

Human Rights and Peace in Southeast Asia Series 5

PUSHING **THE** BOUNDARIES

Edited by

Azmi Sharom
Sriprapha Petcharamesree
Yanuar Sumarlan
Vachararutai Boontinand
Joel Mark Baysa-Barredo

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The Southeast Asian Human Rights Studies Network (SEAHRN) is an independent consortium of academic institutions and research centres which provide human rights and peace education through study programmes, research and outreach activities within the Southeast Asian region. The Network, which was established in 2009, currently has 20 members from seven countries: Cambodia, Indonesia, Lao PDR, Malaysia, The Philippines, Thailand and Vietnam.

SEAHRN was born out of a common dream to enhance and deepen the knowledge and understanding of emerging and seasoned scholars, educators, researchers and advocates as well as other stakeholders from the Region about human rights and peace. The goal will be achieved by engaging in collaborative research, improving course curricula and study programmes, sharing of best practices and conducting capacity building training of educators, staff and students. Furthermore, it seeks to strengthen regional academic and civil society cooperation to sustain effective promotion and protection of human rights and peace in the Region. The Network desires to open its doors to interested institutions and individuals who share its vision for human rights and peace in Southeast Asia.

Human Rights and Peace in Southeast Asia Series 5: Pushing the Boundaries

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FOREWORD

The United Nations learning lessons from the devastating second World war placed unprecedented importance in human rights. Article 1 of the UN Charter states that one of the purpose of the UN is “to archive international cooperation in ...promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.” Promotion of and respect for human rights was considered pivotal for maintenance of universal peace and security. Three years later in 1948 the Universal Declaration of Human Rights (UDHR) was adopted. The UDHR has been considered and generally accepted as the manifestation of common standards for all governments and individuals.

During the past 67 years the international community has witnessed the gradual but steady advancement of the internationalization of human rights. At regional levels the European, Inter- American, and African Charters adopted the values set out in the UDHR for regional application.

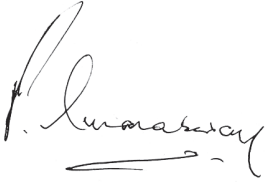
In Asia at a sub-regional level the ten member nations of ASEAN in 2007 became a rule based body under a Charter which provided, among others, adherence to the rule of law, good governance, principles of democracy and constitutional government, respect for fundamental freedoms, promotion and protection of human rights and upholding the UN Charter and international law including international humanitarian law. The Terms of Reference (TOR) also expressly provides for upholding international human rights standards as prescribed in the UDHR. To carry out such wide ranging provisions the Charter provided the setting up of a human rights body. In 2009 the ASEAN Intergovernmental Commission on Human Rights (AICHR) was established with a set of Terms of Reference. AICHR functions with ten Commissioners one from each State.

Despite such an extensive international and regional framework for the promotion and protection of human rights violations, sometime serious, continue threatening peace and security as admirably documented in some of the essays compiled in this publication. Though the ASEAN Charter and the TOR provide for promotion and protection of human rights protection it is hindered by the non-interference in the internal affairs of ASEAN member States provided in the same Charter and the TOR.

The essays compiled in this publication addresses a wide range of topics like the pros and cons of the South African truth and reconciliation process; rights of children to participate in matters affecting their lives; Civil Society Organisations participation in the drafting processes of ASEAN instruments; women participation in politics in Cambodia; analysis of the manner which the Little India riots in December 2013 were handled by the authorities in Singapore; the impact of economic liberalization on trade unions in Vietnam;

and the marginalization of undocumented migrant workers in Malaysia. The authors of these essays must be congratulated for their painstaking research and presentation.

This publication is a welcome contribution to ASEAN in the wake of the establishment of a single ASEAN Community on December 31 2015.

A handwritten signature in black ink, appearing to read 'P. Cumaraswamy', with a horizontal line underneath.

Dato' Param Cumaraswamy

Founding Member

Working Group for an ASEAN Human Rights Mechanism

A Note of Gratitude

The names of the editors on the cover of this book is misleading. That is not to say that the editors did not do their work; on the contrary the editorial team has strived hard to complete this latest edition to our series. It is misleading because it implies that they are the only ones involved in the process of producing this book. The fact is a large team of people are involved. This is especially true in the screening process where SEAHRN members collectively go through the many papers that we have and then select the ones we think are most suitable for publication here.

Therefore it is with gratitude and much appreciation that we acknowledge the following people:

- **Theresa Casal de Vela, Miriam College (Philippines)**
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- **Elizabeth Pangalangan, University of the Philippines (Philippines)**

Together we have once again demonstrated the team work that characterises SEAHRN and what can be achieved with it. Long may it continue!



Azmi Sharom
Chief Editor



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INTRODUCTION

Locating a Community For and By Peoples

“We resolve to consolidate our Community, building upon and deepening the integration process to realise a rules-based, people-oriented, people-centred ASEAN Community, where our peoples enjoy human rights and fundamental freedoms, higher quality of life and the benefits of community building, reinforcing our sense of togetherness and common identity guided by the purposes and principles of the ASEAN Charter (Paragraph 4, ASEAN Community Vision 2025).”

The ASEAN Community Vision 2025, adopted in 2015, aimed to solidify a common understanding of a regional identity and agenda. Over recent years, ASEAN had been promising and a brighter and more prosperous regional community. While this is so, peoples located in all corners of Southeast Asia are consistently navigating through various spaces of both opportunities and challenges. Many have surrendered to the need of pushing boundaries—in pursuit of better chances in life, or mere daily survival. Moreover, contrasts that solidify inequality and injustice amongst individuals and societies are still abound-- socio-economic gaps are widening, fundamental freedoms are curtailed, marginalised peoples remain at the gutters of society, and many forms of violence are still experienced.

This Series aims to expose issues found within a region longing for better promotion and protection of human rights, fundamental freedoms and peace. Strengthening knowledge is a key factor in rousing interests and supporting efforts to eliminate boundaries that divide and marginalise peoples. Such is a crucial first step in attaining a vision of an integrated community owned and accepted by all.

In this regard, all nine articles chosen for this Series are armed with narratives, discourses in pursuit of contributing to this arduous academic mission. For the purpose of this introduction, the articles are divided into three categories: niching for the weakest, negotiating, and advancing charges.

1. Nicheing for the Weakest

The first group of “nicheing” begins with Chaiwat Satha-anand’s keynote speech for the Third International Conference on Human Rights and Peace & Conflict in Southeast Asia entitled, “Traces of Reconciliation under the Conflict Shadow in Southeast Asia (?).” He unravels the nexus between human rights and peace and its impact in achieving meaningful justice and reconciliation. Echoing Satha-anand—himself a peace academic and worker-- his “thesis is that the promise of reconciliation lies in the ways political conflicts where gross human rights violations often occur are seen. Unpacking the visuals of these conflicts into areas of light and shadows, I would argue that by looking into the shadows of these conflicts, it might be possible to find traces of human actions conducive to reconciliatory moves necessary in fostering a humane world where rights to life, the most basic form of human rights, is respected.”

He brilliantly uses narratives to unearth human qualities amidst national and global socio-political crises such as political unrest in Thailand, Holocaust, the Attack on Malaysia Airlines’ MH17, and conflicts in Pakistan and Liberia. Satha-anand chose this approach to prove that it is through one’s free will and deliberate choice can hate and further atrocities set by socially and politically constructed boundaries can be avoided and eliminated. Thus, reconciliation, justice and lasting peace can possibly be achieved—even in a wounded and conflict-ridden region like Southeast Asia.

Chantevy Khourn’s article entitled Women’s Participation in Politics in Cambodia reveals the real cases of challenges Cambodian women have to face in picking their roles in politics. While Cambodia has seen an increase in percentage of women representatives in the country’s General Assembly from 5.8% in 1993 to 20.3% in 2013 as a result of commitment and actions toward gender equality made at international and national level, Chantevy argued that Cambodian women continue to face challenges to their political participation stemming from adherence to traditional gender roles and belief, a low level of education and confidence on the part of the women themselves as well as a lack of political will and adequate political framework to promote women’s participation in politics. Part of Chantevy’s article focuses on the experiences of four Cambodian women who became involved in politics either at the local or national level, and representing perspectives from both the government and civil society.

It is clear from the cases illustrated that the two women who come from better-off family backgrounds receive supports from their families which enable them to engage in politics. This is in contrast with the other two women who grew up in a poor or ordinary family background and have to face different kinds of challenges from their own family and the public while making their ways into politics. The different views expressed by the two women from the well-to-do background on challenges for women’s participation in politics as pointed out by Chantevy reflect the need to address both the question of political will to put in place affirmative action measures and the attitudes

and perception at personal, family and societal level to be more supportive of women's political participation.

The third “niching” starts with a very acute set of observation that, first, the structure and modalities of the ASEAN Children's Forum (ACF), which are supposed to put children's interests into some proper places, ironically reinforce the exclusion of some children in ASEAN members. Second, these modalities are actually detached from the immediate contexts of children. This article later offers a “reimagination” of child participation in ASEAN. After the UN Convention on the Rights of the Child or UN CRC, ASEAN's Declaration on the Commitments for Children in ASEAN in 2001 committed to “create opportunities for children and young people to express views, advocate their rights and concerns, and participate in community development” through the so-called ASEAN Children's Forum. The author Ryan Silvero, however, noticed a critical view of Gaventa (*Finding the Spaces for Change: A Power Analysis*, 2006) that the concept of participation is not neutral but is shaped by power and designed as a means of control.

The structure and modalities of the ACF are non-inclusive for their problematic [state delegates] selection process. The selection of participants has been based, for example, on internal guidelines and processes of sending governments—in short, subject to adult control and permission. The next challenge appears when political and social structures and contexts at the domestic level mediate against participation of children with unrecognized or maligned identities. It is important therefore, as the author has argued, that there must be multiplicity of spaces for children's participation and that these spaces, which exist within and beyond the immediate contexts of children, must reinforce each other to bring about positive changes for children.

The fourth “niching” is offered by Huong Ngo's ‘Trade Union in Vietnam: Implications of Economic Liberalization’ that analyzes changes in trade union practices that took place with the opening of economic system of Vietnam through Doi Moi Policy in 1986. Trying to fix their niches in the changing situation, the state workers of Vietnam must face challenges from the market economy, changes in relationship between the Vietnam General Confederation of Labor (VGCL) and the State, changes in laws and regulations, and changes in roles and operations of the trade union. The biggest challenge from the market economy appears in the consistent drop of State's and workers' ownership from 80-100 percent shares in State-owned Enterprises (SOEs) before 1986 to 35 percent in 2001. In 2002 in fact the legislation eliminated the fiction of ‘workers as masters of production’.

Change in the relationship between the workers and the State happened when the workers' union was turned into Vietnam General Confederation of Labor and was expected to be more responsive to the demands of workers by providing legal advice and joining collective bargaining process in peaceful democratization process. The two key laws on the role of unions, which are the Labor Law and the Trade Union Law, have been

amended five times between 1994 and 2012 with labor regulations and labor rights well articulated but none provided for freedom of association and the formation of unions. The Law on Trade Unions that currently imposes a 2 percent trade union levy based on the payroll of the employers offers companies reasons not to establish unions.

The role of Vietnam's trade unions was basically ruled by the 1990 Law on Trade Union into four functions: to protect the interests (benefits, visits, parties for children) of workers, to participate in managing assets and properties of SOEs, to encourage workers' productivity, and to educate members in socialist ideology (artistic and sports competitions). These basic functions, however, have been amended in 2006 to focus on raising awareness among the workers and the union staff about legal mechanisms and policies on their rights developing model for grassroots unions and professional unions, and monitoring the implementation of the policies related to the workers. The author argues that although Vietnam's Trade Union has become more autonomous from the State, it can hardly be considered a fully independent. The ability of the trade unions to effectively offer protection for and respond to interests or the union's members in the context of economic liberalization is also raised.

2. Negotiating against the Overwhelming but Mendable

These negotiation moves of the most marginalized – the non-citizens – will be explored through cases of migrants workers who faced arbitrary deportation in Singapore and those surviving the harsh conditions of being undocumented workers without rights and protections in Malaysia. The negotiation by the last group – the displaced persons in a refugee camp in Thailand – is an evidence of how the dynamic of control of authorities vs. agency of the “marginalized” is being played out. We start with Chen Siyuan's “The Repatriation of Foreign Workers and Due Process in Singapore”. Situating his piece on the riot case connected to foreign workers of Indian national in Singapore's Little India, Chen Siyuan examined the state's power, its procedures and mechanisms for repatriation of foreign workers. The article reveals the harsh claims of both labor and state laws and international standards that ended up with the supremacy of state sovereignty when over 4,000 foreign laborers were investigated after the riot. Out of this number, 400 foreign workers were indicated as having been subjected to intensive investigation resulting in 200 of them being issued ‘advisories’ to comply with Singapore laws, 28 charged with rioting, and 57 repatriated as threat to safety and security of Singapore. The ‘negotiation’ begins when the international and local rights groups criticize the arbitrary deportation and lack of public accountability, transparency, and due process. The author finds that removal of foreign nationals from Singapore is permissible under Section 33(1) of Part V of the Immigration Regulations and the Employment of Foreign Manpower Regulation 2012. For those who have been repatriated, the possibility of appealing against such decision is provided by Section 33(2) of the Immigration Act. However, applicants must satisfy certain conditions before leaving the country in order for the judicial review can be granted the subject must be within the judicial review, the applicant has locus standi

in the matter, and the material before the court discloses an arguable or prima facies case in favor of granting the remedies sought by applicant – the conditions which could be difficult to satisfy. The author further points out that international legal framework relating to migrants, especially the UN Migration Convention provides latitude for “competent [local] authority” to have the final decision on deportation, and hence, does not offer adequate protection. As such, the paper concludes that notwithstanding the increasing attempts by human rights advocates it would seem that the best argument is that there should be greater due process.

The next paper by Aris A. Mundayat, entitled ““The Marginalizen” in Malaysia: Human Rights Predicament and The Future Challenge of ASEAN Integration”, presents the second type of negotiation by the migrants with a more precarious position than that of foreign labors in Little India Singapore. Discussing the cases of five undocumented migrant workers from Indonesia and Myanmar in Kuala Lumpur, the author tries to show how these undocumented migrant workers have been surviving for more than 10 years without enjoyment of any rights and thus protection from both sides of their journey. This bare survival has been possible through what the author calls “horizontal network” that centers around “intermediaries” (typically Indians) who serve as job providers through words of mouth, home (flats) providers, protectors from police in petty legal violations, providers of protection from officers-cum-rent seekers, etc. Marginalized (thus “marginalizens” or marginalized “citizens”) and invisible, these migrant workers rely on the patron-like intermediaries for otherwise legally available services such as “health facility” (bone healers, traditional masseuse, herbal medicines, etc), “money transfer” (marginalizens cannot open a bank account), and other social system for life supports.

The author concludes that ASEAN as an organization must become more active to solve the problems of undocumented migrant workers by lifting up barriers to open people’s mobility towards the impending ASEAN integration. Thus the underground operations of migrant workers syndicates (predatory in nature) and anti-transparency nationalist regulations should also be cleaned up.

The third kind of negotiation as told by Supatsak Pobsuk’s “Governing and Negotiating under Identification Regime: Case Study of Displaced Persons in Mae La Refugee Camp” appears as the most difficult venture for the migrants/refugees. Their physical existence at the brink of deportation in a border town exerts stronger pressures for them to show more respect to the regulations imposed single-handedly on them by the Thai authorities. Brandishing an taxonomus regime of calling and giving documents to “Displaced Persons Fleeing Fighting” in local vernaculars—termed by the author as Foucauldian technologies of power through Identification Regime—Thai authorities try to control the refugees inside camps. Through this regime the authorities engender hierarchical gradation by classifying individuals into categories which have different levels such as full, partial, and non-status. Taking 15 refugees (five registered, five unregistered and five new arrivals), the author finds the politics of inclusion and exclusion emerging to identify

and verify who has rights to be members in refugee camps. The known five identification documents are the MOI-UNHCR Household Registration Document (MOI-UNHCR HHRD), the ID Card for displaced persons, the TBC Ration Book, Household Census, and the travel permission document. Getting registration with the MOI-UNHCR HHRD as official document, for example, can nourish the prospect of displaced persons to seek better opportunities for lives in the camp; the Ration Book is a blue book containing data of household members and list of food items for them (rice, flour, fish paste, salt, cooking oil, etc). The Household Census—handwritten to show photo, name, date of birth, sex, ethnicity, address and date of arrival—is the first important document to be camp members and to access humanitarian assistance.

While pointing out that humanitarian assistance is never separate from the power of controlling, the author also argues that displaced persons also use “refugeeness” as a strategic technique to access humanitarian assistance and other privileges. As such, displaced persons are also active agents negotiating with controlling power of authorities.

3. Advancing Charges

Three of the nine papers belong to the group of advancing charges against the known system: Laura Rouhan on LGBTIQ online activism in Indonesia, Gisle Kvanvig on ASEAN’s principle of non-interference, and James Tager on CSO engagement and tactics in relation to ASEAN Charter.

Laura Rouhan’s *Online activism for LGBTIQ Human Rights in Indonesia* retells a history of awakening of voices of LGBTIQ in Indonesia through the Internet. During the past two decades the main LGBTIQ activism in Southeast Asia had matured from one with a HIV/AIDS and health focus into a rights-based movement with greater diversity and breadth. The end of the authoritarian rule of Gen. Suharto in 1998 opened up democratic spaces and the number of LGBTIQ organizations and groups in Indonesia soared. For the first time, organizations began to openly identify themselves as LGBTIQ organizations to cover over 70 million Indonesians through ADSL, Fixed line, Mobile, and Satellite services. However, negative or anti-LGBTIQ sentiment also grew when the Internet had turned into a contested space for social and political issues in Indonesia as like in other places. Groups or individuals who are not supportive to the growth of the human rights of LGBTIQ groups use the same space to discriminate, bully, threaten, and censor the LGBTIQ groups. This online homophobic bullying and discrimination finally reached the Internet Service Providers (ISPs) in 2011. This set anti-human rights policy and regulations gets a nod from the order of the Ministry of Communication and Informatics. Suddenly, the State apparatus is using the newly enacted Pornography Act of 2008 to suppress and equate homosexuality or LGBTIQ contents with pornography and criminal. The ban had been applied to some important LGBTIQ websites including the International LGBTIQ Human Rights Commission, Our Voice (OV), and Institute Pelangi Perempuan (IPP). Claiming these websites as sites with pornographic contents,

the Ministry failed to offer transparent, clear, or accountable explanation for such censorship.

Gisle Kvanvig's "The Frenemies Within: Sovereignty and human rights" quickly throws a charge that the history of interference and intervention in ASEAN points to a more dynamic and flexible approach to non-interference and sovereignty that what is commonly perceived. Questioning what does sovereignty protect in ASEAN Member States (AMS), the author squarely insists that non-interference and sovereignty continue to be used to protect political orders both individually and collectively. As this is the case, the author suggests that in order for an improved human rights regime to emerge in the region, structural issues relating to power, sovereignty and statehood that impact on governance must be first resolved at domestic level.

The final paper by James Tager, "Engagement, Vision, Response: A Comparison of CSO Engagement and Tactics in Relation to the ASEAN Charter and the ASEAN Human Rights Declaration" examines the civil society tactics for engagement and advocacy on the two main regional human rights documents. The author points out that while civil society groups adopted similar approaches and steps in their advocacy efforts through engagement within the ASEAN structure, proposal of an alternative vision, and response to the finished product, there are important differences in their actual tactics for the two processes.

During the Charter drafting, CSOs formed Solidarity for Asian People's Advocacy Working Group on ASEAN (SAPA-WGA) to present some proposals and opinions, i.e., opinions on the Economic Community, to "use expertise to be agents for creating caring societies within an ASEAN community and to have institutionalized input into ASEAN's decision-making apparatus". For campaigns facing the 'secretive' drafting ASEAN Human Rights Declaration, CSOs attempted to lay out their vision and input for the Declaration itself. When CSOs realized that ASEAN Inter-Governmental Commission on Human Rights was lacking engagement, they shifted the focus to the lack of transparency within the Declaration drafting process. When the Declaration was finally signed on 18 November 2012, many CSOs declared their rejection of the Declaration through a joint declaration by 54 CSOs.

Reflecting on the different tactics adopted during advocacy efforts on the two documents, the author first pointed to the CSO's assessment of the level of regressivity of the documents, with the Declaration being more of a step backward. Thus, civil society response to the Declaration has been harsher than that of the Charter. Second, the Charter went through a ratification process during which civil society could be included in a conversation about the Charter after its final form had been decided; the Declaration, however, was presented as a *fait accompli* after its signing. Third, in the five years between the Charter and the ASEAN Human Rights Declaration, civil society groups have been more confidently asserting their place within the ASEAN conversation. This increased

commitment to ASEAN-level advocacy is encouraging sign for the fulfillment of the goal of a people-centered ASEAN.

4. Ready for the Push

Contributors to this Series have reminded us that different groups and sectors from different countries in the region continue to negotiate with state and regional powers in order to push for a greater recognition and protection for their rights. In the cases of women and children who have been calling for a greater space for participation, traditional societal values play an important role in hindering the opening up and accessibility to such space. The boundaries that are being negotiated by workers – both local and migrant – have become increasingly more complex as a result of the liberalization of the economy and the interplay between the differing domestic and international legal frameworks. Although in most cases the boundaries set out by state authorities are rigid and controlling, we are also told not to lose sight of the agencies of those who are pushing the boundaries. The account of the displaced persons in a refugee camp in Thailand has enabled us to better appreciate the power-agency dynamics at play in any rights-negotiating discourse.

While realizing that the road toward a more rights-embracing ASEAN community will be long and windy, there are reasons not to be pessimistic about the journey. Non-traditional groups like the one advocating for LGBTIQ rights has come on board to shake the norms and help pushing the boundary a step further. There are also lessons to draw on from years of civil society advocacy and engagement at the regional level to advance the human rights norms and practices. It is our hope that readers of this Series will become more informed about the issues, more agitated and inspired to help push the boundaries which have confined us from having a life with dignity, wherever we are.

TRACES OF RECONCILIATION UNDER THE CONFLICT SHADOW IN SOUTHEAST ASIA

Chaiwat Satha-Anand

** A keynote speech at the Third International Conference on Human Rights and Peace & Conflict in Southeast Asia (October 2014, Kuala Lumpur, Malaysia)*

In a recent study comparing 40 truth commissions with the South African Truth and Reconciliation Commission, a researcher from Amnesty International argues that the hegemonic South African model of “amnesty for truth” in both legal and policy discussions about truth-seeking mechanisms and public perception of truth commissions is not justified. One of the problems facing truth commissions is a distinction between ‘inadmissible’ blanket amnesties and ‘admissible’ conditional amnesties, when such amnesties cover serious human rights violations. She points out that most truth commissions have not regarded the South African model of “granting amnesty for serious human rights violations in exchange for information” an accepted practice. Instead, they are in favor of prosecutions for all perpetrators of human rights violations. She also concludes that the stories of truth commissions around the world could be seen as stories of bravery against impunity, oftentimes at great personal risks, and attempts towards accountability frustrated by governments in power (Pizzutelli 2010).

Using Pizzutelli’s work as an entry point, this keynote address is an attempt to suggest that the problem of “blanket” and conditional “amnesties” arises out of how human rights violation in conflict is seen as well as the importance of seeing social phenomena, such as the performance of truth commissions, as stories. My thesis is that the promise of reconciliation lies in the ways political conflicts where gross human rights violations often occur are seen. Unpacking the visuals of these conflicts into areas of light and shadows, I would argue that by looking into the shadows of these conflicts, it might be possible to find traces of human actions conducive to reconciliatory moves necessary in fostering a humane world where rights to life, the most basic form of human rights, is respected. In arguing along this line, this keynote address has only 5 words: reality, tensions, shadows, story, and choices.

1. Reality 1

On July 17, 2014, MH 17 was downed and the new world disorder where “clarity seemed to follow in silence” was born. It was born when the bodies and belongings of 298 people tumbled out of the sky and then lay unhallowed and uncollected in the fields of Eastern Ukraine because political responsibility is no longer fixed where it belongs. As a result, consequences for such horrifying actions have not been seen, security guarantees are not given to the vulnerable, and these guarantees- the rights to life of people who are free to travel, to fly far above conflict terrains without any ill intention to conflicting parties- are no longer believed (Ignatieff 2014 b, 30). Ignatieff argues that “we” are entering the third phase of globalization when political convergence ended in 1989. In this new world disorder, capitalism turned out to be politically promiscuous, no longer allied to freedom but ready to partner with authoritarian rules. Economic integration, instead of softens conflict, actually has sharpened conflicts between open and closed societies. He writes: “From the Polish border to the Pacific, from the Arctic Circle to the Afghan border, a now political competitor to liberal democracy began to take shape: authoritarian in political form, capitalist in economics, and nationalist in ideology” (Ignatieff 2014 b, 30).

Some have argued that the tragedy of MH17 is a product of ruthless political economy of energy where Russia could not allow its flow of gas from Eastern Siberia into Eastern Europe to be interrupted by an independent Ukraine with freedom to choose to align herself with the European Union. To pursue such ends, it could be speculated that what in fact happened was that the Russians were targeting a Russian commercial plane. Once shot down over Ukraine, it would provide a valid justification for a planned Russian invasion. Putin’s motivation in such a conspiracy theory notwithstanding, it is sickening to ponder the fact that a commercial plane could become but a pawn in a calculus of increasingly deadly conflict. It also needs to be pointed out that after September 11, 2001, the rights to travel by commercial plane has been compromised in more ways than one since under certain circumstances they could become targets of attacks and destroyed by the country they are flying high above. For example, the Hungarian Minister of Defence informed the media in 2004 that the government has adopted a secret resolution permitting the shooting down of any civilian aircraft suspected of being used to carry out terrorist attacks. The destruction of the civilian aircraft in question is permitted when all contacts with the aircraft were lost or the aircraft deviates from its planned route without “suitable explanation”. What is even more worrying is his claim that every NATO member must have a similar resolution (The Budapest Times, June 28-July 4, 2004).

2. Reality 2

What does it mean to speak about human rights and peace in Asia Pacific in general or in Thai society at this time-October 2014? It means at least 4 things: first, I speak under the spectre of the May 22 coup where the junta claimed, perhaps with some truths, that it was necessary to put an end to the prevalent use of violence alongside expressive uses

of rights to protest nonviolently in order to restore security. Second, I speak as someone who wrote an op-ed piece titled “The sound of the coup” right after the coup which argues that its sound is mainly one of hopelessness in peaceful political process (Bangkok Post, June 5, 2014-op.ed.), and yet I have to continue to work with friends from all political spectrums in my capacity as the chair of a small think tank policy group called: Strategic Nonviolence Commission (SNC). Third, I speak as a citizen under an interim constitution 2014 whose character is reflected in Section 44:

“In the case where the Head of the National Council for Peace and Order is of the opinion that it is necessary for the benefit of reform in any field and to strengthen public unity and harmony, or for the prevention, disruption or suppression of any act which undermines public peace and order or national security, the monarchy, national economy or administration of state affairs, whether the act emerges inside or outside the Kingdom, the Head of the NCPO shall have the powers to make any order to disrupt or suppress regardless of the legislative, executive or judicial force of that order. In this case, that order, act or any performance in accordance with that order is deemed to be legal, constitutional and conclusive, and it shall be reported to the National Legislative Assembly and the Prime Minister without delay.”

Fourth, I speak as an academic supervising several theses in political science, and since my interests lie in the fields of violence/nonviolence, one of these theses is on suicide. My student is looking at cases of suicide among farmers in Thailand which have been on the rise since early 2014 resulted from the previous government’s failure to pay them for the rice they pawned, among other things. But then the striking fact is that suicide among farmers is a global crisis. The suicide rate for farmers throughout the world is higher than the non-farming population. In the Midwest of the U.S. suicide rates among male farmers are twice that of the general population. In Britain farmers are taking their own lives at a rate of one a week. In India, one farmer committed suicide every 32 minutes between 1997 and 2005. More than 100,000 farmers have taken their lives since 1997—86.5 percent of farmers who took their own lives were financially indebted. Their average debt was about \$835. On average, there has been one farmer’s suicide every 32 minutes since 2002. The tipping-point is relatively low: A crop failure, an unexpected health expense or the marriage of a daughter are perilous to the livelihood of these farmers. Suicide has spread like an epidemic among distraught farmers, many of them have committed suicide by drinking the very pesticides that no longer work on their crops (Center for Human Rights and Global Justice 2011). As a form of human atrocity, one also has to raise the question of what happens to their families after farmers committed suicide? Here is a small and sad list from India: farms are confiscated due to inability to pay back high interest loans; harassment of the family by corrupt money lenders; widows burdened with the new responsibility as the sole breadwinners; children who sometimes lose both parents to suicide can no longer afford education since they have to work and earn their livings.

3. Tensions

It goes without saying that the terms human rights, peace and conflict can mean several things, can be contested, and can be used to justify both domination and resistance to existing forms of state power. It is important, however, to understand that when one is working on the “human” faces of rights, peace and conflict, the notion of what constitutes being human itself is not unproblematic. Though different cultural locations of being human can certainly be discussed, I want to call attention to its epistemological side. By that I mean, the notions of being human could be construed as a product and/or a process, or in Aristotelian terms as an actuality and/or a potentiality.

In the evolution of the concept of human rights, when the notion of human is understood as a finished product/actuality, his/her civil and political rights have generally been underscored. But if they are seen as a process/potentiality, then conditions that would make it possible for people to realize their full potentials such as health care and education would also be inherent in the more expanded notion of human rights. More problematic, or I should say crazier, are those who choose to work, and by “work” I mean not as a detached academic or a solemn critic but as engaged academics, in the in-between space between human rights, peace and conflict. They cannot avoid the fact that they have painted themselves into a highly contested terrain between different tribes, much of the time with competing languages, rationales and experiences.

4. Shadows

I began this address with realities and tensions. It is a way of saying that the works that all of you/us have been working on, though admirable, is difficult and at times stressful. How then could one search for meaningful actions that might allow us all to continue to work in the context of such difficult realities? Perhaps to find meaningful actions in the midst of deadly realities, it is important to look into their shadows?

As a peace researcher, I would suggest that most arms-related negotiations take place in the shadow of conflict and violence. To focus only on the highly visible weapons and violence issues would oftentimes mean to ignore the success of negotiation, such as those that lead to the functioning of the nuclear nonproliferation treaty (NPT), which often takes place in its shadow (Suleman, 2008). Is it then possible to imagine that sometimes a clue as to how a conflict would unfold might be found in its shadow?

From a Jungian perspective, everyone carries a shadow and perhaps in spite of its function as a reservoir for human darkness, some would argue, with Erich Neumann, that:” The self lies hidden in the shadow; he is the keeper of the gate, the guardian of the threshold. The way to the self lies through him; behind the dark aspect that he represents there stands the aspect of wholeness, and only by making friends with the shadow do we gain friendship of the self....” (quoted in Zweig and Abrams 1991, 6). Put another way,

not only will darkness be found in the shadow, but a gateway out of it in the form of “stories” may also lie there.

5. Story

To paraphrase Michael Ignatieff’s statement on foreign policy, I would say that perhaps most policy makers and many human rights advocates may consider narratives and stories the province of language scholars or novelists. But then narratives are stories about what history means and what they justify. Some would argue that it is these stories which constitute the single most decisive mental construct presently shaping human rights/peace policies and discourses (Ignatieff 2014 a).

In *The Righteous Mind: Why Good People are Divided by Politics and Religion*, Jonathan Haidt maintained that: “It would be nice to believe that we humans were designed to love everyone unconditionally. Nice, but rather unlikely from an evolutionary perspective. Parochial love – love within groups – amplified by similarity, a sense of shared fate, and the suppression of free riders, may be the most we can accomplish” (2012, 245). This is because Haidt believes that functioning moralities must draw on intuitive emotional responses, namely care/harm, liberty/oppression, fairness/cheating, loyalty/betrayal, authority/subversion, and sanctity/degradation to control behavior, and that reason plays a relatively minor role in morality.

Perhaps a way to call Haidt’s opinion into question is by looking into the shadows of extremely deadly conflicts to find stories of the prevalence of actions where ordinary people risked their lives to cross the enemy lines to help those from outside their circles (Satha-Anand 2001). Let me provide three stories from the shadows of three extremely deadly conflict cases—the Nazi holocaust, the partition of India, and the massacre in Liberia.

5.1 Nonviolent actions of SS guards

The courage of Oscar Schindler, a German and a member of the Nazi Party, who helped thousands of Jews from concentration camps and death at the gas chambers, was well known, especially since Spielberg turned the story into an Oscar – winning movie— “Schindler’s List” in 1993. A question could be raised: is such human kindness that transcends the line dividing the “enemy” from “us” but an exception due to an individual’s idiosyncratic nature? The answer must be a resounding NO because there are cases of even SS officers helping the Jews as well, including that of Viktor Pestek.

Viktor Pestek was an SS guard at Auschwitz. He offered to help his victims escape by dressing them in an officer’s uniform and leaving the camp with him. Suspicious at first, one inmate accepted the offer and the Pestek’s plan succeeded. He returned to arrange more escapes but he was caught and executed. Apparently, he was once helped by his

“enemies” before. When he was fighting on the Russian front, he was wounded and left behind by his troops. After several days, members of a Russian family found him. Instead of killing him, they saved his life.

“He never forgot that these people had saved his life when they had absolutely no reason to spare a uniformed SS officer whose unit had just massacred their entire village” (Todorov 1997, 202).

In fact, there are reports from other prisoners that their lives were saved by several SS guards (Staub 1995, 141). There was also a case of an SS guard who accompanied two children and their fathers from Schindler’s camp to Auschwitz and then accompanied three hundred women from Auschwitz back to Schindler’s camp, acting in humane, friendly, and helpful manner, even crying in response to their sorrow (Staub 1995, 141).

