



International Hybrid Conference on
“Current Issues in Human Rights and Development Research”
2023
(E-Proceedings)

Organized by:
Institute of Human Rights and Peace Studies, Mahidol University and
MA International Development Studies (MAIDS), Chulalongkorn University
Thailand

Monday, 26 July 2023, 08:30 – 17:00 hr.
Room 119, Institute of Human Rights and Peace Studies, Mahidol University
And Zoom Online

Contents

| | | | |
|----|---|-----------|---------------------------------|
| 1 | Is promotion a gender challenge in higher education? Case-study of female academics in Myanmar | 1 – 11 | Ei Yin Yin Phyu |
| 2 | Multilingual education in Cambodia: A case study of multilingual preschools in Rovieng district, Preah Vihear province | 12 – 18 | Nakhem Eom |
| 3 | Right to information of Vietnamese migrant workers – Access to pre-departure information of Vietnamese technical intern trainees | 19 – 26 | Tinh Ut Le |
| 4 | The challenges of women empowerment in the fisheries and aquaculture sector in Thailand | 27 – 35 | Ibijemilusi Funmilola Adekintan |
| 5 | Legal education for protecting customary land rights in Indonesia: case study of Talang Mamak indigenous peoples | 36 – 43 | Aditia Bagus Santoso |
| 6 | The Immediate Socio-Economic Impacts of the Rice Tariffic Law of 2019 on Small-Scale Mindanao Rice Farmers | 44 – 50 | Kristine Bacarra Cabardo |
| 7 | The right to a clean and healthy environment: plastic pollution in Kathmandu and the response of the government of Nepal | 51 – 58 | Alexandra Patricia Engel |
| 8 | Human rights NGOs during political crisis: An analysis of public issuances of human rights organizations on Sri Lanka’s Aragalaya | 59 – 70 | Edgardo Pedro Legaspi |
| 9 | Intersectionality and livelihoods of conflict-induced displaced Myanmar women in Mae Sot, Thailand | 71 – 79 | Su Myat Thwe |
| 10 | A critical appraisal of the Vietnamese government’s perspective toward repatriated victims of labour exploitation | 80 – 89 | Nguyen Quach Cong Minh |
| 11 | The values of “Myi-du” in Lisu women: capitals relation in livelihood diversification | 90 – 98 | Grittayanee Tamee |
| 12 | Barriers to accessing mental healthcare among older displaced people from Myanmar in Mae Sot following the 2021 military coup | 99 – 105 | Suu Mon Aung |
| 13 | The reason why we are still here—— Unraveling the relationship between depoliticization and volunteerism | 106 – 112 | Yilan Qiao |

Contents

| | | | |
|----|---|-----------|--------------------------------|
| 14 | Disruption and Crisis: Mapping the impact of the covid-19 pandemic on human rights organizations in the Philippines | 113 – 119 | Kay S. Conales |
| 15 | Cultural sensitivity and Integration challenges: an analysis of Nidos' support services for underage unaccompanied refugees in the Netherlands | 120 – 128 | Jardeen Kingma |
| 16 | A gender analysis on the livelihood of the former Borei Keila women at Phum Bat relocation site, Kandal (Cambodia) | 129 – 136 | Ros Sereysocheata |
| 17 | Examining Challenges in Fulfilling Education Rights for Rohingya Children in Indonesia | 137 – 145 | Adli Hazmi |
| 18 | Gender discrimination in low-wage industries: a case study of Myanmar female migrant workers in the seafood industry in Samut Sakhon province, Thailand | 146 – 155 | Hsan Thawdar Htun |
| 19 | Marginalisation and right to work: a case study of the nomadic tribe Pardhi in urban city of Mumbai, India | 156 – 164 | Pallavi Kiran Borkar |
| 20 | Women's Sexual and Reproductive Health and Rights in Dhaka Slums; Services and Policies | 165 – 171 | Najia Nuray Jarin |
| 21 | Study on the advocacy in enfranchising the Sri Lankan migrant workers abroad in national elections | 172 – 179 | Tharindu Abeyrathna |
| 22 | The Police Respond to Caste-Based Discrimination against Dalit Women in Nepal | 180 – 186 | Binita Bishwakarma |
| 23 | Understanding Child Sexual Exploitation through Under-aged Contractual Marriage in Bogor, Indonesia | 187 – 196 | Ika Kurnia Riswandari |
| 24 | A Critical Analysis of the Domestic Legal Framework on Rights of the Child Victims in the Trial Process in Sri Lanka: With Special Reference to the Offence of Statutory Rape | 197 – 207 | Chathurika Sisimali Gunasekera |
| 25 | FPTP electoral system of Myanmar as a barrier for Ethnic Minority Inclusiveness in parliamentary decision-making | 208 – 218 | Yamonh Pwint Thit |

Contents

- | | | | |
|----|--|-----------|---------------------|
| 26 | Troll Armies and the Spread of Hatred and Pro-Coup Messages and Ideology in Myanmar's Digital Space | 219 – 225 | Khin Thinzar |
| 27 | โอกาสและความท้าทายในการตรวจสอบการล่วงละเมิดทางเพศในหน่วยงานของรัฐ Opportunities and Challenges in Sexual Harassment Complaint Investigation Procedure in Government Agencies | 226 – 234 | ชนินทร์ เกตุปราชญ์ |
| 28 | ความขัดแย้งกรณีการห้ามคลุมฮิญาบในโรงเรียน จากมุมมองของฝ่ายที่สาม The Conflict on Hijab Wearing at School from a Perspective of the Third-Party | 235 – 244 | สาวินันท์ คาลเคน |
| 29 | การเข้าถึงการศึกษาของเด็กแรงงานข้ามชาติช่วงสถานการณ์โควิด กรณีศึกษาศูนย์การเรียนรู้จังหวัดระนอง Access to education for migrant children during the COVID-19 situation: A case study of the learning center in Ranong province | 245 – 260 | มานพ สังขละบริบูรณ์ |

IS PROMOTION A GENDER CHALLENGE IN HIGHER EDUCATION? CASE-STUDY OF FEMALE ACADEMICS IN MYANMAR

Ei Yin Yin Phyu¹

Faculty of Political Science, Chulalongkorn University, Thailand

Abstract

Gender bias has been enduring in academia regardless of the increased awareness and endeavors for diversity and inclusion. This research paper investigates gender challenges that female scholars face in higher education institutions (HEIs) in Myanmar. The study explores gender practices within universities in Myanmar and examines the experiences and perceptions of female academics concerning promotion and workplace practices. By borrowing the gender analytical framework and drawing on relevant theories, this research uncovers systemic barriers and discriminatory practices towards women and gender justice challenges in Myanmar. Additionally, based on the Multidimensional Inequality Framework (MIF), the paper recommends addressing gender disparities in academia by promoting the agency and capacity of women, building supportive families, and reconditioning cultural norms. It also acknowledges that reducing inequality requires a transformation of gender norms and expectations and interventions at all levels of the patriarchal structure. Tackling patriarchal norms and creating a gender-neutral society is a long-term process. Gender justice requires women's equal participation and influence in policy formulation and decision-making, leading to a fair and equitable society.

Keywords: Myanmar female academics, gender challenge, promotion, higher education, case study, discriminatory practices

Introduction

Although with the increase in awareness and initiatives, gender bias endures in academia, negatively impacting women's work-life balance, mental health, and career development (Llorens et al., 2021). The bias is underpinned by a core issue of inequity, prolonged by persistent inequalities and sluggish growth. Gender equity allocates additional support to disadvantaged groups, whereas gender equality provides the same opportunities and resources (Menendian, 2023; Milken Institute School of Public Health, 2020). There is a visible gender imbalance in Myanmar's academia, e.g., the Rector positions have been primarily occupied by males despite most of the teaching staff being females.

¹ Student of MA in International Development Studies (MAIDS), Chulalongkorn University, Thailand.

Women are most of Myanmar’s public sector employees, particularly in the Ministry of Education (MOE) (NDI, 2020). Nevertheless, most higher-level positions are filled by males, indicating gender disparity in leadership positions. However, the presence of women in some senior positions does not mean gender equality due to widespread inequalities such as political representation, societal perceptions, and stereotypes on gender roles and access to resources (Mra, 2015; Mra & Livingstone, 2020; Roy, 2022).

This paper examines potential gender stereotypes and marginalization against women scholars in Myanmar’s academia and the impacts on women’s careers by applying gender framework analysis (Rao et al., 2016; *Analytical Framework – Gender at Work*, 2018) and relevant theories. The findings of this study will support understanding gender practices for fostering greater gender equality and development interventions for gender justice and gender-neutral society in Myanmar.

Methodology

Semi-structured online interviews were conducted with 17 respondents to find answers to my research questions as part of the primary data source. This method was backed by thematic analysis and several credible sources, including relevant theories. All female academics with work experience ranging from 9 to 25 years – especially in the Department of Law – participated. They come from diverse socio-demographic backgrounds and religions (figure below). The research paper also applied analysis that came from my observations of over three years working with HEIs in Myanmar.

| No | State/Region | Race/Religion | Occupation | Years of HEIs experience |
|-----------|--------------|--------------------|---------------------|--------------------------|
| Female 1 | Mandalay | Bamar/Buddhist | Freelance | 9 |
| Female 2 | Magway | Bamar/Buddhist | Freelance | 16 |
| Female 3 | Pyay | Bamar/Buddhist | Freelance | 12 |
| Female 4 | Mawlamyine | Bamar/Buddhist | Family business | 9 |
| Female 5 | Taunggyi | Shan Chinese/Islam | Lecturer | 14 (and counting) |
| Female 6 | Yangon | Bamar/Buddhist | Lecturer | 11 (and counting) |
| Female 7 | Sagaing | Bamar/Buddhist | Dependent | 12 |
| Female 8 | Yangon | Mon Bamar/Buddhist | Freelance | 12 |
| Female 9 | Yangon | Bamar/Buddhist | Professor | 18 (and counting) |
| Female 10 | Yangon | Bamar/Buddhist | Professor | 18 (and counting) |
| Female 11 | Mawlamyine | Mon Bamar/Buddhist | Lecturer | 11 (and counting) |
| Female 12 | Bago | Bamar/Buddhist | Professor/Head (P1) | 28 (and counting) |
| Female 13 | Sagaing | Chin/Christian | Freelance | 9 |
| Female 14 | Tanintharyi | Bamar/Buddhist | Assistant Lecturer | 8 (and counting) |
| Female 15 | Yangon | Bamar/Buddhist | Freelance | 28 |
| Female 16 | Yangon | Hindu/Buddhist | Associate Professor | 14 (and counting) |
| Female 17 | Rakhine | Rakhine/Buddhist | Dependent | 11 |

Figure 1: Socio-demographic of research participants

Theoretical Framework

Uwizeyimana and Mathevula (2014) detailed three gender-based models: (1) Individual Perspective, (2) Organizational Discrimination, and (3) Socialization Perspective. The "individual perspective" refers to internal barriers such as personal traits, attitudes, and many more, implying remedies lie in personal growth rather than systemic change for women to achieve leadership roles. On the other hand, the "organizational or systemic discrimination" model states that the differences in career aspirations between women and men arose due to systemic gender bias limiting opportunities for women. The "socialization perspective or social perspective" model links the under-representation of women in leadership roles to societal norms and discriminatory practices. This model is referred to by many scholars recognizing gender stereotypes along with family responsibilities that can be strengthened by the triple roles of women (Muyoyeta, 2007).

The works of Okeke-Ihejirika (2017) and Wang (2017) discuss patriarchy, agency, and intersectionality. They highlight how agency and internalization of gender roles differ due to individual contexts and locality, influenced by the state's political agenda. Gender, because of its complexities, requires an interdisciplinary approach to understanding and addressing it. Cultural and religious aspects of societies are context-specific; hence, the systemic framework analysis by Rao et al. (2016) and *Analytical Framework – Gender at Work* (2018) are explained in the following discussion.

Gender Framework Analysis

Rao et al. (2016) and *Analytical Framework – Gender at Work* (2018) critically analyze the interconnection between gender equality, systemic changes, and preserving institutional norms and regulations. The framework came from Wilber's model for organizational change and expanded into a comprehensive, multifaceted intervention strategy.

The framework views gender equality from an institutional perspective, aiming to alter structures perpetuating inequality. It highlights the need for change across multiple dimensions: individuals, resource access, formal rules, and informal norms. The framework below has evolved into four quadrants. The top two focus on individual aspects, while the bottom two tackle systemic barriers.

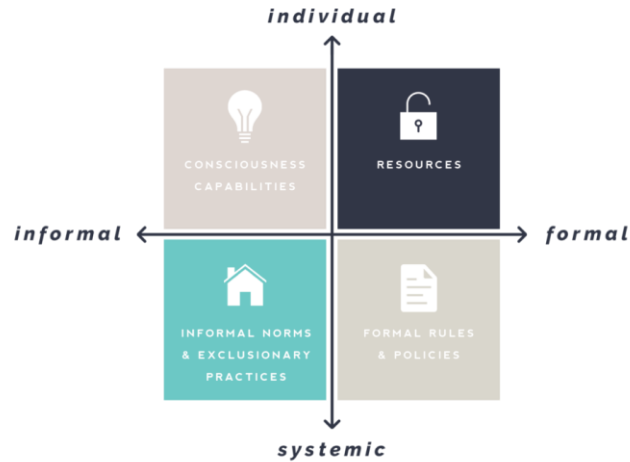


Figure 2: Gender framework analysis

Findings and Discussion

The figure showing service years required for promotion eligibility and the ranking structure of teaching staff is described below.



Figure 3: Ranking of Myanmar’s academia

The data findings are analyzed into three themes that are detailed as follows.

Theme 1: Leadership and Management Nature with Workplace Challenges

This theme evaluates gendered leadership positions and workplace challenges faced by female scholars in higher education in Myanmar. As per Şengül et al. (2020), leadership positions are generally regarded as gendered. Stereotypes of such kind are challenges for women to get into leadership positions when the recruitment process and procedure are centralized by the Department of Higher Education (DHE) – in Burmese “Ah-Sa-Nya” – under the Ministry of Education (MOE). One respondent reported that “I think gender difference has no impact on lower-level positions, but it will be in higher-level positions.”

Some respondents noted that men, a minority group among teaching staff, are preferred or given more priority when it comes to either recruiting or promotion. There was evidence from the surveys conducted (Nielsen, 2015; Subbaye & Vithal, 2017) that a (conscious or unconscious) bias affects the academic promotion process in which women face more challenges to be promoted.

As noted by some respondents, the gender imbalance for both Pro-rector and Rector levels before the 2010s was very significant that it might be only around 25-30 percent of women in such senior roles. Also, Zinovyeva and Bagues (2011) noted that discrimination based on gender influences academic promotion decisions, as female academics score worse on both objective and subjective criteria than male scholars. Further, according to Iqbal et al. (2015), the responsibilities of leaders are enormous, not only being the head of all team members but also supporting them with guidance and sharing knowledge. Likewise, Mo and Shi (2015) seconded that ethical and effective leaders reduce stress and increase employee job satisfaction.

In the context of higher education in Myanmar, many respondents shared the instances where the seniors and leaders have little or no ethics and management skills, e.g., seniors forcing juniors to add as a co-author in the research paper, plagiarizing the whole paper of a junior, and not treating all staff equally, professionally, and fairly. At the same time, gendered leadership is an exclusive problem for women. In contrast, ethical leadership requirement is an issue for all academics regarding promotion prospects and quality of research and education. For example, one sample reported that “There were instances where Saya forced the junior to add his name as a co-author.”

Unethical and ineffective leaders are shaping workplace challenges, creating institutional challenges additionally. Women especially face extra pressures because of traditional gender roles and societal stereotypes. An example a respondent gives is balancing three posts – as in Muyoyeta’s (2007) triple roles – reproductive, productive, and community roles. Particularly during and after childbirth, women in academia have burdens (Rosa & Clavero, 2021), with unclear policies and unsupportive work conditions acting as additional obstacles. This

respondent reported that “A transfer order was placed on Sayama, who is on maternity leave, so she had to choose family and quit.”

The environment reflects gender favoritism, power abuse, lack of fundamental rights, and individual/academic autonomy. Further, the gender socialization concept of Balvin (2017) comes into consideration when the theories of supply and demand (Risman et al., 2018) explain the career and educational choices of individuals impacted by childhood gender socialization. It has influenced social and workplace interactions, creating societal perceptions of gender roles.

In conclusion, ineffective and micro-managing leaders, along with gender socialization, have been reinforcing workplace culture and challenges, encouraging exclusionary practices that affect the physical and psychological well-being of staff, their productivity, and motivation.

Theme 2: Institutionalized Challenges with Gender-based Discrimination

Theme 2 explores institutional challenges fostering gender discrimination in Myanmar's academia with multifaceted factors such as societal, patriarchal, and cultural norms, religious practices, and historical and contemporary dictatorship. Such interconnected systems impact women's leadership and career development, contributing to systemic barriers.

Institutional barriers hinder the career prospects of girls and women. Girls are limited by the higher academic thresholds to pursue subjects such as medicine and engineering, which favors boys. This system prevents women from access to education with equal opportunity – deterring women's human rights and from attaining leadership roles, leading to widespread inequalities. An example of this barrier is a reported fact that “If I were a boy, my marks would be eligible to study Engineering. However, I am a girl, so not eligible to study Engineering.”

Religion, culture, and social norms deeply internalized by Myanmar's society contribute to many inequalities. According to Mra (2021), there are harmful effects of dictatorship and patriarchal norms, accepting women as a secondary gender religiously, culturally, and traditionally; for instance, the context of a masculine state with male-dominated institutions offers little equality for women, with statistics of women representation under 14 percent in both upper and lower house nationally. The systemic patriarchal norms are institutionalized in the "patriarchy masculinities" (Wageni, n.d.) and state dictatorship. These factors lead to gender bias and stereotypes, discrimination, obligations, and expectations of gender roles. A study by O'Connor (2018) found gender bias in employment and salary decisions. There are also stories of unfair treatment against women scholars. The stories abound about “Males have more power, and most of the female P/Head seem to be afraid of getting complaints which come from male teaching staff as they dare to do such things.” Or, “There is discrimination by the Professors themselves that they are being very flexible with Saya, but for females, they will not.”

The glass ceiling concept, described by Şengül et al. (2020), highlighted the societal discrimination against women based on gender. Risman et al. (2018) emphasized employers' biases and discrimination with preferential recruitment toward men. Promotion eligibility criteria are similar for all gender, except for Rector positions, practicing gender favoritism towards males. Ivancheva et al. (2019) underlined barriers women face in academia with the ideal norm of academic staff willing to relocate and having no caretaking responsibilities. Nielsen's (2015) study affirmed that gender prejudice in academic promotion procedures leads to women's under-representation in senior positions. A sample reported that 'I had heard those Professors saying to one another "He is a man, so better keep him. He can go anywhere for duty assignments."'

The pattern of informal rules and formal institutions being complementary and in sync (Waylen, 2014) can be seen in Myanmar's academia. Finally, informal norms with top-down administration sustain inequalities and gender-based discrimination, enforcing widespread inequalities.

Theme 3: Intersectionality, Minority Inclusion, and Corruption in Academia

All themes are interconnected, hence, now comes theme three. Pepper (2018) highlighted the oppression of women of ethnic minorities in Myanmar, which is evident in academia. Double marginalization from racism and religious discrimination increases their vulnerability. This repression is particularly evident for Islam female staff, with responses indicating that Islam females were missing out on the highest positions; also, Rakhine and Chin's female scholars were being singled out with ethnic remarks by their majority Bamar colleagues.

Workplace interactions also reinforce inequalities. Breeze and Taylor (2018) found the under-representation of women and "black and minority ethnic (BME) women" in UK universities, a trend mirrored in Myanmar's academia, where the number of ethnic minority staff is low, especially at seniority levels. Factors contributing to this disparity may include long-standing ethnic conflicts and lack of peace, which have fostered a male-dominated decision-making process (Mra & Livingstone, 2020). One sample reported the fact that Islam females have never been identified in the positions of Rector/Pro-rector.

Ingrained societal and cultural norms have intensified gender disparities. Before the 2000s, assumptions suggested women in positions of power relied on familial, and military connections and nepotism from existing power holders. Corruption, a global issue, is also evident in academia through tuition and favoritism contributing to an unhealthy office culture. Consequently, this forces staff to be victims of institutionalized discrimination, making women scholars bear the burden more. Some staff claim that "There is tuition and corruption. They also pay bribes to DHE."

Further, social pressure related to traditional practices considerably impacts female academics. Rao et al. (2016) argued that it forces women to accept discriminatory norms, leading to systemic barriers within institutions. Despite women's empowerment for social transformation (Dandona, 2015) being important, achieving gender equality requires more than empowering women, from policy implementation to empowering society and the state's commitment to justice and equality for all.

In conclusion, the gender findings of this paper are multifaceted issues intertwined with patriarchal norms, gender stereotypes, and gendered society. These factors are reinforced by the formal rules and informal norms of institutions and society, producing systemic barriers for women, with evident cases in academia.

Conclusion

To achieve gender equality, societal norms and expectations around gender roles need to be transformed. This is particularly important when power is predominantly in the hands of military and religious institutions that uphold patriarchal norms. Addressing inequalities would benefit from systematically employing the Multidimensional Inequality Framework (MIF), inspired by Amartya Sen's capability approach and noted by the London School of Economics (LSE, n.d.). Although MIF is organized around seven key domains of life, the third (Education and Learning) and seventh (Individual, Family, and Social Life) are particularly relevant to gender disparities in Myanmar's academia.

Recommendations include (1) enhancing women's capability and agency, (2) building a supportive and strong identity, and (3) cultural reconditioning. Such changes begin with influencing daughters' upbringing through changing societal norms and dismantling patriarchal structures. Improving societal attitudes for promoting gender equality in HEIs and beyond needs early intervention from primary education and internal family dynamics.

Gender justice requires women to have equal influence in policymaking and decisions that impact their lives. While legislative and policy improvements are essential, transforming power relations and systemic barriers is also vital. Higher education in Myanmar plays a significant role in the country's development, and achieving gender equality is a complex task that requires attention to numerous factors (Ahmed et al., 2020). Despite progress made earlier, current political and socio-economic setbacks present more challenges, thereby calling for further research and dedication toward promoting quality education and establishing gender justice in Myanmar.

References

- Analytical Framework – Gender at Work. (2018). *Gender at Work*.
<https://genderatwork.org/analytical-framework/>
- Ahmed, S. K., Carslake, T., Dabrowski, A., & Lietz, P. (2020). Gender and ethnicity in Myanmar education. Baseline study report for the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) Committee. Australian Council for Educational Research. https://research.acer.edu.au/boys_edu/4
- Balvin, N. (2017, August 18). *Blog - What is gender socialization and why does it matter?* www.unicef-irc.org. <https://www.unicef-irc.org/evidence-for-action/what-is-gender-socialization-and-why-does-it-matter/#:~:text=The%20paper%20defines%20gender%20socialization>
- Breeze, M., & Taylor, Y. (2018). Feminist collaborations in Higher Education: Stretched across career stages. *Gender and Education*, 32(3), 412–428.
<https://doi.org/10.1080/09540253.2018.1471197>
- Dandona, A. (2015). Empowerment of Women: A Conceptual Framework. *International Journal of Indian Psychology*, 2(3). <https://doi.org/10.25215/0203.044>
- Iqbal, N., Anwar, S., & Haider, N. (2015). Effect of leadership style on employee performance. *Arabian journal of business and management review*, 5(5), 1-6.
- Ivancheva, M., Lynch, K., & Keating, K. (2019). Precarity, gender and care in the Neoliberal Academy. *Gender, Work & Organization*, 26(4), 448–462.
<https://doi.org/10.1111/gwao.12350>
- Llorens, A., Tzovara, A., Bellier, L., Bhaya-Grossman, I., Bidet-Caulet, A., Chang, W. K., Cross, Z. R., Dominguez-Faus, R., Flinker, A., Fonken, Y., Gorenstein, M. A., Holdgraf, C., Hoy, C. W., Ivanova, M. V., Jimenez, R. T., Jun, S., Kam, J. W. Y., Kidd, C., Marcelle, E., ... Dronkers, N. F. (2021). Gender bias in academia: A lifetime problem that needs solutions. *Neuron*, 109(13), 2047–2074.
<https://doi.org/https://doi.org/10.1016/j.neuron.2021.06.002>
- LSE. (n.d.). *The Multidimensional Inequality Framework*. The London School of Economics and Political Science (LSE).
[https://sticerd.lse.ac.uk/inequality/#:~:text=about%20data%20gaps.-,The%20Multidimensional%20Inequality%20Framework%20\(MIF\)%20provides%20a%20systematic%20approach%20to,a%20good%20quality%20of%20life.](https://sticerd.lse.ac.uk/inequality/#:~:text=about%20data%20gaps.-,The%20Multidimensional%20Inequality%20Framework%20(MIF)%20provides%20a%20systematic%20approach%20to,a%20good%20quality%20of%20life.)
- Menendian, S. (2023, March 28). *Equity vs. Equality: What's the Difference?* | *Othering & Belonging Institute*. Belonging.berkeley.edu. <https://belonging.berkeley.edu/equity-vs-equality-whats-difference>
- Milken Institute School of Public Health. (2020, November 5). *What's the Difference between Equity and equality?* Onlinepublichealth.gwu.edu; Milken Institute School of Public Health. <https://onlinepublichealth.gwu.edu/resources/equity-vs-equality/>

- Mo, S., & Shi, J. (2015). Linking Ethical Leadership to Employee Burnout, Workplace Deviance and Performance: Testing the Mediating Roles of Trust in Leader and Surface Acting. *Journal of Business Ethics, 144*(2), 293–303. <https://doi.org/10.1007/s10551-015-2821-z>
- Mra, K. K. (2015, November 9). *A masculine Myanmar and the vote*. New Mandala. <https://www.newmandala.org/a-masculine-myanmar-and-the-vote/>
- Mra, K. K. (2021, March 14). *Women fight the dual evils of dictatorship and patriarchal norms in Myanmar*. New Mandala. <https://www.newmandala.org/women-in-the-fight-against-the-dual-evils-of-dictatorship-and-patriarchal-norms-in-myanmar/#:~:text=Even%20during%20the%20transition%20to>
- Mra, K. K., & Livingstone, D. (2020). 11. The Winding Path to Gender Equality in Myanmar. *ISEAS Publishing, 243–264*. <https://doi.org/10.1355/9789814881050-015>
- Muyoyeta, L. (2007). *Women, gender and development*. Women For Change, Zambia; Bray.
- NDI. (2020, August 29). *Institutionalized Inequalities in Higher Education in Kachin State*. Naushawng Development Institute. <https://naushawng.org/institutionalized-inequalities-higher-education-kachin-state/>
- Nielsen, M. W. (2015). Limits to meritocracy? Gender in academic recruitment and promotion processes. *Science and Public Policy, 43*(3), 386–399. <https://doi.org/10.1093/scipol/scv052>
- O'Connor, P. (2018). Gender imbalance in senior positions in higher education: what is the problem? What can be done? *Policy Reviews in Higher Education, 3*(1), 28–50. <https://doi.org/10.1080/23322969.2018.1552084>
- Okeke-Ihejirika. (2017). Asserting Agency by Negotiating Patriarchy. *Journal of Global South Studies, 34*(1), 1–21. <https://doi.org/10.1353/gss.2017.0002>
- Pepper, M. (2018). Ethnic minority women, diversity, and informal participation in peacebuilding in Myanmar. *Journal of Peacebuilding & Development, 13*(2), 61-75.
- Rao, A., Sandler, J., Kelleher, D., & Miller, C. (2016). *Gender at work theory and practice for 21st Century organizations*. Routledge.
- Risman, B., Froyum, C., & Scarborough, W. (2018). *Handbook of the Sociology of Gender* (2nd ed.). Cham: Springer International Publishing.
- Rosa, R., & Clavero, S. (2021). Gender Equality in Higher Education and research. *Journal of Gender Studies, 31*(1), 1–7. <https://doi.org/10.1080/09589236.2022.2007446>
- Roy, K. (2022, August 1). *Difference between gender equity and gender equality*. Katicaroy. <https://www.katicaroy.com/post/gender-equity-vs-gender-equality>
- Şengül, Boran & Karagöz, Ömer & Durusu, Abdullah. (2020). The Glass Ceiling Effect and Coping Mechanisms in Academia. 10.13140/RG.2.2.31807.94888.
- Subbaye, R., & Vithal, R. (2016). Gender, teaching and academic promotions in higher education. *Gender and Education, 29*(7), 926–951. <https://doi.org/10.1080/09540253.2016.1184237>

- Zinovyeva, N., & Bagues, M. F. (2011). *Does Gender Matter for Academic Promotion? Evidence from a Randomized Natural Experiment*. IZA.
<https://www.iza.org/publications/dp/5537/does-gender-matter-for-academic-promotion-evidence-from-a-randomized-natural-experiment>
- Uwizeyimana, D. E., & Mathevula, N. S. (2014). Promotion of Female Educators into School Management Positions: A Gendered Perspective. *Mediterranean Journal of Social Sciences*, 5(20), 1203–1213. <https://doi.org/10.5901/mjss.2014.v5n20p1203>
- Wageni, E. (n.d.). *Masculinities, Patriarchy and Climate Change | HeForShe*.
Www.heforshe.org. <https://www.heforshe.org/en/masculinities-patriarchy-and-climate-change>
- Wang. (2017). Negotiating the Intersection of the Urban-Rural Divide and Gender in Contemporary China. *Modern China*, 43(6), 646–677.
<https://doi.org/10.1177/0097700417697395>
- Waylen, G. (2014). Informal institutions, institutional change, and gender equality. *Political Research Quarterly*, 67(1), 212-223.

MULTILINGUAL EDUCATION IN CAMBODIA: A CASE STUDY OF MULTILINGUAL PRESCHOOLS IN ROVIENG DISTRICT, PRAH VIHEAR PROVINCE

Nakhem Eom¹

Yuki Miyake²

School of Social Innovation, Mae Fah Luang University, Thailand

Abstract

This study aims to analyze the successful and failed conditions of the multilingual preschool program for assisting Kuoy children in the Rovieng district to obtain multiple languages and cultures. It employs in-depth interviews and focus group discussions with 31 respondents. The study suggests two findings focusing on the successes and constraints of the program in promoting language and cultural diversity among Kuoy children. First, Kuoy children have received multiple languages and cultures through the program through three supportive conditions: stakeholders support the program in terms of financial, technical and administrative assistance; Kuoy language is taught at home; and Kuoy villagers view more value and importance of the program. Second, it suggests two constraint conditions: a Khmer ethnicity teacher is teaching in a multilingual preschool, and the Khmer language is appreciated over the Kuoy language by the Kuoy people.

Keywords: Multilingual preschool program, multilingual community, and Kuoy ethnic minority.

Introduction

According to Cambodian Law on Land, “an ethnic minority community is a group of people that resides in Cambodia. They manifest ethnic, social, cultural and economic unity; practice a traditional lifestyle; and cultivate the lands in their possession depending on customary rules of collective use” (Ministry of Land Management, Urban Planning and Construction of Cambodia [MLMUPC], 2001). In 2015, to support the education of ethnic minority people, the Ministry of Education, Youth, and Sport (MoEYS) provided a Multilingual Education (MLE) program in northern provinces. Sokha et al. (2021) say that the MLE is a bridging model that pupils start learning in their mother tongue. Then they slowly transition to the national language. To develop the education of ethnic minority peoples, the MoEYS focuses on the MLE.

In multilingual regions, ethnic minority peoples face a trade-off that they must choose between having access to more opportunities and giving up their languages and cultures (Secada & Lightfoot, 1993, cited in Jullian, 2013). Ethnic minority peoples in Cambodia must study in a

¹ Student of Master of Arts in International Development, Mae Fah Luang University, Thailand.

² Lecturer of Master of Arts in International Development, Mae Fah Luang University, Thailand.

dominant language to access education. In this pattern, it is an assimilation method. Consequently, this issue induces a study on MLE. The research question is “What conditions allow/constrain the multilingual preschool program to help Kuoy children in the Rovieng district to have multiple languages and cultures?”. The study aims to answer the research question by analyzing the conditions responding to the successes and failures of the program in assisting Kuoy children to get multiple languages and cultures.

The Rovieng district has seven multilingual preschools³. They are located in two communes. There are four preschools in Romtom commune⁴. In Rommanie commune⁵, there are three preschools. Based on the Royal Government of Cambodia (2017), the MoEYS must create an evaluation standard assessment to support preschools.⁶ The preschools can apply for assessment to get funds from the MoEYS. The preschools that have not applied for or passed the assessment are currently under the authority of the commune council.

Conceptual Framework

United Nations Educational, Scientific and Cultural Organization (UNESCO, 2003) says that in post-colonial and newly independent countries, significant political changes have resulted in new language regulations due to migratory movement on a mass scale, the internet, and rapidly accelerating globalization, disappearance, and endangerment of many languages. Due to the changes, UNESCO (2003) says that languages have been brought to new countries and continents and affected the way of communication and learning. Then the world became multilingual, and the MLE program was applied worldwide. UNESCO (2003), May (2017), and Benson and Wong (2017) define the term “multilingual education” as a systematic method of learning two or more languages and other academic content based on a learner's beginning literacy in their native language. It is developed to educate language minorities to improve comprehension and grow linguistically competent in a dominant language.

Regarding language ideologies, as plural languages are applied in practice, particularly in bilingual or MLE programs, the utilization of various language practices responds to three language ideologies (May, 2017). As multiple languages are used in the MLE, it is problematic because it is viewed as a transitional program. May (2013) says that the nationalist theory introduces a link between education and state nationalism: the objective of MLE is not only to transmit knowledge but also politics. Responding to the endangerment of minority languages, Jullian (2013) says that national minorities often reject the MLE because they see it as a government educational strategy to weaken or undermine their claims for distinct educational and language services. It is a problem when the program is applied for assimilation.

³ Multilingual preschool is a community preschool established to provide education services to children aged 3 to 5.

⁴ The four preschools in Romtom commune are Tropang Tontem Community Preschool, Bangkern Phal Preschool, Svay Damnak Chas Preschool, and Svay Damnak Thmey Preschool.

⁵ There are three preschools in Rommanie commune. They are Srae Thnong Preschool, Ou Pour Preschool, and Chi Ouk Preschool.

⁶ In the Rovieng district, four preschools passed the assessment, while three preschools did not pass.

Regarding the Education for All (EFA) initiative, the education is available to "every citizen in every society," and getting access to education has become a right for everyone (Hoel, 2014). In 2010, Cambodia offered greater access to education, with an overall net enrollment of primary schools of 95.2 percent (Wright & Sovicheth, 2015). According to rights to access education, the result fell off EFA's goal because the ethnic minority students in remote communities faced challenges to access education. Cambodia treats providing access to education as a right by applying for a bilingual education program as a strategy to reach minority students. It is a method to fulfill the rights of ethnic minority students to get education services.

MLE is viewed as a resource. Language is used for speaking; therefore, it is viewed as a resource in terms of communication. Okal (2014) and UNESCO (2007) state that multilingualism and the MLE have significant advantages in increasing academic and educational value and advancing educational quality. According to the Ministry of Education, Youth and Sport (MoEYS, 2019) and Baker (2011) and García (2009) cited in May (2008), the MLE program linguistically and educationally benefits students to develop communicative competence and ability to read, write, and learn in both the dominant and mother tongue. The MLE program is a resource for educational development for everyone. In conclusion, language ideologies are purposefully used as a right, a problem and a resource.

The study's conceptualization starts with a general view of a multilingual community or national minority with multiple languages. The languages are applied to a concept of MLE in the multilingual community for preserving language and cultural diversity for new generations, especially minority children. Regarding language ideologies, using multiple languages is viewed as a problem, a right, and a resource to the community.

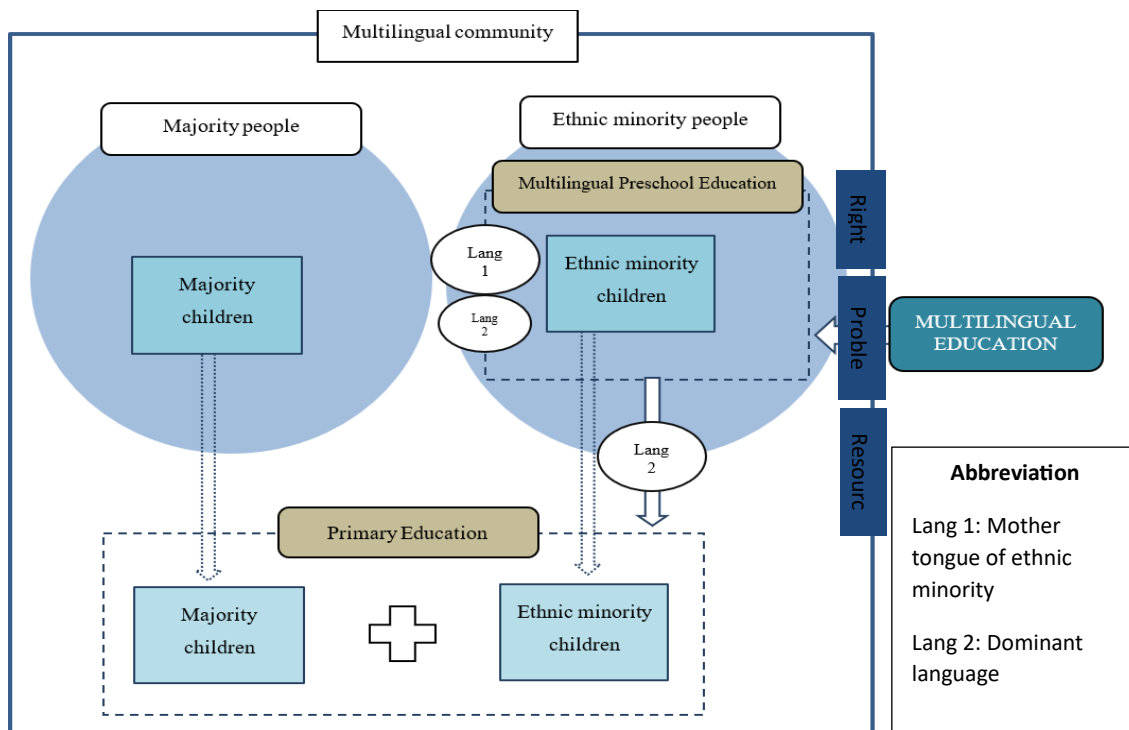


Figure 1: Conceptual Framework

Methodology

This study employed a qualitative approach by doing in-depth interviews and focus group discussions with 23 Kuoy ethnic minority people and eight Khmer ethnicities living in the Rovieng district from the beginning of June 2023. The respondents are two multilingual education government officers, two commune chiefs, six school principals, seven preschool teachers, and 14 Kuoy villagers. During collecting data, the author used the voice record and took note of the highlighted answers. The data was transcribed into Khmer based on the voice record and memo and translated into English. The data was analyzed by merging them as themes. Then the author introduced supportive and constraint conditions of the multilingual preschool program to assist Kuoy children in receiving language and cultural diversity. In the findings, the author quoted some of the respondents' words to show actual views of the Kuoy communities and explained their meaning.

Findings

Supports the Multilingual Preschool Education Program

Based on the data, Kuoy children have had multiple languages and cultures under three conditions through the multilingual preschool program.⁷

First, the program has received support from several stakeholders. According to the Office of Early Childhood Education and Rommanie commune chief, UNICEF has provided training to enhance the teaching capacity of multilingual preschool teachers. The Organization for the Promotion of Kui Culture (OPKC) has actively promoted Kuoy culture and language within the Kuoy communities. The MoEYS plays a crucial role by providing financial and technical support to preschools that meet evaluation standards. The commune councils contribute to the preschool's finance and administration.

Second, Kuoy villagers are crucial in promoting language and cultural diversity for Kuoy children. Two Kuoy villagers explain that the children can improve their Kuoy language ability at home besides preschool.

“In my village, some families do not use Khmer at all. People in this village always use the Kuoy language for communication. Consequently, kids aged two to six can only understand and speak the Kuoy language. However, it is still good that the kids can learn the Khmer language from the multilingual teachers.”

(Two Svay Damnak Chas villagers, group discussion by author in June 2023)

The quote highlights Kuoy villagers' role in supporting the program by applying the Kuoy language as a communication medium in their family.

Third, Kuoy villagers support the program, recognizing its value and importance in helping their children learn in multiple languages and cultures. The villagers believe that if only

⁷ Multilingual Preschool Education Program in the Rovieng district is a bilingual program that uses Khmer and Kuoy languages. This paper calls it a multilingual program because the respondents call it a multilingual program.

Khmer-language schools existed, Kuoy students would not easily understand lessons due to the language barrier.

“The benefit of the program is that in the future, there is no going to lose the ethnic minority language. However, if we only use the Khmer language, we only know the Khmer language so we will lose our language. I want my children to study in the multilingual school.”

(Two Tropang Tontem villagers, group discussion by author in June 2023)

They advocate for sending their children to multilingual preschools to ensure they receive a proficient education that includes their mother tongue. The quote emphasizes the program’s advantages in enhancing the learning outcomes of Kuoy children and safeguarding their language and culture.

In conclusion, Kuoy children have been trained to obtain multiple languages and cultures through the program by three conditions: support from stakeholders in terms of financial, technical and administrative assistance; teaching multiple languages and cultures at home; and viewing the value and importance of the program.

Constraints to the Multilingual Preschool Education Program

Based on collected data from the research field, two conditions constrain the multilingual program to equip Kuoy children with multiple languages and cultures.

First, a Khmer ethnicity teacher is teaching in the multilingual program. According to the data, a Khmer ethnic teacher is in the program. As she is of Khmer ethnicity, it is challenging to train Kuoy students to speak two languages when the teacher cannot provide an exemplary teaching service in the Kuoy language. Regarding this issue, the school principal reports that,

“In principle, it requires Kuoy ethnicity to be a teacher in the multilingual preschool, but we cannot find one. It is difficult to recruit a Kuoy preschool teacher because Kuoy people here are not qualified to be preschool teachers. Although the current teacher is of Khmer ethnicity, she is the best choice for the current situation.”

(A Srae Thnong school principal, personal interview by author in June 2023)

Consequently, Kuoy students are challenged to have multiple languages by learning with a Khmer teacher. The principal acknowledges that recruiting a qualified-Kuoy teacher is difficult, so a Khmer teacher who can speak the Kuoy language is the best choice.

Second, there is another challenging condition caused by Kuoy villagers. Kuoy children in four villages use the Kuoy language less frequently. Kuoy children can speak the Khmer language much better than the Kuoy language. During the in-depth interview, a commune chief says:

“At present, although we do not teach Khmer to Kuoy students, they can still speak it because Kuoy parents in some villages have taught their children to speak the Khmer language since birth. They are Kuoy ethnic minorities. However, they speak to each other in the Khmer language, especially to their children. Furthermore, some parents think that learning to speak the Khmer language contributes to their children's study performance because the curriculum uses the Khmer language and letters.”

(A Rommanie commune chief, personal interview by author in June 2023)

Consequently, Kuoy children in some villages are more proficient in speaking Khmer than their mother tongue, as their parents prioritize teaching them Khmer for better academic performance.

In conclusion, there are two constraints to the program aimed at promoting the language and culture of Kuoy children. First, a Khmer ethnicity teacher is teaching in a multilingual preschool. Second, the Khmer language is appreciated over the Kuoy language by the Kuoy people.

Conclusion

The study suggests successful and failed conditions of the multilingual preschool program in the Rovieng district in assisting Kuoy children to have multiple languages and cultures. According to successes, Kuoy children have received multiple languages and cultures through the program by three conditions: stakeholders support the program in terms of financial, technical and administrative assistance; Kuoy language is taught at home; and Kuoy villagers view more value and importance of the program. Second, it suggests two failure conditions: a Khmer ethnicity teacher is teaching in a multilingual preschool, and the Khmer language is appreciated over the Kuoy language by the Kuoy people.

References

- Baker, C. (2011). *Foundations of bilingual education and bilingualism*. Multilingual matters.
- Benson, C., & Wong, K. M. (2017). Effectiveness of policy development and implementation of L1-based multilingual education in Cambodia. *International Journal of Bilingual Education and Bilingualism*, 22(2), 250-265.
- García, O. (2009). Bilingual Education in the 21st Century: A Global Perspective. *TESL-EJ*, 13(1).
- Hoel, A. (2014). *Education for All*. World Bank.
<https://www.worldbank.org/en/topic/education/brief/education-for-all>
- Jullian, C. (2013). Language, education and minority rights. In S. May (Eds.), *Language and Minority Rights: Ethnicity, Nationalism and the Politics of Language* (pp. 175-205). Routledge. <https://handoutset.com/wp-content/uploads/2022/06/Language-and-Minority-Rights-Ethnicity-Nationalism-and-the-Politics-of-Language-Stephen-May.pdf>
- May, S. (2008). Bilingual/immersion education: What the research tells us. *Encyclopedia of language and education*, 5(1), 19-34.
- May, S. (2013). *Language and minority rights: Ethnicity, nationalism and the politics of language* (2 ed.). Routledge.
- May, S. (2017). *Bilingual and Multilingual Education* (3 ed.). Springer.
- Ministry of Education, Youth and Sport of Cambodia. (2019). *Multilingual Education Action Plan 2019-2023*. Ministry of Education, Youth and Sport.
- Ministry of Land Management, Urban Planning and Construction of Cambodia. (2001). *Law on Land*. Ministry of Land Management, Urban Planning and Construction.
- Okal, B. O. (2014). Benefits of Multilingualism in Education. *Universal Journal of Educational Research*, (2)3, 223-229.
- Royal Government of Cambodia. (2017). *Sub-Decree on the Management of Community Preschool*. Royal Government of Cambodia.
- Secada, W. G., & Lightfoot, T. (1993). Chapter II: Symbols and the Political Context of Bilingual Education in the United States. *Teachers College Record*, 94(6), 36-64.
- Sokha, A., Navy, S., Chankoulika, B., Makara, H., & Bunnat, O. (2021). *Possibility of incorporating Charay language into multilingual education program and transforming community multilingual preschool into standard community multilingual preschool*. Ministry of Education, Youth and Sport.
- United Nations Educational, Scientific and Cultural Organization. (2003). *Education in a multilingual world*. United Nations.
- United Nations Educational Scientific and Cultural Organization. (2007). *Education for All by 2015: Will We Make It?* ERIC Clearinghouse.
- Wright, W. E., & Sovicheth, B. (2015). Striving for education for all through bilingual education in Cambodia. *The handbook of bilingual and multilingual education*, 517-530.

RIGHT TO INFORMATION OF VIETNAMESE MIGRANT WORKERS - ACCESS TO PRE-DEPARTURE INFORMATION OF VIETNAMESE TECHNICAL INTERN TRAINEES

Tinh Ut Le¹

Institute of Human Rights and Peace Studies, Mahidol University, Thailand

Abstract

This paper presents preliminary findings from a secondary research study focusing on the right to information (RTI) for migrant workers (MWs), specifically concerning the right to pre-departure information of Vietnamese migrants participating in the Technical Intern Training program (TITP) in Japan. Given the importance of ensuring migrant workers' RTI from the early stage of their migration process, this paper examines how international and national standards (Vietnam's current law and requirements) acknowledge and address RTI. It also investigates the practical challenges or gaps encountered in implementing these standards. Furthermore, it explores the relationship between the absence or inadequacy of information and the vulnerabilities faced by technical intern trainees (trainees) to identify a list of essential pre-departure information tailored explicitly to TITP intern's needs in response to their current issues.

This paper argues that while maximum disclosure is crucial for accessing information, providing a concise list of essential pre-departure information should be considered, given the short time before departure and poorly implemented standards. It is crucial to note that this approach does not imply denying access to other relevant information. Instead, it aims to ensure that MWs receive the most crucial information within the limited timeframe, effectively addressing their emerging issues.

Keywords: Right to information, migrant workers, technical intern trainees, Vietnam.

Introduction

Among several issues faced by MWs in general and trainees in particular, this paper chooses to focus on the provision of pre-departure information and their RTI because the lack of information is one of the reasons why MWs are vulnerable to human trafficking in labor exploitation (ILO, 2016), and abuses connected with migration for work arise right during recruitment in countries of origin (Farbenblum & Nolan, 2017). Moreover, the lack of information has far-reaching consequences not only for the MWs but also for private recruitment agencies (PRAs) responsible for connecting them with employers abroad. For MWs, a lack of pre-departure information can cause them to have unrealistic expectations about their working conditions, as noted by the Mekong Migration Network (MMN)(2021b, p. 49). In addition, as argued by Hugo & Böhning (2000), those who are ill-prepared for the challenges in the destination country are

¹ Student of Asia Pacific Master of Arts (APMA) in Human Rights and Democratisation, Mahidol University, Thailand

more likely to terminate their contracts prematurely, resulting in significant financial and social losses for all parties involved. Many MWs have to take loans to finance their migration, and failing to complete their contracts leaves them unable to earn enough money to repay these loans. This affects their lives and damages the reputation of PRAs and relevant government agencies as labor suppliers (Hugo & Böhning, 2000, pp. 21–24). As for labor migration to Japan through the TITP channel, the incomplete information provided to trainees before their departure to Japan is also identified by MMN as one of the two most pressing issues that stakeholders in countries of origin can play a significant role in solving (MMN, 2021a, p. 15).

Methodology

This paper applies a qualitative method based on secondary data from examining international and national frameworks regarding the right to information, MWs' rights and relevant published sources.

Conceptual Framework

The RTI is often classified as an instrumental right, a prerequisite for realizing other rights. Discussing the instrumental approach, Wenar (2005, p. 3) argues that contrary to the intrinsic approach, the instrumental justification of rights depends on the facts about interests and consequences. The author states that:

The instrumental approach starts with the desired consequences (like maximum utility) and works backward to see which rights-ascriptions will produce those consequences.

In a specific context of international labor migration, it is necessary to identify the consequences associated with the absence or insufficiency of information and evaluate how such insufficient information affects MWs' rights.

Regarding RTI, Mathiesen (2015, p. 221) argues that in the search for "a sufficient level of access, we should focus on information that supports and enhances people's capabilities ."This argument supports the instrumental approach in studying the RTI discussed above in the work of Wenar (2005), which emphasizes the importance of identifying the connection between the absence or insufficiency of pre-departure information and the vulnerabilities of TITP trainees.

This research may be a testament to the application of the instrumental approach in studying the RTI of MWs. It also offers valuable insights on essential pre-departure information for TITP trainees facing rights violations in Japan.

Findings

First, the RTI is recognized under several international human rights standards, yet there are certain challenges in interpreting and applying the right in practice. The RTI is recognized within the scope of the right to freedom of expression (FOE), coincidentally or intentionally, under Article 19 of the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR). Despite certain wording differences, the UDHR and the ICCPR recognize the right to "seek, receive and impart information and ideas"

to everyone. However, unlike other substantive rights, the RTI as an instrumental or procedural right is placed under another instrumental right, i.e., the FOE, which introduces certain difficulties in interpreting and applying the right in practice. The RTI is limited in the freedom of expression and civil and political rights, which emphasizes the political and public interests of the information seeker. General comment No. 34 of the ICCPR also defines a right to access information held by "public bodies." Besides, placing RTI under the political realm contradicts the provision granting access to information for all, regardless of frontiers. McDonagh (2013, p. 20) argues that while the FOE applies to all, the RTI appears to be associated with the "watchdog role" of the information seeker whose interests are monitoring government activities for public interests. However, MWs seek information to protect themselves from the vulnerabilities they may face in destination countries. This information is essential to further other rights, such as the right to decent work, social security, reproductive health, etc. Their interests, therefore, are personal concerns and do not necessarily deal with the "watchdog" purpose of access to information. As an instrumental or procedural right, the RTI is a prerequisite for realizing other rights, including economic, social and cultural rights recognized in the International Covenant on Economic, Social and Cultural Rights (ICESCR). Zooming on the relevant economic and social rights of MWs, General Comment No.19 on the right to social security and General Comment No. 22 on the right to sexual and reproductive health detail not only state parties' duties to grant access to information but also the requirement on the specific content of the information to be provided. However, these instruments do not mention migrant workers' RTI as a technical legal term. Regarding RTI of MWs, the Migration for Employment Convention of the International Labor Organization (ILO's Convention No. 97) requires ratifying states to provide "accurate information and take all appropriate steps against misleading propaganda relating to emigration and immigration ."Migrant workers' RTI is also acknowledged in the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families (ICRMW). Accordingly, while Article 13.2 recalls the right to FOE, including "freedom to seek, receive and impart information" stated in the ICCPR, Articles 33, 37 and 65 of the Convention go into a degree of detail in terms of information contents. Nevertheless, these Conventions, which are the most relevant conventions for MWs' rights, pertain primarily to information held by public bodies or those relating to the performance of public functions.

Second, from the origin country perspective, Vietnam has developed quite a comprehensive legal framework on overseas labor migration, especially the regulations of pre-departure training for MWs. However, its implementation and monitoring are still far from effective. In Vietnam, the RTI of all citizens is guaranteed in Article 25 of the Constitution 2013, and the Law on Access to Information (LAI) passed in 2016 which acts as a procedural law, providing principles and procedures for the enforcement of the RTI as well as obligations and responsibilities of state agencies in ensuring the RTI. However, similar to international standards, Vietnam's legislation on RTI also interprets information "created by state agencies ."In terms of MWs' rights, Article 7.1 of the Law on contract-based Vietnamese Overseas Workers (Law 69) prohibits acts of deceitful advertising or using other tricks to deceive workers, take advantage of

the placement of workers abroad, organize human trafficking, exploit, to force labor, or to conduct other illegal acts. In terms of law enforcement, since the revised law and its guiding documents came into effect in 2022, until now, there has been no assessment of the implementation of the law. However, as revealed in previous studies, despite regulations both mandatory and in voluntary basic in place, the actual implementation is still far from effective. Findings from research conducted by MMN (2019) show that the most common complaint among migrants is those relating to the provision of limited information about working conditions in the destination country. Vietnamese migrants also reported receiving insufficient information and assistance in accessing social protection entitlements while working in Japan. Furthermore, according to the current regulation, PRAs are mandatory to submit annual reports on their services to the Department of Overseas Labor before 20 December, including their implementation of pre-departure training.² However, the mechanism for monitoring and evaluation is not clear. There is no provision regulating when and how this training will be evaluated and what are the disciplinary measures in non-compliance cases. In this regard, the Code of Conduct (COC) developed by the Vietnam Association of Manpower Supply (VAMAS), an association of recruitment agencies, seems to provide a more explicit M&E mechanism. Accordingly, VAMAS will develop an annual rating and award system for the best-performing recruitment agencies (VAMAS, 2018, p. 17). However, the COC runs voluntarily, aiming to promote better practices among VAMAS's member agencies.

Third, applying the instrumental approach in RTI studies, a list of essential pre-departure information is identified based on examining the connection between the absence or insufficiency of pre-departure information and the intern's vulnerabilities. Several previous research have shed light on the issues faced by trainees working in Japan and concur that verbal and physical abuses at the workplace, long working hours, low wages, unpaid overtime, overcharging of housing rent, and racial discrimination are among common problems faced by TITP trainees (Chonlaworn, 2021, p. 35). Besides these employment violations and living conditions, in the paper, Chonlaworn (2021, p. 43) highlights emerging issues like intern disappearances, illegal recruitment practices, and reproductive health violations. Other scholars have also highlighted these issues. Regarding intern running away issues, Sunai (2020) claims that trainees experience low wages, debt, and violence and bullying at their workplace, leading many to run away (Sunai, 2020, p. 23). Unfortunately, documented cases reveal that these runaways often fall into the hands of Japan's illegal broker system, which is expanding in Japan (Sunai, 2020, p. 25), exposing them to the risk of human trafficking. In terms of reproductive health rights, Chonlaworn (2021, p. 45) references cases of some female Vietnamese and Chinese trainees experiencing reproductive rights violations while working in Japan and claims that most women do not realize their right to reproductive health, meaning their right to give birth and raise a child while working as a trainee in Japan. Multiple media news coverage has also exposed these

² Article 15 and Annex XIII of the Circular 21

violations, spotlighting cases of unwanted pregnancy, giving birth in isolation without any care and forced deportation of female interns from Vietnam (The Asahi Shimbun, 2022a, 2022b). These interns all came across a rumor that foreign trainees would be required to return to their home countries if they became pregnant. Under Japan's laws, TITP interns are entitled to several social protection benefits, including labor and social insurance schemes, as outlined in the Technical Intern Trainee Handbook (OTIT, 2022, pp. 52–58). However, MMN (2019) indicates that Vietnamese interns receive insufficient information and assistance in accessing social protection entitlements while working in Japan. During times of crisis or unexpected circumstances like COVID-19, social assistance measures, such as the relief package of 100,00 Yen, are also provided to those in need. Yet, this measure has not reached all the trainees, partly due to a lack of official announcements about the payment (Tran, 2020, p. 7). The COVID-19 pandemic and economic situation like the devaluation of the Japanese Yen and rising inflation have exacerbated issues for MWs, exposing interns to new emerging issues in Japan. MMN (2021a), Chonlaworn (2021, p. 46), and Tran (2020, p. 10) report that the pandemic has significantly affected interns already in Japan, leaving them vulnerable to job losses entailing losses of housing, reduced salaries, the inability to return home or overstay due to travel restrictions. Concerning Japan's economic instability, no research has explored its effects on MWs and interns. However, news reports highlight the considerable difficulties and challenges faced by interns during this period. Interns share that their life has been more difficult in the past two years, primarily attributed to the depreciation of the yen and the increase in prices of essential commodities, including food, and soaring rental costs (VietNamNet, 2023). In response, many interns need to extend the duration of their loan repayments (VnExpress, 2022), while others choose South Korea and Europe as alternative destinations (Mumtaz, 2023). Another issue is that many interns contact Japan's agencies instead of reaching their country of origin. There are cases of interns who sought help from several Japanese agencies, including the Organization for Technical Intern Training (OTIT), which oversees the intern program, yet received no support from them (Mainichi Daily News, 2022; Tran, 2020, p. 11). In addition, while contact information for Vietnamese agencies is available, there is a notable absence of specific information on their roles, the types of support they provide, and the complaint mechanisms they offer (MMN, 2019, pp. 100–101). All these claims raise concern about the origin country's roles and duties in protecting their citizens abroad. They also highlight the need to provide contact information for both Japanese and Vietnamese agencies, with more specific details about their roles, support mechanisms, and complaint procedures. The existing literature offers valuable insights into the vulnerabilities faced by TITP trainees. To address these challenges proactively, a list of essential pre-departure information tailored to the specific needs of TITP interns is identified below:

1. Rights and obligations, with a special focus on basic knowledge of forced labor, human trafficking, and gender-related issues; and information on social security entitlements and reproductive health

2. Contact information and complaint mechanisms, with clear contact details of both Vietnam and Japan's relevant agencies, along with their roles and services, and an explanation of complaint procedures.
3. Updated information on pressing issues, such as insights into past COVID-19 impacts, current Japanese Yen devaluation, rising inflation, and changes in both countries' laws and policies.

Given the short time before departure and poorly implemented standards, as analyzed above, providing a concise list of essential pre-departure information is crucial. This approach is similar to the core rights approach discussed by Ruhs (2017). For Ruhs (2017, p. 173), one reason for considering the development of a more concise list of rights for migrant workers is rooted in the fact that the actual ratification and implementation of ICRMW and ILO conventions related to migrant workers by participating states have been unsatisfactory in practice. Similarly, the list of core information before departure proposed in this paper is developed in the context of well-established requirements but ineffective implementation in reality.

Conclusions and suggestions

The discussions highlight some challenges and gaps encountered in implementing the standards recognized RTI of MWs. In addressing these challenges, there is a need to clarify the interpretation of the RTI for MWs, enhance M&E mechanisms with clearer disciplinary measures, and provide a concise list of essential pre-departure information tailored to the emerging issues faced by a particular group of MWs.

This paper proposes a concise list of essential pre-departure information as a potential solution and argues that while maximum disclosure is crucial for accessing information, a concise list of essential pre-departure information should be considered given the short time before departure and poorly implemented standards. It is crucial to note that this approach does not imply denying access to other relevant information. Instead, it aims to ensure that MWs receive the most crucial information within the limited timeframe, effectively addressing their emerging issues. The proposed list of essential pre-departure information not only initiates discussions but also highlights the need for future research, such as exploring how and to what extent this essential information is provided to trainees in practice could be an area for future investigation.

References

- Chonlaworn, P. (2021). Cheap and Dispensable: Foreign Labor in Japan via the Technical Intern Training Program. *Jsn Journal*, 11(1), Article 1.
<https://doi.org/10.14456/jsjournal.2021.3>
- Farbenblum, B., & Nolan, J. (2017). The Business of Migrant Worker Recruitment: Who has the Responsibility and Leverage to Protect Rights? *Texas International Law Journal*, 52.
- Hugo, G., & Böhning, W. (2000). *Providing information to outgoing Indonesian migrant workers*. International Labour Office.
- ILO. (2016). *Non-standard employment around the world: Understanding challenges, shaping prospects | VOCEdplus, the international tertiary education and research database*.
<https://www.voiced.edu.au/content/ngv:74820>
- Mainichi Daily News. (2022, October 4). “Get out of the dorm”: Cold treatment of Vietnamese intern in Japan reveals support woes. *Mainichi Daily News*.
<https://mainichi.jp/english/articles/20221004/p2a/00m/0na/024000c>
- Mathiesen, K. (2015). Informational Justice: A Conceptual Framework for Social Justice in Library and Information Services. *Library Trends*, 64(2), 198–225.
<https://doi.org/10.1353/lib.2015.0044>
- McDonagh, M. (2013). The Right to Information in International Human Rights Law. *Human Rights Law Review*, 13(1), 25–55. <https://doi.org/10.1093/hrlr/ngs045>
- MMN. (2019, October 10). Social Protection Across Borders: Roles of Mekong Countries of Origin in Protecting Migrants’ Rights (2019) > Mekong Migration Network. *Mekong Migration Network*. <https://mekongmigration.org/?p=12848>
- MMN. (2021a). Proceedings of MMN Multistakeholder Workshop on Labour Migration from Cambodia and Vietnam to Japan > Mekong Migration Network. *Mekong Migration Network*. https://mekongmigration.org/wp-content/uploads/2022/11/Book_Proceedings-Multi-Stakeholder.pdf
- MMN. (2021b, April 20). Labour Migration from Mekong Countries of Origin to Japan > Mekong Migration Network. *Mekong Migration Network*.
<https://mekongmigration.org/?p=19076>
- Mumtaz, A. (2023, July 2). *Falling Yen and Rising Inflation Drive Vietnamese Expats to Return Home from Japan*. BNN Breaking. <https://bnn.network/breaking-news/economy/falling-yen-and-rising-inflation-drive-vietnamese-expats-to-return-home-from-japan/>
- OTIT. (2022). *Technical Intern Trainee Handbook version 2022*.
https://www.otit.go.jp/files/user/WEB_2023_%E8%8B%B1%E8%AA%9E%E7%89%88.pdf
- Ruhs, M. (2017). *Rethinking International Legal Standards for the Protection of Migrant Workers: The Case for a “Core Rights” Approach*. 111, 172–176.
<https://doi.org/10.1017/aju.2017.35>

- Sunai, N. (2020). *Runaway and Resistance against and within Migration Infrastructures: The cases of Vietnamese migrant workers in Japan and Taiwan*.
https://doi.org/10.14989/pnggw_13_15
- The Asahi Shimbun. (2022a). *Rumor leads to dead baby and trial for trainee from Vietnam* | *The Asahi Shimbun: Breaking News, Japan News and Analysis*. The Asahi Shimbun.
<https://www.asahi.com/ajw/articles/14639419>
- The Asahi Shimbun. (2022b). *Supreme Court to review case of abandoned stillborn twins* | *The Asahi Shimbun: Breaking News, Japan News and Analysis*. The Asahi Shimbun.
<https://www.asahi.com/ajw/articles/14789684>
- Tran, B. Q. (2020). *Vietnamese technical trainees in Japan voice concerns amidst COVID-19*.
- VAMAS. (2018, April 24). *Code of Conduct applied to Vietnamese agencies sending workers for overseas employment* [Project documentation].
http://www.ilo.org/hanoi/Whatwedo/Instructionmaterials/WCMS_626512/lang--en/index.htm
- VietNamNet. (2023). *Báo VietnamNet*. VietNamNet News. <https://vietnamnet.vn/en/vietnamese-workers-in-japan-leave-as-yen-depreciates-2158121.html>
- VnExpress. (2022). *Exchange rate depreciation hurts Vietnamese workers abroad—VnExpress International*. VnExpress International – Latest News, Business, Travel and Analysis from Vietnam. <https://e.vnexpress.net/news/economy/exchange-rate-depreciation-hurts-vietnamese-workers-abroad-4531792.html>
- Wenar, L. (2005). *The Value of Rights*. *Law and social justice*, 179–209.
https://static1.squarespace.com/static/55abfeaae4b0ba2b92833a23/t/55b57354e4b0fb437210d65b/1437954900013/Value_of_Rights.pdf

THE CHALLENGES OF WOMEN EMPOWERMENT IN THE FISHERIES AND AQUACULTURE SECTOR IN THAILAND

Ibijemilusi Funmilola Adekintan¹ and Dr. Balazs Szanto²

Master of Art (MAIDS) in the Faculty of Political Science, Chulalongkorn University

Abstract

Limited research focuses on women empowerment in fisheries and aquaculture sectors and their challenges without linking it to poverty. Existing studies mainly discuss women's activities without understanding their core issues from the perspective of local fisheries villages. This qualitative study explores the challenges women's empowerment faced in the fisheries and aquaculture sector, which contributes to poverty in Thailand, using a conceptual framework of women's empowerment, poverty, fisheries and aquaculture. The study employed surveys and group discussions as research methods. A total of 70 surveys, comprising 34 questions each, were distributed. Of these, 52 surveys were valid, while 18 were excluded due to their irrelevance. Content analysis was used to analyse the survey and group discussion data. The findings highlight significant challenges local fisheries villages face, including limited land access, poor government policies, intermediaries' issues, and technological limitations. These challenges shed light on the potential link between women's empowerment and poverty creation. The study suggests remedies such as improved technology, establishing women's training centres that promote income generation, and more effective government policies targeting local fisheries regions. Generally, the researcher highlighted the need for government agencies and NGOs in Thailand to support women's empowerment in the fisheries and aquaculture sector, mainly in financial and training support.

Keywords: Women empowerment, poverty, fisheries, and aquaculture, non-Governmental organisation.

Introduction

According to the United Nations Development Program (2015), the Sustainable Development Goals have established generally agreed-upon aims, such as ending extreme poverty (Goal 1), achieving gender parity, and empowering all women and girls (Goal 5) (Razavi, 2016). Evidence suggests that women's empowerment is one of the essential components in achieving the

¹ Student of International Development Studies, Master of Art (MAIDS) in the Faculty of Political Science, Chulalongkorn University.

² Lecturer at the Department of International Development Studies, Master of Art (MAIDS) in the Faculty of Political Science, Chulalongkorn University.

17 SDGs. As such, its incorporation into the SDGs has attracted attention in the current discussion on Development (Yila & Sylla, 2020).

Poverty severely challenges our nation's progress, individual opportunity, and the public's health and safety (Gordon, 2011). Despite widespread attempts to alleviate poverty, it affects a sizable fraction of the world's population. Despite being a significant issue, still little is known about poverty. Poverty has a chilling effect on human potential and the prospects for global development. The implications for skill development are likewise substantial. This research provides a comprehensive analysis of how discrimination against women in the fisheries and aquaculture industries exacerbates poverty in Thailand.

Despite being underrepresented in the literature, women have made significant contributions to the fisheries and aquaculture industries; this research looks at their impact in these areas and how their difficulties have contributed to Thailand's high poverty rate. It is essential to keep in mind that the number of women in the globe is nearly equal to the number of men and that, according to the most up-to-date statistics, there are now more women and people who identify as women in Thailand than men. According to the World Bank's compilation of development indicators from credible sources in 2021, women made up 51.37 per cent of the population in Thailand. The (World Bank, 2022) was consulted for information on Thailand's population, present female numbers, historical trends, predictions, and forecasts.

Therefore, this study aims to explore the challenges that Local fisheries women face and how they continue to leave these women in abject poverty, which most literature does not discuss from the local people's perspectives.

Methodology

This case study investigates the fisheries and aquaculture sector in Thailand's Ban Khun Samut Chin, Ban Khun Samut Thai, and Ban Laem Sing villages. The research design combines qualitative methods like questionnaires, field observations, and group discussions to understand women's empowerment challenges in the three villages. The aim is to capture perspectives from the principal researcher and participants, utilising the strengths and weaknesses of each method to complement each other.

The study aimed to explore the role of women in the fisheries and aquaculture sector in eradicating poverty. Data collection involved fish farmers meeting inclusion and exclusion criteria, using closed-ended questionnaires, field observations, and focus group discussions. Group discussions provided qualitative insights, while field observations focused on fisheries and aquaculture activities in selected villages.

The study collected qualitative data from March 23 to May 2023, with informed consent from participants. The principal researcher distributed questionnaires and focus group discussions, with a trained research assistant helping with audio recordings, note-taking, and translation.

The study analysed transcripts and quotes using purposive sampling in fisheries and aquaculture villages. Data analysis focused on women's empowerment and poverty reduction, with rigour and validation strategies employed. A pilot study was conducted in three villages, with questionnaires pretested among ten fishermen and fish farmers.

Conceptual Framework

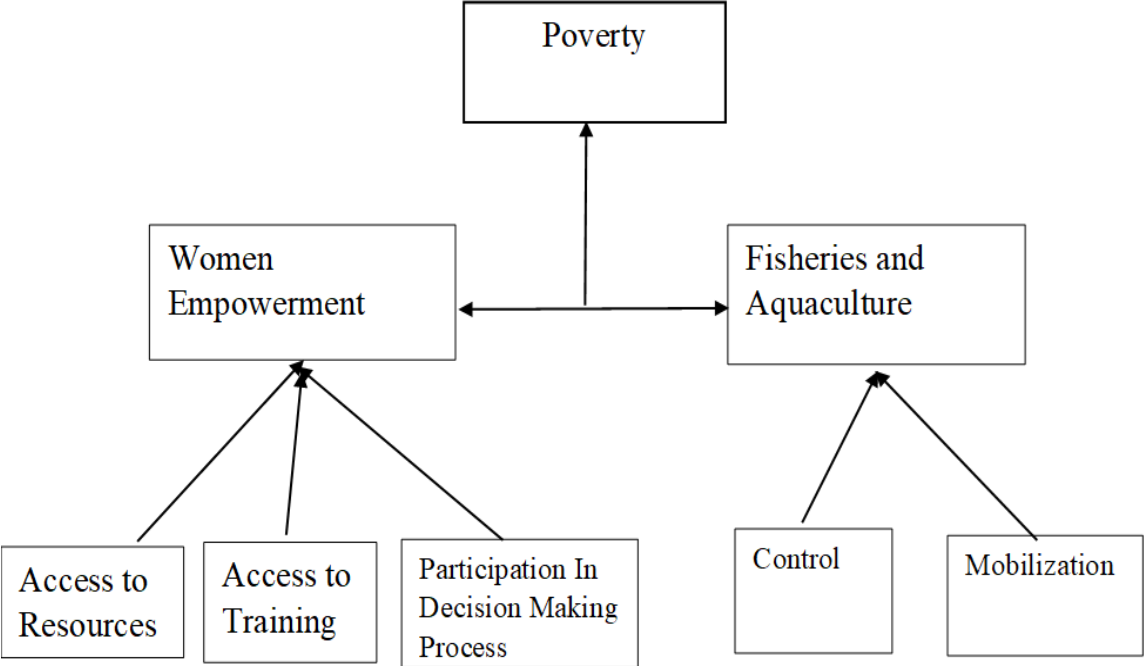


Figure 1.0: Conceptual framework

This study utilises the interpretive research philosophy, idealism, and feminism theory to explore the concept of gender empowerment and women's empowerment in the fisheries and aquaculture industries. Social feminism emphasises the importance of addressing oppressing women for cultural and economic reasons. On the contrary, the Women in Development perspective challenges the notion that women have historically been marginalised and excluded from the development process.

Women's empowerment is about more than just personal accomplishment; it is about the well-being of other women in the community (Kabeer, 2005). This dimension involves managing resources, coordinating collective action, and caring about their personal and community well-being. Women's control over their resources can lead to higher income and negotiating power, which can help alleviate poverty.

This research emphasises the capacity of women to engage in the fisheries and aquaculture industries as entrepreneurs, employees, or leaders, ensuring access to resources, education, and training. Women's mobilisation involves mobilising women and establishing networks that promote empowerment. This involves forming women's groups, cooperatives, and organisations that aid, training, and resources.

The conceptual framework emphasises women's empowerment by emphasising their control over and access to resources, their ability to access markets, their ability to participate in decision-making, and their ability to get knowledge and education. (Adam et al., 2021; James et al., 2021). These characteristics will be measured using the International Food Policy Research Institute's Women's Empowerment in Agriculture Index (WEAI) (Repoa Brief, 2019). The paradigm also considers women's difficulties due to uneven access to resources, limited mobility, and gender-based discrimination.

Poverty is a complex issue that can be addressed through gender balance in eradicating poverty (Kanbur & Squire, 2001). Addressing poverty as a disease has to deal with the incapacity to provide necessities like clothing, food, and shelter.

The challenges and prospects Women face in the Fishery and Aquaculture sector in Samut Prakan Province.

The variable "women face gender discrimination" indicates that 75.00 per cent of the respondents acknowledged experiencing gender discrimination in the fisheries and aquaculture sector. In contrast, 25.00 per cent of the respondents stated they had not encountered such discrimination. Regarding the types of discrimination faced, the most prevalent form reported by the respondents was the lack of access to credit, with 69.23 per cent highlighting this issue. None of the respondents mentioned experiencing less pay or sexual abuse. Limited access to resources, such as fishing gear, was reported by 25.00 per cent of the respondents. A small percentage of respondents (3.84 per cent) indicated facing multiple forms of discrimination, including all the mentioned types, while 1.92 per cent reported facing none of the mentioned types.

Table 1.0: Challenges faced in the fisheries and aquaculture sector.

| VARIABLES | NUMBER | FREQUENCY (%) |
|--------------------------------------|---------------|----------------------|
| Gender faced by women. | | |
| Yes | 39 | 75.00 |
| No | 13 | 25.00 |
| Types of discrimination faced | | |

| | | |
|---|----|-------|
| Lack of access to credit | 36 | 69.23 |
| Less pay | 0 | 0.00 |
| Limited access to resources (fishing gear, etc.) | 13 | 25.00 |
| Sexual abuse | 0 | 0.00 |
| All the above | 2 | 3.84 |
| None | 1 | 1.92 |
| How effective is the policy | | |
| Very effective | 2 | 3.84 |
| Somewhat effective | 8 | 15.38 |
| Not effective at all | 26 | 50.00 |
| I do not know | 16 | 30.77 |
| Does the policy hinder women? | | |
| Yes | 2 | 3.85 |
| No | 38 | 73.07 |
| No idea | 12 | 23.07 |

Group discussion results

Participants were questioned on their opinions of poverty and their reasons for considering themselves poor. Most respondents (Respondents 1, 3, 4, and 5) acknowledged that they consider themselves poor for various reasons, such as the inability to financially support their children's education, inadequate income, limited access to fishing supplies, and limited decision-making capacity. For example, financial constraints in education emerge during the discussion: "Because I cannot afford to send my children to school" (Respondent 1). "Because I do not earn enough to support my children's education... I cannot give them money for their transportation to school" (Respondent 2). "Because I cannot afford to pay the registration fee for access to the river to give me easy access for fishing on the river" (Respondent 3). "Because we cannot afford to make some financial decisions on time" (Respondent 4). "Because my children are not attending school" (Respondent 5).

(Respondent 1) "Most of us stop schooling because the money we will spend on transport alone for a month is enough to feed the family for more than three or four months. Respondent 1 also says, "We know the impact of education, and we wish we could afford to go, but we cannot."

When discussing women's roles in the village, it was mentioned that women primarily engage in fish farming and trading, a few work as bike riders, and many are housewives. Respondent 2 also mentioned the existence of a fishers association but noted that meetings are infrequent: "Yes, we have a fishers association; however, the people here hardly meet for meetings. Meaning they only meet occasionally" (Respondent 2). "Women here are mainly engaged in fish farming and trading; a few are bike riders, and many are housewives" (Respondent 1).

"Women here primarily assist their husbands on the sea coast and participate in the separation of caught shrimps. They are responsible for drying the shrimp for sale in the market" (Respondent 3).

"Almost all the women in this village work in the aquaculture sector. Only a few own plots of land, while most farms are owned by private officials who employ men and women to care for the farm until harvesting. Some women here do own their farms" (Respondent 5).

Responding to the question about non-governmental organisations (NGOs) working in the area, Respondent 5 mentioned the existence of an NGO called Chum Chon Thai in the past, but it is no longer active. "There was an NGO called Chum Chon Thai in the past, but not anymore" (Respondent 5).

The mention of sales going through intermediaries and traders indicates that the fishers have limited control over the pricing of their products. This data highlights a power dynamic within the supply chain, where the intermediaries hold significant influence: "The sales go through the middlemen and traders, so they give them a price" (Respondent 5).

Discussion

Low levels of human capital. Lack of education and skills in the population can limit productivity and economic growth, perpetuating poverty. Most people in three villages are high school holders (86.46 per cent), but many stop schooling due to financial and mobility restrictions. Due to financial constraints, many children stop schooling after high school or university admission.

Lack of proper information. Access to information is crucial for women's empowerment (Kumar & Roy, 2014; Orentlicher, 2020) in fisheries, as it helps them make informed decisions and take advantage of opportunities. However, many village women lack access to information, particularly in selling their fish, which leads to middlemen buying and connecting them to buyers. Additionally, 69.23 per cent of respondents were unsure about the effectiveness of existing government policies and questioned the existence of an NGO in the village. This study argues that lack of information has affected their productivity and income, making them impoverished.

The lack of fishing equipment. Few tools such as boats, nets, and gear pose a significant challenge for women engaged in fisheries activities. About 25.0 per cent of respondents reported insufficient fishing equipment, which restricts their ability to increase productivity and expand fishing

operations. Insufficient access to technology can hinder productivity improvements and economic advancement, trapping impoverished communities. Most respondents (59.61 per cent) emphasise implementing strategies, including access to new equipment.

This study argues that outdated fishing tools and equipment limit women's daily activities and income. The lack of access to modern-day fishing equipment also contributes to a lack of economic opportunity (Pomeroy et al., 2020; Quisumbing & Pandolfelli, 2010), as women use their hands to pick fish and shrimp, causing delays in fish processing, which causes delay and at the end causes lack of finance.

Limited access to credit and financial services. The lack of access to financial assistance is a significant barrier women face in remote villages, leading to poverty. A survey and group discussion revealed that 69.23 per cent of respondents expressed frustration with the lack of credit access, the most prevalent form of discrimination. The geographical challenges and traditional requirements of financial institutions limit women's chances of obtaining loans, as they work in fishing and aquaculture sectors or engage in petty trade. This paper argues that lack of access to finance directly affects their ability to be productive and improve their livelihoods, just like (Boukhatem, 2016) believes financial resources hamper impoverished people's productivity and ability to make a living. Without financial support, they cannot expand their aquaculture farmland or purchase new fishing equipment, limiting their income-generating potential and keeping them trapped in a cycle of poverty.

