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## **2<sup>nd</sup> International Graduate Seminar on Human Rights and Democracy**

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Mahidol University (Thailand)

Friday, 12 July 2019, 14.00-16.00  
Block A (MHRD Lecture room), Kathmandu School of Law  
Purbanchal University

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<b>Time</b>	<b>Activity</b>	<b>Remarks</b>
<b>14.00 – 14.15</b>	Damn the dam The impacts of hydropower development on the rights of the <i>Adivasi Janajati</i> of Nepal	Speaker: <b>Mark Anthony III Ventura Ambay</b>
<b>14.15 – 14.30</b>	How National - Level Political Changes (NCA and 2015 Election) have Improved Women's Local-Level Participation in Kayin State, Myanmar	Speaker: <b>Nant May Nandar Kyaw</b>
<b>14.30 – 14.45</b>	The Impetus of DAP on Establishing the Democratic School as an Alternative Civic Education	Speaker: <b>Tarmizi Anuwar</b>
<b>14.45 – 15.00</b>	Access to Environmental Justice and Its Future in India	Speaker: <b>Visalaakshi Annamalai</b>
<b>15.00 – 15.15</b>	Reporting key outcomes of seminar presentations	
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# **DAMN THE DAM**

## **THE IMPACTS OF HYDROPOWER DEVELOPMENT ON THE RIGHTS OF THE *ADIVASI JANAJATI* OF NEPAL**

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### **Abstract**

Nepal is rich in hydropower resources, with 83,000 MW worth of hydropower energy potential waiting to be tapped. The country currently generates only 968 MW of hydropower energy. The Nepalese government is quite keen on developing these resources for supposed economic growth and progress. There are, however, very few studies that use a rights-based approach to illustrate the possible effects of hydropower development on Indigenous Peoples. Fewer still are studies that use the rights-based approach to demonstrate the effects of hydropower development on the *Adivasi Janajati*, Nepal's Indigenous Peoples. This study is an attempt to bridge that gap. The research queries how hydropower development impacts the rights of the *Adivasi Janajati* in Nepal. The rights-based approach to hydropower development is used as a conceptual framework for studying and analyzing the said impacts. This study uses the case study approach to represent the said hydropower development impacts. Drawing on primary data from in-depth interviews and field research as well as secondary data gathered from various official documents, researches, reports, and news articles, this paper argues that, more often than not, hydropower development in Nepal violates the rights of the *Adivasi Janajati*. This study also asserts that the *Adivasi Janajati* have a deep connection to their ancestral lands, and loss of these ancestral lands will have devastating consequences for them. Finally, this research demonstrates that the rights-based approach to hydropower development is an effective tool in studying the impacts of hydropower development on Indigenous Peoples. This study can be utilized by government entities, advocacy groups, non-government organizations, and dam financiers and developers to more clearly understand what is at stake--and lost--for Indigenous Peoples in hydropower development. While Nepal is a party to the Indigenous and Tribal Peoples' Convention and is a signatory to the United Nations Declaration on the Rights of Indigenous Peoples, it is clear that more needs to be done to secure the rights of the *Adivasi Janajati* in the country.

**Keywords:** Indigenous Peoples, hydropower development, Adivasi Janajati, Nepal, rights-based approach, case study, Upper Trishuli 1 dam, indigenous rights

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## I. Introduction

Nepal has, for quite some time now, been developing its rich hydropower resources through large dam development projects. While the country has about 83,000 megawatts (MW) of potential hydropower energy it can harness, its existing generators only produce 968 MW (Asian Development Bank, 2017, p.5). Policies related to exploiting the country's vast hydropower potential are currently designed to encourage private sector involvement following policy structure agreements the Nepalese government agreed with the World Bank (Government of Nepal, 1992; 2001; World Bank, 1987).

Hydropower development in Nepal, though, has met with criticisms and protests, particularly from the *Adivasi Janajati*, the country's Indigenous Peoples. A large number of large dam projects in Nepal is located in the ancestral lands of the *Adivasi Janajati*. In many instances, indigenous rights, particularly those of self-determination and free, prior, and informed consent are overlooked--deliberately or otherwise--in the course of dam construction, whether in the pre-implementation, implementation, and post-implementation phases. Violations of the rights of the *Adivasi Janajati* concerning hydropower development have been documented by indigenous rights organizations (LAHURNIP, 2017; Sunuwar Welfare Society, 2010).

This paper questions how hydropower development impacts the rights of the *Adivasi Janajati* in Nepal. The results of this study can be utilized by indigenous rights organizations looking for further evidence of the impacts of hydropower development. It can also be a useful resource for entities involved in hydropower development for them to better understand what is at stake for the *Adivasi Janajati* when development projects such as large dams encroach on their ancestral lands.

This study uses the case study method to provide a more in-depth understanding of the problem at hand. Primary data was gathered from interviews with members of the *Adivasi Janajati* community affected by a large dam project in Nepal. Indigenous rights activists also served as respondents. In addition, this study analyzed documents from the hydropower project as well as from the International Finance Corporation. A critical review of literature related to hydropower development and reports and other documents from indigenous rights organizations and news agencies in Nepal was also conducted. This study focuses on the events surrounding the pre-implementation phase of a large dam project and its effects on the residents of Hakubensi, a small village in Nepal's Rasuwa district. Majority of the residents of the said village are from the of indigenous Tamang people.

This paper argues that hydropower development is violating the rights of the *Adivasi Janajati* in Nepal. It also asserts that the *Adivasi Janajati* are deeply connected to their ancestral lands and that to lose these lands would severely affect their ways of life. This study further argues that a rights based approach to hydropower development is necessary in order to better understand what is at stake when implementing development projects in *Adivasi Janajati* ancestral lands.

The next part discusses various issues connected with Indigenous Peoples and hydropower development. The succeeding section then describes the findings of this study, along with a short description of the Tamang people and Hakubensi village and the dam project being studied.

## II. Indigenous peoples and hydropower development

The United Nations identifies Indigenous Peoples through several "characteristics." These are self-identification at the individual level, and acceptance of the said individual by the community;

the group's historical linkage and continuity with pre-colonial or pre-settler societies; possessing a strong link to lands and territories and its natural resources; a distinct social, economic, or political system; has a distinct language, culture, and beliefs; are politically and/or economically marginalized in society; and resolve to maintain their ancestral environments and systems as groups and communities distinct from the dominant ones (OHCHR, 2013).

Nepal's Indigenous Peoples, the *Adivasi Janajati*, comprise about 36% of the country's 26.5 million people, divided into 59 officially recognized groups (Bhattachan, 2018). Most of them can trace their roots to the north of Nepal (Kansakar, 1973). Recent studies in genetic structures of several *Adivasi Janajati* seem to support this assertion (Cole, et. al., 2017; Gneccchi-Ruscione, et. al., 2017).

Nepal is considered a low-income country, with an estimated gross domestic product per capita income of USD 1004 in 2018 (GoN, 2018). It has very few mineral resources. It is, however, rich in hydropower resources, with an estimated 83,000 MW of hydropower available for development (ADB, 2017, p.5). There are those who view Nepal's future progress as depending on optimal exploitation of its hydropower resources (Alam, et. al., 2017). The Nepalese government is determined to maximize its hydropower potential and has called on private sector involvement for this purpose (GoN, 1992; 2001). Investment in hydropower in Nepal is still inconsiderable (Bista, 2017), due mainly to weak infrastructure, political instability, and industrial conflict (Shreshta, P., 2017).

Despite this, there were at least 20 large dams being planned or constructed in Nepal in 2017 (Alam, et. al., 2017). A large dam is defined by the International Commission on Large Dams (2013, p.3), an international non-government organization that compiles data on design, construction, and impacts of large dams worldwide, as any dam that rises to at least 15 meters high from its base or a dam between five and 15 meters that stores at least three million cubic meters of water.

Although dams are being touted as a clean, cheap, and "green" alternative source of energy compared to fossil fuels (IFC, 2015), the negative consequences of large dam development are enormous. Studies show that large dams account for a large portion of greenhouse gases released in the atmosphere that worsen climate change (Deemer, et al., 2016; Fearnside and Pueyo, 2012; Lima, et al., 2008; Zarfl, et al., 2015). Other effects include fragmentation of river systems, massive deforestation, and loss of marine and land biodiversity (Janson, 2006; Kano, et al., 2016; Schmutz and Moog, 2018; Pandit and Grumbine, 2012; Zarfl, et al., 2015).

Between 40 to 80 million people have been displaced by large dam construction (World Commission on Dams, 2000). There are no estimates of those displaced from the year 2000 up to present, but with the resurgence of large dam construction in recent years, the number promises to be significant (Pearse-Smith, 2014).

Indigenous Peoples are disproportionately affected by large hydropower projects (Neef and Singer, 2015). They are forced out of their ancestral lands, impoverished, and sometimes meet threats to their lives (Finley-Brook and Thomas, 2010; Frontline Defenders, 2017; Global Witness, 2017; Minority Rights Group, 2012; Van Cleef, 2016). In Nepal, large dams, other development projects, and forest conservation have claimed 65 percent of ancestral lands (Cultural Survival and NCARD, 2015). This development has resulted in the *Adivasi Janajati* being some of the poorest people in Nepal (Bhattachan, 2012).

