when girls from the nearby hills were sent to the palaces of the ruling clan in Kathmandu to serve as servants and concubines (Sangroula, 2001). After the fall of the regime, these girls were sold to the brothels of Kathmandu and India. Cultural practices of *deuki* system which is a custom of buying girls and offering them to the temple and that of *Badis* make prostitution an acceptable means to support one's family (CeLRRd, 2019). According to Nepali sociologists, it is customary in the *Badi* community that once a girl reaches puberty, her parents will look for a rich man to deflower her in a process called "*Nathane kholne*" (opening a nose ring), thus, her initiation to prostitution (Kisan and Nepali, 2014).

In 1963, recognizing the criminal nature of Human Trafficking and its pernicious effect on society, the *Muluki Ain* (General Code) was amended, and human trafficking was declared a criminal offense. In 1985, the Parliament enacted Trafficking in Human Beings Control Act, which was later replaced by the Human Trafficking and Transportation Control Act. In 2018, the law was further amended to specifically establish the Anti-Human Trafficking Bureau within the Nepal Police. The Anti-Human Trafficking Bureau is mandated to 1) to prevent human trafficking, 2) to investigate human trafficking, 3) rescue victims of human trafficking, 4) provide emergency protection, 5) carry out supervision of other police units, and 6) maintain central data on human trafficking. To manifest its seriousness to address human trafficking, Nepal acceded to United Nations Protocol to Prevent, Suppress, Punish Trafficking in Persons especially, Women and Children (also known as the Palermo Protocol) on March 13, 2020. Nepal is a party to relevant human rights treaties such as the International Covenant on Civil and Political Rights, Convention on the Elimination of Discrimination Against Women, Convention on the Rights of the Child, the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Prostitution, and Pornography, and the International Labor Organization Convention 182 (Worst Form of Child Labor) which all prohibit the trafficking of children for sexual exploitation. It has also ratified the South Asian Association Regional Cooperation Convention on Preventing and Combatting Trafficking in Women and Children (2002). The regional convention has the same purpose provided

by the UN Convention on the Suppression of Traffic in Persons and of Exploitation of the Prostitution and of Others (1949), to which Nepal is party.

The Nepal STD/AIDS Center estimates that 26,574 women and girls are working in the commercial sex industry. It is estimated that over half of them are under 18 years of age, and most are trafficked for commercial sexual exploitation (Baumann and Dharel, 2014). Terres des Hommes, on the other hand, estimates that there are around 11,000-15,000 women and girls in the adult entertainment business with girls working in cabin restaurants, dance bars, dohari restaurants, and massage parlors (NHRC, 2019). The adult entertainment sector is both final and transit destinations for trafficked victims, while women who have been initiated into sex work in Kathmandu are lured to work in brothels in India.

The review of literature showed that there is a substantial body of academic researches establishing the nexus between poverty, lack of education, and gender discrimination to the trafficking of adolescent girls. Nepali society's preference for sons renders girls at higher risks than boys of foeticide and infanticide, and their basic needs are often neglected, especially when the family's resources are scarce. Girls' mobility is often restricted, and in many communities, girls have less access to education and household opinion (UNICEF, 2008). Having experienced discrimination within their own family coupled with their lack of education, adolescent girls are bound to be lured by the promise of a job, marriage, and better life by the traffickers. Poverty can make parents complicit to the trafficking of their children; it was documented that parents are an accomplice in the trafficking and sale of their daughters or in child marriages since girls were often seen as an economic burden (Deane, 2010).

International Legal Framework on Child Trafficking

The United Nations Protocol to Prevent, Suppress, and Punish Trafficking in Persons Especially Women and Children (hereinafter referred to as the Palermo Protocol) is the first modern-day initiative to address human trafficking at the global level. It is the primary international instrument that defines "human trafficking" and provides the foundation for a coordinated global anti-trafficking activity (Bassiouni, 2010). It defines "*Trafficking in Person*" as "the recruitment, transportation, transfer, harbouring, or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs" (Art.3, Palermo Protocol). The recruitment, transportation, transfer, and harboring of a child for exploitation shall be considered "trafficking in persons" even if it does not involve any of the means outlined in Art.3.

Although the Palermo Protocol was crafted essentially to address the organized crime of trafficking and its main focus is to criminalize Trafficking in Person, the Protocol also includes provisions for the protection of victims. A State Party shall ensure that trafficking victims be given assistance to articulate their views and concerns during the

criminal proceeding. A State Party shall also consider implementing measures to provide for the physical, psychological, and social recovery of victims in cooperation with non-government organizations, other relevant organizations, and other elements of civil society, in particular, the provision of 1) appropriate housing, 2) counselling and information, in particular as to their legal rights, in a language that the victims can understand, 3) medical, psychological and material assistance, and 4) employment, educational, and training opportunities. In applying this provision, the State Party must take into consideration the age, gender, and special needs of trafficking victims, in particular the special needs of children (Art.6). Each State Party shall ensure that its domestic legal system contains measures that offer victims compensation for damage suffered.

The Convention on the Rights of the Child (CRC) mandates the protection from sexual abuse and exploitation. Art. 12 of the CRC guarantees the right of children to participate. State Parties shall assure to the child who is capable of forming his or her views the right to express their views freely on all matters affecting the child; the views of the child being given due weight according to age and maturity of the child. For this purpose, the child shall be allowed to be heard in any judicial and administrative proceedings affecting the child either directly or through a representative or an appropriate body, in a manner consistent with the procedural laws of national law. Its Optional Protocol on the Sale of Children, Prostitution, and Pornography defines and criminalizes the sale of children, prostitution, and pornography. International Labor Organization Convention No. 182 considers child trafficking, child prostitution, and child pornography as amongst the worst forms of child labor. Article 8 of the International Covenant on Civil and Political Rights states that “no one shall be held in slavery; slavery and slave trade in all forms shall be prohibited. No one shall be held in servitude.”

5. FINDINGS AND ANALYSIS

On the Domestication of Palermo Protocol and CRC

The Nepal Treaty Act of 1990 provides that upon the ratification, accession, acceptance, or approval of the treaty by the Nepalese Parliament, the treaty shall be enforceable as good as Nepalese laws (Sec. 9 (1)). The Act also mandates the Government of Nepal to initiate action as soon as possible to enact a law for the enforcement of the treaty. Nepal’s international commitment to protect its children from the menace of human trafficking was reflected in its 2015 Constitution which upholds the dignity of its people, and the right of the children not to be trafficked and to be free from mental, physical, and sexual violence, and other abuses.

The Human Trafficking and Transport Control Act considers the following acts as human trafficking, namely 1) to sell or buy any person, 2) to force someone into prostitution, with or without financial benefits, 3) to remove a human organ, except otherwise determined by law, and 4) to engage in prostitution. It also prohibits the removal of anyone from his/her home, place of residence, or from a person, by any means such as enticement, inducement, misinformation, forgery, tricks, coercion, abduction, hostility, allurements, influence, threat, abuse of power, and keep

him/her into one's possession, or to take any place within Nepal or abroad, or handover him/her to somebody else for prostitution and exploitation (2b). It provides the right of the victim to have an additional legal professional to represent his/her person during the court hearings. The law provides for imprisonment of 20 years for the selling and buying of a person and 15 years of imprisonment for forcing a person to engage in prostitution. However, the law also penalizes engaging in prostitution with three-months imprisonment. The law provides for the compensation of victims of trafficking. Victims may request for police protection and in-camera proceedings. The government of Nepal is the plaintiff in trafficking cases.

The Acts Relating to Children 2018 acknowledges that every child has a right to protection from gender-based violence and sexual abuse and exploitation (Art.7(5)). It guarantees the right of the child to participate in all decision making that concerns her/him (Art.8). The right to confidentiality (Art.11) guarantees the right of every child victim to child-friendly justice at each and every stage of the investigation, prosecution, and judicial proceedings, to wit: 1) participate and involve, 2) keep personal details confidential, 3) to receive a reasonable amount of compensation, 4) receive free legal aid and psychosocial counselling, 5) to have a translator, 6) receive copies of documents including court orders and decision free of cost, 7) to receive police protection, and 8) have a close bench hearing.

The HTCCA was viewed as a strong and progressive legislation (ABA ROLI, 2011). However, an examination of the law showed that it falls short of the minimum standard outlined in the Palermo Protocol and the Recommended Principles and Guidelines on Human Rights and Human Trafficking. The law does not reflect the reality and dynamics of human trafficking. The definition of the crime of human trafficking is limited to the acts of "selling, transport and putting into prostitution", thus leaving out the critical acts of recruitment, harboring, or receipt of trafficked from criminal liability. This definition of trafficking is problematic since it prevents persons who play a critical role in the trafficking chain from being held criminally liable. For example, in the case of a relative who recruited an adolescent girl to find work in a cabin restaurant in Kathmandu, the girl under her own volition, went unaccompanied to Kathmandu to work in a restaurant for which she was recruited. The girl was ultimately forced to have sex with clients. Even if the girl ended up in a slave-like condition, the recruiter is not liable under the law. In the same vein, because of the very limited definition, owners of adult entertainment businesses such as dohari, cabin restaurants, and massage parlors who often procured the services of trafficked persons could not be held liable unless there is evidence showing that they "bought" the girls or put them into prostitution. In an interview conducted by Risal and Hacker (2018), managers of adult entertainment business claim that they are not involved in the transaction for sexual services, the negotiation is between the customers and the girls, hence, may not be considered criminally liable for child trafficking.

The purpose of trafficking under HTTCA is limited to prostitution and removal of organs, although there are many occasions that the law was successfully used to prosecute labor exploitation. Nonetheless, the law failed to provide an exemption from proving means (e.g. inducement, tricks) in cases involving children.

The HTTCA falls short in protecting victims of human trafficking. Principle 7 of the Guidelines provides that “trafficked persons shall not be detained, charged, or prosecuted for their involvement of unlawful activity”. It is possible under HTTCA that a trafficked person may be prosecuted and penalized for engaging in prostitution. Article 6 of the Palermo Protocol provides for a set of protection measures that the State Party must provide for trafficked victims as a minimum standard. The HTTCA mandates the government to set up rehabilitation centers for the physical and mental rehabilitation of victims, and social reintegration.

The law allows private organizations to operate rehabilitation centers for trafficked victims. Though the government still has to set-up rehabilitation centers for trafficked victims, instead, it provides financial support to ten Non-Government Organizations that manage rehabilitation centers including ABC Nepal, which operates a rehabilitation center in Kathmandu. On a positive note, the law allows in-camera proceedings for trafficking cases and the provision of police security upon request of the victim.

There are provisions of the HTTCA which were drafted with the clear intent to facilitate prosecution of trafficking, however, these have led to unintended consequences of criminalizing the trafficked victim’s behavior and violates the accused right to a fair trial. The law provides that if the victim gives contrary statements to her previous statement, appears to be a hostile witness for the prosecution, or fails to appear in court she may be charged and penalized with imprisonment ranging from three months to one year. The HTTCA provides for the shifting of the burden of proof to the accused in the prosecution of trafficking cases. This practice violates the accused right to be presumed innocent until proven guilty and the right to a fair trial under the 2015 Constitution of Nepal and the International Covenant on Civil and Political Rights. Shifting the burden to the accused reinforces the tendency of police investigators to rely on “confession” and the reluctance to seek other evidence outside that of the testimony of the victim and the accused. Thus, there is no diligent and thorough case build-up, and evidence may be weak, which leads to a risk of acquittal of the perpetrator, further reinforcing a culture of impunity with regard to human trafficking.

The recent accession to Palermo Protocol by Nepal can serve as a clarion call for the amendment of the HTTCA to comply with the minimum standards set by the Protocol and for the law to provide adequate protection to the victims, as well as ensuring respect to the constitutionally guaranteed rights of the accuse (Arts. 20 and 21).

The Acts Relating to Children 2018 is progressive legislation on child protection. The law mirrors the Convention on the Rights of the Child and adopted its major principles such as the Best Interests of the Child, Protection, and Participation in the national legislation. It elaborated on the right of the child to child-friendly justice and on the obligation of the state to provide for the rights of the child victim and her rights during court proceedings. Although the law prohibits discrimination against children and has abolished the *Kamalari* (female bonded labor), it failed to abolish other harmful traditional practices such as *Deuki* (buying of female children as offering to temple).

The Challenges of Prosecuting Child Trafficking Cases and Ensuring Child Participation

Field research in Nepal revealed the reality and the challenges of prosecuting child trafficking in the country.

Law enforcement should be proactive in investigating child trafficking cases. There is a vast disparity between the numbers of children trafficked in the adult entertainment sector in Kathmandu Valley which *Terres de Hommes* estimates from almost half of the 11,000-15,000 women and girls (NHRC, 2019) and the number of human trafficking cases filed before the police. The following are the data on Human Trafficking from the records of the Anti-Human Trafficking Bureau of Nepal Police. The record shows that out 53 trafficked persons, 22 are adolescent girls.

Table 1: Human Trafficking Cases in Kathmandu Valley, Nepal.

Number of Trafficking Cases registered in Kathmandu Valley		
Year	Cases in Kathmandu Valley	Misc
2015	29	This data includes of all forms of Human Trafficking
2016	40	
2017	55	
2018	39	
2019	53	

Table 2: Number of Minor Victims in Kathmandu Valley, Nepal.

Number of minor victims in Kathmandu Valley			
Year	Male	Female	Misc
2015	14	15	This data includes of all forms of Human Trafficking
2016	0	17	
2017	0	15	
2018	0	15	
2019	0	22	

Kathmandu Valley has a thriving adult entertainment sector that employs adolescent girls, yet for 2019, only a single case of trafficking for sexual exploitation was filed in the police. According to respondents from Non-Government Organizations, the low level of reporting of child trafficking cases is due to the mistrust of the police (KI6 and KI 7, June 8, 2020, June 12, 2020). The Nepal Police is known to protect brothel owners and dance restaurants (Dhungana, 2007). In the 2014 National Integrity Assessment of Nepal conducted by Transparency International, the Nepal Police was perceived to be the third most corrupt public institution in the country after the

customs and the land agency. Cases of bribery in massage parlors and dance restaurants have been detected regularly (2014). The police, on the other hand, connect the low level of reporting to the fact that relatives and families of children are often complicit in the trafficking of their children. Ninety percent (90%) of the FIRs were lodged by children with the help of NGOs (KI5, June 2, 2020). District Attorney and NGO lawyers criticize the police for being passive. It should be stressed that child trafficking is organized crime, according to NGOs. Furthermore, the police do not appear to actively engage in investigating child trafficking syndicates. Police just rely on NGO complaints, as such, they only arrest and file cases against recruiters and middlemen, not the leader of syndicates or the owners of the industry that profited from the exploitation of the trafficked persons.

Public Prosecutors and NGO Legal Aid lawyers should be receptive to collaboration in prosecuting child trafficking cases. The Constitution of Nepal and Acts Relating to Children guarantee the right of a child victim to participate in all decision making that concerns the child and to child-friendly justice in every stage of the investigation, prosecution, and judicial proceedings. The HTTCA also allows the child victim to appoint a private counsel to represent her in the criminal proceedings. However, the Constitution and the National Criminal Procedure Act (2017) give the Attorney General's Office (AGO) absolute power in the prosecution of criminal cases in Nepal, including that of child trafficking. It is the AGO that provides direction to the Nepal Police on whether to gather more evidence or conduct further investigation on a crime. The AGO can decide not to proceed with the filing of a Charge Sheet against the accused, and the victim has no available remedy to assail the decision of the AGO. The District Attorneys view themselves as both lawyers for the government and the legal aid provider for the trafficked child and one key informant was dismissive of the need for another lawyer for the child. NGO leaders and lawyers, on the other hand, assert that the child has the right to appoint her lawyer (KI4, May 12, 2020). Further, they claim that given the caseloads of District Attorneys, child trafficking cases have to compete with other cases handled by the District Attorney for the latter's attention and priority. It is their impression that District Attorneys are not sufficiently trained to handle child trafficking cases and are not immune from pressures from political parties (KI6, June 8, 2020 and KI7, June 12, 2020). Hence, it is important for a child to have her lawyer represent her, to ensure a child-friendly environment during the hearing – that the child's views and concerns were heard and considered by the court. NGO legal aid lawyers are valuable resource to law enforcement and public prosecutors since building a case for child trafficking takes considerable effort and time. Public Prosecutors and NGO legal aid lawyers can actively collaborate and be each other's partner from every stage of the criminal proceedings from investigation, that the child victim is protected, empowered, and allowed to participate in every stage of the criminal proceeding, in securing a conviction, in ensuring that sentence is being served by the accused, and in ensuring compensation for the trafficked victim.

Address the asymmetry in power relations between the child and the Legal Aid lawyer. Former Attorney General of Nepal and law Professor Yubaraj Sangroula describes the legal profession in Nepal as an “elitist profession”. Lawyers viewed themselves as different from the rest of the Nepali society (2010). A leader from the NGO community describes the legal profession as a “bastion of conservatism” which is dominated by Nepali men from the upper caste (KI9, July 11, 2020). On the other hand, child victims are usually illiterate as they are from marginalized castes, and minorities. The age, caste, and gender differences give the District Attorney and legal aid

lawyer the dominant role in the lawyer-client relationship. In an interview with District Attorneys, they revealed that the Attorney General's Office has no specific protocol on handling child trafficking cases. Hence, the practice of how each lawyer handles a case depends on her skills and personal sensitivity. All of the seven key informants who were interviewed cast themselves primarily as legal aid lawyers rather as an agent of child empowerment. Their role is to ensure the successful prosecution of the case and are often frustrated when the child refuses to cooperate, whom they view primarily as a witness for the government. Only two of the key informants incorporated in their practice the effort to establish rapport with the child, orienting the child on the law, the criminal justice system, her rights as a victim, her right to express her views and concerns to the lawyer and the judge, how the adverse counsel may treat her during the trial, and the role of the lawyer (KI3, May 12, 2020, KI7, June 12, 2020). The majority of the key informants believe that ensuring child participation and empowering the child to express herself before the court as well as enabling the child to navigate the judicial system is primarily the work of NGOs as part of the psychosocial support to the child. To mitigate the asymmetrical relationship between the legal aid lawyer and the child, the Attorney General's Office must develop specific guidelines or protocols on handling child trafficking cases that will include minimum standards for child protection and empowerment. The United Nations Guidelines and Principles on Access to Legal Aid in Criminal Justice System require that legal aid providers who represent children should be trained in and be knowledgeable about children's rights and related issues, receive ongoing and in-depth training, and be capable of communicating with children at their level of understanding. All legal aid providers working with and for children should receive basic interdisciplinary training on the rights and needs of children of different age groups and on proceedings that are adapted to them. Moreover, they should have training on psychological and other aspects of the development of children, with special attention to girls and children who are members of minority or indigenous groups.

The need for public investment to provide support services to trafficked children. All the key informants bemoan the lack of support services for trafficked children. Twenty-three (23) years after the enactment of HTTCA which mandates the government to establish shelters for trafficking survivors, the government still has to build one, instead, it just provides subsidies to some NGOs which provide shelters for trafficked victims. Nepal does not have a dedicated shelter for trafficked children. NGO staff complained that the One-Stop Crisis Management Centers (OCMC) in hospitals are not victim-friendly. It has been the experience of social workers accompanying trafficked children that they have to wait for hours or even half a day before the child can be examined. The OCMCs have no dedicated human resources to attend to victims of Gender-Based Violence, hence, victims have to compete for attention with regular hospital patients (KI 6, June 8, 2020). A retired Deputy Attorney General sagaciously observed that although the laws may appear to be child-friendly, the necessary infrastructure to make it a reality is simply lacking. There is no juvenile court which exclusively handles cases involving children, although the law provides for in-camera proceedings for child trafficking cases, the infrastructure is lacking. There are frequent delays in criminal proceedings which result in the inordinate length of the criminal process, which leads to victims' frustrations (KI2, May 9, 2020). The National Budget of Nepal for the year 2020/2021 showed that the country has a budget of 1.47 Trillion of Nepali Rupees, however, only 780 million was allocated for women, children, and elderly a minuscule .0005% of the national budget, a portion from which will be allocated for addressing and responding to child

trafficking (Ministry of Finance, 2020). Child trafficking is not a priority of the government, given that there was no substantial financial investment made by the government for its counter-trafficking program.

Children's rights must be at the center of the anti-child trafficking response. Child trafficking is both an organized crime and a grave violation of children's human rights. Nepal's government approach is predicated purely on crime control and law enforcement. This approach was criticized by the late eminent law professor and international criminal law expert Cherif Bassiouni as flawed since it is predicated upon criminalization of trafficking. Rather, it should be predicated upon the human and social interest to be protected, namely, the freedom of women and children from being sexually exploited and reduced to sexual bondage. The focus on organized crimes is detrimental to counter-trafficking efforts in both international and national fronts (Bassiouni, 2010, p.481). A crime control approach's primary objective is stopping the crime and not giving redress to grave human rights violations brought about by sexual exploitation and abuse. In Nepal, this strategy is a failure given the prevalence of child trafficking.

According to the Institute for Integrated and Development Studies, Nepal adopted a repressive strategy in combatting human trafficking focused on criminal laws. Victim's interest is secondary, revictimizing them, and creating fear of detection among them, forcing them to live underground lives (2004). The HTTCA includes provisions that can hold the trafficked victim criminally liable in case she gives contrary statements to her previous statement, appears to be a hostile witness for the prosecution, or fails to appear in court, where she may be charged and penalized with imprisonment ranging from three months to one year. The primary mindset of child trafficking from the perspective of law enforcement is imbibed by District Attorneys who primarily view a child victim as a witness for the government that needs to be protected. There was a lack of focus on ensuring that child victim's rights are protected throughout the criminal justice process – from the investigation, prosecution, judgment, to securing compensation.

Interviews with District Attorneys and Legal Aid providers revealed that ensuring child participation and empowering the child to enable her to navigate the criminal justice system is often *ad hoc* and dependent on the skills, as well as the knowledge of the District Attorneys. Adopting a Human Rights-Based approach requires that the right of the child is at the center of child trafficking response. Law enforcers and District Attorneys as duty bearers have the obligation to prevent and protect children from the evil of child trafficking. District Attorneys and legal aid lawyers must ensure meaningful participation of the child in the criminal proceeding, ensure her views and concerns be heard during the trial, and not just a mere witness to an event of child trafficking. A Human Rights-Based Approach also requires commitment from the government of Nepal, to invest in building the capacity of law enforcement to investigate child trafficking and embolden them to dismantle trafficking syndicates. It requires building the capacity of District Attorneys to improve their knowledge and skills in prosecuting child trafficking and in incorporating child protection, participation, and empowerment in their practice. The duty to fulfil mandates the State to put in place the necessary support services and infrastructure for trafficked children, as well as equipment that will facilitate a child-friendly justice system.

6. CONCLUSION

More than half a century and a decade since Nepal criminalizes child trafficking it remains a thriving and lucrative criminal activity in the country. The Nepali government's approach, which is focused on crime control and law enforcement, proves to be inadequate in responding to the crime. Hence, it is recommended that the country should reflect on its 60 years of work in fighting this organized crime which preys on adolescent girls. The Recommended Guidelines on Human Rights and Human Trafficking are instructive on how the State Party to the Palermo Protocol can ensure human rights is at the center in all efforts towards preventing and combating human trafficking.

The reality in the field is instructive to anti-child trafficking advocates and also calls for an examination on their advocacy strategy. The State Party's accession to Palermo Protocol and other human rights instruments is a manifestation of its commitment to seriously address and respond to the problem of trafficking. However, accession is not enough; the domestication of the State's international obligation, its criminal procedure, the efforts to address the root causes of child trafficking such as the systemic gender discrimination, and gender-based violence against women and girls are important in addressing child trafficking. There is also a need for public investment to build the capacity of the Police, District Attorneys, and Legal Aid providers to enhance their investigation and prosecution skills. District Attorneys and Legal Aid providers must also be provided with training on child and adolescent development to help them develop a child-friendly practice that is responsive to the needs of the children, which encourages child participation and empowerment. The government should also invest in facilities for the physical and psychological support of trafficked victims.

The recent accession of Nepal to the Palermo Convention can be a clarion call for the government to amend its current anti-trafficking legislation and to make it compliant with the Protocol and the Recommended Guidelines on Human Rights and Human Trafficking. It is about time that government shift its approach in combatting child trafficking from a purely crime-control and law enforcement strategy to putting children's human rights at its center, thus, ensuring the child's meaningful participation in the criminal justice system.

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ANNEX A-KEY INFORMANTS

The key informants are human rights defenders who risk reprisal from criminal syndicates and persons who profit from human trafficking. The key informants gave their consent on the disclosure of their names for the purpose of this study.

Name	Position/Organization	Date of Interview
1. Surya Koirala	Former Deputy Attorney General of Nepal	May 9, 2020
2. Narendra Pathak	Former Deputy Attorney General of Nepal	May 10, 2020
3. Rama Parajuli	Government Attorney, Attorney General's Office	May 12, 2020
4. Dipika Gajurel	Assistant District Attorney, Bhaktapur, Nepal	May 12, 2020
5. Govinda Thapaliya	Police Superintendent, Anti-Human Trafficking Bureau, Nepal Police	June 2, 2020
6. Benu Maya Gurung	Executive Director, Alliance Against Trafficking of Women and Children in Nepal	June 8, 2020
7. Santosh Maharjan	Program Coordinator, Center for Legal Research and Resource Development	June 11, 2020
8. Anonymous	Senior Advocate, Kathmandu School of Law	June 18, 2020
9. Milan Dharel	Executive Director, Swatantrata Abhiyan Nepal	July 11, 2020

INFORMAL EDUCATION AS A SUBSTITUTE: A UTOPIAN THOUGHT OR A REALITY FOR DISPLACED ROHINGYA CHILDREN

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ABSTRACT

Bangladesh, sharing a maritime border with Myanmar, has a long history of hosting Rohingyas within its borders. The recent wave of refugees due to the ethnic insurgency in Myanmar has brought in a mass number of Rohingya displaced people within its territory. Prior to the 2017 mass influx, there were already Rohingyas settled along the Bangladeshi border. At present, the number of refugees stands at approximately 900,000, of which 55% are considered as minors. Currently, the government of Bangladesh strictly prohibits any form of formal learning, which incorporates the usage of the local curriculum and the local Bangla language in a camp setting. Therefore, the only form of education that Rohingya children have access to are the informal education systems that exist inside the camps. Although informal education is a substantial improvement over the lack of structured learning, it falls short in a number of obligations to ensure access to quality education for Rohingya refugee children. Therefore, this research aims to study existing informal education models at the primary education level that are operating in camp. They currently provide education for Rohingya refugee children in the absence of formal, accredited and structured learning. The importance of conducting this study lies in its aim to propose a better informal education model at the primary level. This is while overcoming present barriers that existing education models encounter. Improving and widening existing models can ensure more Rohingya children would have better access to quality education. Hence, the question arises whether informal education models can effectively substitute formal learning systems. Furthermore, this paper aims to study and determine whether it is a reality or merely a utopian thought.

Keyword: Rohingya Education Bangladesh, Education in Emergency Cox's Bazaar, Informal Education Primary Level.

AUTHOR'S BIO

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1. INTRODUCTION

“If we don’t put books in their hands, someone else will put swords in their hands.”

Tom Fletcher, Director of Global Business Coalition for Education (Watt, 2015)

The plight of Rohingya people is not a contemporary phenomenon. In the context of Bangladesh, which shares its maritime border with Myanmar, has been hosting Rohingya refugees since the early 1970s. However, the more recent influx that took place between August to December 2017 had triggered by far the largest mass migration within the Bangladesh borders that brought in an estimated 700,000 Rohingya population - of which more than 400,000 are children. Among the various necessities that the situation has called for, education might seem presumably a peripheral concern, as it is often considered as an optional commodity after food, water, shelter, and healthcare. Refugee children are likely at a risk to be out of school five times more than those children who do not carry a refugee status, as they experience the double jeopardy of losing both home and education. Access to education for the refugee population helps in mitigating the impact of conflict in many ways. This includes bringing in a sense of normalcy, stability, as well as a source of hope and opportunity in the long run, while its absence brings about negative impacts on a child’s safety and well-being.

While not a party to the 1951 Refugee Convention, Bangladesh has sustained its obligation to the customary international law obligation in line with which it refrains from systematic deportation. However, the absence of a necessary legislative framework makes the Rohingya population currently residing in Bangladesh to be categorized as “Forcibly Displaced Myanmar Nationals” - a status that falls short in a number of rights had they been designated as “refugees”. Access to public services and livelihoods, freedom of movement and the right to access formal learning are among the restrictions that deprive the Rohingya population currently residing in Cox’s Bazar, Bangladesh. Therefore, the only form of education Rohingya children residing in the camps have access to are informal education systems.

Although the presence of informal education models within camps is a substantial progress over the lack of formal learning, a relevant issue is what factors ensure the quality of teaching and learning processes and the effectiveness of the purpose of education. At present, several programs have on-going initiatives under the name of Education in Emergencies to provide temporary solutions for Rohingya children living in Cox’s bazaar. Following the influx of refugees in 2017, aid groups have responded to emergency education needs by setting up learning centers and child-friendly spaces in camps. Simultaneously, religious schools (known as *madradas*) and private schools (conducted by senior Rohingya community members/former teachers) have emerged catering to the needs of Rohingya children’s education. According to UNICEF (2020), as of June 2019, the overall non-formal education sectors have been catering to approximately 280,000 Rohingya children. This is approximately 71% of all children residing in camps at Cox’s Bazaar. This number, however, leaves out approximately 55,000 children aged 3 – 14, who are not enrolled in any form of learning opportunities, and who should be attending primary level education (Post et al, 2019.) Despite an improvement in the school attendance figures of children between years 2018 and 2019 (Inter Sector

Coordination Group, 2018; Strategic Executive Group, 2019), ensuring quality education remains as challenge for Rohingya children residing in the camps at Cox's Bazaar.

In light of policies by the Bangladesh government that restrict the participation of the Rohingya children in formal learning systems, informal education models remain as the only viable learning option. Thus, this paper will examine existing informal education models in Cox's Bazaar. This is to better understand common barriers towards full delivery of quality education. By determining the benefits of education not just for communities but also for broader societies, the underlying this paper strongly argues Rohingya children are entitled to their right to quality education even in times of emergency. Hence, echoing the statement by Tom Fletcher, Director of Global Business Coalition for Education, , access to education for displaced Rohingya children in Bangladesh is indeed crucial, given the protracted nature of their situation. Thus, the paper will commence with an overview of the politics that give way for informal education models made available for Rohingya children. The paper will move on to examine different informal primary education models within the. Lastly, it will attempt to identify and analyze barriers to understand whether informal education at the primary level can truly substitute formal structured learning in the case of Rohingya children in Cox's Bazaar.

2. EDUCATION FOR ROHINGYA CHILDREN

Informal Education as A Way Forward

The current politics and state of affairs behind one's right to quality education will help inform why invigorating informal education is the best way forward in the case of the Rohingya children residing within camps in Cox's Bazaar. Bangladesh has yet to accede to the 1951 Convention to the Status of Refugees and its 1967 Protocol. The regional bodies that concern the two states, Bangladesh and Myanmar, include the Association of Southeast Asian Nations (ASEAN) and the South Asian Association for Cooperation (SAARC). Both of which play limited roles in establishing a regional protection framework for refugees (Venugopal, 2018). There is no law regulating the administration of refugee affairs in Bangladesh or securing the rights of refugees at the national level (Venugopal, 2018.) The absence of international or domestic legal instruments in both regions for the protection of the rights of refugees makes it much harder push for a solid case for Rohingyas. At present, the host country, Bangladesh, has adopted a policy that takes into consideration pull factors which have attracted Rohingya to flee from Myanmar. It has contributed to why Rohingya refugees protract their settlement in Bangladesh (Solomon, 2019; Yesmin, 2016.) The government, therefore, has been focused on providing transitory relief as it firmly recognizes voluntary repatriation as the preferred durable solution. Furthermore, the repatriation deal signed in November 2017 between the governments of Bangladesh and Myanmar, has achieved little progress so far (Aljazeera, 2019.) Multilateral organizations such as the UN, IOM, and international aid groups have been responsible for most of the protection related support (Xchange, 2018.)

The Government of Bangladesh (GoB) refers to the Rohingya population as “forcibly displaced Myanmar nationals”, as opposed to “refugees”, which is the term promoted by the international human rights framework (Strategic Executive Group, 2019). Therefore, the absence of a recognized legal status automatically restricts their access to a number of rights within the host country. Although Bangladesh abides by the principle of customary non-refoulement law, it has imposed a number of restrictions which ultimately curtails Rohingya children from accessing formal learning systems. These restrictions include the inability to learn using the local curriculum and the local Bangla language, which disables them from participating in national examinations regardless of academic and social abilities. Moreover, there have challenges towards the usage of the Myanmar curriculum since the Government of Myanmar imposed restrictions for it to be accessed Rohingya children Bangladesh camps (Inter Sector Coordination Group, 2018.) Prior to the 2017 mass exodus into Bangladesh, there were already 34,000 Rohingyas living in Bangladesh and were already registered refugees in the GoB. Around 8000 Rohingya children already had access to non-formal learning within the camp since 1997. However, this was only limited to primary and kindergarten levels, which was later extended to secondary education in 2007 (Fenny, 2011 cited in Prodip, 2017.) Regardless of their legal status, these children could not enroll for national exams nor receive any form of education accreditation. Subsequently, as of January 2019, the GoB has taken restrictive measures to bar Rohingya children from attending any Bangladeshi educational institutions that incorporate the local language and curriculum (European Council on Refugees and Exiles, 2019).

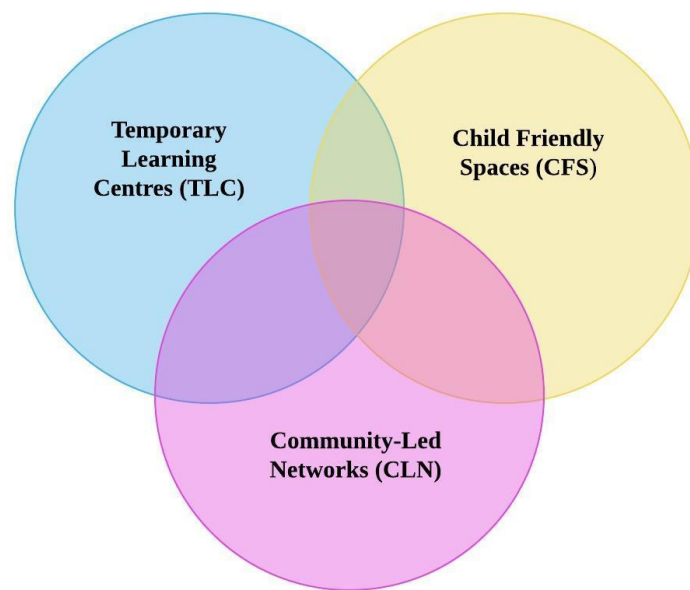
By January 2019, the total number of Rohingyas seeking refuge within the camps of Cox’s Bazaar stood at 900,000, of which 55% are children of mostly primary school age (Strategic Executive Group, 2019.) In this regard, education naturally becomes an critical matter, since the absence of it contributes to several risk factors and a breach of a child’s human rights and freedoms. It has to be stressed that the UNCRC obliges the State to provide access to compulsory free primary level education. However, in reality, such goals are very often difficult to attain in emergency areas. Moreover, education conducted in a protracted situation has harmful implications if ignored (Sinclair, 2001.)

In the case of the Rohingya crisis in Bangladesh, the concept of Education in Emergencies (EiE) applies. This refers to education for children who remain out of the national education system. Programmes offering informal learning in a camp setting have been provided to approximately 341,500 Rohingya children and youth as of June 2019 (Strategic Executive Group, 2019.) It is equally important to point out that 39% of children between the ages of 3 and 14 years have no access to these programmes. Thus, amid many challenges that obstruct Rohingya children’s access to quality education, the provision of informal education may be viewed as a substantial improvement over the lack of formal learning.

Existing Informal Education Models

Informal education centers run by non-government organizations (NGOs) have sprawled across 27 camps in Cox’s Bazaar (Burmese Rohingya Organization UK, 2018.) Therefore, this section will speculate the different types of existing informal education models with a shared goal of providing education to the Rohingya children in the absence of formal schools. The examination of each model increases the understanding on how they operate as a

substitute for formal education. When referring to these education models, the word “school” is not incorporated since these informal or community provisions provide alternative learning in the absence of classroom-based, formal learning systems (Uemura, 1999 cited in Baxter & Bethke, 2012.) This paper shall look at grades 1 to 8, based on Bangladesh’s timeframe for compulsory schooling. However, informal education, in reality, does not target children based on their specific age group but rather on their capability. A thorough literature review reveals that under informal education models at the Rohingya camp in Cox’s Bazaar, there are three broad categories of establishments operating at present: Temporary Learning Centers (TLC), Child-Friendly Spaces (CFS) and Community-led Education Networks (CLN) (Innovations for Poverty Action, 2018.)



Temporary Learning Centres (TLC’s) are the most attended medium out of the three models. There are more than 2000 in the camps currently operated by international aid organizations. Primary education is provided to approximately 145,000 children through a network of 1600 TLCs operated by UNICEF alone (Aljazeera, 2020.) There are other TLCs under the supervision of groups other than the UN. Their curricula and approaches have been observed to vary. Previously, some TLC’s adopted a curriculum which has been derived from a local NGO known as BRAC. It featured a government-approved education model specifically aimed at out-of-school children. The curriculum included basic literacy, numeracy, life-saving information, psychosocial support and life skills for children aged 4 to 14 years (Children on the Edge, 2017.) More recently, UNICEF has been conducted informal education based on a tailor-made curriculum called Guidelines to Informal Education Programming (GIEP). This programme includes English, Mathematics, Burmese language, life skills at the primary level (UNICEF, 2020.)

Child-Friendly Spaces (CFS) were built by NGOs and humanitarian organizations as an intervention aiming to build low-profile education systems within a safe place. CFS incorporates a learning model that consists of a play-

based curriculum that targets children between the ages of 0 and 14 (BRAC Remote Play Labs Hundred.org, 2019.) While most CFS classrooms include books, blackboards, and notebooks, their goal is to provide a safe environment for the children by diverting them from trauma they have been through. As of 2019, UNICEF and its partner organizations have been supporting approximately 126 CFSs inside the camps and each CFS looks after between 70 to 100 children of ages 6 to 12 (Raan, 2018.) Very often, a CFS runs alongside a TLCs to ensure children are not distracted from learning.

Community-led Education Networks (CLN) operate inside camps informally under three broad subcategories, General Education networks, Private Centers, and Madrasa Education Centers (Olney et al, 2019). Most CLNs operate unofficially intending to mitigate gaps in attaining quality education. While most refugee-run CLNs follow the Myanmar curriculum, Madrasah Education Centers provide Islamic-based Arabic education. Approximately 10,000 children are known to already have attended CLNs. Of which, about 450 attend religious-run models (Olney et al, 2019.) Due to their Islamic faith, madrasas are often preferred by parents.

Barriers to Quality Education

The overall informal education sector based in camps has already accommodated 200,00 Rohingya children (UNICEF, 2020.) While it is of great significance, it is imperative to assess whether or not a child enjoys quality education. Furthermore, the right to education normally had to give way to other equally essential rights such as food, shelter and health. This section is tasked to evaluate the quality of education provided by informal models. It shall also look at barriers to accessing it.

To understand what defines “quality” in education, the paper takes into account the framework developed by Education For All (EFA) Global Monitoring Report 2005s. It identifies a learner's cognitive development as the most significant objective of learning. Therefore, the role that education plays is to implant the values and attitudes, promote and civic responsibilities, and facilitate one’s creative and emotional development (Madani, 2019). To ensure quality education, elements such as learner’s external experiences (sound health, family nutrition), learning environment (safe and healthy), processes (trained teachers), content (appropriate curriculum), and the outcomes (positive participation in the society) must be ensured (Refer to Appendix 1.) However, barriers still exist in most of these five spheres.

Bangladesh’s National 7th Five Year Plan is based on the UN Sustainable Development Goals (SDGs.) It emphasizes the provision of equitable quality education, where its key principle “No one is left behind” indicates all children deserve to enjoy quality education (Government of the People’s Republic of Bangladesh, 2018.)

In the case of informal education models in a camp setting for the Rohingya children, barriers mainly come in the form of a disparate curriculum that is not aligned with other TLCs (Magee et al, 2020). Most CLNs are operating unofficially. Their teachers also lack adequate qualifications. (Patinkin, 2018). The problem with CFS is it gives more emphasis on providing psycho-social support (PSS) rather than focusing on education. Other challenges faced by informal education models include lack of accredited learning facilities, inadequate number of learning

establishments, uncertain funding, lack of qualified teachers, and inequality between boys and girls. Perhaps, the most severe of these barriers are the restrictive conditions a Rohingya child is forced to live with. It is therefore crucial to focus efforts to achieve the best interest of the child, despite one's living conditions.

3. FINDINGS AND ANALYSIS

To understand further delve into this issues, extensive literature review and Key Informant interviews (KII) have been conducted. It is, however, imperative to mention that due to the COVID-19 crisis majority of the study was based on documentary research. As of this writing, the study is still be finalised.

The concern as to whether informal education models in Cox's Bazaar can substitute formal schools is seen as a temporary measure, as both Rohingyas and the Government of Bangladesh firmly believe in near-term repatriation. This justifies why a Myanmar curriculum is being applied in these models.

Greater clarity is required in terms of its accreditation and international acceptability of this standardized curriculum. Education received from informal models by the Rohingya children should be accredited and/or recognized by both home and host countries. This is important for someone who will either be resettle or repatriate. Furthermore, GIEP being limited to the primary level only (or class 8) limits its potential to substitute for formal learning. It also defies the education outcomes as stated on the UNICEF Quality Education Chart (Refer to Appendix 1). It has been deduced that CLNs mostly coexist within the camps in lieu of formal learning. These models have formulated bearing in mind the Myanmar curriculum, however it is not standardized enough for a child to qualify for national examinations.

Due to the religious nature of some CLN, it is only natural that Rohingya parents prefer to send their children to these schools rather than TLCs. It has been identified that these three models have been operating in Silo, and through different pedagogies. It would have been better if these models are more synchronized to achieve better chances for children to enjoy holistic, quality education.

Limited space and inadequate funds and resources are also barred to ensuring a Rohingya child's access to education. Classrooms are often at full capacity. Schools are often faced with financial constraints—disabling them from acquiring or improving educational facilities. Gender also plays a huge role in determinizing a child's educational destiny. Girls are refrained from attending classes once they reach puberty. This is why young women are much less literate than their male counterparts.

Bodies such as ASEAN and SAARC might also need to review their mandate and accommodate such issues. Bangladesh is currently catering to the education needs of the Rohingya community entirely on humanitarian basis, even though it is a participatory state under SDG.

Humanitarian aspect-based work is different to the development aspect based, where many things can be overlooked in the latter. Therefore, even while providing the bare minimum education support to the Rohingya community, the quality of its deliverance becomes a question of concern. Psychosocial support and life-skills are among the two important aspects that must concern the education stakeholders especially when it comes to dealing with children from a vulnerable community. Hence, CFS have greater roles to play in the camps and experts might need to think about integrating them into the other informal models within the camps.

4. CONCLUSION

While challenges related to Rohingya education in Bangladesh prove to be unique, consequences of the lack of access to quality education are likely to follow a common pattern. Based on discussions and analyses, the situation of refugee education requires greater improvement, not just in enrolment rates, but also in the provision of quality facilities, instructions and learning environments. With the increased restrictions from the Government of Bangladesh imposed over Rohingya education policy, the durable solution of preserving the best interest of the Rohingya children is perhaps widening the alternative learning provisions available in the camps, which are essentially the informal education models identified in this paper. The pertinent question, whether informal education at the Rohingya camps in Cox's Bazaar can parallel formal learning or the idea is just an utopian thought is indeed based largely on increased collaboration among all the stakeholders which has been identified as instrumental in achieving the desired quality in the deliverance of education.

Going back to Tom Fletcher's quote stated at the beginning of the paper, widening of the alternative learning models indeed could be a strategy to address the detrimental outcomes likely to arise in a vulnerable community in a protracted situation, especially in the case of the children from the Rohingya community displaced in a state where the first and foremost barrier is their refugee status is unrecognized.

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APPENDICES

Appendix 1

Quality Education Includes:							
1. Learners	Good health and nutrition	Regular attendance	Family support				
2. Learning Environment	Physical elements 1. Quality of school facilities 2. Interaction between school infrastructure & other quality dimensions 3. Class size	Psychosocial elements 1. Peaceful, safe environments for girls 2. Teachers' behavior 3. School discipline policies 4. Inclusive environment 5. Non-violence	Service delivery 1. Health services				
3. Quality Content	Student centered, non-discriminatory, standard-based curriculum	Local & National content	Literacy (ability to read & write)	Numeracy (quantitative literacy)	Life Skills (health, hygiene, Etiquette, vocational skills)	Peace Education	
4. Quality Processes	Teachers 1. Professional learning for teachers 2. Teacher competence & school efficiency 3. going professional development 4. Continuing support for student-centered learning 5. Active standards-based participation methods 6. Teachers feedback mechanisms 7. Teachers believe that all students can learn 8. Teacher s' working condition	Supervision & support 1. Administrative support and leadership 2. Student access to languages used at school 3. Using technologies to decrease disparities 4. Diversities of processes & facilities					
5. Quality Outcomes	Achievement in literacy & numeracy	Using formative assessment to improve achievement outcomes	Outcomes sought by parents	Outcomes related to community participation, learner confidence and life log learning	Experiential approaches to achieving desired outcomes	Health outcomes	Life skills outcomes

Source: UNICEF, 2000, *Defining Quality in Education*, New York

AGEING IN CHIANG MAI: ELDERLY CARE AND THE SHIFTING DEMOGRAPHICS OF URBANIZING THAILAND

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ABSTRACT

The sociology of ageing is an emerging field of sociological studies. Gerontology, the study of the social, cultural, psychological, cognitive, and biological aspects of ageing, has only been an academic discipline since 1975. Today, this field has grown in importance due to the ageing of societies across the world, especially with the ageing baby-boomer generation. Like many other developed countries across the globe, Thailand will become a full-fledged ageing society within the next two decades.

This ageing phenomenon presents many challenges for families, communities, and for Thailand as a whole, as older adults require more support for their well-being, assistance in their daily lives, and plans for care in the last stages of life. This growing problem that Thailand will increasingly face, coupled with the shrinking size of families—in the 1970s the average family size was 5.2 persons, whereas in 2017 the average family size was recorded as 2.7—will place many strains on Thai families, who generally regard the family as the main network of support in caring for their elders.

While children continue to look after their ageing parents, the decreased family size means there are less caregivers than there were in the past when large families were the norm and traditional roles of caregiving played a critical and necessary role in caring for one's parents. With Thailand's decreasing birthrate and rising number of older adults, the question of caregiving presents itself as one of the most fundamental problems regarding Thailand's ageing population. As there are fewer children to serve as caregivers, resulting in changed family dynamics, new ways of caring for older Thais must be adopted. This could be through an increase in care facilities, older adults exercising their own agency in caring for themselves, or an increased reliance on communities and other resources. Based on a literature review of the disparate topics relevant to shifting demographics and ageing in Thailand, as well as semi-structured interviews conducted while working at the Foundation for Older Persons Development (FOPDEV) in Chiang Mai, Thailand, this paper identifies the elements and trends that have shaped the experience of ageing in the peri-urban area of Chiang Mai, where traditional ways of life and modern trends exist side-by-side. Some of the various elements that have helped shaped the experience of ageing include urbanization, family structure, health care, and social welfare. This paper, which is based on exploratory field research, focuses on ageing in Thailand, specifically in the city of Chiang Mai, where new ways of living are taking hold while traditional family patterns remain intact.

Keyword: Ageing, Caregiving, Biopolitics, Modified Extended Family/ Kinship Redefined.

AUTHOR'S BIO

Sarah DeLoach (sarah.evel1@yahoo.com), social worker, from the United States. Sarah has a Master of Science in Social Work from the University of Louisville where she graduated in 2017. She has completed two one-year long internships, one in Hawaii and one in Massachusetts. In both of these positions she's worked with homeless seniors and families in need. Sarah is currently a graduate student at Chiang Mai University with the Regional Center for Social Science and Sustainable Development program. Her research focus concerns ageing, elderly care, caregiving, and families in Thailand. She is currently researching and working on her thesis titled, "Ageing in Chiang Mai: Elderly Care and the Shifting Demographics of Urbanizing Thailand."

1. BACKGROUND

The sociology of ageing is an emerging field of sociological studies. Gerontology, the study of the social, cultural, psychological, cognitive, and biological aspects of ageing, has only been an academic discipline since 1975. Today, this field has grown in importance due to the ageing of societies across the world, especially as the baby-boomer generation begins to age. Like many other developed countries across the globe, Thailand will become a full-fledged ageing society within the next two decades. Kumagai (2019) describes the extent of this phenomenon:

By 2030, Thailand's average life expectancies are expected to reach 75 years for men and 82 for women, because of factors that include the increasing availability of advanced medical technologies and growing awareness of health issues. As a result, the percentage of Thailand's population over the age of 65 is expected to expand from around 10% at present to over 20% in the 2030s. This represents the fastest rate of ageing of any major emerging Asian economy (p.5).

Many countries, including Thailand, are experiencing fundamental changes in the demographic composition of their populations. Such shifts in population are requiring social institutions to respond in an unprecedented way, with few countries serving as role models of how the process of ageing should be handled.

This ageing phenomenon presents many challenges for families, communities, and for Thailand as a whole, as older adults require more support for their well-being, assistance in their daily lives, and plans for care in the last stages of life. This growing problem that Thailand is facing, coupled with the shrinking size of families—in the 1970s the average family size was 5.2 persons, whereas in 2017 the average family size was recorded as 2.7—will place many strains on Thai families who generally regard the family as the main network of support in caring for their elders. While children continue to look after their ageing parents, the decreased family size means there are less caregivers than there were in the past when large families were the norm and traditional roles of caregiving played a critical and necessary role in caring for one's parents.

With Thailand's decreasing birthrate and rising number of older adults, the question of caregiving presents itself as one of the most fundamental problems regarding Thailand's ageing population. Kwanchit and Youngyut (2019) outline the challenges Thailand will face, "The foremost challenge facing Thailand is that of providing adequate eldercare. A middle-income country like Thailand must decide whether the elder will live longer with good health or with more illness, disability, and dependency" (p.1). With fewer children available to play the role of caregivers and changed family dynamics, new ways for caring for older Thais must be adopted. This could be through an increase in care facilities, older adults exercising their own agency in caring for themselves, or an increased reliance on communities and other resources.

Bengston et al. (2003) discusses the impact of global ageing and the challenges it posits to families:

Shifts in population age structures generally result in new service demands and economic requirements. With an increasingly older age structure comes change in the relative numbers of people who can provide support to those who need it. In the early 1980s, Myers and Nathanson (1982) identified three prominent issues regarding population aging and the family: (1) The extent to which changes in social norms and responsibilities, driven by the secular processes of urbanization and modernization, alter traditional familial modes of caring for people. (2) The possible social support burden resulting from reduced economic self-sufficiency of aged people and the likelihood of heightened chronic disease morbidity and functional impairment related to longer life expectancy. (3) The ways in which countries develop funding priorities for public care systems given competing demands for scarce resources (p. 9).

Although Thailand is now considered an ageing society, it is unique in that traditional ways of life still exists in rural parts of the country and in urban cities like that of Chiang Mai. However, while the traditional ways of life may remain intact in some places, older adults in cities like Chiang Mai may have more similar lifestyles to those in other developed ageing societies across the world, including living longer, having less children, and increasingly living alone. The impact of this shift in the family structure, alongside factors such as migration and urbanization that have shaped the lifestyle and available care for older adults in the urban city of Chiang Mai, is evident in various parts of the city across wide range of older adults and families with varying socioeconomic backgrounds.

2. THAI FAMILY STRUCTURE AND FILIAL OBLIGATIONS

In order to fully grasp the implications of this demographic change, it is necessary to understand the Thai context, particularly, how families are the cornerstone of Thai society and are given great value and importance. In the past, the Thai familial structure consisted of large and extended families living together. This norm of multigenerational cohabitation has been the foundation of support and care for Thai families. Meals are usually eaten together, child rearing is something the entire family participates in, and it is not uncommon for aunts, uncles, and cousins to live under one roof. Brooks (2020) explains the importance of large families:

“Extended families have two great strengths. The first is resilience. An extended family is one or more families in a supporting web. Your spouse and children come first, but there are also cousins, in-laws, grandparents—a complex web of relationships among, say, seven, 10, or 20 people. If a mother dies, siblings, uncles, aunts, and grandparents are there to step in. If a relationship between a father and a child ruptures, others can fill the breach. Extended families have more people to share the unexpected burdens—when a kid gets sick in the middle of the day or when an adult unexpectedly loses a job (para. 10).”

The second strength which Brooks (2020) applies to extended families is the socialization factor, including how adults teach children how to behave and act morally, something that can easily be lost amongst a smaller family.

Within the traditional Thai setting, the elderly play an important role in their family. For example, elderly Thais contribute to their families economically, especially as the benefactors of land and homes. They also play an important part in household activities, such as caring for grandchildren, cooking, and cleaning. In addition, they are often called upon for their knowledge of Thai culture, traditions, and the practices surrounding the Buddhist religion.

This system of relationships can be seen as one of reciprocity in that the older generation and younger generation play different roles in which they both benefit. For example, traditionally, the parents' house would be given to the youngest daughter and her husband with the expectation that the daughter would, in return, care for her ageing parents until their death. And as land is typically distributed amongst all children, this was another way by which children were motivated to live and stay near their ageing parents. However, the extended family network is changing as cohabitation of multigenerational families is declining and nuclear families, those consisting of a married couple and their children, are rising. The effects of this change in family structure are intensified with the migration of both younger and older adults to urban areas.

3. DEMOGRAPHIC SHIFT

Beginning in the 1970s, and continuing today, Thailand has been undergoing a dramatic change in the demographic makeup of its population. Therefore, while the structure of the family is changing from traditional and large to modern and small, Thailand is also in the midst of transitioning from a society with many children and few elderly to many elderly and few children. The most important factors contributing to this change are the decline in fertility rates and an increased life expectancy. According to the State of Thailand's Population Report (2015), there are seven factors leading to this shift in demographic and, in particular, a change in the structure of the Thai family: low fertility rates, longevity, changing composition of the Thai population, rural to urban migration, limited savings and social welfare, more women having higher education and entering the workforce, and changing lifestyles within the Thai family (UNFPA, 2016, pp. 14-15). All of these factors affect Thai families and will continue to influence how the Thai family looks after and cares for their older members.

Although all factors contribute to how Thai families are formed, the dramatic decrease in the birth rate and the increased life expectancy pose many challenges for Thai society across multiple levels: the individual, family, and society. The State of Thailand's Population Report highlights the continuing decline in birth rates, stating, "In 1964, women of reproductive age had an average of six children. The current average number of births per woman has dropped to less than two and the trend is projected to continue" (UNFPA, 2016, p. 14). This change in the number of children being born, combined with a higher life expectancy, leads to a larger population of Thai elderly and a shrinking working class. In addition, the Thai tradition of elders living with their adult children has been disrupted, leaving many elderly adults living alone or with a spouse.

4. URBANIZATION IN CHIANG MAI

As the makeup of the population is shifting, Thailand is simultaneously experiencing a rural to urban exodus with an increasing number of young adults moving to urban areas. An example of such movement is in the city of Chiang Mai, located in Northern Thailand. The movement of people from rural to more urban areas began in the 1960s when the Thai government introduced national economic and social development plans. This migration has resulted in a dramatic effect on Thailand's economy, which prior to the 1960s was predominately an agrarian society. The State of Thailand's Population Report states, "The number of young people aged 15-24 employed in agriculture has dropped from 35.3% in 1987 to 12.1% in 2011" (p. 15). The report further states that the population in urban areas increased from 26.4% in 1980 to 44.2% in 2010 (UNFPA, 2016, p. 15).

Urbanization in Thailand is not just centered on Bangkok, but is present in all provinces across the country. As young people are increasingly more attracted to living in cities compared to more rural areas with traditional ways of life, the structure of the Thai family, and society as a whole, is changing. This movement of people, combined with lower fertility rates and an increasingly larger elderly population, requires many families to live differently than how their parents did, and ultimately encourages older individuals to adapt by taking on new roles.

Chiang Mai in particular has experienced an influx of individuals and families over the past several decades, moving from rural areas in the North to more urban and peri-urban areas around the developing city of Chiang Mai. The city of Chiang Mai provides a unique perspective regarding the context of ageing in Thailand as it is an ancient city that stretches 700 years back to the Lanna Kingdom of the 13th century, yet in many ways it is new and growing.

Many types of individuals, families, and communities exist within Chiang Mai, which provides a unique lens to study how ageing, and the lives of the elderly, have changed over the years. For example, within the city there are old and well-established communities and villages that have existed for generations. In these communities, more traditional forms of elderly care and roles remain in place, which may not look very different from hundreds of years ago. At the same time, and within close proximity to these communities, new developments are also being built at a rapid pace. These developments are constructed with certain populations in mind; some are built for young families, retirees, expat retirees, and nursing homes, where individuals will live into old age and be taken care of by a professional staff. By comparing these old and new communities and institutions, it is possible to see the transition from an older more traditional way of life to a more modern one that often consists of smaller family sizes and a focus on the individual. Various patterns of caring for older adults are also found within these changing contexts.

5. BIOPOLITICS

Biopolitics is a concept that was originally coined by Rudolf Kjellen and further developed and applied in social theory by French philosopher and scholar, Michel Foucault. In simple terms, this concept can be understood as an intersection of the fields of biology and politics, or in other words, biological life's relation to power. Biopolitics

is of particular interest to ageing societies, as Nielson (2012) discusses, “The absence of a deep consideration of experience in biopolitical thought becomes apparent when life is conceived in relation to ageing. Certainly, the ageing of people and populations has been a key concern in biopolitical debates, especially as they bear upon questions of fertility and morality relevant for the general administration of human populations” (p. 45). It is this idea of how biology is linked to the larger picture of society and the general administration of human populations that makes the concept of biopolitics relevant to this paper.

Although biopolitics is applicable to how nations govern their populations, in the context of ageing populations, there has been much debate about the true meaning and intention of this concept. Foucault was often ambiguous in his own interpretation of it, which has led many to speculate about what exactly Foucault’s biopolitics was concerned with. One suggestion by Rachel Adams (2017) is to look at Foucault’s concepts of biopolitics and biopower side by side in order to see how they work together and complement one another, and thus see how they can be applied. Adams (2017) states, “biopolitics can be understood as a political rationality which takes the administration of life and populations as its subject: ‘to ensure, sustain, and multiply life, to put this life in order.’ Biopower thus names the way in which biopolitics is put to work in society.”

Although examples may be formed from these definitions, many scholars continue to debate over the incompleteness of Foucault’s concepts and how they lack a coherent theory. I argue, however, that the incompleteness of this concept allows the concept to be applied in a multitude of ways. I put it to use in the context of ageing in Chiang Mai as a way to show the relationship between the Thai government’s response to the older adult population and the role of the Thai family and community in elderly care, examining how policy decisions at the macro level affect the way everyday life is lived.