Inadequate infrastructure. These scholars believe that Road networks can hinder economic activities, trade, and market access, limiting development opportunities and perpetuating poverty (Chu, 2014; Zhao & Yu, 2021). In the three villages, only motorcycle bikes are accessible, leaving residents reliant on walking or boats. Poor road infrastructure hampers mobility, especially for women who work in farming and small-scale businesses. Women are compelled to sell their goods to intermediaries, who exploit the situation by purchasing at lower prices and reselling them in more accessible markets at higher rates. In contrast, women earn meagre returns due to limited mobility and a lack of alternative options.

Weak government policy

Weak governance policies in three villages contribute to poverty perpetuation. These policies create an unfavourable business environment, discourage investment, and limit economic growth opportunities (Ayanwale, 2007). Around 69.23 per cent of respondents lack awareness about government policies supporting their economic endeavours, leaving them uncertain about resources and assistance. The absence of clear and supportive policies has negatively impacted villagers' productivity and economic prospects. The dependency on elderly citizens' monthly income reinforces the cycle of poverty and restricts their ability to break free from their current circumstances. This study argues that the lack of effective governance policies leads to inadequate resource allocation and limited access to essential services, further marginalising villagers, especially women, and perpetuating the cycle of poverty.

Conclusion and Recommendation

The study highlights challenges in women's empowerment in Thailand's fisheries and aquaculture sector, contributing to poverty in local fishing villages. The Sustainable Development Goals emphasise gender equality, but obstacles like limited land access, inadequate infrastructure, and outdated fishing equipment hinder progress. To address these issues, the study recommends improving technology, establishing women's training centres, and implementing effective government policies tailored to local fisheries regions.

References

- Adam, R., McDougall, C., Beveridge, M., & Marwaha, N. (2021). *Advancing gender equality and women's empowerment in fish agri-food systems: Four pathways*.
- Ayanwale, A. B. (2007). *FDI and economic growth: Evidence from Nigeria*.
- Boukhatem, J. (2016). Assessing the direct effect of financial development on poverty reduction in a panel of low-and middle-income countries. *Research in International Business and Finance*, 37, 214-230.
- Chu, C. (2014). *Highway in the Mountains-The Western Yunnan Roads Development Project*.
- Gordon, D. (2011). Consultation response: Social mobility and child poverty review. *Policy response series*, 2, 4-5.
- James, R., Gibbs, B., Whitford, L., Leisher, C., Konia, R., & Butt, N. (2021). Conservation and natural resource management: where are all the women? *Oryx*, 55(6), 860-867.
- Kabeer, N. (2005). Gender equality and women's empowerment: A critical analysis of the third millennium development goal 1. *Gender & development*, 13(1), 13-24.
- Kanbur, R., & Squire, L. (2001). Thinking about Poverty: Exploring the Interactions. *Frontiers of development economics: The future in perspective*, 183.
- Kumar, D., & Roy, A. (2014). Assessing Farmers Access to Information in Arid Western Rajasthan. *Indian J. Hill Farming*, 27, 176-183.
- Orentlicher, D. (2020). Ensuring Access to Accurate Information and Combatting Misinformation about Pandemics. *Am. U. Int'l L. Rev.*, 36, 1067.
- Pomeroy, R., Arango, C., Lomboy, C. G., & Box, S. (2020). Financial inclusion to build economic resilience in small-scale fisheries. *Marine Policy*, 118, 103982.
- Quisumbing, A. R., & Pandolfelli, L. (2010). Promising approaches to address the needs of poor female farmers: Resources, constraints, and interventions. *World development*, 38(4), 581-592.
- Razavi, S. (2016). The 2030 Agenda: challenges of implementation to attain gender equality and women's rights. *Gender & development*, 24(1), 25-41.
- World Bank. (2022). *Population, female (% of total population) - Turkiye*. <https://data.worldbank.org/indicator/SP.POP.TOTL.FE.ZS?locations=TR>
- Yila, J. O., & Sylla, A. (2020). Women empowerment in addressing food security and nutrition. In *Zero Hunger* (pp. 980-990). Springer.
- Zhao, P., & Yu, Z. (2021). Rural poverty and mobility in China: A national-level survey. *Journal of transport geography*, 93, 103083.

LEGAL EDUCATION FOR PROTECTING CUSTOMARY LAND RIGHTS IN INDONESIA: CASE STUDY OF TALANG MAMAK INDIGENOUS PEOPLES

Aditia Bagus Santoso¹

Institute of Human Rights and Peace Studies, Mahidol University, Thailand

Abstract

Indonesia recognizes indigenous peoples' rights on customary land under Article 18B Clause 2 of the Indonesian Constitution 1945 and Article 1 (2) ICESCR but fails to ensure indigenous peoples enjoy their rights. Talang Mamak indigenous peoples who live in Riau Province, Indonesia, lost their customary land rights for many reasons. Therefore, Talang Mamak must know and be aware of their rights and legal basis to protect and reclaim their rights. Because of that, some NGOs in Riau Province provided Talang Mamak indigenous peoples with legal education – part of legal empowerment – to increase their knowledge, skills, and attitude, expecting they will protect their customary land rights effectively and efficiently. This study aims to view the effectiveness and efficiency of legal education for community paralegals in Talang Mamak in protecting their customary land rights and their challenges. This qualitative study reviews academic journals, NGO reports, media coverage, and personal fieldwork observation to analyze the effectiveness and efficiency of legal education through the legal empowerment concept. This study shows that legal education increases Talang Mamak's ability to implement their legal knowledge, skills, and attitude through strategy implementation and the expected result of customary land rights protection. This study demonstrates that legal education improves effectiveness and efficiency in protecting and defending their customary land rights.

Keywords: Legal Education, Customary Land Rights, Talang Mamak Indigenous peoples, Indonesia.

Introduction

Since the early 1970s, the term indigenous peoples has been transformed (Kingsbury, 2008, p. 103) and is currently used as a strategic and advocacy tool (Arizona and Universitas Gajah Mada, 2023, p. 1). Because of that, the experts and institutions interpret the definitions of indigenous peoples in various ways. Relying on their perspectives, the United Nations, the International Labor Organization (ILO), and the World Bank try to define the term (Kingsbury, 2008, p. 109). Hence, the definition of indigenous peoples is still contested among experts and institutions.

¹ Student of Asia Pacific Master of Arts (APMA) in Human Rights and Democratization, Mahidol University, Thailand.

As a concept, indigenous peoples affect legal and political significance, specifically emerging basic rights such as lands, territories, water, and other resources. Those rights rise as the special relations of many indigenous peoples to land under their historical aspect and are supported by the international human rights instruments such as Article 1 Paragraph 2 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), and Article 27 of the International Covenant on Civil Political Rights (ICCPR). Specifically, several articles in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) formulate close ties between indigenous peoples and lands, namely Article 8 b, Article 10, Article 25, Article 26, Article 27, Article 28, Article 29, Article 30 and Article 32.

Notwithstanding debates about indigenous peoples' definition and concept regarding rights, indigenous peoples worldwide have been discriminated against by conflict over land, forest, mineral resources, fishing rights, and other natural resources. These conflicts cannot be avoided since indigenous peoples strongly connect with their land. Moreover, these conflicts emerge in the context of rapid economic change, often accelerated by government-supported development projects (Kingsbury, 2008, p. 133).

In the Indonesian context, Article 18B Paragraph 2 of the Indonesian Constitution of 1945, Article 5 Paragraph 3, and Article 67 of Forest Law Number 41 of 1999 have mentioned explicitly a strong connection between indigenous peoples and land, forest, and other resources. However, land, forest, and other natural resources beneath the ancestral area have affected indigenous peoples in land tenure conflicts (Clarke, 2001, p. 242). Indigenous peoples in Indonesia have been pushed away from their ancestral area due to extractive activities conducted by government-supported companies. Indigenous peoples suffer while their ancestral land and law emphasizing communal property rights are disregarded by state law. Inevitably, as state law under the Constitution, indigenous peoples must use a combination of state law and customary law to protect their land rights.

1.1. Talang Mamak Indigenous Peoples Amid Conflict in Protecting Customary Land Rights

In history, around 60 indigenous tribes in Talang Mamak, who spread over Riau and Jambi Province, Indonesia, are recorded as Talang Mamak community members. However, according to the Archipelago Indigenous Peoples Alliance or *Aliansi Masyarakat Adat Nusantara/ AMAN* Indragiri Hulu (2023), only 29 tribes are active and still exist as indigenous peoples regarding Article 18 paragraph 2 of the Indonesian Constitution of 1945.

Meanwhile, only 3 of 29 indigenous tribes are free from internal or external conflict related to land tenure or customary land rights, and the rest of the indigenous tribes face conflict with palm oil plantations, the forest industry, and coal mining companies. Furthermore, their conflicts are exacerbated with transmigrant communities and national parks under the national government, an internal conflict among the head and members of ancestral communities, and conflict with the head of the village. Inevitably, 26 indigenous tribes have to struggle to protect the dignity and wealth of their land.

1.2. Legal Education for Talang Mamak, Indigenous Peoples in Protecting Customary Land Rights

As an unwell-educated community, Talang Mamak lacks an understanding of state law utilized by the opposition to exacerbate discrimination. For example, PT Inecda managed the customary land of *Talang Sungai Parit* indigenous tribes without consent from the community leader or *batin* (Seftirizanda, 2016, p. 13). Companies also use state law to criminalize Talang Mamak while protecting their customary land (Ali, 2016). In addition, Talang Mamak will lose their ancestral land because Talang Mamak have not been legally recognized as indigenous peoples under the regulation of the Ministry of Home Affairs Number 52 of 2014.

Undoubtedly, protecting the ancestral land of Talang Mamak needs an understanding of state law and customary law. Without customary law, state law will stand only for business interests. On the other hand, without a state law, the claim of Talang Mamak about the ancestral area, land, and forest will be unilateral claims. Hence, implementing legal pluralism in Talang Mamak, particularly in protecting customary land rights, is important since it has been conceptualized as a situation where different sources of law exist in a community. Meanwhile, without a basic legal degree, Talang Mamak needs a lawyer who understands state law and how to explore and maximize it with their customary law (Harper, 2011, p. 37).

Several NGOs in Riau Province work on legal issues, namely the Legal Aid Institution of Pekanbaru (*Lembaga Bantuan Hukum Pekanbaru/ LBH Pekanbaru*) and the Association of Defenders of Archipelago Indigenous peoples (*Perhimpunan Pembela Masyarakat Adat Nusantara/ PPMAN*) provided legal education training to help bridge the gap. Legal education aims to raise awareness and knowledge of Talang Mamak about their rights under state law and how to explore state law mechanisms in the advocacy of customary land rights protection.

Research Method

This qualitative study reviews academic journals, NGO reports, media coverage, and personal fieldwork observation in examining the effectiveness and efficiency of legal education in protecting customary land rights in the Talang Mamak indigenous peoples area. In enriching this study, some comments from scholars or experts will be included in the analysis. The strategy of community paralegals is assessed under their capability to understand state law, use legal knowledge and mechanisms under state law, and have confidence in establishing a relationship with local government and legal enforcer. The analysis is conducted through the legal empowerment concept to analyze the effectiveness and efficiency of legal education in protecting customary land rights.

Result and Discussion

3.1. Effectivity of Legal Education in Protecting Customary Land Rights of Talang Mamak

Talang Mamak have been reclaiming their ancestral land rights from when and where they were expelled following the massive creation of palm oil plantations, forest industries, and coal mining. The state law is expected to support the customary law to effectively bring changes and pressures upon the whole. Although the effectiveness in solving disputes is not merely about the law, particularly the state law, but also power differentials and applicable law, including customary law (Berenschot and Rinaldi, 2011, p.2).

Effectivity means the expected and existing results or goals are surpassed. In this context, the effectivity can be analyzed how legal education affects indigenous peoples in their outcomes of protecting customary land rights (Berencshot and Rinaldi, 2011, p. 53; Ubink and van Rooij, 2010, p. 18). Talang Mamak has different goals differ on the ancestral communities, such as seizing back the land, establishing people plantations, regular or non-regular compensation, and agreement to separate the land (interviewed with Gilung, Head of AMAN Indragiri Hulu, annual report and personal observation). Meanwhile, the effectiveness of legal education can also be analyzed through how it emphasized the level of Talang Mamak's awareness about their land rights, explored the state law mechanism, and increased confidence (Goodwin and Maru, 2014, p. 25).

Legal education as part of legal empowerment for the community is constructed to support the claims brought in light of the institutional requirements, such as reclaiming or receiving compensation (Maru and Gauri, 2018, p. 2). Moreover, achieving the claims consist of several strategies chosen by the ancestral communities led by community paralegal. Community paralegals might aspire to cultivate knowledge, combine several strategies, pursue remedies creatively, and propose a more plausible model for delivering justice service to all (Maru and Gauri, 2018, p. 5).

Hence, the effectiveness of legal education can be analyzed from chosen strategies and expected goals or results from Talang Mamak. Legal education inspired Talang Mamak to choose strategies: litigation or non-litigation or combining them. Common non-litigation strategies are mapping, education, organizing, public hearing, complaint, discussion, negotiation, and mediation (Mujiburohman et al., 2017, p. 126; Charin & Hidayat, 2019, p. 31; Maru and Gauri, 2018, p. 22; Zakaria, 2016, p. 143). Moreover, litigation strategies are lawsuits and administrative complaints Gilbert and Begbie-Clench, 2018, pp. 7-8).

The chosen strategies are gradually improving the level of understanding of Talang Mamak on state law, especially for community paralegals. Moreover, legal education is expected to trigger Talang Mamak to be more active, establish a commitment to protecting ancestral land, and strengthen community cohesion, representation, and confidence (Gilbert and Begbie-Clench, 2018, p.12). Consequently, the applicable strategies contribute to meeting the goals effectively.

For example, mapping the ancestral area became a main strategy and accelerated advocacy in protecting customary land rights conducted by Talang Mamak (Mujiburohman et al., 2017, p.108). The ancestral area mapping result will be essential to prove the ownership and as evidence in the burden of proof in litigation or non-litigation strategy. Mapping, which emerged in legal education in-class sessions and discussions after the training, is identified as a participatory approach with potential application to legal empowerment evaluation and an essential element in proving ancestral area before the courts (Gilbert and Begbie-Clench, 2018, p. 11).

The mapping process of the ancestral area combines knowledge of customary and state law about the history of owning land, location, and borderline of the ancestral area under the Ministry of Home Affairs regulation. The mapping process has demonstrated to the companies that Talang Mamak is a valid land owner or at least Talang Mamak still have the ancestral area. For example, *Anak Talang* indigenous tribe used their ancestral map to negotiate with PT Runggu Prima Jaya and PT Tasma Puja to obtain regular compensation and urge the company to establish a palm oil plantation for the community (Department of Communication and Information of Riau Province, 2018). For another example, the *Talang Parit* tribe uses their ancestral maps to accelerate advocacy at the province level (Mujiburohman et al., 2017, p. 123; Charin and Hidayat, 2019, p. 26).

3.2. Efficiency of Legal Education in Protecting Customary Land Rights of Talang Mamak

The emergence of legal education as part of legal empowerment is not denied from the pursuit of creative ways to reach justice and minimize cost units (Maru and Gauri, 2018, p. 5). Indigenous peoples worldwide, particularly in Indonesia, only have enormous financial support from grant donors (Ubink, 2018, p. 932). Because of that, legal education is expected to maximize the minimum resources in supporting the strategies.

However, legal education offers costly state law mechanisms for indigenous peoples. For example, a district court lawsuit until the Supreme Court will spend money, energy, and time. In Indonesia, the paralegal's role as a lawyer was delegitimized (Lutfiyah, 2021, p. 527) because the paralegal is only legitimate in providing legal assistance outside the court. Hence, indigenous peoples must pay for lawyer services or are uneasy about seeking legal aid centers with a voluntary spirit (Azalia, 2020, p. 86).

Indigenous peoples were forced to accept defeat in a weak position without written, valid and concrete evidence (Gilbert and Begbie-Clench, 2018, p. 6) while arguing claims against multinational companies in the courtroom. The Constitutional Court Decision Number 35 of 2012 acknowledged that *Talang Parit* and *Talang Perigi* indigenous tribe sued PT Inecda, and the claim failed. The decision argued that the judge recognized the customary forest and land; however, Talang Mamak needed to provide evidence to prove its claims.

Efficiency is interconnected with effectivity, even though efficiency does not merely focus on a goal or result but also on resources used in reaching a goal or result. In an efficient context, legal education is expected to urge community paralegals in Talang Mamak to use resources efficiently. Meanwhile, legal education has not contributed to resource usage efficiently since the mechanism provided by the state law still requires cost, time, and other resources. A lawsuit in the district court is costly because it requires a register fee, location assessment fee, fee for the lawyer, and weekly operational cost. In addition, the judges will assess the claim following written evidence, and it is challenging for Talang Mamak since they have not been recognized officially by the local government.

Therefore, legal education urges Talang Mamak creatively to manage its limited resources. Since the litigation mechanism is costly, the non-litigation mechanism is the most efficient model for protecting customary land. According to the fieldwork observation, community paralegals frequently negotiated or meditated with companies or local governments to protect their customary land rights because non-litigation offers low-budget advocacy and measurable effects.

Moreover, supported by AMAN Indragiri Hulu and other NGOs, Talang Mamak proposes several programs for grants or donors as part of the consequences of intervention. Although the intervention fails to meet outcomes, it still has important effects (Li, 2020).

Conclusion

The achievement of legal education in Talang Mamak relies upon their indigenous tribes' desired outcomes and strategies. Research has indicated that Talang Mamak has enhanced its comprehension of state law to attain its preferred outcomes. The effectiveness and efficiency of legal education have been demonstrated in the protection of customary land rights of Talang Mamak. Nevertheless, although the intervention may fail to attain its desired outcomes, it still has important impacts as lessons learned for future advocacy.

The importance of legal education in protecting customary land rights for Talang Mamak underscores the imperative for national and local governments to support this initiative. Although non-governmental organizations are spearheading legal education programs, the government must intercede and extend constitutional protection to the indigenous peoples of Indonesia.

References

- Ali, M. (2016, March 17). *Maklumat Talang Mamak Melawan Korporasi* [The Announcement of Talang Mamak Against Companies]. Jikalauhari.
<https://jikalauhari.or.id/kabar/rilis/maklumat-talang-mamak-melawan-korporasi/>
- Arizona, Y., & University Gajah Mada. (2023). Adat as strategy for legal struggle and legal mobilization. *The Indonesian Journal of Socio-Legal Studies*, 2(2), 1-24.
<https://doi.org/10.54828/ijsls.2023v2n2.3>.
- Azalia, S.N. (2020). Peran dan Efektivitas Lembaga Bantuan Hukum Asosiasi Perempuan Indonesia untuk Keadilan dalam pendampingan kasus kekerasan terhadap perempuan. *The Digest: Journal of Jurisprudence and Legisprudence*, 1(2), 79-104.
<https://doi.org/10.15294/digest.v1i2.48622>.
- Berenschot, W. & Rinaldi, T. (2011). *Paralegalism and legal aid in Indonesia*. Universiteit Leiden Faculty of Law, Open Society Institute, and UNDP.
- Charin, R.O., & Hidayat, A. (2019). The efforts of Talang Mamak Indigenous Peoples to Maintain Their Existence in Customary Forest Resources Battle. *Society*, 7(1), 21-36.
<https://doi.org/10.33019/society.v7i1.78>.
- Clarke, G. (2001). From ethnocide to ethnodevelopment? Ethnic minorities and indigenous peoples in Southeast Asia. *Third World Quarterly*, 22(3), 413-436.
<https://doi.org/10.1080/01436590120061688>.
- Department of Communication and Information of Riau Province. (2018). Konflik Masyarakat Adat dengan Perusahaan RPJ Tidak Kunjung Selesa [The conflict between indigenous peoples with PT RPJ has not solved].
<https://mediacenter.riau.go.id/read/40759/konflik-masyarakat-adat-dengan-perusahaan-rpj.html>
- Erica, H. (2011). Engaging with customary justice systems. In Ubink J., & McInerney, T. (Eds.), *Customary Justice: Perspective on Legal Empowerment* (1st ed., pp. 29 – 42). International Development Law Organization (IDLO)
- Gilbert, J., & Begbie-Clench, B. (2018). Mapping for Rights: indigenous peoples, litigation, and legal empowerment. *Erasmus Law Review*, 11(1), 6-13.
<https://doi.org/10.5553/ELR.000092>.
- Goodwin, L., & Maru, V. (2014) *What do we know about legal empowerment? Mapping the evidence*. Working Paper May 2014. Namati.
- Goodwin, L. and Maru, V. (2017). What do we know about legal empowerment? Mapping the evidence, *Hague Journal on the Rule of Law*, 9(1), 157-194.
<https://doi.org/10.1007/s40803-016-0047-5>.
- Kingsbury, B. (2008). Indigenous Peoples in International Law: A Constructivist Approach to the Asian Controversy. In Erni, C. (Ed.), *The Concept of Indigenous Peoples in Asia. A Resource Book* (1st ed., pp. 103 – 160). International Work Group for Indigenous Affairs (IWGIA)

- Li, T.M. (2020). Epilogue: customary land rights and politics, 25 years on, *The Asia Pacific Journal of Anthropology*, 21(1), 77-84. <https://doi.org/10.1080/14442213.2020.1680016>
- Lutfiyah, K. (2021). Equality before the law principle and the legal aid for the poor: an Indonesian insight, *The Indonesian Journal of International Clinical Legal Education*, 3(4), 517-536. <https://doi.org/10.15294/ijicle.v3i4.48292>.
- Maru, V., & Gauri, V. (2018). Paralegals in comparative perspective: What have we learned across these six countries. In Maru V., & Gauri, V. (Eds.), *Community paralegals and the pursuit of justice*. (1st ed., pp. 1 – 42). Cambridge University Press. <https://doi.org/10.1017/9781316671801>.
- Mujiburohman, D.A., Salim, M.N., & Dewi, A.R. (2017). Masyarakat Adat Talang Mamak Berjuang Menemukan Tanahnya [Talang Mamak indigenous peoples struggle to find their lands]. In Pusat Penelitian dan Pengabdian Kepada Masyarakat (PPPMP). (2017). *Persoalan Agraria Kontemporer: Teknologi, Pemetaan, Penilaian Tanah dan Konflik [The contemporary agrarian issue: technology, mapping, assessment, and conflict]*. STPN Press.
- Seftirizanda, Y. (2016). *Penyelesaian Sengketa Tanah PT Inecda Plantation dengan Masyarakat Adat Sungai Parit di Indragiri Hulu* [Land dispute settlement PT Inecda Plantation with Sungai Parit Indigenous Tribe in Indragiri Hulu]. *JOM Fakultas Hukum*, 3(2), 1-15.
- Ubink J., & van Rooij, B. (2010). *Towards Customary Legal Empowerment*. International Development Law Organization and the Bill & Melinda Gates Foundation.
- Ubink, J. (2018). Customary legal empowerment in Namibia and Ghana? Lessons about access, power, and participation in non-state justice systems. *Development and Change*. The Institute of Social Studies, 49(4), 930-950. The Hague. <https://doi.org/10.1111/dech.12415>.
- Zakaria, R.Y. (2016). Strategi pengakuan dan perlindungan hak-hak masyarakat (hukum) adat: sebuah pendekatan sosio-antropologis [the recognition and protection strategy of indigenous peoples: a socio-anthropology approach]. *Bhumi, Jurnal Agraria dan Pertanahan*, (2)2 , 133-150. <https://doi.org/10.31292/jb.v2i2.66>.

The Immediate Socio-Economic Impacts of the Rice Tariffic Law of 2019 on Small-Scale Mindanao Rice Farmers

KRISTINE BACARRA CABARDO¹

Institute of Human Rights and Peace Studies, Mahidol University, Thailand

Abstract

This research study examines the immediate socio-economic impacts of the Rice Tariffication Law (RTL) on small-scale rice farmers in Mindanao, Philippines. The study adopts a qualitative research design, utilizing case studies, in-depth interviews with ten farmers and a rice mill owner, and two focus group discussions. The participants were selected based on their involvement in rice farming before and during the implementation of the RTL and their representation from different regions in Mindanao. The study analyzes the collected data by identifying emerging patterns, themes, and ideas and compares them with existing statistics, government data, and academic research. The findings reveal that the farmers faced exacerbated challenges regarding land ownership, access to planting and post-harvest equipment, declining incomes, and the need to diversify income sources while implementing RTL. In addition, they have limited prior knowledge and involvement in the formulation and implementation of the law. They lack access to consultation and decision-making processes, highlighting a disconnect between the farmers and the legal decision-making apparatus. The research also explores the impact of the Rice Competitiveness Enhancement Fund (RCEF) on farmers, revealing varying experiences and the need for more effective support. Based on the findings, the research recommends policy changes prioritizing research and data-driven decision-making, inclusive policy formulation with active farmer participation, comprehensive support programs, sustainable agricultural practices, and strengthening social support systems. By implementing these recommendations, the study aims to alleviate the socio-economic difficulties faced by small-scale rice farmers in Mindanao and promote a more sustainable and inclusive agricultural industry.

Keywords: Rice Tariffication Law, Small-scale rice farmer, sustainable agriculture, agriculture, Philippines agriculture.

¹ Kristine Cabardo is a student of Master of Arts in Human Rights and Democratization at Mahidol University, Thailand

Introduction

The Philippines has long relied on rice as a staple food, with a significant portion of its population cultivating rice, especially in Asian countries like the Philippines, where rice remains a crucial food source (Cororaton, 2004). However, the challenges faced by small-scale rice farmers in Mindanao, the country's southernmost island, have only been exacerbated by the implementation of the Rice Tariffication Law (RTL) in 2019. The immediate impacts of this law on these farmers, who cultivate less than 5 hectares of land for rice production, have raised serious concerns about their economic stability and well-being.

Small-scale rice farmers in Mindanao have long encountered many socio-economic difficulties, including poverty, armed conflicts, and inadequate access to resources and support systems (Balicasan, 2003). These farmers have traditionally relied on subsistence farming to meet their needs, but their voices have often been excluded from important policy-making decisions that directly affect their livelihoods. While the RTL aimed to ensure a stable rice supply for consumers at low prices, it has led to significant challenges for these farmers.

The implementation of the RTL opened doors for increased rice imports, flooding the local market with cheap imported rice and resulting in stiff competition for local farmers (Arcalas, 2022). The absence of protection mechanisms left them struggling to compete, causing reduced demand for their produce and declining prices. This situation has led to a considerable decrease in their income, adding to the economic vulnerabilities that these farmers were already facing.

While the law was intended to secure a sufficient supply of low-priced rice for consumers, questions have arisen about the government's commitment to safeguarding the price security of small-scale rice farmers. With a substantial influx of rice imports, these farmers are exposed to volatile market conditions and unpredictable price fluctuations. The government's efforts to provide income security for farmers have been questioned, especially given the rising production costs and falling selling prices that farmers confront.

In response to these challenges, small-scale rice farmers in Mindanao have exhibited resilience and resourcefulness. Many have diversified their income by farming livestock and cultivating additional food crops for household consumption and other needs (Dy, 2013). These alternative strategies are driven by the pressing need to secure additional income streams and mitigate the effects of unpredictable rice prices and economic uncertainties.

The immediate socio-economic impacts of the RTL on these farmers have prompted the need for a deeper understanding of the intricate dynamics between policy implementation, farmers' livelihoods, and economic well-being. This study delves into the specific impacts of the RTL on small-scale rice farmers in Mindanao, shedding light on the challenges they face and the complexities of their responses. By identifying and analyzing these impacts, this research aims to contribute to informed policy decisions prioritizing these vulnerable farmers' needs and concerns.

Methodology

This study employs a qualitative research design focusing on case studies to delve into the immediate socio-economic impacts of the Rice Tariffication Law (RTL) on small-scale rice farmers in Mindanao. Qualitative research allows for an in-depth exploration of the participants' experiences and perspectives, providing rich insights into the topic's complexities.

The central research question of this study is: "What are the immediate socio-economic impacts of the Rice Tariffication Law on small-scale rice farmers in Mindanao?" The primary objectives include investigating the RTL's specific impact on small-scale rice farmers' incomes, particularly concerning production expenses and income from selling rice. Additionally, the study assesses how the subsistence of the families' basic needs of small-scale rice farmers has been affected by the implementation of the RTL. Furthermore, this study examines the changes in land ownership and access to farming equipment among small-scale rice farmers following the RTL.

The participants in this study consist of small-scale rice farmers in Mindanao who have been actively engaged in rice farming before, during, and after the implementation of the RTL (RA 11203). The inclusion criteria required that the participants own or till a rice farm of no more than 5 hectares in size. A purposive sampling technique was employed to select research participants from three regions: Surigao Del Sur, Lanao Del Norte, and Bukidnon.

In-depth interviews and focus group discussions (FGD) were conducted with the selected small-scale rice farmers to collect data. The individual interviews provided a deeper understanding of each participant's experiences and perspectives, while the FGDs facilitated the exploration of common and shared experiences within communities. Open-ended questions encouraged participants to freely express their thoughts and experiences about the RTL's impact on their socio-economic well-being. Due to logistical considerations, some interviews were conducted remotely via internet communication platforms.

The collected data underwent thematic analysis to identify patterns, themes, and ideas from the participants' narratives. The researcher transcribed and organized the interview and FGD data, paying attention to recurring patterns and key themes related to the immediate socio-economic impacts of the RTL. Additionally, the analysis involved examining existing statistics, government data, and academic research pertinent to the subject. This approach allowed for a comprehensive understanding of the direct impacts of the RTL on small-scale rice farmers, contrasting their reported experiences with the broader economic and governmental concerns surrounding the RTL's liberalization policy.

Ethical guidelines were adhered to, ensuring the privacy and confidentiality of the participants. Informed consent was obtained from all participants before their involvement in the study, and participants were informed of their right to withdraw at any stage without penalty. To

protect participant identities, pseudonyms were utilized in reporting findings. While acknowledging potential limitations, including the small sample size of participants and the focus on a specific geographic area (Mindanao), efforts were made to ensure data richness and meaningful insights.

Findings

The findings of this study provide a nuanced understanding of the direct and immediate socio-economic impacts of the Rice Tariffication Law (RTL) on small-scale rice farmers in Mindanao. Through a series of interviews and focus group discussions, key insights emerged, shedding light on how the RTL implementation intensified the challenges these farmers faced, exacerbating their pre-existing difficulties. In the course of the law's implementation,

One pivotal discovery is the unmistakable link between the RTL and the escalating struggles of the farmers. These struggles are particularly evident in the context of limited land availability, rising production costs, and the persistently low price of rice in the market from 2018 up to 2022, when the law was implemented until the data collection date of this research. Farmers, already grappling with these hardships, were confronted with a compounding effect due to the RTL's provisions. For instance, as the market became flooded with cheaper imported rice, local farmers competed at an unequal footing, leading to a precipitous decline in demand for their produce. The rice production cost maintained at at least PHP 14 per kilo, while the selling price dropped as low as PHP 10 per kilo. Consequently, the income from rice cultivation, which was already meager, plummeted further, pushing their economic stability to the brink.

Moreover, the findings unveiled the pronounced vulnerability of small-scale farmers due to their lack of access to essential resources such as land and farming equipment. Many participants in the study were tenants on the land they cultivated, heavily reliant on renting post-harvest equipment and facilities. Notably, none of the interviewed farmers owned planting machinery, posing a substantial challenge to their productivity and income generation. The RTL Law, rather than alleviating such struggles, exacerbated them by exposing these farmers to volatile market conditions and unpredictable price fluctuations, eroding their income prospects.

Prior to the passage of the law, six out of 10 farmers owned the land that they till. However, as the law was implemented, only three out of the ten (10) farmers owned their land, while the other seven lost their land and continued farming as tenants. While the government introduced the Rice Competitiveness Enhancement Fund (RCEF) to assist farmers, the study revealed uneven experiences among respondents. Astonishingly, only those who belonged to farmers' associations in Surigao Del Sur were eligible to access the full spectrum of assistance the Department of Agriculture provided under the RCEF. This lopsided distribution underlines the inequitable accessibility of support for farmers across various regions, potentially exacerbating disparities within the community of small-scale rice producers.

Beyond economic repercussions, implementing the RTL also cast a shadow on the future of rice farming among small-scale farmers. The findings indicated that many farmers harbored reservations about continuing the farming tradition, with some expressing intentions to steer their children away from agriculture. This trend could lead to a decline in the farming population in the years to come, posing a broader challenge to the sustainability of agricultural practices in the region.

In response to these profound challenges, the study identifies the imperative for multi-pronged interventions. It recommends a data-driven approach to policy formulation, ensuring that solutions are rooted in a comprehensive understanding of the issues faced by farmers. Additionally, the study emphasizes the critical need for inclusive policy-making, suggesting that farmers' participation in shaping agricultural policies is essential. Strengthening the RCEF is also underscored as crucial, with a focus on tailoring assistance to meet farmers' specific demands and mitigate their dependence on external financiers. Lastly, promoting sustainable agricultural practices and bolstering social support systems, including healthcare and education, emerged as integral strategies to empower farmers and secure their livelihoods beyond rice cultivation.

This study unequivocally establishes the intricate connection between the Rice Tariffication Law and the immediate challenges confronting small-scale rice farmers in Mindanao. By unearthing these direct impacts, the research underscores the need for targeted policy reforms that address the unique socio-economic vulnerabilities of these farmers. The study's insights illuminate a path forward that prioritizes the well-being of farmers and the sustainability of the agricultural sector in the region.

Conclusion

In conclusion, this study sheds light on the intricate fabric of challenges woven into the lives of small-scale rice farmers in Mindanao. While the immediate socio-economic impacts of the Rice Tariffication Law (RTL) are multi-dimensional, specific instances demonstrate how the law has deepened the fissures of existing problems. These instances, drawn from the experiences of our farmer participants, underscore how the law's implementation has exacerbated their struggles.

As we delve into the narrative of these farmers, it is evident that the RTL, rather than simply addressing rice importation, has catalyzed an intricate web of challenges. Rising production costs and plummeting market prices have cast a shadow over their economic stability, as evidenced by the staggering deficit between costs and earnings. The Rice Competitiveness Enhancement Fund (RCEF), envisioned as a lifeline, has often fallen short of expectations, leaving farmers ensnared in cycles of debt.

In the backdrop of these challenges, the small-scale rice farmers of Mindanao have shown resilience in diversifying their income streams. Nevertheless, the broader socio-economic issues

persist, and the threat to their livelihoods looms large. The decision of many farmers to steer their children away from the farming tradition underscores the urgency of addressing these concerns. With this situation, there are recommendations that this paper would like to propose. On the community level, the farmers must be introduced collectively to empower them and their communities, which is equally important as raising awareness regarding new laws or policies. At a national level, there should be thorough and more inclusive policy-making measures to ensure that it is an informed decision based on data and the democratic process of the stakeholders. With these recommendations, we aim to create a more resilient and fairer environment for small-scale rice growers. By addressing the RTL's immediate effects through these multifaceted measures, we can foster a future in which the hard work of these farmers is justly rewarded, and the country's food security is strengthened.

References

- Arcalas, J. Y. (2022, September 7). *PHL rice imports jump by 64% in January-August | Jasper Y. Arcalas*. BusinessMirror. <https://businessmirror.com.ph/2022/09/08/phl-rice-imports-jump-by-64-in-january-august/#:~:text=Last%20month%2C%20the%20USDA%20revised,pace%20of%20imports%20this%20year>
- Balisacan, A. M., & Ravago, M.-L. V. (2010). *The Rice Problem in the Philippines: trends, constraints, and policy imperatives*. Diliman: Department of Agriculture University of the Philippines. Munich Personal RePec Archive.
- Cororaton, C. B. (2004). *Rice Reforms and Poverty in the Philippines: A CGE Analysis*. Asian Development Bank Institute. <https://www.adb.org/sites/default/files/publication/157236/adbi-rp57.pdf>
- Dy, R. (2012, November 25). Job creation is not a walk in the park. *Business Mirror*. <https://business.inquirer.net/153695/job-creation-is-not-a-walk-in-the-park>

THE RIGHT TO A CLEAN AND HEALTHY ENVIRONMENT: PLASTIC POLLUTION IN KATHMANDU AND THE RESPONSE OF THE GOVERNMENT OF NEPAL

MA. Alexandra Patricia Engel¹

Institute of Human Rights and Peace Studies, Mahidol University, Thailand

Abstract

The world is facing a global plastics crisis. Every living species throughout every ecosystem on the planet is detrimentally affected by plastic pollution. However, people in vulnerable situations and poverty are disproportionately affected by plastic waste and its implications on their lives and full enjoyment of human rights. Although Nepal has strict laws regarding plastic and environmental protection, their implementation is lacking. In addition, the waste management system is weak, and there is a lack of general awareness. Throughout Kathmandu, plastics are thrown into rivers, dumped on their banks, or along the streets, affecting the citizens. In this context, this paper seeks to study the right to a clean and healthy environment of the people living in Kathmandu, focusing on environmental justice. Furthermore, this research will identify policy and practical measures of the government of Nepal regarding plastic pollution and their applicability and efficiency. Through qualitative tools such as in-depth and key informant interviews with stakeholders such as lawyers, judges, scholars, and government officials, this research hopes to draw a holistic approach to the general discussion of plastic pollution and the right to a clean and healthy environment by including different perspectives. Therefore, this study contributes significantly to identifying the obligations and needed assistance (capacity and resources) of the government (duty bearer) to fulfill their commitments regarding safeguarding the right to a clean and healthy environment as guaranteed by the Constitution of Nepal.

Keywords: Environment and Human Rights, Plastic Pollution, Government, Nepal

Introduction

Until today, the right to a clean and healthy environment has received constitutional recognition and protection in more than 100 states worldwide (Boyd, 2019). Nepal is one of these countries. Article 30 (1) of Nepal's Constitution of 2015 states that "Every citizen shall have the right to live in a clean and healthy environment." Besides the constitutional environmental

¹ Student of Asia Pacific Master of Arts (APMA) in Human Rights and Democratization, Mahidol University, Thailand

provision, the *Godavari Marble* case served as a milestone in the development of the Environment Protection Act 2053 BS ² (1997) (Parasai & Shrestha, 2021). In 2019, the Environment Protection Act 2076 BS (2019) replaced the earlier law. The Act was adopted and enacted in Nepal to uphold the constitutional right of citizens to a clean and healthy environment. The state and its residents are both required under this green law to safeguard and enhance the environment. The Act contains many favorable features that support the concept of environmentalism. According to the Act, a victim of environmental pollution has the right to submit a request for compensation against the individual or group responsible for the pollution to the relevant body (Article 36 (2) of the Environment Protection Act 2076 BS (2019)). This is in accordance with the polluter pays principle (PPP) as stated in Article 30 (2) (“The victim of environmental pollution and degradation shall have the right to be compensated by the pollutant as provided for by law”) of the Nepalese Constitution (Yadav & Jha, 2022).

The second essential law, especially concerning plastic waste, is the Solid Waste Management Act 2068 BS (2011). In order to maintain a clean and healthy environment, the Act seeks to reduce the harmful impacts of solid waste on the environment and public health. It states that infrastructure for the collection, treatment, and ultimate disposal of municipal solid waste must be built, operated, and managed by local entities, such as municipalities (Article 3 of the Solid Waste Management Act 2068 BS (2011)). The Act requires local government entities to take the required actions to encourage the "reduce, reuse, and recycle (3R) campaign (Article 10 of the Solid Waste Management Act 2068 BS (2011), including the source-level segregation (Article 6 of the Solid Waste Management Act 2068 BS (2011)) of solid waste. Furthermore, it allows the punishment of anyone who disposes of solid waste in the street or other public places (Article 38 (g) of the Solid Waste Management Act 2068 BS (2011)). The enactment of the law in 2011 was a significant step toward enhancing solid waste management practices in Nepal; however, it has not been adequately implemented regarding actions and results on the ground (ADB, 2013). In this context, this paper aims to point out the response of the government of Nepal to address plastic pollution and thus guarantee the right to a clean and healthy environment.

Methodology

This study applied a qualitative research method. Interviews with NGO members and other relevant stakeholders, such as government officials and lawyers, in the field of environment in Nepal were conducted. In total, ten individuals were interviewed. The researcher contacted these experts purposefully based on their expertise. All interviews were conducted from 21 May to 16 June 2023 in a semi-structured manner (only one person submitted the answers via email on 30 June 2023). In this type of interview, the interviewer leads the conversation with the interviewee based on previously prepared questions. The following table shows the research participants.

² *Bikram Samvat* (BS) is the official calendar of Nepal.

| Respondents | Occupation | Remark |
|--------------------|---|--|
| Respondent 1 | Member of the National Human Rights Commission of Nepal | Senior Advocate and Professor of Law |
| Respondent 2 | Program Development Officer, CREASION Nepal | NGO |
| Respondent 3 | Executive Director, Clean up Nepal | NGO |
| Respondent 4 | Chief Operations Officer, Doko Recyclers | Social Enterprise |
| Respondent 5 | Portfolio Manager (Resilience & Environment), UNDP Nepal | UN |
| Respondent 6 | Executive Director, Institute for Social and Environmental Transition Nepal | Visiting Professor at KSL |
| Respondent 7 | Information Officer, Department of Environment | Government Official |
| Respondent 8 | Environment Inspector, Department of Environment | Government Official (answered the interview questions via email) |
| Respondent 9 | Constitutional and Human Rights Lawyer | |
| Respondent 10 | Environmental Lawyer | Teaching Faculty at Tribhuvan University |

Table 1: Profile of Respondents (Source: own table by Author)

Findings

All study participants, even the two government officials themselves, agree that the government's measures to tackle plastic pollution are not sufficient. This insufficiency can be derived from the statements below.

We don't even have a single mention of plastic in our policies. So how can we expect a robust mechanism to manage plastic pollution? And especially I have had a conversation with a few of the government officials regarding plastic waste, and they do not even understand what are the types of plastics or the concept of recycling. They do not have any knowledge regarding this. So, for now, we can say that the response of the government has been really non-existent regarding plastic pollution (Respondent 2, personal interview, 22 May 2023).

In that context, Respondent 5 mentions that the Ministry of Forest and Environment (MoEF) and the Department of Environment (DoEnv), which oversee these issues, take measures, but they never comply with them. One reason is that they do not have as much authority as other ministries, and another is that they do not have enough human resources (personal interview, 16 June 2023). The representative of the DoEnv, Respondent 7 agrees and explains:

In our department, we don't have sufficient manpower. Most of [the employees] are not technical staff. They are administrative, they are helpers, drivers, everything. And with our director general all together, we are 53, and this number is not sufficient to control all of Nepal with all the environmental issues (personal interview, 16 June 2023).

Besides the lack of workforce, the government budget allocated to environmental protection is also insufficient because the existing infrastructure, for example, for waste management, has to be expanded, and that requires much funding (Respondent 7, personal interview, 16 June 2023). According to Respondent 8, for this year 2023/24, NPR 15.56 billion has been allocated for MoFE, a slightly higher amount than in the previous year (personal communication, 30 June 2023). For 2022/23, it was divided into two sections and given NPR 2.17 billion for the President Chure Conservation Program³ and NPR 13 billion for the MoFE. In contrast, the Ministry of Physical Infrastructure and Transport received NPR 131.59 billion and the Ministry of Urban Development NPR 66.17 billion (Sherpa, 2023). This fund shows that the government's focus is on development policy and not on addressing environmental concerns, although sustainable development and preservation of the planet for humanity can only be achieved in harmony with both (Thirlwall, 1994).

According to Respondent 9, plastic-related pollution in Nepal is not because there is a lack of a treaty. There are “good constitutional provisions and good laws,” but internalizing them and enforcing them in a genuine way is a problem. He further elaborates that: “At least we have a textual guarantee. But a long way to go to translate that into reality. We need to review our legislation considering the right to a clean environment and other obligations in relation to the environment” (personal interview, 26 May 2023). Respondent 10 shares this standpoint and states: “There are laws, there are very wonderful laws, but we lack in the implementation aspect” (personal interview, 23 May 2023). Furthermore, the lack of awareness among political actors responsible for dealing with policy issues, as well as the absence of proper leadership, civil society involvement, institutional commitment, and enforcement, are the key issues preventing some of the core constitutional and legal provisions from being effectively implemented (Respondent 1, personal interview, 30 May 2023).

However, in recent years, the government has repeatedly taken initiatives to bring plastic pollution under control. In September 2021, the MoEF imposed a complete ban on plastic bags below 40 microns by publishing a notice in the Nepal Gazette (Himalayan News Service, 2022b). According to Respondent 8, the DoEnV is strictly monitoring the status of the ban on the production, import, sale, distribution, and use of such plastic bags (personal communication, 30 June 2023), but implementation remains doubtful as people continue to manufacture and use plastic bags (Ojha, 2021). To address the problem in May 2022, the government announced the Action Plan for the Ban on Plastic Bags (Himalayan News Service, 2022a). Furthermore, in July 2022,

³ The program's objective is to protect the natural resources of the Chure region, which makes up 12.78 percent of Nepal, through ecological service promotion and sustainable resource management.

the government banned plastic flower production, import, sale, distribution, and storage (Himalayan News Service, 2022c). This decision is in line with Section 15 of the Environment Protection Act 2076 BS (2019), stating that the government may determine necessary standards for pollution mitigation. Overall, when asked about the government's current measures, Respondent 8 replies that DoEnv also issues notices from time to time to discourage the use of plastic bags and plastic flowers. In Kathmandu, department stores, shopping malls, and commercial establishments are requested to use cotton, jute, or paper bags instead of plastic bags (personal communication, 30 June 2023). However, even if a certain amount of action is taken on the side of the government, the other side of the NGOs or the judiciary believes that this is by no means sufficient.

Conclusion

This paper aimed to examine the Nepalese government's response to plastic pollution in Kathmandu and its respect for the right to a clean and healthy environment. The Nepalese government has an obligation to provide a clean and healthy environment to its people, as stated in Article 30 of the Constitution, which includes doing everything possible to mitigate the impacts of plastic pollution. Nevertheless, not only the Constitution serves as a basis for tackling the plastic crises in Nepal. The Environment Protection Act 2076 BS (2019), as well as the Solid Waste Management Act 2068 BS (2011), are equally important in addressing environmental degradation due to plastic pollution in Nepal. Although these laws exist and are comprehensive in written form, the interviewed representatives of the NGOs and the lawyers strongly criticize the government's enforcement measures. In addition, while the two government officials emphasize that the government is taking certain actions, such as the ban on plastic bags below 40 microns, they also agree that the measurements are not efficient enough.

The three most frequently mentioned issues during the interviews, which need to be improved to tackle the plastic problem, were waste segregation, recycling, and awareness raising. Therefore, in consultation with the waste collection companies, it is the government's responsibility to encourage waste separation and impose penalties for non-compliance, as this is frequently the most effective way to change people's behavior (Steg & Vlek, 2009). In addition, incentives for companies to open recycling facilities, such as tax breaks and introducing recycling technologies already developed elsewhere, should be introduced in Nepal. More educational programs are needed to raise awareness about the harmful effects of plastic on the environment and the behavior of simply throwing garbage out of the bus or dumping it next to the road and on the riverbank. As can be seen from the current situation in Kathmandu, the current efforts are not yet sufficient.

The extent to which the plastic crisis will progress depends on the government's willingness, the importance it will place on environmental protection in the future, and whether it is prepared to focus not only on economic development but also on the environment at the same

time. Crucial for a fundamental change of direction is also allocating more budget to the MoFE and increasing human resources.

The right to a clean and healthy environment is also becoming increasingly recognized internationally. In October 2021, a milestone in the development was reached when the Human Rights Council (HRC) adopted resolution 48/13⁴, which considers the right to a clean, healthy and sustainable environment a human right, which is also important to fulfill other human rights (IUCN, 2021). The second decisive step was made in July 2022, when the United Nations General Assembly (UNGA) recognized the human right to a clean, healthy and sustainable environment for everyone. The resolution 76/300⁵ was adopted by the UNGA with a recorded vote of 161 in favor and zero against, with eight abstentions. Although it is not legally binding on the 193 member states of the United Nations, it will lead to more awareness. It will bundle and strengthen international action for the protection of the environment. These efforts will also impact Nepal and contribute to the government's commitment to take its obligations into more significant consideration.

⁴ A/HRC/RES/48/13.

⁵ A/RES/76/300.

References

- ADB. (2013). *Solid Waste Management in Nepal: Current Status and Policy Recommendations*. ADB.
<https://www.adb.org/sites/default/files/publication/30366/solid-waste-management-nepal.pdf>
- Boyd, D. (2019). Chapter 2: The Right to a Healthy and Sustainable Environment. In Y. Aguila & J. E. Viñuales (Eds.), *A Global Pact for the Environment: Legal Foundations*. University of Cambridge.
- Himalayan News Service. (2022a, 21 May). Action plan to implement ban on plastic bags below 40 microns. *The Himalayan Times*.
<https://thehimalayantimes.com/nepal/action-plan-to-implement-ban-on-plastic-bags-below-40-microns>
- Himalayan News Service. (2022b, 27 July). Govt to strictly monitor ban on plastic bags. *The Himalayan Times*. <https://thehimalayantimes.com/nepal/govt-to-strictly-monitor-ban-on-plastic-bags>
- Himalayan News Service. (2022c, 31 July). Government imposes ban on plastic bouquets, flowers, garlands. *The Himalayan Times*.
<https://thehimalayantimes.com/kathmandu/government-imposes-ban-on-plastic-bouquets-flowers-garlands>
- IUCN. (2021, 29 October). *The Right to a Healthy Environment*. IUCN.
<https://www.iucn.org/news/world-commission-environmental-law/202110/right-a-healthy-environment>
- Ojha, A. (2021). *Government reintroduces ban on plastic bags, but implementation remains doubtful*. <https://kathmandupost.com/national/2021/09/17/government-reintroduces-ban-on-plastic-bags-but-implementation-remains-doubtful>
- Parasai, R. B., & Shrestha, K. (2021). Legal and Judicial Aspects of Sustainable Development in Nepal: A Bird's Eye View. *International Sustainable Development Research Society*. <https://oxford-abstracts.s3.amazonaws.com/c6e25c6e-eb50-4a5a-836d-4d2bc5a3e604.pdf>
- Sherpa, S. (2023, 30 May). Budget of 1.751 trillion unveiled for 2023-24. *The Himalayan Times*. <https://thehimalayantimes.com/nepal/budget-of-1751-trillion-unveiled-for-2023-24>
- Steg, L., & Vlek, C. (2009). Encouraging pro-environmental behavior: An integrative review and research agenda. *Journal of Environmental Psychology*, 20, 309–317.
<https://doi.org/10.1016/j.jenvp.2008.10.004>
- Thirlwall, A. P. (1994). Development and the Environment. In A. P. Thirlwall (Ed.), *Growth and Development: With Special Reference to Developing Economies* (pp. 211–231). Macmillan Education UK. https://doi.org/10.1007/978-1-349-23195-9_9

Yadav, A. K., & Jha, J. (2022). Environmental protection regime under Nepal's constitutional renaissance: A revisit to the salient features of the Environment Protection Act, 2019. *Gehu Law Review*, 2(1). <https://gehulawreview.com/wp-content/uploads/2022/02/GLR22P2.pdf>

HUMAN RIGHTS NGOS DURING POLITICAL CRISIS: AN ANALYSIS OF PUBLIC ISSUANCES OF HUMAN RIGHTS ORGANIZATIONS ON SRI LANKA’S ARAGALAYA

Edgardo Pedro Legaspi¹

Institute of Human Rights and Peace Studies, Mahidol University, Thailand

Abstract

As a severe economic and political crisis, Sri Lanka’s popular uprising in 2022, or the *Aragalaya* as it was called locally, gave rise to serious human rights violations. This paper's main purpose is to examine how the crisis may test the impartiality of human rights non-governmental organizations in relation to specific issues and the crisis itself. Its methodology compares the content of the reports and statements of various domestic and international human rights organizations on this topic, which were issued throughout the crisis and its aftermath. The findings reveal differences between the political stances of domestic and international human rights NGOs, which serves as an essential starting point for further inquiry into how human rights are applied during periods of political polarization.

Keywords: Political crisis, human rights advocacy, politics, non-governmental organizations, NGOs, Sri Lanka, Aragalaya

Introduction

Public advocacy through statements and reports is the most publicly visible aspect of human rights work. It is the primary method by which NGOs, in their recognized role in the international human rights system under Article 71 of the United Nations Charter, draw attention and demand state accountability and compliance with existing standards. Advocacy, including documentation and reporting work, helps bring international attention and elicit government responses to human rights violations.

During the political crisis in Sri Lanka in 2022, human rights non-governmental organizations (NGOs), through their advocacy, drew attention to the state’s violent responses to peaceful protests, arbitrary arrests, the declaration of states of emergencies, and the impact of the economic crisis. However, the main demands of the “*Aragalaya*” (the Sinhala word for “struggle,” which is used to refer to the continuous mass protests that occurred during the crisis) are highly political: the resignation of the country’s President (“#GotaGoHome”), and change of the political system (“system change”). These calls emerged from the popular perception of the government’s

¹ Student of the Asia-Pacific Master of Arts (APMA) in Human Rights and Democratization, Mahidol University, Thailand.

culpability for the economic crisis and its failure to protect the people. These calls challenge the basic human rights framework of state obligations, which presumes the existence of a government as a duty bearer that should respect, protect and fulfill human rights.

This paper will examine how NGOs, through their human rights advocacy, approach a political crisis like the Aragalaya. It analyses public advocacy material produced by human rights NGOs. The specific questions are relevant for this paper: What issues were raised by human rights NGOs during the Aragalaya? How do domestic human rights organizations raise these issues differently from international organizations? How do these issues and positions relate to the human rights framework of state obligation to respect, protect and fulfill human rights?

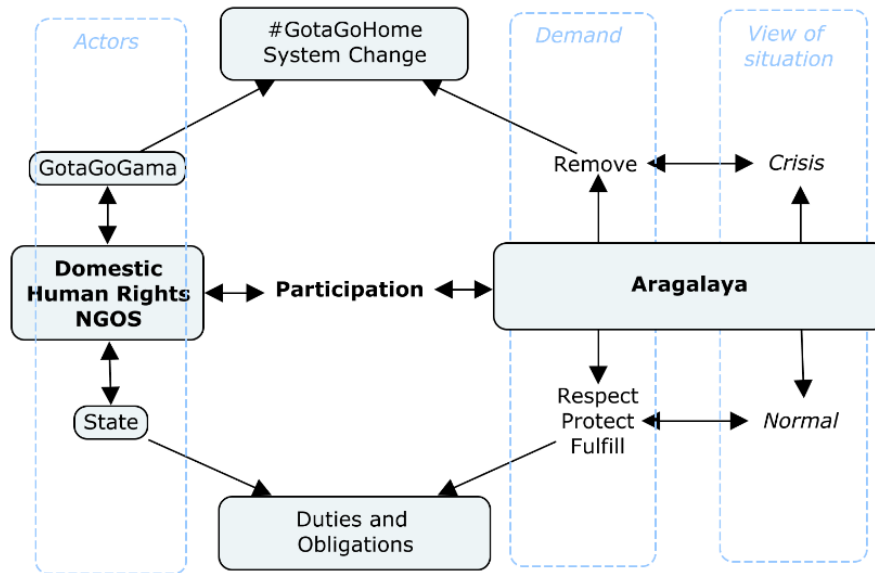
This paper argues that domestic human rights NGOs conduct their respective advocacies with a different political stance from international organizations during political crises like the Aragalaya. As domestic actors, they directly tackle the crisis with more direct political positions relating to the crisis. By contrast, international organizations take extra care to be seen as impartial observers of the crisis.

Conceptual Framework and Literature Review

In brief, the conceptual framework (See Figure below) underlying this study focuses on applying the human rights concepts of state obligations or duty-bearers during situations such as the Aragalaya.² The study assumes that the situation during the Aragalaya was a political crisis in which the state's legitimacy was questioned by large, sustained protests that affected the government's regular functions and concerns. In this context, human rights organizations may view the situation as normal or a crisis. If they are to respond accordingly, they may continue to demand the state's fulfillment of its duties as usual or, in a crisis, address the call for a change in government. This study aims to determine if the situation presented a dilemma for different organizations working with a human rights framework.

² For emerging academic literature on Aragalaya, see Modin-Lundin, 2022; Fedricks and Haniffa et al., 2022; Wijesuriya and Hemachandra, 2023; Hemachandra, 2023; and Gamage and De Silva, 2023.

Conceptual Framework



Existing literature on human rights NGOs (See Posner 1997; Van Tuijl, 1999; and Welch 2001) examines the conceptual divisions of being international and domestic organizations, which acknowledge that the key differences between international and domestic human rights NGOs include the latter having greater access to in-country information, and more knowledge about national mechanisms, and legal strategies that can help domestic advocacy. However, Calnan (2008, p. 10) writes further that the degree of political involvement is an essential distinction between domestic and international NGOs. Nevertheless, missing in these discussions is how the domestic human rights community navigates the political environment in the context of crisis.

Relevant to this paper, the concept of impartiality of human rights organizations is taken as a key benchmark and point for reflection. Posner (1997, p. 630) writes that human rights NGOs must be politically independent and non-partisan "in a manner that enhances public confidence and credibility." Major international groups like Amnesty International have adopted this framework of maintaining a critical distance and a level of procedural integrity (Leebaw, 2007) from politics owing to the nature of the work of "naming and shaming" or criticizing states and calling for political will to implement human rights obligations. Leebaw (2007) argues that while international organizations maintain impartiality because they are outsiders, impartiality at the domestic level derives from the deployment of international standards where local action and laws are inadequate. Although it is acknowledged that domestic human rights organizations are more involved in the situation on the ground, Posner (1997) and Leebaw (2007) imply that impartiality is a standard that domestic groups must adhere to in their work.

Examining human rights advocacy concerning crises such as the Aragalaya will help expound the observations above to show the differences in the political positioning of organizations at the domestic and international levels, including how they maintain impartiality, which, more specifically in the light of a political crisis, may affect the effectiveness of human rights advocacy itself.

Methodology

The study collected public issuances related to the Aragalaya (2022) found on the websites and social media accounts of domestic and international human rights organizations. Selection of domestic groups is based on suggestions of local informants of two categories: (1) human rights organizations with a general mandate (national organizations working on civil and political rights) and (2) organizations focusing on group-specific rights. For this paper, the issuances of domestic organizations were compared with similar issuances of four advocacy-focused international human rights organizations. The documents examined only organizational positions and excluded articles or opinions attributed to their staff. The positions in the documents collected are taken at face value, and organizations were not further queried about issue selection and particular reasons behind the positions articulated in the issuances.

Table 1 below presents an overview of the number of documents examined for this study.

Table 1: Numbers of Human Rights NGO Public Issuances on the Aragalaya

| Domestic HR NGOs (32) | International HR NGOs (27) |
|---|---|
| <ul style="list-style-type: none">• Center for Policy Alternatives (20)• Inform Human Rights Documentation (5)• Law and Society Trust (1)• Tamil Civil Society Forum (2)• Women and Media Collective (5)• Joint statements (1) | <ul style="list-style-type: none">• Amnesty International (8)• FIDH (4)• Forum-Asia (3)• Human Rights Watch (9)• Joint statements (3) |

Findings

Both domestic and international human rights NGOs made public issuances on 18 distinct issues (events and topics) during the Aragalaya, excluding regular documentation and summary reports (See Table 2 below).

Table 2: Number NGOs that issued releases on the Aragalaya

| Issue/Incident | Domestic | International |
|--|----------|---------------|
| 1. Violence at <u>Mirihana</u> Protest | 1 | 1 |
| 2. President's Resignation | 1 | |
| 3. Violence on Protest near Parliament | | 1 |
| 4. Economic Crisis | 1 | 2 |
| 5. Violence at <u>Rambukkana</u> Protest | 2 | 3 |
| 6. State of Emergency - May | 1 | |
| 7. Violence on Temple Trees Protest | 2 | 2 |
| 8. <u>Ranil</u> as PM | 1 | |
| 9. Slow investigations | 1 | |
| 10. IMF Negotiations | | 2 |
| 11. 22 nd amendment | 1 | |
| 12. Final Protest Call | | 3 |
| 13. State of Emergency – July | 1 | 2 |
| 14. Violence on <u>GotaGoGama</u> protest site | 1 | 3 |
| 15. Attacks and Reprisals | 3 | 4 |
| 16. PTA Arrests | 1 | |
| 17. High Security Zone | 1 | |
| 18. <u>Aragalaya</u> survey | 2 | |
| Summary/Topical Reports on Protests | 2 | |
| Regular documentation | 1 | |

After searching the websites and social media accounts of at least 17 domestic organizations, only five were found to have issued releases on the Aragalaya and its aftermath. The low number of organizations that made issuances reflects that not all human rights organizations engage in documentation and advocacy, similar to the pattern among international organizations and their peers at this level. Among domestic organizations, the Centre for Policy Alternatives (CPA) has the most number of issuances at 20, which is higher than all other NGOs, especially among domestic organizations, and accounting for two-thirds of the issuances from this group. Also, it must be noted that only three organizations released statements as an immediate response to issues during the Aragalaya. Of the remaining two, one issued its regular documentation of the incidents (INFORM Human Rights Documentation Centre, 2022a, 2022b, 2022c, 2022d, 2022e, 2022f, and 2022g), and the other conducted a study on people's attitudes toward the Aragalaya (Munasinghe & Hemantha, 2023).

On Protests

The predominant concern of human rights documents issued concerning the Aragalaya was violent attacks on specific protest events (see Numbers 1, 5, 7, and 14 in Table 2). This concern is hardly surprising as the Aragalaya is itself a prolonged protest that manifested not only in the capital city of Colombo but in other urban centers of Sri Lanka. Violence against protests represents the main subject commonality among domestic and international human rights organizations, which raise human rights standards on freedom of assembly and expression, necessity and proportionality of using force, and arbitrary arrests. Most protest-related issuances tend to be

treated as single-issue releases on specific events/incidents of the Aragalaya, except for the CPA, which made follow-ups on its statements through suggestions for implementation, commenting on official responses, and filing cases in court (See Centre for Policy Alternatives [CPA], 2020b, 2020c, 2020f, 2020j, 2020k and 2020l) as part of their advocacy work.

While all organizations refer to international human rights standards in condemning violence, domestic and international organizations differ in some respects. International human rights NGOs tend to be detached in their approach, with a descriptive tone in their narrative and analyses. However, three domestic NGOs notably differed from international groups in directing blame or accusing the government of causing the violence, going as far as citing the propensity to resort to violence in dealing with protests, including for past incidents.

On the States of Emergency.

There is also a difference between the stances of domestic and international organizations concerning the states of emergency declared by the government in May and July. Domestic organizations—Centre for Policy Alternatives (2022d, 2022h and 2022i) and Women and Media Collective (WMC, 2022b)—called the emergency regulations an inappropriate response and an unnecessary escalation of the situation. On the other hand, international organizations tend to call for caution in implementing emergency powers (See Amnesty International [Amnesty], 2022a and 2022b, and Human Rights Watch [HRW], 2022c and 2022d) but seem to refrain from demanding the withdrawal of the declaration. Human Rights Watch, however, later called on the government to withdraw the July declaration (HRW, 2022f). The stance of domestic organizations reflects their more profound stake in the political situation and the ongoing protests, while international organizations, in not calling for rescinding the state of emergency, implicitly acknowledge the legal prerogative of the state to make such declarations, which generally include derogations of specific rights.

On Addressing the Economic Crisis.

It is primarily international organizations that released statements directly addressing the economic crisis. Amnesty (2022a and 2022c) and HRW (2022a, 2022b, 2022e, 2022g) raised the urgency of addressing the impact of the economic crisis on human rights. The WMC (2022a), a domestic organization, also underlined the need for the government to prevent a humanitarian crisis from unfolding from the economic crisis.

Relatedly and perhaps more significantly, Amnesty and HRW also stressed the importance of the role of the International Monetary Fund (IMF) in addressing the crisis. Crucially, they reminded the IMF to include civil and political human rights protection as a precondition for emergency bailout funds, which is part of the procedure of the financial institution. By contrast, domestic organizations hardly paid attention to the government negotiations during the crisis. The only organization to note this was the Women and Media Collective (WMC, 2022a), which differed from the two international organizations in mentioning the negative impact of the IMF economic prescriptions, but not its responsibility to consider economic and social but also civil and political human rights in addressing economic crises.

On #GotaGoHome.

Most international NGOs that issued statements mention the Aragalaya's call of #GotaGoHome as backdrop by which human rights violations take place. They do not take a firm stand on this issue, which is in stark contrast with three domestic human rights organizations that made clear statements on this call during the protests. The Centre for Policy Alternatives (2022a) felt it was necessary as early as April to make their stand on the #GotaGoHome call, even taking the extra step to explain (CPA, 2022b) existing legal means by which this can be achieved. The Tamil Civil Society Forum (TCSF, 2022a), on the other hand, supported the call for an overhaul of the system, saying that calling for the resignation of the President is "not enough" and called for a system that will address the discrimination suffered by the Tamil people in Sri Lanka. The WMC (2022c), while not making an explicit resignation call, said, "women have enthusiastically participated in these protests" and acknowledged the "need for a system that can restore the confidence of the people". In the context of the absence of public statements within Sri Lanka's human rights community, the stances of these three organizations may well reflect the overall mood of the domestic human rights community, who, according to accounts from interviews, did join the protests freely, albeit mostly unofficially and as individuals.

On Impartiality.

Overall, the language of these issuances shows a general tone of impartiality among domestic and international organizations. As mentioned previously, international organizations tended to adopt an impartial tone towards the situation by being descriptive in their language. Overall, because of the low number who made public issuances, domestic NGOs were impartial in being more careful in issuing statements and responses and avoiding altogether making an overtly political call. However, staff joined the protests at some point, even as their organizations generally refrained from officially getting involved. However, even the three domestic organizations (CPA, WMC and TCSF) approached the political issue quite objectively, for example, framing the resignation call as the appropriate response to take responsibility for the deterioration of the country's situation. Their perspectives and experience as domestic organizations have allowed them to comment on a broader range of issues, including those that are not related to incidents, such as the appointment of the new prime minister, the proposed 22nd constitutional amendment and the partiality of authorities in conducting investigations (See CPA, 2022e, 2022f, and 2022g), and the oppression of non-Sinhala Buddhists" (TCSF, 2022a and 202b).

Conclusion

Advocacy is the most publicly well-known form and strategy of human rights work, and the findings presented in this paper review the advocacy work of human rights organizations during the Aragalaya. The study found that only a few domestic NGOs issued statements on the Aragalaya. However, the low number of releases from domestic groups does not indicate their lack of activity or participation during the political crisis. This observation sets the stage for examining how domestic human rights NGOs handled their mandates during the Aragalaya.

The preceding review of public issuances by human rights organizations confirms the observations put forward by scholars on this subject on how NGOs navigate politics related to human rights. First, the coverage of work—domestic or international—of human rights organizations reflects their differing political positions relative to human rights issues. While NGO human rights work is inherently political, statements from international organizations address the importance of the role of standards and institutions. In contrast, domestic human rights organizations address more specific and political issues, taking clear stands within the bigger context of the crisis. Secondly, based on the issuances examined, impartiality is still a critical stance, including for domestic groups, even during an extraordinary political situation such as the Aragalaya. The #GotaGoHome call is presented as a natural extension of the failure of the government to protect the people, which, while not referring to any human rights standard, echoes the fundamental principle underlying human rights. Despite calls for or acknowledging the Aragalaya demand for the president’s resignation, there seems to be no conflict or dilemma related to using the human rights framework in the context of the protest.

References

- Amnesty International. (2022a, May 6). *Sri Lanka: From bad to worse: Rights under attack during Sri Lanka's economic crisis*. Amnesty International. <https://www.amnesty.org/en/documents/asa37/5564/2022/en/>
- Amnesty International. (2022b, May 11). *Sri Lanka: New Emergency regulations and shooting orders threaten human rights*. Amnesty International. <https://www.amnesty.org/en/latest/news/2022/05/sri-lanka-new-emergency-regulations-and-shooting-orders-threaten-human-rights/>
- Amnesty International. (2022c, June 20). *Sri Lanka: Government must ensure human rights are central in its response to economic crisis*. Amnesty International. <https://www.amnesty.org/en/latest/news/2022/06/sri-lanka-government-must-ensure-human-rights-are-central-in-its-response-to-economic-crisis/>
- Calnan, S. (2008). *The Effectiveness of Domestic Human Rights NGOs: A Comparative Study*. Brill.
- Centre for Policy Alternatives. (2022a, April 4) CPA Statement on the crisis in Sri Lanka and public outcry for ousting current regime. Centre for Policy Alternatives. <https://www.cpalanka.org/official-cpa-statement-in-regard-to-the-current-state-of-crisis-public-outcry-for-change-in-leadership/>
- Centre for Policy Alternatives. (2022b, April 4). *Rights of those arrested by Law enforcement [the Police or the Military]*. Centre for Policy Alternatives. <https://www.cpalanka.org/rights-of-those-arrested-by-law-enforcement-the-police-or-the-military/>
- Centre for Policy Alternatives. (2022c, April 19) *Impeachment and No Confidence Motion Procedure and Protocol Explained*. Centre for Policy Alternatives. <https://www.cpalanka.org/impeachment-and-no-confidence-motion-procedure-and-protocol-explained/>
- Centre for Policy Alternatives. (2022d, May 7) *Centre of Policy Alternatives Statement in regard to State of Emergency imposed by the President on the 6th of May 2022 in response to the Island-wide Protests*. Centre for Policy Alternatives. <https://www.cpalanka.org/cpa-statement-in-regard-to-state-of-emergency-imposed-by-the-president-on-the-6th-of-may-2022/>
- Centre for Policy Alternatives. (2022e, May 14) *Centre for Policy Alternatives Statement in Regard to the Appointment of Mr. Ranil Wickremasinghe as Prime Minister*. Centre for Policy Alternatives. <https://www.cpalanka.org/wp-content/uploads/2022/05/CPA-statement-in-re-to-appointment-of-new-PM.pdf>
- Centre for Policy Alternatives. (2022f, May 26). *Request for action on the attacks against peaceful protesters on 9th of May 2022 and other incidents of violence* Centre for Policy

Alternatives. <https://www.cpalanka.org/cpa-letter-to-the-igp-and-ag-requesting-action-on-the-violence-against-peaceful-protesters-on-the-9th-may-2022/>

Centre for Policy Alternatives. (2022g, June 30). *CPA Statement on the Government's TwentySecond Amendment to the Constitution Bill*. Centre for Policy Alternatives. <https://www.cpalanka.org/cpa-statement-on-the-governments-twenty-second-amendment-to-the-constitution-bill/>

Centre for Policy Alternatives. (2022h, July 18). *CPA Statement on the declaration of a State of Emergency on the 18th July 2022*. Centre for Policy Alternatives. <https://www.cpalanka.org/wp-content/uploads/2022/07/Statement-re-the-declaration-of-a-state-of-emergency-on-the-18th-July-1.pdf>

Centre for Policy Alternatives. (2022i, July 27). *Emergency Regulations promulgated in May and July 2022*. Centre for Policy Alternatives. <https://www.cpalanka.org/emergency-regulations-promulgated-in-may-and-july-2022/>

Centre for Policy Alternatives. (2022j, August 1). *Request for action on the attacks against peaceful protestors on 21st of July 2022 and other incidents of violence*. Centre for Policy Alternatives. <https://www.cpalanka.org/request-for-action-on-the-attacks-against-peaceful-protestors-on-21st-of-july-2022-and-other-incidents-of-violence/>

Centre for Policy Alternatives. (2022k, August 7). *The Centre for Policy Alternatives and Dr. Paikiasothy Saravanamuttu vs. The Attorney General [SC FR 262/ 2022]*. Centre for Policy Alternatives. <https://www.cpalanka.org/the-centre-for-policy-alternatives-and-dr-paikiasothy-saravanamuttu-vs-the-attorney-general-sc-fr-262-2022/>

Centre for Policy Alternatives. (2022l, September 25) *CPA statement on High Security Zone Order No. 1 of 2022*. Centre for Policy Alternatives. <https://www.cpalanka.org/cpa-statement-on-high-security-zone-order-no-1-of-2022/>

Fedricks and Haniffa et. al. (2022). Snapshots from the Struggle, Sri Lanka April–May 2022. *Anthropology Now*. 14:1-2, 21-38. <https://doi.org/10.1080/19428200.2022.2123194>

Gamage, S. and De Silva E. (n.d.) *The Good, the Bad and the Ugly: The People's Struggle (Aragalaya) and the Regime Change in Sri Lanka*. (unpublished)

Hemachadra, S. (n.d.) *Protests and Democracy in Colonial and Post-Colonial Sri Lanka*. (unpublished)

Human Rights Watch. (2022a, April 4). *Letter to IMF Managing Director Re: Economic Crisis in Sri Lanka*. Human Rights Watch. <https://www.hrw.org/news/2022/04/04/letter-imf-managing-director-re-economic-crisis-sri-lanka>

Human Rights Watch. (2022b, April 4). *IMF/Sri Lanka: Address Economic Rights, Corruption in Loans*. Human Rights Watch. <https://www.hrw.org/news/2022/04/04/imf/sri-lanka-address-economic-rights-corruption-loans>

- Human Rights Watch. (2022c, July 13). Sri Lanka: Protect Rights During Political Turmoil. Human Rights Watch. Retrieved July 3, 2023, from <https://www.hrw.org/news/2022/07/13/sri-lanka-protect-rights-during-political-turmoil>
- Human Rights Watch. (2022d, August 2). Sri Lanka: Heightened Crackdown on Dissent. Human Rights Watch. <https://www.hrw.org/news/2022/08/02/sri-lanka-heightened-crackdown-dissent>
- Human Rights Watch. (2022e, August 5). Sri Lanka's Economic Crisis and the IMF. Human Rights Watch. <https://www.hrw.org/news/2022/08/05/sri-lankas-economic-crisis-and-imf>
- Human Rights Watch. (2022f, August 9). Sri Lanka: New President Should Chart Path Upholding Rights. Human Rights Watch. <https://www.hrw.org/news/2022/08/09/sri-lanka-new-president-should-chart-path-upholding-rights>
- Human Rights Watch. (2022g, August 16). Sri Lanka: Economic Crisis Puts Rights in Peril. Human Rights Watch. <https://www.hrw.org/news/2022/08/16/sri-lanka-economic-crisis-puts-rights-peril>
- INFORM Human Rights Documentation Centre. (2022a) *Repression of Dissent, March 2022*. <https://www.inform.lk/repression-of-dissent-in-sri-lanka-march-2022/>
- INFORM Human Rights Documentation Centre. (2022b). *Repression of Dissent, April 2022*. <https://www.inform.lk/repression-of-dissent-in-april-2022/>
- INFORM Human Rights Documentation Centre. (2022c). *Repression of Dissent, May 2022*. <https://www.inform.lk/repression-of-dissent-in-may-2022/>
- INFORM Human Rights Documentation Centre. (2022d). *Repression of Dissent, June 2022*. <https://www.inform.lk/repression-of-dissent-in-june-2022/>
- INFORM Human Rights Documentation Centre. (2022e). *Repression of Dissent, July 2022*. <https://www.inform.lk/repression-of-dissent-in-sri-lanka-july-2022/>
- INFORM Human Rights Documentation Centre. (2022f). *Repression of Dissent, August 2022*. <https://www.inform.lk/repression-of-dissent-august-2022/>
- INFORM Human Rights Documentation Centre. (2022g). *Repression of Dissent in Sri Lanka, Annual Report 2022*. <https://www.inform.lk/repression-of-dissent-in-sri-lanka-annual-report-2022/>
- Leebaw, B. (2007) 'The Politics of Impartial Activism: Humanitarianism and Human Rights,' *Perspectives on Politics*, 5(2), pp. 223–239. <https://doi.org/10.1017/S1537592707070752>
- Modin-Lundin, A., Björk, M. (advisor), 2022. *Aragalaya – Stories about unity and conflicts in a crisis-hit Sri Lanka* [Master's thesis in Religion, Peace and Conflict, Uppsala University, Sweden]. <https://www.diva-portal.org/smash/record.jsf?pid=diva2%3A1716833&dswid=8758>

- Munasinghe, V. and Hemantha, P., 2023. *Can't we do without bosses? – An analysis of public opinion in the post-Aragalaya context*. Law and Society Trust.
<https://www.lstlanka.org/publication/cant-we-do-without-bosses/>
- Posner, M. (1997) 'Foreword: Human Rights and Non-Governmental Organizations on the Eve of the Next Century', *Fordham Law Review*, 66(2), p. 627.
<https://ir.lawnet.fordham.edu/flr/vol66/iss2/11>.
- Tamil Civil Society Forum. (2022a, 20 April). *அண்மைய நாட்களில் தென்னிலங்கையில் முகிழ்த்து வரும் பொது மக்கள் போராட்டங்களுக்கான தார்மிக ஆதரவைத் தமிழ் சிவில் சமூக அமையம் தெரிவித்துக் கொள்ள விரும்புகின்றது* ("The Tamil Civil Society Forum wishes to express its moral support for the public protests that have been taking place in South Lanka in recent days" [translated via Google Translate]).
https://docs.google.com/document/d/1SubfrBNy6-3_q2zp4Cixw1JtF18waP8B/edit
- Tamil Civil Society Forum. (2022b, 11 May). *We condemn the state violence against those who are protesting for their rights*.
<https://drive.google.com/file/d/1wmvlt6hXtmY6NC850Wiv4uEdf9xTE8wf/view>
- Wijesurya, L. and Hemachadra, S. (2023). The Aragalaya online: A sketch of the political role of social media. *LST Review* Vol 31, Issue 349. Law and Society Trust. Colombo.
<https://www.lstlanka.org/wp-content/uploads/2023/08/Aragalaya-LST-review-eng.pdf>
- Women and Media Collective. (2022a, April 6). *Urgent plea by Sri Lankan feminists to address the unfolding humanitarian crisis caused by the economic collapse in Sri Lanka*. Women & Media Collective. <https://womenandmedia.org/urgent-plea-by-sri-lankan-feminists-to-address-the-unfolding-humanitarian-crisis-caused-by-the-economic-collapse-in-sri-lanka/>
- Women and Media Collective. (2022b, May 11). *Statement by the Women and Media Collective on the attacks against the peaceful GotaGoGama protest*. Women & Media Collective. <https://womenandmedia.org/statement-by-the-women-and-media-collective-on-the-attacks-against-the-peaceful-gotagogama-protest/>
- Women and Media Collective. (2022c, August 3). *Press release – Women for Democratic Struggles*. Women & Media Collective. <https://womenandmedia.org/media-briefing-women-for-democratic-struggles/>

INTERSECTIONALITY AND LIVELIHOODS OF CONFLICT-INDUCED DISPLACED MYANMAR WOMEN IN MAE SOT, THAILAND

Su Myat Thwe¹

Faculty of Political Science, Chulalongkorn University, Thailand

Abstract

The four marginalized identities of being a woman of Myanmar nationality, in displaced status, and engaged as a migrant either formally or informally in the workforce significantly impact their livelihoods, especially in the post-coup period. This paper highlights the intersectionality of marginalized identities in the context of cross-border livelihoods in Thailand, which is embedded in an interconnected scope of political and economic factors for Myanmar women migrant workers. The analysis has shown that these insecurities are deeply knitted and occur at various structural levels, leaving such migrant populations vulnerable amidst multiple challenges. As with possible openings to dig deeper into intersectionality, beyond high-level structural context alone, seeing other personal characteristics such as those with sickness, disabilities, infants, children, pregnancy, or elderly in care if they have a micro-level connection, this paper laid down the basic grounds directly impacting livelihoods of the focused population altogether. Through data triangulation, adopting an intersectionality lens highlights the gaps in human security faced by Myanmar displaced migrant women working in Mae Sot as they explore their unique experiences amidst the marginalized structural conditions. Addressing specific needs and such vulnerabilities requires gender-responsive policies, streamlined administrative processes, and expanded access to formal sectors by recognizing and utilizing skilled individuals to bring mutual benefit to the host country's economy.