Several studies show how large dam construction has contributed to further impoverishment of the *Adivasi Janajati* during dam pre-implementation phase (Koirala, et al., 2017) and how the state and the companies behind large dam development have failed to respect the rights of the *Adivasi Janajati* to self-determination and free, prior, and informed consent (LAHURNIP, 2017; Sunuwar Welfare Society, 2010). Even the World Bank found itself in the midst of controversy when a bank inspection panel found that the World Bank itself did not follow its own protocols on indigenous rights with regards to the Arun III hydropower project (World Bank Inspection Panel, 1994). The 900MW dam is one of the largest projects in Nepal in terms of foreign investment and, as the power from the dam will be exported to other countries, would have significantly added to the government's income. The project was revived recently and is currently under construction.

### **III. The rights-based approach to hydropower development**

The rights-based approach to hydropower development (RBAHD) is the use of human rights standards and norms in planning, implementation, operation and evaluation of hydropower development projects. This concept builds on the work done by hydropower development watchdog International Rivers on using the rights-based approach to dam standards (2014).

The importance of using RBA in hydropower development is that it allows us to have a common standard, internationally recognized as such, with which to measure the impacts of hydropower development on project-affected people. The RBAHD assumes, first and foremost, that human beings have a set of inherent rights by virtue of their being human. In addition, the RBAHD identifies both rights holders and duty bearers in hydropower development, thus opening up avenues with which rights holders can seek redress and justice should duty bearers fail to uphold and protect the rights of the project affected people.

In this study, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) is used as a reference to enumerate the rights related to Indigenous Peoples in the context of hydropower development (2007). While the UNDRIP is not legally binding to countries, it is still a more updated version of the International Labour Organization's Indigenous and Tribal Peoples' Convention (C169) of 1989. It also deals more strongly with such issues as self-determination, displacement, and militarization. It also enjoys much broader support than the C169, as the UNDRIP has been signed by at least 150 countries. In contrast, only 23 countries are a party to the Convention.

### **III. Hydropower development and the *Adivasi Janajati* in Nepal: A case study**

The small village of Hakubensi can be found in Rasuwa District, Province No. 3, about 80 kilometers away from Kathmandu, Nepal's capital city. The village is home to 42 households, with an estimated population of 200 people (NWEDC, 2018c, p.32). The Tamang people are the predominant *Adivasi Janajati* living in Hakubensi. For the Tamang people, the land is life (Tahal, interview, 22/05/2019). Most of the Hakubensi villagers are farmers, planting rice, corn, millet, and vegetables. They practice a type of Tibetan Buddhism intertwined with centuries-old Tamang beliefs. For seven days in April, they celebrate the *Sansaripuja*, where Tamang spiritual leaders would invoke the blessings of Mother Nature (Tahal, interview, 22/05/2019). Such practices show how deeply connected the Tamang people are to their ancestral lands.

Hakubensi lies less than 10 kilometers from the site of the Upper Trishuli 1 hydropower project (UT1). It is the pet project of the Nepal Water and Energy Development Company (NWEDC). Ownership of NWEDC, in turn, is divided between South Korean companies Korea South-East Power (50%), Daelim Industrial Company (15%), Kyeryong Construction (10%), Nepalese businessman Bkesh Pradhanang (10%), and the IFC (15%) through its project development venture fund (IFC, n.d.).

The project is a run-of-river type of dam, where a river's water is diverted from its course to pass through tunnels and engines to generate electricity before being returned some distance away from the dam site (international Rivers, 2016). The dam will operate under a build-own-operate-transfer scheme, and NWEDC will essentially own the UT1 for 35 years before turning it over to the Nepalese government.

The dam will be 29.5 meters high, and 1090 workers will be employed for the project. In early 2019, NWEDC announced that it would start construction of the dam itself (Tahal, interview, 22/05/2019), although construction of dam-related infrastructure and other activities commenced a few years before.

NWEDC acquired a total of 107.79 hectares for the UT1 project (NWEDC, 2018a, p.ES10). Of these, more than 84 hectares are national and community forests while the rest are private and *Guthi*-controlled lands. *Guthi* is a form of the social organization of the *Adivasi Janajati*. *Guthi*-controlled lands are lands owned by the *Guthi*, but wherein community members are allowed to till the land for their needs. Thirty-nine households composed of 154 families were considered tenants of the *Guthi* lands or owners of the private ones. Meanwhile, 422 families utilized the community forests for their livelihood, food, and other uses (NWEDC, 2018b, p. 7.5-1).

In 2007, NWEDC was granted a survey permit by the Nepalese government (Thapa, 2012). Land surveys for the project site started in 2009 (NWEDC, 2018b, p.8-1). Meanwhile, consultations with the project affected people started in 2012 (NWEDC, 2018c, p.35). Construction of an access road and a bridge were initiated prior to 2015, although the said facilities were severely damaged by a major earthquake that hit Nepal in 2015 (NWEDC, 2018a, pp. 2-8). Meetings to obtain the Free, Prior, and Informed Consent (FPIC) of the project affected people were conducted in late 2018, resulting in the project affected people signing a consent agreement with the company as well as an Indigenous Peoples Plan, supposedly to assist the project affected people cope with the effects with the project construction. Following this, WEDC announced in early 2019 that dam construction would commence sometime late in the year.

Art. 2 of the UNDRIP provides that Indigenous Peoples “have the right to self-determination... (to freely) determine their political status and freely pursue their economic, social, and cultural development” and Art. 10 stipulates that their FPIC should be obtained prior to commencement of any development projects or policies that may affect them as a community. Shradha Ghale (interview, 24/04/2019), an indigenous journalist and novelist, opines that, in Nepal, it is usually government officials and big businesses who agree on large projects while *Adivasi Janajati* are mostly absent from any proceedings. United Nations Special Rapporteur Victoria Tauli-Corpuz, in a message to the UN Human Rights Council, expressed her concern about the proliferation of large scale development projects that are “undertaken without consulting the Indigenous Peoples concerned, nor is their free, prior, and informed consent sought” (Tauli-Corpuz, 2018, p.8).

This appears to be the case for the UT1 project, as it is the government and NWEDC who agreed on the UT1 project. Tahal (interview, 22/05/2019) and Durga (interview, 23/05/2019), both



residents of Hakubensi village, do not remember ever being consulted by either government or NWEDC representatives prior to the approval of NWEDC's survey permit. They were not allowed to decide on whether they want the said project or not.

In addition, surveys and construction of project facilities started even without the consent of the project affected people, thus violating their right to Free, Prior, Informed Consent (FPIC). NWEDC itself acknowledges that it deliberately did not seek the consent of the project affected people prior to land acquisition and facilities construction as there was no specific law in Nepal mandating such (NWEDC, 2018b, p.7.6-3). Furthermore, the company considers that FPIC can be obtained even if "individuals or groups within the community explicitly disagree" (NWEDC, 2018b, p.7.6-3). When they attended meetings held about the project, respondents to this study say they were only *told* about the project; their consent was not asked for (Durga, interview, 23/05/2019; Tahal, interview, 22/05/2019). This fact puts into question the sincerity of NWEDC and the Nepalese government in respecting the rights to self-determination and FPIC of the *Adivasi Janajati* in the project affected area.

Karsang Tamang (interview, 24/05/2019), an indigenous rights activist residing in the area, laments that the project affected people had no participation whatsoever in the design and planning of the UT1 project. This situation goes against the right to participation Indigenous Peoples possess. The project was presented to them ready-made. Lakpa Tamang (interview, 24/05/2019), another indigenous rights leader living in the area, notes that company and government representatives initially talked only to district and municipal level officials and political party representatives; it was only much later that they would start conducting talks with the villagers themselves.

Also, the meetings were held mostly in Nepalese, in which majority of the Tamang people living in Hakubensi were not fluent. With the low level of education most of the residents of the village had, they were mostly unable to comprehend the technicalities of the discussion, and many of them left the meetings with no clearer understanding of the project or its consequences (Manoj, interview, 23/05/2019). In addition, project documents are available on the company website only in the English language, and Hakubensi villagers possessed no copies of these project documents in the Tamang language (Tahal, interview, 22/05/2019), thus precluding the ability of project affected people not conversant in English to scrutinize information regarding the project further.

Just compensation for development induced displacement is stipulated in Art. 28.2 of the UNDRIP. The article further clarifies that, whenever possible, compensation should be in the form of land, territory or resources at least equal to those lost due to the project. NWEDC admits that, from the onset, it did not even consider land-for-land compensation as viable; it, instead, opted for cash-for-land compensation for their land acquisition program (NWEDC, 2018b, p.7-5.3). Just compensation for the project affected people were clearly insufficient and unequal to what the project affected people lost to the project.

