

# GRADUATE SEMINAR: CURRENT ISSUES IN HUMAN RIGHTS



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# Current Issues in Human Rights Research

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# GRADUATE SEMINAR: CURRENT ISSUES IN HUMAN RIGHTS

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## **CURRENT ISSUES IN HUMAN RIGHTS RESEARCH—SOME THOUGHTS AND REFLECTIONS**

LatifaLaghzaoui – July 2017

Human rights research is not in itself an academic discipline per se. It is an area of research where different disciplines such as Social Sciences, Political Sciences, Humanities and other fields have been exploring human rights issues using their own specialised disciplinary theories and methodologies. Given the inter- or cross-disciplinary nature of human rights and the broad range and diversity of its materials, no one discipline can adequately capture the complex essence of this field. Furthermore, human rights research today is also having to consider the internationally agreed principles of universality, interdependence and indivisibility. The lack of a common agreement about their meaning and implementation is a challenge for human rights scholars and activists alike. One issue that appears to be gaining more ground in the human rights field and which has the potential to help with the challenges highlighted so far is the existing body of “intersectional theories”. Intersectional research and theories seek to identify and explain how different forms of abuse and violations are interlinked thus highlighting the inter-dependent nature of human rights.

### **The Legal Lens**

The human rights field has, for a long time, been dominated by theologians, legal scholars and philosophers who put much emphasis on developing laws and norms at the national, regional and international levels. Since it first emerged some six decades ago, the human rights system has developed an extensive body of standards and procedures making it a rather heavily legalised field in International Relations. The result is that we now have an international human rights system with well-defined norms and obligations. Needless to say, the importance of an effective legal system is well known. For example, the international human right law has been successful in shaping and declaring universal values or "compelling law" which includes norms on torture, slavery and genocide. These laws are there to primarily protect individuals and groups from abuse at the hands of governments and their agents. But in order to provide actual protection for human rights, these international standards and procedures must

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be incorporated into domestic legislation, applied fairly by the judiciary and supported by local rights advocates. The main problem is one of compliance (or lack of). Universal international human rights treaties and conventions have been adopted (sometimes unanimously) by governments which then violate their obligations without sanction. They do so because the enforcement structures of the international legal system are weak. But are legal provisions enough to understand fully the nature of all rights, protect and promote human rights in all societies?

Given the current range of human rights violations and abuses we witness across the globe, it is evident that laws cannot and have not been able to cover everything. Laws cannot be separated from other disciplines such as Social Sciences that contribute to our understanding of freedoms and how they can be protected. Furthermore, in an increasingly globalised world and a shift in sovereignty, we are seeing the emergence of a new breed of powerful and influential players namely non-state actors who have a greater role in human rights issues. We are also witnessing a rise in the number of populist political leaders who are challenging and violating international laws and norms. They claim that human rights laws are providing better protection for minority groups and 'terrorists' than the rest of society. For them, rights have become an impediment to the security and stability of their citizens and therefore cannot be complied with.

As it stands, the existing human rights legal framework has not been particularly successful. It has not delivered its objectives, and there is little evidence that people's rights are better protected because of internationally agreed human rights treaties and conventions. Perhaps a universal system of rights cannot after all be that universal as will be discussed later. A human rights discourse that is too legalistic can be alienating for many stakeholders not least the rights holders themselves and the activists who campaign for better protection and promotion of human rights.

An important shift had taken place over the past twenty years or so when human rights discourse and research started gaining momentum in various disciplines especially through linking human rights to economic development. This new development theory of rights-based

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approach adopted by several UN agencies as well as NGOs created the space for this critical inter-disciplinary model. We have also noticed that human rights research is no longer using a state-centric perspective, i.e., focusing solely on the government and its agents as human rights abusers. Issues like Female Genital Mutilation (FGM), child labour and poverty have contributed to shedding some light on the role of cultural and economic systems in promoting or abusing human rights.

Academia has also recognised the importance of human rights resulting in a significant increase in both human rights programmes and scholarly work. However and despite these important developments, human rights are still largely examined through the legal lens. This legalistic dominance can be the source of a number of challenges when it comes to undertaking a more balanced and inclusive form of human rights research and formulating policies that can address more effectively the human rights violations and abuses facing the world today. A more multi and inter-disciplinary approach to human rights research is still not the norm and presents many challenges, but it remains a viable way forward if we are to see some a more inclusive and effective human rights system.

### **Universal, Interdependent and Indivisible?**

Even though the general framework, philosophy and perception of human rights are rooted in the 25-year-old internationally agreed principles of universality, interdependence and indivisibility, not enough theoretical or empirical studies on these principles have been carried out.

These three principles refute any suggestion of a hierarchy of rights. All rights are thus believed to be equally important and mutually reinforcing. But there is still a lack of a precise definition and theoretical basis of these. In fact, there has even been a tendency to make little distinction between “indivisibility” and “interdependence”. The absence of an agreement on how they can be made more operational in human rights policies and guidelines complicates matters further.

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To take up the example of the principle of universality, in particular, it has been an important and much-contested issue in the human rights debate. One of the most common criticisms to this issue is the concept of "cultural relativism" meaning that universal norms in human rights cannot be applicable across societies and cultures especially when those values are believed to have Western origins. The oft-quoted embodiment of this challenge is "Asian values" and, to a lesser extent, "Islamic culture". Proponents and critics of the applicability of the universal principle are extensive and well documented. They continue to be debated especially in light of the more recent wars in the Middle East. For instance, it has been argued that the 2003 invasion of Iraq was a prime example of the neo-imperialist attitude and double standards of the West which use human rights to justify its wars in the region.

Some of the critics of the cultural relativism theory argue that the concept of Asian values has been used by authoritarian regimes to justify their repressive policies and disregard for human rights standards. They claim to promote and defend human rights in some countries while at the same time they turn a blind eye to the serious human rights situation in countries they consider their allies.

Adopting such a fixed approach to human rights and dismissing cultural differences has obviously not been helpful in ensuring compliance with the principle of universality. But can we accept certain atrocities simply because we have to be sensitive to and/or respectful of the socio-cultural context within which they occur? Clearly not. Female genital mutilation or FGM, which had been accepted by communities as a religious and socio-cultural practice continues to be eliminated and/or made illegal by a growing number of countries around the world. Decades of awareness-raising, culturally-sensitive education, and prevention work conducted by local activists, NGOs and the international community have resulted in a global decline of the practice.

This area of human rights research is in need of more in-depth extensive work that would help bring together a less radical theory. It is not a question of turning universal human rights into a country or culture-specific principles as this will defeat the very essence of human rights. Instead, we need to recognise and give more legitimacy to the compatibility of human rights with cross-cultural perspectives and values.

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The interdependent and indivisible doctrines enshrined in the human rights framework underline the principle that rights are not isolated and independent from one another. They are inherently inter-related so fact that the enjoyment of one right can help advance another right. Similarly, the impact of the violation of one right can contribute to the violation of another right. The interdependence principle is probably one of the least problematic of the three especially because it works well identifying the different categories of rights and making the links between them. There is nothing new or even ground-breaking about linking human rights and environmental issues and human rights and poverty. For example, the 1972 UN Conference on the Human Environment in Stockholm proclaimed that "both aspects of man's environment, the natural and the man-made, are essential to his well-being and to the enjoyment of basic human rights [and] the right to life itself." There is also a lot of research linking poverty and an array of human rights violations. People living in poverty are more likely to experience inter-related abuses and deprivations such as unequal access to justice, lack of political power, poor housing and dangerous working environments. These in turn act as barriers towards the realisation of their rights, hence, the perpetuation of their poverty.

### **INTERSECTIONALITY**

Discrimination as a cross-cutting form of human rights violation can be used to help strengthen the interdependence and indivisibility of human rights. The impact of the combination of different types of discrimination and human rights violations – referred to as intersectional human rights – can be devastating on their victims and survivors. And yet these situations have not received enough attention within the international human rights system. In recent years, the concept of multiple forms of discrimination has been included in the UN system. A few human rights treaty bodies such as the CRC and CEDAW committees have adopted this concept. They started recognizing and working on multiple and inter-sectional forms of discrimination highlighting the need to move away from the "single-axis thinking". Intersectional theories are slowly gaining some ground in the international human rights discourse, but much more is still needed to counter the tendency to compartmentalise human rights.

The use of intersectional theories is well worth considering here not least because they have the potential to address the rights of people who are covered by different categories of



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international standards simultaneously. At the heart of these anti-essentialist theories is the belief that people's identities have multiple dimensions i.e., each one of us simultaneously experiences his/her gender, class, race, ability, etc. ... and it is those experiences that can make us subject to privilege and/or discrimination. After all, inter-sectionality has human rights origins since it was first applied to the experiences of black women who did not think they were being considered sufficiently in gender equality and anti-discrimination and gender equality debates. The need to applying it more extensively is needed more than ever before given the current complex and deteriorating human rights work worldwide.

Intersectional theories are not without their critics, though. Such critics include human rights practitioners who believe that applying intersectional methods do not provide a meaningful answer to the actual causes of inequality and discrimination. Others have argued that by giving more attention to the individual cases or sub-groups, it is much more difficult, if not impossible, to put in place intersectional policies and strategies that can help promote and protect the rights of the larger group.

It is clear that intersectional methods of analysis require a much more thorough and even radical way of rethinking human rights and human rights institutions in particular. More research on the scope and applicability of inter-sectionality can help shed some light on the different forms of discrimination and untangle the multiple and complex dimensions of not only the human rights system but more importantly the actual structures of power and inequality that lead to human rights violation and abuses.

The challenges we face today require not only intersectional research as the basis for developing effective policies and guidelines but international cooperation on a global scale. The current nature of the human rights scene in the 21<sup>st</sup> century is such that disciplinary and theoretical efforts need to be accompanied by strategic and timely partnerships amongst key stakeholders including academics, human rights professionals and activists and policy-makers.

**A STUDY OF THE IMPLEMENTATION ON WORKING  
CONDITIONS OF WOMEN WORKERS AS THE IMPACT OF  
FOREIGN DIRECT INVESTMENT IN INDONESIA**

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**Abstract**

FDI should be implemented by responsible and respect human rights in every sector including to their direct stakeholders. The integrated of labour standards in FDI policy will bring the protection of workers' rights in the host country as the FDI recipient. State has a duty to protect the workers' rights through applicable policies and regulations and MNCs must respect the workers' rights based on the applicable of labour standard. FDI has brought the opportunities in creating job opportunities through MNCs business operation in the host country. Through FDI, women workers are having opportunities in labour market to apply for the job position. In the implementation, women are still having violations in their working conditions. As duty bearers, state and MNCs should avoid issues related to violations of workers' rights. The findings show that the violation against workers is still occurring in their working conditions standard due to lack of monitoring and legal enforcement from the state.

Keywords: FDI, Workers' rights, Women, Business and Human Rights

**I. Introduction**

Globalization has been given opportunities for countries to collaborate with another country through business cooperation in improving their economic level. Globalization is seen as opportunities in providing decent work which can fulfil the basic needs such as food, shelter, and an appropriate environment based on social dimension to avoid exploitation (ILO 2004, p.5). Globalization has opened the opportunities between countries to collaborate in business sectors. The countries which have the source in capital-intensive can collaborate with another country which has labour intensive. Indonesia as the largest economy in Southeast Asia and has the fourth largest population in the world (World Bank 2017), Indonesia has many potential sources in economics, human resources and natural resources which has attracted the foreign

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investors to do the invest in Indonesia. The recession economy in Asia in 1997 has brought Indonesia to improve the economy level through Foreign Direct Investment (FDI). Attracting more FDI can promote the competitive business environment which bring the job employment opportunities in the host country (Gopalan, Hattari and Rajan 2016, p. 32-33). Indonesia Investments Act No 25 Year 2007 affirm in Article 3 that one of the purposes of the investments implementation is to create job opportunities. MNCs as the tangible entity of FDI which operates in the host countries has absorbed the workforce as their workers including women workers. The requirement of labour standard has been an important requirement to be included in the FDI trade agreement before the MNCS started operating in Indonesia as the host country. State as the duty bearer must have a protection mechanism in protecting the workers' rights in Indonesia through policies and regulations (UNGP 2011).

## **II. The Implementation of Working Conditions in Indonesia**

The implementation of FDI in Indonesia from year to year has been increasing and has become a main income in the state revenue through tax revenue as the result of FDI business operation. The provision of tax facilities is one of the government's efforts to attract investors in developing their business in Indonesia (Abidin 2015). Indonesia as the host country, has given a statement to loosen the FDI policy. The Indonesia government stated the opening call for foreign investment by streamlining the procedure to obtain business permits in Indonesia (Wirayani 2016). As the host country, Indonesia must avoid the race to the bottom theory which is a common practice done by host countries by lowering the regulations to attract foreign investors. The FDI policies in Indonesia still do not have the requirement of labour standards which can arise of workers issues in the implementation of FDI. The Indonesia government only focussing in attracting the foreign investment without assessing the implications of FDI to the related stakeholders. Workers as FDI related stakeholders will have the impact due to the MNCs operation in Indonesia.

Business and human right has given a guidance for duty bearers in performing their duties in protecting the rights holders. The state duty must protect the workers as the rights holders from the abuse by third parties in their territory (UNGP 2011). MNCs as the employers must respect the workers' rights by avoid infringing of human rights issues which they are involved (UNGP 2011). FDI has created employment opportunities in the host countries and has provided opportunities for women workers to apply for the jobs.

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The total workforce of women in Indonesia has reached to fifty one percent of the total workforce in Indonesia.<sup>1</sup> The large number workforce of women workers has made women are having opportunities to involve in the labour market. Workers' rights protection must be as a major concern for MNCs in doing their business operation due to workers are they main stakeholders. The protection of workers' rights must be complied with the domestic and international labour standard. Indonesia Manpower Act No.13 Year 2003 as a legal provision for MNCs in Indonesia. In international, Universal Declaration of Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) and the ILO Conventions as guidance for MNCs as duty bearers in implementing the labour standards related with working conditions.

In the implementation, the protection of women workers' rights still finds some violations related with their working conditions. Women are still working more than eight hours per a day and have to work overtime more than three hours per a day without receive any overtime remuneration and transportation service for returning to their home. Based on Indonesia Manpower Act (13/2003) in Article 77 for the working hours, Article 78 for overtime regulations and remuneration and Article 76 regulates for employer's obligation to provide transportation for women who work overtime.

Business and human rights as a guidance for state and MNCs in upholding their role to respect workers' rights. The lack of labour standard requirement in trade agreement has resulted in workers' rights violation as the impact of FDI. As duty bearers, state and MNCs must prioritized for protection of workers' rights to avoid of human rights violations in the host country. The state must have a protection mechanism with monitoring and implementing sanctions for MNCs that have violated the workers' rights based on the Indonesia Manpower Act (13/2003) as stipulates in Article 185 related with working conditions.

### **III. Conclusion**

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<sup>1</sup> The total workforce in Indonesia in 2016 is 127,410,000  
<<http://data.worldbank.org/indicator/SL.TLF.TOTL.IN>> accessed on 20 July 2017

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The role of the state as a duty bearer in protecting the workers' rights as the impact of FDI should be done by the application of the rules and regulations that bind MNCs in implementing their business operation in Indonesia. FDI should be implemented by not violating the rights' holders in the host countries as the impact business operation. The protection of the workers' rights should be as the main consideration for the state in cooperation with foreign investor in Indonesia. The Indonesia government should take a prevention effort through policy making by emphasizing the application of labour standard in FDI policy and implementing the monitoring system.