Keywords: Displacement, Intersectionality, Livelihoods, Migrant Worker, Thailand-Myanmar

Introduction: Hope away from home

The Sustainable Development Goals Report (2022) highlighted the global displacement crisis as a 24.5 million population impacted by conflict by mid-2021; 311 out of every 100,000 people worldwide seek refuge outside their country of origin. The cycle of migration to Thailand from Myanmar has a special history with many intersecting factors of forced migration, and a new trend emerged following 1 February 2021: only 1,527 cases in 9 shelters (TBC, 2021, 2022); 986,670 regularized as migrant workers in 2021 (ILO, 2022); tens of thousands of unrecorded.

¹ MA (Candidate) in International Development Studies, MAIDS-GRID Program, Faculty of Political Science, Chulalongkorn University, Thailand.

In talking about ASEAN as a regionality with a lack of protection for asylum, Thailand is no excuse despite accepting forcibly displaced migrants on humanitarian grounds for four decades, starting with the Indochina influx (Issa, 2022). However, such populations are referred to as 'persons of concern (POCs)' by UNHCR as they are to be registered and accessed by the UN Refugee Agency with no legal recognition by the Royal Thai Government.

What happened with the new influx from Myanmar is that not all of them are entitled to such status as UNHCR's assistance to Myanmar people either as refugee status determination or as resettlement has slowed down since the 2008 referendum for the constitution (The 88 Generation Students, 2008). The number of Myanmar POCs as verified in 9 shelters, commonly being referred to as camp refugees, as of May (2023) is 90,759, many of whom are in protracted situations, with notably a few of them spending almost four decades awaiting UNHCR resettlement without rights to work (KPSN, 2023).

Again, as with the terminology, those from Myanmar's borderlands are referred to as '(war as conflict) displaced persons fleeing from fighting' (Thadaniti & Chantavanich, 2013) and put in aforementioned temporary shelters managed by MOI (Lang, 2002) which do not align with those recent 'fleeing from arrest' to seek asylum in the country on political persecution grounds. This renewed (coup d'état as conflict) urban refugee issue of unrecorded thousands, as witnessed in Thailand, is an extended issue as political insecurity in the home country has caused at least 1.5 million displaced (OCHA, Jun 2023). This new influx of people tried to integrate into the workforce through amnesty programs for migrant workers, and it was seen that from the accounted regularized 1,556,408 Myanmar migrant workers as of September 2022 (ILO), 44 percent are women.

Myanmar women, as part of Thailand's regular workforce, already play a huge role in the infamous seafood processing industry, garment factories, and seasonal agricultural labor. Even though most jobs available for migrant women are in irregular industries such as domestic care and sex entertainment that push them to stay without any legal protection or social welfare entitlements, Myanmar women in Thailand still sustain their economic standing to provide for families and comrades home.

The silent outcry of these populations amidst the inapplicability of renowned 'durable solutions' is heartbreaking, yet how such marginalization happened at the policy and institutional nexus is under-addressed. Such discrimination resulting in second exile for Myanmar displaced women is seen as an intersection of identities as 'Myanmar (political conflict),' 'displaced (not UNHCR POC),' 'women (household burden),' 'migrant workers (informal jobs)' as well as the lack of protection from both the home and host countries.

Conceptual Framework

To set the definition of conflict-induced displacement, in addition to the general refugee view of the threat to life or freedom, loss of locality and occupation are also added as the operational definition for forced migration as push factor 'conflict-induced.' The term 'cross-

border displacement' is used instead of 'refugee' to avoid confusion of legal status in Thailand and to not mix with 'internally displaced people inside Myanmar.

The central notion of putting cross-border displaced women from Myanmar at the center is based on the intersectionality of four identities which, to not set the prejudice of these creating vulnerabilities, lie at the center of marginalized status in the politics of policy as follows:

1. The marginality of people from the country 'Myanmar,' as per the unprotection nexus from the home country and the regional context, is rejected of refugee or asylum seeker status.
2. The marginality of (irregular) migrant workers, as per the conditions they face on arrival at the host country and efforts to regularize and integrate into the socioeconomic environment.
3. Marginality of forced displacement, as per the situations compelling them to leave their origin, either domestic or transnational, and sustain livelihoods individually and collectively.
4. The marginality of women in the patriarchal state, as per the physical and cultural oppressions, and to carry the burden of care amidst limitations in maintaining or acquiring socioeconomic status.

Since this study intends to identify the vulnerabilities in human security as a result of the marginalization in the host community, the interconnecting nature of political and economic (in)securities for cross-border livelihoods is at the center of making the bottom-up interpretation.

Methodology

This research used qualitative methodology to address the elusive nature of intersectionality in cross-border livelihoods. Given the intended transdisciplinary efforts, findings reported in this research are co-inputs from both academic and non-academic actors, including social workers, healthcare practitioners, human rights activists, legal aids, civil societies, and communities themselves. Under the data source triangulation, four legislative instruments and three cabinet resolutions were selected for discourse analysis. Two legal aids and five participating organizations assisted with ethnographic observations, in addition to twenty-one in-depth research interviews conducted under strict ethical considerations.

Before conducting the fieldwork, the researcher conducted a documentary analysis on relevant Thai laws impacting the legal status of Myanmar urban refugees and asylum seekers in Thailand and their right to work while volunteering as a legal advocate in a Bangkok-based team. With the general understanding of the political and economic status of these post-coup cross-border displaced populations, the case study has been framed in Mae Sot as the border town where most Myanmar irregular migrants have historically and currently sought the first shelter and occupational start.

This research uses an integrative data collection method in three phases. Phase A focused on building relationships with several stakeholders and actors on the ground through Chulalongkorn University. In Phase B, the researcher interned for the legal aid program agenda in Mae Sot to get involved on the ground and do non-participatory observations through collaborative networks. Phase C was mainly the bottom-up data collection recruiting through a

snowballing technique to conduct exploratory interviews with Myanmar women who migrated to Thailand after February 2021 who fit under the conflict-induced displacement status.

While interdisciplinary actors act as focal contacts for the researcher to reach respondents, the involvement of these organizations was minimal as interviewees later approached the researcher themselves. Though the documentary analysis and observations commenced around February 2023, the actual start date of field data collection was 1 May 2023 - lasting until the first week of June 2023.

Findings and Analysis

Political insecurities: displaced population from Myanmar

This section is based on the retold narratives and status of 21 in-depth interviewees of all women aged 16-71 of different ethnicity and religious roots with varying experiences of geographical, educational and economic backgrounds.

| Reasons of Displacement | Mobilization Routes | Current Documentations |
|--------------------------------|--------------------------------|-----------------------------|
| 17 - Political Activism | 4 - border trade cargos | 3 - no ID at all |
| 9 - Non-violent Resistance | 12 - night-time river crossing | 11 - invalid passport |
| 5 - Anti-junta Administration | 1 - air travel | 4 - Myanmar ID/ border pass |
| 3 - Armed Defense Network | 1 - MoU green channel | 7 - Monthly police card |
| 7 - War-torn/Border Population | 2 - border pass | 5 - pink card only |
| 11 - Poverty/Economic Refugees | 1 - other transport | 1 - pink card+CI/passport |
| | | 1 - non-Thai tribal ID |
| | | 1 - Student ID |

Table 1. Case study findings on reasons for displacement, mobilization routes and legal status

As seen in the table above, there is no specific category for classifying each person. The rapid shifts in the revolution landscape have repeatedly pushed many people to face turning points. Of course, some people had been vocal and active in the pro-democracy movements either through institutions or as activists. However, many people from urban origins retold their narratives either as going out on the streets to join the protesting mass peacefully or as happened to have joined or incited non-violent resistance. Nevertheless, with the forming of NUG (National Unity Government), some former civil servants in CDM (Civil Disobedience Movement) have voluntarily joined the relevant ministries to help facilitate anti-junta administration. There are also overlapping identities for youth activists of specific expertise backgrounds, including but not limited to technicians, artists, publicists or human rights defenders later involved in armed resistance networks or pushed into the economic refugees as their assets getting confiscated.

With each person's narrative being high-context and their choices of identity over the past two years have been inspirational yet risky, the main reasons for displacement have been extracted by identifying the time of their decision-making to cross the border finally. When looking at the mode of border crossing, those with family or friend connections with migrant

worker communities came along with border trade cargos officially crossing the gates in late 2020. Furthermore, many of them retold their experiences of moving from place to place as internally displaced, with some ending up in Lay Kay Kaw and surrounding locations until the December 2021 raids (Frontier, 2022) (the point of time for fleeing across the border only allowed for illegal river crossing). Only one interviewee who came to Mae Sot in 2022 to meet a family member in the refuge used official air travel. However, at the time of the interview, she is also an illegal alien for not being able to secure a job offer or afford a visa. Later, in 2022, poverty-displaced without warrants on their backs started using green channels as MoU workers. However, most of them moved further into other parts of Thailand, and now new entrants have started using border passes as a means to cross the border.

When attempting to examine the correlation between the delayed implementation of the National Screening Mechanism while the pandemic impacts have long been subdued and the significant influx of conflict-induced displaced population from Myanmar, the study also sheds light on the perceived neglect by the RTG, which criminalizes these individuals who are neither eligible for registration by the UNHCR nor protected from undignified confinement or deportation under yet another delayed enforcement of Anti-Torture Act. This fact is an intersectionality seen through having a displaced status in exile and being a citizen of Myanmar, where priority is pushed back.

Intersectionality and Gender Blindness in Thailand's Policy Framework

Through ethnographic observations, it is visible that intersectionality happens at several structural levels and in various forms. It is, of course, based on marginalized identities as conceptualized:

- The intersectionality of conflict as political insecurity in country-of-origin Myanmar – as it forced them out for migration – and lack of legal recognition and international involvement as another form of political insecurity as host country Thailand marginalized all displaced population in general.
- The intersectionality happened again as political and legal insecurity barred these populations from getting hired by employers, leading to economic insecurity as the right to work was not given any attention.
- In the context of economic insecurity, the intersectionality of COVID-19 pandemic-induced depression and coup-inflicted border trade struggles have further limited all migrant workers to seek stable income.
- In the structural situations, it is also seen that being a Myanmar national could also become an advantage rather than a vulnerability as someone with some economic security can achieve political security through regularization when amnesty cabinet resolutions are made for the neighboring four countries only.
- Lastly, the intersectionality is once again seen in the cases of women migrant workers being inaccessible to nature-gifted domestic care jobs for those to be in their official work permit as the sectors excluded all immigrants.

With such gender blindness in Thailand's policy framework and a lack of efforts to streamline administrative processes to expand migrant workers' access to formal sectors, the welfare and rights of women migrant workers will continue to be limited, if not absent. Such an intersectionality of political and economic insecurity creates vulnerabilities in cross-border livelihoods as women struggle not only for themselves but also to carry the burden of safeguarding the whole household.

Calls on equitable opportunities: Excluded and neglected

The economic security of refugees and asylum seekers in Thailand, where their status is not recognized and access to formal work is inaccessible, relies on a combination of informal employment, financial support from family and community, humanitarian assistance, and utilizing their skills and talents. These strategies help them navigate the challenges of limited economic opportunities and sustain their livelihoods without formal recognition and rights. However, addressing the systemic barriers that hinder their access to legal employment and financial inclusion is crucial.

Marginalized Myanmar women may face significant barriers to formal employment due to their legal status. This barrier forces them into the informal sector, where they may encounter exploitative working conditions, low wages, and job insecurity. The lack of legal recognition also restricts their access to social protection mechanisms, such as healthcare and social security benefits.

Addressing these insecurities requires comprehensive approaches that include legal recognition, protection, access to livelihood opportunities, and support services for marginalized Myanmar women in Thailand. This address involves promoting their rights, combating discrimination, and ensuring their inclusion in policies and programs to improve their livelihoods and overall well-being.

Livelihood situations: Looking through basic human security needs

Ensuring food security becomes even more critical for displaced populations forced to leave their homes due to conflict or other adverse circumstances. Furthermore, for those who had to seek shelter in Mae Sot for more than just mere days, with the marginalization they suffered limiting their chances of making an income, basic food needs became a significant challenge. Though the witnessed humanitarian aid aims to address immediate access to food, the quality, sustainability, and long-term food security for the population remain a significant challenge. Consequently, as primary caregivers and household managers, women bear the burden of ensuring their families' survival with meager resources. However, the level of food security is still low given that many households have children and elderly who require more nutrients than just rice.

"I don't have any means to go out and find a job as I don't even have enough money to get a police card. On every other day, those living together with us at this safe house cook extra portions for me and my two children. I feel bad, so I try to contribute at least rice or cheap salad dishes and bring it on the table" (Interviewee C on 13 May 2023).

The interviews with Myanmar women migrants revealed a concerning picture of individuals and their families grappling with various medical conditions. Among the interviewees, several reported caring for family members with chronic illnesses. Common conditions mentioned included hypertension, diabetes, cardiac and coronary diseases, and arthritis.

"My husband and my mother both have hypertension and are under daily prescription, but my husband tries to keep himself fit through diet and exercise, for we do not have money to buy medicines. For my mother, we have to set aside some money to keep the minimum required dosage" (Interviewee R on 2 June 2023).

The health challenges extended beyond the adults, as children in these families were also affected. The lack of proper vaccination, not only for COVID-19 but also for other preventable diseases, puts children at risk. The lack of proper documentation due to political insecurity limits these children from accessing social welfare services and, thus, pushes them out of the immunization programs.

"I gave birth to my son while in hiding. I crossed the border alone for his safety, but he has not gotten any vaccination yet" (Interviewee W on 6 June 2023).

The findings highlight the critical need for accessible and affordable healthcare services for undocumented migrants, particularly those with chronic diseases and vulnerable children who require proper medical attention and preventive measures.

Conclusion: Intersectionality in Livelihoods

As the research outlined the intersectionality of political and economic security, it became evident that Myanmar women faced a multitude of challenges that were interconnected; political instability and conflicts in Myanmar often act as catalysts for cross-border displacement, leaving women vulnerable to exploitation and abuse, economic insecurities exacerbate their vulnerability, as limited employment options force them into low-paying jobs with little social protection. The interplay of political and economic factors creates a complex web of livelihood challenges for these women. With this paper setting the discussion on the several dimensions of human security in the context of political instability and economic exclusion, further efforts should be put into exploring means of resilience building to promote the well-being of such communities amidst these structurally created vulnerabilities.

Overall, a gendered intersectionality lens highlights the gaps in human security faced by Myanmar displaced migrant worker women in Mae Sot. Understanding these vulnerabilities and

resilience demonstrated by these women is crucial for developing comprehensive support and intervention strategies to safeguard their human security and improve their well-being in the cross-border livelihood context.

Addressing the needs and vulnerabilities of Myanmar women migrant workers in Mae Sot requires gender-responsive policies, streamlined administrative processes, and expanded access to formal sectors. Recognizing their skills, qualifications, and contributions would lead to the utilization of highly skilled individuals and benefit the host country's economy. By ensuring equal opportunities, access to social protections, and financial services, Thailand can improve the political and economic security of these marginalized people with job-ready skill set and youthful-population human resources, promoting inclusivity, stability, and resilience in Mae Sot and beyond, benefitting the economic development of the host as well.

References

- Frontier. (2022, 17 December). 'Peace town' to ghost town: Lay Kay Kaw, one year on. Retrieved from Frontier Myanmar: <https://www.frontiermyanmar.net/en/peace-town-to-ghost-town-lay-kay-kaw-one-year-on/>
- Gierszewski, J. (2017). Personal Security within the Human Security Paradigm. *Security Dimensions*, 23, 51–66.
- ILO. (2022). *TRIANGLE in ASEAN Quarterly Briefing Note: Myanmar (July to September 2022)*. International Labour Organization.
- Issa, F. (2022). Somali asylum seekers in Bangkok: Coping strategies of the (in)visible and (in)secure. In E. Goździak, & S. Chantavanich, *African Migration to Thailand: Race, Mobility, and Integration* (1st ed.). Routledge.
- KPSN. (2023, 20 June). Open Letter dated 20 June 2023 addressed to Prime Minister-designate Mr. Pita of Move Forward Party. 'Time for A Change' World Refugee Day 2023 by SEA Junction. Karen Peace Support Network (KPSW).
- Lang, H. (2002). *Fear and Sanctuary: Burmese Refugees in Thailand (Vol. 32)*. New York: Southeast Asia Program Publications, Southeast Asia Program, Cornell University Press.
- OCHA. (Jun 2023). *Myanmar Humanitarian Update No. 30*. UN Office for the Coordination of Humanitarian Affairs (OCHA).
- Patton, M. (1999). Enhancing the quality and credibility of qualitative analysis. *Health Serv Res* 34(5 Pt 2), 1189-208.
- Sakulsri, T. (2022). Challenges of Labor Migrants to Thailand: Issues of Bilateral Agreements for the Employment of Workers in the Greater Mekong Subregion (GMS). *Journal of Population and Social Studies (Vol. 28)*, S45-S69.
- TBC. (May 2023). *Refugee Camp Population*. The Border Consortium (TBC).
- TBC. (2021, 2022). *Refugee Camp Population: January 2021 vs Refugee Camp Population: December 2022*. The Border Consortium.
- Thadaniti, S., & Chantavanich, S. (Eds.). (2013). *The Impact of Displaced People's Temporary Shelters on their Surrounding Environment*. Springer Cham.
- The 88 Generation Students. (2008). *Burma (Myanmar): A Preliminary Report on the Referendum of 10 May 2008*. Rangoon.
- UN DESA. (2022). *The Sustainable Development Goals Report 2022 - July 2022*. New York: UN DESA.

A CRITICAL APPRAISAL OF THE VIETNAMESE GOVERNMENT'S PERSPECTIVE TOWARD REPATRIATED VICTIMS OF LABOUR EXPLOITATION

Nguyen Quach Cong Minh¹

Institute of Human Rights and Peace Studies, Mahidol University, Thailand

Abstract

Despite ratifying international treaties, especially the Palermo Protocol against human trafficking, Vietnam has struggled to effectively combat crime, recognise victims and provide meaningful support to them. The incompatibility of Vietnamese laws that offer no definition along the elements under the Palermo Protocol and a lack of protection for trafficked migrant workers have been traced as significant problems. Victims' rights-based approaches are not internalised by the government, leaving them vulnerable and without recourse. As a result, achieving justice and compensation for victims, especially women migrant workers, is difficult due to these challenges. Hence, this study examines the implementation of anti-trafficking laws in Vietnam by analysing the Palermo Protocol, ACTIP, and Vietnam's laws. The study reveals gaps, loopholes and challenges in obtaining justice for victims, particularly women migrant workers, through compensation and indemnification under the existing legal and policy frameworks.

Keywords: human trafficking, labour exploitation, justice, women, Vietnamese migrant workers in Saudi Arabia, Vietnam.

Introduction

Human trafficking is a global problem that affects millions of people, particularly those who are vulnerable and marginalised (UNODC, n.d.). Despite ratifying the “Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime” - Palermo Protocol (General Assembly resolution 55/25, 2000) and the ASEAN Convention against Trafficking in Persons - ACTIP (ASEAN, 2015), Vietnam has struggled to effectively combat human trafficking and provide adequate protection and remedies for victims (US TIP Office, 2022). The case involved Vietnamese trafficking victims who were denied recognition as victims of human trafficking for labour exploitation despite clear violations of their rights. By exploring these cases, this article aims to explore the Vietnamese government's obligations under international law to combat human trafficking and how it can provide meaningful support to victims.

¹ Student of Asia Pacific Master of Arts (APMA) in Human Rights and Democratisation, Mahidol University, Thailand.

The repatriated victims of human trafficking for labour exploitation from Saudi Arabia are primarily Vietnamese women who labour recruitment companies in Vietnam recruited through brokers or online advertisements to work as domestic workers for wealthy families in Saudi Arabia (UN Special Procedures, 2021).

However, upon arriving in Saudi Arabia, these women were subjected to labour exploitation, sexual abuse, physical assault, torture, and other forms of cruel treatment at the hands of their Saudi employers. The recruitment agencies or the employers confiscated their passports, leaving them trapped without any means to return to Vietnam. If they managed to escape their Saudi employers or complete their contracts, they were abandoned without documents, finances, or assistance from the recruitment agencies or the Vietnam Embassy. Some even faced the situation where recruitment companies forced them to continue working for another Saudi family against their will (UN Special Procedures, 2021).

These atrocities were brought to light following a post by a group of 13 Vietnamese women on Facebook. They implored the Vietnamese authorities to assist them in repatriating to Vietnam from a shelter in Riyadh, Saudi Arabia. These women shared similar stories of being deceived, mistreated, and stranded in Saudi Arabia (Hoang, 2021a). One woman was reported as beaten until she lost her eyesight in one eye (Hoang, 2021b).

Subsequently, the United Nations (UN) recognised these cases as human trafficking in its Joint Urgent Appeal reference UA VNM 5/2021 on October 25, 2021, urging the Vietnam government to take action against human trafficking. The UN's Special Procedures also noted the abuse of women and girls as young as 15, recruited from Vietnam as domestic workers in Saudi Arabia (UN Special Procedures [@UN_SPExperts], 2021).

The Office of the High Commissioner for Human Rights (OHCHR) similarly condemned these heinous acts of human trafficking, stating that labour recruitment companies in Vietnam have targeted girls from ethnic minorities in poor and remote rural areas, some of whom were even underage: “We are seeing traffickers targeting Vietnamese women and girls living in poverty, many of whom are already vulnerable and marginalised,” they said. “Traffickers operate with impunity” (OHCHR, 2021).

It is troubling to note that despite these appeals, the Vietnamese government has failed to recognise these cases as human trafficking and has even gone so far as to punish the victims themselves for coming forward. The perpetrators have faced little to no repercussions, with some recruitment agencies having their licenses revoked but facing no criminal charges.

As a result of this negligence, the US Department of State's Trafficking in Persons Office has ranked Vietnam in the lowest tier, Tier 3, for its lack of action against human trafficking. The report raised concerns about "the forced labour of several Vietnamese nationals in Saudi Arabia" and "a lack of systematic implementation of victim-centred screening procedures"(US TIP Office,

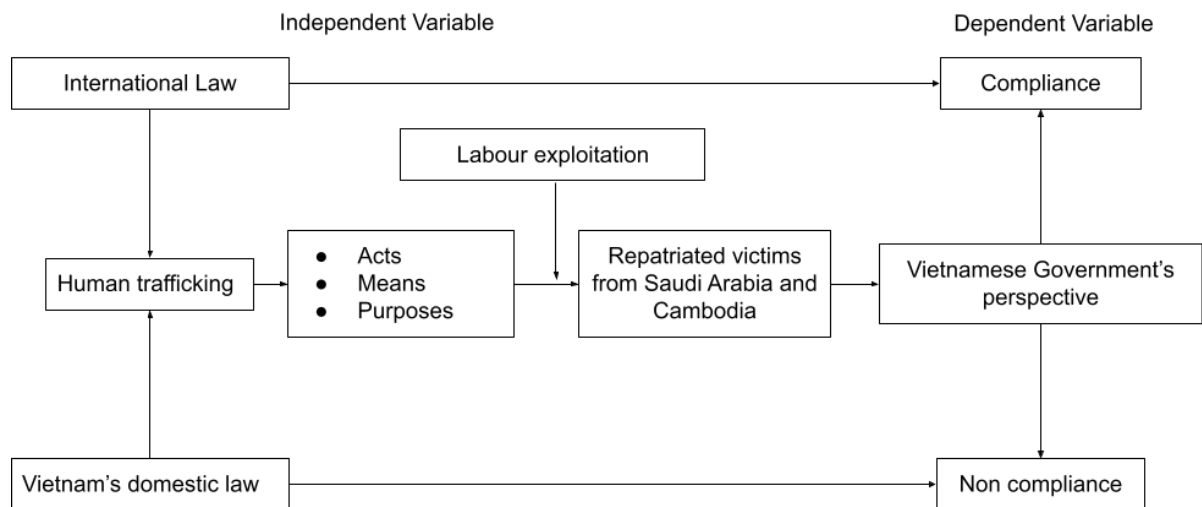
2022). The Vietnam Government has criticised this report as “biased and misleading assessments of Vietnam's efforts to prevent and combat human trafficking” (Thu, 2022). The victims of these atrocities have been denied recognition as victims of human trafficking under Vietnam's domestic laws, stripping them of their rights and protections. This failure to act with due diligence to protect, prevent, and provide effective remedies to victims of human trafficking is a breach of the Vietnam State's legal obligations. This article aims to shed light on the human trafficking situation in Vietnam, expose the government's lack of action and recognition of victims, and emphasise the importance of addressing this issue following international legal obligations.

Conceptual Framework

The conceptual framework for this thesis is based on two main components: international standards, including the Palermo Protocol and ACTIP, and Vietnam's domestic law. The Palermo Protocol is an international treaty that defines human trafficking, while ACTIP is a regional agreement that aims to prevent human trafficking in the ASEAN region.

The main focus of the study is to explore the lack of adequate protection of Vietnam's domestic law on human trafficking, specifically in cases of migrant workers who initially agreed to work abroad but then faced exploitation and abuse. The following figure is the legal framework for the whole research project.

Figure 1



Research Methodology

This study employs a mixed-methods research design, incorporating qualitative and quantitative data collection and analysis techniques. Legal, textual, and content analysis are utilised to systematically categorise, historically contextualise and analyse the meaning of words, phrases, and sentences found in the Palermo Protocol, ACTIP, international treaties, and Vietnam's domestic laws. This analysis aims to identify misconceptions and loopholes regarding the three

indicators of human trafficking - actions, means, and purposes - and assess to what extent Vietnam's domestic laws and policies align with the international standards outlined in the ratified treaties. The failure to recognise the international compensation regimes concerning preventing, protecting, and providing effective remedies to victims of human trafficking has allowed the state to impose excessive limits on these rights and contributed to a failure to act with due diligence.

Findings

Human trafficking indicators grid

| A case of human trafficking in Saudi Arabia | |
|---|---|
| Years | 2014 to 2022 |
| Country of destination | Saudi Arabia |
| Description workplace | Domestic workers in Saudi households |
| Profile of workers | Vary from 14 to 55 |
| Type of recruitment | Recruited by government-approved labour recruiter companies |
| Type of contract | Civil contract |
| Human trafficking indicators based on UNTOP: | |
| ACTION elements of the trafficking in person definition | |
| Recruitment | Deceived about income, deceived about conditions of employment |
| Transportation/transfer | Recruited labour exported companies |
| Harbouring (housing) | Inside the Saudi houses |
| Receipt | The companies/agents received commissions from the Saudi household for each domestic worker |
| MEANS elements of the trafficking in person definition | |
| Coercive/deceptive recruitment/ recruitment with abuse of workers' vulnerability | Withholding of wages/ no contract/ false wage promise |

| | |
|--|--|
| Abuse of vulnerability/power in performing work | Lack of legal knowledge and education, limited language skills, and family poverty |
| Coercion | Yes |
| Confiscation of documents | Confiscated national ID card/passport/work permits |
| Debt bondage | Yes, I need to pay a large amount of money to go back home |
| Violence on Victims | Yes |
| Isolation | Yes |
| PURPOSE elements of the trafficking in person definition (labour exploitation, forced labour) | |
| Exploitation | Yes, |
| Excessive work hours | Yes, I was forced to work from day to night |
| Bad living conditions | yes |
| Hazardous work | No |
| Low or no salary | Yes |
| Disregard for laws and contract | Yes |
| No social protection | Yes |
| Wage manipulation | Yes |

Indicators of "purpose" in Vietnamese anti-trafficking law differ from the Palermo Protocol

Despite anti-trafficking laws in Vietnam, there are gaps and inconsistencies between Vietnamese domestic law and international standards. These gaps are significant and affect how certain cases are prosecuted and recognised. Bui and Tran pointed out in their paper on the Supreme People's Procuracy of Vietnam's website on "The issue of vernacularisation the ASEAN Convention against Trafficking in Persons, Especially Women and Children."² Although Articles 150 and 151 of the Penal Code 2015 closely follow the United Nations definition of human

² Bui and Tran (2022) mentioned four incompatibilities between Vietnam's anti-trafficking laws and ACTIP. "Firstly, according to Vietnam's criminal law, children are still identified as persons under 16 years old. Second, the basic composition of Article 150 and Article 151 of the 2015 Penal Code does not follow the United Nations' definition of human trafficking. Third, the new ACTIP regulations only deal with human trafficking. Vietnamese law defines other crimes along with human trafficking. Fourth, when it comes to human trafficking or trafficking, Vietnamese law refers to the purpose of profit. The researcher only mentioned two out of four points to answer research questions".

trafficking, cases of recruitment, transportation, and harbouring without accepting/transferring money, property, or other material interests cannot be prosecuted as human trafficking. Similarly, trafficking of persons under 16 years of age may not be prosecuted as trafficking in persons, due to the absence of transfer for profit.

They also gave an example: "An object tricked another person into going to Malaysia to do business, but when they came to Malaysia, they forced this person to sell sex, and they were the organisers and brokers of prostitution and exploitation of sex workers. Due to the failure to satisfy the sign of transfer to receive money, property, or other material benefits, the crime of "trafficking in persons" cannot be considered" (Bui & Tran, 2022).

Vietnam laws' priority on indicators of "profitable/profitability"

Furthermore, this article draws attention to the fact that Vietnamese law may have a narrower interpretation and a more stringent requirement of financial gain when categorising cases as human trafficking. The trafficking offences under Vietnamese law focus on "trade, profit, and illegality" (Hoang Thi, 2015 cited Kneebone & Debeljak, 2014), which is closer to the narrative of slavery and prostitution than the broader idea of end-purpose exploitation (Hoang Thi, 2015).

In addition, Vietnamese law enforcement agencies are required to investigate and determine the profit element of human trafficking crimes. In contrast, international law does not consider "profitability" a mandatory element of human trafficking investigation, especially against people under 18 (Bui & Tran, 2022).

Lacking Links between migrant workers and human trafficking

Migrant workers, especially those who migrate for employment opportunities, can be particularly vulnerable to various forms of exploitation, including human trafficking. They often leave their home countries in search of better job prospects, and this vulnerability can be exploited. Providing legal alternatives and pathways for safe migration is essential for protecting the rights of migrant workers. When such alternatives are lacking, individuals may resort to irregular migration or be more susceptible to traffickers who promise employment opportunities.

Vietnam's efforts to combat human trafficking have been criticised for overlooking the relationship between trafficking and labour migration. Rather, its protection regime has predominantly focused on addressing the trafficking of women and children for sexual exploitation in the related areas, disregarding the many other forms of trafficking and exploitation that labour migrants may face (Hoang Thi, 2015). Additionally, the immigration policy does not provide sufficient legal alternatives to promote safe migration and protect migrant workers' rights at their destination, thus impeding individuals' ability to migrate and leaving them vulnerable to trafficking and exploitation (Hoang Thi, 2015).

Despite the lack of effective transnational regulations to protect migrant workers from exploitation and trafficking in foreign countries, Vietnamese labour export companies continue to send workers abroad. In the case of Saudi Arabia, the discriminative Kafala System³, which still troubles overseas domestic workers, continues to trump the Vietnamese law governing overseas workers (theoretically protective of migrant workers). Despite the lack of a bilateral agreement to protect workers, the number of Vietnamese migrant workers in Saudi Arabia still increased (Tran, 2022). As a result, migrant workers from Vietnam are at heightened risk of exploitation and trafficking abroad.

The issue of victims' consent

Notably, the victim's consent is not mandatory when determining whether a person has been trafficked under Article 3 of the Palermo Protocol. The Law on Prevention and Combat Human Trafficking 2011 in Vietnam also does not mention consent as a determining factor (Hoang Thi, 2015). This regulation complies with the international standards.

A literature review of the research conducted by the Center for Research - Applied Science on Gender, Family, Women, and Adolescents (CSAGA) reveals that 55 workers from other wealthy countries were confirmed to be victims of human trafficking. CSAGA highlights that many participants in labour export programmes fall prey to fraudulent labour export agencies. However, these individuals have not been recognised as victims of human trafficking and do not have access to necessary support services in accordance with Vietnamese regulations (Bảo Bảo, no date). However, in practice, since the laws do not mention whether the consent of victims is a mandatory indicator when identifying trafficked victims, it is unclear whether the police and local authorities are interpreted correctly or not.

Due diligence obligation of the government of Vietnam

The UN Committee on the Elimination of Discrimination against Women (CEDAW) has highlighted the importance of due diligence in preventing violations of women's rights, stating that “states may be held responsible for private acts if they fail to act with due diligence to prevent or investigate and punish acts of violence” (CEDAW, 1992). States should, therefore, take the necessary legislative and other measures to exercise due diligence to prevent, investigate, punish and provide reparation for acts relating to human trafficking, including when these are perpetrated by non-state actors (CEDAW, 1992). Juxtaposed against the Vietnam laws, firstly, Vietnam State has failed to provide a systematic implementation of victim-centred screening procedures (US TIP Office, 2022).

³ According to the Council on Foreign Relations website, "the Kafala System is a system used to monitor migrant labourers, working primarily in the construction and domestic sectors in Gulf Cooperation Council member states and a few neighbouring countries, namely Qatar, Bahrain, Kuwait, Lebanon, Oman, Saudi Arabia and the United Arab Emirates" (Kali, 2022).

Second, the failure of the Vietnam Authority to hold traffickers accountable and provide justice for victims is another issue. In 2020, the Authority inspected and punished 32 out of 86 labour export companies for administrative violations, with the operating licenses of six companies revoked. These were administrative measures and not criminal charges related to human trafficking. Additionally, the Authority did not investigate officials allegedly involved in trafficking operations (Tran, 2022).

In light of the inconsistencies and loopholes in anti-trafficking laws, the Ministry of Public Security has proposed an amended draft of the Law on Prevention and Control of Trafficking in Persons to create a comprehensive and feasible legal framework for preventing and combating human trafficking in a unified and consistent manner, consistent with international law (Minh, 2022). However, the amended draft has yet to be processed.

Conclusion

This research has examined Vietnam's anti-trafficking laws and practices with a special focus on the repatriated victims from Saudi Arabia and their alignment with the Palermo Protocol's indicators of human trafficking. The comprehensive analysis shows that Vietnam's domestic laws and practices still contain significant loopholes and misconceptions. The primary research question of this paper sought to determine whether the victims repatriated from Saudi Arabia are satisfactorily covered by the indicators of human trafficking as outlined in the Palermo Protocol. The analysis suggests that the country's focus on the 'profitability' of trafficking and lack of emphasis on the 'purpose' of trafficking leaves a gap in protecting repatriated victims, particularly those from countries like Saudi Arabia.

Moreover, the heavy focus on trafficking for sexual exploitation to the exclusion of other forms of exploitation, such as labour trafficking, has resulted in a disproportionate protection regime that does not adequately cover all victims. The absence of effective transnational regulations to protect migrant workers also exacerbates their vulnerability to exploitation and trafficking abroad. Furthermore, the paper also sheds light on the lack of due diligence from the government of Vietnam to ensure a thorough investigation, prosecution, and compensation for wrongful acts related to human trafficking. Many individuals participating in labour export programmes become victims of trafficking yet are not recognised as such under Vietnamese regulations.

References

- ASEAN. (2015). *ASEAN Convention Against Trafficking in Persons*. <https://www.asean.org/wp-content/uploads/2015/12/ACTIP.pdf>
- Bảo Bảo. (n.d.). Xuất khẩu lao động qua môi giới: Nhiều rủi ro. *Hanoimoi.Com.Vn*.
<http://hanoimoi.com.vn/ban-in/Kinh-te/566164/xuat-khau-lao-dong-qua-moi-gioi-nhieu-rui-ro>
- Bui, T. N. L., & Tran, T. L. (2022, January 11). *Vấn đề nội luật hóa Công ước ASEAN về phòng chống buôn bán người đặc biệt là phụ nữ và trẻ em* [Government website]. VKSND tối cao;
<http://vksndtc.gov.vn>. <http://vksndtc.gov.vn/tintuc/Pages/lists.aspx?Cat=10&ItemID=9907>
- CEDAW. (1992). *General recommendations made by the Committee on the Elimination of Discrimination against Women* [United Nations]. <https://www.un.org/>.
<https://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm>
- General Assembly resolution 55/25. (2000). *Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*. OHCHR. <https://www.ohchr.org/en/instruments-mechanisms/instruments/protocol-prevent-suppress-and-punish-trafficking-persons>
- Hoang. (2021a, June 16). 13 phụ nữ Việt Nam làm việc ở Ả-rập Saudi kể chuyện bị ngược đãi. *VOA*.
<https://www.voatiengviet.com/a/muoi-ba-phu-nu-viet-nam-lam-vieco-arap-saudi-ke-chuyen-bi-nguoc-dai/5930635.html>
- Hoang. (2021b, November 6). Một cuộc mưu sinh nhọc nhằn, một kết cục cay đắng. *VOA*.
<https://www.voatiengviet.com/a/thieu-nu-nguoi-viet-17-tuoi-chet-sau-hai-nam-lao-dong-o-a-rap-xe-ut/6254569.html>
- Hoang Thi. (2015). Protection for Trafficked Persons in Viet Nam: Another National Security Discourse? *International Migration*, 53, n/a-n/a. <https://doi.org/10.1111/imig.12189>
- Kali, R. (2022). *What Is the Kafala System?* Council on Foreign Relations.
<https://www.cfr.org/backgrounder/what-kafala-system>
- Kneebone, S., & Debeljak, J. (2014). Transnational Crime and Human Rights: Responses to Human Trafficking in the Greater Mekong Subregion. *Asian Politics & Policy*, 6(1), 152–154.
<https://doi.org/10.1111/aspp.12079>
- Minh, H. (2022, October 11). Đề xuất sửa Luật Phòng, chống mua bán người. *Vietnam Government News*.
<https://baochinhpheu.vn/de-xuat-sua-luat-phong-chong-mua-ban-nguoi-102221011095816743.htm>
- OHCHR. (2021, November 4). *Viet Nam and Saudi Arabia: UN experts call for protection of trafficked workers*. OHCHR. <https://www.ohchr.org/en/press-releases/2022/01/viet-nam-and-saudi-arabia-un-experts-call-protection-trafficked-workers>
- Thu, H. (2022, August 3). Vietnam determined to prevent human trafficking. *VOVWORLD*.
<https://vovworld.vn/en-US/current-affairs/vietnam-determined-to-prevent-human-trafficking-1123429.vov>
- Tran, A. N. (2022, February 15). The Kafala system and Vietnam's domestic workers: Corruption and a silenced press. *New Mandala*. <https://www.newmandala.org/the-kafala-system-and-vietnams-domestic-workers-corruption-and-a-silenced-press/>
- UN Special Procedures. (2021). *UA VNM 5/2021*.
<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26748>

UN Special Procedures [@UN_SPExperts]. (2021, November 4). #KSA/#VietNam: *UN experts call on Saudi Arabia and Viet Nam to crack down on #HumanTrafficking after documenting the abuse of women and girls as young as 15 recruited in Viet Nam to serve as domestic workers in the kingdom.* <http://ow.ly/Nf1J50GG15N> #EndHumanTrafficking <https://t.co/QhDcLWN2Wn> [Tweet]. Twitter. https://twitter.com/UN_SPExperts/status/1456252137978093579

UNODC. (n.d.). *Human trafficking: People for sale.* <https://www.unodc.org/toc/en/crimes/human-trafficking.html>

US TIP Office. (2022). *2022 Trafficking in Persons Report: Vietnam.* US. Department of State. <https://www.state.gov/reports/2022-trafficking-in-persons-report/vietnam/>

THE VALUES OF “MYI-DU” IN LISU WOMEN: CAPITALS RELATION IN LIVELIHOOD DIVERSIFICATION

Grittayanee Tamee¹

Faculty of Social Sciences, Chiang Mai University, Thailand

Abstract

This paper aims to study the livelihood changes of Lisu women, which have been affected by the implementation of Government policy on highland development projects in Ban Doi Lan, Mae Suai District, Chiang Rai Province, Thailand, in relation to the capital or assets that the women have used to diversify their sources of income by using the strategy of livelihood diversification. The study also analyzed livelihood diversification's effect on the value of Myi-du, which is the traditional Lisu idea of honor, in the work context of Lisu women. The study culminated in three key findings. Firstly, the implementation of the highland development project caused livelihood changes for Lisu women in dimensions of economic, socio-cultural, and gender, which, together, have formed both the vulnerability and opportunity that determine the livelihood diversification of women. Secondly, by using the concept of capital in livelihood diversification, the finding has shown that the women have alternatively used various forms of capital or assets to diversify their sources of income at multiple levels, especially social capital, which plays the most important role in diversifying women's livelihoods. Finally, through multicultural social interactions, women have integrated the traditional Lisu's idea of 'Myidu' into a new definition.

Keywords: Lisu women, Government policy on highland development projects, Livelihood diversification, Myidu.

Introduction

In the realm of subsistence farming, the Lisu people have long held in high esteem the diligent toil involved in agricultural pursuits. This cultural disposition has bestowed upon them a unique reputation known as "Myidu" within the Lisu vernacular (Hutheesing, 1989). Rooted in their livelihood, which centers predominantly on agrarian activities ("Mu Yea"), the quest for agricultural excellence has not only been pivotal in sustaining their existence but also played a pivotal role in shaping their social standing and acceptance within their community.

¹ Student of Faculty of Social Sciences, Master of Arts in Social Sciences, Chiang Mai University, Thailand.

The term "Myidu" in the Lisu cultural lexicon is a composite of two fundamental components, "Myi" and "Du." In this cultural context, "Myi" encapsulates the concept of serendipity or favorable fortune, intrinsically linked with the celestial entity known as "Phi-Fah," a deity revered by the Lisu people. This celestial being is attributed to the role of bestowing blessings upon individuals, symbolizing a transcendent force capable of fostering prosperity and prowess across various domains. In contrast, "Du" signifies authority or influence from possessing "Myi" or favorable fortune. Conversely, the term "Satua" stands in stark opposition, translating to "shame" or "embarrassment," a consequence of unfavorable circumstances or misfortune. Within this cultural milieu, reputation and shame are intricately interwoven with Lisu individuals' power dynamics and interpersonal relationships. Moreover, these concepts display a degree of adaptability, their interpretation shifting across diverse contexts and circumstances. This exposition seeks to illuminate these terms' cultural and symbolic connotations, offering a scholarly perspective on their nuanced meanings and implications.

Metaphorically, the reputation of Lisu individuals finds its allegorical counterparts in elephants and dogs, symbolizing distinct qualities associated with each gender. Women, often symbolized as elephants embody humility, modesty, kindness, and moral integrity. They aspire to cultivate a reputation akin to the esteemed status of elephants, known as "Hama Myidu," through their poised demeanor, modesty, gentleness, and self-awareness (Hutheesing, 1989). Conversely, men's reputation is metaphorically akin to that of dogs. Men are expected to seek recognition and praise actively, analogous to dogs receiving "Ah Na Myidu," by displaying bravery and venturing into new experiences. Reputation holds significance for both Lisu men and women, aligning with assigned gender roles without one role being considered superior to the other. The concept of "Myidu" permeates various facets of Lisu life, notably their labor dynamics. Men and women fulfill complementary roles, with neither gender-specific task inherently considered more or less valuable. While men may engage in fewer tasks, their responsibilities often involve physically demanding labor. In contrast, women juggle multiple responsibilities, frequently involving labor-intensive work (Hutheesing, 1989). Women possess extensive knowledge of the land, guiding men on suitable cultivation areas to ensure bountiful harvests. They oversee the weeding of young plants in the fields and manage the timely harvest, with men assisting in transportation (Hutheesing, 1989).

However, the evolving livelihood patterns within the Lisu community have the potential to influence their perception and preservation of reputation significantly. This transformation is intricately linked with economic dynamics, ushering in a new paradigm where reputation is increasingly assessed through the lens of financial capital accumulation among the Lisu population. Simultaneously, these shifting livelihoods may impact the division of labor among Lisu men and women. As access to resources and capital, which historically balanced gender roles within their occupational sphere, undergoes transformation, the equilibrium of traditional roles is potentially disrupted by the implementation of government policies about highland development,

commencing in 1967 and notably affecting Doi Lan Village, has brought about inefficient labor utilization and disparities. These challenges have ramifications for the dignity associated with Lisu labor, as it becomes intertwined with notions of production and reproduction inherent to the capitalist system. Consequently, Lisu men and women grapple with their roles in a society increasingly valuing economic worth. Women, in particular, experience a diminishment of power and influence in farming activities, leading to a perceived erosion of the significance of their work.

Government efforts to eradicate opium cultivation and promote economic crops have compelled the Lisu people to abandon opium production. Thai military forces have destroyed opium fields, while restrictions on land access and limited water resources have hindered agricultural pursuits. The influx of various groups, including lowland Thais, lower hill tribes, and additional Lisu settlers, has exacerbated land use pressures, necessitating the Lisu people of Ban Doi Lan to venture farther from their homes to pioneer new farming areas. For those with limited land, this entails journeys of one to two hours to reach these pioneering farms. Unfortunately, the productivity of these newly cultivated lands is often compromised due to their frequent utilization, resulting in insufficient periods of dormancy (Hutheesing, 1989).

This research thus delves into how Lisu women have adapted to these changes and diversified their sources of income by leveraging various forms of capital. Unlike previous studies, notably Klein's (1991), which focused primarily on the fragmentation of women's livelihoods resulting from government policies, this inquiry delves deeper into the resilience of Lisu women following the implementation of these policies. It seeks to provide a more comprehensive understanding of the prevailing perception of a shift in the traditional Lisu value of "Myidu," a value system traditionally based on reputation accumulation through economic capital. Recent research findings in this paper offer fresh insights, addressing research questions illuminating this nuanced and evolving landscape.

Methodology

The study analyzes livelihood diversification's effect on the value of "Myidu," which is the traditional Lisu's idea of honor, in the work context of Lisu women. This study explores the varied livelihood patterns of Lisu women from Ban Doi Lan who have migrated to work outside the community. It aims to analyze the different forms of capital these women employ to access their respective livelihoods. Additionally, the study examines how their changing ways of life impact the value attributed to work and reputation.

Population

The population given the research focuses on the livelihoods of Lisu women from Ban Doi Lan who work outside the community. The population under investigation includes Lisu women engaged in diverse occupations, varying in age, education level, and field of work. The study aims to gain insights from this group, who have direct experience working and living outside the

community. Utilizing a diverse set of case studies will shed light on the adaptive decision-making processes of women in different circumstances and living contexts.

Table 1: The Information of Case Studies

| No. | Name | Age | Occupation | Education level |
|-----|-------------|-----|------------------------------|-------------------|
| 1 | Woo Two | 37 | Independent researcher | Master's degree |
| 2 | Wu Xue | 55 | Masseuse, business owner | Secondary school |
| 3 | Wu Piya | 40 | Traditional masseuse | Elementary school |
| 4 | Ah Fu Sue | 35 | Accountant, insurance broker | Bachelor's degree |
| 5 | A Ba Sue Wi | 25 | Hotel receptionist | Bachelor's degree |

The selection criteria for the case studies in this research were based on factors including age, occupation, and education level. These factors can ensure diverse representations of Lisu women. The data collection methodology for each case study involved the researchers spending time with the women in their homes and accompanying them to their workplaces. Through this approach, the researchers could gain insights into these women's daily lives and observe firsthand the dynamics of their work and livelihoods. This method allowed for a comprehensive understanding of the various aspects of their lives and the challenges and opportunities they encountered.

Data Collection Methods

This research adopted an ethnographic method that employed participant observation and in-depth interviews, including gathering information from relevant documentary sources such as books, research papers, articles, theses, and publications. Participant observation and in-depth interviews were conducted with the target population, including Lisu Households, Five Lisu women as mentioned in Table 1, and key informants, including the wife of the head village or 'Mae-Luang Bann.' Participant observation was conducted by following and observing five Lisu women's daily activities outside the community. However, there were challenges in collecting from certain case studies, particularly those working abroad. The online conversations, therefore, were used as an interview tool.

Key informant interviews involve engagement with family members of Lisu women from Ban Doi Lan who work outside the community. The interviews varied between households and Mae Luang, Doi Lan Village, depending on the issues being explored. The interviews with Mae Luang Village focused on the village's development history and the overall changes in livelihoods from the perspective of women. The researcher arranged informal interviews with 2-3 women in Mae Luang Village, selected randomly. The researcher was also allowed to address specific issues

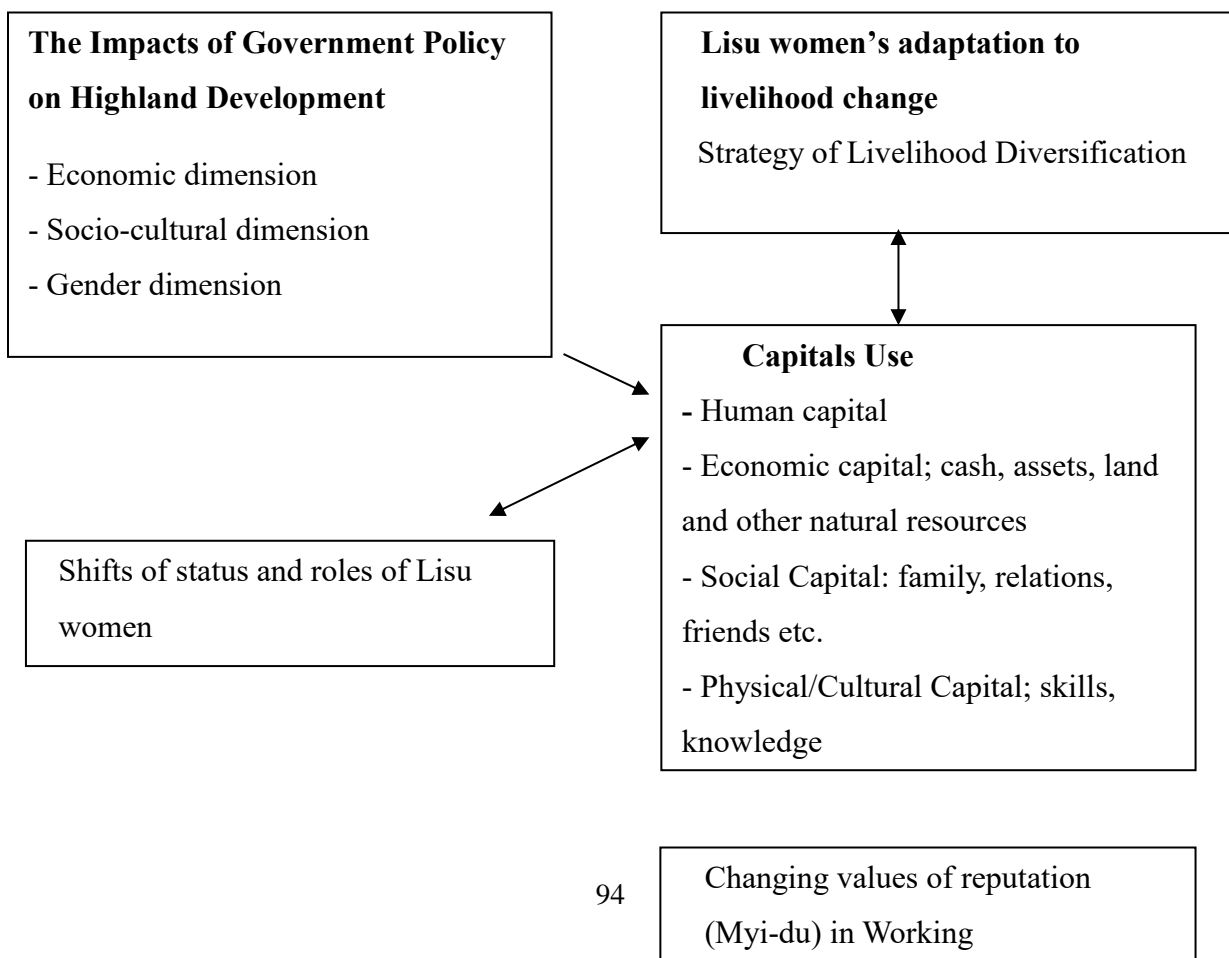
related to a divorced woman's land division during these interviews. This method allowed for a comparative analysis of the reasons behind women working outside the community and shed light on the role of the family in women's decision-making processes and the influence of family dynamics on women's status within the household.

To capture information about the case study participants in line with the study's objectives, the researcher conducted in-depth interviews. These interviews explored women's perspectives on working outside the community and the value attributed to dignity. The researcher followed the case study participants to their homes and, in some cases, resided with them to observe their daily lives and examine how they fulfill their roles at home and work, assessing whether these roles align with the perspectives presented by the women during interviews.

Conceptual Framework

This study employs several conceptual frameworks to analyze the research findings. The concept of capital by Bourdieu (1986) encompasses economic, social, and cultural capital. Additionally, Ellis' (1993, 1998, 2000, 2005) concept of livelihood diversification, which emphasizes the importance of diverse livelihood strategies for the poor, is incorporated. The study also examines the concept of state development and livelihood change to understand the impact of government initiatives on the lives of Lisu women. Lastly, the concept of Myidu within Lisu society is explored, considering its relationship with changes in women's ways of life and work.

Figure 1 Conceptual Framework



Findings

Klein's (1989) study has examined the impact of state-driven highland development policies on changes in Lisu's reputation and gender relations. The research indicated that the division of labor in subsistence farming does not inherently lead to a perception of labor inequality among Lisu women. However, inequality arises from the state's development policies, which overlook women's participation in the production process, hindering their access to knowledge, including advancements in agricultural practices. Consequently, women's decision-making power within households is diminished, limiting their roles to laborers on family-owned land and restricting their involvement in household work. Furthermore, the shift towards commercial production reinforces the overemphasis on economic status as a measure of Myidu, the Lisu concept of dignity, leading to increased social class divisions.

Nevertheless, the researchers recognize that certain state development policies have offered solutions to address the inequalities women face. Infrastructure development policies, for instance, have facilitated women's access to information, education, and employment without relying on men or official invitations to training programs. Educational management policies have also provided avenues for women to receive education that is relevant and accessible, such as the teaching and learning systems in welfare schools. Scholarships, such as those provided through the Royal Patronage Project and the Education Loan Fund, have significantly enhanced the quality of life for ethnic groups. This research, as demonstrated by the case study, reveals that some women have been able to pursue higher education through the state's open education program and access diverse economically beneficial careers, thereby transforming their worldview. This change highlights a reevaluation of women's contributions and the value of Midi or reputation within Lisu society.

The changing value of Myidu in women's work can be categorized in two directions. Firstly, a new perspective of Myidu emerges, aligning Lisu's traditional beliefs with a value system that emphasizes hard work and economic growth and awareness of the ethical sources of individual and household economic capital. Honesty becomes a significant criterion for evaluating honorability. Secondly, Midi is intertwined with religious doctrines of merit and sin, shaping the perception of honorable and dignified occupations. In this sense, Midi carries moral significance, distinguishing those who are renowned and prestigious based on their righteous work. Women negotiate the value of Midi within their work, even if it may not directly contribute to the household economy. By integrating various cultural beliefs, they fluidly define their own dignified identities, challenging class-based discrimination among women. This reevaluation of careers with feminine dignity moves beyond a reliance on economic indicators, as previously observed by Hutheesing (1989). The researchers perceive this as an opportunity to define women's values and meanings from multiple perspectives, allowing them to reclaim their status as "Graceful elephants" without being constrained by labor exploitation or the need to prove their economic potential in response to societal expectations.

Conclusion

In conclusion, the implementation of the state's highland development policy has had a profound and multifaceted impact on the livelihoods of the Lisu people in Ban Doi Lan, significantly influencing their economic, cultural, societal, and gender dimensions. The transition from a subsistence-based production system to a commercial agriculture model has necessitated a reliance on cash crops. It has led to the Lisu community becoming entangled in a cycle of inescapable debt. This transition has been particularly challenging for the younger generation of Lisu individuals, who face immense struggles in adapting and surviving within the framework of this modern production system. In response, they have resorted to various survival strategies, including expanding the cultivation of new crops, seeking financial assistance from formal institutions to cover household expenses, diversifying income streams by engaging in non-agricultural employment, and other similar measures. These strategies have emerged as crucial responses employed by the Lisu people to address the food insecurity crisis, which the government's policies have exacerbated.

Notably, Lisu women, historically playing significant roles in the agricultural sector, have encountered specific challenges within this transformed landscape. The development policies have limited their access to knowledge and resources associated with modern farming practices, disempowering them in decision-making processes related to cultivation and financial matters. Consequently, household power dynamics have shifted, with men assuming control over crop-related decisions and the resulting financial gains. This unequal division of labor in agriculture has further marginalized women, reducing their economic agency within the household. Consequently, Lisu women have increasingly pursued opportunities outside the agricultural sector to negotiate their economic status and bolster their influence within their households. They have sought educational and employment prospects beyond their immediate community by exploiting the infrastructural advancements facilitated by development initiatives.

Engaging in occupations outside their community has required Lisu women to leverage various forms of capital, including economic, social, and cultural. Notably, social capital has emerged as a particularly influential resource, enabling women to access new opportunities. Networks of family, relatives, and friends have played pivotal roles in recommending employment options, providing information about potential work sources, and facilitating the transfer of occupational skills. Furthermore, social capital has bolstered women's cultural capital by fostering connections to external sources of knowledge, skills, and experiences. This phenomenon is exemplified by cases where Lisu women have pursued higher education through the support and relationships forged with individuals outside their immediate community. Such social networks have also alleviated the financial burden of acquiring new skills or vocational training. Consequently, Lisu women have been able to transcend the constraints imposed by their traditional roles and establish themselves in diverse occupations.

In conclusion, the Lisu people in Ban Doi Lan have experienced far-reaching transformations in their economic, cultural, societal, and gender dimensions due to implementing

the state's highland development policy. These changes have both positive and negative implications. It is essential for future development policies and initiatives to adopt a more comprehensive and inclusive approach that accounts for the socio-economic and cultural dynamics of indigenous communities. In addition, according to the findings and conclusion of the research, to address the gender inequalities highlighted in Klein's (1990) study concerning Lisu women's reputation and gender relations resulting from state-driven highland development policies, here are the policy suggestions proposed as follows:

To begin with Gender-Inclusive Development Policies, State development policies should be reviewed and revised to ensure they actively incorporate gender considerations. Policymakers should recognize Lisu women's essential roles in subsistence farming and promote gender equity by actively involving women in the decision-making process regarding agricultural practices and land use. In addition, the development policy should focus on women's capacity building, which is aimed at empowering Lisu women economically and socially. These programs could include training and capacity-building initiatives that provide women with the skills and knowledge necessary for active participation in the workforce and agricultural sector. It should further focus on the necessity of promoting equity education and expanding educational opportunities, with a focus on making education accessible and relevant to their needs of livelihood, including encouraging the participation of women in open education programs and establishing more welfare schools to provide education that meets the needs of Lisu communities. It is important to ensure that these projects are designed and implemented with the specific needs of Lisu women in mind, considering their geographic and cultural contexts. By implementing these policy suggestions, the state can play a pivotal role in promoting gender equity, enhancing the status and reputation of Lisu women, and fostering a more inclusive and ethical approach to development within Lisu society. However, this research still needs to continuously monitor the impact of development policies on Lisu women and conduct further research to assess the effectiveness of policy interventions. This monitoring will help policymakers make informed decisions and adjustments as needed.

References

- Bourdieu, P. (2011). The forms of capital.(1986). *Cultural theory: An anthology*, 1(81-93), 949.
- Ellis, F. (1993). *Peasant economics: Farm households in agrarian development* (Vol. 23). Cambridge University Press.
- Ellis, F. (1998). Household strategies and rural livelihood diversification. *The journal of development studies*, 35(1), 1-38.
- Ellis, F. (2005). Small farms, livelihood diversification, and rural-urban transitions: Strategic issues in Sub-Saharan Africa. *The future of small farms*, 135.
- Hutheesing, O. K. (2560). *Emerging sexual inequality among the Lisu of northern Thailand: The waning of dog and elephant repute*. (T. Jatuworapruk, Trans.). Brill. (Original work published 1989).

BARRIERS TO ACCESSING MENTAL HEALTHCARE AMONG OLDER DISPLACED PEOPLE FROM MYANMAR IN MAE SOT FOLLOWING THE 2021 MILITARY COUP

Suu Mon Aung¹

Institute of Human Rights and Peace Studies, Mahidol University

Abstract

Mental health is a growing concern among displaced people from Myanmar in Mae Sot, Thailand, following the 2021 military coup. After experiencing traumatic events such as forced displacement and other persecution by the Myanmar military, many suffer from mental health problems. The research aims to explore the limitations and challenges that make older displaced Myanmar people inaccessible to mental healthcare and psychosocial support in Mae Sot after the coup. Even though older displaced people are among the most vulnerable groups due to their age-specific challenges and forced displacement, their needs are often overlooked in emergency responses and left out with humanitarian agencies focusing on other vulnerable groups. Besides, Thailand does not recognize them as refugees and leaves them vulnerable to deserve their right to health, but instead, it imposes a risk of arrest or deportation. The qualitative data were collected through in-depth interviews with mental health and psychosocial support providers to identify barriers for older displaced people accessing mental health support in Mae Sot. The study points out that the percentage of older people who seek or are willing to seek mental health support is negligible or possibly non-existent. Findings show external and internal barriers, including legal and financial barriers, as well as stigma and trust that prevent older displaced people from accessing mental health support in Mae Sot. Moreover, the findings indicate the need for legal protection for older displaced people to access healthcare without the fear of arrest, the need for promoting awareness of mental health among displaced people from Myanmar, the need for qualified and professional mental health and psychosocial support service providers in Mae Sot, and, the need for effective and far-reaching mental healthcare programs to cater the specific needs of older displaced people from Myanmar.

Keywords: Mental health, Older displaced people, Myanmar military coup, Thailand

¹ Student of Asia Pacific Master of Arts (APMA) in Human Rights and Democratization, Mahidol University, Thailand.

Introduction

Since the Myanmar military staged the coup in 2021, tens of thousands have been forced to flee their homes, cities, and, ultimately, the country due to its attacks against civilians (Amnesty International, n.d.). More than 20,000 people have sought safety in Thailand since the coup, and older people are among the biggest population groups crossing the border (United Nations High Commissioner for Refugees, 2022, p. 3). Older displaced people are among the most vulnerable groups because of their age-related limitations and illnesses. They may also suffer from traumatic experiences, be displaced far from their homes, and not be legally recognized as refugees after arriving in Thailand. Traumas caused by conflict-related experiences have an extensive mental health impact during post-displacement phases (Virgincar et al. 2016, p. 889). Furthermore, Mölsä et al. (2017) mention that refugees' lack of permanent legal status in a foreign country causes significant symptoms of post-traumatic stress disorder (PTSD).

Additionally, forced displacement can cause a higher risk of mental health problems, especially among older people, due to the loss of social networks and social support (Siddiq et al., 2023, p. 1). These mental health problems may require regular counselling, medication, and other psychosocial support to assist the needs of older displaced people. Even though older people are one of the most vulnerable groups during humanitarian emergencies, there is often no targeted protection specific to their needs (Burton & Breen, 2002). Despite many older displaced Myanmar people needing support for their mental health, the accessibility of mental healthcare services is limited, with the lack of legal recognition as refugees in Thailand leaving them vulnerable because they cannot use public health facilities. In addition, given that they are dispersed across a vast geographical expanse in Mae Sot rather than a specific area, it is difficult to target an area where mental healthcare services can reach many people. Suphanchaimat et al. (2020) mention that providing healthcare services in a specific area, such as a refugee camp setting, is easy to implement as the settlement of displaced people in that area is well aware by healthcare providers. This research is developed through literature reviews on the needs for mental health and psychosocial support of older displaced people (60 years old and above) who were forced to leave Myanmar and live in Mae Sot while facing limitations and challenges in receiving mental health support.

Methodology

The research is conducted in a qualitative study approach, and the primary data were collected through semi-structured, in-depth interviews. Six key informants were recruited through purposive selection and snowballing methods based on their background and professional experience providing mental healthcare and psychosocial support in Mae Sot. Interviews were conducted in-person and online in the Burmese language and translated into English by the researcher. The names of the key informants are kept confidential due to safety concerns. Key informants include one psychiatric professional who works at Mae Tao Clinic, one freelance

counselor who is a medical doctor, one freelance counselor who studied psychology, one freelance psychosocial support provider who is trained in trauma healing, one freelance psychosocial support provider who is a medical doctor and has worked as a psychosocial support programs manager for an International Non-Government Organization (INGO), and one professional counselor from Assistance Association for Political Prisoners (AAPP) with years of experience in counseling. All key informants have experience providing mental healthcare services and psychosocial support for displaced people from Myanmar in Mae Sot. Even though the initial methodology includes recruiting older displaced Myanmar people in Mae Sot, the number of older people who sought mental healthcare is minimal, and the ones who were found were unwilling to talk because of their safety concerns.

Findings

Several causes forced older people to flee to Mae Sot following the 2021 military coup in Myanmar, including being wanted for participating in protests for being targeted as hostages for their children who have participated in the Civil Disobedience Movement (CDM)², and who are parents of children who have joined the People's Defense Forces (PDF), which is the armed wing of the National Unity Government (NUG)³ To fight against the Myanmar military.

According to the key informants, the percentage of older displaced people receiving and seeking mental healthcare in Mae Sot is tiny. Most people seeking mental health and psychosocial support in Mae Sot are young adults and middle-aged groups. However, it does not mean the population of older people in Mae Sot is small. Younger people have more access to information, especially through online platforms, and they tend to be out in the community more where they can receive information, compared to older people who may be home more. The following findings show age-specific barriers to accessing mental health support.

The main barrier in Mae Sot seems to be the legal limitation that prevents older displaced Myanmar people's access to mental health support. Unlike the migrant population from Myanmar, who have been living and working in Mae Sot for years, many newly arrived displaced people following the 2021 coup do not have legal documents. Furthermore, there is no protection from Thai authorities for this vulnerable group despite the forced displacement and persecution they have endured in Myanmar. The fear of arrest is a constant worry among displaced people. It is stronger among older people because it is an additional stressor when adapting to a new, unfamiliar environment while also coping with any age-related medical conditions they bear. Key informants said there are often incidents of displaced people on the way to mental health and psychosocial

² Civil Disobedience Movement is a resistance of civil service people who leave their state jobs to show their disapproval of the coup.

³ The parallel government of Myanmar was formed by the lawmakers who were forcibly removed from their positions when the Myanmar military took over power in the 2021 coup.

support being arrested due to the lack of legal documentation for living in Thailand. This arrest requires them to pay fines to Thai authorities to be released. The number of Burmese displaced people arrested in Mae Sot since the 2021 military coup is unknown. However, random checks on roads and raids in Mae Sot are often reported on the news. Radio Free Asia reports that a Burmese couple who fled due to the Myanmar coup was arrested on their way to a café in Mae Sot by the Thai authorities because they had no legal documents (Radio Free Asia, 2023). They were detained for three days until they paid THB 10,000 to be released (Radio Free Asia, 2023). A more recent incident in May 2023 showed that some 70 undocumented migrant workers were arrested during raids in one day in Mae Sot, and a THB 5,000 fine per person had to be paid to Thai authorities to be released (The Irrawaddy, 2023). Random raids on homes can also happen, meaning people have to live in this fear even when trying to stay out of sight.

Displaced people also face financial barriers when seeking mental healthcare and psychosocial support. Many of them had to leave their belongings and assets behind when they fled, so they did not have extra savings while living in Thailand. This trouble is exacerbated because they cannot access employment without legal documentation, unlike documented migrant workers. This burden is bigger among older displaced people because fewer job opportunities exist for them than younger people. In Mae Sot, most jobs are blue-collar work involving physical labor. Many displaced people still rely on financial aid from individual donors or humanitarian organizations to meet their essential needs, such as rent and food in Mae Sot. Although mental health services, such as counseling and therapy sessions, are free of charge, many people do not have extra money to spend on traveling to reach them. Therefore, the potential risk of fines if they are arrested is a particular concern among displaced people from Myanmar.

The lack of professional service providers and facilities in Mae Sot is another external barrier for older displaced people to receive mental health support. Key informants explained that training people to be professional mental health services providers takes time because they need ethical practices and an understanding of trauma to support individuals with traumatic experiences. Therefore, this factor may impact the lack of service providers in Mae Sot. Some may argue that there are online platforms for counseling and psychosocial support. However, mental health support providers mentioned that in-person mental health support is more effective than online, especially for older people, as many struggle with or do not have access to devices for video calls, and they prefer face-to-face communication. One psychiatric facility in Mae Sot has a small team to facilitate a high demand for mental healthcare needs. This service has been a recent improvement since August 2022. Before this, no psychiatrist could diagnose clinical cases of mental health conditions. In addition to the need for professional service providers and facilities, community volunteers who could facilitate and provide information about mental healthcare and psychosocial support in Mae Sot are also required. As mental health is a new topic for displaced people following the coup, it is unsurprising that only a few professionals are available. However, mental healthcare is a growing concern among displaced people whose lives are uncertain, with much stress to bear.

In addition to external barriers like legal and financial struggles, internal limitations, including cultural stigma and a lack of trust among displaced people from Myanmar, discourage older displaced people from seeking mental health support. The cultural stigma often associates "mental health" with being "crazy or mad." This belief is stronger among older people as they have believed for so long that depression, anxiety, or mood swings only happen to mentally unstable people. This belief makes mental health a taboo topic and creates a sense of shame in seeking professional mental healthcare and psychosocial support. Even though awareness of mental health and psychosocial support has increased, and many people have become more accepting of it following the 2021 coup, the cultural stigma is still strong among older people. Many of them still accept that it is normal to feel depressed or anxious after traumatic events, and they tend to cope with religious practices such as praying or meditation rather than consulting with professionals.

Trust is another internal barrier for older displaced people seeking mental health and psychosocial support in Mae Sot. Even though mental health and psychosocial support providers are from Myanmar and have a strong understanding of the political and social context of the military coup in Myanmar and displacement in Thailand, to a certain degree, there is a lack of trust in others among displaced Myanmar people in Mae Sot. Key informants mentioned that some people are afraid to say where they live in Mae Sot. Due to living in fear of being arrested by Thai authorities and the threats they faced and would still face back in Myanmar, displaced people are reluctant to open up about their emotions. Some people are worried about talking about their experience, trauma, or what they have witnessed due to safety concerns. They are afraid that information shared during a counselling or therapy session could be used against them. Because of this concern, information about mental health support programs provided in Mae Sot is shared only through trusted networks among displaced people.

Conclusion

This research is conducted through experiences and knowledge of mental health and psychosocial support providers to identify the barriers that older displaced people from Myanmar face in Mae Sot following the 2021 military coup. The findings show external and internal barriers that prevent older displaced people from accessing mental health support. The legal barrier is significant for older displaced people as they are not legally recognized as refugees and do not have legal documentation, which imposes a risk of arrest if they go out to seek mental health support in Mae Sot. In addition, financial barriers, lack of adequate professional mental health and psychosocial support providers, cultural stigma, and trust are external and internal barriers that discourage older people from seeking mental health and psychosocial support. In reducing these barriers, legal protection is needed for vulnerable displaced people after going through traumatic events while enduring age-specific challenges and deserve their fundamental right to health.

Furthermore, humanitarian organizations should be allowed to operate more to facilitate mental healthcare services and to deliver aid to displaced people to ease their financial burden.

Additionally, more mental health awareness programs are needed to reduce cultural stigma, especially targeting older people through communication channels they use to seek information. Moreover, more safe spaces are needed to facilitate psychosocial support workshops and other mental healthcare services and build trust between receivers and providers. The priority in Mae Sot is increasing the availability of mental health support services overall rather than tailoring them for different age groups. This priority shows a gap in mental health support that meets older people's needs.

References

- Amnesty International. (n.d.). *Myanmar 2022*. <https://www.amnesty.org/en/location/asia-and-the-pacific/south-east-asia-and-the-pacific/myanmar/report-myanmar/>
- Burton, A., & Breen, C. (2002). Older refugees in humanitarian emergencies. *The Lancet*, 360, s47–s48. [https://doi.org/10.1016/S0140-6736\(02\)11819-8](https://doi.org/10.1016/S0140-6736(02)11819-8)
- Mölsä, M., Kuittinen, S., Tiilikainen, M., Honkasalo, M.-L., & Punamäki, R.-L. (2017). Mental health among older refugees: The role of trauma, discrimination, and religiousness. *Aging & Mental Health*, 21 (8), 829-837. <https://www.tandfonline.com/doi/full/10.1080/13607863.2016.1165183>
- Radio Free Asia (2023). "Myanmar migrants face being exploited under Thai deportation system." <https://www.rfa.org/english/news/myanmar/myanmar-migrants-thailand-02052023090414.html>
- Siddiq, H., Ajrouch, K., Elhaija, A., Kayali, N., & Heilemann, M. (2023). Addressing the mental health needs of older adult refugees: Perspectives of multi-sector community key informants. *SSM - Qualitative Research in Health*, 3, 100269. <https://doi.org/10.1016/j.ssmqr.2023.100269>
- Suphanchaimat, R., Sinam, P., Phaiyarom, M., Pudpong, N., Julchoo, S., Kunpeuk, W., & Thammawijaya, P. (2020). A cross-sectional study of unmet need for health services amongst urban refugees and asylum seekers in Thailand in comparison with Thai population, 2019. *International Journal for Equity in Health*, 19(1), 205. <https://doi.org/10.1186/s12939-020-01316-y>
- The Irrawaddy. (2023, May 24). *Dozens of Myanmar Migrant Workers in Mae Sot Detained by Thai Police*. <https://www.irrawaddy.com/news/burma/dozens-of-myanmar-migrant-workers-in-mae-sot-detained-by-thai-police.html>
- United Nations High Commissioner for Refugees. (2022, July 29). *Thailand: Myanmar Situation Preparedness & Response plan - July-December 2022*. Operational Data Portal. <https://data.unhcr.org/en/documents/details/94465>
- Virgincar, A., Doherty, S., & Siriwardhana, C. (2016). The impact of forced migration on the mental health of the elderly: A scoping review. *International Psychogeriatrics*, 28(6), 889–896. <https://doi.org/10.1017/S1041610216000193>

THE REASON WHY WE ARE STILL HERE——UNRAVELING THE RELATIONSHIP BETWEEN DEPOLITICIZATION AND VOLUNTEERISM

Yilan Qiao¹

Institute of Human Rights and Peace Studies, Mahidol University, Thailand

Abstract

By the political craft of populism and depoliticization, the Chinese government takes the priority of national sovereignty and stability before political and civil rights, as well as responds to outside criticism with their determination to "ensure human rights with Chinese characteristics" in National Report to the Human Right Council in 2018. This policy makes Chinese LGBT organizations and activists vernacularize their working approach, transforming from advocacy to service provision. However, in the face of the shrinking space of civil society and the conservative backlash on gender equality, many people, known as Zhiyuanzhe (volunteer, 志愿者), persist in working voluntarily for LGBT NGOs. This article explores why people volunteer given the political context through a case study of one NGO for sexual minority groups in China and in-depth semi-structured interviews with volunteers of different participatory levels and sexual orientations by stratified sampling. The textual analysis showed that political inertia emerging from the depoliticized context motivates people to make micro changes rather than give in to political frustration. Additionally, the depoliticization effects of online attacks and the closure of organizations stimulate emotional needs for gender-friendly spaces that align with the depoliticized transformation of LGBT organizations, thus supporting sustainable volunteerism. These findings show the diversity of working approaches and reveal the equal importance of emotional labor and political changes in promoting gender equity.

Keywords: China, LGBT, Volunteerism, Depoliticization

Introduction

With the appointment of a SOGIE independent expert in the United Nations in 2011, the SOGIE issue has gained significant attention worldwide. However, with the emphasis on human

¹ Student of Asia Pacific Master of Arts (APMA) in Human Rights and Democratisation, Mahidol University, Thailand.

rights with Chinese characteristics (Chinese Foreign Ministry, 2018), the problems that the Chinese LGBTQ+ community face has not been fully addressed yet. As a matter of fact, in the face of Western countries' criticism of China for its violation of human rights, such as Hong Kong issues, and the prevalence of homo-nationalism, the Chinese government adopts the political craft of non-politicization and populism to maintain the legitimacy of its regime. This politics is also reflected in the Chinese government's mixed attitude toward homosexuality. On the one hand, the Chinese government recognizes LGBT rights to health. For example, China has realized the decriminalization (1997) and de-pathologization (2001) of homosexuality. In 2018, The Chinese Foreign Ministry made it clear that China will take protective measures for the right to health of sexual minorities (Li, 2018).

On the other hand, the Chinese government has repressed LGBT political rights for fear that they would subvert the state. Although the Chinese government has not publicly declared that LGBT organizations are subverting state power, the Chinese government has not made any punishment for netizens' hate speech that LGBT organizations are foreign forces and will destroy national security (Ziwuxiashi, 2021). Instead, it has restricted the rights of association of LGBT groups through strict policies, such as the Regulation on Registration and Administration of Social Organized (2016) and the Foreign NGO Management Law (2017), and illegal crackdowns. For example, due to LGBT campus organizations' advocacy for anti-gender violence events in 2021, many netizens, such as Ziwuxiashi, are falsely accusing LGBT activists of supporting Hong Kong independence foreign forces through gender issues and attempting to subvert the Chinese government by criticizing the Chinese government. Finally, on 6 July 2021, the Chinese government directly closed the official social media accounts of all campus associations in China and secretly issued an order prohibiting students from organizing associations in schools (BBC News, 2021).

In such a constraint context, to ensure the legitimate status and continue their work for the LGBT community, Chinese LGBT NGOs adopt the vernacular process of recuperation and compartmentalization to translate "ideas and practices developed in western counters into terms appropriate for local contexts"(Levitt and Merry, 2009, p. 2) to avoid connection with western countries and political factors within their agency. In order to get legitimate status, LGBT NGOs registered with the Civil Affairs Bureau started more cooperation with the local government, such as taking the Government's Purchase Public Service, and transformed their working approach from radical advocacy to conservative service through social service provision and psychological counseling. This NGOization made LGBT NGOs lose their visibility and affection of pride to connect with the public and community. Nonetheless, many people still contributed to NGOs by volunteering. In order to understand why these people still work for the LGBT gender issues under political constraints in China, this research used a case study to interview volunteers from a Chinese LGBT NGO in China. From the perspective of the NGOization and emotion theory, it reveals how people build emotional resilience to cope with the depoliticized context.