Previous research in the area indicates that the project and government representatives presented the sale of the ancestral lands as something non-negotiable (LAHURNIP, 2017). Respondents to this study verify this claim, stating that the approach taken by the representatives was that the villagers had no choice but to agree to the cash-for-land compensation scheme (Durga, interview, 23/05/2019; Tahal, 22/05/2019). In fact, the villagers were not even made aware that there was a land-for-land compensation option available, nor were they made aware of what their rights over their lands were as *Adivasi Janajati*.

Moreover, although the private landowners and *Guthi* land tenants affected were paid 500,000 rupees per 0.05 hectares of land, they were given no compensation for the residences, trees, and other structures that stood on their lands. The 422 families affected by the loss of the community forests were also not compensated for the loss of access to these forests, as it was the District Forest Office who claimed ownership of these forests as stipulated in Nepal's Forest Act (GoN, 1993). Compensation was thus paid to the forest office instead of the project affected people. Since the farms and forests act as sources of food and livelihood, loss of these lands means less food on the table and hunger in the horizon for the *Adivasi Janajati* of Hakubensi.

The project will also reduce to 10 percent the water flow of the Trishuli River, which lies at the foot of the hill in which Hakubensi is located and which acts as a source of water for drinking, bathing, washing, irrigation, recreation, and religious purposes (NWEDC, 2018a, pp.ES7-8). The extremely lessened water flow will also immensely impact riverine biodiversity. This reduction, in turn, may lead to less fish catch for the Hakubensi villagers.

Along with the land, 27 residences were acquired by NWEDC and will soon be demolished to give way to the construction of project facilities (NWEDC, 2018b, p.7.5-1). The company relocated only two houses, and it is not clear why only these two houses were relocated and not the others. The other families had to buy new houses in other areas such as Dhunche or Kathmandu, where the price of land and the cost of living were higher. This additional expense significantly reduced the resources the families received from the cash-for-land compensation provided by NWEDC.

In return for the loss of livelihood, NWEDC verbally promised to provide one job for every family in the villages in the project affected area (Durga, interview, 23/05/2019). Yet during the construction of the access road and other facilities, workers from other parts of Nepal were hired instead of locals (NWEDC, 2018b, p.7-8.1). Also, NWEDC expressed its preference for hiring workers from outside the locality because of the lower wage rates (NWEDC, 2018b, p.7.8-1). And, if ever the company does hire the villagers, the tenure of employment will most likely be up to the project completion date five years from the start of dam construction.

It is clear from the incidences mentioned above that hydropower development in Nepal violates the rights of the *Adivasi Janajati*, the country's Indigenous Peoples. The Tamang people of Hakubensi village were not allowed to determine whether they wanted to have a dam or not in their ancestral lands, and their free, prior, and informed consent was not obtained until over one decade after the issuance of a survey permit for the company's activities and the commencement of these activities. Their participation in the design and planning of the project was not sought for either by NWEDC or by the government.

Relevant information regarding the project was denied the *Adivasi Janajati*, whether it be through the use Nepalese in community meetings or the use of English in project documents, both languages the majority of Hakubensi village are not exactly fluent in. The land loss was presented by NWEDC and government representatives as inevitable, with cash-for-land compensation as the only compensation scheme available.

Loss of land and forests means loss of livelihood and less food for the villagers; it also means food insecurity and possible hunger in the horizon. Dam activities will also lead to great reduction in water supply in the Trishuli River, threatening the villagers' right to water. Houses will be demolished for the project, with no relocation provided for the vast majority of the families to be displaced.

Because the *Adivasi Janajati* are deeply connected to their lands, the great changes brought about and will continue to be brought about by the UT1 project spells disaster for the ways of life of the Hakubensi villagers. Through the use of the rights-based approach in viewing the effects of hydropower development, it is now much clearer to us what Nepal's Indigenous Peoples have to lose in the hydropower development projects like UT1.

#### **IV. Development and human rights**

There is no debate when we say that energy is important for the progress of any country. The Nepalese government is currently trying to produce this energy through the exploitation of its vast hydropower resources. A large number of large dam projects, however, are in the lands of the *Adivasi Janajati*.

The *Adivasi Janajati* are deeply connected to their ancestral lands. The livelihood and ways of life of the Tamang of Hakubensi village reflect this connection. However, this connection, as well as their rights, are threatened by the arrival of the Upper Trishuli 1 hydropower project.

Through the data presented above and by use of a rights-based lens, this paper shows how NWEDC and the government violated the rights of the Tamang people of Hakubensi. The rights of the *Adivasi Janajati* to self-determination and free, prior, and informed consent were not respected. Their rights to their ancestral lands, food, water, housing, and work are also endangered by the project, and the displacement of the project affected families promises more violations of indigenous rights to come.

The implications of this situation are staggering. Indigenous Peoples have time and again been pitted against the interests of profit-oriented entities, damning Indigenous Peoples to lose their lands, livelihoods, ways of life, and even their very lives in the name of so-called “development.” While numerous political, anthropological, sociological, and historical studies abound regarding Indigenous Peoples, what is often forgotten is that the history, culture, and ways of life of Indigenous Peoples are likely to disappear in the face of the onslaught of development projects. What is worrying is that, given the current situation, it seems that it is quite easy right now to disregard the rights of Indigenous Peoples, indeed, the rights of everyone, in the name of “development.”

Although this paper shows how hydropower development has violated Indigenous Peoples' rights, this does not mean that development projects such as large dams should be scrapped in their entirety. Further studies should be made, though, to develop new ways of ensuring that, in the mad rush for development, the rights of project-affected people are upheld and respected. Development should never come at the expense of human rights.###

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# **HOW NATIONAL-LEVEL POLITICAL CHANGES (2015 NCA AND GENERAL ELECTIONS) HAVE IMPROVED WOMEN'S POLITICAL SKILLS EMPOWERMENT IN KAYIN (KAREN) STATE, MYANMAR**

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## **Abstract**

Ethnic women from Myanmar have for several decades experienced acute human rights violations related to conflict, such as violence and harassment, with limited opportunity to speak out. The objective of this thesis is to learn more about women's experiences in political skills empowerment and to assess the impact of training led by women's rights-based organizations in Kayin State, Myanmar. The research uses in-depth interview methodology through interviewing 14 key-informants. Interview findings show that many interviewees felt that women's participation in voting, local-level politics and peace processes have improved since the 2015 NCA and the general elections, highlighting the impact of the promotion of peace and democracy for politically marginalized groups. The research also found that as a result of the training, women participants have become better at engaging with different key actors and better equipped in the decision-making process in communities. The trained women became more involved in legal assistance for human rights violations; often, however, this involvement focuses solely on issues that are specifically related to women.

Nevertheless, women still suffer from less confidence and reduced capacity to participate, gender discrimination, weak governmental initiatives, financial restraints, and fewer opportunities to access leadership in local-level politics. The research also found that the key barriers for women are communicative, both in terms of education and access to

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language, lack of capacity, and limited access to information, as well as socio-cultural norms that prioritize men's leadership and decision-making, and limited, poorly resourced governmental initiatives for women's political skill-building. The research recommends on-going coaching, mentoring for women, and initiating advocacy against gender discrimination in all spheres, mainly at the local and national political level to increase women's participation in political processes. The government also should formulate law and policy to provide women's political skills empowerment in line with CEDAW and the Beijing Declaration and Platform for Action.

**Keywords:** gender equality/political skills/women empowerment and advancement/political participation/peace process/engagement/key actors

## **I. Introduction**

Myanmar comprises seven states, seven regions, and the Union territories. It is one of the most well-known countries in the world that severely restricts fundamental freedoms, civil, political, and economic rights of its population (United Nations Development Programme, 2018). Kayin State is one of the most isolated states which have been affected by protracted conflict for over 70 years. In 2012, the government initiated bilateral ceasefires with the ethnic armed organization (EAO) in Southeastern Myanmar, and in 2015, the dominant Karen EAOs became the signatories to the Nationwide Ceasefire Agreement (NCA). Later that year a civilian government, the National League for Democracy Party (NLD), under the leadership of Aung San Suu Kyi, was elected. These changes have led many civilians to hope for improvements in the human rights situation and women's empowerment, specifically (Asian Century Institute, 2016).

The women's rights-based organizations apply the human rights-based approach to empower women and communities to know their rights and to support political participation fully. This approach supports to collect the views of rights-based organizations discussed below. A study was undertaken from January to June 2019 looking at the role and impact of the work of women's organizations to increase women's political skills empowerment in Kayin State, Myanmar, as part of a master's thesis "A Study of Women's Experiences in Political Skills Empowerment in Kayin State, Myanmar." This research mainly focuses on the qualitative approach to represent the data gathered from the interviews using a semi-structured method. The research design is narrative to show the experiences of women's rights-based organizations and trained women. The findings presented in this paper are taken from the key findings of that research.

## **II. Findings of Women's Political Skills Empowerment**

This research focuses on women's political skills empowerment, which aims to engage with local-level key actors, local-level decision-making process, women's leadership, and to increase women's awareness of their rights. The research also focuses on how women overcome the challenges by using political skills in their communities, as these women live in the conflict areas of Kayin State.

