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Intersecting Sectors: A Student Seminar on Human Rights and Democratisation 2018

Organized by
Ateneo de Manila University, School of Law,
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Thursday, 29 June 2018, 13:00-16:00
Bernas Center Seminar Room, Ateneo de Manila University School of Law, the Philippines

Seminar Program

Time	Activity
13.00 – 13.30	Registration Opening ceremony
13.30 – 14.00	Presentations: The Efficacy of National Human Rights Institutions: Assessing the Mandate of the Commission on Human Rights of the Philippines in Evolving Contexts (Nir Lama) -Question and Answers
14.30 – 15.00	Break
14.30 – 15.00	Presentations: The Challenges of Non-Government Organizations (NGOs) in Providing Reproductive Health Services to Internally Displaced Persons: A Case Study on the Marawi, Philippines Experience (S M Mahmudul Hasan) -Question and Answers
15.00 -15.30	Presentations: Muting the "Mutiny": A Case Study on the Repression of Student Protests and the Violation of the Right to Freedom of Peaceful Assembly in Sri Lanka (M.T. Erandika Kumudumalee de Silva) -Question and Answers
15.30 – 16.00	Open discussion forum for all participants

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The Efficacy of National Human Rights Institutions: Assessing the Mandate of the Commission on Human Rights of the Philippines in Evolving Contexts

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Abstract

The 1987 Constitution of the Philippines, the Executive Order No. 163, and other legislation provide human rights protection and promotion mandate to the Commission on Human Rights of the Philippines (CHRP). It is one of the few National Human Rights Institutions (NHRIs) established before the UN adopted the Paris Principles, which guide the functioning of NHRIs. The CHRP has been performing its functions according to the same mandate for 30 years though contexts have changed. This study undertook semi-structured interviews with six informants and a questionnaire from one informant at the central level to investigate whether the CHRP has been effective within its original mandate given contextual changes and challenges. This methodology was complemented by documentary research. The study finds that the investigation carried out by the CHRP under its protection mandate is inadequate and its promotional function has not been effective. The current mandate of the CHRP falls short of the criteria provided in the Paris Principles for the NHRIs. The mandate of the CHRP needs to be expanded through legislation, possibly a CHRP Charter/Act.

Keywords: Commission on Human Rights of the Philippines, National Human Rights Institutions, Paris Principles, Mandate, Human Rights

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I. Introduction

National Human Rights Institutions (NHRIs) are unique agencies in that they play the role of human rights watchdogs for the governments that fund them. Due to their influential role in the protection and promotion of human rights, many countries even with different political establishments are setting up NHRIs. However, there are attempts to undermine the role of NHRIs by their governments for trying to hold them accountable for human rights violations. The case of Philippines is a recent example where the executive branch of the State tried to limit the role of the Commission on Human Rights of the Philippines (CHRP) as the latter conducted investigations into the alleged extra-judicial killings being carried out in the name of 'war on drugs.'

The Philippines NHRI criticized the government for its policies against human rights. The current administration attacked the Commission and the Commissioners, and President Rodrigo Duterte even threatened to abolish the Commission for speaking out against the administration's anti-human rights policies. The President through his influence in the House of Representatives tried to defund the Commission. The House, dominated by administration allies voted 119-32 to cut the budget of the national human rights watchdog to a meager 1000 Philippine Pesos. The decision was overturned following pressure from civil society, NGOs (ANNI, 2017) and the public later.

The 1987 constitution of the Philippines provides independence to the CHRP from other branches of the State. The CHRP, formed as a response to address the human rights violations committed during the 14-years dictatorship of Marcos (1972-86) has strong protection mandates (Linos & Pegram, 2017, p.46). It has been functioning according to the same mandate for 30 years.

The CHRP draws its mandate from the Constitution, the Executive Order No. 163 and other relevant legislation. It has been functioning without a comprehensive founding law since its establishment in 1987. The study attempts to find whether the CHRP has been effective within its original mandate given contextual changes and challenges and whether its mandate has evolved or there is a need for the mandate to evolve in order for the CHRP to be effective. The study analyses the protection and promotion mandate enjoyed by the CHRP with reference to the criteria set forth in the Paris Principles. This paper is divided into four parts: introduction, literature review, findings and discussion, and a conclusion.

II. Research Methodology

Review of relevant legislation, reports from the UN, civil society, parliamentary records, etc. was conducted to understand the power and functions of the CHRP. Qualitative information from primary sources was collected for the research. Those interviewed include CHRP Commissioner, CHRP staff, civil society members and a lawmaker. The data was collected through six interviews and one questionnaire through email was collected. Among the seven respondents, two were representatives from the CHRP, one was a member of House of Representatives and four representing national and regional civil society organizations. The respondents were primarily selected on the basis of their expertise on the issue of national institutions. Experts who have worked with the CHRP during its different leadership were also selected.

The interviews were transcribed. For interpretation, the data was classified and coded with concepts during the data analysis process. The data from different sources were corroborated for triangulation. For example, the data provided by the CHRP representatives were corroborated while this information was validated with the information provided by the civil society members. The evidence provided by the primary sources was also corroborated by secondary sources like news, documents.

The results of the data collection through interviews, questionnaire, and documentary research have been presented together with the discussion on the findings. These chapters also include the researcher's commentaries on the findings of the study. The analysis has been done taking into consideration the evolving context of the Paris Principles and the challenging political context of working for protection and promotion of human rights for the CHRP and other human rights defenders in the Philippines.

The questionnaire was collected from the FORUM-ASIA (*referred to as the NGO in the study*). The name of one civil society member has been withheld for confidentiality while the other five interviewees are: Commissioner Karen Lucia S. Gomez-Dumpit, CHRP (*referred to as the Commissioner*); Spokesperson & Executive Director Atty. Jacqueline Ann C. De Guia, CHRP (*referred to as the spokesperson*); Teddy Baguilat Jr., Congress Representative (*referred to as the Congress representative*); Rosemarie R. Trajano, PAHRA (*referred to as the civil society member*); Wilnor M. Papa, Amnesty International (*referred to as the civil society member*).

The research offers a rich description of the mandate and effectiveness of the CHRP. The readers can transfer this information to other settings. Additionally, the research tests the

efficacy of CHRP through assessment of its mandate. This test opens possibilities for other researches to study the effectiveness of NHRIs using one or more criteria of the Paris Principles. This study offers recommendations that may be useful in different countries, where NHRIs are experiencing similar challenges.

III. NHRIs and the Paris Principles

The Commission on Human Rights, the predecessor of the Human Rights Council, drafted guidelines for the structure and functioning of NHRIs in 1978. The Commission on Human Rights and the General Assembly subsequently adopted the guidelines. The General Assembly urged the States to establish NHRIs where they did not already exist and requested the General-Secretary to submit a detailed report on NHRIs. The Paris Principles relating to the status of national institutions was the outcome of the first international workshop on National Institutions for the Protection and Promotion of Human Rights that took place in Paris in 1991. The Paris Principles have been broadly accepted as the test of an institution's credibility and legitimacy since the Vienna World Conference in 1993. By 21 February 2018, 120 NHRIs are operating all around the world, 77 of which are accredited by the GANHRI in full compliance with the Paris Principles (A status) (GANHRI, 2018).

The Paris Principles marked the beginning of serious international co-operation and standardization of NHRIs. The Principles provide that NHRIs should advise and make recommendations to governments on matters relating to human rights, including human rights violations, existing and proposed laws, and the national human rights situation in general (ICHRP, 2005, p.6).

NHRIs are State bodies with a constitutional and/or legislative mandate to protect and promote human rights (OHCHR, 2010). These institutions facilitate the internalization of international human rights standards. As required by the Paris Principles, the NHRIs need to protect human rights, including by receiving, investigating and resolving complaints, mediating conflicts and monitoring activities; and promote human rights, through education, the media, outreach, publications, capacity building and training, as well as advising and assisting the government (GANHRI, 2018).

According to the Paris Principles, there are six criteria that NHRIs should meet: broad mandate, autonomy from Government, independence guaranteed by legislation, pluralism, an adequate power of investigation and adequate resources. The Paris principles define the role, status, composition, and function of NHRIs. They provide for NHRIs' independence, adequate funding, broad human rights mandate, and an inclusive and transparent selection and

appointment process. NHRIs participate in the peace process, the transitional justice process and democratization process.

The 1993 World Conference on Human Rights in Vienna highlighted the significant roles played by national institutions, mainly in their advisory capacity to the competent authorities, their contribution in remedying human rights violations, in the dissemination of human rights information, and human rights education.

IV. CHRP as NHRI

Section 18, Article XIII of the Constitution of the Republic of the Philippines (1987) and Executive Order 163 provide the CHRP a mandate to investigate human rights violations involving civil and political rights; exercise visitorial powers over jails, prisons or detention facilities; recommend to Congress effective measures to promote human rights to victims of human rights violations; establish a continuing program of research, education, and information to enhance respect for the primacy of human rights; and monitor the Philippine government's compliance with international human rights treaty obligations. These powers and functions recognize the role of CHRP as an advocate, watchdog, educator, and advisor. Moreover, the Juvenile Justice and Welfare Act of 2006, Anti-Torture Act of 2009, International Humanitarian Law of 2009, Magna Carta of Women Act of 2009, Anti-Enforced Disappearance Law of 2012, HR Victims Reparation and Recognition Act of 2013, among other laws also give specific mandates to the CHRP. Despite these specific mandates, the CHRP is yet to be supported by a comprehensive founding law even after 30 years of establishment. The CHRP Charter Bills proposed to strengthen it as an effective NHRI are pending in the Congress and the Senate. Though the CHRP has been given additional powers through various legislations, the Commission itself did not welcome the expanded mandate. The CHRP considered that these additional functions without corresponding resources would overburden the Commission and impair its effectiveness (CHRP, PAHRA & PhilRights, 2011, p.10).

The first NHRI in Southeast Asia, the CHRP was established as a response to the atrocities that happened during the Marcos era with the function of safeguarding the civil and political rights of the people (Linos and Pegram, 2017, p.47). Prior to the creation of a more permanent NHRI, the CHRP was envisioned as an interim investigative body that was empowered to investigate complaints, report its findings to the President, propose procedures and safeguards to ensure protection of human rights and all other functions as may be necessary for the purpose of its creation (Rocamora, 2009, p. 681). Its predecessor, the Presidential

Committee on Human Rights (PCHR) was created on 18 March 1986 as a guarantee of the new government's commitment to "uphold and respect the people's civil liberties and human rights" (Malacañan Palace, 1986), following the fall of Marcos dictatorship. The CHRP succeeded the PHRC a year later with additional powers when the then President Corazon C. Aquino issued the Executive Order No. 163 (Malacañan Palace, 1987).

The CHRP does not have an explicit protection mandate with regards to economic, social and cultural rights (SCA, 2017, p.29). However, the CHRP, interpreting its role as an NHRI, also investigates and monitors all economic, social and cultural rights violations and abuses (CHR, 2012, p.2). It also issues human rights advisories, primarily addressed to the Philippine Government in relation to the State obligations under international human rights treaties to which the Philippines is a State Party (CHR, 2012, p.4). SCA (2017, p.29) expressed concern that the CHRP also lacks an explicit mandate to encourage accession or ratification to international human rights instruments.

The CHRP was formed in 1987 before the United Nations promoted NHRIs in 1993. Linos and Pegram (2017, p. 37) note that the CHRP, set up before the Paris Principles set out promotional powers lacked the mandate to advise on legislation or to produce reports. Linos and Pegram (2017, p. 37) highlight that the CHRP has only one promotional function – education – as stipulated in its mandate, while it lacks two other powers found in other NHRI charters: the power to advise on legislation, and to produce annual reports. Rocamora (2009, p. 716) proposes enactment of a law granting prosecutorial powers to the CHRP to not only investigate promptly and expeditiously allegations of human rights violations, but also bring these violators to justice.

Efforts to expand the mandate of the CHRP were limited by the narrow definitions of the Supreme Court. In the case of *Simon v Commission on Human Rights*, the Philippine Supreme Court ruled that the framers of the Constitution intended the CHRP to protect specific civil and political rights only (Linos and Pegram, 2017, p. 50). Additionally, in the case of *Cariño v Commission on Human Rights*, the Supreme Court ruled that the power of the Commission be purely investigatory and not adjudicatory (Salcedo 2017, p. 50). In *Export Processing Zone Authority v Commission on Human Rights*, the Supreme Court further declared that such investigatory power does not include the authority to issue injunctive relief (Salcedo, 2017, p. 50).

There is a lack of literature on the effectiveness of the CHRP within its original mandate given the changed contexts and the challenges. Hence, this study looks at whether the mandate

of the CHRP has evolved or there is a need for its mandate to evolve in order for the CHRP to be more effective.