Biopolitics and Thailand in the 1960s

A general example of how biopolitics may be applied regarding older adults in the city of Chiang Mai would be to look at the Thai government’s role in providing services for this population. Yoko (2019) explains this intersection of decentralization and the administration of health care to the older adult population in Northern Thailand:

In the beginning of the twenty-first century, Thailand launched its second- and more substantial-aging policy. Administrative decentralization began to take shape in the 1990s, and during the same decade Thailand launched a statewide program targeting the health promotion of its citizens. The cumulative effect of all of these measures is the conjoining of biopolitics with decentralized administration toward nationwide health promotion as well as the implementation of elderly care policy (p.387).

After introducing this shift in ageing policy, Yoko explains that the current policy for elderly care in Thailand consists of three things, “first and foremost, that the elderly must help themselves; second, the family and community must provide support; and third, whenever these two measures fail, the state will provide support” (p. 388). Although

the Thai state is suggesting that the elderly and their communities must provide care before the state takes responsibility, this policy is nonetheless an example of biopolitics at play.

In short, the concept of biopolitics can be applied to demonstrate how decisions made at the macro-level directly effect and influence the lives of older adults who are the direct recipients of such services and national policies. In other words, once Thailand implemented the voluntary family planning program in the 1960s, the reduction in population growth accelerated. It was at this time when Thailand began to change from a predominately rural society, where women had more than six children on average, to families of a much smaller scale that increasingly lived in more urban areas. It was the prevalence of contraceptive use during this time that would later create an increased number of nuclear families, and it is this change in the Thai family structure that raises questions about how older members of families are cared for. The concept shows the relationship between the individual and the state, and how influential such decisions can be on groups of people and their livelihoods.

6. MODIFIED EXTENDED FAMILY/ KINSHIP REDEFINED

The concept “modified extended family” refers to a family that lives apart, either in separate households or across a large geographical distance, but continues to be a strong family and function as a family unit. This concept, originally introduced in 1960 by Litwak, was based on three considerations: (a) that kin structures are a necessity in a modern industrial society; (b) that in order for it to live alongside the powerful formal organizational structures, the kin structure had to alter its form to permit differential mobility of kin members; and (c) that it was possible to do this because modern technology permitted the transmission of many crucial services over geographic and social distance (Litwak & Kulis, 1987). This concept is applied in this paper to contrast the traditional view of the family in which close proximity, cohabitation, and communal living are seen as integral aspects to the success of the family.

In an article by David Brooks (2020), “The Nuclear Family was a Mistake,” Brooks discusses the concept of kinship redefined in relation to the past before the nuclear family took hold across the developed world. He compares the past to the present in terms of what is usually thought of as kinship:

In the beginning was the band. For tens of thousands of years, people commonly lived in small bands of, say, 25 people, which linked up with perhaps 20 other bands to form a tribe. People in the band went out foraging for food and brought it back to share. They hunted together, fought wars together, made clothing for one another, looked after one another’s kids. In every realm of life, they relied on their extended family and wider kin. Except they didn’t define kin the way we do today. We think of kin as those biologically related to us. But throughout most of human history, kinship was something you could create (Brooks, *The Atlantic*).

Brooks’ discussion of the extended family and how people lived in the past provides a lens for how smaller, nuclear families can be viewed today. Kinship redefined therefore not only implies how biological families may

function across a geographical distance, but also who is included in this support network and how communities, friends, and others may look out for one another's emotional and physical needs.

The changing structure of Thailand's population has altered the way many families live and take care of one another compared to the way their relatives lived a generation ago. Urbanization, low fertility rates, increased mortality, and a shift away from agrarian based society has resulted in smaller families and an increasing number of older adults living alone. Despite these transitions and changes, it does not imply that older Thai adults are suddenly isolated without friends or family nearby. Instead, this concept provides a lens through which to view the lives of older adults and their networks, both biological and nonbiological kin, and how they maintain familial support networks despite cohabitation and smaller family units.

While conducting exploratory research in Chiang Mai with the non-profit Foundation for Older Persons' Development (FOPDEV), which serves disadvantaged older people in the city of Chiang Mai, it was apparent that many types of Thai families exist today who care for their elderly members in different ways. Although the majority of clients' homes consisted of the elderly member living alone, the second most common type of household was the elderly member living with their daughter as a caretaker. Whether the older adult lived alone or was cared for by their child, most adults seemed to be active in their community and well acquainted with their neighbors. These household types, including living alone, relying on one's community, and living with a child, showed various forms of care taking place. Applying the concept of modified extended family, it becomes apparent that there is not just one source of care for elderly individuals, but rather multiple sources of care extending help in various ways.

Modified Extended Family/ Kinship Redefined in Thai Society:

John Knodel, a prolific writer on older adults in Thailand and Southeast Asia in general, has conducted many studies on older adults in Northern Thailand, specifically pertaining to the migration into urban areas and the changes in the structure of the Thai family since the 1960s. One such study, "Rural Parents with Urban Children: Social and Economic Implications of Migration for the Rural Elderly in Thailand", focuses on the relationship between the parents who stay behind and the children who migrate to urban areas, a consistent trend in Thailand throughout the last sixty years.

Knodel's main finding is that migration of children to urban areas positively affects older parents because of the remittances sent home to the older adults improves their financial well-being, lessening many of the burdens faced by the elderly in rural areas due to poverty. Knodel also concluded that the negative impacts of migration, such as a lack of social support and infrequent visits from their children, have been mitigated more so in recent times compared to 20 years ago due to the increase in technology and access to transportation. Although Knodel's argument that the migration of children positively affects older parents, such assumptions must be made carefully due to the fact that elders must still rely on their family members for many things, making close proximity critical and necessary as many tasks cannot be substituted by phone calls or made up for monetarily.

Knodel's research is in response to other scholars' takes on urbanization in developing Asian countries, each of which reach different conclusions and look at the impact on the elderly from varying perspectives. One such assumption is that older adults in the context of urbanization are often negatively impacted. A report by the United Nations (2002) states, "In many developing countries... the ageing population is marked in rural areas, owing to exodus of young adults. Older persons may be left behind without traditional family support and even without adequate financial resources" (para. 29). Knodel argues against this, framing it specifically within the Thai context and instead arguing that older adults benefit from youth migration in various ways.

Other scholars that Knodel cites point out that academic literature illustrates a different picture than what is usually assumed by the public and portrayed by the media. For example, Knodel (2007) discusses some of academia's positive findings:

In contrast, the academic literature on migration, especially as related to the developing world, contains both theoretical arguments and empirical studies that depict the consequences in a much more positive light. Migration is seen as part of a household strategy to diversify risks for families and benefit both migrant and non- migrant members, including presumably older age parents who typically remain behind in the place of origin (Stark and Bloom, 1985; Stark and Lucas, 1988; Cai, 2003; VanWey, 2004).

Considering that much of the literature that supports this view is from the migrant children themselves, Knodel (2007) takes a different approach by researching this topic from an alternative vantage point, portraying the perspective of the older adults. This is significant because little research has focused on older Thais who have migrated to urban areas, or has examined the impact this has had their relationships with their families.

Elderly in the Thai Family

Overall, the elderly plays an important role in their families and in their relationships with family members. For example, in Thai society the elderly is dealt a high level of respect both from their children and grandchildren, and from society as a whole. Within Thai culture, there is a sense of duty, respect, and obligation towards the elderly, and an expectation of service and politeness. In addition, advice given by one's elders, as well as their requests, are not taken lightly and are expected to be followed. Lastly, a norm in Thai society is that children will care for their parents as they age, regardless of the sacrifice this requires of the child. However, these attitudes and expectations are slowly starting to change in Thai society, especially in the midst of urbanization in cities like Chiang Mai.

In Chiang Mai, various types of Thai families are visible. There are large families consisting of three generations who are more likely to live by traditional values and ways of life. There are also families who have split up due to economic factors. In these families, the older parents may be living outside the city while the child works and lives in the city. Although many different variations of this type of family may exist, this type of family falls closely in line with the concept of "modified extended family" meaning that these families are separated physically but remain close and are still able to adapt and support one another. Lastly, another type of family that is becoming

increasingly more normal are older adults who live by themselves or with their spouse. These individuals often lack support from other family members in terms of social relationships, overall well-being, and financial security. While there are many more types of families, these three types are most common in Thai society and stretch across various socio-economic backgrounds.

Existing Support for Thai Elderly

Although Thailand has come a long way in terms of establishing a modern health care system and acknowledging that the ageing population is now an essential part of the national agenda, there is still room for improvement, especially because of how fast this group is growing. In Thailand, support for the elderly can be categorized into four levels: the Thai state, community, family, and non-profits. Tus Werayutwattana (2019) discusses how the elderly Thai have multiple levels of support from the ground, but not as much from the government, “The ageing in Thailand have the advantage of a cost of living that is not shockingly high. Most of the comfort and support for the aged still comes from the family institution, but it is a concern that society and the government don’t have much to offer.” The primary concern is that the response of the government is slow to address the issue of ageing and the needs of these individuals while the gap is continuously growing. The national response to concerns surrounding Thailand’s elderly population are adequate and include safe housing, an increased social security program, health care services geared towards geriatric medicine, and addressing the lack of caregivers for those who need it.

Identifying these levels of support and acknowledging the different roles they play in the lives of the elderly in Thailand is critical in understanding the ageing experience. As mentioned in the section, “Biopolitics and Thailand in the 1960s”, elderly care policy in Thailand first states that the elderly must help themselves, and then the family and community must step in to provide additional needed support, and lastly, if these measures fail, the state will provide assistance (Hayami, 2019, p. 388). Although care for the elderly may at first appear to be multifaceted, there are gaps that exists amongst these actors, such as between the family and state, and concerns whether the community is well-equipped to respond to the elderly needs.

One major concern is the lack of savings and income amongst the elderly. Tus Werayutwattana (2019) further describes this lack of income that most experience in the later stage of life, “A 2016 research report by the Government Savings Bank revealed that 74% of those over 60 in Thailand do not have enough savings to cover their retirement expenses.” However, the Thai government does provide a monthly allowance for older persons at 600 baht per month and an additional 600 baht per month if that person registers to work as a Village Health Volunteer, one of many state-initiated activities to promote community participation and elderly care.

Yoko Hayami (2019) explains the important roles communities have played for elderly care in Thailand, “Thai communities are themselves reinforced by the state as receptacles and transmitters for top-down governance, which has been especially effective after administrative decentralization. The governance processes related to health promotion and elderly care are arranged through various programs that formulate and reinforce communities and

health promotion programs” (p.392). Elderly clubs, a large part of the state initiative, can be found in most communities and promote active ageing through events, sports, cultural activities, and aid services.

Another source of support for the elderly comes from local NGOs. The two most well-known NGOs that support the elderly in Chiang Mai are FOPDEV and Help Age International. FOPDEV serves disadvantaged older adults in and around the city of Chiang Mai through various programs that address community development, education, civic engagement, and economic development. Help Age International, located close in proximity to FOPDEV, focuses more on influencing national policy by undertaking research and initiating community programs on the local level. Although it is clear that these NGOs are providing a much-needed service to the elderly in Chiang Mai, their organizations are small and their budgets are limited. Greater support for organizations like these from the state could help immensely in serving the needs of the underprivileged elderly in the community of Chiang Mai.

Although the ageing population is now on the Thai government’s national agenda and there are multiple forms of support for the elderly, the Thai family remains the primary foundation and source of care for this group. However, as the family is slowly changing in response to global circumstances, the elderly needs more care now than ever, particularly as the number of individuals in this demographic is growing rapidly.

7. CONCLUSION

Many factors have contributed to the ageing experience of the elderly in the city of Chiang Mai. Beginning in the 1960s, when the government initiated statewide health and economic development plans, a shift began to take place in the Thai family structure. Numerous factors led to such changes, including lower fertility rates that came from the widespread use of contraceptives and the increased longevity of elderly Thais as a result of improved healthcare services. These factors, coupled with the movement of individuals and families to urban areas to seek new ways of life outside of the rural agrarian economy, have changed the way Thais care for their older family members.

Thai families today are not only having less children but are increasingly less likely to live in the same house as their parents. While these changes have not necessarily had a negative impact on elderly care, they are changing the way one ages compared to just a generation ago when it was common to see three or more generations living under one roof. In Chiang Mai, various forms of care and ageing are evident, such as an increased number of elderly Thais living alone or with just a spouse, older Thais utilizing services from long- and short-term care facilities, elderly Thais caring for one another through state-sponsored community programs, and Thai families who have adapted to caring for their loved ones even though they are not in close proximity to one another through the use of public transportation and technology. These changes in the family structure over the past several decades that are a result of development programs, health care initiatives, modernization, and urbanization have affected the ageing experience of the elderly and how they are cared for, especially in cities that are growing rapidly and changing continuously, like Chiang Mai.

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SGAW KAREN STUDENTS' EXPERIENCE IN ETHNIC LANGUAGE MAINTENANCE IN KAREN STATE, MYANMAR

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ABSTRACT

Language identity is a universal human right guaranteed by UDHR and subsequent human rights instruments such as ICCPR (Art. 27) and extended to the 1992 United Nations Declaration on the rights of persons belonging to national or ethnic, religious, and linguistic minorities (OHCHR, 2020). Globally, ethnic or minority languages are disappearing and dying out. Ethnic languages gradually disappear when they adopt the dominant language in their public and private life. Ethnic students' languages shift when the State fails to respect and embrace appropriate measures that enable their language to have at least some status within the education system. Since the Sgaw Karen language shifts to the Burmese Language in the formal school curriculum, students have limited time to practice their language skills. According to the Myanmar Education Curriculum Framework, primary students have 40 minutes per day learning or practicing their language in government schools. This study focuses on micro-level language practice among Sgaw Karen students at the primary school level. It also explores the students' experiences in maintaining speaking, listening, reading, and writing skills both at school and outside it. The study uses document reviews, semi-structured in-depth interviews, and observation to explore the language maintenance environment. The study reveals the language policy and the way that its practice maintains the language among Sgaw Karen students. Finally, it will be seen that Sgaw Karen students still maintain their language skills to some extent in their public and private lives.

Keyword: Sgaw Karen, Language Maintenance, Myanmar.

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1. INTRODUCTION

We live in a multilingual world where some countries possess many languages, while some have fewer. Although certain languages feature prominently, others do not at all. Language diversity can be seen simultaneously as both beautiful and threatening. This study explores multilingualism and ethnicity within the context of Myanmar. It tries to reflect the ethnic language situation in the formal education system, where the Burmese Language is the classroom's primary medium of instruction. The study focuses on Sgaw Karen students at an early age since children are the ones most affected by changes and the disappearance of ethnic languages. Furthermore, it provides information on the current primary education curriculum in Myanmar and its role in maintaining the Sgaw Karen language. Lastly, it explores how students are maintaining their language skills in both public and private life.

1.1 Background

Myanmar is a multilingual society where 135 spoken languages exist along with two main sign languages. 111 language continue to exist and are spoken by more than 23 million people in Myanmar (Jolliffe and Mears, 2016). According to the 1947 Myanmar Constitution, citizens may practice their own cultures and religions and may teach ethnic languages (Lo Bianco, 2016). The Chin, Karen, Kayah, Mon, and Shan ethnic minorities were allowed to teach their ethnic languages in Buddhist Monasteries and Christian churches.

In 1962, following General Ne Win's coup d'etat, the country changed its education policy leading to the elimination of the teaching and use of ethnic languages in school (Lo Bianco, 2016 p.6). According to Aye and Sercombe (2014), many schools had stopped teaching in minority languages by the mid-1980s. The International Crisis Group (ICG) stated that the government banned all ethnic publications, newspapers, books, and minority languages in the education system during the period of military rule (Mon, 2014).

The 2008 Constitution of Myanmar, Basic Principles, Section 22 (1), states that "The Union shall help develop the language, literature, fine arts, and culture of the National races." However, Section 450 of the General provision of the constitution states that the Burmese Language is the official language. The constitution does not recognize the national languages as official languages in their states or regions, which does not help sustain or encourage the development of ethnic languages (Lwin, 2011). On the other hand, the Ethnic Rights Protection Law 2015, Chapter II (3a,b) guarantees that ethnic groups are entitled to preserve and develop their languages, literature, fine arts, cultural customs, national character, and historical heritage. Myanmar Education Law, chapter (8) section 44 grants the right to teach ethnic languages and literature by the Regional or State governments. Hence, government schools have provided instruction in ethnic languages as an extra subject since 2013. About 28,500 ethnic language teachers teach 54 languages throughout the country currently (Selem-Gervais and Raynand, 2019). The local curriculum allocates 40 minutes a day, according to the Curriculum Framework. In the local curriculum, children can learn the ethnic language, culture, history, traditions, local business practices, agricultural businesses, and necessary computer skills according to local needs. Currently, Karen ethnic languages are taught at the lower primary level in Grades 1 to 3 in government schools in villages but not in the cities so far (KIC, 2017).

On the other hand, the Karen Education Cultural Department (KECD) has provided education services to refugees in the Karen National (KNU) control areas that the government is unable to reach. KECD uses the school curriculum based on Mother Tongue Based-Multilingual Education (MTB-MLE) and encourages Sgaw Karen language and culture, while including the use of the Burmese Language as a language for instruction. KECD practices Sgaw Karen as the language of instruction, and the teachers are culturally appropriate and trained using MTB-MLE methodologies (Shee, 2018).

1.2 Research Problem

Myanmar National Education Law, 2014 states that the State has to implement inclusive Education, but policy planning is still on the way (Shee, 2018). Although KECD policy and practice align with the National Education Law to preserve the mother tongue and its cultures, the Government does not recognize the KECD system (Lenkova, 2015). Since Myanmar Education practices single language policy in the field of Education, protecting ethnic languages and cultures is a significant problem. Multilingual communities face tremendous challenges when they accept a single language policy in Education. Their mother tongue gradually disappears when their language shifts to another one (Shee, 2018).

1.3 Argument with Reasons

In 2012, KNU signed a Ceasefire Agreement with the (Shiohata, 2018). The Government has started building hundreds of schools in ceasefire areas in the Karen State and recruited thousands of Burmese teachers. One-third of the KECD schools have already been occupied and the official government curriculum has replaced the previous one (Lankova, 2015). Use of the Sgaw Karen language as a mother tongue is ultimately being replaced by the Burmese Language and its school system and curriculum. Notably, indigenous and tribal languages are the most vulnerable, and 90 to 95 percent of spoken languages may cease to exist or face serious risk during this century (Skutnabb-Kangas, 2010, p.35).

1.4 Research Question

The study intends to answer the question of how Sgaw Karen students can keep their ethnic language alive, despite the linguistic shift to the Burmese Language in schools.

How do the Sgaw Karen students maintain their ethnic Language in the Karen State?

1.5 Research Objective

Due to the language shift from Sgaw Karen to Burmese in the formal school system, children have 40 minutes per day to practice their ethnic language at school. In order to maintain their ethnic language, this research aims to examine the situation of ethnic language maintenance by Sgaw Karen students in primary school. The study also

explores Sgaw Karen students' experience of maintaining their ethnic language skills such as speaking, listening, reading, and writing.

1.6. Methodology

The research focuses on qualitative data and a case study approach to answering the semi-structured research questionnaires. On the other hand, documents and literature reviews are parts of the methodology. Twenty-three key informants were involved in the interviews, including parents, Sgaw Karen students, religious leaders, and youth leaders from the community. Key experts such as language teachers, government officials, KECD education officials, and cultural associations were also involved, in addition to which the role of Karen literature was examined.

2. CONCEPTUAL FRAMEWORK

The Sgaw Karen community, which receives MTB-MLE schooling by KECD, has shifted to the Burmese education system and its curriculum. The education system has shifted from MTB education that uses the mother tongue as a language of instruction in the Karen community. Students maintain their ethnic language skills by using them in both public and private life. Their language maintenance experience is mainly focused on using language skills in speaking, listening, writing, and reading.

3. LITERATURE REVIEW

Yim-On (1984) stated that language shift occurred when an extensive population adopted a new language, and, in doing so, gave up a language it had previously used (Yim-On, 1984, pp 96-97). The author also cited Fishman (1971) who contended that language maintenance is related to the characteristics of bilingualism. Bilingual means speaking one language with one's parents and another in school or at work (Yim-On, 1984, p.97).

Kedrebeogo (1998) argued that a language shift happens in minority communities where a centralized socio-political system is forcefully implemented. The author referred to the constitution of Burkina Faso that recognizes French as the official language, but where local languages do not function beyond group communication (Kedrebeogo, 1998, p. 174). The study also showed that the Koromba people and their Koronfe Language in Burkina Faso shifted to Mooré, the dominant language due to its demographic preponderance (Kedrebeogo, 1998, p. 183). The use of Mooré is more important than the use of Korofé. Parents and their children expressed that use of the Koronfe language was not being transmitted to the younger generation. Since Koromba is traditionally animist, Mooré influences their adoption of Islam and Christianity. However, the Koromba elites are trying to maintain their language through adult literacy. The author also suggested that language maintenance is possible if the government implements a decentralized policy as part of a grassroots language policy (Kedrebeogo, 1998, p. 190).

Cavallaro (2005) lamented that languages spoken by the original inhabitants of Australia had lost out to English, and that most languages had become extinct. The author also discussed the fact that the government neglects the primary language in the state education system, which leads to the disappearance of the local languages (Cavallaro, 2005, p. 561-562). Cavallaro also argued that it is too late for many aboriginal and immigrant languages in Australia since many communities have shifted to using only English. Studies also show that some immigrant communities in Australia are almost monolingual in English by the time their third generation is born (Cavallaro, 2005, p. 567).

Tannenbaum and Berkovich (2005) also expressed that immigrants from the USSR to Israel have no formal system to teach and encourage the maintenance of minority languages. However, immigrant children do attend various local heritage schools that operate mostly on weekends or after school hours (Tannenbaum and Bekovich, 2005, p. 288). Moreover, the author claimed that a close family relationship increases language maintenance and contributes to better family relations. Findings also indicate that endorsing language policy reduces family conflicts and contributes to second-generation migrant workers (Tannenbaum and Bekovich, 2005, p. 304).

Similarly, Malay Muslims in Thailand make efforts to defend their ethnic identity by preserving their language. The use of Malay is a crucial factor in maintaining the Malay world. In Thailand, the Malay language is the language of communication within the Malay community, and the older Malay generations force the younger generations to learn Malay to communicate with them. Religious schools use the Malay language widely, and religious instruction helps maintain Malay language (Yamirudeng and Kama, 2011, p.308). Fang (2017) also recommended that learning and teaching minority languages requires the help of the elderly, including creating a family environment in which the language can be used (Fang, 2017, p.8). Okpanachi and Joseph (2017) cited Fishman's (1965, pp. 67-88) claim that whoever speaks whichever language to whom, where, and when are very important factors for language maintenance (Okpanachi and Joseph, 2017, p. 25).

4. FINDINGS AND DISCUSSIONS

Sgaw Karen students develop their language skills mostly at home and in the community through daily usage. They received 50% of the language skills at school by language classes and communicating with friends. The finding expressed that students are maintaining the language at home rather than at school. According to the Department of Myanmar Nationalities' Languages (DMNL), 82% of ethnic minority students access ethnic languages at a young age. 51% access them between the age of 12 and 35, 46% access them at the age of 12, and 82% attended the language-related courses. Among them, 40% acquired their language skills. However, the number of those who master literary studies after the age of 35 was very small (one digit) (MOE, 2019, p.36).

There are not enough bilingual teachers who can provide language maintenance for the students at school. Language teachers and language assistants are not recognized as full-time staff and are treated differently. Discrimination among the teachers also leads to resignation. The recruitment of teaching assistants comprises teaching

assistants (TAs), language teachers (LTs-Staff), and language teachers (LTs-outside). LTs (outside) and TAs carried out the teaching in the Karen State.

Teaching hours are not enough for language maintenance students because they receive 30 to 60 minutes per period per day and five days a week over a period of six to 10 months per year.

The education system places little emphasis on the students' language classes and provides few incentives for the students in terms of language skills. Teaching the Sgaw Karen language happens outside the curriculum as part of the local subject and there is no grading for language classes in the educational curriculum. However, some language teachers organize language competitions and award prizes to winners to motivate the children.

Teaching materials for language classes are not sufficient for the students. Although handbooks for teachers are available, students' textbooks are not available. They cannot practice and improve their language skills at home and get support from their parents. Children are used to speaking Sgaw Karen with their parents at home. The community also uses Sgaw Karen for verbal communication most of the time within their community.

5. CONCLUSION & RECOMMENDATIONS

The teaching of an ethnic language between Grades 1 to 3 is not enough for language maintenance due to time constraints, and it is crucial to continue the language classes up to Grade 9 or 10. Students' reading, speaking, and listening skills are at a reasonable level. However, writing skills need to be improved by the provision of quality time. Since there is currently no grading for language classes, they should be graded as part of the education system. Parents and communities must continue using their language at home in order to maintain their language skills. There should be textbooks for students and learning materials for children in order to maintain their language skills. Finally, language teachers should be fully recognized and treated equally. Ultimately, it is essential to continue summer language schools to maintain their language skills, and the State should make more efforts to support language maintenance.

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UNDERSTANDING THE BARRIERS THAT STUDENTS FROM THE KAREN EDUCATION SYSTEM IN THE KNU-CONTROLLED AREAS FACE WHEN ACCESSING HIGHER EDUCATION OVERSEAS

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ABSTRACT

The provision of education in KNU-controlled areas is political because it is indispensable to development and national identity building. In fact, issues of legitimacy are key to understanding education services in these areas. Through the Karen Education and Culture Department, the KNU has mainly been providing education services in the areas it controls with its own curriculum and administration for the past seventy years since the beginning of the civil war in Myanmar. However, the students cannot access universities in Myanmar due to the lack of recognition of their learning attainments by the Myanmar Government, and only a handful of students are able to pay their way to attend universities abroad. Since the KNU is the authority in the areas, the study argues that it has central roles and responsibilities to fulfil rights to education because the Myanmar Government does not have access and control over these areas. Therefore, the study aims to identify the major barriers faced by the students in accessing higher education overseas by using a human rights-based approach to higher education, specifically pertaining to the availability and accessibility of education. In this study, a thematic analysis is utilized through case study approach under qualitative research methodology. The research finds that there are three emerging barriers pertaining to the practical challenges and two major barriers related to the structural challenges directly influenced by the central government. Therefore, the students can only access bridging programs if they manage to learn and come to the Thai-Burma border for better access. This suggests that migrant and refugee students from the Thai-Burma border have more and better access to higher education overseas than the students in KNU-controlled areas.

Keyword: Higher Education Overseas, Human Rights-Based Approach, Ethnic Education System.

AUTHOR'S BIO

Saw Than Min Htun (s1115758@s.eduhk.hk) is a student of Master of Arts in International Development Studies (MAIDS) at Chulalongkorn University. Before joining the MAIDS, he was doing his undergraduate degree in Global and Environmental Studies at the Education University of Hong Kong. As a Karen and migrant student, himself, he has great interests in higher education overseas since my secondary education in Thailand-Burma border was not recognized by the Myanmar government or Thai government. This imposed huge challenges for me in accessing his higher education abroad because he cannot access to higher education in Myanmar due to the lack of recognition. Therefore, he is very curious about the issues related to higher education among students under Karen education system since their education is not also recognized by the central government.

1. INTRODUCTION

Unfortunately, the right to education in Myanmar is still a distant dream for many children despite the current educational reforms. Chronic inequalities in access to education are common across the country due to the prolonged underinvestment in and mismanagement of the education system under successive regimes (Mears et al., 2015a). Under the Myanmar National Education Law, Chapter 6 outlines the types of schools in the country; schools under ethnic education systems are not included. Despite ethnic education systems supplementing the mainstream government system and providing education to children in conflict-affected areas, usually ethnic ones, the national education law does not recognize the ethnic education system and disregards the role played by the ethnic education systems. In Myanmar, only those schools that use the government curriculum can transfer to mainstream lower-level education at government schools and have access to higher education in the country. Therefore, there is a huge gap in access to higher education between rural and urban areas as well as between major cities and ethnic areas. In addition, the decades-long underinvestment in and mismanagement of the education systems has not only affected children's access to education but also the quality of education provided by the government. In a recent study, the state education system is described as a very weak education system by any standard (Mears et al., 2016).

Besides the low quality of education provided by the government, the dropout rate at secondary level is very high across the country even though secondary education is considered to be the most significant level of education for fostering economic development, particularly in developing countries (Lee & Kim, 2009). This may partly be attributed to the lack of recognition of ethnic education systems apart from the government systems. It has also been highlighted that more than half of global poverty could be reduced by the fulfilment of universal secondary education in developing nations (UNESCO, 2017). In Myanmar, following the national education reform in 2015, the Ministry of Education (2016) established that it is necessary to fulfil universal primary and secondary education in order to nurture human capital for the promoting of national development. Nevertheless, it is unfortunate that only 16.5% of students completed secondary education out of a 62.8% enrolment rate in 2017 despite the fact that 83.2% out of 97.7% enrolment rate at primary education level (UNESCO Institute for Statistics, 2019). As global completion rates for primary education, lower secondary and upper secondary are 83%, 69%, and 45% respectively in 2018 (UNESCO 2018), the 16.5% completion rate of secondary education in Myanmar is significantly low. In the study of enrolment status disparity for secondary education in government schools in the urban areas of Yangon, based on different socio-economic backgrounds, Yoshida (2019) found that students from low socio-economic groups show the worst enrolment rate and that there is a significant disparity in secondary enrolment-based socio-economic backgrounds. This educational inequality must be significantly higher in rural and ethnic areas due to the nature of chronic marginalization and underinvestment in rural and ethnic populations.

In a study analyzing education services in contested areas of Myanmar, "ethnic education providers offer good complementary education – but the government doesn't take advantage of and support what already exists, instead it seems to be undermining it" (Mears et al, 2015, p.35). Reviewing national policies, Aye and Sercombe (2014) point out that there is an overarching national policy of a single national identity despite the existence of vast

ethnic diversity. Lall and South (2013) also pinpoint that one of the underlying grievances of the ethnic armed groups is the suppression of ethnic languages under forced assimilation of the Burmese-only national culture. In fact, the denial of ethnic language and rights is argued to be the cause of intergenerational social inequalities, including education and economic development for disadvantaged ethnic minorities across the country (Lall & South 2014). A number of scholars have also highlighted the significance of providing free and high-quality education for all, especially in ethnic languages as it promotes more understanding and tolerance among diverse ethnic groups as well as human capital accumulation for national development socially, economically, and politically (Lall & South 2013; Jolliffe & Mears, 2016).

In the KNU-controlled areas, education services are provided by the KNU through its administrative department called the Karen Education and Culture Department (KECD). However, little is known about the extent to which the KNU's provision of education can fulfil the right to education in line with international human rights norms and standards. Furthermore, as the KECD's education system is not recognized by the central government, access to mainstream higher education in the country is out of reach for students under the Karen education system. Because students from the Karen education system cannot enter mainstream higher education in the country due to the lack of recognition of their learning attainments, it is imperative to explore the barriers faced by the students in accessing higher education overseas as only a handful of these students are able to find their way to access higher education overseas. Nevertheless, little is known about their struggles towards pursuing higher education overseas, since they cannot access mainstream higher education in Myanmar. There is a dearth of studies focusing on the barriers faced by students from the Karen education system in the KNU administrative areas when attempting to access higher education overseas. Therefore, through the systematic study of the barriers faced by students under the Karen education system, this study aims to fill in this knowledge gap by applying a human rights-based approach because it pinpoints the responsibilities and accountabilities of the government in fulfilling the right to education for its respective populations. In this study, the following sections explore the human rights based approach to higher education as a key concept while the research method and findings are presented.

2. CONCEPTUAL FRAMEWORK

This research uses a human rights-based approach (HRBA) to education as an underlying concept in understanding the major barriers for students under the Karen education system in KNU-controlled areas in accessing higher education overseas. In applying the rights-based approach to education, Katarina Tomasevski's 4A Framework is one of the most important guidelines to ensure access to education. In fact, it is also viewed as the most appropriate framework for the human rights-based approach to education (UNICEF and UNESCO, 2007). Therefore, thanks to its usefulness in assessing education access in a particular society, the study deploys the 4As Framework that pinpoints a government's obligations to ensure the right to education through the availability, accessibility, acceptability, and adaptability of education. The rights-based approach to education afforded by the 4As Framework is generally informed by human rights principles and norms. The HRBA to education sees education as "an end in itself rather

than merely a means for achieving other ends” according to Katarina Tomasevski, the founder of the 4As framework (2004). She also argues that the economic interpretation of human capital is confined to an expansion of commodity production and that we need to have a broader view that is based on the enhancement of human lives and freedom towards profounder ends. Therefore, the HRBA to education goes beyond the scope of economic development to encompass basic human rights such as freedom, equality, and peace. To remove the barriers is to fulfil the rights to education (Tomasevski, 2004). This is particularly relevant to this study. As the KNU is the government authority in these areas, it has roles and responsibilities to follow and meet HRBA to education including higher education. Moreover, proponent’s views of HRBA to education is significant to the right to education for students from the Karen education system in KNU-controlled areas as the lack of recognition of their learning attainments prevents them from furthering their education in order to develop their full potential. In fact, the KNU government has roles and responsibilities to provide education for the people in line with international human rights norms and standards. If the KNU government does not remove the barriers or fulfil HRBA to education, it should be held accountable. Therefore, it is essential to explore to what extent the KNU is fulfilling HRBA to education and removing the barriers for individuals for the attainment of their full potential. In order to fit the specific context of the proposed study, as the provision of education in KNU-controlled areas is quite complex with limited data available, only two elements of the 4As will be deployed in this study. In fact, these two elements are most relevant to this study of the students’ barriers towards pursuing higher education overseas.

Availability

Availability refers to the government’s guarantees of free and compulsory education for all children with emphasis on key requirements of international human rights laws and norms. In this specific proposed study area, the government is the Karen National Union (KNU) as it not only proclaims itself as a government and the area is under its administrative control. As a government in this area, the KNU has its obligation to fulfil the right to education for the population under its control and administration. Moreover, availability here is also concerned with government’s respect of parental choice of education. The modified availability suggests that there must be policies in place in KNU-controlled areas to provide all children with free, compulsory education for education to be available. In order to meet the needs of the marginalized groups, different options of schooling including non-formal education must be made available and coordinated by the government for all children regardless of their ethnicity or socio-economic backgrounds. The government must ensure equitable education budgets without any discrimination. This is especially relevant in ethnic areas as there is often a lack of budgetary allocations by the KNU Government as well as from the central government, meaning that limited school options are available. This will affect the education children get in this particular study area. Furthermore, the government must ensure that schools have adequate and appropriate resources and equipment as well as enough qualified teachers. It is also the government’s responsibility to provide adequate information and guidance for educational and vocational opportunities, particularly higher education opportunities overseas in this context.

Accessibility

For accessibility, it focuses on the elimination of discrimination and exclusions in line with international laws. This element concerns practical issues and challenges in access to education such as the distance of schools and affordability as well as linguistic barriers. This is particularly significant to students under the Karen education system, especially for their secondary and higher education because there may be limited numbers of these schools available in the areas. In order for education to be accessible, there must be schools within a close distance of children's homes to commute to, and transportation must be made available if schools are too far to reach by walking. The safety of the children must be the utmost priority for parents if they are to feel comfortable, as the proposed study area is in conflict-sensitive locations. The government and community leaders must ensure the safety of the children in any circumstances. Furthermore, the government must ensure that tuition is free and other costs must be kept at a minimum so that underprivileged children from different backgrounds and lower socio-economic backgrounds can afford uniforms, books, and school meals. In case of needs, the government must ensure that financial assistance is available in order to increase the accessibility of education, particularly for the most disadvantaged groups. Discrimination of any forms can be a great impediment to children when enrolling in schools, so the government must ensure the elimination of any form of discrimination against minorities and students from lower socio-economic backgrounds.

3. RESEARCH METHOD

In order to gain insights into and understanding of the research questions, the researcher applied descriptive qualitative design. The researcher conducted in-depth interviews so as to capture the whole picture of their experiences. There are four groups of participants in this study. First, the study includes students who finished high school from the Karen education system in Myanmar and have successfully entered higher education overseas. The second group of participants involves those students who recently graduated from high school under the Karen education system in KNU-controlled areas. The areas of the study will be based on the Karen State and the recruitment of the participants will be subjected to a snowball sampling method due to the limited available information about the number of the study targets, especially for the first two groups. Each group has four participants. The third group comprises of four key informants who are leaders of different organizations that work in education and specifically provide alternative education that helps bridge students for higher education overseas. Lastly, the researcher also interviewed three key experts in the field in order to deepen insights and understandings of the barriers. In fact, the experts' comments and suggestions are important for the discussions and analyses of the findings. Regarding data collection, the interviews took about 40 to 60 minutes and the researcher explained the protocol of the interviews and sought prior consent from the interviewees. All the interviews were audio-recorded with the full consensus of the participants. Due to the present outbreak of Covid-19, there were some restrictions with regards to data collection. As a result, the researcher could only access students from the KNU-controlled areas currently studying in Thailand as over ten students for recently graduated high school students. In fact, four of the in-depth interviews in this study were conducted through an online platform which may limit the researcher's observations; however, it was possible to

conduct the majority of the in-depth interviews in person. One significant limitation of this study is that the study could not include the perspectives of the central government education officials and teachers although the researcher believes it would be useful to integrate different points of views from varied relevant stakeholders in the field. This may affect the comprehensiveness of the different aspects of the study.

Data Analysis

All sets of information collected from the interviews and data mining were subjected to thematic analysis so as to identify the barriers to accessing quality higher education as perceived and experienced by the different groups of participants. Thematic analyses produce and present the data more effectively and reflect the reality of the data elicited from the responses of the interviews (Miles and Huberman, 1994; Creswell, 2014; Hayes, 1997).

According to Braun and Clarke (2006), thematic analysis also provides rich, detailed and complex data, while Blacker (2009) also pointed out that researchers and readers can benefit from a rich thematic description of the entire data in the sense of “the predominant and important themes’ from the data (p.83). The study data analysis strategy is chiefly based on the models of Miles and Huberman (1994) and the guideline approach of Auckland University. Specifically, coding is an integral part of the analysis as themes are developed from it. In this study, the design and structure of the coding strategy deploys the strategy developed by Gibbs (2002, p. 192) since it is simple and effective. Additionally, this study also utilizes a variety of quotations elicited from the responses of the participants in order to support the emerging themes that are observed with evidence. The use of quotations is explained in that it provides evidence, support, and validates interpretations (Miles and Huberman, 1994; Gibbs, 2002). Thus, presenting different quotations is also significant to validating the interpretation of the themes’ conclusions, as well as the observations.

4. RESEARCH FINDINGS

In this study, there was an overlap of participants’ views regarding the barriers faced by students in accessing higher education overseas among the different groups of the participants: the recently graduated students, the college students, the three groups of key informants from different educational organizations, and the experts. Data culled from the different groups of participants was categorized into five emerging themes and they are the five major factors that the participants experienced and identified as the major barriers for the students in accessing higher education overseas. The factors that hindered students’ access to higher education overseas include:

1. Authoritative practices of local community leaders,
2. Limited bridging programs and information channels available in the areas,
3. Low quality of education,
4. Lack of high school education recognition, and
5. Political instability.

Discussion and Analysis

This section provides systematic analyses of the major factors hindering student's access to higher education overseas as experienced and identified by the participants in the study. The factors are categorized into two major challenges, namely, practical challenges and structural challenges. These major challenges are key to understanding issues of barriers for students in the KNU-controlled areas when accessing higher education overseas.

Practical Challenges

Despite the vast scale of the existing challenges for the KNU Government in fulfilling the right to education for the populations under its controlled areas, there are some practical challenges that the KNU can address in order to enhance students' access to higher education overseas. The practical challenges include the first three factors of the barriers in the findings, namely, the authoritative practices of the local community leaders, limited bridging programs and information channels, and the low quality of education provided in the areas. These practical challenges are also of great relevance to a rights based-approach to education as they are rooted in the availability and accessibility of education under a rights based-approach. They coincided directly with the roles and responsibility of the government particularly with respect to the availability aspect of the 4As Framework. Firstly, the authoritative practices of local community leaders are commonly described by both groups of student participants as one of the major barriers for them in accessing higher education overseas. Under this factor, three sub-themes emerge: (1) the imposition of challenges or difficulties to pursuing higher education outside the KNU-controlled areas; (2) expectations that they will work for the KNU or KNU-related organization after high school; and (3) the control of their freedom of movement for higher education. The study reveals that "expectations that they will work for the KNU or KNU-related organizations after high school" had the highest number (n=8, 100%) while the other categories had lower numbers (n=7, 87.5%). In fact, they are unacceptable under the 4As Framework as members of the government have the utmost roles and responsibilities to ensure that the right to education is met in the areas rather than it standing as a barrier to students in accessing higher education. One of the student participants described the situation and system in the KNU-controlled areas as "local community dictatorship system" while another student also asserted that the education system in the KNU-controlled areas is "very organizational oriented" towards the KNU as they were expected to work for the KNU after high school. In a nutshell, it is the government's responsibility to eliminate the barriers for the students in accessing higher education rather than blocking them. One student participant described his experience in the following excerpt.

"Some of the local leaders are very narrow minded. They do not want us to go outside and get higher education although they always said education is important... They said to us that having high school education is enough to teach at Karen schools and work for the KNU. I think they are afraid that when we went out and become highly educated, they may lose their power. Maybe this is why they try to control us and exercise their power a lot (Day Chit, 2020)."

Moreover, the finding of the authoritarian practice of the majority of the local leaders as a major barrier for the students is significant and concerning if these practices are rooted in the KNU's institution because the students already have substantial challenges in terms of structural exclusions such as the lack of recognition of their learning attainments by the central government. This obstacle reminds me of the work of Paulo Freire when he discussed the importance of higher education for Brazilian people and how the oppressed people tend to become oppressors in his landmark book on "the pedagogy of the oppressed". According to Paulo Freire (1970), "the oppressed unveil the world of oppression" (p. 54). He also warned us that the oppressed must be very careful not to become the oppressors themselves, as oppressed people tend not to seek to be liberated, but to be the opposite of what they are now. In fact, as many of the local leaders have long been structurally oppressed by the central government and the level of education they received is often very limited as a result of more than half a century of the insurgent movements, some of them may unintentionally become the oppressed due to the isolation and the lack of exposure to the outside world. Most importantly, in bringing up Paulo Freire's critiques of the oppressed leaders, I do not have the slightest intention to criticise the fact that the majority of the community leaders are the oppressors for the students., Rather, it is to emphasize that this factor should not be overlooked as all of the students in this study experienced it and described it as a major barrier for them in accessing higher education and opportunities.

Secondly, the participants pointed out that there are extremely limited bridging programs and information channels in the areas and this stands as one of the major barriers for them in accessing higher education overseas owing to the practical challenges because bridging programs and information channels are key to further studies. There are three emergent sub-themes with respect to this challenge: (1) limited options of higher education in the areas; (2) a lack of higher educational information and guidance; and (3) a lack of support and opportunities for higher education after high school. Notwithstanding the significance of bridging programs and information channels for higher education overseas, all the student participants highlighted that there are no bridging programs or higher education information and guidance available in their communities in the KNU-controlled areas. Besides, there is a lack of support and opportunities for higher education after their completion of high school as the Karen Teacher Training College (KTTC) is the only option for higher education available in the areas. In order to be able to access bridging programs and higher education opportunities for overseas study, all of the students mentioned that coming to refugee camps and migrant schools in Thailand is the only option for them. This suggests that Burmese refugee students in Thailand have many more options of higher education and opportunities for overseas studies than they have in the KNU-controlled areas. This is particularly alarming for the future development of youths in the KNU-controlled areas as access to higher education is found to be a major challenge for students in the refugee camps in Thailand (Zeus, 2010). Comparing the situations in the KNU-controlled areas and the Thai-Burma border, particularly the Mutraw District, the barrier is well elaborated by one of the experts below.

"People in the Thai-Burma border and refugee camps will have better access to overseas higher education simply because they have the proximity and the transportation access, and the exposure they have with international communities and Thailand, people who just go in and out. But people in Mutraw or inside the KNU-controlled areas, it is difficult for them to either have the motivation or get access to overseas

higher education because they don't even know what the overseas system look like and so they don't even know how to prepare themselves to be ready for education system outside of Kawtholei (the KNU) (Thara Saw Kapi, 2020)."

Besides the availability of extremely limited bridging programs and information channels, all of the student participants revealed that the low quality of education is also a major barrier for them in accessing higher education overseas. Because of this, there are four emergent sub- themes, namely: the inadequacy of qualified teachers; the insufficiency of resources and learning materials; the lack of options for schooling within the areas; and the lack of measures or financial assistance provided by the KNU Government in case of need. In fact, all of these themes are different elements of the rights based-approach to education. However, there is a huge gap between the right to education and the reality of the situations in the KNU-controlled areas. A student participant explained that

"the majority of the teachers are not qualified for teaching high school level education as they themselves only finished high school when they were recruited to teach in high school due to teacher shortages in the KNU-controlled areas. Some of them finished the Karen Teacher Training College (KTTC); however, they do not have teaching degree and certifications to teach at the secondary education schools. In fact, they also explained that the teachers in the KNU-controlled areas were not given proper salary as they often only received a small amount of stipend or pocket money annually (Rene, 2020)."

These above-mentioned factors greatly influence the quality of education the students received. Although the quality of education is generally concerned and viewed by all the key informants and experts as a major barrier for students in accessing higher education overseas, there is a slight difference of opinion among the key informants and experts regarding the quality of education the KECD has been providing in the KNU-controlled areas. Some of them perceived that the quality of education under the KECD is better than the education provided by the central government; however, some of the key informants and experts highlighted that the quality of education in the KNU-controlled areas is greatly compromised by the availability of the financial supports and budget allocation of the KNU. The government allocation of budget is another important aspect of the availability of education under the rights based-approach to education. However, it is well documented that the KECD is mainly dependent on external financial sources and the KNU Government contributes very little to the KECD in the provision of education in the areas. According to an informal source, the entire contribution of the KNU to the education sector went to one of the higher education programs in the refugee camp. The researcher has tried to seek information about the contribution or the budget allocation of the KNU towards its education sector; however, there is a lack of transparency regarding the education expenditure of the KNU Government, as witnessed by the complete absence of documentation stating the percentage of KNU Government expenditure on education. Most of the documents indicate that the KNU allocates an appropriate budget to education, for instance, under the KNU's constitution; however, there is no clear budget allocation provided. One of the experts firmly posited that;

“one of the most obvious institutional barriers is that the KECD in principles. They are supposed to receive five percentages of the KNU total expenditure, but they don’t even take that percentage from the KNU due to the resistance movement needs.”

Another key informant disclosed that the KNU spends about three to five percent of its total expenditures, a figure whose reliability she called into question. Nevertheless, this is far below the recommendation of the United Nations Educational, Scientific and Cultural Organization (UNESCO) as it declared a benchmark of at least 26% of total public expenditure to be spent on education in developing countries (as cited in Ebi and Ubi, 2017). A recent study in Nigeria found that there is a strong, positive relationship between education expenditure and access to all levels of education in the country (Ebi and Ubi, 2017). They also found that if Nigeria spends 26 percent of its total public expenditure on education as prescribed by the UNESCO, this would have had “19-times impact on access to primary school enrolment, more than 2-times impact on secondary school enrollment and 9-times impact on access to tertiary education, and on average 10-times access to all levels of education in Nigeria” (p.). This is a clear indication of the criticality of the government’s contribution to education in providing better and greater access to different levels of education. It is crucial and rudimentary for the KNU to re-examine the fiscal allocation to its education department, as it is insufficient and unsustainable for the KECD to chiefly be dependent on external funding and support in the provision of education in KNU-controlled areas. There is also a lack of transparency in the KNU’s fiscal allocations and little is known about what percentage of total KNU government expenditure goes to education. In order to fulfil the right to education, the KNU needs to provide sufficient fiscal allocations to the KECD as the incumbent authority in line with the availability of the 4As framework of rights to education. The fragility and unsustainability of the education system can be seen in the recent announcement by the Karen Teacher Working Groups, which is a main partner of the KECD for teacher training and stipend, when it announced that the recent 80% funding cut from a key donor, the Myanmar Education Consortium (MEC), not only compromises the education of over 160,000 children in ethnic areas but also risks the collapse of the Karen education system (as cited in Weng, 2020). Moreover, it is obvious that the contribution of the KNU Government compromises not only access to higher education and opportunities but also the quality of education in the areas. Consistent with the study finding on the issues of teacher shortages and the low quality of education, a recent study also shows that the shortage of teachers is the most difficult challenge encountered in the community schools under the KNU-controlled areas as a single teacher is required to teach several grades while the lack of trained teachers compromises the quality of education provided in these schools (KTWG, 2016). Therefore, as the government in the areas, the KNU must ensure responsibility and accountability at least through the allocation of revenue to its education department. In fact, “the KNU is mainly prioritizing in political aspects and peace process with little or no attention to the education system” (Expert interview, 2020). This may have long-term implications as the provision of education is key to issues of legitimacy and the duration of peace building is unpredictable.⁷

Structural Challenges

In addition to practical challenges, the issue of structural challenges is key to understanding the factors influencing access to higher education overseas for students in the KNU-controlled areas. These structural challenges include the lack of high school education recognition and political instability, external influences from the central government that compromise the KNU's abilities to fulfil the right to education. It would be utterly unfair for the KNU if the roles and responsibility of the central government were disregarded because there exist structural issues influencing students' access to higher education in the KNU-controlled areas as well as higher education overseas.

First and foremost, the issue of accreditation is extremely political and controversial as there are different competing education systems in Myanmar between the state and non-state actors. For the non-state actors like the KNU, the issue of accreditation is paramount in ensuring access to formal higher education. This is consistent with a recent study that pointed out that accreditation is a key issue for the students attending KECD's schools in the KNU-controlled areas (Lall and South, 2012). Indeed, the non-discriminatory principal in recognizing students' learning attainments regardless of their formal status, ethnicity, and gender may lie at the heart of the rights based-approach to education. However, it is little surprise that the right to education in Myanmar is unfortunately still a distant dream for ethnic children under the education systems of non-state actors, as there are chronic inequalities in education across the country induced by the prolonged underinvestment in and mismanagement of the education system under successive regimes (Mears et al., 2015).

This mainstream chronic inequality is particularly more severe in ethnic areas due to protracted conflicts over the past seven decades. This chronic inequality in access to education can be described in the words of George Orwell, "all animals are equal, but some animals are more equal than others" (as cited in Wicker, 2011, p.156). It is little wonder that there is an overarching national policy of a single national identity (Aye and Sercombe, 2014) while the government education system is found to be highly centralized (Zobrist & McCormick, 2013). As the ethnic education systems are not recognized by the mainstream government system, access to higher education in ethnic-controlled areas is automatically more challenging. In fact, the lack of recognition of students' learning attainments in the ethnic education systems by the central government clearly represents structural exclusion and political marginalization. Besides, the lack of recognition remains one of the biggest barriers for the students in accessing higher education as well as higher education overseas. This finding is in line with the study of World Bank Group in higher education for development in developing countries. Under the theme of higher education for development, World Bank Group (2017, p. 10) explored "Equity and Inclusion in Higher Education" and the study concludes that secondary education qualification as an entry requirement for higher education institutions is the most obvious and major barrier for students in determining access to higher education.

The discourses over issues of the accreditation and certification of the students' learning attainments are rooted in migrant and refugee contexts and the issues of higher educational opportunities for migrants and refugees have gained more attention within policy making, the media and academia (Esses et al., 2013; Kolowich, 2014, UNESCO, 2015; Kosha et al., 2014; Johnson, 2013). Like the failure of the central government to recognize the

learning attainments of students from the ethnic education systems in Myanmar, a recent study also found that the host governments fail to recognize the learning attainments of the migrants and refugees (Kirk, 2008). Moreover, it also highlighted the lack of accreditation as a barrier for the migrant and refugee students in accessing higher education in the host countries. In order to alleviate the adverse challenges and difficulties of migrants and refugees for higher education due to the lack of recognition, Sawade proposed, “an international certificate available globally would give IDPs, refugees, and migrants the ability to be mobile with their education but also to be legitimate” (2007, p.75).

In addition to the issues of the above-mentioned barriers, one of the most important aspects of the provision of higher education in the KNU-controlled areas is the instability and security of the areas as listed in the red zones. The key informants and experts chiefly identify this aspect of the barriers while a few college students also briefly mentioned it. The key informants and experts elaborated that the political instability imposes major challenges and difficulties for setting up higher education programs while it also causes students’ to be displaced and disruptions to schooling. Furthermore, they pointed out that this also triggers a major security challenge for the students, teachers and education administrations. In fact, security and stability are imperative to the provision of education and this is a fundamentally important aspect of the right to education. Without a stable, peaceful environment, it is little wonder that there are a wide variety of challenges for the KECD in providing education in the KNU-controlled areas. It is inevitable that the students experience limited opportunities to acquire higher education due to political and armed conflicts. Most importantly, it also endangers the students and educators’ safety, which is completely incompatible with the right to education as a secure, peaceful learning environment is the main priority in the rights based-approach to education. If the learning environment is not stable, it not only causes a disruption to students’ education, but also generates enormous challenges for education providers. Beyond questions of measures or standards, schools must be peacekeeping zones. However, this is still a distant dream for the ethnic minority due to the nature of political conflicts in Myanmar. The reality of the situation in the KNU-controlled areas and the challenges for education providers are described in the following excerpts. According to Tharamu Paw Moo, who has been working in higher education sector under the Karen education system,

“In the KNU controlled areas, our main challenges to set up higher education is security for the students and instability as educational facilities were often targeted by the Burmese Army. There were many instances that the students and teachers had to run and were displaced due to the attacks. Perhaps, funding is another challenge to set up higher education in the KNU-controlled areas.....For our Junior College (JC), we could only start to set up them in late 2013 after the National Ceasefire Agreement.”

Besides, there is also a lack of responsibilities and accountabilities on behalf of the central government in protecting the right to education for the children who are affected by political conflicts. Thus, the political instability is described and experienced as a major barrier for the students in the KNU-controlled areas in accessing higher education overseas. On average, political conflicts last for one decade and internally displaced persons have to spend 20 years in the camps (Ferris and Winthrop, 2010); however, political conflicts have been ongoing for over seven decades in Myanmar. The provision of higher education is still quite controversial in the protracted conflicts. One

implication is that the disregard for the it has long-term consequences and “the failure to prioritize education in general – and higher education in particular – leaves entire generations uneducated, developmentally disadvantaged, and unprepared to contribute to their society’s recovery” (Geneva Summer Schools, 2020). Therefore, the issues of the lack of access to higher education for the students from conflict-affected areas in Myanmar should not be overlooked since the ethnic minorities have been trapped in prolonged conflicts for their entire lives.

5. CONCLUSION

Applying a human rights-based approach to education, specifically elements of availability and accessibility under the 4As framework, the study identified four major barriers for students under the Karen education system in the KNU-controlled areas in access to higher education overseas. The authoritative uses of power by the local leaders stands as one of the major factors influencing student’s access to higher education overseas while the lack of higher education opportunities and supporting channels available remains a significant challenge for students. Due to a wide variety of challenges, particularly funding limitations, instability and displacement, the quality of education is greatly compromised and this becomes an important barrier for not only the recognition of the education but also students’ access to higher education overseas. Lastly, the lack of recognition of learning attainments is key to issues of accessing higher education overseas and it is fundamentally influenced by the political will of the central government as well as political and peace processes in the country. As the prospects of political aspects of the ethnic conflict remain controversial and unpredictable, it is crucial for the KNU Government to review their strategic priority policies and there must be fiscal allocations for the education departments if the KNU is to fulfil the right to education. As the governing authority in the areas, the KNU has roles and responsibilities to meet the right to education for its populations. Unfortunately, achieving a human rights-based approach to education is still a distant dream for the KNU to and significant reforms and steps need to be taken to alleviate the barriers facing students in accessing higher education overseas. If these barriers are to be addressed, there must be more research and systematic studies focusing on access to higher education for the students under the Karen education system in the KNU-controlled areas as little attention is currently paid despite its critical role in development and peace in the country.

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COVID-19 AND THE WAY FORWARD: A STORY OF LIVELIHOODS FROM COASTAL RURAL SUNDARBANS, WEST BENGAL

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ABSTRACT

Globally, around 2 billion people (~ 61% of the total world population) are engaged in the informal economy, whereas the percentage rises to more than 80% in India (ILO, 2018). Since 25th March 2020, the COVID-19 outbreak and resulting lockdown in India has created an atmosphere of extreme uncertainty and raised several questions. Global analysts have already suggested that, for many developing countries, the economic consequences could be more crippling and devastating than the disease itself. Livelihoods are vital means of making a living. The term 'livelihood' is not synonymous with mere income generation. It encompasses people's capabilities, assets and the activities required to secure the necessities of life. Undoubtedly, COVID-19 has become an unprecedented shock globally; however, any kind of shock tends to reinforce existing socio-economic-political and environmental stresses, problems, and inequalities. Therefore, there is a need to understand how and to what extent this pandemic has affected and is going to affect the lives and livelihoods of the inhabitants of a coastal rural community entirely dependent on rain-fed agriculture, small-scale fisheries (inland and marine) and other riverine as well as forest resources for their subsistence. This paper attempts to explore the impact of the COVID-19 outbreak and lockdown on the livelihood choices and daily lives in the coastal rural stretches of the Indian Sundarbans delta region. This study incorporates a rapid assessment telephonic survey method to understand the impact of COVID-19 and assess the minute detailing and pathways of livelihoods. This paper refers to findings from a questionnaire-based household survey of the concerned area carried out by the author herself. The findings support the argument that the shock of COVID-19 will further aggravate preexisting socioeconomic issues. Long-standing local problems as well as backwardness and COVID-19 are mutually reinforcing in nature; the social cost and economic cost of this pandemic is immense. Asset loss, changes in dietary pattern and consumption, increased indebtedness, and increased dependence on natural resources are some of the major findings.

Keyword: COVID-19, Livelihood Diversity, Vulnerability.

AUTHOR'S BIO

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1. INTRODUCTION:

On 31st December 2019, the Country Office of the World Health Organization (WHO) in the People's Republic of China picked up a media statement by the Wuhan Municipal Health Commission on cases of "viral pneumonia" in Wuhan, People's Republic of China. Later, on 5th January 2020, the WHO's first Disease Outbreak News Report stressed that the "WHO's recommendations on public health measures and surveillance of influenza and severe acute respiratory infections still apply"; it was followed by official confirmation of the Novel Coronavirus as the cause of the outbreak on 9th January 2020. Later, on 11th March 2020, COVID-19 was characterized as a pandemic by the WHO (WHO, 2020). Till now, COVID-19 has caused tremendous suffering with a total of 15.4 million confirmed cases and a death tally of 620,000 worldwide. In the Indian context, the figures for confirmed cases and the death tally have reached 1.24 million and 29,000 respectively (by 23rd July 2020). In the past few months, as COVID-19 has proliferated in an unprecedented fashion, a strange obsession with figures and statistics has been observed. Unfortunately, beyond the discourse of infection curve, mortality rate and measures to contain the spread, there lies a grey area that deals with the socio-economic aspects of COVID-19 and lockdown. Global analysts have already suggested that, for many developing countries, the economic consequences could be more crippling and devastating than the disease itself. Taking into account the uncertainty attached to the magnitude of COVID-19, an accurate assessment of COVID-19's impact on the economy is still not possible. But unarguably, an economic downturn is and will be expected at the global level; trickling down to developing economies, this economic downturn can further exacerbate existing food insecurity, livelihood insecurity and vulnerability (Beltrami, 2020). Livelihoods are vital means of making a living. The term 'livelihood' is not synonymous with mere income generation. It encompasses people's capabilities, assets and the activities required to secure the necessities of life. Undoubtedly, globally, COVID-19 has become an unprecedented shock; however, any kind of shock tends to reinforce existing socio-economic-political and environmental stresses, problems and inequalities. Therefore, there is a need to understand how and to what extent this pandemic has affected and is going to affect the lives and livelihoods of different communities. In this study, through a rapid assessment survey, livelihood issues in a coastal rural community of the Indian Sundarban delta region have been explored. A preliminary report has been prepared on how a village community entirely dependent on rain-fed agriculture, small-scale fisheries (inland and marine) and other riverine as well as forest resources for their subsistence is coping with the pandemic and lockdown.