The key argument for the analysis is that trained women leaders from the community are aware of their rights, and they can pursue the human rights issues in their communities by engaging with key actors, networking, and communicating with women's organizations for rights violations after the political changes in 2015. However, trained women can be identified mostly at the grassroots level and are rarely seen to reach the State-level politics because of lack of political education, social and cultural norms, language barriers, gender discrimination, and lack of governmental support for women's political empowerment. Moreover, there are still on-going armed clashes, and political oppression continues to affect women's political participation. As the troubles continue, women from communities still face challenges to participate in local-level political participation and peace processes.

### **II. A. Women's Political Participation**

Before the 2015 political changes, there was a history of politicians being tortured, killed, and imprisoned; thus, women from across Myanmar did not dare to participate in politics, even the local-level peace processes, and politics. In addition to the long-term armed conflicts, there is a severe lack of education in politics and lack of access to the information. Additionally, language and communication continue to be a key barrier, although the female literacy rate is at 70.98 percent (Myanmar Census, 2014) in Kayin State. The lack of well-resourced education and the presence of a multiplicity of ethnic and minority languages not only provide a barrier but also discourage active participation.

All respondents said that fewer women voted in the 2010 elections, and the majority of women were compelled by male family members and authority figures to vote for specific candidates, a clear example of the lack of female political autonomy present in these areas. In some villages, only men voted, claiming to represent the voice of the whole village in the 2010 elections. The analysis shows that the main reason for the low rate of women's voting was women's unawareness of the value of voting and no media updates. However, from 2013 onwards after the 2012 bilateral ceasefire agreement, women's organizations, local civil society organizations (CSOs), and non-governmental organizations (NGOs) gave voter education and gender equality

awareness training to spread women's awareness of how to vote, and also women were encouraged to vote the right candidate in the 2015 elections by their children from abroad.

A women's leader from Hlaing Bwe Township, Respondent A, stated such statement.

There were no polling stations in the 2010 general elections in the ethnic-controlled area and some mixed-controlled areas (government and EAOs' administration). In the 2015 elections, some polling stations were built, and more women voted in this election.

A women leader from Hpapun Township, Respondent F, said the followings.

Regarding the election involvement in 2015 elections, all the women currently living in the area took part but not from a too remote area and EAO's administrative area. No significant number of women is involved in the peace process because women still face armed clashes.

Respondent M from Local CSOs (Kayin) stated the followings.

Women's role in political participation was not apparent before the 2015 NCA and political changes. After the NCA and elections, the State minister was a woman, and also women were encouraged to participate in the peace process, so women's participation and the decision-making process is a bit improved. Before 2015, the prime minister was male, and when we say women's participation, he brought his wife in women affair committee, and they did not have gender mindset before 2015.

Respondent K from women's organization mentions the followings.

One representative (a man) votes for the whole village in the mixed controlled area in the 2010 general elections. Some women vote, but they do not understand how to vote. Some women do not vote, but their names are listed in voting rolls.

## **II. B. Women's Political Leadership**

Women face considerable challenges to participate in formal political processes at village tract, state, and national levels, which have been outlined above. There has been some improvement at state and national levels since 2015. However, in local-level positions of village tract

administrator, for example, women's participation is now reduced in the most conflict-affected areas as men took the lead, and only slightly improved in the improving conflict-affected areas.

Notably, female candidates for the Parliament of Myanmar (13.7 percent) have increased in the 2015 general elections. There have only ever been two women state ministers, both from Kayin State, in 1953 and 2015 general elections (The Asia Foundation and Pan Htee Eain, 2017). In the 2015 general elections, a female chief minister, a female vice minister and four female MPs from the Upper House and one woman MP from the Lower House of Parliament were elected in Kayin State (*Pyidaungsu Hluttaw*, The Republic of the Union of Myanmar, 2018).

Following are the examples of women's leadership field situations, recorded when the field research data was gathered.

Respondent F from Hpapun Township stated:

There were more female village tract administrators during the armed conflicts as the men had to hide in the forest to avoid the military's forced labor before the signing of the NCA, and men took leadership after 2015 NCA in the most conflict-affected areas.

In contrast, Respondent B from Hpa-an Township (the capital city of Kayin State) expresses the following opinion:

There was only one woman village tract administrator in the 2010 elections in Hpa-an Township. After the 2015 general elections, four out of 99 VT administrators and the communities chose more ten households and 100 household village head in local-level administration.

There are more than 20 EAOs in Myanmar, and it is rare to see women's leadership in any EAOs across Myanmar. Significantly, the women's decision-making process and empowerment from one big EAO in Southeastern Myanmar was active before the 2015 general elections as a women's leader led the initiative for the NCA. The participation of women in political processes, particularly the peace process, was noteworthy to respondents, even when it was only one woman.

Respondent L from Local CSO noted the following:

A KNU female secretary was initiated to sign the NCA, and so, significantly, a female leader participated in the decision-making process for the NCA. After

the 2015 NCA and elections (from the EAO side), there were no women leaders who would continue leading for consultation from the Karen EAOs, so it has been a drawback for women's participation in politics and the peace process.

Moreover, there are around 90 political parties in Myanmar, and mostly 90 percent of their executive members are male. In the 2015 general elections, 18 political parties won in elections but with only seven women candidates, two female ministers at Union level and two female chief ministers at State/Regional level (Salween Institute and Women's League of Burma, 2018). The women's participation in political parties is low, and also women face challenges to become candidates in the political party. Among the political parties, the significant changes were found in the NLD party as women become candidates in parliament in the 2015 general elections. However, at the local party level, there appears the same mindset where men dominated in the party, and rarely were women candidates found. Because of this domination, the evidence gathered shows that women leaders had not received any particular political skills training from the government or their political parties before they become MPs.

## **II. C. Women's Empowerment After the 2015 NCA and General Elections**

This research has chosen a range of community-based, women's rights-based civil society and NGOs, and their trained women, as respondents, representing 98 NGOs and CSOs working in Kayin State that respond to different sectors of development, including women's needs, after 2015 (MIMU 2017, Overview of the Sep 2017 3W Kayin State, pp. 1-7). The de facto prime minister is a woman; by that token, she has encouraged and supported more women's empowerment activities for implementation and also permitted the women's rights-based organizations to be registered to work for women in communities after 2015. More women's organizations were able to begin operating in Kayin or expanding their works.

The women's rights-based organizations and local CSOs focused on providing voter awareness before the 2015 elections. The organizations also focused on giving rights and gender equality awareness in the community, so it is significant that more women have become aware of their rights and have claimed their rights after this. There was a more significant movement for women's inclusion, and also most women's rights-based organizations advocated for a 30 percent quota of women for political participation.

Despite the 2015 NCA, conflict is on-going across Myanmar even though 10 EAOs signed the NCA and has affected women's empowerment and development. The women from communities have been aware of the women's rights since 2013, as women's rights-based

organizations started giving awareness after the 2012 bilateral ceasefire agreement, but women have not been active in raising awareness and exercising their rights despite the repeated human rights violations before 2015. Since 2015, CEDAW, NSPAW, and the 30 percent women's quota policy were brought to the community's attention by women's organizations.

The research found that trained women leaders from the community are aware of their rights and improving their engagement with key actors and participation in dealing with women's issues. The analysis found that women from the community are effective at engaging with EAOs in the EAO-administered areas (and some mixed-controlled area), but the women from the community are still weak in engaging with the government as less dealing with the government before 2015 political changes. Trained women leaders are peace monitors and paralegals for giving legal assistance to the community with the cooperation of women's networks, but trained women leaders are yet to be in the position of becoming candidates in State-level parliament because of crucial barriers, although they participate in the local-level peace process and political dialogues.

Respondent H from women's right-based organization expresses the following opinion:

Women have improved in giving legal assistance, and also some selected women from Thandaungyi Township attended a peace dialogue. The women's organizations/groups have become more established after 2015 and become a network of Women's Organization Network (Kayin). Now women leaders can lead and contribute to the decision-making process regarding women's issues in the communities. However, there are only a few trained women leaders from seven townships, and not yet all women from communities are involved.

Respondent M from Local CSO states:

Women's participation and local-level decision-making have improved, but women have less of a role in the decision-making process as men still take leadership at every level of politics. Women leaders have improved in their ability to engage with key actors, such as complaining about the issues directly to the government ministers. The potential four women candidates' family fully supported them to be leaders to attend training regularly to become MPs in the 2020 general elections. Women can participate in peaceful dialogue and deliver peace awareness training to the communities.

Mennonite Economic Development Associates (MEDA), INGO from Canada implements projects for women farmers' empowerment in Kayin and Shan State after 2015. Respondent N from MEDA states:

Women leaders from Kayin state receive gender awareness and women's leadership training to promote businesswomen to participate in the national economy and to participate in decision-making processes. Now women leaders become the sale promoters on behalf of the women farmers' group and are effective at engaging with different key actors. Some trained women, especially women from Kawkaireit and Hlaing Bwe townships, take the initiative and are good at leadership, so the communities chose them to be the village tract administrator, hundred household head, and ten household leaders ( government system on village administration).