## References

Abidin, M. Z., 2015. *Increasing Investment Competitiveness Through Fiscal Stimulus (Meningkatkan Daya Saing Investasi Melalui Stimulus Fiskal)*. [Online]  
Available at: <https://www.kemenkeu.go.id/en/node/47166>  
[Accessed 28 July 2017].

Act, No. 25 Year 2007. Concerning Investments.

Act, Number 13/2003. Concerning Manpower.

Gopalan, S., Hattari, R. & Rajan, R. S., 2016. Understanding foreign direct investment in Indonesia. *Journal of International Trade Law and Policies*, 15(1), pp. 28-50.

International Labour Organization, 2004. *A fair globalization : creating opportunities for all*, Geneva: ILO.

United Nations, 2011. *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*. [Online]  
Available at: [http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)  
[Accessed 17 October 2016].

Wirayani, P., 30 November 2016. *Jokowi calls on global CEOs to invest in Indonesia*, Jakarta: The Jakarta Post.

World Bank, 2017. *Overview of Indonesia Context*. [Online]  
Available at: <http://www.worldbank.org/en/country/indonesia/overview>  
[Accessed 18 June 2017].

**Situation of Access to Justice to  
Nepalese Returnee Female Migrant Workers**

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**Abstract**

The paper explores the impacts of the global feminization of migration has been a common trend and increased significantly in recent years. The considerable increase in women migration is mainly based on government policies and the various ban imposed on women's mobility. These restrictions on women migration have aggravated the trend of taking irregular channels for traveling and landed with a grave number of undocumented and unregistered women migrant workers. The trend of taking circuitous routes exposed women migrant workers to more vulnerability within a country, the countries of transit and the destination countries. The purpose behind writing this paper is to identify the gaps within the existing legal frameworks and determine the obstacles to access justice for returnee women migrant workers. Therefore, Nepal as a member State to many international treaties should adopt robust policies, international agreements and national laws which align with the international standards to ensure the protection of the rights of these workers and develop strong monitoring mechanisms to regulate the flow of migration.

Keywords: ban, irregular channels, undocumented, state obligation, protection, women migrant workers, returnee women migrant workers

**I. Introduction**

Women migration has always been one of the important aspects of global migration. Feminization of migration has been a common trend in recent years (Caritas Internationalis, 2011). The international migrant stock estimates the total number of international migrants in the world to be 214 million, out of which female migrants are found to be almost half of this migrant stock (United Nations Secretariat, 2015). The Middle East, Malaysia, Hong Kong and

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Singapore have been the preferable destination for the majority of Nepalese women. Most of them work as caretakers, nannies and look after domestic chores where they encounter a wide range of abuses and are excluded from standard labor protections such as minimum wage, regular payment of wages, a weekly day off and paid leave (Varia, 2007, p. 51). Official statistics show that only 3 percent of women are employed overseas, although other estimates put that figure closer to 30 percent with 80 percent being employed in domestic work. Regulative laws and various forms of the ban imposed by the government on women's mobility is a leading factor for the discrepancy between recorded women migrants and the estimated reality. Consequently, the inconsistency of data has stood as a challenge to understand the situation of WMWs (Gurung, 2013, p. 12).

Therefore, the purpose behind writing this paper is to identify the gaps within the existing legal frameworks and determine obstacles to access justice for returnees. The researcher found so far that no research has been conducted in the field of access to justice to the returnee women migrant workers. The researcher had challenges to complement her research with abundant literature. There were literature gaps to suffice theoretical discourse and significance of situation of access to justice to Nepalese returnee female migrant workers. The qualitative method was used for data collection. Purposive sampling was used to determine the participants for an interview. Out of 15 participants, five representatives were from government sectors and ten representatives were from the civil societies working on behalf of women migrant workers. The data were analyzed using content analysis approach with narrative reflection.

## **II. Loopholes in existing legal frameworks**

The existing law does not foresee the management of migration in a holistic manner. The law does not enlist individual rights to safe migration. The laws are more regulatory rather than harnessing benefits of migration and protecting migrant workers. The law does not uphold the claim on behalf of a returnee women migrant worker in an irregular status. The foreign employment act and rules do not cover the aspect of returnee women migrant workers in an irregular status (Paoletti, Nicholson and Farbenblum, 2013). Some issues of returnee women migrant workers are incorporated under human trafficking and transportation control act. However, the law fails to define the relationship between human trafficking and transportation control act and foreign employment act and to distinguish the jurisdiction of police and DoFE to look after foreign employment and trafficking cases (Paoletti, Nicholson and Farbenblum,

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2014). The law, on the one hand, mentions no discrimination shall be made on the grounds of origin, religion, race, caste, tribe, sex, or on similar other grounds (*The Constitution of Nepal*, 2015, Article 18). On the other hand, the ban imposed by Government of Nepal prohibits women from migrating. The bans though have been pronounced as the protectionist measure to safeguard women from exploitation and abuse abroad. However, these bans have been discriminatory and inconsistent with the spirit of international human rights treaties (Ghimire, n.d.). Similarly, these bans have been counterproductive and provoking women to take irregular channels to work overseas (ILO, 2015). The irregularity makes them more vulnerable; consequently, they return to a home country where they face several stigmas. The government lacks comprehensive reintegration policy, and the law does not cover the elements of psycho-social counseling (Bharadwaj, 2013). The law mentions about the mobilization of returnee women migrant workers in productive sectors. However, there are no mechanisms regulating this provision. These gaps present within the foreign employment laws have made women migrant workers more vulnerable and pathetic.

### **III. Obstacles to access to justice**

The hindrances to justice to the returnee women migrant workers are coupled with diverse situations. The informal method of seeking justice through negotiation and mediation is hugely practiced within the Nepalese perspective (Paoletti, Nicholson and Farbenblum, 2013). The foreign employment act prohibits the use of an informal method to seek justice; however, this method so far is largely carried out, and migrant workers regard reporting to the judicial bodies as a complex process and prefer to settle cases outside courts which are creating a huge obstacle to seeking justice legally and ethically. This problem is backed with the centralization of redress mechanisms in the Capital. The justice rendering mechanisms do not have sub-branches or any regional or district representation, and the MWs should travel all the way to Kathmandu to file complaints and go with legal proceedings. This has led to significant fall on registration of complaints. Moreover, the use of irregular channels and undocumented status debar returnee migrant workers from producing adequate documents and evidence to initiate cases at judicial bodies. This ultimately prohibits MWs from obtaining legal remedies and compensation. In a country like Nepal WMWs face insurmountable challenges in accessing the justice system,



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especially more in the issues like migration. The WMWs are ignorant about their rights and redress mechanisms to enforce their rights and provide redress when those rights were violated (Paoletti, Nicholson and Farbenblum, 2014). Similarly, the women migrants face stigmatization and consequently due to fear of being ostracized by the family and society restrict women from pressing charges, particularly, in the case of sexual abuse and rape. Therefore, all these problems create huge obstacles to render justice to the victims and the existing Nepalese law fails to uphold women rights and protect the right to confidentiality and privacy of sexual assault victims during the investigation which is the impairment to access to justice (Bharadwaj, 2013).

### **IV. Conclusion**

Not all that glitter is gold; if we talk about the sanctity of foreign employment, it will lead to the complex and sophisticated pattern which is apparently full of havoc and upheaval. Positive and negative reflection can be found in returnees' life. Globalization and neo-liberal economic policies are prominent to put workers into an increasingly vulnerable position. Socially, the life of women is more complicated than men because of the dominating patriarchal structure in the society; women are looked negatively. The migration of Nepalese women has been affected either by the partial ban or the total ban provoking them to take irregular and routes via India and Bangladesh. It is just pushing the migrant flow underground which is even scarier. The effectiveness of these bans is yet to be tested, and there is no reliable data to back up the effectiveness and legitimacy of such ban has in fact protected the women. The government has often relied on the protectionist approach for imposing such bans. This protectionist approach inherently limits its focus on the special treatment for women and, in doing so, these bans reinforce a cycle of gender differences and disadvantage. The government has committed to ensure equal rights and eliminate gender discrimination in recent Constitution of Nepal 2015. Nepal has also signed a number of international conventions committing to ensuring human rights according to international standards. Nepal has signed and ratified CEDAW which obligates to take steps to eliminate discrimination against women on the basis of gender and to realize women's rights through equal access and opportunities. Nepal is a state party to CEDAW that is obliged to take due diligence measure to eliminate all forms of discrimination against women. The government is required to ensure equality of opportunity and treatment in respect of ILO Discrimination (Employment and Occupation) Convention and

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protect the women's right to work elsewhere under ICESCR to which Nepal is Party. The Nepalese government has tried to prohibit any form of gender discrimination and provide special provision of reservation for women. However, at the same time, the government state policies and practices show a hesitation to fully embrace women migration.

## References

Bharadwaj, D., 2013, *Final Report on Study of the Social Rehabilitation Status of Returnee Migrant Women*. Social Inclusion Research Fund, SNV Nepal.

Caritas Internationalis, 2011, *Advocacy, Domestic servitude, Female face of migration, Labor exploitation, Migration*. Available at:

<<http://www.caritas.org/2011/07/the-female-face-of-migration/>> [Accessed 5 May 2017].

Department of Economic and Social Affairs, 2016. *Trends in International Migrant Stock: The 2008 Revision CD-ROM Documentation*: United Nations Secretariat. Available at:

<[http://www.un.org/esa/population/migration/UN\\_MigStock\\_2008.pdf](http://www.un.org/esa/population/migration/UN_MigStock_2008.pdf)> [Accessed 7 May 2017].

Department of Foreign Employment, 2013/2014. *Labour Migration for Employment A Status Report for Nepal*: Ministry of Labour and Employment. Available at:

<https://asiafoundation.org/resources/pdfs/MigrationReportbyGovernmentofNepal.pdf>. [Accessed 13 December 2016].

Ghimire, B., (n.d.) Ensuring the Rights of Women Migrant Workers of Nepal; Need of Integrated Approach Beyond the Protectionist Ban.

Gurung, G., 2013. *Living the Golden Dreams: The Gulf and Nepalese Women*. Maiti Nepal.

Kawar, M., 2004. Gender and Migration: Why are Women more Vulnerable. Available at:

<[http://graduateinstitute.ch/files/live/sites/iheid/files/sites/genre/shared/Genre\\_docs/2865\\_Actes2004/10-m.kawar.pdf](http://graduateinstitute.ch/files/live/sites/iheid/files/sites/genre/shared/Genre_docs/2865_Actes2004/10-m.kawar.pdf)> [Accessed 19 June 2017].

ILO (International Labor Organization), 2015, *No easy exit, Migration Bans Affecting Women from Nepal*. Available at:

<[http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_428686.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_428686.pdf)> [Accessed 1 June 2017].

## GRADUATE SEMINAR: CURRENT ISSUES IN HUMAN RIGHTS

Varia, N., 2007. *Perspective on Migration, Labor & Globalization: Sanctioned Abuses: The Case of Migrant Domestic Workers*. Vol.14, No. 3, Human Rights. Brief.

Paoletti, S., Nicholson, E., Sijapati, B. and Farbenblum, B., 2013. *Migrant Workers' Access to Justice at Home: Nepal*. Open Society Foundation, New York, NY.

Paoletti, S., Nicholson, E., Sijapati, B. and Farbenblum, B., 2014. *The Exploitation-Trafficking Continuum in Labor Migration and the Need for Reform in Nepal*. CESLAM, Policy Brief, No.4.

Nicholson, E., Paoletti, S., Sijapati, B. and Farbenblum, B., 2014. *Labor Migration Agents: Regulation, Accountability and Alternatives*. CESLAM, Policy Brief, No.5.

**The Assessment on the Collaboration and Engagement  
between Human Rights Commission of the Maldives (HRCM) and  
the Civil Society in Protecting Children from Sexual Abuse**

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**Abstract**

Child sexual abuse is a widespread issue in the Maldives. Civil Society along with the National Human Rights institutions (NHRIs) can play a vital role in combating child sexual abuse. Collaborative work needs to be done especially in making the state accountable for ensuring the protection of its people. The aim of the study was to (1) assess how the Human Rights Commission of the Maldives (HRCM) collaborates and engages with civil society to protect children from sexual abuse, (2) identify the challenges faced by the Human Rights Commission of the Maldives (HRCM) and the civil society in doing collaborative work to protect children from sexual abuse, and (3) to find out the impact on the protection of children from sexual abuse as a result of collaboration of Human Rights Commission of the Maldives with civil society. Findings of the study indicated that there was a selective collaboration with NGOs while there was no collaboration with the Civil Society at all. There was no strategic plan or a mechanism for either child protection or HRCM collaboration with the Civil Society. Challenges for collaborative work for HRCM includes difficulty in reaching the community due to budget constraints while NGO's identified the inhibition of HRCM works and independence due to the Supreme Court verdict following the 2nd UPR submission to UN.

Keywords: CHILD SEXUAL ABUSE, COLLABORATION, NHRI, CIVIL SOCIETY

**I. Introduction**

*"Within all of us there are two sides. One reaches the stars; the other descends to the level of beasts" (Eleanor Roosevelt).*

Child sexual abuses can occur anywhere. It is a gross human rights violation against children which is widespread and cuts across religion, geography and classes and cultures. Studies show that sexual abuses take place in various forms. According to Abbas (2012), sexual

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abuse is the involvement of children in sexual activities that they do not fully understand what is being done or the impact of the consent given. These include activities such as the act of having sex with a child, rape, incest, exposing genitals, sexual sadist, child prostitution, child pornography and molesting acts (Abbas 2012, p.4).

**This paper presents the findings from the research carried to find the collaboration between Human Rights Commission of the Maldives with the Civil Society in protecting children from sexual abuse. The first part of the paper highlights the magnitude of the issue and some of the consequences of child sexual abuse, while the second parts briefs on the role of Civil Society and Human Rights Commission of the Maldives (HRCM) and the importance of its collaboration. Lastly, the research method and its findings are outlined with the Conclusion.**

### **II. Magnitude and Consequences of child sexual abuse**

A study done by UNICEF indicates that there are 120 million girls under age 20, which is one in every ten that have been subjected to forced sexual intercourse or other forced sexual acts at some point in their lives (UNICEF, 2016). This study also finds that it is not only girls who are subjected to sexual acts; however, compared to girls, boys face the issue to a lesser extent. Additionally, Ludovica (2014) reports that according to a report of 2009 by Trade Union Solidarity Helping Hand, there was one child raped in every three minutes, in South Africa. In addition, she highlighted in her article that there were 172 rape cases in 2011 in Zimbabwe, 18,915 sexual crimes against children in 2012 and 2013 in England and Wales. The 48,000 child rape cases reported from 2001 to 2011 in India was an increase of 336 per cent of child rape cases from 2001. Generally, in average, one child from every ten is sexually abused (Darkness to light, 2013). However, a report from UNICEF declares that the true magnitude of the issue is not known as such cases are hidden due to its sensitive and illegal nature (UNICEF, 2016).

A small island state with a population of only 313,000 people, Maldives is no exception to this widespread of gross human rights violation. To assess the magnitude of children's vulnerability in the Maldives is a challenge due to lack of empirical data on child protection in the Maldives (Maldives UNICEF, n.d). However, from the very few available data, the seriousness and the scale of the issues are apparent. Reports from Maldives Police Services shows that among 900 cases lodged regarding sexual offences between the years 2012 and 2014,

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365 cases are sexual abuse with children (Maldives Police Service, 2014). Furthermore, there were around 423 child abuse cases reported to the Maldives Police Services.