5.2 A Sikh who saved a Muslim woman

A couple of days after independence in 1947, a group of 200 people from the Sikh and Hindu-dominated villages planned an attack on the Muslim camp in Meharbanpura. The leader of the group was a Sikh fanatic by the name of Bhan Singh who was later killed during the attack. His son, Harbans Singh, a head constable at Jhabbal in the Khem Karan area found a helpless young Muslim woman, Nawab Bibi, whose immediate family had been murdered and was left without relatives. The Sikhs gave her shelter and she stayed there. In early 1949 after partition, Nawab Bibi was taken away by some Pakistani officials. Harbans Singh tried to look for her at the border and everywhere without success. He then used the Muslim name of Barkat Ali, and with bribery managed to cross the border into Pakistan. In Lahore, Barkat Ali produced some papers to show that he was a displaced Muslim from the outskirts of Amritsar and was allowed to start a small business there. Barkat Ali, or Harbans Singh the son of the feared fanatic Bhan Singh, killed by the Muslims, kept trying to trace his “beloved” NawabBibi, a victimized Muslim woman whose entire family was killed by the Sikhs. Finally he managed to find her (Nandy 1999, 325-326). Although the Indian newspaper which reported this story did not say if they lived happily ever after, Nandy characteristically ends his article with this sentence: “But frankly, I would like to believe that they do” (Nandy 1999, 326).

5.3 Charles Taylor’s good soldier who helped the Mandingo people

In June 1990 at a small Liberian town of Bakedu, there was a massacre. On that day, two pick-up trucks full of armed NPFL fighters, the feared Charles Taylor’s National Patriotic Front of Liberia (NPFL), led by a woman commander burst into the village. The commander shouted at the trembling villagers gathered in a hut and said: “You, together with your belongings, belong to us. We will kill you because you are Mandingo people, strangers and not citizens. So we will kill all of you on this land.” The soldiers

opened fire at everyone in the hut, including children, killing 36 people instantly. Then they went out to kill some more. Some 350 villagers were killed in the shooting that lasted thirty minutes. After telling the story of the killing to the visitor, a village elder walked over to a spot by the river, near the mosque where people fled in panic on that very day and said:” There was soldier standing here too, but he was a good man and let the people pass by him without shooting them.” Other villagers nodded, also remembering this good but unknown soldier who has entered their collective memory of goodness in the midst of killing time (Slim 2008, 9-11, the quotes appear on p.10 and 11 respectively).

Cases and stories like these are usually relegated to the realm of exception. But here I wish to invoke the thought of Emmanuel Levinas to explain the acts of that nameless Liberian “good” soldier, and perhaps the S.S. guard Pestek and the Sikh Harbans Singh as well. The French philosopher argues that the acts could be the result of a sudden normative decision that is less rational from a conventional perspective but is quite beautifully surprising. This sudden turn takes place as a result of “pure emotion” when one human sees the face of another – imagine the eyes of Taylor’s “good soldier” when he saw the fear and suffering in the faces of the Mandigo villagers fleeing the bullets of the NPFL. This encounter of the other as a face, Levinas maintains, is to encounter him/her in a state of absolute alterity to oneself. The face one sees becomes irreducible because it “is present in its refusal to be contained” (Levinas 2002, 194). This is perhaps because the face is naked and vulnerable. It is at once common to all and yet absolutely unique at the same time. As a result, the act that followed from such encounter forecloses conventional ethics and makes it possible to cross institutional or other cultural lines that separate one human being from another.

These stories serve to show that if one looks carefully even in the shadows of deadly conflict, one could find acts of human kindness to those earlier demonized as the enemies. The problem is to connect these acts lying in the shadows of deadly conflict with the ensuing peace and conflict transformation projects that often try to move societies beyond the traumatic history of past, or at times continuing, violence.

Looking into the shadow of deadly conflict and find stories like the ones I choose to share here could serve as an antidote to the memory cage that would lock a society of past violence in a petrified moment without hope. These stories, though small and likely to be individuals’ stories, are important since in this day and age, the power of story could be much more powerful in shaping the course of conflict (Nye 2005). The smallness of these stories could also be extremely powerful since it could be argued that the shape and form of gigantic political changes in Poland after the fall of Soviet Union could be better understood if one looks at the small things, oftentimes relegated to the realm of shadows. Goldfarb points out that it was the Polish student theatre movement, organized in the 1970s, with the sort of public it helped constitute, and the kind of expression it presented to the Polish public that prefigured the Solidarios movement and thus ushered in the

transformation of the geopolitical world in late twentieth century (Goldfarb 2007, 3). In other words, it is these small things which live and breathe “in the shadow of big things”, a Goldfarb’s phrase which he uses in his introductory chapter, that help foster the shape of big things to come (Goldfarb 2007, 1).

6. Choice

In 1951, the US House of Representatives had set up its Committee on Un-American Activities (HUAC) charged with rooting out Communist activities in every sphere of civilian life. Senator Joseph McCarthy of Wisconsin had begun to denounce the legions of secret Communists embedded in left-wing strongholds like the labor union and the arts. Arthur Miller whose *Death of a Salesman* had won Pulitzer prize in 1949 was about to work with the legendary Elia Kazan to produce it as a movie. But the US government didn’t like the script where the villains were corrupt businessmen and wanted Miller to change it to corrupt Communist union leaders. Miller refused. But Kazan, in order to preserve his cinematic career, told Miller that he decided to do what was asked by the government-to supply HUAC with the names of former members of the Communist Party. Sadly looking back at the incident decades later, Miller writes: “It was not [Kazan’s] duty to be stronger than he was, the government had no right to require anyone to be stronger than it had given him to be, the government was not in that line of work in America. I was experiencing a bitterness with the country that I had never even imagined before, a hatred of its stupidity and its throwing away of its freedom. Who or what was not safer because this man in his human weakness had been forced to humiliate himself?” (Rowland 2014, 59).

The world-renowned novelist Amos Oz reflects on what the solution to one of the most difficult and intractable deadly conflicts in the world-the Israel-Palestine case would look like this way:

“Tragedies can be resolved in one of two ways: there is the Shakespearean resolution and there is the Chekhovian one. At the end of a Shakespearean tragedy, the stage is strewn with dead bodies and maybe there’s some justice hovering high above. A Chekhov tragedy, on the other hand, ends with everybody disillusioned, embittered, heartbroken, disappointed, absolutely shattered, but still alive. And I want a Chekhovian resolution, not a Shakespearean one, for the Israeli/Palestinian tragedy” (quoted in Pinker 2011, 547).

Oz has made up his mind, now perhaps it’s time for us all to make a choice as well.

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WOMEN'S PARTICIPATION IN POLITICS IN CAMBODIA

Chantevy Khourn

By investigating the roles of Cambodian women in politics, explaining the barriers that confine women from joining politics, and analysing government policies, the paper wishes to contribute to the strengthening and promotion of women's participation in Cambodian politics.

This article aims to address the challenges that Cambodian women face in political participation by both reviewing the literature and interviewing women who actively engage in politics and leadership roles. It will explain how Khmer culture and traditions shape gender roles in Cambodia. In addition, the article will analyze the laws and policies that Cambodian government have implemented in order to promote women's participation in politics in Cambodia.

1. Introduction

1.1 Short Description of Cambodia

Cambodia has undergone a long history of civil war and the country was returned to the year of zero during Khmer rouge regime (1975-1979). About 1.7 million people were killed and died from starvation and diseases. After Vietnamese military left the country in 1989, the United Nations organized its first national election in 1993. Cambodia since then has opened as a democratic country with a free market economy and it has attracted foreign investments and aids. The country has been gradually developed. Cambodia is one of the least developed countries in South East Asia with the total population of about 15 million people, slightly more than half of which are women with the majority of people (around 85 percent) living in the countryside mostly working in agricultural sectors. The population growth rate is 1.8 percent and the GDP per capita is \$1,006.8 (World Bank, 2013).

1.2 What is women's participation in politics?

Before moving to a deep discussion about the challenges that Cambodian women face in political participation, let me define the meaning of women's participation in politics in this research context.

Women's participation in politics in the context of this research refers to the political participation among Cambodian women in the national levels: primarily female representation in the National Assembly; and female participation in local level of politics (Commune/Sangkat Council). The paper addresses the roles of Cambodian women in society and their positions in politics. Young Cambodian women represent 33 percent of the country's youth population, i.e., those aged from 15 to 30 years (Youth Resources Development Program, 2012). However, very few females in the population are interested in politics. Mehrvar (2013) conducted a case study on young women's political representation and participation in local governance in Cambodia and found there were three types of responses among young female participants to question on the understanding of the word "politics". First, young women aged from 14 to 18 had no clue about the word "politics" and nothing was brought to their mind. This was due to the lack of awareness and limited interests and knowledge in politics. Second, older participants (20-35 years) who are garment factory workers or those who have higher level of education thought "politics" involved discussions about law, resources, the national minimum wage, employment, land and services. Third, the word "politics" was considered as related to money, power, particular groups (men), control, lies, corruption, and special interests. Young Cambodian women have a broad mistrust of politics, thinking that political parties do not address their interests and that they are powerless in relation to the political system (Mehrvar, 2013). Cambodian women often think that politics is not their

jobs but it is a man's job. These women have been living on the margins of the political sphere and are not given enough opportunities to fully contribute to politics and decision-making. The culture puts women into a lower status than men and they are confined with household responsibilities. Women are considered as in the shadows behind successful men. Moreover, the research will address the barriers that block Cambodian women from political participation. The study will also explain whether Khmer tradition still plays a role in discouraging women from political participation. Some suggest that young women in Cambodia are not entirely disconnected from political activities in their community but there is a narrow conception of politics and also a negative image. Women are sometimes reluctant to perceive their actions and engagement with their community as political activity (Mehrvan, 2013). This study also analyzes government policies used to promote women in politics. The research aims to discuss how much government and the ministry of women affairs can implement their policies or mechanisms on female empowerment with regard to political participation. The Royal Government of Cambodia (RGC) has publicly committed to increasing female representation at all levels of government in a number of documents, including the Rectangular Strategy for Growth, Employment, Equity and Efficiency, the National Strategic Development Plan and the Cambodian Millennium Development Goals (CMDGs). CMDGs set a target of 25 percent of women's representative at the Commune/Sangkat Council level and 30 percent of female representatives in the National Assembly and Senate by 2015 (CCHR, 2013). However, the level of women's representation at both the local and national levels remains low due to the lack of the implementation of government policies and the negative perspectives regarding women's abilities in leadership roles. By investigating the roles of Cambodian women in politics, explaining the barriers that confine women from joining politics, and analyzing government policies, the paper aims at contributing to the strengthening and promotion of women's participation in politics.

Having explained the meaning of women's participation in politics in the context of the research and short description about the situation of Cambodian women to play in political roles, let me examine the challenges that Cambodian women face when they participate in politics.

2. Challenges in Women's Participation in Politics

Women are elected in order to meet government quota; however, in practice, they are only figureheads and lacking real power. It is common, during elections, for political parties to list female candidates towards the bottom of the ballot to ensure that they are not elected to positions with power (Cambodia CEDAW NGO's Shadow report, 2013). Women remain underrepresented at all levels of political and public life as well as in the foreign and diplomatic service. There is a concern because the number of women represented in the National Assembly decreased after the elections in July 2013 (Concluding Observation, 2013). This is as a result of a lack of commitment on

the part of political decision makers at the national level in establishing an adequate legal framework or plan of action for promoting gender political empowerment and participation (COMFREL, 2011).

In addition there is a gender imbalance between, on the one hand, individual rights and freedoms and, on the other hand, individual rights and state power. Cambodia faces a cultural imbalance between men and women. Most Cambodian politicians are men and there are fewer opportunities for women in the political fields. Part of this problem is a result of the conservative traditional norms within Khmer culture that place a lower value on women than men in all sectors of society. Moreover, poverty, illiteracy, discrimination, lack of encouragement and opportunity, and the absence of a specific policy on promoting and providing opportunities to women, are obstacles for women who want to participate in politics and social activities (COMFREL 2011). Low levels of education amongst Cambodian women have been attributed to the lack of female representation in politics; women feel they do not have the skills, qualifications or experience to stand as candidates, represent their country and make decisions. A qualitative analysis conducted by Seithi (2013) finds that lower level of education results in the lack of self-confidence amongst women. Around 30 percent of Cambodian women have reached undergraduate level but they are not able to use their capacity to engage in public office due to the strong prejudice and stereotype (Seithi 2013). There is a mindset that politics is a man's role. Some people think that politics is not safe and thus women should not get involved. "Women and Politics" is also included in my gender studies course. I often asked my students "Do you think politics is dangerous to women?" Not surprisingly about 95 percent of my students raise their hands thinking that politics was very dangerous. The perceived danger was not just for women as politics was considered very dangerous for both men and women. This creates pressure on young women who are interested in politics.

Another problem is politicians doubting women's capability. Male politicians do not respect women (Seithi, 2013). They look down on women's capacity both in terms of education and qualification. Women are considered physically and emotionally weaker than men. Additionally, the stereotyping of women's roles within the home is deeply rooted in Cambodian society.

Cambodian Women's family roles: Cambodia, along with many other nations, is a country where men and their activities are valued more than women and their tasks. Family is focused on a strong bond between a husband and a wife, who each has links with siblings outside the marital relationship. However, the strongest enduring relationship found in village social organization is that between parents and children. This means women's roles as mothers are paramount, although their status also depends on how they behave as wives and sisters. The primary roles of wives and mothers demonstrate the importance of marriage and parenthood in Cambodian society (Surtees, 2003). Traditionally, Cambodian women are tasked with the care of the children and responsibility for the

household, including its economic survival, and ultimately with ensuring the success of their husbands (Surtees, 2003). Women gain social respect and prestige from the status of being good mothers and 'well-behaved' wives. This contrasts highly with the position of men. Family responsibilities make it hard for women to participate in politics; many Cambodian women are faced with a 'double burden' as they spend time on income-generating activities, as well as caring for other family members and completing household duties (Seithi, 2013). Such a conception of the woman's role in the family represents an obstacle for women wanting to actively engage in politics because they are always attached to and responsible for children in the family.

Husband's Control: Cambodian culture features male dominance. For example, the 2005 Cambodia Demographic and Health Survey shows that 45 percent of respondents agreed with the statement, "It is better to educate a son than a daughter;" 42 percent of respondents also agreed with, "A married women should not be allowed to work outside the home even if she wants to;" and 53 percent agreed that, "The important decisions in the family should be made by the men of the family" (National Institute of Public Health, National Institute of Statistics and ORC Macro 2006; cited in Eng et al. 2009, p.238). Cambodian culture and gender inequality have placed women in a subordinate position; this is also a major risk factor for violence against women and discrimination against women.

HE Dr. Ing Kantha Phavi, Minister for Women's Affairs has addressed some challenges in promotion and advancement of women status during her presentation to the Government Congress May 30-June 01, 2008. Those challenges include "(a) The changing of the social attitudes and behavior is a long-term process that needs strong commitment and support, (b) National and international financial resources are needed to implement existing and future gender mainstreaming policies and programs, (c) National Capacity at all level in MoWA, line ministries and related institutions for gender analysis, research and evidence based advocacy is still limited, and (d) The coordination and communication with other line ministries and institutions for the effective implementation of gender mechanism and policies are still limited" (MoWA, 2008, p. 18).

After I have identified the issues that Cambodian women face in political participation, now let me introduce the international law, national laws, and policies that Cambodian government has implemented in order to promote women's participation in politics.

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

Discrimination against women violates the equality of rights and respects for human dignity and is an obstacle to the participation of women on equal terms with men in the political, social, economic and cultural life of their countries. The United Nations General Assembly adopted the Convention on the Elimination of All Forms of Discrimination

against Women (CEDAW) in 1979 which aims to eliminate any forms of discrimination against women and thereby promote women's rights. Discrimination against women is defined in Article 1 of CEDAW as referring to "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other fields". In order to promote women's rights and women's equal access to food, health, education, employment and justice and to ensure the equal rights of men and women to enjoy all economic, social, cultural, civil and political rights, Cambodia ratified CEDAW in 1992. Accordingly, Cambodia has agreed to implement its provisions.

Article 2 of CEDAW addresses policy measures. The article illustrates that the state parties have the responsibility to create laws and policies in order to stop any forms of discrimination against women.

Article 4 of CEDAW addresses temporary special measures. The measures aim to accelerate the equality between men and women and the temporary special measures shall not be considered as discrimination against men.

Article 5 of CEDAW addresses sex role stereotyping and prejudice. The states parties shall eliminate any forms of social and cultural patterns that create the idea of inferiority or the superiority of either of the sexes or of the stereotyped roles for men and women.

Article 7 of CEDAW addresses political and public life. Women have equal rights to participate in politics and public life hence states parties shall take all appropriate measures to eliminate discrimination against women in politics and public life.

Article 8 of CEDAW addresses that "States Parties shall take all appropriate measures to ensure to women, on equal terms with men and without any discrimination, the opportunity to represent their government at the international level and to participate in the work of international organizations".

It is clear from these articles that Cambodia has accepted a number of obligations aimed at securing equality of women at all levels of society. More especially, Cambodia has agreed to take positive measures, in law and policy, to promote the rights of women. This can even mean, in terms of Article 4, adopting temporary special measures to promote women above men until such time as parity is achieved.

4. Cambodian Constitution

The Cambodian Constitution also reflects a commitment to equality between men and women and a desire to encourage the equal participation of women in politics. Cambodian

Constitution's Article 31 provides "Every Khmer citizen shall be equal before the law, enjoying the same rights, freedom and fulfilling the same obligations regardless of race, color, sex, language, religious, belief, political tendency, birth origin, social status, wealth, or other status" (Rights and Freedom).

Cambodian Constitution Article 35 stipulates that "Khmer citizens of either sex shall be given the right to participate actively in the political, economic, social and cultural life of nation" (Political equality).

5. Government Policies

In order to move forward with CEDAW and the equality requirements of the Constitution, the Royal Government of Cambodia has undertaken a number of measures. The government established the Secretariat of State for Women's Affairs in 1993, which was replaced by the Ministry of Women's Affairs in January 1996, then the Ministry of Women's and Veteran's Affairs from 1999 to 2004 (MoWA 2004). When the new government was formed in July 2004, the Ministry again became the Ministry of Women's Affairs (MoWA). In February 1999, the Ministry of Women's Affairs and Veterans' Affairs published its first Five Year Strategy Plan, Neary Rattanak (Women are Precious Gems). Neary Rattanak was aimed at creating "a new image of Cambodian women, moving from disadvantaged group to the nations' invaluable asset and one with great social and economic potential" (MoWA, 2004).

Neary Rattanak II (2004-2008) was focused on "Enhanced participation of women in economic development especially in micro and small enterprises, based on the principle of equitable distribution of economic resources including water, energy, land and information; right to legal protection to enable women to avoid domestic violence, trafficking, rape and all other forms of violence; women and girls' rights to health care to address serious problems such as maternal and infant mortality, nutritional issues and HIV/AIDS; women's and girls' rights to education, literacy and skills training; and substantive participation of women at all levels in the institutions of governance." In order to promote Cambodian women in decision making, Neary Rattanak II set a goal to "develop the skills and confidence of women to make a greater contribution to decision making at all levels of governance."

Table 1: Action Plan on Women in decision-making

Focus	Activities	Outputs, Targets & Indicator
<ul style="list-style-type: none"> Women in public service 	<ul style="list-style-type: none"> Schedule of training in leadership and management, and other relevant skills Work with Secretariat for Public Function and CAR to advocate for gender responsive recruitment and promotion policies and procedures Advocate with political parties and Ministry of Interior to increase the number of women governors, deputy governors, district and village chiefs 	<ul style="list-style-type: none"> Women public servants skills in leadership, management and policy making Increased proportion of women civil servants and promotion to higher levels of decision making Increased proportion of female Secretaries of State to 15% by 2010 (CDMG) Increased proportion of female under Secretaries of State to 17% by 2010 (CDMG) Increased proportion of female governors to 6% by 2010 (CDMG) Female deputy governors to 8% by 2010 (CDMG) Village chiefs to 15% by 2010 (CDMG)
<ul style="list-style-type: none"> Women in Commune Council 	<ul style="list-style-type: none"> Preparation of prospective women candidates for 2007 commune election Advocacy with political parties Cooperate in training programs of new women members 	<ul style="list-style-type: none"> Increased number of women elected in 2007 elections to 15% by 2010 (CDMG) Women are two of the first five candidates on the party lists Women members understand their roles and responsibilities and have skills to carry their work
<ul style="list-style-type: none"> Women in National Parliament 	<ul style="list-style-type: none"> Preparation of prospective women candidates for 2008 national election Advocacy with political parties 	<ul style="list-style-type: none"> Increased number of women elected in 2008 elections to 24% (CDMG) (NPRS) Women are one of the first three candidates on the party lists

Source: Neary Rattanak II (2004-2008)

The Ministry of Women's Affairs has achieved a great change of women's contribution to decision-making at all levels of governance. According to Table 1, overall there is an increase in number of female representatives in the National Assembly of roughly 13 percent between 1993 and 2003. However, the increasing rate of female representation from 13 percent to about 3 percent from year 2003 (19.51 percent) to 2008 (21 percent). Even though the percentage of women in the National Assembly has steadily increased

over the mandate, which is a positive sign, there is still a concern regarding the under-representation of women in the National Assembly. Cambodia has not yet achieved gender equality in political empowerment regarding elected officials. About 53 percent of eligible voters are female but female representatives make up only 21 percent of the Fourth Mandate (2008-2013). “According to UNDP’s Human Development Index 2009, Cambodia has one of the lowest ratings of gender empowerment in Asia: a gender development index of 0.588 and gender empowerment index of 0.427. This ranks Cambodia at 91st, with the worst ranked at 109th” (COMFREL, 2011).

Disappointingly, during the national elections 2013, the number of female representation decreased about 1 percent between 2008 (21 percent) and 2013 (20.32 percent). This is concerning as Cambodia may not be able to reach CDMGs, which target 30 percent female representation in the National Assembly by 2015.

Table 2: Number of seats held by women in the commune/Sangkat elections

Mandate/Year	Councils of Communes			Chief of Communes	
	Total	Women		Total	Women
2002	11,216	1,056	(9.4%)	1621	42 (2.6%)
2007	11,353	1,717	(15.5%)	1621	67 (4.1%)
2012	11,459	2,038	(17.78%)	1633	69 (4.2%)

Source: National Election Committee

There have been improvements in women’s political representation in commune/Sangkat councils. Overall, there is an increase in number of female councilors by 8 percent between the elections year 2002 (9.4 percent) and 2012 (17.78 percent). There is also a steady rise of female chiefs of the communes from 2.6 percent in 2002 to 4.1 percent in 2005. However, while these figures support the notion that women’s representation is increasing and are encouraging, levels of representation remain a far cry from the CMDG5 targets to which the RGC has committed itself. For instance, as only 17.78 percent of commune/Sangkat council seats went to women in 2012, it will not be possible to achieve the 25 percent of CMDG target by 2015. Women that are elected representatives are consistently being elected to relatively junior positions. During the commune/sangkat council elections in June 2012, 1,590 women received Member seats but 164 were elected to the position of Second Deputy, 189 to the position of First Deputy, and only 95 to the most senior seat of Commune Chief (CCHR 2013).

These figures show that Cambodia still faces challenges in reaching CMDGs, which projects that by 2015 women will hold 30 percent of the positions at the national level and 25 percent at the Commune/Sangkat level.

6. Quota Policies

Quota policies are globally considered as an effective way to increase female representation in politics. They are also acceptable in terms of international law through Article 4 of CEDAW quoted above. Quota policies have been adopted in more than 100 countries and their adoption has resulted in the increase in number of female representation, with an average of 22 percent in contrast to the countries that do not implement quota policies with only 13 percent female representation (Seithi, 2013). RGC supports women in politics but does not set quota policies because RGC considers that it can be a form of discrimination against men. While this is arguably correct, such discrimination is justifiable under Article 4 of CEDAW, as long as it is temporary and necessary to secure the goal of equal representation, or even just increase representation of women.

In order to make the paper more practical, I decided to conduct interview with four women who are actively engaged in politics and leadership roles. The research has been conducted following the mentoring from the Raoul Wallenberg Institute. After finishing the initiative human rights research training in Thalat, Laos in February 2014, the research outline was finalized.

A mixed research approach has been selected for the study including desk review and in-depth interviews. For the research, I conducted literature review from journals, textbooks, government's policies and national action plans used to promote women's participation in politics. To make the study more practical, four women who actively engage in Cambodian politics, leadership role, and human rights defending were interviewed. I conducted in-depth interview with the minister from the Cambodian ministry of women affairs for approximately 90 minutes. The interview was conducted in Khmer language and recorded with a Smartphone recorder. The minister signed on the consent form and permitted the whole interview to be recorded and the minister agreed to be quoted as the minister of women affairs. The interview with the minister started with her personal experience as a woman who actively engages in Cambodian politics. This interview helped to analyze the women ministry's work regarding the implementation of human rights of women in political participation. Also, the interview looked at the barriers to and challenges facing Cambodian women in political participation. The second participant of the research was a human rights defender from LICADHO. LICADHO is one of the main human rights organizations that aim to promote human rights in Cambodia. This interview was conducted in English and the participant has signed on the consent form and allowed the interview to be recorded. The participant agreed to be quoted as the human rights defender and the interview took about 90 minutes. Similar to the interview with the minister this interview looked at her personal experience in promoting human rights, analyzing women's roles, and discussing whether Cambodian tradition still plays a role confining women from joining politics. The other two women are the women leaders in the local level from Kampong Cham province. Attempts to secure interviews with two other women who played very active roles in empowering Cambodian women

in leadership and another female prominent politician from the opposition party were unsuccessful. Hence, this study was conducted with just four interviews. Since the study is based on a qualitative approach, with only four interviewees it cannot be used to generalize and applied to Cambodian society as a whole. However, the research can be utilized as a way to explain the reasons behind lower participation among Cambodian women in politics. It is thus still of considerable academic value.

To begin with, let me introduce the personal background of the four women whom I interviewed based on their narratives.

7. Background of Women in Decision Making

The research finds that women who hold positions in higher level of politics and decision making mostly come from a well-off and supportive family and have high education. For example, the Human Rights Defender (HRD) is a highly educated woman whose mother was the first female member elected in Cambodian parliamentary election during the Sangkum Reastr Niyum (People's Socialist Community). The HRD is a physician. She said her family fully supported her. The HRD and her family have helped bringing Cambodia into the peace agreement after a long history of civil wars. Similarly, the Minister of Women's Affairs is also a highly educated person, though she never wished to be a politician at first. She is a doctor and has participated in politics in 1990s. She also claimed that her family supported her.

On the other hand, the two women leaders from the local level are not highly educated. Mrs. Chantha (pseudonym), the director of Women's Affairs Office in one of districts in Kampong Cham province, finished school in grade 9. She participated in politics and leadership roles in 1980s and her parents did not support her at the beginning of her career path. She decided to take leadership roles because she wanted to understand about women's roles, promote women, and help to manage the family and the society. At the beginning, she did not receive any salary; her family was very poor, and she almost gave up her job. Her parents did not want her to work because they thought a woman like her should just stay at home and do farming. Interestingly, other people saw her differently. The villagers thought she looked cool and it was good to have a female leader. Her male counterparts, on the other hand, discriminated her. They think women cannot walk around the kitchen (Khmer proverb meaning women are supposed to take care of housework and they are not supposed to work outside) and cannot work like the men. She faces many challenges in her career. Her office did not have budget to help poor rural women. Mrs. Chantha mentioned that during the commune/council election, men only put their male team on the top of the list while women are put in the bottom list. Hence, there is less likely for women to be elected as the chief of the commune.

Similarly, Mrs. Maly (pseudonym) is currently the chief of one of communes in Kang Meas District, Kampong Cham and she finished school in grade 9. Mrs. Maly became

the member of commune council in 2002 and participated in the commune work by helping women who were the victims of violence, elderly, orphans, and raised money from NGOs to support poor people. She said she never wished to be a politician or hold a high position in the higher position. She participated in the commune work because she wanted to learn and work. She saw people who worked in the offices dressed up nicely, while a pork seller like her was poorly dressed up. She was elected to be the chief of the commune in 2007 but she refused to take the position due to the lack of self-confidence. She then was elected again in 2012 and decided to take the role because other people including provincial governors persuaded her to take the position. Villagers love her and want her to be their chief of the commune. The officials from her party told her that if she did not take the position, her party would lose trust and vote from the people. Mrs. Maly mentioned that she faced many challenges but she worked hard to solve them. She mentioned that there was much work that she had to take care of after she became the chief of the commune. Her husband supports her but he is sick very often so she is both the chief of the commune and the leader of the family. She has to wake up at 3 am almost everyday to take care of her family business and children before she can go to work. Because she is married with children, it is very hard for her to go far away from home. For example, she was once invited to join a meeting in the Philippines but she declined the invitation because of her family. Interestingly, she mentioned that she was not discriminated by her male counterparts. The male team supports her and she always discusses and seeks for advice from her team and the former chief of the commune. However, she is discriminated by her female leaders. She mentioned that those female leaders were jealous of her because many villagers loved and supported her. Those female leaders were afraid that Mrs. Maly would take their positions in the future as she did a lot of good work for her commune. She raised money to support the poor villagers and even built the road for the village.

8. Women's Participation in Politics

There is still gender inequality in political participation in Cambodia. Even though there is decrease in discrimination against women in politics, gender stereotype still confines women's ability to fully engage in politics. Responding to a question of Cambodian women's situation in politics, the HRD pointed out that in the past there were very few women who were interested in politics. She returned to Cambodia from France in 1989 and established LICADHO organization. At that time she wanted to have half female and half male staff working in LICADHO. She tried to convince women to work with her but they rejected her request. Those women said no because they had to stay at home and look after their children. The HRD said it was very difficult at that time because women only wanted to stay at home. She believed that Women Codes of Conducts (Chbab Srey) was the main obstacle for women. The HRD continued that older grandmothers or mothers or older sisters often told their younger female relatives not to go for higher education or enter politics. There was a stereotype that politics was the men's job. There was progress of women's participation in politics from 1993 to 2013.

9. Progress and Change

The HRD appreciated the progress of Cambodian women's participation in politics even though she noted it changed very slowly. She recalled that during her first visit in Cambodia women were very reluctant to talk about politics and did not want to get involved. She stated that the Prime Minister has appointed one female deputy governor in each province and district. Also, there is an increase in women representation at the commune level. However, the HRD would like to see half female and half male governors in the 25 provinces and cities, not just female deputy governors. Cambodia has only one female deputy prime minister and recently it was announced that she would retire.

According to the HRD, it is very important for Cambodian women to join politics. About 52 percent of the population is female and if Cambodia uses all the economic forces [both men and women go to work], the country will develop tremendously. When women have higher education, good jobs, and independent financial resources, they tend to have fewer problems at home, she claimed. The country is developing because of the population. She expressed concern over reliance on foreign aid and continued that if all women could work they could share the men's work and help grow the economics of Cambodia. She disagreed that it is only women who have to take care of the family and questioned why women work more than men. In her opinion, it is not fair to the women when men take all the higher positions in the country and women just stay at home.

"If a woman can take care of her family...she can take care of her community...her country the same way as her family...I see no obstacle that why women can or cannot participate in the development of the country..." said the HRD.

When she was asked about her opinion regarding quota policies, she explained that the policy was not a discrimination against men. Quota policy is considered as temporary special measures in terms of CEDAW and that is not discrimination in favor of women. More than 100 countries adopt quota policy and it is internationally accepted as a special measure. The special measure is just temporary and it shall be eliminated after it reaches equality. The HRD teases that failure to adopt quotas is because the government does not understand the convention.

"Government said they didn't want to set quota because they didn't have enough quality female candidates or not enough high education women...I said that was just an excuse...I asked do you think all male candidates have high education? ...they didn't answer to me...it's because men only trust men...It's the lack of political wills," said the HRD. She also mentions that if we look at those elected male candidates' background, some of them do not have higher level education at all. When the government said they did not have enough qualified female candidates that were just an excuse. The lack of political will from government is the main problem. She believes that more advocacies have to be done in order to push them [government] in political women empowerment.

10. Contradicting Points of View between the Government and Civil Society

It is very interesting to find that there is a contradiction in opinion between the minister of women affairs and the human rights defender. The minister claims that the lack of education, financial resources, and family support are the main problems behind lower participation of Cambodian women in politics. She said when men undertook political campaigns, they received more financial support from both family and others. The minister did not say anything about the lack of political will on the part of the government. She explained that the government did not set quota because sometimes government did not have enough qualified female candidates and it was wrong and unfair to men in the office. According to the minister, the government uses “Special Measures” instead of quota policy. The Special Measures aim to empower women such as appointing one female deputy in each province or district. The minister also pointed that women did not have confidence in themselves when it came to politics. There are not many women who are interested in politics and those women who are interested in politics often do not receive much support or trust from female followers. She said that the female followers often vote for male candidates rather than for the female candidates. The minister also stated that it is very difficult to empower women in politics due to the lack of trust from others. Hence, women have to work a lot harder to show that they are qualified to engage in politics. The minister also mentioned that family responsibility is another challenge. When men participate in politics, women will look after the family and children. However, when women participate in politics, there will be a question as to who will be responsible for the family? The minister does not really see tradition as the main problem, but she thinks that tradition is partially involved in lower participation of women in politics.