Literature review: Emotion and NGOization

Many scholars have already discussed the important role that emotion plays in the participation of activism (Guenther, 2009; Jasper, 2011), the type of emotion that contributes to participation, the emotional mechanism and strategy (Flam, 2007), as well as the relationship between emotion and the social structure (Summers-Effler 2002). In the extant literature on Western LGBT and feminism studies, pride, fear, pity, and shame are considered the most important affections motivating the LGBT community (Jasper, 2011). Along with these factors, critical consciousness (Hercus, 1999) and hope for changing the world (Summers-Effler, 2002; Guenther, 2009) are the key to the mobilization. One of the gaps in extant research is the lack of empirical research from the Chinese context, especially when the government forbids advocating in a pride stance and making macro change. Furthermore, given the interrelationship between macro politics and micro emotional configuration (Brown & Pickerill, 2009), it is worth analyzing what the emotional tone that Chinese LGBT activists will take under the long-term deprivation of civil rights in the face of the depoliticization and NGOization of Chinese LGBT NGOs.

So far, many scholars have analyzed the impact of depoliticization on the development of NGOs. While many research showed that NGOization gave the Chinese NGOs more space to cooperate and negotiate with the government, thus having a higher influence on politics (Han, 2018; Yuen, 2018), building alliances (Guo, 2021), gaining government funding (Guenther, 2009; Tian & Chuang, 2022), there are also criticisms on the NGO's internalization of hierarchical political repression in working approach, mission, goals (Tian & Chuang, 2022) and the reinforcement of legal governance and state's regulation (Han, 2018). From the perspective of emotional culture, Guenther (2019) conducted a comparative study of two feminist NGOs, demonstrating the polarized impacts of emotional expression in an independent organization and repression in a depoliticized organization on sustainable development. Following Guenther's study, this research explores the effects of depoliticization on emotional needs and how the depoliticized NGO responds to volunteers' emotional needs through place. It is crucial to analyze the place since an NGO provides a physical space that can provoke different emotions compared to other forms of activism, such as street campaigns and online advocacy (Brown & Pickerill, 2009, pp. 28-30).

Methodology

In order to explore the emotional tone that volunteers have in a Chinese depoliticized context and how the physical space of a depoliticized NGO resonates with activists' emotional tone, thus promoting activists' participation in NGO's daily work, this study takes qualitative study on volunteers who work for one of the Chinese LGBT NGOs from four different participation levels (quitted, normal, active, core volunteers), and different sexual orientations and gender identities. Participatory observation, secondary data research based on the NGO's report, and 15 informal and formal interviews are taken to understand the motivation for joining volunteerism as well as

individual feelings and understanding of the macro depoliticized environment and NGO's working approach. This in-depth ethnography sheds light on the interrelationship between depoliticization and volunteerism.

Findings

Through a textual analysis of the interview, it becomes evident that people's continued dedication to the movement stems from two fundamental factors. Firstly, the long-term depoliticization shaped the emotion of political inertia, which provides resilience for people to enjoy emotional pleasure during the participatory process rather than be frustrated entirely about the dim future. Secondly, the shutdown of some LGBT organizations and online hate speech brought by political depoliticization motivate activists to find a relatively safe place where the depoliticized NGO with a gender-friendly place resonates with their emotional needs. These findings show the diversity of approaches to promoting gender equality in different contexts. In a depoliticized society, participants and NGOs will rely on micro-emotional labor for personal pleasure and to improve intimate interpersonal relationships, which is the energy for sustainable participation.

The resilience of emotion of political inertia

Participants increased their resilience as a result of the emotion of political inertia they developed from understanding Chinese political participation since 2015. When asked about their understanding and feeling about depoliticization, participants stated "totally disappointed," "without any expectation," "indifferent," and "stay away from political frustration" as the most common emotions answered by the interviewees. This status resembles the "emotional tone of serene yet determined resistance" (Juris, 2008, p. 74). According to the volunteers, the long-term frustration towards the social reformation and the lack of political and civil rights cultivates political inertia. However, they still consider that society will be changed at a relatively slow pace and in a conservative way. As a result, such emotion helps volunteers continue their participation without being defeated by the disappointed reality.

In addition, the indifferent attitudes towards political change also show the diverse working approach to making social change in different contexts. People with emotions of political inertia prioritize personal pleasure and the improvement of intimate relationships over political change, which is relatively impractical in the current situation. These people consider that volunteerism is one way for activists to relieve personal loneliness when they organize pan-psychological activities for several LGBT people. Some volunteers even consider enhancing intimate relationships with family and friends as meaningful as political change. "The personal is political"; "If you always dream of something impossible and set your goal too high, it is very easy for you to get burned out and quit the movement especially when there are too many hurdles"; "Rather than only waiting for political change, we should also help people nearby to remove their stereotype against LGBT people since they need more opportunities to understand

LGBT people are not 'perverts'." shows the depoliticized working approach also bring the space for social change.

The emotional need for an offline, gender-friendly safe place

Apart from the political inertia accompanied by depoliticization, which makes everyone focus on personal pleasure and interpersonal relationships so that people have the motivation to continue to participate, the internal trauma from the depoliticization results, such as attacks from previous online hate speech and the shutdown of the LGBT organization has also prompted a search for safer offline options gender-friendly safe space to meet the need for belongingness.

Due to the prohibition of offline street campaigns since 2015, online advocacy through social media has become a prevalent trend among LGBT and feminist movements (Yuen, 2015; Yang, 2019). Although the online network has empowered the LGBT community through knowledge dissemination and public participation, it has also caused online hate speech targeted at LGBT and feminist groups and endless internal conflicts among different LGBT groups. Moreover, online help activities would even "enlarge the negative offline psychological well-being" due to the restriction of online emotional support (Han et al., 2019, p. 96). In addition, the shutdown of all LGBT student groups also promoted LGBT activists to seek out another relatively safe space. As a result, all of these traumas brought about by the depoliticization of the crackdown increase LGBT activists' demands for a safe offline space, which the depoliticized NGO can provide appropriately.

In contrast to the depoliticized NGO dependent on the government, the LGBT NGO in the case study retains some degree of autonomy where people can express themselves. The NGO's principle to create an inclusive space for marginalized groups such as LBQ women and the poor differs from current commercial space and elitist official space. The former allows different LGBT communities to find their belongingness in this place.

Conclusion

The above analysis demonstrates that with the understanding of the Chinese political context and the transformed working approach of LGBT NGOs, both activists and organizations build emotional resilience featuring political inertia and gender-friendly safe space focusing on emotional labor for sustainable participation in the current depoliticization of the LGBT movement, which complements the gap of emotional studies in the Chinese context. This gap reveals the diversity of participatory approaches to promoting LGBT rights through enjoying personal pleasure, finding belongingness, and removing closet people's stereotypes of LGBT people instead of only focusing on political and macro change. In this context, promoting LGBT rights through personal pleasure, belongingness, and removing closet people's stereotypes of LGBT people shows that personal micro-change is as important as political macro change.

References

- BBC News. (2021, July 8). *China divided as WeChat deletes LGBT accounts from platform*. BBC News. <https://www.bbc.com/news/world-asia-china-57759480>
- Brown, G., & Pickerill, J. (2009). Space for emotion in the spaces of activism. *Emotion, Space and Society*, 2(1), 24-35.
- Chinese Foreign Ministry. (2018). *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21**- China*. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/254/62/PDF/G1825462.pdf?OpenElement>
- Flam, H. (2007). Emotions' map: A research agenda 1. In Flam, H., & King, D (Ed.), *Emotions and social movements*, (2nd ed., pp. 19-40). Routledge. <https://doi.org/10.4324/9780203013526>
- Guenther, K. M. (2009). The impact of emotional opportunities on the emotion cultures of feminist organizations. *Gender & Society*, 23(3), 337-362.
- Guo, Y. (2021). The Practice of Chuquan by Queer NGOs in China. In *2021 5th International Seminar on Education, Management and Social Sciences* (pp. 344-347). Atlantis Press. 10.2991/assehr.k.210806.064
- Han, H. (2018). Legal governance of NGOs in China under Xi Jinping: Reinforcing divide and rule. *Asian Journal of Political Science*, 26(3), 390-409.
- Han, X., Han, W., Qu, J., Li, B., & Zhu, Q. (2019). What happens online stays online?—Social media dependency, online support behavior and offline effects for LGBT. *Computers in Human Behavior*, 93, 91-98.
- Hercus, C. (1999). Identity, Emotion, and Feminist Collective Action. *Gender and Society*, 13(1), 34–55.
- Jasper, J. M. (2011). Emotions and social movements: Twenty years of theory and research. *Annual Review of Sociology*, 37, 285-303.
- Juris, J. S. (2008). Performing politics: Image, embodiment, and affective solidarity during anti-corporate globalization protests. *Ethnography*, 9(1), 61–97.
- Levitt, P., & Merry, S. (2009). Unpacking the Vernacularization Process. *Global Networks: A Journal of Transnational Affairs*, 9(4), Introduction.
- Li, M. Q. (2018, November 6). 因循普遍定期审查机制, 联合国人权理事会查看中国人权状况 [Special Report, UN Human Rights Council's Universal Periodic Review reviews the Human Rights record in China]. *UN News*. <https://news.un.org/zh/story/2018/11/1022202>
- Summers-Effler, E. (2002). The micro potential for social change: Emotion, consciousness, and social movement formation. *Sociological Theory*, 20(1), 41-60.
- Tian, F., & Chuang, J. (2022). Depoliticizing China's grassroots NGOs: State and civil society as an institutional field of power. *The China Quarterly*, 250, 509-530.

- Yang, Y. (2019). Bargaining with the state: The empowerment of Chinese sexual minorities/LGBT in the social media era. *Journal of Contemporary China*, 28(118), 662-677.
- Yuen, S. (2015). Friend or Foe? *China Perspectives*, 3, 51-56.
- Yuen, S. (2018). Negotiating service activism in China: The impact of NGOs' institutional embeddedness in the local state. *Journal of Contemporary China*, 27, 406-422. doi:10.1080/10670564.2018.1410976
- Ziwuxiashi. (2021, May 15). 女权组织、同性恋等LGBT组织，绝不能让他们进校园! [We should not allow Feminist and LGBT organizations to infiltrate into the campus!] [Status Update]. Weibo. <https://weibo.com/5067914848/Kga8073pq?type=repot>

DISRUPTION AND CRISIS: MAPPING THE IMPACT OF THE COVID-19 PANDEMIC ON HUMAN RIGHTS ORGANIZATIONS IN THE PHILIPPINES

Kay S. Conales¹

Institute of Human Rights and Peace Studies, Mahidol University, Thailand

Abstract

COVID-19 transformed how societies and communities function. Studies show that the crisis has been used to stifle dissent and repress citizen engagement. Civil society organizations working on democratization and human rights in Southeast Asia are particularly constrained (Nixon, 2020). This paper examines the impact of the COVID-19 pandemic on human rights organizations in the Philippines. In particular, it looked at the experiences of the Initiatives for Dialogue and Empowerment through Alternative Legal Services, Inc. (IDEALS). This non-government organization provides legal and technical needs to vulnerable and marginalized groups. Specifically, it determined the challenges experienced by IDEALS in their operations and conduct of human rights work and advocacy. Through in-depth interviews and document reviews, this qualitative study found that IDEALS had to overhaul their operations since most, if not all, of their services, needed to be delivered face-to-face. They integrated online tools and platforms for legal consultations, legal aid, advocacy, and networking. IDEALS observed changes like the concerns of citizens during the COVID-19 pandemic. The common drug cases and illegal arrests saw a rise in cases involving violations of quarantine protocols, labor issues (e.g., illegal dismissal), and domestic violence. Consequently, IDEALS retooled internally and refocused certain resources to respond to these changing needs. While online tools became a typical response of civil society and other types of organizations in coping with COVID-19, these tools prove inadequate in ensuring that organizations thrive in their work. Their relations with other civil society organizations, the community, and the State remain pivotal in their success.

Keywords: COVID-19 crisis, human rights organizations, politics of crisis, state-civil society relations

¹ Kay S. Conales is a student of the Asia-Pacific Master of Arts (APMA) in Human Rights and Democratization at the Institute of Human Rights and Peace Studies of Mahidol University, Thailand.

Introduction

The COVID-19 pandemic transformed how communities, organizations, institutions, and societies functioned. States and governments worldwide had to impose restrictions on movement and other basic freedoms to curb the spread of the virus. Aside from overwhelmed healthcare systems, the nature of work, education, the economy, and society, in general, had to adapt to the changes required by the crisis. Beyond the tangible and material impact of COVID-19, it posed serious challenges and human rights violations and worsened what scholars and practitioners call a "shrinking civic space." COVID-19 happened at a time when democratic backsliding or regression has been observed across all regions, including Southeast Asia (Levitsky and Way, 2020; Diamond, 2021). The quality of democratic institutions and processes significantly waned, changing the dynamics of human rights promotion and protection.

There is evidence that the State weaponized the COVID-19 pandemic to stifle dissent and repress civic and political rights (Chiozza and King, 2022), especially those of civil society. Launching quarantine protocols, the State launched a crackdown on legitimate mobilization and protest activities. This notion turns the COVID-19 pandemic into not only a humanitarian crisis but also a human rights crisis. Against this backdrop, organizations working on protecting and promoting human rights and democracy were particularly challenged. In its pandemic response, then-President Duterte deployed a widely militaristic and punitive approach in the Philippines. The Philippine National Police (PNP) and the Armed Forces of the Philippines (AFP) were activated, with medical and healthcare professionals and experts sidelined in policy-making. The country's pandemic response was ranked poorly among ASEAN Member States.

This study takes an interest in the actual experiences of human rights organizations in the Philippines during the pandemic. Most studies focus on the impact of COVID-19 on human rights and the challenges that civil society needs to confront in the context of an eroding democratic space. The gaps in existing literature include limited use of human rights organizations as loci and units of analysis and limited contextual focus on Southeast Asia.

Accordingly, this study examines the challenges experienced by human rights organizations in the Philippines. Particularly, it focuses on Initiatives for Dialogue and Empowerment through Alternative Legal Services, Inc. (IDEALS), a non-government organization that provides legal and technical needs to vulnerable and marginalized groups in the country. It hopes to uncover how the COVID-19 crisis affected their operations, advocacy work, and relations with the State and other stakeholders.

Concepts

Using Singapore and Hong Kong as case studies, Wong and Wu (2021) found that the State can cooperate with other actors in society and be confrontational in its COVID-19 response. Civil society participation or exclusion is a factor in their success or failure.

In order to facilitate the analysis of the experiences of human rights organizations, this study utilizes Young's (2000) categorization of State and civil society relations. In the *supplementary* model, civil society organizations fulfill the public demands that are left

unaddressed by the State. There is an opposite relationship between private financing of public goods and government expenditure. In the *complementary* view, civil society organizations are regarded as partners of the government, where they help carry out the delivery of public goods, which are largely financed by State coffers. In the *adversarial* view, civil society pressures the government to make changes in public policy and pushes them to demonstrate accountability to the public. In response, the government may attempt to influence the behavior of civil society by regulating its existence or addressing its advocacy initiatives directly. Finally, the *collaborative* model looks at increased partnership characterized by relatively equal power relations and information sharing between civil society and government when engaged in a particular program. Young (2000) warned that these typologies are not mutually exclusive. The lines are often blurred, and civil society may act differently in different times and places. In short, state-society relations are usually dynamic and fluid, so labeling them under a single view is impossible. Often, it is a combination of two or more models.

Methodology

This study is using qualitative data. Semi-structured interviews were conducted with the Human Rights Program Manager and the Program Coordinator of IDEALS's Networking, Advocacy, and Social Work Team as participants. Their responses were processed following a thematic analysis approach.

Documents and secondary data published through their [official website](#), [Facebook Page](#), and other online sources for media coverage were also used to corroborate or validate the data gathered during the interviews.

Findings

The Initiatives for Dialogue and Empowerment through Alternative Legal Services (IDEALS) is a nonprofit legal-focused advocacy group that aims to address the legal and technical needs of marginalized, disempowered, and vulnerable groups. In particular, it assists agrarian reform beneficiaries, farmer traders, migrant sectors, persons and communities affected by disasters, and victims of human rights violations.

IDEALS faced multiple challenges during the COVID-19 pandemic. It may be classified into three areas: (a) operations, (b) advocacy work, and (c) relations with the State and other stakeholders.

Operations

IDEALS had to overhaul its operations since its services needed to be delivered face-to-face. Since IDEALS focuses on providing legal aid where trust and privacy are keys, personal meetings and activities were important.

The COVID-19 pandemic restrictions affected the mobility of their staff. Not all were authorized to go to the office or the areas where their partners and beneficiaries are located. This immobility meant that the conduct of legal consultations and missions was halted. It was mostly the organization's lawyers who were able to acquire permits indicating that they were authorized

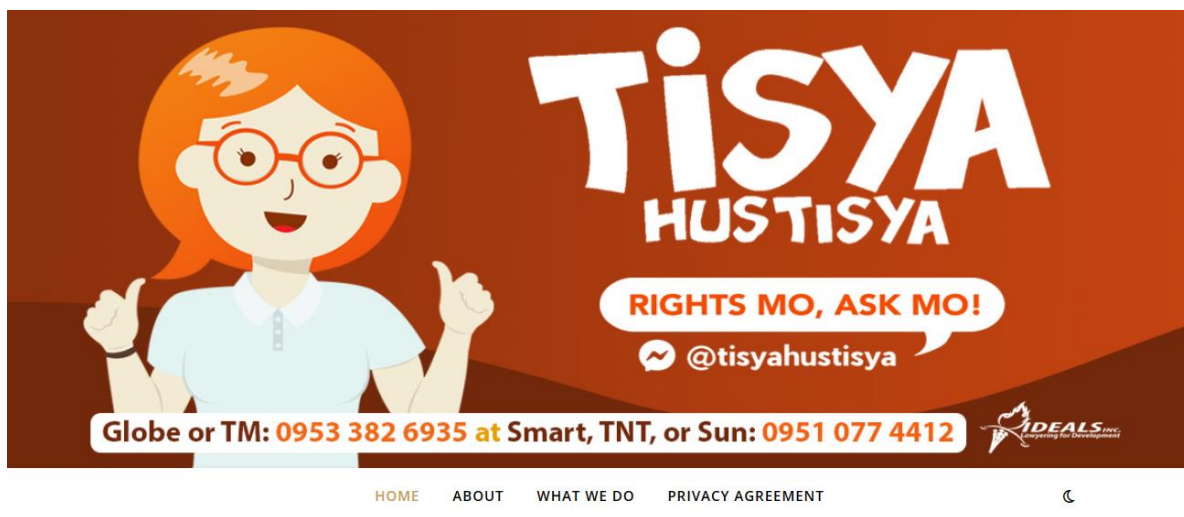
persons outside of residence (APOR). Because of this, lawyers had to fill in certain roles that were not initially their task or function, and the staff had to reorganize, given these changes.

The COVID-19 pandemic also saw the closure of Courts with no definite resumption of activities made known to the public. This closure led to delays in case hearings and resolution, which ultimately affected the right to access justice. These drastic changes required IDEALS to rework its approach and strategies in extending legal aid to those in need.

Advocacy Work

IDEALS responded to the shifts in their operations and work setup by using their Facebook Page to conduct online legal consultations. They opted for this platform since it is free of charge on the part of users (i.e., free data for Facebook/Messenger application in the Philippines). Many people reached out to them, articulated their legal and personal questions, and relayed their problems. The availability and access to this platform made it easier for IDEALS to reach many people. Although the reach increased, it also meant that more people from IDEALS needed to respond to these voluminous queries. IDEALS had to expand its human resources—from volunteers to staff members.

Gradually, IDEALS developed programs that can be delivered or facilitated using online tools (e.g., Facebook, Zoom, website). While this shift was welcomed, it entailed retooling and training on the part of IDEALS as an organization to cope with the demands of using online tools.



Tisya Hustisya, an online legal service platform, is an IDEALS program developed at the height of the COVID-19 pandemic. It was selected as the only Philippine finalist in the Access to Justice category out of the 305 international submissions for the World Justice Challenge 2022. The #WJChallenge is a global prize competition to identify, recognize, and promote good practices, high-impact projects, and policies that advance the rule of law.

IDEALS also observed changes like the concerns of citizens during the COVID-19 pandemic. The common drug cases and illegal arrests saw a rise in cases involving violations of quarantine protocols, labor cases (e.g., illegal dismissal), and domestic violence. The pandemic added another layer of concern for citizens, especially those who already experience discrimination and marginalization. Their content expertise and experiences mainly were on cases relating to the War on Drugs. Consequently, their legal team was pushed to re-train themselves on the newer emerging concerns of clients and beneficiaries during the pandemic.

IDEALS also realized that rights education and legal assistance, as they had conventionally done before COVID-19, were no longer adequate to respond to the changing needs and concerns of the public. This inadequacy became an important impetus for them to re-scale their programs and pursue partnerships that could help them achieve their goals as an organization while also trying to augment resources.

Relations with the State and other Stakeholders

IDEALS could not organize face-to-face activities for several months due to the lockdown and corresponding restrictions. This failure had an impact on their mobilization in communities. Their human rights work necessitates face-to-face interactions to build trust and understanding. Their partnership with local parishes proved to be pivotal in addressing this limitation.

Meanwhile, IDEALS was able to explore partnerships and collaborations outside of Metro Manila through online coordination meetings. Regarding their relations with the State, IDEALS acted as a point or source of pressure for government agencies and institutions to fulfill their duties and obligations. IDEALS lobbied for reviewing certain policies pertinent to labor cases and pushed for recommendations for improving such policies. IDEALS filed a case against a local health official in Cainta for failure to provide PPEs, which resulted in the death of a healthcare professional. At the barangay level, IDEALS assisted in the legal process for Violence Against Women and Children (VAWC) cases. The receptiveness of State institutions on their work remains limited, even noting that some government officials they interacted with were more emboldened to deny access or assistance using COVID-19 as their shield or excuse.

Conclusions

IDEALS' experiences during the COVID-19 pandemic illustrate the strains of the crisis on civil society, especially on human rights organizations. Operational and political challenges affected their human rights work and advocacy. The protection and promotion of human rights were constrained. Specifically, the right to access justice was severely limited during COVID-19. Even with the shrinking civic space, IDEALS continued to pressure the government to make changes in public policy and pushed them to demonstrate accountability to the public. These *adversarial* state-civil society relations persist, even before and beyond the COVID-19 pandemic.

IDEALS expressed that their inability to provide for or cater to all the needs of their clients and partners is their biggest challenge. While their reach grew during the pandemic, it is still limited versus the dire situation of ensuring justice in the country. While facing many forms of repression, civil society in the Philippines remains to be an important alternative for individuals and groups to access and claim their human rights.

The fundamental law of the Republic of the Philippines (Article II, Section 23, as a matter of state policy, rightfully recognizes the role of civil society and non-government organizations in nation-building and development. In practice, however, this recognition is often artificial. State institutions and government actors resist or are usually defensive against initiatives and actions from civil society, especially those that seek to promote democracy and human rights. Non-government organizations that provide social and economic relief find it relatively easier to connect with the government, prompting a technocratic pivot in civil society actors.

Criticisms and grievances are often dismissed and not acted upon. Progressive organizations and activists face real threats from state forces.

In order to strengthen state-civil society relations, this study respectfully recommends the following:

- a) Institutionalize State support mechanisms for civil society organizations, especially human rights organizations, in terms of funding and coordination or collaboration in public policy processes;
- b) Institutionalize protection mechanisms for human rights defenders and activists, e.g., pass the Human Rights Defender Bill into law, which aims to implement the 1998 UN Declaration on Human Rights Defenders;
- c) Encourage partnerships and collaborations within and among civil society and human rights organizations;
- d) Encourage platforms for sharing best practices in addressing the challenges of the COVID-19 pandemic and other similar crisis situations.

References

- Chiozza, G., & King, J. (2022). The State of Human Rights in a (post) COVID-19 world. *Journal of Human Rights*, 21(3), 246-262. DOI: 10.1080/14754835.2022.2051450
- Diamond, L. (2021). Democratic regression in comparative perspective: scope, methods, and causes. *Democratization*, 28(1), 22-42. doi:10.1080/13510347.2020.1807517
- Gilbert, C., & Tiwana, M. (2015). *The Civic Space Monitor: Consultation Document and Southern Africa Pilot Report*. Johannesburg: CIVICUS.
- Levitsky, S., & Way, L. (2020). The new competitive authoritarianism. *Journal of Democracy*, 31(1), 51-65. DOI:10.1353/jod.2020.0004
- Nixon, N. (2020). Civil Society in Southeast Asia during COVID-19: Responding and Evolving under Pressure. *GovAsia: The Asia Foundation*, 1(1), 1-14.
- Wong, W., & Wu, A. (2021). State or Civil Society – What Matters in Fighting COVID-19? A Comparative Analysis of Hong Kong and Singapore. *Journal of Comparative Policy Analysis: Research and Practice*, 1-18. doi:doi.org/10.1080/13876988.2021.1978819
- Young, D. (2000). Alternative Models of Government-CSOs Sector Relations: Theoretical and International Perspectives. *CSOs and Voluntary Sector Quarterly*, 29(1), 149-172.

CULTURAL SENSITIVITY AND INTEGRATION CHALLENGES: AN ANALYSIS OF NIDOS' SUPPORT SERVICES FOR UNDERAGE UNACCOMPANIED REFUGEES IN THE NETHERLANDS

Jardeen Kingma¹

Institute of Human Rights and Peace Studies, Mahidol University, Thailand

Abstract

This paper analyses the cultural sensitivity practices of government-provided support services for underage unaccompanied refugees (AMVs) in the Netherlands and their impact on the integration challenges AMVs face. In accomplishing this purpose, the study investigates the cultural sensitivity practices of Nidos, the Dutch national guardianship organization for AMVs. Previous research highlights the various integration challenges AMVs face, which include the lack of cultural sensitivity of the professionals they work with, which hinders the integration process of AMVs. This challenge contradicts the articles and principles of various human rights treaties the Netherlands has signed, such as the CRC, Refugee Convention and ECHR. In order to investigate this issue further, the cultural sensitivity practices of the support services Nidos provides were examined by themselves and in relation to AMVs' integration challenges, which found that the organization has been incorporating the practice of cultural sensitivity into their working methods, which is beneficial to AMVs and their integration process. These findings show the significance of culturally sensitive practices when working with AMVs and provide insight into how integration into Dutch society can be more effective.

Keywords: Cultural sensitivity, unaccompanied underage refugees, integration, support services, children's rights, the Netherlands.

Introduction

In 2022, the Dutch Central Agency for the Reception of Asylum Seekers, or COA, which is the governmental body responsible for the reception, support and guidance of asylum seekers and refugees, had over 3000 unaccompanied underage refugees under its wing, most of them coming from Syria, Eritrea and Somalia (NJI, 2023). In Dutch, these unaccompanied underage refugees are known as AMVs (*Alleenstaande Minderjarige Vluchtelingen*), and the government defines them as people under the age of 18 who have come from outside of Europe to the Netherlands and are staying there without a parent or guardian (Rijksoverheid, n.d.). The Dutch government provides AMVs with additional support services. These services are informed by the

¹ Student of Asia Pacific Master of Arts (APMA) in Human Rights and Democratization, Mahidol University, Thailand.

various human rights treaties the Netherlands has signed, such as the Refugee Convention and the Convention on the Rights of the Child (CRC). Furthermore, on a European level, these services are influenced by the European Convention on Human Rights (ECHR) (European Migration Network, 2015). These encourage non-discrimination, putting the child's best interest first, and ensuring the right to education, social and mental well-being, housing, humanitarian assistance, healthcare, and more. Integration itself is not included among those rights, but it should result naturally from their fulfillment. It also provides a sense of belonging and a future perspective, which is in the child's best interest.

AMVs encounter various challenges during their integration process, including the cultural barrier between them and their support providers. The difference between Dutch culture and theirs is great, as AMVs are usually from Africa or the Middle East. The integration process is hindered by this lack of cultural sensitivity in support services. Furthermore, this contradicts the previously mentioned principles of the human rights treaties the Netherlands has signed, as it is not in the child's best interest. As such, these cultural sensitivity practices in support services of AMVs have to be examined further, as well as their impact on the integration challenges of AMVs. This impact allows insight into how AMVs' integration into Dutch society can be more effective and how barriers towards better integration can be removed to fulfill the Netherlands' obligation to the human rights treaties. This paper is part of a master's thesis and focuses on one government-related organization providing support services to AMVs: Nidos. In the Netherlands, every minor is legally required to have a guardian. Nidos provides every AMV with a guardian until they turn 18 or leave the Netherlands. The guardian supports the AMV in their general upbringing, provides them with guidance, legal or otherwise, and assists them in becoming independent and integrating into Dutch society (Pharos, 2022).

Overview

While trying to integrate, there are various challenges that AMVs can encounter. One of the most common barriers is establishing social contact with locals, which can help with cultural adjustment to the AMV's host country and its citizens (Oppedal & Idsoe, 2015; Vermeulen & Penninx, 2000). Former AMVs in the Netherlands have emphasized how important contact with locals is. Otherwise, they can get isolated, mainly having friends with the same ethnic background. This isolation can be a form of comfort but can also promote marginalization (Naber & Uzozie, 2016; Jeppsson & Hjerm, 2005). Regarding social contact, AMVs also miss the presence of adult figures on whom they can depend (Ruitenburg, 2022; Kalverboer et al., 2017). Education is sometimes not accessible enough due to language barriers and insufficient focus on the refugee students' ambitions and capabilities (Ruitenburg, 2022). The language barrier can also prove an obstacle to entering the labor market (European Migration Network, 2022). Access to healthcare can be an obstacle due to the differing perspectives on healthcare where, for example, something like 'talk therapy' – where one discusses negative aspects from one's past – might not work as some AMVs have been taught to deal with unpleasant events in their lives by not thinking or talking about it (Majumder et al., 2018; Schippers 2017). Language barriers can be another issue

here (Ruitenburg, 2022). Mental health issues due to past experiences seem to be another hindrance towards integration (Strang & Ager, 2010), especially when it comes to AMVs, as research shows that they more often develop psychological problems than refugee children who fled with their parents (Huemer et al., 2009; Vervliet et al., 2014).

Concepts

Cultural sensitivity

What understood as ‘culture’ are essentially the norms, values, beliefs, and traits of a particular social group, and in fields where one comes into contact with cultures that differ from their own, there are various positions when it comes to the treatment of patients (Merriam-Webster, n.d.). ‘Fitting the model to the patient’ is one such ideology, which emphasizes the importance of being aware of one another’s differences and encourages developing treatments that suit different groups (Rooijen-Mutsaers & Ince, 2013). The latter perspective argues that this is why culturally sensitive practices are essential when working with those from differing cultures. Being culturally sensitive equals being genuinely and respectfully interested in the cultural background of the other and acknowledging cultural differences without judgment (Schippers et al., 2019; Schippers, 2017). Knowledge of the other’s culture is important, but it should prevent one from generalizing and drawing conclusions. Instead, one should examine how the other person has personally experienced their culture. At the same time, one must be aware of their cultural identity and the norms and values based thereon (Knipscheer & Kleber, 2017). Other traits attributed to being a culturally sensitive care provider are being empathetic, respectful, open-minded, tolerating ambiguity, easily adaptable to new situations, and looking for similarities rather than differences when interacting with others (Shadid, 2010).

One example showcasing a lack of cultural sensitivity often occurs with Eritrean AMVs. Religion is very important to them, and their dedication to religion can sometimes come at the cost of their education and other activities. This can cause conflict with their Dutch carers, who don’t understand the Eritrean’s perspective as religion plays much less of a role in Dutch culture (Sleijpen et al., 2017; Pharos, 2016). Valibhoy et al. (2017) emphasize that the professional’s attitude is essential when establishing a bond with an AMV. The relationship between these two should be based on trust, which can only develop if the AMV feels understood and supported. This trust can cultivate a place of stability, safety and comfort for the AMV, which is the only way an AMV can achieve a sense of belonging (SOS Kinderdorpen, 2021). All of this will not only be beneficial to the AMV but will also allow the professional to assist them better in return. In short, the professional’s sensitivity towards the AMV’s cultural background can determine their success in their support provision and should be considered, especially on the road towards integration.

Integration

Integration comes from acculturation, defined as a ‘cultural change that results from continuous, first-hand contact between two distinct cultural groups.’ There are various

'acculturation strategies,' one of which is integration. This integration occurs when someone can join a society while maintaining their cultural identity (Sam & Berry, 2010; Berry, 1992). It is a complex process that places demands on both the receiving society to have the willingness to accept the newcomer and the preparedness of the newcomer to adapt to the lifestyle of that society. It is a long-term process that happens over time and is multi-dimensional, meaning the actual participation in all aspects of life in the host country (ECRE, 2002). There are various aspects to integration. Oppedal and Idsoe (2015) mention the importance of social integration, which includes the refugees learning social and communication skills suitable for their host country. Cultural integration – sharing cultural norms and values with natives of the host country – and socio-economic integration – receiving education and employment – are also important factors (Vermeulen & Penninx, 2000). Becker (2022) discusses emotional integration, which is the emotional relationship between the refugee and the social system of the host country.

Methodology

My research consists of two tools: secondary literature review and semi-structured interviews. The literature establishes what is already known about my research topic. It creates a base for further field research, as it is used to relate to and provide context to the findings that come out of the semi-structured interviews. The interviews will be conducted with employees of government-related organizations that provide support services to AMVs, as well as experts and advocates related to the topic and governmental employees, as this research concerns services to the government, and as such, their point of view is also relevant. Finally, the personal experiences of former AMVs are also relevant, so they are also included. Due to ethical concerns, AMVs are not interviewed to avoid possibly upsetting or retraumatizing them. My current findings are based on my research so far. I am over halfway done with my literature review, and I have conducted one interview with a migrant expert.

Findings

Examining the cultural sensitivity practices of Nidos shows that there have been several active efforts the organization has made in recent years to incorporate this concept into their AMV-work methodology. First, they have included the notion of working from a place of respect for the cultural background and with knowledge of one another's cultural differences as a part of their mission (Nidos, 2023). This inclusion is reiterated in the methodology Nidos has developed for working with AMVs, which has been in place since 2020. This methodology has provided culturally sensitive support to AMVs as one of its three cornerstones. Most of the facets of cultural sensitivity that were previously mentioned are included in the elaboration of the methodology (Schippers et al., 2019). Any recruits who work with AMVs are trained as quickly as possible in this methodology. Since its introduction, most employees have responded enthusiastically to this work methodology, and the most recent yearly report is optimistic about it.

Additionally, Nidos has made further efforts to include culturally sensitive practices in the organization. They have incorporated intercultural mediators (ICMs) in their work with AMVs.

An ICM is usually from the same cultural background as the AMV and helps bridge the cultural gap between the AMV and the professional working with them – in this case, the guardian. Nidos has also led various projects centered around ICMs, such as the Resilience Project II, which focused on professionalizing ICMs within guardianship (Ghebreab, n.d.). Another project focused on actively incorporating ICMs into the mental health treatments for AMVs, which also showed positive results (Es et al., 2019). Nidos also has its ICMs that employees can use in their work with AMVs. Furthermore, Nidos further employs culturally sensitive practices by ensuring that the family is of a similar cultural background when AMVs have to be placed in foster families (UNHCR, 2019).

Analysis

The findings show that the way Nidos actively employs cultural sensitivity practices in their working methods is quite progressive. As a result, they are able to better support AMVs in overcoming integration obstacles and help them become a part of Dutch society. First, the cultural sensitivity practices Nidos employs help establish a better bond of trust between the guardian and the AMV. Valibhoy et al. (2017) previously emphasized how important this bond of trust is. It can also help establish the guardian as a point of social contact for the AMV. This contact can also provide an answer to the previously discussed needs of AMVs for local contacts and the presence of adult figures in their lives (Naber & Uzozie, 2016; Ruitenburch, 2022; Kalverboer et al., 2017), as well as help progress their social integration and cultural adjustment (Oppedal & Idsoe, 2015; Vermeulen & Penninx, 2000). This bond of trust can help cultivate a sense of belonging – an essential step in achieving successful integration. Trust between the guardian and the AMV will allow for the stability, safety and comfort necessary to establish this sense of belonging (SOS Kinderdorpen, 2021). Overall, these practices and the resulting feelings of trust and belonging will allow AMVs to overcome their integration obstacles, allowing them to become self-sufficient, contributing members to their host societies more easily, and giving them a sense of purpose. They will be better able to move on from their traumatic experiences rather than remain stuck, which could lead to other issues, such as mental health problems, isolation or marginalization (UNHCR, 2010; Strang & Ager, 2010).

Conclusion

So far, research has shown that Nidos has been working in recent years to fully incorporate the practice of cultural sensitivity into their working methods, which seem to be beneficial to the AMVs that Nidos aims to support. Nidos has implemented cultural sensitivity into its general mission statement as well as through its newly developed work methodology, the use of ICMs and their management of foster families. This sensitivity allows for establishing a bond of trust between the AMV and the guardian, better social integration, and the ability to move forward, overall helping AMVs better overcome the integration obstacles they face. It creates a safe environment for AMVs in which they feel safe, understood and supported, and through which they can cultivate a sense of belonging that will benefit their integration process. Nidos' methods help encourage a

shift in the treatment of AMVs and stimulate the removal of barriers for AMVs towards successful integration. These practices, and the work towards making them more effective, also uphold the promises the Netherlands made by signing various human rights treaties.

The data collected so far has provided helpful information for this research but has also brought to light some further research needs. Other organizations and their support service practices need to be examined, such as COA, which I mentioned before. More interviews need to be conducted with people who know the field to research how cultural sensitivity practices are implemented and whether there are possible shortcomings. This practice includes ex-AMVs, as their personal experience must also be included. The forthcoming research will allow the full scope of this topic to be investigated from all angles. It will make various perspectives come to light, along with good practices and shortcomings, as well as possible solutions. In the end, my eventual findings will contribute towards making the integration process for AMVs in the Netherlands more effective. They will support the Dutch government in upholding the promises made by signing the human rights treaties.

References

- Becker, C. C. (2022). Migrants' Social Integration and Its Relevance for National Identification: An Empirical Comparison Across Three Social Spheres. *Frontiers in Sociology*, 6. <https://doi.org/10.3389/fsoc.2021.700580>
- Berry, J. W. (1992). Acculturation and Adaptation in a New Society. *International Migration*, 30(1), 69-85. <https://doi.org/10.1111/j.1468-2435.1992.tb00776.x>
- ECRE. (2002). *Position on the Integration of Refugees in Europe* (p. 32). chrome-extension://efaidnbmnnnibpcajpcgclefindmkaj/https://ecre.org/wp-content/uploads/2016/07/ECRE-Position-on-the-Integration-of-Refugees-in-Europe_December-2002.pdf
- Es, C. van, Sleijpen, M., Ghebreab, W., & Mooren, T. (2019). Cultuursensitief werken met alleenstaande jonge vluchtelingen: 'Veerkracht-project' biedt trauma-geïnformeerde interventie. *Kind en Adolescent Praktijk*, 4, 16-22.
- European Migration Network. (2015). *Policies, Practices and Data on Unaccompanied Minors in the EU Member States and Norway*. EMN Inform. chrome-extension://efaidnbmnnnibpcajpcgclefindmkaj/https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/AdvisoryCom/Migrant/Belgium_4.pdf
- European Migration Network. (2022). *Transition of unaccompanied minors to adulthood* (p. 32). EMN Inform. https://www.emnetherlands.nl/sites/default/files/2023-01/EMN_INFORM_Transition-minors-adulthood_final.pdf
- Ghebreab, W. (n.d.). *Resilience Project II*. Nidos. Geraadpleegd 4 augustus 2023, van <https://nidosineurope.eu/projects/resilience2/>
- Huemer, J., Kanik, N. S., Voelkl-Kernstock, S., Granditsch, E., Dervic, K., Friedrich, M. H., & Steiner, H. (2009). Mental health issues in unaccompanied refugee minors. *Child and Adolescent Psychiatry and Mental Health*, 3(1). <https://doi.org/10.1186/1753-2000-3-13>
- Jeppsson, O., & Hjern, A. (2005). Traumatic stress in context: A study of unaccompanied minors from Southern Sudan. In *Forced migration and mental health: Rethinking the care of refugees and displaced persons* (pp. 67-80). Springer Publishing Company. https://doi.org/10.1007/0-387-22693-1_4
- Kalverboer, M., Zijlstra, E., Os, C. van, Zevulun, D., Brummelaar, M. ten, & Beltman, D. (2017). 'It is a house but it isn't my home' Unaccompanied minors in the Netherlands and the care facility in which they flourish best. *Child & Family Social Work*, 22(2), 587-596. <https://doi.org/10.1111/cfs.12272>
- Knipscheer, J. W., & Kleber, R. J. (2017). *Psychologie en de multiculturele samenleving*. Boom Koninklijke Uitgevers.
- Majumder, P., Vostanis, P., Karim, K., & O'Reilly, M. (2019). Potential barriers in the therapeutic relationship in unaccompanied refugee minors in mental health. *Journal Mental Health*, 28(4), 372-378.
- Merriam-Webster. (n.d.). Culture. In *Merriam-Webster.com dictionary*. Retrieved July 21, 2023,

- from <https://www.merriam-webster.com/dictionary/culture>
- Naber, P., & Uzozie, P. (2016). *Match voor de toekomst? Een verkennend onderzoek naar de bijdrage van maatjesprojecten aan de maatschappelijke participatie van jonge alleenstaande asielzoekers*. In Holland.
- Nidos. (2023). *Jaarverantwoording Nidos 2022*. Nidos. chrome-extension://efaidnbmnnnibpcajpcgiclfndmkaj/<https://www.nidos.nl/wp-content/uploads/2023/06/Nidos-jaarverantwoording-2022-met-controleverklaring-DEF.pdf>
- NJI. (2023, februari 8). *Cijfers over asielzoekers*. [https://www.nji.nl/cijfers/asielzoekers#alleenstaande-minderjarige-vreemdelingen-\(amv's\)](https://www.nji.nl/cijfers/asielzoekers#alleenstaande-minderjarige-vreemdelingen-(amv's))
- Oppedal, B., & Idsoe, T. (2015). The role of social support in the acculturation and mental health of unaccompanied minor asylum seekers. *Scandinavian Journal of Psychology*. <https://doi.org/10.1111/sjop.12194>
- Pharos. (2016). *Van ver gekomen*. Pharos. file:///C:/Users/deeni/Downloads/Van_ver_gekomen_verkenning_Pharos-1.pdf
- Pharos. (2022, Oktober). *Alleenstaande Minderjarige Vreemdelingen (amv's)*. <https://www.pharos.nl/factsheets/alleenstaande-minderjarige-vreemdelingen-amvs/>
- Rigter, J. (2016). *Handboek ontwikkelingspsychopathologie bij kinderen en jeugdigen*. Coutinho.
- Rijksoverheid. (n.d.). *Alleenstaande Minderjarige Vluchtelingen*. Geraadpleegd 4 augustus 2023, van <https://www.rijksoverheid.nl/onderwerpen/asielbeleid/alleenstaande-minderjarige-vreemdelingen-amv>
- Rooijen-Mutsaers, K. van, & Ince, D. (2013). *Wat werkt bij migrantenjeugd en hun ouders?* Nederlands Jeugdinstituut. chrome-extension://efaidnbmnnnibpcajpcgiclfndmkaj/<https://www.nji.nl/sites/default/files/2021-06/Wat-werkt-bij-migrantenjeugd-en-hun-ouders.pdf>
- Ruitenburg, M. (2022). *Alleen volwassen worden: Onderzoek naar knelpunten bij overgang meerderjarigheid amv's met verblijfstatus* (p. 45). Kinderombudsman. chrome-extension://efaidnbmnnnibpcajpcgiclfndmkaj/<https://www.lowan.nl/wp-content/uploads/2022/05/Rapport-Alleen-volwassen-woorden.pdf>
- Sam, D. L., & Berry, J. W. (2010). Acculturation: When Individuals and Groups of Different Cultural Backgrounds Meet. *Perspectives on Psychological Science*, 5(4), 472-481. <https://doi.org/10.1177/1745691610373075>
- Schippers, M. (2017). *Kinderen, gevlucht en alleen: Een interculturele visie op de begeleiding van alleenstaande gevluchte kinderen*. Nidos.
- Schippers, M., Bastiaens, F., & Verstegen, T. (2019). *Veerkracht versterken van vluchtelingenkinderen. De Nidomethodiek voor interculturele jeugdbescherming*. Nidos.
- Shadid, W. (2010). *Interculturele competenties: Een vak apart*. chrome-extension://efaidnbmnnnibpcajpcgiclfndmkaj/<https://www.interculturelecommunicatie.com/download/interculturele-competenties.pdf>

- Sleijpen, M., Es, C. van, Brake, H. te, & Mooren, T. (2017). *Alleenstaande minderjarigen uit Eritrea in Nederland: Kansen en bedreigingen aan het begin van een nieuw leven* (p. 28). NIDOS. [chrome-extension://efaidnbmnnnibpajpcgclefindmkaj/https://nidosineurope.eu/wp-content/uploads/2021/01/Veerkracht-onderzoeksrapport.pdf](https://nidosineurope.eu/wp-content/uploads/2021/01/Veerkracht-onderzoeksrapport.pdf)
- SOS Kinderdorpen. (2021). *Cultuursensitief werken: Handvatten voor de hulpverlener n het werken met niet-begeleide minderjarigen met een migratie-achtergrond (NBM)*. SOS Kinderdorpen België. [chrome-extension://efaidnbmnnnibpajpcgclefindmkaj/https://www.sos-childrensvillages.org/getmedia/130a8181-b8ee-4aac-9d07-b709210714e5/TIP-Annex-to-Practice-Guidance-A-Culturally-Sensitive-Approach-\(Dutch\).pdf](https://www.sos-childrensvillages.org/getmedia/130a8181-b8ee-4aac-9d07-b709210714e5/TIP-Annex-to-Practice-Guidance-A-Culturally-Sensitive-Approach-(Dutch).pdf)
- Strang, A., & Ager, A. (2010). Refugee Integration: Emerging Trends and Remaining Agendas. *Journal of Refugee Studies*, 23(4), 589-607. <https://doi.org/10.1093/jrs/feq046>
- UNHCR. (2019). *In de Eerste Plaats een Kind* (p. 64). UNHCR. [chrome-extension://efaidnbmnnnibpajpcgclefindmkaj/https://www.unhcr.org/nl/wp-content/uploads/sites/93/UNHCR-Children-First-2019-screen-1.pdf](https://www.unhcr.org/nl/wp-content/uploads/sites/93/UNHCR-Children-First-2019-screen-1.pdf)
- Valibhoy, M. C., Kaplan, I., & Szwarc, J. (2017). ‘It comes down to just how human someone can be’: A qualitative study with young people from refugee backgrounds about their experiences of Australian mental health services. *Transcultural Psychiatry*, 54(1), 23-45.
- Vermeulen, H., & Penninx, R. (2000). *Immigrant Integration: The Dutch Case*. Transaction Publishers.
- Vervliet, M., Lammertyn, J., Broekaert, E., & Derluyn, I. (2014). Longitudinal follow-up of the mental health of unaccompanied refugee minors. *European Child & Adolescent Psychiatry*, 23(5), 337-346. <https://doi.org/10.1007/s00787-013-0463-1>

A GENDER ANALYSIS ON THE LIVELIHOOD OF THE FORMER BOREI KEILA WOMEN AT PHUM BAT RELOCATION SITE, KANDAL (CAMBODIA)

Ros Sereysocheata¹

Institute of Human Rights and Peace Studies, Mahidol University, Thailand

Abstract

The intensity and rapid growth of the forced displacement in Cambodia have reached a crisis level, making almost regular attention in the popular media and becoming a hot topic of distress. Although the involuntary displacement and resettlement affect both men and women, in Cambodia's patriarchal society, women are often unable to equally participate in decision-making processes of resettlement planning due to the gender-blind policies and gender disparities; women tend to be more disproportionately affected in particular on their socio-economic status. This research paper aims to assess the consequences of involuntary displacement and resettlement on women regarding their economic livelihood and also to analyze changes in the social roles regarding women's decision-making power, gender relations, gender roles, and risk of violence during the displacement. In understanding the displaced women's economic plights, this paper studies explicitly a case of the involuntary resettlement and displacement of the former Borei Keila Community to the Phnum Bat relocation site. This research paper finds that displaced women bear more consequences of moving far away from the city center and lacking access to basic needs and public facilities, including employment hubs. The women's mobility is more restricted after the displacement and the changes in their decision-making power in their family, and they have to live in unsafe environments and are further vulnerable to domestic violence with a lack of support from local authorities. Therefore, the process of displacement had entrenched gender roles and norms that have already been standing firm within Cambodian society against women.

Keywords: GENDER ANALYSIS, BOREI KEILA, RELOCATION SITE

Introduction

Borei Keila was a 14.12-hectare area of land in the center of Phnom Penh, the capital city of Cambodia. It was previously home to 1,776 families. Noticeably, in May 2003, the government launched the land-sharing project in the area, and most residents chose to remain onsite in new buildings to be constructed (Menziés et al., 2008, pp. 25–26). This unique land-sharing project

¹ Student of Master of Arts in Human Rights (MAHR) program, Mahidol University, Thailand.

started in 2003 was not fulfilled and resulted in the involuntary eviction of 300 families in 2012. Thus, among 300 families, around 140 families were relocated to Phnum Bat relocation (Vichaka, 2017). Some families were forced to get on the trucks and brought to the Phnum Bat relocation site in Kandal Province.

Noticeably, the plots of land provided by the company are remote from the city center, basic facilities, public services, and job opportunities. It is difficult to sense normality in their lives as they were forced evicted from their homes and lands without consultation to a new place. Moving to this far-distance relocation site against their will has affected many things, particularly their livelihood, food security, loss of income and career to support their daily life and children's education, and further vulnerability to violence and harassment for women. It is very challenging for family members to commute to the capital when most cannot afford their everyday transportation. To reduce the expense, a father, whom Cambodian culture considers a family's breadwinner, is the one who stays outside and is responsible for earning income. At the same time, the mother has to stay home and look after the house. This fact has increased the barrier for women, especially mothers, to reach out for gender equality and, in some cases, increased their vulnerability within society.

Research Methodologies

The research collected the primary data through semi-structured interviews with the affected community members to assess the issues through their perspectives as well as to develop insights and analytic ideas that would be helpful in answering the research questions. Furthermore, participants of the research were identified through snowball sampling. It was applied by connecting with local NGOs who work closely with the affected community to contact a female activist who is a spokesperson of the Phnum Bat relocation site. The researcher worked with a woman activist to identify the other 10 participants, which was 11 interviewees in total, including a woman land rights activist. Hence, selecting research subjects was based on purposeful sampling to fit the criteria based on relevance to the research objectives.

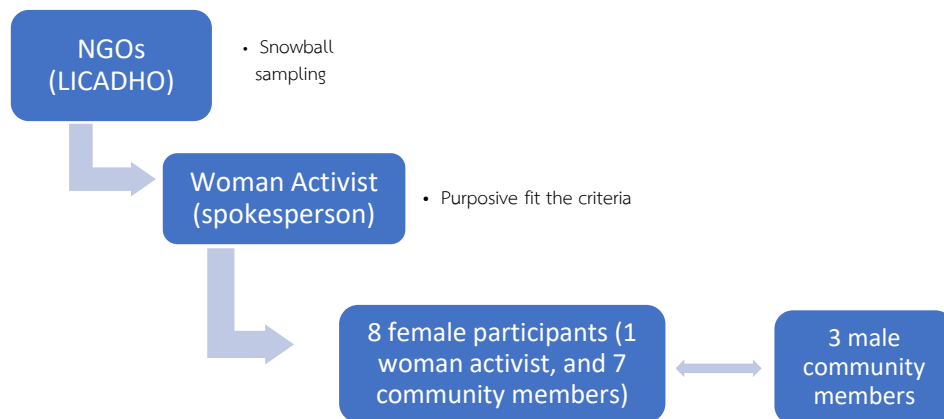


Figure 2 Sampling Method of Semi-Structured Interviews

Participants were chosen in a mix of women and men who are head household, spouses, housewives, or work in formal or informal sectors to understand their 'similarity and difference' situations and perspectives and also to ensure a representation and wide range of samplings. Some were married, separated/windowed (women/men head-household), and in the prime working age group (20-58). This study mainly focuses on women's economic livelihood during the displacement.

Furthermore, this study also collected secondary data through a comprehensive review of available studies and articles, including existing research on involuntary displacement and resettlement, the impacts of the displaced women in Cambodia, and other countries' experiences to develop the contextual questionnaire and interview guides.

Research objectives

The ultimate objective of this study is to explore the long-term consequence of the involuntary displacement and resettlement on the former Borei Keila women's economic statuses, their agency, power relations, gender roles, and vulnerability to gender-based violence, and how this renders the former BK women to further marginalization.

Research Question

What has been the long-term consequence of involuntary displacement on the economic position/status of the former BK women at the Phnum Bat relocation site within the household and community where they live?

Conceptual Framework

This study is focused on the context of urban squatter displacement, the issue of gender concept analysis, and the economic empowerment concept of displaced women. The involuntary urban displacement and resettlement process has manifested the existing gender inequalities, discrimination, and biases, pushing women to the frontline of its impacts, bearing the heaviest consequences if compared to men.

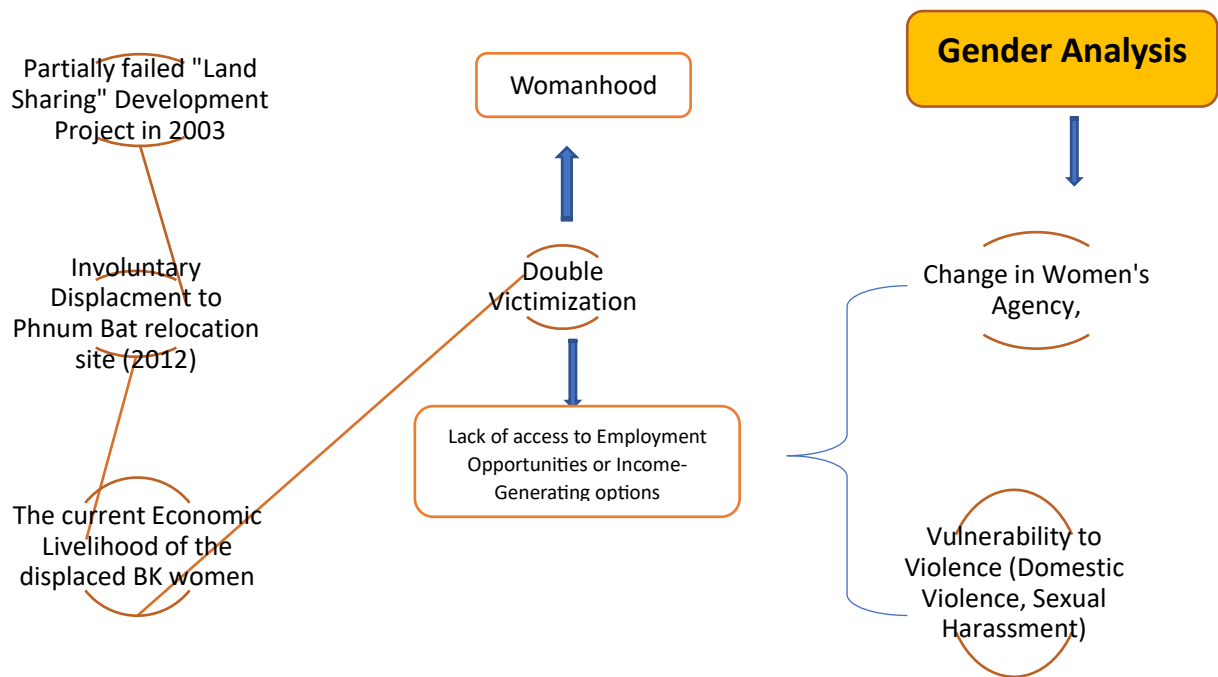


Figure 3 Conceptual Framework

Research Findings

It is so hard to access job opportunities in the nearby area of this relocation site for both men and women. However, women seem more vulnerable than men when they cannot access job opportunities. In the nearby village, there is no job available for them, and the problem of security of land tenure is still unresolved. Most women interviewees said they had no choice but to stay home to safeguard their house to take care of children and do housework, leaving only men as sole breadwinners. They said having their home in the city center was easier as they could earn better to support or contribute to their families.

Noticeably, two women interviewed said they had to work as a construction worker at the construction site near their house, forcing themselves to do what they had not done before. Many displaced families lost their previous jobs when they moved to this area. They told the researcher, and from the researcher's observation, that there are only rice fields and reserved land for sale surrounding their village. Knowing there is a construction job recently available near their community, many of them are very happy and willing to take up the job. However, they said the site supervisor often finds an excuse to delay the payment to the workers. So, the community members typically do not get paid on time and always get less than they should. Since they have no choices, all of them must tolerate this abuse, keep working, and hope to get paid soon.

Gender Roles

While they must work harder to earn income to support their family's livelihood, they must also look after their children at home. This condition was reported to be more of a burden when they relocated to the remote area from the city center. All of the women interviewed said they have to take care of their children and, or grandsons/daughters alone, with little or no support from their husbands who went to work in the city or other provinces. This problem did not occur when they lived in Borei Keila, as at least their husband shared some household responsibilities. They all told the researcher they were too tired to do all the work alone.

More than this, one woman said she faced many challenges to attend any social activities with the network she had before. She had to earn money, care for the children, and do housework. She said that even though her husband helped her do some housework and care for their children, she felt she still had to be more responsible to do all those things. Women have no choice but to take up a role as a good housewife while she has to decide to let their husband go to the city or other provinces to work. One female interviewee said she is more tired of doing housework and caring for her kids alone than when she could work and earn income in Borei Keila.

One male interviewee said that before the eviction, he was a construction worker, but his wife worked as a garment worker and later worked as a janitor. Nevertheless, after eviction, his wife could not do the jobs she had before. She had to work as a construction worker like him. Also, she had to work and took some free time from outside work to do housework and take care of their five children. As can be seen from the interviews and observation, husbands have been increasingly overprotective of their wives in the household and do not want them to engage much with the outside world. They do not want their wives to work far from home, as they think it is unsafe for women. They want their wives to only focus on the household chores and taking care of the kids, performing their role as "a good wife." Women's mobility is restricted after the displacement; women are bound to only the domestic realm and the family. In this condition, women are more vulnerable and insecure than men after relocation.

Decision-Making Power

The married women interviewees raised concerns about the changes in their decision-making power in their families after the relocation. After the relocation, they all said they could not earn as much income as before. So, their voice in the family is also not heard much. All of the married women interviewees used to have a proper job before the relocation. They were previously businesswomen, janitors at private schools, garment workers, etc., who could earn money to contribute to the family. This situation is different from the current situation; when they have to rely on their husband's income, their voice is not considered by their husband. So, they can no longer share decisions in the family; their husband has more authority to decide.

Unsafe Living Environment for Women

Women cannot travel far since it is unsafe if they travel out of their community. All the female interviewees said they never travel at night, especially from 7 p.m. onwards, as it is so dark outside. There is no street light along the road to their community. The place they are living is far from the police station or any local authority office. One woman said there is always a group of gangsters coming at night to fight each other near their area.

One case of attempted rape in their community happened very recently. A man from outside a village came to their village and attempted to rape a young woman who stayed at her home alone. From this case, many women in the community, especially young women, are concerned about their safety. One woman said that if this kind of case happens at night, it would be difficult to contact the police to help on time. She talked from her experience that at night time, the police usually never pick up the phone call.

Domestic Violence

There is also strong evidence of significant stress among people at the relocation site. They face many difficulties in finding employment and securing a stable income, lacking food for their family and kids, insecure land tenures and fears of being evicted again, family separation, and falling into a debt trap with no hope of getting better. During the interview with the married women, many raised that after the eviction, they started to have frequent verbal arguments with their husbands. They said their husbands usually got stressed because they could not find a job. They usually threw a fit of anger at their wives whenever they were stressed. Those women interviewees also stressed that they must follow their husband's decisions, especially what they should spend money on, even if they wanted to buy needed things. With these forms of violence, it can be considered as emotional and economic violence happening to them after the eviction.

In one case, one woman interviewee told the researcher that physical violence frequently happened in her family. She said she had never experienced such violence from her husband before the eviction. She recalled they were happy to run a home business and earn income back then. However, now her husband usually got stressed and threw a wave of anger at her. She was beaten by her husband several times. She said men typically expected them [wives] to do household work properly. Some female interviewees saw that domestic violence happens frequently in their community. Most of the time, it was reported that the violence happened because the husband got stressed since they could not find a job or earn as much money as before the eviction. They faced some difficulties, so when they returned home, they drank alcohol. Subsequently, they started to yell and beat their wives. Some of them raised that the most vulnerable situation of women in their community is when they are jobless and cannot earn money as they did before eviction. In addition to problems in their livelihood, they were also vulnerable to violence and abuse, especially from their husbands, who frequently stressed and got drunk.

Conclusion

In the case of the BK community, the government failed to oversee the eviction and relocation process to ensure the process was by the law and fundamental human rights. Ten years after the eviction, many still feel insecure about living in Phnum Bat, especially the displaced BK women. They increasingly face difficulties and live in miserable conditions without long-term and sustainable support. However, the impacts on the displaced women's agency and power relations are rarely assessed or studied, especially for the female community members.

The process of displacement also further entrenches gender roles and norms that have already been standing firm within Cambodian society against women. Borei Keila women were double victimized by being a woman in this society and the improper relocation process without considering the specific needs of the marginalized groups. BK women fell back and were entrenched within the gender norm again; they had to drop their school, abandon their jobs, separate themselves from their empowering network, be a housewife, and allow their husbands to be the sole family's income generators. It further victimizes the BK women as more vulnerable to new forms of violence, harassment, insecurities, and submissiveness within their families.

References

- LICADHO. (2014). “*Good Wives*”: *Women Land Campaigners and the Impact of Human Rights Activism*. LICADHO. http://www.licadho-cambodia.org/collection/24/good_wives_women_land_campaigners
- Menzies, N., Ketya, S., & Adler, D. (2008). *Land, Development, and Conflict: Urban and Peri-Urban Phnom Penh* (136750; pp. 1–63). The World Bank. <http://documents.worldbank.org/curated/pt/701991557465744910/Land-Development-and-Conflict-Urban-and-Peri-Urban-Phnom-Penh>
- United Nations (Ed.). (2012). *Women and The Right to Adequate Housing*. United Nations. https://www.ohchr.org/Documents/publications/WomenHousing_HR.PUB.11.2.pdf
- Vichaka, K. (2017, January 3). អតីតអ្នកកូមប្តីកីឡាប៉ះទង្គិចជាមួយអាជ្ញាធរ ក្នុងពេលប្រារព្ធខួប៥ឆ្នាំនៃការបណ្តេញចេញអោយបង្ខំ. *Voice of America*. <https://khmer.voanews.com/a/former-borei-keila-residents-clashed-with-security-forces-during-the-fifth-anniversary-of-eviction/3661362.html>

Examining Challenges in Fulfilling Education Rights for Rohingya Children in Indonesia

Adli Hazmi, S.IP., MA.¹

Institute of Human Rights and Peace Studies, Mahidol University, Thailand

Abstract

The Rohingya people, considered one of the most persecuted minority groups globally, have faced severe persecution in Myanmar, leading them to seek refuge in various countries, including Indonesia. Despite Indonesia's accepting Rohingya as transit refugees since 2009, the country, as a non-ratifying party to the 1951 Refugee Convention, lacks an obligation to provide comprehensive human rights protection for the Rohingya population. Initially labeled as illegal immigrants upon their arrival, it took seven years for the Indonesian government to establish President Regulation 125 of 2016, which outlined introductory human rights provisions such as healthcare, food, shelter, and clean water. Unfortunately, this regulation did not address the right to education for Rohingya children, leaving them without access to public schools. However, Indonesia ratified the International Convention on the Rights of the Child (CRC) in 1990 and the International Covenant on Economic, Social, and Cultural Rights (ICESCR) in 2006. Both these international instruments emphasize the importance of education as a fundamental right for all individuals, including children. Article 28 of the CRC stipulates that primary education should be free and compulsory for all children, while the ICESCR highlights similar rights. By ratifying these international laws, Indonesia commits to their implementation within the country, regardless of individual identity. Nevertheless, Rohingya children in Indonesia face significant educational challenges, primarily due to limited opportunities to enroll in public schools. This paper explores the barriers and obstacles Rohingya children face in accessing education, focusing on their struggle to enroll in public schools in Indonesia. By analyzing the existing policies, legal frameworks, and social dynamics, this research sheds light on the educational plight of Rohingya children and the potential solutions to address this pressing issue.

Keywords: Rohingya, education, access, public schools, Indonesia, human rights, refugee children.

¹ Student of Asia Pacific Master of Arts (APMA) in Human Rights and Democratization, Mahidol University, Thailand.

Introduction

The right to education is entitled to everyone, regardless of identity, nationality, status, race, or religion (Zendeli, 2017, pp. 158–166). However, for refugees, the right to education is hard to come by (UNHCR, 2021, pp. 1-50), especially when the country is not obligated to care for them due to the non-ratification of the 1951 Convention. Rohingya people face many challenges in accessing formal education in Indonesia (Pratama *et al.*, 2021, pp. 52–62). Historically, the first arrival of Rohingya people in Indonesia was in 2009 (IOM, 2018). At that time, Indonesia did not recognize the Rohingya as refugees because they arrived in Aceh's coastal area without permission, making them considered illegal immigrants. Despite the lack of willingness from Indonesian soldiers to help, local fishermen in Aceh assisted them in reaching the coastal area (Listriani, 2019, p. 279). As a result, many Rohingya people have sought refuge in Indonesia.

Due to the absence of a law specifically addressing the response to foreign refugees, Indonesia lacks a mechanism to care for the Rohingya people, including ensuring their human rights. It is worth noting that Rohingya people have a stateless status after Myanmar, where they originally resided, rejected their existence as part of the country in 1982 (Alam, 2018, p. 161).² Indonesia, however, is not a country that has ratified the 1951 Convention and, therefore, has no obligation to fulfill the human rights of foreign refugees (UNHCR, n.d.). In response to the influx of Rohingya people, the local government collaborated with UNHCR, IOM, and Indonesian immigration to take humanitarian action, including providing temporary shelter and food.

In 2016, in response to the emergency caused by the massive influx of Rohingya people coming to Indonesia in 2015³, President Joko Widodo issued Presidential Regulation No. 125 of 2016.⁴ This regulation outlined the mechanism for meeting the fundamental rights of foreign refugees (Cabinet Secretariat of Indonesia, 16 January 2017). However, it is essential to note that the right to education was not included in the regulation. As a result, Rohingya children in Indonesia cannot access formal education.

The lack of access to education creates uncertainty regarding the future of Rohingya children. Despite Indonesia serving as a transit country, many Rohingya children have resided there for over three years. Although Indonesia has not ratified the 1951 Refugee Convention, the country has ratified the International Convention on the Rights of the Child (CRC) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR). Both of these conventions include provisions on the right to education.

Despite the considerable time, the Circular Letter from the Ministry of Education and Culture issued in 2019⁵ It represented a step forward in addressing the education issue for foreign

² The New Citizenship Law of Burma 1982 only recognized 135 ethnicities, and Rohingya were excluded. As a result, Rohingya people face persecution and must flee from Myanmar to many countries, including Indonesia.

³ According to the UNHCR, the influx peaked at 13,500 people, with 28 percent children.

⁴ In Indonesian language “Peraturan Presiden (PERPRES) No. 125 Tahun 2016.”

⁵ Circular Letter of the Ministry of Education and Culture regarding Education for Child Refugees number 75253/A.A.4/HK/2019 states that foreign refugees can enroll in public schools with requirements.

refugees. Nevertheless, challenges in accessing public schools persist. This paper examines Rohingya refugees' challenges in accessing education in Indonesia, particularly within formal education settings. Using Putnam's Two-Level Games Theory 1988, this paper also analyzes compliance with international treaties, particularly the CRC and ICESCR, in fulfilling the right to education for Rohingya children in Indonesia.

Theoretical Framework

In examining the obstacles to Indonesia fulfilling the right to education for Rohingya children, this study employs the Two-Level Games Theory proposed by Robert. D. Putnam in 1988. Putnam (1988) believes that compliance with international treaties occurs at two levels. Level 1, or the international sphere, is where the state's leader must understand and negotiate the treaty before ratifying and signing the international agreement or covenant because it will affect the domestic level (Putnam, 1988, pp. 427–460). Moreover, level 2, or domestic level, the conditions at the domestic level will determine the implementation and translation of the international treaty. Putnam believes compliance with international treaties depends on domestic factors, including political will, political situation, interest groups, and national interest.

In many international treaty implementations, domestic politics influence compliance (Simmons, 2000, pp. 75–93). As the state's government (parliament) creates policies, laws, and mechanisms for the implementation, domestic politics will determine how the international treaties will be implemented. In this regard, Indonesia has ratified the Rights of the Child (CRC) and the International Covenant on Economic and Social Rights (ICESCR). The international treaties will be challenged with the Two-Level Games Theory regarding policy and implementation in Indonesia using Rohingya children's education fulfillment as the study case.

This research employs a qualitative methodology, combining archival research and interviews with academia and NGOs in Indonesia that possess experience with Rohingya refugees. The archival research facilitates data collection concerning the implementation of international treaties such as ICESCR and CRC, explicitly focusing on the right to education for Rohingya children in Indonesia.

Right to Education in the Human Rights Sphere

Education rights is widely known in the Universal Declaration of Human Rights (UDHR) 1948, Article 26, which states, 'Everyone has the right to education.' This can also imply that everyone, regardless of their status, is entitled to education. However, UDHR 1948, in international political practice, is considered a 'soft law' (Olivier, 2002, pp. 289-307) that has no solid legal binding to force a country to obey. On this matter, other international treaties regarding education have legal solid binding for the ratifying parties. First, The Convention on the Rights of the Child (CRC) Article 28 guarantees that children are entitled to education, and primary education shall be free and accessible for all. Second, the International Covenant on Economic

and Social Rights (ICESCR) Article 13 constitutes the same notion as the CRC. Both of these covenants have been ratified by Indonesia, which makes the country obligated to respect, fulfill, and protect these rights.⁶

General Comment No. 13 of the ICESCR 1999 states that implementing the ICESCR on education shall meet four elements: availability, accessibility, acceptability, and adaptability. Availability of education pertains to the existence of a sufficient number of schools staffed by an appropriate number of teachers. Accessibility entails ensuring that education is both affordable and easily attainable. Acceptability addresses the pedagogical elements of education that contribute to the growth and development of children's personalities. Finally, adaptability underscores the need for education to be flexible and responsive to the ever-changing dynamics of societies and communities (Tomasevski, 2006, pp. 1-148).

The treaties establish the international legal framework for education's rights. As a party to these treaties (CRC and ICESCR), Indonesia has an obligation to commit to fulfilling and protecting the rights of all children regardless of race, color, sex, language, religion, and national or social origin within its jurisdiction. The education rights in CRC and ICESCR include refugee children in Indonesia, particularly Rohingya children. In Indonesia, the law of education has been constituted in many laws. The Indonesian Constitution 1945, Article 28C⁷, states that "Everyone has the right to develop himself by fulfilling his basic needs, has the right to get education and to benefit from science and technology, arts and culture, in order to improve his quality of life and for the welfare of mankind," which is further strengthened by Law No. 39 of 1999 concerning Human Rights, Article 12, that ensures everyone has the right to get education.

In alignment with the ICESCR and CRC, Law No. 20 of 2003 concerning the National Education System⁸, Article 5(1) states that every citizen has the right to quality education. While the word 'citizen' is exclusive to only Indonesian nationals, foreign nationals can enroll in public schools with other laws. On this matter, the issue of accessing education for refugees is addressed in the Circular Letter of the Ministry of Education and Culture No. 752553/A.A4/HK/2019 on the Fulfillment of the Right to Education for Refugee Children⁹, which states that foreign refugees can enrol in public schools with several requirements.

Finding and Discussion

During this study, the author conducted interviews with key figures representing various sectors. Within the Suaka NGO, these discussions involved Atika Yuanita Paraswaty (Chairperson of SUAKA NGO), Dewi F. Rahmasari (Campaign Information and Advocacy Officer), and Zico

⁶ Indonesia has ratified the CRC in 1990 and ICESCR in 2006.

⁷ Original name Undang-Undang Dasar (UUD) 1945, hereafter written with Indonesian Constitution

⁸ In Indonesian language 'Undang-Undang Nomor 20 Tahun 2003 tentang Sistem Pendidikan Nasional.'

⁹ In Indonesian language 'Surat Edaran Kementerian Pendidikan dan Kebudayaan No. 752553/A.A4/HK/2019 tentang Pemenuhan Hak Pendidikan Bagi Anak Pengungsi.'

Pestalozzi (Program Manager of SUAKA NGO). Furthermore, the study extended its reach into the realms of academia and government, where insightful conversations took place with Prof. Dr. Tri Nuke, a distinguished researcher affiliated with the Research Center for Politics at the National Research and Innovation Agency (BRIN), and Rahmawati Husein, MCP, PhD, a prominent expert hailing from the Muhammadiyah Disaster Management Centre (MDMC). All interviewees shared a common focus, deep concern, and extensive experience related to foreign refugees, including the plight of Rohingya children.

The legal foundation is essential in constituting a policy in the political discourse (Mima et al., 2020, p. 48). The Circular Letter of 2019 shows Indonesia's commitment to fulfilling the right to education for refugees. However, the strength of the circular letter is less robust than national law, as it can be replaced depending on the ministry's situation. Paraswaty argues that the circular letter needs significant strength and is solely intended for internal use within the ministry and department. Moreover, the letter is only an appeal, not an order. Hence, it should be formally incorporated into the Indonesian Constitution or National Law to establish a robust legal footing. This way, the policy can gain a strong legal foundation.

Furthermore, Rahmawati Husein, MCP, PhD, believes that ratifying the 1951 Convention and the 1967 Protocol could be the solution for Indonesia to fulfill human rights, including the right to education for refugees. However, the country needs to consider the risks associated with the conventions.

Another area for improvement in fulfilling education rights for Rohingya children is the differing data among ministries, departments, and international organizations. According to UNHCR data from March 2023, approximately 12,881 foreign refugees are in Indonesia, with 1,366 originating from Myanmar. However, Prof. Dr. Tri Nuke Pudjiastuti stressed the need for information sharing among IOM, UNHCR, the Indonesian Law and Human Rights Ministry, and the Ministry of Foreign Affairs to have accurate refugee data in Indonesia.

Administrative processes need to be improved for refugees. Many refugees are constrained in public schools (Michaela & Stulgaitis, 2022, p. 33). While the Circular Letter of 2019 has been amended in 2022, making the requirements less stringent, the current situation still leaves some schools not recognizing UNHCR identity cards as a substitute for official documents like birth certificates. Only certain cities like Medan, Batam, Pekanbaru, Tangerang, Semarang, Makassar, and Kupang allow refugees to enroll in formal education. Based on the field interview with Suaka NGO and BRIN, Rohingya children are currently enrolled in public schools, especially at the elementary level. However, there is no precise data on how many Rohingya children enrolled. The Rohingya children enrolled in public schools have the sponsoring letter from IOM and UNHCR.

Furthermore, the current curriculum in Indonesia may only partially accommodate the needs of refugee students, and obtaining diplomas remains a challenge. Language learning and interpreters provided by volunteers, IOM, and NGOs play a crucial role in communication with Rohingya refugee students (Pratama *et.al.*, 2020, pp. 54–60 and Merdeka, 2015 May 24).

Political will plays a vital role in fulfilling education rights for foreign refugees. The Turkish government allocated USD30 billion from its budget between 2011 and 2017 to address the refugee issue, including the education sector (Hurriyet Daily News. 2017. November 6). As a result, according to UNICEF, approximately 500,000 Syrian refugee children could enroll in public schools in Turkey by 2017 (UNICEF, 2017, January 19).

Foreign refugees, including Rohingya, face challenges. A strong legal foundation through laws, not just circular letters, is vital. Streamlining administrative processes and collaborating with UNHCR for birth certificates and identity recognition is crucial. Like Turkey, Indonesia must show strong political will and allow Syrian refugees in formal schools. Providing Indonesian language training will aid their integration. Empowering the right to education will create opportunities for faster resettlement.

Thus, the Indonesian government must encourage foreign refugees to enroll in public schools. Issuing diplomas to refugee children who complete their education will enable them to pursue higher studies seamlessly. One of the prominent challenges is the economics of the refugee's education. As for now, IOM and UNHCR are the primary sources for the refugee sponsoring letter, and Indonesia is still suffering from poor education availability and quality in some regions.¹⁰ Indonesia could explore various sources from third parties, such as Badan Amil Zakat Nasional (BAZNAS)¹¹, Lembaga Zakat Infaq dan Shadaqah Muhammadiyah (Lazismu)¹², and CSR programs, to gather financial aid, minimizing the burden on the national budget.

Conclusion

Education is a right entitled to everyone, including refugees. The UDHR, ICESCR, and CRC have established that the right to education belongs to everyone regardless of status. However, to some extent, refugees face difficulties in accessing education. Despite Indonesia ratifying the ICESCR and CRC, no legal foundation allowed refugees to enroll in public schools from 2009 to 2018. Despite the Circular Letter of 2019 becoming a silver lining to fulfil education rights for foreign refugees, many challenges remain to be addressed. The Circular Letter of 2019 reflects Indonesia's commitment to addressing education rights for foreign refugees.

It is recorded that as of 2021, 646 foreign refugees could enroll in public schools in Indonesia (VOA, 2022, June 22). However, challenges such as administrative processes for enrollment in public schools need to be tackled. Considering Turkey's policy allowing Syrian

¹⁰ According to the Indonesian Constitution 1945, Indonesia allocate 20 percent of the national budget to education.

¹¹ Badan Amil Zakat Nasional (BAZNAS) is a national zakat institution in Indonesia. Its primary purpose is to collect and distribute zakat, a form of Islamic almsgiving, to those in need. BAZNAS operates under the Ministry of Religious Affairs and plays a significant role in poverty alleviation and social welfare programs. It ensures that zakat funds are utilized efficiently and transparently to assist the underprivileged and marginalized communities.

¹² Lembaga Zakat Infaq dan Shadaqah Muhammadiyah (Lazismu) is an Islamic charitable institution affiliated with the Muhammadiyah organization in Indonesia. It collects and distributes zakat, infaq, and shadaqah funds to support various social and welfare initiatives aimed at helping those in need and promoting community development.

refugees to enroll in public schools, it takes a strong political will to establish a solid legal foundation to enable foreign refugees, including Rohingya, to enroll in the Indonesian education system. Additionally, as budget constraints pose a challenge, the country should promptly consider third-party aid for support, in line with the Circular Letter of 2019's point of not burdening the national budget.