Whichever way the children are sexually abused, there can be several negative impacts on the child. It ranges from the mental health problem to physical, interpersonal and cognitive disorders. Children who have been sexually abused are prevalent to a wide range of psychological and interpersonal disorders than those who do not go through such experiences (Briere and Elliott 1994, p. 54). The reality is that the scale of the issue is immense and the issue needs special attention and immediate extensive actions.

### **III. Importance of the collaboration between HRCM and the civil society in protecting children from sexual abuse**

The Paris Principles state that monitoring the national human rights situation is an essential function of National Human Rights Institutions (NHRIs). Additionally, the National Human Rights Institutes (NHRIs) has the mandate to work along with civil society in the promotion and protection of the rights of people.

National Human Rights Institutions can be one of the key formal monitoring bodies while Civil Society can be the informal mechanism for monitoring human rights. Hence, the collaboration can make the more effective since it would help for the easy access to reach the grassroots through its community members, thus addressing the root cause. It is therefore imperative that they collaborate well with the civil society organisations.

### **IV. Findings of the study**

This is a study done to assess the collaboration and engagement between HRCM and the Civil Society. A total of 132 participants were involved in this study both from NGO and other members of the Civil Society.

The findings showed that there is no written formal mechanism for child protection and no proper mechanism or strategic plan both at NGO's and HRCM to work collaboratively with Civil Society. Moreover, there is no collaborative work was carried out by HRCM with the civil society other than a selective NGO in regard to combat child sexual abuse.

It was also found that only awareness sessions and child abuse investigations were carried out while other areas such as policy review and regulations, ensuring accountability

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service delivery mechanism were much neglected, especially regarding collaboration. There is no specific State body, in particular, to monitor that the victims of abuses are provided with justice and reparation. Hence there is not specific Institution accountable for the fulfilment of State obligations.

The main challenge faced by HRCM was to reach and involve Civil Society, and according to HRCM, this challenge was due to budget constraints while the NGOs also identified HRCM been underfunded which had posed significant problems, especially reduction in programs and projects based-budget. Another huge challenge NGO's think HRCM faces is the decision by Maldives Supreme Court that doubts the independence of the Commission's work in recent years resulting in a decline in public confidence in the institution as well as controls HRCM's works in addressing issues, particularly issues relating to State's decisions.

Positive impact on child protection as the results of collaborative work between of Human Rights Commission of the Maldives and Civil Society working together. It was found that HRCM having built a better relationship and working as partners with the Civil Society would help NGOs to solve cases easily as HRCM is a State institution and have the authority to investigate cases and access to information that NGO does not have.

### **V. Conclusion**

Collaborative effort accomplished between Civil Society and HRCM to protect child sexual abuse is weak. Neither a strategic plan nor a proper mechanism is established for child protection or collaborative work with mandate holders. While few selected NGOs were supportive but none of the members at grassroots collaborated. Not having sufficient budget and the obvious influence of the Supreme Court in the HRCM work are the main challenges. The independence of the commission and the confidence the public have on HRCM on its mandated work is questionable due to insufficient budget and the influence by the Supreme Court in HRCM's work. Hence, to gain trust from the public and resolve the issues on child sexual abuse, a more collaborative effort is needed.

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### BIBLIOGRAPHY

Abbas, A. (2012). Child abuse in Malaysia: legal measures for the prevention of the crime and protection of the victim, *International journal of social sciences and humanity studies*, vol 4, no 2.

Briere, J.N. & Elliott, D.M. (1994), Immediate and long-term impacts of child sexual abuse, *Future Child*. vol. 4, no. 2, pp. 54-69.

Darkness to light 2003, *Sexual abuse statistics*, Available at: <[http://www.d2l.org/site/c.4dICIJOkGcISE/b.9314267/k.3928/Child\\_Sexual\\_Abuse\\_Statistics.htm](http://www.d2l.org/site/c.4dICIJOkGcISE/b.9314267/k.3928/Child_Sexual_Abuse_Statistics.htm)> [Accessed 15 November 2016].

Ludovica, I 2016, *Child Sexual Abuse: Top 5 Countries with the highest rate*, Available at: <<http://www.ibtimes.co.uk/child-sexual-abuse-top-5-countries-highest-rates-1436162>> [Accessed 18 June 2017].

Maldives Police Services, *Annual Biannual report 2014*, viewed on 18 November 2016, Available at: <[https://www.police.gov.mv/s/Bianual\\_book2014.pdf](https://www.police.gov.mv/s/Bianual_book2014.pdf)> [Accessed 20 July 2017].

Maldives UNICEF n.d., *Child Protection*, viewed on 18 November 2016, Available at: <[https://www.unicef.org/maldives/children\\_3434.htm](https://www.unicef.org/maldives/children_3434.htm)> [Accessed 24 July 2017].



**Nepali Print Media and Human Rights: A Content Analysis of broadsheet frames and coverage of LGBT issues pre- and post- 2015 (2072) Constitution of Nepal (नेपालको संविधान २०७२)**

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**Abstract**

As Nepal's LGBT political landscape develops, an increase in awareness is expected to be evident in the media. However, despite these advances in visibility, the reportage remains to be bound by traditional representation and sensationalism. Because the media can set the public agenda, it is imperative for studies to analyze how it frames these issues. This paper utilized a quantitative content analysis of three daily English national broadsheets in Nepal: *The Kathmandu Post*, *The Rising Nepal* and *The Himalayan Times*. The articles were collected and subjected to various categorizations according to the number of coverage and patterns of reporting. This was followed by a set of semi-structured interviews to obtain a more textured understanding of the topics with respect to the Nepalese culture. The watershed is the year 2015 when the present Constitution was passed. With that said, the study examined the changes in reportage before and after the set period. The investigation revealed that there was a 78.57 percent increase in coverage from 2014 to 2015. On the contrary, it was noted that only 23.75 percent out of the total number of articles talked about local LGBT issues. This data means that while broadsheets are overtly advocating LGBT issues through the number of articles they released; the coverage lacks in-depth local reportage. Topics about transgender/third gender also dominated the local coverage milieu, which created an imbalance in term of media prominence. Overstressing a certain issue for the sake of 'equal treatment' in media space does more bad than good because it gives people the wrong notion about LGBT.

Keywords: content analysis, media studies, broadsheets, Nepal, LGBT

**I. Statement of the Problem**

After the fall of the monarchy in 2007, the Federal Democratic Republic of Nepal has seen rapid political changes in its jurisdiction (Bell 2008). This paved the way for a huge reform in the conservative nation particularly when a law decriminalizing homosexuality and relationship between same-sex consenting adults was introduced in 2007 (Knight 2015). It was trailed by a bold move in 2015 when the country made history by recognizing third genders on passports (Panthi 2016). Aside from the transgender rights achievement, Nepal became the 10<sup>th</sup> country in the world to enshrine legal protection for LGBTs in its constitution (Knight 2015). As Nepal's LGBT political landscape develops, an increase in awareness is expected to be evident in the media. Thus, this paper sought to know the role of the media with regards to LGBT people in Nepal. The media has considerable power over public opinion, which can be

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used as a tool to aide in social constructionism of certain issues (Foucault 1980). It is a potent vehicle, which can frame how society sees the position sexuality plays in human identities (Little 2013). The media play a major role in framing events in the society by thriving on controversial issues such as LGBT rights (Mbugua 2007). Studley (2013) reported that the 'media agenda' affects the public agenda by communicating and foregrounding LGBT to manipulate and alter opinions of the public.

News coverage about these kinds of issues has increased dramatically in term of scale (Murray 2014). It should be noted, nonetheless, that in this visibility sphere not all viewpoints are treated correspondingly; judgments are routinely made by those people who define the public agenda (Gross 2001). This is where the question on the quality of the portrayal arises. In Nepali context, LGBT issues are frequently covered in the media due to big events like the passing of legal measures. Nevertheless, UNDP & USAID (2014) reported that the coverage is often regarding scandalous stories or too focused on these few positive gains that it forgets about other challenges such as the daily struggles of openly LGBT people (UNDP & USAID, 2014). This study was designed to examine how the Nepali daily English national broadsheets have represented LGBT issues in Nepal and to examine the change in the coverage and pattern of reporting before and after the 2015 Constitutional provision on non-discrimination. Furthermore, it also aimed to inspect how the Nepali media cover local scope LGBT-related issues.

### II. Results and Discussion

The media coverage of LGBT issues has been explored through content analysis and a semi-structured interview. The content analysis was used to measure the coverage (number of coverage and scope of coverage) and patterns of reporting (tone, theme, standpoint, and worthiness) present in the LGBT-related articles in three Nepali broadsheets: *The Kathmandu Post*, *The Rising Nepal* and *The Himalayan Times*. This method was followed by a qualitative approach that gave the interpretation of the results through a semi-structured interview.

After methodical analysis of the findings from the Content Analysis, it was found out that the coverage of the LGBT issues in the three broadsheets analyzed grew significantly. The transition between the year 2014 to 2015 was the most progressive regarding this indicator as a number of the articles published increased by 73.68 percent. The months wherein the reportage was seen to be most concentrated were June, July, and August of 2015. It is not by chance that this period had the highest number of articles analyzed because it was also the year

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when the issues about LGBT rights in Nepal have started to become more evident to the public eyes, particularly during the months prior the passage of the 2015 Constitution on September 20<sup>th</sup>.

The coverage indeed became more progressive in terms of the number of articles and the patterns of reporting. While the tone of the articles in the broadsheets prior the year 2015 was already generally positive, it became more emphasized when the number of articles amplified. With the most dominant theme and standpoint identified as Public Concern and Human Rights respectively, it gives a new dimension of understanding that the media is delivering an affirmative general perception about LGBT. This is also supported by the results of the semi-structured interview wherein 100 percent of the respondents agreed that the coverage has become more positive now compared to the coverage before. The numbers might seem to be very promising if only the coverage were concerned; but if one looks beyond the statistics, a different perspective will arise.

Out of the total number of articles analyzed ( $n=261$ ), only 23.75 percent were dedicated to issues which concern the local LGBT population in the country. To better exemplify the difference, the ratio of the coverage with local scope to coverage with the international scope is 59:202. These 202 reports with international scope were found in different sections of the broadsheet but were mostly centralized in the International News section and Feature News section. More significantly so, despite being a state-owned broadsheet, *The Rising Nepal* published only one article in 2015. This gives the impression that *The Rising Nepal* did not really prioritize LGBT issues even at the height of the LGBT advocacy in Nepal. This was expounded more by the result of the interview with Basyal of *The Rising Nepal*, who said that LGBT issues are indeed in the low priority of the broadsheet since they are more focused about news related to the state. This, however, creates a puzzle since *The Rising Nepal* published the most number of LGBT-related articles in the international news section than the other two broadsheets.

This leaves us the question as to why transnational ideas and norms find greater media coverage in Nepal than local topics. This finding tells us that the local agents reconstruct 'foreign norms' to fit within the society's cognitive identities. By presenting more international scope stories, the Nepali media can send a message to the audience that LGBT people exist in other places that they have put their priorities in. However, this leaves a notion that LGBT people in Nepal do not deserve equal media coverage because the reportage is mostly influenced by global trends. While reporting international news can also frame the transnational norm to appear as local and to make it as the prevailing atmosphere in the society, this tactic

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clouds the minds of the readers. This can also offer a dynamic view that LGBT issues from international sources are prioritized to justify the arguments that being an LGBT is far from the norms of the Nepali society. By using languages which depict 'foreign-ness' of being an LGBT, the broadsheet may appear to be very accepting towards the LGBT cause. However, with the amount of local coverage on the issues, it creates misperception on the authenticity of their agenda.

Furthermore, it was found out that the local scope coverage seems to have focused too much on only one aspect of the LGBT advocacy, which is the transgender rights. From the content analysis, it was discovered that a majority of the local scope articles (44.94 percent) were about transgender/third-gender rights while leaving other topics at low levels. This will put us back to the findings from the semi-structured interviews that the common connotation of LGBT in Nepal is very limited to the transgenders/third genders. The representative from the Blue Diamond Society even said that third-genders were more accepted in the Nepali society compared to homosexuals since most people still consider homosexuals as unnatural. The wholesale borrowing of the LGBT cause and putting it in a box of third-gender advocacy has put the rights of gays and lesbians on the table, as well. However, the cultural partialities remained deeply engraved in the society. Thus, the gays and lesbians' rights were put at stake. The rights of gays and lesbians were usually off-topic when media discuss LGBT issues which reinforce society's understanding of LGBT. Due to this implication, people were not very much aware of other sexual orientation and gender identities.

*The Kathmandu Post* is the most progressive in terms of coverage and patterns of reporting, followed by *The Himalayan Times*. It has been noted that *The Kathmandu Post* has strongly linked LGBT issues to human rights more than the two other broadsheets using the indicators provided. It even featured stories of LGBT in its special issues like M&S and Turning the Page. *The Rising Nepal*, in contrast, was seen to be very poor in terms of diversity of the stories. While the general tone of the articles was positive, the broadsheet did not give enough coverage of local scope stories as compared to *The Kathmandu Post*. Like the other two, *The Himalayan Times* also framed LGBT issues positively, but the number of articles was also very limited. The connotation of LGBT as the third gender was seen to be more evident in *The Himalayan Times* as it often used transgender/third gender photos to describe LGBT and sexual minorities.

With all the findings laid down, this paper concludes that the media is overtly promoting LGBT issues through the high-level of coverage and positive patterns of reporting;

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however, it is covertly unmindful of the issues that surround the local milieu. High level of coverage and repeated of exposure to topics regarding LGBTs increases the stimulus of the masses to follow it, but it does not necessarily translate into a positive impact. The idea that more is better does not accomplish all that much particularly since the reporting trend is essentially reactive, but this reaction is not giving justice to local issues. The underlying assumption that by feeding tons of broadsheet articles to people to ‘empower’ the LGBT community in Nepal is, except in few cases, false. Since the trend is reactive, media people will just go to the websites of news wires and pick up stories rather than seek stories out there by themselves. In this situation, the substance of the news blurs out, and, later on, the news will just become a stop gap to fill out white spaces.

While the inclusion of other stories from overseas sources has been used by most, if not all, of the newspapers to fill out white spaces, it is giving the impression that LGBT activism in other countries is worthier of media coverage than the LGBT activism in Nepal. The lack of in-depth reporting with regards to local LGBT issues is aggravated by the one-sided prioritization of transgender/third gender issues. Overstressing a certain issue for the sake of ‘equal treatment’ in media space does more bad than good because it gives people the wrong notion about LGBT. A coverage is a coverage, and some people might even say that it is part of the visibility campaign, but an awareness-raising campaign done wrong backfires and encourages more negative notion towards the LGBT community. A high level of coverage of articles just for the purpose of reporting them only triggers the descriptive norm that is prevalent in the community, which is local LGBTs are second-class citizens which do not deserve equal attention. Coverage is not bad, but it is very tricky particularly once it reaches a certain level wherein the respective doers would seek for more. People in Nepal already know about transgender issues when it was first raised in 2007 by the Landmark case of Sunil Babu Pant, but the media seems to have not gotten past that period.