11. Conclusion

The research finds that there is an increase in number of female representatives in politics over the years 1993-2013. The Government has ratified CEDAW and set up CDMGs and Neary Rattanak Strategic Plans in order to promote women’s participation in politics. According to the minister of women’s affairs, the lack of education, financial support, family support, and tradition are the reasons behind lower women’s participation in politics. The Human Rights Defender accepts that women code of conducts, family, and lack of qualified female candidates are challenges but to her they are really excuses. Government has established CMDGs and many good national action plans, but failed to implement them fully. The lack of political will and the lack of concrete implementation of CEDAW, CDMGs, laws, and strategic plans are thus the major reasons behind lower participation of women in politics in Cambodia.

The study finds that there are some civil organizations, which are working to promote women in leadership and public services. For example, Women for Prosperity—WFP

that was founded by Nanda Pok—has provided leadership training to women so that they are qualified to hold political office. The organization provides “(a) Training potential female candidates, and organizing female debates for the 2003 general election, (b) Media campaign to promote female candidates, and free, fair, transparent, and non-violent elections, (c) UNIFEM-sponsored Peace for Prosperity, a program that promotes nonviolence, voter education, and the participation of women in the government through work with politicians, voters, and the media”. This research also identified the Harpswell Foundation Dormitory and Leadership Training Center that has a mission to promote and nurture the younger female generation towards becoming leaders. The organization was founded by Dr. Alan Lightman in 2006. It provides free room and board for young female university students who have high potential and ambition to become female leaders in the future. The organization provides leadership training, critical thinking skills, debating skills focusing on politics and economics, advocacy skills, freedom of expression and opportunities for young women to empower themselves to become leaders.

More of younger females in today's generation are interested in political participation. According to my observation, the social network opportunities (particularly Facebook) have provided broader discussion of politics in Cambodia. Moreover, female garment factory workers are more daring to speak their opinion and protest demanding more salary increases. Additionally, there are many female villagers who are victimized by land grabbing and come out and express their views asking for respect for their land ownership. The fact reveals a greater change among Cambodian women's participation in politics and social affairs. Cambodian women are not really trapped in household responsibilities or traditions anymore; many women understand about their rights and roles in the society. Therefore, I expect there is a positive change and progress among the young female generation in expressing their voice and taking part in politics.

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BEYOND THE ASEAN CHILDREN'S FORUM: EXPLORING AND IMAGINING SPACES FOR CHILDREN'S PARTICIPATION IN ASEAN

Ryan V. Silverio

The right of all children to participate in all matters affecting their lives is internationally recognized and enshrined within the UN Convention on the Rights of the Child. Despite ASEAN member states' reservations about the Convention, the said right is recognized through the ASEAN Declaration on the Commitments to Children. Also, the ASEAN Commission for the Protection and Promotion of the Rights of Women and Children (ACWC) included the need to develop an enabling environment for children's participation as one of its key priorities. The rights to participation has also helped frame the establishment of the ASEAN Children's Forum as an institutionalized consultative mechanism for children to influence the regional body's policies and programs.

This paper critically examines the structure and modalities of the ASEAN Children's Forum.

The paper poses a problem that the representative model of participation ironically reinforces exclusion of several children within the region. Also, while aimed as a space for children, it has likewise been detached from the immediate contexts of children. Furthermore, the paper identifies key concepts towards an alternative framework for child participation in ASEAN that imagines spaces that are inclusive and pluralistic, and characterized by transnational processes that recognize, connect and reinforce different sites where children exercise agency.

1. Introduction

The right of children to participate in matters affecting their lives is widely recognized under international law, notably the UN Convention on the Rights of the Child (UN CRC). As a duly recognized right, states and non-state actors are duty bound to undertake steps to ensure that children meaningfully participate in spaces and decision-making processes that have an implication on their rights. The UN CRC in particular obligates duty-bearers to ensure that children have access to information, to participate in cultural life, and to express views freely using appropriate media.

Such right has also been recognized at the ASEAN level. In the 2001 Declaration on the Commitments for Children in ASEAN governments committed to “[c]reate opportunities for children and young people to express views, advocate their rights and concerns, and participate in community development”. Such commitment was then further sustained by creating a space for children to participate directly in influencing ASEAN’s further strategies and plans of action through the ASEAN Children’s Forum.

This paper intends to critically reflect on the ACF as the institutionalized space for participation of children in ASEAN. The concept of space for participation is informed by Gaventa (2006, p. 26) who viewed it as “opportunities, moments, and channels where citizens can act to potentially affect policies, discourses, decisions and relationships that affect their lives and interests”. Space in this context is not viewed as neutral but is shaped by power and designed as a means of control (Gaventa, 2006). Space of participation can also be examined by looking at “how they were created, and with whose interest and what terms of engagement” (Gaventa, 2006, p. 26).

In examining the ACF as a space for participation, this paper will first explain the concept of child participation as a human right. Second, in order to understand how child participation can be operationalized in the context of policies and programs, the paper will present child participation models derived from literature. Third, the paper critically examines the structure and modalities of the ASEAN Children’s Forum by raising issues of non-inclusivity and its limited impact within the decision-making process inside ASEAN. Also, while designed as a space for children, it has likewise been detached from the immediate contexts of children. Lastly, the paper brings to light possible conceptual tools to help develop a critical lens in viewing and reimagining spaces for child participation within ASEAN.

2. Children’s Participation as a Human Right

The rights stipulated in the Convention on the Rights of the Child (CRC), according to Verhellen (2000, pp. 80-81) could be classified into the following: “protection”, “provision” and “participation”. Cantwell (2000) said that participation was as a new category because it has never been incorporated in any child-focused international

instrument prior to the adoption of the CRC. The term participation does not appear in the text of the CRC. However, existing literature has pointed out to Article 12 as the provision establishing such right. And as will be explained later, there are also additional provisions in the CRC that guarantee such right.

The following are the articles considered to be relevant to the right to participation. First is Article 12.1 which stipulates the “[t]he right of the child who is capable of forming his or her own views the right to express those views freely in all matters concerning affecting the child, the views being given weight depending on the age and maturity of the child...” (United Nations Children’s Fund, 2007, p. 686). Second is Article 13.1 that entitles the child to the “the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child’s choice” (United Nations Children’s Fund, 2007, p.686). Third is Article 15.1 that obligates governments to “recognize the rights of the child to freedom of association and to freedom of peaceful assembly” (United Nations Children’s Fund, 2007, p. 687). Lastly, Article 17 mandates governments to “recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources...” (United Nations Children’s Fund, 2007, p. 687).

In understanding the meaning behind the right to participation, Lansdown (2001, p. 2) explained both the substantive and the procedural aspects of Article 12 of the CRC. As a substantive right, Article 12 entitles children to be agents in their own lives and to participate in the decisions that affect them. As a substantive right, it calls for state obligations to undertake measures to guarantee children’s participation.

The General Comment No. 12 of the Committee on the Rights of the Child expounded further on the obligations of states under the Convention. In the said document, states must ensure that mechanisms are in place to solicit the views of the child, to give weight to those views, to combat negative attitudes and customary conceptions of the child that can hinder participation (United Nations Committee on the Rights of the Child, 2009a). Over all, the state is obliged to create an environment that respects, supports and encourages children to express their views (United Nations Committee on the Rights of the Child, 2009a).

It is important to note, however, that the same provision has a claw back clause, i.e., the weight of a child’s view depends on his/her age or level of maturity. This is a crucial clause because there would be different interpretations of this right depending on the way meanings and roles are attached to each child’s level of development. This is problematic because the provision would have different standards, for example a 17-year old child’s opinion would have a different bearing compared with that of 7-year old. In addition to this, the opinion of a child having limited capacity to articulate her issues due to the lack

of opportunity to study would have a different weight compared with that of a highly educated child. It is necessary to point out that the child's competence does not develop according to standards of development stages. There are external variables that affect the development of the child's mental, emotional and spiritual growth (Protacio-De Castro et al., 2002).

On the other hand, Article 12 was considered by Lansdown (2001) as a procedural right. As a procedural right, it refers to the "means through which to achieve justice, influence outcomes and expose abuse of power." Adding to Lansdown's explanation, the researcher thinks that beyond Article 12, Articles 13, 15 and 17 are key provisions to enrich the procedural aspect of the right to participation.

Indeed, the close association of Article 12 and the other provisions, specifically Articles 13 and 17, has been established by the UN Committee on the Rights of the Child in their General Comment No. 12 (United Nations Committee on the Rights of the Child, 2009a). The said committee pointed out that the child's right to freedom of expression and the right to access information is vital towards the effective exercise of the right to be heard (United Nations Committee on the Rights of the Child, 2009a).

Considering the views of the UN Committee on the Rights of the Child, it is important that there is access to relevant and comprehensible information in order for the child to cultivate his/her opinions. There should also be an access to flexible venues for the child to express his/her thoughts individually or collectively. Moreover, ensuring the right of a child to communicate his/her views through various media including those of his/her choice is vital.

3. Existing Models on Children's Participation

Much literature on children's participation has presented models that have been influential to the design of programs and projects of many organizations working with children. These have cited the works of Roger Hart (1992), Harry Shier (2001) and Gerrison Lansdown (2001). A discussion of these models is necessary in order to provide an operational understanding of child participation as a human right and how it can be put into practice.

One influential and well-cited model is the "ladder of participation" that was conceptualized by Hart (1992). This model illustrates the increasing participation of children from different levels of non-participation to full-participation. Each level of participation describes the extent to which children are involved in decision-making.

The eight levels of participation proposed by Hart (1992, p. 8) are as follows. First is manipulation, which is characterized as a situation where children are involved by adults but the children do not have understanding of the issues and their actions (Hart,

1992, p. 9). Second is decoration, which is characterized as a situation where children are involved but are limited only to providing entertainment and to provide proof that they are being involved (Hart, 1992, p. 9). Third is tokenism, which is a situation where children are being given a voice but not a venue for them to consult and process inputs together with other children they are supposed to represent (Hart, 1992, p. 9). The fourth level, called “assigned but informed”, is characterized by a situation where children understand the rationale of the project and volunteer to take on roles they will play in implementing the project (Hart, 1992, p. 11). The fifth level, called “consulted and informed”, is a situation where adults involve children in the conceptualization of the project and that children volunteer to play roles in implementing the project (Hart, 1992, p. 12). The sixth level, called “adult initiated and shared decisions with children”, is a situation where adults initiate the project but there is room for children to influence and make decisions side-by-side with adults (Hart, 1992, p. 12). The seventh is called “child initiated and directed”, whereby children alone initiate, conceptualize and implement projects (Hart, 1992, p. 14). The last level is called “child initiated and shared decisions with adults”, whereby children lead the conceptualization and implementation of the project but they have equal standing with adults in terms of decision-making (Hart, 1992, p. 14).

Hart's (1992) model could be helpful as a means of analyzing or assessing the participation of children in programs or projects of organizations. However, there are limitations to this model. First is that it is one dimensional, meaning the model is hinged only on the aspect of decision making. In this regard, the model assumes that children are automatically interested and capable of engaging in decision-making. Hart (1992) did not provide room to explore the possible situation where children would opt not to participate in decision-making because of limited capacities and external constraints such as those that are beyond the control of children, e.g, situations of armed conflict or natural disaster.

Second limitation of Hart's (1992) model is that it gives an impression that each organization or agency should seek for the highest level of participation, i.e., “child initiated and shared decisions with adults.” This might pressure organizations and children even though the situation is not ripe for such level of participation. In aiming to reach such level, organizations, adults and children should make a self-check using the important considerations, such as the understanding of the existing capacities of children to be involved in certain roles, the appropriate venues where children could comfortably engage, and the resources available for children.

Third limitation of Hart's model is that it only referred to the process of participation. Apart from the process, it is important to take into consideration the political and social context as such could define the rationale, content and method of participation of children. For example, the absence of a democratic space that would allow any form of participation in policy-making might urge children to take up arms as the only option to achieve social change. Poverty, on the other hand, might hinder young people to do

voluntary work and instead opt for a paid involvement in the project implementation because of the need to earn income for the family.

A revision of Hart's model was developed by Shier (2001). The model titled as "Pathways to Participation" removed the three lowest levels (i.e., "manipulation", "decoration" and "tokenism") in Hart's "ladder of participation" (Shier, 2001, p. 110). Similar to Hart, Shier's model is also hierarchical indicating the most ideal level of participation. Furthermore, Shier elaborated on the processes and conditions entailed in the higher levels of the ladder which were deemed as real forms of participation.

Shier's model is two dimensional describing the degree of roles children perform in decision-making processes and, on the hand, the extent to which adults engage or support children who participate. The model entails five hierarchical levels of participation ranging from "children are listened to" as the first level to "children share power and responsibility for decision-making" as the fifth and highest level. In each level, three stages of adult commitment were indicated, namely, "opening" to refer to the "personal commitment" or "statement of intent" of adults, "opportunity" to refer to the resources, skills and knowledge adults provide to support children, and "obligation" to indicate the existence of organizational/institutional policies ensuring children's participation (Shier, 2001, p. 110).

As an alternative to two previous models, Lansdown (2001) provided three broad approaches to children's participation. These approaches according to Lansdown (2001) are not mutually exclusive and that the boundaries of these approaches are not clear cut. This could also mean that the categories could be viewed as a continuum from which one organization could adopt an approach that could be a permutation of two approaches rather than a hierarchical set of categories where preference for the highest level is implicit. On the other hand, these approaches are flexible allowing the program proponents and children to define the modalities of engagement and support in the program implementation.

The three approaches conceptualized by Lansdown (2001) are as follows: consultative processes, participative initiatives and promoting self-advocacy. Consultative processes are usually adult initiated, led and managed. Children do not have any control over the outcomes. According to Lansdown (2001) this approach seeks not change the structural relations between adults and children. However, it involves "a recognition by adults in positions of power of the validity of children's experience, that it can and does differ from the experiences of adults and that it needs to inform decision-making processes" (Lansdown, 2001, p. 17). The intention of this approach is "to find out about children's experiences, views and concerns in order that legislation, policies or services can be better informed" (Lansdown, 2001, p. 16). The consultative processes could be conducted at various levels ranging from the community up to the international levels. They could take

place in the form of a single activity, part of a sustained activity, or part of a long-term or permanent structure.

Participative initiatives are also initiated by adults but have a sense of collaboration with children. They involve the creation of structures whereby children can influence outcomes and that children could eventually take self-directed actions once the project is underway (Lansdown, 2001, p. 21). The intention of this approach is “to strengthen the processes of democracy, create opportunities for children to understand and apply democratic principles or involve children in the development of services and policies that impact on them” (Lansdown, 2001, p. 16).

According to Lansdown (2001), projects that begin as consultative processes move forward to becoming participative initiatives as adults explore new ways of working together. An example cited under this approach include research projects involving children in the design of the research agenda and in the conduct of data gathering on issues affecting lives of children themselves.

The third approach proposed by Lansdown (2001) is promoting self-advocacy. The overall aim of this approach is “to empower children to identify and fulfil their own goals and initiatives” (Lansdown, 2001, p. 16). Compared to the two previous approaches, children take the lead in identifying issues of concerns and strategies that would be implemented. The role of adults is to facilitate and support the processes decided upon by children, taking up the roles as advisers, supporters, administrators and fund-raisers (Lansdown, 2001, p. 27). Adults play a significant role in this approach whereby they should concede the power to children to control the process and outcome. An example cited by Lansdown (2001) is the support for the creation and sustainability of operations of children's clubs and organizations.

Compared with the framework of Hart and Shier, the three approaches of Lansdown (2001) do not give any valuation of one approach over the other. In another sense, it is non-hierarchical. One limitation however is that Lansdown did not provide a set of criteria which could guide organizations or agencies in choosing the appropriate approach given the capacities of the organization, the dynamics of the issue that would be addressed and the capacity of children to engage with. Although viewed as a limitation, the researcher could also view such gap as an opportunity for flexibility for organizations to design an appropriate approach. According to Lansdown (2001), there are no blue prints to effective participation of children because these could deny the opportunity of children to be involved in the design and development of the process itself.

Child participation can also be understood by the way the process involving children is valued or the meanings attached to these. Child participation can be understood in terms of its value in bringing about changes to children. Two approaches to children's

participation were conceptualized by Theis (2007), namely, the utilitarian approach and the transformative approach.

Existing literature on different initiatives and projects relevant to child participation are replete. Theis (2007), however, cautioned that one-off events and project-specific participation dominated experiences in the region. He further criticized that many initiatives were led and driven by international organizations and governments in order to improve the quality of decisions and services for children. Moreover, he commented that such initiatives are lacking in terms of bringing fundamental changes in children's social roles and power positions in the family, community and larger society. Theis proposed two approaches to children's participation, namely, the utilitarian approach and the transformative approach. The utilitarian approach "focuses on children as resources, on children's contributions and service, and on children's responsibilities" (Theis, 2007, p. 3). In such an approach children do not have decision-making power nor do they challenge existing hierarchies and power relations with adults (Theis, 2007). On the other hand, the transformative approach views "children's participation as a process of social change in the relation between children and adults" (Theis, 2007, p. 3). Such an approach is critical because it aims to accelerate the power position of children as social agents, enables them to make decisions and challenge the power dynamics they experience with adults.

4. Children's Participation Within ASEAN

All countries in ASEAN have ratified the UN CRC, and given this all governments are expected to comply with all the principles and provisions including the right to participation. A closer look on the status of reservations made on the Convention, the views of governments towards the said right, and the approaches done to realize such right reveals some challenges.

Malaysia expressed reservations on Articles 13 and 15 and declared that the provisions will only be applied in conformity with the country's Constitution, national laws and national policies (United Nations Treaty Collection, n.d.). Certainly, issuing such reservations does not recognize the right of the child to express his/her views and undertake forms of protest against the State.

Singapore, on the other hand, has issued reservations on Articles 12, 13, 15 and 17 and has invoked the authority of the parents, schools and other persons entrusted with the care of the child in determining the child's best interest (United Nations Treaty Collection, n.d.). In addition, the country's customs, values and religions in a multi-cultural context has to be complied with in implementing the aforementioned articles in the Convention (United Nations Treaty Collection, n.d.). This implies that views of children towards the government and towards society have to be mediated by existing political, social and cultural institutions to which they do not have access to and control. Such reservations

have also reinforced the notion that adults are the final arbiter in the interpretation of rights for children.

Brunei Darussalam made a blanket reservation on the CRC which also includes provisions on child participation. The government explained that its reservations apply to Convention's provisions that may be contrary to its Constitution, and to the beliefs and principles of Islam, religion and the state (United Nations Treaty Collection, n.d.). Notwithstanding, the government reported that activities encouraging children to express their views have been organized within schools and different levels of society (United Nations Committee on the Rights of the Child, 2003a). Some constraints towards recognition of children's participation are the lack of laws that provides for freedom of expression, and that tradition and culture that gives due importance on respect for elders and primacy of parents' decisions (United Nations Committee on the Rights of the Child, 2003a).

Thailand did not issue reservations on the provisions relevant to children's participation. However, the government issued a reservation on Article 22 of the CRC, which concerns the rights of refugee children, and this imposes restrictions in enabling the participation of refugee and asylum-seeking children. Moreover, the UN Committee on the Rights of the Child (2012b, p. 8) expressed a concern "that not all children have the opportunity to express their views freely and participate in the decisions that affect them in the home, community, and administrative and judicial procedures, partly due to traditional attitudes".

Myanmar does not have reservations on the CRC and that the government reported that its national Child Law allows children to express their views and to have their explanations listened to and respected (Committee on the Rights of the Child, 2011b). However, the UN Committee on the Rights of the Child (2012a, p. 8) expressed concern that "traditional attitudes towards children in society limit respect for their views and that the State party has not taken sufficient measures to ensure that the views of the child are given due consideration, especially in courts, schools... within the family, other institutions and society at large."

Indonesia initially issued reservations on Article 17 of the CRC but these were withdrawn in February 2005 (United Nations Treaty Collection, n.d.). Despite this, Indonesia faces constraints with regard to realizing children's right to participation due to the paternalistic and feudal culture that persists in its society (United Nations Committee on the Rights of the Child, 2003b).

Cambodia did not issue a reservation on the CRC. With regards to children's participation, the government reported that its Constitution stipulated that Khmer citizens, including children, have the right to freely express their views (UN Committee on the Rights of the Child, 2010b). Moreover, the government reported to have organized platforms and

events to provide opportunities for children to express and to participate in decision-making, and have included children's views in governmental plans of actions on children (UN Committee on the Rights of the Child, 2010b).

Philippines did not issue any reservation when it ratified the CRC. With regard to children's participation, the government's report to the UN stated that "beyond all these spaces and opportunities...already in place there is still the deeper challenges of... changing society's values, attitudes and norms which still tend to promote conformity and therefore discourage independent and critical thinking and decision-making..." (UN Committee on the Rights of the Child, 2009b, p. 39).

Lao People's Democratic Republic did not issue any reservation on the CRC. In its report to the UN, the government said that its Constitution provides its citizens, including children, freedoms in both oral and written expressions that are not contrary to the law (UN Committee on the Rights of the Child, 2010a). Some examples of measures cited by the government were existence of children and youth organizations, opportunities for children to air views to school managements, and using media to inform parents about children's rights (UN Committee on the Rights of the Child, 2010a). However, the government reported that challenges remain, including the lack of sufficient resources to promote the children's participation among public officials and personnel such as judges, police and probation officers, teachers and public health workers (UN Committee on the Rights of the Child, 2010a).

Viet Nam did not issue any reservation on the CRC. The government reported to the UN that laws that recognize and allow children's participation exist, however, society's views and expectations of children's role pose challenges (UN Committee on the Rights of the Child, 2011c). Another challenge cited by government was the low level of awareness and knowledge of some leaders at different levels, of parents and child care workers on child participation, and the low level of commitment in creating conditions and expectations to enable children to exercise their right (Committee on the Rights of the Child, 2011c).

The reservations made by and the challenges expressed by governments manifest a cultural construction of children as dependent on adults, as social actors whose agency is yet to be developed and who are at a disadvantage in terms of power position vis-a-vis adults. As West (2007, p. 126) pointed out, children in Southeast Asia are perceived to be "white cloths or blank sheets to be inscribed upon, or empty vessels waiting to be filled".

Despite these challenges, ASEAN has taken strides in recognizing the child's right to participation. Firstly, ASEAN states recognize that children have the right to participate and this is recognized in its 2001 Declaration on the Commitments for Children in ASEAN whereby governments committed to "[c]reate opportunities for children and young people to express views, advocate their rights and concerns, and participate in

community development” (Declaration on the Commitments for Children in ASEAN, 2001). Such commitment was then further sustained by creating institutionalized spaces for children to participate directly in influencing ASEAN’s strategies and plans of action.

The ASEAN Children’s Forum is considered as the institutionalized space for children’s participation in ASEAN. It was conceived out of a strong recommendation of Southeast Asian children to have a forum that will be the “regional voice of children”, “will work to address children’s concerns with a regional perspective”, and “will also encourage governments to develop national frameworks on children’s participation and create policies that promote children’s rights” (First Southeast Asia Children’s Conference Declaration: Towards one caring and sharing community for children, 2006).

Prior to the first ASEAN Children’s Forum, the Philippine government took the initiative to convene the First Southeast Asia Children’s Conference last 10 to 14 December 2006 (ASEAN, 2011). It was participated in by children from ASEAN member countries who discussed themes that were deemed as important to children and youth (ASEAN, 2011). The issues discussed were on poverty, disasters and emergencies, education, HIV/AIDS and other diseases, maternal health, child mortality, gender equality, environmental sustainability, children’s participation and child trafficking (First Southeast Asia Children’s Conference Declaration: Towards one caring and sharing community for children, 2006). The said children’s conference in 2006 served as a platform to decide on creating an institutionalized mechanism for children’s participation in ASEAN.

The terms of reference of the ASEAN Children’s Forum, which was adopted during the Preparatory Senior Officials Meeting for 7th ASEAN Ministerial Meeting for Social Welfare and Development (AMMSWD) held last November 2010, calls for the institutionalization of the ACF as a formal children’s process within ASEAN. The said document considers the ACF as a venue for children to participate in ASEAN community building, to express views and aspirations, and to cooperate together towards regional development. Moreover, the document stipulates that the ACF shall be a biennial venue for children from ASEAN member states to “[a]dvocate children’s rights in the region” and “to participate in the ASEAN Community building by 2015” (ASEAN, 2011, pp. 3-4).

In a press release issued by the Singaporean government during the 2012 ASEAN Children’s Forum, the Minister of State for Community Development, Youth and Sports was quoted as saying, “The Forum is a significant platform for the discussion of children issues in the region...provides an opportunity for ASEAN children and youth to not only discuss matters close to their hearts, but also to work together... [and] [i]t also gives ASEAN countries an opportunity to hear from our children and youth, who will be our leaders tomorrow” (Ministry of Community Development, Youth and Sports, and Singapore Children’s Society, 2012).

The modalities of the ACF are as follows. The ACF is joined by children aged 12 to 18 who were nominated by their respective governments “through existing national children’s conferences or other appropriate national processes that will ensure wider representation of children” (ASEAN, 2011, p. 4). The terms of reference encourage inclusion by ensuring gender equality among the delegates and by providing opportunities for children with special needs to participate.

As a venue for deliberation, each delegate has the responsibility to be informed about the issues prior to the forum, to actively participate in the discussions, to disseminate information and outcomes of the forum and carry-out follow up actions relevant to the ACF’s recommendations. Similar to the decision-making practice in ASEAN, the ACF shall decide “based on consensus” although the TOR recognize and encourage “freedom of children to give suggestions” (ASEAN, 2011, p. 5).

The outcomes or recommendations made by the ACF shall be disseminated within ASEAN and to the member states. Based on the terms of reference, representatives of the children delegates will present the forum outcomes to the ASEAN Ministerial Meeting on Social Welfare and Development (AMMSWD) through the Senior Officials Meeting on Social Welfare and Development (SOMSWD), which may be convened during the same year. But in case the SOMSWD will be convened at a later year, the representatives of the children delegates will still be presenting the outcomes during and prior to it they are also expected to have an opportunity to present it to the AMMSWD ministers in their respective countries. On the other hand, the ASEAN Secretariat is expected to support the dissemination of the outcomes to other ASEAN sectoral bodies such as the Senior Officials Meeting on Youth (SOMY), ASEAN Committee on Women (ACW) and the ASEAN Commission for the Promotion and Protection of the Rights of Women and Children (ACWC).

There have already been three ACFs that have taken place. The first was in 2010 held in the Philippines which led to the formulation of the ACF TOR. The second was in 2012 hosted by the government of Singapore. The 2012 ACF was followed-up by the dialogue between selected children representatives from the ACF and the ACWC. Moreover, the third was hosted by the Thai government. These processes are expected to adopt documents drafted and framed by children themselves.

The 2010 ACF was organized by the Council for the Welfare of Children, a policy-development body of the Philippine government. It took place last 19 to 23 October 2010 and did involve around 32 children from ASEAN countries including children with special needs. Being the first ACF, it was deemed as significant because it was the venue where children adopted the Terms of Reference of the ACF and ways to better involve adults and organizations in supporting children’s participation (Council for the Welfare of Children, 2012; Travis, n.d.).

The 2012 ACF was held from 6 to June 2012 involving around 36 young delegates from ten ASEAN member states (Ministry of Community Development, Youth and Sports, and Singapore Children's Society, 2012). It was organized by the Ministry of Community Development, Youth and Sports (MCYS) and the Singapore Children's Society, and carried the theme "Empowering children by promoting their rights under the UN Convention on the Rights of the Child (UNCRC)" (Ministry of Community Development, Youth and Sports, and Singapore Children's Society, 2012).

The 2012 ACF was given a follow-up through the dialogue between selected children representatives from the ACF and the ACWC. The dialogue between the children representatives who participated in the 2012 ACF and the representatives of the ACWC took place in Jakarta last 4 July 2012 (ASEAN, 2012a). During the dialogue, the participants shared the outcomes of the recommendations generated during the ACF and issued a reminder to the ACWC members saying, "Don't speak about us without us!" (ASEAN, 2012a).

The ACF is indeed advantageous to children for various reasons. First, it has institutionalized children's participation within the ASEAN decision-making process. The ACF is recognized as a space created by children, participated in by children and intended for the protection and promotion of the rights of children. Second, the ACF has provided an avenue through which children's issues can be generated, deliberated and translated into specific recommendations and proposals to other ASEAN bodies. Third, it has become an instrument to voice out children's priorities and recommendations to other ASEAN bodies; the resulting decisions in the ACF were directly articulated by children to other ASEAN bodies. The results of the 2010 ACF including the proposed terms of reference were presented during the 7th ASEAN Ministerial Meeting on Social Welfare and Development (AMMSWD). The results of the 2012 ACF were presented during the 5th meeting of the ACWC.

One of the key outcomes of the ACF is the resulting integration of children's participation as a priority in the ACWC's work program. The work plan of the ACWC for the period of 2012 to 2016 indicated "the right of children to participate in affairs that affect them" as one of the priority thematic agenda. In particular the strategy is to "create an enabling environment for children to participate in decision making process". Moreover the said work plan noted that ACWC representatives will attend the ACF and that children will also be invited to attend the ACWC meetings.

5. Structural Weaknesses of the ASEAN Children's Forum

The ACF is structured as a participatory and consultative space for children. It has a value in terms of allowing children to identify and deliberate on the issues they confront at the national and regional levels and have these issues articulated to higher bodies within ASEAN. However, the process itself has weaknesses.

In examining the ACF, the views of Dryzek (2000 cited in O'Toole and Gale, 2008) on the necessary elements of democratic practices shall be used. It is important to note that the essence of children's participation effectively contributes to the process of discussion, sharing and making decisions affecting one's life and that of the community. This is also the same rationale that democracy has. In fact, Hart (1992) pointed out that participation is the means through which democracies are built and also serves as a standard through which democracies are measured.

O'Toole and Gale (2008) used the views of Dryzek (2000) in determining ways whereby democratic processes can be measured. The three elements were provided, namely, 1) extension of franchise determined by groups involved in any decision-making process, 2) scope of democracy determined by the range of issues covered, capacity to set the agenda and roles performed in decision-making processes, and 3) democratic authenticity determined by the extent of participation and control of agents in a decision making process (O'Toole & Gale, 2008).

One of the weaknesses of the ACF is the limited opportunities it has provided for children's participation. One of the reasons why the ACF is non-inclusive is due to its problematic selection process. The terms of reference of the ACF said that the selection of participants shall be based on internal guidelines and processes of sending governments. This led to varying methods undertaken by governments such as by holding elections amongst children and appointing children delegates who are involved in NGO's or government programs. Despite guarantees of gender balance and participation of children with disabilities in the ACF's terms of reference, the way the participants are selected is still subject to adult control and permission. On the other hand, the selection process is also mediated by the political, social and cultural structures at the domestic level that may not even be in favor of children's right to participation. This displaces a wide number whose identities are maligned or unrecognized (e.g, Rohingya, stateless and gender diverse children) or whose political views run counter with that of the state.

The problem of being less inclusive is not limited to the ACF itself. Several participatory processes involving children also face similar constraints. Protacio-De Castro et al. (2007) cited that socio-economic and geographic locations of children hinder their participation. They articulated the difficulty to reach out to children who are poor, live in remote areas, differently-abled and who are out of school.

While being a participatory process, children are not necessarily in control of the agenda-setting behind the ACF. Interestingly the ACF has taken a broad range of issues including violence against children and HIV/AIDS which do affect children. But there is a lack of clarity how priority issues were determined but what is apparent is that the agenda are determined by ASEAN itself in consultation with the host government.

Whether the ACF manifests democratic authenticity is worth examining. The ACF is clearly a consultative process whereby children articulate their issues, deliberate what should be considered as regional concerns, in particular those that are common across children within ASEAN and generate recommendations. As a consultative process, there is no guarantee that the recommendations of children would eventually translate into policies and programs that governments and ASEAN would adopt. The ACF falls short by only guaranteeing that the recommendations made by children will be articulated and considered by adult-only bodies such as the ACWC.

On the other hand, the ACF and its related processes only translate into two things—a set of recommendations accepted by children participants and a process of voicing these to adult officials. The ACF does not guarantee how the recommendations will be disseminated to a wider audience of children at the national or local levels or how the process itself can contribute to the empowering of children and/or their groups to work towards social change. In fact, the ACF has made itself detached from other processes involving children even at the regional level. This renders the ACF as just a symbolic process that is detached from a wide spectrum of activities that are closer to children's lived realities and that allow children to make sense about their world and to allow their rights be realized.

As a way to illustrate such analysis, the report of Regional Workshop to Promote and Support Children and Young People's Participation in ASEAN: Making our ASEAN meaningful for Children and Young People noted that a group of children from different children's groups in Southeast Asia was convened during a parallel workshop to the ASEAN Children's Forum 2010. The said parallel workshop carried the theme, "Making our ASEAN Meaningful for Children and Young People". One of the decisions during the said workshop was to request for an interface with the official delegates to the ACF, but this was declined by the ASEAN and in particular the Philippine government. The children in their letter addressed to the Department of Social Welfare and Development of the Philippines expressed their "regret foregoing meeting the delegates from [sic] the ASEAN Children's Forum" and expressed "a more meaningful and active collaboration between the children of ASEAN" (Regional Workshop to Promote and Support Children and Young People's Participation in ASEAN: Making our ASEAN meaningful for Children and Young People, 2010, p. 35).

These weaknesses are not exclusive to the ACF but also manifest in various participatory processes involving children. Percy-Smith (2010) has criticized participatory processes as being too focused on children expressing a view rather than being involved in all aspects of planning, decision-making and implementation. Percy-Smith (2010) also talked about tensions between adult organizational agenda and the priorities of children leaving children with no choice but to focus deliberations of an issue or agenda that have been pre-set. Moreover, Percy-Smith (2010) cited that consultative processes restrict children's

empowerment by focusing too much on children's articulation of concerns and less on their capacity to directly work on ways to improve their lives. Furthermore, Percy-Smith (2010, p. 112) expressed that participation in governmental decision-making "breeds a culture of dependency on professionals that mediates against active participation and empowerment of children and community members as authors of their own lives".