V. The Mandate of the CHRP

The respondents were of the view that the CHRP had the mandate to protect and promote human rights provided by the Constitution. The CHRP representatives consider "policy" as another of their core mandates that allows them to advise the Government on human rights issues, besides protection and promotion of human rights. There were mixed responses regarding expanding the current mandate of the CHRP. The CHRP representatives said that the current mandate is sufficient while other respondents emphasized that the CHRP should be given additional power.

The 1987 Constitution of the Philippines and the Executive Order No. 163 empowers the CHRP mandate to investigate all forms of human rights violations involving civil and political rights. The Constitution does not provide the mandate with regards to economic, social and cultural rights. The CHRP is mandated to recommend to Congress to provide compensation to the victims or their families, provide appropriate legal measures for the protection of human rights, monitor the Government's compliance with international treaty obligations on human rights and make recommendations to relevant bodies.

A civil society member attributed the provision of the Constitution to limiting the mandate of the CHRP, leaving out social, cultural and economic rights and other complex and complicated issues like business and human rights. The NGO noted that the current mandate given to the CHRP through the Constitution and the Executive Order 163 is relatively broad. Even those rights which are not explicitly stated in the order, (such as protection mandate regarding economic, social and cultural rights or to encourage ratification/accession to international human rights standards), the NGO acknowledged that the CHRP had conducted activities on such rights by interpreting its mandate in a broad manner. It stressed on the need to expand the CHRP's protection mandate (explicitly stating the economic, social and cultural rights, encourage ratification/accession to the international human rights) through a comprehensive NHRI law. The Congress representative opined that the CHRP needed more quasi-judicial powers.

VI. Protection Mandate

SCA (2018, p.7) considers protection functions as those that address and seek to prevent actual human rights violations. Such functions include monitoring, inquiring, investigating and reporting on human rights violations, and may include individual complaint handling. The respondents cited activities like (a) conducting prison visits; (b) investigation of alleged extrajudicial killings, incidents of torture, enforced disappearance, child rights cases, women's rights violation, migrant worker's issues, some violations of economic, social and cultural rights; and (c) the witness protection program being carried out by the CHRP under its protection mandate.

Due to the alarming number of deaths in the brutal 'war on drugs' carried out after President Duterte assumed power in 2016, the civil society, public and international community are expecting the CHRP to carry out investigations on these alleged extrajudicial killings. The spokesperson said that there are efforts currently to strengthen the protection mandate. She said that the CHRP is ensuring that it is able to document as well as investigate more thoroughly all cases, particularly extrajudicial killings, torture as well as enforced disappearances. Investigating such violations will add to the effectiveness of the CHRP as research has shown a robust correlation between investigatory powers and NHRI effectiveness (Linos and Pegram, 2017, p.37).

The CHRP spokesperson shared that about 1,106 cases involving 1,345 victims of alleged extrajudicial killings were being investigated by the CHRP as of February 2018. According to her, of those cases, 50 percent are perpetrated by police while the rest are committed by vigilantes. She stressed that the CHRP does not distinguish between the two kinds, as there is state responsibility for both kinds of killings. In the first kind, the CHRP is looking at whether protocols have been observed while in the second kind, it is evaluating, ascertaining or investigating if the police have conducted thorough investigations. 90 percent of these cases are *motu proprio* (on its own initiative) conducted investigations meaning that there were no complainants but on the CHRP's own initiative, it was acting on it.

Majority of these cases were still being investigated, according to the spokesperson. A small percentage has been resolved because of the difficulty of obtaining more information. She mentioned non-cooperation from complainants and witnesses in many cases, the absence of leads to pursue creating difficulties that impede faster investigation rates. About 47 cases have been filed under different agencies, courts, internal affairs service under the Philippine National Police (PNP), and before the office of the prosecutor, according to the CHRP.

Regarding the number of investigations taken by the CHRP against the reported at least 12,000 alleged extrajudicial killings (Human Rights Watch, 2018), the spokesperson said that the CHRP was overwhelmed by the current situation, as it never encountered such situation before. She said that the CHRP had investigated incidents of extrajudicial killings before, but the current situation was unprecedented. She attributed a low number of investigators in the regional offices to the taking up of few cases of such killings. These investigators, aside from investigating, are required to conduct jail visitations, entertain walk-in complainants and offer mediation services. The CHRP has only regional offices but does not have offices in every city and municipality that leads to the dispatch taking time. Then, aside from the logistics problem, there's also a climate of fear that the CHRP has to contend with because many victims are afraid. They are hesitant to file cases. This is the reason why only 10 percent of the complainants have filed the cases. Then, many witnesses are similarly afraid. They do not want to be involved. The spokesperson said that the directive of the PNP to subordinate offices to inform and seek clearance first before granting interviews and providing documents for human rights activists/ or bodies has also affected the investigation, as in the previous years, a mere letter would be enough to obtain reports from the police. Because of the directive, they are no longer furnishing the CHRP any copies of those reports.

The civil society members are not confident about the skills of the CHRP investigators. One civil society member said that the CHRP investigators use legal lens instead of using the human rights lens during an investigation, which understands the incident from the victim's point of view. She added that the CHRP investigation is prolonged and not scientific. She further said that the civil society was expecting resolutions on these killings, but none has been released although the investigations were initiated two years ago. The NGO also said that it was expecting the CHRP to issue its reports on the extrajudicial killings.

The Congress representative noted that the CHRP conducted investigations occasionally, especially if there are complaints from the marginalized sectors. He also expressed lack of knowledge on the number of cases filed following the CHRP investigations. He said that the investigations or reports of CHRP could be used as a means to change or amend the policy. One civil society member also pointed out lack of data on the torture cases documented by the CHRP.

Data collection also confirms that the CHRP carried out investigations into extrajudicial killings, tortures and conducted jail visits as per its protection mandate. The current situation of the Philippines with a high number of alleged extrajudicial killings also demanded that the

CHRP focused on fulfilling its protection mandate. Despite its limited resources and manpower, it is commendable that the CHRP has initiated investigations on 1,106 cases involving 1,345 victims. However, lack of updates on such cases despite two years of investigation and non-completion of investigation has made the CSOs and the public question on its investigations. Though the CHRP spokesperson informed that actions have been taken in about half of the cases, this information has not been issued to the public and the civil society. As part of the investigation, the CHRP should publish and disseminate its investigation results and recommendations. Its efforts seeking to enforce its recommendation and seeking remedies through courts have not been made public as well.

General Observation 1.6 of the SCA (2018) stipulates that as part of their protection and promotion mandate, the NHRI should undertake follow-ups regarding the recommendation contained in their reports and should publicize whether actions were taken or not taken by the public officials in implementing their recommendation. As the CHRP has not made the status of its recommendations public, this shows that the CHRP has not fulfilled its protection mandate. The study also shows that the CHRP did not carry out other protection activities like monitoring visits in jail as expected by the civil society.

VII. Promotion Mandate

The fact that the CHRP was created following the Marcos dictatorship meant that it would be focused on dealing with serious cases of violations of civil and political rights, including torture, enforced disappearance and extrajudicial killing. This investigatory power of the NHRIs is challenged when the governments turn repressive. The Philippines government has also repeatedly attacked the CHRP after the later initiated investigations into the alleged extra-judicial killings carried out in the President's anti-drug war. However, this challenge also provides the CHRP opportunities to strengthen its other mandates. It can carry out promotional activities, and reach out to a wider public. The CHRP can collaborate more with CSOs and network with other democratic institutions and human rights bodies.

The CHRP was established before the UN popularized the promotional powers for NHRIs in 1993 through the Paris Principles. The mandate provided by the 1987 Constitution and Executive Order No. 163 lack different promotion mandates that are provided to NHRIs that were established after the adoption of the Paris Principles. Linos and Pegram (2017, p.46) point out that the Philippine NHRI, though established under similar circumstances in Malaysia, was unable to mobilize national opinion as effectively as the Malaysian NHRI owing to the lack

of extensive promotional powers. Such promotion functions are the powers to provide advice on legislation and produce reports.

The civil society members unanimously concluded that the CHRP was very weak in terms of promoting human rights. They complained of CHRP using outdated education materials, not reaching out to the public. All the respondents sought more measures from the CHRP to promote human rights during this challenging context as the current administration is bent on misconstruing the basic concepts of human rights.

The CHRP spokesperson said that the CHRP is intensifying its efforts to establish more human rights education centers (HRECs) all over the country. CHRP's regional offices are linking with universities, colleges, and schools to ensure that human rights are disseminated through these linkages. It is also intensifying social media efforts during the past years. She attributed allotment of few information officers for many provinces and lack of budget from the government for promotion activities until 2013 to the CHRP's not being able to fulfill its protection mandate. According to her, CHRP's regional offices started getting budget for promotion activities only in 2013/14 for the first time in 20 plus years. Prior to that, it relied heavily on partnership and on invitations.

A civil society member urged the CHRP to work together with the Department of Education and the Commission on Higher Education to develop a module or curriculum on human rights, human rights defenders and the CHRP itself. The Congress representative echoed this concern by saying that the CHRP should form partnerships with the Department of Education, with universities and colleges in incorporating human rights into the curriculum from basic to higher education.

The civil society member highlighted the need for CHRP to conduct a human rights education program with the provincial, municipal, city government and the barangay (local) government. He said that the CHRP needed to fund resources for advertisement campaigns on TV and social media about human rights education and their presence to make people aware of the CHRP's existence.

The civil society members said that the materials used by information and education program of the CHRP are obsolete. They complained of lack of human rights education in the regions and provinces. They now expect good results in the human rights promotion mandate following shifting of CHRP staffs in that program, which has resulted in a lot of engagements with the civil society lately. One civil society member said that the CHRP should engage with public schools for human rights education since it requires minimum fund. He also said that the

public school libraries contained no publications of CHRP.

Another civil society member said that the CHRP should improve more aggressively and make itself more visible by providing more information and education on human rights. She suggested the CHRP publish materials defining human rights, extrajudicial killings, etc. in very simple, friendly, popular terms that can be used by the people and the CSOs. She said that the new team of the Commission was already showing progress improvements, but they could do more. Saying that social media visibility is insufficient, she said that the CHRP has to have a thorough, in-depth discussion with the people by having an excellent human rights education group, which understand the mandate and embraces its true meaning.

The Congress representative stressed the need for the CHRP to launch a campaign on how to popularize the concept of human rights among those who are not familiar with human rights. According to him, the people supporting the version of the current administration that human rights defenders are defenders of criminals might be because of the failure to educate the masses, especially young people. He also emphasized to educate people on economic and religious rights through an education campaign. He said that the CHRP should take the lead on this being the focal institution though it is the duty of government agencies.

The CHRP is in an awkward position where it has to prove its credibility at a time when it should be imparting human rights education to the public as incidents of human rights violations continue to rise in the Philippines. Even after 30 years of establishment, it has to struggle now to keep its existence as seen by the Congress' attempt to defund it last year. Though its relation with the government entities at the center was affected by the President's interference, the CHRP should continue the human rights promotion activities at the ground level where it still has good relations with the government bodies. The CHRP needs to engage more with the Legislature, as the congressional representatives are still unclear about its mandate as observed during the voting for a 1000 peso budget for the CHRP (Cabato, R., 2017).

The CHRP is mandated to establish a program of research and education as part of its promotion mandate. Though promotion is seen as fundamental to the mandate of NHRIs (Beco & Murray, 2014, p.63), CHRP conducted few promotion activities and had little impact as shown by the study. According to the SCA (2018, p.7), the promotion includes functions which seek to create a society where human rights are broadly understood and respected. These functions may include education, advising, training, public outreach, and advocacy. Use of obsolete education materials, non-allocation of funds for education shows the lack of attention

given to the promotion mandate by the CHRP. While the UN has popularized the promotive powers of the NHRIs due to their impact, CHRP has not exploited this mandate to reach to a broader public. The promotion activities also seemed ineffective also due to lack of the CHRP personnel.

A civil society member underscored the need to reach out more as people became only aware of the existence of the CHRP due to the President's attack. He said that people would be demanding for better resource and funding if they are aware of the CHRP. He suggested the circulation of CHRP emergency numbers in creative ways to make people know about the CHRP.

The Congress representative emphasized the need to reach out to other stakeholders like business corporations, mining companies, military, armed groups, and other sectors. He stressed for massive public education campaign with an emphasis on the young about concepts of human rights and reaching out to other stakeholders and sectors, who can be a partner for human rights. He acknowledged the challenges in broadening the network because this administration is being anti-human rights. The Congress representative stressed the need to be more creative in social media while promoting human rights as the 'other side had more skillful agents in dictating the course.'