2. COVID-19 AND LIVELIHOOD

The history of livelihood thinking as well as research can be traced back to mono-disciplinary, sectoral perspectives offered by economists and geographers. "Livelihoods" is a highly flexible term; it can be found in most of the literature that deals with "people" in the form of livelihood approaches, perspectives, frameworks, and methods. These relate to varied aspects, such as occupations (farming, fishing livelihoods), locations (rural or urban livelihoods), social categories (gendered, age-defined, religion-defined livelihoods), patterns (sustainable and unsustainable livelihoods), directions (livelihood pathways, trajectories) and so on (Scoones, 2009: 172).

During the 1980s and 1990s, with the paradigm shift on the world stage, the focus shifted to the real world. The whole discussion became “actor-oriented” in an attempt to understand things from a local perspective, i.e. the lived experiences and struggle of poor people themselves, without relying upon artificial divisions and complex categorizations. In 1992, Chambers and Conway’s seminal paper on “sustainable rural livelihoods (SRL)” produced the most widely used definition of livelihood:

“A livelihood comprises the capabilities, assets (stores, resources, claims and access) and activities required for a means of living. A livelihood is sustainable when it can cope with and recover from stress and shocks, maintain or enhance its capabilities and assets, and provide sustainable livelihood opportunities for the next generation; and which contributes net benefits to other livelihoods at the local and global levels and in the short and long term.”

It has been stated that subsistence producers and small-scale fishers and farm wage laborers in the rural areas of low-income countries constitute over two thirds of world’s poor and food-insecure populations (FAO, 2014). Livelihoods among the rural populations of tropical coastal communities often rely heavily on a range of natural resource-dependent occupational sectors, such as agriculture, fisheries, and informal economic activities (i.e. small shops, transportation, etc.). The combination and type of household livelihood strategy mostly depends on the particular season, access to the resource (whether fishing areas or farm land), access to capital, skill base, education and risk preference. While adapting to changing circumstances, the coastal rural communities often face a nominal level of options for diversification; as a result, the alternative or secondary economic activities practiced by the communities are also extremely dominated by climatic and anthropogenic considerations (Pomeroy et al., 2006). Globally, around two billion people (~ 61% of the total world population) are engaged in the informal economic sector, whereas the percentage rises to more than 80% in India (ILO, 2018). Workers engaged in vulnerable forms of employment are exposed to high levels of precariousness; they are more likely to be informally employed, have fewer chances of social engagement and are less likely to benefit from job security, regular incomes and access to social protection than their waged and salaried counterparts (ILO, 2017e). Worryingly, the significant progress achieved in the past in reducing vulnerable employment has essentially stalled since 2012, with the rate remaining above 42% globally. In 2017, almost 1.4 billion workers are estimated to be in vulnerable forms of employment, and every year, an additional 17 million join them (ILO, 2018). As per the recent Periodic Labour Force Survey (PLFS), 2017-18, around 0.45 billion (47%) adults work in the countryside. Over half (52%) of the workers are self-employed, followed by casual workers (25%) while the remaining workers are regular or salaried (23%). Of these, casual workers are the most vulnerable due to the irregular nature of their work and daily-wage payment based on their work schedules. The status of other workers also does not present a very positive outlook, as most of the self-employed (96%) were either own-account workers or unpaid family workers (sole workers), with only 4% constituting employers or entrepreneurs (PLFS, 2017-18). In an attempt to combat different types of shocks and stresses, rural households tend to opt for multiple sources of income generation, i.e. livelihood diversification¹. In spite of that, since 25th March 2020, around

¹As defined by Ellis (2000), livelihood diversification is the process by which rural households construct a growingly diverse portfolio of activities and assets in order to survive and to improve their standard of living.

130 million people in India¹ have become unemployed. Amongst those 130 million, 40% correspond to blue-collar jobs, which means these 40% are beyond the ambit of basic social security and benefits. While all kinds of jobs have been lost during the lockdown, the number of jobs in the farming sector has been rising. In May 2020, employment in farming increased by 1.4 million over its April 2020 level. In June 2020, the increase over May was a massive 11.8 million. While the average employment in farming in 2019-20 was 111 million, in June 2020 it reached 130 million (CMIE, 2020). Usually, an increase in farming during economic stress is an indication of disguised unemployment.

Moreover, over 300 million people have not benefitted from the relief packages (CMIE, 2020). The direct and indirect shocks and stresses of the COVID-19 crisis worldwide, although primarily considered a public health crisis, will have a much broader impact on the global economy. The worldwide socio-economic disruptions will not only diminish the well-being and livelihoods of people, but also undermine the social nets, markets and food security on which life depends. Both lives and livelihoods are and will be at risk from this pandemic. The socio-economic as well as cultural and political repercussions arising from the lockdown: job losses, travel bans, disruptions to the supply chain etc. have a twofold impact on the lives and livelihoods of people and communities; one is the immediate impact and the other is long-term disruptions (www.livelihoodcentres.org accessed on 15th June 2020).

However, any kind of shock tends to reinforce the existing socio-economic-political and environmental stresses, problems and inequalities. Therefore, even though COVID-19 is a pandemic, it has the capacity to affect different communities differently due to the inherent differential vulnerability. Impoverished people are usually less able to invest in risk-reducing measures. The lack of access to insurance and social protection means that people in poverty are often forced to use their marginally limited assets to buffer losses arising from shocks and stresses, which drives them into further poverty. Poverty is therefore both a cause and consequence of such disastrous events (Wisner et al., 2004). In various academic, political and economic domains, it has already been widely discussed how the recovery from the pandemic needs a more critical local lens. Moreover, the geography of inequality expresses itself on a wide scale- temporally and spatially: between regions and countries, within countries, and inside cities and localities (UNISDR, 2015a). Taking this idea of local lens forward, the next sections of this paper will attempt to explore COVID-19 and livelihood narratives in the Indian Sundarban region.

3. INDIAN SUNDARBANS: AN OVERVIEW

The Indian Sundarbans Delta (ISD) is spread over about 9,630 km² between 21°40'04" N and 22°09'21" N latitude, and 88°01'56" E and 89°06'01" E longitude. This is the smaller and western part of the complete Sundarbans delta; around 60% of the delta region comes under the administrative boundary of Bangladesh. The Indian Sundarbans

¹ As of 1st January 2020, the population of India was estimated to be 1,387,297,452 (according to www.countrymeters.info accessed on 7th July 2020)

are an immense archipelago¹ situated between the vast Bay of Bengal to the south and the fertile plains of Bengal to the north. This active delta region, created by the confluence of the rivers Ganges, Meghna, Brahmaputra, and their innumerable distributaries, comprises an intricate network of tidal channels and islands, the land being still under formation. Geographically and ecologically sensitive, this region has been recognized as the world's largest contiguous mangrove deltas, a world heritage site, Ramsar site and also a biosphere reserve. The Indian Sundarbans Delta is bounded by the Ichamati-Raimangal River to the east, by the Hugli River to the west, by the Bay of Bengal to the south, and the Dampier Hodges line drawn in 1829-1830 to the north. Always in the headlines for the breathtaking natural beauty of the mangroves and the abundant flora and fauna (including Royal Bengal Tigers, crocodiles, and sharks), this place is also a home to over 4.5 million people. In the absence of any major industrial area, this region is mostly dependent on rain-fed agriculture, fishing, and aquaculture.

4. AIMS AND OBJECTIVES

This paper attempts to explore the impact of the COVID-19 outbreak and lockdown on the livelihood choices and daily lives in the coastal rural stretches of the Indian Sundarbans delta region. Its main objectives are –

- To analyze major livelihoods (with characteristic features)
- To explore the impact of COVID-19 lockdown on their lives and livelihoods in terms of access to food, dietary changes, access to resources, income, education, and some additional factors.
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5. MATERIALS AND METHODS:

Data Sources

Mostly, primary data has been used for this study. Primary data for the 1st objective, i.e. analysis of major livelihoods, was collected during fieldwork in the year 2018-19. Household surveys were conducted using questionnaires. For the 2nd objective, i.e. the impact of COVID-19 and lockdown on lives and livelihoods, a rapid assessment telephonic survey was carried out in April 2020. Apart from that census data, Indian Meteorological data was consulted along with existing literature.

¹ A part of Ganga- Brahmaputra- Meghna Delta (GBM Delta), this Indian Sundarban delta region consists of 4,200 square kilometers of forested area and 5,400 square kilometers of non-forested areas that border the north and north-western part of the forests. There are currently 100 islands in the Indian Sundarbans Delta, of which 46 are forested while the remaining 54 islands are variably inhabited. Indian Sundarbans is not an administrative unit; it is essentially a distinct eco-geographical region. However, administratively, this area is constituted by six blocks of North-24 Parganas and 13 blocks of South-24 Paraganas districts in West Bengal, India. All these 54 islands are inhabited by 4.5 million people (Census 2011).

Research Design

In this particular study, mixed method research design was employed to gain enough insight to achieve the desired objectives. Within this mixed method, exploratory sequential research design was employed.

Sample Size and Design

Through stratified random selection, 150 households were selected and interviewed in the first phase to get the profile of varied livelihoods. The stratification was based on the distance between the household and the coastline. In the later phase, a telephonic survey was conducted of 120 households (the rest of the households were not available for the telephonic survey).

Details of the Area of Study

In total, four villages were selected for the study. Two villages were selected from Sagar Island in the SW Sundarbans, Beguakhali and Mahishamari, located near the south-western fringe of this island. The other two villages selected from Mousuni Island were Kusumtala and Baliara. These four census villages¹ from two different islands are made up of a population mostly dependent on subsistence-level livelihoods. The interviewed population does not have any indigenous origin. However, Sagar Island experiences a large influx of pilgrims during Makar Sankranti and also throughout the year.

Table 1: Demographic Characteristics of Selected Villages

Island	Sagar Island		Mousuni Island	
Village	Beguakhali	Mahishamari	Kusumtala	Baliara
Block	Sagar	Sagar	Namkhana	Namkhana
Gram Panchayat	Gangasagar	Gangasagar	Mousuni	Mousuni
Total household	1074	539	711	921
Total population	5683	2890	3,756	4350
Male population	2911	1503	1917	2200
Female population	2772	1,387	1,839	2150
Total no. of literates	3854	2018	4373	5957
Total workers	2360	1115	2042	2717
Total non-workers	3323	1775	3621	5955

Source: Census of India 2011

¹ Census village refers to a revenue village which is recognized by the normal district administration. It has a definite surveyed boundary and it may have one or more hamlets. The entire revenue village is one unit (Census of India)

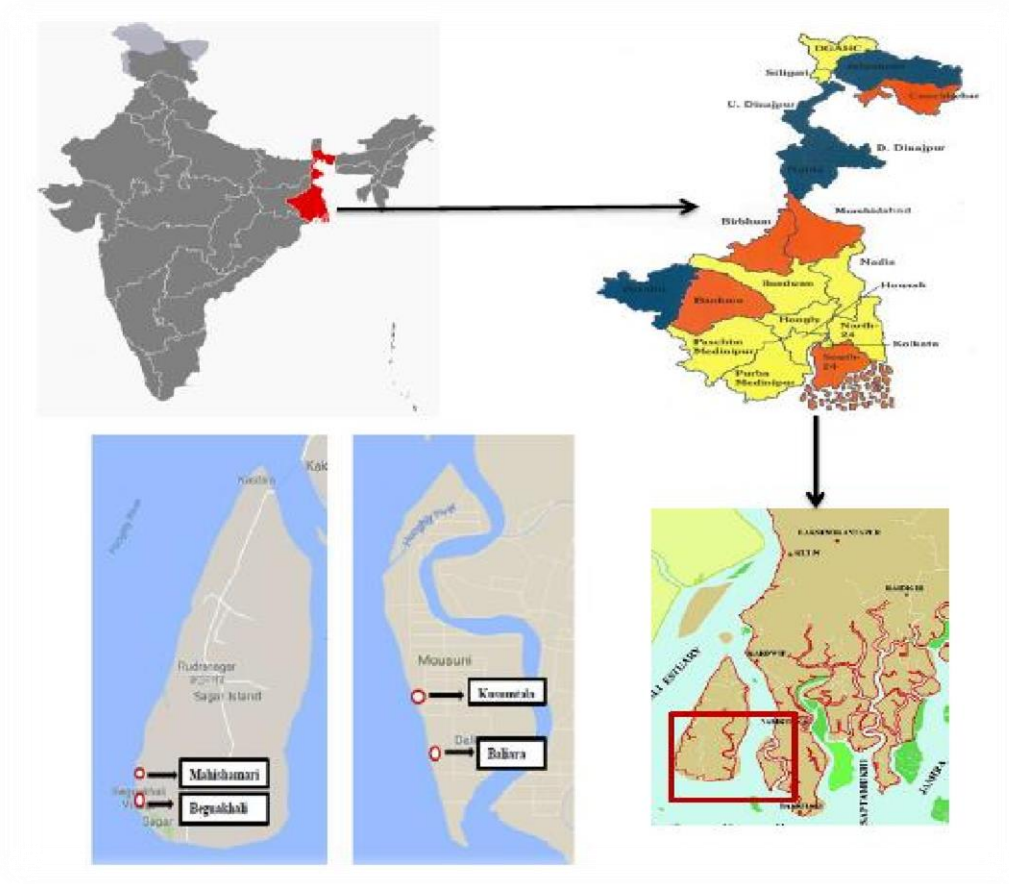


Figure 1. Location of Study Areas

6. DISCUSSION

Livelihood profile of Households (HH)

Primarily, livelihood options are quite limited in the terrains of the Indian Sundarbans; a large majority of the population is dependent on agriculture, fishing and other natural resource-based options. Agricultural and non-agricultural laborer constitute a percentage of the population. Around 24% of the population was identified as cultivators in Census of India 2001; however, no exact figures were found for the fishing population (Census 2001). As identified during the household survey, agriculture and fishing constitute most of the primary means of livelihood. In Sagar Island, 30% of the interviewed population is engaged in agriculture; the percentage is 17.8% in Mousuni Island. Inland and marine fisher populations constitute around 26.7% in Sagar Island and 44.5% in Mousuni Island.

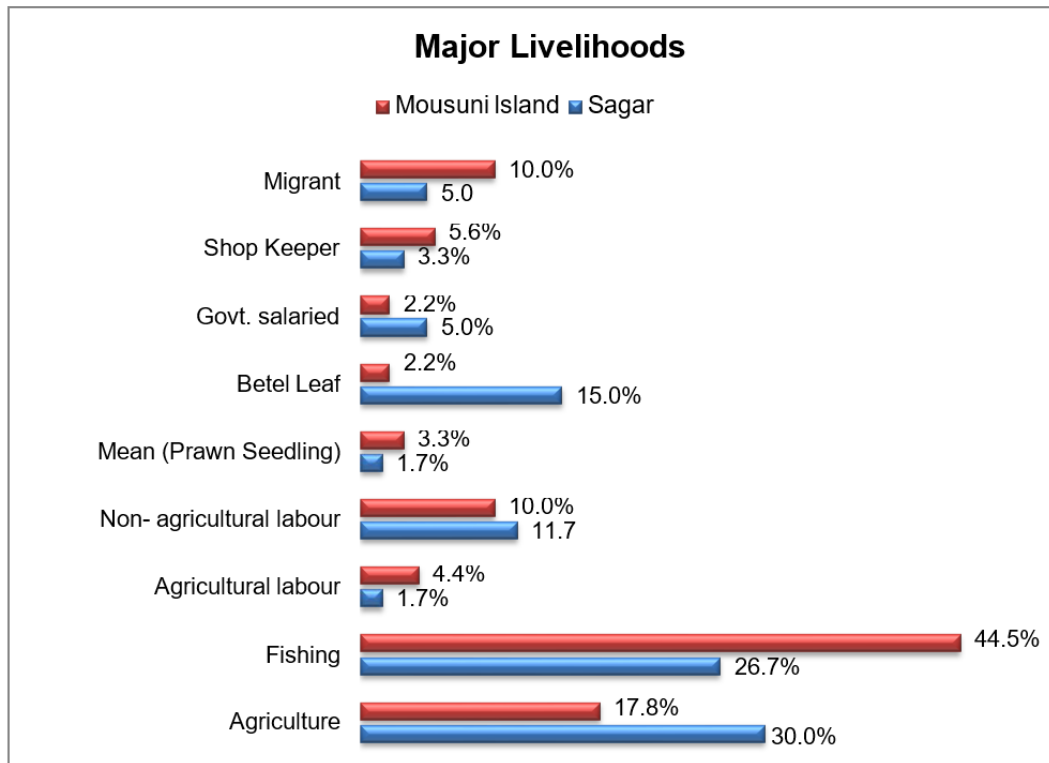


Figure 2. Major Livelihood Options Identified in Selected Villages (Source: Primary Survey)

Around 4.4% and 10% of the sample population of Mousuni Island are engaged as agricultural and non-agricultural labourers respectively. In Sagar Island, agricultural labourers and non-agricultural labourers constitute 1.7% and 11.7% of the sample population. A small percentage of population in both the islands is engaged in prawn seedling collection, government salaried jobs and shop keeping. Betel leaf cultivation is a particularly significant livelihood strategy in Sagar Island (15% of the sample). Around 10% of the sample households have migrant earning members in Mousuni Island, whereas the proportion is 5% in Sagar Island. Interestingly, a large proportion of the livelihood options found in the study area is quite seasonal in nature; therefore, it was found that 70% of the surveyed HH is engaged in secondary economic activity in Mousuni Island. However, the proportion is 40% in Sagar Island. A small percentage of HH is involved in fishing as a secondary means of livelihood; mostly inland fishing that accounts for 10% and 9% of the secondary livelihood in Sagar Island and Mousuni Island respectively. A considerable section of HH is engaged as agricultural labor in Mousuni Island (7.8%) and in Sagar Island (5%).

Table 2: Secondary Means of Livelihoods in Surveyed Populations (Source: Primary Survey)

Secondary livelihood	Sagar island	Mousuni island
No Secondary Livelihood	60%	30%
Fishing	10%	9%
Agricultural labour	5%	7.8%
Non- agricultural labour	10%	10%
Prawn seedling collection	10%	30%
Crab catching	NA	3.3%
Migrant worker	5%	10%

A substantial proportion of HH is engaged in prawn seedling collection in Mousuni Island (30%). A substantial population has been reported to migrate to cities during the monsoon for daily wage jobs (10% in Mousuni and 5% in Sagar Island).

Characteristic Features and Challenges of Livelihoods in Sundarbans:

A wide range of characteristic features of each of the livelihood strategies and the myriad challenges associated with it were identified from the survey. As the economic activities are mostly natural resource and climate-dependent, climatic and anthropogenic shocks and stresses play a significant role in the structural and functional integrity of the activities. The challenges associated with the activities are also multifaceted, covering a wide spectrum of determining factors, including natural, climatic, economic, social, political and cultural aspects, some of which are unique to the terrain. Tidal flooding, embankment breaches¹, and increasing salinity are highly site-specific factors of this terrain that directly influence the livelihood activities. A critical assessment of the livelihood characteristics and challenges faced by the islanders provides valuable insights regarding the triggers of vulnerability. Daily stressors such as tidal flooding, lack of employment, natural resource dependence, difficult modes of transport, lower income rate, coastal erosion, and increased salinity etc. provide a strong platform for shocks like COVID-19 to wreak havoc.

¹ The lifeline of Sundarbans is a 3,500 km long embankment. It protects the low-lying land from saline water ingress during tide and storms. Thus, the embankment breaches often inundate villages, causing property loss.

Table 3: Characteristic Features of Different Economic Activities as Identified During Survey (Source: Primary Survey)

Livelihood Options	Characteristic Feature
Agriculture	Rain-fed mono-cropping of rice, brinjal, cauliflower, pulses, chilies, potato, tomato etc. In spite of the salinity problem, salt-resistant varieties were not found to be cultivated in the survey. Decreasing cultivable land due to erosion and salinity Monsoon rainfall variability Small landholding and lack of mechanization
Fishing	Inland and marine fishing Fishing season: June- October/ November Fish drying: December- May Boats are lent by middlemen on contract basis Tend to ignore “Fishermen alert” issued by IMD Lack of access to insurance and permit
Non-agricultural labor	Employed in Mahatma Gandhi National Rural Employment Guarantee Act ¹ projects Engaged in the ongoing embankment construction/ maintenance works Mostly irregular employment Opportunity of employment away from home
Agricultural Labor	Decreasing agricultural activity in the adjoining islands Mechanization of agricultural activity in another agro-ecological region Demand for manual labor due to non-mechanized form of cultivation
Betel vines cultivation	Initial cost of construction Rs. 1.5 Lakhs Annual turn-over is promising Labor-intensive, requires regular care Requires sweet water, irrigation facility and clay-like soil devoid of salinity
Prawn seedling collection & crab catching	Involvement of women and children of households Crabs are caught near the creeks of Sundarban Reserve Forest
Out-migration	Intra-state mobility (Kolkata, Burdwan, Birbhum) Inter-state mobility (Kerala, Tamil Nadu, Karnataka) Change in social fabric

Thus, existing socio-economic and environmental conditions are already adverse enough for the islanders of the study area. Moreover, since 25th March 2020, the lockdown has created a major disruption starting with restricted movement of people and lack of livelihood options to shortage of essential supplies in remote corners of the country including fringe villages (WWF, 2020). The next section attempts to explore the multidimensional impacts of COVID-19 and the lockdown on the lives and livelihoods of the islanders in the researched villages.

7. IMPACT OF COVID-19 AND LOCKDOWN:

As mentioned in the previous section, this whole terrain has a sense of marginality and uncertainty textured into the lives and livelihoods of the islanders. Through the rapid assessment telephonic survey, several factors were taken into account. To keep the conversation brief and productive, short, close-ended questions were asked. Questions leading to simple “Yes” or “No” were chosen to facilitate the collection of information. In some exceptional cases,

¹ The Mahatma Gandhi National Rural Employment Guarantee Act 2005 aims at enhancing the livelihood security of rural areas by ensuring 100 days of wage employment through unskilled manual labor each financial year.

background information was gathered. The questions asked during telephonic conversations and concerned responses have been presented in tabular form (Table 4).

Table 4: Impact Of COVID-19 Lockdown on Life and Livelihood (Source: Primary Survey)

Questions asked during rapid assessment survey (all the information are pertaining to status of lives and livelihoods since 25 th March 2020)	Sagar Island		Mousuni Island	
	Yes	No	Yes	No
Do you have any steady income?	41.7%	58.3%	33.4%	66.6%
Do you have employment through MGNREGA?	-	100%	-	100%
Do you have access to ration? ¹	83.4%	16.6%	77.8%	22.2%
Did you reduce no. of meals per day?	30.0%	70.0%	22.2%	77.8%
Did you reduce no. of items consumed?	43.3%	56.7%	54.4%	45.6%
Do you have access to medical facilities?	58.4%	41.6%	22.2%	77.8%
Can you maintain social distancing?	16.7%	83.3%	13.4%	86.6%
Did you have to borrow cash?	26.6%	73.4%	35.5%	64.5%
Borrowed from moneylender:	10.0%	NA	23.3%	NA
Borrowed from relatives/ friends:	16.6%	NA	12.2%	NA
Is there chance of school drop-out?	16.7%	83.3%	22.2%	77.8%
Is there any postponement of marriages?	Scheduled marriages: 10		Scheduled marriages: 24	
	80%	20%	79.2%	20.8%
Do you have seed for next season of farming? (restricted to HH engaged in agriculture)	16.7%	83.3%	13.4%	86.6%
Can you sell products in local market?	56.7%	43.3%	35.5%	64.5%
Can you send perishable items to town? ²	26.6%	73.4%	-	100%
Did you face difficulty in harvesting?	70.0%	30.0%	77.8%	22.2%

A massive 58.3% and 66.6% of the respondent HH of Sagar Island and Mousuni Island have not had any steady income since 25th March 2020. Evidently, the travel ban, lack of a labor force, social distancing norms and complete disruption of all major economic activities across India have triggered this situation. Moreover, the fishers haven't been able to venture into the sea since the end of March and are quite understandably concerned about the 45-day annual fishing ban in line with the fish breeding season, coming into force along the east coast of India from mid-

¹ As reported by the respondents, through Public Distribution System food grains are available free of cost. However, other essential items (baby food, medicines etc.) are not available due to disruption in the supply chain and travel bans.

² Perishable items exported from this region to town markets are flowers, vegetables, fish, and fruits.

April to 18th June. All projects and employment opportunities have ceased since lockdown 1.0, leading to zero employment through this scheme. However, most islanders reported having access to free rations through the Public Distribution System. Moreover, some of the islanders have small backyard gardens where a small number of vegetables are grown. Thus, in Mousuni Island, locally-grown potatoes, onions, bitter gourds, snake gourds, drumsticks, and fish are available; as export to town markets is not possible during lockdown, the island's entire produce is being sold in the local market. Therefore, the islanders are not yet starving. There is a reduction in the number of meals consumed per day in both the islands; the migrant families, landless households and households of older people are facing a scarcity of food to some extent. There is a dearth of cash inflow; therefore, the local economy is slowly succumbing. Around 43.3% and 54.4% of the HH of Sagar and Mousuni Islands reported a reduction in the number of items per meal. A substantial 77.8% HH of Mousuni island reported a lack of medical facilities. As the islands are geographically isolated from the mainland, disruptions to transportation and travel bans have become a major issue. Around 85% HH of both the islands could not effectively maintain social distancing, mostly due to single room huts and restricted space. A proportion of HH have already borrowed cash for sustenance from moneylenders and relatives. However, the sale of liquid assets was not yet reported. In Sagar and Mousuni Island, respectively, 16.2% and 22.2% of the respondents predicted the possibility that their children's education could be discontinued. Moreover, more than 60% of the HH declared that they cannot afford online education. 10 and 24 marriage ceremonies were scheduled in the surveyed HH in Sagar and Mousuni Island. Around 80% of the marriages have been postponed and the rest have experienced major alterations in terms of expenses and invitees. Around 85% do not have any seeds left for the next farming season. A small proportion of these HH have consumed their stock during lockdown. In Sagar Island, the local market is still comparatively more active than that in Mousuni Island. The sale of local produce in local markets yields lower profits compared to its sale in town markets. Due to the disrupted supply chain, local perishable goods cannot be exported to town markets. Fish, betel leaves and prawn seedlings are exported internationally from this region; unfortunately, since 25th March, there have not been any exports. The prawn seedlings and crabs are initially sold to middlemen; afterwards, prawn seedlings are grown locally for around two weeks then sold to prawn fisheries. The crabs are segregated and exported internationally via Kolkata (the state capital of West Bengal). Due to market closure, the cancellation of international flights and water-based transportation, and movement restrictions the export of these items has stopped; thus, local prices have dropped, leading to loss of income. Worse still, owing to insufficient labor availability and the transport ban, the aquaculture farms are experiencing huge losses. The agricultural harvest is facing immense problems as well.

8. CONCLUSION:

Apart from the immediate effects of joblessness, lack of access to resources, lack of flow of remittances, and socio-political uncertainty, the COVID-19 lockdown can have a long-term impact on health and educational status as well. The agriculture and fishing sectors will have to provide sustenance and a livelihood to the people who are returning from cities and abroad as a result of the COVID-19 pandemic. This unusual reverse flow of labor from urban

to rural areas creates additional pressure on available farmland. There have been reports of increased dependence on forest resources for immediate income generation. However, it makes community members susceptible to tiger attacks and harassment as well. Therefore, better management of local resources to create a notion of sufficiency is needed. Ensuring workplace safety, social protection and risk insurance can make a crucial contribution to safeguarding the vulnerable population. The provision of rations, medicines, and personal care goods by Government as well as NGOs can make a significant contribution to reducing the islanders' plight. Direct Bank Transfer of cash depending on the level of vulnerability can be a useful tool as well. Moreover, the development and implementation of comprehensive site-specific economic and resilience development programs aimed towards building self-reliance for local economies, local food systems, and on- and off-farm activities need to be encouraged.

As shocks like the COVID-19 pandemic and lockdown eventually reinforce the existing inequalities and lack of opportunities, strengthening the system as a whole is of the utmost importance. As popularly said during the lockdown "We are in the same storm, but not in the same boat"; the communities experiencing plight thus need to be assessed locally to identify triggers of vulnerability.

In this paper, the information collected from the respondents provides an initial rapid assessment survey report. Further more advanced phases of survey can generate useful information to identify the scope of policy intervention.

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UNDERSTANDING THE FEMALE POLITICAL LEADERSHIP IN NEPAL: EXPERIENCES OF FEMALE DEPUTY MAYORS

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ABSTRACT

An unprecedented number of women were elected in the 2017 local level elections in Nepal as a result of the provisions in Nepal's 2015 constitution. The newly formed local government is 40% female, where a remarkable 92% of the deputy mayors (DM) are women. These are women who belong to heterogeneous categories of intersecting class, ethnicity, religion, and geography. Although a positive outcome, it remains to be seen if the constitutional development has translated into women's political empowerment or if has amounted to mere tokenism. The study tries to understand whether female deputy mayors' experiences align with the constitutional imagination of a secure and active political space for Nepali women. For this, the research explores how female deputy mayors exercise their official power and advance women's issues. Using the conceptual framework of Intersectionality, the research analyzes their leadership experiences in their executive, legislative, and judicial capacities. Employing primary data from in-depth online interviews with female deputy mayors from intersecting backgrounds, the research argues that the constitutional aim of empowerment of women in politics, especially as leaders, is only partial as political leadership continues to be gendered. This, the research suggests, constrains the role in which women leaders can exercise their powers. In addition, it also asserts that even the extent of their involvement within those limited roles is determined by the intersection of their identities. As the debate on the substantive impact of the constitutional provisions for female representation in politics continues, the research will add perspectives from female leaders themselves to this recent field of inquiry.

Keyword: Women in Politics, Political Leadership, Intersectionality, Nepal.

AUTHOR'S BIO

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1. INTRODUCTION

Among the central issues that drove the last two decades of political movements in Nepal, which culminated in a new constitution in 2015, was the demand for fair representation of various marginalized groups in the country's legislative, executive, as well as judicial bodies. While the most politically powerful of these groups were the ethnic minorities that pressed for federalism based on ethnic and linguistic rights in an erstwhile centralized state, the issue of women's representation in state bodies has been another consistent demand. In response, the new constitution has, therefore, made several key provisions to ensure greater inclusion of women across the board.

The provisions made for women in the new federal Nepal made it possible for a minimum of 33% women representation. Mechanisms like Nepal's Local Level Elections Act 2017, which mandates that political parties appointing candidates in both mayor and deputy mayor posts must ensure that the two candidates are of opposite gender (i.e. if the mayoral candidate is male, the deputy mayoral candidate must be female, and vice versa) (Tamang, 2018), have helped realize not just the increase in proportional participation of women, but also to place them in executive/senior positions. As a result, of the 35,041 local representatives of 753 local level governments, 14,349 are women, allocated as 2 % of all mayors, and 92.5 % of all deputies (both urban/rural municipalities), according to Mahato, Paudyal and Baruah as mentioned in Tamang (2018, p. 312).

While the numerical increase in women's participation in politics and governance is quite evident, it is still not clear if this number is translating into policies and decisions advocated for by women. It is also important to examine how the women representatives, who come from different political, ideological, ethnic, class, and caste background, are able to change and structure the democratic exercise at different levels, which over the last two decades has been transformed by patronage politics.

The study is a step toward understanding if affirmative action for women under the new constitution has led to qualitative political representation; the research will do so by exploring the deputy mayors' experiences of executing their roles as deputies, as well as promoting specific agendas and implementing them. This research used qualitative methodology to gather data through the means of semi-structured interviews looking at the experiences of female deputy mayors in Nepal. The research includes seven urban municipalities across seven provinces in Nepal. This was done with the intension of gathering a diverse set of participants, including geographical diversity, mostly in relation to their positionality from the center. Therefore, it will contribute to the debate whether an increase in the number of women in politics is a good indicator of their substantive participation in politics. The positive aspect of the research is that it looks at the experiences of women deputy mayors who belong to various backgrounds. As a result, it helps us to understand how women's experiences cannot be understood as overarching and monolithic, but rather that these women's experiences differ greatly and their intersecting identities shape and impact their experience in offices in Nepal.

2. WOMEN AND POLITICAL LEADERSHIP

A large volume of scholarship theorizes the low participation of women in political life throughout history as a binary gendered issue of public and private life. The categorization of politics as part of the public sphere is a notion commonly held, and the idea that politics is a masculine activity (Anwar, 1991; Takhar, 2014) dictates mainstream politics, thus creating obstacles for women to crossover from the private sphere. This idea of women's place being in the home and that public spaces, like workplaces, are secondary to women, according to Ombevt (2005), is one of the main reasons for women's visible absence in politics.

Although women's representation in Nepal today has become a beacon of gender equality in South Asia, women have been under-represented in politics in general, and political leadership in particular, throughout Nepali history. Scholars looking at the role of women in Nepali society and institutions have largely agreed on the fact that their low level of representation and sparse presence in leadership is a result of long existing patriarchy. In fact, until the legislation on 33% women representation was passed in 2006, the presence of women was significantly low.

The pathway to political leadership for women is different than it is for men. Hart (1988) identifies dynastic succession as one of the pathways to power, in addition to institutional succession and a cultural hero's transformation to politics. Although his reference was in regards to India, in Nepal as well, the women that were present in political positions, before the mandatory reservation system, had mostly been relatives of male politicians (IDEA, 2008). These women have also been of certain social standing, mostly belonging to the higher strata of the social class.

The scenario post-civil war has changed, as there has been significant presence of non-dynastic women from the grassroots level in politics as there are now alternative paths for women to engage in politics other than by dynastic succession. In the case of Nepal, this is a result of constitutional intervention in the form of specific reservations for women. Even then, women's political role has been supplementary to their traditional roles. Therefore, despite the provision of reservations, the phenomenon of co-opting has failed to challenge the dominance of high-caste men in key decision-making positions in Nepal (Paswan, 2017). According to Limbu (2018), this unequal political inclusion did not "translate into reconfiguration of existing power structures".

This culture of clientelism, especially in the case of a gender quota, has only confirmed the gendered attitudes prevalent in political sphere. When women's representation is considered only for the sake of numbers, it dismisses substantive roles and representation of women in politics. It checks the notion that heteronormative arrangements of society pervade the wider political sphere where "real politics of building connections, forging alliances, devising political strategies, formulating election manifestos and garnering party loyalty take place in informal and 'closed spaces', which are built upon and perpetuate gendered power structures" (Limbu, 2018). This is clearly due to the gendered understanding of leadership. This kind of leadership is understood to be a form of empowerment that incorporates concepts of authority as well as other characteristics associated with gender.

According to Goethals, Sorebsn & Burns (2004), there is a stereotypical understanding of leadership that has been linked with masculine dominant attributes. Thus, historically, men have been looked at as the figures of authority as compared to females, and generally, men have maintained that authority within the public arena. Similarly, Spary (2008) also argues that a behavioral style of leadership that cites biological bases such as hormones and genetic makeup is cited as justification for the gendered understanding of leadership styles. These socially constructed molds for men and women, i.e. gender relations, Spary argues, have been the basis for defining authority and power.

This also holds true for Nepal, as the Nepali society is a patriarchal society. Socio-culturally, women are subjugated in the name of religion and purity and women's sexuality is scrutinized and controlled in the name of caste and marriage. Men continue to be perceived as the head of a family/household, and dominate the private sphere, especially the decision-making positions, while women are perceived to be a "weaker sex". This syncs with the state's imagination of women as a "second class citizen".

According to Jean-Marie, Williams, and Sherman (2009), traditional leadership definitions have focused on conceptualizing male leadership behavior. On the other hand, feminist definitions have looked at the leadership of women as being "cooperative, collaborative, collective decision making and relationship oriented" (Mahtab, 2014, p. 227). While women's style of leadership is said to be communal, male style leadership is considered to be agential and associated with effective leadership, however only women have to balance both styles in order to be effective (Eagli and Carli, 2007). Interestingly, communal style leadership is linked with transformative leadership, in which the relationship between the leader and the follower is long term and exists even beyond a single event. The interpretation of women's decision-making as per Von Wahl (2011) is complex, as "female leaders may perceive that acting on behalf of women will make them seem 'weak' or only supportive of 'special interests', and will therefore shy away from being identified too closely with women's issues" (Van Wahl, 2011, p.393).

3. REPRESENTATION, INTERSECTIONALITY AND EXPERIENCES

To put an end to the gendered categorization insisting that politics is a male-centered domain (Mcgregor and Clover, 2011), various instruments, such as reservations and quotas, have been introduced as "they provide an efficient mechanism to provide gender balance in political institutions relatively fast" (Delys, 2014). Reservations are also useful to increase the participation of women in politics to further ensure that marginalized groups, such as women, are present in governing bodies and thus making their voices heard (Bardhan and Mookherjee, 2000; Girard, 2013).

This, however, does not guarantee substantive representation of women, which is only possible when representatives are able to address and voice the concerns of those they represent. Scholars also argue that the women involved will only have a major impact on legislature if "they evolve from a few token individuals to a considerable minority and this increase in number will contribute to the promotion of women friendly policy change" (Shevdova, 2005).

This goes along with the concept of empowerment that scholars suggest occurs when individuals are involved in decision making, agenda setting, resource control, and altering relations of power (Sen, 1993; Malhotra, Schuler and Boedner, 2002). Another aspect important to empowerment is the process of challenging existing power relations and of gaining greater control over the sources of power (Baltiwala, 1994, p.130; Cornwall, 2016). These requirements are true for empowerment in politics as well.

However, many factors other than gender impact a woman's performance and experience in office; "gender is only one dimension of power struggle alongside caste, class, religion and location" (Lotter, 2017, p.98). Women's intersectional identities also marginalize them in accessing or functioning in offices. As researchers like Lotter point out, women's various intersecting identities impact their positions in office. Single women from underprivileged classes and women from marginalized castes face discrimination and stereotypes, which limit their progress.

Moreover, women who did not possess significant formal education were also not prioritized, nor aided by their affiliated parties. Minority women's stereotypical perception also undermines their autonomous agency by damaging their credibility (Raj, 2013). Women from politicized families for example have informal networks that promote their career advancement (Sanchez-Hucles and Davis, p.174), a luxury the newcomer women politicians cannot afford. As Lotter (2017) puts it, the differences between women and women on the basis of caste, ethnicity, geography, religion, and class impacts the power dynamics between them.

4. FINDINGS

The Local Government Act (2017) of Nepal has specified significant roles to the Deputy Mayors (DM), and these roles, according to Tamang (2018, p. 321) "demand attention to the coordination and organization of substantive policy and administrative governance". The DM has eight significant roles, which are; convener of the Judicial Committee, perform duties of the mayor in his/her absence, coordinate activities of organizations and NGOs, coordinate work related to consumer's rights, monitor and supervisor the progress/work of plans and programs, coordinate and facilitate the work of committees formed by the council and legislature, convener of local tax deliberation committee, and convener of budget and programs committee (Timalsena 2014; Tamang 2018, p. 321). Additionally, the Deputy Mayors are also members of the municipal assembly and district coordination committee.

Gendered Roles and the Public-Private Dichotomy

What clearly emerged from the interview responses of the deputy mayors is not just their encounters with deeply entrenched gendered understandings of leadership and political participation, but also the fact that in many instances, they themselves articulate such conceptualizations. Such gendering was most visible in the agenda, roles or positions that the DMs were allowed or encouraged to pursue, and disallowed or discouraged from pursuing. In the first category were issues relating to women's empowerment, social-welfare projects, and mediational or conciliatory work, such as in the Judicial Council. On the other hand, nearly all DMs interviewed noted how they had limited or

no participation in issues of budgetary allocation and physical/infrastructural development. In some cases, even their designated roles were either subverted or undermined. For example, some of them complained that their suggestions in budget meetings were not heard, and they had to get it articulated through their male counter parts for it to be registered. Similarly, some said that when the final budget proposal was presented, it was quite different than the one they had contributed their ideas to.

The gendered aspect of political representation was also clear in how limitations were implemented. For example, several DMs pointed out that the freedom of movement men have is denied to women, which gives male politicians disproportionately more political power. Many aspects of political activity and decision-making happen outside of normal office hours, and since female politicians are still impacted by the unwritten rules of domesticity and thus cannot often stay out during off-hours, they are denied access to important information and participation in decision-making. For instance, one DM mentioned that the two male DMs in her district find it easier to manage cases in the JC since they hangout with the complainants in teashops after office hours, where most of them are more willing to open up to the DMs. She, on the other hand, cannot hangout in teashops after office hours, because one, she has to go back home to manage her child and family, and two, women are not expected to engage like that and should go through formal methods instead. Along the same lines, some respondents also mentioned the withholding of personal amenities, such as vehicles, further impedes their ability to exercise their political leadership.

Most problematically, in terms of constitution drafting, it appears that the policy of reserving either the mayoral or the deputy mayoral position has in fact contributed to the perpetuation of stereotypes about the kind of leaders or political actors women can be. Electoral numbers clearly show that women in Nepal most often end up becoming deputy mayors rather than mayors, due to existing patterns of patriarchy in political culture, and thus assume a subordinate position with significantly less powers, or powers that are seen to be feminine in nature. As a result, society in general, as well as the political actors (including the female ones), appears to have normalized the inherently feminine quality of the DM position. Based on the respondents' reactions, we see that this perception is further strengthened by their roles in spaces like the Judicial Committees, which are seen as conciliatory or mediational in nature. In several cases, the DMs themselves appear to subscribe to this gendered understanding of female leaders as being more collaborative or less likely to be involved in hypercompetitive and sometimes corrupt politics.

Intersections of Caste, Class, and Gender

The interviewed DMs responses were also interesting in how they marked their varied experiences and different perceptions of their involvement, based on the intersections of their identities. What stood out most was that the DMs who came into their current offices with significant political experience and family involvement in politics viewed their (and other female DMs and politicians') challenges differently from those who didn't have the same level of political exposure in their background. For example, they were more likely to see impediments that women face as DMs to be a function of their own individual capacities, rather than purely a result of structural discrimination against women.

From the literature on the dynastic form of leadership, we can see that such perceptions are not unpredictable, as those with political family backgrounds often benefit from their personal and professional networks, and thus are helped past some of the challenges they would normally face due to their gender. Newly emerged leaders, or those without family involvement in politics, the interviews suggested, were likely to describe their challenges as rooted in patriarchal or traditional culture and institutions. Such divergence could also be sometimes seen in the kinds of agendas and policies they favored. The higher the respondents were in caste and class, and the more years of experience in politics they had, their political projects seemed to be more gender-neutral and oriented toward the politics of physical development.

Some respondents, meanwhile, also took what might appear as contradictory position: for example, insisting on the patriarchal and gendered roles associated with DMs and yet simultaneously claiming that women who were brought in through representational quotas are sometimes unaware or incapable of their given roles. Such instances were not unusual, but also explained further by the fact that gender is only one of the various axes along which identities are defined. Therefore, while they suffer the disadvantages of being women in a patriarchal political culture, they also benefit from their higher class and caste status, thus producing such mixed responses.

5. CONCLUSION

This research is not absolute and is limited in its scope. However, based on the conversations with the DMs, it seems that the constitutional imagination of meaningful participation of Nepali women has only been partially successful. It is successful in the sense that women from various backgrounds are now numerically present, and these women also perceive this as a learning opportunity. However, women's ability to exercise their powers as leaders has been limited by a gendered understanding of leadership, as well as patriarchal social and institutional norms. Nepali society, political parties, and the bureaucracy still view women as subordinate to men. Moreover, women's political experiences have not been meaningful in the sense that their performance is limited to mere implementation rather than policy making or resource allocation. Women's experiences have also been impacted by their various intersecting identities. Different socio-cultural and economic, as well as formal and informal, obstacles seem to hinder women's leadership in Nepal. It seems that along with education and ongoing trainings, a change in bureaucratic, political, and social norms is required to further the progress of political representation for women. Nepal should not look at the existing constitutional provisions for numerical gender parity as an end goal, but rather as means to help achieve gender equity. For this, it must recognize a Nepali woman's identity beyond the lens of gender.

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TOWARDS SUSTAINABLE LIVELIHOODS IN THE INDUSTRIALIZING ECONOMY: ADAPTIVE CAPACITY AND ECONOMIC INTEGRATION OF THE AGRICULTURAL COMMUNITY IN THE EASTERN ECONOMIC CORRIDOR, THAILAND

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ABSTRACT

Whilst the associated development policies and government services for agricultural development under Thailand 4.0 in the Eastern Economic Corridor has potential implication to provide the opportunity for the agricultural community to increase their income and enhance well-being, there are few studies assessing the community capacity toward those opportunities. Capacity is the key feature for community development. It can also become the justification for accessibility into the new dynamics of structural development. Insufficient or mismatched capacity with the current innovation activity and economic system could become a barrier for the community to access the range of project's benefits. In the community enterprise in Map Ta Phut, "Biodiversity-based community enterprise" is a potential source to apprehend the role of agent-oriented development. Most of the community members remain working in the agricultural sectors, significantly in mango and jujube farm. The community enterprise has been established to respond to both the opportunity and the challenge of socio-economic transformation in dual-economic development. Using the Sustainable Livelihoods Framework allows the study to understand the complexity of factors that influence the local livelihoods. Particularly, the framework provides the understanding of interaction among the five components of the vulnerability context - assets pentagon, livelihoods strategy, and institution and process - which influence the decision and choice of people to generate livelihood outcome. Livelihood assets and livelihood strategies which the community have generated the solution and organized the activities and projects for livelihoods development; for example, community tourisms, fruit processing and groundwater banks. The innovation for inclusive development by diversity of partnership and the role of participatory development has a significant implication for sustainable livelihoods and capacity development for this case study.

Keyword: Sustainable Livelihoods, Economic Integration, Community Adaptive Capacity, Inclusive Development.

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1. INTRODUCTION

The development of the Eastern Economic Corridor under Thailand 4.0 aims to create economic prosperity, social well-being, raising human value and environmental protection. The community has initiated the community enterprise and worked towards the collective action strategy to establish the project for access to socio-economic transformation opportunities. The community adaptive capacity for well-being highlights the role of human agency, rights, and capacity to prepare to cope with challenges and improve their well-being (Tanner et al.,2015). Sustainable livelihoods framework provides key elements which include livelihoods assets and livelihoods strategy as part of community capacity to produce the activity for livelihoods enhancement. This study has perceived the role of the community and their adaptive capacity through ethnographic research, which include semi-structured interview and observation. The community case study is situated in the Krok Yai Cha community located in Noen Phra Sub-district, Muang, Rayong. The community has the main profession in the agricultural sector, working in mango and jujube farm. In recent years, the community established the community enterprise “Biodiversity-based community development.” This community development group takes collective actions and generates activities to respond to socio-economic transformation in both advantage and threat dimensions. Under the operation of community enterprise, the community has established the projects; for example, community fruit tourism and groundwater banks. Conducting the community development project shows the socially organized learning process, human development, and capacity building among members. Moreover, its products are quite unique. However, the local community development is mostly perceived as a lack of engagement with macro-scale approach and long-term challenge. The grassroots innovation will be employed to explain in this case study how the community can gain recognition in the mainstream market and become the source of sustainable development. Recently, the community has scaled up their activities by collaborating with other partners, especially governmental institutions, private sector, and academic institutions. The inclusive development among the community and other institutions shows the joint responsibility to create an innovative solution for inclusive development.

2. LITERATURE REVIEWS

2.1 Innovation for Inclusive Development

Poverty and Inequality

Exclusion can be examined in several fields of study; for instance, social, economic, political, and opportunity exclusion. It can be represented at the individual level, community level, and across segments. The exclusion could limit the opportunity to equal development, which will subsequently lead to poverty and inequality. The level of inequality not only affects the well-being of the population, but also determines a country's economic performance, since disadvantaged segments obtain fewer resources to invest in with their skills and education (Planes-Satorra and Paunov, 2017).

The case of inequality can be categorized into two groups - structural attribution and personal attribution (Wright, 1989, 2009). Firstly, structural attribution refers to the structure that can influence the outcome of development and livelihoods. The structure includes policy, institution, process, and system. These structures generate the social norm, economic regulation, and law which can influence the activity and capacity of people. It can allow or limit the capacity to access the structure of development. Thus, the structural attribution also becomes the determination of the development outcome and the opportunity to development outcome. Top-down policy, absence of participatory, preferential policy, government failure, resource misallocation, and asymmetric distribution of power could be the challenge for policy to generate equitable growth across population and sectors.

Another case of inequality can be observed in personal attribution. Personal attribution reflects the capacity of individuals to access the window of opportunity of the existing structural attribution. Capacity approach, thus, urges to recognize that people's capacity is heterogeneous. While several opportunities in economic activity would open for all people, it however does not signify that all people have the same capacity to access the available opportunity. Supporting the people who have lower capacity would reduce the asymmetric personal attribution.

On the other hand, diminishing inequality can also be done by investing in human capital; for example, in education, health, and nutrition. Based on the nature of the current economic system and innovation activity, today's skills are required to be appropriate to an existing system and at a sufficient level. The capacity-building approach expands the focus to solid science and technology training. Complex problem-solving ability, good communication skills, vocational education, and entrepreneurial and marketing skills are of relative importance. These skills support the individual to engage in innovative activity. The skills are equally applicable to improve productivity and expand the market reach (Planes-Satorra and Paunov, 2017).

Nevertheless, personal attribution could be inferior based on a range of social factors; for instance, race, ethnicity, religious, gender, and age discrimination (Stewart, 2013). For this reason, the equity approach argues that a person's achievement should be determined primarily by their talents and efforts rather than predetermined circumstances (Stewart, 2013). In particular, value recognition and cultural respect are relevant factors for well-being and dignity.

Throughout the failure of structural attribution to deliver equitable development across groups and sectors, Pro-poor growth approach denotes that if these structural factors are influence to "outcome and opportunity to outcome," policy measures need to address inequality within and provide opportunity to equitable development, which is required to encompass people to grow unreservedly (UNDP, 2015). However, the policy instruments can also be accomplished through an independent set of policies of redistribution. This underlines that policy is the essential source of inequality reduction. Economic and monetary policy, notably progressive tax measurement, demonstrate the role of policy in reducing income and wealth inequality across the population and sector.

Inclusive Innovation Policy

Structural attributions may fail to deliver equitable development (George et al., 2012; Mariano, 2014). Several policies have been implemented to reduce inequality, yet, these seem to be reduced to particular dimensions of inequality. Even so, the inequality of opportunity is still questioned. Combining the low capacity of individuals and sectors would constrain the opportunity to engage in the process of development and innovation.

Inclusive innovation addresses innovation that creates or enhances opportunities to improve wellbeing. *“It develops and implements new ideas which aspire to create opportunities that enhance social and economic wellbeing for disenfranchised members of society.”* (George et al., 2012) The inclusive innovation is tailored to include the underrepresented groups in the process of innovation, research and development (Klingler-Vidra, 2019). Since policy could become a source of inequality and poverty reduction, policy innovation can potentially be developed to the novel modified model to remove the barriers of opportunity.

Throughout inclusive innovation, it values the power and capability of every institution in the society to become a source of inclusive innovation for inclusive growth and development. Government, academic institutions, civil society, private sector, individuals and grassroots innovations are some key innovators for inclusiveness (Dahlman, 2014; George et al., 2012; Klingler-Vidra, 2019). The diversity of people from different backgrounds will contribute a different set of knowledge. Thus, the products of innovation will include the definition of development from each collaborator, which leads to address the inclusive development and growth for all.

According to UNDP and Nesta, technology is part of the solution to social and economic challenges. Technology will play the role of identifying the challenge, and, at the same time, will perform along the process of solution. However, fixed technology may not be applicable for variable environment and heterogeneous user needs (Fressoli et al., 2014). Therefore, the policy of inclusive technology needs to perceive the citizens as the customer and deliver the suitable technological services and products based on variable needs. The policy can apply the social market-oriented approach based on people’s needs (Dann, 2010; Gupta, 2012; Walker et al., 2016). Once again, the process must act towards inclusiveness by including all the stakeholders and expand the foundation locally, especially for the poor to perceive their needs (Stanley et. al., 2020).

The inclusive innovation policy will work towards empathic innovation with faith in the process of inclusive practice rather than in political problem-solving (Smith et al., 2014). The policy will consider distribution not only as a resource but also a decision-making power. The process of inclusive participatory development will give privilege for policy to change strategy at different stages of the value chain negotiation and compromise among multi-stakeholders (Gupta, 2012). This innovation does not aim to disrupt the existing system, but to strengthen it in a more inclusive way.

While inclusive growth and development are mostly expected to be delivered by the government, inclusive innovation allows the role for the private sector, who might be out of the discussion for social development, to become

agents in creating inclusive innovation. The entrepreneurs perform their inclusive innovation through business models, the supply chain, services, and marketing (George et al., 2012). Domestic and transnational companies are more engaged in inclusive innovation because they begin to develop goods and services for these low-income markets (Dahlman, 2014). Inclusive innovation policies can facilitate to bridge between the private sector and the unrepresented group to collaboratively generate innovation for growth and development. Policy is required to find the overlapped areas of value, objective, and goal for growth among actors. The policy can be initiated by choosing a similar or close industrial cluster; for example, a value chain of food production. Thus, it will include the actors from the agrarian sector, water and soil quality specialists, botanists, agricultural and food scientists, and product designers to the entrepreneurs in the food industry to cooperatively work for inclusive innovation.

According to OECD science, technology, and industry working paper (2017), policy innovation for social inclusiveness can act based on industrial inclusiveness (sector), territorial inclusiveness (place), and social inclusiveness (people). These dimensions are the areas most exposed to exclusion. Using monetary and financial support, for example, to provide investment incentives can enhance inclusiveness; yet it is not sufficient. Non-monetary policy approaches - for instance, capacity building, business development training, promoting network, facilitating in accessing global knowledge and technology, and attracting innovation institutions to the peripheral regions - are examples of policy tools for inclusiveness (Satorra and Paunov, 2017).

The result of inclusive innovation policy can reduce the *ex-ant* (cost of searching for information and finding suppliers) and *ex-post* (cost of monitoring, inducement, and cost of conflict resolution) transaction costs. The inclusive stakeholder engagement in co-producing inclusive innovation will systematically allow policy to access data and information (Gupta, 2012), saving the cost of maintaining and implementation through inclusive operation among stakeholders. Moreover, inclusive innovation policy will also strengthen equality of opportunity, especially for underrepresented groups to join the innovative solution for inclusiveness. The inclusive innovation of policy platforms would allow multi-actors to claim their rights and freedom from want as the basic source of human dignity. Moreover, collaborative work among all actors will add values to the participants' understanding, and this will enrich the empathy among participants in their engagements. Co-production knowledge and innovation will also strengthen the capacity of human capital based on knowledge and information exchanges.

Grassroots Innovation

Innovation and community action are important strands of sustainable development (Seyfang and Smith, 2007). For the time being, however, they have not yet been linked. The mainstream institution creates the legitimacy for their knowledge and practice to rule the socio-economic norm. Consequently, it overshadows the value of community capacity and the way of living.

The Grassroots innovative movement is the idea of opening the space for local knowledge and communities to lead in the framing of a collaborative innovation activity (Gupta et al., 2003). By self-recognition towards challenge and goal for development, the unpopular issue may not be taken by the mainstream, but it will be brought to the surface

by locals, since they know what is best for the people (Seyfang and Smith, 2007). Grassroots innovation generates the bottom-up innovation from local material, skill, and knowledge to seek development and social justice (Heeks et.al, 2014). The grassroots innovation is also referred to by other names; for example, below-the-radar innovation and BoP (base-of-the pyramid) innovation (Heek et. al. 2014).

Through the dimensions of membership, influence, reinforcement and shared emotional connection of community containment to make community different (McMillan and Chavis, 1986), these senses of livelihood extend greatly to the common resource and environment. As a result, it will lead the community to produce a sustainability-driven solution. Grassroots movement takes their role in the development field in three dimensions: consumer, co-producer, and innovator (Pansera and Sarkar, 2016). Other stakeholders who engage in grassroots innovation could apply the localization approach, which provides ground in local realities to pursue community means of lives and development perspective. At the same time, the community becomes an organized, agent-oriented, development local group that take the initiative without waiting for external input. This type of innovation can be exemplified in community enterprise and community movement as a source of innovative potential.

However, livelihood has been criticized for the lack of engagement with the process of globalization, macro-scale and mainstream approach (Scoone,2009). The design of local innovation is quite unique. Some innovations may meet the needs of a small community but may not meet the large-scale application. Thereby, grassroots innovation has a low capacity to influence things. However, this should not become an enemy of sustainability (Gupta,2009) because the niche is the source of innovation. It would take time to transform the niche to mainstream, but it does not mean that it is impossible.

Communities can provide niche settings and be scaled up into more commercial and market settings. Enacting a new business model by taking the Frugal innovation will develop innovation from a lower-income, then transfer, adapt, apply, and distribute it into a developed market (Weyrauch and Herstatt, 2017). The Frugal innovation is an innovation process that minimizes resource usage, along with cost-saving, in the production. In other words, it usually involves pro-poor business models (Abrol, 2013; Fressoli, et al. 2014). To influence the mainstream, the community could conceivably work through a novel organizational arrangement and lifestyle practice (Satorra and Paunov, 2017).

External parties assume an advisory role, acting as partners (Chaskin, 2001). Grassroots innovation can scale up their implementation and strategy by becoming partners with other institutions to co-produce solutions for sustainable development (Smith and Seyfang, 2007). Inclusive innovation suggests that a technology may become part of development. However, grassroots innovation is perceived as a technology taker. The local group might not directly be the technology innovator or developer. It needs to make sure that they are fully included in adopting and benefiting from the technology (Fressoli, et al. 2014). At this point, it also shows that one particular institution is unable to work alone in achieving sustainable development. The contradiction between top-down and bottom-up becomes the key challenge to be integrated in collaborative working. It can apply the bottom up-top down strategic alignment to bridge the common ground of work for inclusive innovation.