6. Re-imagining Child Participation Within the ASEAN

Processes and mechanisms relevant to children's participation should continuously be revised and re-imagined to maximize their potential as a venue to realize the rights of children and to empower them. This section provides some ideas towards that end.

6.1 Towards a Pluralistic Political Space

There is a plethora of opportunities for children to engage in the public sphere ranging from consultations to involvement in decision-making mechanisms. However, these mechanisms located in the public spheres provide some limitations to children such as access to these spaces, language barrier, and the openness of these spaces to the capacities of children.

Moreover, these processes where children are involved are rarely within the realms of their everyday life but situated and limited to the confines within the public/official sphere. Theis (2007) argued that initiatives that are close to the everyday lives of children such as schools, communities are likely to be sustainable. This problematic point is reflective of the ACF wherein there are no points of connection between the issues and recommendations put forward by the official children representatives and the daily realities of children at the local level. One may argue that the issues and recommendations have been developed through consultative processes at the domestic level. But connections between the national/local and regional should not be limited to preparatory consultative processes but also in terms of the outcomes of regional deliberations reinforcing or supporting the processes back home.

Having a pluralistic political space for children in ASEAN recognizes that the ACF is not the only opportunity to children to affect decision-making processes at the regional level, but acknowledges other spaces of engagement operating at various levels. These would include civil society led initiatives such as children's meetings, consultations and campaigns operating at the local, national and regional levels. The point is not to aggregate and diffuse children's voices and perspectives into priority issues fed into only one recognized children's process, i.e. the ACF, but for ASEAN to open itself and reach out to a variety of deliberative processes and taking those voices into consideration.

Cockburn (2007, p. 454) argued for a "radically pluralistic public arena where political spaces are able to change in order to accommodate the everyday worlds of children and

other marginalized groups". He also argued that children should not be the one who change and suit themselves but rather the surroundings must suit them. Such can be done by accommodating and valuing a variety of voices, discursive practices and languages.

6.2 Enhancing Inclusivity

Many literature have pointed out on the value of inclusion as one vital element of democratic processes (Held, 2000; Young, 2000; Cockburn, 2007; O'Toole and Gale, 2008). An inclusive process is deemed as one legitimating factor behind any decision-making process and its corresponding outcome (Young, 2000 cited in Thomas, 2007). An inclusive process is considered as a form of effective participation to allow citizens to have a "real possibility" to influence the decision (Falbo, 2006, p. 255).

Re-imagining an inclusive political space in ASEAN where children can engage entails two aspects. First is an inclusive political space that recognizes and provides access to a variety of children who come from marginalized identities or subjectivities. Second is an inclusive political space where children's discursive capacities are recognized and valued.

A starting point towards inclusivity is a recognition of children's specific differences and otherness as a group. As Will and Dar (2011, p. 601) pointed out, "political participation will truly include children only insofar as it involves the ability to transform entrenched structures of power through children's particular lived experiences of difference".

Children are not a homogenous group but rather a plurality of subjective experiences, social positions and identities. These differences need to be checked because there are underlying power dynamics that if not checked can reinforce exclusion. For example, the issue of patriarchy and heterosexism which manifest in various ASEAN countries can reinforce marginalization of children on the basis of their diverse gender expressions.

On the other hand, ensuring children's participation needs to recognize and address their marginalized position vis-a-vis adults. Moreover, while children engage in deliberations together with adults they are not treated as equally positioned participants. The reservations of ASEAN countries citing culture and tradition manifests a common view that children are less capable as agents, cannot make decisions themselves, and should be in the guidance of adults.

Another aspect of inclusion is in the realm of political communication. Going beyond being physically present and visible or what Falbo (2006, p. 252) calls "politics of presence", political actors such as children engaging in decision-making processes should also have an opportunity to influence the outcomes. Drexler (2007, p. 3) citing political theorist Iris Marion Young pointed out that "[t]he normative legitimacy of a democratic decision depends on the degree to which those affected by it have been included in the decision-making processes and have had the opportunity to influence the outcomes". However,

Cockburn (2007, p. 447) pointed out that “obstructed forms of communication” marked by a preference towards an adult-oriented method and language used in argumentation and deliberation still manifest and pose as barriers to children.

Making political communication inclusive necessitates the altering of a political culture wherein argumentative modes of reasoning are supplemented by other modes of communication such as greeting, rhetoric and narratives and the diverse ways these can be articulated (Young, 1990 cited in Held, 2006, p. 244). Thomas (2007) elaborated on Iris Marion Young’s concept of inclusive political communication by describing the other modes of communication such as Young’s concept of “greeting”, “rhetoric” and “narrative”. Greeting or “public acknowledgement” refers to “communicative political gestures through which those who have conflicts aim to solve problems, recognize each other as included in the discussion, especially those with whom they differ in opinion, interest, or social location” (Young, 2000 cited in Thomas, 2007, p. 211). Rhetoric was considered as “the various ways in which something can be said, which color and condition its substantive content” and would include emotional tone, use of figures of speech and non-verbal and symbolic gestures (Young, 2000 cited in Thomas, 2007, p. 211). Moreover, narrative or otherwise considered as “situated knowledge” are considered essential to enable groups to understand the experiences of others and develop a shared discourse (Young, 2000 cited in Thomas, 2007, p. 211).

Recognizing and valuing such diverse forms of communication are necessary in order to bring to light and disclose experiences of marginalized groups that are usually excluded or which go unnoticed.

Another aspect of inclusion that may need to be considered entails “the widening of issues that could be the object of deliberation” (Falbo, 2006, p. 253). Such was deemed by Falbo (2006, p. 253) as crucial because it “refers to those inputs that could be included in the deliberative arena, despite the application of mechanisms and procedures to enhance the active participation of disadvantaged groups”. Such concept is necessary to counterbalance the role of governments in deciding on the priority issues that will be discussed in the ACF. Such inclusion is also necessary to allow children to bring in critical issues that may not be deemed pleasant by the governments.

6.3 Space that mutually reinforces regional and local concerns

Conceptualizing a space in ASEAN where children engage needs to reframe our understanding of children not only as political actors at the domestic level but also at a regional level. There is a need to reframe our understanding of children as “transnational” actors “straddling geographical and ideational boundaries in a notional network that is seen to exist above or beyond the state” (Gilson, 2011, p. 289), or what Tarrow (2010, p. 172) considers as “rooted cosmopolitan”. The term “rooted cosmopolitan” coined by anthropologist Ulf Hannerz who defined it as “...interspersed among the most committed

nationals, in patterns not always equally transparent, are a growing number of people of more varying experiences and connections[,]...[who] redefine the nation... others again are in the nation but not part of it" (Hannerz, 1996 cited in Tarrow, 2010, p. 172). Tarrow (2010, p. 172) further noted that "rooted cosmopolitans" may express allegiance to an imagined international community.

In such case, children are imagined as actors whose interactions are not limited within the confines of the geography of community or state but also in institutions and spaces beyond the state. There have been experiences of children worldwide who have engaged in processes at the transnational level including the ACF itself.

In re-imagining a space that mutually reinforces regional and local concerns, I wish to borrow Sidney Tarrow's concept of "loose coupling" to help us understand how international and domestic politics interact and at times intersect (Tarrow, 2010, p. 174). Such concept was thought of as the "emergence of mechanisms and processes that bridge domestic and international politics in a sustained way without displacing one or the other or homogenizing the two" (Tarrow, 2010, p. 174). The processes of interaction and intersection between the domestic and international were categorized into four types, namely, internalization, externalization, insider/outsider coalition formation and transnationalization (Tarrow, 2010).

Internalization conceived as "construction of campaigns of local or national non-state action constructed around external issues" occurs at the domestic level (Tarrow, 2010, p. 174). It is characteristic of processes where actors "reframe claims in terms of universal human rights rather than particular citizenship rights" (Tsutsui and Shin 2009, cited in Tarrow, 2010, p. 175). Such internalization can happen when the outcomes of the ACF are disseminated by children at the domestic level and used by children, or even together with child rights activists, as points to influence policy outcomes of the state. Internalization can also happen when children who have been involved in regional spaces are able to support the capacities of their peers to take collective action addressing issues they face.

Reflecting on the experiences of children members of Caring Teens Community, an Indonesian children's organization involved in regional level meetings, Diena Haryana, a child rights activist, pointed out that children's exposure to regional discussions have resulted in efforts to discuss amongst themselves issues such as bullying and violence, share with each other ways by which other children have dealt with the issue, and develop their own solutions to the problem (Haryana, 2014, pers. comm., 5 September).

Externalization conceived as "the employment of political opportunities provided by international institutions, regimes, or treaties for external political action" occurs at the international level (Tarrow, 2010, p. 174). Processes under this type usually occur when domestic actors engage international institutions such as international human rights courts and other intergovernmental bodies. An example given by Tarrow (2010) is the

Women's NGO Forum during the 1995 Beijing UN conference on women. Indeed, the ACF itself is a process of externalization where children representatives bring and articulate domestic issues and engage in deliberation to make such as regional priorities worthy for ASEAN's action.

At the UN level, children have likewise affected decisions of the UN Committee on the Rights of the Child by submitting their alternative reports and conducting dialogues with the committee members. Reflecting on the experiences of Kids Dream, a children's organization from Hong Kong, Billy Wong, a child rights advocate, shared good outcomes resulting from children's involvement in the CRC reporting process. She said that "the UN Committee now also have new guidelines for children in participating in the reporting process...[and] they now allow submission of reports in different formats" (Wong, 2014, pers. comm., 10 September).

Transnationalization pertains to "the cooperation of domestic actors when they work together across national boundaries" and "with common aims"; it occurs at the international level (Tarrow, 2010, p. 175). Tarrow said that there are limited examples of such processes which she considered as difficult to organize and to sustain. At the ASEAN level, transnational actions occurred during the ASEAN civil society meetings that despite the multiplicity of issues carried by a diverse range of activist groups produced a common call to ensure and strengthen civil society participation within ASEAN decision-making. Indeed there have been experiences whereby children engaged in the ASEAN Civil Society Conference/ASEAN People's Forum (ACSC/APF) from 2011 to 2014 resulting to children's statements integrated into the forum's outcome documents. There were also civil society initiatives to bring together several children's groups around Asia to discuss their issues, learn from each other's experiences and discuss plans for the region. These processes need be considered as alternative transnational political spaces for ASEAN children.

The involvement of children in regional meetings generated positive outcomes towards children. Billy Wong shared that "through regional children's meetings, child participants learnt more skills and knowledge on child rights advocacy that help them continue [to] advocate children's rights in their home countries...these experiences were shared with their peers when they went back to their home countries" (Wong, 2014, pers. comm., 10 September). Diena Haryana, on the other hand, shared that children's involvement in regional processes "broaden their perspectives of what happen[s] to children in other parts of the world, and that they can share with each other that they can do something meaningful to help other children around them" (Haryana, 2014, pers. comm., 5 September). Indeed, engaging in transnationalization potentially opens spaces to cultivate a sense of solidarity among children across different spheres or levels where they engage.

The last process at the transnational level which can potentially be engaged by children is the formation of insider/outsider coalitions, a term borrowed by Tarrow from Sikkink

(2005). Such process happens when both international and domestic opportunities are open for domestic activists to engage, and that domestic activists “privilege domestic political opportunities but will keep international activism as a complementary and compensatory option” (Sikkink, 2005 cited in Tarrow, 2010, p. 179). This process somehow maximizes both international institutions and domestic power structures as sites towards change. Forming insider/outsider coalitions is vital considering that not all children are enabled to directly participate in processes beyond the state due to a host of barriers such as resource constraints, immigration issues and geographic barriers. For example, street children may not be given a capacity to represent a children’s organization in an ASEAN fora. Moreover, even if children were able to speak in international gatherings, their recommendations may not automatically translate into concrete actions by the state. Hence, a dual pronged approach of participation is vital engaging various nodes of power and leveraging on one to strengthen the push on another. Such should be the ideal scenario where children at the local level influence the outcomes of the ACF and in other ASEAN mechanisms and where they get to use the decisions of ASEAN to call for stronger policy and programmatic outcomes by their respective state. Such would be an ideal scenario where children from one state in ASEAN facing human rights violations are supported to engage with children’s groups from other countries in the region to create solidarity and collectively call for enhanced action by the concerned state.

7. Conclusion

This paper albeit critical to the ASEAN Children’s Forum does not propose its abolition. Looking at the various spaces where children can participate both at the national and regional levels, the ACF can still play an important role by being a site for interaction amongst children, a site for deliberation of issues and as a platform for children to advocate for their issues within ASEAN. But considering the ASEAN Children Forum as the only regional space for children can be problematic due to issues of inclusion and being detached from the contexts of children. Exploring and expanding spaces for children’s participation within ASEAN is needed to allow more children to act as agents, within their own immediate environments.

Reimagining children’s participation in ASEAN would necessitate the recognition of, and making accessible the multiplicity of spaces for children. For one, such space should be characterized by the plurality in terms of form and inclusion recognizing the diversity of children’s identities and subjective experiences. Moreover, these spaces located within and beyond children’s immediate contexts need to mutually reinforce each other, leveraging on each other’s potential to create positive changes for children.

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TRADE UNIONS IN VIETNAM: IMPLICATIONS OF ECONOMIC LIBERALIZATION

Huong Ngo

The shift since 1986 towards an economy based on free markets, driven by so-called Doi Moi (or economic renovation) policy of the communist-controlled State of Vietnam, has had major implications for the nation's workforce. Whilst economic growth has benefitted many citizens, low-income workers, especially those employed in the booming manufacturing sector, many still endure inadequate wages, poor working conditions, and poor access to social goods. Vietnam's trade union system led by the Vietnam General Confederation of Labor (VGCL) is mandated by government to protect workers' rights.

This paper addresses (1) challenges faced by trade unions resulting from the shift from a centrally planned economy to a market economy, (2) resulting changes in the relationship between the VGCL and the Government, (3) changes to laws framing the role of trade unions, and (4) changing roles and ways of operating of unions. The paper is based on a literature review, government and union policy documents and laws and 20 interviews conducted with trade union officials at all levels of government and in different types of business enterprises. The latter provide insider views of the changing nature and effectiveness of union power.

1. Introduction

Trade unions in Vietnam, in the period of economic liberalization (Doi Moi) beginning in 1986, have been under pressure to change their roles and ways of operating by the Communist Party of Vietnam (CPV), by the need to comply with international standards and by society at large. As a consequence, some have suggested that unions have gained substantial autonomy (Clarke, Lee and Chi, 2007). They may even have moved beyond being mere ‘transmission belts’, to union members, of Party-State policies and supporting management, into institutions of ‘semi-civil society’ supported by reform-oriented leaders who see that democratic reforms are needed (Saxonberg, 2012). This paper examines the changing relationship between Vietnamese State and the Vietnam General Confederation of Labor (VGCL), specifically evidence that unions can now act more independently of the State than was the case pre-1986. The following specific questions are addressed: What factors have driven the VGCL towards being more autonomous from the State? What indicates autonomy? How do the State and the CPV currently set the VGCL’s mandate, policy and programs? How does the VGCL use its increased autonomy to negotiate and make changes in law and policies? Are there barriers to changes in the role of the VGCL? The paper is based on a literature review, government and union policy documents and laws. Twenty interviews trade union officials at all levels of government and in different types of enterprises provide insider views of the changing nature of union power.

It is essential to note that there is only one trade union organization in Vietnam, the VGCL, and that it is a socio-political organization which is an arm of the CPV. The VGCL does, however, have many affiliated branches under its direct control at Provincial and District level and in ministries and public bodies. There is also a myriad of unions at enterprise-level across the country. Whilst able to operate independently to some extent under devolved powers these unions are affiliates of the VGCL.

The paper is set in four parts. First, challenges faced by trade unions resulting from the shift from a centrally planned economy to a market economy are outlined. Second, resulting changes in the relationship between the VGCL and the CPV are identified. Third, changes to laws framing the role of trade unions are highlighted. Fourth, the changing roles and ways of operating of unions are summarized.

2. Economic Liberalization in Vietnam: Challenges for Organized Labor

Vietnam’s economic and social life over the period 1945 to 1986 was deeply influenced by communist ideology and concomitant authoritarian political control together with centralized management of the economy. 1986 was a momentous year for the nation’s political economy. It saw the announcement of Doi Moi and in so doing demonstrated that socialism in Vietnam was not purely ideologically driven but was capable of adapting to changing global economic conditions. Major reforms were mandated in state agencies and in state owned enterprises (SOEs). These required new policies and regulations,

as well as processes of restructuring and equitizing (i.e. privatization of SOEs). These effectively, and intentionally, undermined the existing central planning system. By the early in the 1990s, shortly after the collapse of communism in the Soviet Union, Vietnam and China remained the only countries with a socialist orientation yet following the path to ‘market socialism’.

The first quarter century of Doi Moi saw marked changes in the numbers of and ideas about the so-called ‘working class.’ Workers have moved away from their historical role of ‘protecting the nation’ to one of supporting the nation by means of market-oriented production. The economic liberalization process itself is creating a new class structure, notably the growth of a middle class and a huge expansion in numbers of factory workers.

On the economic and production side under Doi Moi, equitization commenced on a pilot basis in 1992. Changes due to privatization have been radical in terms of the position and status of workers. Most significant perhaps is the fact that in the early period of the modern Vietnamese State (pre-1986), the State and workers held 80-100 percent of shares in SOEs. This situation enabled workers to feel that they were the ‘real owners’ of enterprises’ and ‘masters of production’. As Doi Moi unfolded, however, the proportion of shares owned by workers dropped sharply. By 2001 the figure was down to 35 percent (CIEM 2002).

As a result, the power of management and new shareholders increased. Legislation in 2002 finally eliminated the fiction of ‘workers as masters of production’. In the process, the VGCL requested a policy on selling shares to workers in order to make them feel more secure participants in the economic structure. The Chairperson of the VGCL, Dang Ngoc Tung supported this approach: “The union is appealing to the government to resolve this issue. We need to let workers hold more shares in enterprises, so they have stronger attachment to enterprises”. This measure also helps unions and workers have their representatives on boards of directors, which will further protect workers’ rights in the long term and avoid multiple disadvantages for workers after privatization.

Some SOEs have, however, become entirely privatized because their stocks have been purchased by small numbers of individuals. Since board memberships are determined by percentage of shares owned, VGCL-affiliated unions are not members. This is a big disadvantage for workers since unions do not have the same power of negotiation with managements as they had beforehand. The cumulative effects of this process have been loss of union power at enterprise level and the undermining of the concept of a workers’ state (Evans, 2004).

The consequences of economic liberalization have had both positive and negative impacts on workers in terms of ensuring their rights and interests and more generally access to social justice. Economic relations in the market economy have, however, caught unions ‘between a rock and a hard place’. They operate under conflicting and sometimes irreconcilable pressures from the State, from workers, and from enterprises.

In some SOEs, during the process of equitization, there is evidence that managements exploited workers in ways typical of capitalism (Greenfield 1994, pp. 207-8). Economic liberalization also engendered changes in economic relationships under the market economy and industrialization as private capital emerged alongside foreign investment. Labor relationships consequently changed within enterprises with the distinction between workers and capitalists emerging. The working class now sells its labor for compensation but there are increasing income gaps in society (The World Bank, 2014).

Doi Moi has brought about changes in workers positions in former (and current) SOEs and in the new types of companies that have affected their participation in decision-making processes. The old system of distribution of wages and other welfare benefits in SOEs was replaced by wages and bonuses based on pieces of work and extra hours in equitized or transformed joint stock companies. Government Decree 217/1987 gave directors greater autonomy to set wages. The wage system controlled by directors introduced elements of inequality and potential sources of conflict. Many workers did not agree with these shifts as they were not consulted. A large numbers of strikes, peaking between 2004 and 2008, were mainly on wage issues. Policy on minimum wages and mechanisms to negotiate wages with businesses were vague and gave less power to unions to negotiate on behalf of workers. The VGCL had, therefore, to refer to Party Resolution 20/2008, which gave guidance on the minimum wage, to persuade Government to take responsibility for the Law on Minimum Wage. Under economic liberalization, the private sector naturally increases its power and bargaining position in the economy. The State has however been ineffective in supporting workers' rights under the new regime. The role of the VGCL has therefore not been strong in terms of bargaining on behalf of its members.

Economic liberalization has created emerging labor markets and labor forces that bring about large challenges for trade unions. A corporatist system is formed and increasingly influenced by the new wealth of entrepreneurs and business owners. Yet the authoritarian structure of the State cannot fully accommodate stresses arising from economic development. In the market economy, labor markets are deregulated in ways that give more space for businesses to negotiate labor contracts with individual employees. Actors such as trade unions have a limited role and lack the independence from government to effectively represent workers.

Economic liberalization impacts negatively on low-income workers in terms of their rights and interests. Under capitalist-worker relations, wages are maintained at a low level compared with the cost of living, especially in foreign invested factories. For many years, under the market economy system, in terms of wages, workers related directly to employers whom they expected to meet their demands on wages but without any real power and instrumental means for wage negotiation. The State had not imposed policy on wages, instead regarding wages as a matter to be determined in the economic sphere, until enactment of the new Labor Law in 2012.

Continued low wages, below reasonable living costs for most workers, became a common source of labor discontent. There was accordingly, increased unrest amongst rural and urban workers as indexed by large numbers of strikes for higher wages and better working conditions (Paul, 2010, p.124). Because of the lack of a legal framework for wage negotiation, which was traditionally the role of the VGCL, unions could not actively deal with such unrest or confront enterprise managements.

During Vietnam's integration with the global economy there have been several economic shocks that rendered workers especially vulnerable, notably the Asian Financial Crisis of 1997 and Global Financial Crisis of 2008. Job lay-offs in many privately financed (including FDI-invested) firms led to flows of workers back to their places of origin. This in turn meant for a great burden on households and governments in the typically rural regions. At the same time new dimensions of urban poverty emerged, signified by: low incomes, lack of coverage by health insurance and social security, poor housing quality, poor access to local services (clean water and sanitation, electricity), weak social inclusion, and poor physical safety. The burden of identifying and arguing for the interests and rights of workers was laid on the shoulders of unions. At the same time the State was delegating attention to these matters to unions that lacked sufficient power and resources to meet the needs.

Overall, too, workers lack the political sensitivities needed to empower them to challenge legal institutions charged with protecting them. The market economy entails qualities of individualism and opportunism that complicate the relationship between employers and workers and increases the potential for conflict between them (Nguyen, Bui and Tran, 2000). As a result, ever more workers have joined together to claim economic entitlements from an individual rights perspective (Duong, 2001). Since workers lack awareness of how to proceed and, in particular, what unions can do for them, they choose means such as strikes, even if illegal. Since these so-called 'wild cat' strikes have occurred, indeed continue to occur and radically increase in some year without being organized by trade unions, they may imply nascent workers movements claiming rights on a 'grassroots' on collective manner. Although wild-cat strikes were often organized by workers themselves on an unofficial basis as a form of claiming their rights and negotiating method against the employers for their rights and entitlement, and it is notable that unions cannot function in collective bargaining, failed to negotiate with management, thus strikes occur. Also government has not acted strongly to repress strikes. As the movement grows stronger not only in factory but also in strikes outside of factories, the movement involves workers from different factories or in a larger industrial area. Both state and unions could not fully prevent it from happening, and there were indication of workers' direct involvement. It would be claiming too much to imply that strikes represent green shoots of political change but the way strikes are led by workers in a non-union based and organized manner without state ability to control indicates that the movement is moving up to take political space and leading to democratization.

3. Trade unions vis-a-vis the CPV

Both the VGCL and the Party are concerned about workforce instability and resulting diminished attractiveness of Vietnam to investors. The Party requires unions to become more innovative and responsive in meeting members' needs, and society's more generally. The 'statist' VGCL is moving away from being wholly dependent on the State to being more responsive to the demands of workers by providing more legal advice, and by joining collective bargaining processes that may presage stronger political representation in a peaceful democratization process. The VGCL is expected to not only represent employees but also to play an important role in facilitating the participation of workers in economic and social life so they can own their lives on behalf of the State.

At the peak of Doi Moi's initial impact, in 1988, at the Congress of the Vietnam Workers' Union, the name of that organization was changed to Vietnam General Confederation of Labor (VGCL). The change of name signified that the organization was not only for factory employees but rather for all kinds of people working for wages in all sectors of the economy (as per the 2012 Constitution). It was accordingly declared that trade unions should be established in all relevant organizations, entities, and business enterprises. Since the CPV wanted unions to support its economic policies it restricted their capacity to act independently.

On the other hand, in production workshops, union voices were not strong so the Party urged reform and capacity building.

Despite these urgings it seems, however, that Party policies did not match real needs. In assessing Decree 20-NQ/TW, in response to the Party, the VGCL drew the conclusion that: "the Party only delegates to the VGCL care for the lives and work of workers, without proper Party policy". In other words, the control space of the Party did not fully bear on every aspect of the work of the VGCL and there is more space for it to act. Unions still feel bound by the general direction of Party policy but at the same time they lobby the Party and State continuously for changes and reforms in policies that concern employees.

Vietnamese trade unions face conflicting demands from the Party-State. They face pressure to establish more unions, recruit more members, and support their members' interests more strongly, whilst still being loyal to Party policy. Considered from another perspective, the Party faces a paradox in needing to recruit more party members into trade unions whilst at the same time allowing unions to develop their organization autonomously so as to be able to attract members and thus ensure survival. In a speech by Nguyen Van Linh, the Secretary General of the CPV, he stated that leading union cadres do not have to be Party members and he urged trade unions to act more forcefully and independently of the Party and of management. However, this view of its leader was not fully reflected in the Party's resolution pressing trade unions to recruit party members in all economic enterprises.

Moreover, in order to be able to recruit members, the Party openly pressures the VGCL to act more independently and to more clearly defend workers' interests. Similarly to more orthodox regimes, the union is required to be loyal to the Party and its main goals. But in contrast to orthodox regimes, union leaders do not need to be Party members. Instead, the Party only pressures local unions to recruit some new members for the Party so that at least one person from each local union will eventually join the Party. Vietnam has moved far from the totalitarian model, in which everyone must be a member of a union. Whatsoever, trade unions face the problem of set-up unions at more enterprises and needing to recruit more members as according to the law, membership in unions is voluntary and no evidence has been found in the present study or in any of the literature reviewed of unofficial pressure for people to join unions. On the other hand, trade unions actually face open pressure from Party and state leaders to become active and dynamic to support worker's interests and protect workers' rights more directly and effectively. Since unions—in contrast to other mass organizations—are officially socio-political organizations, they also have the right and obligation to present their views on many proposed laws and this gives them some influence over policy-making. Mass organizations such as Trade Union do in fact tend to act as mere 'transmission belts' for Party-state policies. In Vietnam context, even no change in regime but there is gradual change from within the society state relationships with non-state actors.

By the same token, interviewees acknowledged that it is easier to establish unions in SOEs since the Party has greater influence and it is Party policy and part of the law on labor unions that all enterprises must have unions. Moreover, unions in SOEs are less likely to be neglected by management, as is the case in some foreign-owned enterprises, since SOEs need to follow more closely laws requiring consultation with the union on labor issues. It is much easier in a state-run economy for this requirement to be met, but in a market economy enterprises do not automatically encourage the establishment of unions. Interviewees also pointed out that the Party has much more influence in SOEs than in privately owned companies (e.g. same interviewee; chair of the Long Bien district union organization; representative of the union organization at the Ministry of Trade and Industry). In newly established joint-stock companies, unions are weaker. As a union representative at the Ministry of Trade and Industry puts it: "The roles of unions in joint-venture and state owned enterprises are limited, not very effective. Most of the time unions know about problems but ignore them. They also depend too much on other organizations and leaders [i.e. Party leaders and management]." So the VGCL must try to organize people at the grassroots level. Consequently, for example, in 2011 the VGCL held a conference; one of the main themes was the need to recruit new members (Saxonberg, 2013).

The Party faces challenge from society, especially from workers, through labour conflicts in enterprises that lie beyond the public sphere and thus beyond the direct control of the State. Conflicts between members of the working class and entrepreneurs, notably manifest in strikes, are intensified when unjust practices cannot be resolved by union-

based collective mechanisms. These phenomena pose challenges to the State to revisit the way justice is achieved and its obligations to respond to rights-based claims of workers. The dynamic of workers demanding economic and social justice could lead to a proposition of political change in a larger society than just the workplace. The State may consider solutions that work out a smooth transition to accommodate the interests of the new working class by more democratic processes such as enhancing legitimate democracy at work as well as empowering unions to act independently in support of workers.

The views of these matters by the CPV and the VGCL may not be the same. The Party assumes that labor conflicts resulting in ‘wild cat’ strikes, especially if union cadres allow strikes occur, would be “harmful to public security” and “harmful to the economy and investment.” The Party and the Government therefore push the VGCL to maintain harmony in labor relations. In another sense, the less that strikes happen the better. So whilst the law permits unions at enterprise level to organize strikes, the rules make it difficult for unions to do so. Interviews with trade union leaders confirm that they sometimes, despite the urgent needs of workers, “ignore calls for workers to go on wild cat strikes.”

The Party demands that unions play a more representative role on behalf of members. Resolution No. 22 (2008) stated: “trade unions must be better represent and protect the legitimate rights and interests of employees.”

In 2013, the General Secretary of the CPV, Nguyen Phu Trong, stated that the VGCL needs to act better to “represent and protect the rights of laborers.”

At present, one of the key tasks of trade unions is to protect rights and interests of members as agreed to by the CPV.

The Party has continued to stress the need for trade unions to develop mechanisms to achieve ‘harmonious’ labor relations, in which labor, capital and the State work in together. However, given the requirement to maintain Marxist-Leninist ideology as the guiding political principle of Vietnam’s governance, the use of the term ‘harmony’ seems to be mostly pragmatic, as a way to improve economic performance, rather than an attempt to replace Marxist-Leninism with a Confucian ideal of a ‘harmonious society’ (as Chinese Communist leaders have done). These themes emerged strongly in the interviews. Union leaders should ‘harmonize’ the interests of the workers with those of management and the Party (interview with a local union official from the Dong Nai province). Unions should cooperate with the Party in educating workers on Party policies and goals, whilst at the same time defending workers’ rights and interests. As a manager in the Department of Policy and Law for the Hanoi Union put it: “unions should support the Party in political teaching and tasks and also protect workers’ rights and interests by (a) participating in the adjustment of the labor law (insurance policy, wage), (b) providing legal consultation

to workers and (c) running labor newspapers to give workers a voice.” The chair of the union at a joint stock company in the Hai Duong province stated: “we communicate and educate workers concerning the guidelines and policies of Vietnam Communist Party.” Nevertheless, as argued above, the mandate for unions to protect workers’ rights is not an easy one to implement, given increasing challenges from workers and managements whilst at the same time supporting the State’s legal and institutional mechanisms.

4. Legal Changes Affecting the Role of Trade Unions

This section of the paper reviews the legal framework that defines the role and mandate of Vietnam’s trade unions. A landmark of Doi Moi, 1986-1987, was reform of labor legislation and the role of trade unions. The VGCL and its predecessors had been seen as a “school of socialism for laborers” (Trade Union Law, 1990). The Trade Union Law of 1990 removed much of the State control over unions which thenceforth needed only to inform the appropriate government body that an organization (i.e. enterprise-level union) had been formed.

Vietnam’s Constitution has been amended on a number of occasions to reflect changes needed in the face of economic liberalization. The most recent of these was the 2013 Constitution. In relation to the Vietnam Trade Union (VGCL) it says:

“Vietnam Trade Union is the socio-political organization of the working class and laborers established on the basis of voluntary membership for laborers to take care of and protect the legitimate rights and interests of laborers; participate in state management, socio-economic management; participate in supervision, inspection, assessment of state organs, units, organisations and enterprises on the issues related to rights and duties of laborers; disseminate and mobilize laborers to study, improve capacity, profession and comply with the laws and nation building and national protection.”

The 1992 Constitution referred to the Trade Union in Article 10. It stated that the role of Vietnam Trade Union as a state organ and a socio-political organization, having a mandate on state and social management, included supervision and inspection of the activities of state bodies and other economic organizations, education of public cadres and working people with the aim “for and protect” their interests.

The two key bodies of law bearing on the role of unions are the Labor Law and the Trade Union Law. Amendments of these two laws have been made in the similar steps of labor legislation reform. Legal changes are analyzed together with the views and perspectives of informants on law in practices from the interviews.

The Labor Code of Vietnam, approved in the ninth term of the National Assembly on 23 June 1994, came into effect on 1st January 1995. The code institutionalized the CPV’s new direction after 1986 regarding labor relations and management. It covered issues

such as: employment, apprenticeships, labor contracts, collective bargaining agreements (CBA), wages, working time, rest time, labor discipline and material responsibility, occupational health and safety (OHS), specific provisions on women labor, child/adolescent and other types of labor, social insurance, Trade Union, settlement of labor disputes, state management of labor and inspections, and the handling of the violations of labor legislation. The Code regulates labor relations between workers and employers and directly related social relations. It applies to all workers, organizations and individuals using contracted labor in all economic sectors and all forms of ownership, as well as to apprentices, domestic workers, and a number of other jobs, with the exception of workers doing outwork (Articles 1-2 and 137). Until recently, however, the code was still mainly practiced in SOEs rather than in the private sector. Only with Decree 233/1995 was labor in foreign owned companies covered in an expanded system of wage setting. Disputes over changes to the wage system have occurred in many equitized SOEs and reflect the role of factory-level trade unions in meditating and explaining the new rules.