Public outreach is another issue that the CHRP has to exploit. Though the increase in the number of its followers on the social media platform Facebook is increasing, it still has a lot to do. It has 40 thousand followers on Facebook at the time this study is being undertaken, while the statistics show that there are 67 million Facebook users in the Philippines (Camus, 2018). Creating sponsored advertisements would help the CHRP to reach millions of people by spending little amount. Its website lacks even basic contents. All resources at its disposal should be uploaded to the website so that public, researchers and academic can use it for education purposes. Mass media platforms like the television, FM radio stations should also be exploited to deliver human rights awareness messages.

IX. Advisory Mandate

The spokesperson said that the CHRP Policy Division Office had been very active during recent years regarding issuing policy advisory as well as position papers. It has come up with an advocacy plan that aims to strengthen linkages with the legislature. The CHRP also set up a very strong opposition when Congress attempted to pass the death penalty and the

legislation attempting to lower the age of criminal responsibility. She gave credit to the CHRP's policy effort, as the legislation on the death penalty has not been passed in Congress.

The study suggests that the CHRP's advocacy created pressure against the House's attempt to reintroduce the death penalty. Due to the campaign of the CHRP and other CSOs, the government attempt to re-impose the death penalty and reduce the age for criminal responsibility has been stalled in the Congress. The CHRP's continuous reaching out with the government agencies despite the President's directive should continue as there are opportunities of engagement in promotion and advocacy cluster.

The Congress representative said that the CHRP provided technical assistance for Congress, provided inputs to Congress in crafting policy on how to strengthen the human rights obligations and in passing more laws that fulfill the State's obligations. He added that the CHRP officials attended public hearings in the Congress and provided opinions on proposed bills focusing on human rights.

X. Conclusion

This study finds that the investigation carried out by the CHRP under its protection mandate is inadequate, and its promotional function has not been effective. Attempts to undermine its role by the Duterte administration have created further challenges for the CHRP to be effective. The current mandate of the CHRP falls short of the criteria provided in the Paris Principles for the NHRIs. The mandate of the CHRP needs to be expanded through legislation, possibly a CHRP Charter/Act. There are several versions of the CHRP Charter Bills currently before the incumbent 17th Congress – both in the House and the Senate - which will take on the role of setting out the details of the CHRP’s mandate and powers. This offers an opportunity to address many of the concerns raised repeatedly by the GANHRI-SCA; however, amendments to this proposed Charter Bill are still required to address all issues.

The study shows that the nature of the mandate of the CHRP is protection-oriented, focusing on investigations of civil and political rights violations. Despite this, the CHRP has not been able to carry out these investigations effectively. Its mandate does not provide adequate protection for the investigation of social, economic and cultural rights. While the NHRIs formed after the adoption of Paris Principles in 1993 have become very effective using the promotion mandate, the CHRP does not enjoy adequate promotion mandate. It does not have the advising mandate and the reporting mandate. The education part under the protection mandate enjoyed by the CHRP has not been effective. There is an urgent need for a supporting

law for the CHRP to strengthen its mandate and in order to undertake its role as an effective and independent rights watchdog. The focus should be given to empower it with more promotion mandate, which has been proven to be quite effective, rather than additional quasi-judicial mandate as it might duplicate the functioning of other agencies.

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The Challenges of Non-Government Organizations (NGOs) in Providing Reproductive Health Services to Internally Displaced Persons: A Case Study on the Marawi, Philippines Experience

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Abstract

The deadly battle of Marawi erupted on May 23, 2017, in the Autonomous Region in Muslim Mindanao (ARMM), the Philippines and ended in October 2017. This fatal firefight uprooted 350,000 individuals including 170,000 women and girls who are solely depending on the humanitarian response to fulfill their needs. To address the reproductive health concern, the international agencies and non-governmental organizations (NGOs) engaged themselves in the cluster approach accepting the government agencies' leadership. The case study approach focuses on the reproductive health rights of internally displaced people (IDPs) considering the national and international mechanisms, the Responsible Parenting and Reproductive Health Law 2012 of the Philippines. Although it is the government's responsibility to uphold all the rights, the international and non-governmental organizations (NGOs) communities' contribution to the emergency response, in the case of displacement is inevitable. This study seeks to contribute to understanding the obstacles experienced by humanitarian NGOs to provide RH services in Marawi humanitarian response and hopefully, pave the way for thinking about how these concerns could be addressed.

Keywords: Internal Displacement, Internally Displaced People, Reproductive Health, Humanitarian Response, Cluster Approach, Non-Governmental Organizations

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I. Introduction

It is estimated that 40.3 million internally displaced persons (IDPs)[3] fleeing from gross violence, human rights violations, or armed conflict situations in 2017. (UNHCR, 2018) Eighty-four percent of this number were said to have lived in poor or middle-income countries (BBC, 2017). Additionally, these people were forced to embrace catastrophic, heartbreaking realities with the psychological trauma of experiencing armed conflict, violence, gross violations of human rights and other humanmade or natural disaster (Deng, 2001). Unlike the refugees, the IDPs never received the same level of attention from the international community and the responsible states. However, there is no specialized agency for IDPs. While the UNHCR also deals with IDP issues, it is challenging for one agency and requires the strengthened collaborative approach in coordination and response gaps in the field. In order to support the needs of humanitarian assistance, the primary responsibility lies with the State in accordance with Principle 3 of the Guiding Principles on IDPs. Furthermore, Principle 25 stipulates that offering international humanitarian assistance should not be considered as interference to internal affairs of the State.

Generally, women and children form the more significant portion of IDPs and face higher risks due to the nature of the conflict, societal structure, and evacuation camp set up (Mooney, 2005). Principle 19 (2) of the Guiding Principle emphasized "special attention" on the health needs of women, including access to female healthcare providers and services, such as Reproductive Health (RH) care, as well as appropriate counseling for victims of sexual and other abuses (UNHCR, 2008). The humanitarian assistance should ensure the availability, accessibility, affordability, information, acceptability, quality and non-discriminated health services with necessary drugs.

The Philippines is a case to point in terms of addressing health needs of vulnerable groups, including IDPs, through legislation and policies such as the Magna Carta of Women of 2009, the Responsible Parenthood and Reproductive Health (RPRH) Law-2012, AIDS

[3] "Person or group of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized state border." - The Guiding Principles on Internal Displacement by the United Nations Office for the Coordination of Humanitarian Affairs (UNOCHA)

Prevention and Control Act-1998, Administrative Order on the Minimum Initial Service Package (MISP) for Sexual and Reproductive Health (SRH) during emergencies.

The Marawi Siege, itself contributed to produce 80,000 women of childbearing age (Pasion, 2017) among 350,000 new IDPs. Referring to the Philippine Star's report on July 5, 2017, the Media Relations Unit of the Department of Health (DOH) said, approximately 11,500 are pregnant women and over 7,000 have given birth… (Jaymalin, 2017) Of 170,000 total internally displaced women (IDW) (CARE, 2017). The United Nations Population Fund (UNFPA) distributed only 1,200 clean delivery kits to midwives and health workers, and 5,000 dignity kits for pregnant women and new mothers in Marawi humanitarian response. (Vilamor, 2017) To address this ever-changing number of new mothers, pregnant women and more than half of IDP young's reproductive health needs the measure so far taken is insufficient. This study tried to find out the challenges faced by the NGOs in providing the sufficient reproductive health services in the given case from the field research, narrative responses from the key informants.

II. Methodology

This research is a case study on the Marawi humanitarian response of local NGO specific to the provision of reproductive health services to IDPs. Based on narrative analysis mostly, the researcher tried to find out the challenges of NGOs in the response in providing reproductive health services to the internally displaced persons (IDPs) affected by the Marawi siege.

Key informant interviews were conducted with the following local NGOs involved in RH services: Al-Mujadillah Development Foundation (AMDF), Balay Mindanaw, Ecosystems Work for Essential Benefits, Inc. (ECOWEB), and Ranaw Disaster Response and Rehabilitation Center, (RDRRAC). The records of the interviews, interview transcripts, field notes have been coded according to thematic areas of services and challenges. Interview were also conducted with representatives of international institutions --- such as the World Health Organization (WHO), United Nations Population Fund (UNFPA), International Committee of the Red Cross (ICRC), and the United Nations Office for the Coordination of Humanitarian Affairs (OCHA) --- to compare and validate data from the local NGOs.

Secondary data were also retrieved from OCHA, UNHCR, WHO, UNFPA, DSWD websites, NGOs working with IDPs, newspapers, TV reports, books, etc. For the theoretical study, the Philippines constitution, the RPRH Law 2012, the Demographic and Health Survey,

the Health Policy, the Internally Displaced Persons Management Act, UN and UN-mandated agencies' publications, journals on internally displaced persons, expert opinion, published interviews have been used to analyze.

III. Understanding the cluster approach and organizations

The cluster approach enhances predictability, accountability, and partnership among the actors of the response. The leaders and their clear responsibilities of these clusters are designated by the Inter-Agency Standing Committee (IASC). The Marawi humanitarian response also followed the cluster approach. Along with the Philippines government agency, the UNOCHA is responsible for overall coordination of the response. In the case of Marawi emergency, WHO, as the co-lead of Health and Mental Health and Psycho-Social Support (MHPSS) Cluster, assessed the needs to provide support to the DOH in the establishment of disease surveillance, health cluster coordination and access of health services and facilities by the affected population. UNFPA, co-chaired the subcluster for RH concern, globally mandated for ensuring that vulnerable populations, women, young people's right to their reproductive health services.

IV. Reproductive Health as Right

No international mechanism was introduced before the UN guiding principle on Internal Displacement, 1998 to protect the rights of IDPs. It provides guidance to national and international actors on responding to IDPs' needs. (OCHA, 2017) However, the principle 19 (2) says, "*Special attention should be paid to the health needs of women, including access to female healthcare providers and services, such as reproductive health care, as well as appropriate counseling for victims of sexual and other abuses*" which has been echoed in International Covenant on Economic, Social and Cultural Rights (ICESCR) article 12 and promoted health rights in the 1965 International Convention on the Elimination of All Forms of Racial Discrimination[4]; the 1979 Convention on the Elimination of All Forms of Discrimination against Women[5]; and the 1989 Convention on the Rights of the Child- art. 24. (UNHCR, n.d.) The Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health maintains that women are entitled to reproductive health care services, goods and facilities that are: (a) available in adequate numbers; (b) accessible physically and economically; (c) accessible without discrimination; and (d) of good quality. (UNHRC, n.d.) To be more precise, General comment No. 22 (2016) on

[4] Art. 5 (e) (iv)
[5] Art. 11 (1) (f), 12 and 14 (2) (b)

the right to sexual and reproductive health articulates elements of the right to sexual and reproductive health, giving full responsibility to the state parties to ensure the enjoyment of the right. As state parties are obliged to guarantee the right, laws to be repealed or reformed creates refrains from enjoying the right.

Complying with international standard, by Article II, Sec-15 of The Philippines constitution health has been recognized as a right. (The Philippines Constitution, 1987) With the aim of promoting and protecting the rights of IDPs, "Rights of Internally Displaced Persons Act" passed in 2014. With the provision of obtaining medical care without any distinction, and special attention to the health needs of women especially mothers; wherever possible with women healthcare provider respecting cultural values.

In 2012, the Congress of the Philippines passed, "The Responsible Parenthood and Reproductive Health Act of 2012" with the guiding principle for implementation of the act, focused on reproductive health. The Act covers almost everything including access to family planning, maternal health care, healthcare facilities, gender-based violence, and sexually transmitted diseases, including HIV and AIDS (RPRH Law, 2012) except the provision of abortion.

V. Reproductive Health and Significance

In 1995, Inter-Agency Working group (IAWG) formed first field manual on reproductive health in a refugee situation, which added safe motherhood; sexual and gender-based violence; sexually transmitted diseases, including HIV and AIDS; and family planning. (IAWG, 1999) The World Health Organization (WHO) provided a definition of reproductive health which adopted, and expanded at the International Conference on Population and Development (ICPD) (Cook, Dickens, & Fathalla, 2003) as follows-

> *"Reproductive Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity, in all matters relating to the reproductive system and its functions and processes." (UN, Department of Public Information, Platform for Action and Beijing Declaration, Fourth World Conference on Women, Beijing, China, 4-15 September 1995*

Analyzing the definition provided, it is the collection of methods, techniques, and services that directly or indirectly, in a positive or negative way to impact the reproductive

health. The RPRH law of the Philippines adopted this definition of RH. It also provisioned the RH care as access to a full range of methods, facilities, services, and supplies that contribute to reproductive health.