## **II. D. Women's Empowerment Challenges**

The majority of organizations mention that they face challenges today engaging with key actors, as three key actors—the government, the army, and EAOs— are all present in the conflict area. The government system is also the same process as the governing body, and the former government staffs are in every ministry. Some CSOs argues that they have challenges to build trust with the EAOs as well. The most local CSOs approached some religious leaders for the activities implementation in Kayin State before 2015. Some women's rights-based CSOs said that the women's rights-based organizations are encouraged to work more to improve women's capacity to participate democratically by the Prime Minister after 2015 but still have challenges to implementing the women's activities at the ground level because the village authorities are not under the government body.

Through the field research, the majority of women's rights-based organizations and local CSOs mention that women from the community lack the capacity to engage in politics and lack the confidence to participate in politics and to be candidates for political office, but not all are set for trained women leaders. Some organizations argue that some women are educated, but they have less experience in politics than men, so they have to put in more effort to meet expectations. Even though women are aware of their rights to participate in politics, some women are not interested in political participation because political oppression has been a constant feature since the previous government, and communities are discouraged from resisting due to a legitimate fear of a backlash.

Respondent L from the local CSO (Kayin) suggested this opinion:



Women need more capacity building and coaching to be in politics as they are also weak in studying policy and legal issues and accessing political knowledge. The challenges of women also include, of course, their being trapped in poverty and struggling with finances and domestic labor.

Respondent H from women's organization states the followings.

They face challenges on the government's system approval to conduct training. For example, the organization already submitted the informed letter for implementation to the Department of Social Welfare (DSW) and the prime minister, but the local authority did not approve the implementation especially in the conflict-affected area and recommended that the organization contact the Prime Minister for permission. Before the 2015 political changes, the local CSOs and women's organizations found it difficult to share the UDHR and notions of women's rights awareness.

Respondent I from women's organization argues the followings.

CEDAW was not officially accepted in 2013 in Kayin State even though the government ratified CEDAW in 1997, as rights are a sensitive topic in the conflict area of Kayin State.

Respondent I also mentioned that they have faced challenges with harassment in dealing with rights and justice for the villagers, and have had to deal with several actors participating in the case. Additionally, it can be challenging to deal with perpetrators.

Respondent K from women's organization states:

Local women face challenges with the language barrier to access politics as the majority of the women are from ethnic minorities, and cannot understand the information which is in Burmese. Another challenge has been the harassment of security issues from the opponents, especially from domestic violence cases.

The research analysis shows that only one local CSO initiated training for women to become candidates in State-level parliament for 2020, but other women's rights-based organizations only focus on grassroots-level women's leadership; therefore it is rare to see the trained women rise to become representatives in the parliament. Some trained women went on to

work as VT administrators, paralegals, peace monitors and sale promoters at the local-level in Kayin State. The analysis also shows that the government has not initiated any political skills training for women across Myanmar, and most political parties are also weak in mainstreaming women's participation in politics. The women's rights-based organizations require further capacity building to raise women from the grassroots level to participate in State-level politics and decision-making processes. Moreover, the government needs to ensure the policy or existing law is correctly enforced to protect women's security to participate in politics in line with CEDAW.

To sum up, the challenges facing women's empowerment, this research finds that although since the NCA and 2015 general elections, women's participation at the local-level in Kayin State has improved, significant barriers remain that perpetuate socio-cultural norms and gender discrimination.

### **III. Conclusion**

Ethnic minorities in Myanmar have faced decades of political oppression, armed conflict, human rights violations, and economic crisis. Kayin (Karen) State has been affected by prolonged conflicts for more than 70 years, and women have been affected by particular human rights violations related to the conflicts. The instability in the political regime, security, and infrastructure has meant that women have limited capability to report violence or harassment and simultaneously have no faith in the establishment to act justly.

In 2015, the dominant Karen EAOs became signatories to the National Ceasefire Agreement (NCA), and later that year, a civilian government was elected. These changes have led many civilians to hope for improvements in the development of Myanmar economically, socially, and particularly in regards to human rights and access to justice. The rise to the high office of Daw Aung San Su Kyi was considered a historic moment in the campaign to improve women's rights across the country.

The objective of this research is to learn more about women's experiences in political skills empowerment and to measure the impact of training mainly led by women's rights-based organizations in Myanmar. The study evaluates how women's rights-based organizations played an essential role in women's political skills empowerment development. The study also focuses on the extent to which women were engaged and, therefore, participated in the political process relating to voting, leadership, and engagement with key actors, education, and challenging societal and gender-based norms. The research uses in-depth interview methodology, gathering

information from twenty-one informants from women representatives, organizations, and governmental institutions.

Many interviewees felt that women's participation in voting, politics, and local level peace processes were improved after 2015 NCA and the general elections many focusing on the impact on marginalized groups. In addition, the interviewees felt that domestic violence and human rights violations cases have become less common than before 2015, attributing this to communities' increased awareness of women's rights, led mainly by the CSOs that have become more prevalent in Kayin State since 2012.

The research found that as a result of the training, women feel more equipped to participate in the decision-making process in communities, and take action when it comes to human rights violations. However, the respondents are still participating in areas focused on women, and they do not necessarily feel equipped to branch out into areas typically dominated by men. Besides, while the respondents note improvements in women participation in politics, at the local level political and peace processes, women running for leadership positions at the village or township level run considerable risks attached to the pursuit of the office. As women generally are the primary caregivers and providers of domestic labor with little control over their finances, their running for a leadership position is sporadic. However trained women leaders are still becoming paralegals and peace monitors, and also women's groups are being formed to assist in the legal process regarding human rights violations, working with active women networking groups and lawyers.

The main challenge facing women's empowerment in Myanmar are found at the top and grassroots levels. In their mission to train and empower women to be active citizens, women's rights organizations face challenges rooted deep within the government system and key government authorities, such as the military, government departments, EAOs, and VT administrators. This research found that even if the women's rights organizations overcome the barriers put in place by the government authorities, they face further challenges in the other social power structures of religion and economy, and the lasting effects that they have on women's perception of their capacity, skills, and confidence. Continuous armed conflict and language barriers also were significant issues in these projects.

Finally, the research found that the low numbers of women's involvement in leadership and involvement in decision making in communities are due to limited opportunities for women, as men are traditionally the default decision-makers. It is undeniable that women's leadership and

women's administration have remained low in the most conflict-affected areas after the 2015 elections and NCA because, despite these landmark changes, the cultural attitudes will not be changed in the long term without a sustainable education initiative that is implemented by a responsible and progressive state authority.

This research recommends on-going and sustained political skills training and mentoring for women across Myanmar, and advocacy against gender discrimination, not only in the government and grassroots-level but also spanning national organizations such as EAOs, CSOs, and religious groups. If the authority perpetuated through every type of power structure in Myanmar continues to reside with men, the change will never come, and women will never be encouraged to pursue high office until they see that change being enforced. The government must begin with establishing and enforcing laws and policy to provide at least 30 percent of positions reserved to women within the political and peace process. The government should also follow their commitment to the international treaties that they have committed for, with particular emphasis on CEDAW General Recommendation 30 ( GR30) (United Nations, 2013). The empowerment and participation of women is the key to development. Effectively taking half of the population out of the decision-making process is a way to make sure a country is left behind as the world progresses, and the women and men of Myanmar deserve a new chance at hope.

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# THE IMPETUS OF DAP ON ESTABLISHING THE DEMOCRATIC SCHOOL AS AN ALTERNATIVE CIVIC EDUCATION

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## Abstract

The alternative civic education is a civic education in informal sectors such as NGOs, individuals, political parties, and youth organizations which promotes political socialization and citizen participation by establishing links between citizens and political systems that allow the meaningful participation of the citizens. The Democratic School (SEKDEM) was established by Democratic Action Party (DAP) to share knowledge with youth on politics and democracy, debate the role of the state and interest of people in the economy, as well as providing the platform to create a democratic youth generation. By using a collection of interviews and secondary data, the study categorized respondents into three groups, the main facilitator or organizer, the participants or alumni, and the individuals involved with another alternative civic education besides SEKDEM. The study identified five impetus of DAP for the establishment of SEKDEM, controversial allegations, decreasing of youth political participation, the exclusivity of new political discourses, creating of democratic youth and weaknesses of formal civic education.

**Keywords:** Alternative Civic Education, New Politics, Democratic Citizenship, Youth Participation

## Introduction

Civic education is a process of socialization of knowledge, skills and attitudes for citizens to become democratic and productive members of society (Levinson, 2014, p.1). Each country has its own history and background as it creates a civic education. After World War II, Germany realized that the democratic system would not function properly without a democratic citizen. Later, Germany decided to teach civic education at school to avoid the occurrence of the Nazi again. Besides, in the United States, civic education is created for Americanize immigrant waves were arriving in the country to ensure that they assimilate into the dominant Northern

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European culture (Quigley, 1999). Whereas Malaysia, the Education Ordinance 1952 outlines the need for formal education in schools to bridge the ties between students of varying heredity (Sidin and Aziz, 1992, p. 20). Whatever the reason, civic education continues to evolve and undergo complex evolution, including directions, components, concepts and pedagogy.