## GRADUATE SEMINAR: CURRENT ISSUES IN HUMAN RIGHTS

### Bibliography

- Bell, T 2008, Nepal abolishes monarchy as King Gyanendra given fortnight to vacate palace. *The Telegraph*, 28 May, viewed 30 September, <http://www.telegraph.co.uk/news/worldnews/asia/nepal/2044579/Nepal-abolishes-monarchy-as-King-Gyanendra-given-fortnight-to-vacate-palace.html>.
- Foucault, M 1980, 'Truth and power', in C. Gordon (ed.), *Power/knowledge: Selected interview writing, 1972-1977*, Pantheon Books, New York, pp. 109-133.
- Gross, L 2001, *Up from invisibility: lesbians, gay men, and the media in America*, Columbia University Press, New York.
- Knight, K 2015, 'How Nepal's constitution got queered', *The Los Angeles Review of Books*, viewed 1 November 2016, <https://lareviewofbooks.org/article/how-nepals-constitution-got-queered.v>
- Little, W 2013, *Introduction to Sociology*, 1st Canadian Edition, OpenStax College, Houston.
- Mbugua, N S 2007, 'Mass media framing of homosexuality: a content analysis of the national daily newspapers in Kenya', University of Nairobi.
- Murray, R 2014, 'International transgender day of visibility: looking at positive images of trans people', *glaad.org*, 31 March 31, viewed 30 September, <http://www.glaad.org/blog/international-transgender-day-visibility-looking-positive-images-trans-people>.
- Panthi, K 2016, 'LGBT rights in Nepal: fews steps forward, one step backward', *The World Post*, 9 May, viewed on 12 November 2016, [www.huffingtonpost.com/kishor-panthi/LGBT-rights-in-nepal-few\\_1\\_b\\_9854660.html](http://www.huffingtonpost.com/kishor-panthi/LGBT-rights-in-nepal-few_1_b_9854660.html).
- Studley, A 2013, 'Marriage equality: media coverage and public opinion', *Senior Honors Projects*, paper 317.
- UNDP & USAID 2014, *Being LGBT in Asia: Nepal Country Report*, Bangkok, Thailand, viewed on 25 September 2016, <http://www.refworld.org/docid/54ed880a4.html>.

**Communicable Disease Occurrences and Management in Gorkha  
District: 2015 Nepal Earthquake**

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**Abstract**

Nepal faced different challenges in disaster response following the 2015 catastrophe. Amongst was the management on communicable disease occurrences in the aftermath of an earthquake. The main objective of this study was to analyze how the government specifically in Gorkha District managed the occurrences of communicable diseases aligned to the existing health law, policy, plan, and guidelines the Ministry of Health has. The study aimed to (1) explore the existing health law, policy, plan, and guidelines applicable to the management of communicable disease occurrences in the aftermath of an earthquake and (2) map out the strengths and challenges of health sectors in the management of communicable disease occurrences in Gorkha District. This study utilized a qualitative research approach through the description of the management on communicable disease occurrences post-disaster incorporating Nepal's health instruments. This study found that several provisions on the right to health were not applied in reality such as the insufficient data recording on syndromic disease cases, shortage of health workforce, insufficient supply of essential medicines, unmanaged overcrowding in temporary shelters, lack of access to safe water and sanitation, untimely and incomplete reporting on syndromic disease surveillance and the lack of awareness on country's health law, policy, plan and guidelines of some health workers. These findings are clear indications of non-compliance to state's obligations stipulated in International Covenant on Economic, Social and Cultural Rights 1966, Constitution of Nepal 2015 and National Health Policy 2014

Keywords: right to health, 2015 Nepal earthquake, Gorkha District, communicable disease

**Introduction and Rationale**

Natural disasters put the health of the vulnerable population at risk and have a potential to cause significant harm to the public health. This is true when the 7.8 magnitudes in Richter scale racked Nepal on 25 April 2015. Its epicenter was approximately 81 km northwest of Kathmandu, near the village of Barpak in Gorkha District. Another second major earthquake measuring 7.3 magnitudes, which struck on 12 May 2015, caused further death and injuries and heightened fears and tension among the affected population.

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A detailed government report states that health and population have been severely affected as evident from damages and losses to health infrastructure and disruption in essential health care services delivery along with the death of 8,702 persons and 22,303 more injured. A total of 446 public health facilities including administrative building and 16 private facilities are destroyed while a total of 765 health facility or administrative structures are partially damaged. As a result, the ability of the health facilities to respond to the healthcare needs has been affected, and service delivery has been disorganized. Consequently, disaster victims have been further disadvantaged in accessing health services in remote areas. A total of 18 health workers and volunteers have lost their lives, and 75 got injured adding further challenges in health resumption of services delivery (Government of Nepal Health and Population Sector, 2015).

The researcher chose this topic as the center of her study to know how the government specifically in Gorkha District managed the occurrence of communicable diseases aligned to the existing health legal instruments the country has. Although there are several reports on the country's general situation after an earthquake and several studies on the diseases following the disaster, none exists or very least maybe very few, on investigating the issues and aligning it into Nepal's health law, policy, plan, and guidelines the Ministry of Health has. In view of this lax of information, the researcher attempted to look into this issues.

### **II. Research Methodology**

This study utilized a qualitative research approach through the description of disease management to communicable disease occurrences in the aftermath of an earthquake aligning to Government of Nepal's health law, policy, plan, and guideline applicable in the management of communicable disease occurrences following a disaster. Purposive sampling method was employed in the selection of the participants. Primary data were collected through scheduled in-depth interviews and focus group discussions while secondary data were obtained through desk research of government documents, articles, news and journals. The respondents were health care experts from Department of Health Services, health care practitioners from Gorkha District Public Health Office and District Hospital and health workers from eight Health Posts in the locality. In addition, Nepal Resource Center for Primary Health Care (RECPHEC) research participants on Health Status of Gorkha—Post Earthquake Assessment were included adding to the government health sector informants. People in the villages were asked about their experiences on the 2015 catastrophe and questions were designed to



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answer the RECPHEC team's purposes that had similarities to the main researcher's objectives.

### **III. Findings**

The concept of health as a fundamental right of every citizen is recognized in the Constitution of Nepal 2015. It also recognized the right of every person to live in a clean and healthy environment. In its mission to increase access to health, the Government introduced Free Health Care Policy in 2008 and launched a program for free essential health care for primary health services and access to some essential drugs for all citizens seeking care at the health post. These services were extended to primary health care centers and district hospitals in 2009. The country's health system underwent several problems in the earlier period, including weak monitoring and evaluation of programs, limited implementation of plans, unfilled government positions and the lack of orientation in the villages, thus National Health Policy (NHP) 2014 hopes to resolve these issues by setting out a new forward-looking agenda to improve health and wellness of all citizens of Nepal.

The National Health Policy seeks health as a vital element of overall development, building partnerships and establishing multi-sectoral collaboration (Ministry of Health, 2017). In addition, the Ministry of Health Second Long Term Health Plan (SLTHP) aims to guide health sector in the improvement of the health of the people mostly those whose needs are often unmet especially the marginalized and underprivileged rural population. It resolves inequalities and disparity, guaranteeing gender balance and unbiased community right to use to quality health care services by building successive annual plans, having appropriate action plans and strategies and establishing a strong coordination to non-states actors and development partners. The SLTHP targets include the availability of essential medicines in 100 percent of health facilities and filled health staff to deliver important health services in 100 percent facilities, availability of services within 30 minutes travel time in the villages., reduction of infant, under five and maternal mortality rate, and increase life expectancy in years (Ministry of Health, 2016). Furthermore, Nepal Department of Health Services adopts World Health Organization's Guidelines on the Management of Dead Bodies that ensures proper and dignified management of cadavers following a disaster.

Several issues on the management of communicable disease occurrences were identified. These were insufficient data recording on syndromic disease cases, shortage of health workforce, insufficient supply of essential medicines, unmanaged overcrowding in temporary shelters, lack of access to clean water and sanitation, incomplete and untimely

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reporting on syndromic disease surveillance and lack of awareness of county's health laws, policy, plan and guidelines for some health workers.

### IV. Conclusion

To provide the highest attainable standard requires not just the existence of comprehensive instruments but highly its rigid implementations on the ground. A state of catastrophe is both considered an intricate period for putting the country's documents into effect and an opportunity to assess any inadequacy in the health system. The several identified issues on the management of syndromic disease cases following a disaster are clear indications of non-compliance to some of the provisions and obligations stipulated in the ratified International Covenant on Economic, Social and Cultural Rights 1966, Constitution of Nepal 2015 and National Health Policy 2014., These policies need to be taken into considerations for a more efficient and focused interventions not just as a preparation for the next calamity but also towards the full realization of the right to health on a daily basis.

### References

Government of Nepal Health and Population Sector. (2015). *A Report on Post Disaster Needs Assessment and Recovery Plan*. Kathmandu: Government of Nepal Health and Population Sector.

Ministry of Health. (2016). *PHC Revitalization Division*. Retrieved July 19, 2017, from Government of Nepal Ministry of Health: Available at: <[http://www.phcrd.gov.np/downloads/](http://www.phcrd.gov.np/downloads/2nd_Long_Term_Health_Plan.pdf)

2nd\_Long\_Term\_Health\_Plan.pdf> [Accessed 14 July 2017].

Ministry of Health, (2007). *Second Long Term Plan 1997-2017*. Ministry of Health and Population Available at: <<http://www.mohe.gov.np/app/webroot/upload/files/Second%20Long%20Term%20Health%20Plan.pdf>> [Accessed 15 July 2017].

**Domestic violence from men's perspectives: How social norms shape the masculinity power of men in Yangon, Myanmar**

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**Abstract**

Human rights violation is a huge issue in Myanmar which is a country started to transform to democracy in late 2015. One of many issues that have been drawing a great amount of attention from local NGOs is women's right. In this paper, the researcher worked on the domestic violence issues from the male perpetrators' perspective which is not much discussed in Myanmar society. As a result, information on the issue is insufficient because incidents are often unreported. The researcher used the qualitative method to attempt to explore the aspects of men and to see how social norms shape the masculinity power of men in Myanmar society and the leading causes of domestic violence in cases of husband against wife. The patriarchal society of Myanmar created strong traditional, social and cultural norms which have shaped women's and men's lives. As a result, gender discrimination is the fundamental cause of the gender-based violence in Myanmar.

Keywords: Domestic Violence, Gender Norms, Social Norms, Gender-based Violence, Myanmar

**I. Introduction**

Myanmar and its human rights have long been disregarded under the military government regimes for many decades. A new Government was elected in 2015 in the first democratic election in 50 years, witnessing a landslide victory to the National League for Democracy, and ending 50 years of military rule (UNFPA, 2017). Myanmar government is legally bound under the international human rights instruments including UDHR (10 Dec 1948), Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW, 22 July, 1997), Convention on the Rights of Child (CRC, 15 July, 1991), and Convention on the Rights of Persons with Disabilities (CRPD, 7 December, 2011). Nevertheless, Myanmar has many human rights violation including women's human rights. In Myanmar, gender inequality is the issues that get little attentions from the government. It leads

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to gender-based violence cases especially for women and domestic violence cases. Moreover, Myanmar has no specific law for the domestic violence cases. Many civil societies' organisations in Myanmar are working for the women empowerment and women's rights, children's rights. Women's rights and women empowerment project Gender Equality projects are not successful even though they have spent many years. One thing they should have considered is men's perspectives on violence issues and engagement in the process of women's human rights. To start with, men's perceptions, attitudes and practices including how they have accepted social norms and women's roles in their lives should be understood carefully and correctly. Men and boys are a necessary part to achieve gender equality and to abolish domestic violence.

The research found that the men's perspectives about women's human rights and how men and women have learnt from their childhood. People are living in the patriarchal society that was created by the society and accepted by men and women. Men and women have been taught differently from their parents and society. Men are not aware that they are committing the domestic violence to their wives. Traditional, social and cultural norms are the most important facts that can make them blur and encourage men to control and power over their wives in Myanmar.

This research study used the qualitative approach in order obtain new insights into Myanmar men's experienced being as perpetrators. By using qualitative methods, we can better understand how social norms shape men and can explore the consequences of domestic violence. This study aimed to explore the impacts of broader social norms, inequalities, power imbalance between men and women in Myanmar.

### **II. Findings**

This section attempts to present how social norms shape the masculinity power of men and the construction of the patriarchal society in Myanmar. The roles of the men and women and how they have learnt from the parents and society since from their childhood will also be analysed. The findings will be divided into two parts including (1) general findings and (2) main findings in this section.

#### **A. General findings**

In the circle of patriarchal society, the hegemonic masculinity will come out when social norms shape the masculinities power of men. Men and women are living in these three elements

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social norms, hegemonic masculinity and patriarchal society. Moreover, these three elements can fuel men to control and power over women. In Myanmar, men are born privileged, and they are originally taking the roles of the household leader after getting married. Men believe that they have a right to take control of their wives and wives suppose to obey their husband. Rates of violence against women are higher in societies with rigid gender roles (Flood, 2016). Furthermore, men and women have been taught in different ways when they were young. Men and boys can get the freedom to communicate with outsiders but not for women and girls since they were young. Men and boys can have girlfriends as possible as they wanted when they grew up. As a result, they can choose when they decided to get married. Women and girls should have only one boyfriend, and they suppose to stick with that boyfriend and get married to him. To become a good man and woman, they have to follow the social rules that came from the social and cultural norms. Men accepted that women are their property after getting married. Thus, with men and boys, life is freedom and with women and girls life restrictions.

### B. Main findings

By way of introduction, it should be mentioned that in this paper, men and women are encouraged to follow the social rules that were taught through the traditional, social and cultural norms. A human being has the power of masculinity and femininity. Toxic masculinity and femininity will emerge because of the gender roles and expectations. Gender roles are divided for the men and women based on their genital organs. When social norms shape the masculinity power of men, hegemonic masculinity emerges for the men. Men are confirming and applying this hegemonic masculinity. Gender constructions pushed men to practices the privileged positions and maintain hegemonic masculinities which can lead to gender inequality and discrimination and also move to the patriarchal society. Patriarchal systems can create the restrictions on women and badly impacts the daily life of women in Myanmar.

One thing should be mentioned in this study is that both women and men were influenced by their parents in different ways from their childhood. Cultural and social norms are highly influential in shaping individual behaviours, including the use of violence (WHO, n.d.). Traditionally, women are socialised by their parents and society when they were young. Society and parents shape them based on their sex and exclusion from the position of power, wealth, and authority. Besides, women are accepting the masculinity power of men. Sometimes, women can be push factors for men to commit the domestic violence. Women were shaped by the traditional, social and cultural norms and they have to follow these social rules. Regarding

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the patriarchal system of Myanmar, not only men but also women are shaped by these social norms.

### III. Conclusion

Women have individual rights, including right to life and right to live and these rights are guaranteed in the 1948 Universal Declaration of Human Rights (United Nation). Besides, women are supposed to live their lives free from any form of violence. Moreover, general society considered and accepted that domestic violence is a private family matter and should not be interfered. Marriage and motherhood are defined as the ultimate goal of any women which is ironic for as mother and wife. Later on, women will become dependent on the men, and it can lead the conclusion of needs of the women including the place to stay, the clothes to wear and to feed her. In a married life, women feeling are not that important and all should be hidden behind the curtain and women sphere is the private one that of her home where violence, oppression and patriarchy for her. Men and women roles in society are ideologically defined in the sexist and limiting the area based on their gender roles. People are born with social norms because parents started differentiated boys and girls since they were born.

In Myanmar, one of the main factors that encouraged men to commit domestic violence is social norms. As stated, almost all humans currently live in systems of patriarchal power which privilege men but stigmatise, penalise and oppress women. The Society shaped the men and internalised their mind to accept that they are always higher than women.

Study of World Health Organization indicated that between 16 per cent and 52 per cent of women worldwide are physically assaulted by an intimate partner at least once in their lives (World Health Organization, 1996). Domestic violence in Myanmar and it is underreported case because of the traditional, social and cultural norms; the fear appears among women that if they report such events, it will lead to marital disharmony and broken homes. To eliminate the domestic violence in Myanmar, men engagement and effective participation are vital. No matter how many human rights treaties that the State has ratified, the State needs to make the domestication process and pay attention to the human rights violation cases. Moreover, what needs to be done by Government is to enact the specific and effective law for the domestic violence to protect and promote women's human rights in Myanmar.