2.2 Thailand's Eastern Economic Corridor and Its Implication to The Livelihood of Agricultural Communities

The Eastern Economic Corridor Background

The challenge of slow economic growth and low export capacity urges Thailand to establish a new strategy to regain economic and trade capacity status. Under Thailand 4.0, the country has established the Eastern Economic Corridor (EEC) to be a key fuel for economic development, aimed to increase economic performance and step up to be a high-income country through a value-based economy. The idea of this initiative is replicated from the successful phenomenon of Thailand's first-generation Eastern Seaboard development. The EEC project will be initially expanded into 3 designated provinces, which are Chachoengsao, Chonburi and Rayong province, occupying an area of 134,609 rai (215.37 sq.km)¹

The main focus of the EEC consists of 6 key strategic plans. First, development of fundamental infrastructure and public utility systems. The airport, port, and high-speed railways to be constructed are planned to facilitate the seamless connection for both national and international linkage, together with improving the utilities system. Second, the Government of Thailand plans to develop 10 targets industries, the "New Engine of Growth." This includes the First S-Curve of 5 target industries – namely, Next-Generation Automotive Industry, Intelligent Electronics Industry, Advance Agriculture and Biotechnology Industry, Food Processing Industry - and the initially developed New S-Curve of 5 target industries – namely, Robotics Industry, Automation Industry, Aviation Industry, Logistics Industry, Comprehensive Healthcare Industry, Biofuel and Biochemical Industry, and Digital Industry. The clusters are aimed to become a high technology and knowledge-based economies. Third, the tourism promotion plans are oriented to increase tourists in the EEC area, especially family and business tourism. Fourth, human resource, education, research, and technology development have been set. Throughout this programme, the EEC Office will arrange training, coupled with setting up a learning center, to produce skilled people in the scientific, robotic, communication fields. Fifth, the smart city and financial center will be prepared for the incoming population. Lastly, the digital infrastructure is responding to the need for advanced technology of industrial clusters (EECO, 2020). The project expects twice the growth in the total national economic value by the next ten years.

¹ EECO (2019), overview of land utilization plan (Version August 2019), p.5

The area is calculated by including Special Economic Zones for Special Activities 18,484 rai, the Special Economic Zone for Target Industries Development 86,755 rai, Mega infrastructure, and utility 13,870, New urban city and commercial center at least 15,500, Logistics area 1,500 rai. (1 rai is equal to 1,600 sq.m.) * Note: this calculation does not include agricultural land, water source, conservation area of natural resources, environmental area and the previous settlement area of the industry which account up to 8,202,814.81 Rai.

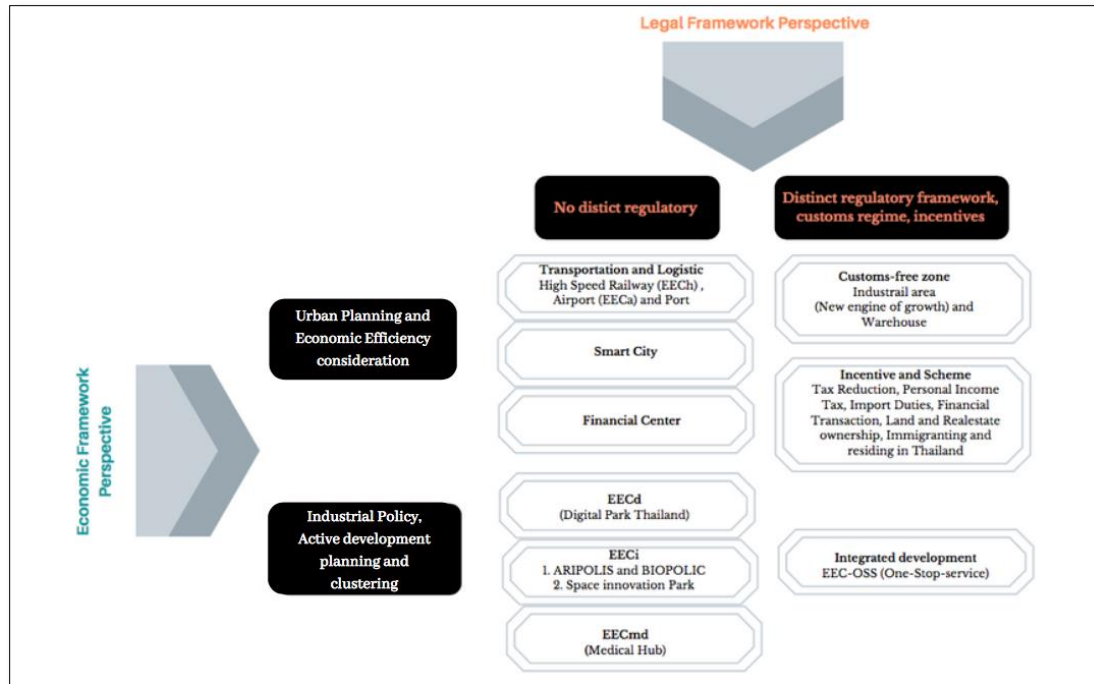


Figure 1. The Eastern Economic Corridor (A Matrix of Economic and Legal Perspectives)
(Adapt from UNCTAD)

The Eastern Economic Corridor Office of Thailand (the EECO) is the institution that corresponds to the development in the area. The twelve ministries are the key partners to the project.¹ The Secretary-General of the Office of the National Economic and Social Development Council (NESDC), the board of investment of Thailand (BOI), Thai Chamber of Commerce, and the Federation of Thai industries are included in the EECO board.

The Implication of The Eastern Economic Corridor to Livelihood Context

The policy-split from accelerating economic growth, both from the physical and social infrastructure, is beneficial to the agriculture community in poverty reduction and social well-being improvements. Several studies show that farm income and productivity are highest near the center of urban-industrial development (T.W. Schultz,1953; Tickamyer and Duncan ,1960). The concentration of industries and business clusters provide job opportunities, especially for the poorer area of agriculture, to join the tide of urban migration workers (Xu and Tan,2002). The number of migrations in the area will increase. Hence, the needs of food and agriculture products would be increasing, and this will require farmers to produce more products and allow them to gain more income. The study of industrialization's effect on the agricultural sector in Algeria also shows that farmers can increase the price of agricultural products as a result of increasing market demands (Fraser and Antrobus;1989).

¹ Ministry of Energy, Ministry of Interior, Ministry of Higher Education, Science, Research and innovation, Ministry of Finance, Ministry of Agriculture and Cooperatives, Ministry of Education, Ministry of Public Health, Ministry of Industry, Ministry of Digital Economy and Society, Ministry of Natural Resources and Environment and Ministry of Labour.

Besides the effort of the cluster of industries such as advanced agriculture and biotechnology, the food processing industry also facilitates the market of agriculture commodities to sell their product for the production process and increase vertical agriculture through business relations. The standard of food production from the local agricultural community will be improved and the practice of sustainable agriculture production towards private sector requirements and consumer rights will increase (Wilkins, 2005). Transportation, such as airports and ports, will also integrate Thai agricultural commodities to the world economy and facilitate exporting.

However, the risk and vulnerability from a state-led development policy is that it may exclude local communities in the development process. Consequently, neglect in this context of livelihood creates key features of poverty and the lowering community well-being (Chamber,1995). Land development has already transformed about 393,226 Rai of agricultural areas to industrial zones (2007-2016).¹ In the agricultural community, the land is the heart of their livelihood. Less agricultural land will possibly impact food security and cause food shortage. Speculation of land loss, derived from the need of land use for project development, causes livelihood insecurity and job loss. As a result, the country may depend on importing agricultural commodities from other countries instead of using domestic commodities (Fader et.al 2013; Kalnay and Cai,2003).

New urban sprawl from central planning could also lead to utility system scarcity, such as water shortage, due to the concentration of industries that will rely on huge water usage. Consequently, this may impact both agricultural quantity and quality since both sectors depend on water (Kalnay and Cai,2003; Brown,2012). To respond to the problem by building a dam may not be the best solution since it may additionally encroach into preserved forest areas or use the water from nearby agricultural communities.

Even though the agriculture community may increase their productivity and income from an increasing population, however, urbanism may also increase living costs, as exemplified in several urban-developed cities. The increase of income may be a tradeoff for a high cost of living (Tiffen, 2003). The result of the policy may fail to guarantee the livelihood's economic security. The opportunity of increasing agricultural products from the community will be challenged by high-capable suppliers that can sell more diverse products at lower prices.

The unhealthy environment from industrial zones, city expansion, traffic, and lack of social responsibility of businesses could also pose harm to people's health, especially respiratory problems. According to the report of the Ministry of Natural Resources and Environment reports on chemical volatile organic compounds (VOCs), there was failure to control the nitrogen oxides (NOx) and sulfur dioxide (SO₂) in the previous project area from the past decade. Soil and water contamination and waste management also exceed the limit of the province's capacity.² Besides, labor influx and new diseases through commercial port channels increase the risk of an emerging disease. Absence of local community participation in the policy process and their inaccessibility to information are other key challenges of the community to obtain the information and/or design their sustainable livelihood development.

¹ EECO (2019), overview of land utilization plan (Version August 2019), p.24

² Pollution Control Department (2019), Ministry of Natural Resources and Environment.

Agriculture Promotion Policy in The Eastern Economic Corridor

Smart farmers (Thailand 4.0) and sub-plans of the EEC initiative - for instance community-based tourism and the Eastern Fruit Corridor (EFC) - provide capacity building to the agriculture community. Rayong is the main pilot province of the EFC program because the province already had a port facility (Sangsuban, 2020). The project will provide a cold warehouse for storing fruits, a packaging building, a customs and shipping building and an exhibition area in the nearby port. Moreover, the Government will also facilitate a new market and use encouragement policy to attract more members of the private sector to invest in the Thai fruit industry. Besides, the innovative learning center (EECi) will be a public space for the agriculture community to learn and share knowledge and innovation to increase their capacity on-farm productivity. At the provincial level, the province office has initiated Rayong Brand to attract and promote tourism in Rayong. The agricultural product development and community enterprise has been supported by funding and technical skills by the Department of Internal Trade of Thailand and academic institutions.

2.3 Agricultural Community and Location Background

Economy and Agriculture in Thailand

The agricultural sector is remarkably important to the economy and society of Thailand. It employs more than 30 percent of the country's labor force, covering 6.4 million households, while agricultural land covers 40 percent of the nationwide area. However, the agricultural sector value accounts for only 10% of the Gross Domestic Product (Bank of Thailand, 2019). The growth rate is slower and more fragile than the other economic sectors of the country. The reduction of agricultural land area and the decline of labor in the agricultural sector are also becoming a risk for the future of Thailand's agricultural sector.

The World Bank (2020) reveals poverty is more prevalent in households where the head has low educational attainment or is employed in the agriculture sector. The poverty indication correlate to the agriculture sector since about one-third of the labor force are in this sector. However, the agricultural labor force still has low-employment and low-productivity in agriculture. Thus, it creates poverty in the agricultural labor force (Yang et al., 2020). The Bank of Thailand (2019) shows agricultural households have an average net income of 16,000 THB per month, meaning 60 percent of agricultural households have a net monthly income below the average (Kingnetr and Maneechan, 2019).

The slow growth rate of agriculture and the declining land and labor are derived from several reasons. The most significant factor is the structural adjustment programs (SAPs). It needs to return back to the time the Thailand and Economic development plan has shifted their agenda from sending agricultural commodities as the main exporting products during 1954. It was the 5th of the national economic and social development plan (1982-1986) that changed the country's development agenda to heavy industry. In addition, the influence of production process transformation and the declining trends of agricultural labor has deflected the attention of the growth of the agricultural sector.

The Importance of Agriculture to Human and National Security

At the community level where the main profession is in agriculture, the sector is the main source of their livelihoods and income, and it provides job opportunities. Agriculture also becomes the main source of national food security. This sector contributes to export, to economic development and to other sectors, since the agricultural sector is linked with several sectors; for example, the textile industry, transportation, retail market, and the food processing industry. The risks of losing the main source of raw materials can lead the country to import food from other countries to be used in the production process and to feed the population nationwide. At this point, it would create the insecurity of the nation and loss of self-resilience, as well as dependence on the international market.

Agricultural Sector in The Eastern Economic Corridor

The three-EEC designated area population has accounted up to 131,000 households engaged in the agricultural sector. The total value of the agricultural sector in the EEC area is worth about 60,707 million THB or 3.17 percent of total gross product value in 2014.

Table 1: Gross-product contribution of Agricultural and Manufacturing sectors in the Eastern Economic Corridor

Province	Gross Provincial Product (GPP)									
	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
	Agriculture									
Rayong	15,187	17,212	21,103	22,856	22,376	27,363	33,705	25,199	22,115	20,962
Chonburi	12,513	10,223	12,464	14,545	14,424	17,785	21,218	17,185	19,171	19,398
Chachoengsao	11,564	12,025	13,031	16,251	15,748	16,415	20,334	20,957	21,578	20,347
Total	39,265	39,461	46,598	53,652	52,549	61,563	75,257	63,341	62,864	60,707
Ratio (Percentage)	3.79	3.22	3.33	3.63	3.84	3.89	4.53	3.50	3.30	3.17
	Manufacturing									
Rayong	192,392	229,408	270,885	246,926	231,420	311,187	286,181	299,090	335,906	314,381
Chonburi	236,210	300,411	356,325	365,345	334,656	352,735	353,510	311,384	334,549	346,679
Chachoengsao	99,595	116,394	135,016	150,512	126,497	166,244	169,447	237,479	216,627	221,040
Total	528,196	646,213	762,225	762,783	692,574	830,165	809,138	847,953	887,082	882,100
Ratio (Percentage)	51.01	52.67	54.41	51.55	50.57	52.40	48.67	46.79	46.63	46.08
	Total Gross Product									
Rayong	454,203	539,225	613,674	639,115	592,742	716,125	764,558	841,935	889,458	874,547
Chonburi	426,605	510,263	585,556	615,054	576,720	620,601	639,951	630,075	693,025	716,051
Chachoengsao	154,663	177,510	201,658	225,391	200,001	247,686	257,866	340,252	319,780	323,528
Total	1,035,471	1,226,999	1,400,888	1,479,560	1,369,464	1,584,412	1,662,375	1,812,263	1,902,263	1,914,126
Ratio (Percentage)	100	100	100	100	100	100	100	100	100	100

Source: National Statistical Office (NSO)

Table 2: Agriculture Sector in Rayong, Chonburi, And Chachoengsao in 2018

Province	Total area (Rai)	Total Agricultural area (Rai)	Number of Agricultural households (Households)	Rice (Rai)	Field Crop (Rai)	Fruit and perennial plant (Rai)	Vegetable (Rai)
Rayong	2,056,554	1,306,783	37,566	30,390	257,103	1,435,547	2,425
Chonburi	2,726,875	1,030,840	40,196	97,613	652,103	700,729	21,362
Chachoengsao	3,344,375	1,698,738	52,743	763,195	521,010	266,804	20,136

1 Rai Is 1,600 Square Meters.

Source: Office of Agriculture Economy, Rayong Agriculture Office, Chonburi Agriculture Office and Chonburi Agriculture Office.

The ratio between the total area of agricultural sector and the total land area in the EEC designated provinces (Rayong, Chonburi, and Chachoengsao) are 57.37, 37.63 and 50.79, respectively. Fruit and perennial plants share the highest amount of agricultural land in Rayong, and Chonburi, while rice is the most significant crop in Chachoengsao.

Spatial development plans prepare Chachoengsao to become the Smart City, with a residential area and logistics hub to connect with neighboring countries such as Cambodia, Laos, and China. Chonburi is aimed to promote eco-tourism, to become the center of education and the financial center, and to focus on research and development. Rayong is expected to be an innovative city, focused on research and development and agricultural tourism (EECO,2019).

2.4 Livelihoods Security and Interventions

People-centered development: Security, Rights and Development

In the developmental state, state-led development focused on developing infrastructure, economic development, and modernization aims to reduce poverty and enhance the well-being of the people. However, these policy tools can partially reduce human challenges while maintaining poverty and inequality. The focus of the development paradigm has been shifted to the subject of well-being and quality of life (Healy and Côté, 2001). Human development approach is defined as the process of enlarging people's freedom and improving their well-being. It can also be referred to as the stage of ability that humans are "Doing and Being" (Sen, 1995). Thus, human development includes the opportunity and freedom of people to have a well-being and an opportunity to reach well-being.

Human development can be measured in diverse ways. It has multinational dimensions which depend on the focused issue and context of influence. The Human Development Index, created by the United Nations Development Program (UNDP), distinguished the measurement into three key dimensions: a long and healthy life, access to knowledge, and a decent standard of job. This approach correlates to the Human Security Approach. The human security approach brings the human element of security, rights, and development as the key study (UNDP,1994). Human security approach components can identify the risk of human development. At the same time, the approach can perceive the security of livelihood development at the community level. The approach is organized into the seven security components.

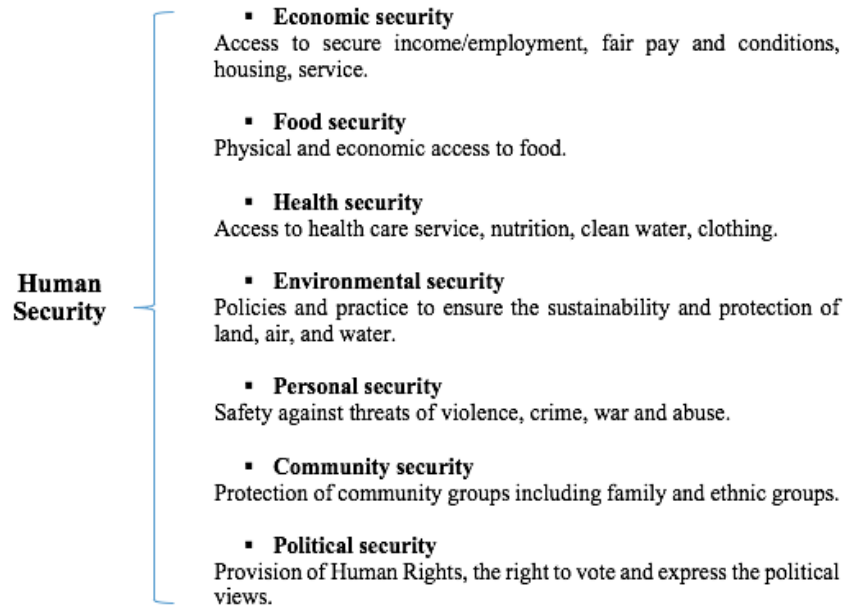


Figure 2: List of Human Security, a security for human development

Source: United Nations Trust Fund for Human Security

The components of human security are interconnected. It can be exemplified by its connection with economic security, which can determine other non-income outcomes of well-being (Sen, 2003). Another example is how health security can impact economic security with the result of the conditions to work. The security components do not only cross-connect among others, but the consequences of its security also interconnect to a network of diverse agents and institutions (UNTFHS). Therefore, the human security approach can lead to the establishment of synergies and partnerships towards the common threats.

Human development and human security prioritize human rights. The right-based approach considers that individuals and communities have the right to identify their insecurity and needs for development. The community can become the active agent of change to secure well-being. It leads the community to work towards community collective action to determine available resources and coping mechanisms against insecurity. The analysis of threat by community perception will present the context-specific based on local information, which will lead to identifying the lack of policy coherence that can have a negative impact on livelihood security. This will allow policy to seek the prevention-oriented mechanism on both protection and empowerment. The empowerment strategy based on the capacity needed will endorse community capacity to better cope with the challenge, as well as strengthen the capacity for achieving their development goals. (UNTFHS)

2.5 Sustainable Livelihoods Approach

Sustainable Livelihoods Construal

The definition of livelihoods reflects the common understanding of being a means of subsistence or a means of securing the necessities of life. With this broad scope of definition, livelihoods are typically associated with the means of living, including a job, monetary income, and other similar substances that enable people to have basic needs: food, shelter, and clothing (Silva,2013). In consonance with Chambers and Conway (1991),

“Livelihoods comprises the capabilities, assets (stores, resources, claims and access) and activities required for a means of living: a livelihood is sustainable which can cope with and recover from stresses and shocks, maintain or enhance its capabilities and assets, and provide sustainable livelihood opportunities for the next generation, and which contributes net benefits to other livelihoods at the local and global levels and in the short and long-term (Chambers & Conway, 1991, p.7).”

The central idea is that people will generate the strategies to achieve their livelihood outcomes. It shows the complexity of how livelihoods work, which underline the requirements of effective use, and maintain and enhance the assets and capabilities for the purpose of a means of living (Silva, 2013). The Sustainable Livelihood Framework (Figure 3) represents the factors that affect people’s livelihoods. Particularly, it provides the understanding of interaction among the five elements of the vulnerability context, assets pentagon, livelihoods strategy, and institution and process which influence decision and choice of people to generate livelihood outcomes.

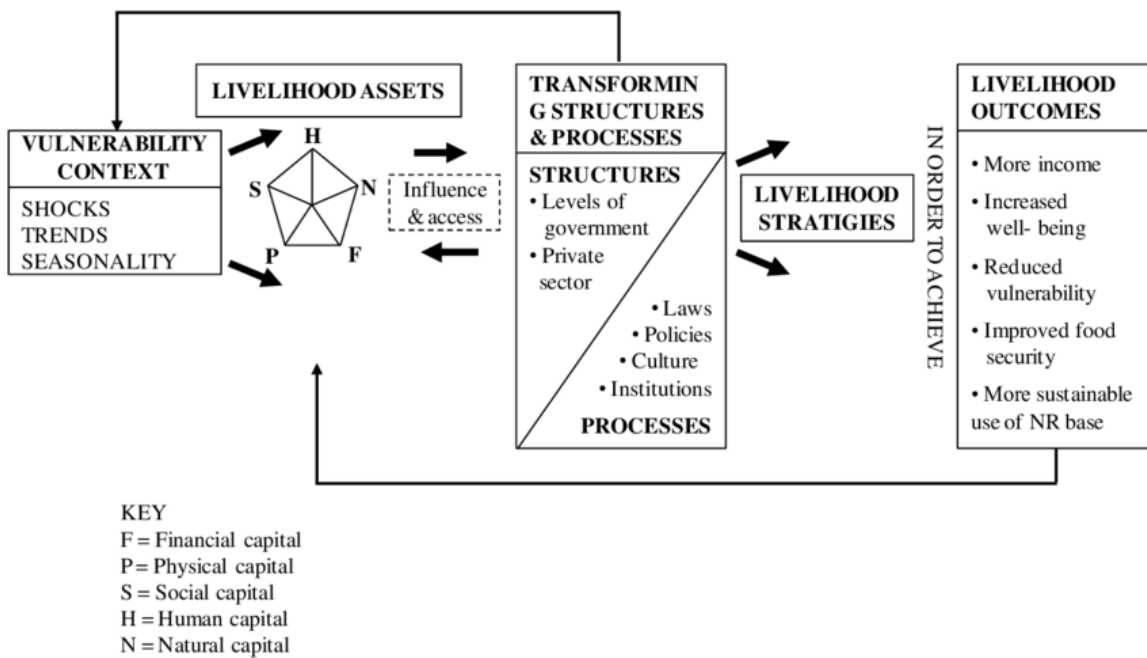


Figure 3: Sustainable Livelihoods Framework

Source: DFID Sustainable Livelihoods Framework (Adapted from Carnet et al., 1999)

The Vulnerability Context

People are conceived to be living within the vulnerability context when they are exposed to risks, though sudden shock and trends over time and seasons change (Brocklesby and Fisher, 2003 p.187). The livelihoods become vulnerable when they cannot cope with the stress. In this manner, the vulnerability thus has two sides: an external side of risks, shocks, and stress to which an individual or household is subject; and an internal side which is defenselessness, meaning a lack of means to cope without damaging loss (Chambers, 1989, p.1).

Vulnerability from the external side refers to the external environment in which people are living; for instance, national and international economies, trends in population growth, politics and technology, natural resources, earthquakes, agriculture problems, diseases, economic shocks and seasonal vulnerability of production, prices, health or employment opportunities that put a severe impact on livelihoods (Birkmann et al., 2013). The external systems can generate a negative impact on the livelihoods' security and destroy capitals. (Gallopín, 2003) It can force people to dispose of capitals as part of their coping strategies. Resilience to external shocks and stresses is an important factor in livelihood sustainability (Benson & Twigg, 2007). At the same time, the vulnerability from the external side can become a window of opportunity, facilitating people to a beneficial transformation. (Young, 2005). It allows people to access the available opportunity of transformation to gain a living.

Vulnerability within the internal side refers to the lack of means to cope with the exposure. Towards the Sustainable Livelihoods Approach has significantly referred to the means to cope as the availability of livelihoods assets and strategy that are used to respond from the exposure (Devereux, 2001). However, not all individuals have a fair capacity to respond to the external side as a result of different assets, insufficient resources, lack of opportunity to correspond, as well as mismatched skills. Thus, this group of people are more susceptible to shocks. The vulnerability context of the internal side can be diminished by strengthening an individual's capacity or adjusting the system that people are living in. (Gallopín, 2003)

Transforming Structures and Process

Transforming Structures and Processes are the institutions, organizations, policies and legislation that shape livelihoods by influencing access to capital, livelihood strategies, vulnerability, and terms of exchange (DFID, 1999). Kollmair and Gamper (2002 p.8) determine "structure" as the hardware or institution/organization (both public and private) that generate the social norm, economic regulation, and law which can influence the activity and function of people's livelihoods. "Processes" are denoted as the software and the way in which structures and individuals operate and interact. The processes include macro, sectoral, redistributive and regulatory policies, international agreements, domestic legislation, markets, culture, societal norms and beliefs, and power relations associated with age, gender, caste or class. Scoone (1998) states the importance of understanding the structural and process attribution, as it allows to identify the restrictions/barriers and opportunities to sustainable livelihoods. It clearly shows that transforming structures and processes can give a direct feedback to vulnerability context, which determine the choices that are exposed to people in pursuit their livelihood strategies (Devereux, 2001; Farrington et al., 2002). Thus, the

transforming structural and process become determinations of both livelihoods' outcome and the opportunity to livelihoods outcome.

Livelihoods Strategy

Livelihood Strategy is the range and combination of activities and choices that people undertake to pursue their livelihood goals. The most common livelihood goal is to ensure economic and social security (Koczberski et al., 2011). However, it is too early to assume that people should have the similar goals of well-being. The livelihood goal must depend on their choice. At the same time, the structural attribute or environment that they live in may influence their livelihood choice and strategy. Households and individuals may pursue multiple strategies for their various means of living. This was mentioned in Adato and Meinzen-Dick (2002), that even in the context of agricultural research, one should not assume that someone is automatically a “farmer” and their strategy is to pursue farm productivity, or that other people with other business are not involved in farming. In this regard, people can generate several strategies to gain their well-being and provide a measure of security. The availability of assets and the ability to access the capitals have a major influence on people's choice of livelihood strategies. In other words, more available livelihoods assets will allow people to generate a wider range of strategies to attain security and contribute to a positive livelihood outcome.

Under the scope of this study, the livelihoods strategy can be perceived as the strategy of the agricultural community to correspond to their insecurity towards the dimension of human security. The sustainability of livelihoods strategy, thus, can be comprehended on the prolonged implementation of the community development groups and how to maintain and enhance their strategies and actions regarding socioeconomic and environmental transformation.

Livelihoods Assets

The ability to pursue different livelihood strategies is dependent on the basic material and social, tangible and intangible assets that people have in their possession (Scoone, 1988). The key assets of a community, which are financial, physical, natural, human, and social capitals, are the substantial elements that allow the community to exercise the resilience or development activities according to their strategic plan. The resource is the determination of the community's capacity and performance in resilience and development. Without the attention of the community's resources, models of resilience and development may have limited functionality. (Zautra et. al.,2010)

List of Community Assets (Scoones,1998; Tacoli, 1999; Campbell et. al, 2001; Adato and Meizen-Dick 2002; Erenstien et al. 2010 – Referred in Quandt, 2008)

- 1) Human capital: skills, knowledge, labor availability, capacity to work, capacity to adapt, health, nutrition, and education.
- 2) Social capital: networks and connections (patronage, neighborhoods, kinship), relations of trust and mutual understanding and support, shared value and behaviors, common rules and sanctions, access to

- market representation and access to the state, mechanisms for participation in decision-making, social claim and leadership, and relations among other stakeholders.
- 3) Natural capital: environmental services, freshwater availability, land management, agricultural space, forest resource, marine resource, air quality, erosion protection, and biodiversity.
 - 4) Physical capital: financial capital, infrastructure (transport, roads, vehicles, secure shelter and buildings, water supply and sanitation, energy, communications), agricultural household assets and technology (tools and equipment for production).
 - 5) Financial/Economic capital: capital base; for example, cash, savings, credit and debt, remittances and pensions.

Sustainable livelihood outcome

Sustainable livelihood outcomes can be measured based on normative standards; for instance, increased household income, increased community coping capacity, reduced livelihoods vulnerability, enhanced social and human capital, and improved food security. Additionally, the alternative measurement of outcomes such as technological capacity, entrepreneurship skill, community good governance, and social inclusion practice can be used to strengthen the key intervention of livelihood outcomes. Maintaining sustainable livelihoods can be done by working through an adaptation process (Bonanno, 2004). Hence, the sustainable livelihood is a process of continuous improvement and adaptation. Working through these processes, the community will evolve and make a transition to accomplish the goal (ISC; Bonanno, 2004).

3. RESEARCH METHODOLOGY

3.1 Literature Data

The thesis will utilize secondary data from academic papers and government official reports, such as from the Eastern Economic Corridor Office of Thailand, the Office of Agriculture, the Ministry of Public Health, the Ministry of Natural Resources and Environment, the Bank of Thailand, the Thailand Board of Investment, and the provincial and district offices of the three designed provinces. Law and policy reviews will also help to comprehend the impact of the Eastern Economic Corridor on the agricultural sector and community. The literature source from news articles, civil society, and individual experts will broaden the perspective of the role of program implementation in a socio-economic perspective. The academic paper will be scrutinized by theory and approach, while the cross-country case study from the academic paper will allow the research to examine the cause and effect of urbanization, special economic zones, industrial economy, and human and community security.

3.2 Primary Data Collection

A **qualitative methodology** is decided to be used in this study because of the nature of the research problem, which seeks to understand and explain the livelihoods and factors of local agriculture people's livelihoods in the industrialized site and economy. It was considered that a qualitative approach would provide an in-depth understanding and reveal the complex textual descriptions from people's experiences (Wilmot, 2005). The **semi-structured interview** will be conducted to perceive the subjective experience of the impact of the EEC to livelihood security, livelihood status, self-resilience, and government's protection policy. The methods are also useful to generate in-depth information and complex ideas. Qualitative methods with **open-ended questions** allow informants the opportunity to answer the questions in their own words rather than force them to choose from fixed answers, as quantitative methods do (Mack, et.al, 2005). Besides, qualitative research methods do not depend on sample sizes as do quantitative methods. This thesis will use a **case study** which can provide significant results with a small sample group. Following the primary data collection, the interviewer will embrace the concept of empathize which allows to understand people through engagement and conversation. Field study becomes an **evidence-based analysis** to support the argument and hypothesis of this research. Throughout the fieldwork, the study will facilitate to frame the research analysis and enhance the argument through the context, culture, and value of the target community.

3.3 Analysis and Visualization of Results

Originating from quantitative data of the interviews will simplify obtaining the linkage between the impact of the EEC (Context) to livelihood and community assets. Human Security will be used to analyze the key interventions for livelihoods security, which are economic security, food security, health security, education security, environmental security, community security, and political security. Down to the line, the impact of the EEC will be categorized into a positive impact which provides an enabling environment for the community to develop and a negative impact which obliges the community to resilience or improve their environment.

In the process of adaptive capacity of a community, the Sustainable Livelihood Approach will allow to identify the key components of a community's adaptive capacity, which consist of community assets and adaptive strategy. The 5 key of livelihood assets is the central feature that can determine the level of adaptive capacity.

The sustainable livelihood outcome of a community floorplan may be different from that of the national policy plan. Thus, it will bring to mind the gap between policy attention and the community development agenda. Throughout this process, it will facilitate balancing the development stance between macroeconomic policy and livelihood development scheme which will facilitate policy-led to inclusive growth. Structure and process, such as government policy, law and institution, can be the supporting measure for the community adaptive capacity

3.4 Research Locations

The Krok Yai Cha community is located in the southern part of Rayong, in Noen Prah Sub-district, Mueng district, Rayong. The community's location is surrounded by industrial plants in the area called Map Ta Phut complex.

The area is the pioneer of industrial development since the previous policy of the Eastern Seaboard. However, the livelihoods of this community still represent the character of the agriculture-based economy.

Geographical Strategic Locations

Krok Yai Cha Community is the strategic location related to the scope of the research. Here the research will apply the case study to research questions. The location is surrounded by 2 industrial Estates which are the Pha Daeng and the Map Ta Phut industrial Estate. Its location is the strategic location of nearby transportation, such as highway No.3 (Sukhumvit), No. 363, motorway, U-Tapao Airport and Map Ta Phut deep-sea port. In the nearest future, the high-speed train project connecting 3 airports (Don Mueang, Suvarnabhumi, U-Tapao) will be constructed there. The types of agriculture in the communities, such as mango, are the target list of development plans. This district provides the opportunity to prove the hypothesis, whether the community can gain more income in being nearly at the center of development and improve their social well-being through urbanization, or will their income and well-being be affected by the development.

The geographical area is mostly flat but full of high and low areas (Map Ta Phut Municipality, 2020). The slopes are lower starting from the side of the gulf of Thailand. With this geological character, the community faces the drainage flood challenge during the middle of May to the end of October, when the Southwesterly wind brings the rain to the area. The location of the community is close to the sea. As a result, the soil of this community has a different character from most agricultural farms in Rayong, which shows its character as a sandy soil. Apart from soil that is important for agricultural practices, water is also a vital factor that influences the farm productivity. The closest water source is the Nam Hu irrigation canal. However, the canal does not flow through the community because it is far from the community location - approximately 2 kilometers.

Economic Setting

Rayong has been a pioneer in industrial development for 30 years. The province ranks as the highest Growth Provincial products (GPP) per capita in Thailand (NESDB, 2019). The decreasing number of agricultural land and agricultural households show a significant relation to whether the result of its decrease came from the factors such as low returns in agriculture, labour shift to other sectors, and ecological challenge, or in consequence of an increasing number of the industrial sectors and urbanization.

Table 3: Comparison of agricultural area and household of Rayong Province in 2010 and 2020

District	2010			2020	
	Total area (Rai)	Agricultural Area (Rai)	Agricultural Houshold (Household)	Agricultural Area (Rai)	Agricultural Houshold (Household)
Mueang Rayong	301,370	188,954	8,935	180,290	8,027
Klaeng	456,199	385,318	13,140	341,951	12,878
Ban Khai	261,163	218,129	7,382	214,298	7,462
Ban Chang	140,097	84,109	2,475	119,336	3,560
Pluak Daeng	329,867	163,904	4,233	49,011	2,353
Wang Chan	214,398	122,274	3,867	148,889	4,325
Khao Chamao	184,481	163,909	4,177	141,163	4,917
Nikhom Phatthana	168,979	114,465	3,954	111,935	1,835
Total	2,056,554	1,441,062	48,163	1,306,873	45,357

Source: Rayong Provincial Agricultural Office

Table 4: Agricultural Sector in Noen Prha Sub-District Comparison between year 2010 and 2020

Year	Total Area (Rai)	Agriculture area (Rai)	Agricu lture (Rai)	Wet season rice (Rai)	Pineapple (Rai)	Cassava (Rai)	Mango (Rai)	Durian (Rai)	Rambutan (Rai)	Mangosteen (Rai)	Coconut (Rai)	Rubber Plant (Rai)	Palm oil (Rai)
2010	14568	4305	394	49	0	454	333	110	18	100	68	83	2
2020	14568	3500	395	125	20	20	300	60	15	64	10	16	0

Source: Rayong Provincial Agriculture Office

Social Setting

Krok Yai Cha Community consists of 2,481 households with 3,951 people in total population. The population can be categorized based on the gender by birth to 1,993 of males and 1,958 of females (Rayong health promotion hospital civil registration, July 2019). The health care services for this community is provided by the Kok Koh health promotion center, which is the closest - 1 kilometer - from this community. Another health care service is the HRH Princess Maha Chakri Sirindhorn Memorial Hospital Siam Grand Palace, Rayong. The hospital is a public hospital with a 200-bed capacity. Moreover, a private hospital, Mongkut Rayong Hospital, also provides health care service with their availability of 100-bed capacity. The distance of these two hospitals from the Krok Yai Cha community are 13 and 12 kilometers, respectively. The educational institution at Map Ta Phut Multiplicity provides kindergarten to secondary education. There are the Map Ta Phut technical college and the Rayong Polytechnical College available in the Multicity area. The education at university level is not available in this sub-district, but up to two public universities are available in the Mueng district.

Agricultural livelihoods

The community has had their livelihoods in the agricultural sectors since 1938s. In the past, people of this community worked for the rice farm. The locations of their rice farm are far from the location, approximately 3-4 kilometers, which is today an industrial estate area. The land expropriation of the first phase of the industrial economic development of Eastern Seaboard impacted people in this community by loss of their rice farm. Fortunately, people still have remaining land, which is their home, the site research of this study. The condition of this community on land possession allows the community to transform their land to provide income by continuing the agriculture sector.

In the past, this area had jujube farm concentration. It led people who lost their land to shift their crop from rice to jujube. However, the jujube farm also faced the challenge of the low prices with high investment. As a consequence, people changed again their type of farm to mango farm. The mango farms started in the 1987s, and since then, the mango farm became their livelihood character. By the agricultural innovation of the grafting technique, people can graft the local mango tree, which does not serve the market demands to other accession to meet the demands. However, there remains 3 jujube farms in the community.

The social relations among the members of this community is the kinship among those who occupy the farm land in this village. However, the impact of development led to the increased population brought about by the migration of both domestic and international migrants into this sub-district, including the Krok Yai Cha Community. The increasing population and housing estate affect the people who work in farms to change their farm practices, especially the farm that is close to the new housing estate. The farm practice has changed in terms of requirement to seek the appropriate time for conducting the chemical pest control. Influenced by the urbanism lifestyle, people lost their social relations and connections among the local neighborhoods. Some areas of this community have transformed to other types of land usage, but up to 10 households portray their livelihood as working in mango and jujube farm. The agriculture sector is still continuing their identical livelihoods.

In 2018, the Social Welfare Division of Map Ta Phut Multiplicity visited the community. The division found the potential for collaboration with this community in livelihoods and well-being development. With the character of local practice and actual livelihoods of Rayong province on fruit farms that surrendered to the industrial estate, the Krok Yai Cha community started to collaborate with the Social Welfare Division's officer to frame the plan for community development and agricultural livelihoods sustainability.

4. FINDINGS

This section will provide the key findings on the relevant factors that influence local livelihoods of the agricultural community in both positive and negative impacts. In the event of insecurity or opportunity from structural attribution, both open the key message for the community to gain well-being status. In favor of reaching the well-

being goal, adaptive capacity is represented as the positive attribute to both community resilience and community development.

The objective of adaptation for well-being highlights the role of human agency, rights, and capacity to prepare to cope with challenges and improve their well-being (Tanner et al., 2015). It requires “the capacity” to move the goal of well-being to become a reality. **Sustainable livelihoods framework** provides key elements, which include livelihoods assets and livelihoods strategy as part of community capacity to produce the activity for livelihoods enhancement. Livelihoods assets are of five dimensions: human capital, natural capital, infrastructure capital, financial capitals and social capitals.

4.1 The Impact of The Eastern Economic Corridor to Livelihoods of The Agricultural Community

The study found that the development of the Eastern Economic Corridor contributes both positive and negative impact to livelihoods. However, some development policies and government services have no significant relationship with livelihood development. The Eastern Fruit Corridor (EFC) is the associated policy for agriculture sector development which will provide the wholesale market for premium quality products, cold storage, and encourage the export capacity of Thai fruit. However, the community has less capacity for the export market due to a small farm and production capacity. The community perceives that the ability to export is not their indicator of successful livelihoods development. It is because their capacity of production in the internal market is suitable for their current production capacity, even though the community has prepared themselves by obtaining the Good Agriculture Practice (GAP) in order to respond to the opportunity to sell the quality products at the upcoming wholesale market under EFC initiative. By participating in GAP, the community has no information on the EFC program, but the community is encouraged by the local government to obtain the GAP. Along with the innovative learning center where there will be a public space for the agriculture community to learn and share knowledge and innovation to increase their capacity on-farm productivity, people have no information regarding the project. It underlines the significant role of information, which is the key for accessing the impacted factors of both challenge and opportunity, to gain their well-being and livelihood status. The lack of information could limit the community perception towards the new opportunity. At the same time, it decreases the awareness of the community on their role as innovation creator, constrains their confidence in investment of their time and financial capitals to the benefit returns in the existing opportunity, and contribute to the lack of knowledge on how to go about it.

The project on fruit tourism is significantly applied for this case. The community decides their strategy to go towards fruit, culture, and livelihoods living as their key identity for community fruit tourism. The study shows that the increasing populations and good roads support the market for the agricultural products of this case community. Moreover, the concentration of private sectors supports the financial capacity for community development. Yet, the knowledge and innovation exchange regarding product innovation and marketing strategy between the private sector and community was not indicated in this case study. Still, the innovation exchange on groundwater banks among private sector, academic institutions and the community shows the collaboration in enhancing the challenge of water shortage. The study also shows that there is no relation between the increasing food industrial cluster and the industrial

economic development in increasing the opportunity for a fruit farm to send their commodities in the production process. It is because the community has changed their economic activity to become entrepreneurship by themselves as a result of increasing population and road infrastructure. The people gain a better satisfaction price of their products than sending them to a factory at the wholesale price rate.

4.2 The Capacity and Strategy for Adaptation

Livelihoods Assets

Human capital: The total number of community enterprise members are 30 people. The members who have completed the secondary education account to 36 percent, while people who completed tertiary education are only 20 percent. The majority of people completed the education level under secondary school, which are the people aged around 60-70 year old. Based on the interview, people agreed that the increase of agricultural productivity is the result of experience. The significance of the knowledge exchange is learned among group members and neighborhoods. People in the group are literate. The second language acquisition is still low based on speaking, reading, and writing. However, people considered the second language as significantly important. Towards the health security dimension, people can access the nearest health center within 4 kilometers. The mobile clinic is provided regularly by health promotion centers and community health volunteers. People have the public service for low cost of health care expenses under the 30 Baht scheme, which would save their cost of household spending. Most of the people rely on the labour from self-labour and family members. The reason is because the people can save the labour cost of the external source of labour. At the same time, the nature of the EEC's development shows the trends that people tend to work in the industrial sectors rather than in the farms. However, the increase of age becomes the challenge for their income security. It underlines the importance of human capitals and ability for livelihoods.

Natural capital: The geographic area is sandy soil due to the location being close to the sea. The mango growing from sandy soil becomes a significant character. According to the information from the community, the mango has a sweet taste and fine-grained texture, which is different from the mango around this area. In terms of water resources, the study found that the only available source of water is the Nam Hu irrigation canal. People have been facing a water shortage in the past five years. Some of the farms decide to excavate a pit for supporting farm productivity. People also face the challenge of climate variability. The arid weather brings the thrips which is the most dangerous insect for mango and other fruit (Maneerat, 2007). The thrips destroy the young flower and young leaves. Thus, the mango tree is unable to bear fruit. The risks of no output of fruit production have a direct impact on income security since the mango farmers only receive income a maximum of two times per year during the seasonal mango and off-season. The farmers also report that the rain has chemical contamination. It can be proved because, after raining, the mango leaves are seared and young flowers are damaged. As a result, it also leads to income and health insecurity of the farmer not only for the natural resource from the ground but also from the sea. This community is near the sea, approximately 1-2 kilometers. The krill, which looks like a small shrimp, has been produced to make the krill paste for food. The information from the community has reported that the krill paste is decreasing in the past few years.

Infrastructure capital: Water, electronic and communication infrastructures are accessible in the community. The 68 percent of community development group members are able to access mobile banking. Most of the people are able to access the social media which allow them to sell their products in online market channels. People also use the internet to access new knowledge for farm practice via Youtube and other website sources. The government has produced several knowledge sources and applications for smart farmers. However, these materials did not gain the recognition from this community. The research found that there is no relation of export opportunity through port and airport facilitation for the community. It is because the households have a small farm which are around 8-18 Rai (1 Rai is 1,600 Square meters) As a consequence, the community has less capacity for export. The concentration of related industrial clusters, for example the food processing industry, has no relations with community economic development, because the existence of factories did not match with the type of agriculture commodities. In contrast, the concentration of factory and business has provided a market from increasing labour and vertical relation between the private sector and community.

Financial capital: The income per household is sufficient to lead to saving. Most of the members are indebted, except some households who just began constructing the farm resort. The financial for running this community enterprise comes from the share of each member. Some of the financial support is also contributed by the government and public sector. The groundwater bank is also supported by the private sector who facilitate the machine operation in the area. The financial capitals also show that the dependence on income of the members would endorse the community capacity for development, as it allows the community to experience the new method for well-being enhancement and creating innovation. However, the advanced technology in farm practice is still a difficult decision for people to invest in. It is because of the uncertainty of technology effectiveness and the risks of investment and profit returns.

Social capital: The community becomes partners with diverse institutions. Firstly, the local government who respond for community development has played a significant role and worked with the community since the founding of community enterprise until now. Information and encouragement is the key capacity building of the community that the government has been supporting. Moreover, the local government also provides the customers a marketing channel to promote this community. Another key partner of this community is educational institutions. The community has worked with the university in conducting the community development plan through participatory development, which includes community tourism, resource management, and farm practice. In addition, the private sector also contributes to the community through their Corporate Social Responsibility.

Livelihoods Strategy

The livelihoods strategy is the strategy that community generates to increase the range of assets and to improve long-term livelihood security (Ellis, 2000). The consequence of land expropriation caused people to lose their rice farm and create economic insecurity. Most of the people who still have land are located in this current community. The land loss led to livelihoods changing from the rice farm to the mango and jujube farm where there are abundant wild mango trees. The farmers who shift their types of agriculture products still face the challenge of low price. The

industrialized development and urbanism bring the market opportunity to the community as a result of increasing population, location, and transportation. The community decides to become entrepreneurs by selling their products in front of their farm where their house is located. Moreover, this community enterprise generates the strategy to respond to the opportunity of economic development and enhance their well-being and livelihood security.

Collective Actions Strategy

The community uses the collective action strategy to establish the community enterprise biologically utilized in Map Ta Phut since the community has growing the fruit. The group was encouraged by the local government, the Map Ta Phut municipality office, to establish the community enterprise and work towards livelihood development. Collaboration between community and local government has conducted the participatory development to generate an idea and strategy for development. This collective development group becomes the platform for the people to exchange the knowledge on farm productivity and quality of production. The information from the interviews points out that this collective action allows people to speak and understand each other more. In other words, collective actions is the mechanism for capacity building and conflict management. The community has established community fruit tourism. This project has been perceived as the collective action strategy. When groups of tourists has contacted the farm, the community will arrange the meeting for distributing the work. At the same time, they will provide the equal opportunity for each farm member to welcome the tourist group. The chosen farm will agree upon the willingness of the farm owner and the consensus agreement of the members. In the case of tourism groups, farms will not work individually, but all the farm members will come to work as a collective action. The duty of each member is not assigned as a certain duty. The group aims that people can practice in every duty from guiding tours and cooking to marketing. This strategy does not only create the sustainability of the group as the result of the risk of lack of human resource, but this strategy allows people to practice unfamiliar skills which would help them in capacity building.

Livelihoods Diversification: Community Fruit Tourism

Instead of focusing on doing the farm work, people expand the livelihoods strategy to tourism. The community had linked this to their livelihoods, where agriculture is the main profession, by doing community fruit tourism. The community is still doing the mango farm as the typical practice, but at the same time, using their orchard as the place for people to visit. One of the strengths of this community is culture, history and local practice. These factors become the key identity which makes the community different, since most of the place in the Map Ta Phut complex is urbanized. The identity on mango on sandy soil can be recognized as the community identity that can be applied as tourism and marketing strategy.

By remaining in what livelihoods are, this will guarantee income security, since people do not need to completely change their livelihoods to other sectors or industries. The tourism strategy becomes the opportunity to gain a second source of income. Some farmers have expanded the business to farm-stay

resorts. Another main point of the community's strength on community fruit tourism is the location. The community location is near the beach, where there are already existing tourists. The highway connected between cities and the location in the middle of Map Ta Phut industrial area endorse the capacity of this community for tourism.

Economic Activity Transformation

The rule of demand and supply can be perceived in this case study of sustainable livelihoods. With the decrease of orchards in the area, there are fewer competitors who can supply the same agricultural products. "The less supply, the more demand" is the rule. However, the mango farmers still face competition with other farms in Thailand, as well as international suppliers, especially in Myanmar who can provide the lower price of mango (MOC, 2019).

In this case, the difference and identity is the key which makes a greater impact to marketing and competitive strategy. As mentioned, the several kinds of fruit, especially mango, mangosteens and durian, is well-known in Rayong province. The special character of this community's mango is it being grown in sandy soil, which has a sweet taste and thin shell of fruit. This special character has been promoted through government official websites and sharing by customers. From the interview, the customers still come back to buy the mango from this community every year. The labour from North Eastern of Thailand always buy a huge amount of mango and send it back to their homes. Thus, the community already has loyal customers, but the challenge of the community is to find new customers. Linking the tourism strategy to the marketing and competitive strategy can create the new way of doing farm business. The customers can visit the farm and get the fresh fruit directly from the tree. The visitation can guarantee customers of product quality, as well as create the good farm practice of mango farmers towards clean food and quality sustaining.

Diversity of Partnership

The definition of the agriculture collective development group does not necessarily define its narrow scope on similar types or profiles of the members. This collective development can include the group or people who work in other sectors, but the members require mutual motivations and goals (Gilchrist and Taylor, 2016). This community enterprise focuses on income security, food security, environmental security, health security, and other dimensions of livelihood security. The group has a majority of members who are mango farm households. However, the members also include people who work in the restaurant business, health facilitators, and government agents.

Towards the same goal for livelihood security and development, people will form the group to plan, generate solutions and act towards the livelihood's goals. The benefit of member diversification can enhance the capacity among each member. It can be exemplified when members come to create the community tourism map, which pin the significant place for tourist visiting. Thus, it also covers the locations of farms

and restaurant members. The diversity of members will share the market and customers. Moreover, farms have the opportunity to put the products at the restaurant. At the same time, the restaurant has gained marketing benefits through government and partnership support marketing. The diversity of members also contributes to a wider perspective on generating the solution or development plan, as the result of different backgrounds, knowledge, and experience.

Youth Engagement

The diversity of group members is not only in the different types of business but also in age. Most of the farm owners are aged higher than 60 years old. They are challenged by their capacity limitation, especially their ability to work. Currently, their next generation is continuing the farm work and their second generation can assure the livelihoods of agriculture. However, the third generation is unpredictable with the definition of their brown livelihoods. The research found that, currently, the third generation who graduated at the undergraduate level are continuing in mango farms. The people support indirect sustainable livelihoods through providing education opportunities at a higher level. Another challenge of the farmers who are aged above 60 years old are the constraints of technology and digital communication skills. Most of the youths are children and grandchildren of the farm owners. They have fully engaged in the group activities. The knowledge exchange among different ages can lead to human capacity building. The youth engagement is the key of human capitals to guarantee the sustainability of the group in promoting agricultural sustainable livelihoods.

5. SYNTHESIS

Scoone (2009) analyzed the livelihood perspective of local development. He said that local development schemes mostly lack engagement with the big shifts in the state of the global market and microscale approach engagement, and this left the local community incompatible with real world challenges. This section can provide key samples based on site research on how this grassroots innovation has the possibility to encounter the mainstream and be recognized using a grassroots innovation framework. At the same time, grassroots innovation is an outstanding contribution to sustainability, especially in the environmental sustainability (Pansera and Sarker, 2016). Apart from the local institution, the study found the role of partnership in supporting development capacity of this local agricultural community case study.

5.1 Grassroots Innovation

Grassroots innovative movement is the idea that opens the space of local knowledge and communities to lead in the framing of a collaborative innovation activity (Gupta et al., 2003). Grassroots innovation generates the bottom-up innovation from local material, skill, and knowledge to seek development and social justice (Heeks et.al, 2014). The community could bring the challenge of social issues which may be disregarded from the mainstream. At the

same time, the community can become the source for sustainable development regarding environmental sustainability. Using the local livelihood capitals allows the community to work through the process of frugal innovation in order to gain the market recognition from the mainstream.

Socially- driven Solution

By self-recognition towards the challenge and goal for development, the unpopular issue may not be taken by the mainstream, but it will be brought in the surface by locals, since they know the best what is matter for people (Seyfang and Smith, 2007). In this case, the government encourages the export of agriculture commodities, but the community has been limited by their capacity for production. The smart farmers were farmers encouraged to apply technology. However, the certain technology - for example, the drone - cannot be used in the case of the mango tree. It is because of the shape and the thick bush of the tress. The encouragement on food processing or development second stream of production may not be well applied for this case of the small farm, since the national market capacity is sufficient. Even if the community wishes to export, the limitation on GAP and trade barriers become the challenge for farmers.

Sustainability-driven innovation

The dimensions of membership, influence, reinforcement and shared emotional connection of community make the community different (McMillan and Chavis, 1986). These senses of livelihood will extendedly concern the common resources and environment. As a result, it will lead the community to produce a sustainability- driven solution; in this case, community concerns on environmental degradation and food safety. The community tries to find the solutions as to how to use less agrochemicals for growing their fruit. The community has also shared the knowledge on doing bio-extract by using the mango leaves, and this would save the cost of production and guarantee health security of the people in the long term. The group has been working on bio-extract and aims for the same efficiency as the agrochemical. The development pathway leads the new innovation on agro farm sectors.

Frugal Innovation

The design of local innovation is quite unique. Some innovations may meet the needs of a small community but may not meet large-scale application. Thereby, grassroots innovation has a low capacity to influence things. However, this should not become an enemy of sustainability (Gupta,2009) because the niche is the source of innovation. It would take time to transform the niche to mainstream, but it does not mean that it is impossible. To influence the mainstream, the community must conceivably work through a novel organizational arrangement and lifestyle practice (Satorra and Paunov, 2017).

George et al. (2012) defines frugal innovation as innovation that uses the low cost of production to produce the high-quality products. In other words, the products or services should be simple but cheap (Pansera and Sarkar, 2016). In this case of community development, the group is using the livelihoods assets – for example, the culture of the community, the farm, and the current plantation - which are available in the community to generate the solution

for gaining income and respond to the economic opportunity. One of the examples is when people use their identity, culture and local practice as the marketing for tourism. The livelihoods and culture are also perceived as different characters from mainstream trends of tourism. However, this different characteristic becomes another choice in the tourism market. Another example is people who have used mango which is scarred or not in good shape or almost mature to process the dried candied mango. It can be perceived that the dried candied mango is the local product which is able to sell in the current market. Currently, the community is developing this product by listening to customer needs for example packaging and taste. The community has linked this innovation to the pathway for accessing the mainstream market.

5.2 Inclusive development

We can learn from this case study on how inclusive development would become the tools for development by engaging with the partners. Inclusive innovation addresses innovation that creates or enhances opportunities to improve wellbeing. Inclusive innovation values the power and capability of every institution in the society to become a source for inclusive growth and development. Government, academic institutions, civil society, private sector, individual and grassroots innovations are some key innovator for inclusiveness (Dahlman, 2014; George et al., 2012; Klingler-Vidra, 2019). The diversity of people from different backgrounds will also contribute a different set of knowledge. Thus, the products of innovation will include the definition of development from each collaborator, which lead to address the inclusive development and growth for all.

Government: This case study has been well supported by the local government. The Map Ta Phut municipality has encouraged the community since the founding of community enterprise by inviting the community members and conducting the group work to collaboratively generate the solution for accessing the economic and social transformation opportunity. Moreover, the local government agencies also provide data and information that are needed to develop livelihoods, find the customers of community fruit tourism, and provide encouragement to try the new thing. This can be seen when the community decides to do the GAP and attend the fruit farm completion at the national level and gain second place at provincial level. In terms of technical farmer training, the Department of Agriculture, for example the District Agriculture Extension Office, has responded to this training. Information regarding middle to upper stream of production, which include food processing and export, has less promotion by these following departments. As per interview to the agriculture provincial extension officer, the office has responded on the issue of supporting the marketing and export capacity by requiring integrated work among the ministry - for example, the Department of Trade Promotion - to support the market and marketing capacity of the community. However, the government has less capacity to support financially or materially the community activity development as the result of governmental regulation.

Private Sector: The limitation of government on supporting the financial and material for the community and the result of high cost of technology in development may become the challenge of the community to invest in new technology with high cost of advance technology with risks of unsuccessful application. Private sector becomes a key supporter in this dimension and fills the gap. The upcoming water bank project in the community has the financial and

technical support from the company who are working and obtaining background knowledge on this issue. This project includes the community, the government, the educational institution and the private sector to exchange knowledge and information to solve the issue of water shortage. However, this case study did not find the knowledge on entrepreneurship skill training, marketing or product design required for economic activity of the community members.

Educational institution: Education plays a significant role in community development in this case. The project of community water banks and the knowledge on technology for agriculture and bio extract are collaborative work with the educational institution. Several solutions are provided by educational institution, especially technical knowledge on science and technology.

Community: In this study, the community is the key actor in the development. The community opens to new opinions and tries the experiment on new practices for community development. The community also works with other institutions and exchanges their knowledge in particular fields of community development; for example, water banks, tourism projects, food processing and entrepreneurship advancement.

6. CONCLUSION

The community uses the livelihoods assets to create the solution for enhanced well-being and to respond to economic and social transformation opportunities. The diversity of the members in terms of age, gender and sectors becomes the key attribute to strengthen community development. The members are required to have the same goal which can lead to collaboration. The youth engagement can guarantee sustainability of the group in pursuing community development. The physical assets, especially the location and connection of the city to the residential area of labour, facilitate the market to the community where there is a concentration of mango. The character of soil impacts the quality of mango products. Good road condition also becomes the key capacity for the endorsement of development. People have the financial capacity to invest in community development since they are indebted. We found that social capitals and partnerships do significantly contribute to the success of community development. The collaboration among partners becomes the platform for ideas and knowledge exchange which lead to innovation for development. In other words, it can contribute to the capacity building and development of human capital.

The study found that many of the policies of the associated development scheme of the Eastern Economic Corridor that aims for agricultural development have no coherent community development context. The encouragement on export from the government is not related to small farms because of production capacity. It clearly shows that one policy does not fit all. It also is shown in the case of farm technology in smart farmers. Some technology could not be applied to different types of plants; for example, drone technology to spray the extract. It cannot cover the types of fruit and perennial plants.

The risks of sustainability dimensions of the community can be identified in both structural attribution and personal attribution. The uncertainty of land development could change over time. The uncertainty of land transformation for the purpose of industrializing economic development create the risks for their agricultural sustainable livelihoods. In case the community wishes to pursue the development in community tourism, the main tourists now are brought by the government. The community can prepare to find their own customers. It requires the target, baseline, and timeline to achieve each development objective. The upcoming increase of business tourists are from middle and high-income groups. The community still faces the challenge of language and the strategy to access this channel of customer's group. Rather than their security of income, people found that becoming the member of collective development group contributes positive impact to their physiological security, builds and sustains members' relationships, and creates the self-esteem in the agriculture-based profession.