In civic education studies, there are two main types of civic education; formal and alternative. The formal civic education refers to institutionalized civic learning space by focusing on a set of objectives, approaches and processes of the national curriculum, while alternative civic education refers to noninstitutionalized learning space and reflects the interest and experience of young people involved as an active citizen in the wider community, society and democracy (Hong, 2015, p. 9). In a nutshell, formal civic education is associated with government institutions such as school, university and national services. Meanwhile, the alternative civic education is based on decentralization curricular other than the government institutions such as civil society, political parties, youth organizations and unions. To date, most civic education studies focus on the formal sector. A few reasons for this are formal civic education is considered more structured, easier to measure and also falls under the government responsibility. This led to the alternative civic education being given less attention in academic studies. Since 2008, some structured alternative civic education has been created, but still lacking scientific study on it. Especially, the most controversial and the first initiative on alternative civic education by political party, the Democratic School by Democratic Action Party (DAP).

### **Democratic Action Party in Malaysia's Political Lens**

DAP was first established in October 1965, two months after the People's Action Party (PAP) came out of Malaysia. PAP who was a political party originating from Singapore was first established in 1954. Later, when the merger of the Federation of Malaysia between the Federation of Malaya, Singapore, Sabah and Sarawak in 1963, the PAP expanded its party's networks to Peninsular Malaysia by contesting the 1964 General Election. When Singapore came out of Malaysia in August 1965, the rest of the PAP members in Malaysia established DAP (Aziz, Ismail and Abdullah, 2018, p.33). According to Ibrahim (2011), despite the fact that DAP's history has been linked to the PAP in Singapore, it has no continuity in its struggle, especially when DAP accepted the Federal Constitution and fights for the freedom and democratic rights in the true sense.

Later, on March 18, 1966, DAP was officially registered as a political party. Basically, DAP is a party that professes democratic social. In the 1967 Declaration, it describes that DAP is committed to the struggle for a Malaysian nation' freedom and social democratic Malaysians, based on the principles of human rights, equality, social and economic justice and based on democratic parliamentary institutions. This declaration emphasizes ethnic equality for every

Malaysian citizen and no lower or higher group than the others in relation to policy such as culture and education. In other words, meritocracy is prioritized as the main value. The Federal Constitution is the cornerstone of the national construction and must be respected, as well as accepting Bahasa Malaysia as a national language. At the same time, the right to use other languages must also be maintained. Although DAP is championing meritocracy, they also accept positive discrimination or affirmative action in ensuring social justice is implemented.

Although DAP is an ideological and cross-racial and non-racial-based party, undeniably the current situation is clearly a party dominated by the Chinese (Dzaki, 2013, p.84). Indirectly, the issues that DAP fought towards for non-discrimination led to frequent controversies in local newspapers such as anti-Malay, anti-Islam, anti-Sultan, and anti-constitution (Karim, 2019). Moreover, DAP defends the concept of democracy and opposes openly the concept of Islamic state brought by PAS since the 1970s (Yaakop, 2011, p.131). To this day, despite being a part of the Alliance of Hope (PH) and succeeded to form a government on 9th May 2018, DAP still in the face of this controversy. Looking at racial and religious issues that are being played persistently through political lenses, DAP feels it is necessary to create a new medium to critically discuss new political cultures that should replace the old ones.

### **The Impetus for the Establishment of the Democratic School**

There are five factors that motivated DAP to establish SEKDEM; i) controversial allegations, ii) decreasing of youth political participation, iii) exclusivity of new political discourses, iv) creates democratic youth and v) weaknesses of formal civic education. The fact that DAP was always associated with controversial allegations such as anti-racial, anti-religious, anti-Sultan (monarch) and suffocating the politics of the Malays. These allegations indicate that the old political culture still exists in the political scene in Malaysia (Ismail and Ismail, 2016, p.203). Therefore, DAP feels there is a need for a platform to explain the party's vision and ideas in the Malay language. Then, in 2011, DAP established a Malay-language media portal named Rokatkini. Describing this matter is Hamidi, who was a former Rokatkini Editor (2019: interview):

*We want a website in Malay to bring people who speak Malay, and usually, the Malays who have not known about DAP. They only hear the slander, and this time, hear exactly what DAP is. If you know about it but still do not like it, it doesn't matter anymore because at least you know it and not just believe in defamation.*



At the same time, when Roketkini was established, the trend of youth involvement in politics was at an unsatisfactory level. Based on the Malaysia Youth Index 2015 (IBM'15) study conducted by Institute for Youth Research Malaysia (IYRES) between 2006 and 2012, out of 10 domains, the political socialization was at the lowest level of 45.82. Another study conducted by the Federation of Malay Students Union (GPMS) in 2010 showed that 70 percent of students or youth were not interested in politics. This was realized by Roketkini because they were not able to attract young people if they were merely creating a portal. According to Hamidi (2019: interview), this phenomenon occurs because of the interest of young people changes, for example, the interest in writing books and novels has increased compared to around the late '80s to the '90s. Later, this affects the indie phenomenon that occurs in Malaysia between 2013 and 2015, especially in book publishing (Ashaari et al., 2018, p.169).

Although the culture of writing was back, it does not mean anything if not strategically channeled into politics that benefits society. As such, civic education emphasizes civic knowledge to create citizens who are knowledgeable and able to actively engage in political and social affairs (Halstead and Pike, 2006). These changes and problems are identified by DAP. They established SEKDEM to educate the principles of democracy and the political foundation in order to increase the involvement of youth in politics (Ahmad, 2011; Faizal, 2019: interview). In addition, the setting up of School for Politicians has also been a driving force for the establishment of SEKDEM. This is explained by Hamidi, who was a SEKDEM principal (2019: interview):

*Frankly speaking, I was interested in School for Politicians. Jaafar invited me that time for a talk and I realized he was from PKR. So, why didn't I do one for DAP? I was imitating the idea, but making sure that the modules are different because the School for Politicians aims to train people to be politicians but our goal is to get acquainted with democracy and may be involved in democracy-based activism.*

Also, to agree with this statement is Ramlee, who is the trainer for School for Politicians and SEKDEM (2019: interview):

*My discussion with Hamidi at that time was why should we create "politicians" and not Democrats who actually have a wider role because not everyone would end up as a politician. Many want to know about democracy, but he or she could be a housewife, a pilot or a teacher and not a politician.*

After the 2008 political tsunami, new political discourse in the public sphere was growing. However, the discourses are still limited, exclusive, and did not reach broader groups such as university students, young people, and people in the rural area. The change of government administration in five states by the opposition gives space to the public to be more actively involved and get informed about how good governance should be. However, active engagement is meaningless without having a basic knowledge of democracy. Because of that, Faizal (2019: interview) emphasized the need to create more people who are politically literate and democratic. According to Pybas (2004, p.18), the stability of the liberal community depends on the education or civic knowledge based on the liberal values that the youth receives. The factors of the exclusivity of new political discourses and to create democratic youth are complementary and have a significant correlation. To create democratic citizens, the discourse of new politics needs to be expanded and more inclusive so that more people can understand and adopt civic and democratic values. Therefore, DAP sees there is a need to interact and educate the people they rarely can reach; which is Malay and the youths.

Political and social issues such as racism, lack of involvement of youth in politics and low political literacy, can be attributed to the failure of formal civic education. Look at the history of formal civic education in Malaysia; the government introduced it as a separate subject in 1954 before it was abolished in 1983. Later, it was re-introduced in 2005 and finally repealed again in 2013 in primary schools and 2017 in secondary schools. In general, this shows a commitment of the government to provide civic education to citizens. However, it can also be seen from the opposite point of view, in particular, the government's action to abolish the civic education subject in a primary and secondary school in the new curriculum made the government's commitment to be questioned. The uncertainty in the implementation of civic education subjects may have an impact on the construction of democratic citizens.

While in the higher education level, the government introduced a General Education Subjects (MPU) which can be considered under the provision of civic education. There are four groups of MPU namely U1: philosophy appreciation, value and history, U2: the mastery of soft skills, U3: the extension of knowledge about Malaysia and U4: practical community management skills such as community service and co-curriculum.

The students, especially at the Bachelor's Degree level, they have to complete the U1 and U2 Group subjects that are higher than U3 and U4 between 6 to 9 credit hours compared to 4 to 5 credit hours. This has led to the debates on democratic citizenship such as human rights, political rights, religious rights, and good governance were not getting a place among students rather than good citizenship. A student needs to be provided and prepared with more credit hours to engage with critical issues in order to form a mature democracy in the country. Hence, the active

participation of citizens in debating issues that are considered sensitive to discuss in public such as human rights, political rights, religious rights, and good governance should be emphasized more. In addition, subjects U1 and U2 have less impact on students' daily lives, in particular involving politics, public policy and active involvement in society compared to U3 and U4. This is an important factor in ensuring that young people or students are able to practice civic skills such as critical thinking and civic engagement in every day's life while also developing civic dispositions such as tolerance and building confidence in talking about politics (Vasiljevic, 2009, p.58).