Reference

- Alam, M. J. (2018). The Rohingya Minority of Myanmar: Surveying Their Status and Protection in International Law. *International Journal on Minority and Group Rights*, 25(2), 157–182. <https://www.jstor.org/stable/26557890>
- Cabinet of Indonesia (2017, January 16.). *President Jokowi Signs Presidential Regulation on Handling of Refugees from Abroad*, Setkab <https://setkab.go.id/en/president-jokowi-signs-presidential-regulation-on-handling-of-refugees-from-abroad/>
- Hurriyet Daily News. (2017, November 6.). *Turkey to continue responding to humanitarian crises*. <https://www.hurriyetaidailynews.com/turkey-to-continue-responding-to-humanitarian-crises-121982>
- IOM (2018, August 6). *IOM Steps in to Aid New Rohingya Boat Arrivals in Indonesia*, <https://indonesia.iom.int/news/iom-steps-aid-new-rohingya-boat-arrivals-indonesia>
- Listriani S., Rosmawari., and Kadir Y. A. (2019). *Toward a New Legal Framework for Settling Rohingya's Refugee Crisis in Indonesia: A Lesson Learned from Aceh Province*. *Advances in Social Science, Education and Humanities Research*, Volume 413 1st International Conference on Law, Governance and Islamic Society (ICOLGIS 2019). pp. 277 – 285
- Merdeka. (2015, May 24). *Anak pengungsi Rohingya diajari bahasa Indonesia, Inggris & Aceh*. Merdeka.com <https://www.merdeka.com/peristiwa/anak-pengungsi-rohingya-diajari-bahasa-indonesia-inggris-aceh.html>
- Michaela, M., & Stulgaitis, M. (2022). *Refugees' Access to Higher Education in their Host Countries: Overcoming the 'super-disadvantage'*. UNESCO. <https://unesdoc.unesco.org/ark:/48223/pf0000381505/PDF/381505eng.pdf.multi>
- Mima, I., Yamkovyi, V., Kopaygora, I., & Ivaniuk, N. (2020). *Legal Policy: The Latest Dimensions of Development*. In A. Editor & B. Editor (Eds.), *Proceedings of the III International Scientific Congress Society of Ambient Intelligence 2020*. Atlantis Press. pp. 47-55. DOI: 10.2991/aebmr.k.200318.007.
- Ministry of Education and Culture, Republic of Indonesia. (2019). Circular Letter No. 752553/A.A4/HK/2019 on the Fulfillment of the Right to Education for Refugee Children.
- Olivier, M. (2002). The relevance of “soft law” as a source of international human rights. *The Comparative and International Law Journal of Southern Africa*, 35(3), pp. 289–307. <http://www.jstor.org/stable/23252173>
- Pratama N. A., & Gitareja, B. (2021). Challenge and Opportunity to Implement the Right to Education for Child Refugees in Indonesia. *Advances in Social Science, Education and Humanities Research*, Volume 549, Atlantis Press, pp. 54-61.
- Putnam, R. D. (1988). Diplomacy and Domestic Politics: The Logic of Two-Level Games. *International Organization*, 42(3), pp. 427–460.
- Republic of Indonesia. (2003). Indonesian Law No. 20 of 2003 concerning the National Education System.

- Simmons, B. A. (2000). Compliance with international agreements. *Annual Review of Political Science*, 3(1), 75-93.
- Tomaševski K. (2006). *Human Rights Obligations in Education: The 4-A Scheme*. Wolf Legal Publishers (WLP) pp 1- 148.
- UNHCR (2021), *Staying the Course the Challenges facing Refugee Education*, 2021 Refugee Education Report 1- 51.
- UNHCR. (n.d.). Education FAQs. <https://help.unhcr.org/turkiye/faqs/education-faqs/#:~:text=All%20refugees%20and%20asylum-seekers,right%20to%20go%20to%20school>.
- UNICEF (2019, December 19.) 65,000 refugee children to benefit from School Enrolment Programme in Turkey. <https://www.unicef.org/turkiye/en/press-releases/65000-refugee-children-benefit-school-enrolment-programme-turkey>.
- United Nations Committee on Economic, Social and Cultural Rights. (1999). General Comment No. 13 on the right to education (Article 13 of the Covenant).
- United Nations General Assembly. (1966). International Covenant on Economic, Social and Cultural Rights.
- United Nations General Assembly. (1989). Convention on the Rights of the Child.
- United Nations. (1951). United Nations Convention Relating to the Status of Refugees, 189 U.N.T.S. 137
- United Nations. (1967). Protocol Relating to the Status of Refugees.
- VOA Indonesia. (2022, June 22). *Hari Pengungsi Internasional: Menilik pendidikan anak-anak pengungsi di Indonesia*. <https://www.voaindonesia.com/a/hari-pengungsi-internasional-menilik-pendidikan-anak-anak-pengungsi-di-indonesia/6628106.html>
- Zendeli, E. (2017). The right to education as a fundamental human right. *Contemporary Educational Researches Journal*. 7(4), 158-166.

GENDER DISCRIMINATION IN LOW-WAGE INDUSTRIES: A CASE STUDY OF MYANMAR FEMALE MIGRANT WORKERS IN THE SEAFOOD INDUSTRY IN SAMUT SAKHON PROVINCE, THAILAND

Miss Hsan Thawdar Htun¹

Master of Arts in International Development Studies, Chulalongkorn University, Thailand

Abstract

The study aims to address the gender inequality issue faced by Myanmar female migrant workers in Thailand's seafood industry, focusing on gender discrimination. Female migrant workers play a significant role in Thailand's economy but have faced various challenges, including gender-related issues. Among human rights and development research, the gender aspect should receive sufficient emphasis in understanding the experiences of women migrant workers in the seafood industry. By filling this gap, the paper mainly explores the gender discrimination challenges by linking them with the concepts of the five faces of oppression. The study adopts a case-study qualitative approach, collecting primary and secondary data. Face-to-face semi-structured interviews are conducted with seven Myanmar female migrant workers from formal and informal sectors within the seafood industry. Using content analysis, the study finds that the issues of gender, migration and marital status play a significant role in the prevalence of gender discrimination. The findings will serve as a valuable resource to develop effective solutions and promote the role of women migrant workers in Thailand's industrial growth.

Keywords: Gender discrimination, Myanmar female migrant workers, vulnerability, Thailand's seafood industry.

Introduction

Migrant workers contribute substantially to Thailand's economic growth, working in agriculture, seafood and fisheries, manufacturing, construction, and domestic sectors. Among the current 2,167,937 registered migrant workers (Ministry of Labour, 2022), approximately 70 per cent are from Myanmar, and 43 per cent are women. Although women migrant workers are crucial to Thailand's economy, there are a variety of challenges, including gender inequality, which is one prominent issue in low-skilled industries in Thailand.

¹ Student of Master of Arts in International Development Studies (2022), Faculty of Political Science, Chulalongkorn University, Thailand.

Myanmar female migrant workers in labour-intensive industries in Thailand are frequently subjected to labour rights violations low wages and are often "exploited under precarious work practices" (Chantavanich, 2016b). Especially in the seafood industry, women workers' contributions are mostly invisible, although they make up half of the industry's workforce. Regarding female migrant workers, Thailand government ratified CEDAW in 1985. It also endorsed the Beijing Platform for Action (BPFA), and the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers was signed in 2007. Regarding national legal provisions, the Constitution prohibits gender discrimination. The bilateral agreement with Myanmar on the Memorandum of Understanding (MOU) recruitment ensures that migrant workers receive equal protection to Thai nationals. Although the country shows a growing awareness of gender, women migrant workers continue to face various forms of gender discrimination as women or migrant workers in vulnerable positions.

While working full-time in the industry, women are much more likely to shoulder unpaid family responsibilities and unequal work practices. In the study "Exploitation and Discrimination Experience of Migrant Workers in Five Provinces, Thailand" explored by Chalamwong et al. (2010), gender inequality features in labour-intensive workplaces are filled with gender exploitation and abuse. According to the findings, some pregnant women experienced a lack of maternity benefits, and Samut Sakhon Province faced the highest level of gender abuse, including unfair pay and abuse from their Thai managers or supervisors. According to Kanyajit et al. (2018), Burmese migrant women experienced various negative consequences in Thailand, including forced labour, exploitation, sexual harassment, prostitution, and inaccessible justice. The study called "Like Machines in Thailand's Seafood Industry" (Dahlquist, 2017) also described that although women chose paid employment, they continued to be underpaid and in charge of childcare.

Much attention has been given to the general concerns of female migrant workers in the Thailand industry. However, exploring the issue of gender discrimination with a particular focus on Myanmar female migrant workers in the specific seafood industry has been typically ignored by the existing studies. Therefore, the focus of this study is narrowed down to explore gender discrimination practices in the seafood industry, Samut Sakhon Province, which is renowned as the centre of the seafood industry in Thailand, standing out for its significant population of Myanmar female migrant workers. The paper's objective is to mainly explore gender discrimination instances (exploitation, marginalisation, powerlessness, cultural dominance and violence) that Myanmar female migrant workers have faced since the COVID-19 period.

The paper will attempt to address the following questions:

- What are gender discrimination practices faced by women migrant workers in the precarious seafood industry in Samut Sakhon Province?
- How do they experience gender discrimination challenges in five faces of oppression?

Conceptual Framework

Gender Discrimination

Analysis of the extent of disparities present in the modern workplace requires a thorough comprehension of gender. Gender inequality serves as “the foundation for gender discrimination against women because they place men in positions of authority in the public sphere while placing women in roles that are irrational, emotional, weak, and associated with motherhood” (Ida Rosida & Lestari Rejeki, 2017). Gender inequality and gender discrimination are mutually reinforcing, and to bring the concept of gender discrimination in this paper, it refers to unfair treatment of someone and presumptions made about them, often based on their gender and the role they should perform in society. It demonstrates how the female character in society feels stereotypes, subordination, and violence against women due to gender discrimination.

Five Faces of Oppression

Young and Allen (2011) explored five forms of oppression (exploitation, marginalisation, powerlessness, cultural dominance, and violence) that can illustrate how female migrant workers may face gender discrimination in the working conditions of the seafood industry in terms of the low-skilled female labour force.

The disparity between people's access to wealth and power is called exploitation. The transfer of the rewards of physical labour to men and the transfer of sexual energy to men are the two components of gender exploitation. In addition, the patriarchal family's institutional structure has also been the focus of gender exploitation, and by seeing this, the increasing numbers of women migrant workers may experience certain types of gender exploitation in the modern labour-intensive workplace.

Regarding marginalisation, an entire group of people, such as low-skilled female migrant workers, are excluded from contributing to social life. It prevents female workers from using their abilities in ways that are socially defined and acknowledged. Powerlessness is another important factor in understanding discrimination. Also, it denotes a position in the hierarchy of needs that provides few opportunities for women to hone their abilities.

In terms of cultural domination, it allude to the idea that one group is superior to others in terms of experiences, cultural manifestations, and history. The dominant group solidifies its power by subjecting the other groups to its dominating norms. As a result, the difference between men and women is generally recreated as inferiority. Women may experience paradoxical oppression in labour-intensive workplaces, simultaneously rendered invisible and singled out by stereotypes. Fear is the driving force behind violence, which takes many forms, including beatings, verbal violence, and sexual harassment of marginalised groups. Gender discrimination facing low-skilled female migrant workers can be examined under these classifications, which can help us comprehend gender inequality and discrimination in precarious employment situations.

Vulnerability

According to Elson and Pearson (1981), the rise of the feminine workforce results from employers looking for cheap labour, which has resulted in exploitation and pushed women into vulnerable conditions. Hence, vulnerability is “the result of gender inequalities and hierarchies that prevent the individual from satisfying basic needs, accessing resources, and exercising their rights” (Bankoff, 2001).

Methodology

This study used qualitative research using primary and secondary data collection.²With the assistance of the Migrant Workers Rights Network (MWRN) and vulnerability extent, seven Myanmar female migrant workers (formal and informal) from the seafood industry in Samut Sakhon with unique life stories and significant challenges were chosen among many female workers. Within this study, the term "female migrant workers from the formal sector" refers to individuals who migrated to Thailand through the MOU (Memorandum of Understanding) legal channel. In contrast, "women migrant workers from the informal sector" are defined as those who initially entered Thailand illegally. The interviewees were chosen from diverse backgrounds and marital statuses to be able to capture gender discrimination as a whole. The sample may be small, and the contextual information may not be fully covered. However, the findings can reflect the reality and are sufficient enough to cover gender discrimination as the majority issue in the study area. Face-to-face semi-structured interviews were conducted in May 2023. The secondary data will be obtained from the existing literature and related articles. Content analysis, a helpful tool for qualitative research, was used in this study to identify gender discrimination practices in Thailand's seafood industry.

² Migrant Workers Rights Network (MWRN) is a grassroots member-based association in the Samut Sakhon area. It comprises members who strive to safeguard the rights of migrant workers residing and working in Thailand, primarily from Myanmar. Formed in 2009 by nine leaders from the Myanmar migrant community, the organisation was established in response to witnessing widespread exploitation and mistreatment of migrant workers within various sectors in Thailand, including the seafood industry.

| Participants | Marital Status | Age and Type of work | Date of Interview |
|----------------------|---|-----------------------------|-------------------|
| Female participant 1 | Married with 3 children | 38-year-old factory worker | May 7, 2023 |
| Female participant 2 | Married with 1 child | 43-year-old factory worker | May 7, 2023 |
| Female participant 3 | Married with 5-month-old kid | 38-year-old factory worker | May 7, 2023 |
| Female participant 4 | Married with 1 child (pregnant now) | 30-year-old informal worker | May 14, 2023 |
| Female participant 5 | Married with 3 children | 46-year-old informal worker | May 14, 2023 |
| Female participant 6 | Single | 35-year-old informal worker | May 14, 2023 |
| Female participant 7 | Divorced (Single mother with one child) | 34-year-old informal worker | May 14, 2023 |

Table 1: Participant List

Findings

This section discusses the findings from primary and secondary data collection about gender discrimination based on the five faces of oppression (exploitation, violence, marginalisation, powerlessness, and cultural domination).

According to Pauly and Zeller (2017), in the seafood industry, men's voices are valued more than women's voices remain quiet. ILO claims that women are overrepresented in the supply chain's low-paying, informal parts, including irregular or unequal employment. For instance, they are less likely to have secure employment, receive lower pay, have fewer maternity rights, and have fewer childcare options than males. Women are often expected to perform tasks related to reproductive or delicate care work, such as cooking, cleaning, and laundry. This cultural expectation undervalues women's labour compared to men's (UN Women, 2021). Regarding family and household, women have to take the responsibility of taking the entire burden of household chores and childcare, apart from the income generation. Therefore, they are left on the shore to manage a double burden of paid and unpaid work (PlanInternational in Asia, 2018). The results of this study, which correspond to previously mentioned information, are presented below.

Exploitation

In terms of exploitation, it includes whether they face gender exploitation or sexual exploitation as a woman, labour or a migrant in the seafood industry. Some oppressive gender exploitation practices of female migrant workers are found. It was noted that when male employees are absent, female workers often experience intensive pressure due to the perceived expectation that only men are proficient in managing substantial workloads (Female Participant 5 – married informal worker, Semi-structured Interview, May 2023). The finding reveals that factory leaders exhibit gender discrimination by treating male and female workers differently by holding biased assumptions.

In addition, the disrespectful behaviours of the worker leaders lead to sexual exploitation. According to (Female Participant 3 – married formal worker, Semi-structured Interview, May 2023), during the pregnancy period, whenever she took a rest from standing for an extended period at work, the leader closely monitored and scolded her for taking too long, using his leg as a signal of disapproval. Women's contributions are devalued along with the negative perceptions, hindering access to equal opportunities and rights. Formal and informal female migrant workers in the seafood industry face gender exploitation. The experiences reveal unequal treatment and the loss of rights for women in the workplace.

Violence

According to the findings, some factory leaders and male counterparts frequently engage in violent actions. In the workplace, it was reported that when female workers could not meet their performance targets, they endured severe reprimands and were frequently subjected to derogatory terms in the Thai language (Female Participant 1 – married formal worker, Semi-structured Interview, May 2023). Another female worker encountered verbal abuse when she made occasional mistakes at work. It was observed that there is a misguided assumption that their perceived lack of focus on tasks stems from a preoccupation with the opposite sex or interest in men rather than a total commitment to the duties (Female Participant 6 – single informal worker, Semi-structured Interview, May 2023). The gendered languages target women migrant workers through verbal violence, rude manners and inappropriate behaviours. It reinforces gender stereotypes and undermines the well-being of female workers.

Apart from verbal violence, there have been instances of sexual violence. As reported by female participant 7, she experienced inappropriate behaviour from male colleagues, including uninvited physical contact such as touching her cheek and hands without consent (Female Participant 7 – divorced informal worker, Semi-structured Interview, May 2023). According to this finding, she faces sexual violence from male worker leaders and colleagues. Interestingly, sexual violence instances tend to occur more often among divorced female migrant workers, and it highlights the importance of marital status. The mindset of some male workers is still ingrained with gender exploitation as something normal. Overall, female migrant workers in the seafood industry face verbal abuse and sexual violence.

Marginalisation

Some female participants face marginalisation challenges in the seafood industry. Regarding marginalisation, Female Participant 3 mentioned that she received no special accommodations or benefits as a pregnant woman in her workplace. She had to endure long hours of standing and perform physically demanding tasks without being prioritised for any form of support or consideration from the employers (Female Participant 3 – married formal worker, Semi-structured Interview, May 2023). It shows that pregnant women migrant workers in the formal sector tend not to get special considerations in their workplace, enduring physically demanding tasks. Meanwhile, Female Participant 4 expressed the informal sector's absence of maternity leave benefits.

In addition, according to some findings, there are no provisions for maternity leave benefits in the market area. Consequently, female migrant workers feel compelled to continue working throughout their pregnancy without the opportunity to take sufficient rest in preparation for childbirth (Female Participant 4 – married informal worker, Semi-structured Interview, May 2023). This story highlights the circumstances pregnant women face in the informal sector, where the absence of supportive policies places them in vulnerable positions. Overall, both formal and informal pregnant women migrant workers are not still given priority, but the ones in the informal sector face the additional challenge of lacking official labour benefits.

Powerlessness

In terms of powerlessness, there is still a lack of influence from women migrant workers compared to men in the seafood industry. According to the result, when female migrant workers are confronted with situations involving sexual violence or disagreements with male colleagues, there is a prevailing reluctance to assert themselves and a sense of uncertainty about how to address their problems because their voices are mostly neglected effectively (Female Participant 2 – married formal worker, Semi-structured Interview, May 2023). It underscores the reluctance of female migrant workers to openly address their problems in the seafood industry due to fear and the belief that their voices may not be heard.

In the workplace and personal life, some female participants encounter powerlessness relating to financial management and taking care of kids within the family. As per one participant's answer, despite feeling tired from the day's work in the market, she was the one who was solely responsible for taking care of her kid without adequate support from her husband. She must prepare food for her husband and child (Female Participant 4 – married informal worker, Semi-structured Interview, May 2023).

Overall, Female Participants from all diverse backgrounds hesitated to speak out about their problems. In their personal life, they still lack the influence to manage their income, and their expenditures are more than that of men within the family as they have to spend for their parents, husband or kids rather than for their personal use.

Cultural Domination

In this aspect, informal women migrant workers face cultural dominance from dominant groups at work. According to findings, there have been complaints from Thai workers and certain male colleagues regarding receiving the same wage. It is noted that they exhibit dissatisfaction with the idea of equal payment with female workers (Female participant 6 – single informal worker, Semi-structured Interview, May 2023). It shows that the dominant groups in the workplace have a negative attitude towards the women migrant workers receiving equal payment, possibly indicating a perception of unfairness or superiority.

In addition, women migrant workers face discrimination based on the local language barriers. Female Participant 5 described her experience in accurately pronouncing the Thai language. She highlighted the challenges in accurately pronouncing the Thai language. These language barriers have resulted in experiences of discrimination within the workplace. As a result, she lost confidence in communication, which hindered her participation in group activities (Female Participant 5 – married informal worker, Semi-structured Interview, May 2023). The limited understanding of the local language hampers effective communication and tends to restrict the ability to join the main group's activities.

Female Participant 7 also faces discrimination and stigmatisation due to her marital status as a single mother. Thai male workers told her that she is a single mother because of having low moral standards and weakness. She faced different attitudes from male counterparts in her workplace (Female Participant 7 – divorced informal worker, Semi-structured Interview, May 2023). Being a single mother is always a reason, and her marital status as a weakness highlights the unfair treatment and negative stereotypes she encounters. The cultural norms play a significant role in shaping the experiences of the female participants.

Overall, cultural domination practice is primarily observed in the informal sector, and it manifests itself through certain groups considering themselves superior and subjecting others, particularly women, to discriminatory attitudes.

Conclusion

The study brings to the fore the various vulnerabilities female migrant workers face, with the gender aspect of being a woman being a significant factor in every form of oppression and the issues of migration and marital status also impacting the prevalence of gender discrimination. In contrast to their counterparts in the formal sector, informal sector female migrant workers face more restrictions and challenges, given their lack of access to legal benefits and exposure to irregular working conditions. In sum, the unequal treatment, prejudiced attitudes, and limited opportunities these women face, particularly in the seafood industry, pose significant hindrances to their ability to participate and thrive in the workplace fully. Policymakers and non-governmental

organisations can benefit from the study's insights to develop gender-responsive policies and actions.

References

- Bankoff, G. (2001). Rendering the World Unsafe: “Vulnerability” as Western Discourse. *Disasters*, 25(1), 19–35. <https://doi.org/10.1111/1467-7717.00159>
- Chalamwong, Y., Prugsamat, R., & Hongprayoon, K. (2017). TDR Quarterly Review, December 2010. TDR: *Thailand Development Research Institute*. <https://tdri.or.th/en/2012/09/tdri-quarterly-review-december-2010/>
- Chantavanich, S., Laodumrongchai, S., & Stringer, C. (2016b). Under the shadow: Forced labor among sea fishers in Thailand. *Marine Policy*, 68, 1–7. <https://doi.org/10.1016/j.marpol.2015.12.015>
- Dahlquist, M. (2017, June). “Like Machines” in Thailand’s Seafood Industry.
- Elson, D., & Pearson, R. (1981). “Nimble Fingers Make Cheap Workers”: An Analysis of Women’s Employment in Third World Export Manufacturing. *Feminist Review*, 7(1), 87–107. <https://doi.org/10.1057/fr.1981.6>
- Ida Rosida & Lestari Rejeki. (2017). Woman in Patriarchal Culture: Gender Discrimination. *Journal of Islam and Humanities*, Vol. 1(2). doi:<https://journal.uinjkt.ac.id/index.php/insaniyat/article/view/4345/0>
- Kanyajit, S., Nakpong, P., & Sokantat, N. (2018). Burmese migrant women and access to justice in Thailand. *Social Science Research Network*. <https://doi.org/10.2139/ssrn.3226598>
- Ministry of Labour. (2022). *TRIANGLE in ASEAN Quarterly Briefing Note*. doi:https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/genericdocument/wcms_735108.pdf
- Pauly, D., & Zeller, D. (2017). Comments on FAOs State of World Fisheries and Aquaculture (SOFIA 2016). *Marine Policy*, 77, 176–181. <https://doi.org/10.1016/j.marpol.2017.01.006>
- PlanInternational in Asia. (2018, June). Young Female Migrant Workers in Thailand’s Seafood Sector and their Access to Decent Work. doi:https://plan-international.org/uploads/sites/57/2021/12/into_the_light_080818_0.pdf
- UN Women. (2021, June). Research on Barriers and Opportunities to Improving Outcomes for Women Migrant Workers through Skills Development in Thailand.
- Young, I.M, & Allen, D.S. (2011). *Justice and the Politics of Difference*. Princeton University Press.

MARGINALISATION AND RIGHT TO WORK: A CASE STUDY OF THE NOMADIC TRIBE PARDHI IN URBAN CITY OF MUMBAI, INDIA

Pallavi Kiran Borkar¹

Institute of Human Rights and Peace Studies, Mahidol University, Thailand

ABSTRACT

The paper focuses on the rights of the tribal peoples in India, specifically the 'right to decent work' of the nomadic tribe called Pardhi, living in the metropolitan city of Mumbai. Pardhi people are one of the most underprivileged and economically weaker communities. The historical reason is the draconian law passed by the British under which nomadic communities were declared criminals; this brought about marginalisation, discrimination and social exclusion, making their lives abysmal. In the Constitution of India, the right to work is not clearly mentioned as a fundamental right. Nevertheless, within the Constitution in Article 41 Part IV, there is an inclusion of the 'right to work'; India has ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR). This paper explores the continuing difficulties Pardhis faces when trying to get access to decent work, along with the freedom to choose a job of their liking and well-being. This paper used qualitative methodology for data collection; the tools utilised were face-to-face and telephone interviews for primary data collection. For secondary data collection, a literature review, scholarly articles, and media archives were used. The findings from this paper show that Pardhi people experience discrimination based on caste, cultural background and their rural background. These discriminations have become the source of their economic deprivation.

Keywords: Pardhi, Human Rights, Employment, Discrimination, Livelihood, Scheduled Tribe, NT-DNT, Tribal Struggles.

INTRODUCTION

Significant gaps exist in treating and recognising the Pardhi community in India. Despite being categorised as a Scheduled Tribe in some states, they still face discrimination and lack access to necessities like food security, education, healthcare, social protection, and justice delivery. The repeal of the Criminal Tribes Act did not bring about any significant change in the mindset of society or the government towards these communities. The introduction of the Habitual Offenders

¹ Student of Asia Pacific Master of Arts (APMA) in Human Rights and Democratisation, Mahidol University, Thailand.

Act merely continued the discrimination against individuals from these communities. The formation of the National Commission for Denotified, Nomadic & Semi-Nomadic Tribes is a positive step towards identifying and uplifting these communities. Still, severe attention and innovative approaches are required to improve their conditions. The right to work is of utmost importance in developing these communities in the capitalist world.

The hunter-gatherer nomadic Pardhi community belongs to one of the Denotified Tribes (DNTs) in India. The history of Nomadic and Denotified Tribes in India was once glorious. They were proud of their heritage, culture and skills; they were self-sufficient and accomplished communities. When the British colonised the country, things changed for these communities – they became powerless, victimised and discriminated (Jha Kumar, 2021).

Under the British regime, the nomadic community were ‘notified’ as ‘born criminal’ by the British under a law called the Criminal Tribes Act 1871 (CTA). Pardhi people were also one of those communities that were categorised as criminals under this Act. During that period, about 150 tribes were branded as criminals. They were under constant surveillance, and the police had extensive power to arrest them. Even though independent India repealed the Act in 1952, officially removing the criminal label, Pardhis still face discrimination. This treatment continued even when India achieved its independence from the British. Till today, they remain socially, economically and politically backward (Bokil, 2002). They face the brunt of this discriminatory process through poor access to food security, education, healthcare, social protection and justice delivery (Gaikwad, 2010).

Schedule Tribe, Adivasi

The community is categorised as a Scheduled Tribe in some states in India. However, in some parts of the country, they are considered DNTs, which is just one of the confusion and causes for their discrimination. Schedule Tribe (STs) in India are underprivileged and most socio-economically backwards. The Indian Constitution acknowledges them through this term. During the British rule, they were called the Depressed Class (Labour Bureau, Government of India, 2011). Defining Schedule Tribe: The original inhabitants of the Indian subcontinent are called Adivasi. Within the Indian constitution, these groups were listed or scheduled as those in desperate need of economic and social development (Legislative Department, 1949). They are considered backwards based on their primitive agricultural practices, geographical isolation and lack of home ownership or land. Based on these characteristics, the Constitution of India in Article 366 (25) states that the Scheduled Tribes can be defined as tribal communities under Article 342 of the Constitution to be Scheduled Tribes (National Commission for Schedule Tribes, 2023). Ever since then, the Adivasis have been officially called Scheduled Tribes.

National Commission for Denotified, Nomadic and Semi-Nomadic Tribes

Because the Pardhis practice a nomadic lifestyle, they had not received any constitutional rights and were not made part of any welfare activities until recently when the government of India

constituted a National Commission for Denotified, Nomadic & Semi-Nomadic Tribes with a mandate to identify and prepare a state-wise list of DNT/NT (National Commission for Denotified, Nomadic And Semi-Nomadic Tribes, 2015). The Commission assessed the status of the inclusion of DNT/NTs in the reservation category of the constitution, identified the areas where the population lives, reviewed the progress of development and suggested measures for their upliftment (Press Information Bureau, 2022).

Habitual Offenders Act

When India achieved its independence, it revoked the Criminal Tribes Act, and instead, a new Act was put in place called the Habitual Offenders Act (HOA) on 31 August 1952, merely an extension of the CTA. The Act states that a habitual offender is a criminal by birth and presents a danger to society (Brown et al., 2021). The only noteworthy modification in this Act was that it now targeted individuals and not the entire community (Singh, 2018). Nevertheless, in actuality, nothing has changed. The entire community suffers, even if it is just an individual offence (Agrawal & Sinha, 2010). Hence, repealing CTA did not help change the mindset and prejudiced thoughts of society or the government.

A growing number of atrocity cases, such as death in custody, brutal killings, physical torture, and rape of Pardhi people, reflects our ignorance towards the marginalised. For a better and just future for tribal people in India, innovative approaches should be adopted so that attention is given to their concerns and aspirations. The paper aids in understanding the dire condition of the Pardhi community and initiates a conversation regarding the violation of human rights. Pardhi people are free and equal to all other people and have the right to exercise their rights, mainly based on their tribal origin or ethnic identity. Discussing their right to work is important as it forms the bedrock of their development in the capitalist world.

METHODOLOGY

The research applied for this paper is the phenomenology and case study approach; therefore, a small number of 5-7 Pardhi people were selected to explore their perspectives and lived experiences for primary data collection. The estimated number of participants is determined by applying the Snowball and purposive sampling methods. The number helped provide ample opportunity to identify themes of the cases as well as conduct cross-case theme analysis; also, I did not want to dilute the level of detail.

The study involved Pardhi participants, men and women above 18 years old, at the Karbala Chawl site at Sathe Nagar in Mankhurd, Mumbai. Because they are a nomadic tribe, they live collectively with their families and distant relatives. This site was chosen because the location consists of a large population of the Pardhi tribe. Many migrated here from rural areas of Maharashtra in search of livelihood. Initially, the Pardhi tribe lived on the streets in the southern

part of Mumbai city. They were displaced because of the constant evictions conducted by the local police - owing to which they have now settled in Karbala Chawl.

The Pardhi population is traditionally nomadic; hence, help was sought from an NGO called Coro India. Their assistance helped locate, identify and arrange preliminary meetings with the participants, keeping in mind their availability and working hours. Pardhis work as daily wage labourers; hence, a time slot was decided to meet them. Every evening, when they return from their odd jobs, Pardhis gather at a nearby tea stall/ shop close to their settlement for refreshments, and this was the time they were available for a quick introduction and to seek permission for interviews on a scheduled day close to their settlement. This quick meeting allowed accessible communication and helped me gain face-to-face and telephone interviews with them. These interviews aimed to get their perspectives and experiences related to access to employment and government employment schemes, as well as their situation while working in the city of Mumbai. The monsoons had begun in India; hence, navigating to their slums was challenging because they live adjacent to midden like a huge drain, which is used for disposing of garbage or open defecation, and that area was flooded. The interviews were conducted once the rains subsided.

CONCEPTUAL FRAMEWORK

The framework utilises two elements – discrimination of the Pardhi people and the Pardhis people's right to decent work. Specific indicators listed in the treaties International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and International Covenant on Economic, Social and Cultural Rights (ICESCR) were used as a reliable way to acquire data connected to the research. For discrimination, the indicators listed in ICERD, such as distinction, exclusion, and restriction, were adopted (United Nations General Assembly resolution, 1969). For the right to decent work, the indicators listed in General Comment No. 18 of Article 6 of the ICESCR are availability, accessibility, acceptability and quality (General Assembly Resolution, 1976). These indicators also helped to understand the relationship between discrimination and the right to work and how it affected the Pardhi people's livelihood.

A case study of the denotified tribe Pardhi in urban city of Mumbai, India

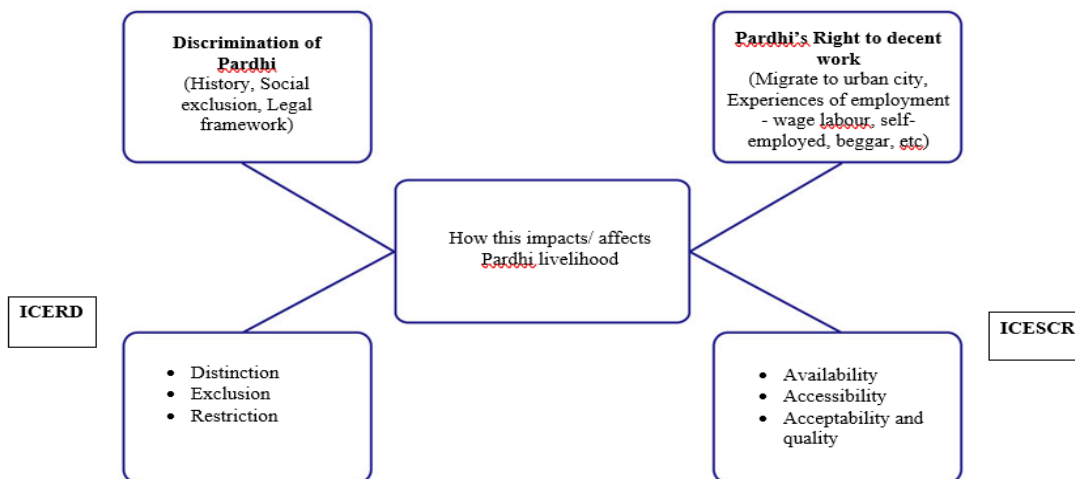


Figure 4: Conceptual Framework

PARDHIS EMPLOYMENT AND SOURCE OF INCOME – FINDINGS, ANALYSIS AND CONCLUSION

Insufficient representation and support for the Pardhi community in the democratic process of the country is a significant issue. Despite their desire to establish permanent residency and procure national identity cards, they experience significant underrepresentation and societal stigmatisation. As such, political organisations and government officials should take appropriate measures to assist the Pardhis in enhancing their living conditions and access to opportunities.

Even in an urban city like Mumbai, where people from different communities and religious affiliations live and survive harmoniously, Pardhis are still considered an outcast. Their settlements are stretched towards the end of the area, adjacent to infested and foul-smelling middens, as though to ignore them and their plight. This site is a transit camp where Pardhi people have lived for over 15 years.

Pardhis continue to face the stigma of being a criminal because of the past law, which subjects them to torture by the local administration and police. Even today, they are suspected of no fault of theirs. They are helpless and living a miserable life. Sometimes, their settlements are forcibly removed (Press Information Bureau, 2022). While the administration hears their request for alternative arrangements, no progress has been made thus far.

Pardhi people are not literate, and because they are a hunting-gathering nomadic tribe, their employment source is now confined to labour work. Pardhi people travel around in groups and live collectively with their families and distant relatives. Hence, they are involved in similar occupations. The main income of the daily wage earners comes from casual labour. This income depends on the availability of work or seasonal raw materials. Lack of national identity proofs deprives them of government employment schemes, which none of the Pardhis know. They form an integral part of the gig economy doing odd jobs as and when offered by private contractors – such as sewage cleaning, selling flower garlands, rag picking, etc.

Pardhis are now willing to change the nomadic patterns and want to settle permanently. Some of them have been issued national identity cards such as Ration Card and Aadhar Card, helping them to get a few benefits under the Government welfare schemes. Lack of awareness and interest being designated by any political group has resulted in Pardhis continuing to be underrepresented in the democratic process of the country.

The data was analysed using thematic analysis, which helped me to identify, analyse, and interpret patterns/ themes in the qualitative data.

IMPLICATIONS OF THE RESEARCH

The study aims to be a part of a growing body of research on Denotified Tribes and Nomadic Tribes (DNT & NT) of India through the human rights lens. The research aims to improve human rights through increasing awareness, developing the capacity of Pardhi people and duty bearers for people's rights to be met, and allowing the research to be used as a form of advocacy.

RECOMMENDATIONS

Pardhis' dire condition calls for a positive government intervention to improve the socio-economic and educational status of Pardhis. Proper enforcement of tribal-related policies and programs and active participation of the Pardhis are important.

In assessing the usefulness of the current policies and mechanisms, there is a need to identify hidden talent and emerging leaders within Pardhi people who have the potential to drive positive change. The leader will empower others to increase awareness about their rights and how to secure them, build teamwork and togetherness to appeal to the government and motivate active participation as citizens in local affairs.

For a better and just future for the Pardhi people in India, innovative approaches should be adopted to address their concerns and aspirations. These approaches must respect their traditions, cultures and lifestyles. The policies designed and measures taken should improve their livelihood conditions.

India should ratify the ILO 169 Convention, the Indigenous and Tribal Peoples Convention, an important binding convention about indigenous and tribal people that would support the Pardhi people's favour (International Labour Organisation, 1989).

References

- Agrawal, P., & Sinha, M. (2010). *A report on the Status of Pardhis in Mumbai City*. Tata Institute of Social Sciences Mumbai. <http://castemumbai.tiss.edu/wp-content/uploads/2015/04/Pardhis-In-Mumbai.pdf>
- Bokil, M. (2002, January). *Denotified and Notified Tribes: A Perspective [Review of Denotified and Notified Tribes: A Perspective]*. *Economic and Political Weekly*, 148–154.
- Brown, M., Jadhav, V. K., Raghavan, V., & Sinha, M. (2021). Imperial legacies and southern penal spaces: A study of hunting nomads in postcolonial India. *Punishment & Society*, 23(5), 675–696. <https://doi.org/10.1177/14624745211054393>
- Gaikwad, R. (2010, January). *Pardhis continue to suffer from social stigma*. *The Hindu*. <https://www.thehindu.com/news/national/other-states/Pardhis-continue-to-suffer-from-social-stigma/article16835536.ece>
- General Assembly Resolution. (1976). *International Covenant on Economic, Social, and Cultural Rights*. United Nations. <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>
- International Labour Organisation. (1989). *C169 - Indigenous and Tribal Peoples Convention*. Ilo.org. https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB%3A55%3A0%3A%3ANO%3A%3AP55_TYPE%2CP55_LANG%2CP55_DOCUMENT%2CP55_NODE%3AREV%2Cen%2CC169%2C%2FDocument#:~:text=Indigenous%20and%20tribal%20peoples%20shall,female%20members%20of%20these%20peoples
- Jha Kumar, A. (2021). *From Hunters To Ecological Refugees – The Pardhi Tribe Of India*, 450 pages. BUUKS.
- Labour Bureau, Government of India. (2011). *Chapter 1 Introduction - Scheduled Tribe*. http://labourbureau.gov.in/SE_GUJARAT%2006-07_CHAPTER%20I.pdf
- Legislative Department. (1949). *The Constitution Of India - Part IV - Directive Principles of State Policy*. Ministry of Law and Justice, Government of India. https://legislative.gov.in/sites/default/files/COI_English.pdf
- National Commission For Denotified, Nomadic And Semi-Nomadic Tribes. (2015). *Voices of the DNT/NT Communities in India*. Ministry of Social Justice and Empowerment, Government of India. https://socialjustice.gov.in/writereaddata/UploadFile/Voices%20of%20The%20DNT_NT%20for%20Mail.pdf
- National Commission for Scheduled Tribes. (2023). *Frequently Asked Questions - Who are Scheduled Tribes?*. Government of India. <https://ncst.nic.in/content/frequently-asked-questions>

Press Information Bureau. (2022). *Union Minister for Social Justice & Empowerment Dr Virendra Kumar launches a Scheme for Economic Empowerment of DNTs (SEED)*. Department of Social Justice & Empowerment.
<https://pib.gov.in/PressReleasePage.aspx?PRID=1798792>

Singh, N. (2018). *Why 13 crore Indians are celebrating their 'independence day' today*. The Print. <https://theprint.in/india/governance/why-13-crore-indians-are-celebrating-their-independence-day-today/109449/>

United Nations General Assembly resolution. (1969). *International Convention on the Elimination of All Forms of Racial Discrimination*. United Nations.
<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-elimination-all-forms-racial>

Women's Sexual and Reproductive Health and Rights in Dhaka Slums; Services and Policies

Najia Nuray Jarin¹

Institute of Human Rights and Peace Studies, Mahidol University

Abstract

Women living in the urban slums of Dhaka city are deprived of accessing their sexual and reproductive health rights in their families and health service centers. This paper will examine the barriers and reasons women from urban slums face to access the rights and services and the role of government health services in reducing the problems. Also, this paper will focus on finding the service quality in the service centers and service providers' behaviors towards the service-seeking women who are living in the urban slums of Dhaka. Women from poor economic backgrounds are still unable to decide to make a family or go to the service centers due to existing stigma and patriarchal practices. This qualitative research will be based on data collection through interviews among the women living in the slums, service providers and the NGOs working on this. I will also conduct some FGDs and in-depth interviews. This research will also look into possibilities to make reproductive health and rights more accessible for the women who are living in the urban slum areas of Dhaka city, Bangladesh.

Keywords: Sexual and Reproductive Health and Rights, Bangladeshi Women, Health Services, urban slums, Dhaka.

Introduction

Bangladesh is getting urbanized so rapidly. The extension of slums and squatter communities that are already overcrowded due to such rapid urban growth puts a tremendous demand on public resources and presents difficulties for local health authorities (Buckner, 2006). In 2022, the urban population of Bangladesh was 39.7 percent. It has increased from 8.6 percent in 1973 to 39.7 percent in 2022, growing at an average annual rate of 3.2 percent (KNOEMA, n.d.). In developing countries like Bangladesh, sexual and reproductive rights are often ignored. Women, especially those from poor economic backgrounds, have less access to sexual and reproductive health and rights (SRHR) (Mahmud, 2019). Compared to women in wealthy nations, women in developing nations often have less access to healthcare services; within each nation, the poor have proportionately less access (Peters et al., 2008).

¹ Student of the Asia-Pacific Master of Arts (APMA) in Human Rights and Democratization, Mahidol University, Thailand.

Sexual and reproductive health rights cover many concerns, such as the right to a safe, pleasant sexual life, the freedom to choose whether and when to have children, access to nonjudgmental treatments, and freedom from gender-based violence. Such a human rights-based approach to sexual and reproductive health was promoted at the 1994 International Conference on Population and Development (ICPD) and the 1995 Fourth World Conference on Women in Beijing. The ICPD Programme of Action (PoA) commits governments to ensuring the realization of reproductive rights for all, including women and adolescents, and to providing a comprehensive range of sexual and reproductive health information and services. The Beijing Platform for Action recognizes that women's human rights include their right to control and decide freely and responsibly on their sexuality, including sexual and reproductive health, free of coercion, discrimination, and violence (Naripokkho, 2020).

Women's sexual and reproductive health is related to multiple human rights, including the right to life, the right to be free from torture, the right to health, the right to privacy, the right to education, and the prohibition of discrimination. The Committee on Economic, Social and Cultural Rights (CESCR) and the Committee on the Elimination of Discrimination against Women (CEDAW) have indicated that women's right to health includes their sexual and reproductive health.

Bangladesh has several policies, such as the National Population Policy (2012), National Health Policy (2011), National Nutritional Policy 2014 and National Policy for Women's Advancement 2011, that refer to women's access to reproductive health and maternal and newborn services. The specific objective of National Health Policy 2019 ensures primary and emergency health care services for all. The specific objective mentions encouraging people to take health care services based on rights and dignity (Naripokkho, 2020). In addition to these policies in Bangladesh, several strategies and guidelines exist. The National Neonatal Health Strategy and Guidelines for Bangladesh 2011 addresses the health service needs of mothers and newborn babies, i.e., giving attention, taking care, and nursing for the most vulnerable. This guideline focuses on postnatal care in health facilities to be implemented in a structured way. The National Neonatal Health Strategy and Guidelines 2009 incorporate many maternal health interventions and indicators and recognize the need to train health workers in maternal and neonatal health. Adolescent Reproductive Health Strategy facilitates women and adolescents with decision-making capacity, negotiation skills, and sexuality education in the school curriculum. The strategy also recognizes the need to reach adolescents out of school, engaged in various kinds of employment, street children and disabled children.

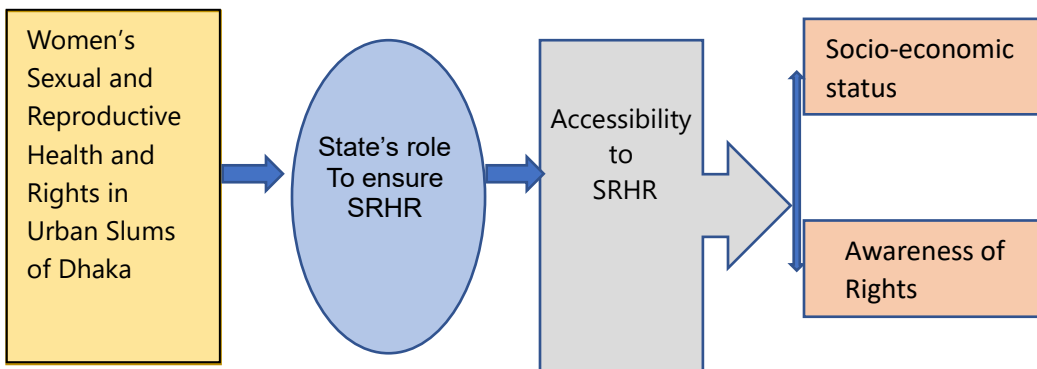
My study area is the urban slums of Bangladesh. I worked and focused on the slum area in Mirpur and Pallabi. Slums are widespread and are expanding yearly due to the large number of migrated people from all over the country. With a dense population in those areas where all the people live a very poor standard of living, people are unaware of their rights, when they seek services, where they go, and how the service providers treat them.

Research Question

What challenges do women living in urban slums of Bangladesh face to access sexual and reproductive health rights from health service providers?

Conceptual Framework

This research focused on finding out the access to sexual and reproductive health services in the urban slums of Dhaka city. The research found out the accessibility of SRHR services, which includes treatment and information. This research also focused on how socio-economic status and awareness influenced their access to services.



Methodology

The study was undertaken in one of the biggest urban slums of Dhaka City in the Mirpur area. It was situated in Pallabi, a district of Dhaka that was once a part of Mirpur. With many middle-class residents and relatively impoverished populations living in squatter communities, Mirpur presents a perfect example of income inequality. To understand the overall situation regarding sexual and reproductive rights, I conducted one focus group discussion with the women living in the slums. This group consisted of 6 women aged between 25 and 45. To conduct the focus group discussion, I contacted one NGO already working in that area to improve SRHR in the slum area. Few participants wanted to share their stories during the focus group discussion, so I talked to them separately for some case studies. I also interviewed NGO workers, especially the NGOs working on SRHR, in collaboration with the government. The interviews were conducted to determine how government policies include civil society to ensure the services to people living in the slum area. The NGO workers also shared their work experience working in the slum area for a long time.

Results and Discussion

Current Situation in the Pallabi Slum

Pallabi is one of the biggest slums in Dhaka city. However, due to some development work of the North City Corporations, many residents had to shift to new places because the government acquired the main slum area to make new roads and flyovers and beautify the area. So, many people have to move and find a new place nearby to live. However, many have lived in this area for many years. The government-provided reproductive services are very hard to find in that area. The Urban Primary Health Care Delivery clinics are situated far away. The only government hospital there is the Kurmitola Government Hospital, which is quite far from where they live. They mostly rely on two NGO-running clinics. Those are not yet providing complete free services.

Timing of the Services

As most of the women who are living in this slum are working women, it becomes difficult for them to find time to visit the government hospitals or NGO clinics. The sexual and reproduction-related services end very early, and often, the doctors are not available to provide the services. The NGO clinic doctors also leave their posts early before most women finish their work. Doctors are not available on weekends to provide services.

Cost of medicine and other contraception products

Although all the contraception products were supposed to be free and available in reality, the outreach workers are selling them and taking money. Also, the service centers are quite far. The people who are living in slums go to local pharmacies to buy menstrual hygiene products and contraceptive methods, and most of the time, those are not affordable. So, many decide not to buy any products.

Lack of monitoring and transparency

The lack of transparency among outreach workers of the health service in Dhaka has become a growing concern, casting shadows on the program's effectiveness and eroding public trust. Operating in a densely populated and diverse city like Dhaka, these outreach workers are crucial in providing essential healthcare services to vulnerable communities. However, reports and complaints have surfaced about inconsistencies in their actions, including irregular distribution of resources, favoritism, and insufficient documentation of their interventions. This opacity not only undermines the credibility of the health service but also raises suspicions about potential corruption and mismanagement of resources. In addressing these issues, there is an urgent need to implement strict monitoring mechanisms, ensure accountability, and promote a culture of transparency within the outreach worker network. Only through greater openness and accountability can the health service in Dhaka regain the public's confidence and fulfill its mission of delivering quality healthcare to all.

Recommendation

Improving sexual and reproductive health services in Dhaka slums requires a comprehensive approach that addresses the unique challenges the population in these areas faces. Here are some recommendations to enhance sexual and reproductive health services.

Community engagement and awareness

In this research, one thing that came up repetitively was that the women who are living in the slum do not see any frequent visits from any community worker, and as a result, they do not receive any information regarding their sexual and reproductive health services. Community workers who are working with government and private sectors must pay regular visits to their designated areas. This practice will help women living in the slums more access to information.

Accessible and affordable services

In this study, many women mentioned that they do not go to government-run hospitals and health service centers as they are far away and often ask for fees. These facts set difficulties for them to visit health service centers. Only if the services become more accessible will women find it more manageable. That includes the establishment of service centers nearer to the slum areas.

Also, the services and products should be free of cost. Sexual and reproductive rights are already much neglected, and overpriced services and products can worsen it.

Comprehensive family planning services

Services can offer a range of contraceptive methods to cater to individual preferences and needs, including condoms, birth control pills, intrauterine devices (IUDs), and implants. Services should conduct family planning counseling to inform individuals about the available options and help them make informed choices.

Gender-sensitive services

Every service should be available for all genders. The wrong conception of sexual and reproductive health rights is women's concern is a very wrong idea that still exists in society. The services should be gender sensitive. Man, woman, transgender, intersex, everyone should be treated with respect and equally.

Youth-friendly services

The government is already paying attention to youth and adolescent-friendly services. However, youth-friendly services are more available in the rural areas of Bangladesh. Government and NGOs can have separate youth-focused services.

Data collection and monitoring

Establishing a system to collect and analyze data on sexual and reproductive health indicators in the slum areas is critical. This information can help identify specific areas that need improvement and track the progress of interventions.

Capacity building and training

Service providers also need capacity building to provide quality service. The government, in collaboration with international and local NGOs, can work to increase the capacity of service providers by giving them training from experts.

Advocacy and policy support

Working with local authorities and policymakers to advocate for improved sexual and reproductive health services in Dhaka slums is preferable. Collaboration is also important with relevant stakeholders to address legal and social barriers hindering access to these services. By implementing these recommendations, it is possible to enhance sexual and reproductive health services in Dhaka slums and improve the overall health and well-being of the population in these areas. However, sustained efforts and collaborations among various stakeholders are crucial for the long-term success of such initiatives.

Conclusion

The Government of Bangladesh has tried to create some good policies to ensure health rights, which include sexual and reproductive health. Nevertheless, the implementation of these policies is far from achievement. The government should have a more robust monitoring system and collaboration with related organizations to make the services more available. Service and information about the service are both important. After talking to the participants, it was clear that when they lived outside of Dhaka, they received much better services than they do now. The urban or mega city Dhaka is not only for people from the higher socio-economic strata. A significant number are living in the slums and have the same rights as any other citizens. The government and civil society organizations should ensure that these people are getting all the services for their basic human rights.

References

- Buckner, B. (2008), Migration and migrant characteristics. 2006 Bangladesh Urban Health Survey. Dhaka and Chapel Hill: National Institute of Population Research and Training (NIPORT), MEASURE Evaluation, International Centre for Diarrhoeal Disease Research Bangladesh (ICDDR,B), Associates for Community and Population Research
- Knoema, n.d. Bangladesh - Total fertility rate (1950-2022), Knoema, World Data Atlas, <https://knoema.com/atlas/Bangladesh/topics/Demographics/Fertility/Fertility-rate>
- Mahmud, N. (2020), Women's Sexual Health & Reproductive Rights in Bangladesh, Institute of Epidemiology, Disease Control and Research. <https://iedcr.gov.bd/nbph/issue-sections/d19c92d3-ae4f-4c85-b0ab-6e2767429bbe>
- Peters, D., Garg, A., Bloom, G., Walker, D., Brieger, W. & Rahman, Md. (2008). Poverty and Access to Health Care in Developing Countries. *Annals of the New York Academy of Sciences*. 1136. 161 - 171. 10.1196/annals.1425.011.
- Naripokkho (2020), Country Profile on Universal Access on Sexual And Reproductive Rights; Bangladesh, The Asian-Pacific Resource & Research Centre for Women (ARROW), <http://arrow.org.my/wp-content/uploads/2017/04/Bangladesh-Country-Profile-on-SRR.pdf>

STUDY ON THE ADVOCACY IN ENFRANCHISING THE SRI LANKAN MIGRANT WORKERS ABROAD IN NATIONAL ELECTIONS

Tharindu Abeyrathna¹

Institute of Human Rights and Peace Studies, Mahidol University, Thailand

Abstract

The lack of a legal framework and a voting mechanism to enfranchise Sri Lankan migrant workers abroad has resulted in their disenfranchisement, despite their contribution of 8-9 percent of the country's GDP, with over two million individuals affected. Article 88 of the Sri Lankan Constitution mandates the enfranchisement of all citizens. Furthermore, Sri Lanka's ratification of the International Convention on the Rights of Migrant Workers (ICRMW) obliges the country to facilitate the participation of migrant workers in public affairs, including their right to vote and be elected in elections. Despite the advocacy efforts of civil society organizations, labor unions, and government institutions, no legislative actions or measures have been taken to address the issue of granting voting rights to Sri Lankan migrant workers. This reality is due to the problem needing to be higher on the agenda of the country's policymakers. This paper intends to understand internal and external factors affecting labor organizing and advocacy efforts for the voting rights of migrant workers in Sri Lanka.

Keywords: disenfranchisement, migrant workers, right to vote, advocacy, non-residency

Introduction

The Sri Lankan migrant workers abroad comprised over 2 million from Sri Lanka's 21.4 million population, with approximately 200,000 annual outflows. Migrant workers contribute over 8.1 percent to the Sri Lankan Gross Domestic Product from their remittances that they send home from earnings abroad (World Bank, 2018).² Nevertheless, the lack of legal provision to register migrant workers who are non-residents and a voting mechanism to cast votes from abroad disenfranchised them. It prevented them from exercising their right to vote, while external voting was allowed in 115 countries and territories worldwide by 2007 (Ellis et al., 2007).

¹ Student of Asia Pacific Master of Arts (APMA) in Human Rights and Democratisation, Mahidol University, Thailand.

² In 2018, SLR 7.4 billion of migrant workers remittances reached Sri Lanka, which equals 8.1 percent of the GDP in the country.

This paper posits that the lack of voting rights for Sri Lankan migrant workers abroad in national elections can be attributed to a combination of factors. Firstly, it is argued that the political stance of policymakers, which often caters to the preferences of the Sinhala majority constituency, has contributed to a lack of support for non-resident Sri Lankans in their quest for the right to vote. Secondly, the insufficiently robust advocacy strategies, along with weak coalitions and inconsistent efforts employed by advocacy groups, have collectively failed to effectively advance the issue of voting rights for migrant workers on the policy agenda of Sri Lanka's national-level policymakers.

Methodology

The study will deploy the qualitative research approach to analyze the secondary data gathered through various channels such as scholarly articles, news articles and interviews, NGO and INGO reports, and parliament committee reports. The paper also utilized the advocacy coalition framework and the policy window framework to examine the internal and external factors that influenced the advocacy by the Sri Lankan advocacy groups who have been advocating for the voting rights of the Sri Lankan migrant workers abroad.

Analysis and Discussion

Non-residency as a base for disenfranchisement

Disenfranchisement of migrant workers takes place in Sri Lanka based on the non-residency of the citizens at the time that elections and voter registrations occur in the country. Article 88 of the constitution enfranchised all citizens of Sri Lanka to exercise their voting rights in national elections. Also, it required the pre-requirement of having their name entered in the appropriate register of electors. The requirement of residency in one of the electoral districts to register as an elector is placed in article 4.1 of the Registration of Electors Act No. 44, 1980, which prevents migrant workers from registering as voters in elections in the country³.

Scholars argue that the traditional approach to citizenship, which is bound to its territory, jurisdiction, and defined population within the territory challenged by the migration in modern societies, means that the state is no longer a closed institution with absolute control over the people with a defined population within a specific territory, as an alternative system of constitutionally interconnected at the state level with a multiplicity of membership (Soysal, 1994). Kim Barry (2006) identifies migration as the phenomenon that "Decouples citizenship and residence that makes it not only a symbol of rootedness, exclusivity, and permanence, but also portable, exchangeable, and multiple."

³ Article 4. 1 of the Registration of Electors Act no 44, 1980 says, "The first day of June in any year is, hereby, prescribed as the qualifying date on which a person should be resident in any electoral district to have his name entered or retained in the register of that electoral district."

In the larger context of the democratic theory, the concept of the "All Affected Interests Principle (AAIP)" has been used by scholars to justify political inclusion in the democratization of modern nation-states (Warren, 2017). Everyone affected by a decision has a right to participate in decision-making (Lagerspetz, 2015).

The scholars who argue against the disenfranchisement of non-residents claim that transportation and communication technologies have enabled non-residents to remain actively connected with events, people, and organizations in their countries of origin while increasing the capacity of states to contact residents overseas (Barry, 2006). The remittances they send home as a portion of their earnings to families, businesses, and investments, and the skills and technology transfers also have made them increasingly affected by the consequences of the votes. Through migration, state jurisdiction is also extended to the territories of foreign sovereigns where its citizens reside; therefore, citizens residing outside their countries of citizenship are simultaneously protected by the laws of multiple overlapping sovereigns (Barry, 2006).

Michael Collyer (2014) in "Extraterritorial Citizenship" and Kim Barry (2006) in "External Citizenship" argue that the political relationship between emigration states and their citizens who have moved temporarily or permanently out of the territory remain as part of the core in the relationship. The right to vote that falls under the broader context of political participation is considered one of the most important political rights in international law and is explicitly recognized as a citizen's right in the International Convention of Civil and Political Rights (ICCPR) rather than a universal right. Even though international human rights legislation recognizes that the right to vote is not absolute and that limitations on citizenship and age are permitted, no specific provisions are made about residency-based restrictions (Lappin 2016). Citizenship ultimately pertains to full participation in a self-governing democracy. Citizens exercise their right to self-government by voting or standing for public office. Although most civil and social rights have gradually been extended to all residents, regardless of nationality, voting rights remain connected to official citizenship status. Lappin (2016) questioned the legitimacy of the concept of citizenship without voting rights as it has been referred to as an "inherent citizenship right" and a "basic right of citizenship" in this context.

Politics of non-residents

Both the United National Party (UNP) and the Sri Lanka Freedom Party (SLFP) lead governments who have won every election since independence in 1948 that rely on Sinhala constituencies have had the suspicion of the Tamil diaspora utilizing external voting rights for political gains. Indeed, the Tamil diaspora has often been labeled by the Sinhala majority politicians as disloyal to the state and loyal to the Tamil separatist movement led by the Liberation Tigers of Tamil Eelam (LTTE) fought against government forces during the civil war in north and east for a separate Tamil homeland (Collyer, 2014; Jayawardane, 2022).

Jayawardane (2022) further underlines that skepticism remains towards dual citizens. The last four amendments to the constitution and public debate reflect the dilemma of the disloyalty of dual citizens. The 18th and 20th amendments to the constitution have allowed dual citizens to run

for the national legislative elections, while the 19th and the latest 21st amendments have revoked the provision.

Society shows a contradictory dual approach to migrants as they view them positively as a source of financial assistance while perceiving them negatively as a group of disloyal individuals. She explained, "Non-migrant Sri Lankans have arrived into the latter assumption based on a nation-state premise. They consider a person's physical residence of a territory as the marker of his or her loyalty" (Jayawardene, 2022).

Despite the solid economic contribution that Sri Lankan migrant workers make to the Sri Lankan economy, comprising 8.8 percent of Gross Domestic Production, it is also hindered by suspicion, unlike Mexico and the Philippines (Barry, 2016; Seung, 2009). Barry (2006) identified the Mexican "emigrants have gone from being barely acknowledged, absent, second-class citizens whose Mexican-ness was suspect, to being national heroes who make great sacrifices for Mexico."

Advocacy on Sri Lankan migrant workers

A diverse group has been involved in the advocacy for the Sri Lankan migrant workers within and outside the country. Those include the government institutions responsible for the migrant workers, trade unions, local and international CSOs, and international organizations such as IOM and ILO. Feminist organizations also play an essential role as many Sri Lankan migrant workers are women employed as domestic workers, especially in the Gulf countries.

According to **Gunawardana (2014)**, the National Workers Congress (NWC), a multi-sectoral national-level trade union, and the National Trade Union Federation (NTUF) are vital in advocating for migrant workers. NWC has played a crucial role in migrant worker advocacy, representation, and organization by establishing the Migrant Service Center (MSC)⁴ and associated grassroots-level Migrant Worker Associations. NWC offered membership to migrant workers in the 1990s. The NTUF facilitates the Migrant Workers Front (MWF) and organizes unions such as the National Union of Seafarers (NUSS) and the National Union of Migrant Workers (NUMW).

Several civil society organizations (CSOs) and networks, such as the Action Network for Migrant Workers (ACTFORM) and Migrant Forum Lanka (MFL), have been advocating for the rights and protection of Sri Lankan migrant workers for several decades. The ACTFORM local grassroots NGOs and community-based organizations (CBOs) that advocate for the rights of migrant workers and women. It is led by the Women and Media Collective (WMC), a feminist CSO based in Colombo. Both ACTFORM and MFL activities are affiliated and partly funded by the MSC. MFL consists of several local NGOs and CBOs that conduct advocacy efforts. At the same time, MFL perceives itself as a network of Sri Lankan civil society organizations, activists, lawyers, and researchers working to promote and protect the rights of migrant workers and their families. These non-union groups have advocated for labor rights under the common theme of human rights (Gamburd, 2009; **Gunawardana, 2014**).

⁴On some occasions, literature also refers to the MSC as the Solidarity Center or ACILS (American Center for International Labor Solidarity).

However, Gamburd (2009) argued that the advocacy by civil society organizations and government institutions has not done enough for the Sri Lankan migrant workers as it can not meet the scale of organizing needs of Sri Lanka's migrant workers, who number over a million strong while acknowledging the fact working conditions and the legal structures in middle eastern countries where most Sri Lankan migrant workers go for work abroad have not been in favor of the migrant workers for their activism.

Despite the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) being the pioneer document to refer to when it comes to the government's obligation to extend the right to vote for the migrant workers and Sri Lanka's accession of the convention can be viewed as a significant step toward safeguarding the rights of migrant workers. It was a routine ratification for the Sri Lankan government rather than a strong political commitment to protect migrant workers (Iredale, et al., 2005; Iredale and Piper, 2003). Additionally, Iredale et al. (2005) identify that a dynamic civil society movement did not drive Sri Lanka's accession, and the Ministry of Foreign Affairs, rather than the Ministry of Labour, played a leading role in the process. The convention establishes a structured framework or overarching platform, facilitating advocacy and lobbying efforts by diverse groups and establishing universally acknowledged human rights norms (Iredale, et al., 2005).

Although most advocacy efforts by union and non-union groups concentrate on the protection and welfare of Sri Lankan workers abroad, several advocacy campaigns have also centered around their right to be recognized as citizens of the country. It is common to observe that advocacy groups have advocated for voting rights before the national elections, even though the process needs more concrete and consistent advocacy efforts. Before the General Election in 2000, the NWC and NGOs made representations to the National Election Commission (NEC) and requested voting facilities for those working abroad (Iredale et al., 2005). In the early stages of 2004, the MSC, affiliated organizations of ACTFORM, and unions lobbied the government to establish a mechanism for Sri Lankan citizens working abroad to vote in local elections (Gamburd, 2009). MSC also urged the NEC in January 2010 on the migrant workers voting rights in the 2010 elections (Sunday Times, 2010), while there were notable demands from the opposition groups in 2015 and 2017 demanding a mechanism to enfranchise the migrant workers abroad (Daily News, 2015).

Even though the 1987 Philippines construction mandate overseas voting for migrant workers, the legislation was not passed until 2003. It took 16 years of advocacy among civil society and other stakeholders to enfranchise the Overseas Filipino Workers (OFW) (Seung, 2009). Seung (2009) also identified the Asian economic crisis that happened in the late 90s as a window of opportunity that OFWs utilized to increase the influence of overseas Filipinos over domestic politics in the country. The Filipino advocacy groups also used the development of communication technologies based on the internet in early 2000 to coordinate their advocacy between inside and outside Filipino groups of The International Coalition for Overseas Filipino Voting Rights (ICOFVR) that continuously lobbied for the enfranchisement of the overseas Filipino workers have had the members from all over the world while having strong different ICOFVR chapters such as Hongkong, Singapore, Arab, Europe, and USA.

However, in comparing the organizational capability of the advocacy groups in the Philippines and Sri Lanka, Gamburd (2009) argues that the civil and political environment of host countries of the Sri Lankan migrant workers play a disadvantaged role than the OFW as ninety percent of the Sri Lankan migrant workers go to gulf countries while only 30 percent of OFW work in the gulf. Overseas Filipino Workers (OFWs) outnumber Sri Lankans by a factor of two. Labor migration has a long history in the Philippines, stretching back to the early twentieth century. Sri Lankan labor migration, on the other hand, began much later, around the mid-1970s. The Philippines' extended migration history has resulted in more experienced and organized laborers. Furthermore, it is acknowledged that the second generation of Sri Lankan migrants appears to view migration differently from the previous generation, particularly when compared to married Sri Lankan women who worked in the Middle East (Gamburd, 2009).

Conclusion

Article 4.1 of the Registration of Electors Act no 44, 1980, requires the citizens to be a resident in one of the electoral districts, stand as the main legislation barrier to enfranchise the millions of migrant workers who are working abroad while it conflicts with the various international obligations that Sri Lanka has as it is a state party to the international human rights mechanisms such as ICCPR, ICMW, CEDAW, and CRPD.

The perception among the Sri Lankans against non-residents as a "disloyal group" and the "suspicion" against the Tamil diaspora has played determining factors even in a background that the National Human Rights Commission has made a recommendation to the government of Sri Lanka enfranchise the migrant workers. The Policies Sri Lanka adopted in the post-colonial era, including the electoral policies, have neglected to see citizenship as a transnational phenomenon. Policies have been strongly overshadowed by skepticism, suspension, and feeling of disloyalty towards the non-residents. Although the country has ratified many of the international instruments that bind the state to fulfill its obligation to ensure the voting rights of migrant workers, local political factors have played a determining factor in shaping its policies.

The advocacy efforts on the right to vote and the rights of migrant workers, carried out by government institutions, trade unions, civil society organizations, and other relevant stakeholders, have been regrettably lacking in consistency and collaboration. The enfranchisement of Sri Lankan migrant workers abroad and highlighting their voting rights have received minimal attention and support from these parties. Moreover, the advocacy groups have not achieved the desired level of success in advocating for the overall rights of migrant workers in Sri Lanka when compared to their counterparts in other Asian countries, such as the Philippines.

Furthermore, these stakeholders have demonstrated limited interactions with election expert groups in the past, thereby failing to actively contribute to shaping future policy alternatives that could effectively address the concerns of migrant workers. This lack of engagement also has hindered the alignment of their advocacy efforts with the policy agenda of policymakers.

References

- Barry, K. (2006). Home and Away: The Construction of Citizenship in an Emigration Context. *NYU Law Review*, 8(1). <https://www.nyulawreview.org/issues/volume-81-number-1/home-and-away-the-construction-of-citizenship-in-an-emigration-context/>
- Blais, A., Massicotte, L., & Yoshinaka, A. (2001). Deciding who has the right to vote: a comparative analysis of election laws. *Electoral Studies*, 20(1), 41–62. [https://doi.org/10.1016/s0261-3794\(99\)00062-1](https://doi.org/10.1016/s0261-3794(99)00062-1)
- Collyer, M. (2014). A geography of extraterritorial citizenship: Explanations of external voting †. *Migration Studies*, 2(1), 55–72. <https://doi.org/10.1093/migration/mns008>
- Collyer, M., & Vathi, Z. (2007). Patterns of extraterritorial voting. Working paper T22 of the Development Research Centre on Migration, Globalisation and Poverty. *Patterns of Extraterritorial Voting. Working Paper T22 of the Development Research Centre on Migration, Globalisation and Poverty*. <https://research.edgehill.ac.uk/en/publications/patterns-of-extraterritorial-voting-working-paper-t22-of-the-deve-2>
- Ellis , A., Navarro , C., Morales , I., Gratschew , M., & Braun, N. (2007). *Voting from Abroad The International IDEA Handbook*. <https://www.idea.int/sites/default/files/publications/voting-from-abroad-the-international-idea-handbook.pdf>
- Gamburd, M. R. (2009). ADVOCATING FOR SRI LANKAN MIGRANT WORKERS. *Critical Asian Studies*, 41(1), 61–88. <https://doi.org/10.1080/14672710802631152>
- Gunawardana, S. (2014). *Labor Movement Responses to International Labor Migration in Sri Lanka*. Solidarity Center.
- Iredale, R., & Piper, N. (2003). *dentification of the obstacles to the signing and ratification of the UN Convention on the Protection of the Rights of All Migrant Workers: the Asia-Pacific perspective*. UNICEF. <https://unesdoc.unesco.org/ark:/48223/pf0000139529>
- Iredale, R., Piper, N., & Ancog, A. (2005). *Asia Pacific Migration Research Network Impact of Ratifying the 1990 UN Convention on the Rights of All Migrant Workers and Members of Their Family: Case Studies of the Philippines and Sri Lanka*. <https://www.cetim.ch/legacy/fr/documents/UNESCO-CMW-PhilipSriL.pdf>
- Jayawardene, P. (2022). A Financial Resource but a Disloyal Group: Inquiring Sri Lankans' Perceptions towards “Sri Lankan Migrants.” *Colombo Journal of Multi-Disciplinary Research*, 6(2), 47–74.
- Lagerspetz, E. (2015). Democracy and the All-Affected Principle. *Res Cogitans*, 10(1). <https://philpapers.org/rec/LAGDAT>

- Lappin, R. (2016). THE RIGHT TO VOTE FOR NON-RESIDENT CITIZENS IN EUROPE. *International and Comparative Law Quarterly*, 65(4), 859–894. <https://doi.org/10.1017/s0020589316000336>
- Samanthi, G. (2014). *Labor Movement Responses to Migration in Sri Lanka*. Solidarity Center, AFL-CIO. <https://www.solidaritycenter.org/wp-content/uploads/2015/09/Labor-Movement-Responses-to-Migration-in-Sri-Lanka.report.1.2014.pdf>
- Seung, M. J. (2009, November 26). *Overseas Filipino Worker Activism and its influence on Philippine Politics: A Case study of the Overseas Absentee Voting Act of 2003*. Scholarbank.nus.edu.sg; National University of Singapore. <https://scholarbank.nus.edu.sg/handle/10635/16374>
- Soysal, Y. (1994). Limits of Citizenship. In *press.uchicago.edu*. Chicago University Press. <https://press.uchicago.edu/ucp/books/book/chicago/L/bo3683837.html>
- Warren, M. E. (2017). A Problem-Based Approach to Democratic Theory. *American Political Science Review*, 111(1), 39–53. <https://doi.org/10.1017/S0003055416000605>
- World Bank. (2018, December). *Migration and Development Brief 30 | KNOMAD*. www.knomad.org. <https://www.knomad.org/publication/migration-and-development-brief-30>

The Police Respond to Caste-Based Discrimination against Dalit Women in Nepal

Binita Bishwakarma¹

Institute of Human Rights and Peace Studies, Mahidol University

Abstract

Dalit women, who constitute 13.2 percent of Nepal's population, face multiple forms of discrimination based on their caste, gender, and ethnicity, rendering them more vulnerable to caste-based discrimination. Dalit women are more marginalized as compared to men. Caste-based discrimination remains a deeply rooted social issue in Nepal, with Dalit women experiencing multifaceted social marginalization. The intersection of gender, caste, and ethnicity characterizes discrimination against Dalit women in Nepal. As members of this group's social strata, Dalits endure systemic challenges due to patriarchal norms. This intersectionality creates a unique form of discrimination that severely impacts their access to justice. Every year, Dalit women face multiple forms of discrimination, directly and indirectly, because of their caste. Usually, police are not sensitive to caste-based discrimination cases. Even if the victim wants to register the case, the police register it as gender-based violence. Police discourage victims from registering and settling a case outside the judicial process. They often neglect in the investigation and take caste-based incidents very lightly. The police use Dalit women's intersectionality as women to modify caste-based discrimination cases into gender-based violence.

Keywords: Intersectionality, Dalit women, Access to justice, Caste-based discrimination, Case registration denial.

Introduction

Nepali society was formed on a caste system, and this system considered Dalits as untouchable or impure. History shows how caste-based discrimination was legalized in 1854 *Muluki Ain* (County Code). It has been a long time since they have been facing caste-based discrimination. The Dalit community holds 13.6 percent of the total population of Nepal (Central Bureau of Statistics, 2012). However, non-governmental organizations, Civil Society Organizations, and researchers claim that their population is around 20 percent (International Dalit Solidarity Network, 2022). As per the Asian Development Bank "Country Poverty Analysis 2011, 42 percent of the Dalits are under the poverty line (Asian Development Bank, 2013). Dalit communities are divided into two categories, which are the Hill Dalit and Tarai Dalit. The Literacy

¹ Student of the Asia Pacific Master of Arts in Human Rights and Democratisation (APMA) Program at the Institute of Human Rights and Peace Studies, Mahidol University.

rate of Hill Dalits is 67.8 percent, and Madhesi Dalits is 46.3 percent, which is very low compared to the national literacy rate. Similarly, a significant number of the Dalit community are landless (36.7 percent of hill Dalits and 41.4 percent of Tarai Dalits are landless) (Amnesty International Nepal, 2019). Likewise, 12.6 percent of Dalits are stateless because they do not have citizenship cards (Pokharel & Pradhan, 2020). Similarly, Dalit representation in the civil service is 2 percent, the Nepal Police 9 percent, the Nepal Army 8 percent, and the Judiciary 1 percent (National Human Rights Commission of Nepal, 2020).

Dalit women hold 13.2 percent of the total population of Nepal (Central Bureau of Statistics, 2012). They have been facing multiple forms of discrimination based on gender, caste, and ethnicity. The literacy rate of Dalit women is 34.8 percent which is low compared to women's literacy rate. Likewise, 80 percent of Dalit women are under the poverty line (Central Bureau of Statistics, 2012)

Nepal ratified the International Convention on Elimination of All Forms of Racial Discrimination (ICERD), the International Convention on Civil and Political Rights (ICCPR), and the Convention on Elimination of All Forms of Discrimination against Women (CEDAW). They are obliged to eliminate all forms of discrimination in Nepal and provide legal protection regardless of caste, gender, and ethnicity. The Constitution of 2015 prohibited caste-based discrimination and guaranteed legal protection against it. It has made caste-based discrimination and untouchability a serious crime. Article 24² protects Dalits against caste-based discrimination and Article 40³ provides rights to the Dalit community. The National Dalit Commission became a Constitutional body and had a legal Status.⁴ The government of Nepal also formulated the “Caste-Based Discrimination and Untouchability (Offense and Punishment) Act 2011”.

Despite this provision, caste-based discrimination is still predominant in Nepali society. Every year, the Dalit community encounters violence against them based on their caste (National Human Rights Commission of Nepal, 2020). In 2021, 68 percent of women and 32 percent of men encountered caste-based discrimination (SAMATA Foundation, 2021). Dalit women are more prone to caste-based discrimination than men because of their intersectionality. Much evidence showcases that extreme cases of caste-based violence are being destroyed and diluted by the police, media, and society. The victims and families are not supported to seek legal justice. As a result, Dalit women are not free and equal, as stated in the Constitution of Nepal and the UN human rights conventions. Their choices in life are confined and limited within the social norms and culture. For centuries, they have been living with this stigma and exclusion; their voice is not in the mainstream. The reason behind this is that the government of Nepal cannot execute all the

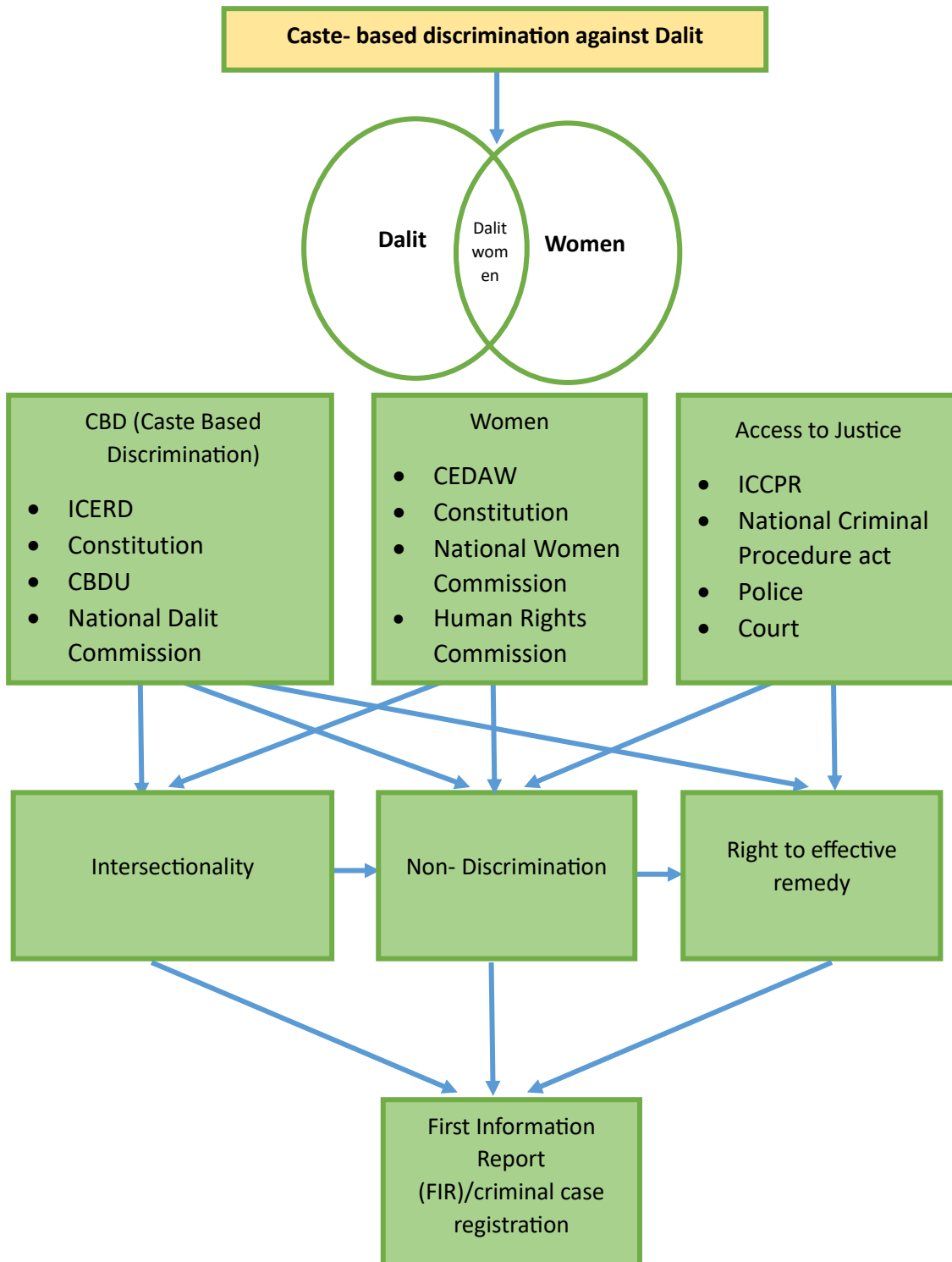
² Constitution of Nepal 2015, Article 24. Rights against Untouchability and Discrimination, https://lawcommission.gov.np/en/?lsvr_document_cat=existing-law-constitution.