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REVISITING TRANSNATIONAL ADVOCACY NETWORKS AFTER 20 YEARS: PROMOTING RIGHT TO HEALTH FOR AGRICULTURAL MIGRANT WORKERS IN THAILAND

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ABSTRACT

In many countries, migrant workers are a matter of concern to human rights activists and governments because they are underserved and under-represented populations. Agricultural migrant workers in Thailand do not benefit from key provisions of the Labour Protection Act (1998) and the Social Security Act (1990) regarding healthcare and other social benefits. Workers in this sector are considered informal workers, and many of them are employed as daily or seasonal workers rather than year-round workers. This hard-to-reach population often face the 4A barriers: accessibility, availability, affordability, and acceptability in accessing healthcare. This paper explores how non-state actors assert the right to health for migrant workers in the receiving state. The article applies the concept of Transnational Advocacy Networks (TANs) to examine how transnational activists and scholars' campaign for the right to health for these non-citizen groups. Built up from desk research, this paper argues that while a considerable range of non-state actors engages predominantly in providing immediate support to migrant workers as an enforcer of worker's problems, either by acting alongside or in lieu of the government, NGOs and human rights activists often overlook the issue of agricultural migrants in accessing healthcare. Unlike other human rights issues, the right to health is hardly captured in the agenda-setting of TANs, implying its limited space in advocating for this issue. Instead, TANs are likely to advocate for the right to health in conjunction with other human rights violations.

Keyword: Migrant Workers, Informal Sector, Right to Health, Transnational Advocacy Networks.

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1. INTRODUCTION

In Thailand, the presence of migrant workers from Cambodia, Lao PDR, and Burma is significant in fulfilling the country's labour shortage. Migrant workers predominantly work in the low-skill sector, and their jobs are often described as "3-D jobs: dirty, dangerous, and degrading" (Grover, 2013). These workers are usually employed in the informal sectors, including fishing, domestic work, construction, and agriculture. There were about 2,877,144 registered migrant workers as of August 2019, and among them, around 436,188 work in agricultural sector (IOM, 2019).

Agriculture contributes the most to the Thai economy as the state is a leading country in exporting natural rubber, rice, sugar, cassava, and palm oil (IOM, 2019). However, agricultural work is one of the most hazardous sectors of employment. Workers in agriculture are at high risk of exposure to harmful chemicals, disastrous weather conditions, and high-risk equipment. At the same time, exposure to such chemicals can cause pain, depression, and even miscarriages (Benach et al., 2010). As estimated, there were about 170,000 deaths and more than one million were obtained injuries related to agricultural equipment or pesticide poisoning worldwide in 2018 (IOM, 2019). Agricultural migrants are ignored and fallout from the scope of protection even though their vulnerability is high. Despite their contribution to economics, the health of this group remains problematic, and migrant workers often face difficulties when seeking healthcare.

In the absence of cross-border cooperation, migrant workers are still disproportionately disadvantaged in claiming their rights. Thus, this paper aims to illustrate the contributions of transnational advocacy networks (TANs) in addressing the problem of agricultural migrants in Thailand in accessing healthcare. The study draws from secondary data that focused on publications regarding the healthcare policy of agricultural workers, barriers to healthcare, and TANs in campaigning human rights, to provide insight into specific gaps surrounding campaigning migrants' right to health.

2. AGRICULTURAL MIGRANTS AND THE RIGHT TO HEALTH

Stipulated in the WHO Constitution (1946), health is "a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity." The right to health includes the right to access healthcare, right to access food and nutrition, safe and potable water, safe and proper working conditions, access to health information, and housing, and entails numerous benefits such as access to services and availability of resources (Grover, 2013; IOM, 2019). The right to health of migrant workers is explicitly provided under Articles 25, 28 and 43(e) of the International Convention on the Protection of the Rights of All Migrants Workers and Members of their Families (ICMW). However, the convention suffers from a lack of ratifications especially from host countries like Thailand.

On the other hand, Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) recognizes everyone's right to enjoy the highest attainable standard of physical and mental health without any distinction, even on nationality. However, recognition of the right to health does not guarantee that beneficiaries of this right have a right to be healthy. Instead, by adopting an all-embracing language like "everyone, all persons, or no one" with the stipulation of non-discrimination clauses, ICESCR stresses the state's obligations to respect, protect and fulfill the right to health for both national and non-nationals within its territory regardless of the legal status.

It indicates that states under international law are responsible for the welfare of persons within their territory and migrant workers shall have the right to enjoy the protection. On the other hand, receiving states often create preferential policies and impose discriminatory practices toward the migrant population that lead to unfair treatment (Kneebone, 2012; Matlin et al., 2018). Matlin et al. (2018, pp.3 & 15) describe such policies as "keep them out syndrome" and argues that the government should not respond to labour migration issues as "exclusively employing exceptional or emergency responses". Policy created by the receiving states sometimes puts migrant workers under the control of their employers and the government, thus creating a hierarchy of migrant workers as well as migrant status.

Agricultural Migrants Under Thai Laws

Section 22 of the Thai Labour Protection Act (LPA, 1998) categorizes workers in agriculture, fishery work, and housework as informal workers. While formal workers can receive a variety of legal and social security protection, informal workers are only guaranteed a select number of necessary labour rights protection. The differentiation of rights and benefits between the two groups include minimum wage, welfare, and severance pay. The distinction between formal and informal workers also applies within other relevant laws and regulations in Thailand, particularly the Social Security Act (SSA) 1990. Under the SSA, migrant workers in informal sectors are excluded from social welfare and other establishments under the Thai public health system. Section 33 of the SSA indicates that formal workers are provided access to healthcare through their mandatory enrollment in the social benefits and insurance scheme. However, Sections 39 and 40 encourage employers to register informal workers in a voluntary healthcare system, while the benefits are not comparable to formal workers. Besides, the failure to register migrant workers in a social security scheme does not entail any legal responsibility for employers.

For agricultural workers, the benefits and protection variations depend on the type of agricultural crop, location of employment, and employment status. The employment contracts are based on the kind of crops migrants are hired to cultivate, so most workers are employed as seasonal workers and not year-round workers. Moreover, workers in this sector receive lower wages because of the lack of a written contract. Migrant workers likely face discrimination due to nationality and gender as well. To make problems even more complicated, most agricultural migrants do not possess a passport or work permit; they only have border passes or seasonal work permits which provide minimal access to medical treatment and benefits (IOM, 2019).

Thai domestic laws and policies do not grant workers in the informal sector the same rights as those in the formal sector. Informal workers receive insufficient protection because the activities are conducted outside the legal frameworks with no full enforcement. National policies fail to provide informal workers, particularly agricultural workers, with equal treatment and other social benefits in comparison to formal workers. In the challenging context of contempt culture and discrimination against the workers, violation of the right to health persists.

The Thai Healthcare System for Agricultural Workers

Marginalized groups such as migrant workers, refugees, and asylum seekers are considered the forgotten populations in national health strategies (Matlin et al., 2018, p.5). The inclusion or exclusion of the health policies of these vulnerable populations are mostly derived from the interaction between the ethnonational conception of citizenship. Most states face challenges in defining social rights, including the right to health for non-nationals (Harris, 2013). As Grover (2013) argues, access to healthcare in many hosting countries is dictated by restrictive immigration policies and public perceptions of “non-deserving.”

Many countries praised Thailand for taking the first step in providing health insurance for undocumented migrants. The expansion of healthcare coverage for migrant workers is an example of how the government makes judgments for health-related social rights in combination with other elements, such as work status, national security, and healthcare fees. However, these are not founded on nationality or universal personhood (Harris, 2013). Yet, the entitlement to be secured by the health insurance amongst undocumented migrants is considered a “conditional right” (Harris, 2013). The insurance scheme for undocumented migrants is de facto only available for migrant workers and their families from Cambodia, Lao PDR, Burma, and those who register under the One-Stop Service (OSS).

While Thai policy is to include everyone in its universal health coverage, the complexities are associated with the case of non-Thai citizens, such as migrant workers and stateless people. As Tamagno (2008) illustrates, the government often takes a “nationals first” approach to extend social protection while neglecting the expansion of such protection for informal workers. Migrant workers can access health services under two official health insurance schemes. Yet, the creation of a migrant healthcare system—up to date, remains weak as a result of a lack of funding and enforceability. Formal workers can enroll in the Social Security Scheme (SSS), which is limited to those who register through the National Verification (NV) process or the Memorandum of Understanding (MOU). The SSS includes healthcare benefits for injury or disease, benefits for maternity leave, and old-age pension. Workers in the informal sector enroll in the Compulsory Migrant Health Insurance (CMHI) scheme managed by the Ministry of Public Health. However, agricultural workers who hold border passes face problems enrolling in both designated insurances. Border Pass holders fall under the scope of Workmen’s Compensation Act (1994) if they have work-related accidents or illness, and the treatment must be at the designated service providers where they have registered (MMN, 2020).

Barriers in Accessing Healthcare

Agricultural workers are one of the most marginalized groups who have difficulties in obtaining access to healthcare. The workers face the “4A barriers—accessibility, availability, affordability and acceptability” when seeking health treatment (Grover, 2013; Harris, 2013; Razak & Nordin, 2018). Workers in the agricultural sector have problems getting access to the treatment on time due to their isolated workplaces. Workers who are unable to travel to public hospitals prevent them from seeking treatment on time. Language and cultural barriers also prevent migrant workers from seeking health services. Few public hospitals provide free translation services for migrant workers, while many private hospitals or clinics in provinces do not have translators to assist patients. In not being able to communicate in Thai, patients cannot address their health conditions properly. More importantly, it can cause misunderstandings and be the cause of intolerance between doctors and patients as well.

Also, the cost is by far the most significant barrier that prevents migrant workers from seeking treatment. Agricultural workers cannot afford all the associated costs, including treatment fees, transportation, medicines, and follow-up care. In comparison to other workers in various sectors, agricultural workers receive less wage. These hard-to-reach populations also feel uncomfortable when seeking treatment due to feeling as though they do “not-belong”, social exclusion, and even discrimination. Few hospitals may apply different prices and different treatment between migrant workers and local people (Razak & Nordin, 2018). All these obstacles suggest that migrant workers continue self-medicating and avoid seeking treatment at a hospital until they face life-threatening illnesses.

Disconnection Between Ideal and Reality

Migrant workers have been a matter of concern to human rights activists and governments because they are among the underserved, under-represented, and marginalized groups. Compared to the general population, these marginalized groups enjoy minimal rights and receive less protection from the state. Migrant workers are invisible labour forces and are subject to unfair treatment, lack of stable income, labour protection and social security, lack of organization and bargaining power. The vulnerability of migrant workers result from exclusionist national policies that contain the notion of non-nationals, discriminate against unfamiliar culture with host states, and stereotypes that promote prejudice, racism, xenophobia, ignorance, discrimination, fear, and apprehension in the recent global economic crisis (Tamagno, 2008).

Many studies demonstrate how migration affects local people’s perspectives of host countries in an insecure manner (Kneebone, 2012; Razak & Nordin, 2018). Local citizens believe that migrant workers engage in risky behaviour such as committing crimes or using drugs. Also, people think migrants can bring infectious diseases into their local communities (Benach et al., 2010). Kneebone (2012, p. 370) argues that a “colonial-type approach” inherited by many states in the region could lead people to view migrant workers as property. Highly restrictive policies and a lack of legal recognition can also exclude migrant workers from labour protection and other social welfare. Moreover, denying migrants’ equal access to opportunities can cause many problems, for instance, exclusion

from national resources or a conflict within the workplace. Therefore, it is crucial to recognize the urgent need to engage countries to grant equal rights and expand migrant workers' protection regardless of their status.

3. TRANSNATIONAL NETWORKS IN PROMOTING MIGRANTS' RIGHTS

One way to campaign for migrant workers' rights is to link the issues and struggles around the notion of the transnational network to its nature as a transnational problem. The networks connect based on the shared idea or advocacy for social changes.

Transnational Advocacy Networks (TANs)

Keck and Sikkink (1998) introduce the new form of collective action known as "Transnational Advocacy Networks (TANs)" in their publication entitled *Activists Beyond Borders: Advocacy Networks in International Politics*. The authors describe TANs as "shared principled ideas or values" whose subsequent advocacy and practice challenge state action to lead state initiative for policy change (Keck & Sikkink, 1998, p.30). TANs are motivated by patterns driven by common understandings of values and issues. This network categorizes based on its goal, not its structure. Actors of TANs are varied and depend on the issues they advocate for. Most often than not, they are non-state actors who pursue activities that promote the interest of people in vulnerable situations. These actors include, but are not limited to NGOs, IGOs, media, grassroots movements, and individuals joining as new forms of network groups to contribute to the success of their campaign. The purpose of TANs is to empower local people and overcome domestic policy blockages to change state behaviour (Keck & Sikkink, 1998; Tarrow, 2005). The network campaign in an everyday discourse is due to the reciprocal and horizontal communication pattern rather than material concerns fed by "dense exchanges of information" (Keck & Sikkink, 1998, p.74).

The literature on TANs has not widely discussed or explained why one issue has gained recognition within TANs. Most scholars share a standard feature that states are the perpetrators of violations and targets of activism (Carpenter, 2007; Hadden & Jasny, 2017; Keck & Sikkink, 1998; Magrath, 2015). Domestic structures and politics, along with leadership and issue characteristics, are among the most crucial factors to the emergence and success of TANs (Keck & Sikkink, 1998, pp.72-74). Carpenter (2007) suggests that, the emergence of a specific issue, though not limited to, comes from the attributes of the problems themselves, public visibility pressure (through media or a favourable environment), and international legal precedents (political entrepreneurs, donors). Moreover, issue adaptation is based on three factors: the suitability of an item with their ideational relative to other networks, its impact on existing efforts and the allies in advancement networks, and the consensus forged on the suitable advocacy frame (Carpenter, 2007, p.644).

After identifying the issue, the networks need to consider framing the problem to gain recognition from local support and influence cooperation from outside sources (Keck & Sikkink, 1998; Kiel, 2011; Tarrow, 2005). Tarrow states that "no domestic claim is inherently interesting outside a country's border unless framed to appeal to a broader

audience” (2005, p.147). Kiel (2011, pp.83-84) illustrates that cross-border entrepreneurs look for a change in benefits such as information and administrative access. While local activists expect domestic policy change and support for their domestic initiatives and activities, different ideological goals among the actors can lead to tension. International actors—though hesitant to admit—are afraid of manipulation (Kiel, 2011, p. 94). When this happens, local NGOs may put the agenda of international NGOs ahead to maintain the support from local NGOs (Kiel, 2011). When portraying problems like human rights violations, it could attract international actors to the cause and thus, create new norms resolution to respond to the challenging problem. However, issue framing does not guarantee an absolute formation of cooperation among the networks. Carpenter (2007) illustrates that such conditions include internal considerations among individual organizations regarding cost-benefits and ongoing efforts, existing relationships between the actors, and political opportunities in the country. Also, the internal structure is another barrier that can influence negotiations and decision-making since each member also has its agenda (Keck and Sikkink, 1998). These factors could either help or hinder group mobilization in a transnational network.

Migrants’ Right to Health: Visible yet Overlooked

As a social right, the right to health of migrant workers is not within the priority list of the government and hardly gains attention from activists and other relevant stakeholders. This is because economic, social, and cultural rights have historically been misunderstood due to being conventionally regarded as aspirations or ideals rather than as needs, resulting to little improvement towards the aspiration to promote migrant workers’ right to health. Besides, the right to health is not well articulated in the issue attribution of the advocacy network.

Negative Rights vs Positive Rights: Historically Misunderstood

The historical preference between civil and political (CP) rights and economic social and cultural (ESC) rights is considered a contentious issue. Liberal states such as the United States focus on upholding the CP rights while the socialist such as China and Russia, promoted ESC rights (Marochini, 2014). As a result, in 1966, the twin covenants, namely ICCPR and ICESCR, were adopted to reflect the political tension. Later, other human rights instruments contained both CP and ESC rights in the same document. In reality, CP rights have gained attention both in theory and practice, while ESC rights have largely been ignored.

The most common distinguishing factor between CP and ESC rights is the notion of negative and positive rights (Marochini, 2014). CP rights reflect the dissection of the state’s negative duty that requires states to refrain from interfering with the rights and freedom of the individual and state’s obligations toward these rights are relatively cost-free and are implementable immediately (Marochini, 2014). On the other hand, the realization of ESC rights required the state’s positive obligation to a proactive measure, which demand more resources to achieve full enjoyment. For instance, Article 2(1) of the ICESCR requires the state to progressively undertake steps to achieve the full realization of the maximum available resources.

Article 2(3) of ICESCR permits the least developed and developing countries to determine the extent to which they will guarantee the economic rights to non-citizens. Even this international instrument does not allow state parties to draw distinctions between nationals and non-nationals for non-economic rights, though other social and cultural rights also face the limitation of the enforcement within state territory. Moreover, the notion of progressive realization hinders the state's commitment to perform the obligations stipulated in ICESCR. The issue becomes more complicated when advocating for the migrant populations. As Onarheim (2018, p.4) argues, when discussing migrants' right to health, particularly the right to access healthcare, "ethical trade-offs and political questions" are on where best to spend national resources-to whom, for what, and at what cost.

However, the notion between positive and negative rights should no longer be applicable and befitting because neither CP nor ESC rights offer a single model of enforcement. The full enjoyment of each right requires both positive and negative state obligation to respect, protect and fulfill. For instance, the right to health requires, amongst other things, health facilities to be accessible to all. The state's core obligation is to progressively improve the service provided in specified areas, expand the research, and provide extensive infrastructure to ensure that everyone within the state's territory can access healthcare.

Right to Health in the Agenda-Setting of TANs

Agenda-setting of TAN matters. According to Keck and Sikkink (1998), issue attribution is essential in the framing process of advocacy network. As illustrated in a wide range of reviews, TANs are practical when addressing civil and political rights violations rather than economic, social, and cultural rights (Carpenter, 2007; Keck & Sikkink, 1998; Magrath, 2015). Keck and Sikkink (1998, pp.98-99) illustrate the two areas that TANs can be most effective, one, where it involves bodily harm to vulnerable individuals and two, where it involves legal equality of opportunity. It indicates that TANs will have a high chance of putting pressure on local government if the victims are perceived as vulnerable.

When focusing on the labour rights movement, activists prefer to target the buyers in the global supply chain. The international campaign uses the most dramatic cases of labour rights suppression to illustrate the "naming and shaming" tactic (Keck & Sikkink, 1998). By reaching out to that multi-cooperation, activists hope that these companies can pressure the government and local companies to protect workers' rights, especially in the garment sectors. Although the right to health, as part of social rights, is very relevant for agricultural migrants, little has been addressed in this area. Former Special Rapporteur on the right to the highest attainable standard of health, Paul Hunt stated the following:

"The right to health is unquestionably part of international human rights law, but still [...] many people do not grasp that it is a fundamental human right. They feel intuitively that the right to a fair trial and freedom of expression are human rights, but they do not instinctively regard the right to health as a human right. In order words, the right to health has not yet gained the same human rights currency as more established rights (Hunt, 2003, p.2)."

While migrant workers are among the population of concern who have suffered from discrimination and marginalization, the right to health is not considered bodily harm. Instead it is understood as equal opportunity discrimination. Advocates are reluctant to adopt the issue as a transnational cause. The lack of advocacy for agricultural migrant's right to health accounts for the issue attribution in the agenda of TANs because this right is not perceived as vulnerable in comparison to civil and political rights. Thus, it suggests that the non-adoption issues need to link with other items that were put as agenda-setting in TANs to gain more recognition. Members of TANs face some challenges in reaching out to outside actors or to put direct pressure on the targeted state. The obstacles include how to frame the violations of economic, social or rights in comparison to the civil and political rights since breaches of these rights mostly occur from indirect discriminatory practice and are somehow not visible. Thus, TANs mostly frame health issues with other serious human right violations to achieve more vulnerability that states cannot justify their actions. Besides, there is a challenge in finding the powerful actors who can put pressure on the employers or states since the space in the supply chain is relatively small.

Media and public opinions often spread issues for migrant workers as they are portrayed as takers of local people's jobs or as a threat to the security, yet little discuss the myriad of issues migrants face as they are barred from enjoying their economic, social, and cultural rights. Violations of migrants' rights can frequently happen in the context of economic and social rights, which directly affect migrants' ability to integrate into the hosting country. And as many realize, the failure to protect migrant workers can also lead to other severe human rights violations.

4. THE ROLE OF ADVOCACY NETWORK

Over 20 years, many researchers emphasize the critical role of TANs in addressing social changes and advocating for human rights in general (Tarrow, 2005) to more specific groups —women (Keck & Sikkink, 1998), children (Carpenter, 2007), and environmental issues (Kiel, 2011). Yet, only few studies have addressed the contribution of TANs toward marginalized migrant workers. A growing realization indicates that organizational coalitions can exert far more influence than a single organization since the network provides public support as a substantial contribution to gain attention and spread awareness of migrants' situation (Pangsapa, 2015). Labour migration has gained recognition from the government and non-state actors, especially on the issue of human trafficking, sexual exploitation, and forced migration (Pangsapa, 2015; Tkawakami, 2006). Yet, there is a limitation on TAN's contribution in campaigning for the rights of migrant workers, let alone the right to health.

Regarding the right to health, TANs perform two types of roles—providing direct service to migrant workers and advocacy. There is an involvement of TANs in empowering and promoting migrant workers' rights to access healthcare through social mobilization and helping communities identify and respond to health issues. TANs can associate with other relevant stakeholders through a direct or indirect partnership while collecting data, monitoring and reporting government performing. Individual-oriented services directly target migrants and their primary needs, while advocacies target state policies (Keck & Sikkink, 1998). The comprehensive research on the contribution of

TANs in addressing workers' rights to health illustrates that networks can campaign for subsidized health insurance and healthcare treatments (Razak & Nordin, 2018).

Service Provision

Members of transnational networks such as NGOs, IGOs, CSOs, and private firms play a significant role in providing direct service and building capacity to local people (Pangsapa, 2015; Tkawakami, 2006). Most of the time, these networks offer numerous educational and outreach programs, such as legal advice, health orientation, legal aid, and language assistance to migrant workers (Pangsapa, 2015; Tkawakami, 2006). Other members distribute educational materials about workers' rights in their local language and run the health clinics in migrant's communities (Hadden & Jasny, 2017; Pangsapa, 2015; Tkawakami, 2006). NGO health clinics, mostly located in the border provinces, work independently but collaborate with government agencies to provide medical service to migrant workers. Presently, a successful model clinic is supporting migrant workers in Mae Tao Clinic in Mae Sot district, Tak province. Established since 1989, the clinic helps Burmese workers who are currently working in Thailand and people who cross the border to seek assistance (IOM, 2008). Despite its limitation in providing the service, the clinic has offered to include outpatient and preventive health services, vaccinations, reproductive health services, and a range of specialized services, including eye care and prosthetic workshops.

Advocacy

Besides providing services for migrant workers' individual development, TANs engage in advocacy for migrants as a more significant entity in the public, legal, and political sphere. A wide range of studies indicates that advocacy is the most crucial role of networks (Keck & Sikkink, 1998; Levine, 2004; Pangsapa, 2015). To operate in global campaigns, members of TANs consider advocacy as a critical activity because it pleads the causes of others or defends a cause or proposition (Keck & Sikkink, 1998). NGOs and IOs usually deal with labour rights advocacy, legal matters, and welfare for the migrant population. At the same time, trade unions address the issues and provide support to workers from the ground. Some members also contribute to the international health-policy agenda. Levine (2004, p.154) states that "IGOs were essential in mobilizing the leadership, the funding, and assisting with implementation". Through advocacy, non-state actors can raise the awareness of the migrant problem, link to issues of rights violations and distribute data to general audiences.

Mekong Migration Network (MMN)

Mekong Migration Network (MMN) is an example of a TAN working on policy advocacy that aim to promote and protect the rights of migrant workers and their families in the Greater Mekong Subregion (GMS) namely Cambodia, Burman, Laos, Thailand, Vietnam, and Southwestern China, particularly Yunnan and Guangxi Province (MMN, 2020). Officially launched in 2003, MMN comprises of 40 organizations and research institutions representing the countries in the GMS. As a sub-regional network, MMN commits to promote the welfare and rights of every migrant worker in the region without discrimination and work towards the improvement of health, well-being, dignity

and human rights. To achieve this goal, MMN carries out advocacy, capacity building, information monitoring, research, and publications using a human rights approach that enrich fundamental rights in many international instruments. The member organizations provide direct assistance to migrant workers for instance training, translation, and other activities. MMN has become a crucial network that links advocacy efforts within member organizations in striving to strengthen migrant's rights by building mutual support and solidarity spanning across the GMS.

A greater engagement of TANs is in empowering and promoting migrant workers' rights to access healthcare through cooperating with government agencies as service providers that support the well-being of the workers. Yet, non-state actors in the campaign represent these marginalized groups through other strategies against the social, political and economic discrimination. Non-state actors predominantly provide immediate assistance to the migrant population for the time-being. At the same time, the right to health usually captures and advocate indirectly with other significant labour rights-related issues, such as minimum wage, forced labour, and sexual harassment.

5. CONCLUSION

While agricultural migrants consider working in the most vulnerable sector and believe in experiencing health issues, their rights to access healthcare is understudied. Tackling migrant health issues requires a holistic approach and participation from all relevant stakeholders in different sectors. IOs and INGOs have played an essential role in promoting and advocating for better protection of migrant workers. Still, the campaign needs to frame with other rights to obtain success. The effective integration and inclusion of migrants require services directly targeted to enhance migrants' capacities. It also requires more advocacy targeting the policy change to pass the non-discrimination policy in which there is no distinction between regular and irregular workers and nationals of the states. Besides the campaign for eliminating forced labour, measures toward ensuring equal treatment, and socio-economic rights, such as access to health facilities, goods and services, need to be equally available to nationals and non-nationals, including the undocumented migrant workers.

Transnational Advocacy Networks (TANs), while successful in campaigning for many human rights issues, is known for its limited contribution to migrant workers' health. Various networks have emerged to promote migrant workers' rights as it is considered as an avenue that requires further collaboration. This paper contributes to future research that focuses on the work of TANs in the promotion of economic, social, and cultural rights.

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COVID – 19: RISKS OF LIVES AND EMERGING OF SOCIAL MOVEMENT OF MIGRANT WORKERS IN CHIANG RAI BORDERLAND

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ABSTRACT

COVID – 19 pandemics in Thailand raises a number of concerns among Non-Governmental Organization (NGO), activists, and scholars about the economic suffering of migrant workers and question the government stigmatize them as a group of disease spreader. As such, migrant workers are viewed as the victim of inequality and discrimination. Instead, I shade lights on the risks of lives and emerging of social movement of migrant workers in Chiang Rai borderland. On one hand, migrant workers face 3 kinds of risks: work; health and cross-border. On the other hand, they are very active in participating with NGO and academic in aid providing and access to right of health and workers.

Keyword: COVID - 19, Emerging of Social Movement, Migrant Workers, Chiang Rai.

WOMEN'S PARTICIPATION IN MODERN CHIN PARLIAMENT POLITICS

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ABSTRACT

After the 2010 election in Myanmar, women have become more active in the political sector and the opportunity for women in governance has increased. Despite this increase, the number of women in the parliament is still extremely low. Women's political participation is marginalized and they are largely excluded in parliament. Even though around half of the population in Myanmar are women, Chin women continue to be underrepresented in the political sphere, and there are only two women parliamentarians in Chin State. The purpose of this paper is to address the serious underrepresentation of women and the obstacles in their participation in politics by conducting a case study on political parties in Chin State. The paper also seeks to understand the contemporary situation in Chin State. The main research questions include: (1) What are gender-based recruitment policies applied by CNLD when recruiting a parliament member in political parties? (2) How are the Chin women's experiences in dealing with normative institution recruitment? The researcher collected data through in-depth interviews with parliamentary members, political party members, and NGOs in Chin State. To understand their reasoning and to analyze the political condition of women in Chin State, the researcher applied the concept of double barriers. The findings reveal the bias against women leadership in the tendency of township send men to training activities that limit the effect of institution. Socio-economic factors, poor literacy rate, and language barriers also hamper women from participating in politics. The analysis shows that women had been recruited by the party leaders but provided little information about their role as representatives in the national parliaments and what candidates could expect from them. The key argument is that the several forms of obstacles for women to participate in politics are the 2008 constitution, public opinion, and the nomination process of the party in Chin State.

Keyword: Chin Women, Candidate Selection, Party Policy, Representation, Gender Quota, Political Recruitment.

AUTHOR'S BIO

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1. INTRODUCTION

After two decades, the political situation in Myanmar in 2010 underwent an intense transformation, progressing from the military regime into a democratic governance. However, according to a report (Myanmar Time, 2017), despite several changes since the dawn of the new citizen-led government in Myanmar, women continue to face tremendous obstacles from their full and equal participation in public and political life. In Myanmar's Chin ethnic society, it is notable that gender inequality and discrimination of women are broadly associated with the so-called patriarchal system, traditional and religious beliefs, and cultural and customary practices, in spite of other kinds of discrimination in particular place and time.

In Chin traditional society, women and men have played different roles in the community. It is a traditional norm in Chin society that women should stay at home, do housework, and take care of elderly relatives and children (Nwe, 2015). While engaging in these massive scales of caring responsibilities, women face barriers unique to their customs and cultural setting. In particular, gender equality practitioners saw how the socialization process through which the female individual of the society must go through is severely stereotypical and is viewed as a major problem (Myanmar Time, 2017). According to Chin's history and culture, women in Chin are considered to be "the protector of culture and identity," and this imposes on them the obligation to live their lives according to the traditional belief and customary practices. For example, Chin's traditional proverb states "Never end with women's words" literally means "Don't let women influence your decision." These cultural norms strongly shape gender roles in Chin State.

Nowadays, with the spread of liberal education and women's rights, more and more women are breaking the barriers of traditional norms and start to work outside (GEN, 2013). However, many challenges and difficulties still remain in the isolated Chin society. For instance, there were only two Chin women at the parliamentarians to debate in the military and male-dominated parliament sessions (WLB, 2017). With this, women's political participation is almost non-existent in Chin State. This low participation can be attributed to societal attitudes towards women in Chin that oppose women's participation in political and public life. Though many Burma nations made affirmative actions to enable women's equal participation in politics, the ignorance on women's leadership capabilities in Chin culture hampered the current political participation and decision-making involvement of the Chin women. Besides the government, the cultural and traditional norms of Burmese societies continue to put a heavy burden on women, despite the progress made by some NGOs and INGOs.

This paper will discuss the document that shows women's meaningful participation in politics still remain very low in Myanmar, and it will argue that several forms of discrimination against women in Chin state, including the 2008 constitution, is related to the limitation of women in politics and the role of women in society.

Among various gender-related discrimination and violation of women in Chin state, there are some forms of discrimination that can be described as institutional discrimination due to traditional beliefs and customary practices embedded in Chin society for a long period (Sisue M, 2015). This article will argue that the attempts for the realization of women's rights and gender equality seem to remain a dim and distant reality due to the traditional or religious

beliefs and customary practices at the service of the patriarchal system or male dominance. The purpose is to understand what causal mechanisms impact female representation in both Union and State Parliaments of Chin state and the contemporary in Chin State.

Chin women are unable to access their fundamental rights; traditional culture in Burma has a significant influence on attitudes towards women in leadership roles (Sisue M, 2015). More women should be involved in a political representative role, leadership role or decision-making roles. Chin societies are dominated by this conservative culture, and there is need to change this perspective. United Nations Committee on the Elimination of Discrimination against Women (CEDAW) has expressed concern about women's rights in Burma because Burmese participation in advocating for women's rights must translate to a belief on gender equality for the country. In particular, gender equality practitioners saw the socialization process through which the female individual of the society go through as severely stereotypical and is viewed as a major problem (Myanmar M, 2016). Violence against women in society is indeed rooted in this very process. Many women are suffering from this discrimination due to patriarchal norms and practices which is resulting in the loss of access to many of the fundamental rights among women, particularly the right to practice their political and civil rights. (UDHR, article 19 to 21, ICCPR)

Moreover, the traditional view on gender inequality and gender role that brings the gap between men and women are constantly modified or transformed by many important factors such as education, the growing impact of globalization and other eco-political change transpiring in the international, regional, national levels which have direct and indirect effects on the everyday lives of people (Shwe L, 2017).

According to the traditional beliefs, the political participation of women in Chin is also challenged by the policies' authority and the political parties themselves until now. Concerning this, the justice argument on women's participation in politics claims that women have the right to half the seats of the parliament, since they make up half of the population - the male population with 229, 604 (47.95%) and the female population with 249,197 (52.05) (the 2014 Myanmar Population and Housing Census). In this study, the paper will focus on women's political participation in Chin state. The recent political change also accommodates human rights groups and civil society organizations to participate in democratic transition and the promotion of human rights, including the realization of women's rights and gender equality. Therefore, the harmonization and realization of women's rights and gender equality deeply depends on how the patriarchal concepts could be transformed by a genuine and new concept of education. Women's role should not be limited but be encouraged though their participation in public discussion and politics in the country bound with the traditional stereotype toward equality of gender in terms of political civil rights.

2. RESEARCH METHODOLOGY

The researcher has done qualitative research through a case study. Apart from reviewing existing literature, the researcher has relied on an interview conducted with MPs, political parties, and NGOs. The researcher has

interviewed 3 successful candidates, 4 unsuccessful candidates, and 2 persons from the NGOs. The paper attempts to understand their experiences through their story, aiming to provide a thorough understanding of this case and contribute to the greater understanding of women's underrepresentation in Chin State. The paper is written based on the findings and analysis through the interviews.

3. OBJECTIVE

The objective of this research is to study the laws and policies related to political participation in Chin State, to identify the challenges in participation in politics, and to analyze how the political party in Chin State promotes women's political participation.

4. RESEARCH QUESTIONS

- (1) What are the gender-based recruitment policies applied by CNLD when recruiting a parliament member in political parties?
- (2) How are Chin women's experiences in dealing with normative institution recruitment?

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5. REVIEW OF LITERATURE

The literature on women's political participation generally has three main perspectives (Emelie B, 2010, Raikhan Satymbekova 2016): the actor, the structural level factor, and the individual-level factors. The structural level includes the institutional and national participation of women participation in politics, and the individual level is the particular female individuals demonstrated in political history. Various scholars have documented how women participated as individual and organized groups in the development process, how structural factors highlighted in the literature affect women's political participation in Chin State and how actor's activities are limited by the current structures. The researcher explores more on the attitude toward women candidates and explains how double barriers can be useful against underrepresentation in Chin State. An example of this argument can be in the works of Black (2000) and Celis (et. al., 2015) that argues that ethnic women face double barriers when running for office. They have pointed out by using this concept how women have ethnic disadvantages from participation in politics. Nevertheless, it provides an analysis of the border institutional and the political context of the recruitment practice of candidate and selectors' attitudes. Furthermore, Tharaphi Than (2013) states that women in Myanmar admitted in public that there are boundaries between men and women because of the traditional culture which highlights a significant influence on attitudes towards women.

According to the report by the UN Women and the Inter-Parliamentary Union, Burma ranked 134 out of 143 in the world in terms of women participation in parliament. Burma remains as one of the least developed countries in the world with lowest women participation in politics. Working as loosely organized groups, women effectively participated in political struggles. Not only did they function as reliable channels of communication and political mobilization but also coordinated centers of recruiting fighters. The 2008 constitution, however, undermines the fact that the involvement of women in political struggles and attributes more credit to men. CEDAW article one and two enjoins the government to create policies and law that will eliminate discrimination and emphasizes that discrimination is prohibited, whether its authors are the state or private actors. Gender equality continues to be viewed as a marginal area in the ongoing democratization and development processes; reliable sex-disaggregated information on a sufficient scale is still lacking (Torres M, 2009).

Finally, the research will show that women participants must be united and male participants are requested to support and cooperate in increasing women's participation to reach 30 percent to ensure the success of political participation in Burma.

6. FINDING AND ANALYSIS

In practice, women's ability to take part in Chin political life has been very limited. Additionally, financing was a major challenge for women. Not a single respondent received any support from the political party. The researcher found out that the 2008 constitution does not guarantee gender equality against the challenges women face in politics. This wide gap is reflected in the policies and in practice. The researcher found out that there are informal factors within the party, such as the practice of gender hierarchies and conservative notions of gender roles, that limit the institutions that are supposed to enable women's representation.

Most of the respondents addressed that the prime obstacle to women's equality in the political institution is the patriarchy system traditionally practiced in Chin State. Men's dominance over women, lack of confidence, education, as well as constraints for women, are the reasons women are far from politics. Political will or commitment and experience in politics are still lacking in this matter.

Most respondent also state that Chin traditional society expect women to continue doing their domestic work, and this cultural norm strongly shape Chin women's ambition and confidence. In general, the informants mentioned other conservative, normative institutions that make it more difficult for women to travel. Women face criticism when traveling away from home. All the respondents believe and hope that the current situation will change.

One of the respondents made an interesting point about how the political party in Chin needs to adopt gender policy. The political party in Chin State does not have any clear mechanism for improving the gender equality of participation in governance and policies are needed to challenge prevailing gender inequalities in Chin State. In conclusion, one of them points to the fact that political training and skill development is lacking in Chin state. She

continues that many women are afraid to take part in politics and do not have the capacity. The analysis shows how normative institutions relating to political recruitment favor men and limit women's political representation. Moreover, regarding this Kenny (2016, p, 360) argues that the party is conservative regarding the changes which gender quota brings along.

7. CONCLUSION

Though the government ratified the CEDAW and set up a National Strategic Plan for the Advancement of Women (NSPAW) to promote women's participation, in practice the opportunities and equal result for women are not fulfilled by the government, especially with the fact that there is a very limited number of female representations in Chin State. Moreover, the political party in Chin State needs to adopt a gender-sensitive policy to have more effective women participation in politics. One of the most surprising realizations from the research is that there is a lack of support from the public and other women for women MPs. The researcher also has noted that women MPs need more skill and training in technical areas, especially in public speaking, to be more effective in parliament. There is also a response that says that Chin women must be made aware of social and cultural norms to give them the confidence to impact development and work. These norms also affect women who are in governance to get their voices heard in politics. The lack of strategic plans for women in a political party is the reason behind the lower number of women participations in politics. All respondents mention certain changes in the functioning, the mechanism itself, and gender reform. Chin women should be represented in the same way as men in the political sector, and they need to challenge the existing norms. These normative institutions' sides are important and these changes are needed and wanted. With this, the researcher has answered the research questions.

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THE IMPACT OF CHILD MARRIAGE ON GIRLS IN MYANMAR

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ABSTRACT

Although the incidents are underreported, child marriage is a critical issue in Myanmar with a great impact to girls in the rural area. This study applies the narrative approach to explore how early marriages impact rural girls due to heavy economic dependence on their partners. The patriarchal society of Myanmar, with strong traditional, social, and cultural norms, have shaped girls' and women's lives, especially when parents allow their daughters to be married at a very young age. The research question for this study is how early marriage impacts girls in a rural area in Myanmar. The objectives of the study are to analyse impacts of marriage on economic, social, and cultural rights of girls, and to explore the experiences of these girls. The researcher conducted and assessed six in-depth interviews with girls who married early. This study also conducted interviews with four INGO staff who work on child protection and child rights.

The study finds that early marriage drives the girls to extreme poverty due to the debts, leaving them deprived of access to basic health services during the pregnancy and delivery of the child. The girls' economic, social and cultural rights are violated. The girls' economic dependency even leads to domestic violence and gender-based violence. This research strives to provide a better public awareness on this issue, and hopefully, to push policymakers to address and change systemic causes that perpetuate this practice.

The research recommends that the State should promote gender equality and strengthen law enforcement to eliminate child marriage. The State must also train parents, children, communities, and society as a whole on the rights of the child and reproductive health. There should be an awareness-raising program for men about human rights and women's rights to change their behavior.

Keyword: Child Marriage, Economic Dependence, Patriarchal Society, Domestic Violence, Gender-Based Violence.

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1. INTRODUCTION

Child marriage is one of the serious problems in Myanmar. There is still a critical mass of children who marry under the age of 18 (Diego-Rosell & Larsen, 2017). In Bago, Ayeyarwady, Kachin, Magway, Shan, Mandalay, and Yangon, children at the young age of thirteen have been subjected to such abusive practice (UNFPA, 2016). According to the United Nations Population Fund (UNFPA) (2017), sixteen percent of girls enter into the married life before reaching the age of 18, while two percent are married before 15 in Myanmar. The driving factors include traditional customs, gender inequality, masculine culture, humanitarian crises, armed conflicts, and economic inequality (IPU and WHO, 2016).

The number of married adolescent girls strictly confined to their new lifestyle and space have been increasing in Myanmar over the years (UN, 2019). It nullifies and impairs the human rights of girls and prevents them from accessing education and services related to their sexual and reproductive health rights and psychological well-being. In some communities in Myanmar, girls usually have to step aside for boys to get ahead in life. Such standards identified within the family impact a girls' choices in life. In fact, many of them are forced to drop out of school, which alienates them from being more competent, confident, and empowered to claim their rights and freedoms (IPPF, 2006).

This paper is divided into five parts. After this introduction, the paper will reveal the research methodology that covers the background, the definition of child marriage, and causes of child marriage. Then, the paper would present the findings, such as the impact of child marriage on the girls' rights, the influence toward economic dependency, the low level of young wife's decision-making power, the right to health, the right to education, and the security of the girls that are in due diligence an obligation of Myanmar, which is a part of ICESCR. Afterwards, the paper would summarize the findings into lived experiences, gender discrimination, and gender inequality/violence. The final part is the conclusion.

2. RESEARCH METHODOLOGY AND SOURCES

This study focused on identifying and analyzing the impacts of child marriage on girls in a rural area in Myanmar. As a qualitative research and using a purposive sampling method, semi-structured in-depth interview questions were developed by the researcher. The researcher conducted six interviews with women who were forced into marriage as girls and with four key informants who work in NGOs working on child protection, child rights, and women empowerment. The research is based in Phone Gyi Thaung and Mingalar Thaungtan villages at Pyar Pon District in Ayeyarwady region. These villages are situated in a very remote area and the living condition is poor.

While the study centers on child marriage, the study did not involve anyone below the age of 18 years old. Girl-respondents are between the ages of 18 and 30 years old. This study abides by the standard code of ethics of

research set by Mahidol University. Free, prior, voluntary, and informed consent was obtained from all research participants.

Background

The Republic of the Union of Myanmar is a Southeast Asian country, neighboring China, India, Thailand, Lao PDR, and Bangladesh. It has a population of about 54 million (Worldometer, 2020), and in 2012, 51.48 percent of which were women (JICA, 2013). 24.8 percent of the population lives below the poverty line, and the majority of ethnic minorities live in rural parts of the country (World Bank, 2019). The two villages, Phone Gyi Thaung and Mingalar Thaung Tan, are located in the southern part of the Myanmar inland from the Andaman sea. The local people's livelihood depends on fishing. Phone Gyi Thaung village has around 150 households, and Mingalar Thaung Tan village has about 20 households.

In the context of Myanmar, social standards on gender and sexual orientation have shaped norms on roles and characters of girls and boys. Masculinity is normally attributed to strength and bravery, values which are held superior over women. The possibility that girls and women could concentrate on regenerative work is, to a great extent, underestimated. Central to the possibility of male predominance is the idea of "*Hpon*," which is thought to be a unique and conceptual quality that gives more significant position, authority and status to men in Myanmar (Nwe, 2003, p.7). Therefore, girls are inferior compared to men in strict conditions. These conditions are often reinforced in social practices and shared within the public domain (Thein, 2015). These could be justifications to why families prefer marrying of their young daughters than their sons.

Based on international human rights law, child marriage is a violation of human rights. However, it is still a normal social practice in some rural areas of Myanmar. It leads to high risks of domestic and gender-based violence, apart from impacting a girl's economic, social and cultural rights. The difficulty of analysing and addressing these issues lies in the lack of available and accessible aggregated data.

There have been a number of studies on child marriage, violence, and their effect on girls in other countries. However, as previously mentioned, there is insufficient data about child marriage in Myanmar. This problem has been overlooked by academics and policymakers who could have addressed this human rights issue in the country. The study has focused mainly on married girls living in the rural areas of Myanmar. This research has focused on the plight of girls who have been economically dependent on their husbands, seeking to identify the impacts of marriage on the lives of girls, particularly on their economic, social, and cultural rights.

The Definition of Child Marriage

The definition of child marriage that UNICEF (2018) pursues is that child marriage is any formal or informal marriage, that means registered or unregistered, where one or both partners are aged below 18. Early union means marriages or social unions, where one or both spouses age is under 18, recognized by families and communities; however, it has no legal recognition, (UNICEF, 2018).

A “forced marriage” is a marriage without the full and free consent of either of the parties. Additionally, this includes situations where either of the parties cannot end or leave the marriage as a consequence of family or social pressure. Early marriage, indeed, violates the human rights of the child. Prohibited by international law, it steals childhood from millions of girls aged under 18 around the world. Early marriage denies young girls of the entitlement to decide on their sexual well-being and prosperity (UNICEF, 2018). It drives them out of instruction and into the existence of poor possibilities, with an expanded danger of viciousness, misuse, sick, or early passing (Plan International, n.d).

Causes of Child Marriage

Child marriage still exists in Myanmar. It is still practiced in some urban settings, but is mostly found in rural areas such as the Ayeyarwady region. A critical mass of the population is poor, illiterate, and still greatly subscribe to local norms and traditions. A child hailing from a low-income family is more likely to be forced into marriage compared to someone who comes from a more educated, well-off family (Malhotra, 2010). An organization explained that,

“Factors driving child marriage in Ayeyarwady are connected to cultural and social norms. It is also aggravated by poverty, wherein families force their daughters into marriage (Organization B).”

Victims face tremendous pressure from society and their families due to social stigma. Children from low-income families are normally threatened by the parents into this abusive practice. Both parents and children lack basic knowledge and understanding of sexual and reproductive health rights. Cultural and social norms force girls to stay silent about their plight and disable them from protecting themselves. Normally, abused and molested children do not know who to approach for help. One of the NGO staff shared that,

“Most parents in the villages are unable to teach their children to defend themselves from abusers. Living conditions in rural areas make it more difficult for children to distance themselves from harm. There are no separate rooms for boys and girls in the house. The elders often abuse their authority over the young (Organization A, 2020).”

According to Myanmar Child Rights Law 2019, the legal age for both parties should be 18 years old and above. This provision is not well understood by all, especially in rural areas of the country. Without any social and structural changes, a child will continue to fall into the trap of disempowerment, economic depression, and social disregard.

3. FINDINGS

Impacts of Child Marriage on A Girl's ESCR

Economic, social, and cultural rights (ESCR) consist of a list, albeit non-exhaustive, of rights such as the privilege to a satisfactory way of life, including food, clothing, and housing, the right to physical and psychological well-being, the right to social security, the right to take part in cultural rights, water, and sanitation (ICESCR General Comment 16, 2005). Everyone, including children, are entitled to their ESCR. However, one has to be educated and empowered in order to claim his/her rights. This requires parents and guardians to support this segment of their growth as rights holders. (World Vision, 2018).

It is key to reiterate that child marriage exists in Myanmar and has caused massive distress on children, specifically girls. One of the NGOs staff added that,

“Child marriage cross-cutting issue that covers gender equality, access to education, and enjoying an enabling environment (access to business development, Information Technology knowledge, Vocational training). It also affects how a child values oneself and one’s ability to develop as a human being (Organization B, 2020).”

It is a grave violation of rights where a girl loses her agency to determine her destiny in life. Voices that speak their lived realities reflect the horrors of being forced into such practice.

Child Marriage’s Impact to Economic Dependency

The Beijing Declaration (1995, para 26) refers to the promotion of women’s economic autonomy, including employment, and the elimination of the industrious and expanding burden of poverty on women. This refers to combatting the basic reasons of poverty through changes in economic structures, guaranteeing equivalent access for all women, and incorporating those in rural areas to productive resources, opportunities, and public services as fundamental development agents.

This research found that child marriage limits a girl’s physical and psychological development. A girl has to stop being a child and forcibly become an adult, skipping fundamental aspects of development. Hence, it takes away the prospects of fully claiming all her rights and freedoms. This has disproportionate impact on her economic security. She becomes heavily reliant on someone who has the capacity to earn, who is usually the husband. One of the respondents shared that,

“My husband is the primary income earner; I did odd jobs from home as mending the fishing net during my free time. I would normally buy household stuff, if I had the money. However, I dependent on him, which means I need to respect him. He feels this is necessary as he works and earns for the family (GW3).”

In light of economic vulnerabilities, the research found that wives are confronted with greater challenges as they lose prospects to earn money and become more dependent on their other family members. This predicament is much worse amongst girl-wives. On top of limited work opportunities, they had to contend with the humiliation brought about by the inability to fend for their basic needs and wants. Based on the responses, some have to go out of the way to do odd jobs or borrow money in order to solve their household ordeals. These women end up falling into debt, unable to pay back their loans. This forces them into a vicious cycle of hardships, humiliation, and economic disempowerment.

The Level of Young-Wife's Decision Making-Power

The National Strategic Plan for the Advancement of Women (NSPAW) is a mechanism developed to accelerate the promotion of women's rights and the achievement of gender equality in Myanmar. It provides a framework and sets the direction for the Government of Myanmar (GoM) to realize its commitments in addressing concerns women from all walks of life face (AGIPPI, 2017).

In the context of child marriage in rural Myanmar, this study found that the girls immediately lose their agency to make decisions on behalf of the household, plainly due to their age and gender. Moreover, it becomes difficult for them to turn the situation around, as society is dominated by masculine centric norms and traditions. An interesting case highlights the severity of a girl-wife's disempowered position within the household,

“When one of the girl-wife ran out of monosodium glutamate (MSG), which is a staple ingredient in Myanmar dishes, she had to ask for one hundred MMK from her husband. He then had to check whether she bought other things aside from MSG. Apparently, she has to ask for his permission on anything she purchases—even to the very last cent. She has been conditioned that her husband has the right to control their resources and to check on every movement of money within the household. She cannot change this because she does not have any income to contribute to her family's needs (GW2).”

Women in Myanmar, particularly those forced into child marriage, have seemingly surrendered themselves to the fact that, as a result of traditional gender stereotypes, they have limited opportunities to participate in decision-making processes within the household. This is also due to their economic dependence on their husbands. Those living in rural areas are not even aware that such right has been taken away from them. Furthermore, such unequal, abusive power relationship is normalized. It had failed to address normalized power relations within families, where the primary income earner, who is usually the husband, could take away the girl-wife's agency to decide and determine ways to fend for her needs and wants. Such social and cultural norms should be addressed to eliminate degrading impacts on women.

The Right to Health

Myanmar has seen considerable improvement in improving well-being and human development results over the previous decades. However, the country's health system is challenged by a lack of health financing, human

resources, depressed physical infrastructure, and weak essential services. The State, nonetheless, could not meet the Millennium Development Goals (MDGs) focused on maternal and child well-being. The Demographic and Health Survey (DHS) of 2015-2016 evaluated infant mortality of 40 per 1,000 live births, the under-five mortality rate of 50 per 1000 live births, neonatal mortality rate of 25 for every 1,000 live births, and maternal mortality rate of 200 per 100,000 live-births. Mortality rates in Myanmar are considerably higher than the average in Southeast Asia. Myanmar continues to experience a high prevalence of maternal and child under-nutrition (MSWRR, 2019).

People living in rural and remote areas are unable to access basic health care services, particularly sexual and reproductive health rights. The Ministry of Health and Sports (MOHS) assigns midwife in villages of Ayeyawardy. However, a number of remote areas can enjoy only limited visits. Also, not all villages have an assistant midwife (MSWRR, 2019). The nature of advice on pre and post-natal care is exceptionally reliant on the accessibility and effort of midwives. Families in very remote areas depend on relatives for pre and post-natal care knowledge and advice. Respondent 4 had no opportunity to access health care facilities when she gave birth. She said ,

“I did not rely on any health care professional when I was giving birth. I delivered my child at home with the help of a traditional midwife. I do not have any knowledge about safe pregnancy measures (GW4).”

Based on the discussions, there is a direct link between a girl-wife’s low level of education and economic dependency, and their ability to enjoy her right to access health care facilities and services. This is aggravated by the lack of available health care centers and workers in their area. The absence of health education has added to the lack of progress to address health issues. This pushes women and girls to depend on traditional modes of treatment and services when it comes to their sexual and reproductive health rights. Traditional practitioners in rural and remote areas do not have any proper clinical training. This heightens the risk of accidents and death during the process of treatment.

The Right to Education

Article 13 of ICESCR states that everyone has the right to education. Article 20 section (c) of the Myanmar 2008 Constitution states that the Union shall implement a free, compulsory primary education system, Section (a) of Article 366 provides every citizen the right to education. In Section (b), primary education is a compulsory right. These laws should be implemented, and every individual should easily access the primary and secondary level education.

Despite these standards and mechanisms, some families living in rural Myanmar are unable to send their children to school due to a number of factors such as poverty, lack of educational facilities, and absence of accessible transportation. This has been the case at Mingalar Thaug Tan village in Ayeyarwady region, which has only one primary school which lacks adequate facilities. Girl-wives are affected by this condition, on top of entering into marriage early in life. Respondent 1 shared that,

“I wanted to graduate; however, this can no longer happen due to my marriage (GW1).”

The Constitution of Myanmar guarantees that primary education is free and compulsory for all. However, in remote areas such as Phone Gyi Thaung and Mingalar Thaung Tan villages, people are still unable to fully enjoy this constitutional right. Due to poverty and lack of access to schools and educational facilities, parents and guardians, who themselves are illiterate, are unable to give their children a chance to education. Such is also a gendered dilemma, as boys are most likely to have better access to schools. It has also pushed many families to force their girls into early marriage. The Government must feel obliged to intervene and provide for the educational needs of rural and remote communities. Political will and adequate resources are required to achieve such changes.

Girl-Wives' Security Within the Household

The Beijing Declaration paragraph 283 (b) pushes States to take appropriate legislative, administrative, social and educational measures to secure the girl child in the family unit and in the society from all types of physical or mental violence, injury or misuse, neglect, abuse, including sexual abuse. In the context of girl-wives, a household with limited resources normalizes a culture of abuse and disempowerment.

The level of insecurity varies from one household to another in Pyar Pon District. However, a girl-wife has to face multiple challenges on a daily basis, including dealing with her husband's in-laws. This can be seen in this case where,

“One respondent has to compete with her in-laws for the income her husband receives. Apparently, her mother-in-law controls resources from the family's small shop. Her husband violently reacts to her whenever she questions this practice. Moreover, she has to endure humiliation and frustration whenever other members of the family are using funds (Girl Wife 1).”

Girl-Wife (GW 3) shared about the painful process of survival while her husband is out at work,

“I have to borrow money for food, clothing, and other needs from my husband's employer. I usually have to pay the person back with interest. Thank God we do not have a child. Otherwise, life will be much more difficult.”

This is a similar case for GW 4,

“I have to borrow money for food, clothing, and health. I did not have any savings. I have to borrow the money with interest. I could not afford providing my child with adequate nutritious food. Now, that I am pregnant, I'm afraid if I can still afford to feed both of my children in the future.”

This has also been the case for GW 6,

“My husband provides for our needs. However, we have to borrow money when he's broke. We have already exhausted all our savings.”

More often than not, a violation of a particular right is connected to a violation of different rights (OHCHR). When the State fails to protect one's freedom from hunger, it could have a direct effect on the violation of one's sexual and reproductive health rights. Narratives revealed that economic insecurity is often paired with physical and psychological abuse. The wife has no access to any remedies and to any opportunity to protect herself from harm. Many rural women have been constrained by poverty to take on high-interest debts. The Government must put an end to this cycle of abuse and varied facets of insecurity.

4. SUMMARY OF FINDINGS

Women's Lived Experiences of Child Marriage

The Beijing Declaration mentions that women's poverty is directly related to the lack of economic opportunities and autonomy, lack of access to economic resources, including credit, land ownership and inheritance, absence of access to education, and support services and their minimal participation in the decision-making process. Poverty can likewise constrain women into circumstances in which they become more vulnerable to sexual misuse (1995, para 51).

Marriage should be enjoyed and sustained equally by both partners. It is important for both to access employment and means to earn income. Women should be allowed to equip themselves with skills and knowledge to be able to contribute to their marriage and family and to protect themselves from violence. However, based on information gathered from respondent interviews, intimate partner violence is a regular occurrence within the marriage. Girl-wives from Phone Gyi Thaung and Mingalar Thaung Tan villages suffered from domestic violence, gender-based violence, and discrimination. On the one hand, these forms of abuse eliminate one's ability to access education, employment, health, and financial independence. On the other hand, they are frightened by the idea of leaving their husbands behind and are disempowered from protecting themselves and their children from imminent harm.

Based on narratives and discussions, traditional and social norms condone domestic and gender-based abuses within families. It is interesting to note that respondents accept the fact that their husbands are the head of the family, despite their abusive behavior/character. The research also found that girls and women who suffered domestic violence were advised by their family members to stay silent about this. In some cases, in-laws were also found to partake in the abuse of the wife. Furthermore, liquor abuse has become prevalent in many marriages found in rural areas in Myanmar. Married girls fall victim to physical, verbal, and psychological abuse by their husbands under the influence of alcohol. Women typically think about leaving the relationship, but choose to stay for the children's sake and the family's honor.

Rural women in Myanmar are disproportionately impacted by poverty, violence, and insufficient access to health care and education. This further eliminates their agency to stand up against violence, and fight for their rights

and freedoms. It also allows society to keep silent on domestic violence and normalize patterns of abuse within marriages.

Gender Discrimination

Gender-based violence is an outcome of gender-based discrimination as interpreted by the CEDAW committee, GR 19 (1992), and GR 35 (2017). Masculinity and patriarchy play a vital role in perpetuating violence and discrimination against women in Myanmar, specifically in the Ayeyarwady region. This study found that women face discrimination and violence due to structural barriers and gender stereotypes that are normalized in Myanmar society, such as male leadership in households, women's traditional reproductive roles, and unequal decision-making powers within a marriage. The wife and her children are usually subject to the husband's will and mercy. Respondents also affirmed that these norms are firmly rooted in their community—disabling them from enjoying their rights to a safe environment, access to education, employment, and health. They are also obliged to function based on these norms and practices.

In Myanmar, as in many underdeveloped societies, girls and women are forced to stay at home and forced to do reproductive work. Traditional beliefs present impediments to women's and girls' rights. Respondents have been conditioned to accept these socially constructed realities. Furthermore, people in Myanmar are generally unaware of the harms caused by discrimination and violence against women. Women in rural areas also have limited knowledge about laws pertaining to rights.

A critical mass of men in Myanmar view women as subordinate to them and violence as an acceptable behavior (Thein, 2015). They do not recognize this as a problem at all. The GoM must eliminate norms that perpetuate these kinds of worldviews and practices. The draft law on Protection and Prevention of Violence against Women (PoVAW), developed in consultation with women's organizations and civil society, has the potential to break barriers that allow gender-based discrimination and violence. It consists of the definition of rape, consent marriage, inheritance, divorce with a survivor-centered approach; however, the provisions of this draft may be weakened before its passage (AGIPP, 2017).