As the major burden of reproductive health lies on women in general, the situation of women in emergency deteriorates. During any emergency, reproductive health becomes even more noteworthy because of morbidity and mortality. It is globally estimated that around 4 percent of the population affected by an emergency are pregnant mothers, around 3.5 percent are lactating women and around 30 percent are young people. Around 15 percent of pregnancies may end up in complications while 5 to 15 percent will require a Caesarian section (IARH, 2011). Premature delivery among pregnant women may occur during times of displacement. Moreover, the interruption of access to reproductive health care, unavailable information, and services deprives pregnant and lactating women and their newborns. The young people are also vulnerable and may find difficulties to avail essential health care services. For the case of Marawi, gender segregated data is difficult to verify. Thus, the government census data is used in different sources.

> *"... based on the Government census data, approximately 51 percent displaced persons are female while 49 percent are male. Of this population, 49 percent are children. In the absence of current sex-disaggregated data, humanitarian actors have been utilizing qualitative methods to gather information"* (OCHA, 2018).

It has been reported that 80,000 women of child bearing age (Pasion, 2017) among 350,000 new IDPs. Referring to the Phil Star's report on July 5, 2017, the Media Relations Unit of the Department of Health says, approximately 11,500 are pregnant women and over 7,000 have given birth … (Jaymalin, 2017) of 170,000 total internally displaced women (IDW). (CARE, 2017) This vast population was at the risk of pregnancy complications. Lack of access to emergency obstetric care increases the risk of maternal and new born death. Lack of family planning services increases the risks associated with unplanned pregnancies, transmissions of STI and HIV. Furthermore, the women and children are at higher risk of GBV and discrimination in any social instability.

The Philippines has substantial experience in responding to the needs of those displaced by conflict, violence, and disasters. It has established and well-developed mechanisms and coordination structures. (IDMC, 2015) The pillar of safeguarding the RH rights in the

Philippines is implementing the RPRH law. Acknowledgment of individual's right to access the full range of desired services and information without any discrimination ensure the highest standard of sexual and reproductive health. To provide quality, adequate services the Minimum Initial Service Package (MISP) has been incorporated, localized in the context of the Philippines in Administrative Order (AO) 2016-005 namely the National Policy on the Minimum Initial Service Package (MISP) for Sexual and Reproductive Health (SRH) in Health Emergencies and Disasters and AO 2017-0001, Joint Memorandum Circular to DSWD, OCD units, LGUs, and all the public, private and civil society organizations. According to AO 2017-0001,

The MISP for SRH elements are:

1. Safe Motherhood

    - Ensure the availability of skilled health workers to provide Emergency Obstetric and Newborn care services, prenatal care and postpartum services
    - 24/7 referral system establishment
    - Provide clean delivery kits to pregnant women on their third trimester of pregnancy and skilled birth attendants
    - Ensure awareness of the community on the availability of services

2. Family Planning

    - Provide contraceptives to existing or current users
    - Provide necessary information on family planning

3. Sexually Transmitted Infection (STI), HIV and AIDS

    - Ensure access to free condoms
    - Ensure observance of universal precautions like a safe blood transfusion
    - Provide necessary treatment
    - Provide necessary treatment of STIs

4. Gender Based Violence

    - Inter-agency protection mechanism with a functional referral pathway
    - Provide medical care for GBV survivors
    - Provide psychological support
    - Ensure the information about the available services

5. Nutrition Services of Newborns

- Follow guidelines on Infants and Young Child Feeding in Emergencies (IYCF-E)

6. Adolescent Sexual and Reproductive Health (ASRH)

- Provide ASRH information and services including referral mechanism
- Establish youth friendly spaces for youth related activities

In providing reproductive health services the government and non-government organizations must follow this inclusive standard to maintain the quality of services.

VI. Challenges faced by the NGOs in providing RH services

As the conflicts affect all components of RH, directly through damage to services, gender-based violence (GBV), and forced displacement of populations, and indirectly through reductions in the availability of primary health care and breakdown of standard social institutions. (Benjamin et al., 2014) It is challenging to restore the institutions where the conflict still goes on. The humanitarian response actors try to accommodate all the needs of the IDPs within their capabilities. Numerous constraints have to be faced by the humanitarian agencies. More often than not, the lack of materials and resources are significant barriers to assisting organizations. Based on literature review, the underlying challenges to advancing reproductive health in humanitarian settings are ideological, managerial, policy barriers and donor influences, are hard to deal with in emergency in the global context (Hakamies N, 2008).

The provided framework by Hakamies says, in four diverse themes the barriers are -

Theme 1: Resource and collaboration barriers

- *Personnel constraints*
- *Insufficient funds*
- *Insufficient collaboration with partners*

Theme 2: Policy and legal barriers

- *National and local policies*
- *International policies*
- *Security issues*

Theme 3: Barriers related to the agency's culture

- *Agency's mandate and philosophy*
- *Agency's internal management*

- *Prioritization of other services*

Theme 4: Other Barriers

- *Geographical inaccessibility of IDPs*
- *Transport constraints*

Considering the demographic reality of Marawi, most of them are Muslim, where family planning is not universally accepted, and receiving reproductive health services is not well acknowledged. The religious and cultural barrier is another dimension of this scenario.

In response to the struggle in the response, the National Disaster Risk Reduction and Management Council (NDRRMC) reports that there is a need for better coordination between camp managers and relief assistance donors, goods distribution and IDP activities inside evacuation centers' (OCHA, Philippines Humanitarian Bulletin , 2017). In term of mismanagement of humanitarian assistance, the issue of distribution of hygiene kit DSWD raised severe concern among the IDPs. Moreover, it evident that lack of adequate health-care facilities, trained medical personnel in attendance and enough medical supplies hampered the Marawi humanitarian response.

Current literature on the reproductive health of IDPs of Marawi Humanitarian Response is limited, mainly in the aspects which provides an in-depth understanding and analysis of IDP's reproductive health situation and the NGO's experiences. Published reports provide the collective figures of the indicators which indicate the state of reproductive health in the given areas. There is a broad scope to examine the participant's responses towards the humanitarian interventions to reproductive health concerns of IDPs.

VII. Marawi is Different

The 2017 Philippines National Demographic and Health Survey (NDHS, 2017) portrayed a comparison between national and the given areas' RH scenario.

Indicators	National (%)	ARMM (%)
Fertility Rate	2.7	4.2[6] (Statistics Authority, 2018)
Teenage Pregnancy (Had a live birth 15-19)	7.0	6.8
Family Planning (any method)	54.3	26.3

[6] As of 2013

Modern Method of Family Planning	40.4	18.7
Unmet Need for FP	16.7	17.8
Receiving ANC from skilled Service Providers	93.8	68.6
Knowledge of HIV prevention method	66.2	37.5

The Filipinos from the ARMM, the most impoverished region of the Philippines (Philippines Statistics Authority, 2017) face more health challenges than the rest of the Philippines. In this region, the education rate is low, the fertility rate is higher, and knowledge of family planning and HIV/AIDS is lower. (NDHS, 2003) The reproductive health scenario of their originating place is not pleasant to be taken into account. Coming from this community as IDPs, everyone is vulnerable. Around 333,779 IDPs are home based, and 17,389 IDPs stayed in evacuation centers of the total 350,000 IDPs. (OCHA, 2017) This substantial displaced population got scattered in different nearby regions staying with their family and friends or with host families. They are not settled down for a long time as well. Keeping the track unlike the camp set up and reaching them with RH services and information is challenging. This mobility of the IDPs and most impoverished region from rest of the country makes Marawi response different from other emergencies.

VII.A. Services provided according to the Minimum Initial Service Package (MISP) standard:

Analyzing the elements of MISP, there are three segments of services.

1. For safe motherhood and GBV victims, there should be a provision of **skilled health workers, proper medication, and referral services.**
2. For family planning and STIs and HIV prevention, there should be **enough commodities.**
3. For GBV prevention and ASRH awareness, the **information sessions** should be conducted.

In response to the needs of the IDPs, the humanitarian organizations included Family Planning Services, prenatal, postnatal and delivery related care, counseling and information, treatment for STIs and STDs, adolescent reproductive health, and services to the victims or survivors of Violence Against Women in their activity. In term of service provision, the response complied with the standard set by the government. Whereas, the number of resources

and services required were not enough. That has been reflected in challenges faced by NGOs in term of fund and resources. When there was a lack of fund and resources that impacted the quantity. The services and commodities distributed among the IDPs were not enough to meet the demand. Apart from the basic services of FP, hygiene kit, dignity kit there is no accessible collective data on the referral system, quantity of modern family planning services, provision of youth-related activities, and available medical personnel. Except for the documentation process, it has been observed from the interviews that services have been provided according to MISP standard.

VII.B. Inadequate funds to meet the needs

In finding the reason that triggered to widen the gap between supply and demand of RH services, the lack enough fund is recognized by the humanitarian assistance providers. The global trend of reducing funds and meeting the primary needs on an emergency basis make the RH concerns and availability of resources comparatively less important. The organizations continued their advocacy. Therefore, only 21 percent of the fund has been collected while 79 percent is unmet (OCHA, 2018). A small portion of the overall health requirement has met. The detail of the allocated budget for reproductive health is unavailable, but it can be assumed that tiny amount of health budget received particularly for RH intervention. It has been considered as the biggest challenge for the NGOs.

Sole dependence on fixed donors is another dangerous trend in ensuring RH services. The excessive reliance on foreign aid threatens to undermine existing institutions and its capacity often termed as “aid dependency.” (Raphael C De la Cruz, 2018) Should be noted, acquiring foreign fund is often time-consuming, complicated in term of donor's mandate. In the development context, it fits but, in an emergency, the procedure is not reasonable. On the other hand, the DOH and LGUs are not additionally funded to meet the sudden necessity of services and commodities. So the regular funds are unable to cater increased need.

The administrative decision of refusing foreign aid burdened the allocation of the fund has been criticized widely. The President's inflexible refusal of conditional aid from long-standing allies impacted the Marawi humanitarian response (De la Cruz, 2018) heavily. The Philippines Star report says, *"the Duterte administration has not received-- and will not ask-- for any foreign assistance"* (Ocampo, 2017).

As the government did not ask for any foreign fund for the response, it has been a tough job for the non-government actors. The state should come out from the arrogancy of "internal" matter. The actors have their limitations. Nor the government can fund the total expense of the needs due to the national budget shortage. As a result, the NGOs had to rely on their permanent donor who is scarce. The government's stand created an indirect barrier to receive funds for the IDPs.

VII.C. Scarce trained human resources

Data available from the government sources shows that regions are relatively near to metropolitan Manila have a higher proportion of government health workers than other more remote regions like those in Mindanao. (Albert et al., 2011) This reflects the implementation of RPRH law in Mindanao. The reason for the discrimination is seemingly ignorance towards this area in term of ensuring RH rights of the ARMM population.

As there is a high demand for skilled health workers, the local NGOs fighting to retain their staff. Usually, the local NGOs work with a smaller budget. Thus, their trained health personnel get paid less, enjoy fewer benefits compared to the international organization's or UN agencies' staff. Ultimately the human resource mobilization among the humanitarian response actors is frequent, not supportive of the local NGOs. They have termed it as "*pirating the local human resources.*" This piracy is impacting the effectiveness of the RH interventions.

The NGOs are training and counseling the health workers including the health professionals from the DOH. So, complementing other partners in the response is evident. Despite complementing each other and the deployment of additional skilled human resources after the displacement, the supply of required did not meet the demand. The progress of implementing the RPRH law shows that the ARMM has been excluded from the desired attention it should have been given in terms of building adequate local human resource. Deploying from other regions is not cost effective and impacts the regions the human resources coming from.

VII.D. Insufficient fund impacted the supply of RH commodities

As most of the budget would typically go into food, water, and shelter, the equal importance on ensuring medicines for pregnant women, sanitary pads for women of reproductive age, the family planning supplies would not be practical as per UNFPA respondent. As a result, to provide the RH services the NGOs often faces the lack of

commodities. In that case, procuring the commodities from the local market is mandatory for the NGOs, it also refrains them from doing so. Dependence on the government supply thus appears. Due to the absence of smooth supply chain of commodities the IDPs facing challenges to purchase as they do not have any livelihood activities and money. The existing supply chain of FP commodities is a barrier to safeguard the continuous availability of a wide range of FP methods (DOH, 2017). Lack of demand forecasting mechanism and resource planning of the government put additional pressure on the local NGOs.

Compared to the importance of food, shelter, water, focus on RH rights visibly less. Thus, purchasing commodities, recruiting dedicated doctors deserve the same importance as any other needs. The available resources at the health centers could not cater to the needs. Allocation of the budget should be rational in terms meeting every need of the IDPs.

i) Collaboration problems

In term of relationship between LGUs and the local NGOs, lack of trust has been observed. The NGOs urged to have a better collaboration between them. On another hand when it came to collaboration between the international organizations and local NGOs, one of the respondents expressed his frustration. He desires to treat the local organizations as the partner, not as the worker to implement their intervention.