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## Bibliography

Flood, M., (2016). Involving men in ending violence against women: Facing challenges and making change. *Graduate Journal of Social Science*, 12(3).

UNFPA, (2017). *Powerful Myths Hidden Secrets*. [Online] Available at:

[http://myanmar.unfpa.org/sites/default/files/pub-pdf/PowerfulMythsHiddenSecrets\\_EDITED.pdf](http://myanmar.unfpa.org/sites/default/files/pub-pdf/PowerfulMythsHiddenSecrets_EDITED.pdf) [Accessed 30 May 2017].

United Nations, n.d. *Universal Declaration of Human Rights*. [Online] Available at:

<http://www.un.org/en/universal-declaration-human-rights/> [Accessed 3 August 2017].

WHO, n.d. *Changing the cultural and social norms that support violence*. [Online] World

Health Organization Available at

[http://www.who.int/violence\\_injury\\_prevention/violence/norms.pdf](http://www.who.int/violence_injury_prevention/violence/norms.pdf) [Accessed 26 June 2017].

World Health Organization, (1996). *World Health Organization (1996) generally*. WHO.

**Enhancing the Role of NGOs in the Philippines in  
Promoting and Protecting Environmental Rights: with special  
focus on the Mining Act, 1995**

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**Abstract**

Climate Change is a global phenomenon, but it does not affect all parts of the world equally. The Philippines is one of the most climate affected country according to the Global Risk Index (Sönke Kreft, 2017). The Philippines is also known for its extensive laws and policies related to the environment and its protection. These laws and policies are effective in words, but a gap appears in realization and execution. This gap in the implementation of the laws leaves the Philippines in a very vulnerable position of constant disaster damages and violation of human rights. The vibrant and active environmental NGOs in the country have constantly advocated for a better Mining Law. This led to the formation of the Mineral Management Bill that encompasses human rights approach and a better management of mineral and natural resources, diminishing the chances of exploitation. But, this bill is yet to become law. In order to achieve this, the CSO community has to strengthen and enhance its roles in the participation of implementation of the laws by using the provisions of CSO engagement within these laws and policies. The aim of this paper is to analyze the current situation of the environmental NGOs and the provisions in the constitution and Mining Act, 1995 that can be accessed. This paper is an excerpt from the ongoing thesis of the author titled, 'Enhancing the Role of NGOs in the Philippines in Promoting and Protecting Environmental Rights: with a special focus on the Mining Act, 1995'. The primary data collected has not been used to formulate this paper. Only secondary sources have been quoted to understand the space for CSOs under the Mining Act, 1995 and the corresponding need for a reformed mining act. Also, it will be timely and effective in the current discussion of mining issues in the Philippines.

**Keywords:** Climate Change, NGO/CSO, Mining Act, Philippines and Participation in Implementation



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## I. Introduction

Climate Change is clearly of major concern in the Philippines. One of the major and current threats that contribute to climate change affect the archipelago is mining. The rise in sea level, increase in temperature, frequent typhoons and heavy uneven downpours of rainfall every year shows the vulnerability of the Philippines to climate change (Sönke Kreft, 2017). An average of 15 billion Philippine Pesos is estimated by the government of Philippines as direct cost of damage due to natural calamities (Penarroyo, 2016). While the Philippine government has set in place the Mining Act, 1995 to address mining disasters and regulate the use of these non-renewable resources there is a serious and immediate need to strengthen the implementation by the various institutions involved in this policy.

Climate Change Act, 2009 of the Philippines takes measures in establishing a Climate Change Commission responsible for the mitigation and adaptation planning and execution in the country. This act also entails the mainstreaming of climate change in government policy formulations and establishing the framework strategy and program for climate change<sup>2</sup>. The inter-link between this act and the Mining Act of the Philippines is established with its composition of the CCC (Climate Change Commission). The Secretary, DENR (Department of Environment and Natural Resources) is a member of the advisory board of CCC with the responsibility to oversee the establishment and maintenance of climate change information management systems and network. This also includes the climate change risks, activities, and investments in collaboration with other concerned national government agencies, institutions and local government units<sup>3</sup>.

The Philippines is on the cover page of mining issues since the Mining Act of 1995 which aims to regulate mining in order to make mining less harmful to the environment and economically beneficial to the nation. More recently, Gina Lopez, former Secretary, DENR officially announced the closure of 23 mining industries in the Philippines on the 2nd of February, 2017 (Morales, 2017). The major reasons behind the closure of these mining industries were the operations of many of the mines operating on a functional watershed, and some other reasons are the tailings produced as a remnant in some of the copper and nickel mining industries. The secretary also insisted on how the economic benefits of an environmental approach by saving the watersheds which are a source of life for the people in

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<sup>2</sup> R.A. 9729 (Climate Change Act, 2009), Section 9: Powers and Functions of the Commission.

<sup>3</sup> R.A. 9729 (Climate Change Act, 2009), Section 15: Role of Government Agencies  
<http://www.ifrc.org/docs/IDRL/RA209729.pdf>.

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those areas outweigh that of the operationalization of these industries (Geronimo, 2017). The role of NGOs and their engagement in the implementation of the laws and policies that govern climate change appear in specifically the Mining Act of 1995 and the Administrative order of the Mining Act of 2010 with its updated amendments as of 2012<sup>4</sup> as described in the implementing rules and regulations of RA 7942 can be enhanced. Further, establishing the environmental rights of the people are under threat, and the responsibilities of both state and non-state actors play a vital role in this enhancement.

### **II. Areas for CSOs engagement in implementation**

#### **II. A. Constitutional Mandates**

The underlying ideologies of the laws that govern the Philippines are convergent to the rule of law, transparency, and accountability. The strategic framework of the constitution involves and places importance on the rule of law, engaging the CSOs and peoples organizations in the policy and decision-making process of the government as given in the preamble<sup>5</sup> of the 1987 Constitution of the Republic of the Philippines. This framework can be gathered from the various laws that emphasize on the involvement of the NGOs which in the case of the Philippines encompasses non-governmental organizations, community-based sectoral organizations and peoples' organizations. This is evident in the 1987 Constitution of the Republic of the Philippines, Article 2, declaration of principles and state policy, Section 23 which entails that "the state shall encourage non-governmental, community-based, or sectoral organizations that promote the welfare of the nation." Furthering this declarative statement the constitution also provides under the legal and democratic framework, the right of the people to form associations, unions, and societies to pursue their collective interests and aspirations (see Article 3, Section 8 of the 1987 Constitution of the Republic of the Philippines). The role of NGOs in being involved with the policy and decision-making process is established as role and rights of people's organization. It validates people's organizations as bona fide associations of citizens who with leadership, membership and structure promote the public interest. Further, it respects the role of NGOs in promoting and pursuing people's interest. Also, it ensures by law that it shall establish adequate consultation mechanisms and curtail no rights of people and

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<sup>4</sup> R.A. 7942: The Mining Act, 1995 along with its Implementing Rules and Regulations (IRR) that was in 2010 and the amendments made according to Executive Order 79 of 2012.

<sup>5</sup> Preamble of 1987 Constitution of the Republic of the Philippines: We, the sovereign Filipino people, imploring the aid of Almighty God, in order to build a just and humane society, and establish a Government that shall embody our ideals and aspirations, promote the common good, conserve and develop our patrimony, and secure to ourselves and our posterity, the blessings of independence and democracy under the rule of law and a regime of truth, justice, freedom, love, equality, and peace, do ordain and promulgate this Constitution.  
<http://hrlibrary.umn.edu/research/Philippines/PHILIPPINE%20CONSTITUTION.pdf>

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their organization to reasonable and effective participation at all levels inclusive of socio-economic and political decision-making according to Article 13, Section 15 and 16 of the 1987 Constitution of the Republic of the Philippines.

### **II. B. Government – CSO partnership**

The government in many occasions partners with people's organizations and CSOs in promoting public participation, accountability, and transparency. They also involve the NGOs in preparation, authorization, execution, and monitoring of the national budget. These efforts are important and need to be made sustainable. In order to understand the context of the parameters involved in the role of NGOs in facilitating the implementation of the laws in the Philippines, CODE-NGO's pivotal role in the Philippines must be analyzed.

Post Marcos regime the Philippine economy was faced with a looted economy. The government that followed encouraged the NGOs to deliver the basic services and gave them positions at special commissions and advisory committees. Legislations made during this period had incorporated NGOs causes and facilitated their participation in the implementation process. This partnership had even Government line agencies set up NGO liaison offices. NGOs were allowed and encouraged to seek and negotiate with foreign governments to get funding as Official Development Assistance (ODA) for which NGOs were the implementing agency of the government (Lowry, 2008). Need for a mechanism to ensure accountability on both the NGOs and the Government of the Republic of the Philippines arose when the partnership between the two sectors was strengthened by legislations. CODE-NGO was formed. It was the biggest NGO networks that comprised of 7 of the biggest coalitions to establish a code of conduct for development NGOs in 1991. This was one of the pioneering NGO self-regulation the NGOs of Philippines had developed (Songco, 2006). This was furthered by creating a PCNC (Philippine Council for NGO Certification) in 1998 and was one of the earliest government recognized NGO certification system in Asia. Only one sixth of the NGOs were PCN Certified during that time, and the current number of NGOs in the Philippines is yet to be accurately determined. The PCNC was an accountability mechanism for the NGOs, the recognition of this certification by the government of the Philippines is what makes this unique. The mutual transparency and support in monitoring and accountability lay the foundation of trust for this mechanism to play a vital role in the implementation of development programs (Songco 2006, 1).

Many CSOs were engaged in the planning and consultation process of the Philippine Development Plan of 2011 to 2016. This was the result of the pursuant and persistent advocacy of the organizations due to the initial reluctance some government authorities to provide more

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opportunities and mechanisms for CSO participation. This called for a multilateral initiative that enabled commitments from the government to promote transparency, empower the citizens, increase the fight against corruption and embrace new technologies to strengthen governance called the Open Government Partnership (CODE NGO, 2016, p. 72).

### II. C. Provisions of the Mining Act, 1995

The Mining Act of 1995, i.e. The Republic Act 7942 of the Philippines was intended to regulate the large scale mining in the country. It has undergone much scrutiny over the years from critics. The intent of the Mining Act was to boost the Philippine economy and improve land usage and regulate the use of natural resources. But, the criticisms were that the conservation and protection of land, indigenous people's rights, land rights, safety regulations of the consequences of mining were largely underrated in the Act (Cabalda, et al., 2002, pp. 40 - 42). The generous allowance of land use for mining under the Mining Act enables foreign investors to maximize the opportunity which in turn diminishes the opportunity for local/Filipino investors to partake in mining. International investors are offered subsidized tax rates in excise and allowed to carry over losses to income tax. These mining companies are given priority access to water resources within their concession and also selling gold to the international market without the intervention of the Central Bank (Cordillera Peoples Alliance Philippines, 2015).

The Mines and Geosciences Bureau can deputize whenever necessary the PNP and or *barangay*, duly registered and accredited NGO or a qualified person to police any mining activities according to section 7[f] of the IRR of R.A. 7942<sup>6</sup>. This opens a space for the NGOs chosen or proven effective to monitor and submit compliance reports to the Bureau. The Bureau also enables the Local Government Units to act as a mediator between the Indigenous People and the Contractor when requested according to section 8 of the IRR<sup>7</sup>.

In matters of the establishment, disestablishment and modification of boundaries of a mineral reservation the Non-Governmental Organizations, People's Organizations and Local Government Units can air their view on local media like newspapers or circulate notifications in the concerned barangays (small units of municipality) thirty days prior to the public hearing. These institutions are also given the opportunity to raise their concerns during the Public Hearings conducted by the Director according to section 9 of the IRR of R.A. 7942<sup>8</sup>. These are

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<sup>6</sup> Section 7(f): Organization and Authority of the Bureau.

<sup>7</sup> Section 8: Role of Local Government.

<sup>8</sup> Section 9: Establishment, Disestablishment or Modification of Boundary of a Mineral Reservation (available at <http://www.mgb.gov.ph/images/stories/CDAO-Final.pdf>).

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some of the areas the NGOs are directly involved by law and can support the implementation process. The level of engagement within the law is well established, but the practical challenges are arrayed as part of social problems like corruption, vested interests, manipulation of indigenous people, lack of autonomy of the NGOs and lack of funds for the NGOs to work in this sector.

A prior and informed consent are required from land occupied by indigenous people who are claiming their rights to the ancestral land from the mining companies or contractors to obtain mining permits and FTAAAs. The contractor needs to show proof of environmental management and technical expertise in order to obtain these permits. In the case of the contractor securing the permission from the Indigenous People and verified by the Department Regional Office or any office that is responsible by law for such purpose, the contractor shall pay no less than 1 percent of gross output as royalty to the Indigenous Community (Lansang, 2012).

### **III. Conclusion**

Given the current parameters discussed above, the Constitution, the laws, and policies have specific provisions or mandates of involvement, engagement, and access to implementation for the Civil Society in the Philippines. Nevertheless, there is still a gap in the implementation by the government to monitor and abide by the mining law due to corruption, vested interests, red-tapes, decentralization of power to the local government units, etc.(Salvador, 1999). Further, the mining law in itself is deficient in many of its provisions which ultimately are arguably failing its purpose. This understanding leads to question the roles of the Civil Society within the policy and legal spaces. The increase/enhancement of roles of civil society in participating in the implementation of these policies and laws will certainly encourage the non-state actors to advocate and lobby for a better law that can cater to all the needs such as higher civil society and people's participation in the implementation process of the laws and policies, increased focus on the human rights of the stakeholders involved, and effective execution of the laws and policies.

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## References

Cabalda, M., Banaag, M., Garces, R. & Tidalgo, P., 2002. *Sustainable Development in The Philippine Minerals Industry: A Baseline Study*, England: International Institute for Environmental Development and World Business Council for Sustainable Development.

CODE NGO, 2016. *ASSESSMENT OF THE ENABLING ENVIRONMENT FOR CIVIL SOCIETY ORGANIZATIONS IN THE PHILIPPINES*, Manila: CODE NGO.

Cordillera Peoples Alliance Philippines, 2015. *Philippine Mining Act of 1995: A Curse to the Environment and Communities*, s.l.: Cordillera Peoples Alliance Philippines Posts.

DENR, 2010. *Implementing Rules and Regulations of R.A. 7942*. Manila: Government of the Republic of Philippines.

Geronimo, J. Y., 2017. *DENR announces closure of 23 mines*, s.l.: Rappler.

Government of the Republic of Philippines, 1987. *THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES*. Manila: Government of the Republic of the Philippines.

Lansang, L. G., 2012. NGOs, Coalition Building and the Campaign for a Minerals Management Policy in the Philippines. *Philippine Political Science Journal*, 17 February, 32(55), pp. 127 - 166.

Lowry, C., 2008. *Civil Society Engagement in Asia: Six Country Profiles*, Honolulu: Manuscript prepared for the Asia Pacific Governance and Democratic Initiative.

Morales, Y., 2017. *DENR closes 23 mining firms, plans rehabilitation of affected areas*, Manila: CNN Philippines.

National Economic and Development Authority, 2017. *Philippine Development Plan*, Pasig City: National Economic and Development Authority.

Penarroyo, F., 2016. *Inquirer.net*, s.l.: Inquirer.net.