Gender (In) Equality and Violence

CEDAW is referred to as the “international bill on the rights of women.” It sets up standards and provides direction on the progression of gender equality. States that ratify CEDAW consent to find a way to make or modify enactment and strategies to improve the status of women, and tackle fundamental social and political imbalances that enable inequity gender power relations. This women's rights treaty focuses on three core areas: civil rights and the legal status of women, reproductive rights, and social factors impacting gender relations (AGIPP, 2017). The joint interpretation made by CEDAW (GR 31) and CRC (GC 18) committee is remarkably coming up with the interrelation between the girl child and the gender perspective (Committee of CEDAW & CRC, 2014).

Myanmar is a state-party to the CEDAW. However, Myanmar failed to address norms and structures that enable the masculinity and gender inequality to exist in the country. It is important to reiterate that in abusive households, women and girls suffer greatly from economic dependence, disproportionate power relations, and loss of agency to determine one's freedom and growth. A case was reported that,

“A married girl who suffered from sexual violence, physical violence, and psychological violence. The husband was the perpetrator, who refuses to have sex with her after she got pregnant. He then slapped, dragged, and burned her hair and forced to have sex with her. She thinks that marriage only breaks one's body, spirit, and future (GW6).”

Certain provisions (Articles 347 and 348) in the 2008 Constitution still contradict with CEDAW, which compels states to protect women's rights and realize gender equality. Such provisions refrain the State from protecting women from gender-based violence and other gross violations of human rights. It should also incorporate a legitimate meaning of gender-based law in congruence with CEDAW principles.

Customary law and practices demonstrate that women in Myanmar hold a lesser status in the public eye. Despite existing policies and mechanisms, customary laws prove to still discriminate against women in various aspects of life, including women's rights to inheritance, marriage, property, and health. This failure requires better awareness of the standards of women's rights. Mechanisms for reporting and remedies have to be put in place, especially in rural and remote areas where cases of violence and discrimination against women are surging. Furthermore, marital rape should be taken seriously and should be considered a crime. Many victims remain silent and unable to access judicial remedies. The State needs to focus its efforts on preventing and responding to gender-based violence, especially in underdeveloped communities. It also needs to address the root causes of inequalities that often lead to displacement, fear, and abuse.

5. CONCLUSION

Child marriages take away a girl's childhood and her ability to determine the means for growth and full development. The girl-wife is considered by both families as an adult and is expected to act as one. This paralyzes the girl-wife from fully claiming her basic rights to education, employment, health, food, and standard of living. It also robs a girl the opportunity to participate in decision-making processes in her relationship and household.

Narratives from interviewed girl-wives revealed that they are normally abused and humiliated by either partners or their in-laws. Their husbands are the usual perpetrators of violence. The girl-wives are also unable to work and earn a living. They would have to live off debts for survival. These conditions have a grave effect on their well-being. It was also found that abuses are often unreported due to fear of authority and lack of protection mechanisms. This speaks volumes on the culture of silence that exists in under-developed communities. This had resulted in long-lasting trauma and self-blame amongst girl-wives.

The State should be serious in promoting gender equality and in combatting all forms of discrimination. Law enforcement must be reformed and strengthened against child marriage. Training on human rights and SRHR must be made available to parents and children living in remote and rural communities. It must support local efforts on raising awareness and promoting rights-based participation in research and protection mechanisms.

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A STUDY OF HUMAN VALUES OF SOCIAL ENTERPRISE FOUNDERS IN THAILAND

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ABSTRACT

Along with the growing concern for social and environmental issues and interest in market-based solutions, social entrepreneurship has emerged as a widely acknowledged practice and concept in Thailand. The formal concept of social entrepreneurship has been widely adopted in public and private sector discourse, yet there is still a lack of empirical studies that reflect the practical reality of social entrepreneurship in Thailand. Research on social entrepreneurship in the Thai context mostly considers its emergence and development, the laws, and obstacles, while micro considerations such as the intentions of enterprise founders and cultural factors shaping social enterprises in Thailand are neglected. In particular, this paper argues that there is a gap in the literature on social entrepreneurship in Thailand regarding the values and motivations of social enterprise founders. Case studies and research in the Thai context address value-based leadership and the characteristics of successful social entrepreneurs but do not explore characteristics of the broad population of social entrepreneurs. In particular, the existing literature on social entrepreneurship does not examine the value-based motivations of social entrepreneurs in Thailand. Research from other countries and sectors suggests that social entrepreneurs adopt prosocial values such as universalism to achieve equality for others, and share some common values with for-profit entrepreneurs, such as a sense of accomplishment, security, and wisdom. Yet, distinctive cultural values and demographic factors in different countries also shape entrepreneurs' motivations and values. These insights suggest that we should question the underlying motivations and values of founders and how they differ between social entrepreneurs and for-profit entrepreneurs in the Thai context. To answer these questions, the author proposes research that focuses on the values of social enterprises founders and seeks to understand their motivations for founding their organizations. To understand the distinguishing values and features of social and for-profit enterprise founders, the research adopts the Schwartz Value Survey (SVS) to examine enterprise founders' values while analyzing their demographic characteristics. The author argues that such research will help understand the direction of social enterprises and their potential impact while also enabling government agencies to identify and support potential founders.

Keyword: Human Values, Social entrepreneurs, For-profit entrepreneurs, Cultural Values.

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1. INTRODUCTION

Social entrepreneurship has developed into a worldwide currency from the early 2000s and it currently receives global attention in both social and business sectors (Bidet & Defourny, 2019; Miller, Grimes, McMullen, & Vogus, 2012). Thailand is no exception. According to Bidet and Defourny (2019), social entrepreneurship in Thailand developed from traditional third sectors and philanthropic organizations, such as religious organizations, Chinese charitable institutions, non-profits organizations, and community enterprises. These organizations that initially rely on donors' financial support have encountered the challenge of neoliberal policies that reduced state funding for the third sector and demanded market-based solutions as proof of productive and sustainable operations in creating social value. Under these pressures, social organizations have pivoted to social enterprise models for achieving organizational goals of mitigating social problems and creating social value while operating under market conditions (Miller et al., 2012).

During the late 2000s, the Thai government also became increasingly interested in market-based solutions and were drawn to the social enterprise model as a means for the private and third sectors to mitigate social problems without drawing on the state for financial support (Bidet & Defourny, 2019). They initiated public policies for the development of a social enterprise, such as drafting a bill for social enterprise promotion and Social Enterprise Master Plan Act 2555 to create regulations, social and environmental indicators, incubation programs and curriculum for social enterprises, and incentives for investors to collaborate with social enterprises (Agapitova, Sanchez, & Tinsley, 2017; Bidet & Defourny, 2019). In 2019, the Social Enterprise Promotion Act of 2019 was officially enacted and this contributed to a legal definition of a social enterprise in Thailand. Even though there is a criticism of the inclusiveness of legal definition, the registration criteria, and the tax benefits that might not support some shareholders and organizations meet international standards on social enterprises, the current expansion of the social entrepreneurship concept and the emergence of government policy initiatives indicate a broader interest in a social enterprise sector in Thailand (Bidet & Defourny, 2019; มจร, 2014).

While the public and private sectors in Thailand have widely adopted the formal concept of social entrepreneurship in their organizations, there is still a lack of empirical research that reflects the practical reality of social entrepreneurship in the Thai context. This shows the contrast between the increasing trend of social entrepreneurship adoption and the development of social entrepreneurship research in Thailand. Research from other countries and sectors have examined the concept of social entrepreneurship in macro and micro perspectives. The macro perspective focuses on the emergence and scope of social entrepreneurship, innovation adoption, and opportunity exploitation. In contrast, the micro perspective considers motivations, intentions, and values to influence individuals to be social entrepreneurs. The research has critiqued and identified several gaps which require more research on both perspectives to build more holistic and diverse knowledge to reflect the reality of social entrepreneurship in different contexts (Grimes, McMullen, Vogus, & Miller, 2013; Teasdale, Dey, & Steyaert, 2012). Yet, research on social entrepreneurship in the Thai context mostly examines the macro perspective of social entrepreneurship such as its emergence and development, laws, and obstacles, but does not consider their individual actor perspective including motivations and values of social entrepreneurs in founding their enterprise (Bidet &

Defourny, 2019; มะณี, 2014). Therefore, there is a need to learn from motivation and value research to understand what is driving individual actors toward the social entrepreneurship sector in Thailand.

Entrepreneurship research in different countries explains universal aspects of social entrepreneurs' values. The research finds that social entrepreneurs mostly adopt prosocial values such as universalism to achieve equality for others, and share some common values with for-profit entrepreneurs such as a sense of accomplishment, security, and wisdom (Conger, 2012; Conger, York, & Wry, 2012; McCabe, 2012). However, there are other factors including distinctive cultural values and demographic attributes that are different across contexts and shape values of social entrepreneurs in a different way (Alon, Lerner, & Shoham, 2016; Hechavarria & Reynolds, 2009; Schwartz, 2007; Shane, 1993, 1995; Swierczek & Ha, 2003). Research on the values of entrepreneurs has mostly been developed in the American context where entrepreneurs have demographic and cultural characteristics different than Thai entrepreneurs (Thomas & Mueller, 2000). Individualism and masculinity are distinctive cultural values in the American context, while collectivism and conformity are often found in Thai society (Meyer, 2016). These differences might shape how social entrepreneurs from different countries construct their values in founding their organizations differently.

Moreover, the author has reviewed comparable case studies and research on the characteristics of social entrepreneurs in the Thai context to analyze the values of social entrepreneurs in the Thai context effectively. However, to date, there has been no research that addresses the values of social entrepreneurs or social enterprise founders, except at an individual case study level. The existing research proposes characteristics of leadership that leads to the effective management of social enterprises and value-based leadership that creates the success of social enterprises, such as socially responsible leadership, ethical leadership, strategic leadership, resource awareness, honesty, and virtue (นนท์ & รุ่งรมย์, 2016; เวกิน, 2018).

The characteristics described in the literature do not represent the characteristics of social enterprise leaders broadly, but only represent particular successful cases studies. For example, one study selected five cases in the organic food industry that are regarded as social enterprises with the most effective management by experts (เวกิน, 2018). Based on this approach, they gave a selective presentation of successful characteristics and leadership of social enterprises, but lacked a broader reflection of social entrepreneurship and practical reality of social entrepreneurship in the Thai context. Moreover, their approach could instill particular beliefs and expectations about social entrepreneurs in Thailand that do not align with the reality of most social entrepreneurship practiced in Thailand. Thus, there is a need for research that is boarder and diverse to practically reflect the concept of social entrepreneurship in the Thai context. Research on the values and motivations of social entrepreneurs from different backgrounds, cultures, and personal attributes could anticipate current roles and directions of social entrepreneurship actors in the Thai context.

Accordingly, there is a need to question the underlying values of social entrepreneurs in the Thai context and seek to identify how their values are different across demographic attributes. Thus, this paper proposes research on

the values of founders in Thailand through a comparative analysis of social and for-profit entrepreneurs' values across different demographic attributes. The research adopts the Schwartz Value Survey (SVS) that is one of the most reliable and highly adopted value measures across numerous cultures and occupations (Karakitapoğlu & İmamoğlu, 2002; Kusrkar & Croiset, 2015; Spini, 2003). The author argues that such research will reflect the direction and possible impact of social enterprises in the Thai context, and help government agencies identify and support potential founders who might be neglected in the social entrepreneurship discourse.

The next section of this paper analyzes the literature on human values theory and the values of entrepreneurs in different countries, the relationship between values of demographic attributes, as well as cultural values. It further explores the potential of how the founders of social enterprises and for-profit enterprises may have distinct values that shape how they engage with society.

2. HUMAN VALUE THEORIES AND VALUES OF ENTREPRENEURS IN DIFFERENT COUNTRIES

Research on the values of entrepreneurs from different countries adopts different human value theories to examine entrepreneurs' values. Schwartz Value Theory has been one of the most widely-adopted theories used to explain the values of entrepreneurs across different countries. According to the theory, values construct motivations and behaviors of individuals and reflect desirable goals they seek to achieve in life. In the context of entrepreneurs, the theory can also describe the value-based motivations of entrepreneurs in founding their enterprise. Thus, this paper will discuss the roles of human values and how different researches applied human value theories to examine the values of entrepreneurs. The paper also proposes hypotheses regarding the most influential values of social and for-profit entrepreneurs developed from research in different countries.

2.1 The Roles of Human Values

Values serve as guiding principles of human lives, societies, and standards for judgments that people adopt to evaluate behaviors of individuals, their groups, and situations or events (Schwartz, 1992, 1994, 2007). They also reflect beliefs in which specific actions are more desirable than their opposites or seen as desirable end-states. These beliefs are influenced and shaped through long periods of one's life experiences, so they are not easily affected by immediate control of other individuals' actions (Conger, 2012; Conger et al., 2012; Schwartz, 1992, 1994, 2007). Moreover, values respond to three universal requirements which are biological needs of humans, needs of interaction within society, and needs for group well-being and survival (Schwartz, 1992, 1994, 2007).

Accordingly, the values of individuals are guiding principles that shape their actions. Schwartz developed a theoretical model of relations among ten motivational types of human values which are derived from the three universal requirements and support their higher central (Schwartz, 1992, 1994, 2007). The model includes ten basic values of humans: self-direction, stimulation, hedonism, achievement, power, security, conformity, tradition, benevolence, and universalism. He also pointed out that actions which are derived from different values can lead to

compatible or conflict social consequences (Schwartz, 1992, 1994, 2007). For example, individuals with the achievement value tend to construct actions that support individual benefits but less likely adopt actions that support others' welfare (Schwartz, 1992, 1994, 2007). Similarly, people whose actions are aligned with inherited cultures, customs, and religions are unlikely to develop the stimulation value that seeks changes, challenges, or excitement in their actions (Schwartz, 1992, 1994, 2007). In contrast, the values of benevolence that is compatible with the value of conformity can lead to actions that serve social acceptance, normative behaviors, and the relationships of individuals (Schwartz, 1992, 1994, 2007). For value priority, people in different social and cultural contexts prioritize values differently. Personal drive and social and cultural influences are the factors that cause people to define what values are more or less critical for them (Conger, 2012).

2.2 Values of Entrepreneurs in Different Countries

Research from different countries points out similar aspects about the personal values of entrepreneurs (Conger, 2012; Conger et al., 2012; Fayolle, Liñán, & Moriano, 2014; McCabe, 2012; Miller et al., 2012). Entrepreneurs from the research are categorized by considering their values with different degrees of individual and social welfare orientation. For-profit entrepreneurs with economic orientation tend to adopt values to gain individual gratification and achievement, while entrepreneurs with social orientation tend to adopt prosocial values to create equality for others. Insights from the research lead to the first and second hypotheses of social and for-profit entrepreneurs.

Entrepreneurs with an economic orientation are found to be strongly influenced by a sense of accomplishment, health, family security, and freedom measured by Rokeach Value Theory (McCabe, 2012). In the Schwartz Value Theory, they are dominated by the self-enhancing value, whose subset values include power, achievement, and hedonism (Conger, 2012). When considering Schwartz and Rokeach Value Theory, it can be said that hedonism value in Schwartz Value Model share motivational compatibilities with freedom value in Rokeach Value Model, since they have common motivational aims to obtain self-gratification and independent thoughts. Achievement and a sense of accomplishment values from the different theories have similar motivational goals, which are to gain personal success. Similarly, power and security are found to be the values located closely to each other in Schwartz Value Model as they share compatible motivational goals (Schwartz, 2007).

Comparing economic-oriented entrepreneurs with the two types of founders – for-profit and social enterprise founders - the researcher found that entrepreneurs with economic orientation share the most similar characteristics with for-profit enterprise founders. As the primary goal of for-profit organizations is to achieve the highest profits for their own growth, including the benefits of people in their organizations such as founders, employees, stakeholders, it can be assumed that this type of founders might adopt personal goals which are congruent with their organizational goal. They might seek to gain economic opportunities and create their ventures as a way to achieve personal fulfillment or benefits for their group. The values as their guiding principles or end states should be aligned with the values of entrepreneurs with economic orientation - achievement, hedonism, freedom, power, and security. Thus, the first hypothesis that describes the values of for-profit founders can be stated as mentioned below.

Hypothesis 1: The most influential values of for-profit founders are achievement, power, hedonism, and security.

In terms of social entrepreneurs, they are found to be dominated by some common values shared with for-profit entrepreneurs, which include a sense of accomplishment, health, and security of themselves, and their family (McCabe, 2012). However, various studies show that social entrepreneurs have unique values such equality, universalism, and other-orientation (Conger, 2012; Conger et al., 2012; McCabe, 2012; Miller et al., 2012). Like the for-profit entrepreneurs, they are described as ambitious, courageous, honest, broad-minded, group-welfare oriented, but they are also more imaginative and other-oriented than for-profit entrepreneurs, and thus embrace possibilities for social changes and equality of others (McCabe, 2012). The latter values adopted by social entrepreneurs are found to be more influential and given higher priority than other values. The values of equality, other orientation, and welfare of the group found in the previous research can be comparable with universalism and benevolence values from the Schwartz Value Theory. Universalism can refer to a social entrepreneur whose social enterprise aims to contribute benefit beyond their group to society at large, while benevolence describes the founders who have the benefit of the welfare of their groups as purpose of their enterprise. For other dominant values, including security and achievement, they might still be influential for the founders, but are less likely to be adopted than universalism and benevolence values. Accordingly, hypothesis 2 might illustrate the most influential values of social entrepreneurs as stated below.

Hypothesis 2: The most influential values of social entrepreneurs are universalism, benevolence, security, and achievement respectively.

In conclusion, research from different countries demonstrates the values of social and for-profit entrepreneurs in a similar direction. For-profit entrepreneurs tend to adopt values of achievement, power, hedonism, and security as the way to seek individual gratification and freedom through economic opportunities. Social entrepreneurs are strongly influenced by prosocial values such as universalism to achieve equality for others and share some common values of for-profit entrepreneurs such as achievement and security. However, other factors, including demographic attributes and cultural values, can shape the values of entrepreneurs. These factors are different across individuals and countries. Thus, demographic attributes of social entrepreneurs and cultural values in the Thai context need to be considered to understand their values. The next section will discuss the relation of demography and values and cultural values in the Thai context.

3. THE RELATION OF DEMOGRAPHY AND VALUES

Individuals' demographic attributes can reflect their living conditions and social contexts, and these are the crucial elements constructing personal values. In the Schwartz Value Theory, he describes how individuals' values are diverse across different ages, genders, and education (Schwartz, 2007). However, research on values of social entrepreneurs in different countries does not address how different demographic attributes affect social entrepreneurs'

values. They mostly analyze social entrepreneurs' values by comparing them with other types of entrepreneurs, such as for-profit or traditional entrepreneurs. In fact, people from different countries have different demographic attributes. In the Thai context, the research found that values of people with different ages, genders, and levels of education do not consistently support the theory of value and demography (Jirapornkul & Yolles, 2010). Thus, research on entrepreneurs' values developed in different countries, mostly in the American context, might not reflect values of entrepreneurs in the Thai context due to the differences in demography and cultural contexts in the countries. Therefore, it is important to consider the value and demography theory and how it may or may not be consistent in the Thai context.

According to Schwartz (2007), the studies on the relationship between value and age found that older people in most societies prioritize the security, tradition, and conformity values while younger people prioritize stimulation, hedonism, and achievement values. Three factors describing how values are affected by age include a cohort effect, physical aging, and life stage. For the cohort effect, materialism is the value found significantly higher in older than younger generations. The study explains that the older generation experiences more economic hardship and insecurity during their adolescence than the younger generation who are brought up during the past 50 years where the prosperity and security of many countries have been gained. Older people with lower security and economic stability seek to meet their materialistic needs and raise security through their commitment to traditions. In contrast, the younger generation desire freedom, feel motivated to make their own choice, and indulge themselves. In terms of physical aging, people lose strength, energy, cognitive speed, memory, and sharpness due to aging. Hence, the security and conformity values become more important as people with high age lose capacities to deal with a variety of uncertainty and need a safer environment. The stimulation and power values become less important with age since risks and challenges can harm their security and cause uncertainty. For the life stage, people in their early adulthood highly attempt to achieve family and work goals. There is a great demand and opportunity in achieving the goals in their occupation and family during this age, and this enhances a higher level of stimulation and achievement values. When it comes to middle adulthood, people gain more responsibility and are likely to have greater commitment regarding their family, work, and social relations. Accordingly, they tend to prioritize the values of security, conformity, and tradition over stimulation and achievement.

In terms of education, it has a positive correlation with self-direction, stimulation, achievement, and universalism values and negative correlation with conformity, tradition, and security values (Schwartz, 2007). Education promotes the level of openness, flexibility, and perspectives which lead to an acceptance of new ideas while creating a tendency to challenge norms, expectations, and traditions. Moreover, universalism values are found higher in the last year of secondary school and when people start to attend university, which probably shows that people with higher universalism seek to gain higher education or the experience at university increases this value. The literature on the relation between gender and values shows that women have more collectivism values while men are more individualistic. To be precise, women are more related to others, care about the welfare of groups, and hold the ethic of care and responsibility, while men are autonomous, emphasize status and power, and hold the ethic of rights based on justice and fairness (Schwartz, 2007).

However, the insights from the theory might not be consistent in different contexts. Most research in different countries do not mention whether the values of entrepreneurs are different across demographic attributes. In Thai context, comparable research on values and value change in Thai organizations conducted by Jirapornkul and Yolles (2010) found that values of managers and employees in Thai organizations do not consistently support insights from the theory. They found that younger people tend to adopt values of tradition, conformity, and security values more than older people, which is the opposite to that of Schwartz Value Theory. For gender, the finding is also negatively correlated with the theory. Women adopt tradition, conformity, and security values more than men. In terms of education, the group with a bachelor's degree had a lower tendency to pursue tradition, conformity, and security values than others with below bachelor, master, and doctoral degrees. The findings support the argument that entrepreneurs across different demographic attributes and contexts adopt different types of values. To understand the values of social entrepreneurs in the Thai context, we should analyze their demographic attributes and how cultural factors might influence them in their context. In the next section, the paper will discuss how cultural values influence the values and motivations of entrepreneurs in founding their organizations.

4. CULTURAL VALUES AND ITS INFLUENCE ON ENTREPRENEURSHIP

Cultural values are found to be consistently related to the rates of entrepreneurship and entrepreneurial activities throughout different countries. Many studies adopt the dimensions of cultural values developed by Hofstede (1984) to research how these different values might differently support or undermine entrepreneurship across different countries (Alon et al., 2016; Hechavarria & Reynolds, 2009; Shane, 1993, 1995; Swierczek & Ha, 2003). Many researchers hypothesized that high individualism and masculinity, low uncertainty avoidance, and low power-distance cultural values support entrepreneurship in their countries (Alon et al., 2016; Hechavarria & Reynolds, 2009; McGrath, MacMillan, Yang, & Tsai, 1992; Shane, 1993, 1995; Swierczek & Ha, 2003; Thomas & Mueller, 2000). On the other hand, collectivism and conservative cultural values can impede the development of entrepreneurship activities and innovation in a country (Alon et al., 2016; Hayton, George, & Zahra, 2002). However, these arguments are not consistent as they are based on research conducted in different periods of time. Shane (1993) found that individualism and power distance were positively related to the national rates of innovation and supported entrepreneurship in 1975 but not in 1980 (Hayton et al., 2002). Uncertainty avoidance was also negatively related to innovation, and masculinity had no relation to innovation (Hayton et al., 2002). Moreover, the value of collectivism is positively associated with the early stage of entrepreneurship in societies that encourage their members to create innovative solutions.

Thomas and Mueller (2000) also raised a compelling argument that the concept of entrepreneurs could be nominated by entrepreneurship research developed in the American context. Cultural values in the American context that focus strongly on individualism and masculinity might shape the values of entrepreneurs in the country, but these cultural values might not be influential for entrepreneurs in other countries. Therefore, it is important for future research to investigate cultural characteristics that might influence entrepreneurs in different countries. Thus, the next section covers different studies concerning Thai cultural values and how they are related to or influence Thai

entrepreneurs' personal values. As a few studies have been conducted to examine Thai cultural values and their relation to entrepreneurship, this paper will also cover some studies on values of people in Thai organizations with different management levels, such as managers and employees.

4.1 Cultural Values in Thai Organizations

Thai culture has been rooted and strongly influenced by Chinese and Indian cultures (Jirapornkul & Yolles, 2010). Moreover, Thai culture is considered as a high-context and relationship-based society (Meyer, 2016; Runglertkengkrai & Engkaninan, 1987). Due to these cultural characteristics, Thai people are expected to comply with social traditions and harmony. In Thai society, Buddhist monks, the king and royalty, parents, elders, and teachers are seen as prestigious and often receive respect from people in the society (Jirapornkul & Yolles, 2010). These cultural characteristics also affect behaviors of Thai people in organizations. There is a clear distinction of the relationship between leaders and subordinates. The distinct differences in roles, obligations, and rights between leaders and inferiors are reflected through their interaction. These cultural values among Thai people including Buddhism, royalty, materialism, status, and seniority are also reported in the literature review collected by research on Thai social values supported by the Ministry of Culture, Thailand (Kulrattanameeporn, 2012). Moreover, the experts in Thai cultural studies who are selected to participate in the research expressed their concerns toward changes in cultures and adoption of new cultures from different countries among the new generation which indicate a conservatism among the so-called experts on Thai social bias (Kulrattanameeporn, 2012). Therefore, there is need to move beyond the subjective perspective of experts and examine Thai social values in a scientific manner.

To investigate cultural values in Thai organizations, Jirapornkul and Yolles (2010) have adopted the model of six generic values - respect, honor, synergy, allegiance, learning, and sensibility - initiated by Yolles (2006) to analyze the culture coherence in a corporation. It was originally used in the Chinese context, the country which shares some common cultural characteristics with the Thai cultures. The model also embeds cultural classification developed by Schwartz and Hofstede. It is derived from 25 original Thai cultural values collected by different Thai cultural studies that examine organizational behavior, thinking, state, and disposition. Overall, the studies show that Thai people are collective, compromising, and respect group harmony and seniority. They are influenced by materialism, seek economic wealth achievement, image and status preservation, and higher job positions.

4.2 Entrepreneurial Orientation of Thai and Vietnamese SMEs

Another study of cultural values in Thai small and medium-sized enterprises (SMEs) conducted by Swierczek and Ha (2003) also indicate a comparable result which emphasizes how distinct characteristics of Thai cultural values are expressed through entrepreneurial orientation and firm performance. Swierczek and Ha (2003) examined that the entrepreneurial orientation of 172 Thai and 306 Vietnamese SMEs include three dimensions: risk-taking, proactivity, and innovativeness. The finding indicates Thai SMEs are more innovative and proactive, while Vietnamese SMEs are more risk-taking due to some historical differences in their economy and culture. For Thai SMEs, Thai society has been seen as culturally homogenous and comparatively conservative. These cultural characteristics are also embedded

in their entrepreneurial activities. According to the results, Thai SMEs are more risk-averse, conservative, and prefer uncertainty avoidance more than Vietnamese SMEs (Swierczek & Ha, 2003). Comparably, Vietnamese SMEs have been through more economic difficulties and country turbulence, which can indicate why they are more risk-taking. The risk-taking characteristic can indicate the emergence of an entrepreneurial culture among Vietnamese SMEs, while Thai SMEs focus more on long-term growth by adopting innovative and proactive approaches (Swierczek & Ha, 2003). To compare compatibilities of the values in Schwartz's model (Schwartz, 2007) with the entrepreneurial dimensions found in Thai entrepreneurs from the study by Swierczek and Ha (2003), the entrepreneurial dimensions including risk-aversion, conservatism, and uncertainty avoidance found in Thai entrepreneurs can be seen as sharing similar motivational goals with the values of tradition, conformity, and security in Schwartz's model.

The studies of cultural values in Thai organizations and Thai SMEs (Jirapornkul & Yolles, 2010; Swierczek & Ha, 2003) indicate how Thai entrepreneurs, managers, and employees are influenced by Thai cultural values and reflect them through entrepreneurial directions and goals in their organizations. The comparison between the different studies shows that the tendency of values of Thai people in organizations, including entrepreneurs, managers, and employees, are influenced by Thai cultural values. These values can be precisely described as the tradition, conformity, and security value by building alignment with the Schwartz value model. This leads to the third hypothesis of this paper.

Hypothesis 3: Thai enterprise founders, including both for-profit and social enterprise founders, adopt a significant degree of tradition and conformity values.

5. CONCLUSION

Values of entrepreneurs are different across demographic attributes and cultural contexts. Research developed in different countries points out a similar direction regarding values of social and for-profit entrepreneurs. In terms of social entrepreneurs, the significant values that motivate them in founding their enterprise to create equality for others include universalism, benevolence, achievement, and security. For-profit entrepreneurs share some common values such as achievement and security with social entrepreneurs, but also prioritize power and hedonism values with the motivational goal to achieve self-gratification and freedom. However, unique characteristics of demography and cultural values in one society also shape their entrepreneurs' values. Entrepreneurs in the Thai context might adopt some degree of tradition and conformity values as a reflection of cultural values in Thai society. To justify the assumptions, the author proposes adopting the Schwartz Value Survey (SVS) to examine the values of founders and analyze the different values between social and for-profit entrepreneurs across different demographic attributes. Such research on social and for-profit enterprise founders would help identify the direction of social enterprises in the Thai context and what they aim to achieve through their ventures. The research findings would also help government agencies identify and support potential founders that might be neglected in social entrepreneurship discourse.

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UNDERSTANDING CHINA'S INVOLVEMENT IN VINH TAN THERMAL POWER PLANT IN VIETNAM AND ITS NEXUS TO HEALTH CONCERNS

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ABSTRACT

Ranking first among the top three investors in Vietnam, Chinese banks and corporations account for 50 percent of foreign investment in the coal energy sector in Vietnam. In particular, China has been involved in at least twenty-three coal power plants in the country, which has posed severe effects on human health and has violated local communities' human rights. Vinh Tan Thermal Power Plant is among them. This paper aims to understand China's involvement in Vinh Tan Thermal Power Plant in particular and examine the Vinh Tan community's health concerns towards the plant since it started operations. Based on desk research and primary data collection with an in-depth interview of six participants, this study finds that Chinese banks and corporations fund seven out of ten units of Vinh Tan Thermal Power Plant, which were contracted to be built and operated by Chinese standards and used technologies, causing severe environmental pollution. It had aroused intense health concerns and faced strong objection from the Vinh Tan community. This study argues that in order to develop the country's economy, the Vietnamese authorities have approved investment on coal-fired power from China with used technologies despite of health and environmental concerns. They have not performed their obligations properly to protect the community from environmental harm, which leads to a violation of the right to health of the Vinh Tan community.

Keyword: China's Involvement, Vinh Tan Thermal Power Plant, Coal Power Plant, Vietnam, Health Concerns, Right to Health, Human Rights.

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1. INTRODUCTION

China is known as the leading country in the use of fossil fuel, especially coal, and has the most significant coal-fired electricity (Hart, C. et al., 2018; Li Z. et al., 2020). Since being confronted with environmental pollution challenges, it has been taking dramatic steps to phase out coal by closing coal-fired plants and investing in renewable energy inside China (Gopal S. et al., 2018; Li Z. et al., 2020). Ironically, it also builds hundreds of coal-fired power plants in other countries such as Pakistan, Bangladesh, India, Indonesia, and Vietnam.

China's investment plays a significant role in the coal power sector in Vietnam via its commercial banks: Industrial and Commercial Bank of China, Bank of China, and China Construction Bank (Advani, R. and Fengqing, G., 2019). It accounts for 50 percent of Vietnam's total foreign-funded coal finance, followed by Japan (23 percent) and South Korea (18 percent), making it the biggest investor in the coal-fired power sector. While most developed nations and international organizations such as the World Bank, IFC (International Finance Corporation), European Investment Bank, and KfW-German Development Bank have refused to provide funding to developing countries like Vietnam due to concerns about environmental pollution, China stands ready to increase its coal finance to the country (Springer C. et al., 2020; Meidan M., 2020).

According to Hervé-Mignucci M. and Wang X. (2015), China often provides loans for developing Asian countries to develop coal-fired power plants via bilateral agreements and via loans for Chinese investors to implement these projects there. Its loans have many purposes, including financial investment, expansion of overseas markets for Chinese state-owned companies, and export of used technologies and equipment to developing countries, especially in Vietnam, in order to combat the environmental pollution in China and to ensure the economic development at the same time in both countries. GreenID (2019), as cited in Advani, R., and Fengqing, G. (2019) that Chinese engineering, procurement, and construction (EPC) firms have invested \$8.6 billion to build sixteen operating coal-fired thermal power plants through bank loans. At present, Chinese firms are partaking in the construction of the other seven plants; the Vinh Tan-1, 2, and 3 coal-fired power plants with seven units are among of them.

China has been accelerating their investment in Vietnamese coal-fired power projects ever since, which raises the concerns for environmental protection and public health. This paper draws from both secondary and primary data that focused on learning about China's involvement in Vinh Tan Thermal Power Plant and on examining the Vinh Tan community's health concerns towards the plant since it went operational.

After the introduction, the following part covers the research methodology. The next part gives an understanding of China's involvement in Vinh Tan Thermal Power Plant. Part four of this study covers the health concerns caused by the coal power plant. Finally, the paper discusses the perspective of human rights from the case of Vinh Tan Thermal Power Plant pollution, followed by the conclusion.

2. RESEARCH METHODOLOGY

In this study, the case study method is employed in data collection and analysis. Firstly, secondary data is collected as a literature review. The research conducted a literature review to understand health concerns related to coal power plants, the right to health in terms of the right to access to environmental information, participation in environmental decision-making, and access to justice and states' obligations. Literature is reviewed before the data collection to look through previous researches or articles on the impacts of Vinh Tan Thermal Power Plant project on public health and the environment.

Secondly, the primary data is collected through in-depth interviews with six key informants who live in the area within a 1-km radius of the Vinh Tan plant (Key informants: one older man, one older woman, two women with young children, and two mature men; Duration: 05-27 June 2020). Due to the pandemic of Covid-19 and for security reasons, the researcher could not go back to the community for direct interviews. Therefore, an in-depth online interview via Viber or Facetime is chosen with support from the researcher's colleagues and friends in Vietnam. The in-depth interview is conducted to learn about the perspectives of individuals who are supposed to be knowledgeable in the research's concern. The data collection highly respects the fishermen community's accurate responses and perceptions of the coal power plant's health concern.

Finally, data collection findings are collected, classified, compared, and analyzed to understand how the community is affected, the nexus to the coal plant project, and to learn how the fishermen community conceives their rights to access environmental information, to participate in environmental decision-making, to access justice, and to the Vietnamese government's obligations in fulfilling those rights in the case of Vinh Tan Thermal Power Plant.

Talking about the impact of thermal plants is supposed to be a sensitive topic because of Vietnam's context. As the project is authorized by the government and the environmental protection method is declared by officials, complaints on the project can be understood as opposed to the government, resulting in unwanted consequences. Hence, to get information, the researcher takes local grassroots as critical stakeholders and the main subject of this study.

The research looks through the perspective on the right to health as a human right and studies the Vinh Tan fishermen community's perceptions of health issues toward the plant. However, another obstacle to elicit information is the hesitation and doubt of local people to disclose information. Based on the local context of the case study, it designs the appropriate research methods, which are in-depth interviews, for answering the research questions and objectives.

3. CHINA'S INVOLVEMENT IN VINH TAN THERMAL POWER PLANT

Operating since January 2014, Vinh Tan Thermal Power Plant is a significant capability coal-fired power plant with five plants. Vinh Tan- 1, 2, 3, 4, and Vinh Tan-4 Extension in Binh Thuan province in the south of Vietnam (Global Energy Monitor, 2019). Vinh Tan-1, 2, 4, and Vinh Tan- 4 Extension power plants has started operations, and the three-unit Vinh Tan-3 is under construction.

According to the Global Energy Monitor, Vinh Tan- 1 is designed with a capacity of 1,200 MW and a US\$1.76 billion total investment, is the biggest project invested by Chinese corporations in Vietnam, and is the first BOT (Build-Operate-Transfer) investment made by China in the country,. Of the amount, a consortium of Chinese investors, China Southern Power Grid Co. Ltd. and China Power International Development Limited, contributed 95%, and Vinacomin-Power Holding Corporation the remainder. China Development Bank, the Export-Import Bank of China, Bank of China, Industrial and Commercial Bank of China, and China Construction Bank fund 80% of the two Chinese investors' capital contributions.

Vinh Tan- 2, another two-unit coal power project of Vinh Tan Power Station complex with a capacity of 1,244-MW, US\$1.3 billion, was also created by a Chinese company, Shanghai Electric Group, and Electricity of Vietnam (EVN). China Development Bank and CLP Holdings are the sources of financing of the project.

Vinh Tan- 3 thermal coal power plant is also part of a planned five power center in the Vinh Tan. It consists of 3 units with a total installed capacity of 1,980 MW at US\$2.7 billion. The project has been created by the Vinh Tan- 3 Energy Joint Stock Company (VTEC), which is owned by One Energy Ventures Limited (JV of CLP Group and Mitsubishi Corporation, 49%), Electricity of Vietnam (EVN, 29%), and Pacific Group Corporation (22%). Also, China Development Bank and CLP Holdings are the sources of financing of the project. China's Harbin Electric International Company is the contractor of Vinh Tan- 3 thermal power plant project.

All of their designs and constructions adopt Chinese standards. Investors and contractors committed to "open, clean, and green development." (Advani, R. and Fengqing, G., 2019).

4. HEALTH CONCERNS CAUSED BY VINH TAN THERMAL POWER PLANT

As discussed earlier, Vinh Tan Thermal Power Plant complex with five plants and ten units is being built in phases. Once all of them connect to the national grid in 2025 (projected), the complex will generate 6,224 MW (Vinh Tan-1, 2, and 3 accounts for 4,424 MW of the total) or about half of Singapore's total power generating capacity (Godfrey, 2015).

In January 2014, the first unit of Vinh Tan Thermal Power Plant started operating (Global Energy Monitor, 2019), and it has caused pollution in the Vinh Tan area. The fishermen community reported to the government that

dust from the coal power plant had covered their houses and entire village, and they faced breathing problems. Many of them said that their children had pneumonia. The well water, too, was contaminated and unusable for irrigating crops, washing, cooking, and drinking purposes (Thanh Nien News, 2015.)

In December of the same year, the Vietnam Environment Administration fined the Vinh Tan Coal Power Plant 2 around VND1.5 billion (US\$69,510) for its environmental violations (Vietnam News, 2015). The People's Committee had urged the thermal complex to cover and water its cinder dumping ground from the production, but nothing was done even after it was slapped a fine.

Although protesting is not a widespread practice in Vietnam, there was a rare protest (Mac Lam and Paul Eckert, 2015) that happened on April 14, 2015, blocking National Highway 1A and causing two-days of traffic for 20 kilometers in the Vinh Tan area, Binh Thuan province. The protesters blamed Vinh Tan Thermal Power Plant for the massive dust covering their entire village (Mac et al., 2015). Local people and Vinh Tan fishermen decided to raise their health concerns through the protest with a hope that the government will help them out of the pollution. In an online newspaper article (Godfrey, 2015), they complained that by the time they put a bowl of rice down on the table, it turned to black. "We sent letter after letter telling them to spray down the slate to cut down on the dust," a local said. "But they would not do anything."

After the 2015 demonstration, the thermal plant stopped moving cinder to the dumping spot for ten days. The 6,000sq.m dumping substance was later watered and covered with canvas (Vietnam News, 2015). The plant took some measures to tackle emissions and dust, but they were not sufficient. The Deputy Prime Minister Hoang Trung Hai instructed the Binh Thuan People's Committee to inform local people about these measures and maintain social order and security. The Electricity of Viet Nam has promised to resolve the problem entirely. However, environmental pollution persisted (Thanh Nien News, 2015).

Noticeably, the Vietnamese authorities have not listened to the community's voice and have not upheld their rights and interests, but arrested the 2015 protest leaders and active members. In December 2015, a trial of those 12 protestors began, and the group was sentenced to between six to nine months in jail for disrupting public order. Of those sentenced, the sentences of five people were suspended (Thanh Nien News, 2015).

Even though the Vinh Tan complex has been operating for six years, there has not been any independent investigation on the impact of the coal power plant on public health and the environment. Simultaneously, there has been an increasing amount of ash and cinder from construction and operation sites, leaving vital impact on residents, especially the fishermen community living near the complex (Vietnam Plus, 2018). Till December of 2019, the government stated that the black smoke in Vinh Tan area polluted the air and was harmful to local people's health (B. Ngoc, 2019). The authorities confirmed that there is no hint to prove from which units of the coal project or other factories the poisonous smoke came. Meanwhile, the Vinh Tan fishermen community has insisted that Vinh Tan Thermal Power Plant is the reason for the air and water pollution. It has raised intense health concerns from the community, particularly when Vinh Tan-3 is going to go online.

Indeed, the findings of this in-depth interview confirm the existing literature review about the community's health concerns regarding the Vinh Tan Thermal Power Plant. In particular, the participants opined that the air had been severely polluted since the first unit of the plant went on the operation. They claimed that members of their community have been exposed to a suffocating blanket of dust, which made them anxious for their health.

“Oh, my God! There is so much dust in the air. Waking up in the morning, use a tissue to pick up our noses, the tissue will turn into black color. Since the coal power plants have been put in operation, the dust and coal ash cover all of our houses and furniture. We have to clean the floor and interiors two to three times per day. Look at the floor, and we could assume how much dust in our lungs. In the windy season (from September to April of the lunar calendar), we could draw on the floor with overnight dust. It is too rough to walk on the floor with our bare feet. It likes we have not cleaned the house for many years. I think that our years are numbered (Participant Interview 2, age 52).”

Moreover, research participants explained more about how polluted rainwater, well water, and seawater affected their livelihoods. According to an informant, the coal power plant has discharged tons of coal ash, untreated water, and toxic chemicals into the air and environment daily. As a result, rainwater, well water, and seawater are all severely contaminated. The informant shared that his family used to pump well water and store it in an inox water tank on the roof to use. However, it has been corroded by the polluted well water. The water leak from the tank destroyed the metal ceiling. The wall nearby appeared to become more readily oxidizable. It oozed with polluted water and turned into white color. He guesses that the white one is salt.

“The rain-water is too muddy to consume. The well water is contaminated. In 2017, you know, the local government urged us not to use well water for irrigating crops, washing, cooking, and drinking purposes. That was horrible! We were too scared to continue using the well water. Seawater is too severely polluted since the plant started its operation. The seawater nearby the embankment and the landing are muddy with smoke and coal ash. Floating cage farmers could not raise fish and shrimps caused by polluted seawater. There is not much fish to catch, as well. Fishermen lost their livelihoods (Participant Interview 1, age 39).”

Participants also shared how they strongly opposed the Vinh Tan Thermal Power Plant due to its use of Chinese technologies that caused pollution in their commune. They are all worried about their health and the future. A participant confirmed that she could not breathe normally anymore due to the air pollution. The black smoke and dust released from the power plant make it difficult to breathe. Her family tries their best to close all of our doors and even windows during their bedtime; however, their house would always be covered with dust following morning. She is a victim of sinusitis. Her nose is always stuffed up. Her husband's health condition is better, but their daughter's is not. She has had a bad cough these days. She has itchy hands, feet, and throat all the time.

“The project caused serious environmental pollutions with many many problems. They apply the old-fashioned Chinese technologies and types of equipment in their operation. It is too dusty and polluted.

Noone, nobody supports the Vinh Tan at all! Neither of us is happy with the plants. We are afraid that people in this commune or the whole district would get cancer, sooner or later. We have faced noise pollution also. If I knew the disadvantages of coal power plants beforehand and asked whether I agree for the Vinh Tan project to be built, I would say no for sure. I confirm with you that I myself and the locals here, especially the fishermen community, strongly oppose the Vinh Tan Coal Power Plant. We are all at sea about our health and future (Participant Interview 5, age 33)."

The health concerns toward Vinh Tan Thermal Power Plant are reasonable and understandable because coal combustion has been scientifically proven to have detrimental effects on human health. The combustion is a significant threat to public health because it releases particulate matter (PM), or a complex mixture of fine particles and liquid droplets, in the air. The particles' size is directly linked to their health effects, with particles 10 micrometers (μm) or smaller in diameter considered more harmful because they can pass through the throat and nose and enter the lungs (Greenpeace, 2013; Hendryx M. et al., 2020).

More broadly, coal-fired power plants discharge nitrogen oxide (NO_2), sulfur dioxide (SO_2), and other toxic air pollutants that can react chemically to form particulate matter that is $2.5 \mu\text{m}$ in diameter. $\text{PM}_{2.5}$ is considered as a fine particle and is smaller than $1/25^{\text{th}}$ of the diameter of human hair. These particles are microscopic to penetrate the bloodstream and lungs and cause a wide range of diseases: for instance, respiratory illness, cardiovascular disease, lung cancer, kidney disease, mental health problems, poor birth outcomes, and mortality (Greenpeace, 2013; Cortes-Ramirez J., 2018; Kravchenko J., 2018; Hendryx M. et al., 2020).

5. A PERSPECTIVE OF HUMAN RIGHTS FROM THE CASE OF VINH TAN THERMAL POWER PLANT POLLUTION

Environmental harm can interfere with the enjoyment of a vast range of human rights, including the rights to life, health, property, food, water, and housing. Since the first unit of Vinh Tan Thermal Power Plant has gone operational in 2014, it has caused environmental pollution, posed threats to public health, and violated the human rights of the Vinh Tan community.

The right to health, or to give it its full name "the right to the enjoyment of the highest attainable standard of physical and mental health," is a fundamental part of our human rights and our understanding of a life with dignity. Internationally, it was first articulated in the 1946 Constitution of the World Health Organization (WHO), whose preamble defines health as "a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity." The preamble further states that "the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition."

The 1948 Universal Declaration of Human Rights (UDHR) also mentioned health as part of the right to an adequate standard of living (art. 25). The right to health was again recognized as a human right in the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by Vietnam in 1982. The Committee on Economic, Social and Cultural Rights, the body responsible for monitoring the International Covenant on Economic, Social and Cultural Rights, calls these the "underlying determinants of health." in the General Comment number 14. They include safe drinking water and adequate sanitation; safe food, adequate nutrition and housing; healthy working and environmental conditions; health-related education and information; and gender equality.

In this case of Vinh Tan power station's pollution, Vinh Tan community's rights to healthy working and environmental conditions (in which clean air is included), safe domestic water supply and adequate sanitation have been breached. The dust and ash from Vinh Tan Thermal Power Plant cover their houses and entire village, and they faced breathing problems. Even though the fishermen community and local people tried to report the case to the Vietnamese local government, nothing changed; the pollution persists. The Binh Thuan provincial government and the Ministries of Environment, Industry, and Trade have been criticized for inadequate supervision of the project and lack of proper assessment of environmental impacts. The local government has failed in their obligations to respect, protect and fulfill the Vinh Tan community's right to health and right to an adequate standard of living, which are recognized in the 1946 Constitution of the WHO, UDHR, the ICESCR and its General Comment number 14.

According to the 1988 Aarhus Convention, protection of the right to health and right to an adequate standard of living depends on the rights to information, to public participation in decision-making, and to access justice. Access to environmental information is a prerequisite to public participation in decision-making and monitoring governmental and private-sector activities. The Aarhus Convention takes a very comprehensive approach to recognizing the importance of the right to information and public participation.

Although Vietnam is not a member of the Aarhus Convention, it ratified the International Covenant on Civil and Political Rights (ICCPR) in 1982, in which the right to freedom of expression is mentioned. This right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or print, in the form of art, or through any other media (ICCPR, art.9.12). Also, in its General Comment number 15 on the right to water, the Committee on Economic, Social and Cultural Rights stated that individuals should be given full and equal access to information concerning water and the environment. Effective remedies for environmental harm should be provided if their rights were violated.

Speaking of the right to environmental information of Vinh Tan fishermen community and local people, the participants shared that they had no information on the Vinh Tan Thermal Power Plant before its construction, as well as the environmental impact assessment of the proposed project. Therefore, their right to participate in the decision-making of the project approval is severely violated. In other words, the rights to information and public participation in decision-making of the Vinh Tan people are broken down due to the failure of the local government's obligations to implement article 9.12 of ICCPR and the General Comment number 15 of ICESCR.

An informant shared that he had not known that the government must assess the environmental impacts of proposed Vinh Tan Coal Power Plant before it was launched. Nevertheless, the Vinh Tan 1, 2, 4, and Vinh Tan-4 Extension have posed severe impacts on the environment and our health. The local community strongly opposed the plant and raised their voice. By and by, he watched news via the national television and social media on what the government and relevant agencies had to do, so he came up with the idea that they have to assess environmental impacts of the proposed plant.

“I did not know that the Vinh Tan Coal Power Plant would be built in my area from the beginning. I just recognized its presence when the Vinh Tan- 2 was under construction. I do not know how many percent of finance that Chinese banks invested in the project. However, I know that most of the plants are funded by Chinese companies and operated by Chinese. The evidence is that I saw many Chinese are working here in the project. Later I was told that some members in my village were invited to the consultation meeting before the project launching. Not many of us were invited. At least I am not the person even though I live very near the project (Participant Interview 1, age 39).”

Moreover, when the first unit of the power station went operational and caused environmental pollution, the community raised their health concerns to the local government for environmental information transparency, but they did not receive any reasonable explanation. Even then, there has not been any guidance from the government for people to protect themselves from environmental degradation. Participants shared that the authorities merely urged the locals not to use groundwater for washing and drinking due to contamination. If they got complaints, they would come to visit the community and promised that they would work with the plants to tackle the pollution. Nevertheless, things did not change much.

“When the plant went for a trial, then came online, caused pollution, the local governors organized meetings. They visited our villages, too. That because of the fishermen community's strong opposition. Many questions on the reasons for the pollution were raised, the governors promised that they would work with the Vinh Tan plants immediately for solutions. The plants sent some tank trucks playing water on roads to fight dust and coal ash. Temporarily, the dust pollution was decreased, so fishermen could not blame on the project anymore. However, it has not lasted for long. After three to five days, the pollution was worst and worst. The governors once again asked the factory to water the roads. They repeat it over and over again for short-termed pleased fishermen community. The community keeps complaining, and the governors make light of their opinions and public health (Participant Interview 3, age 41).”

In terms of accessing remedies caused by environmental harm, the community has sent letters to ask for a reasonable explanation of the pollution and compensation; however, there has been no reply from the government. In short, their right to access or be updated on environmental information and the right to access justice has not been adequately protected by the authorities.

“We have asked for an effective remedy and entirely law re-enforcement from the government. Due to the pollution, we have paid for expenses such as vacuum cleaner and electricity for picking up the dirt, air purifier and water spray machine for tackling dust, electricity for running the air conditioner while sleeping, bottled water for drinking purposes. All of our fruit trees died caused by salinization. Our fish and shrimp farms went under, and we lost everything. We would love to relocate to a safer place. The project should be responsible for all of these expenses. We are still waiting for a response from the government and the plants (Participant Interview 5, age 33).”

To give an update on the situation in the Vinh Tan commune, the local authorities on 06 July 2020 had revealed the results of the inspection of the Vinh Tan plant and urged for the resettlement of residents living near the power station due to the air and noise pollution (Duc Trong, 2020). It is indicated that the amount of dust discharging from the plant was about 1.19-1.63 times higher than standard, while the noise pollution level at night was 1.05 times higher than the limit. Ironically, it took six years for the government and relevant agencies to examine how the coal power plants affected the community in terms of dust and noise pollution. Nevertheless, the water contamination has not been mentioned, following reports of residents in Vinh Tan regarding the pollution. The inspection results, however, partly affirm these study’s findings in terms of Vinh Tan fishermen community’s health concerns towards the Vinh Tan Thermal Power Plant. Furthermore, their claims to be relocated are, of course, fully justified and is an imperative and need.

6. CONCLUSION

In conclusion, China is engaging more and more in the overseas coal power sector. This has helped Chinese companies alleviate domestic industrial overcapacity, find markets and opportunities for Chinese products, services, and investments, and generate additional profit. However, these investments also cause environmental pollution, which poses detrimental effects on human health and violates the local communities’ human rights. This study reveals that Chinese banks and corporations involved in seven out of ten units of Vinh Tan Thermal Power Plant, contracted to be built and operated by Chinese standards and used technologies, caused air and water pollution, had aroused intense health concerns and faced a strong objection from the Vinh Tan community.

The study finds that the participants are concerned that the air and water pollution caused by the Vinh Tan Thermal Power Plant may result in diseases like cancer and in death shortly. It also shows that the community's right to health in terms of the right to access environmental information, the right to participate in decision-making, and the right to access justice have been violated. It is urged that the government fulfill its obligations to protect and promote the community's rights. They should work more closely with the Vinh Tan Thermal Power Plant to provide remedies for affected people and immediately relocate the victims to another area with favorable conditions of livings. While many countries plan to get rid of coal (Bixel E., 2019), it is urgent for the Vietnamese government to consider alternative power sources to phase out coal-fired power.

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INTEGRATED SAFETY AND SECURITY MECHANISM FOR INDONESIAN LESBIAN, BISEXUAL, QUEER (LBQ) WOMEN AND TRANSGENDER MAN ACTIVISTS

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ABSTRACT

This paper was of Indonesian Lesbian Bisexual Queer (LBQ) Women and Transgender Man activists.” The study was designed to achieve an overview on activism, in relation to defending personal and collective rights of LBQ women and Transgender man in Indonesia. In particular, it sought to understand integrated security and protection mechanism in light of living and working conditions of Indonesian LBQ women and Transgender man activists.

Life as an Indonesian LBQ women and Transgender man activists is considered high risk due to how their bodies and sexualities are accommodated and perceived at personal, social, and state levels. Moreover, it was found that these activists tend to experience high levels of chronic stress, exposure to trauma, enormous workloads, and compensation. Meanwhile, existing mechanisms in women’s or LBTQ organization are most focused on risk-prevention related to security issues, and response mechanisms for cases of violence and discrimination.

It is necessary to raise the awareness of LBQ women and Transgender man risks that could potentially impact their physical and mental beings. To address this, it is key for one to access self-care and self-security mechanisms. Women and LBTQ organizations are urged to be safe and supportive spaces for their staff/volunteer for a more balanced life. This means that while engaging in activism, LBQ women and transgender men are still able to enjoy a happy life without sacrificing their means of livelihood, and health. Finally, the State must guarantee the rights of Indonesian LBQ Women and Transgender Man activists as any other citizen of the country.

Keyword: LBTQ Activism, Integrated Security, SOGIESC-Based Violence, Self-Care, Personal Well-Being, Protection Mechanism.

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1. INTRODUCTION

This paper was developed based on the author's thesis submitted to the Master of Arts in Human Rights and Democratisation Programme. It was entitled "Self-Care and Personal Well-Being Concept in Security and Protection Mechanism for Women Human Rights Defenders (WHRD): Case of Indonesian Lesbian Bisexual Queer (LBQ) Women and Transgender Man activists."

Simply put, defending Lesbian, Gay, Bisexual, and Transgender (LGBT) rights in Indonesia is challenging. Indonesia does not recognize these rights as human rights. In general, most societies still perceive human rights contradictory to Indonesian culture and values. Furthermore, although Indonesia integrated human rights principles in its constitution and relevant legislation, it still lacks robust mechanisms to protect human rights defenders.

While there are Security and protection mechanisms in place, LBQ women and Transgender man activists still find themselves excluded from such processes. Mechanisms implemented by organizations only focus on recovery and restoration process. Discussions on risk-prevention are mostly limited to concerns pertaining to self-defence and personal security in the workplace and online spaces. Furthermore, LBQ women and Transgender man activist are not only working for other LGBTQ communities but also fighting for themselves. It is necessary to have integrated security measures covering employment, social wellbeing, development and national sovereignty in terms of natural resources.

This paper begins with an overview of the research – objectives, design and methodologies. It is then followed by a discussion based on sexual and gender specific risks and how to keep the defenders safe while assuming their identities as LBQ women and Transgender man activists and Indonesian citizens. Concluding arguments will then focus on why integrated security measures are necessary and should be internalized and normalized. This means that both State and organizations are responsible to ensure the safety, well-being and rights of LBQ women and Transgender men activists.

2. OVERVIEW THE STUDY: OBJECTIVES & METHODOLOGY

The study was conducted to understand the plight of Indonesian LBQ women and Transgender man activists, with respect to defending their personal and collective rights. Furthermore, through the study, the researcher identified a number of key challenges to ways activists negotiate with conditions affecting their sanity, safety and health. The study is approached through participatory action research, which seeks change social and personal dynamics in the life of participants/respondents. This is emboldened by feminist framework and lens¹ to as basis for conducting the interview, process of data analysis and result writing.

¹ Bhavnani (1993) pointed three elements for the 'feminist objectivity' which were accountability, positioning and partiality.

To acquire a more diverse set of information, the study was conducted in three different areas in Indonesia. Selection of these sites was based on the existence of LBTQ rights organizations, activism and challenges-within the span of at least five years. These sites include Banda Aceh (the only province in Indonesia, which subscribes to the Sharia Law, known for heavily regulating and criminalizing same-sex relationships, Jakarta, Indonesia's seat of power, and Surakarta, where many homegrown LBT organizations are based.

Data were collected from recorded interviews, observation, and desk research. Selected participants were interviewed using Bahasa Indonesia.. Interview guidelines were inspired by *Integrated Securities: The Manual* (Jane Barry, 2011), and were modified to meet characteristics of research areas and participants. Interviews took place withing 90-180 minutes. The researcher stayed at the research site for a week to conduct interviews and perform observations. Meanwhile, desk-research centred on the review and analysis of existing human rights report or case reports on Sexual Orientation, Gender Identity and Expression and Sex Characteristics (SOGIESC)-based violence and discrimination towards LBQ women and Transgender man communities in Indonesia, from 2016 until the research period. The researcher also shared her professional and personal experiences with various relevant movements in recent years.

There were a total of 10 individuals interviewees, who identify themselves as either women, lesbian women, bisexual women, queer, queer women, or transgender man. Selected respondents had been working to defend rights LBQ women and Transgender man¹.

3. UNDERSTANDING SEXUAL-AND-GENDER SPECIFIC RISK SITUATION

As mentioned, the study's purpose is to raise awarens about existing integrated security and protection mechanisms for LBQ women and Transgender man activist. It also aims is to shed light on sexual-and-gender specific risk situations.

Intial Discussion

Hina Jilani highlighted in her reports as Special Rapporteur for Human Rights Defenders the significance of identifying and addressing sexual-and-gender specific risk situation in view of challenges faced by human rights defenders working on women's and sexual rights (E/CN.4/2001/94, p.24 and E/CN.4/2002/106, p.20). She mentioned significant threats related to gender-forms of violence, such as sexual harassment, sexism hate-speech, rape, sexual torture, and intimidation, and even death (E/CN.4/2002/106, p.20) IMoreover, the Asian Pacific Forum on Women, Law, and Development (APWLD) in their guidebook defines women human rights defender as women who defend human rights and all individuals who work for women and sexual rights. This group of defenders have to deal with

¹ Four of them were working in LBTQ organizations or women organizations, while the other four served as key person or community organizer of LBTQ communities. Two worked as commissioners of National Commission on Violence against Women between 2015 and 2019.

significant risk situations plainly on the based of their SOGIEC identities and their work (APWLD 2017, pp 15). In addition to this, APWLD mentioned that Lesbian, Gay, and Transgender activists also have been struggling for their rights not just as women's rights defenders, but also as human beings.. In their explanation — Lesbian, Gay, and Transgender activists have been trying to overcome significant challenges because of their sexual orientation, gender identities, and expression. Also, in most countries like Indonesia, LGBT rights are not considered as human rights.