<b>Groups</b>	<b>Objective</b>	<b>Subjects</b>
U1	Forming or cultivating students with the knowledge and appreciation of Malaysia's history and noble values.	Ethnic relations; Asia Civilization and Islamic Civilization (TITAS); Malaysia Studies
U2	Cultivating the mastery of soft skills	Ethics and Professionalism; Language Proficiency Skills; Property Management Skills;
U3	Producing students who have the mastery of Malaysia's mold knowledge.	Constitution and Society; Law and Society; Human rights; Politics and Leadership
U4	Produce students who are able to apply soft skills.	Community Involvement; Student Volunteerisms

Table 1: Offering Scope for Each Groups

Source: *Garis Panduan Mata Pengajian Umum (MPU) Edisi Kedua* or Guidelines for General Studies Second Edition: 2016

Formal civic education issues either in schools or universities that lack emphasis and exposure of political systems, ideologies, democracy, human rights, good governance, economic systems, and critical thinking lead to youths seeking alternatives other than formal education institutions (Hanani, 2019: interview; Najib, 2019: interview). This was further acknowledged by Faizal (2019: interview), a SEKDEM Coordinator who sees the alternative civic education as criticism and response to the existing educational system. Therefore, SEKDEM emphasizes several key topics in the syllabus taught at each level, which includes political, economic, and social discussions.

Level	Contents
Form 1	<ul style="list-style-type: none"> <li>• Political system; feudalism, authoritarianism, and democracy.</li> <li>• Political ideologies; socialism, social democracy, and liberalism.</li> <li>• Economic system</li> <li>• Human rights</li> <li>• Malaysia political system and constitutions</li> <li>• Local culture and values</li> </ul>
Form 2	<ul style="list-style-type: none"> <li>• Type of government; federal, state, and local.</li> <li>• Formulation and advocacy of public policy</li> <li>• Implementation of ideology in public policy</li> <li>• Good governance</li> </ul>
Form 3	<ul style="list-style-type: none"> <li>• DAP policies on public policy; education, economic and social</li> <li>• Political event management</li> <li>• Research skills</li> <li>• Public speaking</li> </ul>

Table 2: The Syllabus of SEKDEM

### Comparison the Impetus of Alternative Civic Educations in Malaysia

Basically, the establishment of alternative civic education aims to educate the foundations of democracy to Malaysian citizens. However, whether it is a political party or civil society, each has its own reasons for establishing alternative civic educations. It has been discussed that at least there is five impetus of DAP for the establishment of SEKDEM: controversial allegations, decreasing of youth political participation, the exclusivity of new politics discourses, creating democratic youth and weaknesses of formal civic education. One out of five is a common impetus for either political party or civil society, decreasing of youth political participation. For example, according to Samad (2019: interview) the National Front Youth Volunteer (BNYV) School of Politics wants to attract young professionals to join National Front (BN). The Voice of the Malaysian People (SUARAM) School of Activism and the Coalition for Clean and Fair Elections (BERSIH) Booth Camp want to recruit young activists (Hadi, 2019: interview; Singh, 2019: interview). Meanwhile, the School for Politicians (SEKPOL), School for Political Communication (SKOP) and AMANAH School of Leadership (SCHOLAR) to produce young politicians (Jaafar, 2019: interview; Zohdi, 2019: interview; Najib, 2019: interview). The results of the IBM'15 study showed that the domain of political socialization was at the lowest level as a

reflection of the phenomenon of youth less involved in politics. This phenomenon affects political parties and civil society with fewer members by youth.

Subsequently, the impetus for the inclusivity of new politics discourses was shared by AKHI, SUARAM School of Activism, BERSIH Booth CAMP and SEKPOL. This can be seen from the content discussed by every alternative civic education, such as human rights, anti-radicalism, electoral democracy, and public policy. This discourse is not only intended to be a check and balance for the government and to demand clean and fair elections but also to create an autonomous public sphere (Loh, 2009, p.43). Based on the interviews conducted, although most admitted they were organizing alternative civic education, only SEKDEM and SCHOLAR claimed their role in filling the gaps of formal civic education, while others did not (Faizal, 2019: interview; Najib, 2019: interview). In addition, almost all alternative civic education is set up in reaction to the establishment of SEKPOL and SEKDEM. This was acknowledged by organizers of the BNYV School of Politics, SUARAM School of Activism, BERSIH Booth Camp and SCHOLAR. While SKOP does not directly acknowledge it, it can be seen when Zohdi (2019: interview) says that most alternative civic education focuses on political thoughts rather than soft skills and that is why SKOP was established and recognizes SEKDEM and SEKPOL can contribute to a more open political discourse. Among all the organizers of alternative civic education, only DAP has a history in controversies of allegations by people such as anti-Malay, anti-Islam, and anti-King. The other organizers did not face this problem.

Each alternative civic education has a different focus and approach due to three main factors: first, avoiding overlapping syllabuses with other programs, secondly filling the gaps of the other programs and thirdly focusing on organizational goals. The following are the goals or objectives of alternative civic education conducted by different organizations. In general, each alternative civic education has been conducted to teach three components of civic education; civic knowledge, civic skills, and civic dispositions. Almost all alternative civic education teaches important topics in civic knowledge, such as democracy, constitution, public policy, political and economic systems, and ideology.

<b>Alternative Civic Educations</b>	<b>Goals</b>
School for Politicians	Pragmatic and moralist politicians
BERSIH Booth Camp	Civil society activist
School of Activism	Human rights activist
SKOP	Mastering soft skills

AKHI	UMNO activist
BNYV School of Politics	BN activist
SCHOLAR	AMANAH activist
SEKDEM	Democratic youth and DAP activist

Table 3: Goals of Alternative Civic Educations

However, a different emphasis is given on debating a topic based on the goals outlined by each organization. For example, although political ideologies were taught, School for Politicians emphasized on liberalism, SEKDEM focused on social democracy, AKHI on Malay ethnonationalism and BNYV School of Politics on consociationalism. Meanwhile, civic education alternatives conducted by civil society such as BERSIH, SUARAM, and SLR Institute do not emphasize the political ideology but emphasize more practical matters such as human rights, elections, and soft skills.

## Conclusion

New politics discourse began in 1998, but it took over ten years to expand it. Such developments are not easy; there are many obstacles that need to be dealt with, for instances; the interest of young people to engage in politics or democratic activism that has fallen down and the discourse only occurs in small and very limited circles. At least, these two problems require a long period of time to overcome. Political culture is not something that is easy to change because, for some, politics is the belief that needs to be obeyed. For Malaysians who have a long history of conserving the values of conservatism either from a political or social point of view, it requires a continuing education process at the grassroots level or from bottom to top.

The democratic system will not function properly or it may be a reversal of democracy if there are no democratic citizens. Education is the most important tool in delivering ideas and values of democracy, thus creating a democratic citizen. Alternative civic education is an important aspect of providing lifelong education, more flexible and more important democratic values than a formal civic education that has time constraints, less critical and less attractive. Therefore, the role of SEKDEM is very important to accommodate these shortcomings. There is no doubt that a political party has a tendency to use alternative civic education to recruit youth to join a political party or gain supports. However, this argument must be judged fairly because political parties have the responsibility to educate civic values to society. Hence, the efforts of DAP on alternative civic education must be evaluated and criticized in order to benefit the development of society and the nation.

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# THE IMMEDIATE FUTURE OF THE NATIONAL GREEN TRIBUNAL IN INDIA

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## **Abstract**

The National Green Tribunal (NGT) was set up under a statute in 2010. The Tribunal functions from five benches across the country. Each bench has jurisdiction over a particular territory. According to many scholars, academics, and lawyers, the National Green Tribunal was a beacon until 2017. It was also considered a best practice by many, despite the pitfalls in the institution. However, the amendment made to the National Green Tribunal Act via the Finance Act in 2017 and the temporary closure of the regional benches due to lack of workforce has contributed to the downfall of the beacon. This paper will look at the driving and restraining forces surrounding the institution and conclude that political will has become a weak restraining force while the Supreme Court has become a stronger driving force in keeping the institution alive recently leading to the conclusion that the future of the Tribunal is not as bleak as it seems.

Keywords: National Green Tribunal, environment, political will, driving and restraining forces

## **I. INTRODUCTION TO THE CONTEXT**

The National Green Tribunal in India was set up in response to the Stockholm Declaration (1972) and the Rio Declaration (1992). It is the institution through which the right to access to justice and environmental remedies are realized. So far as environmental rights are concerned, the framework is quite comprehensive. The Indian Constitution (1950) has provisions for the protection of the environment under the Directive Principles of State Policy and the Fundamental

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Duties of citizens. Further, the Supreme Court of India read down Article 21 (Right to life and liberty) to include the right to a clean environment thereby making it a fundamental right (M.C. Mehta v. Union of India, (1998) 9 SCC 589)). The environmental courts set up prior to the NGT were very limited in the mandate and had minimal powers. The National Environment Tribunals were never set up, and vacancies were never filled up in the National Environment Appellate Authority between 2000 and 2010 (Gill, 2018). The passage of the NGT Act repealed these laws in 2010. The NGT Act provides for four zonal benches (Chennai, Pune, Bhopal, and Kolkata) across the country along with one Principal Bench in New Delhi. From 2013, all the benches were fully functional. A high-level committee was appointed by the Government in August 2014 to review the environmental laws (TSR Subramanian Committee). The committee submitted a report in December 2014 and proposed drastic changes to the system. It advocated for self-certification of compliance by industries, enacting umbrella legislation covering all environmental matters and the setting up of district-level courts to deal with environmental issues. The report was however never implemented as it was rejected by the Parliamentary standing committee on Science, Technology, Environment, and Forest.