The 1995 Labor Code set the optimistic goal of establishing trade unions, or interim unions, or preliminary workers' councils, within six months and the implementation of a trade union in management board. Unions were also required to be funded from a 2 percent levy on enterprise wage bills of which 1 percent was to be contributed by workers. This financial base of unions allowed them to become more independent. The 2001 Labor Code further formalized the role of unions in declaring that if any employer has more than 10 employees s/he must register a 'labor regulation' with the Provincial Labor Office and must contact local trade union executives about its activities.

The Labor Code, 2006, comprehensively amended Chapter 14 of the 1995 Code on labor dispute resolution. This reflected the fact that, with the yearly increase of foreign investment and flourishing domestic private enterprises, violations of labor laws had resulted in an increasing the number of strikes, especially in 2005 and 2006, and the law regulating labor disputes had proved inadequate. The 2006 amendments to the Labor Code required businesses to take responsibility in providing safeguards for workers' rights and working conditions as well as non-discrimination, collective bargaining and the like.

The Labor Code, 2007 focused on two aspects, which are arrangements for social security and mechanisms for enforcement. The first included how to ensure good working conditions, a decent income, and effective social protection. The Code tried to ensure this with detailed regulations on OHS, working time, minimum wage, and social insurance. The second aspect refers to institutions dealing with Labor Code violations and labor disputes, the legal framework for collective action and LU work. The Labor Code 2012 was designed to define a clearer role for trade unions in protecting labor and union rights, including collective agreement mechanisms and organization of strikes. It stated that "collective negotiation of the scope of sector is the representative of the sector Executive Committee of the Trade union" (Art. 69), Role of Trade union in labor

dispute (Art. 195) and grassroots trade union can organize strikes (Articles 209, 210).¹ In all versions of the Labor Code, labor regulations and labor rights are well articulated but none provided for freedom of association and the formation of unions.

The Law on Trade Unions currently imposes a 2 percent trade union levy based on the total payroll of the employer.² When the rule on trade union fees was first introduced, there was a difference between foreign invested companies and Vietnamese private companies and organizations. Still as trade-union membership is voluntary, it is difficult to collect sufficient fees from workers who are also union members. Companies also found reasons not to establish unions or to delay unionization so as to avoid paying fees. The law now requires employers to pay union fees whatever there are trade union units in enterprises. It requires duty of trade union members to pay the fee. This view appears that the new trade union law 2012 was stronger reinforces applicable to involved stakeholders and activities of trade unions.

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- 1 Ref. Labor Code 2012: Chapter V Section 2. COLLECTIVE NEGOTIATION and Chapter XIV-Section 2 AUTHORITY AND ORDER OF PERSONAL LABOR DISPUTE SETTLEMENT
Article 69. Representative of collective negotiation
1. Representative of collective negotiation is defined as follows:
a) For the labor collective in collective negotiation, the scope of enterprise is the representative organization of the labor collective at the grassroots level; the collective negotiation of the scope of sector is the representative of the sector Executive Committee of the Trade union;
Article 72. Responsibilities of the trade unions, representative organizations of the employers and the state management agencies on labor in collective negotiation.
1. Organizing the training of the collective negotiation skills for the persons participating in the collective negotiation.
2. Participating in the meeting of collective negotiation upon the request from either collective negotiation party.
3. Providing and exchanging information relating to the collective negotiation
Articles 195 – role of TU in labor dispute
1. The State management agencies on labor shall be responsible for coordinating with the trade union organization, the representative organization of the employer to make guidance and support and assist the parties in the settlement of labor disputes.
Art 199: Trade union is the member of Labor Arbitration Council.
- 2 Ref.258/HD-TLD- Regulations regarding trade union roles in alignment with the amended laws; 1803/HD-TLD- all members of trade unions, laborers shall contribute 1 percent of salary. 200/2013/ND-CP- Members of trade unions shall contribute trade union fees equal to 1 percent of salary ; 200/2013/ND-CP - Regarding rights and responsibilities of trade union in state management, social-economic management; 191/2013/ND-CP - New regulations on deducting for paying the trade union fee; 43/2013/ND-CP - The rights and obligations of the trade union in the enterprises. Before 2012 Trade Union Law: Although the former Law contained no such levy, a 2 percent fee was introduced for local Vietnamese companies under Joint- Circular 119/2004 dated 8 December 2004 of the Ministry of Finance (MOF) and the VCGL and Circular 17/2009 of the MOF dated 22 January 2009 (Circular 17). Circular 17 introduced a 1 percent fee for foreign invested enterprises.

5. Changing Role of Vietnam's Trade Unions

The VGCL has dual roles that play an important positions in Vietnamese society and as part of state structure as state's arms to deliver state's and party's policies. However, this dual function restricts its capacity to advocate for members' interests in the way that is possible in democratic states whereas unions act as members of civil society. For the Vietnamese unions, protecting workers' rights is only one among many objectives, which notably include to: "stabilize production and business, see to the rights and the benefits of both sides in labor relations and of the State".³

Vietnam trade unions originally, according to 1990 Law on Trade Union, had four basic functions:

- Protecting the interests of workers in their working environment. This included such activities as supervising the allocation of welfare benefits, visiting the sick, and arranging parties for children;
- Participating in managing the assets and property assigned by the government to the SOE;
- Encouraging and motivating workers to raise productivity;
- Educating its members in socialist ideology and awareness by such measures as organizing artistic and sporting competitions.

Along with changes to legal frameworks, the VGCL's constitution has gradually shifted to embody the changing role of unions. The role of unions is now more clearly identified as being to act in the interests of workers and to play a strong role in settling workplace agreements. Unions have established themselves independently from government activities and approval, and are permitted to join international trade union organizations.

The structure and role of trade unions changes over time in practice. The role of trade unions in Vietnam is not clear. The VGCL has made its own role, to some degree, to cope up with the changing economic, workforce and social structures, changing of social that require better defense of labor rights and interests. The structure of the VGCL has moreover changed greatly since Doi Moi, with more establishments in professional branches, such as the district and industrial zones trade unions. On balance, however, it could be argued that there was no real change in the regulated mandates of the VGCL at the Congress of Labor Unions in 1988.

3 Decision 5A/NQ-BCH 7/7/2005.

The changes in labor force structure and organization demanded changes in the role and practices of unions. In the current period, priorities and strategies of the VGCL⁴ are as the followings.

- To raise awareness among the workers and the union staff about the legal mechanisms and policies directly related to their rights;
- To improve the protection of rights through law dissemination and legal aid support, so as to make the workers aware of their own rights and help them defend them,
- To develop modeling in grassroots unions and professional unions, so that they can organize themselves and operate in an appropriate way within enterprises, especially in the private sector, but also for informal workers;
- To monitor the implementation of the policies related to the workers, in particular in matters of salary, CBA, labor contract, policies related to workers in excess during the restructuring of SOEs, social insurance, medical insurance and the policies for female workers.

The structure of grass roots trade unions (i.e., at enterprise level) units changed significantly from what was allowed for under the 1978 Charter to provisions of the 1989 Trade Union's Constitution Charter. The latter promoted two models of trade unions.

The first dealt with unions located within SOEs. Operating under the control of local government and the Party cell within the enterprises, unions are regarded as one of four interests: party, government (management), trade union and youth union. Unions in SOEs work under the leadership of the management board. The union president is appointed by the management board and ratified by higher government authorities. Union fees are deducted from SOE profits, decided upon by the management board. Unions are led directly by a union committee and indirectly guided by the local authorities because SOEs come under management of local authorities. The second model covers unions in sectoral SOEs under ministries or central government. Their funds are provided by government but they have the autonomy to use them without going through the SOE's management board. Union membership fees are established and SOEs must deduct one percent of total profits to pay to the unions. Members pay two percent of total wages. So that, by law, the union representative's salary can be funded by union fees.

To conclude, it is interesting to note indications of democratization of trade union within the one party state in Vietnam. The situation under Doi Moi and the resultant flourishing and diversification of the economy and concomitant changing demand for labor has created new challenges for trade unions. The communist-ruled regimes have

4 Ref. Decision 5A/NQ-BCH dated 7/7/2005 about strengthening law related tasks of the LU in the new situation, Decision 04/NQ-DCT 3/4/2006 about strengthening the dissemination and education work of LU in the new situation, and action program of Viet Nam LU to implement decisions of the 10th Congress of the Communist Party (Paper 1245/TLĐ dated 1/8/2006).

become more complicated to define in the era of economic liberalization. Since the Labor Union, VGCL, is an element of the political structure, even though it has its own charter, structure and resources, it is hardly fully independent from the Party and the State. However, trade unions at grass root (enterprises or sector) level do seem to be becoming more independent of the Party and there are changes in the role of trade union towards democratization.

Trade unions also face the increasing demand from workers to represent and to protect thus they need to be flexible and innovative and harmonious between state, the enterprises management and the workers. The fact is that many workers are not interested in unions because they feel that unions have not been protecting their legitimate right when these are violated by employers. Nor have unions been effective in securing fair shares of firm profits. Grassroots trade unions, in particular, are seen to have been unable to supervise enterprises still under the supervision of the state and the party. Trade unions are seen as passive and unresponsive to changes, especially to strikes and labor disputes.

This paper argues that Vietnam's unions have become more autonomous from the state and as such face different dynamics to organizations, in between the society and the Party-state. This means trade unions could hardly be considered to be fully independent from the state but they could be in transmission between state and society. Rather than being mainly transmission belts from the top-down from the Party to the workers, the Vietnam's unions have become more like mediators, who mediate between workers, the Party and management.

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GOVERNING AND NEGOTIATING THROUGH IDENTIFICATION DOCUMENTS IN A REFUGEE CAMP: A CASE STUDY ON DISPLACED PERSONS IN MAE LA REFUGEE CAMP, THAILAND

Supatsak Pobsuk

Refugee camps are an exceptional space where displaced persons need to be verified and identified through the system of identification, the so-called Identification Regime. Based on qualitative research in Mae La refugee camp, Thailand, this study applies the Foucauldian concept of governmentality and technology of power to illustrate how identification documents in the camp function in terms of control and manipulation by the Thai state and humanitarian agencies. In the same way, displaced persons also use identification documents as a tool for accessing to humanitarian assistance and protection in the camp. Hence, this study argues that identification documents play as strategic tools for both governing and negotiating. Theoretically, the study illustrates that even though both theories explain how sovereign powers use various kinds of techniques to govern and control people, marginalized people like displaced persons in Mae La refugee camp have learned to reverse the control of power in order to seek better conditions. In this sense, displaced persons in Mae La refugee camp can be seen as active agents who are not submissive to the power of control.

1. Introduction

Thailand has been a host country for displaced ethnic minorities from Myanmar for more than 30 years in a protracted refugee situation (Loescher and Milner, 2008). According to TBC (March, 2015), there are 110,513 displaced persons in nine refugee camps along the Thailand-Myanmar border. Refugee camps are separated from society where exceptional rules and regulations are employed by the state to control and manipulate displaced persons based on national security discourse. In this way, refugee camps are considered as a state of exception.

Displaced persons living in refugee camps are imperceptible from society. The status of displaced persons living in the camp is relevant to identification documents which allow them access to entitlements and protection provided by the humanitarian regime. Hence, the aim of this article is to examine the relationship between displaced persons and the uses of identification documents by terming the identification regime to explain how identification documents function in a refugee camp. This study will also illustrate how identification documents are used by the Thai state, humanitarian agencies and displaced persons for specific purposes.

The article argues that not only can identification documents in the context of Mae La refugee camp be a technology of power for population control and manipulation by the Thai state and humanitarian agencies; but they are also a strategic means for displaced persons to reverse the control of power for accessing to humanitarian assistance and protection in the camp.

2. Literature Review

The conventional forced migration study cannot provide a better understanding on refugees and their existences because the approach simply classifies them into categories, namely forced and voluntary migration (see Moolma, 2011; Brill, 2012). It still considers refugee as passive actors relying on humanitarian assistance. The counter-conventional approach illustrates that refugees actually are strategic agents who actively interact and engage with spaces and other actors to seek better opportunities and protection amidst many restrictions they encounter (see Olsen and Nicolaisen, 2011; Rangkla, 2013; Polianskaja, 2013). As strategic agents, it seems that refugees can negotiate or ultimately resist the sovereign power of state. However, it is arguable that the previous studies about refugees as a strategic actor paid more attention to how refugees use their own capitals such as culture, ethnicity, religion and kinship, etc. as tools to negotiate powers for better opportunities (see Horstman, 2011; Lee, 2012). Most of the studies give inadequate attention to how refugees reverse available technologies of power in negotiating with the controlling regime.

I concur with Agamben (2000, 2005) who explained that refugee camps are controlled in a state of exception (see also in Tangseefa (2007) for applying state of exception concept to study forcibly displaced Karen people on the Thailand-Myanmar border). In this context, the centralized state desires to make displaced persons in the camp visible and identifiable in order to govern and control efficiently. In such a process, categorizing people through identification documents are a crucial tool of control (Scott, 1998; Lyon et al., 2012). I describe this practice as the identification regime. It can be observed that studies on how identification documents relate to displaced persons in Thailand have seldom been seen. I consider that this study will hopefully expand knowledge on the refugee situation in Thailand.

3. ‘Governmentality’ and Technology of Power in a State of Exception

The concept of state of exception is applied to explain characteristics of refugee camps in Thailand where the state and humanitarian agencies employs sovereign powers to confine populations of displaced persons through exceptional rules and regulations. Under this condition, rights such as freedom of movement, right to employment and right to privacy are deprived of (Agamben, 2005). In this way, sovereign powers have created the practice of identification by which displaced persons living in refugee camps need to be identified and labeled according to categories, such as displaced persons fleeing fighting, migrant workers, illegal people and others.

Following this identification practice, I apply the concept of governmentality (Foucault, 1991) to elucidate the uses of documentation which people have embraced and practiced as a norm. Foucault used the term “conduct of conduct” to explain a government which is defined as the functions attempting to influence, direct, and impact people’s conduct (Gordon, 1991). The state is unable to use various hard-power coercive actions to strengthen sovereign power, as its population would find this unacceptable. Instead, a government will use strategic methods based on institutions, knowledge, analysis and calculation to manage its people as tools of governing (Tanabe, 2008). Li (2007) also illustrated that a government should create will, ambition, and faith as a soft power. Hence, governmentality aims to control people by letting people act willingly and freely in a limited extent. In this sense, governmentality can be considered as the ruling of people’s mentality, which people accept as the regime of truth.

The state thus devises various kinds of technologies of power to control spaces, minds and bodies of people creating self-controlled system. Das and Poole (2004) pointed out that documentation practices have been invented under the written manners of the modern state. Documentation and statistics are obvious tools of the state for manipulating people, territories and properties. Likewise, documentation is a tool that individuals use to access to rights and welfare. In this article, identification document refers to a document or a paper created by sources of power to assign identities to people (Lyon, 2009). I term the

identification regime to explain the functional existence of identification documentation in this context.

Identification documents issued by the government are the formal technology of power to confirm membership and belongingness, so-called official legibility (Scott, 1998). In order to be recognized in the nation state system, national identification documents are evidential documents in which body, identity, and citizenship are bonded (Laungaramsri, 2014). In the context of Thailand, the identification regime can be explained through the processes of verification, acknowledgement and confirmation. The verification process is to screen individuals into the nation state system. Acknowledgement is the process of acceptance of an individual so as to assign him/her to a certain identity according to the law. Confirmation is the process of affirmation of identity, in which body and identity of an individual are bound to rights corresponding to the law. In such processes, the regime engenders hierarchical gradation by classifying individuals into categories which has different levels including full, partial, and non-status (Keyes, 2002). Particularly, non-status, which refers to individuals who do not have identification documentation, can merely be illegible persons lacking civil rights and protection.

4. Methods

Based on the qualitative research by using interviews and ethnographic methods for four weeks between June and July 2014, I conducted 15 semi-structured interviews with displaced persons in Mae La refugee camp to see the relationship between the uses of identification documents and displaced persons. The interviews illustrated entitlements and restrictions of using different kinds of identification documents. I interviewed displaced persons by dividing them into three different types of status existing in the context of Thai refugee camp which were five registered, five unregistered and five new arrivals. From 15 respondents, I interviewed eight Karen, four Burman, one Kachin, one Kayah and one Rohingya. Among them, nine considered as Christian, three Muslim and three Buddhist which I was aware their responses might be interpreted through ethnic and religious backgrounds. In this stage, I selected my interviewees by introduction from camp section committees and my interpreters.

In addition, I conducted interviews with the key informants who are parts in maintaining the identification regime such as camp section committees, The Border Consortium (TBC) as humanitarian agency in the camp, patrol police, immigration police and bureaucratic officials in Ministry of Interior (MOI). I employed ethnographic techniques, particularly non-participant observation, to see the practice and enforcement of identification documents in the field such as at police and ranger checkpoints. This technique was applied to observe the way that identification documents used by displaced persons in Mae La camp in accessing to various entitlements.

Documentary research also examined rules and regulations relating to identification documents which have been set by laws and policies in controlling displaced persons and providing entitlements to them. Importantly, the documentary data is crosschecked against my field data to show the inconsistencies.

As a cross-cultural research, all conversations in the camp were conducted in Thai-Karen and Thai-Burmese through interpreters. In the case of interviewees who could communicate in English, the interviews were conducted in English. The information and data that I received from interviewees was then verified in order to avoid misinterpretation. All of my respondents relating to this study have been in anonymity given pseudonyms because of their security concerns. Before each interview and observation was conducted with target samples, consent was always asked.

As a researcher, I consider myself an outsider in Mae La refugee camp as I cannot enter the camp unless I get a permission letter from the Ministry of Interior, a so-called camp-pass document. Particularly, entering the camp for academic purpose has not been permitted according to national security concerns (MOI official, pers. comm., Jul 29, 2014). For this reason, I entered the camp informally where it is arguable that sovereign power by the state cannot permeate thoroughly in the refugee camp. In addition, even though I had worked with my interpreters before, it was quite difficult to make them trust that I merely came in the camp in the purpose of academic research, and was neither governmental nor non-governmental officials who planned to surveyed and investigated displaced persons in the camp. I thus followed their advice by introducing myself and requesting permission to conduct research at section committee, as a local administrative level in the camp. From this incident, it reconfirmed the “outsider” status of mine in the exceptional space where I needed to get permission in some levels in order to conduct research.

5. Identification Regime in Mae La Refugee Camp

In this section, I analyze how the identification regime is established in Mae La refugee camp. First, I introduce Mae La refugee camp as my research site, and I describe how the governance and management in the camp are organized. Then, through five important identification documents, I discuss how they create the identification regime in Mae La refugee camp.

5.1 Introduction to Mae La Refugee Camp

I carried out the study in Mae La refugee camp in Tha Song Yang District, Tak Province. Mae La refugee camp is the largest of the nine camps along the Thailand-Myanmar border and accommodates the largest population of displaced persons, with approximately 40,381 people (TBC as of Mar 2015). Mae La camp is called by displaced persons living in the camp and the local population as Beh Klaw, a Karen term meaning cotton field,

because of the history of cotton production previously to the establishment of the camp (Wichaidit, 2004). The majority of the displaced people living in the camp are of Karen ethnicity, at 83.9 percent, whereas Burmans represent 2.7 percent, and other groups are 13.4 percent (TBC, 2014). Mae La refugee camp was established in 1984 after the Karen Nation Union (KNU) regiment was attacked by Burmese military. The KNU leader negotiated with the Thai government to establish the camp for the first wave of Karen displaced persons. Later, the 1995 fall of Manerplaw, the Headquarter of KNU base, and state of unrest along the borders led the Thai government to formalize Mae La as a refugee camp (Lang, 2002). The population of the smaller shelters including Ka Maw Lay Kho, Kler Kho, Shoklo, Mae Ta Wor and Mae Salit were relocated to Mae La refugee camp in April 1995, due to the Thai government's increasing concern over security problems, especially during the fighting between the Burmese military government and ethnic army groups between 1960s-1980s (Senate, 2008 and South, 2011). In case of management, the camp is divided into three zones: Zone A, Zone B, and Zone C with subdivision of 21 sections (UNHCR, 2014).

5.2 Mae La Governance and Management Structure

The Thai authorities are not the only actors interacting with displaced persons on the ground. In Mae La refugee camp, for example, there are three main parties, consisting of the Thai authorities, humanitarian agencies and the displaced persons themselves, each of whom manage the refugee camp and population in different sectors and on different levels. In terms of national security, the Thai Government formulated controlling policy on displaced persons which assistant chief district officer from Ministry of Interior (MOI), the so-called Palat as the camp commander, paramilitary force, border patrol police and territorial defense volunteer play this role. Humanitarian agencies such as the United Nations High Commissioner for Refugee (UNHCR) and non-governmental organizations assist displaced persons by providing food, shelter, health, education, livelihood and legal advocacy, etc. Local administration as self-governance running by displaced persons themselves, such as refugee committees, camp committees and Community Based Organizations (CBOs), administers and assists in health services, education, aid supplies, security, judiciary services, women, youth and other camp activities (TBC, 2012 and Saltman, 2014).

5.3 Identification Documents in Mae La Refugee Camp

In the context of Thailand, displaced persons fleeing from Myanmar have been verified by the Provincial Admission Board (PAB), an official mechanism for determining displaced person status in Thailand. Its function is to screen displaced persons arriving in the refugee camps with criteria in order for them to be recognized as refugees, or Displaced Persons Fleeing Fighting, the term in the Thai context. Likewise, it also screens out people who are not determined to be displaced persons fleeing fighting (Vungsiriphisal et al., 2014). From this way, the politics of inclusion and exclusion emerge to identify and

verify who has a right to be membership in refugee camps (Das and Poole, 2004; Agier, 2011). In this context, identification documents are relevant to the status and right of displaced persons in the camp. Following this, I describe five identification documents: the MOI-UNHCR Household Registration Document (MOI-UNHCR HHRD), the identification card for displaced persons, the TBC ration book, household census, and the travel permission document, all of which are crucial for people living in the camp.

First, MOI-UNHCR HHRD is a census document including a list of family members and basic biographies including name, sex, relationship, date of birth, age, marital status, country of origin, ethnic origin, religion, arrival date, registration date and camp address and MOI-UNHCR number, MLA is an acronym using for displaced persons in Mae La refugee camp. Displaced persons who have the MOI-UNHCR HHRD referred as “registered persons” meaning that the Thai government officially recognizes them as the MOI official stated:

“The Thai state primarily recognizes displaced persons who have identification documents issued by MOI and UNHCR, because we use documentation as evidence to identify them... displaced persons who do not have any documents can only be considered as illegal persons” (MOI official, pers. comm., Jul 29, 2014).

According to the registration timeline, the Royal Thai Government verified and registered masses of displaced persons between 2004 and 2006 under the PAB verification process. It means that displaced persons who lived in the camp and were qualified by the process during that period of time received the MOI-UNHCR HHRD as an identification document (TBC, 2010). This document is considered to be the one with the highest status in the camp. Displaced persons use it access to durable solutions, in particular, the third country resettlement. This is the highest privilege among displaced persons, as Maung Toh expressed:

“We plan to resettle in the third country, so the MOI-UNHCR HHRD is very important...if we don’t have it we cannot apply for the third country” (Maung Toh, pers. comm., 17 Jun 2014).

By contrast, displaced persons arriving in the camp after the aforementioned registration period can only be unregistered persons, as Saw Ko expressed:

“If I get a chance to be registered by UNHCR, I can resettle to a third country, where I will get legal status as a citizen...I will be a legal person in that country...I will be free to travel and work...no worries about being arrested by the police” (Saw Ko, pers. comm., Jun 18, 2014).

Not only can displaced persons resettled to the third country, but registered displaced

persons can also access the other privileged status in the camp which unregistered persons cannot as stated in the TBC report (2014). It stated that unregistered persons have different access to programs and services, for example, they cannot travel across the camp for training sessions; it takes a longer process for them to request permission for medical referral to Thai hospital; and they cannot apply for positions in camp committees or as section leaders. Getting registration with the MOI-UNHCR HHRD as official document can nourish the prospect of displaced persons who want to seek better opportunities for their lives in the camp.

Second, the Thai Government, with technical support and funding from the UNHCR, issued identification cards for all registered displaced persons over 12 years old in 2007. The identification card includes a photo, name, date of birth, and camp of residence along with the date of issue and the date of expiration. The card is also encoded with left and right thumbprints on the magnetic strip. Even though the initial aim of issuing the card for displaced persons was to increase basic rights and expand protection (Han and McKinsey, 2007), I learned from cardholders during my fieldwork that they have never used it in order to access food, welfare, or to improve their rights but rather kept it along with other documents. One of my interviewees expressed:

“I normally use the MOI-UNHCR HHRD and the ration book...I never use the MOI card and I don't know what the purpose of this card is” (Naw May, pers. comm., Jun 16, 2014).

Concerning the usage of the identification card, one of the MOI officials explained that displaced persons can only use the card as the way to prove their authorization to stay in the Thai temporary shelter. The official pointed that displaced persons have often misunderstood the card as providing them with rights of movement and employment outside the camp, but in fact the card merely displays the displaced persons' identity. The official concluded by saying:

“After the first phase of validity, from 2007 to 2009, the card was not extended by the Thai government because there was no funding from UNHCR, and avoided the card being misused by the displaced persons” (MOI official, pers. comm., 29 Jul 2014).

Third, the TBC Ration Book is issued by TBC as a consortium of NGOs which provides humanitarian assistance such as food, non-food items, and capacity-building to displaced persons in the camp. The TBC ration book is the blue book containing the biographical information of household members with photos and including regulations for using the book. The main part of the book comprises lists of food items including rice, fortified flour, fish paste, salt, yellow split peas, and cooking oil provided monthly to displaced persons, and non-food items such as bamboo poles, eucalyptus poles, and

roof thatching, etc. (TBC, 2012). The ration book is the individual evidence proving that displaced persons are allowed to live in the camp and have right to access to entitlements in the camp provided by humanitarian agencies. The significance of the TBC ration book can be confirmed through a statement from Saw Sun:

“Since I am unregistered, a document like the TBC ration book is very important, and I have to show it when I receive food every month... moreover, unregistered persons like me have to show it when dealing with Thai authorities to request permission to leave the camp” (Saw Sun, pers. comm., Jul 17, 2014).

The ration book is issued to every displaced person who passed “screen-in process”, including registered person. At the time of collecting food or non-food items, displaced persons must carry the ration book and show it to the TBC officer in order to collect those items (TBC, 2010).

Fourth, the Household Census is a handwritten document including photo ID, name, date of birth, sex, ethnicity, address, and date of arrival. In order for new arrivals to be camp members and having access to humanitarian assistance, I discovered that they must report and register their names with section leader, the lowest administrative level. At this level, new arrivals will receive household census. One of Section Leader described:

“The household census is the first important document which displaced persons must have... it proves that the newcomer is recognized as a member of the refugee camp, guaranteeing that they can stay in the refugee camp” (Section Leader B, pers. comm., Jun 23, 2014).

After a new arrival is authorized to stay in the refugee camp, particular person or family will be verified by a new arrivals committee consisting of a representative of the camp committee, section leader, representative of CBOs, e.g. women group, youth group and religious leader, through an interview and responding to questionnaires, in order to grant them eligibility for humanitarian assistance, particularly food and non-food items provided in the camp (TBC officer, pers. comm., Jul 25, 2014). Once the new arrivals receive acceptance, they will receive a TBC ration book. It can be said that new arrival is a temporal status, under which a new displaced person waits for some sources of power to bestow the membership. Naw Sar, who arrived in Mae La refugee camp in February 2014, and is waiting for consideration by the new arrivals committees, told:

“Living in the refugee camp, people should have some documents, otherwise life will be difficult... without the ration book, I and my family cannot access food here... I hope that I will get the ration book which gives my family access to food, and my husband will stay with our family, so he does not have to work outside anymore” (Naw Sar, pers. comm., Jun 17, 2014).

A TBC officer informed me that there are some people who are not qualified for accessing humanitarian assistance because they did not encounter past persecution and difficulties in Myanmar, particularly displaced persons who are induced to migrate by economic reasons (TBC officer, pers. comm., Jul 25, 2014). Section leader B informed me that in practice, if displaced persons cannot pass the screen-in process by the new arrivals committee, they are allowed to stay in the camp but they cannot get food and non-food items under humanitarian assistance programs (Section Leader B, pers. comm., Jun 23, 2014).

Fifth, the travel permission is a paper showing name, photo, camp address, reason for traveling, and period of travel and used along with other identification documents used in the camp, such as the MOI-UNHCR HHRD, the TBC ration book, and the household census when displaced persons want to travel outside the camp (Section Committee A, pers. comm., Jun 18, 2014). In order to apply for travel permission, displaced persons must get a recommendation letter from a section leader, and request to the camp commander directly. Normally, displaced persons get authorization to leave the camp for periods of between three and seven days (maximum) depending on the reason given. Displaced persons commonly requested to travel outside the camp for a medical appointment at the migrant clinic in Mae Sot. Displaced persons need to show the document to the Thai authorities at several checkpoints. If the displaced persons are caught travelling without a permission document, they will be pulled from the car and transferred to the police station, which will start the process of deportation. Local Thai authorities such as patrol polices at checkpoints and immigration polices do not recognize a travel permission document alone unless it is used along with other identification documents, such as the MOI-UNHCR HHRD, the TBC ration book and the household census. The patrol police at the checkpoint stated:

“In case of displaced persons from the camp, if they do not have a permission document from the Palat (camp commander), we see them as illegal people, and put them in the process of deportation” (Patrol police, Jul 12, 2014).

There are, however, several kinds of welfare that the displaced persons can access, no matter what status and identification document they have. These types of universal welfare include accessing to shelter, education and health services in the camp. For example, one Thai woman I interviewed who lives outside the camp, brought her sick father to receive treatment in Mae La hospital (pseudonym). She told:

“Hospital in Mae La camp is good and free...I cannot afford the cost for my father if I bring him to a Thai hospital” (anonymous woman, pers. comm., Jul 13, 2014).

As for education and health services, one of my interviewees also confirmed the universality of such welfare, by saying:

“I got enough food and took shelter in the temple...for me documents were not necessary in the camp since I could access education and medical services...I got malaria when I was in Mae La, and I was treated by Mae La hospital without showing any documents” (Saw Tae, pers. comm., Jul 09, 2014).

6. Governing and Negotiating in the Identification Regime

I will further elaborate on how identification documents play a role in two ways: governing and negotiating. The former refers to population control and manipulation by the Thai state and humanitarian agencies. The latter refers to accessing to humanitarian assistance and protection by displaced persons. It can be argued that this is a trade-off relationship between being controlled and accessing entitlements (Pongsawat, 2007; Laungaramsri, 2014). However, I would argue that identification documentation, in practice, does not have any significance in and of itself, but rather, represents significance as assigned by sources of power. The significance of identification documentation can be seen through particular regulations and benefits attached to the documentation, which the holders follow and receive. This portion of the analysis also showcases some stories of my interlocutors captured from Mae La refugee camp.

6.1 Governing: Population Control and Manipulation

Following Malkki's framework (1995, 1996), it clearly establishes that displaced persons from Myanmar have been simplified as conflict victims requiring humanitarian assistance. She further argues that refugee identity is usually formalized as an object of protection and manipulation. Scott (1998) also argued that the categorization of persons is a technique intended to simplify complicated individuals and make ambiguous individuals legible in the eyes of the state and to administer and control. The new identity as a refugee generates refugeeness among displaced persons, which ties their bodies to exceptional regulations. It is arguable that identification documentation which displaced persons possess proves their refugeeness.

Hyndman (2000) described that refugee camps have been created with the aim of providing humanitarian protection and assistance to people who are outside their country of origin. However, it can be argued that humanitarian assistance is never separated from the power of controlling. Under Foucault's concept of governmentality (1991), identification documents can be considered as a form of control with disciplinary measures, bound to sovereign powers. In other words, identification documents do not just uphold entitlements of displaced persons living in the camp, but also contribute to confinement, surveillance, and control. In addition, those identification documents

function well along with techniques of power, for instance, headcounts and checkpoints, in the context of Mae La refugee camp. Even though these techniques are employed differently, they share the same objectives, which are to control displaced persons.

A headcount is a technique for determining the level of the population living in the refugee camp. Between June and July 2014, just after the military coup in Thailand, it was difficult to conduct research in the refugee camps because the military government announced the restriction of movement in and out of the area. Specifically, displaced persons living in the camp were not allowed to travel outside the camps (Naing, 2014). Later, I learned that the travel restriction for displaced persons in the camp was primarily to facilitate a population count by the military government as Colonel Terdsak Ngamsanong, commander of the 4th infantry regiment, expressed to the media:

“We conducted the headcount this time to get the exact number of those who fled the conflict... but whoever came here to work illegally, they will have to be treated in migrant worker system which they will lose their refugee status” (DVBTVenglish, 2014).

Per a conversation with one of my interpreters, I learned that headcount was conducted by calling displaced persons by house number in the camp. Displaced persons needed to bring identification documents, such as MOI-UNHCR HHRDs and TBC ration books, as evidence identifying those who are eligible to stay in the camp. The authorities would check every family member presenting at the time in comparison with a particular document and taking family photos as evidence. Anyone who did not show up to be counted would be crossed off the list (Kaw Kee, pers. comm., Jul 29, 2014). Again, I have learned from the media that the authorities enforced tight regulations on travel restrictions towards violators. Preeda Foongtrakulchai, Mae La camp commander, explained to the media:

“...If refugees leave the camp area, they will be considered illegal immigrants...we will process (them) according to the immigration law by sending them to the police and they will be pushed back” (DVBTVenglish, 2014).