The researcher attended a Mindanao Humanitarian Team meeting in Iligan city. At the end of the meeting, the UNFPA coordinator discussed informally with WHO regarding changing “focal point/person” as because of having difficulties with arranging cluster meeting which refers to lack of commitment, accountability to existing, adopted mechanism from the local NGOs.

The traditional project acquiring process used in the given case increases the possibility of the repetition of the same intervention by different NGOs. The cluster approach does not provide any mandatory joining to the cluster. That keeps the provision of not joining as well. So, there is a possibility of the repetition of the same RH services or not getting the RH services at all. Only the implementing partners of UNFPA, WHO are engaged to implement their

respective projects. Sometimes the implementing partners also partner with the local NGOs. That creates layers between the organizations, increased the management cost and complicacy.

Improved collaboration among the organizations is needed. There are gaps between or within the governmental authorities, NGOs and the LGUs. Only meeting and updating each other will not build a productive collaborative relationship among the actors working to ensure

RH services to the IDPs. In-depth analysis of cluster approach will contribute in the modification of the approach.

ii) Martial Law and Security

The government security agencies did not allow the humanitarian response to access some areas for security reason where there were IDPs in the initial days of the conflict. The ongoing martial law also obstructed the response. It is not only for RH assistance but also for other humanitarian needs. Especially in the current conflict situation some of the areas were restricted for any civilian and had to bypass through longer route which took more time, more resource allocation, and more strict coordination with security agencies. Sometimes the NGOs felt threatened to perform their duties to provide services.

To provide humanitarian assistance to two employees of Duyog Marawi, a local NGO got killed. Hence, the security of the staff becomes another concern for the local NGOs in the response.

> *"local volunteers and aid workers put themselves in danger without the luxury of even basic risk insurance"* - Regina Antequisa, ECOWEB (Bruer, 2018).

She also expressed her concern over the "imbalance" between "internationals" and "locals" in term of security protection to be addressed. Thus, the risks taken by the locals will be diminished and the protection will be enjoyed by the locals. In the language of Antequisa, *"there is this imbalance as of now."* For better implementation of organization's activities in the response these "imbalance" needs to be addressed for the security protection. The concern over staff security came out due to the inequal treatment towards the local staff by the international organizations and the security forces as well. Presumably, the frustration among the staff hampers the maximum productivity and mental health.

iii) Religion or culture as a "Big" challenge

Marawi city is dominated by the Muslims. In 2000, Islam was the dominant religious affiliation in Marawi City comprising 95.57 percent of the household population. (Census, 2000) There is a perceived notion in receiving RH services in the Muslim community that Islam does not allow family planning. The UNOCHA respondent mentioned this challenge first when the question of challenges in providing RH services came up. She says on the IDPs perception on family planning,

> "*when you talk about reproductive health, the majority, the affected people here are Muslims; so when they talk about contraceptives, it is a "no no" for them. …I think it is cultural and religious as well, especially religious."*

The RH intervention coordinator, UNFPA described the challenge more softly saying,

> "*of course, there could be some segments of the population that would need the additional encouragement…"*

From the RH coordinator's perspective, the interventions to address counter the potential religious or cultural barrier are culturally sensitive. Particularly for Marawi crisis extra measure has been taken. From the direct service providers' perspective who are not UNFPA's implementing partners, there is a constraint in changing health seeking behavior of the IDPs. Due to lack of knowledge, some of them think it is a Western propaganda or mechanism to control the number of Muslims. In the long run to exterminate this community. The traditional role of men in the family in Marawi society plays a role in acquiring information about RH services and decision making. The Maranao (Marawi society) are ignorant about family planning, and mostly dependent on husband in deciding the acceptance of family planning methods. They also think it is *Haram (not accepted in Islam).* It has been identified as one of the "*big challenges*". The notion of family planning given by the local organizations has been supported by Oxfam gender snapshot.

> *"Family planning is among the more challenging programs of health providers when it comes to Muslim communities …"* (Sorhaila, 2017).

To counter this challenge, the NGOs are collaborating with Muslim religious leaders or Allama, who are 'champions in family planning and reproductive health services implementation" to provide "*Fatwa*", religious preaching or motivation to change something for the greater good as part of awareness building activity. However, some IDPs protest the religious leaders and accuse of misleading them and doing *"bad"* for the Muslim society. The

effectiveness of this kind of intervention for service seeking behavior has been questioned by OCHA respondent. If the sessions were conducted in scientific "*public health or medical knowledge to disseminate*" manners, it brings no effect on them. Thus, alternative means are needed to influence them. In this case, the dominant male role in the family impacts the decision making in availing services, acquiring credible information regarding the RH services. Analyzing the service-seeking behavior of Muslim communities and influential personalities of

the society should create a more creative and better intervention plan needed to counter the religious or cultural barrier. In a word, the misperception about Islamic rule, deep patriarchy in the society, lack of women's participation in decision making in term of family planning induced to create a religious or cultural barrier in providing RH services.

The religious or cultural barrier has been discounted by the UNFPA respondent and demanded that their interventions are culturally sensitive. UNFPA's direct interventions might be "culturally sensitive" but as there are other organization's interventions have not been portrayed. As the RH sub-cluster co-lead, UNFPA has a room for cooperation by providing technical assistance to all NGOs in this regard.

iv) Consolidated analysis

Fund constraint is a global phenomenon in humanitarian emergencies as Marawi humanitarian response. However, the factor contributed to fund constraint is the government's perceived strategy of not asking for a fund. As a result, that impacted the supply of skilled health personnel and RH medicines and supplies. Compared to the needs of RH services and supplies, the human resources and commodities are insufficient. Moreover, for socio-political reasons, neither a skilled health workforce nor real service-seeking behavior could be formed in ARMM. This has been fueled by deeply ingrained patriarchal practice, the absence of women's decision-making power, and "misinterpretation" of the religious laws and practice. Therefore, the RH service seeking behavior of the IDPs did not support the effective implementation. Besides, comparatively fewer benefits and security of the local staff created frustration among the local NGOs which can be linked with the commitment and accountability to the response. With minimum security and insurance, it was hard to concentrate on work during the conflict and martial law situation.

Analyzing the findings, it can be said that scattered IDPs in a vast area to be addressed made the Marawi response challenging. The government's ignorant attitude of refusing to ask for cooperation and critical security measures like imposing martial law did not comply to overcome the challenge to address the IDPs' RH needs. These additional unique features of the response added to the contemporary humanitarian study what was missing. Other than national or local policy barrier, the findings of this study support the challenges mentioned in the literature review part on global context.

VIII. Conclusion

Due to the unique nature of the Marawi humanitarian response, it had to address the whole population of the area. Thus, more resources needed to allocate compared to other emergencies where maximum displaced persons live in evacuation camp set up. To respond to it, the local NGOs are focusing to mitigate the challenges in providing direct services. Accessing the inaccessible areas of IDPs, arranging the commodities, countering the religious and cultural barrier, retention and security of their own staff are the prime concerns for them along with the fund and resource constraints.

The challenges faced by the NGOs need attention from all the actors involved in humanitarian response. Apart from focusing on the fund constraint, coordination gaps in acquiring projects there are other needs in the provision of service providing to be prepared in long run.

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Muting the "Mutiny": A Case Study on the Repression of Student Protests and the Violation of the Right to Freedom of Peaceful Assembly in Sri Lanka

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Abstract

This paper focuses on the nature of student protests and the policing of student protests in Sri Lanka. The right to freedom of peaceful assembly receives international recognition and protection through the ICCPR and ICESCR, two core international Human Rights instruments to which Sri Lanka is a State Party. At the national level, the constitution of Sri Lanka recognizes and guarantees the right to freedom of peaceful assembly under Article 14(1)(b). Despite the constitutional provisions recognizing the right to freedom of peaceful assembly and the guarantees in the international Human Rights treaties Sri Lanka is obliged to protect, the exercise of the right to freedom of peaceful assembly is challenged. The main objectives of this paper are (1) examining the ways in which the Sri Lankan State responds to student protests, and (2) understanding their Human Rights implications. Using the chapters on findings and analysis in the author's Master's thesis this paper presents the various ways in which the State responds to student protests in Sri Lanka. The research findings depict how the Sri Lankan law enforcers use both legal and extra-legal measures in policing student protests. Analyzing the data, this paper concludes that the Sri Lankan law enforcers exceed their legal remit in protest-policing and go to the length of protest-repression.

Keywords: protests/repression/right to freedom of peaceful assembly

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Introduction

Protests are an important feature in a democracy. Resolution 15/21 adopted by the Human Rights Council acknowledges that the rights to freedom of peaceful assembly and of association are important features of democracy for a number of reasons. The rights to freedom of peaceful assembly and association enable people to "express their political opinions, engage in literary and artistic pursuits and other cultural, economic and social activities, engage in religious observances or other beliefs, form and join trade unions and cooperatives, and elect leaders to represent their interests and hold them accountable" (A/HRC/RES/15/21, p.1-2). Protests arise due to various reasons and they vary in terms of their peacefulness, strength and the political support they receive. Repression of protests is inevitable when protests become "undesirable" to and uncontrollable by the State. A number of international and regional human rights instruments recognize and enshrine the right to freedom of peaceful assembly. The Universal Declaration of Human Rights (Article 20(1)), International Covenant on Civil and Political Rights (Articles 21 and 22) and the International Covenant on Economic, Social and Cultural Rights (Article 8) are among the core international human rights instruments that enshrine the right to freedom of peaceful assembly. Regional human rights instruments such as the African Charter on Human and Peoples' Rights (Articles 10 and 11), the American Convention on Human Rights (Article 11), and the Charter of Fundamental Rights of the European Union (Article 12) are similar instruments that have provisions for the protection of the right to freedom of peaceful assembly.

Despite the recognition and importance given to the right to freedom of peaceful assembly in international and regional human rights instruments, domestic laws in most states regulate the freedom of peaceful assembly through various means. The domestic law of Sri Lanka has provisions for the protection of the right to freedom of peaceful assembly. The 1978 Constitution of the Democratic Socialist Republic of Sri Lanka has a chapter on fundamental rights (Chapter 3). In Chapter 3 under Article 14(1)(b) the constitution of Sri Lanka recognizes the right to freedom of peaceful assembly. This constitutional recognition comes with necessary and acceptable legal provisions to regulate the exercise of this right. For instance, Article 15(3) presents a restrictive clause to the right declared and recognized in Article 14(1)(b). Similarly, a number of bylaws in the domestic legal framework regulate the exercise of the right to freedom of peaceful assembly. Even though the domestic law has legal provisions to recognize this right and regulate the exercise of it legally, there have been certain instances that suggest that the Sri Lankan law enforcers exceeds their legal remit in regulating peaceful assemblies.

In 2012, during a protest against increasing fuel prices, fisherman Anthony Warnakulasooriya from Chilaw-Wella, Sri Lanka was killed while 10 others were wounded in the attack by the Anti-riot Squad (Asia News, 2012). In 2013, three unarmed protestors; Akila Dinesh (17 years) and Ravishan Perera (19 years) and Nilantha Pushpakumara (29 years) were shot dead during a protest for clean water in Weliweriya (Ada Derana, 2013). University students get brutally wounded on a regular basis, during student protests in Sri Lanka. In 2017, during a protest against outsourcing the Hambanthota port to China for a 99-year lease, the protestors were arrested while some were wounded by brutal police attacks (Daily News, 2017). These examples indicate that the Sri Lankan law enforcers exceed their legal remit in regulating and policing protests. One reason for this is that, even though international human rights standards and laws have a consensus about what a peaceful assembly refers to, in the end it is law enforcement officers who are faced with the challenge of making this difficult judgement and responding to protests.

This paper presents the findings from the author's research done on the repression of student protests in Sri Lanka. This paper examines two things: (1) how the Sri Lankan State responds to student protests and the Human Rights implications of it, and (2) how the State legitimizes its actions. The research findings display the nature of protest-policing in Sri Lanka.

I. Findings and Analysis

The research findings reveal the police practices related to dispersal of assemblies and how they challenge the exercise of the right to freedom of peaceful assembly. The nature of the right to freedom of peaceful assembly is that the exercise of this right creates complexities. For instance, crowd-dispersal by the civil peacekeeping forces is inherently connected to the exercise of this right. As an individual or a group of people exercise their right to freedom of peaceful assembly, practical issues such as obstruction of roads and traffic congestion occur. As assemblies create traffic congestion, rights of other individuals are also affected. This chapter discusses the complexities that arise during the exercise of this right. This includes the complexity in determining the line between legal and non-legal police practices in regulating this right.