³ Constitution of Nepal 2015, Rights of Dalit: (1). https://lawcommission.gov.np/en/?lsvr_document_cat=existing-law-constitution.

⁴ Constitution of Nepal 2015, Article 255, https://lawcommission.gov.np/en/?lsvr_document_cat=existing-law-constitution.

recommendations given in the Second Cycle. They only executed 44 percent of the recommendations (Feminist Dalit Organization, 2021). They need to take strong action to eradicate caste-based discrimination in Nepal. The Second Periodic Review recommendation is repeated in the third cycle. For instance, there was a strong urgent implementation of the “Caste-based Discrimination and Untouchability (Offense and Punishment) Act 2011” (Feminist Dalit Organization, 2021). Most of the recommendations were related to the implementation of laws.

Conceptual framework



Access to Justice provides citizens with the ability to turn to the judicial and administrative bodies of the State to enforce their rights.⁵ Non-discrimination and impartiality are some of the key principles of access to the justice system. Every human being has the right to access justice regardless of age, sex, gender, caste, or religious belief. In Nepal, Dalit women have been discriminated against while registering their caste-based discrimination case First Information Report (FIR) by the police. Access to justice should not be based on people's status. Similarly, the International Convention on Civil and Political Rights, the Nepali Constitution 2015, "Caste Based Discrimination and Untouchability (Offense & Punishment) Act 2011", and National Criminal Procedure 2017 mentioned rights to an effective remedy for the caste-based discrimination act. All government officials, including the Nepal police, must facilitate the judicial and administrative process for access to justice. Likewise, Dalit women have been facing multiple forms of discrimination, and their intersectionality makes them further vulnerable to discrimination, so it is necessary to look at the intersectional aspect. The intersectionality aspect helps to discover how Dalit women are deprived of the right to access justice.

Methodology

This study applied qualitative research techniques and analysis of secondary data. Data collection tools will be semi-structured, desk review, and case study. Other publicly available research reports from social and development organizations in Nepal and internationally further complement the qualitative study.

Findings

Many research shows that Dalit women are more prone to caste-based discrimination. In 2022, 68 percent of Dalit women faced caste-based discrimination (SAMATA Foundation, 2022). The reason behind this discrimination is their intersectionality and social and economic status. They face many challenges while seeking justice. Nepali society is patriarchal, so women's challenges start from their homes. Their husband and family members control their every decision. They usually do not allow women to register a case and insist on solving the matter outside the judicial process in the name of social harmony disruption (SAMATA Foundation, 2021). The police often take Dalit women's cases very lightly, even if the family supports them.

In most cases, they support the perpetrators instead of the victims and put pressure on resolving it outside the judicial process. Even though the police are one of the state organs that are obliged to protect everyone's human rights regardless of caste and gender, the police are not

⁵ According to Cappelletti et al., (1982): "[T]he rights to effective access to [justice] is increasing as rights of primordial importance as the possession of rights makes no sense if there are no mechanism for the enforcement. Access to justice can then be considered the most basic required –the most fundamental human rights- in an egalitarian legal system that seeks to guarantee and not only proclaim all rights.

sensitive to caste-based discrimination against Dalits (SAMATA Foundation, 2021). Usually, they are unwilling to support victims in the case registration process. Dalit women who encounter caste-based discrimination cannot feel justice (SAMATA Foundation, 2022). In Nepal, generally, such cases take time to go through the legal process. Case registration is a hassle for Dalit women. Mostly, the police register complaints only after pressure efforts such as protests and press releases.

The research findings reveal several significant issues. Firstly, every year, Dalit women face numerous forms of discrimination, which is directly and indirectly linked to their caste. Secondly, often, the police's behavior is insensitive and negligible while responding to caste-based discrimination cases. Victims are usually discouraged from seeking legal remedies as the police frequently modify gender-based violence, downplaying the caste element. Thirdly, the government of Nepal is not providing awareness-raising training to the police force, which hinders their ability to handle caste-based discrimination cases adequately. The police's role is unsatisfactory in arresting the accused and conducting effective investigations. Overall, the role of law enforcement agencies is not effective and justice-oriented. The victim of caste-based discrimination has been unable to get real justice due to the complexity of gathering evidence. The National Dalit Commission was established as a constitutional body; however, it has been given limited powers, and because of that, it has a weak constitutional and legal status. The National Women's Commission has not addressed the specific human rights of Dalit women. Also, the National Human Rights Commission has not prioritized the issue of various human rights of the Dalit community, including Dalit women (SAMATA Foundation, 2022). Similarly, there is difficulty in gathering evidence and low vigilance of the police administration. In that, too, challenges such as the question of whistleblowers and witnesses, along with pressure in the name of social harmony, do not work. Due to these reasons, the incident could not be included in the legal and judicial process.

Similarly, most of the research done by the different organizations focused on caste-based discrimination against the Dalit community. It showed that women are more vulnerable to violence against caste-based discrimination, weak law implementation, and a lack of awareness to eradicate it. Moreover, women have less access to justice because of the police's discriminatory roles. However, they did not talk about who has more access to justice, men or women, and how and where access to the justice process is hindered. Intersectionality is the main cause of caste-based discrimination against Dalit women. Most of the cases diverted into gender-based violence (SAMATA Foundation, 2021). In 2021, the Dalit Commission helped to register 36 caste-based discrimination cases, which were denied by the police (National Dalit Commission, 2020).

Conclusion

Despite the constitutional provisions and international obligations, the issue of caste-based discrimination against Dalit women is a deeply rooted and multifaceted problem that persists in

Nepal. Due to the intersectionality of their cast, gender, and ethnicity, Dalit women face unique forms of discrimination, which makes them more vulnerable to various forms of marginalization and violence. The efforts made by the government are not sufficient. Due to the insensitive and negligible response of the police and the lack of awareness within law enforcement agencies, access to justice for Dalit women remains challenging. The research finding highlights the grim reality that violence and discrimination against Dalit women continue year after year, both directly and indirectly linked to their caste. While the police play a key state role in upholding the rule of law, they have shown a lack of sensitivity towards caste-based discrimination cases, often misclassifying them as gender-based violence and discouraging victims from pursuing justice.

The Dalit women's access to justice is further hampered due to a lack of effective law enforcement and justice-oriented approach. Despite being established as a constitutional body, the National Dalit Commission has not been able to fully address the specific human rights concern because of its limited power. Additionally, the vigilance of the police administration and the challenges in gathering evidence contribute to the difficulty of including such cases in the legal and judicial process.

More comprehensive and inclusive efforts are needed to combat caste-based discrimination and ensure access to justice for Dalit women. The police official plays a significant role in the access to justice process, so the government of Nepal, Law enforcement agencies, and relevant stakeholders should prioritize awareness and training programs to sensitize them.

Moreover, the authorities must effectively implement the existing legal framework, such as the "Caste-Based "Discrimination and Untouchability (Offense & Punishment) Act 2011 " to hold perpetrators accountable for their actions. There is a need to strengthen and give more power to the National Dalit Commission to address specific human rights concerns of the Dalit community, including women. Furthermore, through the targeted program, there is a need to focus on promoting inclusivity in society, challenging patriarchal norms that perpetuate discrimination against Dalit women, and empowering Dalit women.

In conclusion, Nepal requires concerted efforts to address caste-based discrimination against Dalit women. Nepal can work towards eradicating caste-based discrimination and ensuring a more just and equitable society for all its citizens by prioritizing access to justice and creating an environment that values inclusivity and equality. Dalit women are no longer subjected to discrimination and violence based on caste if the State takes collaborative and sustained action.

References

- Amnesty International Nepal. (2019). *Nepal: Land for Landless Peasants- Comments and Recommendations on Amendment to the Lands Act 1964*. 25.
<https://www.amnesty.org/download/Documents/ASA3112212019ENGLISH.pdf>
- Asian Development Bank. (2013). *Country Poverty Analysis (Detailed)- Nepal*.
<http://www.adb.org/sites/default/files/linked-documents/cps-nep-2013-2017-pa-detailed.pdf>
- Cappelletti, M., Garth, B., & Trocker, N. (1982). Access to Justice, Variations and Continuity of a World-Wide Movement. *The Rabel Journal of Comparative and International Private Law*, 46. Jahrg., H. 4 (1982), Pp. 664-707.
<http://www.jstor.org/ep.fjernadgang.kb.dk/stable/pdf/27876704.pdf?acceptTC=true>
- Central Bureau of Statistics. (2012). *National Population and Housing Census 2011: National Report*. <https://nsonepal.gov.np/national-population-and-housing-census-2011national-report/>
- Feminist Dalit Organization. (2021). *Study on Dalit Women Specific Recommendations Received from the UPR, CEDAW, and CERD, and their Implementation Status*.
https://fedonepal.org/wp-content/uploads/2022/02/Final_UPR_CRD-Booklet_final-Edit-Copy.pdf
- International Dalit Solidarity Network. (2022). *Dalit Women in Nepal*. <https://idsn.org/key-issues/dalit-women/dalit-women-in-nepal-2/>
- National Dalit Commission. (2020). *Annual Report*.
https://ndc.gov.np/storage/listies/June2022/Annual_Report_2077-078.pdf
- National Human Rights Commission of Nepal. (2020). *Annual Report*.
https://www.nhrcnepal.org/uploads/publication/Annual_Report_FY_2019-20_compressed.pdf
- Pokharel, B., & Pradhan, M. S. (2020). *State of Inclusive Governance in Nepal. A study on participation and representation after federalization in Nepal*.
<http://anthropologytu.edu.np/wp-content/uploads/2020/11/State-of-Inclusive-Governance-in-Nepal.pdf>
- SAMATA Foundation. (2021). *Dalit Human Rights Book* (1st ed.). Samata Foundation.
- SAMATA Foundation. (2022). *Dalit Human Rights Book* (1st ed.). Samata Foundation.

Understanding Child Sexual Exploitation through Under-aged Contractual Marriage in Bogor, Indonesia

Ika Kurnia Riswandari¹

Institute of Human Rights and Peace Studies, Mahidol University

Abstract

Indonesia gained notoriety for *halal* sex tourism in the late 1980s through a contractual marriage practice. The phenomenon of contractual marriage practices between local women and Middle Eastern tourists, which takes place in Puncak Cisarua, Bogor, Indonesia, is the most infamous covert sex tourism purportedly legitimate. The contractual marriage is carried out per Islamic marriage law, for the marriage is claimed to be legitimate according to the Indonesian Marriage Law despite violating the Islamic marriage law itself. Since it has been going on for a long time, the involvement of underage brides is inevitable. This paper focuses on the contractual marriage between Middle Eastern tourists and local adolescent girls in Indonesia. A qualitative method is adopted to analyse various documents on contractual marriages in Puncak Cisarua to identify the determinant factors and process of a contractual marriage. By examining the process and its causative factors, this paper aims to analyse child sexual exploitation under contractual marriage. This paper identifies that a contractual marriage is carried out for sexual pleasure without committing adultery (*zina*), which, in other words, is *halal* sex. While sexual pleasure is the main objective for Middle-Eastern tourists, economic fulfilment becomes the primary rationale for local adolescent girls to be involved in contractual marriage. This paper believes that contractual marriage practice involving underage brides is considered Child Sexual Exploitation (CSE).

Keywords: contractual marriage, halal sex, underage bride, child sexual exploitation, Indonesian marriage law

Introduction

There is a mountainous area in the west of the capital of Indonesia, Jakarta, which has beautiful natural scenery with cool air that is notorious for its *halal sex* tourism. The area is Puncak

¹ The author is a graduate student of the Asia-Pacific Masters of Arts in Human Rights and Democratisation (APMA) program at the Institute of Human Rights and Peace Studies, Mahidol University, Thailand. She obtained her BA in political science from Universitas Gadjah Mada, Indonesia, with an undergraduate thesis on a new social movement in reclaiming public spaces in Indonesia. Her research interests include children's rights, gender studies, human rights, social movements, and politics and democracy in Southeast Asia. She can be reached at ika.riswandari@gmail.com.

Cisarua, located in Bogor Regency, West Java. It is approximately a one to two-hour drive from Jakarta. Since the late 1980s, Puncak Cisarua has attracted foreign tourists, specifically from Middle Eastern countries. Because they can enter into contractual marriages with local women quickly while on holiday in the area, Puncak Cisarua in Bogor gained notoriety for its contractual marriage tourism, addressed as *halal sex* tourism.

Contractual marriage practices in Puncak Cisarua are carried out for sexual pleasure without committing *zina*², known as *halal* (allowed) sex. Some research examined the concept of contractual marriages similar to *mut'ah*.³ marriages carried out by the Shia (Shafra, 2010; Aidatussholihah, 2012; Maripah, 2016; Daud, 2018; Wahab et al., 2018; Abdullah and Tridewiyanthi, 2019). *Mut'ah* marriage remains a debate among Muslim scholars, albeit it has been banned and declared *nasakh* or eliminated from the law by most Muslim scholars. This paper will not discuss the debate on *mut'ah* marriage. However, it needs to be included here that the concept of contractual marriage that occurred in Bogor is influenced by the *mut'ah* marriage, which is widely adopted by the Shia Muslims, mostly from the Middle Eastern regions.

In principle, contractual marriage abuses the lawful marriage definition recognised in the Islamic law on marriage. It also violates the interpretation of legal marriage according to the Indonesian Marriage Law, Article 1 Number 1 of 1974. The law on marriage in force in Indonesia does not recognise contractual marriage. Therefore, manipulation of the interpretation of legal marriage in the Islamic Law and Marriage Law Number 1 of 1974 has taken place and is undertaken by the perpetrators of contractual marriages. Contractual marriage is carried out covertly and undocumented. Hence, the marriage is also unregistered to the Office of Religious Affairs, where marriage is supposed to be registered.

The practice of contractual marriages has been going on for a long time to the extent that underage brides are in demand. The practice of contractual marriages, which initially involved adult women, grew to involve adolescent girls to fulfil the requests of Middle Eastern tourists. This paper focuses on understanding child sexual exploitation under underage contractual marriage by examining the process and causative factors of contractual marriage. It explores the contractual marriage practices between Middle Eastern tourists and local adolescent girls in Bogor. While the contractual marriage practice generally victimises women, the contractual marriage involving an underage bride makes adolescent girls more vulnerable to becoming victims of sexual abuse and exploitation.

Methodology

This paper aims to understand child sexual exploitation through contractual marriage involving underage brides. The study of child sexual exploitation through underage contractual

² *Zina* or adultery is an Islamic legal term referring to sexual intercourse by an unlawful couple. In Islam, *zina* is haram and is considered a violation of Islamic law, mentioned explicitly in the Quran.

³ *Mut'ah* marriage is a temporary marriage arranged with a contract between the bride and groom. In the history of Islam, *mut'ah* marriage used to be permitted during times of war to prevent soldiers from committing *zina*. Although many Islam scholars have declared that *mut'ah* marriage is haram, in modern society, *mut'ah* marriage is still allowed according to Shia Islam jurisprudence.

marriage in Bogor is qualitative research. Library research is used as a research method to accommodate the challenging aspect of field research on this issue. The research uses documentary analysis as the data collection method. Data collected are derived from investigative news articles and videos. Secondary data for triangulation are collected from research articles, journals, reports and other related documents. Using the qualitative analysis method, this study on contractual marriage's process and causative factors examines how child sexual exploitation occurs. The analysis shows that under-aged contractual marriage is a form of Child Sexual Exploitation (CSE).

The Phenomenon of Contractual Marriage in Puncak Cisarua, Bogor

Puncak Cisarua is one of the first locations visited by Arab tourists. Arab tourists is the term used by the locals referring to a foreigner who comes from Saudi Arabia and Middle Eastern countries because of their similar physical characteristics, making most Indonesian people recognise them as Arabian. The reason Middle Eastern tourists visit Puncak Cisarua is that they yearn to spend a vacation in a chill and green mountainous location, which presents a different atmosphere to their countries where nearly all deserts have hot and dry weather throughout the year (Swarsi, 1995; Ummanah, et al., 2015). Tourism is warmly welcomed by the government and local people because it provides an opportunity to stimulate the economy in the locations visited. Over time, regardless of what the natural beauty of Puncak Cisarua can offer, Arab tourists begin to look for other more exciting beauties.

A contractual marriage is performed to attain a temporary marital status within a certain period and with agreed benefits. Syakit (2002) defines a contractual marriage as matrimony with the agreed dowry written in a contract until a predetermined time limit, under the agreement of both parties. Aidatussholihah (2012) mentions that if the agreed period between the two parties has expired, they will part by themselves. Arab Muslim tourists must be in a lawful marriage relationship before having sexual intercourse. Hence, temporary marriage is used by Arab tourists to attain a lawful marriage relationship to fulfil sexual desires while on vacation. Since then, *halal sex* tourism in Indonesia become notorious within foreign communities, especially in Middle Eastern countries.

The emergence of contractual marriage practices in Puncak Cisarua had a long story that started in the 1980s when several Arab families spent a holiday at a villa in Puncak Cisarua (Ummanah et al., 2015). The power of word of mouth among the Arabians resulted in more Arab tourists visiting the area. The Arab tourists who visit for a vacation there with their families subsequently come without their families and begin to look for another pleasure (Ummanah et al., 2015). Along with the increasing number of Arab tourists visiting Indonesia, the term contractual marriage between Arab men and local women began to spark in 1987 (Maripah, 2016). Around the year 1991, after the arrival of Arab tourists, Puncak Cisarua transformed nearly all settlements into admirable tourist destinations (Sumandoyo, 2017). The inbound tourism resulted in a thriving tourism business in the area. Hotels and villas were built, travel agents established, and many people in the area started to make a living out of the tourism businesses.

The increasing number of Middle Eastern tourists visiting Puncak Cisarua for contractual marriage carved a reputation for the area. Puncak Cisarua became popular, where contractual

marriages between Arab men and local women often occur (Sumandoyo, 2017). In an article about wedding scams in the Indonesia Expat (an online news channel for expatriates) providing information about living in Indonesia, writer Kenneth Young (2014) writes that Arab sex tourists have been visiting Indonesia for decades for 'contract weddings' in the Puncak area—also known as Puncak Cisarua, in Bogor. Some people in Puncak Cisarua call a 'passport marriage' to refer to contractual marriage (Aidatussholihah, 2012). Also, as most contractual marriages are performed during the visit of tourists in Indonesia, which is limited to the validity of the tourist visa, local people refer to it as a 'visa marriage' (Arivia and Gina, 2015; Wahab et al., 2018). Since it is always connected with the visits of foreign tourists, in particular Middle Eastern tourists, tourist visits usually peak from July to September or during the summer holidays in Middle Eastern countries.

Over time, contractual marriages went through various dynamics. Despite the practices that have taken place for decades, data recording the number of contractual marriages is unavailable. This information dearth happens because contractual marriages are performed without registration. The marriages are never documented by either the Civil Registry Office or the Office of Religious Affairs. After the 2000s, contractual marriage attracted far-reaching public attention and raised vast criticism. Concerns about covert prostitution were among the main issues, forcing the public to demand that the authorities ban contractual marriage practices. Contractual marriage drew many protests from the far-reaching society, forcefully making it carried out in secret (Maripah, 2016). The protests make contractual marriage even more covert.

Actors involved in contractual marriages are mostly male foreigners from Middle Eastern countries who are on vacation or work visit for a short period in Indonesia (Suhud and Sya'bani, 2014; Suhud and Wilson, 2016), and local women and girls who are usually forced by their families for economic reasons (Maripah, 2016). The determinant factor that causes Middle Eastern tourists to contract temporary marriage is sexual pleasure without committing Zina, whereas for the local women is economic reasons (Shafra, 2010; Haryono, 2011; Aidatussholihah, 2012; Suhud and Sya'bani, 2014; Arivia and Gina, 2015; Maripah, 2016; Rubyasih, 2016; Wahab et al., 2018). Most women who are involved come from low-income families and are low-educated. In its early emergence, contractual marriage was carried out by Arab tourists with local young women of impoverished families for economic motives. Over time, brides involved in contractual marriages are sex workers who specifically target Arab tourists (Ummanah et al., 2015; Maripah, 2016). Young women who used to contract temporary marriages with Arab tourists became widows when the contracts expired. Few women can recover from temporary marriage and live a better life, but some contract more contractual marriages again to different spouses to sustain their economy. In another story, many ended up becoming sex workers in Puncak Cisarua. The brides who are involved in contractual marriages which are sex workers usually come from Sukabumi, Cianjur, Subang, and Bandung—these areas around Puncak Cisarua (Ummanah et al., 2015; Maripah, 2016; Rubyasih, 2016; Wahab et al., 2018).

Contractual Marriage (Violations of the Indonesia Jurisprudence and the Islamic Law on Marriage)

In Indonesia, marriage is regulated under Law No.1 of 1974 on marriage (the Marriage Law). The Marriage Law establishes the principles of marriage, ranging from the requirements and procedures of marriage to the legitimacy of the marriage. Two fundamental concepts of marriage are set under Law No.1 of 1974. To begin with, it is the concept of marriage itself, as indicated in Article 1, and the postulation of legitimate marriage, as conveyed in Article 2(1). The Indonesian Marriage Law, however, does not recognise a contractual marriage.

Article 1 of Law No.1 of 1974 indicates that "marriage is a sacred physical-emotional bond between a man and a woman as a husband and wife with a sole intent to form a jubilant and perpetual family built upon the Supreme Godhead". It implies that the marriage shall be carried out according to the bride and groom's religious beliefs. Interpreting it with the Islamic religious traditions regarding marriage, the marriage indicated under Article 1 of Law No.1 of 1974 includes a marriage conceiving the element of *akad*, constituting a permanent marriage relationship (*nikah daim*). The term 'contractual marriage' is neither recognised nor regulated in the Indonesian Marriage Law. The term "perpetual" within the marriage mentioned above in Article 1 of Law No. 1 of 1974 contradicts the intent of a definite period within the contractual marriage.

Article 2 of the Marriage Law states, "(1) Marriage is legitimate if it performed according to the laws of the respective religious beliefs of the parties concerned" and "(2) Each marriage must be registered according to the applicable laws." The provisions signify that marriage is avowed legal, providing it is carried out by the religious law principles and registered in the Religious Affairs Office (Kantor Urusan Agama) for Muslim couples and the Civil Registry Office for non-Moslem couples following applicable laws. Article 2 implies that the reference to the legitimacy of marriage according to Indonesian law is the religious law of the persons in matrimony. It affirms that—for Muslims—the postulation to validate the marriage they carry out in light of the national legal standards is Islamic law. Furthermore, it is also conformable with Article 4 of the Compilation of Islamic Laws (KHI), which states that "a marriage is legitimate if such marriage carried out according to the Islamic Law in light of Article 2(1) of Law No.1 of 1974 concerning marriage."

Despite the differences in opinion about the legitimacy of *nikah mut'ah* among Islamic scholars, Islamic law espoused by the Indonesian Muslim community considered *nikah mut'ah* invalid according to Islam. There is no discussion on the subject of marriage types that are prohibited in the Marriage Law and KHI. However, Islamic law provides more detailed rules and regulations concerning types of forbidden marriages, namely *nikah mut'ah*, *nikah syigar*, *nikah muhallil*, and marriage to a woman who just gets divorced (*iddah*) (Uwaidah, 2008). It affirms that contractual marriage, which constitutes *nikah mut'ah*, is not legitimate according to Islamic law.

Considering the legitimacy of a contractual marriage in the Islamic law in Indonesia, the Indonesian Marriage Law has neither recognised nor regulated a contractual marriage. However, it also poses no legal consequences upon contractual marriage practices, creating a loophole. The loophole is what is used by some parties to take advantage of the contractual marriage's legal

status. Marriage in a contractual marriage is performed similarly to marriage in Islamic traditions despite lacking legitimacy according to Islamic law. The different opinion among Islamic scholars upon this practice makes them take advantage of the loophole to pronounce legitimacy upon a marriage predetermined by a contract that poses the nature of trade.

The belief that the *akad* validates the matrimony by Islamic law because the marriage performed under Islamic law principles assumes that the union is legal. Thus, the bride and groom are pronounced husband and wife, and the sexual relations are halal. However, in essence, the marriage cannot be considered legal according to Islamic marriage law because it does not meet the legal requirements of marriage under Islamic customs. In addition, matrimony is not considered halal because of the underlying motivation, which is to justify sexual pleasure without a pure intention to build a family to respect the woman they married. Hence, it is similar to covert prostitution.

Contractual Marriage, Exploitation of Underage Brides

Contractual marriages in Puncak Cisarua are performed according to the Islamic religion because they are Muslim. By doing so, the marriage is recognised as lawful religiously. Hence, promiscuity is arguably avoided because sexual relations are allowed after marriage. Middle Eastern tourists opt for a contractual marriage to satisfy their sexual pleasure without being sinful because of Zina. Whilst the men are quenching their sexual desires, the women agree to be involved in a contractual marriage for economic motives (Aidatussholihah, 2012; Suhud and Sya'bani, 2014; Arivia and Gina, 2015; Ummanah et al., 2015; Maripah, 2016; Rubyasih, 2016; Wahab et al., 2018; Daud, 2018).

The process includes bargaining for dowry and the period of marriage, making the contract an agreement, and getting matrimony in front of witnesses (Shafra, 2010; Haryono, 2011; Aidatussholihah, 2012; Arivia and Gina, 2015; Ummanah et al., 2015; Maripah, 2016; Rubyasih, 2016; Wahab et al., 2018). The discussion regarding the dowry arrangements will initiate the dialogue for an agreement. Contractual marriage will proceed after all terms and conditions are agreed upon by both parties. The groom and the bride meet in an agreed place for the wedding ceremony. In the early days of its practice back in the 1990s, if the Arab tourist approved the agreement and provided a commitment to marry the bride, he would visit the woman's residence to confirm with her family for the marriage to take place (Wahab et al., 2018). Over time, Arab tourists often do not meet the brides' parents because, arguably, they have been represented by the family acquittance. In fact, in the present time, the wedding ceremony is not attended by any of the bride's parents or family according to the traditional Islamic marriage ceremony.

Although the practices are widespread in Puncak Cisarua, it does not mean that prospective brides are easy to find on the street. Arab tourists need to find a contractual marriage agent before the marriage finally takes place. The agent is a middleman known as *biong*. *Biong* is the person who regulates the occurrence of contractual marriages, starting from looking for a woman to be married to an Arab tourist, preparing all the requirements for marriage, to providing a villa to rent for the contractual marriage couple (Wahab et al., 2018; Abdullah and Tridewiyanthi, 2019). The price for contractual marriage ranges from tens of millions to hundreds of millions of rupiah

(Nuraeny and Kuswandi, 2019). The price includes the dowry for the bride. Nevertheless, the dowries given to the brides are often received not only by the brides and their families. There is a share for the intermediaries and *biong* in the dowry. *Biong* often works as a tour guide, rent-car and taxi driver. Intermediaries are usually people within the community who can find a woman or girl to be contractual marriage brides.

In the rampant practice of contractual marriage in Puncak Cisarua, brides come from an impoverished and low-educated community. The woman who becomes the prospective bride sometimes agrees to contractual marriage because of third-party factors, such as parents (Haryono, 2011; Aidatussholihah, 2012; Arivia and Gina, 2015; Rubyasih, 2016). She hopes to improve her family's economy by marrying an Arab tourist. In its early practices, Arab tourists looked for mature brides to set a contract marriage. Adult women tend to have more compassion concerning serving a husband. The marriage life they attend is similar to any common marriage despite being a temporary marriage. The wife serves the husband, and the husband provides for the wife. Over time, Arab tourists began to request younger brides. Younger brides mean less demanding wives for Arab husbands. Younger brides are adolescent girls aged from 14 to 18 years old. Factors causing these underage brides to agree to contract temporary marriage with Arab tourists are similar to those of adult brides, an economic improvement for their families and themselves. These young brides believe that what they do is dutiful to their parents.

Under a similar concept of thoughts, adolescent girls who agreed to contractual marriage due to coercion are also frequent (Rubyasih, 2016; Arivia and Gina, 2015). The perpetrators are usually the intermediaries or *biong*, but often parents. The intermediaries are often relatives of the girls' families, neighbours, or influential community members. Intermediaries manipulate girls' parents to persuade the girls to marry Arab tourists with the lure that the girls would be able to join their future Arab husbands in their foreign country after they married and that their economic and living conditions would be much better off once becoming a wife of the Arab tourist. More often than not, intermediaries lured the prospective brides with a work offer as migrant workers (Daud, 2018), but in reality, women were brought to Puncak Cisarua to be married off by contract with the Arab tourists.

Conclusion

In general, contractual marriage puts women under the domination of men, in this case, the Middle Eastern tourist who sees a woman as a sexual object. By paying a certain amount of money or property as a dowry to the bride, the Arab tourist assumes possession of the bride for a certain period. Temporary marriage has co-opted women's subjectivity and sexuality (Arivia and Gina, 2015) by depriving women of their right to marry. Women have no right to determine their marriage or pose an equal position upon a decision to marry. As a price is to be paid, contractual marriage becomes a material transactional activity. On the one hand, to quench the sexual desires of Middle Eastern tourists, and on the other hand, for the women's economic survival. Contractual marriage reflects the nature of prostitution and puts it under the culture of patriarchy that defines women's sexuality as the domination of men to serve men's needs for sex (Wahab et al., 2018).

An under-aged contractual marriage or a child *mut'ah* marriage is a child marriage. It harms a girl married for sex or work, even for a short time. Most underage contractual marriages are influenced by the economic hardship of the brides' parents. It is often arranged by parents for material compensation. Brides and their parents often being coerced by *biong* or intermediaries. Getting lured by the imagination of being wealthy after contracting temporary marriages with Arab tourists, these adolescent girls quit school and gave up their education to become temporary wives. The impact of being burdened with adult social and economic responsibilities from a young age and entering a social institution that restricts freedom and opportunities harms the girls' physical health and cognitive, psychological, and emotional development (ECPAT, 2015a).

Contractual marriage constitutes a kind of rent as its purpose is for a man's sexual pleasure, and the woman is compensated with a certain amount of money or property (Nuraeny and Kuswandi, 2019). Underaged contractual marriage puts adolescent girls in an imbalance of power relations with Arab tourists. The imbalance of power relation can lead the underage bride to become prone to sexual abuse and exploitation. The sexual violence suffered in early marriage is the most severe violation experienced by victims (ECPAT, 2015b). Not only do underage brides become victims of Child Sexual Exploitation (CSE), but the practice of contractual marriage involving adolescent girls plunges them into the illicit practice of child prostitution, resulting in many short-term and long-term harms.

References

- Abdullah, Z. and Tridewiyanthi, K. (2019). Penyalahgunaan Konsep Kawin Mut'ah Pada Praktik Kawin Kontrak. *Sharia Journal Journal of Islamic Law Studies* 2(1). 65-83.
<http://js.law.ui.ac.id/index.php/about/article/view/36>
- Aidatussholihah, N., (2012). Kawin Kontrak di Kawasan Puncak: Antara Normatif, Yuridis dan Realita. *Al Ahwal Jurnal Hukum Keluarga Islam* 5(2).31-56. <http://ejournal.uin-suka.ac.id/syariah/Ahwal/article/view/05202>
- Arivia, G., and Gina, A., (2015). Culture, Sex and Religion: A study of contract-marriage in Cisarua and Jakarta. *Jurnal Perempuan* 20(1), 57-64.
<https://indonesianfeministjournal.org/index.php/IFJ/article/view/56>
- Daud, F.K. (2018). Nikah Kontrak Modus Human Trafficking (Kritik Atas Fiqh Munakahah Mazhab Syi'ah). *Al Hikmah Jurnal Studi Keislaman* 8(2).252-270.
<https://core.ac.uk/download/pdf/268132696.pdf>
- ECPAT, (2015a). *Thematic Report: Unrecognised Sexual Abuse and Exploitation of Children in Child, Early and Forced Marriage*. Thailand: ECPAT International, Plan International.
- ECPAT, (2015b). Researching The Sexual Exploitation of Children: Challenges and Methodologies of Data Collection. *ECPAT International Journal*. 10. Thailand: ECPAT International.
- Haryono, B., (2011). Kawin Kontrak di Indonesia: Fungsional Bagi Siapa? *Jurnal Sosiologi Dialektika Masyarakat 'DILEMA'* 26(1).1-13. Surakarta: FISIPOL Universitas Sebelas Maret.
- Hidayat, T., Damanik, J., Nopirin, N., and Suprihanto, J. (2018). Peran Aktor dalam Pembentukan Image Desa Wisata (Fenomena Wisata Seks di Puncak Cianjur, Jawa Barat). In: *SEMINAR NASIONAL DAN CALL FOR PAPER 2018: Membangun Green Entrepreneur Bonus Demografi Indonesia*. STIE Widya Wiwaha, Yogyakarta. 128-136. ISBN 978-602-51174-1-1. <http://eprint.stieww.ac.id/709/>
- Maripah, S.S., (2016). Fenomena Kawin Kontrak di Kawasan Puncak Bogor. *Sosietas*, [e-journal] 6(2). <https://doi.org/10.17509/sosietas.v6i2.4239>
- Nuraeny, H. and Kuswandi, (2019). Legal Protection for Contract Marriage Victims in Indonesia. *Journal of Legal, Ethical and Regulatory*, [e-journal] 22(1).
<https://www.abacademies.org/articles/legal-protection-for-contract-marriage-victims-in-indonesia-8335.html>
- Rubiyasih, A., (2016). Motif Perkawinan Kontrak Laki-Laki Arab dengan Perempuan Pribumi di Cipanas Kabupaten Cianjur. In: FISIPOL-UT (Fakultas Ilmu Sosial dan Politik – Universitas Terbuka), *Indonesia yang Berkeadilan Sosial tanpa Diskriminasi*. ISSN: 25486799. Tangerang Selatan: Universitas Terbuka. 45-62.
- Shafra, (2010). Nikah Kontrak Menurut Hukum Islam dan Realitas di Indonesia. *Marwah*, [e-journal] 9(1), 15-27. <http://ejournal.uin-suska.ac.id/index.php/marwah/article/viewFile/469/449>

- Suhud, U., and Sya'bani, N., (2014). Halal Sex Tourism in Indonesia: Understanding the motivation of young female Hosts to marry with Middle Eastern male tourists. *Journal of Education for Sustainable Development*, 5(1), 91-94.
<https://pdfs.semanticscholar.org/d223/2f4cbcb32de5113961fb04a7c069a01e18dd.pdf>
- Suhud, U., and Wilson, G., (2016). The impact of attitude, subjective norm, and motivation on the intention of young female hosts to marry with a Middle Eastern tourist: A projective technique relating to Halal sex tourism in Indonesia. *Heritage, Culture and Society: Research agenda and best practices in the hospitality and tourism industry*, 237-242.
- Sumandoyo, A., (2017). Bagaimana Cisarua Jadi Magnet Pelancong Arab dan Pengungsi? *Tirto.id*. <https://tirto.id/bagaimana-cisarua-jadi-magnet-pelancong-arab-dan-pengungsi-cqgv>
- Syakit, M.F., 2002. *Perkawinan Terlarang*. Jakarta: Cendikia Sentra Muslim.
- Ummanah, P.H., Tang, M., and Farid, M. (2015). The Tourist Contract Marriage in Cisarua Sub-District, Bogor Regency, West Java. *International Journal of Scientific and Technology Research* 4(2), 142-144. <https://www.ijstr.org/final-print/feb2015/The-Tourist-Contract-Marriage-In-Cisarua-Sub-district-Bogor-Regency-West-Java.pdf>
- Uwaidah, S.K.M. (2013). *Fiqih wanita edisi lengkap*. Pustaka Al-Kautsar.
<https://inlislite.uin-suska.ac.id/opac/detail-opac?id=21772>
- Wahab, A.J., Kustini, and Ali, M. (2018). Fenomena Kawin Kontrak dan Prostitusi 'Dawar' di Kawasan Puncak Bogor. *Al Qalam* 35(1). 127-152. DOI:
<http://dx.doi.org/10.32678/alqalam.v35i1.1847>
- Young, K. (2014). For Better or For Worse. Indonesia Expat.
<https://indonesiaexpat.id/outreach/scams-in-the-city/for-better-or-for-worse/>

A Critical Analysis of the Domestic Legal Framework on Rights of the Child Victims in the Trial Process in Sri Lanka: With Special Reference to the Offence of Statutory Rape

Chathurika Sisimali Gunasekera¹

Institute of Human Rights and Peace Studies, Mahidol University, Thailand

Abstract

This study seeks to examine the rights and best interests of victims of statutory rape when testifying in adversarial criminal trials in Sri Lanka. Against this backdrop, the objectives of this study are to examine the domestic legal framework in Sri Lanka that guarantees the best interests of child victims of statutory rape participating in the criminal trial (court process) and identify the gaps in the existing legal law in Sri Lanka. For this purpose, this study examines the following questions: (1) How does the domestic legal framework in Sri Lanka provide for the best interests of victims of statutory rape participating in the court process, (2) What are the gaps in the existing law that impede the best interests of these child victims when participating in the court process? For this purpose, this research was conducted as a qualitative study. The author employed two approaches to collect data. First, it was necessary to examine the legal instruments that guarantee the child victim's right to participate and the child's best interests. For this purpose, the author analysed the relevant United Nations Conventions, General Comments to Conventions, UN Guidelines, Sri Lankan laws, NGO reports, case laws and previous literature on the subject. Secondly, to collect information on the laws and the gaps in the existing laws, the author conducted semi-structured, in-depth interviews with eight key criminal justice stakeholders.

Keywords: Child Victims, Statutory Rape, Trial, Right to Participate, Best Interests, Sri Lanka

Introduction

Sexual violence against children in Sri Lanka has increased drastically during the past few years. As observed in recent studies, the ratio between the number of crimes and crimes against children has reduced from 9:1 to 3:1 during 2011-2015 (Niriella, 2018). Most importantly, police crime statistics reveal that statutory rape constitutes 80 per cent of overall crimes perpetrated against children during the period from 2015-2017² Moreover, the reported rate of statutory rape offences from 2016 to 2019 is more than six times the rate of adult rape cases. According to police

¹ Student of the Asia Pacific Masters of Arts in Human Rights and Democratization (APMA) Program at the Institute of Human Rights and Peace, Mahidol University, Thailand. Contact: gunasekera.chathurika@gmail.com.

² This observation was made based on the Grave Crime Abstract data for 2015, 2016, and 2017 respectively.

statistics from 2016 to 2019, 1,179 adult rape cases have been reported, whereas the number of statutory rape cases has amounted to 7,058 for the same period (Sri Lanka Police, 2019). The situation had gone haywire during the COVID-19 pandemic and in its aftermath when Sri Lanka faced the country's worst economic crisis. Like in many other countries, even in Sri Lanka criminal justice system is the primary institution designed to respond to the offence of child rape³ (statutory rape). The criminal justice system in Sri Lanka is adversarial in character. In adversarial legal systems, arguably, the most interactive relationship between the victim and the criminal justice decision-making takes place when obtaining evidence from the victim at the criminal trial.⁴(court process). This process entails three stages: evidence-in-chief, cross-examination, and re-examination. Given their tender age and the trauma they underwent, these child victims of rape need special care and protection during the trial. However, the criminal justice system in Sri Lanka, which is adversarial, is, unarguably, offender-oriented and not victim-oriented. Hence, the victims are often treated as mere 'evidentiary cannon floggers', leading to secondary victimisation within the system (Doak, 2005; Edwards, 2004). Child victims are no exception.

Against this backdrop, this study aims to examine the domestic legal framework in Sri Lanka that guarantees the best interests of child victims of statutory rape participating in the criminal trial (court process) and identify the gaps in the existing legal law in Sri Lanka. For this purpose, this study examines the following questions,

1. How does the domestic legal framework in Sri Lanka provide for the best interests of victims of statutory rape participating in the court process (criminal trial)?
2. What are the gaps in the existing law that impede the best interests of these child victims when participating in the court process?

For this purpose, this study was conducted as qualitative research using both primary and secondary data. Primary data was collected using semi-structured, in-depth interviews with eight criminal justice stakeholders.

Concepts

In Sri Lanka, the Constitution of 1978 is the country's Supreme law. The Roman Dutch Law is deemed the country's common law (Cooray, 1974). However, the English common law system influences the Sri Lankan legal system. Hence, the Sri Lankan criminal justice system is inherently adversarial, and the onus is on the prosecution to establish the guilt of the accused beyond reasonable doubt (Niriella, 2017). Statutory rape is a crime in Sri Lanka; the same standards apply in respect of statutory rape trials in Sri Lanka.

The adversarial criminal trial is structured as a battle between the prosecution and the defence counsel and, hence, extremely hostile and combative. Whilst the prosecution seeks to establish the guilt of the accused and pursue a conviction of the accused, the defence counsel fights

³ In this paper, the term child rape will be used interchangeably with statutory rape.

⁴ The term trial will be used interchangeably with the court process throughout this study.

for an acquittal of the accused. Hence, the child victim of statutory rape is, unfortunately, trapped in the middle and, thereby, gets re-victimised by the 'system-induced trauma'.

"Unlike the adult victims of other crimes, the victims of statutory rape are inherently vulnerable and fragile. The vulnerability increases with weak protection systems. The weak protection systems result in the 'system-induced trauma,' which ironically subjects the child victim to secondary victimisation".⁵

Whilst expressing the same sentiments, Ms Sajeewani Abeykoon, Director (Law Enforcement) of the National Child Protection Authority (NCPA), elaborates that the Sri Lankan legal system accords more protection and safeguards to the accused. In contrast, there is a sheer lack of safeguards for child victims. When coupled with the dynamics in the adversarial criminal justice system, this imbalance and inequality in legal safeguards inevitably result in the re-victimisation of child victims within the justice system.

The United Nations Convention on Rights of the Child (CRC) in Article 12 guarantees the child's right to participate in judicial proceedings. Further, in terms of Article 3 of the Convention, the child's best interests should be a primary consideration in all actions concerning the child, including courts of law. It could thus be argued that the best interest standard is at the heart of the child victim's right to participate, and effective participation in judicial proceedings necessarily requires safeguarding the child victim's best interests within the justice system.

Sri Lanka ratified and became a state party to the Child Rights Convention on 12 July 1991. In terms of Article 4 of the Convention, the state parties are required to take "all appropriate legislative, administrative and other measures" to give effect to the rights and standards enshrined in the CRC within their domestic jurisdictions. Hence, under the Convention, Sri Lanka is legally bound to enact laws and ensure their effective implementation to safeguard the best interests of child victims of statutory rape when participating in judicial proceedings.

Constitution of Sri Lanka

The Constitution of the Democratic Socialist Republic of Sri Lanka, 1978, is the country's supreme law. Chapter III of the Constitution enunciates the fundamental rights of the citizens and persons. Even though the rights of the persons who conflict with the law are recognised and guaranteed as fundamental rights by the Constitution, neither the Constitution nor the Fundamental Rights Chapter guarantees the rights of the victims, let alone the rights of child victims of statutory rape. Sharing her views on the question of non-recognition of victims' rights in the Constitution, Professor Camena Gunaratne opines that so long as the rights of the victims and the process to be followed therein is very clearly set out in other legislations, then that should be adequate to safeguard the rights of victims even in the absence of Constitutional guarantees. She states that

⁵DL3, a lawyer practising in (criminal) High Courts in Sri Lanka (in person, 8 April 2023).

what is more important is guaranteeing the rights and process in some sort of legislation and ensuring the effective implementation of the law.⁶

However, Article 12 (1) of the Constitution provides the following.

"All persons are equal before the law and are entitled to the equal protection of the law."

Article 12(4) states as follows:

"Nothing in this Article shall prevent special provision being made, by law, subordinate legislation or executive action, for the advancement of women, children and disabled persons."

The Constitution has empowered the government to enact and implement laws to advance children properly. Further, Chapter VI of the Constitution articulates the Directive Principles of State Policy and Fundamental Duties. In terms of Article 27, the government of Sri Lanka is obliged to be guided by the Directive Principles of State Policy when enacting laws. Article 27 (13) provides that the state is obliged to promote the interests of children and youth to ensure their full development, including physical, mental and social development:

"The State shall promote with special care the interests of children and youth, to ensure their full development, physical, mental, moral, religious and social, and to protect them from exploitation and discrimination".

Unfortunately, the effect of the Directive Principles has been curtailed by Article 29, which provides that they "do not confer or impose legal rights or obligations and are not enforceable in any court or tribunal." However, the judiciary in Sri Lanka has adopted a significantly progressive approach in developing the jurisprudence on Directive Principles of the State Policy and held that they are constitutionally binding on the state and the state organs are obliged to seek guidance and direction of the directive principles in enacting laws and implementing them.

The Charter on the Rights of the Child

Sri Lanka is a dualist country. Dualism treats the international and municipal legal systems as two distinct domains. Hence, international law does not automatically become part and

⁶ Senior Professor, Department of Legal Studies, Open University of Sri Lanka (on Zoom, 2 June 2023).

parcel of a state party's domestic legal system upon mere ratifying the international covenants or treaties. An enabling/incorporating domestic legislation must necessarily be enacted to translate and give effect to the said international laws in the domestic sphere of a dualist state (Shaw, 2008). Similarly, it was upheld by their Lordships in the Supreme Court in *Nallaratnam Singarasa v Attorney General* (2013) 1 SLR 245 that rights enshrined in the international treaties ratified by the executive and to which Sri Lanka is a party can be given effect at the domestic legal system only if they are incorporated into the national laws by a subsequent implementation/enabling legislation.

Upon ratifying the CRC, Sri Lanka adopted the Charter on the Rights of the Child. Interestingly, Article 12 of the Charter safeguards the child's right to be heard in judicial proceedings in compliance with the procedure established by law. Secondly, Article 3 articulates that the child's best interests "shall be the primary concern in any matter, action or proceeding concerning a child, whether undertaken by any social welfare institution, court of law, administrative authority or legislative body". Unfortunately, the Charter has no legally binding force and is only intended as a policy document (UN Committee on the Rights of the Child, 2010).

Penal Code of Sri Lanka

As subsequently amended, the Penal Code of Sri Lanka lays down the substantive criminal law in Sri Lanka. Accordingly, the acts and omissions criminalised in Sri Lanka and the punishments to be imposed on such criminalised acts and omissions are spelt out in the Penal Code. Section 363(e) of the Penal Code, as amended by the (Amendment) Act, No 22 of 1995, criminalises sexual intercourse with a woman below the age of 16, with or without consent, as statutory rape.

"363. A man is said to commit " rape " who enactment has sexual intercourse with a woman under the circumstances falling under any of the following descriptions:-

.....

(e) with or without her consent when she is under sixteen years of age, unless the woman is his wife who is over twelve years of age and is not judicially separated from the man."

In Section 364 (3), a person convicted of statutory rape is liable to be punished with rigorous imprisonment for a term not less than fifteen years, not exceeding twenty years, and with a fine. However, the definition of statutory rape in the Penal Code is extremely restrictive and gendered. The rape of the male child below the age of 16 years is not captured within the ambit of the definition of statutory rape and, hence, not recognised as victims of rape. Commenting on this legal provision DL 2, an Attorney-at-Law practicing in (criminal) High Courts, elaborates as follows:

Statutory rape laws are premised on the proposition that children below a particular age do not have the capacity to legally consent to sexual intercourse. There are many reasons for that. Children lack the maturity to understand the consequences of sexual intercourse; they are not physically prepared for that, and their consent could easily be manipulated and obtained, and they may not even resist. In Sri Lanka it is 16. However, the issue is that our law does not perceive male children under 16 as victims of statutory rape. According to the Penal Code, statutory rape could be perpetrated by a man only against a female child below the age of 16 years. This definition is very gendered and narrow. Of course, where a male child has been raped, the perpetrator could be charged under "unnatural offences". However, that does not accord the same treatment to the victim as in the offence of statutory rape.⁷

Evidence Ordinance, No. 14 of 1895

In the previous section of this Chapter, the author observed that once the trial commences, the prosecution has to state its case and lead evidence to establish its case beyond reasonable doubt. The victim of rape is generally called to testify as the primary witness in statutory rape trials. In Sri Lanka, the Evidence Ordinance sets out and regulates the law and procedure concerning evidence. As stipulated in sections 137 and 138, a trial consists of 3 stages: examination-in-chief, cross-examination and re-examination. Accordingly, a witness called to give evidence in a trial is first examined in chief by the party who calls such a witness. After that, such witness is cross-examined by the adverse party, and finally, such witness is re-examined by the party who called such witness. Hence, a child victim who participates in a statutory rape trial has to encounter all these three stages.

It is important to observe that the Sri Lankan law does not exclude child victims and witnesses from participating and testifying in court. Section 118 of the Evidence Ordinance provides as follows:

"All persons shall be competent to testify unless the Court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind or any other cause of the same kind."

Accordingly, any person, including children, is deemed competent to testify in court unless their capacity and capability to understand and answer the questions is affected, *among others*, by tender years. Even if there is a small amount of a subtle restriction on the children to participate in the court process, it can be argued that such a restriction has been imposed for the betterment of

⁷ Interview with DL 2, an Attorney-at-Law practising in (criminal) High Courts in Sri Lanka (in person, 29 April 2023).

children because there is more probability for child witnesses to be tormented in a trial if they cannot even understand the questions put to him.

Although a child is generally deemed a competent witness, it is saddening to observe that the Evidence Ordinance of Sri Lanka does not provide special protection measures specific to child victims or victims of rape who testify in court. On the contrary, the Evidence Ordinance empowers the defence counsel to slander and injure the witness's character, which could, undoubtedly, be detrimental to the child victims of statutory rape. In terms of Section 146(c), the questions that injure the character of a witness are lawful in a cross-examination:

Assistance to and Protection of Victims of Crime and Witnesses Act, No. 4 of 2015

The Assistance to and Protection of Victims of Crime and Witnesses Act (hereinafter referred to as the Victim and Witness Protection Act) was enacted in 2015 to give effect to the international standards and best practices concerning the victims and witnesses of crimes and thereby to ensure the protection and promotion of the rights and interests of the victims and witnesses of crimes. Section 3 of the Act enunciates the rights of the victims. Accordingly, the victim's right to be treated with equality and dignity, respect for privacy, rights for reparation and redress, right to receive medical attention for mental or physical harm suffered as a victim of crime, rights to be protected from any prospective threats and intimidation, rights to be informed, rights to participate at all stages of the criminal justice system, and rights to representation are recognised guaranteed by this Act. Most importantly, in terms of Section 3(2), the Act provides for the child victim's right to be "treated in a manner which ensures the best interests of such child".

Further, Section 4(2) provides that a victim is entitled to receive medical treatments from the state to recover from the harm suffered as a crime victim. In terms of Sections 4 (1) and (3), victims are entitled to receive financial assistance from the National Authority for Victim and Witness Protection (hereinafter referred to as the NAVWP) to compensate for the expenses incurred by such victim to participate in judicial and quasi-judicial proceedings pertaining to such crime.

The legislature has attempted to introduce the standards and norms guaranteed in the CRC and UN Conventions. Most importantly, in terms of Section 25, if a Court or a Commission reasonably deems that a victim needs special protection and assistance to participate in judicial and quasi-judicial proceedings, then such Court or Commission is mandatorily required to ensure the provision of the same provided the same shall not prejudice the rights and interests of the accused/suspect. Such protection and assistance measures include taking special measures to guarantee the best interests of child victims, conducting judicial proceedings in-camera, taking special measures to prevent the intimidation caused by the accused, and safeguarding the privacy of the victims.

Findings

As discussed in the previous part of this paper, laws in Sri Lanka, especially the Victim and Witness Protection Act, enacted in 2015 and the Evidence Ordinance, have extensively set out safeguards for protecting the rights and best interests of child victims in the trial process. According to the respondents interviewed in this study, there are adequate safeguards in the law, but the lack of implementation of those laws has resulted in the secondary victimisation of child victims. However, the respondents also pointed out several fundamental gaps in the existing laws which significantly impede the best interests of child victims in the judicial process.

First, legal provisions that provide for the evidence-in-chief to be conducted as video-recorded interviews do not extend to the cross-examination. Section 163A (2) (a) of the Evidence Ordinance explicitly provides that such video-recorded evidence obtained from a child victim is admissible only if such child is available for cross-examination. The respondents pointed out that the effect and the change the legislature aimed to bring through this legal provision is nullified when the child victim is cross-examined in open court. Sharing her opinion on the said legal provision and its implication on the child victims, Ms Sajeewani Abeykoon, Director (Law Enforcement) of the National Child Protection Authority (NCPA), opined that a significant period of 3 to 5 years usually lapses between the evidence-in-chief and the cross-examination. Moreover, recent decisions by the Appellate Courts have imposed some restrictions forbidding the video-recorded evidence to be shown to the child victim before the cross-examination. In this context, the child victims who give evidence through video recordings undergo more harassment from the defence counsel in cross-examination.

When you traditionally give evidence, the whole trial occurs in the High Court. So, only a few months would lapse between the evidence-in-chief and the cross-examination. Children could still remember what they testified at the previous stage. Obtaining evidence through video recordings taken at the initial stages of the case takes place long before the trial commences. So generally, by the time cross-examination starts, 3 to 5 years have already lapsed, and the child victims do not even remember what they testified through video recording.

On the other hand, in a recent judgement, the Court of Appeal pronounced that the testimony obtained as a video recording should not be shown to the child witness before the cross-examination. So, this provides ample room for the child to be harassed by the defence counsel when the child is put into the witness box for cross-examination in open court. Child victims are often accused of lying and fabricating stories when they fail to recollect what they testified to 3 to 4 years ago. Furthermore, the other thing is that victims get into the witness box and have to give evidence before a full courthouse for the first time in cross-examination, which is detrimental. Thus, either the whole trial should be

conducted through video recordings or through CCTV, or the whole trial should be in the courtroom.⁸

Secondly, legal provisions in the Evidence Ordinance designed to establish the innocence of the accused are purposively utilised by defence counsels to torment the child victims. The Evidence Ordinance in Section 146(c) empowers the defence counsel to slander and injure the witness's character in cross-examination. In Section 155(d), when the accused is prosecuted for rape, the accused is entitled to establish that the prosecution is generally immoral. The Respondents interviewed in this study opined that defence counsels deliberately rely on these legal provisions to humiliate and torment the child victims and accuse them of lying, thereby subjecting them to secondary victimisation. Elaborating on the rationale behind these laws, Attorney-at-law VL stated these laws are designed to establish the innocence of the accused and safeguard his interests in the event of false allegations of rape lodged by a woman. However, it is needless to establish them in a statutory rape case as the element of 'consent' is immaterial in statutory rape cases.⁹

Not all allegations of rape are genuine complaints. Sometimes some women lodge false complaints of rape. Even though the sexual intercourse happens with consent, after that, they allege the man for rape. Sometimes, even prostitutes do the same. Now, in such instances, the defence could rely on these provisions and establish the element of 'consent' to prove the innocence of the person who is wrongly accused. So, these provisions are useful in cases of rape. Nevertheless, statutory rape cases are different. Done with consent or without consent, it is still rape. So, there is no question of consent.¹⁰

Nevertheless, since the statutory rape victims are not excluded from the ambit of these legal provisions, they become a good weapon in the hands of defence counsels whose objective is to harass the child victim and distort their evidence, states attorney-at-law VL. Sharing similar views, attorney-at-law DL 2 states that due to these legal provisions, the state counsels who lead the prosecution of statutory rape cases hardly object to humiliating, tormenting questions and remarks from the defence counsels. Even the trial court judges are reluctant to intervene for fear of allegations of being biased and accusations of tampering with a fair trial.

When the child witnesses get tormented, humiliated and harassed by the defence counsels in cross-examination, they finally succumb. Then, it is easy for the lawyers to twist and distort the child's testimony. Technically, the judges should intervene. But since such questions are 'lawful' it is common to see that the judges are actually

⁸ Ms. Sajeewani Abeykoon, Director (Law Enforcement), National Child Protection Authority (NCPA) (in person, 9 May 2023).

⁹ VL, an Attorney-at-Law who appears in High Court for victims in statutory rape case (in person, 8 May 2023).

¹⁰ VL, an Attorney-at-Law who appears in High Court for victims in statutory rape case (in person, 8 May 2023).

hesitant to intervene. In many cases, the defence is led by leading President's Counsels or senior counsels in the bar, whilst a junior state counsel leads the prosecution. Thus, this power imbalance is another factor, you know, for lack of protection for the child witness.¹¹

Conclusion

Based on the findings of this study, it was identified that the existing laws in Sri Lanka, especially the Victim and Witness Protection Act, which was enacted in 2015 and the Evidence Ordinance, have extensively set out safeguards for the protection of rights and best interests of child victims in judicial proceedings. However, several fundamental gaps in the existing laws significantly impede the best interests of child victims in the judicial process.

¹¹ DL 2, an Attorney-at-Law who practices in (criminal) High Courts (in person, 29 April 2023).

References

- Assistance to and Protection of Victims of Crime and Witnesses Act, No. 4 of 2015
- Constitution of the Democratic Socialist Republic of Sri Lanka, 1978
- Cooray, L.J.M. (1974). The reception of Roman-Dutch law in Sri Lanka. *Comparative and International Law Journal of Southern Africa*. Vol. 7(3). 295-320.
https://journals.co.za/doi/epdf/10.10520/AJA00104051_1135
- Doak, J., (2005). Victims' Rights in Criminal Trials: Prospects for Participation. *Journal of Law and Society*, 32(2). 294-316.
- Edwards, I., (2004). An Ambiguous Participant: The Crime Victim and Criminal Justice Decision-Making. *British Journal of Criminology*, 44(6). 967-982.
- Evidence Ordinance, (Chapter 14) No. 14 of 1895
- National Child Protection Authority Act, No. 50 of 1998
- Niriella, M. A. D. S. J., 2018. Protection of Children from Sexual Violation: Adequacy of the Contemporary Legal Framework in Sri Lanka. *Forensic Science and Addiction Research*, [e-journal] 3(2). DOI:10.31031/FSAR.2018.03.000561.
- Niriella, MADSJS (2017). "A critical analysis on the application of the legal principle of rule of law in the criminal justice system of Sri Lanka," *Forensic Research & Criminology International Journal*, 4(3). <https://doi.org/10.15406/frcij.2017.04.00114>.
- Penal Code Ordinance, No 3 of 1883
- Shaw, M. N. (2008). *International law*. Cambridge University Press.
- Sri Lanka Police, (2018). *Performance Report 2018*.
<https://www.parliament.lk/uploads/documents/paperspresented/performance-report-srilanka-police-2018.pdf>.
- Sri Lanka Police, (2020). *Grave Crime Abstract for The Year 2019*. Sri Lanka Police.
https://www.police.lk/images/crime_statistics/2019/Grave-crime-abstract-for-the-Year-2019.pdf.
- The Charter on the Rights of the Child, 1992
- UN Committee on the Rights of the Child (CRC), (2010). Consideration of reports submitted by States parties under article 44 of the Convention: Convention on the Rights of the Child: concluding observations: Sri Lanka, 19 October 2010, CRC/C/LKA/CO/3-4,
<https://www.refworld.org/docid/4cdcfb112.html>

FPTP electoral system of Myanmar as a barrier for Ethnic Minority Inclusiveness in parliamentary decision-making

Yamonh Pwint Thit¹

*Master of Arts in International Development Issues (MAIDS), Faculty of Political Science,
Chulalongkorn University, Thailand*

Abstract

In Myanmar, ethnic minorities do not have equal access to public services to raise their issues and voices. They are not adequately represented in state institutions by the political system, which does not grant them adequate opportunities to participate in decision-making at the union level. Ethnic minorities believe that all groups should have equal access to public services and enjoy an efficient system of protection of human rights. Ethnic diversity may result in tensions within the nation when one group is economically, socially, politically dominant, or privileged. By being discriminated against and marginalised through the political system, ethnic grievances have centred on the lack of inclusive decision-making, leading to internal tension and civil wars between ethnic groups and the government. Hence, the lack of ethnic minority inclusiveness and a weak system of fair representation impact the human security of ethnic minority groups. The electoral system of Myanmar, "First Past the Post" (FPTP), did not create a fair share of seats according to the number of votes each political party receives. As a result, these groups do not get their preferred representatives to raise their voices in parliament. At the same time, the winner, who represents only some people, becomes the representative of the whole constituency. Thus, Myanmar's current electoral system is not creating inclusive representation of political parties in parliament. According to the principle of inclusivity, governance systems should ensure that all significant communities in a country are represented in state institutions and granted adequate opportunities to influence decision-making meaningfully. The paper will explain ethnonationalism and the history of Myanmar, the electoral system and the Constitution, which diminish the inclusiveness and re-design the considerable electoral system for better inclusiveness.

Keywords: Inclusiveness, Ethnic Minority, FPTP, Representation

Introduction

Ghosh (2008) evaluated the two statements based on problems relating to ethnicity and the rights of minorities. To begin, Myanmar is one of the countries in Southeast Asia that is home to a large number of distinct ethnic groups. Additionally, since the country's post-independence period, Myanmar has been at the center of ethical issues in Southeast Asia and worldwide (Ghosh, 2008).

¹ Student of Master of Arts in International Development Issues (MAIDS), Faculty of Political Science, Chulalongkorn University, Thailand.

In Myanmar, ethnic minorities do not have equal access to public services to raise their concerns and voices. They are not effectively represented in state institutions because the political system does not provide adequate chances for union-level decision-making.

In a multi-ethnic nation like Myanmar, each ethnic group has its preferred political parties or candidates for representing them in parliament. Misrepresentation or no representation of these groups could give rise to many problems. In practice, full representation in parliament is almost impossible to achieve. However, to some extent, fair representation is important to reduce tensions among diverse groups (Williams, 2005).

A country's political willingness is necessary to adopt an electoral system to create fair representation or to re-design the electoral system to become more representative. This paper argues that the FPTP electoral system in Myanmar is a barrier to inclusive representation in union-level decision-making for all ethnic minorities.

Research Questions

1. What are the barriers to ethnic minority inclusion in political representation at the union-government level?

Sub-questions

- How does the FPTP electoral system affect the role of ethnic minority representation?
- How does institutional design (2008 Constitution) affect the role of ethnic minority representation?
- How do favoritism and populism affect the role of ethnic minority representation?

2. What type of electoral system can be reformed for a more inclusive representation of ethnic minorities in the Future?

Research Methodology

The paper will be undertaken with a documentary research design. It will utilise the secondary data from academic papers on the electoral system and inclusiveness, ethnic diversity and minority inclusiveness in the case of Myanmar. For the systematic review, the paper will review the literature to investigate the legacy of ethnic diversity, a political system that contradicts inclusiveness. This electoral system favours the large party with more seats and the Constitution's provision for the composition of seats in the parliament.

This academic paper will allow the research to examine the key cause of the political system, which diminishes the inclusive decision-making for the ethnic minority. It will then examine the barrier, which is the FPTP electoral system, through a systematic review.

Conceptual Framework

Inclusiveness contributes to stability in the long term as it allows all groups to channel their demands and aspirations through the electoral system and political processes undertaken by state institutions. Inclusiveness provides not only a fairer society with equality but also long-term peace and prosperity. This paper will work to analyse the causes of why ethnic minorities in Myanmar failed to have fair representation and inclusive decision-making by this conceptual framework.

Dependent variable
Effect



Lack of minority ethnic inclusiveness = FPTP system

= Independent variables
= Cause



= Favorism, populism by FPTP

= 2008 constitution and the parliamentary seat composition

Concept applied

- Democracy and Elections (Collier, 2009), (Reynolds, 2008)
- Democracy and representation (Lijphart, 1969), (Phillips, 1995)

Democracy, elections and votes

Collier (2009) classified democracy and elections in his book *Wars, Guns and Votes*. Collier (2009) highlighted that a proper democracy does not merely have competitive elections. A proper democracy also has checks and balances that limit the power of a government once elected. This conceptualisation helps to analyse the role of the central government in Myanmar and its check and balance for the minority inclusiveness in decision-making for public goods: how elections contribute to what extent of democracy (Collier, 2009).

Collier claimed that peace would be secured by an election because the winner would be recognized as legitimate by the population, making violent opposition more difficult (2009). Not only will the elected government be recognised as legitimate, but the democratic process will ensure that it will need to be inclusive, and so there will be less reason for grievance: the government will be accountable to its citizens. With this conceptualisation, it is time to look at the evidence of why Myanmar's political system was not democratic, which failed the inclusiveness through the FPTP electoral system.

Democracy and Representation

Phillips (1995) argues that the partial autonomy of representatives and the presence of marginalised groups in legislative bodies are crucial for the democratic process. "Representatives do have autonomy, which is why it matters who those representatives are." In discussing

marginalised group representation, Phillips (1995) focuses considerable attention on the relationship between deliberative models of legislative decision-making and the problem of representatives' accountability to constituents (Mansbridge, 2003). Following the theory, the paper will conceptualise the importance of ethnic minority representation in the legislature by analysing the unfair representation of ethnic minorities in the legislature by the FPTP system and the design of seat composition for each parliament by the 2008 Constitution's provisions.

Findings

The proliferation of Ethnic political parties and single-member plurality-ruled elections

The fragmentation of ethnic political parties is facilitated by the political changes throughout the history of Myanmar and the unstable political environment caused by several interethnic clashes. Most significantly, the military-imposed transition has created a rift between the new electoral parties formed specifically to run in the 2010 election and the old movement parties founded in 1988–1990 but did not participate in the election.

Vote splitting has consequently emerged as a common theory to explain why ethnic parties have failed to give formal and accurate representation for ethnic groups, especially among party representatives. Many believe that vote splitting is crucial in single-member electoral districts and First-Past-The-Post voting (Stokke, 2019). Table (1) shows the vote splitting by ethnic minority parties in the 2015 elections.

Table 1: Vote splitting pattern in Pyithu Hluttaw in the 2015 Elections

| State and Constituency | Winner's vote share | Split Vote Share of Ethnic Parties | |
|----------------------------------|----------------------------|---|---------------|
| Shan State: Namkham Constituency | TPNP (36.63%) | SNDP (21.88%) | SNLD (21.34%) |
| Shan State: Minpan Constituency | USDP (36.82%) | SNDP (33.50%) | SNLD (16.28%) |
| Shan State: Namsan Constituency | USDP (37.23%) | SNDP (5.27%) | SNLD (32.45%) |

Source: Briefing paper on electoral system and results, 2015 General Elections of Myanmar, Democracy Reporting International Myanmar

The rise of two-party dominance: Polarization by FPTP system

In Myanmar, ethnic parties are outmatched in the polarised competition between the USDP and NLD for tactical reasons or because they found the NLD's promises of representing all ethnic groups more appealing. Many ethnic voters supported NLD over ethnic parties (Sai Wansai, 2015). When combined with the first-past-the-post system, it gives large national parties the upper hand in parliament when it comes to representing the interests of the majority party. Many ethnic minority areas also have sizable Burma populations due to recent or historical migration, which enables the major parties to gain additional seats in the states even without the help of minority voters. As a result, the NLD and USDP compete for national supremacy by concentrating their election efforts on the Burmese people. As seen in Table (2), two parties dominated all three elections.

Table 2: Comparison of Parliamentary elections in 2010, 2015 and 2020

| Political Party | 2010 | 2015 | 2020 |
|--|-------------|-------------|-------------|
| <i>People's Assembly (Lower House)-330 seats</i> | | | |
| National League for Democracy (NLD) | 0 | 255 | 258 |
| Union Solidarity and Development Party (USDP) | 259 | 30 | 26 |
| <i>National Assembly (Upper House) -168 seats</i> | | | |
| National League for Democracy (NLD) | 0 | 135 | 138 |
| Union Solidarity and Development Party (USDP) | 129 | 11 | 7 |

Note: adopted from Union Election Commission, ‘Announcement of the results of 2020 Multi-party Democratic General Elections’ November 15, 2020

FPTP electoral system and Disproportionate Representation by Mal-appointment

At the national, regional, and state levels, are 1,171 places up for vote. Myanmar's national assembly, the Assembly of the Union (Pyihtaungsu Hluttaw), is made up of two bodies: the House of Nationalities (an upper house with 224 seats called Amyotha Hluttaw) and the House of Representatives (a lower house with 440 seats called Pyithu Hluttaw) (Hluttaw Brochure Working Group, 2017). The 2008 Constitution provides that elections are used to fill 498 national seats in each House. The remaining 166 seats are filled by military personnel chosen by the Commander-in-Chief.

A common critique of FPTP is disproportionality and how it rewards larger, established parties. The absolute difference between the total percentage of votes for and the total percentage of seats won by the party with the largest overrepresentation determines the degree of disproportionality. Overall, the disproportionality is very low, demonstrating that Myanmar's FPTP system does convert votes into seats. This disparity occurs under FPTP since a party only needs to win a constituency with a plurality of votes or one more vote than the party in second place.

For instance, in a two-party race, the party with 51 per cent of the vote in each constituency would win 100 per cent of the seats, regardless of the party with 49 per cent of the votes in second place. It is not intended to minimise the NLD's electoral achievement by highlighting the winner's bonus from which the party benefited. Out of 196 of the 255 seats in the Pyithu Hluttaw, the NLD gained was obtained by absolute majority. The NLD's vote distribution is quite effective, as evidenced by analysing its vote share throughout all constituencies (Huang, 2020). The breakdown of seats versus vote share for both houses is shown in Tables 3 and 4.

Table 3: Votes vs. Seats in Amyotha Hluttaw (2015 Elections)

| Party | Vote Share | Seats | Seat share |
|---|------------|-------|------------|
| National League for Democracy- NLD | 58% | 135 | 80% |
| Union Solidarity and Development Party (USDP) | 28% | 11 | 7% |
| Arakan National Party (ANP) | 2.2% | 10 | 6% |
| Shan National Party (TPNP) | 1.6% | 3 | 2% |

Source: adopted the data from the book by NAKANISHI Yoshihiro, *The 2015 Myanmar General Election: A Historic Victory for the National League for Democracy*, Center for Southeast Asian Studies, Kyoto University, March 2016

Table (3) shows that NLD keeps 80 per cent of seats for Pyithu Hluttaw and 58 per cent of share votes. USDP only obtained 7 per cent of seats, though it has 28 per cent of the total votes. Fragmentation and vote splitting played a role in the small ethnic parties by the results.

Table 4: Votes vs. Seats in Pyithu Hluttaw (2015 Elections)

| Party | Vote Share | Seats | Seat share |
|---|------------|-------|------------|
| National League for Democracy- NLD | 57.2% | 255 | 79% |
| Union Solidarity and Development Party (USDP) | 28.3% | 30 | 9% |
| Arakan National Party (ANP) | 2.2% | 12 | 4% |
| Shan National Party (TPNP) | 1.6% | 12 | 4% |

Source: adopted the data from the book by NAKANISHI Yoshihiro, *The 2015 Myanmar General Election: A Historic Victory for the National League for Democracy*, Center for Southeast Asian Studies, Kyoto University, March 2016

According to Table (4), NLD keeps 79 per cent of seats for Pyithu Hluttaw and 57 per cent of votes to share. USDP only obtained 9 per cent of seats, though it has 28 per cent of the total votes. Fragmentation and vote splitting played a role in these results. For example, states like Kachin saw as many as 12 candidates competing in one constituency, spreading voters across ethnic parties of all stripes and making it easier for national-level parties to win constituencies with relatively few votes (Mun, 2020).

The results show that the current voting method favoured some ethnic parties. The FPTP system gave the Arakan National Party (ANP) and Shan Nationalities League for Democracy (SNLD) more members in parliament than their popular vote because their votes were geographically concentrated. The FPTP electoral system allows for a wide range of political parties. When the country's electoral districts are not designed fairly, the FPTP system can also open up opportunities

for smaller political party candidates in geographically concentrated regions (Moscrop, 2016). It gives elected parties a chance to get their share of parliament. Similar ethnic candidates who united would have won the seat over the national-level party split the vote (International Crisis Group, 2020).

Re-designing the Electoral System of Myanmar: Implication for better inclusiveness of ethnic minority

In a country like Burma, which has a long history of political and social conflicts and a lot of different people, an electoral system should make a democratic space for everyone. Also, the first step toward making a federal union that respects the rights of its states and regions is to ensure that their voices are heard at every level of government. A sound election system could be a way to do this.

A PR system could better give seats to groups based on how many votes they got. This proportional system, in turn, would lead to a more open political atmosphere and make it possible for a broader range of parties to participate in politics meaningfully (International Crisis Group Asia Briefing, 2015). However, it is important to remember that even in a democratic system, alternatives to PR, such as alternative vote plurality systems, may also meet some of these goals (Low-Beer, 1984).

When we look at the trends in electoral system reform, countries tend to either switch to a more proportional system by using PR versions of plurality systems, like the so-called Mixed Member Representation system (MMR) or directly replace a plurality system with a PR system. List PR, the most accessible type, is used in 35 per cent of countries worldwide, while FPTP is used in 24 per cent of countries (Reynolds et al., 2008; Scheiner, 2008).

Conclusion

The FPTP electoral system in Myanmar limits the representation of ethnic minorities in several ways. First, the winner-takes-all nature of the method means that only the candidate or party with the most votes in a constituency wins the seat. All other votes go unrepresented. This unrepresentativeness can make it hard for groups that represent ethnic minorities to get a majority in any constituency because their votes are spread across multiple constituencies.

In Myanmar, where there have been a lot of ethnic and political tensions, the FPTP system could make things worse and make it harder to work towards reconciliation and social harmony. When people focus on getting a majority, they may have a "zero-sum" mentality in which they care more about their own goals than finding things they can agree on together. This mentality can make dealing with human security issues harder (International Crisis Group, 2020).

PR (proportional representation) systems could help ensure that minority ethnic groups have the same power in a political system (Lijphart, 1984). According to the theory, PR ensures that minority parties have a good chance of being represented in the legislature by giving seats in proportion to each party's votes. In places like Myanmar, where there have been ethnic battles for a long time, and many different ethnic groups, PR can be a crucial part of solving these problems and making it easier for people to share power. This broad representation can help address the concerns and needs of ethnic minorities, including those linked to human security.

References

- Collier, P. (2009). *Wars, Guns and Votes*. Harper Perennial.
- Ghosh, L. (2008). *Minority, Polity and Governance in Myanmar: Dynamics of Changes*. India Quarterly, 64(4),35–72. <https://doi.org/10.1177/097492840806400402>
- Hluttaw Brochure Working Group. (2017). *The Republic of the Union of Myanmar: Hluttaw Brochure*. Nay Pyi Taw, Myanmar: The Republic of the Union of Myanmar.
- Huang, K. P (2020), *Myanmar's 2020 election: Explaining the strong performance of the NLD and some ethnic parties*, Journal of East Asian Studies, National Taiwan University, Taipei City
- International Crisis Group. (2020). *Liberalisation and Ethno-nationalism*. In *Identity Crisis: Ethnicity and Conflict in Myanmar*. 9-12. <http://www.jstor.org/stable/resrep31436.6>
- International Crisis Group Asia Briefing (2015). *The Myanmar Elections: Results and Implications*. Yangon/Brussels, p.7. [http://www.crisisgroup.org/~media/Files/asia/south-east-asia/burma-myanmar/b147-the-myanmar-elections-results-and-implications.pdf](http://www.crisisgroup.org/~/media/Files/asia/south-east-asia/burma-myanmar/b147-the-myanmar-elections-results-and-implications.pdf)
- Lijphart, A. (1984). *Electoral Systems: Majority and Plurality Methods vs. Proportional Representation*. In *Democracies: Patterns of Majoritarian and Consensus Government in Twenty-One Countries* (pp. 150–168). Yale University Press.
- Low-Beer, J. R. (1984). *The Constitutional Imperative of Proportional Representation*. The Yale Law Journal, 94(1), 163–188. <https://doi.org/10.2307/796319>
- Mansbridge, J.J. (2003). Rethinking Representation. *American Political Science Review*. Vol. 97, No. 4 (Nov., 2003). 515-528. DOI:10.1017/S0003055403000856
- Moscrop, D. (2016), *The False Majorities of Fast-Past-The-Post*, Broadbent Institute (BroadbentInstitute.ca).
- Mun, N. T. (2020). *The electoral system at a crossroads: The recalculation of the 2015 election results under the proportional representation system*. Yangon, Myanmar: The Salween Institute for Public Policy.
- Phillips, A. (1995). *The Politics of Presence*. Clarendon Press.
- Reynolds, A., Reilly, B., & Ellis, A. (2008). *Electoral System Design: The New International IDEA Book*. International IDEA. <https://www.idea.int/sites/default/files/publications/electoral-system-design-the-new-international-idea-handbook.pdf>

- Scheiner, E. (2008), Does Electoral System Reform Work? Electoral System Lessons from Reforms of the 1990s, *Annual Review of Political Science*, 161-181
- Stokke, K. (2019). Political Representation by Ethnic Parties? Electoral Performance and Party-Building Processes among Ethnic Parties in Myanmar. *Journal of Current Southeast Asian Affairs*, 38(3), 307–336. <https://doi.org/10.1177/1868103419893530>
- Wansai, S. (2015), *Military Confrontation or Political Dialogue: Consequences of the Kokang Crisis for Peace and Democracy in Myanmar*, Transnational Institute, 2015 Policy Briefing Paper.
- Williams, D. C. (2005). Constitutional design for Burma: The second lecture (2004). In D. C. Williams & L. H. Sakhong (Eds.), *Designing federalism in Burma* (pp. 127-213). Chiang Mai, Thailand: UNLD Press.