The Finance Act of 2017 was another law that was aimed at diluting the status of the NGT. The Act gave the Central Government the powers to decide on the qualifications, appointments, salaries, terms of office, and removal of all the members of the NGT. This was not in line with the provisions of the NGT Act. It also violated the idea of separation of powers as this change allows executive interference in the judiciary. The Supreme Court of India has, therefore, stayed some parts of the Finance Act, 2017. In addition to such changes to the law, there are vacancies in the NGT that the government has not filled up citing financial reasons. This non-appointment of members and staff has led to the temporary closure of the regional benches. This has not only affected the right to access to environmental justice but has also put the future of the NGT in question.

## **II. RESEARCH METHODOLOGY**

The researcher has followed a narrative, qualitative research. Apart from reviewing existing literature, the researcher has relied on interviews conducted with lawyers associated with the NGT to reach conclusions. The researcher has interviewed six lawyers, among which two represent the State, and the rest represent the victims. The paper attempts to understand their experiences through the stories they tell. The paper is written on the basis of the findings and analysis of the data collected through the interviews. The paper follows majorly inductive reasoning, beginning with specific observations and measures to detect patterns and regularities, formulating some tentative

hypotheses that can be explored, and finally ending up developing some general conclusions or theories.

### **III. OBJECTIVE**

The objective of the paper is to show that the NGT's future is not as bleak as it seems. Nevertheless, the paper concludes that absence or lack of political will is a constituent of restraining forces. It is construed to be a weak force. The Supreme Court, the rising public consciousness and the fact that new minds are joining the area of practice are factors that contribute to the strong driving forces at the moment.

### **IV. RESEARCH QUESTIONS**

Are restraining forces against the NGT gaining momentum over the driving forces at the moment?  
Is the future of the NGT uncertain?

### **V. HYPOTHESIS**

The restraining forces have become very weak or dormant at the moment leading to the conclusion that the future of the NGT is not as bleak or uncertain as it seems.

### **VI. REVIEW OF LITERATURE**

The paper relies on available secondary data on the NGT and its functioning. The researcher relies on all literature reviewed for the purpose of the Master's thesis titled 'PAST, PRESENT AND FUTURE OF THE NATIONAL GREEN TRIBUNAL IN INDIA'. The focus, however, is on the momentum of the driving and restraining forces on the institution. The researcher relies on a few conceptual frameworks that are explained below.

There is an inevitable link between the right to environment and human rights, and this is being acknowledged more widely today. Human survival is dependent on the environment and its resources. Without the environment, the realization of other human rights is impossible. All these sources somehow relate notions of equity and justice and show that they are interrelated. The NGT is a manifestation of Principle 10 of the Rio Declaration in India through political commitment and public consciousness (Weiss, 1992). Concepts such as political will and commitment, public

consciousness are essential factors that will determine the existence of an institution and the realization of the corresponding rights (the right to environment, the right to justice, the right to access to justice in the instant case).

Political will is an abstract concept which is a pre-requisite to implement anything, starting from a policy to a law. While it has not been defined very clearly by many scholars, we can agree on what factors contribute to the absence of political will as measuring the presence of political will is difficult (Hammwegren, 1998; Post *et al.*, 2010). The researcher, in the interviews, has asked the respondents to come up with these very factors to see if it constitutes a driving force or a restraining force.

Lewin (1943) identifies two factors in the process of change- one is responsible for the change, a driving force; and the other is opposing the change, the restraining forces. For an institution to be fully functional, the driving force must be more than the restraining force or both the forces must be equal. In other words, the restraining forces should be weak or equal to the driving force in order to at least maintain a status quo. Gill (2018) fits the NGT into Lewin's (1943) theory and concludes that the restraining forces (political will, government) are stronger than the driving forces (Supreme Court). However, Gill (2018) finishes with an open question as to whether or not the NGT will live or die given its current circumstances. The outcome of this research will show that this is not true anymore and that the restraining forces are weak and more or less dormant now. Given that outcome, the NGT will live owing to growing pressure from the Supreme Court to make the NGT functional and finally, growing public consciousness.

## **VII. FINDINGS AND ANALYSIS**

The main argument in this section is that the political will required to keep the NGT alive is decreasing. Nevertheless, it is constituent of a weak restraining force. This fact takes place for the fact that the driving forces are stronger than the restraining forces at the moment. Therefore, the immediate future of the NGT is not as bleak or uncertain as it seems. The section will start by explaining the purpose behind the setting up of the NGT and will directly move to the findings from the interviews to reach conclusions on the questions raised.

### **NGT's Purpose**

The Bali Guidelines were adopted by the UNEP Governing Council in 2010 to assist countries to develop national and sub-national legislation on access to information and justice in environmental matters. Following this, in 2015, the UNEP also published a guide on putting Principle 10 into action. The guide cites the NGT as a best practice. While the NGT has its

problems and downsides, it is still considered as one of the best forums to realize the right to environmental justice. The aim of the research was to find out the current status of the driving and restraining forces on the institution. The argument that is put forth here is that the will to keep the institution alive is decreasing. Nevertheless, it is construed as a weak restraining force owing to the stronger driving forces.

### Analysis of the findings

Most of the respondents are very optimistic about the Tribunal's future. While they all believe that there is some kind of absence or lack of political will or commitment to keep this institution alive, they also perceive it in different ways. Indicators of the absence of political will include non-compliance of orders passed by the Apex Court to fill up vacancies by the government, the government becoming a silent spectator to the violation of laws, insensitivity towards environmental issues and general lethargy towards the issue. Almost four of them have identified these as forces against the NGT.

In conclusion, one of them points to the fact that the Principal Bench is still on its feet and is doing as much as it can. If there is an absence of political will to keep the institution alive, even this bench should have become non-functional. Another respondent also iterates the fact that by merely shutting down an institution like the NGT, it does not necessarily bar the access to other judicial forums. There are other forums available, and there are fines imposed, stays and interim orders passed the time and again against large projects. This leads us to a conclusion that what the NGT does is being done by alternative forums and therefore, the restraining forces do not have much effect on the outcome of NGT's functions. One respondent says that it is merely the government's lethargy in implementing the orders of the Apex Court to appoint members and staff and that there is nothing to read into it as there is no hard evidence. So, political will is neither completely present nor entirely absent.

All the respondents believed and hoped for the current situation to change for the better. They believe in the Supreme Court. They say that an order from the Apex Court cannot be disobeyed by the government. They may push it for tomorrow, but it has to be done someday. The Supreme Court is also sending back cases to the NGT for reconsideration. The Apex Court is continuously pushing the government to fill the vacancies at the earliest. One respondent makes an interesting point. That respondent says that the NGT was a mechanism that was set up to remove certain other more accessible roads than an affected person could take (referring to the traditional courts) and so, there was no way this Tribunal would close down. There is one respondent who, however, thinks that the Supreme Court also responds to different cases differently. A decision in

a matter depends on who the Judges of the Bench are and the amount of sensitivity they have towards the environment. Nevertheless, two of the respondents feel that despite this, there is more hope in the Supreme Court.

In the end, all of them think that with the current state of affairs, the Supreme Court can bring about a positive change through its orders. This optimism and the faith they have on the Supreme Court leads us to the conclusion, especially with the current scenario, that the Supreme Court is becoming a stronger driving force. In fact, after the amendment in 2017 and the vacancies in the Tribunal, the government has done nothing deliberately to affect the NGT. The government also has only asked for more time to fill up the vacancies. Political will has been an instrument in the making of the NGT to start with, but, has turned to a mild or weak restraining force at the moment.

## **VIII. CONCLUSION**

The amount of political will in keeping the institution alive is not entirely absent. Nevertheless, it still constitutes a weak restraining force. Now, the Supreme Court has the upper hand and is becoming a strong driving force. The researcher has also noted that there is growing public consciousness and sensitivity towards environmental issues. This development also forms a part of the driving forces.

Many of the respondents do not see any alternatives to the NGT. They call for certain changes in the functioning and the method of implementation, but not for a change in the mechanism itself. They call for the appointment of staff and members, uniformity in filing and an appeal to the High Court before approaching the Apex Court. Some of the respondents feel that the immediate requirement would be to get the zonal benches functioning, as it will ease the current situation to an extent. The light to them does not seem far away as they believe in the Supreme Court to help make the NGT functional. Therefore, the future of the NGT is not as uncertain as it seems. With that, the researcher has answered the research questions.

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