II.a.Misuse of crowd-dispersal tactics

The domestic law has clear provisions to regulate and police protests. While there are clear legal provisions on how to police protests, the research findings revealed that the police use other modes of handling and controlling student protests. As revealed by student protesters, the police use the crowd-policing techniques not to disperse the crowd but to harm them deliberately. For instance, the acceptable way of using tear gas is spraying tear gas at an angle of 45 degrees so that the dispersal happens through the smoke reaction. According to the research participants, what the Sri Lanka police does is aim directly and throw the metal cannisters of tear gas at students so that the cannisters would hit the protesters. Furthermore, there are few reported cases of severe eye injuries due to water cannoning.

During an interview with the chief of the Criminal Investigation Division of a police station in the capitol of Sri Lanka, it was stated that there is a group of specially trained police for protest controlling when crowds get out of control. However, this specially trained group of policemen is identified as the 'Anti-riot Squad'. If we observe the terminology used to refer to the police team that regulates aggressive assemblies, it is clear that the Anti-Riot Squad is what is used for the policing of aggressive assemblies. Does that mean that any assembly that is not peaceful falls under the category of "riot"? The OIC of the Criminal Investigation Division, when inquired about the crowd-controlling tactics in Sri Lanka, states the order of tactics as follows; (1) obtaining a court order or an injunction from the Magistrate's Court, (2) using crowd control barriers, (3) water cannoning, (4) tear gas, (5) firing rubber bullets, (6) baton charges, and (7) arrests. However, during the interviews, none of the participants mentioned about crowd-control barriers. There are two explanations to this. One explanation is that the research participants may have failed to observe these crowd-control barriers. The other explanation is that the police may not have used crowd-control barriers during crowd-controlling. If the police has failed to or deliberately avoided using crowd-controlling barriers, it is a fault in the part of the police.

II.b.Extra-legal modes of protest-controlling

Another example is the abductions of student activists who organize student protests. Abductions are not permitted both under the domestic law of Sri Lanka and under international laws. Abductions are illegal and against all Human Rights standards. The attempted abduction of Ryan Jayalath the convener of the Medical Faculty Students' Action Committee is one

example that makes it impossible for the State to deny extra-legal modes of protest-controlling. Different accounts of the attempted abduction of Ryan Jayalath can be seen in news media. As reported by the Government Medical Officials Association it was a group of people under the guise of policemen that carried out this failed abduction (Daily Mirror 2017). According to *Asian Mirror*;

> "A tense situation occurred outside the Government Medical Officers' Association (GMOA) headquarters yesterday, when a team of policemen in civilian clothing attempted to 'abduct' Medical Faculty Students' Action Committee (MFSAC) Convener Ryan Jayalath." (Asian Mirror 2017).

While the Police Spokesperson denied the allegation that the police tried to abduct Ryan Jayalath, a chief inspector who has visited the crime scene has admitted that it was his subordinates who have carried out this failed abduction (Daily Mirror 2017). With this chief inspector's remark, it is clear that policemen in civvies attempted to abduct Ryan Jayalath. As the attempt failed, the police reported that Ryan Jayalath has 5 arrest warrants against him. However, an abduction is not the protocol to arrest an individual who has five warrants issued against him. This failed abduction is one instance that displays how the police exceed their remit and misuse the legal powers vested on them.

II.c.Banning of Student Unions in universities

Apart from the police, the administration of certain universities has been involved in actions that violate the right to freedom of peaceful assembly and association. Research participants revealed that Sabaragamuwa University in Sri Lanka had banned student unions. Moreover, in Sri Jayawardenepura University, in the capitol, the university administration went to the length of taking legal action against students who formed assemblies within the university premises. At the international level, Article 20 of the UDHR and Article 22 of the ICCPR are among a number of international Human Rights instruments that guarantee the right to freedom of association. The Sri Lankan constitution also guarantees this right under Article 14(1)(c). Yet, student unions were banned. This a direct violation of the right to freedom of assembly. Rev. Rathkarawwe Jinarathana, the present Convener of the Inter-University Bikkhu Federation, stated that over 280 students were suspended "for being members of an unlawful assembly" (Rev. Jinarathana. 21.05.2018) According to him, students of more than 5 in a group couldn't gather around a table in the canteen since they were suspended for being members of an "unlawful assembly". In the University of Sri Jayawardenepura, during the office of Vice

Chancellor M.L.A. Karunaratna, the university administration went to the extreme of removing one chair out of every table that had five chairs in the canteen. The implication of this is that the university administration attempts to crush down student activism which is deemed to be violent student politics.

Student activism is often associated with violence, aggression and insurgencies due to a series of historical events that took place in 1971 in which university students together with the left wings political parties of Sri Lanka led to an insurgency and massacre. Samaranayake (1992) notes that there has been a significant increase of student unrests since the mid-1960s: "Student participation contributed to the victory of the coalition led by the Sri Lanka Freedom Party. By 1971, this situation changed profoundly with students becoming part of insurrectionary violence and guerilla warfare while the University of Peradeniya was a major centre of revolutionary activities by students" (Samaranayake 1992, p.101). Weeramunda (2008) writes how the Janatha Vimukthi Peramua (JVP) used the "universities as a recruiting base for its insurrection in 1971" and used the halls of residence as "virtual armories" in the insurrection (Weeramunda 2008, p. 21). He identifies a significant trend: "student agitation and activities spread beyond the scope of University issues involving the shooting incidents on May Day, the North Colombo Medical College issue, and protests against the Indo-Sri Lanka Accord of 1987. The university examinations were boycotted indefinitely. During this period, the pro-JVP students virtually controlled the University and used it as "a safe haven" for violent activities." (Weeramunda, 2008, p.34). According to Samaranayake, the "student bodies perceived themselves as a vanguard of social change…and merged with underground organizations controlled by the militant youth" (Samaranayake 2015, p.29). Therefore, a genuine fear is present in the University administration that student politics may lead to a potential student outbreak and repeat history. On the other hand, historical events are used as an excuse to crush down student unionism that is considered a threat to university authority and the State.

II.d.Fashioning a negative public opinion about student protests

During an interview, a police officer expressed that student protesters have a fetish to be seen as heroes on television. He remarked that student movements, nowadays, seek "cheap popularity" and getting beaten by the police and being shown on television is their reward. The existence of a strong voice of an organized student group poses the threat of micro-mobilization against the State and this is one reason for the State to repress student protests. Therefore, a

public opinion is created that student politics is second-rate politics and that it is not worth any serious attention. This public opinion is fashioned to discourage and disapprove student politics. Since Sri Lanka has a free education system and a free tertiary education system where undergraduates receive free education up to their first degree, certain citizens are of the opinion that university students who protests are wasting taxpayers' money by investing their time on politics instead of doing their academics. Kusal Perera (2017) writes an article titled 'people pay for protests' and in his article, he maintains that the anti-SAITM protest is a political campaign funded by the people indirectly (Perera, 2017). An opinion piece that appears on the citizens' views section of Sunday Times also displays similar logic: "That is why a huge amount of taxpayers' money is spent to educate them…Is it wise to stay away from one's studies for more than three months expecting that the government will come to them on bended knee with cap in hand and plead with them…" (Silva, 2017). As mentioned in the previous section, the student protests have a negative reputation with the events that took place in 1971. Therefore, by creating a negative public opinion about student protesters, it becomes easy for the law enforcers to justify their actions even if they exceed their remit in protest-policing.

II.e.From protest-policing to protest-repression.

While the law enforcers are bound by duty to regulate and police protests in order to maintain peace and order, there are reported incidents where the law enforcement officers have exceeded their remit in imposing sanctions on student protesters. Research participants revealed how the police, CID and armed forces have been involved in spreading fear, and intimidating student protesters by visiting their families and pressurizing students through families. It is evidents that police harassment was one of the means through which the State pressurized and intimidated student protesters.

For the purpose of this study, repression is understood in relation to Goldstein's definition. Goldstein (1978) states that;

> "repression involves the actual or threatened use of physical sanctions against an individual or organization, within the territorial jurisdiction of the state, for the purpose of imposing a cost on the target as well as deterring specific activities and/or beliefs perceived to be challenging to government personnel, practices or institutions" (Goldstein 1978, p. xxvii).

"Physical sanctions" generally refer to physical penalties or punishments allowed by the law for disobeying a rule or law. In the anti-SAITM struggle, overt protests were repressed using both "actual physical sanctions" and "threatened physical sanctions" during every wave of the struggle. Firstly, let us focus on "actual physical sanctions" that were used during the anti-SAITM protests. Sri Lanka Police used injunctions to stop ongoing assemblies. On certain occasions student protesters behaved aggressively and there were legitimate grounds to use "actual physical sanctions". Generally, if the court order is disobeyed by an assembly, there are "actual physical sanctions" which is acceptable if the ongoing assembly has violated the laws of the country. However, participants of this research revealed that crowd-dispersal tactics were misused by the police during the anti-SAITM protests. The misuse of crowd-dispersal tactics and the imposition of sanctions that are disproportionate to the crime are unacceptable. If the law enforcement officers have exceeded their remit during the dispersal of anti-SAITM protests, it is not acceptable. It amounts up to repression of student protests.

Secondly, let us focus on "threatened physical sanctions" used during the anti-SAITM protests. Just as Sri Lanka Police use injunctions to stop ongoing assemblies, they use injunctions to prevent scheduled assemblies from happening. An injunction or court order is an order that warns a scheduled assembly of possible "physical sanctions" if the assembly proceeds by disobeying the court order. Therefore, the police obtaining court orders to prevent scheduled or impending assemblies from happening could be considered "threatened physical sanctions". According to Goldstein's definition, repression involves physical sanctions for the purpose of imposing a cost or deterring anti-government activities. In the context of the anti-SAITM protests, what could be gathered is that protests were deterred by the use of court orders. It is also a way of imposing a cost on assemblies. Three participants of the research revealed that they were arrested on a number of occasions. A pattern is discernible through their responses. Initially, these three students had been arrested during three different anti-SAITM protests. They were arrested for being members of an unlawful assembly, being a public nuisance and also for obstructing roads. Once they were arrested, they were bailed out on the condition that they shall not be involved in similar protests again. When the student protesters who are on bail they are arrested again for continuing anti-SAITM protests. In 2 out of these 3 cases, the police had legitimate reason to re-arrest 2 of them for taking part in protests while they were on bail. In the third case, a Buddhist priest was arrested on the same charge without evidence. The Buddhist priest who had not been present in the protest was arrested despite the chief priest's testimony as an alibi. Furthermore, the police and armed forces visiting the homes of student

protesters it is evident that the police tried to intimidate dissidents by threatening them of possible physical sanctions. This points to the fact that there are sanctions against student protesters that are beyond the limits of the law.

II.f.The transition from physical repression to a legalist approach to repression

The interviews conducted revealed that the latest trend of repressing student protests is a legalist approach to protest repression and the research participants made a distinction between the pre-2015 era and the post-2015 era. Sri Lanka had a change of governments after the Presidential Election in 2015 (BBC, 2015). Repression has remained a constant while the only variables are the modes of repression. There is a number of legal provisions in Sri Lanka through which a legalist approach to protest repression becomes possible; (1) Court orders/injunctions are sought by the police to prevent protests from happening or to stop ongoing protests, (2) certain provisions in the election law pertaining to Presidential Elections Act and Local Authorities Election Ordinance, (3) Penal Code and Criminal Procedure, (4) Parliament (Powers and Privileges) Act, (5) Offences Against Public Property Act (No:12 of 1982), (6) National Thoroughfares Act , No. 40 of 2008.

One of the main ways through which the police prevents student protests is the use of court orders. Court orders or injunctions are (mis)used by the police to repress public dissent by student protesters. The police could obtain a court order at two instances; (1) before a protest, and (2) during the course of a protest. Upon the request of the police, the Sri Lankan court can issue injunctions to stop ongoing protests, prevent scheduled protests or prevent protests the court considers to be an imminent threat to public order and religious harmony. Section 54 of the Judicature Act of Sri Lanka (Chapter VIII. General Provisions) explains that injunctions shall be issued in a High Court, District Court or a Small Claims Court in three scenarios: (a) When a plaintiff demands a judgment against a defendant "restraining the commission or continuance of an act or nuisance" (S 54(1) Judicature Act) that would injure the plaintiff, (b) when the defendant during an impending action is committing or "threatens or is about to do" an act or nuisance that violates the rights of the plaintiff, (c) the Court may grant an injunction restraining the defendant from (i) committing or continuing any such act or nuisance, and (ii) doing or committing any such act or nuisance. Two out of these three subsections, can be (mis)interpreted and (mis)used in a way that threatens the exercise of the right to freedom of peaceful assembly. To support this, Section 284 of the penal code provides provisions to punish whoever repeats or continues a public nuisance, notwithstanding a legal injunction.