Troll Armies and the Spread of Hatred and Pro-Coup Messages and Ideology in Myanmar's Digital Space

Khin Thinzar¹

Institute of Human Rights and Peace Studies, Mahidol University, Thailand

Abstract

Communication technology and digital media have become increasingly integral to our everyday lives and a powerful weapon for political mobilization. In Myanmar, state actors and the so-called status quo, like the military, have been using social media to communicate their political ideology and agendas and strengthen and legitimize their power. This study examines first the characteristics of information and news media coverage posted by some pro-military groups, known as the *Troll Armies*, via the Telegram platform from the start of the Myanmar 2021 coup d'état in Feb 2021 until March 2023. Next, this study examines how these Troll Armies coordinate and work together to monitor those who go against their ideology. This study finds out that the information and news media coverage contain the military's ideology, pro-coup messages, and messages that could cause social disharmony and hatred among the people. The messages tend to target certain groups in society, the Muslims in particular, painting them as the enemy of the state. The troll armies such as Han Nyein Oo, Kyaw Swar, Ko Thet, the mastermind, and the rest directly circulate their posts on different Telegram channels. The study also proposes that the actions of these Troll Armies potentially suppress freedom of expression by intimidating and silencing individuals or groups that disagree with or engage in democratic movements such as protests or online campaigns. This action contributes to a self-censorship culture where people fear speaking out and expressing their views. Lastly, by controlling the online discourse, the military shapes public opinion as part of military psychological warfare.

Keywords: Telegram, Pro-Military, Myanmar Digital Space, Troll Armies

Introduction

Myanmar, also known as Burma, has endured decades of authoritarian military dictatorship, widespread poverty, and ethnic minority-led civil war. Myanmar's semi-civilian rule (2011-2021) was ended by Senior General Min Aung Hlaing, and other military leaders staged a coup on February 1, 2021, returning the country to a direct military regime. The move came after the Union Solidarity and Development Party (USDP), the military's proxy party, suffered a significant defeat in the 2020 elections ([Maizland, 2022](#)). It justified the coup by claiming

¹ Student of Asia Pacific Master of Arts (APMA) in Human Rights and Democratisation, Mahidol University, Thailand.

widespread fraud in the 2020 election, which Aung San Suu Kyi's National League for Democracy (NLD) swept to victory. The junta, officially named the State Administration Council (SAC), detained and charged Aung San Suu Kyi with corruption and other crimes. It put policymakers from her party and other parties' members under arrest, as well as many human rights activists.

Within weeks of the coup, wide-ranging protests broke out nationwide. Tens of thousands of people, including doctors, bankers, and teachers, joined what began as a peaceful Civil Disobedience Movement (CDM), refusing to go to work until the elected government was returned. Eventually, exiled National League for Democracy (NLD) lawmakers, protest leaders, and activists from various minority groups formed a parallel government called the National Unity Government (NUG). It seeks to bring together disparate anti-junta groups, foster greater ethnic unity, establish a post-junta agenda, and cultivate assistance from international bodies. The United Nations, foreign entities, and human rights organizations condemned the military's brutal crackdown on dissent and widespread violations.

Then, partly due to blocking access to Facebook, Telegram gained popularity as a secure messaging app, similar to how young people in Hong Kong utilized it during their protests in 2019 (Soo, 2019). As part of their strategy to dominate online discourse, the Myanmar military has been using troll armies to spread hatred and disinformation through Telegram public channels.

Telegram in Myanmar

Telegram has more than 200 million monthly active users. Myanmar is one of the top 10 countries in the world in terms of Telegram usage. There are more than 6 million Telegram users in Myanmar (Insight Myanmar, 2022). Additionally, with one billion+ downloads, Telegram is Myanmar's second most downloaded apps (42 matters, 2023). Telegram is a private messaging service because users may subscribe to "channels" to receive regular updates from other accounts. Unlike Facebook or Twitter, where posting is always public by default, Telegram posts are only visible to channel subscribers. Furthermore, if the channel is public, users who search for the channel name without subscribing can read the posts.

Who are Troll Armies?

In this context, Troll armies refer to individuals supporting the Myanmar military, particularly the junta led by Min Aung Hlaing, his government, ultranationalists (Ma-Ba-Tha' members), and the USDP military-backed party. Since Facebook banned military-owned and linked accounts and other ultranationalist and pro-military supporter's accounts in December 2018, troll armies have grown in popularity on Telegram after the coup. Their daily activity is to disseminate misinformation regarding the democratic movement and monitor the activities of celebrities who support democracy, anti-junta activists, journalists, and human rights defenders. Additionally, the fact that many Telegram channel descriptions include fact-checked information

in Burmese "Ta-Din Ahmann" makes it easy to recognize troll army channels and accounts. It attempts to mislead civilians by employing misinformation and fake news about NUG/CRPH and PDF (People Defense Forces). According to the data, the behavior of troll armies is to promote nationalist ideologies, notably divide and rule strategy, and generate hatred between different faiths, which may lead to further violent clashes.

Methodology

This study gathered information using qualitative and quantitative analysis of the Telegram platform from the beginning of the coup d'état in Myanmar in 2021 and March 2023. This study collected all publicly accessible text-related data and sentiment data from posts made by troll armies on Telegram. This study compiled data from 153 channels and 19,909,932 postings altogether. Identification produces the following keywords that appear after searching.

- 1) Address or Shwe Ba or Ko Hla Shwe (identify the post-related doxxing)
- 2) AMyo-BaThar or Ma-Ba-Tha or Myo-Chit (identify the post-related to ultranationalist ideology or anti-Muslim narratives)
- 3) 1982 (identify the post related to citizenship law and Rohingya)
- 4) Buddhist heroes (identify the post referring to Military soldiers as Buddhist heroes)

In this research's extensive data analysis, these keywords are search indicators for data queries. This paper focuses on a mix of data exploration and sentiment analysis.

Findings and Conclusion

The top five channels on Telegram are Kyaw Swar (kyawswar96999), Ko Thet (kothetjournalist), Han Nyein Oo (nyein9699999), Tat Kyat Gyi Phoe-Si (phoesi01233) and Ka Ka Han (KaKaHan777999). These five channels are public, and everyone can view all the posts without subscribing to the channel. These channels had the most subscribers throughout the analysis period; however, this may change depending on the time. Furthermore, Telegram blocked numerous troll army channels due to pornographic content reported by pro-democracy supporters. The interesting finding from monitoring those channels is that the beginning of the Troll armies channel is delivering pornographic content to have so many members. Later on, pro-military propaganda is being shared on the channel.

The category and relationship of the top five channels

The top channel name, Kyaw Swar handler kyawswar96999, has the most subscribers, and USDP News handler kyawswarks969 has a similar handler. This fact demonstrates who controls all of the troll armies' channels. This primary evidence points out that Troll armies are controlled or sponsored by the Myanmar military or a military proxy party, the USDP.

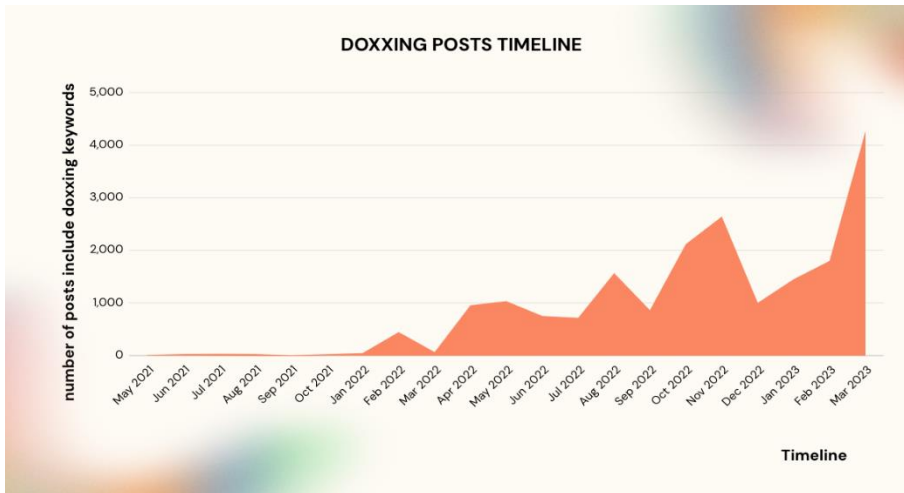


FIGURE-1: The doxxing timeline from May 2021 to March 2023

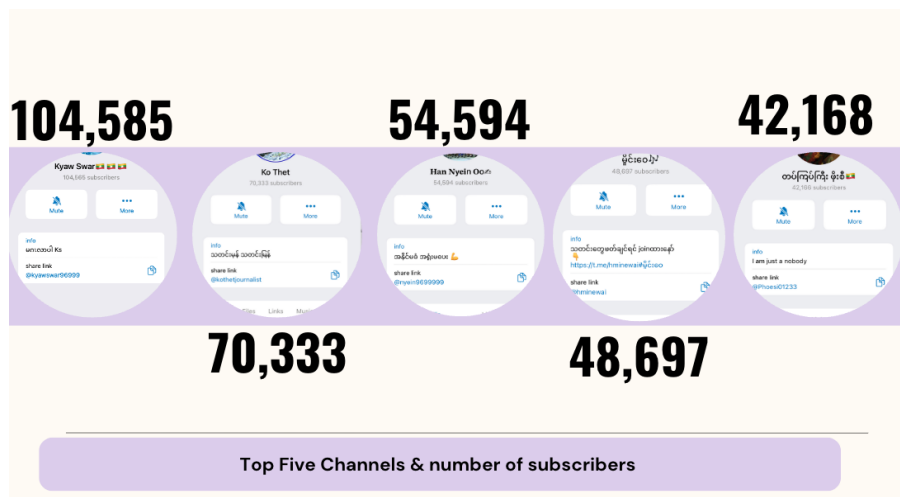


FIGURE-2: Top five Telegram Channels with handler and number of subscribers



FIGURE-3: The same name on the Telegram handler of USDP news and Kyaw Swar channels

Keywords search

Late-Sar or Shwe Ba or Ko Hla Shwe

The keywords were looked up in Burmese. "Late-Sar" means residential address, and "Shwe Ba" and "Ko Hla Shwe" refer to police or security forces arresting specific civilians who advocate NUG, participate in anti-junta online campaigns, or send money to pro-democracy movements, particularly those backing PDF. The data searches found that the total number of posts included "Late-Sar or Shwe Ba or Ko Hla Shwe" throughout these two years was 26,868. That means these keywords are being used **26,868** times about doxxing anti-junta supporters. Han Nyein Oo handler nyein9699999 is a key factor in exposing civilian data. According to the findings, troll armies have various fake ID Facebook profiles to monitor, including (1) Khit Thit news media page and (2) Pencilo page (NLD lobbyist). The next stage is for anyone with an open Facebook profile using their actual name to leave comments or reshare a specific post from those two sites so that civilian data may be disclosed in the Telegram channel to arrest or attack them. Doxxing posts often include a person's name on the register, passport or National Registration Card (NRC) number, home address, and social media images. That handler, Han Nyein Oo, gained notoriety in Myanmar for his doxxing posts that were taken action by police forces.

Amyo-BaThar or Ma-Ba-Tha or Myo-Chit

The Burmese keywords "Amyo-BaThar or Ma-Ba-Tha or Myo-Chit" can be defined as protecting race, religion, and nationality. Those keywords identify the anti-Muslim sentiment. According to data queries, troll armies were utilized 10,891 times to propagate postings about defending and protecting Buddhism in Myanmar. Many narratives are repeatedly highlighted and characterized by Aung San Suu Kyi and the NLD party as "insufficiently supportive of Buddhism." Narratives mentioned comparisons on how junta leader Min Aung Hlaing's speech after the coup, "Buddha devotees were disheartened in their faith in Buddhism during the previous five years."

Min Aung Hlaing simply implements these kinds of trends as strategies from the past. Previous rulers had a similar tactic of strengthening power through religion. Therefore, after the coup, imprisoned people who were ultranationalists and backers of the military, such as U Hla Swe, Michael Kyaw Myint, and U Wirathu were released. These particular people are the masterminds of troll armies.

Additionally, military leadership allies with high-profile monks to attract the Buddhist population's attention, and they are frequently featured in state-run media as part of a public relations campaign.

The 1982 Citizenship Law to identify the post related to Rohingya

The data was detected **4,710 times** using the keywords "1982". 1982 was the year when the junta leader Ne Win passed the citizenship law. Many anti-Muslim propagandas on Myanmar Telegram narratives highlighted that Muslims are outsiders. First, the anti-Muslim propaganda

mentions that Muslims are outsiders who do not belong in Myanmar. Second, Muslims are not part of Myanmar's national community and are not entitled to the same rights and protections as other citizens. These messages include the portrayal of Muslims as violent and aggressive, as well as rumors and conspiracy theories about their alleged attempts to take over the country.

Soldiers as Buddhist Heroes

Troll armies were used **472** times using the keyword Buddhist Heroes. The Burmese military is protecting the national sovereignty. Therefore, military soldiers are valuable to that country. With international support and plans to pursue the Rohingya genocide case in 2019, outspoken ultranationalist organizations in Myanmar assert that soon, Muslim colonization and predicted that Muslims will encircle Buddhism. Such crated discourse thus claims that only Tadmaw—the Burmese military—can defend the nation from external threats like Islamization. Additionally, the Burmese military institution became more robust because the coup leader, Min Aung Hlaing, got the blessing of Lord Buddha (or *Sasana Pyu Min* in Burmese).

Conclusion

The Regime never brings change in Myanmar. The observation of these troll armies channels describes that the military tried to reactivate the "969" movement based on all of the troll armies' Telegram handlers. It clearly illustrates that the coup promoted religious nationalism in Myanmar. From the theoretical perspective of the military junta strategy on anti-pluralism, it is important for a country whose people have been brainwashed for generations to protect their nation belongs to Buddhism and country from Muslim minorities, which created a threat to Burma, anti-Muslim moral panic ([Foxeus, 2022](#)). On the other hand, in that way, the Myanmar military strengthened Islamophobia to legitimize its power.

The troll armies demonstrate their ability to crush free speech by intimidating and silencing anybody who opposes or engages in democratic movements such as protests or online campaigns. Their behaviors lead to a society where civilians are reluctant to speak up and voice their opinions.

References

- 42 matters. (2023, January 5). *Myanmar App Market Statistics in 2023* | 42matters. <https://42matters.com/myanmar-app-market-statistics>
- Foxeus, N. (2022). Buddhist Nationalist Sermons in Myanmar: Anti- Muslim Moral Panic, Conspiracy Theories, and Socio-Cultural Legacies Niklas Foxeus. *Journal of Contemporary Asia*, 53. <https://doi.org/10.1080/00472336.2022.2032801>
- Insight Myanmar. (2022, August). *Telegram in Burmese language*. Insight Myanmar. <https://insightmyanmar.org/all-about-burma/2022/8/29/Telegram-in-burmese-language>
- Maizland, L. (2022, January 31). *Myanmar's Troubled History: Coups, Military Rule, and Ethnic Conflict*. Council on Foreign Relations. <https://www.cfr.org/backgrounder/myanmar-history-coup-military-rule-ethnic-conflict-rohingya>
- Soo, Z. (2019, June 14). *What is Telegram and why was the app so popular during Hong Kong protests?* South China Morning Post. <https://www.scmp.com/tech/apps-social/article/3014382/what-Telegram-and-why-did-messaging-app-prove-so-popular-during>

โอกาสและความท้าทายในการตรวจสอบการล่วงละเมิดทางเพศในหน่วยงานของรัฐ
Opportunities and Challenges in Sexual Harassment Complaint Investigation Procedure
in Government Agencies

ชรินทร์ เกตุปราษฎ์¹

สถาบันสิทธิมนุษยชนและสันติศึกษา มหาวิทยาลัยมหิดล

บทคัดย่อ

การศึกษาวิจัยเกี่ยวกับโอกาสและความท้าทายในการตรวจสอบการล่วงละเมิดทางเพศในหน่วยงานของรัฐ มีวัตถุประสงค์เพื่อ (1) ศึกษากลไกการตรวจสอบเรื่องร้องเรียนการล่วงละเมิดทางเพศในหน่วยงานของรัฐ ต่อการให้ความเป็นธรรมแก่ผู้ร้องเรียนและ (2) ศึกษาปัจจัยเกื้อหนุนที่ทำให้กระบวนการสร้างกลไกการตรวจสอบการล่วงละเมิดทางเพศในหน่วยงานของรัฐมีประสิทธิภาพในการอำนวยความสะดวก จากการศึกษา พบว่า กลไกการตรวจสอบเรื่องร้องเรียนการล่วงละเมิดทางเพศในหน่วยงานของรัฐ ได้กำหนด มาตรการป้องกันและแก้ไขปัญหาดังกล่าวไว้แล้ว แต่มีปัญหาในทางปฏิบัติและยังไม่บรรลุผลตาม เจตนารมณ์ เนื่องจากโครงสร้างสังคมที่ยึดถือแนวคิดปิตาธิปไตยเป็นสำคัญ การมีความสัมพันธ์เชิงอำนาจ ที่แตกต่างกันส่งผลต่อความไม่เสมอภาคทางเพศ และบรรทัดฐานทางสังคมที่กำหนดบทบาทหญิงชายไว้ ชัดเจน ทำให้ผู้เสียหายไม่กล้าร้องเรียน สำหรับปัจจัยเกื้อหนุนการตรวจสอบการล่วงละเมิดทางเพศ คือ ส่วนราชการต่าง ๆ ต้องมีนโยบายและแผนปฏิบัติการภายในหน่วยงานที่คำนึงถึงมิติเพศสภาพ และการส่งเสริมความเท่าเทียมทางเพศ ตลอดจนมาตรการที่ทำให้กระบวนการตรวจสอบการล่วงละเมิดทาง เพศและการสร้างความเป็นธรรมทางเพศมีประสิทธิภาพประสิทธิผลอย่างเป็นรูปธรรม

คำสำคัญ: การล่วงละเมิดทางเพศ ปิตาธิปไตย เพศสภาพ กลไกการตรวจสอบเรื่องร้องเรียน หน่วยงานรัฐ

Abstract

This research focuses on the Opportunities and Challenges in Sexual Harassment Complaint Investigation Procedure in Government Agencies and is conducted with the aims to study (1) the complaint investigation mechanisms towards sexual harassment found in government agencies with guaranteeing of dispute resettlement and fair trial entitled to the complainants and (2) the supporting factors for strengthening sexual harassment complaint investigation procedure in government agencies with effectiveness and justice. It finds that the sexual harassment complaint investigation procedure in

¹ นักศึกษาปริญญาโท หลักสูตรศิลปศาสตรมหาบัณฑิต สาขาสิทธิมนุษยชนและสันติศึกษา, มหาวิทยาลัยมหิดล

government agencies has regulated measures for preventing and protecting such problems. However, the practical problems and intent are still needed to be achieved. This is due to the social structure based on patriarchy, the difference of power relations causing inequality and inequality, and the social norms with clear roles of men and women. And they cause victims not to dare to file complaints. Anyhow, supporting factors towards the sexual harassment investigation are that various government agencies have policies and action plans considering the gender dimension and sensitivity with equality promotion together with measures empowering opportunities to develop a process for investigating sexual harassment and creating gender justice with efficiency, effectiveness and concrete actions.

Keywords: Sexual harassment, Patriarchy, Gender, Complaint Handling and Investigation Mechanism, Government agencies.

บทนำ

การล่วงละเมิดทางเพศในที่ทำงานเป็นเรื่องที่เกิดขึ้นอย่างแพร่หลายกับทั้งผู้หญิงและผู้ชาย โดยจากการสำรวจกลุ่มตัวอย่างพนักงานทั่วไปในสหราชอาณาจักร จำนวน 6,202 คน พบว่าผู้หญิง ร้อยละ 40 และผู้ชายร้อยละ 18 มีประสบการณ์ถูกล่วงละเมิดทางเพศ ซึ่งแม้จะเป็นเรื่องผิดกฎหมาย แต่หน่วยงานกำกับดูแลหรือนายจ้างกลับไม่จัดการเอาผิดกับผู้กระทำ (House of commons Women and Equalities Committee, 2018) นอกจากนี้ ผู้ถูกระทำส่วนใหญ่มักไม่แจ้งหรือเปิดเผยเหตุการณ์ดังกล่าว (TBS Report, 2020) โดยเฉพาะอย่างยิ่งกับกรณีที่เกิดขึ้นในประเทศแถบเอเชียที่ยึดถือค่านิยมอนุรักษนิยมและผู้ถูกระทำไม่กล้าร้องเรียนหรือเผชิญหน้าเพราะอับอายหรือกลัวการตอบโต้ล้างแค้น (AWARE, 2008)

ประเทศไทยประสบปัญหาการล่วงละเมิดทางเพศในที่ทำงานมาอย่างยาวนาน โดยในปี 2552 - 2556 มีสถิติคดีทางเพศ 4,000 คดีต่อปี (สำนักงานตำรวจแห่งชาติ, 2557) แม้ว่าทุกภาคส่วนจะรณรงค์เสริมสร้างความรู้ความเข้าใจในเรื่องสิทธิ เสรีภาพ และความเสมอภาค แต่ปัญหายังเกิดขึ้นอย่างต่อเนื่องโดยส่วนใหญ่เกิดจากการกระทำของผู้บังคับบัญชา หรือเพื่อนร่วมงาน ที่มีความสัมพันธ์เชิงอำนาจในลักษณะที่เหนือกว่าผู้ถูกระทำ รวมถึงอุดมการณ์ความคิดแบบ “ชายเป็นใหญ่” หรือ “ปิตาธิปไตย” (Patriarchy) ทั้งนี้ การจัดการปัญหาดังกล่าวมักเน้นกลยุทธ์เชิงป้องกัน (preventive approach) ด้วยการสร้างความรู้ ความเข้าใจและความตระหนักรู้เรื่องสิทธิมนุษยชน แต่ไม่ได้ให้ความสำคัญอย่างจริงจังเกี่ยวกับผลกระทบต่อสภาพร่างกาย จิตใจ และภาวะสิทธิมนุษยชนของบุคคลที่ถูกกระทำ การศึกษานี้มีเป้าหมายเพื่อนำเสนอผลการสำรวจปัญหาความท้าทายของการใช้กลไกเชิงป้องกันกับการล่วงละเมิดทางเพศในหน่วยงานของรัฐ และค้นหาปัจจัยที่จะช่วยทำให้กลไกการตรวจสอบดำเนินการไปอย่างมีประสิทธิภาพและประสิทธิผล

สำรวจวรรณกรรม

1. สถานการณ์การล่วงละเมิดทางเพศ

การล่วงละเมิดทางเพศ หมายถึง การกระทำหรือพฤติกรรมใด ๆ ที่ส่อไปในทางเพศ เป็นการบังคับใช้อำนาจที่ไม่พึงปรารถนาด้วยวาจา ข้อความ ท่าทาง เสียง รูปภาพ เอกสาร ข้อมูลทางอิเล็กทรอนิกส์ หรือสิ่งของลามกอนาจารเกี่ยวกับเพศ หรือกระทำอย่างอื่นในทำนองเดียวกันโดยประการที่ทำให้ผู้อื่นได้รับความเดือดร้อนรำคาญ ได้รับความอับอาย หรือรู้สึกถูกละเมิดและให้หมายรวมถึงการติดตามรังควาน หรือการกระทำการใด ๆ ที่ก่อให้เกิดบรรยากาศไม่ปลอดภัยทางเพศ โดยเฉพาะจากการสร้างเงื่อนไขซึ่งมีผลต่อการจ้างงาน การสรรหา หรือการแต่งตั้ง หรือผลกระทบอื่นใดต่อผู้เสียหาย (กระทรวงการพัฒนาสังคมและความมั่นคงของมนุษย์ สำนักกิจการสตรีและสถาบันครอบครัว, 2551 ; รัตน์ที วิโรจน์ฤทธิ์, 2547) ข้อมูลที่ผู้บังคับบัญชาหรือ นายจ้างถูกร้องเรียนต่อ กสม. กรณีการล่วงละเมิดทางเพศ ปี 2545 – 2560 มีดังนี้

| ที่ | ประเด็น | ผู้กระทำ/จำนวน (เรื่อง) | | | รวม |
|-----------------------|-----------------|-------------------------|-------|----------|-----|
| | | ภาครัฐ | เอกชน | ครอบครัว | |
| 1 | ข่มขืน | 19 | 17 | 4 | 40 |
| 2 | คุกคามทางเพศ | 10 | 11 | 3 | 24 |
| รวม | | 29 | 28 | 7 | 64 |
| รูปแบบการคุกคามทางเพศ | | | | | |
| 1 | ทางร่างกาย | 5 | 7 | 1 | 13 |
| 2 | ใช้กิริยาท่าทาง | 4 | 3 | 1 | 8 |
| 3 | ใช้วาจา | 1 | 1 | 1 | 3 |
| รวม | | 10 | 11 | 3 | 24 |

ที่มา: ระบบฐานข้อมูลสำนักงานคณะกรรมการสิทธิมนุษยชนแห่งชาติ

การล่วงละเมิดทางเพศไม่ได้จำกัดแค่การข่มขืน เห็นได้จากหน่วยงานของรัฐได้มีข้อห้ามกำกับพฤติกรรมเจ้าหน้าที่ของรัฐที่อยู่ภายใต้พระราชบัญญัติระเบียบข้าราชการพลเรือน พ.ศ. 2551 เพื่อไม่สร้างความเดือดร้อนรำคาญทางเพศโดยผู้ถูกกระทำไม่ยินยอม หรือไม่พึงประสงค์ คณะกรรมการ กพ. ได้กำหนดเกณฑ์แห่งการกระทำอันเป็นการล่วงละเมิดหรือคุกคามทางเพศ ไว้หลายลักษณะ ตั้งแต่กระทำต่อเนื้อตัวร่างกาย การใช้คำพูด การแสดงกิริยา สัญลักษณ์หรือพฤติกรรมอื่นใดที่ส่อไปในทางเพศ (กฎ ก.พ. ว่าด้วยการกระทำการอันเป็นการล่วงละเมิดหรือคุกคามทางเพศ พ.ศ. 2553, 2553)

การล่วงละเมิดทางเพศหรือการคุกคามทางเพศโดยเจ้าหน้าที่ของรัฐ จึงเป็นลักษณะการกระทำที่กว้างหลากหลาย และครอบคลุมพฤติกรรมตั้งแต่รู้สึกไม่พอใจไปถึงการข่มขืนซึ่งเป็นความรุนแรงทางเพศที่มีโทษทางวินัยและอาญา สำหรับองค์กรต่างประเทศ เช่น องค์กรสหประชาชาติ (UN) การล่วงละเมิดทางเพศเป็นเรื่องร้ายแรงและยอมความไม่ได้ หากพบการกระทำผิด มีโทษไล่ออก และจะเข้าทำงานในองค์กรภายใต้ UN ไม่ได้อีก (สมาคมนักข่าวนักหนังสือพิมพ์แห่งประเทศไทย, 2562)

2. ปิตาธิปไตยกับความไม่เป็นธรรมทางเพศ

แนวคิดแบบปิตาธิปไตย ให้คุณค่ากับความเป็นเพศชายผ่านภาษา กฎหมาย นโยบาย รวมทั้งขนบธรรมเนียมวัฒนธรรม การปฏิบัติตามความเชื่อศาสนา และวาทกรรมต่าง ๆ ที่ส่งผลต่อความเสมอภาคระหว่างหญิงและชาย ก่อให้เกิดความรุนแรงเชิงวัฒนธรรม เช่น ค่านิยมการให้คุณค่าหรือเกียรติกับระดับหรือตำแหน่งหน้าที่ คุณค่าความเป็นชายหญิง อัตลักษณ์ บทบาทและหน้าที่ทางเพศ และระดับการศึกษา ส่งผลให้เกิดการล่วงละเมิดทางเพศ หรือการเอาเปรียบทางเพศทั้งในพื้นที่ส่วนตัวและพื้นที่สาธารณะ อาทิ สตรีกับอำนาจตัดสินใจในราชการส่วนภูมิภาค สัดส่วนผู้ว่าราชการจังหวัดหญิง จาก 76 จังหวัด มีเพียง 3 คน (กระทรวงมหาดไทย, 2566) นอกจากนี้มีความทับซ้อนในปัญหาเศรษฐกิจและสังคม กรณีบิดามารดาบังคับให้บุตรสาวค้าประเวณี หรือสามีบังคับให้ภรรยาค้าประเวณี ก็เป็นผลจากการกำหนดและให้อำนาจเชิงสถาบันโดยแสดงออกผ่านพฤติกรรมของบุคคลที่อยู่ในระบบ โครงสร้าง หรือสถาบันทำให้ผู้หญิงกลายเป็นคนชายขอบ ไร้อำนาจ ขาดโอกาส ถูกปิดกั้น และถูกละเมิดสิทธิมนุษยชน

3. รูปแบบและปัจจัยการล่วงละเมิดทางเพศในที่ทำงาน

รูปแบบการล่วงละเมิดทางเพศในที่ทำงานมี 2 รูปแบบ คือ 1) สภาพแวดล้อมไม่เอื้อต่อการทำงาน 2) การแลกเปลี่ยนผลประโยชน์เพื่อความพึงพอใจทางเพศ (นาถฤดี เต็นดวง, 2550) ทั้งนี้ การจัดการภาวะล่วงละเมิดทางเพศที่ถูกใช้มากที่สุด คือ ปฏิเสธแบบรักษามารยาท ขอความช่วยเหลือจากเพื่อนหรือผู้เกี่ยวข้อง เพื่อให้หลุดพ้นจากสถานการณ์โดยไม่มีผลกระทบต่อการทำงาน หากใช้วิธีตอบโต้ทันทีจะส่งผลต่อการทำงานในภายหลัง (นันทวัฒน์ อาศิรพจนกุล, 2555)

การล่วงละเมิดทางเพศในที่ทำงานเกิดจากปัจจัยต่าง ๆ เช่น การทำงานกลางคืน อายุ ตำแหน่งงาน ความอาวุโส มนุษย์สัมพันธ์ (ชลธิชา อังคะนิงเดชา, 2546) และแรงจูงใจด้านรายได้ หรือการสร้างความมั่นคงให้กับครอบครัว เป็นเหตุให้ผู้หญิงบางกลุ่มอาชีพ เช่น พนักงานนวดแผนไทยในต่างประเทศ ยอมอยู่ในความเสี่ยงจากการถูกล่วงละเมิดทางเพศ (วิลาสินี อาริยะกิจโกศล, 2557) การล่วงละเมิดทางเพศเกิดขึ้นได้กับทุกเพศ ทั้งหญิง ชาย หรือกลุ่มหลากหลายทางเพศ เป็นปัญหาที่ผู้เสียหายถูกให้อำนาจกดขี่เพื่อลดทอนศักยภาพและศักดิ์ศรีความเป็นมนุษย์ รวมถึงการปฏิเสธหรือทำให้ขาดอิสระในการพัฒนาความเป็นมนุษย์ให้มีความสมบูรณ์ทั้งร่างกายและจิตใจ ซึ่ง Young (2004) ได้แบ่งการกดขี่เป็น 5 ประเภท ได้แก่ 1) การเอาเปรียบเอาเปรียบ เป็นการสร้างระบบที่ทำให้ความแตกต่างทางชนชั้นยังคงอยู่ 2) ถูกเป็นคนชายขอบโดยการผลักไสหรือจำกัดให้อยู่ในสังคมที่ต่ำกว่า จุดยืน 3) การไร้อำนาจ เป็นการขาดอำนาจหรือไม่มีส่วนร่วมในการตัดสินใจ หรือแม้ว่ามีส่วนร่วมแต่ไม่มีคามหมายอะไรเลย 4) จักรวรรดินิยมทางวัฒนธรรมซึ่งเป็นความเชื่อและยอมรับในสังคมที่สูงกว่า และ 5) ความรุนแรง เป็นรูปแบบของการกดขี่ที่ชัดเจนและมองเห็นได้ชัดที่สุด มีจุดมุ่งหมายสร้างความเสียหาย ทำให้อับอายหรือทำลายบุคคล

วิธีวิจัย

การศึกษานี้เป็นการวิจัยเชิงคุณภาพ โดยสำรวจ รวบรวม และประมวลเอกสารที่เกี่ยวข้องกับการล่วงละเมิดทางเพศ ได้แก่ 1) เอกสารวิชาการทั้งในและต่างประเทศ 2) การศึกษาเกี่ยวกับรูปแบบ สาเหตุ ปัจจัย และการป้องกัน 3) นโยบาย กฎระเบียบ และคำสั่งภายในหน่วยงานรัฐ 4) การสัมภาษณ์เชิงลึก

ข้อค้นพบ

1. ขอบเขต อำนาจ และกลไกกระบวนการตรวจสอบ

กลไกตรวจสอบการล่วงละเมิดทางเพศ แบ่งเป็น 2 กลไก 1) กลไกภายในหน่วยงาน คือ ระบบวินัยที่ตรวจสอบรายกรณีเมื่อมีผู้ร้องเรียน ตามพระราชบัญญัติระเบียบข้าราชการพลเรือน พ.ศ. 2551 และศูนย์ประสานงานด้านความเสมอภาคระหว่างหญิงชาย (Gender Focal Point: GFP) ที่ตั้งขึ้นตามมติคณะรัฐมนตรีเมื่อวันที่ 2 สิงหาคม 2544 ทำหน้าที่ติดตาม ประเมินผลและจัดทำรายงานการเสริมสร้างบทบาทหญิงชายของส่วนราชการ (สำนักเลขาธิการคณะรัฐมนตรี, 2544) และ 2) กลไกภายนอกหน่วยงาน คือ การติดตาม ตรวจสอบทั้งรายกรณีและเชิงระบบ อาทิ คณะกรรมการสิทธิมนุษยชนแห่งชาติ (กสม.) ตามพระราชบัญญัติประกอบรัฐธรรมนูญว่าด้วยคณะกรรมการสิทธิมนุษยชนแห่งชาติ พ.ศ. 2560 และคณะกรรมการวินิจฉัยการเลือกปฏิบัติโดยไม่เป็นธรรมระหว่างเพศ ตามพระราชบัญญัติความเท่าเทียมระหว่างเพศ พ.ศ. 2558

จากการศึกษาเฉพาะกลไกภายใน พบปัญหาความสัมพันธ์เชิงอำนาจทำให้ผู้เสียหายไม่กล้าร้องเรียน โดยเฉพาะผู้มีอำนาจเป็นผู้กระทำ ผู้เสียหายยังไม่กล้าร้องเรียน โดยมีข้อสังเกตจากสถิติปี 2565 ศูนย์ประสานการป้องกันและแก้ไขปัญหาการล่วงละเมิดหรือคุกคามทางเพศ (ศปคพ.) ได้รับรายงานจากหน่วยงานของรัฐว่ามีปัญหาการล่วงละเมิดทางเพศ 46 แห่ง จาก 2,335 แห่ง (กรมกิจการสตรีและสถาบันครอบครัว, 2565) ซึ่งน้อยกว่าความเป็นจริงที่ปรากฏตามสื่อต่าง ๆ สอดคล้องกับการศึกษาของ สุวรรณฯ พูลเพชร (2554) พบว่าปัญหาการล่วงละเมิดทางเพศสถิติอยู่ในระดับต่ำ แต่ปัญหาที่เกิดขึ้นจริงไม่เข้าสู่อุปสรรค การสอบสวน ความสัมพันธ์เชิงอำนาจที่อยู่ในหน่วยงานของรัฐอย่างต่อเนื่องมีหลายรูปแบบ เช่น สถานภาพที่สูงกว่าทั้งหน้าที่การงานและการศึกษา หรือฐานะทางเศรษฐกิจที่ดี เป็นอิทธิพลที่ทำให้ผู้ถูกกระทำไม่มีอำนาจต่อรองหรือยอมปล่อยผ่าน

ปัญหาการล่วงละเมิดทางเพศที่ไม่มีการร้องเรียนก็เป็นผลจากบรรทัดฐานทางสังคมที่กำหนดบทบาทหญิงชายไว้ชัดเจน โดยสังคมยอมรับที่ผู้ชายแสวงหาโอกาสและประสบการณ์ทางเพศได้ ซึ่งเป็นรูปแบบของการใช้อำนาจอย่างหนึ่ง แต่ผู้หญิงจะทำแบบผู้ชายไม่ได้เพราะถูกครอบไว้ด้วยสตรีต้องหวังตัวและเป็นแบบอย่างของภรรยาและแม่ที่ดี นอกจากนี้ ปัจจุบันมีความหลากหลายทางเพศ (Gender) มากขึ้น การแสดงออกไม่ตรงกับบรรทัดฐานทางสังคม (gender nonconforming) แม้ว่าจะมีพื้นที่แสดงตัวตนทางสังคมมากขึ้น แต่อัตลักษณ์ทับซ้อนทางเพศยังทำให้ถูกกดขี่ เลือกปฏิบัติ กลั่นแกล้ง หรือคุกคามในการทำงาน ในกรณีการล่วงละเมิดทางเพศไม่ว่าหญิง ชาย หรือเพศสภาพที่ถูกกระทำ ก็ยากที่จะทะลุกรอบบรรทัดฐานทางสังคมที่กำหนดไว้ได้ เพราะมีความอับอายและไม่กล้าเปิดเผยสิ่งที่ถูกกระทำ โดยเฉพาะกรณีผู้ชายซึ่งมีภาพเป็นผู้มีอำนาจในการกระทำทางเพศแต่กลับเป็นผู้ถูกกระทำเสียเอง หรือผู้ถูกกระทำเป็นกลุ่มหลากหลายทางเพศ การออกมาเรียกร้องก็เป็นเรื่องยากเพราะสังคมไทยยังมีทัศนคติว่าเป็นเพศที่แตกต่างหรือไม่ปกติ จึงอาจต้องยอมเจ็บและอยู่ในภาวะไร้อำนาจโดยปริยาย อย่างไรก็ตาม แม้ผู้มีอำนาจรับทราบปัญหา แต่มีทัศนคติว่าการล่วงละเมิดทางเพศเป็นเรื่องส่วนตัวหรือสามารถประนีประนอมกันได้ ทำให้ผู้เสียหายต้องแก้ไขปัญหาด้วยตนเอง จึงไม่ได้รับความเป็นธรรมทางเพศ ดังคำสัมภาษณ์ของผู้เสียหายที่ 1

“ได้แจ้งปัญหาให้ผู้บริหารทราบ แต่ไม่ห้ามหรือตักเตือนผู้กระทำ และกลับเห็นว่าเป็นเรื่องส่วนตัว ไม่กระทบต่อการปฏิบัติงาน จึงต้องแก้ปัญหาด้วยตนเอง”

น.ส. ข, สัมภาษณ์เมื่อวันที่ 26 พฤษภาคม 2564

การทบทวนและประเมินผลสัมฤทธิ์กระบวนการรับและตรวจสอบเรื่องร้องเรียนทำให้เห็นโอกาสและข้อท้าทาย ตั้งแต่ขั้นตอนรับเรื่อง ตรวจสอบ ลงโทษ และเยียวยา มีกลไกดำเนินการชัดเจน แต่ยังไม่สร้างความเชื่อมั่นและขาดความละเอียดอ่อนในการคุ้มครองผู้เสียหาย โดยเฉพาะขั้นตอนการตรวจสอบยังมีการตีตราและซ้ำเติมผู้เสียหาย ดังคำสัมภาษณ์ของผู้เสียหายที่ 2

“เหตุที่ร้องเรียนต่อ กสม. เพราะรู้สึกปลอดภัย หากร้องเรียนกับพนักงานสอบสวนจะถูกถามซ้ำ ๆ ในสิ่งที่ไม่ต้องการนี้ถึงอีก”

ผู้ร้องตามรายงานของ กสม.ที่ 70/2566 ลงวันที่ 29 พฤษภาคม 2566+

การเข้าถึงความยุติธรรมอย่างเสมอภาคเท่าเทียมตามกฎหมายเป็นสิทธิขั้นพื้นฐานที่ทุกคนต้องได้รับ ไม่ว่าบุคคลนั้นจะมีความแตกต่างทางเพศหรือสถานะทางสังคมแบบใดการจัดกลไกหรือช่องทางเข้าถึงความยุติธรรมที่คำนึงถึงมิติทางเพศจะช่วยขจัดอุปสรรคในการเข้าถึงความเป็นธรรมทางเพศโดยไม่มีทางเลือกปฏิบัติ

2. ระดับภาพสะท้อนกลไกการตรวจสอบ

กลไกการตรวจสอบเรื่องร้องเรียนในหน่วยงานของรัฐได้สะท้อนภาพความตระหนักต่อประเด็นเพศสภาพ (gender awareness) และบรรทัดฐานที่คาดหวังทางเพศ (gender norms) แบ่งได้เป็น 3 ระดับ ได้แก่

2.1 ระดับสังคม

กรณีร้องเรียนการล่วงละเมิดทางเพศเป็นเรื่องละเอียดอ่อนและไม่เป็นที่รับรู้โดยทั่วไป รวมทั้งระบบราชการยึดถือผู้อาวุโสหรือผู้มีตำแหน่งสูงกว่า หากบุคคลดังกล่าวถูกร้องเรียน เรื่องอาจไม่ถูกตรวจสอบและจะสร้างผลทางจิตใจให้กับผู้เสียหาย หรือหากถูกตรวจสอบแล้วกลไกภายในเก็บข้อมูลไว้เป็นความลับ จึงไม่สร้างการเรียนรู้ที่ส่งผลต่อการเปลี่ยนแปลงในสังคม ส่วนการดูแลแผลทางจิตใจ (Trauma Informed Care: TIC) ต้องควบคู่กับแนวทางสิทธิมนุษยชนตลอดกระบวนการ ตั้งแต่การช่วยเหลือ กระบวนการวินัย การตรวจสอบและพิจารณา จะช่วยฟื้นฟูและเยียวยาผู้เสียหาย

2.2 ระดับองค์กร

ด้วยแนวความคิดให้อำนาจตรวจสอบตามลำดับชั้น และถูกมองเป็นปัญหาส่วนตัว แม้ว่ามีแผนส่งเสริมและประชาสัมพันธ์ความเท่าเทียมระหว่างเพศ แต่องค์กรส่วนใหญ่ไม่ให้ความสำคัญกับมาตรการป้องกันและแก้ไข ปัญหาการล่วงละเมิดทางเพศในหน่วยงานของรัฐอย่างจริงจัง องค์กรประกอบของกลไกตรวจสอบที่อำนวยความสะดวกเป็นธรรมทางเพศ จึงต้องมีบุคคลภายนอก รวมถึงภาคประชาสังคมและผู้เชี่ยวชาญด้านความเสมอภาคทางเพศ เพื่อสร้างความเชื่อมั่นและเป็นหลักประกัน ความโปร่งใสและความเป็นธรรมทางเพศ

2.3 ระดับบุคคล

เจ้าหน้าที่ส่วนใหญ่ขาดความรู้ ความเข้าใจรูปแบบการล่วงละเมิดทางเพศ ทำให้ไม่ตระหนักถึงปัญหา บางกรณีผู้บริหารซึ่งมีอำนาจตัดสินใจไม่ให้ความสำคัญกับการตรวจสอบ ปัญหาจึงถูกมองข้ามไป หากถูกดำเนินการฐานละเลยหรือไม่กำกับติดตาม อันเป็นความผิดวินัยตามมาตรา 82 (2) แห่งพระราชบัญญัติ

ระเบียบข้าราชการพลเรือน พ.ศ. 2551 หรือหน่วยงานทำหน้าที่ฟ้องคดีอาญาแทนผู้เสียหาย เพื่อให้ผู้กระทำมีความเกรงกลัว เพราะมีความผิดทางอาญาส่งผลให้ออกจากราชการ จะอำนวยความสะดวกเป็นธรรมทางเพศยิ่งขึ้น

บทสรุป

กลไกปกป้องและคุ้มครองการล่วงละเมิดทางเพศในหน่วยงานของรัฐและปัจจัยที่จะช่วยทำให้กลไกการตรวจสอบมีประสิทธิภาพและประสิทธิผล โดยเฉพาะการสร้าง ความเข้าใจและการรับรู้เกี่ยวกับการล่วงละเมิดทางเพศ เป็นกลยุทธ์สำคัญในการป้องกันตนเอง และระวังการแสดงพฤติกรรมที่เข้าข่ายการล่วงละเมิดทางเพศ นอกจากนี้ หน่วยงานของรัฐมีกฎหมายบัญญัติกลไกตรวจสอบเรื่องร้องเรียนไว้ แต่ผู้บริหารยังมีความรับผิดชอบต่อปัญหาการล่วงละเมิดทางเพศค่อนข้างน้อย และไม่เข้มงวด ทั้งที่ปัญหาดังกล่าวต้องได้รับการดูแลอย่างจริงจังและไม่ยืดหยุ่น จากการศึกษาสรุปได้ 3 ประเด็น ดังนี้

1. บริบทและสภาพกลไก : ผู้บริหารในหน่วยงานของรัฐเป็นส่วนสำคัญในการแก้ไขปัญหาการล่วงละเมิดทางเพศ ทั้งในการกำหนดนโยบาย และการสร้างกลไกตรวจสอบ คุ้มครอง ฟันฟุ เยียวยาผู้เสียหาย

2. สภาพปัญหาอุปสรรคที่ผู้เสียหายเผชิญ : ความสัมพันธ์เชิงอำนาจเชื่อมโยงกับรูปแบบปัญหา และผลกระทบจากการล่วงละเมิดทางเพศในหน่วยงานของรัฐ

3. ปัจจัยเกื้อหนุนต่อความเป็นธรรมทางเพศ : การสร้างความตระหนักภูมิมาตรการป้องกันและแก้ไข ปัญหาการล่วงละเมิดทางเพศในการทำงาน การตอบสนองต่อปัญหาอย่างรวดเร็ว หลักเกณฑ์การรับเรื่องร้องเรียนที่เปิดกว้าง องค์ประกอบของผู้ตรวจสอบมีความหลากหลาย

กล่าวโดยสรุป ปัญหาการล่วงละเมิดทางเพศเป็นเรื่องที่เกี่ยวข้องกับอำนาจและมุมมองต่อเพศสภาพที่ถูกสังคมตีกรอบบรรทัดฐานความคาดหวังทางเพศ ส่งผลให้เกิดความรุนแรงทางเพศทั้งในเชิงโครงสร้างและเชิงวัฒนธรรม ทำให้ผู้เสียหายถูกกดขี่จากผู้มีอำนาจ รวมทั้งผู้บริหารหรือผู้ใช้อำนาจไม่เข้าใจขอบเขต อำนาจ และสิทธิเสรีภาพ ก็เป็นสาเหตุที่ทำให้มีการกระทำที่ละเมิดสิทธิมนุษยชน ดังนั้น การรณรงค์เรื่องความเท่าเทียมทางเพศยังเป็นประเด็นท้าทายด้วยกรอบบรรทัดฐานทางเพศของสังคมแบบปิตาธิปไตย ซึ่งต้องอาศัยการส่งเสริมความเท่าเทียมระหว่างเพศให้มากยิ่งขึ้น แม้วางยังไม่สามารถแก้ปัญหาได้ทั้งหมด แต่การถกเถียงปัญหานี้อย่างต่อเนื่อง อาจสร้างการเปลี่ยนแปลงทัศนคติของเจ้าหน้าที่ของรัฐได้ และเป็นการช่วยเหลือผู้เสียหายให้มีความกล้าที่จะปกป้องสิทธิและเห็นคุณค่าของตนเองมากยิ่งขึ้น

บรรณานุกรม

- กฎ ก.พ. ว่าด้วยการกระทำการอันเป็นการล่วงละเมิดหรือคุกคามทางเพศ พ.ศ. 2553. (2553, 28 กันยายน)ราชกิจจานุเบกษา, 127(ตอนที่ 59ก), 14-16.
- กรมกิจการสตรีและสถาบันครอบครัว. (2565). *หน่วยงานที่รายงานผลดำเนินการตามมาตรการในการป้องกันและแก้ไขปัญหาการล่วงละเมิดหรือคุกคามทางเพศในการทำงาน ประจำปี 2565* ข้อมูล ณ วันที่ 2 กุมภาพันธ์ 2566 ศูนย์ประสานการป้องกันและแก้ไขปัญหาการล่วงละเมิดหรือคุกคามทางเพศในการทำงาน (ศปคพ.). กรุงเทพฯ: กรมกิจการสตรีและสถาบันครอบครัว.
- กระทรวงการพัฒนาสังคมและความมั่นคงของมนุษย์ สำนักกิจการสตรีและสถาบันครอบครัว. (2551). *ระวัง ล่วงละเมิดทางเพศภัยร้ายใกล้ตัว*. กรุงเทพฯ: สำนักกิจการสตรีและสถาบันครอบครัว.
- กระทรวงมหาดไทย. (2566). *รายนามผู้บริหารระดับสูงกระทรวงมหาดไทย*. สืบค้นจาก <http://www.personnel.moi.go.th/>
- ชลธิชา อึ้งคณิงเดชา. (2546). *การตีความพฤติกรรมการล่วงละเมิดทางเพศในหมู่ผู้ปฏิบัติงานภายในองค์กรไทย* (วิทยานิพนธ์ปริญญาโทศึกษาศาสตร์มหาบัณฑิตไม่ได้ตีพิมพ์). จุฬาลงกรณ์มหาวิทยาลัย, กรุงเทพฯ.
- นนทวัฒน์ อาศิรพจนกุล. (2555). *การสื่อสารเพื่อจัดการภาวะคุกคามทางเพศในกิจกรรมส่งเสริมการตลาด* (วิทยานิพนธ์ปริญญาโทศึกษาศาสตร์มหาบัณฑิตไม่ได้ตีพิมพ์). จุฬาลงกรณ์มหาวิทยาลัย, กรุงเทพฯ.
- นาถฤดี เต็นดวง. (2550). *รายงานการประเมินสถานการณ์การล่วงเกิน คุกคาม หรือก่อความเดือดร้อนรำคาญทางเพศในที่ทำงาน หรือเนื่องจากงานในองค์กรภาครัฐ*. นครปฐม: คณะสังคมศาสตร์และมนุษยศาสตร์ มหาวิทยาลัยมหิดล.
- รัตน์นที วิโรจน์ฤทธิ์. (2547). *การล่วงละเมิดทางเพศที่มีผลต่อความเครียด และความพึงพอใจในงานของพนักงานหญิง* (วิทยานิพนธ์ปริญญาศิลปศาสตรมหาบัณฑิตไม่ได้ตีพิมพ์). สถาบันเทคโนโลยีพระจอมเกล้าพระนครเหนือ, กรุงเทพฯ.
- วิลาสณี อาริยะกิจไพศาล. (2557). *การย้ายถิ่นไปทำงานในรูปแบบไม่ปกติและการละเมิดทางเพศของแรงงานหญิงไทย: กรณีศึกษาธุรกิจนวดแผนไทยในกรุงโซล สาธารณรัฐเกาหลี* (วิทยานิพนธ์ปริญญาศิลปศาสตรมหาบัณฑิตไม่ได้ตีพิมพ์). จุฬาลงกรณ์มหาวิทยาลัย, กรุงเทพฯ.
- สมาคมนักข่าวหนังสือพิมพ์แห่งประเทศไทย. (2562). *นักวิชาการชี้! หยุดการคุกคามทางเพศ ต้องเริ่มจากการ “ไม่จ่ายยอม”* ทนายแนะข้อกฎหมายที่ควรรู้ ย้ำทุกเพศได้รับการคุ้มครอง ขณะที่องค์กรระดับนานาชาติเลย การสร้างวัฒนธรรมองค์กรที่เคารพสิทธิส่วนบุคคล และไม่นิ่งเฉยต่อการคุกคาม เป็นแนวทางนำไปสู่การป้องกันปัญหาได้. สืบค้นจาก <https://www.tja.or.th/view/media-union-of-thailand/13262>
- สำนักงานตำรวจแห่งชาติ. (2557). *สถิติคดีข่มขืน (พ.ศ. 2552-2556)*. สืบค้นจาก <http://pitc.police.go.th/>
- สำนักเลขาธิการคณะรัฐมนตรี. (2544). *หนังสือสำนักเลขาธิการคณะรัฐมนตรี ที่ นร 0205/ว 141 ลงวันที่ 2 สิงหาคม 2544 แจ้งมติคณะรัฐมนตรี เรื่อง พิจารณาเลือกรับของอนุสัญญาว่าด้วยการจัดการเลือกปฏิบัติ*

ต่อสตรีในทุกรูปแบบและการดำเนินการเพื่อส่งเสริมความเสมอภาคระหว่างหญิงชาย. กรุงเทพฯ: สำนัก
เลขาธิการคณะรัฐมนตรี.

สุวรรณรา พูลเพชร. (2554). *การล่วงละเมิดทางเพศในหน่วยงานราชการไทย: ปัญหาและนโยบายในการป้องกัน
และแก้ไข* (วิทยานิพนธ์ปริญญารัฐประศาสนศาสตรมหาบัณฑิตไม่ได้อัฒติพิมพ์). จุฬาลงกรณ์มหาวิทยาลัย,
กรุงเทพฯ.

AWARE. (2008). *Research study on workplace sexual harassment 2008*. Retrieved from
[https://aware.org.sg/wp-content/uploads/AWARE_Research_Study_on_Workplace
_Sexual_Harassment.pdf](https://aware.org.sg/wp-content/uploads/AWARE_Research_Study_on_Workplace_Sexual_Harassment.pdf)

House of Commons Women and Equalities Committee. (2018). *Sexual harassment in the
workplace: Fifth Report of Session 2017–19, Report, together with formal minutes
relating to the report*. Retrieved from [https://publications.parliament.uk/pa
/cm201719/cmselect/cmwomeq/725/725.pdf](https://publications.parliament.uk/pa/cm201719/cmselect/cmwomeq/725/725.pdf)

TBS Report. (2020). *Countries with the highest rape incidents*. Retrieved from
<https://tbsnews.net/world/countries-highest-rape-incidents-144499>

Young, I. (2004). Five faces of oppression. In L. Heldke, & P. O'Connor (Eds.), *Oppression,
Privilege, & Resistance*. Boston: McGraw Hill.

ความขัดแย้งกรณีการห้ามคลุมฮิญาบในโรงเรียนจากมุมมองของฝ่ายที่สาม

THE CONFLICT ON HIJAB WEARING AT SCHOOL FROM A PERSPECTIVE OF THE THIRD-PARTY

สาวิรัตน์ คาลเคน¹

สถาบันสิทธิมนุษยชนและสันติศึกษา มหาวิทยาลัยมหิดล

บทคัดย่อ

การวิจัยฉบับนี้ศึกษาสถานการณ์ความขัดแย้งกรณีการห้ามคลุมฮิญาบในโรงเรียน เป็นงานวิจัยเชิงคุณภาพโดยเก็บข้อมูลจากเอกสาร งานวิจัย และการสัมภาษณ์เชิงลึกกับหน่วยงานที่เกี่ยวข้องกับความขัดแย้งในฐานะฝ่ายที่สามจากสองหน่วยงาน คือสำนักงานคณะกรรมการสิทธิมนุษยชนแห่งชาติ และมูลนิธิมุสลิมเพื่อสันติ เพื่อสำรวจมุมมองและบทบาทของของฝ่ายที่สามต่อพลวัตความขัดแย้ง โดยใช้แนวคิดการแปลงเปลี่ยนความขัดแย้ง พลวัตความขัดแย้ง และการแทรกแซงความขัดแย้งโดยฝ่ายที่สาม เป็นกรอบวิเคราะห์ ผลการศึกษาพบว่าฝ่ายที่สามมีบทบาทเข้าไปแทรกแซงในสองลักษณะได้แก่ ลักษณะแรก ฝ่ายที่สามมีบทบาทเพื่อรับฟังและเปิดพื้นที่การสื่อสาร และลักษณะที่สองคือฝ่ายที่สามมีบทบาทในการปรับสมดุลอำนาจเพื่อสนับสนุนฝ่ายที่มีอำนาจน้อย คุณูปการสำคัญของการศึกษานี้สะท้อนให้เห็นถึงความยุ่งยากในการจัดการปัญหาส่วนหนึ่ง มีปัจจัยมาจากความไม่สมดุลทางอำนาจระหว่างคู่กรณี รวมถึงทัศนคติต่อประเด็นสิทธิมนุษยชนมีความสำคัญต่อการนำไปสู่การปฏิบัติ แม้จะมีการออกกฎระเบียบเพื่อรองรับสิทธิต่าง ๆ ตามรัฐธรรมนูญ

นอกจากนี้การสร้างความรู้ในเรื่องสิทธิมนุษยชนให้มีความแพร่หลายเพื่อให้สังคมมีความสามารถในการยอมรับความหลากหลายและนิยมในพหุวัฒนธรรมเพื่อการอยู่ร่วมกันอย่างสันติจะมีส่วนทำให้กฎระเบียบและกฎหมายที่เกี่ยวข้องถูกนำไปใช้อย่างมีประสิทธิภาพยิ่งขึ้น เงื่อนไขที่กำหนดทิศทางของความขัดแย้ง คือเรื่องทัศนคติของคู่กรณีหลักที่มีอำนาจในสถานการณ์ดังกล่าว ข้อเสนอของงานวิจัยนี้เพื่อยกระดับบทบาทของฝ่ายที่สาม ในการเข้าไปแทรกแซงความขัดแย้ง ไม่ว่าจะในลักษณะใดที่ส่งผลต่อความขัดแย้งควรมีความเข้าใจสถานการณ์ความขัดแย้งที่เชื่อมโยงกับบริบททางสังคมและวัฒนธรรม รวมทั้งเข้าใจตัวแสดงที่อยู่ในความขัดแย้งและที่สำคัญควรมีทักษะในการแทรกแซงเพื่อที่จะหาทางออกอย่างสร้างสรรค์

คำสำคัญ : ฝ่ายที่สาม การแทรกแซงความขัดแย้ง การห้ามคลุมฮิญาบในโรงเรียน

¹ นักศึกษาปริญญาโท หลักสูตรศิลปศาสตรมหาบัณฑิต สาขาสิทธิมนุษยชนและสันติศึกษา, มหาวิทยาลัยมหิดล

Abstract

This research studies the conflict situation in the case of banning the hijab in schools. It gathers data from documents, related research, and in-depth interviews with organizations involved in the conflict. Two key organizations are involved: the National Human Rights Commission and the Muslim Peace Foundation. To explore the perspectives and roles of the third party in mediating conflicts. It uses the concepts of conflict transformation, conflict dynamics, and third-party intervention as analytical frameworks. The study found that the third party plays two distinct roles: first, the third party has a role in listening and creating spaces for communication, and second, the third party has a role in balancing power to support the party with less power. The significance of this study reflects the complexity of managing a partly created problem with factors stemming from an imbalance of power between the two parties, as well as attitudes toward human rights issues that are crucial for implementation. Even though there are regulations to support various rights according to the constitution, building awareness of human rights is essential for society to be able to accept diversity and promote a culture of peaceful coexistence. This will contribute to making relevant regulations and laws more effective.

The conditions determining the direction of the conflict are the attitudes of the main parties with power in the given situation. The research proposal aims to elevate the role of the third party in intervening in conflicts, regardless of their nature. It is essential to understand the conflict situation linked to social and cultural contexts, as well as understand the parties involved in the conflict. Most importantly, skills in intervention to find constructive solutions are needed.

Keywords: third party, conflict intervention, the prohibition of wearing the hijab in schools

ที่มาและความสำคัญของปัญหา

ปัจจุบันภาพที่เห็นกันอย่างคุ้นตา นักเรียนนักศึกษาหญิงมุสลิมที่คลุมฮิญาบ มีให้อยู่ทั่วไปตามสถานศึกษาต่างๆ ทั่วประเทศ และการแต่งกายตามวิถีศาสนาที่ยังเป็นที่ยอมรับตามระเบียบกระทรวงศึกษาธิการว่าด้วยเครื่องแบบนักเรียน พ.ศ. 2551 ข้อ 12 (3) ระบุถึงลักษณะการใช้ผ้าคลุมฮิญาบของนักเรียนที่นับถือศาสนาอิสลามไว้ในปัจจุบันชนชั้นกลางมุสลิมมีมากขึ้น การเปลี่ยนแปลงในด้านการปฏิบัติตามหลักการในศาสนาของคนชั้นกลางผ่านตัวกลางคือสื่อออนไลน์ก็มีมากขึ้นเช่นกัน ดังนั้นประเด็นเรื่องการคลุมฮิญาบจึงกลายเป็นประเด็นที่มุสลิมในประเทศไทยเอาใจใส่มากขึ้น (รอมฎอน, 2555) แต่เมื่อย้อนกลับไปกว่าสองทศวรรษก่อน (ปี พ.ศ. 2530-2533)

กลับไม่ไปเช่นปัจจุบัน เรื่องดังกล่าวกลับเป็นเรื่องที่ถูกกีดกัน หรือ แม้กระทั่งถูกขู่ไม่ให้เข้าเรียน หากยังคงยื่นกราน จะสวมใส่ฮิญาบ หากคิดจะใส่ก็อาจต้องแลกกับการไม่ได้เข้าเรียน เข้าสอบ หรือ ถึงขั้นพ้นสภาพการเป็นนักศึกษา (รวมภูอน, 2555)

หากเรียบเรียงสถานการณ์ในกรณีการเรียกร้องคลุมฮิญาบในสถานศึกษาครั้งแรก ในเวลาเกือบ 35 ปีนั้น นับเป็นผลสำเร็จจริง แต่ไม่ได้หมายความว่าสถานการณ์ต่าง ๆ เหล่านี้จะไม่เกิดขึ้นอีก ทว่ามีบริบท และ สถานการณ์ทางการเมืองของพื้นที่และในช่วงเวลาที่แตกต่างกัน การเรียกร้องสิทธิของทั้งสามสถานการณ์นั้น มี ประเด็นที่คล้ายกัน ในเรื่องของการเรียกร้องสิทธิในการคลุมฮิญาบ ที่นักเรียนมุสลิมเป็นคนกลุ่มน้อย ครูส่วนใหญ่ ไม่ใช่มุสลิม และพื้นที่อยู่ในเขตธรณีสงฆ์ (ในกรณีโรงเรียนอนุบาลจังหวัดปัตตานี และโรงเรียนมัธยมวัดหนองจอก) และเหมือนกับการประท้วงใหญ่ฮิญาบที่ยะลาในแง่ความต้องการทางศาสนา ความต้องการในการรักษาอัตลักษณ์ และเรียกร้องสิทธิทางศาสนาของตนเอง

| พ.ศ. | สถานการณ์ |
|------|--|
| 2530 | กลุ่มนักศึกษาสตรีของวิทยาลัยครูยะลาได้ทำหนังสือถึงประธานชมรมส่งเสริมจริยธรรมอิสลามวิทยาลัยครูยะลา และรองอธิการบดีฝ่ายกิจกรรมนักศึกษาเพื่อแจ้งให้ทราบว่าต้องการสวมฮิญาบ เนื่องจากมีกรณีไม่อนุญาตให้นักศึกษาที่สวมฮิญาบเข้าสอบ |
| 2553 | นักเรียนและผู้ปกครองได้เรียกร้องให้นักเรียนคลุมฮิญาบในโรงเรียนมัธยมวัดหนองจอก |
| 2561 | โรงเรียนอนุบาลปัตตานีไม่อนุญาตให้นักเรียนคลุมฮิญาบได้เกิดขึ้นเช่นเดียวกัน |

ซึ่งในแต่ละสถานการณ์นั้นได้มีตัวแทน หรือ ที่เรียกว่าฝ่ายที่สามเข้ามาไกล่เกลี่ยเพื่อไม่ให้ปัญหานั้นบานปลายไปกว่าที่เป็นอยู่และสิ่งที่เกิดขึ้นกับกรณีโรงเรียนอนุบาลปัตตานี ได้สะท้อนให้เห็นว่า ประสบการณ์ของ กระบวนการสานเสวนาระหว่างคนต่างศาสนาในอดีตนับร้อยเวทีตลอดสิบกว่าปีที่ผ่านมาั้นไม่ประสบความสำเร็จเลย หรือได้รับผลสำเร็จที่ส่งผลในระยะสั้นเมื่อสานเสวนาเสร็จเท่านั้น (โชคชัย, 2561)

บทบาทของฝ่ายที่สามกรณีความขัดแย้งการคลุมฮิญาบในสถานศึกษา

ในบริบทของความขัดแย้ง ฝ่ายที่สามหมายถึงบุคคลหรือหน่วยงานที่ไม่ได้มีส่วนเกี่ยวข้อง โดยตรงในความขัดแย้งหรือสถานการณ์ที่เกิดขึ้น (ไม่ใช่คู่กรณี) แต่มีความสัมพันธ์หรือเข้าไปมีส่วนร่วมในกรณีนั้น ๆ ซึ่ง บางครั้งอาจมีบทบาทที่ไม่เป็นกลางและอาจมีผลกระทบในการแก้ปัญหา ฝ่ายที่สามอาจถูกเชิงกลยุทธ์โดยอยู่ระหว่างฝ่ายที่ขัดแย้งกันหรือมีหน้าที่ช่วยให้ความขัดแย้งหรือสถานการณ์นั้นมีความคลี่คลาย และไม่มีส่วนได้ส่วนเสียจากความขัดแย้งนั้น ๆ

ท่ามกลางสถานการณ์ความขัดแย้ง การมีบุคคลที่สาม (Third Party) มาทำหน้าที่ในการช่วยไกล่เกลี่ยเป็นวิธีหนึ่งที่ช่วยแก้ปัญหาความขัดแย้งในลักษณะที่คู่กรณีไม่สามารถจัดการแก้ปัญหาหรือหาข้อยุติจากข้อขัดแย้งได้ บุคคลที่สามอาจเป็น เพื่อน บุคคลที่คู่กรณีทุกฝ่ายให้ความเคารพไว้นับถือโดยบุคคลที่สามเข้ามาช่วยไกล่เกลี่ย

ต้องได้รับการยินยอมพร้อมใจจากคู่กรณีทั้งสองฝ่าย บุคคลที่สามจึงจะทำให้เกิดประสิทธิผลในการแก้ไขความขัดแย้ง ในทางตรงกันข้ามบุคคลที่สามจะกลายเป็นส่วนหนึ่งในความขัดแย้งเพิ่มขึ้น หากฝ่ายใดฝ่ายหนึ่งของคู่กรณีไม่ยอมรับให้มีบุคคลที่สามเข้ามาเกี่ยวข้อง

นอกจากคู่กรณีหลักกรณีความขัดแย้งการคลุมฮญาบในสถานศึกษา (โรงเรียนกับนักเรียน) ยังมีหน่วยงานเอกชน คือ มูลนิธิมุสลิมเพื่อสันติ และหน่วยงานอิสระ คือ สำนักงานคณะกรรมการสิทธิมนุษยชนแห่งชาติ หรือ กสม. ที่เข้ามาแทรกแซงความขัดแย้ง โดยมูลนิธิมุสลิมเพื่อสันตินั้นมีวัตถุประสงค์ในการให้ความช่วยเหลือมุสลิมที่ถูกไล่ออกจากโรงเรียน หรือถูกอธรรม ในสิทธิที่มีรองรับไว้ในกฎหมายของประเทศไทย รวมถึงเรื่องการขอความช่วยเหลือในเรื่องของการถูกไล่ออกจากโรงเรียนในการปฏิบัติศาสนกิจในสถานที่ต่าง ๆ โดยเฉพาะการคลุมฮญาบในสถานศึกษา เช่นเดียวกันกับที่สำนักงานคณะกรรมการสิทธิมนุษยชนแห่งชาติ โดยสำนักงานคณะกรรมการสิทธิมนุษยชนแห่งชาติ ได้สรุปผลเสนอรายงานเสนอแนะนโยบายหรือข้อเสนอในการปรับปรุงกฎหมายเรื่อง เสรีภาพในการถือศาสนา เสรีภาพในการปฏิบัติตามศาสนธรรม ศาสนบัญญัติ และการเลือกปฏิบัติที่ไม่เป็นธรรม กรณีการห้ามสตรีที่นับถือศาสนาอิสลามสวมฮญาบห้ามนักเรียนหญิงมุสลิมแต่งกายตามหลักศาสนาอิสลาม (ฮญาบ)

เหตุที่ทำให้สององค์กรนี้เข้ามามีบทบาทฝ่ายที่สาม เนื่องจากกรณี “โรงเรียนมัธยมวัดหนองจอก” และ “โรงเรียนอนุบาลปัตตานี” มีนักเรียนและผู้ปกครองร้องเรียนไปยัง “มูลนิธิมุสลิมเพื่อสันติ” ว่าทางโรงเรียนไม่อนุญาตให้เด็กนักเรียนคลุมฮญาบไปเรียนหนังสือ ทางมูลนิธิฯ จึงเรียกประชุมคณะกรรมการเพื่อแก้ไขปัญหาเรื่องนี้ โดยทางกลุ่มมุสลิมเพื่อสันติได้ยื่นหนังสือกับทางโรงเรียนว่าขอให้นักเรียนหญิงแต่งกายตามศาสนาอิสลามอีกครั้ง แต่ทางโรงเรียนได้มีหนังสือตอบกลับมว่า ไม่สามารถอนุญาตได้ เนื่องจากโรงเรียนอยู่ในบริเวณวัด จึงต้องทำตามระเบียบโรงเรียน วัฒนธรรมโรงเรียน และความเหมาะสม ทางมูลนิธิมุสลิมเพื่อสันติจึงแจ้งเรื่องไปยังสำนักงานคณะกรรมการสิทธิมนุษยชนแห่งชาติ เพื่อขอความช่วยเหลืออีกทางหนึ่งในเรื่องสิทธิการแต่งกายตามหลักความเชื่อทางศาสนา แต่ท้ายที่สุดเรื่องจบลงที่มติมหาเถรสมาคม “ให้โรงเรียนวัดทั่วประเทศ ที่อยู่ภายในพื้นที่ของธรณีสงฆ์ต้องยึดวิถีพุทธทำตามจารีตประเพณีไทย โดยการห้ามแสดงสัญลักษณ์ทางศาสนาที่ชัดเจน หากครู หรือนักเรียนไม่ปฏิบัติตามถือว่าเป็นความผิด”

จากสถานการณ์ความขัดแย้งเรื่องการฮญาบที่ได้กล่าวมาข้างต้น ทำให้ผู้วิจัยได้เห็นเรื่องราวความขัดแย้งเกี่ยวกับการขออนุญาตคลุมฮญาบในแต่ละช่วงชั้นของสถาบันของสถานศึกษา ตั้งแต่ระดับมหาวิทยาลัย มัธยม และจนกระทั่งระดับอนุบาล ระยะเวลาที่ต่างกันกว่า 1 ทศวรรษ ซึ่งปัญหาที่เกิดขึ้นนั้น คือปัญหาเดิมที่เกิดขึ้นแล้วซ้ำเล่า ซึ่งจากการหาข้อมูลการแก้ปัญหาที่เกิดขึ้นดูเหมือนว่า จะเป็นการแก้ปัญหาในระยะยาวได้ แต่กลับไม่เป็นอย่างนั้น ผู้วิจัยเห็นว่า การได้เรียนรู้จากผู้เคยมีส่วนเกี่ยวข้องกับการแก้ปัญหาความขัดแย้งโดยตรงเพื่อถอดบทเรียนการแก้ปัญหาความขัดแย้งที่จบลงไปในนั้น มีคุณค่าและมีความสำคัญ ซึ่งจะช่วยให้เราเห็นปัจจัยและตัวแปรต่าง ๆ ที่ทำให้ความขัดแย้งขยายตัวและคลี่คลายลง โดยเฉพาะผู้ทำหน้าที่เป็นฝ่ายที่สามในการเข้าไปช่วยทำให้ความขัดแย้งเกิดความสมมาตรในเชิงอำนาจ ในกรณีนี้คือ มูลนิธิมุสลิมเพื่อสันติ และ สำนักงานคณะกรรมการสิทธิมนุษยชนแห่งชาติ (กสม.) โดยงานวิจัยนี้จะศึกษาบทบาทของฝ่ายที่สามจากสองหน่วยงานนี้ที่เข้าแทรกแซงความขัดแย้งในกรณีการคลุมฮญาบในสถานศึกษาที่ตั้งอยู่ในเขตพื้นที่ธรณีสงฆ์

คำถามวิจัย

1. การกระทำของฝ่ายที่สามที่เข้าไปเกี่ยวข้องในกรณีความขัดแย้งเรื่องการสวมฮิญาบของนักเรียนในโรงเรียนส่งผลต่อพลวัตและการคลี่คลายความขัดแย้งอย่างไร
2. ฝ่ายที่สามมีบทเรียนและข้อเสนออย่างไรต่อการแก้ปัญหาความขัดแย้งในลักษณะนี้หากเกิดขึ้นอีกในอนาคต

วัตถุประสงค์

1. เพื่อศึกษาบทบาท มุมมอง และ ปัจจัยที่ส่งผลต่อการแทรกแซงของฝ่ายที่สาม จากความขัดแย้งกรณีการห้ามคลุมฮิญาบในโรงเรียน
2. เพื่อจัดทำข้อเสนอแนะที่ได้จากการศึกษางานชิ้นนี้ ให้เป็นประโยชน์ต่อการจัดการความขัดแย้งโดยผ่านมุมมองของฝ่ายที่สาม ในกรณีคล้ายคลึงกันนี้อาจเกิดขึ้นในอนาคต

ทบทวนวรรณกรรม

การเรียกร้องเพื่อคลุมฮิญาบของสตรีมุสลิมในสังคมไทย

สถานภาพฮิญาบในสังคมไทยในช่วงเวลาเกือบสามสิบปีที่ผ่านมา ถูกวัฒนธรรมกระแสหลักรวมถึงนโยบายจากส่วนกลางของภาครัฐเองได้มีความพยายามบูรณาการเพื่อความเป็นหนึ่งของรัฐ โดยใช้กรอบแนวคิด “ความเป็นไทย” เข้ามาเปลี่ยนแปลงโครงสร้างแบบเดิมของวัฒนธรรมอิสลาม ซึ่งปัญหาการคลุมฮิญาบเป็นตัวอย่างหนึ่งที่สะท้อนถึงปัญหาความขัดแย้งต่าง ๆ ในปี พ.ศ.2530 กรณีการเคลื่อนไหวฮิญาบที่เกิดขึ้นที่ยะลา เนื่องจากวิทยาลัยครูไม่อนุญาตให้นักศึกษาคลุมฮิญาบ แม้จะมีการแก้ปัญหาทางการเมืองแล้วก็ตาม ครั้งหนึ่งจึงได้อาศัยการเมืองโดยได้แก้ไขเพิ่มเติมระเบียบว่าด้วยเครื่องแต่งกายของนักเรียน ในสมัยผู้ช่วยรัฐมนตรีกระทรวงศึกษาธิการ นายอารีเพ็ญ อุตรสินธุ์ ผลักดันให้การคลุมฮิญาบเป็นส่วนหนึ่งของนักเรียนหญิงมุสลิม (พาริตา, 2558 น.153)

โรงเรียนมัธยมแห่งหนึ่งที่อยู่ในเขตธรรมสังข์ พลุดินัยหนึ่งในอุดมการณ์รัฐไทยจะเป็นพุทธศาสนา กษัตริย์ไทยปกครองด้วยคตินิยมราชา รวมทั้งมีพิธีกรรมความเชื่อต่าง ๆ ในพุทธศาสนาเป็นแหล่งของความชอบธรรม เหตุผลทางวัฒนธรรมและการเมืองที่ทำให้โรงเรียนมัธยมวัดหนองจอกห้ามไม่ให้เด็กนักเรียนสวมฮิญาบจึงไม่ใช่เพราะฮิญาบละเมิดหลักการความเป็นทางโลก หากเป็นเพราะว่าฮิญาบละเมิดหรือทำลายการจัดระเบียบชีวิตทางศาสนาในพื้นที่สาธารณะที่รัฐไทยอาศัยสถาบันพุทธศาสนาเป็นกลไกในการควบคุม ดังจะเห็นได้จากมติมหาเถรสมาคมในกรณีนี้ที่ (อนุสรณ์ อุณโณ, 2554)

แนวคิดเรื่องการแทรกแซงความขัดแย้งและบทบาทของฝ่ายที่สาม

ความขัดแย้งนั้นมีความสัมพันธ์กับสิ่งต่างๆ อันเป็นปัจจัยให้เกิดการดำรงอยู่ การเติบโต และการลดลงของความขัดแย้ง และยังกล่าวถึงบุคคลหรือองค์กรที่เข้ามาจัดการหรือเกี่ยวข้องกับปรากฏการณ์ความขัดแย้งนั้นๆ แนวคิดดังกล่าวนี้ เรียกว่า Third-Party Intervention หรือ การแทรกแซงจากบุคคลที่สาม (Joseph P. Fogler

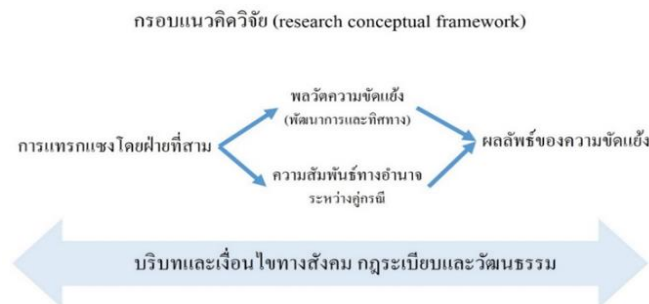
และ คณะ, 2012) เป็นแนวคิดที่เกิดขึ้นเพื่อกำหนดบทบาทของฝ่ายที่สาม (Third-party) ที่จำเป็นต้องเข้าไปเกี่ยวข้องกับสถานการณ์ความขัดแย้งโดยมีอาจหลีกเลี่ยงได้ ในหนังสือ Working through conflict ได้ให้ความหมายของฝ่ายที่สาม หรือ บุคคลที่สามว่าหมายถึง บุคคลหรือกลุ่มคนที่รับบทบาทช่วยเหลือให้คู่ขัดแย้งและผู้ที่เกี่ยวข้องกับความขัดแย้ง จัดการและแก้ไขปัญหาและความขัดแย้งนั้น (Joseph P. Fogler และ คณะ, 2012) ฝ่ายที่สามอาจมิใช่ผู้แก้ปัญหา หรือ ผู้จัดการปัญหาโดยตรง แต่เป็นผู้สร้างบริบทแวดล้อมให้ผู้ที่เกี่ยวข้องกับการจัดการความขัดแย้งเกิดความพร้อมในการแก้ปัญหาาร่วมกัน มีหลายครั้งที่ฝ่ายที่สามจะไม่สามารถระบุบทบาทของตนได้ล่วงหน้า แต่อาจต้องอาศัยไหวพริบ และทักษะในการวิเคราะห์ เพื่อปรับเปลี่ยนตนไปตามสถานการณ์

กรอบแนวคิดวิจัย

การศึกษานี้เป็นการศึกษาเพื่อทำความเข้าใจปรากฏการณ์การแทรกแซงความขัดแย้ง กรณีการห้ามคลุมฮิญาบในโรงเรียน จากมุมมองของฝ่ายที่สาม โดยเลือกใช้แนวคิดการแปลงเปลี่ยนความขัดแย้งตามนิยามและแนวทางของ John Paul Lederach เนื่องจากเป็นแนวทางที่ให้ความสำคัญกับการพิจารณาบริบทของความขัดแย้ง ซึ่งในงานวิจัยนี้ศึกษาสถานการณ์ความขัดแย้งในบริบทสังคมที่มุสลิมเป็นคนกลุ่มน้อย บุคคลากรในโรงเรียนส่วนใหญ่ไม่ใช่มุสลิม และอยู่ในเขตพื้นที่ธรรณิสงฆ์