Republic Act of Philippines, 1995. *RA 7942 Philippine Mining Act*. Metro Manila: Government of Philippines.

Republic Act of Philippines, 2009. *RA 9729 Climate Change Act*. Metro Manila: Government of the Republic of Philippines.

Salvador, A. O., 1999. *Philippine local governments: Toward local autonomy and decentralization*, Manila: Office of Research and Publications, Ateneo De Manila University.

Songco, D. A., 2006. *The evolution of NGO accountability practices and their implications on Philippine NGOs*. s.l.: The evolution of NGO accountability practices and their implications on Philippine NGOs.

Sönke Kreft, D. E. a. I. M., 2017. *Global Climate Risk Index 2017*, Bonn: Germanwatch e.V..

**Pakistani Soap Operas and Gender Norms**

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**Abstract**

Pakistan is one of those states considered vulnerable in providing protection to Human Rights especially women and children. Women are one of the most marginalized parts of society. Domestic violence, honor killing, rape and other incidents happen on daily basis. Patriarchy prevails and women are considered lesser human being than men. Failure in provision has numerous reasons; one of them is not having enough sensitization about how it takes place and which factors make and perpetuate this attitude towards women. This study aims to analyze one of those factors i.e. perpetuating through prime time TV dramas. A qualitative research having critical discourse analysis of 3 prime time TV drama serials/soap operas is being done. Theme of story, dialogues and main characters disposition (especially female) are being critically examined to determine that TV dramas insensitivity/negligence towards human/women rights.

Key concepts: Patriarchal Values, Women Portrayals, Gender stereotyping, Women Rights, TV Dramas, Pakistan Television, Critical Discourse Analysis, Human Rights

***Introduction:***

Pakistan has typical South Asian cultural norms prominent in society. It is also feudal & tribal. Therefore, Patriarchy (According to Oxford Dictionary, a system of society or government in which men hold the power and women are largely excluded from it) remains dominated in social fabric. Man is supposed to be strong gender with decision-making power. Women are considered submissive, and thus they hide them behind the veil of domestication. There is a silently understood agreement that men are in charge of the outdoor affairs while women are responsible for the affairs of the household. (Huda & Ali.2015)

According to the consensus, women are 59% of the population (*Economic Survey of Pakistan, 2012-2013*), and the literacy rate is alarmingly low if we look at the general ratio (57% where males are 69% and female 45%). When the existing factors are already contributing making the process so slow where women can achieve an equal status, Media is also showing negligence. TV dramas remain the most viewed part of entertainment media in Pakistan, and what they present is; Men are rational, impulsive, ruthless, independent, and aggressive and women are always related to words such as emotional, prudent, gentle, submissive, sensitive, etc. (Ni.2011). Gallagher (2001) while discussing link between media

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and violence, believes that negative and stereotyped images of women contributes to gender violence in society, For that reason, the concern of the research is to find how and in what ways TV Dramas re-enforce, do advocacy of patriarchy and contribute in gender stereotyping of women. With observing women's portrayal in typical and stereotype images in TV dramas, this study is investigating and analyzing the various ways of (Mis-) representation of women in Pakistani Dramas/soap operas, through critical discourse analysis. In future, this study may further lead to do advocacy for the sensitization of human/women rights from entertainment media platform.

### *Human Rights Mantra, Soap Opera & Gender Norms:*

As discussed above, in patriarchy dominated societies most of the human rights violations, especially women rights violations are carried under the banner of culture. Culturally sensitized issues are framed in a way that violations seem inevitable. The connection of violations becomes complicated that one violation automatically leads to another one, and state or non-state actors sometimes contribute violations and other times they appear as an entity that is may willing to sort it out, but is helpless, due to complexity of issue's nature. Irony is stigma related to religion is also used to cover these violations wherever they find a helping reference from religion.

The three waves of feminism changed a lot in world, it somehow affected South Asia too but there is still a lot to achieve in context of sensitization regarding women rights. Pakistan has ratified CEDAW (Convention on the Elimination of All Form of Discrimination against Women) in 1996. That clearly says that state has to take all possible measures to bring women in a position (political, social, economic, and cultural) which is equal to men. Unfortunately no visible improvement has been observed despite passing bills in parliament about women protection and making laws in concern. On grounds, there is not much difference. In context of what electronic media presents, stereotypical image of women is way more than what was in 90s. Increasing number of private TV channels (before there was only one national television channel) since 2000s there has been a race of earning profit among channels. In the race of commercialization quality has been constantly compromised against quantity. PEMRA (Pakistan Electronic Media Regulatory Authority) like other governmental institutions is has not played any vibrant role in concern. Less monitoring and accountability is complicating the situation. There is no effective voice is seeing against the trend though there are frequent



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columns or B-logs seen criticizing the trend, but there is a strong momentum or movement needed to make people aware what cost society is actually paying for these unhealthy visual presentation of families, especially women.

### ***Analysis:***

The critical discourse analysis of 3 drama serials/soap operas of Pakistan has intensified the idea that there is repeated perpetuation of stereotypes that are against women empowerment, and also lead to notions of other differences and discriminations i-e class. The study was taken place with the help of evaluating and analyzing (1) main theme of story/plot (2) Dialogues/text (3) disposition of different characters, especially women in different situations i-e what that character is promoting through text, idea or action.

The general idea of these drama serials reflects that power relates to man. Projection if this idea is not only seen in the discourse of how a man is presented (macho) but also there is repetition of this idea through texts and situations. Women are considered as weaker gender and vulnerable in society and they will always be seen as “alone” even if they are 3 in number, if they lack man in family or when they move around, they are “alone”. Domestic violence prevails as a weapon for man, which he can use (physically or psychologically) whenever he cannot continue or win an argument with woman.

Furthermore, there is profiling of women, such as presenting working women as bad human being/mother/wife and mediocre women as the good ones. In addition, women are always asked to compromise to run a relationship. So, these serials generally advocate, compromising relationships whether without mutual respect and understanding, such as marriage whether how loveless or lifeless it is. Another aspect is the projection of “Class Difference” in society; such as servants working at homes are dealt as slaves. Arguments between a servant/house keeper and a character/family member are normalized in a way that even the “good” characters talk to servants in loud/impolite manner. In response the servant just obey and go away what is asked.

### ***Conclusive remark:***

The original paper is still in progress, so the final findings will take a while to come. But the general idea extracted up to now is that these soap operas promote patriarchal values through perpetuating stereotypes that are against human rights concepts. The practice

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can be considered as a disavowal of human rights, and specifically women rights. Until now, the findings proved that discourse of these drama serials is negating CEDAW (Convention on the Elimination of All Form of Discrimination against Women) under:

Article: 5 (a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.

Article: 16 (a) The same right to enter into marriage; (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent.

These practices promoted through dram serials also tempt to go against laws i-e (1) Prevention of Anti –Women Practices (Criminal Law Amendment) Act 2011> Law criminalize practices, customs, tradition violate women rights (2) The Domestic Violence (Prevention & Protection) Act 2013 and others.

### References:

1. Ali, R & Batool, S 2015. Stereotypical Identities: Discourse Analysis of Media Images of Women in Pakistan“ *Multidisciplinary Journal of Gender Studies*, [Vol. 4 No. 2 pp. 690-717]. International Islamic University Islamabad. Pakistan  
<[https://www.researchgate.net/publication/282208398\\_Stereotypical\\_Identities\\_Discourse\\_Analysis\\_of\\_Media\\_Images\\_of\\_Women\\_in\\_Pakistan](https://www.researchgate.net/publication/282208398_Stereotypical_Identities_Discourse_Analysis_of_Media_Images_of_Women_in_Pakistan)>  
[Accessed 29 July 2017]
2. Gallagher, M 2001. *Gender Setting, A new agenda for media monitoring and advocacy*, [Part II, Chapter 7, p. 91] World association for Christian Communication. 357 Kennington Lane, London.SE11, 5QY.  
<[www.presscouncil.org.au/](http://www.presscouncil.org.au/)>[Accessed 29 July 2017]
3. Huda, R & Ali, 2015. Portrayal of Women in Pakistani Media‘ *International Journal of Academic Research and Reflection*, [Vol. 3, No. 1, 2015 ISSN 2309-0405]  
<[www.idpublications.org/.../PORTRAYAL-OF-WOMEN-IN-PAKISTANI-MEDIA.pdf](http://www.idpublications.org/.../PORTRAYAL-OF-WOMEN-IN-PAKISTANI-MEDIA.pdf)>[Accessed 29 July 2017]
4. Parvez, A & Roshan, R 2010. Mass Media and Women: A Study on Portrayal of Status and Violence“, *Pakistan Journal of Social Sciences (PJSS)*, [Vol. 30, No. pp. 133-140]  
<[www.bzu.edu.pk/PJSS/Vol30No12010/Final\\_PJSS-30-1-12.pdf](http://www.bzu.edu.pk/PJSS/Vol30No12010/Final_PJSS-30-1-12.pdf)>[Accessed 29 July 2017]

### Articles on Internet:

Ni, Cheryl, 2012. Portrayal of Women in the Media  
<<https://mediarepresentation.wordpress.com/women-in-tv-dramas/>>[Accessed 29 July 2017]

## GRADUATE SEMINAR: CURRENT ISSUES IN HUMAN RIGHTS

Mujahid, S, 2013. Modern Pakistani TV dramas still bounded gender stereotypes  
<<http://sunnyinpatriarchia.blogspot.com/2013/01/modern-pakistani-tv-dramas-still-bound.html>>[Accessed 29 July 2017]

### Others:

1. CEDAW (Convention on the Elimination of All Form of Discrimination against Women)
2. Economic Survey of Pakistan, 2012-2013
3. Palh, A & Farwa, U, 2014. List of Pro and anti-Women Laws, Rights Now Pakistan.
4. Drama Serials/Soap Operas (1) Dil Lagi (2) Durr-e-Shahwar (3) Humsafar

**Corporate Social Responsibility, Human Rights and Global Supply Chain: A Case Study of the Thai Seafood Industry**

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**Abstract**

Corporate Social Responsibility (CSR) has been a contested issue within the international community for the past decades. Attempts to address human rights and labour rights violations have met with various approaches and policies from the domestic to the international level; from non-state to state actors, and from voluntary self-regulation mechanisms and binding systems. However, current policies and practices of CSR have shown too little impact and outcome on the ground; its promise to challenge labour and human rights abuses somehow left empty. To identify the motivations of companies to introduce and implement CSR, this study looks at two major Thai seafood companies' CSR policies and their sustainable development reports. The research scrutinises reports from the two companies using discourse analysis approach to unveil their agendas in CSR policies. The paper proves that CSR policies are ineffective tools for detecting, reporting or correcting human rights and labour abuses in supply chains. Findings show that changes in the two companies' sustainable development reports are due to international external pressures. CSR is a sophisticated marketing and promotional tool as there is a gap between what reports say and the reality on the ground when it comes to the human rights and labour situation.

Key words: CSR, voluntary self-regulation, seafood, business and human rights, supply chains

**I. INTRODUCTION**

There has been rapid development and diffusion of Corporate Social Responsibility (CSR) in the global sphere. Particularly, the creation of the United Nations (UN) Global Compact in 2000 is one of the key examples of the accelerated expansion of CSR policies. A considerable amount of literature has published on CSR, but few look into its positive social impacts. Research has consistently pointed out that the commitments of companies in CSR policies do not display an adequate understanding of economic, social and political impacts. CSR has instead perceived as part of promotional/marketing strategies for businesses. It is noteworthy that despite the proliferation of CSR policies, human rights violations and labour rights abuses

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by the private sector still prevail. Therefore, questions have raised about the effectiveness and purpose of the expanded use of CSR policies with the view to protect fundamental human rights and labour rights. The main aim of this research project is to look into companies' narratives and motives behind adopting their CSR project and sustainable development reports. Main objectives of this research are to analyse CSR policies to illustrate how CSR is used to project a specific image of companies, and to analyse the effectiveness of CSR policies. In this regard, this paper follows a case-study design, with a comparison analysis of the two biggest Thai seafood companies in Asia's CSR policies. The strategy of inquiry of this research is to take a qualitative approach using a case study. The nature of this study is exploratory and interpretative since it was conducted through a discourse analysis. The case studies are Unit of analysis is two Thai seafood companies, using and their CSR and sustainable development reports as the units of analysis is.

### **II. Background on trafficking in Thailand and two seafood companies**

Thailand is the world's third largest seafood exporter by value at USD8,078 million in 2012, following after China, USD18,211 million and Norway, USD8,895 million (OECD, 2015:21). At the global scale, Thailand produces an estimated 4.2 million tons of seafood per year – 90 per cent of products are exported to the US, Europe and Japan (Environmental Justice Foundation, 2013:12). According to the Food and Agriculture Organization (FAO) report, the fishing industry has also directly contributed to “the growth of other related industrial activities such as ice manufacturing, cold storage, fish processing, ship building” (2009: 6) in Thailand. The number of the population involved in this sector was approximately 2 million (FAO, 2009:8) and includes a huge number of migrant workers.

According to UNIAP, there are between 1.2 and 2.3 million regular and irregular migrant workers live and work in Thailand and the Ministry of the Interior registered about 1.28 million migrant workers from Cambodia, Laos and Myanmar (UNAIP, 2011: 9). There are several factors on the huge influx of migrant workers from neighbouring countries. Pull factors are Thailand's economic growth and labour need as the number of young working-age Thai declined, as did their preference to work in certain industries. Push factors are under-development, poverty, human rights violations, insecurity and political instability in their home countries (Somjai, 2016: 46; Rukumnuaykit, 2009: 3-4). Due to these factors, Thailand receives a huge number of migrant workers, and the Thai seafood industry has benefited from their labour migration.

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While the seafood industry plays an important part in Thailand's exports, relevant regulations and labour standards have not been adequate. Migrant workers often face a various degree of deception and exploitation (UNAIP, 2011: 29; UNCT Thailand 2016: 9). In fact, Thailand signed the UN Convention against Transnational Organised Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention against Transnational Organised Crime in 2001, but only ratified it in 2013. Furthermore, around 80 percent of workers shared that they have not signed a contract with their employer and less than one-third said that basic safety conditions were maintained at their workplace (UNAIP, 2011: 29; UNCT Thailand 2016: 9). The research by Labour Rights Promotion Network (LPN) also shows that there is a "systematic, labour sub-contracting without institutional accountability for Burmese migrants in Thailand" (UNIAP 2011: 3). LPN estimated that around 20 to 30 per cent of Burmese migrant workers were recruited by coercive and deceptive ways (UNIAP 2011: 3).

Two Thai companies are leading Thai seafood industry. One of them is Thai Union Frozen Products (TUF). TUF grew fast in the 2000s and became one of the key exporting companies in Thailand. TUF's activity is the production, distribution and exportation of frozen and canned seafood products. The company is one of Thailand's largest producers of frozen seafood. Most of their products are exported to the US, Europe and Japan. One of the business' growth strategy of TUF is to expand its international sales (OECD, 2010: 153). TUF ranks as the 9th biggest company in the world by market capitalisation in the seafood sector (OECD, 2010: 153). Charoen Pokphand Food PCL (CPF) mainly operates in the livestock and aquaculture sectors. The aquaculture business operation comprises of shrimp and fish (Forbes, 2017). TUF joined the UN Global Compact in 2013 – the first food producer to join the initiative in Thailand – and CPF joined in 2015. They are the first group of food producers/seafood companies to join the UN Global Compact in Thailand.

However, two companies have been facing criticism on human rights and labour rights records. For instance, Associated Press exposed slavery practice in the fishing industry in 2015 in an investigation. They reported bleak situations of migrant workers locked up in cages and tracked down where seafood produced by slaves go in Southeast Asia (Associate Press 2015), and more articles have followed.