Indonesia has yet to fully recognize LGBTIQ rights, including those who work as human rights defenders. This is despite the fact that the Constitution already guarantees every citizen the fulfillment of their rights and a decent life without discrimination. Existing human rights reports show that LGBTIQ communities couldn't access their rights as Indonesian citizens. In Aceh province, which subscribes to Sharia Law, same-sex relationship and LGBT rights promotion and protection are legally prohibited. Violators of such norm face heavy penalties and punishment. Moreover, there are a number of discriminatory regulations at the local and national level that directly pertain to LGTs as disturbance to public order or are sources of infectious diseases and mental illness. These conditions elevate sexual-and-gender specific risks, making activists more vulnerable to abuses and rights violations

Women's bodies and sexuality are often considered taboo compared to the more mainstreamed women's rights. They are attached with 'inherent discriminations' due to strong patriarchal values, heteronormative and binary cultures within Indonesia societies. This has, according to reports, resulted social prejudice, stigmatization and marginalization of women with diverse SOGIEC.

As assignedfemalesatbirth, most LBQ women and Transgender man activists are expected to follow social norms related to feminine characteristics and traditional roles. These create layers of physical, social and psychological. Moreover, lesbians are forced to isolate themselves due to guilt and social values (Gayatri, 2015, p. 32). This inspired lesbian movements to address and eliminate root casues of woman oppression. However in the universe of women's rights activism, lesbians are marginalized due to their non-conventional identities, lifestyles and social positions. Furthermore, in Indonesia, despite their contribution to the LGBT movement, they remain on the sidelines (Andriyanti 2017, p.15).

Findings of The Study

The study exposed that Indonesia LBQ women and Transgender man activists are targeted not only due to their SOGIEC identity, but also due to the nature of their work as human rights and sexuality rights defenders. Moreover, for activists who identify as lesbian, bisexual women, queer women or transgender man, threats and risks do not only come from family, society and state, but also from winthin their personal and organizational circles.

As per responses, some have not come out due to the risks involved by such declaration or move.

“My parents did not know that I am working for LBTQ communities or identified as one of them. They only not that I am connected to a women's organization that that sometimes deal with LBTQ issues. They once said that LBTQ rights are not human rights, and that I should go to hell. I responded that it's not

their business to comment on my identity, life and decisions. I cannot imagine what will happen if they get to know about me and my work. If they know about myself and my work. However, my sister knows that I date women and that I work for LBTQ rights since I live here with my sister — (parents living in different cities) (R, works for LBTQ communities in Surakarta)."

Data collected for this study revealed that a number of community organizers (CO) or key person in LBTQ organization/communities were forced to leave their work because their parents found out about their identity and advocacy. Although some transgender men undergoing transition are forced to inform their family due to significant changes in their physical appearance.

"I did not inform my family about my sexual orientation. But, somehow, my mom knew. But I did tell her that I'm going through medical transition. At least, she was not shocked nor worried about the physical changes because we were living together (R, works for LBT organization in Aceh, Banda Aceh)."

LBQ women who look and act masculine are also undergoing physical and social transformations.¹ They, too, experience social prejudice and stigmatization, when they use 'gender binary' facilities such as women-only bus or train car, toilet, and praying room² The researcher herself myself experienced being yelled at and discriminated for sporting short and acting more masculine.

Findings from Banda Aceh, Jakarta, and Surakarta expose different accounts reflecting risk situations of LBQ and Transgender activists.

LBQ women and Transgender man activists who work in Aceh regularly face risks due to the restrictive environment towards LGBTIQs, such as the *Qanun Jinayat*,³ which criminalizes same-sex relationships.⁴ The regulation not only promotes hatred towards LGBT communities, but also enable vigilante groups to perform acts of violence. Moreover, society in general expect women to act and look modest based on Islamic dogma.

LBQ women and Transgender man activists based in Jakarta are at high risk, especially in the midst of events tackling or attacking LGBT communities. These are magnified whenever they are invited to speak to the media or get invited to seminars or public events⁵. Although Jakarta is more moderate when it comes to sexuality issues and activists are able to access political spaces, discriminatory and harmful acts are still observed throughout the metro.

¹ Transitioning is a process of changing the way you look and how people see and treat you so that you become the gender you feel on the inside. Medical transition can involve hormonal therapy, male chest reconstruction, undergo 'top surgery', etc. Meanwhile, social transition can involve changing your name and preferred pronouns, changing your appearance and dress, or coming out to your friends and family, etc. (plannedparenthood.org)

² In particularly for Muslim LBQ women and Transgender man due to differentiation of praying outfit and separation of praying area.

³ *Qanun Jinayat* is a criminal law unit applicable to the people of Aceh established based on Sharia values and norms.

⁴ *Qanun Jinayat* article 63 for man or assigned-male-at-birth and 64 for women or assigned-female-at-birth

⁵ Examples include Crackdown in 2016, Judicial Review on AILA proposal to expansion of the meaning of adultery in Criminal Code, parliament proposal to revise Criminal Code and to create law that criminalize LGBT

In Surakarta, LBQ women and Transgender man activists face multiple risks. Society, which embodies Javanese culture, is rather diverse. This is why LBQT communities are accepted. However, the public is still divided when it comes to respect, promotion and protection LGBT rights. Activists still face discrimination based on internalized stereotypes and patriarchal values.

This study discovered that organizational sustainability contributes to the level and intensity of risks faced by LBQ women and Transgender man activists. The researcher learned that LBQ women and Transgender man activists take more than one job just to meet ends. This is due to the lack of opportunities and scarce resources available for organizations. Furthermore, Some LBQ women and Transgender man activists do not have access to health care insurance and services. This affects ways they manage with stress or come with mental health issues. The LGBT crackdown in 2016, which is a turning point in sexual activism, left many activists unemployed and scrambling for money.

“My organization got financial support until end of 2015. This is why I was still able to receive my honorarium for two years. The crackdown led to restriction for donors to provide assistance to LGBT programmes. We couldn’t get any funding. So, until November 2017, I did not receive any financial support, but I had to continue my work. I survived by doing other jobs, which not related to LBTQ activism (R, works for an LBT organization in Surakarta. 2018).”

“Most supporters of LBTQ activism did not allocate funding to support staff self-care and personal well-being. This created more difficulties for organizations and communities (A, works for an LBT organization in Jakarta. 2018).”

At the State level, the lack of recognition in policy further increased sexual and gender specific risks faced by LBQ women and Transgender man activists. Komnas Perempuan in their annual report mentioned about the escalation of discriminative bylaws in local and national level that targeted women’s body and sexuality in general also Lesbian, Bisexual and Transgender person in specific – in year 2017, there were 421 discriminative bylaws put in place (Komnas Perempuan, 2017). Furthermore, based on Front Line Defenders reports, the Indonesian State did not recognize LGBTIQ communities’ citizens who deserve their rights and freedoms. This is reflected in its position towards the 2016 crackdown on LGBT movements. (Front Line Defenders 2017). During the study was conducted, several laws aim to legalize to criminalize LGBT communities in Indonesia were reviewed. These include Judicial Review on AILA proposal to expansion of the meaning of adultery in Criminal Code, parliament proposal to revise Criminal Code and to create law that criminalize LGBT.

4. INTEGRATED SECURITY: KEEPING THE DEFENDERS SAFE AND SOUND

Hina Jilani stressed the importance of developing protection mechanisms for women rights groups and sexual rights activists. This includes those who issues concerning sexual orientation and reproductive rights (Commission on Human Rights, 2001).

In 2007, Jane Barry and Vaida Nainar introduced the term ‘**integrated security.**’ Such concept calls for collective approach to redefine security and peace which is directly connected to one’s lived experiences.

“For us, security must be integrated, which means employment, social wellbeing, development and national sovereignty in terms of natural resources. Security is not only for the individual, but also for the community (Barry and Nainar 2008, pp).”

Nainar documented that for every single woman human rights defender, her/their work is immensely Hence, women human rights defenders should be able to define their own concept and experience of security¹. The concept of integrated securities recognizes women’s security as integral to achieving security in in both public and private spaces.

It has been discovered that LBQ women and Transgender man activists have diverse understanding about securities and protection mechanism based on their understanding and awareness towards sexual and gender specific risk situation. In Aceh, LBQ women and Transgender man activists acknowledge the importance of personal security. After LGBT crackdown in 2016, there has been a need for securities and protection mechanisms addressing discrimination based on physical appearance (in particular for LBQ women who are masculine.).

Existing discussions on integrated security involves awareness on self-care concept that focuses on safe space², time³, solidarity⁴ (Barry and Nainar, 2008); and to have a deeply held belief in ones values⁵ (Barry and Nainar, 2011). Most, LBQ women and Transgender man activists share that spending time for their personal affairs and with loved ones is a way to cope with stress and activism-induced fatigue. Moreover, they define self-care as a way towards happiness, energy boosting and fun. Meanwhile, personal well-being means to be safe and the right to feel secure. This also covers all kinds of human rights and fundamental freedoms , particularly receiving decent salaries/honorarium, access to health insurance, free from false judgments, adequate housing, and equal recognition by the State.

¹ This covers the ability to work freely without restriction; the right to work in safe space, in their own space without constantly grinding need to justify their work or themselves; be able to travel without fear; staying sane and healthy; be able to do their work and able to take care the basics for one’s self and family; respect of all rights (not rights for some people and none for others); able to leave the work (take a rest and relax or take a sabbatical); and Temporary/permanent evacuation

² both physically and psychologically safe

³ to reflect, to discuss and assess all aspect of their lives

⁴ support without judgement, agenda, or strings

⁵ self-worth and a commitment to care for and protect our bodies and heart

It has been discovered by this research that mechanisms for self-care and well-being are being done by most organizations and communities where LBQ women and Transgender man activists work. These organizations or communities provide various support to help strengthen capacities, awareness, and understanding towards sexual and gender specific risk situations.

The study documented areas for the development security and protection mechanism for LBQ women and Transgender man activists. First, human rights trial mechanism amongst Komnas HAM (National Commission on Human Rights), Komnas Perempuan (National Commission on Violence against Women), and KPAI (Indonesian National Commission for Child Protection) which could influence public policies on human rights in the country. It has also been observed that the State positively responded to the UPR working group recommendation on LGBT defenders and communities¹.

5. CONCLUSION

Acknowledging that while women, men and transgender defenders face both diverse and common challenges, there are still obstacles related to response strategies that affect LBQ women and Transgender man activists. As individuals whose sexual identities are still seen as assigned-female-at-birth, they continue to deal with inherent discrimination based on strong values on patriarchal, heteronormative and binary. Within women's and LGBT's movements, their issues and existences remain hidden and ignored. These conditions make them more vulnerable to SOGIESC-based violence and discrimination. In this study, we acknowledge that there are several key factors that contribute to the increasing of risks;

- SOGIESC status – if they are identified as lesbian women, bisexual women, queer women, or transgender man.
- Location – if they are living or working in areas that promote hatred or implement discriminative bylaws, and that criminalize same-sex relationship and other issues.
- Working Place – if the organization couldn't provide any support that ensure safety and well-being of LBQ women and Transgender activists
- Discriminative Laws and Policies – State ignorance towards increased discriminative bylaws that limit the rights of LBQ women and Transgender man communities and activists.

Every risk face by an LBQ woman and Transgender man activist is deeply personal. study reveals that they continue to deal with family issues and support from partner/spouse, friends, and colleagues. These conditions result

¹ There are two recommendations, they are (1) Recommendations on the protection of human rights activists as well as LGBT groups, and (2) Recommendations on the revocation of discriminatory regional regulations that are out of sync with the 45 Constitution and prioritize equality and non-discrimination progress as well LGBT groups (<https://www.ohchr.org/EN/HRBodies/UPR/Pages/IDindex.aspx>).

in high levels of chronic stress, exposure to trauma, enormous workloads, and limited compensation. Sadly, there is still a lack of robust and sustainable mechanisms to overcome these.

Echoing Jane Barry and Vieda Neinar regarding the importance of having integrated securities that includes freedom from constant threats, economic security, political security, environmental security and health security, which resonate with definitions of human security that encompass the dimensions of ‘freedom from want’ and ‘freedom from fear’ (Bennet, Ingleton, Nah, Savage 2015) They also said that self-care is both a necessary act of physical and psychological protection as well as a political strategy for sustaining and furthering the work of defenders (Barry and Nainar, 2008). Integrated security is urgently needed to be implemented soon! This is an effective way to support and protect women human rights defenders’ work and personal lives. Moreover, this mechanism must focus on precautionary measures, which address diverse needs of LBQ women and Transgender man activists.

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THE ROLES OF THAI COMMUNITY IN OVERSEAS: THE IMPORTANCE AND NECESSITY OF THAI COMMUNITY FOR THAI UNSKILLED MIGRANT WORKERS IN SOUTH KOREA

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ABSTRACT

The new paradigm of globalization that emerged from the late 1970s has rapidly increased the mobility of people. Thailand is one among various countries that was included in this pathway of change. In 2019, South Korea was the second largest market for Thai exported labour in Asia. South Korea imports foreign workers from various countries under state-to-state agreements, or the Employment Permit System (EPS). The foreign workers bring cultural diversity and have driven South Korea to become a multicultural society, especially in the industrial areas. These foreign workers have interactions with the community members that maintain both the social norms and culture of their origin country. In the case of Thai unskilled migrant workers, they are not isolated in society. They have interactions within groups of people who have the same backgrounds and interests. Most of them start gathering as a small group then expand the scale into a bigger group via chain networks. In order to avoid any risks that could happen in the host country, the migrants tend to seek assistance from the community, both in their home country and host country. Through presentation of the field research in Ansan City, South Korea, this paper attempts to show the importance and necessity of the Thai community for Thai unskilled migrant workers in South Korea, at both the individual and group levels. The results of this paper could help to fill the knowledge gap about Thai unskilled migrant workers' community and its advantages for community members in South Korea. It could also provide advice for a smooth life in a foreign country.

Keyword: Labour Migration, Unskilled Workers, Thai Migrant Workers, Thai Community Overseas, South Korea

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1. INTRODUCTION

Labour migrants, known as migrant workers, are those who migrate to another country for the purpose of employment. People tend to seek better life opportunities, which means that economic disparity is a key contributor for rises in the number of migrant workers around the globe. There are two big categories among migrant workers: White-collar workers and blue-collar workers. The white-collar workers, or skilled workers, perform professional work, while the blue-collar workers, or unskilled workers, are the ones who perform manual work. In 2019, South Korea was ranked the second destination country after Taiwan in terms of the number of Thai unskilled migrant workers (Overseas Employment Administration Division, 2019). High wages and a better quality of life influence Thai workers to migrate to South Korea with the hope that they could earn a large amount of money to send back home. High salary and a better working life in an industrialized country could be a life goal for job seekers who are looking for an important turn in their life. The increased number of foreign workers in South Korea is owed to three main reasons. Firstly, South Korea has experienced a chronic labour shortage in 3D jobs: dirty, dangerous, and difficult, including work in the construction sites and processing factories since the early 1980s (Kim, 2015). Secondly, the workers get a much higher salary than working in the Kingdom. They can earn almost five times more money when comparing the minimum wage rates of both countries. Thirdly, the tourist visa waiver agreement between Thailand and South Korea remains effective (Charoensuthipan, 2018). This factor has driven Thai workers to migrate to South Korea using a tourist visa to enter the state legally, then beginning to work illegally on the status of overstay.

When they migrate to the host country, unskilled workers, who are the largest proportion among the total number of migrants in the world, build their own communities in order to share moral, cultural, social, and economic values. Basically, Thai migrants in foreign countries do not stay alone, but have many interactions with people from their same society or networks, such as the workplace, temples, or events in the host country (Ruenkaew, 2018). This social interaction between two or more people includes exchange, competition, cooperation, and conflict among people. Moreover, the deep interdependence of Thai people brings them together into the form of community. They gather together in order to share information and help each other based on the same interests and needs. The assistance from those who have lived or experienced life in the host country before is very helpful for the new comers. Thai unskilled migrant workers mostly come from rural areas in Thailand and are more likely to welcome new comers who come from their same hometown. Thai unskilled migrant workers in foreign countries have a variety of different communities, depending on the factors that contribute to the community formation in each country.

Based on this background information, this paper shows the importance and necessity of Thai communities for Thai unskilled migrant workers in South Korea, at both the individual and group levels. The advantages of community participation make workers' lives flow more smoothly while the community plays many essential roles during the migrants' period of staying abroad. The results of this paper could fill the knowledge gap regarding the necessity of Thai unskilled migrant workers' communities in South Korea. Ruenkaew (2018) mentions that migrant workers mostly start their relationships at their workplace and by experiencing activities together. They rely on each other in order to exchange and share information about their lives overseas. This could also help to lead others to live

a smoother life in a foreign country. The research site for this paper is in Ansan City, Gyeonggi Province, South Korea. It is where Ansan industrial complex is situated and it has the biggest amount of Thai unskilled migrant workers in Gyeonggi Province of Seoul and Metropolitan area. In 1976, the South Korean government designated this area as a 'National industrial complex' (Kim, 2015). Since then, new migrant workers have moved to Ansan City for work, which caused a shift in the city's demographic.

2. SOUTH KOREA AS A HOST COUNTRY OF MIGRATION

Originally, South Korea was not a host country for migrant workers. After the Korean peninsula was freed from Japan in 1945, the number of emigrants from South Korea overseas continuously increased. Many people decided to leave their homeland for overseas employment, beginning the country's status of a migrant sending country (Oh et al., 2011). In the early 1960s, people departed from South Korea to work as mine workers or nurses in Germany. The movement of South Korean outgoing migrations increased even more after the United States began to accept a large number of Asian migrants in 1965. Then, in the 1970s and 1980s, South Korea expanded the scope of its emigration into the Middle East in order to fulfill the labour gap in construction and the regional lack of general labour.

The new phenomenon of South Korean migration emerged in the 1980s when the country's economy was rapidly developing. South Korea shifted into a middle-income country by the early 1980s and continued to upgrade its economy even afterward by boosting its export markets. It finally moved forward into a high-income country in the early 2000s. In order to promote international trade, the domestic industries had to be well prepared. Unskilled workers were very crucial in various kinds of industries at that time, which meant that these employees were key persons in each industry. South Korea then transitioned to a migrant receiving country in the 1980s due to the national labour shortage.

In the 1980s, South Korea faced a national labour shortage in the "3D" jobs (dirty, dangerous, and difficult) due to the economic growth of domestic industry. Since the locals were more well-educated and expected jobs in high positions that required knowledge and skill, none of them wanted to work in 3D jobs. While those engaged in 3D jobs in South Korea received higher wages than certain other countries, it also encouraged foreign workers from lower income countries to migrate and illegally work there. The first group of foreign workers in South Korea was Ethnic Koreans living in China (Joseon-jok). It was very easy for the Ethnic Korean-Chinese to find a job because they were able to communicate in Korean language.

As expected, the number of illegal workers has rapidly increased. In order to deal with the situation of illegal workers in the state, South Korea has strengthened the immigration process and introduced various policies, such as the Industrial Trainee Scheme (ITS) and the Employment Permit System (EPS).

The South Korea government launched the Industrial Trainee Scheme (ITS) in 1994 with the hope that it could help to reduce the number of illegal workers, but it was not. There was a loophole in the policy itself that made this

policy fail. For instance, the low paying salary and the abuse of human rights resulted in many trainees deciding to run away and become undocumented workers (Lee, 2015).

The Employment Permit System (EPS) was introduced as a replacement for the Industrial Trainee Scheme (ITS) in 2004, and it has been effective until this day. According to the Human Resources Development Service of Korea's publication, Young-bum Park and Myung-hui Kim (2016) said that the number of foreign migrant workers who hold a working visa in South Korea has increased since the Employment Permit System was officially implemented in 2004. South Korea and another 16 sending countries established a Memoranda of Understanding (MoU) under the Employment Permit System in order to coordinate both sides' actions, including participant recruitment, selection, placement, protection, and work-related benefits (Kim, 2015). The Philippines, Thailand, Mongolia, Indonesia, Sri Lanka, and Vietnam were the first six countries to sign MOUs under the Employment Permit System with South Korea in 2004. This was followed by Uzbekistan, Pakistan, and Cambodia in 2006, and China, Nepal, Bangladesh, Kyrgyzstan, and Myanmar in 2007. Timor-Leste became the 15th country in this agreement in 2008 and Laos was the latest country to sign the MoU in the year 2016.

Ansan City does not have a specified 'foreign' area of town as there are many nationalities residing there and it has become known as a migrant city in South Korea. There is no "Thai Town" or "Little Thai" in Ansan City as there are in other countries. Most of the locals have now moved out from the city because they thought that Ansan City was becoming a "red" area, which is dangerous, dirty, and not safe for their life. Several criminal cases happened in Ansan City, which caused the locals to avoid visiting. "Once you get off the train from Ansan station, you may feel difference," said Mr. Wut¹. He expressed that Ansan City does not look like South Korea at all because it is full of foreigners and many languages are spoken there. This is likely one of the reasons that the locals began to feel uncomfortable and started moving to other cities. Only Korean people who work at a company, factory, or as a shop owner are living in Ansan City.

3. LITERATURE REVIEW OF COMMUNITY FORMATION BY THAI UNSKILLED WORKERS

In this section, after providing the definition of "community", I will review examples of community formation by Thai unskilled workers overseas as a literature review before I present my own findings, as collected through the field research, in the next section. Stebbins (1987) defines "Community" as a social group with a common territorial base; those in the group share interests and have a sense of belonging to the group. Macqueen et al. (2002) also provided a similar definition of "community", using the term to refer to a group of people with different characteristics who are connected by social ties, share common perspectives, and engage in joint action within geographical locations or settings. The norm of community was defined similarly, but is experienced differently by people with varying backgrounds (Macqueen et al., 2002). Since community is not limited within one area, the concept of transnational

¹ All interviewees' names are anonymous.

communities has emerged and is increasingly important and active around the globe. Transnational communities give more specific dimensions in terms of the location where people take action.

The interactions amongst a group of people across national boundaries can be concerning, as transnational communities include international cartels, merchant leagues, churches, international communist groups, as well as transnational migrant communities. People in the community gather together based on their shared interests or surrounding environmental standards (Djelic, 2013). The community is a group of people who are connected by social ties based on their same interests and needs. They have interactions with the community members that can maintain both social and cultural norms of their origin country.

The community size, or number of members, is non-specified as the communities are not always built in terms of face-to-face contact, but can also be imagined. People are often connected to other people that they have never met or seen before. It is impossible to know all of the members, meet them, or hear from them. Yet, everyone is able to participate as part of an imagined community (Anderson, 2006). When we look at Thai migrant workers abroad, they are not isolated in society, but rather, they have interactions with groups of people who have the same background and interests as themselves (Ruenkaew, 2018). There are several ways that a community of migrant workers can be formed, such as the communities of Thai product retail shops, Thai restaurants, cultural events and activities, and social network communities on the internet. In the case of migrant workers, Ruenkaew (2018) continues that Thai migrant workers in Singapore, Malaysia, Vietnam, Taiwan, and Japan, began building relationships with their colleagues in the same company or factory. They then began to gather outside of work and experience activities together, such as eating, exercising, traveling, shopping, or even doing a part-time job together. The linkages of the relationship include social networks (family or friend), activities, and social media. Most of them start gathering as a small group then expand into a bigger group via chain networks. Migrant workers are likely to be happier with their lives when they have a highly paid job. Many migrant workers introduce their relatives or friends to work together, and recruitment of relatives is free of charge. They will also be much happier if they have money to spend after sending some home. The young workers enjoy spending money to drink and have fun with their Thai communities in Little Thai or Thai Town within the host countries.

Ruenkaew (2001 and 2018) and Kitiarsa (2006) show some examples of Thai communities overseas where people have formed a community from a group. There are various sorts of communities among Thai migrant workers in host countries. As a minority group within the host country, Thai migrant workers tend to help each other, especially for those who have the same interests and needs. Smutkupt and Kitiarsa (1999) explain that migrant workers communities overseas, particularly the Thai migrant workers community in Japan, is a group of people who interact based on mutual benefits. Often, when people rely on one other, they are willing to do so in order to gain some benefit.

Ruenkaew (2001) highlighted that since language is often a problem for Thai migrant workers, they are likely to always be with someone who is able to communicate in the same language. When Thai migrant workers want to go travel, to send money back home, to go to see the doctor, or to contact someone, they have to depend on people who already have knowledge and information about living in the host country (Ruenkaew, 2001). This dependence is the

beginning of the interactions and communications among people in a community that makes their lives overseas flow more smoothly.

In order to avoid any risks that could happen in the host country, the migrants tend to seek assistance from their networks, both in the home country and the host country, which includes relatives, friends, and communities. The assistance of migrant networks can lead to a reduction in travel costs and financial assistance on arrival (Curran & Rivero-Fuentes, 2003). In terms of labour migration, the workers migrate to the host country with an expectation of enhancing the returns on their work. The migrant networks can guide migrant workers in establishing businesses and finding jobs in the host country. The networks can also help to remit their money back home when they get paid. Such networks help to make the migrant workers' lives in the host country much easier than figuring things out by themselves, and it is easier for new migrants to adjust themselves into the new society of the host country.

4. COMMUNITY FORMATION BY THAI UNSKILLED WORKERS

In this section, based on the interviews from my field research, I will provide examples of community formation by Thai unskilled migrant workers in South Korea. This research found that the assistance from migrant networks is necessary for the success of migrant workers.

In South Korea, the Ministry of Labour assists with network building and was responsible for developing the Employment Permit System (EPS). Before departure, all workers will be informed about the help center and any relevant information in case they need help or are in an emergency. This direct channel can be used by those who have no personal networks in order to request assistance. The help center is a major actor that brings workers together across various interests and needs. Some were led to the temple or church for assistance while others may be encouraged to join activities and events that benefit their lives. Hence, this network gathers people together in groups and widens their views and visions. Most of the interviewees agreed that having Thai friends is important for their life in the host country so that they don't feel alone. For example, Mr. Chot, one of the interviewees, echoed this sentiment, stating, "Two is better than one". It is more secure to have friends who can share information in daily life and to offer their opinions when one of them is in trouble. Mrs. Joy, another interviewee who is working as a chef's helper, mentioned that she was very lucky to meet a Thai guy on the subway by chance. He then introduced her to his friends, which further expanded her network: "I was very lucky because I met one good networks on the subway. He was my first Thai friend in South Korea." Mrs. Joy also explained that in the past, the Thai community in South Korea was not this big. When people needed a job, they would just ask others to introduce them without any cost.

For most workers, their first networks are typically the friends that they meet in the workplace, as participants in the Employment Permit System (EPS) are not able to choose their own workplace or whom they work with. Basically, new comers start building relationships at the workplace, and then expand the scope to include other groups. Korean employers are likely to select many workers from one country, or will choose to hire workers that are from the same

country as their current employees. Mr. Win, an EPS participant, used to work in a factory with Sri Lankan, Pakistani, and Cambodian colleagues. When all his foreign colleagues ended their contracts and returned to their countries, the employer hired only Thai workers and now only Thai people are working in the factory. According to my interviews, most employers in small-sized industries hire workers from only one nationality. These employees live and work together like a family. In contrast, employers in medium-sized industries are more likely to hire workers from more than one country and group them into accommodations by country.

Mr. Chai is another EPS participant who has worked in construction for almost 15 months. His factory builds suspension bridges and employs around 170 people, all of whom are foreign workers. Mr. Chai says:

“They separate the house zones by countries. It is good that we can help each other and the connection make me know more people. At first, I know only few people but when the time passed by, one friend introduced me to his friend, one did to another, and one did to other. This made my society became bigger (Mr. Chai, personal interview by the authors on 24 May 2020).”

This demonstrates that the employers consider their workers’ livelihoods and need for community. None of the employers employed only one worker from one country.

Colleague-level relationships are probably one of the most important factors in community formation for Thai unskilled workers because they spend most of their time together. Ms. Nicha, one of my interviewees, said that she mostly spends her time on the farm and the only community that she has is in her workplace because it is too busy for her to go elsewhere. Even when she has a dayoff, she prefers to rest at home. Mr. Win also spends his day off gardening and growing vegetables at his accommodation. He enjoys studying in his room and having online conversations with his family in Thailand. The workers who rarely participate in activities or events outside tend to have clear goals for their lives. As money is a primary reason for workers to relocate, unskilled migrant workers are pleased to work as much as possible to earn money and send it back home. Working over-time is a fast way to earn more money. Since they are busy from work and too tired to go out, the only intimate group that they are part of in their host country is with their workmates. Additionally, this group of workers is satisfied with their jobs and does not need to visit the help center because they don’t have any problems with their work.

However, there are also some workers who seek other kinds of life experiences, not only from workplace. It is good if they are able to find someone to rely on and to share things with whenever situations occur. Apart from the workplace community, there are many other kinds of community that workers participate in during their time working aboard.

A temple is a good place to form a migrant community because it is the center of Thai life for most Thai people. The Buddharama Temple located in the center of Ansan City hosts all Thai religious ceremonies and activities. “We arrange activities according to Thai calendar, only Buddhist holy day that we set on every Sunday,” said the head monk of the Buddharama Temple. “Besides the religious activity, we give a hand to people who need help such as

accommodation and food,” he added. Many workers who do not have a place to stay while waiting for a new job ask for help from the temple. They can stay in the temple for free for an average of one month. Thus, the temple has become a community that was formed outside of the workplace.

Another example of community formation outside of the workplace is that of Mr. Wut. Mr. Wut has been living in South Korea as an EPS participant for more than nine years and he really enjoys participating in activities. On his days off, he prefers to spend time doing activities that help him to develop himself. Mr. Wut explained:

“I have a day off on every Sunday. It is great that I can have free time to do many activities and have more time to develop myself. I used to take Korean class at Seoul global center (help center for foreigners) and I met many good friends there (Mr. Wut, personal interview by the authors on 19 January 2020).”

Furthermore, Mr. Wut sometimes works part time on Sundays in the entertainment and broadcasting fields, including voice acting, reporting, or being a Master of Ceremonies. Many people have gotten to know him and he has had many more opportunities to do part time jobs:

“I have both Thai and Korean friend and there are many type of group. My Thai co-workers in my factory love to drink and they don’t like to learn. I can be their friend but I don’t like drinking. Another group of my friend is a group of Korean wives. No men in this group and those ladies need some guy to help when they have some special activity. I got a lot of works from this group. It is a kind of connection. They know what I am interested in and what kind of part time job I have done. Then they introduce me many jobs that related with my interest (Mr. Wut, personal interview by the authors on 19 January 2020).”

5. ADVANTAGE OF THE COMMUNITY

As the literature review demonstrated, communities provide many advantages to migrant workers overseas. Workers depend on people who have knowledge and experience living in the host country to share and exchange information when assistance is needed. They help each other with language, work, and daily life. The advantages of building a community of Thai unskilled migrant workers in South Korea include communication, jobs, and daily life assistance, and were found to exist in this case study, just as in the literature review. Workers seek help from this community in order to deal with language barriers and job issues. It is better for them to rely on people who have more experience, and being around people who came from the same hometown and speak the same language can help to reduce loneliness. However, I found that the assistance of the communities, both in the help center and in the temple, presented new advantages. For example, in South Korea, workers have more opportunities to develop their skills by participating in educational classes at the help center. This community advantage could enhance workers’ capabilities, which may contribute to good outcomes in their future careers. The advantage of the temple community is also essential for migrant workers in South Korea as it provides assistance for those who have lost their jobs. Apart from mental support, the physical support including free accommodation and food can help workers reduce their cost of living while facing

difficult situations. For example, Mr. Chot mentioned that community networks are more important than language skills. Mr. Chot says:

“If you are very good in speaking local language but you have no networks, it may not be easy for you to live in a foreign country for a long time because you have to figure things out by your own. In the opposite way, if you cannot speak Korean but you know a lot of networks, I am sure that you can survive here in a very good mood as long as you want (Mr. Chot, personal interview by the authors on 11 January 2020).”

The language barrier is the biggest problem for migrant workers. While it is important to know the local language, networks are more important. Using language skills in real life is much more difficult than practicing in a class. It takes time to get familiar with the vocabulary and accent of each person. However, in a community, newcomers can ask for assistance from members with more experience such as senior workers, language teachers, friends, etc. Apart from helping with the communication problem, community members can also provide guidelines for living, for instance, introduction about work, services, and facilities in South Korea. This automatically places that community member in the position of a life instructor. Ms. Phat has been working in South Korea on a tomato farm for around two months. Her employer assigns work and conveys the message to her via the senior workers who are also Thai because she is unable to communicate in Korean. “I use Korean language just a little bit because my boss will communicate with the senior workers who came before me. She can speak Korean better than me. I always ask her when I have any questions.” said Mr. Phat.

Some workers seek more opportunities during their time working overseas, including opportunities for personal development, local experiences, or even an extra job. Almost all local help centers provide free educational classes for migrant workers. They provide Korean language class, taekwondo class, computer class, photography class, and others. Workers who are interested to develop their skills can join classes on their days off and through their participation they will automatically be included in new communities. Mr. Rat is one of the most active interviewees from this research. He receives an average salary with no overtime. “Our company is working for the Korean government. So, we get less money compared to the others,” he said. He sometimes visits his friends in other provinces to do part-time jobs together. Other than visiting friends and doing part-time jobs, Mr. Rat enjoys fishing and finding shells in the sea with his colleagues and friends from neighboring factories. Interactions with people from the same country also reduce his stress from work and remind him home. Ms. Phat supported this idea by saying that having friends from her same country has helped her to not become too homesick. She doesn’t feel lonely because she has someone to talk to.

However, community participation may be unnecessary for workers who are satisfied with their lives or who have no problems in their daily lives. Mr. Pee, who has stayed in South Korea longer than any of my other interviewees, said that he doesn’t need Thai friends and that he enjoys working alone. He concentrates only on his work in order to save money to marry his Thai girlfriend, who also holds Korean nationality. This case is very special because Mr. Pee has been living in South Korea for more than 12 years and is able to communicate in Korean language. His employer assigns him to work alone in the night shift, which he enjoys. His employer may trust him with this shift because Mr. Pee has a lot of experience in South Korea. “I think Thai friend is not important because nobody can help me better than

myself,” he added. Furthermore, Ms. Was, a friend of Mr. Pee, also supported the idea that having Thai friends is not important:

“It is not important to have Thai friends. We should have Thai friends, but it is not that necessary. I think having foreign friend is more advantage. Foreign friend who can speak Korean is better because we can learn how to speak Korean faster (Ms. Was, personal interview by the authors on 22 December 2019).”

Since the development of technology provides access to the world into one touch, this may help some workers to be less lonely, especially the workers who love to be alone. Mr. Win and Mr. Nit both spend most of their day off resting in their rooms and exercising at the factory. Both have only one community, which is that of their workplace. Mr. Win prefers to stay at his place and plants vegetables in the factory area. He also reduces his loneliness by using technology. “Fortunately, we have got a technology and it is more convenient than the past. I always call back to Thailand and we can even see each other face via phone,” he added.

Some workers would rather search for information on the Internet than ask for help from someone else. Thai people are familiar with Facebook more than other forms of social media. The Manager of Counseling Team, Korea Support Center for Foreign Workers, explained that when Thai workers have a problem, they often do not visit the center. Instead, most of them will message him via Facebook messenger or search for information on the Internet first. He also said, “The workers use Facebook to exchange information. They mostly use social media, without much face-to-face gathering.” For instance, when Korean employer selects a worker, the worker will announce his workplace results on Facebook and people who know that workplace will comment. After that, they can exchange information directly.

In summary, Thai workers lack information about life in South Korea because most of them are traveling abroad for the first time. This is why community is very important and necessary for new comers. Communities can help and guide workers in the host country. In contrast, the workers who have had experience living abroad for a long time often think that community assistance is unnecessary because they are already familiar with the host country’s society and culture. Furthermore, most of them are able to communicate in the local language, which is the main problem for new migrant workers.

6. THEORETICAL DISCUSSION

Based on the literature review, Thai unskilled migrant workers in Asia, especially Singapore, Malaysia, Vietnam, Taiwan, and Japan, have built various kinds of Thai communities. Migrant workers earn advantages from communities since participation can fulfill their interests and needs. They join the communities because they need people to share and exchange information with, especially when mental and physical problems occur in the host country. Such problems include language, work, and daily life, which are not easy for new comers to handle. Migrant workers also seek assistance from the communities’ networks in order to further reduce risk and to prevent unexpected problems.

I found that migrant workers in South Korea receive the same advantages from communities that were found in the literature review. It can be assumed, then, that the existing advantages are the basic things that workers overseas expect. The field research, however, shows that there are even more advantages. (1) First, the educational classes offered by the help center are good for workers in the long run. For example, the Korean language class can help workers to communicate better and to understand their work more clearly. (2) Second, the advantages from the community in the temple are very crucial for all Thai people, but especially for unskilled migrant workers. Migrant workers who have lost their jobs tend to rely on the temple for accommodation, food, and mental support.

7. CONCLUSION

There are various communities of Thai unskilled migrant workers in South Korea. The advantages of these communities make workers' lives smoother and establish a more productive coexistence in the host country. It is important for workers to participate in these communities, especially new comers, since they lack information about the host country are just starting to learn. Communities can be formed in both the home and the host countries, which can then be continued and expanded upon in the future. Workplace relationships provide the strongest community for unskilled migrant workers in South Korea because they already spend most of their time together. In contrast, however, communities might be unnecessary for workers who already have experience overseas. Workers who are satisfied with their lives and do not need assistance from others are also less likely to participate in the communities. Furthermore, the development of technology has also changed the way of life for many migrant workers. It is now easier for them to access information, exchange things, and even to stay in contact with their loved ones.

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PREVENTING HUMAN TRAFFICKING THROUGH COMMUNITY EDUCATION: A CASE STUDY OF JARINGAN RELAWAN UNTUK KEMANUSIAAN (J-RUK) IN EAST NUSA TENGGARA PROVINCE, INDONESIA

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ABSTRACT

One way to prevent human trafficking is to educate communities about the processes and effects of human trafficking itself. This study highlights community education developed and conducted by Jaringan Relawan Untuk Kemanusiaan (J-RUK), in order to address human trafficking in East Nusa Tenggara Province-Indonesia. The main research objective is to analyze alternative approaches to preventing human trafficking in the East Nusa Tenggara province, and to identify approaches aiming to protect potential victims from human trafficking. It is, therefore, guided by the question: how does J-RUK conduct community education to prevent human trafficking?

It is found that community education is an effective tool to fight human trafficking. Furthermore, it empowers people, especially potential victims, protect themselves. Knowledge on their vulnerabilities and conditions leading to trafficking is key. This study identified the following from collected data: participants are aware of the requirements and procedures to become Indonesian Migrant Worker (PMI) and to identify the modus operandi done by traffickers. Participants can potentially be active agents for the dissemination of information about safe migration to the community where they work. Both participants and J-RUK are seriously working to address problem of human trafficking.

Keyword: Community Education, Prevention, J-RUK.

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1. INTRODUCTION

Mace, *et.al* (2012) argued that “the first steps towards effective prevention of human trafficking requires awareness of the problem is capacity and knowledge building. This includes education campaigns, training focusing on victim identification and increasing outreach to vulnerable populations are important principles of prevention (p.338).” To sum up, community education is key to ensure no one is vulnerable to human trafficking.

Community education is one approach that places the community at the center of problem solving. This means its members must be part of the solution, rather the problem. Solutions, therefore, are achieved through dialogues. Dialogues always start with the community's experience and knowledge concerning the problem at hand.

Community education requires educators who serve as facilitators or guides community to be aware of the issues they face or could face in light of human trafficking. Only through this manner that, according to Paulo Frerire, one is able to achieve a level of conscientization. By having consciousness, the community automatically knows to overcome the problem. And in the case of human trafficking, individuals are able to protect themselves and, on the communal level, can be actively involved with others to prevent human trafficking.

Presently, a local organization based in East Nusa Tenggara (NTT) province, the Jaringan Relawan Untuk Kemanusiaan (J-RUK), has been using community education as a means to prevent and addressing trafficking in persons. This organization, according to news from Indonesiasatu.co, is a pioneering humanitarian movement in NTT (Indonesiasatu.co 2017). The J-RUK approach had been complementing prevention measure being carried out by the government and other NGOs. For this reason, this study wants to analyze the approach made by J-RUK.

Research Question

How has J-RUK applied community education to prevent potential victims from human trafficking in the context of NTT?

Research Objective

The objective of this study is to analyze alternative approaches to preventing human trafficking in the East Nusa Tenggara province. It also aims to identify other approaches to protect potential victims from human trafficking.

2. RESEARCH METHODOLOGY

Overall Research Design

This research generally employed qualitative methodologies. The main case study is community education established and being implemented by J-RUK in NTT. To fulfill this, J-RUK officials and programme participants

were interviewed. The main assumption is that community education can prevent human trafficking in East Nusa Tenggara province. This also takes into the consideration that potential victims are educated using designed by J-RUK. Documents such as program design, teaching materials, and meeting minutes were used for analysis.

Data Collection and Analysis

Data collection is mainly based on in-depth interview. Respondents were mainly associated with the-RUK organization (3 pax) and participants (4 pax) who took part in community education activities.

The interviews were mainly semi-structured. This is important to not only understand insights on and behind vision and strategies, but also rationale using community education, and methods for preventing human trafficking in the province of East Nusa Tenggara.

Due to the COVID-19 situation, data collection was done remotely. Instead of face-to-face interviews, phone calls and online conversations were conducted—this is based on the level of comfort and convenience of both researcher and respondents. Secondary data were also reviewed, specifically on literature concerning the role of human trafficking prevention.

3. PREVENTION AND PATTERNS OF HUMAN TRAFFICKING IN EAST NUSA TENGGARA PROVINCE

Preventing Human Trafficking

Preventive measures taken by Indonesian state often encounter internal problems. First is the lack of resources and coordination with and between local and central government (Department of State, 2017, p. 210). Second concerns government structure that allows diverse, conflicting views, policies and strategies (Asyari, 2008, p. 137.) For example, Law No. 39 of 2004 authorizes the private sector to supervise and manage labour in the country. The government is left with a dilemma, whether it wants to side with the people or with the private sector. In this case, the conflict of interest is very high, “bearing in mind the benefits of labor migrants that contribute to remittance for the country and reduction of unemployment in the country” (World Bank Report, 2017, p. 45-52). Another [problem is, as flagged by NGOs, that the governments are corrupt. They accept bribes to issue fake documents. This allows traffickers to transport undocumented migrants across borders and sustain spaces where their issue trafficking and thwarting law enforcement against traffickers (Department of State, 2017, p. 209).

Also, the precautions taken have mainly been reactive. The typical pattern of prevention in NTT is when damage had already been done. This includes accompanying victims to access legal justice, picking up and repatriating victims either living or dead. Such measures fail to address root cause of trafficking in persons.

The consequence of such precaution is the increase in the number of victims from East Nusa Tenggara province. Data from Dominggus Elcid Li revealed that “in 2014, out of 1021 people handled by the authorities, 605 suspected were victims of trafficking. In 2015, from 1004 people handled, 468 were indicated as victims of human trafficking (Li, 2017, Indoprogress.com).” Moreover, based on information from the Kompas newspaper, there were 105 workers from NTT consisting of 71 men and 34 women who were exploited to death in 2018 (Kompas.com 2019). Owing to this fact, NTT was determined by both the Indonesian government and the National Human Rights Commission as an emergency province of human trafficking (Kontan.co.id 2014). Staggering numbers of exploited migrant workers categorized as human trafficking, based on the contemporary approach of Jennifer K. Lobasz. According to Lobasz (2019, p. 39-51), human trafficking in contemporary approaches can be seen as migration. With this in mind, there need to be more efficient preventive measures or approaches to increase public awareness capacity building to protect potential victims.

Patterns of Human Trafficking in East Nusa Tenggara Province

Recruitment in light of human trafficking in NTT has a distinct pattern. The initial point is recruiting people who are in dire need of work. Someone will be sought after and offered to work abroad, luring them with an offer of a handsome salary. This is true in the case of Mariance Kabu. She was recruited to work in Malaysia with a salary of IDR 2 million per month. She accepted it because she was unemployed at that time (Voxntt.2018).

Taking advantage of people looking for work is a generally the first step that occurs not only in NTT but also in other places. Rebecca Surtees, in her writing, tells the patterns of human trafficking in Ukraine are the same. This pattern is very sophisticated because it utilizes the vulnerable position of trafficked victims. Tom Obokata (2019) said, “Perpetrators make trafficking operations more successful due to their sophisticated modus operandi” (p. 541). The sophisticated modus operandi used in the Mariance Kabu case is to take advantage of the vulnerable position of victims, namely those who are unemployed. Victims view recruiters or traffickers as saviors—which is, of course the opposite of reality.

Victims who are recruited attained low or no education at all (Audra Jovani, 2019) and (Everd Scor Rider Daniel 2017). This is true in the case of trafficked persons from NTT. The low level of education makes people more vulnerable. An example of the case is Wilfrida Soik, who was trafficked to Malaysia. She was only able to finish Grade 4 in elementary school. Brokers had to falsify here documents in Jakarta to hide such truth (Medcom.id 2014).

Another pattern is that perpetrator is usually known by the victim. These perpetrators are usually called as field recruiters or PL. These perpetrators could be closely related to the victims, such as father, mother, aunt or uncle, brother or neighbor. The familial relationship between the perpetrator and the victim or potential victim creates a sense of psychological comfort and security. This allows for blind consent and approval for the person and his/her/their family members. Such affinity makes it challenging for cases to be reported to police. This, according to Cris Mensah-Ankrah and Rex Osei Sarpong (2017), is a barrier due to internalized indoctrination facilitated by perpetrators (Ankrah and Sarpong, 2017, p. 5).

Furthermore, traffickers use customary virtues to convince one to agree to such exploitative process. During recruitment, perpetrators sometimes use the custom virtue, particularly on the island of West Timor, which is known as betel nut money. Betel nut money is a habit that is used by local people in marriage, and this usually applied during early stages of marriage. When the betel nut money is accepted by the female's family, it means the proposal of the man is blessed. In essence, betel nut money here is understood as money to seek approval from someone in control of a person. Recruiters use betel nut money, to force parents or people in control of victims to agree to this process.

An example of this is the case of Melitia, the daughter of Mrs. Agustina. Traffickers handed betel nut money to Mrs. Agustina to get her permission and seal the deal. Betel nut money amounted to IDR 1.5 million. After receipt of the betel nut money, Melitia left with the recruiter. As this writing, Melitia's whereabouts are unknown. Her mother narrated, "at that time, she (Melitia) came with a man, who asked me to allow Melitia to work in Malaysia and, he (recruiter) gave me IDR 1.5 million as betel nut money" (Kompas.com 2019).

Recruiters normally target women and girls, who are deemed more obedient and vulnerable. Data from the East Nusa Tenggara regional police stated that the number of women victims of human trafficking in 2016 is 1,667 people (kompas.com. 2016). Common targets are girls and women living in poverty and in rural areas (Kompas.com, 2019).

4. CONCEPT OF PREVENTION AND PRINCIPLES OF PREVENTION IN UN PROTOCOL

Concept of Prevention

The concept of the human trafficking prevention, according to Vidyamali Samarasinghe and Barbara Burton (2007) is "pre-emptive intervention before any of the forms of trafficking identified in the UN protocol occur" (p. 53).

Perceives prevention according to the level of preventing, there are three levels of prevention. The first level is "prevention stops violence before it occurs" (p.4). The second level is "provides an immediate response to violence as it occurs" (p.4). The third level is "long-term response that occurs in the aftermath of violence, such rehabilitative services that seek to prevent sequelae (revictimization) (p.4) (U.S department Of Health and Human Services, 2019)."

Principles of Prevention in Un Protocol

The principle of preventing trafficking is clearly stated in the *Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children* article 9.

State Parties carry the responsibility to make policies and programs, doing research, disseminate information, mass media campaigns, social and economic initiative, cooperation with NGO's and bilateral or multilateral cooperation. The UN Toolkit argues, "effective action to prevent and combat trafficking in persons requires a

comprehensive international approach, including measures to prevent such trafficking, to protect victims of such trafficking and to prosecute traffickers. To prevent human trafficking effectively, States are required to undertake measures such as social and economic initiatives, research, and media campaigns targeting potential victims. This area of trafficking response calls for a wide range of actors (from legislators and law enforcers to the media and the public) to cooperate in designing and implementing creative initiatives (UN toolkit, p. 417).”

5. CONCEPT OF COMMUNITY EDUCATION

Community education is one of the ways to build capacities in order to overcome social problems. It is a type of education whereby the main actor that addresses social problems is the community. It approaches life experiences as a starting point (AONTAS 2004) because it aims to promote the independence of local communities (Poster, 1990, p. 20). It advocates the notion that the seeds of solutions are within the people themselves (Rennie, 1990, p.4, and Poster, 1990, p.21). Furthermore, "community education in its application must reflect the problems, needs, and aspirations of the community in a narrower, more specific sense" (Poster, 1990, p. 21). It, therefore, requires an educator that is "someone who is skilled but must be sensitive to give advice and not try to control the results (Poster, 1990, p. 18)."

Community education employs Paulo Freire method which is dialogue. Dialogue “means to transform social relations in the classroom and to raise awareness about relations in society at large. It is a way to re-create knowledge and learning. It is a mutual learning process whereby the teacher poses critical problems. Dialogue rejects narrative lecturing where the teacher silences and alienates students. In a problem-posing participatory format, both teacher and students transform learning into a collaborative process to illuminate and act on reality. This process is situated in the thought, language, aspirations, and conditions of the students. It is also shaped by the subject matter and training of the teacher, who is simultaneously a classroom researcher, a politician, and an artist (Shor, 1987, p.11).”

Freire advocates this tool what he calls “conscientization.” Conscientization “has a special meaning with regard to the development of historical subjects, when people that could be able to build their lives without being exploited and oppressed, were able to self-organize and fights for their rights (Guzzo, 2014).” Moreover, it is understood in two levels: raising consciousness and critical consciousness. Freire stated that it is “the process in which men (and women) serve, not as recipients, but as knowing subjects, to deepen awareness both of the socio-cultural reality which shapes their life and their capacity to transform that reality (Freire, 1972b, p.51).” Therefore, “community education in its application must reflect the problems, needs, and aspirations of the community in a narrower, more specific sense (Poster, 1990, p. 21).”

From the description above, community education is as a way to increase awareness at the individual and community level. Through this, human beings are able to "transforming, deciding, producing, creating, and communicating (Ryan, 1968, p.17). In this light, Paulo Freire asserts “that education has to for critical consciousness

not only at the individual level but in collective levels because conscientization operates with the world (Freire, 1974, p.130).”

As for this study, community education can be used to help prevent and address issues concerning human trafficking. It creates a robust conscientiousness to fight fraud in the recruitment process and to form collective awareness. At the individual level, community education can help potential victims to identify tactics of traffickers, and to increase their sense of belonging to their hometown. While at the level of collective awareness, it can also encourage the formation of programs and policies that prioritize the protection of potential victims.

6. PREVENTION OF HUMAN TRAFFICKING BY JARINGAN RELAWAN UNTUK KEMANUSIAAN (J-RUK)

A Brief Introduction About J-RUK

The History of The Founding of J-RUK

The founder of J-RUK is *Reverendus Dominus* Leonardus Mali. He is a Catholic priest in the archdiocese of Kupang. When interviewed on 19 May 19 2020, he shared that he began to grapple with the issue of human trafficking since 2003. In 2004, RD. Leonardus Mali was entrusted to arrange one of the commissions in Kupang archdiocese, which is called Justice and Peace and the Migrant Commission. He said that human trafficking issues were not prioritized back then, and that they were more into project-oriented approaches.

Together with the Catholic lay movement Communion and Liberation, which was also established by RD. Mali in Indonesia, on June 10, 2014, Jaringan Relawan Untuk Kemanusiaan (J-RUK)¹ came into being.

The Member of J-RUK

J-RUK membership is exclusive for those who profess in the Catholic faith and is on voluntary basis. Catholic theology places humans as the image of God. Human trafficking is a form of destruction of the image of God. This inspired then to congregate in the fight again this gross human rights and humanitarian crisis.

J-RUK is inspired by the African NGO, Mama Dorah, which is a local community organization helps orphans and provides for their needs, educate and protect them from human trafficking. Its mandate come from the word of God found in the Catholic bible. (Anderson 2018). Therefore, social movements in NTT are mainly inspired by religious teachings.

¹ located at Kapela St. Paulus Oesapa. The J-RUK name itself is giving by RD. Amandus Ninu. The secretariat address of J-RUK is Terrarosa Market, Jln. Prof. Herman Yohanes, Gang Fioreti, RT 009 / RW 003, Balfai, East Penfui, District Kupang Tengah, Kupang Regency, East Nusa Tenggara Province. J-RUK organization obtained its legality in 2015.

"Membership is based on one's wholehearted will to join and fight human trafficking and injustice. Our job is to raise everyone's awareness so that those near us can maintain the dignity of their conscience. All volunteers joined because of their personal experience and in support of what I've been doing and direct and indirect involvement with what I was doing. Volunteer members are also not bound, some come and disappear, then return (interview 19.5.2020)."

Activities of J-RUK Relating to Human Trafficking Issue

The three thrusts activities related J-RUK's work on human trafficking are safe migration, victim assistance, and legal advocacy. Apart from information dissemination, they also conduct the following activities: Seminars, Media releases and publications, Distribution of Safe Migration Booklets, Music concerts, and movie screen campaigns. They also assist repatriated victims by providing them shelter and ensuring that they can be brought home safely.

They also support victims in filing reports to the police and accompanying them to the courts. They have also been advocating for legislative and policy reform related to victim protection.

Data About Research Respondents

Research respondents include J-RUK representatives and participants of their activities. Those from J-RUK are its founding leader and two officials. This study focused more on J-RUK management to gain an understanding of its formation and its agenda. Participants involved two men and two women.

Data Analysis for Community Education Apply By J-RUK

Data Analysis for Element of Community Education

Educator

An educator is a person whose duty is to guide a student's learning process. In the context of community education developed by J-RUK, educators are viewed more as facilitators. The facilitator must be able to stimulate participants to share their life experiences. Existential questions should be raised and inspire visionary action.

"I am often entrusted to guide sharing activities. The questions seek to capture everyone's life experience. For this reason, I ask existential questions such as what is life? what is your reason for choosing your career path? What do you plan to do in the future? These questions also stimulate one's awareness of his/her/their lived experiences (RD. Johannes Tnomel, interview 25.6.2020)."

Participant

People who attend J-RUK activities are those who are closely related to members running J-RUK. They get their invitations through personal means. Activities are not much different from the practice of community education in Donegal. (Fleming, n.d, p. 69-70).

To gather more people, they try to build networks with organizations, cultural figures and musicians based in NTT. It is key to expand networks to be able to effectively disseminate information on the safe migration and the effects of human trafficking.

“We actively network with civil society organizations and NGOs in NTT. The spirit of solidarity and activism is thriving all through the province. It is an opportunity to share about the problem of human trafficking and, at the same time, to invite more participants. We also work with famous musicians from NTT such as Ivan Nestorman. They help us compose songs for our anti-trafficking campaigns. This inspire more people to take about the issue and join our causes (RD Leonardus Mali, interview 19.5.2020).”

Sources of Teaching Material

Life experiences are the main source of teaching materials used for community education developed by J-RUK. Each respondent's experience related to human trafficking is shared and used for lessons.

“Teaching materials are available virtually everywhere. The most important thing is the commitment that starts with testimonies. Through this, knowledge can be acquired anywhere, but testimonies must grow from life experience. They are able to share their history of suffering, poverty and redemption. These stories inspire people to appreciate life and be empathic to victims of human trafficking. Each person's history can be a powerful life lesson. Life is the best teacher. But people who lose confidence, always look elsewhere and become self-forgetful (RD. Leo Mali, interview 19.5.2020).”

Responses reveal that learning material sourced from experiences can influence and inspire participants and facilitators alike. Participants and facilitators learn from each other. Life experiences empower people to mobilize, be more empathic and actively fight against social ills.

Analysis of The Elements of Community Education

Sharing of experiences and existential questions triggered by educators' important facets of community education on human trafficking. It empowers individuals and groups to prevent and address human trafficking in their respective communities.

Data Analysis Regarding Precautions

Community Education as A Way to Increase Knowledge

Claudia Aradau asserted that human trafficking occurs because of ignorance, confidentiality, and uncertainty. For this reason, there needs to be a robust pedagogy on human trafficking (Aradau, 2013, p.2). Echoing Freire, pedagogy as a tool for transforming one's ignorance to knowledge.

Based on collected data, community education can improve the respondent's knowledge. Participant-respondents are able to identify tactics performed by traffickers. They are also aware of the requirements to become an Indonesian Migrant Worker (PMI).

“I am an Indonesian Migrant Worker (PMI) who works on the Celebrity X Company cruise ship. By joining J-RUK, I gained important information about safe migration such as requirements for becoming a PMI. It helps me prepare mentally and emotionally (Meriyanti Simo Toda, interview 15.6.2020).”

“I am now aware of modus operandi related to trafficking. I can also identify tactics used by traffickers (Icha Hayon, interview 21.5.2020).”

Enhancing the Dissemination of Information on Safe Migration

J-RUK is capable of building a network of agents to spread information on safe migration to communities in remote areas. Data from the interview below reveals how to obtain and form an agency developed by J-RUK.

“These days, if I learn that any of family members or neighbors want to go overseas, then I tell them to follow the official route. Also, as a teacher, I also share about the dangers of my junior high school students (Kristo Molo, interview 17.5.2020).”

“At present, I am the village assistant associated with the Ministry of Public Works and Public Housing I work in the villages in Southwest Sumba Regency. Living in the village, I spend most of my time with the community. In the afternoon, while drinking coffee or smoking together, I can talk about the tactics of the trafficker and ways for safe migration. I also motivate them to develop their potentials. Moreover, the COVID-19 situation forced all to migrate back to their villages. Sadly, only farmers in the village can survive, because they had sufficient food supplies (Ade Simon, interview 21.5.2020).”

Based on discussions in this section, it is clear that educators continue to actively promote information on safe migration to the community, especially with those who are close to the respondent. By doing this, they naturally become bearers of information and agents of change.

Education Creates an Informed and Caring Community

“Raising consciousness is not just about increasing awareness it also triggers commitment to action. Knowledge about a problem should always be paired with the power to address it. Sharing helps us achieve problem awareness, social understanding and a caring environment. This is why J-RUK is still thriving. More people are getting involved. The network of volunteers is expanded to other areas such as Maumere, in Sumba, etc. Commitment enables of culture of empathy and solidarity (RD. Leo Mali, Interview May 19, 2020).”

Caring is something that goes beyond understanding because it also means a commitment to action. It is through this involvement that human trafficking can be prevented. Human trafficking can only be eliminated if people are willing to disseminate information and be more constructive to make other people’s lives better.

Community Education and Hometown Pride

There are a number of push and pull factor leading to one’s decision to migrate (Lee, 1966). It is important to catalyze counter imagination to address these factors. Counter imagination means arousing an alternative idea wherein people can appreciate one’s hometown Community education can generate spaces for counter imagination.