It cannot be denied that the Sri Lankan law also has provisions to safeguard the rights of defendants whose actions are subjected to restraining orders (S 54 (2)-(3) Judicature Act). However, the Sri Lankan police constantly seeks the help of injunctions to disperse student protests. 19th May 2014, a warning was issued by Colombo Chief Magistrate Gihan Pilapitiya to the Deputy Inspector General Anura Senanayake saying that in future the court will not issue any injunction orders against peaceful protests (ColomboPage News, 2014). Furthermore, the Court warned the police not to appeal for injunctions against peaceful protests.

Protest repression in the pre-2015 era shows a visible culture of threats and repression resulting in the death of a number of protesters (Asia News, 2012; Ada Derana, 2013; Daily News, 2017) whereas in the post-2015 era, the mode of repression changes to a legalist approach. This not only gives new insight into the repression politics of Sri Lanka, but it also helps understand the complexity in defining "repression". According to Goldstein, even though threats and intimidation are the common forms of repression, repressive behavior does not necessarily use all coercive applications but rather, it deals with "applications of state power that violate First Amendment–type rights, due process in the enforcement and adjudication of law, and personal integrity or security". Goldstein's First Amendment–type rights include, (1) freedom of speech, assembly, and travel, (2) freedom of the press, (3) freedom of association and belief, and (4) the general freedom to boycott, peacefully picket, or strike without suffering criminal or civil penalties (Goldstein 1978, pp. xxx–xxxi). In simple terms, Goldstein notes that repression is when the State uses state power to violate the four types of rights mentioned above. Despite the constitutional protection given to the right to freedom of peaceful assembly in Sri Lanka, "State power" and "State apparatus" are used to restrict the exercise of it. Injunctions are the 'most legal' way of repression student protests. Section 54 of the Judicature Act of Sri Lanka (Judicature Act, Chapter VIII. General Provisions) explains that injunctions shall be issued in a High Court, District Court or a Small Claims Court in three instances. Two out of these three subsections, can be (mis)interpreted and (mis)used by the police in a way that threatens the exercise of the right to freedom of peaceful assembly. For instance, it is the police that acts as the plaintiff when an injunction is requested by the Court. Even before students begin their protests, the police demand a judgment from the Court to overrule a protest that is yet to happen. In addition to that, Section 284 of the penal code provides provisions to punish whoever repeats or continues a public nuisance, notwithstanding a legal injunction. In such a context, carrying out a protest is by default an invitation to legal sanctions.

It is self-explanatory that individuals are entitled to the right to freedom of peaceful assembly only as long as the assembly remains peaceful. When the assembled group ceases to exercise the right to freedom of peaceful assembly in compliance with the limitations laid down in Article 14(1)(b) of the constitution, the police is vested with the power to disperse such an assembly. Section 95(1) of the Code of Criminal Procedure Act No. 15 of 1979 authorizes a police officer not below the rank of Inspector of Police to command such an assembly to disperse. Dispersal of an assembly in accordance with the terms in Section 95 is considered lawful and does not infringe the right to freedom of peaceful assembly. This is further confirmed by the judgement given by Chief Justice Sarath N. Silva in the Bandara and Others V. Jagoda Arachchi. Officer In Charge, Police Station, Fort And Others (Bandara and Others V. Jagoda Arachchi. Officer In Charge, 2000). When the domestic legal framework of Sri Lanka has vested on the police the power to lawfully disperse an unlawful assembly, there arises a question as to why the police (mis)use injunctions to overrule impending protests that are declared to be peaceful protests by the organizers.

Herrero (2006) discusses the 'legalist-type' behavior in repression and states that by adopting a 'legalist-type' behavior in repressing dissent, there is a greater chance of not allowing the emergence of an opposition. In simple words, what Herrero says is that, even when repression is done in an arbitrary and random manner, if the State adopts or imitates a 'legalist-type' behavior, the chance that the public will disapprove the State is relatively low. If the State uses an overt or openly arbitrary nature for repression, citizens will threaten the regime by aligning with the opposition. I must say that this study does not attempt to appropriate the Sri Lankan situation with models found in existing literature on repression. However, these models help explain the situation in Sri Lanka. Herrero's 'legalist-type' model on repression helps explain the legalist approach to protest repression in Sri Lanka. During an interview, it was revealed that student protesters who have ongoing court cases are imprisoned over and over for contempt of court. One of the interviewees (Lahiru Weerasekara, 21.05.2018) stated that when arrested student protesters attend court hearings for a second or third time, they are remanded on the charge that they have violated the court orders of the previous hearing. As these protesters received bail, they are advised not to engage in similar activities. But that is not a valid reason for them to stop exercising their right to freedom of peaceful assembly. As they continue to exercise their right to freedom of peaceful assembly, they are arrested for violating court orders.

If we try to trace back to different stages of this issue, on the surface level what we see as the direct cause for continuous arrests and imprisonment is the violent and aggressive nature of student protesters who ultimately violates certain laws of the country. What is not discussed is (1) why the students turn aggressive and violent, and (2) when the student motives and behaviors change during the course of protest action. Assemblies may turn aggressive and violent for a number of reasons; when they collide with the police or other relevant authorities, when authorities do not respond to their protests, when authorities fail to accept their demands. However, probing into the situation in Sri Lanka, what could be gathered is that the moment peaceful assemblies cross the line of being peaceful, the members of that assembly are charged for being members of an unlawful assembly. Despite the intensity of the offence committed by the protesters, everyone who crosses the line of peaceful assembly is considered members of an unlawful assembly. There is a major practical issue. Even though international human rights standards and laws have a consensus about what a peaceful assembly refers to, in the end it is law enforcement officers who are faced with the challenge of making this difficult judgement. On a struggle site, it is the police or the law enforcement officers that determine between a peaceful assembly and an unlawful assembly. On certain occasions, the police may charge an aggressive assembly while on another occasion the police may feel that the assembly is not aggressive or violent enough to charge them for being a public nuisance or an unlawful assembly. However, on most of the occasions, the problem arises due to the police's deliberate misrepresentation of student protests as "unlawful assemblies".

"Unlawful assembly" is an offence against public tranquility according to the Penal Code of Sri Lanka. Sections from 138-155 of the Penal Code is concerned with determining and prosecuting of offences against public tranquility. In Chapter VIII of the Penal Code, under Section 138 states that an assembly of five or more persons is an "unlawful assembly" if the common aim of the assembled fits 6 criteria:

> 138. An assembly of five or more persons is designated an "unlawful assembly" if the common object of the persons composing that assembly,
> *Firstly* – To overawe by criminal force, or show of criminal force, the State or Parliament or any public officer in the exercise of the lawful power of such public officer; or
> *Secondly* – To resist the execution of any law or of any legal process; or
> *Thirdly* – To commit any mischief or criminal trespass or other offence; or

> *Fourthly* – By means of criminal force, or show of criminal force, to any person, to take or obtain possession of any property, or to deprive any person or the public of the enjoyment of a right of way or of the use of water or other incorporeal right of which such person or public is in possession or enjoyment, or to enforce any right or supposed right; or
>
> *Fifthly* – By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do; or
>
> *Sixthly* – That the persons assembled, or any of them, may train or drill themselves, or be trained or drilled to the use of arms, or practicing military movements or evolutions, without the consent of the President.
>
> *Explanation*—An assembly which was not unlawful when it assembled may subsequently become an unlawful assembly (Penal Code, Sec. 138)

On a practical note, these six criteria used to determine an "unlawful assembly" are not static – they could be manipulated by factors such as police brutality, and the response of onlookers. Whether it is the State forces or the protestors that start the violent outbreak is always indefinite and the members of the assembly may react to State violence in self-defense. The penal code provides an 'Explanation' to the definition of "unlawful assembly". According to the explanation, "an assembly which was not unlawful when it assembled may subsequently become an unlawful assembly" (Penal Code 1885). This becomes problematic considering the practical nature of the problem. The issue does not lie in the Penal Code, but the issue lies in the practical state of these affairs. Law enforcers could easily manipulate peaceful assemblies and provoke them to be violent, and aggressive and then charge peaceful protestors as members of an "unlawful assembly".

Student protesters who are arrested are commonly charged for being members of an "unlawful assembly". These students who exercise their right to freedom of peaceful assembly are unarmed. According to Section 138, "Unlawful Assembly" requires the use of "criminal force. The reiteration of "by means of criminal force" in each subsection shows that it is one of the main criteria that defines unlawful assembly. One question is whether unarmed peaceful protesters could use criminal force. The term "criminal force" is not clearly spelt out and therefore, "criminal force" sounds vague. Three out of the six criteria used to determine an "unlawful assembly" require "criminal force" while the other three do not. The implication of the second and third criteria is that, resisting the execution of any law or of any legal offence

and committing any mischief or criminal trespass or other offence alone can constitute "unlawful assembly" even in the absence of "criminal force". Placement of the word "any mischief" in the third criterion is dangerous since "any mischief" is also vague. This vague and arbitrary nature of the wording in the Penal Code Section 138 is what allows the police to misinterpret "unlawful assembly" in a way that misrepresents student protesters. It is possible that student protesters doing any mischief even without the use of criminal force can constitute an "unlawful assembly". What does criminal force really mean? Does "criminal force" exclude shouting out protest chants loudly and waving placards? There are practical issues such as determining what "criminal force" is during an ongoing assembly.

II.g.Legality of anti-government slogans and chants

Fundamental rights cases such as the *Jana-Gosha case* makes it evident how the police arbitrarily assault assemblies simply because anti-government slogans were being shouted. The Jana Ghosha Case (Amaratunga v. Sirimal and Others), was a case where a group of politicians in Sri Lanka petitioned against the police for violating their right to freedom of expression during an anti-government protest. In 1992, several political parties decided to express their disapproval of a number of socio-political and economic issues in the country by synchronizing their protests, island wide, by means of a 15 minute "*Jana Ghosha*". Participants were asked to organize their efforts in a noisy cacophony of protest by "ringing of temple and church bells, the tooting of motor vehicle horns, the beating of drums, the banging of saucepans, and the like so that there might resound, throughout the nation, a deafening din of disapproval" (Amaratunga v. Sirimal and Others, 1993). The petitioner's drum was broken by the police and he was forced to stop protesting. In this case the Supreme Court decides that (1) "the Police did not have reason to apprehend a breach of the peace. The action by the Police was simply because anti Government slogans were being shouted" and (2) "The petitioner's fundamental right of speech and expression was violated". Chief Justice then holds that the fundamental right of the petitioner under Article 14 (1)(a) has been infringed, and awards him compensation of Rs. 50,000 payable by the State. This is just one such situation that confirms how arbitrarily the police tries to regulate assemblies.

In the Amaratunga v. Sirimal and Others (Jana Gosha Case), the Supreme Court of Sri Lanka reiterates some observations made in Ekanayake v A.B.:

> "The Constitution demands the protection of the right to think as you will, and to speak as you think (Whitney v California), subject to limitations which are inherent, as well as restrictions imposed by law under Article 15. Subject to that, the expression of views,
>
> which may be unpopular, obnoxious, distasteful or wrong, is nevertheless within the ambit of freedom of speech and expression, provided of course there is no advocacy of, or incitement to, violence or other illegal conduct." Bandara and Others V Jagoda-Arachchi, Officer-in-charge (2000)

It is evident that the right to freedom of speech and expression extends to the expression of views which may be unpopular, obnoxious, distasteful or wrong, provided that they do not advocate or incite violence and other illegal conduct. Therefore, inasmuch as anti-government views are acceptable under freedom of speech and expression, similarly, anti-government views are acceptable in the exercise of the right to freedom of peaceful assembly. Therefore, expressing anti-government views do not constitute “criminal force”.

In the Amaratunga v. Sirimal and Others (Jana Ghosha Case) the Supreme Court of Sri Lanka refers to other case laws and states thus;

> There is ample authority that “speech and expression” extend to forms of expression other than oral or verbal placards, picketing, the wearing of black armbands, the burning of draft cards, the display of any flag, badge, banner or device, the wearing of a jacket bearing a statement, etc (cf. Carey v. Brown, Police Department of Chicago v. Mosley, Tinker v. Des Moines, United States v. O' Brien, Stromberg v. California, Cohen v. California. Learned Senior State Counsel concedes that drumming, clapping and other sounds, however unmusical or discordant, can, in the context of the Jana Ghosha, be regarded as "speech and expression". Bandara and Others V Jagoda-Arachchi, Officer-in-charge (2000)

In view of the Jana Ghosha Case (2000), the Supreme Court of Sri Lanka permits oral and verbal placards, picketing….drumming, clapping and other sounds despite how unmusical they be. Therefore, the use of any of these actions during an assembly shall not be considered non-peaceful. Hence, the use of these actions shall not be considered constituents of criminal force.