As evidence, I argue that this implementation by the Thai state illustrates two critical points: First, that travel restrictions and the headcount reflect the state of emergency announced by the Thai state. In this sense, a state of exception has been drawn under which the sneaking in and out by displaced persons for their subsistence as an everyday life practice have been suspended (Agamben, 2005); second, the headcount was an attempt by the Thai state in order to differentiate between refugees, in the category of forced migration and migrant workers, in the category of voluntary migration. This division divides immigrants into fixed categories corresponding to the law. Importantly, counting can be considered analytically as the way that displaced persons reconfirm their identities as refugees who hope to be recognized by the state and the international community.

Since the border is porous where the sovereign power of the state cannot effectively administer, the checkpoint has been devised as a technique of control referring to the state of police. Pongsawat (2007) argued that a checkpoint is a second boundary line to control illegality, informality and criminality. Bordering by checkpoint is a technical practice by the state where identify people through identification documents plays a crucial role (Browne, 2005). In the same way, a checkpoint functions to sustain the identification regime. Checkpoints are established for national security reasons, particularly around borders where the inflow and outflow of people and goods are vague (Jaganathan, 2004). With this framework, checkpoints are a technology of power to strengthen the sovereignty of the state along with the demarcation of boundaries by map. Identification documentation also plays a significant role at checkpoints in terms of confirmation: confirmation of citizenship and confirmation of the legality of outsiders.

First, checkpoints are a technology of power to confirm membership of the nation-state, i.e. it confirms the citizenship of particular individual. Whenever people show their national identification documents to the authorities, their granted freedom of movement is thus confirmed. Second, checkpoints are to confirm the legal presence of non-citizens who live outside their own countries. Analytically, a checkpoint is a technology of territorialization which restricts displaced persons to travel only within authorized spaces with limited time. As I described in the earlier section, displaced persons living in the camp use permission document from the camp commander to travel outside the camp, identifying them as camp populations. This document confirms their legality in travelling out of the refugee camp. Even though this document can be seen as a travel ticket, specific times and spaces are listed on the paper so as to regulate the displaced persons. It can be noted that displaced persons cannot travel outside fixed territories with this document unless they have other strategic tools, such as bribery, smuggling and using irregular ways (see Aung, 2014 for studying strategic methods used by migrants in Thai-Myanmar border). There are seven checkpoints set up by police and border patrol police from Mae La refugee camp to Mae Sot Township. Moreover, there are two important checkpoints demarcated at the camp entrance and the exit, which are controlled by the Ranger Unit (Thahan Phran) to screen people in and out by verifying identification documents. Around the camps, there are several checkpoints set up by territorial defense volunteers to monitor irregular people traveling in and out the camp. I experienced in the field that the authorities at the checkpoints asked all passengers to show their identification documents. If displaced persons did not have authorized documents for travelling, they were pulled out of the car.

The regime of identification in which identification documentation plays an important role creates legible society in Mae La refugee camp. Displaced persons become visible in the eyes of the authorities for the purposes of control and manipulation. It is arguable that the regime can be seen as a technique of spatial and population management.

6.2 Negotiation: The Right to Humanitarian Assistance and Protection

Not only do identification documents play a role for the Thai government in identifying displaced persons fleeing conflict, but the documents also create a sense of self-identification among displaced persons who hold it. It can be argued that being recognized by the Thai government and humanitarian agencies is the way to access some entitlements such as third country resettlement, food/non-food items, and other privileges. As my case study in Mae La camp shows, displaced persons who have the MOI-UNHCR HHRD as an official identification document often feel that they are real refugees as one of them said:

“The UN document confirms to me that I am a refugee who experienced suffering from persecution” (Naw Bee, pers. comm., Jun 17, 2014).

Being recognized as a refugee can be seen as a technology of power leveraged by displaced persons to make them legible for the right to access to humanitarian assistance and entitlements to some extent. This would serve as a counter argument challenging the views of Malkki (1995, 1996) and Scott (1998) I mentioned earlier. In other words, displaced persons in Mae La refugee camp want to be counted as recognizable displaced persons under the international refugee regime. In this sense, refugeeness is also a strategic technique for displaced persons who can be considered as active agents. This is different from the old-fashioned view of displaced persons as passive actors who are merely controlled and wait for humanitarian assistance.

Generally, the Thai state, humanitarian agencies and displaced persons themselves consider identification documents as evidence to prove that displaced persons living in the camp can access to basic humanitarian services and protection. Displaced persons, particularly new arrivals, who want to stay in the camp legally, must have a household census issued by a section leader. In the same way, if any displaced persons want to access to food and non-food distribution, they must be verified by the screening-in process and later identified as vulnerable people holding a ration book. This argument has been confirmed by a TBC officer’s statement:

“Any types of displaced persons living in the camp have their names listed in a ration book so they can access food and non-food items” (TBC officer, pers. comm., Jul 25, 2014).

Even though identification documents are a gateway to humanitarian assistance, the distribution of food and non-food items is also technique of control. Collection of rations comes hand in hand with confinement and population checks. In order to get rations, displaced persons must present themselves with identification documents at distribution time, which means that they must stay in the camp. A TBC officer described ration regulations:

“TBC set up the rule called no show no ration...if a person does not show up for food/non-food distribution, they cannot get the ration” (TBC officer, pers. comm., Jul 25, 2014).

This practice reinforces Hyndman’s argument (2000) that the distinction between humanitarian assistance and technologies of control is blurred, because displaced persons must be present to be counted in order to get entitlements existing in the camp.

Consistent with humanitarian assistance, protection under prima facie refugee status also is applied to displaced persons living in the Thai refugee camps. The principle of non-refoulement is one of the most important rights for displaced persons who are identified as refugees. According to article 33 of the 1951 refugee convention, the principle has been proposed that no person shall be returned against his or her will to a territory where he or she fears persecution (UNHCR, 1951). Because identification documents are related to identification and self-identification, the displaced persons I met in Mae La camp felt more secure when they have the MOI-UNHCR HHRD and the TBC ration book indicating that they are allowed to stay in Thai territory as refugees, and, more importantly, that they will not be forcibly returned to Myanmar against their wills (Saltsman, 2014). Nu Nu also expressed:

“Since I have a UN document, I and my family feel secure on some levels because I believe that we will be protected by UNHCR” (Nu Nu, pers. comm., Jun 17, 2014).

In terms of Thai authority, the immigration police in Mae Sot described the process of deportation that displaced persons should have some documents from refugee camps. If they can be proved to be a camp resident, the officials normally send them back to the camp. If not, they are deported on the basis of illegal entry, as the police stated:

“Those people usually claim that they are refugees to avoid deportation...for the authorities, we need evidence...if they have none, they should be deported like the others” (Immigration police, pers. comm., Jul 12, 2014).

Again, identification documents issued by UNHCR like the MOI-UNHCR HHRD plays a role as evidence confirming that illegal people are displaced persons fleeing fighting from refugee camps. Thai immigration police officer stated:

“We do not send illegal people back without interrogation and differentiation...at this stage, we work with other humanitarian organizations to avoid mistakes in deportation ...for camp residents, they should have UNHCR documents in hand, we will then send them back to the camp” (Immigration police, pers. comm., Jul 12, 2014).

The data I got from the immigration police is consistent with a TBC report stating that registered displaced persons who have the MOI-UNHCR HHRD are normally sent back to the camp, whereas unregistered persons will be deported to Myanmar for illegal entry (TBC, 2014).

In this case, it is provable that identification documents for displaced persons demonstrably create some protection, even though it cannot conclusively be determined whether or not they will be deported. In the view of the state, displaced persons from Myanmar are in an illegal status, which means they must be confined in the shelter with transient time because freedom of movement for displaced persons entails difficulty of management (MOI official, pers. comm., Jul 29, 2014). It is arguable that the identification documents of displaced persons are important within specific spaces and times, i.e. those documents allow displaced persons to stay in fixed spaces within an extended temporary period. Importantly, in those spaces, they are treated and provided with assistance as vulnerable people whose bodies and identities are counted as a part of the humanitarian regime. Nonetheless, I argue that provision of humanitarian assistance always attaches with population management, in the sense of surveillance and control, in which identification documentation still plays an important role along with other techniques of power.

7. Conclusion

This study draws upon considering refugee camps as a state of exception where exceptional rules and regulations have been employed by an asylum country and humanitarian regime in order to control displaced persons who are non-citizens, on the one hand as well as to provide them humanitarian assistance, on the other. In this article, I argue that identification documents are an effective tool to signify particular person to be “refugee”. I apply governmentality to illustrate the identification regime where displaced persons are visible in the eyes of the authorities, either the government or humanitarian agencies, in order to manage and control effectively.

On the other side of the same coin, I further argue that identification documents in Mae La refugee camps can be considered as a technology of power in terms of negotiating. Identification documents are also a tool for displaced persons in Mae La refugee camp to access to humanitarian assistance and protection. These people need to be identified as displaced persons fleeing fight. In this sense, displaced persons in Mae La refugee camp have learned how identification regime works in this context. They thus attempt to access identification documents used in the refugee camp in order to be legible in the eye of sovereign power because they use the documents in accessing to humanitarian assistance and protection. It is arguable that displaced persons in Mae La refugee camp should be considered as strategic actors who actively negotiate with the controlling power through identification documents.

Note: In this article, I intend to use “displaced persons” instead of “refugees” because the term refugee has been socially and politically constructed by international organizations to establish dominant refugee discourse, in Zetter’s word is refugee labeling (1991). Labeling invents definition and distinction between “authentic refugee” and “false refugee”. I consider that labeling reduces complexity of individuals into set categories, and eventually creates the problematic of generalization (Bauman, 2002 and Lyon, 2009). In addition, labeling refugee gets together with mainstream migration study which makes a distinct category between voluntary and involuntary migration. However, it fails to understand the complicated phenomenon of human migration. In this article, displaced persons refer to multi-dimensional actors who have complex migratory processes and crosscut the conventional categorizations of forced and voluntary migration, i.e. they are from mixed migration flow (Van Hear, 2011).

In the context of Thailand, even though the Thai Government has never used the term refugee camp, rather terming temporary shelter, I use refugee camp in this paper to confirm existence of that space.

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“THE MARGINALIZEN” IN MALAYSIA: HUMAN RIGHTS PREDICAMENT AND THE FUTURE CHALLENGE OF ASEAN INTEGRATION

Aris Arif Mundayat

The social life of undocumented migrant workers from Southeast Asian countries who have been living in Malaysia for more than 10 years is a serious phenomenon that needs close examination. Based on observation, documentary studies and ethnographic approach, this paper discusses the context of the industrialization of their home countries which do not give advantage for the people living in rural areas. The attraction to come to the high income country like Malaysia has become their solution for better future. However, in Malaysia they have become the “marginalizen” in term of human rights perspective. They do not have any substantial rights from their country of origin or in Malaysia. Within this situation they constructed a horizontal network beyond the state for their own survival strategy in facing the vertical power of the state. Meanwhile, ASEAN integration remains cloudy and hazy politically. It is because they remain involute within the simulacra of the past that has become entangled with the post-colonial nationalist discourses in the present. Southeast Asian regime and society seem unable to go beyond the dialectical oppositions of nationalist idea (as a sense of selfness) which has to be contrasted to a negative other (as a sense of non-selfness). The nationalist discourse that functions vertically based on the state-centric perspective has become the vertical power against the “marginalizens.” This discourse operates through the vertical line of state control: referred to the divisive colonial rule that brought modern discourses of sovereignty of the states and its equally exclusive territories. This power supported the state interest such as ASEAN free trade. Meanwhile, the marginalizen fabricates post-nationalist discourse works beyond the state horizontally. This horizontal power actually promotes free mobility which is oppositional to the state interest. This situation reflects that the regime of ASEAN countries and its society are still in a political predicament that has made them hesitate to move beyond nationalist discourse despite the agreement of the ASEAN Economic Community agreed among the members. This analysis enables us to have a better perspective in understanding the growth of precarious undocumented migrant workers who have become the marginalizen in Malaysia. By approaching the horizontal network we are able to understand on how human rights power actually rely more on the state vertical line which is not effective to touch the issue at the horizontal network of the marginalizen. Moreover, the horizontal network is inspiring because it shows a better model of free mobility at the regional level, for example, by rewinding back the past of the of Nusantara region for a better inclusive future.

1. Introduction

Southeast Asian people are now more mobile than ever before, and this has intensified people-to-people connections. The ASEAN Community 2015 Program is one of the agreements among the Southeast Asian leaders for regional integration in the future which will facilitate a new cosmopolitanism. However, social discrimination over migrants from the same region or other Asian countries continues to happen in the everyday life and discursive practices. The history of people mobility in the Southeast Asian region can be traced back historically from our ancient time of Nusantara. From the historical background we can find some regional trading networks. The mobility of people followed the principle of labor market supply and demand as well as political reasons. Before the colonial period or Nusantara, the market operation was actually already global, involving global South regions such as East Africa, South Asia, China, and the Middle East (Wolters, 1967; Reid, 1988; Ricklefs, 2001; Andaya, 2008; Hall, 2001; Miksic, 2014). It was the first phase of globalization that influenced the condition of politics, culture and economy of the Nusantara at that time. The concept of the modern state did not exist and the territorial boundary was not yet implemented, but rather tributary systems after conquests over the people of the subjugated land. The tributary system functioned as political economy which expressed the mutual political collaboration and loyalty. People involved in trading and political expansion were mobile from one place to another and made the Nusantara region their roaming place, by which the material and non-material culture are disseminated throughout this region. This is the reason why people in the Nusantara region are practicing a similar kind of culture.

Global-South trading in the Nusantara region finally attracted the European colonial powers to move into this region. The coming of Portuguese, Spaniards, then followed by Dutch, British, and France had made this region experience a modern era of state formation since the late 14th century. The colonial government introduced mapping of the islands and territory for journey purposes as well as political economy interest (Reid, 1988; Suarez, 1999; Ricklefs, 2001; Andaya, 2008). This kind of territorialism was even used by the local kingdoms to claim their territory. Due to the functioning of a territorial system which needed documents to enter the colonial territory, inter-island mobility of the people and trade in the region indeed became restricted. However, the borders remained porous as noted by Tagliacozzo (2005).

The idea of territorialism during the colonial era was a modern governmentality through which the meaning of “people” living in the Nusantara region was changed by the colonial governments into the concept of “population” of colonial territory. Population meant they were bound within the territory. In this situation, colonial territory had become the boundary of the population within the colonial states. Nowadays this territorialism becomes the post-colonial states idea implemented in Southeast Asian countries consisting of Indonesia, Malaysia, Thailand, The Philippines, Myanmar, Laos, Vietnam, Cambodia, Brunei, and Singapore. Colonialism at that time was the second phase of

the globalization where the territory was very important due to the monopoly of the commodities by each colonial government in the Nusantara region.

The third phase of globalization was related to the economic development in the post-colonial period. The colonial territory had become the colonial legacy that remained functioning to define the territory of post-colonial states in Southeast Asia. During this phase of globalization the mobility of goods was based on agreements between the nation states in Southeast Asia which finally has culminated into a free trade agreement.

This agreement facilitated free trade of goods and free capital flows through global investment. However, labor mobility was not freed yet, while the economic development of Singapore and Malaysia had attracted people from the less developed areas to move into these countries.

ASEAN country members have agreed upon the three pillars for regional integration: the ASEAN Political-Security Community (APSC), the ASEAN Economic Community (AEC), and the ASEAN Socio-Cultural Community (ASCC). The blueprint of these pillars has been formulated to detail strategic objectives and actions for the benefit of the people. The pillar of ASEAN political security community has begun in working together to solve the security problems in the region. The pillar of economic community has been established for the regional integration plan which is deeply integrated with the global economy. Furthermore, ASEAN country members have already signed the agreement regarding Human Rights issues as manifested in the ASEAN Declaration on Human Rights.

Among these, free labor mobility is the most challenging one in Southeast Asia regionalization due to culture, social class, and territorialism issues. The socio-cultural community pillar has already been there historically. However, the problem of nationalist sentiment that is based on post-colonial territorialism remains sensitive, especially regarding policies on migrant workers. This nationalism issue is a somewhat sensitive one because it also stimulates nationalist sentiment against migrant workers. Social and cultural issue regarding domestic workers from Indonesia and Southern Thailand do not really matter because they are Moslems who speak the Malay language and have a similar culture with the local Malaysians. Bangladeshis, although they are Moslems, are somewhat facing some difficulties culturally that they usually mingle within their own groups of people. Meanwhile, the domestic workers from Myanmar and the Philippines are usually working for the Chinese, Indians or other ethnic groups who are not Moslem. If they face social discrimination it is usually associated with social class as they are not well-educated and socio-economically poor from low income economies. In this situation, they are associated in stereotypes with crime or viewed as taking job opportunities from the host citizens.

Trans-ASEAN job seekers are ranged from less skilled to skilled workers. The less skilled workers tend to work as blue collar workers and the skilled worker as professionals. Professional workers are equipped with legal documents so they do not have significant problems. This paper will not discuss the professionals but rather focus on the less skilled undocumented migrant workers who do not know legal matters; very often they have become stateless and thus experience many kinds of discrimination even though ASEAN already agreed upon general principles of human rights as declared on the ASEAN Human Rights Declaration and manifested in human right body called the AICHR (ASEAN Intergovernmental Commission on Human Rights).

Transnational mobility of workers has become a major issue for the 21st century especially when there is a trend of regionalization. Migration for work has become a central issue within the context of ASEAN integration because it will raise the issues of nationalism from the nation-states. The character of nationalism can be described as a “vertical power”. It is vertical because it very often involves or uses state power vertically rather than orchestrated as nationalist discourse involving people which spread at the horizontal level. Meanwhile the character of transnational movement of workers is horizontal and showing a post-nationalist discourse. It is horizontal because the movement is spread among the workers through the transnational networks. The idea of post-nationalist discourse follows the horizontal movement of the networks and is not bound emotionally to the nation state where they belong. This is the thesis that I will discuss to understand the predicament of migration and human rights within the context of ASEAN integration.

2. The Emerging Wave of Migrant Workers

The industrial transformation of Malaysia and Singapore has made them two major destinations of transnational migrant workers from the surrounding countries. The development of urban areas in Singapore and Malaysia has created various job opportunities that absorb local people and foreigners. Meanwhile, the rural areas of Malaysia also experienced the intensification of the agricultural sector and modern plantation system which had also attracted migrant workers from surrounding countries (Wong, 2007).

The globally-oriented plantations in Malaysia have attracted low skilled labor from Indonesia, Myanmar and Thailand to migrate into Malaysia for better life opportunities. This industrialization has produced a new middle class and novel occupational structures followed by changes in labor relation. The local residents experience vertical social class mobility through the improvement of education. This has allowed them to avoid the same jobs as those of the migrant workers who are usually involved in the small-scale tertiary economic sector (food stalls, distributors, sundry shops, and transportation).

The economic growths in Malaysia and Singapore have also changed the occupational structures that offer better employment alternatives for the people living in less developed areas in the region. Malaysia (as well as Singapore) has become the destination of job for opportunities. Some observers have noticed that builders from Indonesia and Bangladesh were absorbed to work in building the business districts of Malaysia as well as in agribusiness. Then this was followed by the growth of malls, banks, office buildings, and housing areas that absorb security workers from Nepal and from Myanmar. Moreover, due to the vertical social mobility of the citizens, the need of domestic workers also increases. Female workers from Indonesia are commonly taking this opportunity. Some of them work in cleaning services and restaurants as waitresses. Workers from the Philippines usually work as shopkeepers and waitresses in restaurants in Malls. From here we can see that Malaysia as well as Singapore is experiencing the “ASEANisation” of workers.

Migrant workers in Southeast Asia are generally coming from less developed areas of their home countries to move to wealthier countries in the region. The roles of intermediaries are connecting between one country and another. The number of migrant workers has grown rapidly since the mid-1980s following the short recessions in 1985-1986. The Philippines experienced a debt crisis in the early 1980s, and Indonesia also experienced economic adjustment through currency devaluation, budgetary and monetary constraint, as well as regulatory relaxation due to the falling prices of oil in the mid-1980s. During these years Malaysia boosted their industrialization process through export-oriented products and government’s encouragement of the manufacturing industry as a response to the economic crisis (Lamberte et al., 1992; Haggard, 2000).

The new investment incentives and deregulation strategy attracted foreign direct investment and new labor into Malaysia. From these years to the early 1990s, the number of migrant workers from neighboring countries around Malaysia increased significantly. By 1993, the total foreign workers in this country were estimated at 1.2 million, creating about 15 percent of the total labor force in Malaysia (World Migration, 2005). During the economic crisis in 1997-1998, Malaysian government returned thousands of illegal workers from Indonesia. However, Malaysia remained attractive to many Indonesian workers due to the similar cultural environment with that of Indonesia. By the year 2000 the number of foreign workers increased again to 1.4 million, then 1,777 million in 2005 and decreased to 1,542 in 2010 (World Bank, 2013).

The share of foreigners in Malaysia’s labor force increased from 3.5 percent in 1990 to 9.5 percent in 2010, and the significant increase in the share of foreigners is among the population above 15 years old which is considered the productive ages (World Bank, 2013). Interestingly, foreign workers who were participating in the labor force are at a higher level than the proportions of the Malaysians. From 1990 to 2010 the employment rates of male migrant workers rose from 93 to 95 percent (the increase is from 41 to over 60 percent for female migrant workers). On the other hand, the employment rate of

Malaysian males declined from 81 percent in 1990 to 73 percent in 2010. Consequently, employment levels of both male and female migrant workers from neighboring countries are higher than their Malaysian counterparts. Malaysian females' participation in the labor force is approximately around 41 to 46 percent although they are highly educated comparatively to the level of other neighboring countries in Southeast Asia (World Bank, 2013). A possible reason for this situation is the less skilled foreign workers have taken over the job sectors abandoned by the Malaysian females. This situation very often stimulates the nationalist sentiment among the Malaysians.

World Bank (2013) data show that the feminization of migrant workers in Malaysia increases from time to time following the economic progress. The skilled labors are working for the industrial sector and the less skilled ones are working as household assistants. The industrialization of Malaysia and Singapore has created a new social class that needs household assistants since husbands and wives are busy in the work force. Household assistant is the new job sector attracting mostly female workers from Indonesia, Myanmar, Vietnam, and the Philippines to get new opportunities in the urban areas of Malaysia and Singapore. It is the most ambiguous job sector because this sector follows the contract system like the industrial labor system although in reality household assistants are treated as domestic workers in the traditional sense (working for more than 8 hours a day and unprotected by labor unions). This observation shows that domestic work in Malaysia is the hidden place which is relatively difficult to be reached by vertical type of organization such as State or even NGOs. However, their rights are blurry covered by the existing mechanisms, and when some of them managed to escape harsh conditions they became illegal immigrants because their employers withheld their passports.

Foreign investments in industry have made Malaysia one of the more developed countries in the region. Economic progress in Malaysia is achieved through strategies that require a deepening integration into the global economy and the fluid regional labor market. It cannot be denied that this growth takes place at the expense of migrant workers including the undocumented ones from the region. While their roles are valuable to the economic progress, protection of their rights remains insufficient and the undocumented migrant workers in the worst situation have become deeply marginalized to barely stay survive.

3. “The Marginalizen” and the Human Rights Problem

Statistical data regarding documented migrant workers in Malaysia can be easily accessed, but the number of the undocumented migrant workers in Malaysia is difficult to find. However, the number of undocumented migrant workers has probably reached 2.1 million in 2010. Meanwhile, the total number of documented migrant workers for all sectors reached 2,518,000 in the same year (World Bank, 2013). In February 2014, the Home Ministry of Malaysia managed to legalize only 379,000 immigrants,

including 94,856 who chose to return home. This legalization is an attempt to reach the immigration program of zero illegal workers. The existence of undocumented migrant workers in large numbers has significant consequences on local wage rates and terms of employment for documented migrants. This is because the undocumented migrant workers are paid lower and enjoying fewer facilities than those for the documented one. Due to this situation, the Malaysian government carried out a nationwide large operation in the mid of February 2015 to identify approximately 1.3 million illegal immigrants who did not registered during the 6P Amnesty Programme (6 P is the abbreviation for *Pendaftaran, Pemutihan, Pengampunan, Pemantauan, Penguatkuasaan, and Pengusiran* or registration, legalization, amnesty, monitoring, enforcement, and deportation). The large number of undocumented workers is attracted by the huge job opportunities and rapid development of the industrial sector that cannot be fulfilled by the locals despite their willingness to take the jobs. The companies make use the undocumented migrant workers to work more for lower wages and often without basic facilities such as housing, medical care, overtime payment and so forth. To solve this situation, the Malaysian government has implemented the 6P Amnesty Programme to reduce the number of undocumented migrant workers, but the problem is still there. Why have undocumented migrant workers been able to manage living in Malaysia for years?

Malaysian Employers Federation (MEF) Executive Director Datuk Shamsuddin Bardan reported there are currently 2.8 to 2.9 million migrant workers in Malaysia. Blue-collar foreign workers were predicted to contribute quite significantly to the Malaysian economy (about 10 to 11 percent). However, this federation also found that the migrant workers were facing negative sentiments from the locals who were competing for the same jobs (Malaysian Digest, 2015). Moreover, some migrant workers had been unfairly dismissed or abused or their salaries have not been paid by their employers.

Those who face unfair treatment are usually forced to leave their work place. Since their passports were usually withheld by the employers, these unfortunate migrant workers became undocumented. In this situation, they might become indebted to friends within their circles or did not have enough money to go back to their country. Since they could not return to their home country, they are offered to new employers as cheap labor. Typically, they accepted this offer because they had to survive in Malaysia and to repay their debts. The less skilled undocumented migrant workers living in this country for more than two years usually found the social capital needed to support their continued living in Malaysia.

Their social capital forms a horizontal social network, and this network is expanded across the nations by which each group of different nationals will create their own primary grouping and to some extent get connected to each other. Within the groups they will protect each other in social solidarity and very often they also create community activities just like those who are documented migrant workers. They form a kind of “horizontal”

society, but it is not like society of citizens with secured rights under the vertical line of order stemming from the State. This horizontal society is rather developed via a set of social networks. It is horizontal because they do not have leaders, and each individual is bounded into the community through solidarity without any rights and legal protection from the state where they are living as well as from their countries of origin.

Sociologically the undocumented migrants within the network are not the same as the denizens in Europe. The denizen is the migrant who has become resident non-citizens, despite the fact that they have lived in a country of destination for long period without becoming naturalized citizen but who nevertheless have a substantial set of rights except political rights (Hammar, 1990: 16; Sørensen, 1996: 63). Denizen in European context means that the immigrants already had applied to get citizenship but have not got any approval from the government. However, they still have a substantial set of rights outside of political rights or only in limited sense of political right. For example, in some countries they are allowed to vote at the local level of politics but not at the national level. They are not allowed to participate in the political process and to be elected (Sørensen, 1996: 63).

This paper is based of a research involving five key informants who are undocumented migrant workers from Indonesia and Myanmar and three informants from Malaysian citizens. The key informants have been living in Malaysia for more than 10 years. They rent a low price unit in a slum like flat in Selangor area. This flat is close to the industrial areas, housing complexes, and shop houses. They introduced me to the Indian intermediary (*orang tengah*) who connected them with the people who need the undocumented workers as cheap labor and to find the affordable accommodation. I also interviewed a person who sold medicine in the night market as well as vegetable trader who sometimes gave the undocumented workers extra free vegetable and allowed them to pay after they had accepted monthly salaries. The key informants also informed me about the existing horizontal network that functioned as social capital as well as social security that had kept them surviving after losing their jobs. From this horizontal network, they got information regarding job opportunities as a security guard of the gated housing complex, a trader assistant in small shops, sundry, cleaning service, and other casual jobs. Beside interviewing the informants, the researcher also gathered the qualitative data through observation of the area, migrants' daily life activity, the function of the network, and their experience on traveling to Malaysia using fake name, as well as surviving in Malaysia as undocumented migrant workers.

This research shows that the situation of undocumented migrant workers is worse than denizen because these undocumented workers do not have any substantial rights at all. For example, they have been living in Malaysia for more than 10 years without any documents and working for the local citizens illegally. According to Malaysian Employers Federation, these migrant workers contribute to the economic growth but enjoy no social protection from their countries of origin and Malaysia (Malaysian Digest, 2015). Legally they have no economic rights, but the informants of this research report that the local

small business sectors need them and the gated housing complexes also need them for security job. Due to this need, they have a chance to earn money for their subsistence. Since they do not possess proper documentation, they are uprooted from their countries of origin and cannot go back there. However, they maintain their connection with their relatives in their home countries. They also still transfer their remittance to their home country.

They choose to remain in Malaysia for good within the existing horizontal network because they have no anchor back in their home country like land possession. They also know that it will be difficult to get job in their home countries, while in Malaysia they have better jobs than those in their home countries. In this situation the undocumented workers are marginalized socially because they are not a part of the social life of the citizens but rather as outsiders, albeit their contribution to the economic growth from the informal sector. They are marginalized because they do not have the right to access to the bank services for saving or transferring the remittance. Neither do they have the rights to utilize public health facilities. If they have children, their children have no rights to access education. They contribute to the small-scale economic activities, domestic work, security and some other informal economic sectors without benefits or minimum wages. They work illegally within the horizontal networks. Even though they are marginalized in terms of human and other rights but they are surviving without state protection because they have their own social mechanism beyond the state.

Based on this information, this paper defines them as “marginalized” because they have been living in a country of destination for a long period and contributing economic benefits for the country (and themselves) like a normal “citizen” but without substantial set of rights from their country of origin or in the country they live in; thus they are “marginalized”. They do not want to exit from this situation, and some of them try to buy the faked permanent resident IDs or fake passports with fake stamp and so on but they are afraid to show it to the authority.

Historically, the marginalized in Malaysia have created a community for their own social mechanism beyond the state for their survival strategy. It is a form of horizontal society network without any vertical bureaucratic backbone and without any leader. The character of social relation of this society is relatively egalitarian in nature as they are coming from the same social economic status. This society is a self-sustaining society beyond the state’s watch. It is a horizontal society in contrast to the state that is operating vertically. The state is organized through bureaucracy and has a set of organizational leadership.

Marginalized are able to manage themselves through the horizontal network they have created. Within this social capital network they develop strategies to protect themselves from any untoward possibilities, especially from the vertical power that might harass them. Interestingly, this strategy has some points of connection with the citizens and state apparatus. The connection is facilitated by the intermediaries whose function is to

provide casual jobs for the members of the marginalizen. The jobs the marginalizens get usually service to the citizens who cannot afford the normal market price offered by the contractors or cannot afford the government fees to hire documented foreign workers. Meanwhile, local citizens do not want to work in the informal sectors in urban areas. Consequently, some employers choose the marginalizen to work in their businesses and other casual activities such as cleaning services, repairing, painting the house, gardening, or massaging. They are paid on a daily basis with the cheaper wages than the normal market price for the same jobs. The local citizens who need their services are just around the flat where the undocumented migrant workers are living.

The intermediaries in this horizontal network play the role as job providers through words of mouth. Their roles are very crucial within the network of the marginalizens, especially for the newcomers because the intermediaries are connecting them with the citizens. The intermediary is a legal citizen who connects the marginalizens and the contractors who want to get cheap labor for their construction projects. He is not only active in providing jobs but also in providing flats to be rented to the marginalizens. The strategy is by renting the flat from the land lord first, and then re-rent it to the marginalizens to get the profits of a higher rent. The landlord only deals with the intermediary who possesses an identity card as a citizen. The landlord ignores any further dealings. The intermediary is basically a petty rent-seeker who also comes from a low income family that earns below or up to MYR3,000 per month. The extra money from the marginalizens will be very significant for the intermediary's family needs. This has become the strategy of the intermediaries because the undocumented immigrants are not allowed to rent a place to stay without any legal documents. All bills like electricity, water, or sanitation will go to the intermediary but the payment is still made by the undocumented migrant workers who rent the flat.

The social function of the intermediary is almost like a patron in a patron-client relationship, but he is not responsible for political protection. He just tries to do his best for the marginalizen during intermittent raids by the police and immigration officers without sacrificing himself legally or politically. He usually asks the marginalizens to hide far outside the flats during police raids. Sometimes, when the marginalizen are caught by the police on the streets for riding a motor bike without a driving license, they will phone the intermediaries to deal with the police to release them. This help will be considered as social debts. Socio-economically, the marginalizen may borrow money from the intermediary and will pay it back after they get their salary. To a great extent this transaction binds them to the intermediary, and the intermediary also needs them because he has to pay the rent for the flat which is under the intermediary's name. This also means that both sides will be deeply involved in the network because they depend on each other for different reasons.

This evidence shows that the horizontal society has connection or social capital with the vertical society indirectly. The intermediaries here are the connecting points between those two societies, through whom the space for negotiation between two sides occurs.

The involvement of the state apparatuses in this network is not for the purposes of law reinforcement but rather as petty rent-seeker as well (through payment of bribes) just like the intermediary. This triangular pattern of relationships creates the political, economic or social relations for the continuation of daily life.

Among the marginalizens from ASEAN countries, Indonesians are culturally benefited more than others because they can speak Malay language and share the same religion. They can easily socialize with Malays from the similar social classes, even they sometimes get casual jobs from the locals. Although some of the marginalizens have the ability to earn money above MYR3,000 they do not have rights to access health facilities, education, banks, and other social services. However, the horizontal network provides illegally most of the facilities they need. “Health facilities” for the marginalizen is the house of a person who is an expert in massage and herbal medicines, or *dukun pijat* (bone healer) who is usually a woman who are already above 45 years. Work-related accidents like *keseleo* (twisted muscle), back pain, neck pain, and other muscular problems can be fixed by the bone healer. For simple health problems like flu, headache or allergy, they can buy self-administered medicines from drug stores. Very often they get medicines like antibiotics from unregistered drug stores or they can buy medicines from the *pasar malam* (night bazar). The healer usually has customers up to eight persons per day if she works since 8.00 in the morning and finishes at 23.00 at night. The tariff per person is between MYR30 and 40 for 1 to 2 hours of massage. If she works for 30 days a month then her income will be between MYR7,200 and 9,600. Her income is above the poverty line in urban Malaysia, which is below MYR3,000 per month/family. Due to the fact that the bone healers are undocumented migrants, they do not pay government taxes. They usually keep their cash at home because they do not have bank account. If they want to transfer their money to their home country, some helpers among the local citizens would help them with internet banking services. So the undocumented migrant workers need not to show any document when they want to transfer their money through informal legal banking services.