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### **International media coverage of labour and human rights abuses in Thailand's seafood industry**

In March 2014, the Time newspaper reported about child slaves in fishing boats in Thailand. The story covers a young slave – 17-year-old Aye KoKo who rescued from a fishing boat in March 2014 but ended up spending a year at a detention centre.

In June 2014, the Guardian newspaper revealed further evidence of human rights violations in Thai fishing industry. French retailer Carrefour stopped sourcing shrimp from supplied CPF pending supply chain checks (EJF, 2014).

In March 2015, the Associate Press documented workers trafficked from Burma/Myanmar onto Thai fishing vessels. These workers were trapped in Indonesia. The report also shows how seafood resulted from trafficking and slavery reached western retailers – Walmart, Kroger, Albertsons and Safeway (ILRF, 2016:23).

In July 2015, The New York Times released the first in its Outlaw Ocean series. They investigated that lack of legal implementation and common industry practices allow forced labour, killing of workers and other human rights abuses and violations in the sea (ILRF, 2016:23).

End of December 2015, the Associated Press released another report on shrimp peeling in Thailand. According to the report, workers trapped in the facilities for years without pay. Ready-to-eat shrimp for Western consumers were made from them. Victims were either imprisoned or sent back to work at other facilities (ILRF, 2016:23).

February 2016, the Guardian newspaper again covers that slavery, trafficking, murder and corruption at all levels of government still pervade Thailand's fishing industry, despite recent arrests linked to human rights abuses and the threat of an EU-wide boycott (Hodal, 2016).

### **III. Analysis of TUF and CPF's Sustainable Development Reports**

A total of 9 reports of two companies from 2012 to 2016 were examined and analysed. After reviewing and examining CSR policies and sustainable development reports of both TUF and CPF, it is noticeable that they have changed their reports to follow global standards in a voluntary initiative and self-regulation mechanisms within their scope of business in a discursive manner. It is crucial to understand the context of how they have changed their position and narrative throughout the years. Furthermore, how the two companies construct their position and arguments are observed.

In 2011 when CPF first introduced its sustainable development report, the UN adopted its Guiding Principles on Business and Human Rights: implementing the United Nations "Protect, Respect and Remedy" Framework. The introduction of this initiative was considered one of the biggest events within the business and human rights and CSR as the principles reaffirm the

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company's role to respect human rights. Regarding socio, economic and geo-political contexts in the region and neighbouring country, Myanmar held its first general election in 2010 after two decades. Even though this election was largely condemned, this also created high pressure on the military regime to move toward a civilian government. As Myanmar started opening up after the by-election in 2011, sanctions have been lifted, FDI and other business activities have been flourishing in the country. This also created an expectation from Burmese migrant workers in Thailand to consider returning home to seize economic opportunities. Lastly, as mentioned earlier, international pressures such as condemnatory news articles and pressure from trade partners such as EU and the US further created demands to respect human rights and labour rights in its operations in 2013 and 2014. Keeping in mind these various contexts and factors, the two companies introduced its CSR policies as well as sustainable development reports – CPF in 2011 and TUF in 2013.

According to the first TUF's sustainable development report in 2013, their vision is conceptualised according to their philosophy on sustainability "We can, We care, We connect" (Thai Union Frozen, 2013: 1). Furthermore, strategic foundation of the company lays on the triple bottom line of sustainable development – economic, social and environment as one of key interpretation of CSR by many companies. In its 2013 report, among a total twenty-two photos used in the report, there are eight photos with children amid the promotion of the success of their CSR projects. In its discursive practices, the company seems to be focusing on its "We Care" vision as they are portraying their roles and activities to protect community and society including migrant workers and their children. Furthermore, portraying the company as one of the key stakeholders in the society who nurture a good environment for children gives them a certain level of morality.

The report also spends a good number of paragraphs about the US government's Trafficking in Person report and the risk of Thailand being downgraded to Tier 3 in next year, subject the company to sanctions by the US government under their human rights and labour practice section. On the rightful recruitment process, the company mentions particularly the case of Burmese migrant workers. The company presented that they made a trip to Yangon, Myawaddy and Mae Sot to learn about the recruitment process. It reflects the company's realisation of the importance of keeping up the supply of Burmese migrant workers' for the company's business operation as almost 80 percent of TUF's workforce are daily and non-regular workers – who are likely to be migrant workers. In TUF's reports, they used fewer case



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studies and interview with beneficiaries and employees in its early reports. However, the TUF has moved toward to using more these techniques from 2014.

CPF's Sustainable Development report in 2012 sets out its direction in CSR policies to sustainable development: "Food security, self-sufficiency society, a balance of nature". The report shares that three beneficiaries of sustainable development are the country, people and company and for the betterment of the economy, society and environment (CPF, 2012:8). In 2012 and 2013, the CPF emphasised "food security" in their reports and linked it to the quality of food and safety. Regarding "self-sufficiency society", the company justifies its activities and CSR policies under this section as society development. The company asserts that their dedication to CSR is to promote food security so that the company could play a crucial role to develop self-sufficiency society. These visions and principles could benefit sustainability for the country, people and company. In the report, a message from the Chairman of the Board of Director and the President and Chief Executive Officer said that "Sustainability is unquestionably the global megatrend for the advancement of economic, social and environmental systems" (CPF, 2012:18). The company positioned itself as a leader in agro-industrial and integrated food business; it mentions that "stable growth" and "sustainable success" mean "global acceptance, consumer satisfaction" along with environment and social responsibility (CPF, 2012:18). Even though the company envisions a society with sustainability in food security and self-sufficiency, but it is not in line with the meaning of successful sustainability from UN and other CSOs. It reveals that the company's narrative and wording focuses on community self-reliance, but it also looks at 'global acceptance' which is a key to expand their business in the globalised market. Also, CPF's reports often utilise short case studies and other narrative techniques. For example, the company's community projects are presented in the form of an interview with students and beneficiary of the projects as well as employees involved in the business operation. However, all interviews from students, children as well as farmers and workers showed how grateful they are to receive supports from CPF. Throughout these interviews CPF asserts and positions itself as a key pillar and actor to sustain Thai society.

Robinson emphasised that "simply stating a human rights policy is insufficient to make or demonstrate a meaningful commitment to human rights" by companies (2012:8) and pointed out the importance of "movement from acceptance of principles to full implementation" (2012:8). In this regards, introducing internal policies on protection and promotion of human

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rights and labour rights, CPF amended its code of conduct to include “Equity and Respect for Individual Human Rights” in 2013. In 2014, TUF introduced anti-corruption policy while CPF adopted the Human Rights Policy and Sustainable Sourcing Policy and Suppliers Guiding Principle. In 2015, TUF came up with a short policy commitment to Ban Transshipment at Sea to prevent human rights and labour rights violations towards fishermen. Similarly, CPF announced the Fishmeal Purchasing Policy to have a systematic track and trace system to prevent human rights violation within supply chains. In 2016, TUF announced the Ethical Migrant Recruitment Policy, New Business Ethics and Labour Code of Conduct as well as launched the Modern Slavery Act Transparency Statement.

TUF’s report mentions in details promoting human rights and well-being of people via promoting good employment practices in their business operations and their supply chains (Thai Union Frozen, 2014:18). The company also mentions the company’s code of conduct to tackle forced labour and discrimination practices. They also expanded their material assessment from TUF Samut Sakhon operation in 2013 to TUF’s global operation while the performance data primarily covered main factories in Thailand in 2014. Despite its continued claim to genuinely commit to human rights and labour rights protection, it was reported that one of the subsidiaries companies under the TUF’s operation in Thailand – Songkla Canning PCL. (SC) was linked to forced labour (Greenpeace 2015; and Urbina 2015).

In its 2014 sustainable development report, CPF clarified that labour rights issues and human trafficking are happening “far beyond” its operation as the company neither operate on nor source its raw materials directly from any fishing vessel. However, the company is ready to assist in solving these problems as one of the leading companies in the sector (CPF, 2014:14). In 2014, the company launched its Human Rights Policy and the direct sourcing of labour from legal labour brokers from home countries where the Thai government has bilateral employment memorandum of understandings with (CPF, 2014: 16). According to the report, the Human Rights Policy focus on upholding and respecting human rights as indicated in the Universal Declaration on human rights as well as ILO’s declaration on fundamental principles and rights at work (CPF, 2014: 40). Then the company’s 2016 report mentions that the Human Rights Policy is in line with the UN Guiding Principles on Business and Human Rights (CPF, 2016: 43). However, the policy does not provide any concrete steps or measures of success or failure of its implementation process, indicating the Human Rights Policy is a cosmetic response to the huge backlash on labour rights issues in 2014. Even though the UN Guiding Principles

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existed since 2011, the company only mentions it in its 2016 report. This gap would indicate the company's lack of attention to human rights standards in the past and that the recent insertion of these standards is in response to the labour and human rights crisis in fishing industries in 2014. The two companies' introduction of human rights and labour rights policies in 2014 shows that they are trying to defend themselves from intense criticisms which affect their international reputation.

### **IV. Conclusion**

This paper seeks to understand the discursive process of CSR policies and sustainable reports by companies. The research findings show that two companies' efforts in CSR are an exercise of a promotional and cosmetic piece to cover their poor labour and human rights records. The research also found out that how their policies and sustainable reports shifted after media condemnation and international pressures on human rights and labour rights crisis. Therefore, there were no "self and voluntary" aspects from the companies, but they were forced to implement such policies in discursive manner. This shows that there is a need for strong external pressure to influence the behaviour of the companies. Findings also show that examples of self-regulation are competing with international human rights norms and standards which have agreed among countries. Therefore, improvement of human rights situation on the ground is minimal but to cover up major issues at the time of drafting their sustainable reports. Furthermore, certification and audits in supply chains have applied with a flawed CSR model that lacks genuine migrant workers' feedback and representation within companies. Therefore, one can conclude that ultimately the current audit and certification systems is "working for" only companies, but failing workers.

### **BIBLIOGRAPHY**

A Joint Submission of Migrant Working Group Thailand (Coalition) on Migrant Workers and Their Families in Thailand for Thailand 2nd Cycle of the Universal Periodic Review, 2016.

Adanhounme, A. B. 2011, 'Corporate Social Responsibility in Postcolonial Africa: Another Civilizing Mission?', *Journal of Change Management*, Vol. 11, No. 1, pp. 91-110.

Alloo, F. Antrobus, P. Berg, R. J. Emmerij, L. Escobar, A. Esteva, G. Horn, J. Kerr, J. Kothari, S. Mahfouz, A. Moseley, S. Mumtaz, K. Mwapachu, J. Okello, D. Raghuram, S. Rice, A. Sachs, W. Sadik, N. and Gennip, J. V. 2007, 'Reflections on 50 years of Development', *Society for International Development*, Vol. 50(S1), p. 4-32.

## GRADUATE SEMINAR: CURRENT ISSUES IN HUMAN RIGHTS

Arnold, D. and Hewison, K, 2005, 'Exploitation in global supply chains Burmese workers in Mae Sot', *Journal of Contemporary Asia*, Vol. 35 No. 3, pp 319-340, available from <http://dx.doi.org/10.1080/00472330580000191>.

Asia Monitor Resource Centre, 2014, 'The Impact of Corporate Social Responsibility on Workers and Trade Unions in Indonesia', Institute for Crisis Study and Alternative Development Strategy, Indonesia, available from <http://www.amrc.org.hk/content/impact-corporate-social-responsibility-workers-and-trade-unions-indonesia>.

Charoen Pokphand Foods (CPF), Sustainable Development Report 2012, available from, <http://www.cpfworldwide.com/en/sustainability/report>.

Charoen Pokphand Foods (CPF), Sustainable Development Report 2013, available from, <http://www.cpfworldwide.com/en/sustainability/report>.

Charoen Pokphand Foods (CPF), Sustainable Development Report 2014, available from, <http://www.cpfworldwide.com/en/sustainability/report>.

Charoen Pokphand Foods (CPF), Sustainable Development Report 2015, available from, <http://www.cpfworldwide.com/en/sustainability/report>.

Charoen Pokphand Foods (CPF), Sustainable Development Report 2016, available from, <http://www.cpfworldwide.com/en/sustainability/report>.

Chaninat and Leeds Thailand attorneys. Alien Working Act, B.E. 2551, Thailand law forum, <http://www.thailawforum.com/database1/Alien-Working-Act.html>.

2017 Thailand Civil Society Report on the Implementation of the ICCPR (Replies to the List of Issues CCPR/C/THA/Q/2).

Conrad, C. and Abbott, J. 2007. 'Corporate Social Responsibility and Public Policy Making'. In the Debate Over Corporate Social Responsibility (ed.), Oxford University Press.

Environmental Justice Foundation, 2013, 'Sold to the Sea, Human Trafficking in Thailand's Fishing Industry', available from <http://ejfoundation.org/sites/default/files/public/Sold to the Sea report lo-res- v2.pdf>.

Eve de Coning, ILO, Forced Labor and Trafficking in Fisheries 2013-Voluntary multitaskholders initiative Fernandez-Feijoo, B. Romer, S. and Ruiz, S. 2014, 'Commitment to Corporate social responsibility measured through global reporting initiative reporting: factors affecting the behavior of companies', *Journal of Cleaner Production*, Vol. 81, pp. 244-254.

FISHWISE, March 2014, 'Trafficked II: An Updated Summary of Human Rights Abuses in the Seafood Industry', available from [http://www.fishwise.org/images/pdfs/Trafficked\\_II\\_FishWise\\_2014.pdf](http://www.fishwise.org/images/pdfs/Trafficked_II_FishWise_2014.pdf).

Food and Agriculture Organization of the United Nation (FAO), 2009, 'National Fishery Sector Overview Thailand', available from [ftp://ftp.fao.org/Fi/DOCUMENT/fcp/en/FI\\_CP\\_TH.pdf](ftp://ftp.fao.org/Fi/DOCUMENT/fcp/en/FI_CP_TH.pdf).

## GRADUATE SEMINAR: CURRENT ISSUES IN HUMAN RIGHTS

Forbes, 2017. The World's Biggest Public Companies, <https://www.forbes.com/companies/charoen-pokphand-foods/>.

Greenpeace, 2015, Supply Chained: Human rights abuses in the global tuna industry, available from <http://www.greenpeace.org/seasia/th/Global/seasia/2015/png1/index.html>.

International Migration Office (IOM), Trafficking of Fishermen in Thailand, January 2014, available from <https://www.iom.int/jahia/webdav/shared/shared/mainsite/activities/countries/docs/thailand/Trafficking-of-Fishermen-Thailand.pdf>.

ILO, 2013, 'Employment practices and working conditions in Thailand's fishing sector'. Available from [http://www.ilo.org/wcmsp5/groups/public/---asia/---robangkok/documents/publication/wcms\\_220596.pdf](http://www.ilo.org/wcmsp5/groups/public/---asia/---robangkok/documents/publication/wcms_220596.pdf).

Labour Rights Promotion Network Foundation (LPN), 2014, 'Thailand Trafficking Case Studies', available from <https://www.humanrightsatsea.org/thai-maritime-human-trafficking-case-studies-released/> Labour Rights Promotion Network Foundation, 2015, Thailand Trafficking Case Studies translations provided by the Labour Rights Promotion Network Foundation (LPN), <https://www.humanrightsatsea.org/thai-maritime-human-trafficking-case-studies-released/>.