II.h.Conflict of Interests: Protesters Vs. Police

Crowd-control or crowd-dispersal is inevitable as well as indispensable in the course of assemblies. Police as the civil force responsible for the maintenance of peace and order of any country, is bound by duty to maintain public order by regulating assemblies. According to the Police Ordinance of Sri Lanka, under Duties and Liabilities of Police Officers, Section 77 states the power to give directions prohibiting or regulating processions. Section 78 lays down rules for police officers for regulation of public processions, and of carriages, and persons at places of public resort. Section 78 states that the police is required to direct the conduct of all assemblies and processions in any public place. Police officers are expected to prevent obstructions during assemblies and processions, and places of worship. According to section 86, the police has the authority to give order either verbally or by notice in writing to any person causing any public nuisance mentioned in this Ordinance to abate and remove the nuisance. Apart from the Police Ordinance, the Criminal Procedure also gives authority to the Police to regulate assemblies (Chapter VIII, section 95, 96 and 98). Therefore, the police has legitimate grounds to disperse assemblies that disrupt peace and order. In such a context, there arises a conflict of interests between the protesters who want to meet their demands and the police who wants to perform their duties. The moment law enforcement agents construe any assembly as far from being peaceful, they follow the law by acting to disperse such an assembly. There are certain practical issues that arise at this stage. Firstly, the police has the power to determine between a peaceful assembly and an unlawful assembly. There is a chance that an assembly of people who still consider themselves to be a peaceful assembly may not be so in the eyes of police; Protests or assemblies could be understood by the police and general public as a nuisance or an unlawful assembly. In a context where the police disperses a crowd for being a nuisance or an unlawful assembly, members of that assembly may feel violated as they believe that their right to freedom of peaceful assembly is violated. On the other hand, the general public may feel violated when their rights are affected by individuals or groups exercising their right to peaceful assembly.

In the case of anti-SAITM protests in Sri Lanka, demonstrations, flash mobs and protest marches were held in public places. The final destination of protest marches were government departments in the capitol city. On the 24th of November 2015, IUSF staged a silent protest in

front of the Ministry of Health and dispersed on their own accord (Sunday Times, 2015). On the 21st of June 2017, student protesters entered and occupied the Health Ministry forcibly (Daily Mirror, 2017). As the student protesters trespassed and occupied a government property, the law enforcement agents acted accordingly. The Special Task Force was deployed to maintain order inside the Health Ministry premises, but 96 student protesters were wounded in the clash. In such situations where student protesters violated the civil law of the country, the duty of the police is to act on it. One police officer who was an informant in the research expressed that student activism is necessary, but that crashing through police barriers [crowd-control barrier] and walking into places without any authorization is not what student activism should be. He emphasizes that everyone must abide by the laws of the country and that the police has clear instructions about the steps that should be followed in preventing riots. He argues that rights are not absolute and that individuals who exercise their right to freedom of peaceful assembly shall exercise their right in a way that it does not violate the rights of other people. As the police seem to take a genuine effort in crowd-controlling, there are also evidence that make the actions of the police questionable.

II. A Human Rights-based analysis of the case/s

States have a threefold duty in upholding rights; the obligation to respect, protect and fulfill. States have an obligation to: (1) Respect the right to protest: The State should not prevent, hinder or restrict the right to protest except in compliance with the restrictions stated in international human rights law; (2) Protect the right to protest: The State should undertake reasonable steps to protect those who want to exercise their right to protest. The State shall take measures to prevent violations of this right by third parties; and (3) Fulfil the right to protest: It is the duty of the State to establish and foster an enabling environment for the full enjoyment of right to protest. The State shall take measures to provide effective remedies for violations of all human rights embodied in the right to protest (freedom of speech and expression).

In view of the findings presented in this paper, it is noteworthy that the right to freedom of peaceful assembly in Sri Lanka are challenged due to actions of State actors and not non-State or third-parties. As the research findings revealed that the Sri Lanka Police goes beyond its remit to regulate protests, it is evident that protest-policing has gone beyond its legal limits and reached the extent of repression. As evident in the findings, one mode of hushing down dissent is repressing protests using a legalistic approach. Repressing student protests using a legalist approach is an outright violation of the right to freedom of peaceful assembly and a breach of the State obligation to respect, protect and fulfill this right as the main duty-bearer. There were reported events where Magistrates denied the request for injunctions on several

occasions. It is a sign that the judiciary upholds Human Rights. Therefore, a question arises whether it is the entire State or the law enforcers that is at fault for repressing student protests. The fault lies partly with the law enforcers. However, looking at the political dynamics, it is evident that the police is also a politicized tool of the powerful and influential groups that protect SAITM and the government.

The police alone cannot be blamed for attacking student protests. The practical state of affairs is not simple and easy to handle. The interests of the groups who want to abolish SAITM come into conflict with the interests of those who study at SAITM. The groups who want to abolish SAITM seem to disregard the right to education of those who study at SAITM. As one group demands the State to abolish SAITM, there is another group who will lose their right to private medical education. Furthermore, as student protesters cause traffic and nuisances during the course of protests, can the State still protect and fulfill this right of student protesters? As the anti-SAITM protesters violate the domestic laws during their protests, can the State still protect and fulfil their right to freedom of peaceful assembly?

However, there is a clear violation if the police attacks anti-SAITM protests when the protests are still peaceful and non-violent. The question is who the violator is. Is the violator the State or is it the law enforcers or is it both? According to the Human Rights-based Approach, people are rightsholders while the State is the duty bearer. When the law enforcers use a legalist approach to repress assemblies, the direct violator is the State. However, since law enforcers are a part of the State apparatus, State is also responsible for the violation. Firstly, the State has a negative obligation to abstain from carrying out, tolerating and sponsoring any act that violates the right to freedom of peaceful assembly.

Observing the context of Sri Lanka, it is evident that the judiciary still takes effort to uphold and respect this right of individuals. The law enforcement officials wittingly or unwittingly act in a way that infringes people's right to freedom of peaceful assembly. It is evident through the findings of the research that the State misuses crowd dispersal tactics to dissuade and end protests. Using physical violence is one mode of repressing protests. The subtlest and the non-violent means of repressing protests is the (mis)use of injunctions. The misuse of crowd dispersal tactics is an outright disrespect to the right to freedom of peaceful assembly. Similarly, injunctions are (mis)used by the police in preventing and ending protests. The Police Commissioner and other executive officials in the police service cannot deny their awareness of the misuse of these crowd-dispersal tactics. One implication of this is that the

misuse of crowd dispersal tactics is tolerated and unquestioned by the high-ranking officials. In the Human Rights-based approach, it is clear that the State obligation to respect human rights requires the State and all its organs and agents to abstain from carrying out, sponsoring or tolerating any practice, policy or legal measure violating the rights of individuals. The (mis)use of injunctions by the police is an implication that the police uses legal measures that could be exploited to violate the right to freedom of peaceful assembly. Other laws that are exploited by the law enforcement officers are the Penal Code, Parliament (Powers and Privileges) Act, Election Law, Section 2 of the Offences Against Public Property Act (No. 12 of 1982) -Mischief to public property, and Section 59(2) of the National Thoroughfares Act No:40 of 2008. The misinterpretation and exploitation of these laws for protest repression is a breach of the State obligation to respect the right to freedom of peaceful assembly.

Research findings reveal how, in the case of the anti-SAITM protest movement, student protesters were intimidated using the force of police and armed forces. Another finding is the abduction of student protesters and student union activists. The spread of fear in the homes of student protesters and the abduction of student protesters by the law enforcers are outright breaches of the State obligation to respecting the right to freedom of peaceful assembly. Firstly, we do not know the direct violators or offenders. However, whether or not the violators/offenders have been investigated by the police or the State is not known. Therefore, it is unsure whether the offenders have or have not been prosecuted. In the case of the anti-SAITM protest, the fact that student union activists are abducted or becomes easy targets for abductions raises serious questions. How, is it possible to abduct a student activist in broad daylight? Is it possible for these abductors to operate without the support of powerful State or non-State actors? One implication of student activists being easy targets of abductions is that the State either tolerates or sponsors this kind of violence and violations of the right to freedom of peaceful assembly. It is further evident with the attempted abduction of Ryan Jayalath, the Convener of the Medical Faculty Student Action Committee. As mentioned previously in this chapter, a chief inspector has admitted that the attempted abduction was carried out by his subordinates (Kanakarathna 2017). Therefore, there is a greater possibility that the the failed abduction was either carried out by the police on its own initiative or by some powerful individuals who have allies in the police. If the abductions were carried out by the police, the more plausible explanation is that the abductors are state-affiliated rather than being state-sponsored. Furthermore, white-vans were used in the failed abduction of Ryan Jayalath. The

Sri Lankan government has a strong connection with the white-van culture of abductions. It has connections to extra-judicial killings and enforced disappearances in Sri Lanka. The white-van culture was originally associated with the civil war in Sri Lanka and extra-judicial killings of members or alleged LTTE members.:

> "….persons, being affiliated with the LTTE, were arrested, abducted and detained by Sri Lankan government forces. The well known ‗White-Van-Syndrome' stands for kidnapping of people at various places throughout the country by forcing them into a white van." (ECCHR, 2010. p.68)

While the LTTE was a terrorist group, the white-van culture was one of the methods used by the Sri Lankan government to eradicate terrorists. In the case of the attempted abduction of Ryan Jayalath, it is evident how the white-van culture permeates the arena of anti-government student politics. Abductions and failed attempts of abductions of student union activists in turn reflect the culture of impunity in Sri Lanka.

Inasmuch as the State is obliged to respect and protect the right to freedom of peaceful assembly, the State is also obliged to fulfill the right to freedom of peaceful assembly. In other words, the obligation to fulfill refers to the State's responsibility in facilitating people to exercise this right. This requires the prosecution of the state and non-state actors who are responsible for violating the right to freedom of peaceful assembly. However, if the violators of this right are State actors such as the police and armed forces, the State fails to facilitate the exercise of this right. Similarly, perpetrators who are state actors will not be prosecuted. What is noteworthy, however, is that the judiciary of Sri Lanka have prosecuted several violators who have violated the right to freedom of peaceful assembly. The Janagosha Case (2000) cited in a previous section in this chapter is one such verdict given against a state actor who violated this right. The Magistrate Court has issued warnings to the police not to request injunctions to end peaceful assemblies. Even though the State has failed in the obligation to respect and protect the right to freedom of peaceful assembly, there have been few instances in which this right was upheld and fulfilled due to the efficacy of the judiciary of Sri Lanka.

III. Conclusion.

The participants made a distinction between the period before 2015 and the period after 2015 in terms of the modes of repression. The pre-2015 period is the period of former president Mahinda Rajapaksa while the post-2015 period is the period of President Maithripala Sirisena.

Represion of student protests have taken place in both regimes. However, in the pre-2015 period, repression of student protests takes a more physical approach. State repression of student protests was overtly violent with a visible culture of fear, threats and abductions. In the post-2015 period, repression of student protests takes a legalistic approach and it is done through seemingly non-violent acts. However, abductions and threats are still used even in the post-2015 period. It has come to the point that student activists cannot exercise their right to freedom of peaceful assembly without having to face both physical and legal sanctions.

The right to freedom of peaceful assembly in Sri Lanka is challenged in many ways. The reason for this is that the exercise of this right is subject to regulation by the police and armed forces even when the protests are peaceful and non-violent. In certain cases where protests turn violent and aggressive, the police regulates and disperses protests on legitimate grounds. However, in certain occasions, even when protesters declare their protests as peaceful protests, the police attempt to prevent or stop it from happening on the basis that it is a potential threat to peace and public order. The police justifies physical and legal sanctions against protesters claiming that they are important for the maintenance of peace and order. But what actually happens is that certain anti-government protests are repressed in the pretext of maintaining peace and public order. It is a difficult task to regulate assemblies without the use of force. Therefore, the law enforcers use force as permitted by the law. When the State still fails at regulating protests, they resort to extra-legal measures in repressing protesters. To justify their actions, the police seems to misrepresent assemblies as “unlawful assembly” and prosecutes its members.

The laws that are used to justify repression are not repressive in their essence, but the unaware and untrained law enforcement officers misinterpret and exploit these laws to misrepresent protesters as “unlawful assembly”. However, it is too simplistic to attribute the cause for the violation of the right to freedom of peaceful assembly to unaware police officers. To say so is a major pitfall as well. In certain instances, these low-level law enforcement officials who seem “unaware” are manipulated by politicians and the government to act in the interest of the government. The police and armed forces are thus politicized to silence dissent.

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