Marriage is also an important issue. The Muslims already have a religious ceremony by calling some witnesses and *ustadz* (Islamic clerks) to hold the Islamic rites to settle a legal marriage under “Islamic laws” but not under the state law because the marriage is not legally registered. If there is no *ustadz* available around, they ask a person among the marginalizens who are well-versed in Islamic teachings to be persons who are in charge with “authority” to legalize marriages under the Islamic laws. For delivering babies, the marginalizens give birth at home helped by a traditional midwife who is also coming from within the horizontal community. Of course the babies will not be registered in local offices. Consequently, the baby will become a new born stateless or marginalizen baby, who will not have access to education and other rights in the future. This situation might lead to the possibility of baby selling and trafficking when the marginalizens face economic problems.

The social life of the marginalizen society is just like the everyday life of the other citizens. They create their own social system to support their own needs as the subalterns beyond the state's surveillance. Simple self-reliance, subsistence economy and horizontal cooperation through social networks are their main social foundations to live without the state's services. They are outside the state hierarchical system because there are some spaces where the state is absent. This absence shows the myopia of the state that it does not realize its inability to fully control the spaces using its vertical power. The state is not everywhere that the horizontal forces find their fields for social reproduction at everyday life level. In this level they develop a post-nationalist discourse where the boundaries of the state are deconstructed into a less meaningful set of borders for the marginalizens. Their countries or origin also become less meaningful because the migrant workers are already relatively uprooted from their origins. Nationalism here is not significant; more significant for them is that the world belongs to God who endows them a temporary place to live on earth as they believe.

4. Citizen Nationalist Discourse and the Predicament of ASEAN Integration

Citizens live in a set of hierarchical orders following the logics of the modern nation-state. They have to obey the law as citizens and they develop the idea of we-ness as a nation within the boundary of the state. The state is entailed to develop a nationalist discourse by which the citizens are subordinated to a standardized national identity mostly through education and language with the dominant dialect used by the dominant ethnic groups. Meanwhile, the marginalizens in a country of destination are not following the same standards, but they look and act like normal "citizens" of a state as their mimicry strategy. They disguise themselves within the existing cultures. They are not subordinated by the nationalist discourse but most of marginalizens originating from Indonesia have an ability to adjust themselves in Malaysian culture as they are coming from the same roots of the Nusantara cultural complex.

In this situation, they develop the existing norm of "di mana bumi dipijak, di situ lah langit dijunjung" (literary means "wherever the earth is stepped wherever the sky is held up" or "When in Rome, do what the Romans do"), which means they have to adjust and immerse themselves into the existing culture. The Indonesians imitate the dominant dialects when they are around the citizens but within their own group they speak their own local language. For example, among themselves, the Madurese will speak Madurese; the Javanese will speak Javanese and so on. When the Indonesians are in a mixed of ethnic groups, they will speak Malaysian Malay instead of Indonesian Malay. They try to identify themselves as Malays in terms of socio-linguistic. This is difficult to perform for the marginalizens from countries other than Indonesia except people from Southern Thailand who speak Malay language with the Northern dialects.

Marginalized have created their own milieus which are different from those of the other citizens. The citizens construct the idea of “we-ness” as their political identity using the concept of modern state territory. The state nationalist discourse has been disseminated and internalized by the citizens through the nation-building process historically. To some extent this nationalist discourse has diametrical consequences amongst the marginalized who have been uprooted from their previous nationalist discourses. The marginalized have constructed a set of post-nationalist ideas in the new country they are living. For example, the Indonesian marginalized who are mostly Muslims use the concept of “rahmatan lil alamin” from Islamic teaching as the value of the post-nationalist idea. Based on this concept, they consider that the earth is created by Allah as a blessing for all creatures. This idea deconstructs the concept of territorialism of the post-colonial nation state which becomes less meaningful politically for the marginalized. For them the meaning of boundaries between Indonesia and Malaysia has become meaningless, although the remittance to the families back home remains important. In Malaysia they follow a principle that “When in Malaysia, do what the Malays do” to moderate cultural differences.

Since those two discourses are contested, there are some political predicaments. The cases of the Filipinos living in Singapore who experience negative sentiment from Singaporeans are examples of this kind of predicament. The Filipino migrant workers in Singapore are politically united in strong labor unions and their solidarity is also very strong, but this is not the case in Malaysia. The Filipinos in Singapore dominate the street every weekend, and this make the nationalist Singaporean feel that their public spaces are occupied. Migrant workers in Malaysia do not have that kind of solidarity as their public appearance is not that strong. However, they also experience subtle discrimination from some nationalist sentiments. Since the migrant workers contribute a significant role in the infrastructural development process of Malaysia such as lowly cleaning services in which Malaysian citizens do not take, then the locals tolerate the migrants’ existence. But in the service sectors like restaurants and shops, the citizens from rural areas who have moved to urban areas are in competition with people from Bangladesh, Indonesia, Myanmar and the Philippines. This situation very often produces irritation to the Malaysia citizens from the same social classes into stereotyping the migrant workers as taking citizens’ niches in the job market competition; the migrant workers accept lower payments than what the citizens can tolerate for similar works.

According to Datuk Shamsuddin Bardan (Executif Director of Malaysian Employers Federation or MEF), who was interviewed by Malaysian Digest (on 10 February 2015), “... the perception of Malaysians toward migrant workers has been quite negative”. Moreover, he also said that:

“Some even believe that the influx of foreign workers is the main culprit of the increasing of crime rates in the country. I must say this is an untrue fact ... crime

involving migrant workers is only less than 10 percent of the total crime cases nationwide” (Teh Wei Soon, Malaysia Digest, 10. February 2015).

The negative perception as reported by Datuk Shamsudin Bardan shows a sign of nationalist sentiments among the citizens against the migrant workers.

On 7 January 2014, Malaysian Cabinet Committee of Foreign Workers and Illegal Immigrants decided to ban foreigners from working at the fast food restaurants. It is to give the opportunity for the citizens to work in these outlets. However, this regulation is set without a deadline that the owners of the restaurants do not really follow the regulation because they still want to have foreign workers to operate their business (The Malay Mail Online, 9 January 2014). Even the undocumented migrant workers remain closely involved in this service sector. This kind of politically-related policies is very often indecisive because in reality the businesses still need foreign workers (both legal and illegal) to work. Business owners prefer more foreign workers to operate their businesses because they find it easy to negotiate with the foreigners in terms of salary and other benefits rather than with the locals. It is a matter of power relation in which the foreign workers are less confident to press for socio-political rights than the locals who are more aware about their rights. Thus, the business owners take this opportunity to get more economic benefits from the foreign workers rather than to employing locals.

This policy can be interpreted as an attempt of nationalistic vertical power to protect the citizens from labor market competition, but it does not work within the horizontal network of power. The horizontal power, involving businesses, migrant workers (legal and illegal), intermediaries, and other agencies disobey the vertical power's rules of the government. This shows the inability of vertical power to operate within the horizontal network, and the marginalizen has the opportunity to take the advantage of this. The ambivalence of the vertical line of power and the self-sustaining horizontal network has become the milieu for the marginalizen to survive even under scorching exploitation, such as through bribery for the state apparatus. This situation has turned the intermediary's function as both helper and exploiters of the marginalizen as expressed from the quotation below:

“I came to Malaysia with the help of Pak Haji. He lives in Johor. His man was helping me and others to get new passport in Riau Province of Indonesia. I was not allowed to use my original name as in my previous passport and ID card. So I also have to make a new ID card with new name. After all documents were ready, then I took boat from Batam to Johor; but at that time I was refused to enter Malaysia by the immigration office, so I return back to Batam. A week later Pak Haji's man helped me to make a new ID card and Passport, with a new name again, and then the next day I took boat heading to Johor. I finally passed the immigration check point, and then took a bus with other migrant workers from Indonesia to Malaysia. Pak Haji's people were very nice to all migrant workers who wanted to go to Malaysia. They provided us accommodation and foods three times a day for two

weeks in his house. Of course we had to share our accommodation with others. All costs for transportation, accommodation, food, and documents were already paid as one package to go to Malaysia.”

Narratives from migrant workers who finally become undocumented migrants reveal the horizontal network by which the state apparatuses from Indonesia and Malaysia are involved. It is the syndicate of illegal migrant workers. Based on the information I gathered, most of their passports have one missing page after the holders entered Malaysia. The immigration stamp in this missing page will not be found in their passport.

My informant said: “I saw it was stamped by the immigration officer at the checkpoint, and I do not have any idea why it’s gone”. Interestingly, one informant said, “I will ask Pak Haji’s man tomorrow to get a stamp from the immigration office.” About two weeks later, this informant showed the passport I had seen before and I noticed that it was already stamped by the immigration. This kind of illegal activities shows the cooperation between the horizontal network and the citizens (including state apparatuses). There is no doubt that it is for the sake of the rent-seeking behavior that the marginalized are exploited. It looks like the intermediaries are helping the marginalized who do not know about the legal aspect whether in their home country or in the country of destination, but in fact the intermediaries are exploiting migrant workers systematically.

The collaboration between horizontal networks and state apparatuses who allow people mobility to a great extent has long history in the region of Southeast Asia during colonial and in post-colonial times. This can happen because Nusantara was already their “home” before the colonial rule defined the territory of their colonies, through which the “migrants” can come and go any time without any documents. But after the appearance of the post-colonial states in Southeast Asia, territory became important. However, people actually still manage to cross borders illegally and end up as marginalized in the post-colonial state destination. This kind of porous territorialism can be traced back historically before colonial and post-colonial states in Nusantara (Southeast Asia) where people in this region were moving from one place to another for trading purposes whether in the black market economy (Tagliacozzo, 2005) or the legal and traditional network trading that contributed to the process of ethnic formation in Southeast Asia, especially in Malaysia, Indonesia and Singapore within the context of the international and regional marketplace (Andaya, 2008).

Within the historical context of Nusantara, labor mobility within the region is considered as normal. To a great extent they were already integrated regionally. Post-colonial state territorialism has created the binary opposition between the selfness and non-selfness political awareness among the ASEAN country members. Despite the members’ agreeing upon ASEAN Community 2015 in political term, the sense of selfness is addressed to the country fellow as opposed to the non-selfness of the illegal migrant workers who have become the marginalized whose human rights is not protected by law.

5. The Urge of Horizontal Approach and Free Labor Mobility

ASEAN was established on 8 August 1967 comprising of five founding countries. In the following years the members of ASEAN finally reached 10 countries, which meant it covers all the countries in the region. However, as new post-colonial states each country had experienced political turmoil from the 1960s until the late 1990s. The NPE (Normative Power Europe) as coined by Manners (2002), for example, consist of principle of peace, liberty, democracy, rule of law, and human rights as five major norms that are remain contested in the political practice of ASEAN country members. However, all ASEAN country members have agreed upon the human rights norms that have been already mentioned in The ASEAN Charter. In addition, the four minor norms as what Manners (2002) notes from European Union's experience like social solidarity, anti-discrimination, sustainable development, and good governance remain a challenge in ASEAN.

ASEAN has agreed to free trade since 28 January 1992. But free labor mobility does not follow automatically. This mobility needs more time to be agreed upon since it is a sensitive issue politically especially in relation with nationalist sentiments among the member states. The flows of migrant workers have followed the demand from the more developed countries in the region, but the barriers remain in the form of nationalistic sentiment. The governments still restrict the flow of migrant workers to give more job opportunities for their own citizens. In fact, the citizens are willing to take the parts in the job sectors where lowly skilled migrant workers are limited in number. In this situation, the companies have to employ legal migrant workers. But it is still not enough that the citizens finally recruit illegal migrant workers from the intermediaries who have access to the horizontal network of the marginalizens. This situation only reproduces the existence of the marginalizens and keeps the territorial border porous.

The unstoppable recruitments of illegal immigrants have been operating since the colonial period. But after Malaysia became a post-colonial state and reached the status of more developed country in the region, the flow of illegal migrant workers into Malaysia has been an issue for more than three decades. Within this time, the marginalizens have already constructed their horizontal network strongly. The members of the network see the opportunities of living in Malaysia through the network they have created despite their neglected and ignored rights. It is the field for marginalizens' social reproduction to protect themselves because they do not enjoy any human rights protection.

ASEAN members have been absent in this field, and the marginalizens have already developed some tactics to duck the control of vertical power that stems from the state. They also manage to survive socially and economically within the network. They have created their own social solidarity beyond the state's surveillance. Despite the marginalizens' living in the informal sectors of the economy, they manage to send some parts of their income to their home countries. In the Indonesian context, the remittances

are used to support children education and renovation of houses in their home towns. The campaigning program of “Banteras Permerdagangan Orang dan Penyeludupan Migran” (Eliminate Human Trafficking and Migrant Smuggling) through raiding into the illegal immigrant accommodation, spreading posters, and launching street operations are basically only a cure for the symptom that solves no problem. It is only a political exercise of vertical power, which is ineffective to reach the horizontal network. The existence of the marginalizens for more than 20 years is the evidence of the ineffectiveness of vertical power to reduce the number of marginalizens and illegal immigrants in Malaysia.

The anti human trafficking and illegal migrant worker posters that can be found in many places in Malaysia is an example of the vertical power’s efforts to reduce the number of illegal immigrants and human trafficking into Malaysia. Surveillance technologies like camera, electronic fingerprint scan, and retina scan already installed in the immigration posts in every port, but the syndicate networks still have the ability to penetrate the borders. The Malaysian overstretched border lines remain porous due to the fact that the modern economic system needs the cheap labor that the syndicates can access from the less developed economies in the surrounding countries in Southeast Asia and South Asia regions. The syndicates have their own regional networks. Since they are supplying the insatiable industrial sector, home assistant, and small-scale business, the fact shows that the demands are always high. The cheap laborers without needs to deal with high migrant worker fees and complicated process are the main reason why the syndicates keep supplying illegal workers. The migrant workers usually enter Malaysia using a tourist visa although they eventually work there. Due to the existing horizontal networks, the illegal migrant workers have a place to stay amongst their own people.

Since the syndicates work through the horizontal network, the vertical power exercise will not work effectively to eliminate the horizontal forces unless the government works with the same strategy. In fact, the experience of NGOs on migrant worker’s rights that have followed the logics of vertical power and ignored the horizontal nature of the syndicates and the marginalized network faces failure to reach this community effectively. On the one hand, the NGOs only have managed to work with the documented migrant workers, and consequently they do not touch the issue of marginalized’s rights and do not solve the problem of the syndicate. On the other hand, the marginalized themselves will avoid the NGOs because they are considered as part of the vertical line of power that will place them in political and legal jeopardy. This situation has problematized the issue of the rights of marginalized who are trapped in the informal sectors of the economy. There is a need for a horizontal approach rather than a vertical one to improve their lives.

Besides using the horizontal approach, some lessons also appear from the free mobility of labor in Southeast Asia’s historical background to reach better protection of human rights in this region. Free mobility here demands an arrangement of a longer term staying permit than only an extendable one year term. In reality, most of the marginalized face expiration of work contracts after one year, and without a passport within hand’s reach,

they tend to be stranded in Malaysia without any legal documents. From here, the positive aspects of the regional historical background of free labor mobility during the Nusantara era offer a valuable lesson.

Rewinding our past experience eclectically will provide for a better future of human rights protection for the migrant workers at the regional level. Free labor mobility is the crucial key to open up the nationalistic barriers. It is important, because historically Southeast Asian countries have already integrated culturally long before the colonial time. Southeast Asian people have shared material cultures and cultural values as these had been carried by people who had been highly mobile in the region. But since each country had become a post-colonial state, nationalistic sentiment has become a politically sensitive issue that slows down the integration. ASEAN country members remain involutes within the simulacra of colonial legacies.

ASEAN, as a regional body, has agreed over human rights protection as declared in AHRD (ASEAN Human Rights Declaration). However, migration is not an integral element of the mandate of this body due to nationalist sentiment. People mobility within the region is very often considered as taking the citizens portion of the cake rather than seeing them as inclusive members of ASEAN. This situation will hinder the promote ASEAN Community integration because the social solidarity at the societal levels has not yet been formatted socio-culturally.

Based on the historical evidence that ASEAN country members had experienced during the Nusantara era, I believe that the mobility of labor is the main factor in this integration process. This is because they are the historical actors that have already been mobile within the region. Labor mobility has actually contributed to the economic growth, social solidarity, and socio-cultural integration although they are not calculated as parts of the economic growth at the regional level. The marginalizens need better treatment as they contribute for the people to people regional networking. Punishment against the undocumented migrant workers and their employers does not stop the increasing number of illegal migrant workers since the demands for them remain high. The vertical power has its own shortcomings; there is need for a human rights-based strategy that works more horizontally through the network in which the marginalizens have survived.

6. Conclusion

Historically, ASEAN people already have practiced the basic the foundation for community integration through the mobility of people long before the colonial period. During the colonial rule, the territorial borders were defined for political and economic purposes. The cross-border movements were somewhat restricted; however the borders remain porous due to the cultural contexts in which people in Southeast Asia region have been roaming around the region. In the post-colonial period, especially during the industrialization period in the region, the mobility of the people tends to

increase especially since mobility closes the socio-economic gaps among and within the countries. The people from low income countries are attracted to move out to get better opportunities in the more developed countries like Malaysia and Singapore. The mobility of the people here to a great extent introduces people to people integration. However, the socio-economic gaps among ASEAN country members remain unsolved, and to a great extent it is counterproductive to the ASEAN integration. These gaps can be seen from the increasing number of migrant workers from low income to high income country which remains dominated by low skill migrant workers. Their existence very often creates stereotypes and prejudices that stimulate naïve nationalistic sentiments based on class differences. The socio-economic gaps among the members of ASEAN country are one set of the contributing factors of the negative sentiments toward migrant workers.

ASEAN as an organization needs to be more active in solving the problem of undocumented migrant workers and lifting up the barriers to allow freer people mobility. People mobility to a great extent is one of the contributing factors of ASEAN integration that functions to eliminate the naïve nationalist sentiment which is counterproductive to ASEAN integration in the future. Moreover, ASEAN members need to be actively involved in cutting off the operation of migrant workers syndicates (who are actually the predatory class) and all nationalist regulations that complicate unnecessarily the immigration processes in the era of regional integration. These strategies are important because the demand of foreign labor to work in Malaysia and Singapore is predicted to be high until 2020 for the unsolved socio-economic gaps.

People mobility in the Southeast Asia region is a historical phenomenon that continues through the modern times. The post-colonial state formation has intensified the border security; however, it cannot totally close the porous and overstretched borders. The migrant syndicates operate within these porous borders, and this has created the horizontal networks among the undocumented migrants in Malaysia. They do not have any rights protection because they hold no legal document to enter or stay in Malaysia. This situation has turned them into the marginalized who construct their own horizontal system as an alternative to the state's aegis.

The number of the marginalizans remains high, and it is believed to be increasing because they are needed due to the limitation of local supply of labor working in the same sectors as those of the migrant workers. The migrant workers contribute to the economic growth in Malaysia and at the same time also improve the quality of life of the family in their home countries. From here, it is important to include their contribution to be calculated in a regional strategy to give them human rights protection as well as reduction of number by decreasing the socio-economic gaps between their home countries and the migration targets. Discussions on inclusive social welfare and economic growth must consider the contributions of the marginalizans. The inclusion of the migrant worker is also a door to guarantee their human rights as well as to free them from poverty in informal sectors of economy as they deserve a better quality of life away from social problems.

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ONLINE ACTIVISM FOR LGBTIQ HUMAN RIGHTS IN INDONESIA: INTERNET GOVERNANCE

Laura Rouhan

More and more organisations and individuals are taking to the Internet to share information, campaign for rights and to create safe spaces to support LGBTIQ individuals. With online activism becoming the norm for LGBTIQ organisations across Indonesia, Internet Governance is at risk of being left behind.

Within a human rights paradigm, Internet Governance represents freedom of expression and transparency and challenges LGBTIQ activists to become greater advocates for good online governance in this intersection of rights and freedoms.

The rights of LGBTIQ (Lesbians, Gays, Bisexual, Transgender, Intersex and Queer) people have been vehemently debated across the world and throughout South East Asia, no less so than in Indonesia (Oey, 2012). Over the last ten years, the public discourse has become more open and has been closely followed by the proliferation of LGBTIQ groups throughout the region. Human rights discourses have become central to international debates over gender and sexuality during the past two decades and have now framed the focus of LGBT activism in the region. LGBTIQ activism in South East Asia has matured from one with a HIV/AIDS and health focus into a rights based movement with greater diversity and breadth. Whilst the LGBTIQ movement has created its own identity within a rights based framework, many LGBTIQ people continue to work with HIV/AIDS organisations, demanding an end to the stigmatisation and discrimination they soften face (Oey, 2012). Equally, there is also a great level of intersectionalities with other activist organisations and movements such as feminist, labour and other civil society organisations. This connection is built on the recognition of the ways in which behaviours such as homophobia and sexism are interconnected and cannot be examined separately from one another (UNDP, USAID 2014).

The end of the authoritarian rule of President Suharto in 1998 marked the beginning of the Reform Era in Indonesia, which opened up democratic spaces and the number of LGBTIQ organisations and groups in Indonesia soared (McDonald 2014; Oey 2012). For the first time, organisations began to openly identify themselves as LGBTIQ organisations too. Within this wave of global Human Rights and LGBTIQ discourse, the conversation has expanded to the use of the internet where the proliferation of LGBTIQ organisations and groups cannot be separated from emergence of the internet, which it is seen as an important tool for LGBTIQ activism and communication. Indonesia is the fourth largest country of Facebook users (after the United States, India and now Brazil) with Jakarta known as the twitter capital of the world, generating 2 per cent of the 10.6 billion tweets worldwide ('Jakarta' 2014).

More and more LGBTIQ organisations and activists in Indonesia are taking to the internet and particularly social media where they are able to build safe community spaces where people can connect and communicate, to reduce their isolation and to share information. An online community also creates a space for the LGBTIQ community to advocate for their rights and connect people to health and social support services, all whilst campaigning and advancing LGBTIQ rights as human rights in regional and global contexts (Manaf et.al, 2014).

“The growth of LGBTIQ movements in Indonesia and their advocacy involvement on an international level is inseparable from the growth of the internet. The entire movement is supported and facilitated by the growth in communication technology, which allows high speed transfer of information and communication” (Manaf et al, 2014).

The Internet is a relatively new communication media, with Internet access becoming commercially available in Indonesia in the early 1990's. With a network spanning over some 17,000 islands, ADSL, Fixed line, Mobile and Satellite services give access to over 70 million Indonesians today ('Internet Users', 2014).

Globally, the Internet has created positive spaces for the advancement of the Human Rights of LGBTIQ peoples, the proliferation of International LGBTIQ organisation websites and media demonstrates this. The Internet is a rich milieu of social and political life, so safe, positive spaces also exist with negative, anti LGBTIQ sentiment. The Internet has become a contested space for social and political issues and Indonesia is no exception. Groups and individuals who are not supportive of the advancement of the human rights of LGBTIQ people also use the space to discriminate, bully, threaten and censor the LGBTIQ peoples and organisations online (Manaf et al, 2014). Technology can also be a space where the status quo is preserved, and discrimination and violence against LGBTIQ people is evident. Harassment and homophobic bullying online happens on a regular basis and is equally concerning as off-line bullying and harassments of LGBTIQ peoples.

Bullying and harassment can target individuals or organisations on social media, or it can target websites and blogs. Organisations such as religious groups can also be perpetrators of online homophobic bullying.

It is not just societal attitudes posing challenges for LGBTIQ human rights activists, laws and institutions can also unfairly target and criminalise LGBTIQ peoples. The censorship and blocking of LGBTIQ websites by Internet Service Providers (ISPs) and the Indonesian Government has been reported in Indonesia since 2011 and presents a unique challenge for LGBTIQ organisations in Indonesia (Manaf et al, 2014).

Due to the rapid take up of mobile Internet and telecommunications in Indonesia, online activism and organising of LGBTIQ people is becoming the norm, making it imperative that Internet governance does not get left behind as there are important implications or intersections which support the human rights of LGBTIQ people in Indonesia.

Internet governance, within a human rights paradigm, is about freedom of expression, privacy and other human rights such as freedom to associate, and freedom of expression. Over the last decade, the term 'Internet governance' has been subject to varied interpretations and much conjecture, for our purposes: The online freedom and rights of LGBTIQ Indonesians, the term is understood to be the online freedom, transparency and administration of the internet by a variety of stakeholders, namely ISPs, the Indonesian Government and LGBTIQ online activists (Gelbstein & Kurbalija, 2005).

1. Indonesia Online

Published in January this year (2014), a survey by the Indonesian Internet Service Provider Association (APJII) and the Central Bureau of Statistics (BPS) reported the number of Internet users in Indonesia by the end of 2013 had reached 71.19 million people, or 28 per cent of the country's 248 million population (APJII as cited in Dony 2014). Surveys and Internet usage trend forecasts tip this number to increase over the coming years, to 33 per cent in 2014 rising to 39.8 per cent in 2016 (APJII as cited in Dony 2014).

Mobile devices are still the preferred gateway for Internet access, especially when it comes to social media sites. APJII statistics report over 300 Internet Service Providers (ISPs) currently registered as APJII members, which further illustrates the size of the market and rising demand for Internet connectivity across the Indonesian Archipelago (APJII as cited in Dony 2014).

According to APJII, Internet use is centralised in the western part of Indonesia, namely Java. This is not surprising as telecommunication and Internet infrastructure is focused here. In addition, approximately 83.4 per cent of Internet users are in urban areas (APJII as cited in Dony 2014), which presents another challenge for activists and organisations reliant on the Internet to communicate with, support and advocate for the human rights of the LGBTIQ community. The lack of reliable Internet access in regional or rural areas is best understood as the digital divide and this is of growing concern for LGBTIQ organisations across Indonesia. The digital divide is the term given to the social and economic inequality, which limits a person access to, use of, and knowledge about communication technologies (APJII as cited in Dony 2014).

2. LGBTIQ Indonesia

The Archipelago of Indonesia is the largest Muslim country by population in the world, it is a country, rich in race, culture, religion, ethnicity and diversity, which have become a signature of Indonesian culture and identity. With a population over 250 million it is the most populous nation in South East Asia. Diverse sexual behaviors and gender identities were known in the archipelago centuries ago and documented in groups and traditions such as the Warok and Gemblak in East Java and the Bissu (Transgender) in the social structure of South Sulawesi.

Not unlike other countries in the region, homosexual identity emerged in urban centers in the early twentieth century. In the late 1960s, LGBTIQ groups began to emerge and were primarily centered around transgender women, or waria, as they came to be known. It was not until the 1980s that gay and lesbian groups began to organise in small groups around the country, their mobilisation facilitated through the use of the readily available print media. During the 1990s, as was the case around the world, HIV provided an impetus for greater mobilisation and more gay and lesbian groups began to appear across the country.

During the 1990s, the LGBTIQ movement was involved in national meetings for the first time where the movement also cemented its ties with labour, feminist and pro-democracy organisations, academics and other human rights groups (UNDP, USAID 2014).

The end of the authoritarian rule of President Suharto in 1998 marked the beginning of the Reform Era in Indonesia (McDonald 2014), which opened up democratic spaces and the number of LGBTIQ organisations and groups in Indonesia soared. For the first time, organisations began to openly identify themselves as LGBTIQ too. The many LGBTIQ organisations in Indonesia work on different issues in different ways. Such as small informal support and social groups, counseling and health information organisations, to larger membership based organisations creating open spaces to support victims of homophobic violence, de-bunking myths about LGBTIQ sexuality and rights, providing legal support and LGBTIQ rights as human rights education in schools and the wider community, on and offline.

As the LGBTIQ organisations mature, their civil society connections increase and strengthen, they are able to register with the government, produce annual reports, apply for funding and develop and deliver more sophisticated services to support the LGBTIQ community, even participate in national and international human rights dialogue. For example, since 2012 LGBTIQ organisations have been working together to publish annual reports on Human Rights violations of LGBTIQ in Indonesia (Manaf et al 2014). As local LGBTIQ organisations continue to gather support and maturity, new opportunities such as participation in national and international dialogue and legislative frameworks are increasing.

Within the ASEAN member states, rights of LGBTIQ peoples vary and there are extensive networks of organisations and individuals in the region, campaigning for the protection of rights for LGBTIQ peoples.

The LGBTIQ movement was also involved in the development of the Yogyakarta Principles. The Yogyakarta Principles are human rights principles, which assert the rights of sexual and gender diverse peoples as human rights. Developed in Yogyakarta in 2006 by Indonesian and international activists and scholars, the Principles have become the benchmark of international legal standards regarding sexual orientation and gender identity. In 2011, the UN Human Rights Council adopted a resolution on 'Human Rights, Sexual Orientation and Gender Identity', which asserts human rights principles are applicable to issues of sexual orientation and gender identity. It also reaffirms the Universal Declaration of Human Rights, which was ratified by the Indonesian Government in 1999. The UN further asserted that signatories have a duty under international law to protect the rights of all persons, including LGBTIQ (Manaf et al. 2014) peoples.

3. LGBTIQ Indonesia Online

More and more LGBTIQ organisations are taking to the Internet and particularly social media with three general areas of activity.

In 2014, Indonesian NGO Institut Pelangi Perempuan with the Association for Progressive Communication and the Ford Foundation, published an extensive report on Queer Internet Governance, which used EROTICS (Exploratory Research on Internet Sexuality), a well-established research methodology (using survey techniques) used across the world in places like India, the USA, South Africa and Lebanon (Manaf et al. 2014).

For someone who is Lesbian, Gay, Bisexual, Transgender, Intersex or Queer, disclosing their gender identity or sexual orientation is not as easy, as there is often risk associated, whether it be; violence, ridicule, rejection, fear or persecution from friends, family, colleagues, school mates or neighbours (Manaf et al. 2014). Indonesian law only recognises two genders and whilst Indonesia does not have laws specifically criminalising homosexuality, there are several laws and local by-laws which target gays and lesbians and seek to portray them as criminals (such as the Anti-pornography laws). Without legal protection (despite Indonesia's ratification of the UNDHR, UN resolution on Human Rights, Sexual Orientation and Gender Identity for just two examples) it is easy for individuals to feel vulnerable to discrimination or violence based on their gender or sexual identities. There also exist the normative, religious values of a society, which places further pressure and anxiety on LGBTIQ people.

This is why the Internet has become a popular, safe space for LGBTIQ to interact. Many LGBTIQ groups use websites, twitter and Facebook as a means to organise young people. Some organisations, such as those supporting LGBTIQ youth have websites where people can sign up to online mailing lists, connect with like-minded people and seek support. Websites also publish articles and digital magazines, with its popularity evident in the high web-traffic data. This also proves it is considered a safe space for LGBTIQ to interact and facilitate meetings (Manaf et al. 2014).

Using the Internet in this way, people are able to anonymously ask questions, read reliable and accurate information, and get socially connected all from the advantage of being online. It also helps people participate from a range of ages, backgrounds and geographic locations.

3.1 Education and Advocacy

“News and publications from mainstream media more often than not are discriminative against LBT in Indonesia” (Manaf et al 2014 p. 21).

A range of LGBTIQ organisations in Indonesia encourage the publication of independent media to promote the rights of LGBTIQ people. For many organisations established in the last ten years, this has been an area of focus, producing online magazines, e-books, website content and regular e-newsletters. These publications not only give voice to LGBTIQ people, but perhaps more importantly, the community can safely access them. Digital information is private, accessible, fast to disseminate and cheap to consume and send out.

Printed publications are not discrete and cannot be openly read by someone who is afraid their parents, co-workers or family may question their sexual or gender identity. However, digital publications (online or on CD) can be accessed privately and securely so LGBTIQ people can still access information on sexual health and rights for example. This highlights, as mentioned in the 2014 report *Queering Internet Governance in Indonesia* (UNDP, USAID 2014), that the right to privacy and security must accompany the right to information.

3.2 Connecting LGBTIQ with other human rights issues

We consciously and politically choose Internet as medium of our movement. I feel that Internet gives me more freedom and it can reach out to wider audience. It also allows us to enter different holes that we have never realised before. Through Internet we can meet LGBTs, non-LGBTs, those who are aware of this issue, etc. And they all appear and interact at our website (Hartoyo, Ourvoice) (Manaf et al. 2014, p. 24).

The NGO Our voice (OV) was a pioneer in dissemination of information on LGBTIQ online, and LGBTIQ online networking. Our Voice are ardent campaigners for the rights of sexual and gender diverse Indonesians. Established in 2007, OV quickly used the Internet to build an online community and create alternative media for LGBTIQ activists across Indonesia to access. In 2009, OV's news portal for the LGBTIQ community became www.suarakita.org (Manaf et al. 2014).

OV also provides information on other Human Rights issues, highlighting the intersectionalities within online LGBTIQ and rights based activism.

OV's high Internet traffic, illustrates the popularity of the website and that it is capable of reaching a large audience. Understood as online LGBTIQ rights pioneers, OV were also at the forefront of Internet censorship when their website was blocked by the ISP, justified by the anti-pornography laws (Manaf et al. 2014).

Another application of this is evident in the #WAREASEANTOO campaign. The ASEAN SOGIE Caucus (ASC) is a network of human rights activists from the ten ASEAN countries who work to advocate for the inclusion of SOGIE (sexual orientation, gender identity and expression) rights in ASEAN Human Rights Mechanisms.