“I am very proud of my hometown. Natural resources, such as candlenut, areca nut, and coconut are very abundant. This reality gives hope for the village people to keep on appreciating their home town (Kristo Molo, interview 16.5.2020).”

“Each participant is proud of his/her/their hometown. It is important that they gain the confidence to live and stay in their village. This will enable them to return home and give back to their respective communities (RD. Johannes Tnomel, Interview, 25.5.2020).”

7. CONCLUSION AND PROPOSAL

Conclusion

This paper featured a number of discussions and realizations with regards to the impact of community education to the prevention of human trafficking.

First, there needs to be a strong structure and foundation to disseminate information and address root causes of trafficking in Person. Community education is an effective way to help communities protect themselves from vulnerabilities and harms. Furthermore, pre-emptive action should be enhanced to avoid anyone to fall into the traps.

It is important to highlight the role of the community in protecting its people from human trafficking. They should lead the way in education and facilitating dialogues in order to elevate life stories and insights on this matter.

J-RUK should be commended for effectively carrying out community education programmes. It has successfully supported people by increasing their knowledge and invigorating their agency for change. It was also able to achieve the following” The indications are:

- a. Participants know the terms and procedures to become PMI and know to identify the tactics performed by traffickers
- b. Participants become active agents of change by disseminating information regarding safe migration.
- c. Inspire participants to be proud of their hometown.
- d. Enable both participants and J-RUK staff to be more vigilant about human trafficking and its impacts

Proposal for Ways Forward

The UN identified two factors to enable the prevention of human trafficking: increased awareness and improved economic standing J-RUK has been successful in increasing awareness and understanding through Community education. It was able to change mindset with regards to labor migration and acknowledging exploitative mechanisms. It, however, has not touched about economic empowerment.

NGOs and CSOs are encouraged to adopt strategies and principles put forward by J-RUK. It has been found that it had been successful in empowering the powerless to become their own agents of change. It had also led to addressing other social problems and better protection of human rights at the grassroots level.

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CAN OFFSHORE RENEWABLE ENERGY BE SUSTAINABLE IN TAIWAN?

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ABSTRACT

Fossil fuel and nuclear power account for over 90% of Taiwan's electricity generation, and with the national goal to become a "non-nuclear country" and mitigate air pollution caused by burning fossil fuels, in 2016, the government set a 20%-renewable-energy goal for 2025, in which the proportion of offshore wind electricity would rank second, having started from scratch. The purpose of the paper is to analyze the potential of offshore wind electricity as a solution for sustainable development in Taiwan with the country's first and only offshore wind project, Formosa 1. The three-pillars concept of sustainability is applied to reveal the lessons learned from the project in its environmental, economic, and social dimensions respectively. In addition to the review of secondary information, interviews with 14 affected fishermen were conducted to enrich the data. In the environmental dimension, the process of site selection and Environmental Impact Assessment is evaluated. In the economic dimension, the cost of investment, future demands, and the implementation of localization are discussed. Lastly, the social dimension focuses on the socio-economic aspect by exploring the changes that affected the livelihood of the fishing community. The paper concludes with the achievements of Formosa 1 in terms of being a pioneer in the industry as well as suggestions for further sustainable development. Finally, the sustainability of offshore wind electricity is recognized.

Keyword: Renewable Energy, Offshore Wind, Sustainable, Taiwan.

AUTHOR'S BIO

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1. INTRODUCTION

Taiwan is a small island located in the Pacific Ocean, possessing advantages such as effective isolation from foreign viruses such as COVID-19 and disadvantages such as limited natural resources such as raw materials for fuel. Over the past few decades, energy consumption has risen with the growth of the economy in Taiwan, and, from the 1970s onwards, nuclear power plants were built to supplement the use of fossil fuels in electricity generation. Currently, the nation's energy matrix is dominated by coal, natural gas, and nuclear (Figure 10) (Taiwan Power, 2019).

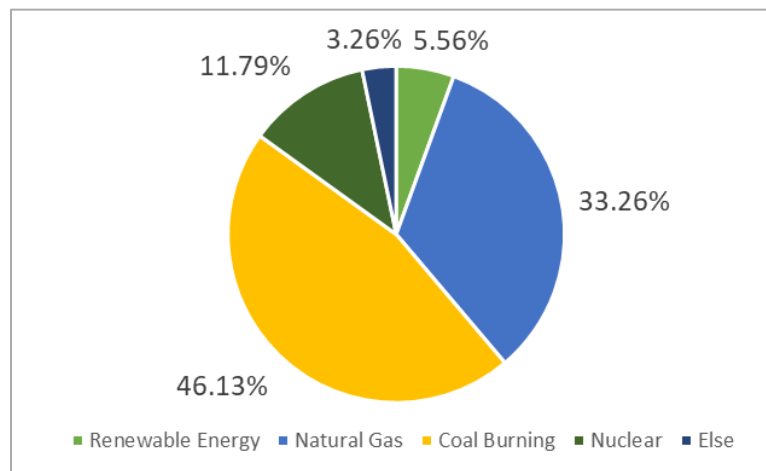


Figure 10. 2019 Electricity generation structure in Taiwan

Note. Adapted from “Energy Statistics Data Inquiry System”, by Bureau of Energy, 2019, retrieved from: <https://www.moeaboe.gov.tw/wesnq/Views/B01/wFrmB0102.aspx>. Copyright 2019 by Ministry of Economic Affairs. Figure made by the author.

The imported raw material supply rate has remained at around 98% (Figure 11), resulting in weaker resilience in terms of energy security. Coupled with global environmental challenges and doubts about nuclear power plants, when it took office in 2016, the new government announced its vision for 2025: “achieving an electricity generation structure with 20% renewable energy, 50% natural gas, and 30% coal burning by 2025, and stable power supply”. The main target was to transform itself into a “non-nuclear country” with a high proportion of green energy (Office of the President, 2016), and in addition to solar and land wind electricity, which were relatively mature, offshore wind farms became the focus of the transition because the special characteristics of the Taiwan Strait provide some of the world's strongest winds to the west coast (4C Offshore, n.d.).

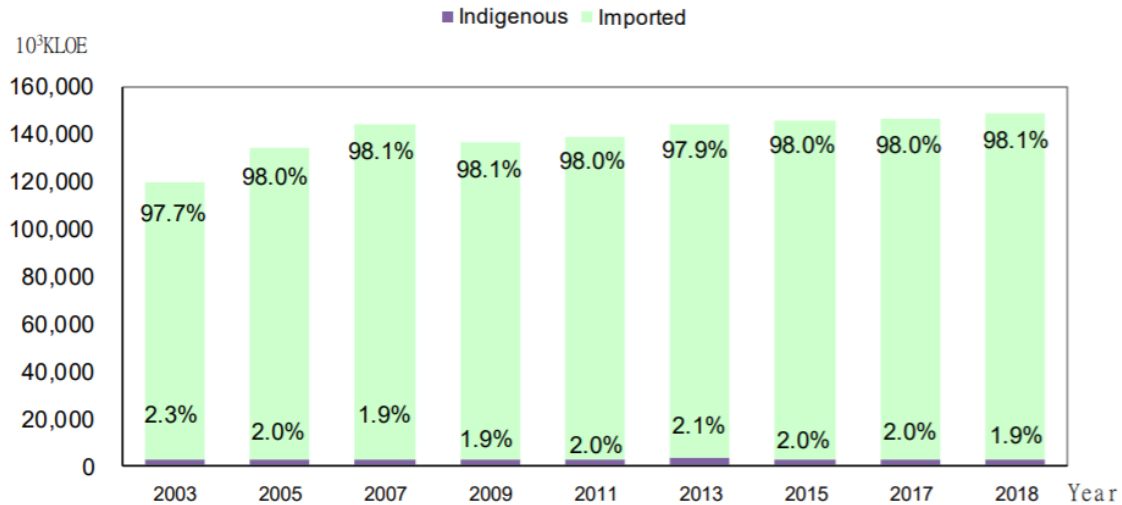


Figure 11. Energy supply from indigenous and imported sources in Taiwan

Note. Adapted from “Energy Supply and Total Domestic Consumption & Energy Supply (Indigenous & Imported)”, by Bureau of Energy, 2020, retrieved from: https://www.moeaboe.gov.tw/ECW/english/content/ContentLink.aspx?menu_id=1540. Copyright 2020 by Ministry of Economic Affairs.

The development plan for offshore wind electricity started in 2012 with a three-phase strategy on a small scale, “Demonstration Incentive Program”, to a larger scale, “Potential Zones Construction”, with the final target being to reach “Zonal Development” (TWTPO, n.d.). As of 2020, one of the three projects of phase one has been completed, becoming the first offshore wind farm in the country and some construction of the second phase is underway. Formosa 1 (Figure 12), launched in November 2019, is not just the first but also the only offshore wind farm that has begun to operate. Different aspects of it have therefore been questioned and it has been subjected to the pressure of public opinion, even now in the operational period. The research aims to explore the potential of the case to become a good model for future construction in terms of its sustainability and to examine whether offshore wind electricity can be economically viable, socially equitable, and environmentally friendly as renewable energy in Taiwan.



Figure 12. Formosa 1 Offshore Wind Farm

Note. From “News Center”, by FOWI, 2019, retrieved from: <https://formosa1windpower.com/news/>. Copyright 2019 by Formosa 1 Wind Power Co., Ltd.

The study is a qualitative research using secondary literature and primary fieldwork data to fill the knowledge gap in the effectiveness and feasibility of offshore wind electricity based on the three-pillar concept of sustainability. Being one of the pioneering researches in the field after the completion of Formosa 1, the paper summarizes its accomplishment as the start of a series of developments toward sustainability while it lists issues that can be improved, including the amendment of supporting policies, the cultivation of a local supply chain, and the effect on society.

2. THEORY

Sustainability, as defined in “Our Common Future”, states that “humanity has the ability to make development sustainable to ensure that it meets the needs of the present without compromising the ability of future generations to meet their own needs” (WCED, 1987, p. 16). According to that idea, renewable energy was considered a solution for balancing development and nature while pursuing economic growth. Environmental, economic, and social dimensions are commonly adopted in the three-pillar sustainability concept, although according to Purvis, Mao, and Robinson (2019) it does not originate from one single source. The paper thus discusses these three interconnected aspects of offshore wind electricity as one of the most important branches of renewable energy in Taiwan.

In the following sections, environmental, economic, and social sustainability will be evaluated respectively with the collected evidence to see whether the development meets the claim to be sustainable and if so, how to replicate and even improve it.

3. METHODS

The qualitative method is used in the paper including the literature review and primary data collection. The environmental dimension was determined mainly from the academic papers and reports of the Environmental Impact Assessment process; the economic information was gathered from books and news; and the social aspect was determined through the key informant interviews and the focus group discussions. The fieldwork was conducted in Miaoli County where the wind farm is situated some two-six kilometers off the coast of its township. In addition 14 fishermen who belong to Nanlong Fishery Association, whose exclusive fishing rights the development partly affected, were interviewed. The field investigation included direct observation during the site visits, consultation of local chronicles in the township library and documents relating to the project process, and the collection of bilingual reference sources (the conversations were in Mandarin and Taiwanese and the written information was in English and Mandarin). Records, photos, and notes were taken with permission, auxiliary tools such as Microsoft software and Google translation were used, and the notes were organized using Bernard's (2006) topical codes and indexing method.

Both the primary and secondary data were summarized and categorized into three dimensions of sustainability, namely environment, economy, and society, for further analysis. The development of offshore wind electricity is still in the initial stage and demands for similar projects have increased. The significance of the research is to assess the effectiveness of Formosa 1 as a good model while providing suggestions for possible improvement. However, the limitation of the paper is the lack of samples for more rigorous comparisons, and the focus on the domestic environment makes it regionally restrictive.

4. SUSTAINABILITY

Keivanpour, Ramudhin & Kadi (2017) had a systemic review of the sustainability of the offshore wind industry, and the paper borrowed some criteria for the three factors to evaluate the Formosa 1 project. Its environmental friendliness is the top advantage that has led to promotion of renewable energy, yet in line with Kaldellis et al. (2015), offshore projects comprise other hardware and activities that may cause negative effects, for instance, platforms, cables, shipping, and maintenance. Moreover, site selection is one of the most critical elements, which is why an Environmental Impact Assessment (EIA) is required in many developments. The EIA process will be the main part to be discussed in the paper with regard to environmental concerns. Three aspects of the economic dimension are going to be explored to ensure market benefits: costs and subsidies, existing supply and future demand, and the practice of localization. The importance of its socio-economic impacts was classified at the social level, together with the implementation of public participation and environmental justice. Similarly, changes to livelihood due to the construction will also be investigated.

4.1 Environmental Sustainability

Site selection was an internal process by the developer before applying for the EIA, and considerations such as ecological resources, economic values, and cultural assets had to be included to avoid sailing routes, military control, and conservation areas (MEA, 2012). In the EIA report, measures to mitigate or prevent the adverse environmental impact of the construction's "environmentally sensitive area" were proposed, and in the context of Formosa 1, five of the thirty-four listed sensitive areas were touched upon:

- (1) wildlife conservation areas;
- (2) noise control area;
- (3) water pollution protection area;
- (4) mining area where mining rights were registered;
- (5) fishing rights area exclusively for the fishery association.

Despite the fact that drawing up mitigation measures relating to the ecosystem, noise, and water pollution, confirming with the company to which the mining right belongs, and communicating with the affected fishing group had been proposed by the developer as solutions for the overlapping of the environmentally sensitive area and development (FOW I, 2014), more questions were raised during the EIA review committee, especially related to marine life and residents' livelihoods.

The project passed after three rounds of review with the biggest change being the site adjustment owing to the habitat of the endangered Indo-Pacific Humpback Dolphins, which was forcefully argued by the environmental groups, so that the new scope and location of the construction shrank and moved a few more kilometers away from the coast to preserve the dolphin's range of activities (Figure 13).

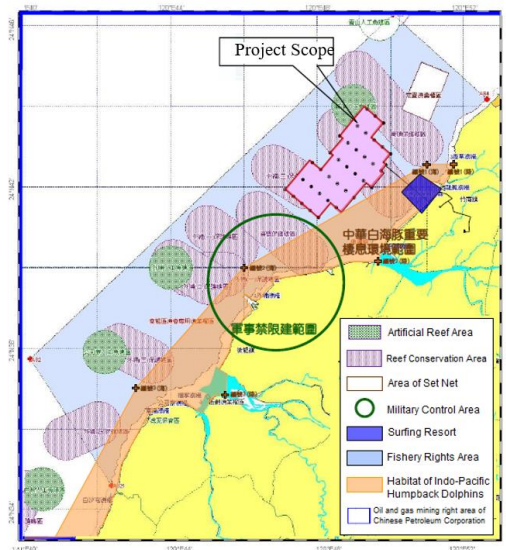


Figure 13. The New Scope of Formosa 1 Wind Farm and Environmentally Sensitive Areas Around It

Note. The orange area is the habitat of the endangered dolphin near the west coast of Taiwan where the land is shown in yellow, and the pink area framed with the red line is the scope of Formosa 1 Offshore Wind Farm near the coast but avoiding the dolphin habitat. Other environmentally sensitive areas are displayed in other colors in the lower right corner. Adapted from “Environmental Impact Assessment Report of Zhunan Formosa 1 Offshore Wind Electricity”, by FOW I, 2014, Formosa 1 Wind Power Co., Ltd, pp. 4-13, Figure 4.3-1. Copyright 2014 by Formosa 1 Wind Power Co., Ltd. Originally Mandarin, translated by the author.

The Environmental Impact Assessment was originally designed to avoid environmental harm, and its value was somehow revealed in the process. However, despite the fact that explanatory meetings were requested as a chance for public participation, the lack of social communication and public acceptance—necessary conditions for the approval of developments—often drives problems such as the protests by the fishing community regarding this project. These will be explored in later sections. Moreover, during the construction period, people were complaining about the noise late at night and that the developer violated their agreement to keep dolphin observation ships around. Consequently, other supervisory measures by the government regarding engineering and subsequent contract implementation are believed to be the keys to ensuring the project meets the environmental standards as well.

As a precedent for national projects, many useful lessons were learned from Formosa 1 and improvements were seen, for example, in delimiting of “Type and Scope of Wildlife Important Habitat for Indo-Pacific Humpback Dolphin” (Council of Agriculture, 2014) on the west coast of Taiwan to prevent conservation animals from environmentally destructive development and the in-depth research of the way that wind turbines might transform the reef, two enhanced measures that were introduced thanks to the lessons learned.

4.2 Economic Sustainability

The cost and risk of the offshore wind were extremely high because there was no domestic supply chain to reduce spending on imported materials and techniques and no local success case to prove viability. Furthermore, to start the very first step and attract foreign technology, the government began with a “Demonstration Incentive Program” to provide government-guaranteed feed-in tariffs for the sale of electricity and the sponsorship of construction, research, promotion, and administrative expenses, in which Formosa 1 was one of the three selected projects and the only one to be completed (MEA, 2012). The ongoing second phase of “Potential Zones Construction” then adopted the policy of “First Feed-in Tariffs, Then Auctions” and the purchase price was reduced by about US\$ 0.1 per kilowatt-hour as a result of the auctions (MEA, 2018; 2019). In spite of the reduced sales profit for newly entered developers, with pioneer risk and unnecessary spending on the process declined greatly. Formosa 1 opened up market demand for offshore wind and large amounts of green energy, paving a relatively smooth way for those that followed, and at the same time, pushing a gradually mature industry for the customers with lower financial and environmental costs.

Localization was another major goal for the government in facilitating the development for the purpose of building a national supply chain and techniques for the entire offshore wind industry, consisting of underwater infrastructure, wind turbine components, and marine engineering ships (IDB, 2018). In addition, it was one of the promises made by the developers to provide short-term working opportunities and long-term talent cultivation and technology transplantation. Swancor, who owns 7.5% of the shares, was the only Taiwanese company in the joint venture running the Formosa 1 project (Swancor, n.d.) and it played a crucial role in communicating between locals and other foreign investors and passing on the experience. Only if more Taiwanese companies have the ability to shoulder responsibility for the offshore wind industry chain, will it be possible to eliminate the public’s doubts about the actual economic benefits of the construction for the country. Therefore, for ensuing projects, the government has announced an industrial development schedule to clearly set the localization requirements for interested investors (OECD, 2019).

4.3 Social Sustainability

The social dimension was the most controversial part and the biggest obstacle faced by the project, including public acceptance over its unfamiliarity and the protests of the livelihood-affected fishing community. Issues involving fishermen emerged from the siting of the project in the fishing zone belonging to the Nanlong Fishery Association. The Association, which is made up of 325 registered fishermen, has exclusive rights to the zone. Unlike the problem of the dolphins’ habitat, which was solved, the Association’s main fishing area was still affected. In order to get the consent of the affected group to officially start the construction after the passing of the EIA, the developer began a negotiation process with fishermen who were asking for the project to be halted or for adequate compensation for their affected livelihoods.

In terms of environmental justice as defined by Walker (2012), the definition of environmental commons as benefit or burden varies from person to person. Thus distinct opinions were expressed on the outcome between two groups representing the region’s main fishing methods: “gillnetting” and “pole and line” (

Figure 14). Fishermen using gillnets were the main opponent since this method requires that the nets float with the current to catch fish as the nets drift, but the installation of wind turbines might block the path of the drifting nets. The fishermen organized a self-help group to fight for their rights. On the other side, the pole and line fishermen benefited from the construction because not only was their activity not affected, but, according to research, the artificial reef transformed by the turbines will cause fish to gather, thus making fishing easier for them with their small flexible boats.



Figure 14. Fishing methods of gillnetting and pole and line

Note. Left: the gillnetting method; right: the pole and line method. Left: adapted from “Cultivating Taiwan: Agricultural Century - Fishery”, by R.-Y. Cai et al, 2012, *Council of Agriculture, Executive Yuan.*, pp. 58. Copyright 2012 by Council of Agriculture, Executive Yuan.

In the end, the amount of compensation was settled and divided equally among the registered boat owners without distinguishing their differences of size, fishing frequency, operating area, or method. Fishermen who used gillnets considered themselves as victims of the global trend towards sustainable development because they neither see the realization of justice nor livelihood recovery. To protect people’s livelihoods, fishery transformation toward sustainability and industry localization were the changes that were expected to be achieved by the development, for instance, coaching the fishermen to develop environmentally friendly sightseeing fishing as an alternative plan and increasing work opportunities as a long-term measure. The electricity price subsidy and welfare for the residents nearby, were other beneficial policies which, it was believed, would be most clearly felt by people and would reduce negative impacts on their lives. Nonetheless, many effects have not been very significant.

Though the implementation of many actions still requires more comprehensive policy cooperation, the project has successfully attracted the attention of the masses, both in a good way and a bad way. Environmental issues were raised, the source of electricity was discussed, and the needs of future generations were considered, and thanks to the experience, the concerns and expectations of the fishing community were better grasped, providing an entry point and a clearer rule for other developers.

5. CONCLUSION

The paper takes Taiwan's first and the only offshore wind project as a case study after its launch some months ago, aiming to provide better knowledge of the industry for subsequent developments and understand its feasibility to play an important role in the national energy transition. In the context of sustainability, Formosa 1 was scrutinized from three dimensions: environmental, economic, and social, and its achievements and deficiencies were both embodied.

In the environmental dimension, the effectiveness of the Environmental Impact Assessment review committee was demonstrated in the revision of the project's scope and location to completely avoid overlap with the habitat of the Indo-Pacific Humpback Dolphin while promoting the policy of ensuring living space for the conservation marine animals legislate. These measures strengthen the environmental protection of offshore wind constructions. In the economic dimension, after years of debates, the successful operation of Formosa 1 makes everyone more confident about new energy and a cleaner future, and the government-promised market and regional demand of the industry were positively viewed by investors, which to a certain extent guarantees its future expansion. With the efforts of all parties, the social disputes have gradually eased and the quality of communication between the fishing community and the developer was improved during the negotiation process, by which the government designed a better protection mechanism for the affected people. An additional benefit of the livelihood change was fishery transformation. Judging from the experience of Formosa 1, offshore wind electricity has the potential to be sustainable.

However, in order to present a good model for nationwide development, there are several points that can be improved. First, the completeness of policies and the implementation of supervision, including supporting measures for affected livelihoods, penalties for breach of contract, and standardization of controversial issues such as compensation. Second, the depth and breadth of localization. Creating a win-win situation so that foreign investors are encouraged to impart their know-how and training local talent to take on important jobs are tasks for the government. Third, deep cultivation at the social level. This means rethinking society's value and power, ranging from the education system to the opportunity for public participation, empowering the public by keeping them informed and improving national strength with the raised level of civic literacy it gives back.

From the approval of the application to the beginning of the operation, Formosa 1 took eight years to reach a milestone in its journey and become the first small step in a giant leap.

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SOCIAL INNOVATION AND INCLUSIVE BUSINESS MODEL FOR THE BOTTOM OF THE PYRAMID: A CASE STUDY OF ORGANIC TOURISM ECOSYSTEM IN THAILAND

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ABSTRACT

Social inequality and poverty are majorly significant issues and challenges faced by all humans in the 21st century. At the same time, income gaps, the uneven development of urban compared to rural areas, and poverty are the main stumbling blocks for Thailand to achieve the UN 2030 Sustainable Development objectives. It is necessary to explore new development models by promoting social innovation. Throughout the past few decades, the private sector has remained the main contributor to the growth of ASEAN's gross domestic product (GDP). It is important to encourage the private sector to assume more responsibilities in contributing to local development. The inclusive business model as a business approach focuses on the improved benefits of the "Bottom of the Pyramid" community, and promotes sustainable development economically, socially, and environmentally. On the other hand, the tourism industry is one of the major contributors to Thailand's economic prosperity and poverty reduction, but research shows that under certain circumstances, tourism has also deepened the fissures separating the rich and poor, and worsens wealth distribution. In this paper, the "Sampran" organic tourism project in Nakhon Pathom province, Thailand was selected as an inclusive business case study. The study was based on qualitative research methods, data was collected through in-depth interviews with different project stakeholders, and the impacts of an inclusive business model on farmers' livelihood in the organic tourism industry of Thailand were analyzed. This research finds that practicing organic tourism based on the inclusive business model is helpful for improving the "Bottom of the Pyramid" community's sustainable livelihood, which leads to poverty reduction and increased social equality in Thai society. In addition, this research will also help to investigate the challenges of implementing the inclusive business model in the organic tourism industry of Thailand.

Keyword: Inclusive Business Model, Bottom of the Pyramid (BoP), Organic Tourism, Nakhon Pathom.

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1. INTRODUCTION

Issues of social inequality and poverty are common challenges for many developing countries around the world. While the word “inequality” can be explained from different perspectives, the definition from the Oxford Dictionary interprets “inequality” as the unfair difference between groups of people in society, when someone has more wealth, status, power, or opportunities than others. It can also be defined from the perspective of development practices, which define “inequality” as income inequality, capability deprivation, and poverty (Amartya S, 1995). Social inequality not only implies the lack of equal economic outcome, but also the lack of equal access to opportunities (UNDP, 2013). Kuznets (1955) mentions that inequality will arise from the initial stages of development in agricultural-based societies, and will grow with industrialization and urbanization as countries’ economies expand. The most significant and earliest academic introduction related to the “Bottom of the Pyramid” (BoP) concept is by C. K. Prahalad, in which the concept refers to the lowest socio-economic class in the world. Out of the entire global population, the lowest socio-economic class is commonly considered to be the bottom 40%–60% of the population, and of that, around 56%, or around 348 million, are in ASEAN (ADB, 2018). As seen in the case of ASEAN, where the gross domestic product (GDP) has grown from US\$37.6 billion to \$2.6 trillion and has been mainly contributed to by the private sector over the last 40 years (Bangkok, 2018), it is important to encourage the private sector to assume more responsibility for contributing to local development. However, most private sectors seek to maximize economic profits and in doing so actually increase the ever-widening gap between the rich and poor, particularly when business models are focused on economic upgrading rather than social upgrading (Alexander M, 2020).

For this paper, I selected an organic tourism project called "Suan Sampran" as a case study. This project is mainly based on an inclusive business model, in which the private sector has collaborated with and integrated the organic farmers into their business value chain, as well as other relevant stakeholders. As poverty and social inequality continue to be Thailand’s main development challenges, it is necessary to explore whether an inclusive business model can provide new opportunities and the redistribution of social and economic value to the “Bottom of the Pyramid” (BoP) community’s livelihoods through the “Suan Sampran” organic tourism case study. Moreover, this research may also help to investigate the challenges of implementing the inclusive business model for the “Bottom of the Pyramid” (BoP) community in Thailand’s organic tourism industry. This research finds that practicing organic tourism based on the inclusive business model is helpful for improving the “Bottom of the Pyramid” (BoP) community, such as farmers’ sustainable livelihoods, which leads to poverty reduction and increased social equality in Thai society. On the other hand, this research also shows that there are some challenges in implementing the inclusive business model in Thailand’s organic tourism industry, such as communication with various stakeholders, business model adjustment, establishment of a common vision and interests, and limited government support for relevant policy.

In this paper, I will first introduce the conceptual theory of poverty and social inequality issues and will analyze the “Bottom of the Pyramid” (BoP) population in Thailand. I will also analyze Thailand’s national development strategy and the impact of organic tourism on the development of the “Bottom of the Pyramid”

(BoP) community. Moreover, I will discuss the concept of the inclusive business model through promotion of innovative business models in the organic tourism industry. Additionally, I will introduce the research methodology and research objectives. In the end, I will present a discussion and analysis of the research findings and will make a conclusion based on the research output.

2. CONCEPTUAL THEORY

“Bottom of the Pyramid” in Thailand: Poverty and Social Inequality

Thailand is still one of the most unequal societies in Asia (Bangkok Post, 2018). Regional inequalities in income levels and value redistribution are the main sources of political instability in Thailand, in addition to the rising politicization of class conflict after the Asian Financial Crisis (Jenmana and Gethin, 2019). In the case of the "Yellow" and "Red" shirt social movements in Thailand, most of the Yellow shirt supporters are from the middle-higher income class, including office workers in Bangkok, but most of the Red shirt supporters are from the lower-income farming communities within other provinces, including migrant workers from similar backgrounds (Pasuk and Chris, 2015). According to the research of the World Bank, Thailand's poverty decreased from 65.2% in 1988 to 9.85% in 2018. Unfortunately, however, the poor population increased from 4.85 million to more than 6.7 million just within the past few years. At the same time, around 40% of farming households are living below the poverty line, which is drawn at 32,000 baht per year (Bangkok Post, 2018). The data from the UN and the World Bank show that the global rural population is around 3.4 billion and it will continue to increase slightly, but then will decrease to 3.1 billion by 2050. In Thailand, around 50.05% of the total population, or around 34 million people, live in rural areas in 2018. In general, Thailand's "Bottom of the Pyramid" (BoP) population is mainly concentrated in farming households, especially those living in rural areas. Some Thai scholars (Attavanich, W., et al, 2019) found that the majority of Thai farmers are smallholders, and that they still face the problem of unequal access to natural resources. Of this majority, almost 40% of farming households did not have full land ownership and only 42% of them have access to water resource.

Organic Tourism for “Bottom of the Pyramid” Development in Thailand

Tourism is one of the major industries contributing to Thailand's economic prosperity. The tourism industry has contributed to almost 14% of Thailand's GDP, with around 39.8 million tourists and a revenue that rose to 1.93 trillion baht in 2019 (Bangkok Post, 2020). There are some scholars who believe tourism can contribute to economic development by creating opportunities for employment (Sahli and Carey, 2013), and that it has the potential to reduce poverty. However, in some cases, tourism has also deepened the fissures separating the rich and the poor (Scheyvens, 2007). In the case of Thailand, the growing demand for inbound tourism has helped to increase the total household income, but has also worsened its distribution (Wattanukuljarus and Coxhead, 2008). Organic tourism is a form of tourism that builds connections between hotels, restaurants, and organic farmers, while also engaging the consumers

in various activities such as organic farming workshops, local farm visits, etc. According to the National Strategy on Competitiveness Enhancement of Thailand, Thailand plans to develop more value-added agriculture and farming systems that can support the farmers to become competitive modern entrepreneurs by promoting innovative business models, products, services, and production processes. Thailand also aims to become the center of organic farming and trade in the ASEAN region, and to become one of the world's major suppliers of organic products (National Thailand, 2016). In addition, the Thai government has launched the Twenty-Years National Agriculture and Cooperatives Strategy with the main goal of increasing farmers' per capita income to more than USD 13000 per year. In order to achieve this goal, it is significantly important to rethink the distribution model for the lower-income community in the organic tourism industry, and it may be necessary to create a more inclusive development model by promoting social innovation.

Social Innovation and Inclusive Business Model for Organic Tourism

Innovation is one of the key factors to promote inclusive growth and development. It is necessary to consider the important role of innovation in addressing global and social challenges (OECD, 2010). This concept also encourages the local community to create new innovative ideas in order to resolve social challenges (Howaldt and Schwarz, 2010). Scholars like Prahalad and Hart (2010) explain that businesses not only can create economic value, but also can contribute to alleviating poverty. According to the Group of Twenty (G20) framework, "Inclusive businesses can provide goods, services, and sustainable livelihoods for the "Bottom of the Pyramid" (BoP) community, which makes them part of the private sectors' business value chain as suppliers, distributors, retailers, or customers." Promoting innovation in the business model transforms less inclusive business models into more inclusive ones in order to address social challenges such as poverty and inequality.

For this paper, an organic tourism project "Suan Sampran", located in Nakhon Pathom province in Thailand, was selected as a case study. This project is a family-run eco-cultural destination, which established a business-community partnership by supporting local farmers to begin farming organically and purchasing fresh produce directly from them. The core business of "Suan Sampran" includes Organic Farm, Patom Organic Village, Patom Products, and Sookjai Market. Since 2009, as the business became more and more successful, the project initiated the "Sampran" Model movement and foundation in an effort to promote inclusive business development and encourage grassroots innovation in the organic tourism industry of Thailand. This project is mainly based on an inclusive business model, which creates a shared value and knowledge-based ecosystem by partnering with different stakeholders, including more than one hundred organic farmers and customers, the government sector, and various universities, all with the goal of improving their capability to address economic, social, and environmental problems. On the one hand, the "Sampran" Model integrated farmers into the organic tourism ecosystem by supporting farmers to practice organic farming, helping them expand their market opportunities, and linking them to the business sector, even to the extent of being classified as SMEs. On the other hand, "Suan Sampran" benefits from the creation of market opportunities, new selling points, product

differentiation, and a more sustainable supply of organic produce. This further provides the customers with a new experience and an increased knowledge of organic farming through activities such as farm visits and workshops, tasting organic food, and practicing a healthy lifestyle. The project model is shown as follows:

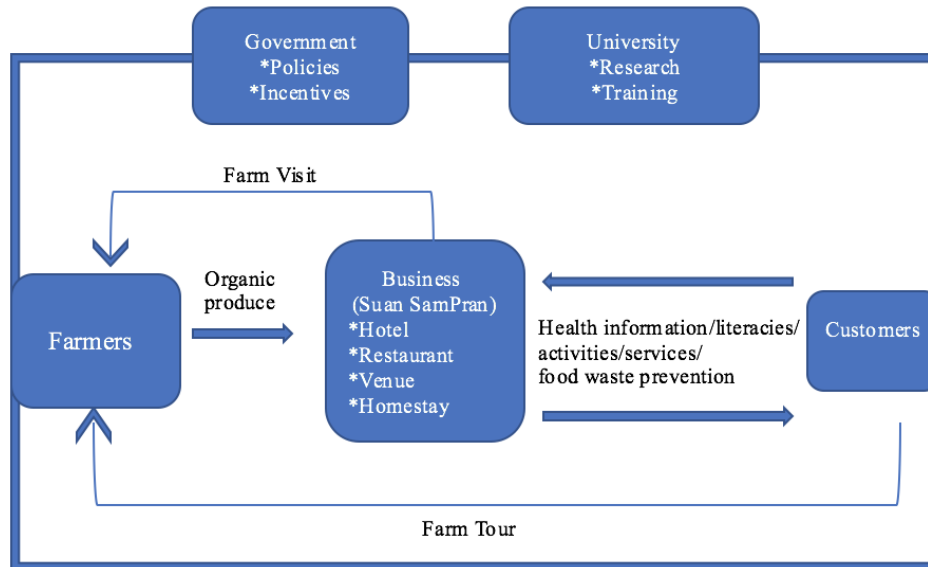


Figure 1. The “Suan Sampran” Project as Based on The Inclusive Business Model:

*Recreated by the author. Source: Organic Tourism Thailand

3. RESEARCH METHODOLOGY

The research objectives of this paper are as follows: first, to assess the impact of the inclusive business model on farmers’ livelihoods in the organic tourism industry of Thailand; and second, to investigate the challenges of implementing the inclusive business model in the organic tourism industry of Thailand. In order to achieve the objectives of this research, I use qualitative research as the main methodology for case study analysis, including fieldwork in the form of in-depth interviews with different stakeholders and direct observation. The secondary data collected to support and create the conceptual framework for this paper came mainly from academic journals, international organization (e.g. UN, World Bank) and local government reports, local newspapers (e.g. Bangkok Post), and the official project website.

First-hand data was collected mainly through in-depth interviews and direct observation of the target groups. The sample of interviewees is mainly composed of project stakeholders, including project managers, farmer groups, and customers. For example, interviews were conducted with two project managers, eight organic farmers, and four customers of the “Suan Sampran” project. The interview questions were designed specifically for each category of respondents, with some questions common to all groups and others specific to each category of respondent. For example, one of my research objectives is to assess the impact on farmers’ livelihoods, and the interview questions

designed to match is based on the sustainable livelihoods framework (DFID, 1999), in which farmers 'livelihood outcomes are categorized as income, wellbeing, vulnerability, food security, and sustainable use of natural resources'. The interviews were conducted in the form of an open discussion, and interview questions were open-ended to allow the researcher to further probe respondents and also to encourage them to share more in their responses. The interviews utilized both Thai and English as the main languages. Collected data was recorded and translated into English, then classified based on the research objectives to ensure the quality of data. Moreover, ethical issues were respected and all respondents who agreed to an interview signed a prior consent form.

There were certain limitations to this research, for example, due to the researcher's limited time and budget, only one case study was selected and therefore the results of this research cannot accurately represent other relative cases in Thailand. Second, the method of first-hand data collection and the design of the interview questions may have had a certain impact on the research output. Furthermore, the process of data collection and the research results were impacted due to the COVID-19 pandemic.

4. DISCUSSION AND ANALYSIS

The research methodology of this paper included interviews with relevant stakeholders of the "Suan Sampran" project, including interviews with eight farmers, two project managers, and four customers. The interviews with farmers and project managers demonstrated that the majority of farmers think that collaborating with the "Sampran" project will help improve their sustainable livelihoods.

From the perspective of the farmer's income, the majority of farmers shared that the income earned from working with the "Suan Sampran" project is more stable and higher than they were able to earn previously, and that the project provides them both a place to live and daily organic food, which comes directly from the organic farm. Organic farmers who joined the "Sampran" model mentioned that the project integrated them into the organic tourism ecosystem, so they have more opportunities to access resources, enhance their capabilities, and expand their networks. In terms of support, the project has helped to establish their farms as SMEs and to implement better organic farming practices, which reduces the high-cost of using chemical fertilizers, increases profits, and provides new opportunities to expand their sales channels with professional skills trainings. For example:

Organic farmer (Khun. Keng): "I am an organic farmer, and I have own organic farm, but I need to develop marketing channel, so I decided to join the "Sampran" model because the project will help me to promote new business channel, so I don't need to find customers by myself. This project also provided professional knowledge training for me, which I can more scientifically practice organic farming at low-cost, and have a place like Sookjai Market to selling my own organic product. Now, my income is higher than before, because now I have more revenue, but lower cost."

Managing Director of the Project (Khun. Arrut): "We encourage them to practice organic farming more, support they develop their farm to become an organic tourism destination and let them become a group or SMEs. At the same time, we buy organic food direct from organic farmers at a higher price, and farmers themselves also have the rights to set up their own prices, then they don't need to sell to the middleman, so profits are much higher than before. For example, now in our hotel, we buy around 150 kilograms' organic food per week from farmers, at price 40THB/ kilogram, so in total farmers can earn at least around 6 Thousand THB per week."

While the definition of the concept of well-being is vague and difficult to quantify, most farmers mentioned that they are generally satisfied with their partnership with the "Suan Sampan" project. They explained that this project gives them comparable benefits and new opportunities, which in result makes them feel more optimistic about their livelihoods, including a more sustainable income, stable market channels, and training about organic knowledge, further helping them to better practice organic farming and improve their food safety. For example:

Organic farmer (Khun. Nthi): "I have more opportunities now compared to before because I get a more stable income, my daily food source direct from an organic farm, so basically it's self-sufficient, and also free skill training, more organic farming supply channel and network, So I am quite satisfied and feel optimistic for my life because now my livelihood is less risky, and the benefits distribution system is also fair for me."

From the perspective of vulnerability, the majority of farmers and project managers believe that organic farming is less affected by natural disasters. For example, organic farmers mentioned that the transformation from traditional farming to organic farming will help reduce the risks incurred from natural disasters, as the production cost of organic farming is much lower than traditional farming and more environmentally friendly. In addition, the project provides free skills trainings to improve farmers' knowledge on how to avoid the risks of natural disasters. However, some farmers explained that organic tourism is also affected by other non-traditional security threats, such as COVID 19, because the decreasing number of tourists directly impacts their income. For example:

Organic farmer (Khun. Keng): "I think natural disasters have a greater impact on traditional farms, but less impact on organic one, because of organic farming are more low production costs, and we do not use high cost chemical fertilizers, and this is beneficial to the soil environment as well. "Sampran" model also provide more organic farming training, and supply channel of organic seeds, organic fertilizers, etc. so we have more ability to resist the impact of natural disasters."

Managing Director of the Project (Khun. Arrut): "As our model is based on an inclusive business model which collated with many stakeholders (like a university) and helping the farms transform to the organic farming and giving them more scientific training, so even if there are any disasters happen, organic farmers will lose less compared with traditional farming, because organic farming has lower risks and lower production costs. For example, under the influence of COVID 19, the farmer groups themselves transformed,

before they used to supply to hotels and restaurants, but now they reprocess the organic food to be organic products and create their brand and selling to the market. For example, we also provide a place for them to selling their product to customers directly, and they no need to pay the rental fees, just lower utility fees which around 17THB per/day.

From the perspective of food safety, most farmers believe that practicing organic farming will reduce the use of chemical fertilizer by using more natural production raw materials. At the same time, the farmers' daily food source mainly comes from the organic farms, which they grow themselves. The project also invites universities to join in order to provide guidance for farmers and scientific research regarding the health indicators of organic food. Most farmers also pointed out that more and more tourists are becoming interested in organic tourism, visiting organic farms, and buying organic products because customers believe organic food will benefit their health. In general, partners in the "Sampran" project will help farmers to better practice organic food production, which helps to promote food safety. For example:

Organic farmer (Khun. Ek): "I think organic vegetables are good for my health, because we do not use chemical fertilizer, so low health risks from toxic chemical residues in food. The food safety can be guaranteed because all vegetables were grown by ourselves."

Managing Director of the Project (Khun. Arrut): "We try to cooperate with local farmers and integrated them into the company's value chain. However, from the beginning, most farmers mainly used chemical fertilizers, so their production cost is high, and it also has a negative impact on the environment and food safety. So, we decided to support and help them transform to be organic farming."

From the perspective of the use of natural resources, the interviews with farmers illustrated that many did not have land ownership before, but that now they are more able to access the land and water necessary to practice organic farming. At the same time, the project provides them with more diversified supply channels, including organic seeds and fertilizer, which helps the farmers to achieve self-sufficiency. For example:

Organic farmer (Khun. Damda): "I don't have my own land, but now I have the right to use this land to grow organic vegetables after I joined in the "Suan Sampran" project, and the project also provides organic seeds and organic fertilizers for me to practice organic farming."

All in all, through interviews with organic farmers and project managers, this research determined that inclusive business projects are helpful to maintain sustainable livelihoods, particularly in terms of increased business and income opportunities, reduced impact of natural disasters, improved food safety, and expanded opportunities to access natural resources, thereby improving farmers' long term well-being.

The second research objective investigates the challenges of implementing the inclusive business model in Thailand's organic tourism industry. The interview responses from project managers and the feedback from customers relevant to this objective are as follows:

Managing Director of the Project (Khun. Arrut): "There are some challenges such as communication which allowing different stakeholders to join the business value chain and share the same vision. The inclusive business model for organic tourism does not require much financing investment. The main thing is encouraging the company to adjust its own business model. For example, as a business sector, we are more work as a coordinator, which integrates different stakeholders to share their capability and knowledge. In terms of government policy support, there no special policy support yet, but we will make a request to the government, such as reducing taxes, etc., we also get some funding from some government organizations such as the Thailand Research Fund. There is also another government department partnership with us as well, such as the Tourism Authority of Thailand, the Ministry of Agriculture. But we are looking forward to more specific policy support in the future."

Customer (Khun. Levin): "I think this business model can help local farmers to expand marketing channels, it provides crucial organic farming knowledge to the farmers, which will help their productivity. Organic tourism tends to provide me more about the knowledge of organic farming, while traditional mass tourism does not."

In general, the interviews with project managers found that the core challenges of implementing an inclusive business model in the organic tourism industry of Thailand are: 1) Communicating with different stakeholders and value integration, 2) Encouraging the private sector to adjust their business models, 3) Establishing a business community that shares the same vision and interests among different stakeholders, and 4) The limited policy support of the government. Regarding the project's funding, the project manager mentioned that promoting an inclusive business model in the organic tourism industry does not actually require a large amount of investment funds. Through interviews with customers, most believe that they have a strong interest in organic tourism. Their perspective is that the organic tourism business model can help with the socio-economic transformation of the farming community, and that they can new experiences, have healthier lifestyles, and eat fresh organic food. Moreover, most customers expressed a positive attitude about this kind of inclusive project, which shows that it has huge market potential.

5. CONCLUSION

Poverty and inequality are the main development challenges faced by many ASEAN countries. While tourism is one of the major industries that contributes to Thailand's economic prosperity and has the potential to reduce poverty, under certain circumstances it has also strengthened the inequitable distribution of social wealth and deepened the gap between the rich and poor. It is important to encourage the tourism industry's private sector to establish a more inclusive business model by promoting social innovation. The inclusive business model as a "business approach" can further contribute to sustainable social and environmental responsibility, rather than just being economically oriented. Through the case study of the "Suan Sampran" project, this paper found that implementing an inclusive business model in the organic tourism industry not only helps the private sector to determine new selling points and consumers to gain

new experience and knowledge about organic farming, but also contributes to more sustainable livelihoods for the “Bottom of the Pyramid” (BoP) community, including Thai farmers. From the long-term perspective, this model may also be useful in contributing to poverty reduction and increased social equality for Thai society. Although there are still some challenges in implementing an inclusive business model in Thailand’s organic tourism industry, the private sector has begun to assume more and more responsibility for local development. Therefore, it is necessary to encourage the private sector to employ more innovative business models that are inclusive and can better contribute to inclusive development in the future.

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CHILD DOMESTIC LABOUR IN PAKISTAN

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ABSTRACT

Child domestic worker (CDW) is one of the most widespread, exploitative and hazardous forms of child labour in Pakistan and is also one of the most difficult to tackle. Thousands of children domestic labourers are daily tortured, physically and mentally abused, raped and exploited but only a few reported. Child domestic labourers are hard to reach not only because they work behind the closed doors of their employers' homes, but also because society sees the practice as normal. Pakistan has agreed to provide children with special protection, as a signatory to the United Nations Convention on the Rights of the child (UNCRC), Convention No.138 Minimum Age and Convention No.182 Worst Form of Child Labour. According to the Constitution of Pakistan 1973, in line with the international standard, it is the fundamental right of every citizen to access health facilities and services, but in reality, it does not extend it for informal occupations such as child domestic labourers. As a result, children suffer from chronic physical, mental and emotional diseases. This paper highlights the deficiency in the law relating to the situation where the convicts of child domestic worker's murderers are set free as a result of a settlement between the employer and the parents of CDW, outside the court. It argues that the deficiencies in the law allow the convicts of child domestic worker's murderers to escape punishment and thereby leading to an increased level of exploitation of the rights of these children in Pakistan. It will then reaffirm the argument by quoting the most recent cases of child domestic worker's killing and serious injuries inflicted by their employers, reaching settlements between the Parents and employers outside the court. Therefore, there is a need to study how the present laws regarding the protection of children can be effective in improving the quality of the lives of children with special consideration on child domestic labourers. There is a need to study the role and foundation of the present law considered to protect the rights of children and duties of state as well as parents. This paper proposes that criminal action should be filed by the state against child murderers and not on private behalf's' such as parents of child domestic workers.

Keyword: Child Domestic Worker, CDL In Pakistan, Child Exploitation In Pakistan.

AUTHOR'S BIO

Zainab Nasir (zainabnaasir@yahoo.com) is from Afghanistan. She was born in Peshawar, Pakistan. Her grandparents had migrated from Afghanistan during the Soviet Union invasion in 1979. Since then, her family including her three siblings lived in Pakistan. She holds a degree of bachelor's in law from Shaheed Benazir Bhutto Women University (SSBWU) Peshawar, Pakistan. The subject of law fascinates her extensively. She is intrigued by developments in the legal system and the way it adapts to an ever-changing society. Being born and raised in a foreign nation with status of a refugee has raised her interest in and given her the capacity to gain an intuitive understanding, based on her observation and experience, of the subjects related to the issues of protection of the rights of women, child and refugees. Her interest in law has also given her valuable insight into work in the legal domain and so, she puts foundation of an organization of female lawyers "Peshawar Women Legal Counsel Association." It aims to provide online and telephonic legal counseling to those women who are lacking the opportunity to get an in person legal assistance due to cultural barriers. The organization is in its initial registration process. Her another subject of interest

is issues related to protection of the rights of children and therefore, she based her thesis research on this subject with title of “Analyzing the Lived Experience of Child Domestic Labour in Peshawar, Pakistan.”

1. INTRODUCTION

Child domestic labour is a problem that exists in multiple exploitative forms in developing countries including Pakistan. The classification of child domestic labour (CDL) refers to children under the age of 18 years, engaged to perform domestic tasks in a third person’s house or home other than their own, with or without remuneration. This culture is a widely prevailing practice in the rural and urban areas of Pakistan. There are millions of children working as domestic workers in Pakistan, yet no single government or private organization initiated to regularize the systematic registration of CDL, which is the reason that there are no official statistics about the exact number of CDL in Pakistan.

There are many root causes of child domestic labour among which poverty is one of the most commonly known reasons that children at an early age as seven start working in a third person’s home. In some cases, it's not only poverty but also ignorance of the parents about the menace of child labor and its effects on child mental and physical growth. Besides, Labor rights organizations and NGOs working on child rights link the issue with the Government's lack of commitment to child exploitation and protection.

Child domestic labour is one of the hazardous kinds of child labor in Pakistan. Thousands of children domestic labourers are daily tortured, physically and mentally abused, raped and exploited but only a few reported which categorize it under slavery. International Labour Organization (ILO) in its convention (No.182) 1999, Worst Form of Child Labour, defined slavery as any kind of child recruitment whereby the child has been taken far away from their homes in circumstances within which they are exploited.

This paper will reflect on the most recent cases of violence against child domestic workers and by analyzing deficiency in the law it argues that it allows employers to escape punishment for violence against child domestic labour. The argument will be developed in two parts. In the first part, it will discuss compoundable offenses under section 345 of Criminal procedure code 1998 and shows how the employers take advantage of this provision of law to escape punishment. It will then discuss the parental responsibility and intervention by the state.

2. DISCUSSION

Most criminal cases in Pakistan are not filed by the state but by the victims or by their families, which means that they have the right to drop the case and reach a settlement. All that they have to do is to tell the court that they have forgiven the suspects in the name of God, however, the real reason is that they have been paid off. Everyday thousands of child domestic workers suffer from such brutal acts. The case of tayyaba is among those thousand cases that happen daily with these young workers (Women Media Centre, 2017). Tayyaba was a 10-year young domestic worker employed

in the convicts' household. The case first came to light after photos of the tortured child began circulating on social media in 2016. She was rescued from their residence with visible wounds on December 28, 2016, and a criminal report was filed against her employers who were a civil judge and his wife. In a statement by Tayyaba, she said that she was beaten up and tortured including having her hand burnt on the stove. The investigation revealed that the judge and his wife had been subjecting the child to torture for the last two years. However, according to different news, the case reached a compromise with Tayyaba's parents in 2017 when the father of the victim said in the court that he forgave the culprits in the name of God (The Express Tribune, 2017). In another case, Tehmina a 12-year young domestic worker was pushed off the balcony by her employer with an intention to kill her as a punishment for demanding her salary. Tehmina's father was given some compensation money and in return, he dropped all the alleged charges against the employer. The child was taken back to her village where she succumbed to the injuries after a few months (Women Media Centre, 2017). In another instance, in August 2010, Muhammad Nadeem, a 13-year-old was tortured and detained in a flat's room by his employer for three days. The police raided the house and found Nadeem tied up in a room. The police confirmed that the teen was subject to severe torture (The Nation, 2010). 16 years Akhtar was working as a child domestic worker in the home of a local politician and was killed by them in July 2017. The post mortem report revealed that he was subject to torture which eventually caused his death. The police filed a case of murder against the employers, however, before the proceeding even started in the court, the father of Akhtar announced that he no longer wanted to pursue the case.

Pakistan is an Islamic country where the main source of law is based on Islamic jurisprudence. According to Islamic law, crimes as homicide and bodily injury, whether it is intentional or unintentional, shall be treated as a civil suit rather than a state's preventive action, which allocates a right to the victim or legal heirs of the victim to either claim for Qisas or Diyat. Under the traditional Sharia doctrine, the state is not a party to the action, but only the victim, his legal heirs or his guardian. Qisas is a punishment as life for life, eye for eye, tooth for tooth and so on while Diyat is a punishment in the form of monetary compensation in cases of homicide and bodily injury. Thus, the victim or legal heirs of the victim or guardian of the victim may alternatively forgive the culprit in the name of God as a religious charity. In the same line, in Pakistan, all offenses affecting human body or life involving Qisas and Diyat are compoundable under section 345 of the Code of Criminal Procedure 1898, whereby the victim or legal heirs or guardian of the victim has the right to forgive the bodily injury or murder in the name of God but with a minor difference from Sharia law, that makes the state a party or prosecutor in an action against the crime. For example, when a crime is reported, the criminal action shall be filed in the name of the victim and the state simultaneously, against the alleged culprits.

Under section 345 of the Code of Criminal Procedure 1898, the high court has the power to allow a person to compound an offense. In other words, the settlement can take place only with the permission of the court. However, in the mentioned cases, none is settled in a court of law with the permission of judges but they had been settled outside the court. But here the argument is neither the question of why these young domestic workers murder cases are being settled outside the court nor if the respective courts have approved them or not. The question is about deficiency in the law which allows the culprits to escape the punishment that they become able to make settlement either by force

or through offering compensation. It is pertinent to mention that this paper proposes that the application of section 345 is not appropriate in cases of young domestic workers because; firstly, it does not prevent the culprits from future crime against these children. Secondly, it is the responsibility of the state to protect vulnerable groups such as these young domestic workers. Therefore, there is a need for making the murder and injury of young domestic workers non-compoundable to prevent the future exploitation of these children.

In the second part, this paper will discuss parental responsibility and state intervention. In Pakistan, parents are vested with the rights and duties of their children by virtue of childbirth. The rights that vest with childbirth become somewhat more difficult when it comes to matters such as child's placement. In other words, the birth of a child gives rise to parental responsibility i.e., to provide for their children and to act in the best interest of their child. Based on this principle, generally, parents are assumed to have the best interest of the child at heart and they are not likely to be questioned on decisions related to their children. For example, if the parents decide to send their child to school, it will be considered as a rightful decision as they decide to send their child to work and earn money. On the other hand, it is taken for granted that these parents will automatically make the right choices for their children and exercise their parental rights and responsibilities in a manner that justifies the natural inclination and aspiration of their children.

However, in the real world, we are well aware of this fact that this is not always the case when it comes to developing countries like Pakistan where a number of 269,000 children are working as child domestic workers (ILO, 2004). In fact, we realize that there is an overwhelming number of parents who do not exercise their parental rights and responsibilities in the best interest of their children. Its best example is the parents who let their children work in others' houses as domestic workers at a young age as seven. While working in the employer's house, these children are subject to different types of exploitation such as verbal, physical and sexual. Beating, squeezing ear, pulling hair and shouting is a common form of punishment for slow working or making mistakes. Sexual abuse includes rap and sexual harassment either by employers or visitors of employers. The abuse and torture are not only caused by the adult members of the house but also by child members of the house and other employees/workers in the house. In such cases does a child have hope for a happy childhood and what are the chances of the wellbeing of the child in the family structure?

Before answering these questions, it is important to mention here that in Pakistan, based on Islamic law, parents are the original custodian and legal representatives of their children without any interruption by state. It refers to the meaning that they may not be questioned about the fulfillment of their parental responsibility. Talking about parents of child domestic workers, the dimension and magnitude of their parental responsibility could be measured by quoting the above-mentioned recent cases where the employers either kills or severely injures with intention of killing these young domestic workers, however, in most cases the parents prefer to compromise with the employers.

In a welfare state, it is the responsibility of the state to intervene when parents fail to provide the responsible care that is expected from them. On paper, this seems like an obvious solution to what could potentially be a disastrous state of affairs for a child, however, in reality, those who have seen this intervention at work may think otherwise. Besides, one may disagree with the possible application of the idea of state intervention and may argue that being a

developing country Pakistan may not afford the cost for this responsibility. However, the government has an important role to play in setting out the responsibilities that parents and carers have towards the children, in order that the children and the wider society are protected from the harm that would result from parental failure to live up to these responsibilities (Bridgeman. J and Lind. C, 2016. PP. 239-240). This approach of responsibility mandates a set of particular actions, which is not limited to tell the parents what should be their course of action related to the welfare of their child, but to provide a legal framework which determines the future course of action to prevent child exploitation in the hands of parents as well as employers. The legal framework here refers to the implementation of the existing child and labour laws related to the minimum age for performing hazardous work and bringing new laws to prevent the exploitation of young domestic workers.

Although Pakistan has ratified most international conventions on child labour such as Convention on the Rights of Child (CRC) and International Labour Organization (ILO) Convention No. 182 and 138, however, laws enacted are not aligned with the standards laid out by these conventions. However, a major obstacle is that child work is so normalized in Pakistan. But the stricter child protection laws are not in the interests of many of those hiring children as their servants. For example, the constitution of Pakistan clearly stipulates in Article 11 (3) that children under the age of 14 years should not be hired to work in hazardous conditions but domestic work is not categorized as hazardous. In Article 25 A, the constitution clearly mentions referring to Right to Education that “The State shall provide free and compulsory education to all children of the age five to sixteen years”. According to the terms of the constitution, this article means that children of the aforesaid age group cannot work in the first place. Furthermore, in Article 37E, Promotion of Social Justice and Eradication of Social Evils “the state shall make provision for securing just and humane conditions of work, ensuring that children and women are not employed in vocations unsuited for their age and sex.” In the light of these articles of the constitution, the government must fulfill its responsibilities to children to provide free and compulsory education and delegitimizing domestic child labour either by awareness-raising campaigns or legislation imposing restrictions and standards maybe next step.

There are no acts, ordinances, and orders prohibiting child domestic work in Pakistan. The constitution and the labour laws restrict children from working under certain circumstances attached to the environment of a workplace, which is broadly based on the industrial assumption of the workplace risk. The legislative instruments such as “The Employment Children Act 1991” and “Employment of Children Rules 1995” deals with child labour and its prohibition in Pakistan, however, child domestic labour is not recognized and thereby discussed as to its hazardous nature, anywhere in these instruments. In the former document (Employment of Children Rules 1995), it is stated that “An act to prohibit the employment of children in certain occupations and to regulate conditions of work for children”. The statement is self-explanatory and contradictory in terms of limitation of its extension for all the child labour and including child domestic workers in Pakistan.

3. CONCLUSION

There is currently raising awareness on the issue of child domestic workers in Pakistan and the level of exploitation these children are facing on a daily basis. In the light of discussion here, it is clear that law is in place but

there is still a gap in policymaking that results in cases like Tayyaba's torture and her father's compromised situation as a parent of child worker (The Express Tribune, 2017). It is therefore proposed that the law relating to criminal acts against children such as child domestic workers' killing and bodily injury needed to be altered to non-compoundable offenses in order to stop the ongoing situation of exploitation of these young workers. Moreover, in cases of offenses against child domestic workers, criminal suits must be filed in the name of the state instead of legal heirs and guardians of the child victim. According to a report published by the Institute of Social Justice in 2012, "Internal trafficking of children is pervasive as the children are sold by their parents or forced into marriage, forced labor, sexual exploitation or domestic servitude" (Institute of Social Justice report on child labor, 2012). The report displays the increasing vulnerability of these children given the lack of awareness, low literacy rates and non-inclusive systems of education and justice. Child domestic labor is entrenched in the culture of a society but is treated insouciantly. This attitude towards such an issue that requires urgent intervention from government and stakeholders is exposed to imminent risk of disaster to society. There is a crucial need for evidence-based, informed policy-making for the country and the issue at hand.

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