Marschke, M. and Vandergeest, P., 2016, Slavery scandals: Unpacking labour challenges and policy responses within the off-shore fisheries sector, *Marine Policy* 68, p. 39–46, <http://www.sciencedirect.com/science/article/pii/S0308597X16000622>.

Marschke, M. and Vandergeest, P., 2016, Ending labour abuse at sea. Asia Pacific Policy Forum. <https://www.policyforum.net/ending-slave-labour-sea/>.

McDowell, R., Mason, M. and Mendoza, M. "AP Investigation: Slaves may have caught the fish you bought", Associate Press, 25 March 2015, available from <https://www.ap.org/explore/seafood-from-slaves/ap-investigation-slaves-may-have-caught-the-fish-you-bought.html>.

Middleton, C., 2016. "ASEAN: How about accountability beyond borders?", Mekong Commons, <http://www.mekongcommons.org/1825-2/>.

OECD, 2010, Globalisation in Fisheries and Aquaculture: Opportunities and Challenges, [http://www.keepeek.com/Digital-Asset-Management/oecd/agriculture-and-food/globalisation-in-fisheries-and-aquaculture\\_9789264074927-en#page4](http://www.keepeek.com/Digital-Asset-Management/oecd/agriculture-and-food/globalisation-in-fisheries-and-aquaculture_9789264074927-en#page4).

Rukumnuaykit, P., 2009, A Synthesis Report on Labour Migration Policies, Management and Immigration Pressure in Thailand, International Labour Organization (ILO). Available from [http://www.ilo.org/asia/publications/WCMS\\_103923/lang--en/index.htm](http://www.ilo.org/asia/publications/WCMS_103923/lang--en/index.htm).

## GRADUATE SEMINAR: CURRENT ISSUES IN HUMAN RIGHTS

Ruggie, J., 2017. 'Multinationals as global institution: Power, authority and relative autonomy', Regulation & Governance Published by John Wiley & Sons Australia, Ltd.

Robinson, M., 2012. Business and Human Rights: A progress Report, OHCHR, available from [www.ohchr.org/Documents/Publications/BusinessHREn.pdf](http://www.ohchr.org/Documents/Publications/BusinessHREn.pdf)(Accessed on 10-02-2017).

Thai Union Frozen (TUF), 2016, Annual Report 2016, available from <http://seachangesustainability.org/reports/>.

Thai Union Frozen (TUF), Sustainable report 2013, available from <http://seachangesustainability.org/reports/>.

Thai Union Frozen (TUF), Sustainable report 2014, available from <http://seachangesustainability.org/reports/>.

Thai Union Frozen (TUF), Sustainable report 2015, available from <http://seachangesustainability.org/reports/>.

The United Nations Global Compact 2011, Overview of the UN Global Compact, The United Nations Global Compact, viewed 11 October 2012, retrieved from: <http://www.unglobalcompact.org/AboutTheGC/index.html>.

United Nations, 2011. Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework, HR/PUB/11/04.

United Nations OHCHR, Open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights, available from <http://www.ohchr.org/EN/HRBodies/HRC/WGTransCorp/Pages/IGWGOntnc.aspx>.

United Nations Interagency Project on Human Trafficking (UNIAP), 2011, Estimating Labor Trafficking Report: A Study of Burmese Migrant Workers in SamutSakhon, Thailand/ Conducted by the Labour Rights Promotion Network (LPN), and the Johns Hopkins Bloomberg School of Public Health (JHSPH) Center for Refugee and Disaster Response. <http://un-act.org/publication/estimating-labor-trafficking-study-burmese-migrant-workers-samut-sakhon-thailand-uniap-trafficking-estimates-competition/>.

**Thailand under Review: An Analysis of the Universal Periodic Review of Thailand**

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**Abstract**

When the United Nations Human Rights Council was established in 2006, one of the initiatives introduced was a review of the human rights situation in member states. The initiative, known as the Universal Periodic Review (UPR), was set up with the ultimate goal of improving the human rights situation in every country. In 2016, the UPR undertook its second cycle of reviewing member states' adherence to internationally recognised human rights standards, and Thailand was reviewed for the second time. With human rights organisations and advocates dedicating considerable resources to ensure that rights concerns are highlighted and raised in the UPR process, a central aspect of the initiative—the human rights recommendations offered by reviewing States—are rarely analysed. This study undertook a critical assessment of the formulation, reception, role and implementation of human rights recommendations which are offered to Thailand. It intended to unveil lessons about the human rights recommendations offered to Thailand and the UPR initiative so that civil society is better informed when approaching future UPR cycles on Thailand.

Keywords: Universal Periodic Review, UPR, Thailand/ Human Rights, Recommendations, Human Rights Council, HRC, United Nations, UN

**I. Introduction**

In 1945 the Charter of the United Nations was drafted and implemented as the foundational treaty of the United Nations (UN).<sup>i</sup> The first chapter of the UN Charter outlined the role of the United Nations as an intergovernmental organization and under Article 1.3 of

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that chapter declared that one of four central purposes of the United Nations project was to emphasise the promotion and respect for human rights and fundamental freedoms.<sup>ii</sup> The Charter and the Universal Declaration of Human Rights (UDHR) are two core elements of the United Nations system that are considered to identify the human rights obligations of all UN member States.<sup>iii</sup>

The years and decades following the implementation of the Charter and the adoption of the UDHR, the United Nations drafted and implemented a number of international human rights mechanisms. From its creation in 1946 until its demise in 2006, the UN Commission on Human Rights (UNCHR) was a key UN feature that was specifically in place to promote and protect human rights.<sup>iv</sup> The UNCHR's mandate and coverage expanded over time, from initially focusing upon the international legal basis for the protection of human rights and fundamental freedoms, to a wider focus upon standard setting and responding to governmental adherence to internationally recognised human rights norms.<sup>v</sup>

As years passed increasing criticism and controversy surrounded the Commission with many member States and civil society organisations no longer perceiving the Commission as being capable of fulfilling its mandate effectively.<sup>vi</sup> One of the main critiques of the Commission was that it was increasingly politicised and dominated, not by a human rights agenda, but of the national and regional interests of State parties – often at the expense of human rights themselves. In 2006 reform of the existing system was confirmed under General Assembly Resolution 60/251 and a UN Human Rights Council (UNHRC) was agreed be set up to replace the Commission and take forward the UN human rights project.<sup>vii</sup>

The UN Human Rights Council carried forward a number of duties and initiatives from the Commission, but also offered new approaches to how human rights were to be addressed and reviewed. One of the fundamental UNHRC initiatives that was created was the Universal Periodic Review (UPR) under General Assembly Resolution 60/251<sup>viii</sup> which offered an alternative approach to State compliance to human rights as it would review all members' adherence to international human rights norms both periodically and without exception. This was a new approach as the preceding Commission had only reserved this for States where instances of widespread and grave violations of human rights had been reported and referred.

It is now ten years since the creation of the Universal Periodic Review and the second cycle of reviews of State parties has been undertaken. While the UPR process may still be in its infancy, it, like its predecessor the Commission, has become subject to criticism by scholars,



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rights groups and other observers for apparently failing to fulfil such self-declared aims and objectives. This may be considered by looking at a few examples. After the first session of the UPR on the Democratic People's Republic of Korea (DPRK), the State under Review (SuR) rejected all recommendations asking the government to acknowledge the existence of prison camps. These rejections were in stark contrast to overwhelming satellite evidence highlighted by rights groups such as Human Rights Watch<sup>ix</sup> but also a United Nations mandated Commission of Inquiry<sup>x</sup> that earlier in the year published documentary evidence of the existence of such camps. A similar concern was raised during the 2011 review of Myanmar as the State delegation rejected more recommendations than it accepted - 95 recommendations were rejected and only 77 were accepted.<sup>xi</sup>

With human rights organisations and advocates dedicating considerable resources, both human and financial, to ensure that rights concerns are highlighted and raised in the UPR process, a central aspect of the initiative – the recommendations – are rarely analysed. The examination of recommendations may unveil lessons about the rights situation in a country, the geo-politics of the UPR, or indicate compliance to the UPR process as a human rights initiative. However, studies rarely scratch beyond the surface to learn what role recommendations play, how recommendations are formulated, how they can differ or what implications they can have.

Thailand's first review was undertaken in 2011 and during the second UPR review of Thailand in May 2016.

### **II. A Change in the Political Environment**

While many recommendations may be made to the State under Review, it does not have to accept all of them and has the option to reject (formally known as 'Note') those that do not receive their support. A record of how Thailand responded to recommendations can be found in the Report of the Working Group (A/HRC/19/8 in the first cycle and A/HRC/33/16 in the second cycle) and any relevant Addendums to that report (Addendum A/HRC/19/8/Add.1 in the first cycle and A/HRC/33/16/Add.1 in the second cycle).

A key difference between the two cycles was the new leadership of Thailand. The coup d'état followed increasing political polarity and unrest in the country between those that supported the government of former Thai Prime Ministers Thaksin and Yingluck Shinawatra and those that opposed them and perceived that they held disrespect for the monarchy. These two camps of supporters are often termed as the 'red shirts' and the 'yellow shirts' as a result of the colour of clothing that is typically adorned during demonstrations.

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The review in 2012 followed the violent crackdown on red shirts during protests in the capital Bangkok and resulted in numerous injury and death of supporters of the Thaksin Shinawatra. With Yingluck in government when the first cycle was undertaken calls for justice and accountability for abuses during the 2010 protests would have been a key political issue both at home and abroad. In the first cycle, a number of concerns about justice focus upon the Truth for Reconciliation Commission of Thailand (TRCT) which was set up in response to the deadly events in 2010. The majority of recommendations that focus upon these areas in the first cycle are accepted. However, if looking at recommendations focusing upon accountability and justice in the second cycle, we discover that the Association of Southeast Asian Nations (ASEAN) and the Asia group States (a group of countries recognised under the United Nations Regional Groups of Member States<sup>xii</sup>) is absent. We learn that recommendations from the regional group the Western European and Others Group (WEOG) and other groupings focusing upon accountability and justice are almost entirely rejected by the new military government. It is not surprising that these recommendations are largely focused upon the military government's methods of rule and focus largely upon rescinding the NCPO order on 'Maintaining Public Order and National Security' and the ending the use of military courts for civilians.

Geo-politics may also be evident if we consider that more recommendations put towards Thailand by members of the Western European and Others Group (WEOG) in the second cycle were rejected than accepted – in stark contrast with the recommendations from all other regional groups across both cycles. All recommendations offered from ASEAN members States in the second cycle were accepted, and only 2 of 21 were rejected in the first. This means that across the two cycles, over 95% of recommendations from ASEAN member States were accepted by Thailand.

Regional politics may be considered important for a number of reasons such as for economic and trade interests as well as for political unity and to negotiate bilateral disputes with bordering nations. This is likely to have had an effect on how Thailand responds to recommendations but also the recommendations that are put towards Thailand. Despite the proximity and political interest other Asian (and specifically ASEAN) States may have in Thailand, Asia was not the region from which the largest number of recommendations originated from. Rather more recommendations emerged from Western and European States who have historically been perceived as having a greater interest in international instruments and an outward-looking perspective on human rights situations overseas. This has played out historically as is evident in the Asian values debate of the 1990s in which human rights

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(particularly civil and political rights) were deemed a western concept imposed upon others while Asia was understood to be pushing for greater levels of sovereignty and non-interference.

### **III. Concerns about specificity**

A key concern that was found in the study is that the specificity of recommendations is often lacking and that those recommendations that are vaguer are on the whole more accepted by Thailand. While semantics may not be the first thing that comes to mind when thinking of recommendations the implications of specificity can be far-reaching and can affect, firstly whether the recommendation is accepted or rejected, but then later when trying to decipher the extent to which a recommendation has been implemented. A recommendation that is not specific leaves implementation open to debate and subjectivity with no credible way to learn to what degree the recommendation has been implemented or not. Furthermore, recommendations that often call for multiple actions create multiple indicators to measure implementation – some of which again fall upon subjectivity.

### **IV. Conclusion**

Recommendations found in the UPR of Thailand appear to be largely dependent upon three key conditions; the State from which the recommendation originates from, the issue being addressed in the recommendation, and the specificity and level of commitment that the recommendation requires. A recommendation is more likely to be rejected from the outset should these conditions not be favourable to Thailand, and they appear to operate upon a tier basis in the order mentioned in the previous sentence. If the rights issue that is being addressed is not favourable to Thailand then it is unlikely to matter from which state it originates from and the specificity of a recommendation appears to be the core deciding factor as, should a recommendation not require any commitment, then regardless of the issue or the originating state it is likely to be accepted. It also appears that the more sensitive the issue, the less likely those in the same regional group (or in ASEAN) are likely to raise it as a recommendation. The lack of a credible accountability mechanism, the reliance upon States to voluntarily offer recommendations, as well as for the SuR to voluntarily accept or reject them—let alone implement them—essentially means that the UPR initiative is operating as a forum to foster political agendas rather than adhere to international standards of human rights. It provides a platform for political positions to emerge and play out. What it should be commended for is its

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inclusion of civil society into such a mechanism. The legitimation of civil society in an international forum and the legitimation it accords to international human rights standards should not be overlooked. The success of the UPR appears to be the door that the initiative opens for civil society rather than the official process itself.

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### REFERENCES

- <sup>i</sup> de la Vega, C. (2013) *Dictionary of International Human Rights Law*, Cheltenham & Northampton, Edward Elgar Publishing, p. 186.
- <sup>ii</sup> United Nations (1948) *Charter of the United Nations*
- <sup>iii</sup> Buergenthal, T. (2006) *The Evolving International Human Rights System*, *The American Journal of International Law* Vol. 100, No. 4. p. 787.
- <sup>iv</sup> Boyle, K. (2009) *The United Nations Human Rights Council: Origins, Antecedents, and Prospects*, Oxford, Oxford University Press.
- <sup>v</sup> United Nations: Office of the High Commissioner for Human Rights (2016). *United Nations Commission on Human Rights*. [online]. Available at:  
<<http://www.ohchr.org/EN/HRBodies/CHR/Pages/CommissionOnHumanRights.aspx>>  
[Accessed 2 July 2016].
- <sup>vi</sup> Buergenthal, T. (2006). The Evolving International Human Rights System, *The American Journal of International Law*, Vol. 100, No. 4. pp. 791-.
- <sup>vii</sup> United Nations: General Assembly (2006) *Resolution 60/251 – Human Rights Council*
- <sup>viii</sup> United Nations: General Assembly (2006) *Resolution 60/251 – Human Rights Council*
- <sup>ix</sup> Human Rights Watch (2014) *UN Human Rights Council: Adoption of the UPR Outcome of the Democratic People's Republic of Korea*. [online]. Available at:  
<<https://www.hrw.org/news/2014/09/19/un-human-rights-council-adoption-upr-outcome-democratic-peoples-republic-korea>> [Accessed 2 July 2016].
- <sup>x</sup> United Nations: Office of the High Commissioner for Human Rights (2014) *Commission of Inquiry on Human Rights in the Democratic People's Republic of Korea*
- <sup>xi</sup> UPR Info (2011) *Responses to Recommendations – Myanmar* [online]. Available at:  
<[http://www.upr-info.org/sites/default/files/document/myanmar/session\\_10\\_-\\_january\\_2011/recommendationstomyanmar2011.pdf](http://www.upr-info.org/sites/default/files/document/myanmar/session_10_-_january_2011/recommendationstomyanmar2011.pdf)> [Accessed 2 July 2016]

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<sup>xii</sup> United Nations (2014). United Nations Regional Groups of Member States. [online] Available at: <<http://www.un.org/depts/DGACM/RegionalGroups.shtml>> [Accessed 5 August 2017].