งานวิจัยนี้มีสมมติฐานว่าการกระทำหรือการแทรกแซงใด ๆ ของฝ่ายที่สามล้วนส่งผลต่อความขัดแย้งทั้งในทางบวกและทางลบ การทำความเข้าใจการแทรกแซงความขัดแย้งของฝ่ายที่สามทำให้สามารถมองเห็นเงื่อนไขของการแปลงเปลี่ยนและพลวัตของความขัดแย้ง การวิเคราะห์ความขัดแย้งมุมมองของฝ่ายที่สามนั้นเพื่อสำรวจพลวัตความขัดแย้งและความสัมพันธ์ทางอำนาจ ฝ่ายที่สามที่เข้าไปแทรกแซงความขัดแย้งมิใช่คู่กรณีหรือผู้มีหน้าที่โดยตรงในการจัดการแก้ไขปัญหา แต่เป็นผู้ที่คู่กรณีเรียกร้องให้เข้าไปสู่ความขัดแย้งเพื่อปรับสมดุลทางอำนาจระหว่างคู่กรณีที่มีความไม่สมมาตรและพยายามจะทำความเข้าใจปัญหาที่เกิดขึ้นและสร้างบริบทแวดล้อมให้ผู้ที่เกี่ยวข้องกับการจัดการความขัดแย้งเกิดความพร้อมในการแก้ปัญหาาร่วมกัน

ในงานศึกษาชิ้นนี้ ผู้วิจัยเลือกที่จะทำการเก็บข้อมูลจากเจ้าหน้าที่ของมูลนิธิมุสลิมเพื่อสันติ และ เจ้าหน้าที่สำนักงานคณะกรรมการสิทธิมนุษยชนแห่งชาติ เนื่องจากนักเรียนที่ขออนุญาตคลุมฮิญาบขอคำปรึกษา และ ขอความช่วยเหลือให้ทนายความจากมูลนิธิมุสลิมเพื่อสันติ (มูลนิธิมุสลิมเพื่อสันติได้ทำหน้าที่ในการเรียกร้องสิทธิเรื่องการคลุมฮิญาบของมุสลิมเป็นองค์กรในลำดับแรก ๆ) อีกทั้งได้ร้องเรียนสิทธิในการคลุมฮิญาบไปยังสำนักงานคณะกรรมการสิทธิมนุษยชนแห่งชาติอีกทางหนึ่งด้วย



ระเบียบวิธีวิจัย

งานวิจัยชิ้นนี้เป็นงานวิจัยเชิงคุณภาพศึกษาปรากฏการณ์ย้อนหลังที่เคยเกิดขึ้นในอดีต โดยหาข้อมูลจากสถานการณ์ หรือ ปัญหาที่เกิดขึ้น ผู้วิจัยใช้วิธีเก็บรวบรวมข้อมูล ผ่านการสำรวจวรรณกรรม ศึกษาทางเอกสารทางวิชาการ รวมทั้งสิ่งพิมพ์ประเภทหนังสือพิมพ์ บทความทางวิชาการ เอกสารวิจัยจากแหล่งต่าง ๆ และทำการสัมภาษณ์เชิงลึกกับผู้มีส่วนเกี่ยวข้อง ได้แก่ ทัศนคติจากกลุ่มนิมุสลิมเพื่อสันติ และ เจ้าหน้าที่จากสำนักงานคณะกรรมการสิทธิมนุษยชนแห่งชาติ เนื่องจากสองหน่วยงานนี้มีบทบาทในการแก้ไขปัญหาความขัดแย้ง

ข้อค้นพบ

1. ปัจจัยที่ทำให้ฝ่ายที่สามเข้าไปมีส่วนร่วมและความยอมรับจากคู่กรณีในการแทรกแซงความขัดแย้ง

ปัจจัยที่ทำให้ฝ่ายที่สามเข้าไปมีส่วนร่วมในครั้งนี้เกิดขึ้นจากการเรียกร้องของฝ่ายนักเรียนและผู้ปกครองเลือกเพียงฝ่ายเดียว โดยเฉพาะกลุ่มมุสลิมเพื่อสันติที่เข้าไปแทรกแซงความขัดแย้งไม่ได้เกิดจากการยอมรับจากทั้งสองฝ่าย เพราะทั้งสองฝ่ายไม่สามารถสื่อสารกันได้อย่างเท่าเทียมถึงการหาทางออกต่อปัญหา ซึ่งความสำคัญของฝ่ายที่สาม คือ ต้องได้รับการยอมรับจากคู่ขัดแย้ง (Fisher, 2001) การเข้ามาด้วยการร้องขอของฝ่ายเดียวที่เป็นคู่กรณียังส่งผลต่อความไว้วางใจที่อีกฝ่ายจะมีให้ต่อคู่กรณีด้วย โดยเฉพาะคู่กรณีที่มีอัตลักษณ์มุสลิมเช่นกัน อาจยังส่งผลต่อการยอมรับเพราะถูกมองได้ว่าเป็นพวกเดียวกัน ในขณะที่เจ้าหน้าที่สำนักงานคณะกรรมการสิทธิมนุษยชนแห่งชาติอาจได้รับการยอมรับให้เข้าถึงบุคลากรที่เกี่ยวข้องโรงเรียนมากกว่าด้วยอำนาจหน้าที่และสร้างการเข้าหาคู่กรณีได้มากกว่าแต่ก็ไม่ได้หมายความว่า จะได้รับการยอมรับและไว้วางใจให้เข้ามาร่วมกันแก้ปัญหา

2. บทบาทและรูปแบบการแทรกแซงของฝ่ายที่สาม

ฝ่ายที่สามทั้ง 2 กลุ่มแสดงบทบาทและใช้รูปแบบการแทรกแซงความขัดแย้งแตกต่างกันออกไปตามจุดยืนและอำนาจหน้าที่ของแต่ละกลุ่ม โดยพบว่า เจ้าหน้าที่สำนักงานคณะกรรมการสิทธิมนุษยชนแห่งชาติทำหน้าที่เป็น

“พยาน” รับฟังสิ่งที่เกิดขึ้นและพยายามที่จะ “สร้างช่องทางการสื่อสาร” หนายความของกลุ่มมุสลิมเพื่อสันติ ทำหน้าที่เป็น “กระบอกเสียง” ให้ผู้ร้องเรียน

3. การแทรกแซงและปฏิสัมพันธ์ของผู้เกี่ยวข้องที่ส่งผลต่อพลวัตความขัดแย้ง

จุดเริ่มต้นของปัญหาเริ่มต้นจากประเด็นผลประโยชน์ที่จุดสนใจของคู่กรณีอยู่ที่ เรื่องการคลุมฮิญาบของนักเรียน โรงเรียนและวัดต่างปฏิเสธที่จะใช้ฐานผลประโยชน์ (Interest-based) ในการเจรจาเพื่อแก้ปัญหา ทำให้ต่อมามีการอ้างถึงฐานสิทธิ (Rights-based) ทางศาสนาตามกฎหมายและรัฐธรรมนูญ

4. ข้อสังเกตต่อการแก้ปัญหาการคลุมฮิญาบของนักเรียนจากฝ่ายที่สาม

จากมุมมองของผู้ให้สัมภาษณ์ เรื่องราวที่เกิดขึ้นส่วนหนึ่งเป็นเรื่องบริบทของสังคม แม้ว่าในชุมชนนั้นจะมีประชากรมุสลิมอยู่จำนวนมาก แต่นับว่าเป็นคนกลุ่มน้อยในบริบทของสังคมไทย ความแตกต่างที่เกิดขึ้นกับคนส่วนใหญ่ (ที่นับถือศาสนาพุทธ) ในด้านประวัติศาสตร์ ศาสนา ภาษา ขนบธรรมเนียม ประเพณี การศึกษา และเศรษฐกิจ ทำให้คนบางกลุ่มมีทัศนคติในเชิงลบ ในสังคมที่คุ้นชินและเรียกร่องเอกลักษณ์ของความเป็นไทยที่มีเพียงหนึ่งเดียว (กฤตยา อาชวนิจกุล และคณะ, 2551) สำหรับฝ่ายที่สามที่เข้าไปเกี่ยวข้องกับกรณีความขัดแย้งนี้มองว่าปัญหานี้คงจะอยู่กับสังคมไทยต่อไปอีกเพราะทัศนคติเป็นสิ่งที่เปลี่ยนแปลงได้ยาก

ข้อมูลที่ได้จากการให้สัมภาษณ์ของฝ่ายที่สามที่ได้เข้าไปมีส่วนในการแก้ปัญหา สิ่งสำคัญอย่างหนึ่งคือการสร้างความตระหนัก สร้างการรับรู้เรื่องสิทธิโดยกลไกจากสำนักงานคณะกรรมการสิทธิมนุษยชนแห่งชาติก็ดี หรือกลไกของรัฐโดยกรมคุ้มครองสิทธิก็ดี และการนับถือศาสนาตามความเชื่อในฐานะเป็นสิทธิขั้นพื้นฐาน รัฐจะต้องกำหนดให้มีกลไกและขั้นตอนปฏิบัติอย่างเพียงพอ เพื่อประกันให้สามารถใช้เสรีภาพนั้นได้ในทางปฏิบัติ โดยไม่ถูกจำกัดจากระเบียบทางราชการที่ไม่เหมาะสม

สรุปผลการวิจัย

การทำความเข้าใจการแทรกแซงความขัดแย้งของฝ่ายที่สามทำให้สามารถมองเห็นเงื่อนไขของการเปลี่ยนแปลงและพลวัตของความขัดแย้ง การวิเคราะห์ความขัดแย้งมุมมองของฝ่ายที่สามนั้นเพื่อสำรวจพลวัตความขัดแย้งและความสัมพันธ์ทางอำนาจ ฝ่ายที่สามที่เข้าไปแทรกแซงความขัดแย้งมิใช่คู่กรณีหรือผู้มีหน้าที่โดยตรงในการจัดการแก้ไขปัญหา แต่เป็นผู้ที่คู่กรณีเรียกร่องให้เข้าไปสู่ความขัดแย้งเพื่อปรับสมดุลทางอำนาจระหว่างคู่กรณีที่มีความไม่สมมาตรและพยายามจะทำความเข้าใจปัญหาที่เกิดขึ้นและสร้างบริบทแวดล้อมให้ผู้ที่เกี่ยวข้องกับสถานการณ์ความขัดแย้งเกิดความพร้อมในการแก้ปัญหาาร่วมกัน

ข้อเสนอแนะ

1. ข้อเสนอแนะต่อภาครัฐ

1.1 สำนักงานคณะกรรมการสิทธิมนุษยชนแห่งชาติและกระทรวงศึกษาธิการควรมีการพัฒนาศักยภาพบุคลากรและส่วนงานเฉพาะด้านสำหรับการเข้าแทรกแซงปัญหาความขัดแย้งที่มีความอ่อนไหวและมีความไม่สมดุลทางอำนาจในโรงเรียน

1.2 สำนักงานคณะกรรมการสิทธิมนุษยชนแห่งชาติ ควรมีกลไกโรงเรียนที่ปลอดภัยสำหรับนักเรียน และควรประชาสัมพันธ์ให้ทั่วถึง และรัฐควรทำเป็นองค์การที่เมื่อคนถูกละเมิดสิทธิสามารถขอความช่วยเหลือได้

1.3 การสร้างวัฒนธรรมพหุวัฒนธรรมนิยมในสังคมไทย ควรมีการให้ความรู้เรื่องความแตกต่าง การผสมผสาน การอยู่ร่วมกันในสังคมบนความแตกต่าง กระทรวงศึกษาธิการและกระทรวงวัฒนธรรมควรมีส่วนสำคัญในการส่งเสริมวัฒนธรรมพหุวัฒนธรรมนิยมผ่านหลักสูตรการศึกษาและการส่งเสริมการเรียนรู้ข้ามวัฒนธรรมผ่านกิจกรรมต่าง ๆ ของรัฐ

2. ข้อเสนอแนะต่อโรงเรียนและภาคเอกชน

2.1 โรงเรียนและศาสนสถานในพื้นที่และท้องถิ่นควรมีเวทีแลกเปลี่ยนเรียนรู้ระหว่างวัฒนธรรม เพื่อสร้างความเข้าใจและลดอคติที่อาจมีต่อกัน

2.2 การสร้างทัศนคติที่ดีในหน่วยงาน ทั้งภาครัฐและเอกชน

3. ข้อเสนอแนะในงานวิจัยครั้งถัดไป

3.1 ศึกษาความขัดแย้งการคลุมเครือกรณีอื่นที่มีผลลัพธ์ในการแก้ไขปัญหาความขัดแย้งในพื้นที่ที่มีการเปลี่ยนแปลง อย่างในพื้นที่มหาวิทยาลัย

3.2 ศึกษาวัฒนธรรมต่างประเทศ เช่น โรงเรียนอนุบาลในประเทศที่มีการคลุมเครือแบบปิดหน้า แต่ต้องใช้การอ่านปากในการเรียนการสอน

บรรณานุกรม

- กฤตยา อาชวนิจกุล, กุลภา วจนสาระ, ปาริฉัตร บัตรประโคน, สายชล สัตยานุรักษ์ และ โสฬส ศิริไสย์. (2551). จินตนาการความเป็นไทย. นครปฐม : สถาบันวิจัยประชากรและสังคม และศูนย์ศึกษาและพัฒนาสันติวิธี มหาวิทยาลัยมหิดล.
- โชคชัย วงษ์ตानी. (2561). ห้ามสวมฮิญาบที่ร.ร.อนุบาลปัตตานี ข้อควรคิดในสถานการณ์อ่อนไหว. (Online). Available: <https://themomentum.co/hijab-ban-in-pattani/>
- รอมฎอน ปันจอร์. (2552). ฮิญาบและกรือเซะ: ประวัติศาสตร์ปาตานีระยะใกล้และการต่อรองทางการเมืองที่หายไป งานสัมมนาวิชาการภาพลอกหลอน ณ ชายแดนใต้ของไทย : การเขียนประวัติศาสตร์ปาตานีและโลกอิสลาม ณ จุฬาลงกรณ์มหาวิทยาลัย 11-12 ธันวาคม
- รอมฎอน ปันจอร์. (2555). ประท้วงฮิญาบที่ยะลา : ความทรงจำของการต่อรอง. มหาวิทยาลัยธรรมศาสตร์.
- ฟาริดา สุไลมาน. (2558). ผู้หญิงสองวัฒนธรรม บนเส้นทางชีวิตการเมือง. 14 พับลิเคชั่น. กรุงเทพฯ.
- ศูนย์ข่าวภาคใต้. เหตุเกิดที่อนุบาลปัตตานี นักเรียนที่นี่ห้ามสวมฮิญาบ? 19 พฤษภาคม 2561. (Online). Available: <https://www.isranews.org/content-page/item/66083-primary.html>
- อนุสรณ์ อุณโณ. (2554). คอลัมน์ คิดอย่างคน. ในหนังสือรายสัปดาห์ มหาประชาชน. วันที่ 18-25 มีนาคม 2554. (Online). Available: <https://prachatai.com/journal/2011/03/33745>
- Fisher, R.J. (2001). Methods of Third-Party intervention. Germany: Berghof Foundation.
- Lederach, J. P. (2005). The moral imagination: The Art and soul of building peace. New York: Oxford University Press

การเข้าถึงการศึกษาของเด็กแรงงานข้ามชาติช่วงสถานการณ์โควิด กรณีศึกษาศูนย์การเรียนรู้จังหวัดระนอง

Access to education for migrant children during the COVID-19 situation:

A case study of the learning center in Ranong province

นายมานพ สังขละบุรีรัมย์¹

สถาบันสิทธิมนุษยชนและสันติศึกษา มหาวิทยาลัยมหิดล

บทคัดย่อ

งานวิจัยชิ้นนี้ประกอบด้วยวัตถุประสงค์(1) เพื่อวิเคราะห์สถานการณ์ในการจัดการเรียนการสอนเพื่อให้ลูกหลานแรงงานข้ามชาติเข้าถึงการศึกษาในช่วงสถานการณ์การแพร่ระบาดโควิด-19 (2) เพื่อวิเคราะห์แนวทางการปรับตัวของศูนย์การเรียนรู้ไทย-พม่ากับข้อจำกัดต่าง ๆ ที่ส่งผลกระทบต่อการศึกษา ภายใต้ข้อคิดเห็นหรือข้อชี้แนะทั้ง 4 องค์กรประกอบ ข้อที่1 การไม่เลือกปฏิบัติ ทุกสัญชาติ ทุกพื้นที่ที่จะได้รับการศึกษา โดยเฉพาะลูกหลานแรงงานข้ามชาติที่ถือเป็นผู้ด้อยโอกาสในการได้รับการศึกษา ข้อที่ 2 ความสามารถในการเข้าถึงทางกายภาพ การเข้าถึงการศึกษาที่คำนึงถึงสภาพแวดล้อมที่ปลอดภัย และเอื้อต่อการเข้าถึงทางการศึกษา และการนำเทคโนโลยีมาใช้ให้เกิดประโยชน์ของศูนย์การเรียนรู้ไทย-พม่าท่ามกลางสถานการณ์โควิด-19 ข้อที่ 3 การเข้าถึงทางเศรษฐกิจ การเข้าถึงการศึกษาที่เหมาะสมกับกลุ่มแรงงานข้ามชาติที่มีพื้นฐานเศรษฐกิจครอบครัวที่ไม่ดีนัก ทั้งนี้การปรับตัวของสถานศึกษา ข้อที่ 4 ความสามารถในการปรับตัว ท่ามกลางสถานการณ์โควิด-19 ยังถือเป็นสิ่งสำคัญที่จะถูกนำมาวิเคราะห์ ซึ่งเก็บข้อมูลจากศูนย์การเรียนรู้ไทย-พม่า จังหวัดระนอง ถือเป็นสถานศึกษาแห่งเดียวที่มีลูกหลานแรงงานข้ามชาติจำนวนมาก ใช้การศึกษาแบบพหุกรณีศึกษาโดยการศึกษาจากเอกสาร การสัมภาษณ์เชิงลึก จากผู้ให้ข้อมูล ได้แก่ ตัวแทนคุณครูและพ่อแม่ของนักเรียนระดับประถมศึกษาปีที่ 4-6 และผู้ที่มีส่วนเกี่ยวข้องอื่น ๆ ข้อค้นพบที่ได้นำมาวิเคราะห์เพื่อศึกษาการเข้าถึงการศึกษาของเด็กแรงงานข้ามชาติในช่วงสถานการณ์โควิด และนำข้อค้นพบที่ได้จากศูนย์การเรียนรู้ไทย-พม่าในการปรับตัวในช่วงสถานการณ์โควิด ข้อจำกัดต่าง ๆ ท่ามกลางสถานการณ์บังคับซึ่งสะท้อนให้เห็นถึงความเปราะบางของเด็กแรงงานข้ามชาติ ความต้องการและความจำเป็นที่จะต้องหันกลับมาให้ความสำคัญกับการสนับสนุนการศึกษาเด็กแรงงานข้ามชาติ รวมถึงความสำคัญและบทบาทหน้าที่ของชุมชนที่จะมีผลอย่างยั่งยืนต่อการศึกษาของเด็กแรงงานข้ามชาติ

คำสำคัญ: คำสำคัญ : กลุ่มเปราะบาง / การเข้าถึงการศึกษา / สถานการณ์โควิด-19 / การจัดการเรียนรู้ / การปรับตัว

¹ นักศึกษาปริญญาโท หลักสูตรศิลปศาสตรมหาบัณฑิต สาขาสิทธิมนุษยชนและสันติศึกษา, มหาวิทยาลัยมหิดล

ABSTRACT

The objectives of this research were to study (1) The situation of access to education rights of migrant children during the COVID-19 situation and (2) The adaptation guidelines of migrant Learning Center during the COVID-19 situation that affects access to educational rights of migrant children. Under four components of access to education are as follows: (1) Non-Discrimination, education must be accessible to everyone and every area without discrimination, especially the children of migrant workers who are considered disadvantaged to receive an education. (2) Physical accessibility, access to education that considers a safe environment, convenient accessibility that affects the access to education of migrant children amid the COVID-19 situation (3) Economic accessibility, access to education suitable for migrant children with low-income family economic backgrounds. (4) Adaptability, the adjustment of migrant learning center amid the COVID-19 situation, must be analyzed. The data will be collected from the Thai Myanmar Learning Center in Ranong Province using a multi-case study, document analysis, In-depth interviews including representatives of teachers and parents in grades 4-6, and others. The findings were then analyzed to study access to migrant children's rights to access education during the COVID-19 pandemic and the adaptation of the learning centre during the COVID situation. These reflect the vulnerability of migrant children and the demand and the necessity to refocus on supporting the education of migrant children and the importance and role of communities that impact the education of migrant children.

Keywords: Vulnerable group / Accessibility / Education / Pandemic / Learning Center / Adaptability

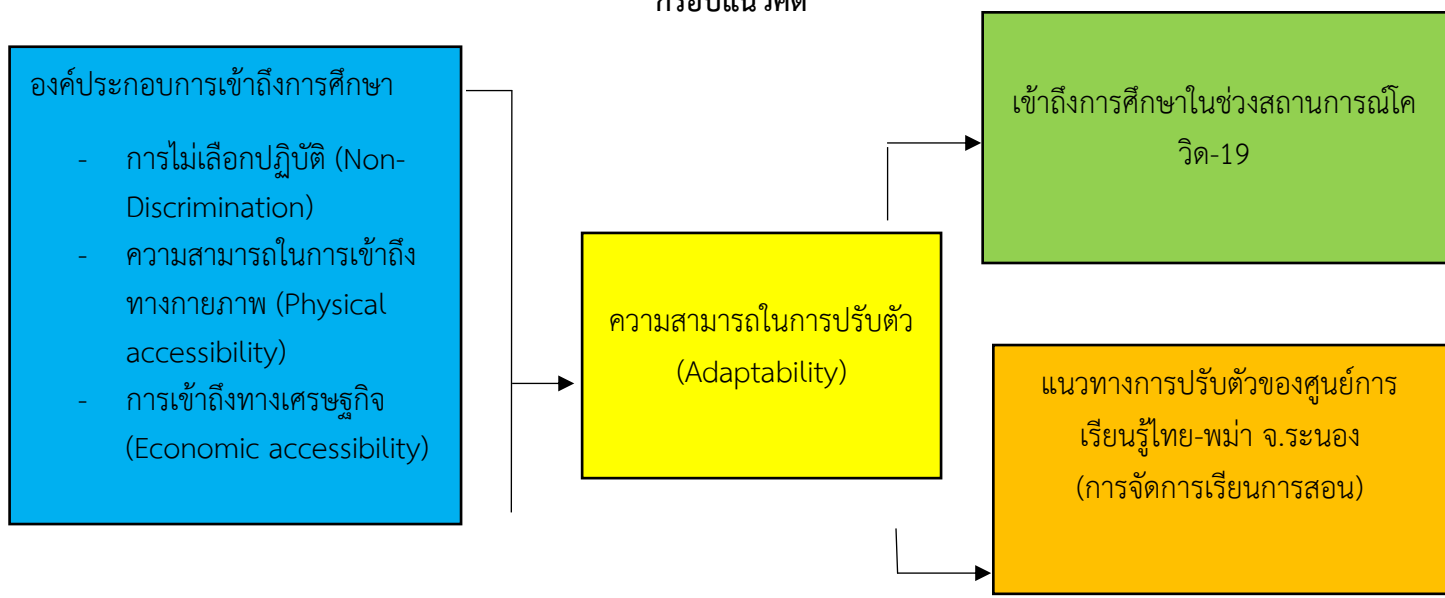
ที่มาและความสำคัญ

การศึกษาถือเป็นวาระสำคัญที่รัฐบาลและหน่วยงานภาคประชาสังคมได้ให้ความสนใจและมีการขับเคลื่อน อยู่เสมอมา สอดคล้องกับสิทธิเด็กที่ประเทศพม่ามีการเข้าถึงการศึกษาของเด็กโดยไม่จำกัดเชื้อชาติ เพศ หรือ ศาสนา อีกทั้งประเทศได้เปิดโอกาสให้ลูกหลานแรงงานข้ามชาติได้มีโอกาสเข้าศึกษาทั้งในระบบและนอกระบบโดย คำนึงถึงความสำคัญของสิทธิทางการศึกษาของเด็กและการลดความเหลื่อมล้ำทางการศึกษา (สำนักงานเลขาธิการ คณะรัฐมนตรี, 2560) พร้อมทั้งการยืนยันจุดยืนในเรื่องของการศึกษาเพื่อทุกคนในปี พ.ศ.2533 ตามหลัก ปฏิญญาสากลว่าด้วยการศึกษาเพื่อปวงชน (Jomtien Declaration “Education for All”) พร้อมกับการเข้าร่วม

เป็นภาคีสัญญาว่าด้วยสิทธิเด็ก (Convention on the Rights of the Child) ข้อมูลจากเครือข่ายองค์กรด้าน ประชากรข้ามชาติ (Migrant Working Group) ในปี 2562 ได้ระบุไว้ว่าประเทศไทยมีเด็กข้ามชาติราว 19,410 คน ที่ลงทะเบียนเรียนในศูนย์การเรียนรู้ไทย-พม่า จังหวัดระนองเป็นอีกหนึ่งพื้นที่ชายแดนที่มีเด็กแรงงานข้ามชาติเป็น จำนวนมากด้วยจำนวนประชากรแรงงานต่างด้าวที่ได้รับอนุญาตทำงานจำนวน 32,495 คน (สถิติสถานการณ์ จังหวัดระนอง, 2564) และอาศัยอยู่ในชุมชนที่มีศูนย์การเรียนรู้เป็นสถานศึกษาให้แก่ลูกหลานแรงงาน หน่วยงาน ในจังหวัดระนองได้เข้าไปมีส่วนสนับสนุนศูนย์การเรียนรู้เหล่านี้โดยการมุ่งเน้นไปที่ว่าลูกหลานแรงงานข้ามชาติ เหล่านี้สามารถเติบโตและมีชีวิตที่ดีขึ้นได้ ศูนย์การเรียนรู้ไทย-พม่าจึงเป็นอีกหนึ่งสถานที่ที่เป็นเหมือนศูนย์รวมเด็ก ที่มีความเสี่ยงต่อการตกเป็นเหยื่อของความรุนแรงหรือแรงงานเด็กในพื้นที่ จำนวนศูนย์การเรียนรู้ไทย-พม่า 13 ศูนย์ในอดีตได้มีการจัดตั้งตามชุมชนต่าง ๆ โดยเปิดโอกาสให้ลูกของแรงงานข้ามชาติได้เข้ามาศึกษาเรียนรู้ แต่ด้วย ข้อจำกัดของบุคลากรและหลักสูตรที่ไม่ได้มาตรฐานและยากต่อการต่อยอดของลูกหลานแรงงานหลังจากจบ การศึกษาในศูนย์การเรียนรู้ จึงทำให้ศูนย์การเรียนรู้ทั้งหมดได้ปิดตัวลง (ลัดดาวัลย์ หลีกแก้ว, 2564) (ย่อหน้าที่ 9) ศูนย์การเรียนรู้ไทย-พม่าแห่งเดียวที่กลับมาเปิดให้ลูกหลานแรงงานข้ามชาติเรียนหนังสือหลังจากเหตุการณ์ที่ศูนย์ การเรียนรู้ที่ถูกสั่งปิดตาย โดยปรับหลักสูตรให้เหมือนการศึกษานอกระบบหรือตามอัธยาศัยภายใต้นโยบายของ กระทรวงศึกษาธิการเข้าไปและดำเนินการให้ครูชาวเมียนมาร์ได้รับใบอนุญาตทำงานอย่างถูกต้อง ศูนย์การเรียนรู้ ไทย-พม่าแห่งนี้อยู่ภายใต้มูลนิธิมารีส์ท์เอเชียที่ทำงานโดยมีวัตถุประสงค์เพื่อช่วยเหลือคนยากจน แรงงานข้ามชาติ และผู้ติดตามที่อาศัยอยู่ในจังหวัดระนองให้สามารถเข้าถึงการศึกษา สาธารณสุขและโครงการช่วยเหลือแรงงาน ข้ามชาติในด้านต่าง ๆ (Save the Children, ย่อหน้าที่ 9)

กระทั่งเมื่อ 11 มีนาคม 2563 ได้มีการระบาดของโรคโควิด 19 ทั่วโลกโดยรัฐบาลแต่ละประเทศทั่วโลก รวมถึงประเทศไทยที่ใช้มาตรการ กึ่งปิดเมือง (Semi-Lockdown) และมาตรการรักษาระยะห่าง (Social Distancing) เพื่อจัดการกับการแพร่ระบาดนี้ มีการปิดสถานศึกษาทั้งประเทศรวมถึงศูนย์การเรียนรู้ที่อยู่นอกระบบ มีผู้เรียนได้รับผลกระทบกว่า 1.5 พันล้านคน (พงค์ทัต วนิชานันท์, 2563) ซึ่งมาตรการเหล่านี้เองทำให้ ส่งผลกระทบต่อศูนย์การเรียนรู้ไทย-พม่าเป็นอย่างมากเนื่องจากมีข้อจำกัดในการเข้าถึงการศึกษาผ่านระบบออนไลน์ จำนวนผู้ติดเชื้อในจังหวัดระนองที่พุ่งสูงขึ้น ชุมชนแรงงานข้ามชาติในจังหวัดระนองที่อยู่ห่างไกลกันจึงทำให้การ จัดการเรียนสอนของศูนย์การเรียนรู้เต็มไปด้วยข้อจำกัดต่าง ๆ จึงทำให้การเข้าถึงการศึกษาของเด็กแรงงานข้าม ชาติเป็นไปได้ยาก ศูนย์การเรียนรู้ไทยพม่าที่อยู่ภายใต้มูลนิธิมารีส์ท์เอเชียซึ่งเปิดสอนลูกหลานแรงงานข้ามชาติ ด้วยหลักสูตรการศึกษานอกระบบยังคงจัดการเรียนการสอนภายใต้สถานการณ์โรคระบาด งานวิจัยชิ้นนี้จึงมุ่งเน้น ศึกษาการปรับตัวของศูนย์การเรียนรู้ที่มีผลต่อการเข้าถึงการศึกษาของลูกหลานแรงงานข้ามชาติตลอดจนการ ได้รับการศึกษาที่เหมาะสมและมีคุณภาพเพื่อการต่อยอดการศึกษาของลูกหลานแรงงานข้ามชาติ

กรอบแนวคิด



คำถามวิจัย

1. สถานการณ์การเข้าถึงการศึกษาของลูกหลานแรงงานข้ามชาติในช่วงสถานการณ์โควิด-19 เป็นอย่างไร
2. ศูนย์การเรียนรู้ไทย-พม่าในจังหวัดระนองได้มีการปรับตัวอย่างไรต่อการจัดการเรียนการสอนในช่วงสถานการณ์โควิด-19

วัตถุประสงค์งานวิจัย

1. เพื่อศึกษาสถานการณ์สิทธิในการเข้าถึงการศึกษาของลูกหลานแรงงานข้ามชาติในช่วงสถานการณ์โควิด-19
2. เพื่อศึกษาแนวทางการปรับตัวของศูนย์การเรียนรู้ไทย-พม่าท่ามกลางสถานการณ์โควิด-19 ที่ส่งผลต่อการศึกษามีคุณภาพของเด็กแรงงานข้ามชาติ

ขอบเขตงานวิจัย

การศึกษาครั้งนี้เป็นงานวิจัยเชิงคุณภาพ มุ่งศึกษาแนวทางการจัดการเรียนการสอนของศูนย์การเรียนรู้ไทย-พม่า มาร์ริส เอเชีย (Marist Asia) ในระดับชั้นประถมศึกษาแบบนอกระบบ

ประชากรที่ใช้ในงานวิจัย

ตัวแทนคุณครู/ผู้ปกครองชั้นประถมศึกษาปีที่ 4-6 ของศูนย์การเรียนรู้ไทย-พม่าในจังหวัดระนอง

กลุ่มตัวอย่างที่ใช้ในงานวิจัยประกอบไปด้วย 2 กลุ่ม ดังนี้

1. ตัวแทนคุณครูและผู้อำนวยการในระดับชั้นประถมศึกษาปีที่ 4-6 ของศูนย์การเรียนรู้ไทย-พม่า
2. ผู้ปกครองของเด็กนักเรียนชั้นประถมศึกษาปีที่ 4-6 ของศูนย์การเรียนรู้ไทย-พม่า

สถานการณ์การเข้าถึงการศึกษาของลูกหลานแรงงานข้ามชาติในช่วงสถานการณ์โควิด-19

1.ความสามารถในการเข้าถึงทางกายภาพ (Physical accessibility)

ในภาพรวมความสามารถด้านการเข้าถึงทางกายภาพลดลงไปอย่างมากจากเดิมที่เข้าถึงการศึกษาในระบบยากอยู่ก่อนแล้ว สภาพแวดล้อมนั้นเป็นสภาพแวดล้อมที่ไม่เอื้ออำนวยต่อการเข้าถึงการศึกษาของลูกหลานแรงงานข้ามชาติ ความสามารถของผู้ปกครองและนักเรียนในการเข้าถึงการศึกษาถูกจำกัดโดยมาตรการเว้นระยะห่างในช่วงของโรคระบาดรุนแรง นักเรียนไม่สามารถเดินทางออกจากบ้านไปโรงเรียนได้ นักเรียนไม่สามารถเรียนในห้องเรียนพร้อมเพื่อนได้ การเข้าถึงทางกายภาพนี้เป็นอุปสรรคอย่างยิ่งในการเรียนรู้ ในขณะที่ผู้ปกครองก็รับภาระมากขึ้นในการดูแลให้ลูกพร้อมที่จะเรียน ซึ่งโดยปกติการทำงานและการเลี้ยงลูกนั้นเป็นภาระที่หนักอยู่แล้ว การที่ส่งลูกไปโรงเรียนก็ทำให้ผู้ปกครองสามารถที่จะทำงานได้ ซึ่งก็เป็นการแบ่งเบาภาระของผู้ปกครองอย่างหนึ่ง แต่เมื่อลูกไม่สามารถที่จะไปโรงเรียนได้ทำให้ต้องปรับตัวอย่างไม่เคยเป็นมาก่อน เพราะโควิด-19 เป็นโรคระบาดรุนแรงในรอบหลายปี ในอีกด้านหนึ่งความสามารถของผู้มีอำนาจและคุณครูก็ลดลงจากสถานการณ์โควิด-19 ที่ไม่สามารถประชุมเตรียมการเรียนการสอนได้อย่างเต็มที่เหมือนช่วงสถานการณ์ปกติ

ผลการศึกษาข้างต้นนี้สอดคล้องกับงานวิชาการกลุ่มที่ศึกษาการเข้าถึงการศึกษาของแรงงานข้ามชาติในการศึกษาไทยก่อนสถานการณ์โรคระบาดที่แสดงถึงความยากลำบากและการโดนกีดกันของกลุ่มคนชายขอบในประเทศไทย สถานะทางกฎหมายแบบชายขอบ (liminal legality) ส่งผลต่อการกีดกันการเข้าถึงการศึกษาของเด็กข้ามชาติในโรงเรียนรัฐ (Kamowan Petchot 2014, 7-8) การที่ไม่มีเอกสารรับรองสัญชาติและทำให้พวกเขาไม่ได้รับสิทธิขั้นพื้นฐาน และถูกพรากสิทธิมนุษยชนไปในทุกมิติ ทั้งสุขภาพ วัฒนธรรม การดูแล และอื่นๆ ไม่ใช่แค่ทางการศึกษา (Seiden et al 2018) Thithimadee Arphattananon (2012) ชี้ให้เห็นว่าถึงแม้ว่าประเทศไทยนั้นมีนโยบายที่อนุญาตให้ลูกหลานแรงงานข้ามชาติเข้าถึงการศึกษาของรัฐ แต่ก็ยังขาดนโยบายที่ส่งเสริมหรือชักจูงผู้ปกครองผู้ซึ่งเป็นแรงงานข้ามชาตินั้นนำบุตรหลานเข้าระบบการศึกษา และยิ่งขาดนโยบายที่คอยสนับสนุนเด็กที่หลุดจากระบบ ยิ่งไปกว่านั้นยังกีดกันออกจากระบบการศึกษาชั้นสูง ข้อค้นพบดังกล่าวสะท้อนให้เห็นถึงปัญหาที่มีอยู่อย่างยาวนานของการเข้าถึงทางกายภาพที่ลูกหลานแรงงานข้ามชาติต้องพบเจอก่อนสถานการณ์โรคระบาด การจัดการศึกษาสำหรับผู้ที่ไม่ได้มีสัญชาติไทยมีปัญหาทั้งในแง่ของการรับเข้าเรียน การจัดการเรียนการสอนและการออกกลางคัน (ฐิติมดี อาพัทธนันท์ 2556)

การกีดกันการเข้าถึงทางกายภาพในช่วงสถานการณ์โควิด-19 นี้เองรวมไปถึงทางวัฒนธรรมทางภาษาทำให้ผู้ปกครองเลือกที่จะส่งบุตรหลานเข้าโรงเรียนนอกระบบ อย่างศูนย์การเรียนรู้สำหรับเยาวชนพลัดถิ่น (MLCs) มากกว่าโรงเรียนในระบบการศึกษาไทย (Titiporn Tuangratananon et al. 2019) และบางโรงเรียนก็ไม่ได้ได้รับการยอมรับจากรัฐบาลไทย อย่างเช่น ศูนย์การเรียนรู้ที่แม่สอด (Johnson & Gilligan 2021, 3) ศูนย์เชี่ยวชาญเฉพาะทางด้านกายกรรมและการพัฒนา สถาบันเอเชียศึกษา จุฬาลงกรณ์มหาวิทยาลัย (ม.ป.ป. 45) รายงานการศึกษาจากกลุ่มตัวอย่างพบว่าในพื้นที่จังหวัดระนองเด็ก 85% เข้าเรียนสถานศึกษาของรัฐ ในขณะที่มีเพียง 5% อยู่ในศูนย์การเรียนรู้เด็กข้ามชาติ และอีก 10% ที่หายไปของเด็กจึงเป็นกลุ่มเปราะบางที่ไม่สามารถเข้าถึงการศึกษาได้ ทำให้เห็นถึงสถานภาพชายขอบของเด็กข้ามชาติในศูนย์การเรียนรู้ไทย-พม่า มาริสท์เอเชียที่วิทยานิพนธ์นี้พยายามนำเสนอ

สถานการณ์การเข้าถึงการศึกษาของลูกหลานแรงงานข้ามชาติในประเทศไทย ในช่วงศตวรรษที่ผ่านมา วิชาการหลายชิ้นชี้ให้เห็นว่า เด็กข้ามชาติในประเทศไทย จากหลายกรณีที่ถูกศึกษาในงานข้างต้นนั้นยังถูกกีดกันออกจากระบบการศึกษา ข้อค้นพบที่ผ่านมาเกือบทั้งหมดมีขอบเขตเวลาก่อนช่วงสถานการณ์โควิด-19 วิทยานิพนธ์ฉบับนี้ที่มุ่งเน้นการค้นคว้าทำความเข้าใจสถานการณ์ที่แย่งจากการระบาดของโควิด-19 จากประสบการณ์ตรงของการเข้าถึงการศึกษาของกลุ่มข้ามชาติในศูนย์การเรียนรู้ ในขณะที่เด็กข้ามชาติในโรงเรียนรัฐนั้นประสบปัญหาน้อยกว่าในช่วงระยะเวลาเดียวกัน อย่างเช่น การศึกษาของอินธิดา จำนงนิตย์และเพ็ญณี แนนรท (2564, 391) ที่ชี้ให้เห็นว่าลูกหลานข้ามชาติในโรงเรียนไทยได้เข้าถึงการศึกษาไม่ต่างจากเด็กสัญชาติไทย

ท่าทีของภาครัฐที่ปล่อยปะละเลยสิทธิการศึกษาของเด็กข้ามชาติเช่นนี้จึงเป็นการละเลยสิทธิมนุษยชนและไม่รับรองความเป็นมนุษย์ ภาครัฐทำได้แต่การสร้างภาพลักษณ์ด้วยการลงนามสัตยาบันในความร่วมมือระหว่างประเทศ แต่ในด้านของการนำนโยบายไปปฏิบัติแล้วนั้นยังคงบกพร่องตั้งแต่ก่อนและระหว่างช่วงสถานการณ์โควิด-19 ส่วนหนึ่งทราบได้จากข้อมูลปฐมภูมิในวิทยานิพนธ์นี้ อันทำให้เห็นถึงความไม่เท่าเทียมและความเสียเปรียบ ที่ลูกหลานแรงงานข้ามชาติต้องประสบใน (และนอก) ระบอบการศึกษาของไทย สถานการณ์โควิดส่งผลให้เราเห็นถึงการปฏิบัติต่อกระบวนการเรียนการสอนของลูกหลานแรงงานข้ามชาติที่หน่วยงานหรือภาครัฐจะต้องเข้ามามีส่วนมากกว่าการบังคับใช้มาตรการต่าง ๆ

2. ความสามารถในการปรับตัว (Adaptability)

ความสามารถในการปรับตัวนั้นสามารถพิจารณาได้จากหลายมุมมองด้วยกัน เนื่องจากทุกภาคส่วนล้วนแต่ต้องปรับตัวจากสถานการณ์โควิด-19 ในส่วนแรกเป็นส่วนของนักเรียน นักเรียนผู้เป็นลูกหลานแรงงานข้ามชาติอยู่ใน “ชายขอบ” ของระบบการศึกษาไทย ถูกกดทับด้วยโครงสร้างรัฐ ถึงแม้ว่านักเรียนชั้นประถมศึกษาชั้นนั้นจะเป็นรุ่นที่เติบโตมาในยุคเทคโนโลยี แต่นักเรียนกลุ่มนี้เป็นกลุ่มที่มีความเปราะบางเนื่องจากฐานะทางเศรษฐกิจและสังคม

สอดคล้องกับการศึกษาของอัญชลี ศรีชมภูและสุภาภรณ์ ตั้งตรงไพโรจน์ (2564) ที่พบว่าข้อจำกัดทางเศรษฐกิจและทางสังคมนั้นเป็นอุปสรรคที่สำคัญของเด็กข้ามชาติในโรงเรียนไทย การปรับตัวของนักเรียนในศูนย์การเรียนรู้จึงเป็นไปได้ง่ายกว่า เมื่อเทียบกับกลุ่มนักเรียนสัญชาติไทยที่มีฐานะที่ดีกว่าและอยู่ในระบบการศึกษาที่รัฐจัดการให้

ส่วนที่สองเป็นการปรับตัวของผู้ปกครอง ผู้ปกครองผู้เป็นแรงงานข้ามชาติได้พยายามอย่างมากในการปรับตัวเพื่อให้ลูกสามารถเรียนได้อย่างเป็นปกติ ทั้งการเตรียมอุปกรณ์อิเล็กทรอนิกส์ การซื้อแพ็คเกจอินเทอร์เน็ต การจัดเตรียมสถานที่ให้เหมาะสมกับการเรียน เช่น ห้องที่ไม่มีสิ่งรบกวนและเด็กสามารถมีสมาธิในการเรียนได้นอกจากนั้นผู้ปกครองยังต้องติดต่อสื่อสารกับคุณครูอยู่เป็นประจำเพื่อที่จะพูดคุยแลกเปลี่ยนเพื่อผลประโยชน์สูงสุดของลูก

“ลูกคนโตของดิฉันต้องขาดเรียนหลายวิชาเนื่องจากน้องชายต้องใช้โทรศัพท์เครื่องเดียวกันเพื่อเรียนในแต่ละวิชา” (สัมภาษณ์ผู้ปกครองเมื่อวันที่ 28 มิถุนายน 2566)

ประโยชน์มาจากผู้ปกครองที่มีลูกหลายคนและมีความยากลำบากในการเรียนออนไลน์เนื่องจากทั้งครอบครัวมีโทรศัพท์เพียงเครื่องเดียว จึงจำเป็นต้องสลับกันใช้เพื่อเรียนหนังสือ การปรับตัวนี้แสดงให้เห็นถึงความจำเป็นที่จะต้องแก้ปัญหาการเข้าถึงทางเทคโนโลยีซึ่งสอดคล้องกับงานของ Workie et al. (2022) ที่ชี้ให้เห็นถึงความสำคัญของความเท่าเทียมทางเทคโนโลยี (technological equity) ที่ทำให้สามารถเข้าถึงการศึกษาได้ในช่วงโรคระบาด ในขณะที่ผู้ปกครองอีกส่วนหนึ่งให้ลูกหลานช่วยทำงานที่บ้าน พวกเขาเห็นว่ามีความยากลำบากหรือความยุ่งยากในการจัดเตรียมการเรียนการสอนและทำให้ลูกมีสมาธิเรียนออนไลน์ที่บ้านได้ จึงให้ลูกมาช่วยงานแทน เพราะเห็นว่าเป็นประโยชน์มากกว่า

ส่วนที่สาม การปรับตัวของคุณครูและสถานศึกษา การจัดการเรียนการสอนแบบออนไลน์เป็นวิธีการที่โรงเรียนเลือกที่จะใช้ เพราะเป็นวิธีการที่สามารถนำไปปฏิบัติได้และมีประสิทธิภาพมากที่สุด เมื่อเทียบกับอีก 4 วิธี

“ผมมีความสนใจในเรื่องเทคโนโลยีและระบบออนไลน์ เนื่องจากผมเป็นครูสอนคอมพิวเตอร์ วิกฤตินี้จึงเป็นโอกาสของผมในการนำมาปรับใช้ในการสอนนักเรียน รวมถึงการสอนคุณครูท่านอื่น ๆ ในเรื่องระบบออนไลน์ด้วยเช่นกัน”

คำบอกเล่าจากคุณครูในศูนย์การเรียนรู้มารีส์เอเชียที่มีบทบาทค่อนข้างมากในการปรับตัวในช่วงสถานการณ์โควิด-19 ทั้งนี้ผู้อำนวยการต้องปรับเปลี่ยนนโยบายและหลักการในการดำเนินงานภายในโรงเรียนให้สอดคล้องกับสถานการณ์ และสอดคล้องกับทรัพยากรที่โรงเรียนมีอยู่อย่างจำกัด ซึ่งสอดคล้องกับงานศึกษาของรัตนา จักกะพาก (2558, 163) ที่พบว่างบประมาณในการดำเนินงานนั้นไม่เพียงพอและยังไม่แน่นอนขึ้นอยู่กับการสนับสนุนจากองค์กรภายนอก ดังนั้นโรงเรียนจะต้องหาทางปรับตัวเพื่อใช้งบประมาณที่จำกัดนั้นได้อย่างมีประสิทธิภาพสูงสุด

และเพื่อประโยชน์สูงสุดของนักเรียน ในส่วนของคุณครูก็ต้องจัดเตรียมทั้งอุปกรณ์อิเล็กทรอนิกส์ต่างๆ ทั้งของตนเองและของนักเรียน เพราะถ้าหากมีนักเรียนมีปัญหาเกี่ยวกับอุปกรณ์ ก็จะทำให้การเรียนการสอนหยุดชะงัก และคุณครูยังต้องปรับเปลี่ยนจัดเตรียมเนื้อหาการเรียนที่เหมาะสมกับรูปแบบการเรียนผ่านจอคอมพิวเตอร์และจอโทรศัพท์มือถือ และยังคงติดต่อกับผู้ปกครองนอกเวลาการเรียนการสอน เพื่อติดตามและเอาใจใส่นักเรียนอีกด้วย

การปรับตัวเช่นนี้อาจจะนับว่าทั้งสามส่วนนั้นถึงขีดสุดในศักยภาพความสามารถและทรัพยากรที่มีอยู่ ในพื้นที่และสถานการณ์นี้ ทุกคนทั้งสามส่วน “ถูกบีบ” ให้ต้องปรับตัว เมื่อพิจารณาโครงสร้างอำนาจรัฐ หน่วยงานภาครัฐละเลยการสนับสนุนอย่างเป็นทางการเป็นกิจลักษณะและเพียงพอต่อความจำเป็นขั้นพื้นฐานของผู้ที่ต้องการมากที่สุด คนกลุ่มนี้จึงต้องถูกทำให้ปรับตัวมากกว่าการปรับตัวด้วยความสมัครใจ รวมถึงความพึงพอใจของเด็กนักเรียนเรียนที่มีต่อการเรียนจึงลดน้อยถอยลงไปและยังถือเป็นความท้าทายของการศึกษาเด็กแรงงานข้ามชาติและหน่วยงานที่มีส่วนในการสนับสนุนเพื่อเป้าหมายสูงสุดของการศึกษาเด็ก ไม่ว่าจะสถานการณ์โควิดจะผ่านไปอย่างไร การศึกษาเด็กแรงงานข้ามชาติก็ยังถือเป็นสิทธิขั้นพื้นฐานที่ควรจะได้รับ

สรุปผลการวิจัย

การศึกษาของเด็กแรงงานข้ามชาติในช่วงโควิดถือเป็นข้อพิสูจน์ให้เห็นได้ชัดเจนยิ่งขึ้นว่า การศึกษาของเด็กสำหรับทุกคนนั้นรวมถึงเด็กแรงงานข้ามชาติหรือไม่ สถานการณ์โควิดเพิ่มข้อจำกัดอย่างมากสำหรับการเข้าถึงการศึกษา ส่งผลทั้งสถานศึกษา ผู้สอน ผู้เรียน และปัจจัยภายนอกของเด็กนักเรียน รวมทั้งข้อบ่งชี้ให้เห็นได้ชัดในเรื่องของเศรษฐกิจของสังคมแรงงานข้ามชาติที่มีผลต่อการศึกษาดูด้วยเช่นกัน จากการศึกษาเรื่องการเข้าถึงการศึกษาของเด็กชายขอบและเด็กแรงงานของ อัญชลี ศรีชมภูและสุภาภรณ์ ตั้งตรงไพโรจน์ (2564) ข้อมูลที่ได้จากศูนย์การเรียนรู้มาริสท์เอเชียในครั้งนี้ถือเป็นข้อค้นพบเพื่อนำมาสู่การวิเคราะห์ถึงสถานการณ์เด็กแรงงานข้ามชาติ โดยเชื่อมโยงกับหลักแนวคิดเรื่องการศึกษา (Education for All) ดังนี้

1. ความสามารถในการเข้าถึงทางกายภาพ (Physical accessibility)

ในภาพรวมความสามารถด้านการเข้าถึงทางกายภาพลดลงไปอย่างมากจากเดิมที่เข้าถึงการศึกษาในระบบยากอยู่ก่อนแล้ว สภาพแวดล้อมนั้นเป็นสภาพแวดล้อมที่ไม่เอื้ออำนวยต่อการเข้าถึงการศึกษาของลูกหลานแรงงานข้ามชาติ ความสามารถของผู้ปกครองและนักเรียนในการเข้าถึงการศึกษาถูกจำกัดโดยมาตรการเว้นระยะห่างในช่วงของโรคระบาดรุนแรง นักเรียนไม่สามารถเดินทางออกจากบ้านไปโรงเรียนได้ นักเรียนไม่สามารถเรียนในห้องเรียนพร้อมเพื่อนได้ การเข้าถึงทางกายภาพนี้เป็นอุปสรรคอย่างยิ่งในการเรียนรู้ ในขณะที่ผู้ปกครองก็รับภาระมากขึ้นในการดูแลให้ลูกพร้อมที่จะเรียน ซึ่งโดยปกติการทำงานและการเลี้ยงลูกนั้นเป็นภาระที่หนักอยู่แล้ว การที่ส่งลูกไปโรงเรียนก็ทำให้ผู้ปกครองสามารถที่จะทำงานได้ ซึ่งก็เป็นการแบ่งเบาภาระของผู้ปกครองอย่างหนึ่ง แต่เมื่อลูกไม่สามารถที่จะไปโรงเรียนได้ทำให้ต้องปรับตัวอย่างไม่เคยเป็นมาก่อน เพราะโควิด-19 เป็นโรค

ระบารุนแรงในรอบหลายปี ในอีกด้านหนึ่งความสามารถของผู้มีอำนาจและคุณครูก็ลดลงจากสถานการณ์โควิด-19 ผู้ที่จัดการเรียนการสอนก็ไม่สามารถประชุมงานและทำงานที่โรงเรียนได้อย่างปกติเช่นกัน

ผลการศึกษาข้างต้นนี้สอดคล้องกับงานวิชาการกลุ่มที่ศึกษาการเข้าถึงการศึกษาของแรงงานข้ามชาติในการศึกษาไทยก่อนสถานการณ์โรคระบาดที่แสดงถึงความยากลำบากและการโดนกีดกันของกลุ่มคนชายขอบในประเทศไทย สถานะทางกฎหมายแบบชายขอบ (liminal legality) ส่งผลต่อการกีดกันการเข้าถึงการศึกษาของเด็กข้ามชาติในโรงเรียนรัฐ (Kamowan Petchot 2014, pp. 7-8) การที่ไม่มีเอกสารรับรองสัญชาติและทำให้พวกเขาไม่ได้รับสิทธิขั้นพื้นฐาน และถูกพรากสิทธิมนุษยชนไปในทุกมิติ ทั้งสุขภาพ วัฒนธรรม การดูแล และอื่นๆ ไม่ใช่แค่ทางการศึกษา (Seiden et al 2018) Thithimadee Arphattananon (2012) ชี้ให้เห็นว่าถึงแม้ว่าประเทศไทยนั้นมีนโยบายที่อนุญาตให้ลูกหลานแรงงานข้ามชาติเข้าถึงการศึกษาของรัฐ แต่ก็ยังขาดนโยบายที่ส่งเสริมหรือชักจูงผู้ปกครองผู้ซึ่งเป็นแรงงานข้ามชาตินั้นนำบุตรหลานเข้าระบบการศึกษา และยังขาดนโยบายที่คอยสนับสนุนเด็กที่หลุดจากระบบ ยิ่งไปกว่านั้นยังกีดกันออกจากระบบการศึกษาชั้นสูง ข้อค้นพบดังกล่าวสะท้อนให้เห็นถึงปัญหาที่มีอยู่อย่างยาวนานของการเข้าถึงทางกายภาพที่ลูกหลานแรงงานข้ามชาติต้องพบเจอก่อนสถานการณ์โรคระบาด การจัดการศึกษาสำหรับผู้ที่ไม่ได้มีสัญชาติไทยมีปัญหาทั้งในแง่ของการรับเข้าเรียน การจัดการเรียนการสอนและการออกกลางคัน (ฐิติมดี อาพัทธนานนท์, 2556)

การกีดกันการเข้าถึงทางกายภาพนี้เองรวมไปถึงทางวัฒนธรรมทางภาษาทำให้ผู้ปกครองเลือกที่จะส่งบุตรหลานเข้าเรียนนอกระบบ อย่างศูนย์การเรียนรู้สำหรับเยาวชนพลัดถิ่น (MLCs) มากกว่าโรงเรียนในระบบการศึกษาไทย (Titiporn Tuangratananon et al. 2019) และบางโรงเรียนก็ไม่ได้ได้รับการยอมรับจากรัฐบาลไทย อย่างเช่น ศูนย์การเรียนรู้ที่แม่สอด (Johnson & Gilligan 2021, น. 3) ศูนย์เชี่ยวชาญเฉพาะทางด้านการย้ายถิ่นและการพัฒนา สถาบันเอเชียศึกษา จุฬาลงกรณ์มหาวิทยาลัย (ม.ป.ป., น. 45) รายงานการศึกษาจากกลุ่มตัวอย่างพบว่าในพื้นที่จังหวัดระนองเด็ก 85% เข้าเรียนสถานศึกษาของรัฐ ในขณะที่มีเพียง 5% อยู่ในศูนย์การเรียนรู้เด็กข้ามชาติ ทำให้เห็นถึงสถานภาพชายขอบของเด็กข้ามชาติในศูนย์การเรียนรู้ไทย-พม่า มาริสท์เอเชียที่วิทยานิพนธ์นี้พยายามนำเสนอ

สถานการณ์การเข้าถึงการศึกษาของลูกหลานแรงงานข้ามชาติในประเทศไทย ในช่วงศตวรรษที่ผ่านมางานวิชาการหลายชิ้นชี้ให้เห็นว่า เด็กข้ามชาติในประเทศไทย จากหลายกรณีที่ถูกศึกษาในงานข้างต้นนั้นยังถูกกีดกันออกจากระบบการศึกษา ข้อค้นพบที่ผ่านมาเกือบทั้งหมดมีขอบเขตเวลาก่อนช่วงสถานการณ์โควิด-19 วิทยานิพนธ์ฉบับนี้จึงมีคุณูปการต่อการทำความเข้าใจสถานการณ์ที่แย่งจากการระบาดของโควิด-19 จากประสบการณ์ตรงของการเข้าถึงการศึกษาของกลุ่มข้ามชาติในศูนย์การเรียนรู้ ในขณะที่เด็กข้ามชาติในโรงเรียนรัฐนั้นประสบปัญหาน้อยกว่าในช่วงระยะเวลาเดียวกัน อย่างเช่น การศึกษาของอินธิดา จำนงนิตย์และเพ็ญณี แนนรท (2564, น. 391) ที่ชี้ให้เห็นว่าลูกหลานข้ามชาติในโรงเรียนไทยได้เข้าถึงการศึกษาไม่ต่างจากเด็กสัญชาติไทย

ท่าทีของภาครัฐที่ปล่อยปะละเลยสิทธิการศึกษาของเด็กข้ามชาติเช่นนี้จึงเป็นการละเลยสิทธิมนุษยชนและไม่รับรองความเป็นมนุษย์ ภาครัฐทำได้แต่การสร้างภาพลักษณ์ด้วยการลงนามสัตยาบันในความร่วมมือระหว่าง

ประเทศ แต่ในด้านของการนำนโยบายไปปฏิบัติแล้วนั้นยังคงบกพร่องตั้งแต่ก่อนและระหว่างช่วงสถานการณ์โควิด-19 ส่วนหนึ่งทราบได้จากข้อมูลปฐมภูมิในวิทยานิพนธ์นี้ อันทำให้เห็นถึงความไม่เท่าเทียมและความเสียเปรียบ ที่ลูกหลานแรงงานข้ามชาติต้องประสบใน (และนอก) ระบบการศึกษาของไทย สถานการณ์โควิดส่งผลให้เราเห็นถึงการปฏิบัติต่อกระบวนการเรียนการสอนของลูกหลานแรงงานข้ามชาติที่หน่วยงานหรือภาครัฐจะต้องเข้ามามีส่วนมากกว่าการบังคับใช้มาตรการต่าง ๆ

2. ความสามารถในการปรับตัว (Adaptability)

ความสามารถในการปรับตัวนั้นสามารถพิจารณาได้จากหลายมุมมองด้วยกัน เนื่องจากทุกภาคส่วนล้วนแต่ต้องปรับตัวจากสถานการณ์โควิด-19 ในส่วนแรกเป็นส่วนของนักเรียน นักเรียนผู้เป็นลูกหลานแรงงานข้ามชาติอยู่ใน “ชายขอบ” ของระบบการศึกษาไทย ถูกกดทับด้วยโครงสร้างรัฐ ถึงแม้ว่านักเรียนชั้นประถมศึกษาชั้นนั้นจะเป็นรุ่นที่เติบโตมาในยุคเทคโนโลยี แต่นักเรียนกลุ่มนี้เป็นกลุ่มที่มีความเปราะบางเนื่องจากฐานะทางเศรษฐกิจและสังคม สอดคล้องกับการศึกษาของอัญชลี ศรีชมภูและสุภาศักดิ์พรรณ ตั้งตรงไพโรจน์ (2564) ที่พบว่าข้อจำกัดทางเศรษฐกิจและทางสังคมนั้นเป็นอุปสรรคที่สำคัญของเด็กข้ามชาติในโรงเรียนไทย การปรับตัวของนักเรียนในศูนย์การเรียนรู้จึงเป็นไปได้ง่ายกว่า เมื่อเทียบกับกลุ่มนักเรียนสัญชาติไทยที่มีฐานะที่ดีกว่าและอยู่ในระบบการศึกษาที่รัฐจัดการให้

ส่วนที่สองเป็นการปรับตัวของผู้ปกครอง ผู้ปกครองผู้เป็นแรงงานข้ามชาติได้พยายามอย่างมากในการปรับตัวเพื่อให้ลูกสามารถเรียนได้อย่างเป็นปกติ ทั้งการเตรียมอุปกรณ์อิเล็กทรอนิกส์ การซื้อแพ็คเกจอินเทอร์เน็ต การจัดเตรียมสถานที่ให้เหมาะสมกับการเรียน เช่น ห้องที่ไม่มีสิ่งรบกวนและเด็กสามารถมีสมาธิในการเรียนได้นอกจากนั้นผู้ปกครองยังต้องติดต่อสื่อสารกับคุณครูอยู่เป็นประจำเพื่อที่จะพูดคุยแลกเปลี่ยนเพื่อผลประโยชน์สูงสุดของลูก

“ลูกคนโตของดิฉันต้องขาดเรียนหลายวิชาเนื่องจากน้องชายต้องใช้โทรศัพท์เครื่องเดียวกันเพื่อเรียนในแต่ละวิชา” (สัมภาษณ์เมื่อวันที่ 23 พ.ย. 2565)

ประโยคนี้มาจากผู้ปกครองที่มีลูกหลายคนและมีความยากลำบากในการเรียนออนไลน์เนื่องจากทั้งครอบครัวมีโทรศัพท์เพียงเครื่องเดียว จึงจำเป็นต้องสลับกันใช้เพื่อเรียนหนังสือ การปรับตัวนี้แสดงให้เห็นถึงความจำเป็นที่จะต้องแก้ปัญหาการเข้าถึงทางเทคโนโลยีซึ่งสอดคล้องกับงานของ Workie et al. (2022) ที่ชี้ให้เห็นถึงความสำคัญของความเท่าเทียมทางเทคโนโลยี (technological equity) ที่ทำให้สามารถเข้าถึงการศึกษาได้ในช่วงโรคระบาด ในขณะที่ผู้ปกครองอีกส่วนหนึ่งให้ลูกหลานช่วยทำงานที่บ้าน พวกเขาเห็นว่ามีความยากลำบากหรือความยุ่งยากในการจัดเตรียมการเรียนการสอนและทำให้ลูกมีสมาธิเรียนออนไลน์ที่บ้านได้ จึงให้ลูกมาช่วยงานแทน เพราะเห็นว่าเป็นประโยชน์มากกว่า

ส่วนที่สาม การปรับตัวของคุณครูและสถานศึกษา การจัดการเรียนการสอนแบบออนไลน์เป็นวิธีการที่โรงเรียนเลือกที่จะใช้ เพราะเป็นวิธีการที่สามารถนำไปปฏิบัติได้และมีประสิทธิภาพมากที่สุด เมื่อเทียบกับอีก 4 วิธี

“ผมมีความสนใจในเรื่องเทคโนโลยีและระบบออนไลน์ เนื่องจากผมเป็นครูสอนคอมพิวเตอร์ วิกฤตินี้ จึงเป็นโอกาสของผมในการนำมาปรับใช้ในการสอนนักเรียน รวมถึงการสอนคุณครูท่านอื่น ๆ ในเรื่องระบบออนไลน์ด้วยเช่นกัน” (สัมภาษณ์เมื่อวันที่ 23 พ.ย. 2565)

คำบอกเล่าจากคุณครูในศูนย์การเรียนรู้มารีส์เอเชียที่มีบทบาทค่อนข้างมากในการปรับตัวในช่วงสถานการณ์โควิด-19 ทั้งนี้ผู้อำนวยการต้องปรับเปลี่ยนนโยบายและหลักการในการดำเนินงานภายในโรงเรียนให้สอดคล้องกับสถานการณ์ และสอดคล้องกับทรัพยากรที่โรงเรียนมีอยู่อย่างจำกัด ซึ่งสอดคล้องกับงานศึกษาของรัตนา จักกะพาก (2558, น. 163) ที่พบว่างบประมาณในการดำเนินงานนั้นไม่เพียงพอและยังไม่แน่นอนขึ้นอยู่กับการสนับสนุนจากองค์กรภายนอก ดังนั้นโรงเรียนจะต้องหาทางปรับตัวเพื่อใช้งบประมาณที่จำกัดนั้นได้อย่างมีประสิทธิภาพสูงสุด และเพื่อประโยชน์สูงสุดของนักเรียน ในส่วนของคุณครูก็ต้องจัดเตรียมทั้งอุปกรณ์อิเล็กทรอนิกส์ต่างๆ ทั้งของตนเองและของนักเรียน เพราะถ้าหากมีนักเรียนมีปัญหาเกี่ยวกับอุปกรณ์ ก็จะทำให้การเรียนการสอนหยุดชะงัก และคุณครูยังต้องปรับเปลี่ยนจัดเตรียมเนื้อหาการเรียนที่เหมาะสมกับรูปแบบการเรียนผ่านจอคอมพิวเตอร์และจอโทรศัพท์มือถือ และยังต้องติดต่อกับผู้ปกครองนอกเวลาการเรียนการสอน เพื่อติดตามและเอาใจใส่นักเรียนอีกด้วย

การปรับตัวเช่นนี้อาจจะนับว่าทั้งสามส่วนนั้นถึงขีดสุดในศักยภาพความสามารถและทรัพยากรที่มีอยู่ ในพื้นที่และสถานการณ์นี้ ทุกคนทั้งสามส่วน “ถูกบีบ” ให้ต้องปรับตัว เมื่อพิจารณาโครงสร้างอำนาจรัฐ หน่วยงานภาครัฐละเลยการสนับสนุนอย่างเป็นกิจจะลักษณะและเพียงพอต่อความจำเป็นขั้นพื้นฐานของผู้ที่ต้องการมากที่สุด คนกลุ่มนี้จึงต้องถูกทำให้ปรับตัวมากกว่าการปรับตัวด้วยความสมัครใจ รวมถึงความพึงพอใจของเด็กเรียนเรียนที่มีต่อการเรียนจึงลดน้อยถอยลงไป

บรรณานุกรม

- กนกวรรณ อุ่ทองทรัพย์, และประเทือง ช่วยเกลี้ยง. (2019). การค้ำนุชย์เด็ก กรณีศึกษาแรงงานเด็กชาวเมียนมา ลาว และ กัมพูชา. *วารสารสังคมสงเคราะห์ศาสตร์*, 27(1), 46-70.
- กมลาศ สาลี สุกันศล. (2556). *แรงงานข้ามชาติกับการเข้าถึงสวัสดิการทางสังคมในประเทศไทย: กรณีศึกษา แรงงานข้ามชาติในเขตเทศบาลนครเชียงใหม่ จังหวัดเชียงใหม่*. Chiang Mai Rajabhat University.
- กระทรวงศึกษาธิการ. (2561). *รายงานการจัดการศึกษาสำหรับเด็กที่ไม่มีสัญชาติไทยและบุตรหลานแรงงานข้าม ชาติในประเทศไทย*.
- กฤตยา อาชวนิจกุล, และกุลภา วจนสาระ. (2552). *การจ้างงานแรงงานข้ามชาติ ตามพระราชบัญญัติการทำงาน ของคนต่างด้าว พ.ศ.2551 กับการจัดทำบัญชีรายชื่ออาชีพ สำหรับคนต่างชาติ*. สถาบันวิจัยประชากร และสังคม มหาวิทยาลัยมหิดล.
- กุลธิดา รัตนโกศล. (2558). *การพัฒนากระบวนการเรียนรู้โดยใช้แนวคิดการเสริมสร้างพลังอำนาจชุมชนบนฐาน ทูทางสังคมเพื่อสร้างอัตลักษณ์ชุมชน*. [วิทยานิพนธ์ปริญญาโท, จุฬาลงกรณ์มหาวิทยาลัย]. Chulalongkorn University Intellectual Repository (CUIR). <http://cuir.car.chula.ac.th/handle/123456789/50195>
- จุฑามาศ พูลสวัสดิ์ (2019). *การศึกษาบทบาทและสภาพความร่วมมือระหว่างภาครัฐส่วนกลาง ส่วนท้องถิ่น ภาค ประชาสังคม และสถาบันอาชีวศึกษาของจังหวัดภูเก็ต*. [วิทยานิพนธ์ปริญญาโท, สถาบันบัณฑิตพัฒนบริหารศาสตร์]. NIDA Wisdom Repository. <https://repository.nida.ac.th/handle/662723737/6319>.
- ฐิติมดี อาพัทธนานนท์. (2556). การศึกษาของนักเรียนต่างด้าวในโรงเรียนรัฐไทย. *วารสารมหาวิทยาลัยศิลปากร ฉบับภาษาไทย*, 33(1), 111-130.
- ธนากรณ์ อินทร. (2023). *การจัดการศึกษาในระบบสำหรับบุคคลที่ไม่มีสัญชาติไทยในประเทศไทย: ศึกษากรณี โรงเรียนสังกัดสำนักงานเขตบึงกุ่ม กรุงเทพมหานคร ปีการศึกษา 2561*. *วารสารวิชาการด้านสังคมศาสตร์ ของคณะนิติรัฐศาสตร์*, 7(1), 60-79.
- ปริญญา หวันเหล็ก. (2015). *ความร่วมมือระหว่างองค์กรภาครัฐและองค์กรพัฒนาเอกชน: กรณีศึกษาการจัด สวัสดิการด้านการศึกษาให้กับบุตรหลานแรงงานต่างชาติในศูนย์คาทอลิกนักบุญออาทิมเพื่อผู้อพยพย้าย ถิ่นจังหวัดสมุทรสาคร*. [วิทยานิพนธ์ปริญญาโท, มหาวิทยาลัยธรรมศาสตร์]. http://ethesisarchive.library.tu.ac.th/thesis/2015/TU_2015_5505030253_3381_3644.pdf

พงศ์ทัศ วนิชานันท์. (2020, 1 พฤษภาคม). *การศึกษาพื้นฐานในยุค โควิด-19: จะเปิด-ปิดโรงเรียนอย่างไร?*
<https://tdri.or.th/2020/05/basic-education-in-covid-19-crisis-reopening-school-after-lockdown/>

พัชรี ประจัญ, อรุณช ศรีสะอาด, และปรีชา จันทวี. (2556). การพัฒนาทักษะทางสังคมของนักเรียนชั้นมัธยมศึกษาปีที่ 1 โดยใช้กิจกรรมเสริมสร้างทักษะทางสังคม : ประยุกต์ใช้แนวคิดการประเมินเสริมสร้างพลังอำนาจ. *การวัดผลการศึกษา มหาวิทยาลัยมหาสารคาม*, 19(1), 89-96.

ภรทิพย์ นิมพาลี, อธิษฐกร วรบำรุงกุล, และเริงวิษณุ นิลโคตร. (2566). การบริหารงานบุคคลของผู้บริหารสถานศึกษาที่ส่งผลต่อคุณภาพการศึกษา ของเด็กไร้สัญชาติไทย สังกัดสำนักงานเขตพื้นที่การศึกษา ประถมศึกษาตราด. *มหาจุฬานาครทรรศน์*, 10(5), 279-288.

รังสิพล เปลียนพันธุ์, ฉันทนา จันทร์บรรจง, ภาณุวัฒน์ ภัคตวิงศ์, และนุชา กอนพวง. (2014). รูปแบบการบริหารศูนย์การเรียนรู้สำหรับเด็กไร้สัญชาติในเขตชายแดนไทย-พม่า. *วารสารศึกษาศาสตร์ มหาวิทยาลัยนเรศวร*, 16(2), 104-118.

รัตนา จักกะพาก. (2558). *การพัฒนา รูปแบบการจัดการศึกษาสำหรับบุตรแรงงานต่างด้าวในประเทศไทย.* [วิทยานิพนธ์ปริญญาโทมหาบัณฑิต ไม่ได้ตีพิมพ์]. มหาวิทยาลัยศิลปากร.

ศูนย์เชี่ยวชาญเฉพาะทางด้านการศึกษาและการพัฒนา. (ม.ป.ป.). *รายงานสถานการณ์การจัดการศึกษาสำหรับเด็กข้ามชาติในประเทศไทย.* สถาบันเอเชียศึกษา จุฬาลงกรณ์มหาวิทยาลัย.

สรिता เจือศรีกุล, อภิชาติ พลประเสริฐ, และชนิดา รักษ์พลเมือง. (2018). การพัฒนารูปแบบการเรียนรู้ศิลปะเพื่อส่งเสริมจิตสำนึกในการอยู่ร่วมกัน ในบริบทการเรียนรวมระหว่างนักเรียนไทยและนักเรียนข้ามชาติ. *Journal of Education Studies*, 46(4), 419-438.

สุวิมล อุดอามาตย์, 2004

องค์การทุนเพื่อเด็กแห่งสหประชาชาติ. (2561, 8 กันยายน). *การศึกษาโดยใช้ภาษาแม่เป็นฐาน สร้างโอกาสที่เท่าเทียม ในการเรียนรู้ให้กับเด็กชาติพันธุ์.* <https://www.unicef.org/thailand/th/press-releases/การศึกษาโดยใช้ภาษาแม่เป็นฐาน-สร้างโอกาสที่เท่าเทียม>

องค์การทุนเพื่อเด็กแห่งสหประชาชาติ. (2562). *ไร้เส้นกั้นการศึกษา : แนวปฏิบัติที่ดีและการถอดบทเรียนจากการจัดการศึกษาสำหรับเด็กข้ามชาติในประเทศไทย.* องค์การยูนิเซฟ ประเทศไทย.

อนุสัญญาว่าด้วยสิทธิเด็ก, พฤศจิกายน 20, 1989,

<https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

อัญชลี ศรีชมภู, และสุภาคีพรรณ ตั้งตรงไพโรจน์. (2564). ความท้าทายในการจัดการศึกษาสำหรับเด็กข้ามชาติ: กรณีศึกษาจังหวัดระนอง. *วารสารศึกษาศาสตร์ปริทัศน์*, 36(3), 87-98.

อัญชลี ศรีชมภู. (2564). ความท้าทายในการจัดการศึกษาสำหรับเด็กข้ามชาติ: กรณีศึกษาจังหวัดระนอง. *วารสารศึกษาศาสตร์ปริทัศน์*, 36(3), 87-98.

อินธิดา จำนงนิตย์ และเพ็ญณี แนนรอกท. (2564). การให้บริการด้านการศึกษาแก่บุตรหลานแรงงานข้ามชาติในจังหวัดนครราชสีมาประเทศไทย. *Journal of Modern Learning Development*, 6(3), 384-395.

รายการอ้างอิงภาษาอังกฤษ

Anderson, S. (2002). *School improvement through teacher development: Case studies of the Aga Khan Foundation projects in East Africa*. Swets & Zetlinger.

Arphattananon, T. (2012). Education that Leads to Nowhere: Thailand's Education Policy for Children of Migrants. *International Journal of Multicultural Education*, 14(1).

Arphattananon, T. (2022). Education of Migrant Children from Myanmar in Thai Government Schools. *Manusya: Journal of Humanities*, 24(3), 409-425.

Collins, J. (2018, 24 May). *Why Aren't Human Rights Part Of The Essential Curriculum At Primary School?* <https://eachother.org.uk/human-rights-education/>

Inthida Chamnongnit, 2021

Johnson, D., & Gilligan, R. (2021). Youth agency in everyday precarity: the experiences of young migrants and refugees growing up on the Thailand-Myanmar border. *Journal of Youth Studies*, 24(2), 142-161.

Kanya Apipormchaisakul & Chalernpol Chamchan. (2020). Factors that Determine Access to Education among Migrant Children. *Journal of Social Development and Management Strategy*, 22(2), 73-90.

Leicht, A., Heiss, J., & Byun, W. J. (2018). *Issues and trends in Education for Sustainable Development*. UNESCO Publishing.

- Mahatma Gandhi Institute of Education for Peace and Sustainable Development. (2017). *Rethinking Schooling for the 21st Century*. (2nd ed.). <https://unesdoc.unesco.org/ark:/48223/pf0000260568>
- Mahmud, E., & Mehelin, N. (2020). Barriers to institutional education for refugees: A case-study of Rohingya Community in Bangladesh. In M. Datta, R. Mahajan, & M. Bose (Eds.), *Business, economics and sustainable development: The emerging horizons*. Bloomsbury Publishing.
- Markus, S. (2011). *Multicultural Education as a Human Right: Framing Multicultural Education for Citizenship in a Global Age*. Woodring College of Education.
- MWG, 2564
- N'tchougan-Sonou, C. H. (2001). Automatic promotion or large-scale repetition—which path to quality?. *International Journal of Educational Development*, 21(2), 149-162.
- O'Sullivan, M. (2006). Lesson observation and quality in primary education as contextual teaching and learning processes. *International Journal of Educational Development*, 26(3), 246-260.
- Petchot, K. (2014). 17 The Right to Education for Migrant Children in Thailand: Liminal Legality and the Educational Experience of Migrant Children in Samut Sakhon. *Migration, gender and social justice: Perspectives on human insecurity*, 307-323.
- Phusima Pinyosinwat. (2020). *How is teaching and learning conducted in the COVID-19 situation: Different lessons the country to learning management of Thailand*. <https://tdri.or.th/2020/05/>
- Rahman, M. M., & Husain, T. (2022). Structural barriers to providing basic education to Rohingya children in the Kutupalong refugee camp, Cox's Bazar, Bangladesh. *International Journal of Educational Research Open*, 3, 100159.
- Samoff, J. (2007). Education quality: The disabilities of aid. *International Review of Education*, 53, 485-507.
- Savage, C. (2019, 30 August). *The importance of mother tongue in education*. <https://www.ie-today.co.uk/comment/the-importance-of-mother-tongue-in-education/>

- Seiden, J., Ungsitipoonporn, S., Thawornpat, M., McDermott, K., Krairit, T., Nuchsuwan, R., & Sangsuk, K. (2018). *Unlock Every Child's Potential*. Save the Children.
https://thailand.savethechildren.net/sites/thailand.savethechildren.net/files/library/20190220%20REACT%20IDELA%20Feb2018%20-%20EN%20final-compressed_compressed-compressed.pdf
- Sifuna, D. (n.d.). *Concept And Function Of Quality Education*. <https://cice.hiroshima-u.ac.jp/wp-content/uploads/2014/07/JEF-E6-12.pdf>
- Tuangratananon, T., Suphanchaimat, R., Julchoo, S., Sinam, P., & Putthasri, W. (2019). Education Policy for Migrant Children in Thailand and How It Really Happens; A Case Study of Ranong Province, Thailand. *International Journal of Environmental Research and Public Health*, 16(3), 430. <https://doi.org/10.3390/ijerph16030430>
- Wasan Pounpunwong. (2018). Nationality Less Children's Education Right, in Case Study of Ban Pong Noi School, Amphoe Muang, Chiang Mai Province. *Political Science and Public Administration Journal*, 9(2), 123–156.
- Workie, E., Hinkle, L., deDufour, A., & Lacarte, V. (2022). *Advancing Digital Equity among Immigrant-Origin Youth*. Migrant Policy Institute.
<https://www.migrationpolicy.org/research/digital-equity-immigrant-origin-youth>