In response to the exclusion of SOGIE rights from ASEAN Human Rights Declarations and associated legislative human rights protection mechanisms (such as the Declaration on the Elimination of Violence against Women and Children), the ASC launched the #WEAREASEANTOO twitter campaign. The campaign aims to build solidarity among the LGBTIQ community, and connect that element of identity to an ASEAN identity. As the ASC website (Yi-Sheng 2013) states, the twitter campaign also seeks to expose the lack of transparency in the drafting process and raise awareness to ensure the exclusion of SOGIE rights does not continue.

Twitter is not a static online medium; it responds, builds connections quickly and allows people to participate directly in discussions and campaigns. It also allows users to share video, pictures, articles and any other content amongst networks. None of this however, makes it immune to negativity as it too can leave people and organisations vulnerable to homophobic bullying online.

4. Internet governance and LGBTIQ rights

The Internet supports the visibility of LGBTIQ movement and facilitates the advocacy of Human Rights of LGBTIQ, but it also gives voice to those who oppose the LGBTIQ movement and actualisation of the Human Rights for LGBTIQ Indonesians, demonstrating that the Internet can be a powerful tool to engage in bullying and homophobic harassment. Whilst individuals and organisations (such as hard-line Islamic groups and in some instances, the state) engage in these negative activities, the state also plays a role through Internet governance, silencing the LGBTIQ community online (Manaf et al. 2014).

The state uses the anti-pornography laws to undermine the Human Rights of LGBTIQ, where it equates LGBTIQ content with pornography, using that as justification to shut down websites. This is despite the fact that the Indonesian Constitution guarantees the rights of all people in Indonesia with no discrimination of any kind, including discrimination based on gender identity and sexual orientation. This guarantee is then strengthened by the ratification of Universal Declaration of Human Rights through the enactment of the Law Number 39 on the Ratification of the Universal Declaration of Human Rights (Manaf et al. 2014).

In 2008 the government of Indonesia decided enacted the Pornography or Act on Pornography Law. The law defines:

“Pornography is pictures, sketches, illustration, photograph, writing, sound, voice, animated picture, moving picture, cartoon, conversation, body movement or any form of message through various forms of communication and/or performance in public, which contains element of perversion, and sexual exploitation that violates the moral norm in the community” (Manaf et al. 2014, p. 26).

The law further targets LGBTIQ people by defining homosexuality as deviant sexual behavior, which in turn then deems all publications and media relating to LGBTIQ peoples as pornographic in content. This interpretation, whilst not explicitly framing LGBTIQ people or 'behavior' as illegal, it does make them vulnerable to and fearful of prosecution.

One of the implications of the anti-pornography laws, has been the establishment of resources within the Ministry of Communications and Informatics to oversee pornographic content. The Ministry of Communication and Informatics has established measure, which it uses to assess and report web content. The most active, being the 'trust Positive program', which is utilised by ISPs to regulate internet content in Indonesia and filter pornographic, gambling and other illegal contents upon request from the authorities.

The screening of Internet content is done when an Internet Service Provider is blocked, on the order of the Ministry of Communications and Informatics. The Ministry receives reports on negative-content websites, which are generated by the public via email and/or through a web-based reporting platform. The report is then assessed before it undergoes assessment, where the content is catalogued and monitored or blocked. If the ISP fails to block the websites contents, sanctions can be imposed under the legislation.

This blocking of websites is hugely problematic as it effectively equates homosexuality, LGBTIQ content as hugely negative, pornographic and even criminalises it. Homosexuality was removed from the Diagnostic and Statistical Manual of Mental Disorders (DSM) in the early 1970's, a starting point for the globalisation of the LGBTIQ human rights struggle. Across the world, this quickly led to its decriminalisation.

In recent years, several prominent LGBTIQ websites have been blocked by the Indonesian government, such as the International LGBTIQ Human Rights Commission, Our Voice (OV) and Institute Pelangi Perempuan (IPP). In each case, it was due to the 'sites pornographic content,' which was seen as contradicting the national anti-pornography laws. In each case, the blocking of these websites was done without providing transparent, clear and accountable explanations. Which in itself is in opposition to the Ministry of Communications mandate and own assurances in the activist community (Manaf et al. 2014 & UNDP, USAID 2014).

The way LGBTIQ organisations and activists respond to this online censorship is hugely important. The common response has been to change ISP and launch the website again. However, this does not engage or acknowledge the depth of this rights issue; censorship is a violation of the rights of LGBTIQ Indonesians with damaging and challenging consequences.

5. Conclusion

While the many advantages for online campaigning for LGBTIQ rights are clear, it is also undeniable that the online LGBTIQ movement in Indonesia faces a great number of internal challenges: bridging the digital divide, Local laws and by-laws attempting to criminalise LGBTIQ Indonesians and societal attitudes. With online activism by LGBTIQ groups in Indonesia taking off and becoming a norm of activist, education and information dissemination behavior, there is a risk that internet governance will get left behind and the LGBTIQ movement will suffer as a result of this.

To combat the emerging challenges of Internet governance, LGBTIQ activists need to develop a better understanding of Internet governance, how it impacts their activist work and how essential it is when advocating for the rights of LGBTIQ Indonesians.

Although most LGBTIQ organisations have started to be involved in the issue of and advocacy forum on Internet governance, the idea of integrating Human Rights of LGBTIQ to the Internet governance is still considered new many in the network of ICT advocates. The discourse on sexuality and rights to Internet access remain new in Indonesia. LGBTIQ activists need to improve their digital literacy, knowledge and skills so they can better protect themselves and their community on-and offline (IPP et al. 2014). It is essential that activist groups work together to integrate the Human Rights of LGBTIQ with digital (online) rights and Internet Governance.

Indonesia is uniquely placed to be a leader among ASEAN nations in the area of Internet Governance as a human rights issue, with early signs of this happening, such as the recent EROTICS report and the 2013 - Internet Governance Conference in Bali, Indonesia and the increase of research and discussion on the subject based in Indonesia.

As LGBTIQ activists and organisations continue to use the Internet to advocate for the rights and protections of LGBTIQ peoples, Internet Governance will need to be supported, strengthened and integrated so it does not get left behind in the fight for human rights.

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THE FRENEMIES WITHIN: SOVEREIGNTY AND HUMAN RIGHTS IN ASEAN

Gisle Kvanvig

The weaknesses in the ASEAN Human Rights Declaration (AHRD) are reflections of the principle of non-interference and ASEAN Member State sovereignty. Criticism of the AHRD can be seen as projections of domestic human rights challenges. ASEAN's history of interference and intervention, and its current process of integration, point to a more dynamic and flexible approach to non-interference and sovereignty than what is commonly perceived. ASEAN Member State leaders have been prepared to break with the principle of non-interference when protecting common establishment interests and political order. Human rights pose a challenge to political order and, hence, the establishment.

1. Introduction

According to its own statements, the Association of Southeast Asian Nations (ASEAN) is integrating by 2020. The ten ASEAN member states (AMS) have a total population of more than 600 million people. Few seem to doubt the potential, but most see the glaring weaknesses and obstacles that stand in the way of both integration and success for ASEAN. The ten AMS have more that sets them apart than brings them together. Conflict, suspicion, governance, level of development, and foreign policy interests make up broad categories of divisive issues. The AMS are perhaps best understood as polities where internal challenges outweigh external threats. Accordingly, traditional western concepts of international relations whether in the realm of security, political economy, or international law often fail to adequately guide, explain and predict state behavior in Southeast Asia (SEA). When approached with multilateral institutions such as the EU in mind, ASEAN makes little sense. Traditional international relations concepts such as liberal internationalism or realist balance of power theory are not irrelevant, but they too fail to “explain” ASEAN.¹ It is worth noting that ASEAN dismisses comparisons with the EU but continues to receive criticism for not being more like them. Despite its plans for an integrated ASEAN, which promises something akin to a single market and security community, the AMS remain stubbornly insistent on its principle of non-interference. For regional and international observers alike, it is becoming increasingly challenging to reconcile non-interference with prospects for functioning human rights institutions, security cooperation and trade agreements that are commonly perceived to require some form of legal basis. Perhaps what seems most strange is that ASEAN would state ambitions to these ends in the first place. Why make promises that seem impossible to keep?

The initial research question for this paper was: What does sovereignty protect in ASEAN’s member states? The reason for the question is ASEAN’s continued insistence on the principle of non-interference, which is a core constituent of state sovereignty. It will be argued that non-interference and subsequently sovereignty continues to be used to protect political orders in the AMS both individually and collectively. Although diverse in nature, the political orders within the AMS share commonalities with regard to establishment interest and power. Human rights pose a challenge to political order and the establishment. The discussion and criticism surrounding the ASEAN Human Rights Declaration (AHRD) and the ASEAN Intergovernmental Commission on Human Rights (AICHR) illustrate that foreign policy in ASEAN should be understood as projections of domestic politics. Criticism of ASEAN seems to emanate from expectations that are difficult to reconcile with ASEAN’s stated objectives and the AMS’ capacities.

1 See for instance Emmers (2003), *Cooperative Security and the Balance of Power in ASEAN and the ARF*. New York: Routledge.

This paper is exploratory in nature and intended as a starting point for further research and analysis. A long-term objective of this research is to contribute to the managing of expectations with regard to what ASEAN is, and consequently what it has the capacity to become. The paper begins with examining ASEAN, Asian values and the ASEAN way before moving on to issues relating to sovereignty and statehood, which in turn inform the discussion of the AICHR and AHRD.

2. ASEAN, Asian Values, and the ASEAN Way

Most observers seem to agree that ASEAN upon its inception in 1967 was established as a bulwark against communism in East and Southeast Asia.² There were predecessors to ASEAN, such as the Association of Southeast Asia (ASA), MAIPHILINDO, and SEATO, but this paper will not go into greater detail about these entities. Some claim that ASEAN has come full circle as it yet again closes ranks against China. This is debatable.

A key difference between 1967 and now is that ASEAN has doubled its number of member states, and that ASEAN now consists of both democratic and semi-democratic states, in addition to autocracies and semi-autocratic states. The relations between the respective ASEAN member states (AMS) and China vary from poor to cooperative, and what some claim is clientelism in the case of Cambodia. Interviews with officials in Myanmar show that one of the main reasons behind Myanmar's recent reforms was that they feared becoming a client state under China. This was a fear they shared with neighbors such as Thailand (Sun 2012 and Pavin 2005).

The common threat identified by ASEAN in 1967 was communism, but the member states also sought to defuse regional conflict in the wake of the Sukarno era's Konfrontasi policies, and other skirmishes such as that between Malaysia and the Philippines. The reference made in the Bangkok declaration, signed by the member states in 1967, to ensuring security from external interference was primarily targeted at China and the Soviet Union, but it carried with it a greater objective in terms of overall resilience vis-à-vis former colonial powers such as Britain and the US.³ This latter point was hotly contested amongst the member states, which eventually arrived at formulations in the declaration that were agreeable to all the members (Jones 2012, Acharya 2009, Emmers 2003).

Throughout the 70s and 80s SEA and ASEAN politics were shaped by the cold war, and particularly the Vietnam wars. In the case of Vietnam's invasion of Cambodia, the five AMS displayed their pragmatism as they joined forces with China, the US and other

2 The original members of ASEAN were Thailand, Indonesia, The Philippines, Singapore and Malaysia. They were later joined by Brunei in 1984, Vietnam in 1995, Laos and Myanmar in 1997 and Cambodia in 1999.

3 The notion of resilience was introduced by Indonesia, which domestic and foreign policy rested on resilience towards external pressures.

western powers in their struggle against Vietnam. The five AMS made a concerted and successful effort to prevent the Vietnamese backed Heng Samrin regime from acquiring the Cambodian seat at the UN. Accordingly, Cambodia continued to be represented by the former Khmer Rouge regime throughout the 10 year-long Vietnamese occupation. In the meantime the ASEAN states acted separately and in concert to overthrow the HengSamrin regime. Indonesian military intelligence aided and funded by the US and China trained Cambodian guerillas with a view to topple Heng Samrin, or if that failed, keep Vietnam engaged in Cambodia by extending the civil war (Jones 2012). Indonesia's intervention and subsequent occupation of East Timor in 1976 forms another interesting case study in light of the oft-cited principle of non-interference that ASEAN supposedly adheres to. As with the Cambodian case the threat of communism was perceived to be both internal and external in nature, and the AMS collaborated against a common enemy (Jones 2012).

With the end of the cold war, ASEAN needed a new *raison d'être*. Where the autocrats of SEA previously saw communism as the main threat, the new threat was identified as liberal democracy. ASEAN found common ground in capitalism and Asian values. The deregulation that took place in the west during the 1970s had aided the SEA export led economies, which by the 1990s had become second tier tiger economies. The political and financial elites of SEA now had considerable wealth and power to protect. They managed to modernize economically while remaining undemocratic and justify it with reference to Asian values. One of the main Asian values arguments posits that human rights and democracy are anathema to SEA as SEA culture emphasizes the collective rather than the individual. The main advocates included Mahathir Mohammad, Suharto, Ferdinand Marcos, and Lee Kwan Yew. It is commonly perceived that the Asian values debate and argument ended with the financial crisis in 1997, and the subsequent toppling of governments in SEA. Prior to the crisis the debate over Asian values had been both lively and diverse with critics such as Francis Fukuyama dismissing the concept as mere exceptionalism to protect autocracies, to Asian academics who engaged with the concept on a less political and more theoretical level such as Mochtar Pabottingi and Muthia Alagappa. The Asian financial crisis in 1997 put a dent in ASEAN's image that it is still struggling with. In 2000, following the Asian Financial Crisis, relations between ASEAN's member states took a turn for the worse. ASEAN's core member states were arguing over who was most to blame for the crisis, and international observers remained unimpressed with the inertia governing attempts to reinvigorate ASEAN by introducing much needed reform to avert future economic crisis. Chandran Jeshurun (2000) argued for a rethink of regionalism that entailed the scrapping of all things ASEAN, and particularly the ASEAN Way.

Where Asian values have retreated into history, the notion of the ASEAN Way persists as a defining feature of ASEAN. The ASEAN way is often seen as elusive and vague, but it found its expression in the ASEAN Treaty of Amity and Cooperation (TAC) that came

into force in 1976.⁴ Noordin Sopiee has identified some key principles underpinning the ASEAN Way. They include seeking harmony and agreement, politeness and sensitivity, non-confrontation and agreeability. As a practice, the ASEAN way favors quiet, elitist, and private diplomacy. The ASEAN way is more about norms than objectives, and is non-binding and non-legalistic in nature (Sopiee cited in Goh 2003).

3. The State and Sovereignty in Southeast Asia

The ASEAN Human Rights Declaration “would have run counter to the ASEAN Charter had it adopted the universality principle in accordance to the Vienna Declaration” (Eberhard 2012).

The non-interference principle seems to remain a permanent fixture of ASEAN as it made its way into the ASEAN charter, and constrains the AICHR’s mandate. Although used interchangeably, non-interference seems to suggest a wider application than non-intervention as described in the United Nations Charter’s Article 2.4.⁵ The Article stipulates that all UN member states shall refrain from the threat or use of force against the territorial integrity or political independence of any state (UN, 1945). As such, non-interference is a core component of sovereignty. Sovereignty is a contested concept this paper cannot engage with in full, but a brief outline of the concept and the debates is warranted. Kalev Holsti states that “sovereignty is an institutionalized legal or juridical status, not a variable or sociological condition” (2004, p.136). Robert Jackson (2007) makes a similar argument, and both point to what they argue is a confusion of authority with power and/or influence among critics of traditional conceptions of sovereignty in international relations theory. Criticisms of traditional understandings of sovereignty commonly point to globalization as having eroded or fragmented state sovereignty practically and judicially. Somewhat simplified, critics like Jan Scholte and Richard Falk argue that the state no longer has the capacity to uphold sovereignty in terms of territorial integrity, and hence state capacity no longer meet the criteria of sovereignty. Holsti quotes F.H. Hinsley who stated “we can believe that sovereignty will continue to be a viable concept without denying that it will continue to fail to fit all the facts” (2004, p.117). The dispute surrounding the definition and utility of state sovereignty will not be settled here. A useful distinction seems to be that between sovereignty as a legal concept and statehood as a condition. Simply explained a state is sovereign despite being weak and governed by authorities considered to be illegitimate in the eyes of world opinion or even parts of its population. Sovereignty in the words of Jackson (2007) is Janus faced. It faces inwards and outwards. Domestically, sovereignty denotes supremacy.

4 The principles of the TAC are: a. mutual respect for the independence, sovereignty, equality, territorial integrity and national identity of all nations; b. the right of every State to lead its national existence free from external interference, subversion or coercion; c. non-interference in the internal affairs of one another; d. settlement of differences or disputes by peaceful means; e. renunciation of the threat or use of force, and; f. effective cooperation among themselves.

5 Here we refer to non-interference since this is the preferred term of ASEAN.

The government of a state is the supreme authority of that state even when authority is divided constitutionally. Internationally, sovereignty denotes independence. States are not supreme in the international domain they are independent (Jackson 2007).

Georg Sørensen distinguishes between the modern, postcolonial and postmodern sovereignty games (2001). Postmodern in his analysis does not refer to the philosophical school of thought but to developments in statehood where the modern sovereignty game is based on nonintervention and reciprocity. Nonintervention is the right to conduct state affairs without outside interference, while reciprocity suggests an aspired symmetry between states based on equal opportunity for giving and taking for mutual benefit. These Grundnorms of sovereignty create problems for the postcolonial state because they lack the capacity to fully play by the rules. Less developed countries cannot base their international relations with developed countries on reciprocity they require preferential treatment. Likewise, postcolonial states are more prone to violations of territorial integrity such as humanitarian intervention. The complexity of the sovereignty game is exacerbated by the arrival of the postmodern sovereignty game where states modify the rule of nonintervention such as in the case of the EU. Holsti discusses this as the pooling of sovereignty where the member states have delegated authority to a supranational body, but retain the sovereign right to withdraw. Sørensen describes the postmodern sovereignty game as one of cooperation rather than competition. To delegate autonomy to a supranational body can be seen as a sign of great state strength and not weakness. However, multilateral forums such as WTO, G20 and the UN display the inherent contentions involved when states playing different sovereignty games try to cooperate. Reciprocity and cooperation are difficult in areas such as world trade, security and climate change for the simple reason that the states involved have very different capacities and require different modes of cooperation and treatment.

The ASEAN member states (AMS) display great diversity in statehood. Acharya argues that there is a liberal – conservative divide based on commitment to human rights and democracy in ASEAN. This divide has pitted Thailand, Indonesia and the Philippines against Vietnam, Myanmar, Malaysia and Singapore. The divide also marks the difference between a more pro interventionist view of ASEAN and a pro sovereignty camp. Add to this the historical mainland versus maritime SEA divide, which has had profound impact on both culture and politics amongst the ten ASEAN member states. In addition, ASEAN is divided into new and old members, and there is a considerable income gap between the citizens of the ASEAN states (Acharya 2009). ASEAN seeks to unite some of the world's poorest countries (Myanmar, Laos and Cambodia) with one of the richest (Singapore). The ratio between the lowest and highest GDP per capita is 1:61 in ASEAN, while it is 1:8 in the European Union (EU) (Kaveevivitchai 2013). It is difficult to see Singapore and Laos playing the same game, and state conduct in Southeast Asia illustrate that sovereignty is far from a uniform game.

Lee Jones (2012) argues that the non-interference principle in ASEAN is not as static as it seems. ASEAN's history of interference and intervention, and its current process of integration, point to a more dynamic and flexible approach to non-interference and sovereignty than what is commonly perceived. Jones argues that ASEAN has undergone a diverse range of sovereignty regimes, and that when ASEAN states intervened militarily it was primarily to protect domestic order. The autocratic leaders of the 1990s tacitly accepted interference in each other's internal affairs when it served their common interests. This was true of the fight against communism, which was as much internal as external to the AMS, and it was true of the struggle to suppress liberal and democratic elements from gaining power in the 1990s. ASEAN has been consistent with regard to protecting its establishment and political orders. The ASEAN way indicates a *modus operandi* that has proved highly adaptive in protecting the sovereignty regime of the day. It may also be argued that the ASEAN way is representative of a political culture descendant from the mandala, and tributary systems in pre-colonial and pre-modern SEA. The mandala system was characterized by overlapping claims of sovereignty between the polities in SEA. Power was strongest at the center, and waned in the periphery. Sovereignty was centered upon the ruler and not territorially defined. The tributary system was one of suzerainty vis-à-vis the emperor in Beijing. The polities in SEA were highly diverse and consisted of sultanates, dynasties, and kingdoms. One can crudely distinguish between the Muslim, Indianized and Sinicized spheres of the region (Stuart-Fox 2003, Chew 2010). Time and space constraints prevent this paper from delving deeper into history. What is important to keep in mind is that the AMS were shaped by a set of historical experiences in statehood and governance that differ from those of for instance European states. This raises questions with regard to the foundation for Westphalian sovereignty in SEA.

Post-colonial states share a trait in that they all possessed weak capacities for upholding domestic and international sovereignty upon independence. Albeit to different extents, the majority of the SEA states continue to struggle with territorial integrity in the sense that they do not have centralized control over the entire demarcated area of the state. Challenges to centralized control and territorial integrity revolve around issues such as borders, national identity, race and ethnicity, or more particular issues such as local governance and increased autonomy, land rights and natural resource extraction. Weak domestic authority can be exploited internationally and can prove combustible as in the case of the South China, East or West Philippine Sea issue.

The ASEAN Political and Security Community "is weak in resolving disputes and maintaining peace in the region"...The ASEAN member states "should carefully and clearly redefine and reinterpret the scope and definitions of "sovereignty", "non-interference", and "territorial integrity" principles stipulated in the ASEAN Charter" (Brata 2013).

ASEAN seemingly wants security cooperation without any of the formal preconditions that historically govern more successful examples such as NATO. This is particularly salient when considering the ASEAN process of integration, which can be considered moving from modern to post-modern statehood. Mohammed Ayooob (2002) along with fellow academics such as Georg Sørensen (2001) argues that third world elites have internalized the principles embedded in the notion of the Westphalian state such as sovereignty, territorial integrity, and non-intervention, to an astonishing degree. SEA state behavior can be defined as explicitly modern. Ayooob explains ASEAN as “a form of cooperation built around ‘the convergence of regime interests relating to internal security’ to manage ‘threats to the security of states and the stability of regimes” (Jones 2012 and Ayooob 2002). This corresponds with the argument that ASEAN is primarily about domestic and not regional politics. ASEAN’s attempt at merging domestic and regional agendas meets domestic resistance. Roberts (2012) cites an interview with an official at Vietnam’s Diplomatic Academy who stated that when the ASEAN charter commits the members to the rule of law, democracy and human rights that applies to the ASEAN context and not to domestic politics. There are other examples indicating that some members of ASEAN appease countries like Thailand, Indonesia and the Philippines by signing the ASEAN charter and AHRD because they are non-binding (Roberts 2012).

It is worth noting that the AMS either lack foreign and defense policy white papers (Indonesia), or have drafted vague white papers of little value in terms of providing guidance to policy and making its intentions and interests clear internationally (Vietnam) (Sebastian and Lanti 2010). Consequently, it becomes difficult to understand what role and function ASEAN can have when its members seem non-committal, unclear or perhaps deliberately vague about their respective domestic agendas, policies, foreign policy and interests. Amitav Acharya sees cooperation amongst the ASEAN states as a social process, which has had a positive and transformative effect on their relations. His is a constructivist view where regulatory norms have been internalized and ASEAN can point to diplomatic successes in preventing and managing intra-mural conflict among its member states. The ASEAN Way and the principle of non-interference are central to his argument as they underpin and facilitate a process of transcendence. Lee Jones on the other hand, observes that taken at face value, “ASEAN states’ boring refusal to intervene in each other’s affairs translates into a boring academic consensus” (2012, p.223). Jones critiques both constructivist and realist scholars who tacitly accept non-interference as a defining feature of ASEAN. He states that there would be nothing left to say about ASEAN if non-interference was respected and upheld. Carroll and Sovacool (2012) argue that rather than an emerging security community ASEAN exemplifies contested regionalism within which entrenched domestic elite interests constrain regionalism.

Despite the criticism, ASEAN has come a long way since the Asian values argument posited that human rights were anathema to SEA culture. In Jones’ terms what is at display is “a highly uneven and complex, and even incoherent, sovereignty regime” (2012,

pp. 117). Amitav Acharya (2009) argues that the current debates over non-intervention, human rights and democracy are indicative of an ASEAN moving towards a collective identity. However, this requires the ASEAN member states to overcome considerable differences as well as bridging some key divides. In light of the previous discussions on sovereignty, statehood and diversity in ASEAN, the next section will examine human rights in ASEAN.

4. The ASEAN Charter, AICHR and AHRD

With the ASEAN charter and the plans for an integrated ASEAN community, ASEAN seems to have opened up a new chapter in its history. ASEAN is proving both resilient and innovative in its search for renewed relevance. The charter of the ASEAN serves as the guiding document for deepening and widening of ASEAN integration in accordance with the three pillars of the ASEAN community - the Political-security community, Economic community and the Socio-cultural community.⁶ The ASEAN community will, according to current ambitions, be established in 2020. The ASEAN Economic Community, which according to present plans will be launched in 2015, marks an acceleration of the process of integration towards 2020.⁷ The charter commits the ASEAN member states to adhere to the principles of democracy, the rule of law and good governance, and to respect and protect human rights and fundamental freedoms (ASEAN 2009). In October 2009, ASEAN inaugurated the ASEAN Inter-governmental Commission on Human Rights (AICHR), and in November 2012 the ASEAN Human Rights declaration (AHRD) was launched. Tae-Ung Baik (2012) argues that SEA is leading the development of a human rights system in Asia. Despite the weaknesses and criticism ASEAN, AICHR and the AHRD receives, he makes a salient point when he asks us to consider how far SEA and ASEAN have come since the Asian values debate.

The establishment of AICHR took 16 years. Following the Vienna Declaration in 1993, ASEAN's foreign ministers agreed to consider the establishment of an appropriate regional human rights mechanism. In 1995, the Working Group for an ASEAN Human Rights Mechanism was created by the human rights committee of LAWASIA.⁸ Its primary purpose was to establish an intergovernmental human rights commission for ASEAN. This paper will not go on to list all the subsequent meetings, but it is worth noting that it took six years (in 2001) before the working group held its first workshop on an ASEAN human rights mechanism, which was attended by national human rights institutions

6 The ASEAN Charter entered into force on 15 December 2008.

7 For greater detail see ASEAN Economic Community handbook for business available at: http://www.asean.org/images/2013/resources/publication/ASEAN_Economic_Community_Handbook_for_Business_2012.pdf.

8 LAWASIA is an international organization of lawyers' associations, individual lawyers, judges, legal academics, and others that focus on the interests and concerns of the legal profession in the Asia Pacific region. For further detail see: <http://lawasia.asn.au>.

(NHRIs), Civil Society Organizations (CSOs) and government representatives.⁹ In 2005, the Kuala Lumpur declaration committed the AMS to the establishment of an ASEAN charter, and set up an Eminent Persons Group (EPG) to give “bold and visionary” recommendations for the charter. The EPG report submitted to the ASEAN summit in Manila in 2006 stated that the ASEAN human rights mechanism was a worthy idea that should be pursued further. This may not impress observers as bold and visionary, but it was politically significant as the EPG report was endorsed by ASEAN leaders in 2007 and submitted to the High Level Task Force (HLTF) established to draft the ASEAN charter. HLTF went on to include Article 14 in the charter, which mandates the establishment of an ASEAN human rights body. Article 14 reads:

1. In conformity with the purposes and principles of the ASEAN Charter relating to the promotion and protection of human rights and fundamental freedoms, ASEAN shall establish an ASEAN human rights body.
2. This ASEAN human rights body shall operate in accordance with the terms of reference to be determined by the ASEAN Foreign Ministers Meeting (ASEAN 2009).

AICHR does not possess any compliance or enforcement mechanism, which means that there is no mechanism for submitting complaints and receiving binding judgments and remedies. This is a key criticism of AICHR along with a lack of transparency. One of the key mandates of AICHR was to draft the AHRD, which it did in 2011. AICHR was quickly criticized for the lack of consultations with civil society, and for not circulating the drafts. In 2012, drafts were leaked and AICHR representatives from Thailand, the Philippines, and Indonesia held informal public consultations. None of the other AMS held consultations. Briefly summarized the key concerns raised by amongst others the Office of The High Commissioner for Human Rights (OHCHR), and NGOs such as Amnesty International and Human Rights Watch related to:

1. The AHRD balances human rights and fundamental freedoms with corresponding duties (AHRD Article 6),
2. Human right must be considered in the regional and national context (AHRD Article 7),
3. Human rights are subject to limitation by national security and public morality (AHRD Article 8),
4. Certain basic rights, and amongst them, the right to life conform to domestic law (AHRD Article 11),

9 An overview over the process and meetings is available from: <http://www.aseanhrmech.org/aboutus.html>.

5. Articles 16, 18, 19, 25 and 27 (2) that concern the right to nationality, marriage, political participation and trade union membership are limited with reference to domestic laws that will decide on the scope and practice of these rights.

Human Rights Watch issued a statement as follows: “Disregarding the deep concerns expressed by senior United Nations officials, human rights experts and hundreds of civil society and grassroots organizations at the national, regional and international levels, ASEAN leaders nonetheless adopted yesterday an “ASEAN Human Rights Declaration” that undermines, rather than affirms, international human rights law and standards. The document is a declaration of government powers disguised as a declaration of human rights” (HRW 2012). Major rights areas that suffer from omission in the AHRD include the freedom of association, minority rights and a more specific articulation of the right to freedom of religion and belief. Lesbian, gay, bisexual and transgender (LGBT) communities also expressed concern that the AHRD’s reference to public morality may give governments a pretext for crackdowns on LGBT communities.¹⁰

AHRD deserves being criticized for falling short of international standards. Criticism makes for a healthy debate. However, as Catherine Renshaw has pointed out, a number of the provisions considered to be claw back clauses or derogations do in fact relate back to the Universal Declaration on Human Rights (UHRD) and Article 29 in particular (Renshaw 2013). Given that the opening paragraph of Article 7 in the General principles of AHRD declares human rights to be universal references to derogations that are also stipulated in the UHRD may not be problematic. It depends on whether the AHRD is interpreted progressively or reactionary, and as long as ASEAN opts for a human rights body rather than a legally binding mechanism that includes entities that deal with complaints and enforcement, the rights will not be subject to legal interpretation and trial.

ASEAN seems to provide a useful regional avenue for debating human rights issues that remain unresolved within the respective member states. However, this may prove to be a futile exercise unless the issues are brought to bear on domestic debates and reforms. After all, the vague formulations, and potential claw back clauses and derogations in the AHRD are a reflection of the principle of non-interference and hence the AMS’ sovereignty. Briefly stated, the debates on the AHRD constitute projections of domestic human rights issues. They are not regional in nature despite some shared traits and commonalities among the AMS. The political diversity among the AMS requires them to play different sovereignty games and hence consensus on core human rights issues is out of reach. While this is a legitimate excuse, Cachavalpongpun (2005) makes the point that non-interference rather than openness distinguishes between the western and ASEAN way of constructing regionalism. The criticism of the AHRD is to a large extent substantial rather than structural. Shortcomings in the AHRD such as the missing

10 See more comments from OHCHR special procedures: http://www.un.org/apps/news/story.asp?NewsID=43520&Cr=human+rights&Cr1=#.Ul_ESBYfnzI and summary from East West Center: http://www.eastwestcenter.org/sites/default/files/private/apb197_1.pdf.

right to the freedom of association represent a direct challenge to the political order in several of the AMS. It challenges the authority and hence domestic sovereignty of the governments. This clarifies an important distinction between the AMS and western democratic states, namely that in the latter sovereignty is popular. Who are the sovereigns in Southeast Asia and the AMS? In Thailand sovereignty is bestowed upon the king, in Vietnam the communist party, in Myanmar the military, in Brunei the Sultan. In a country like the Philippines, sovereignty may be articulated as popular with reference to the nation in the constitution, but closer analysis reveals the power and influence of strong men and landowners. Pak Nung Wong (2013) argues that this should be understood as Philippine statecraft. Competing interests have to be negotiated so as to keep the nation together domestically, and thereby project strength externally to protect its territorial boundaries and integrity. This is not only an issue in the Philippines. Garry Rodan and Caroline Hughes (2014) point out that where authoritarian rule has collapsed in SEA, elite rule has survived through what they label powerful state-business interests. Constitutional analysis across SEA reveals that nowhere in the world do countries revise and reform their constitutions more frequently than in SEA. Research currently being conducted reveals a correlation between constitutional reform and declining fiscal discipline. As explained by the researchers themselves, this means that constitutional reform is a process of elite political settlement in SEA (Bunte and Dressel 2013). The region is rife with references to elites, special interest groups, strong men, and the like, having great impact on policy and law making. The ASEAN way protects these power arrangements and is therefore difficult to reconcile with core human rights norms and standards. If the quiet, elitist, private and non-legalistic approach the ASEAN way promotes primarily serve establishment interests, it is not difficult to see that access to information, freedom of association, transparency, press freedom, freedom of expression, political participation and property rights, to name some, run counter to the overall goal of maintaining the established political order. Accordingly, there are considerable structural challenges to human rights reform.

Relating this back to ASEAN and the regional level we may ask how the respective sovereigns of SEA would go about ceding autonomy in certain areas of policy to ASEAN, but not to their peoples? What would a pooling of AMS sovereignty look like? These are questions for further research and deliberation. Within the context of this paper they serve the purpose of informing our expectations toward ASEAN. The AMS and ASEAN are products of diverse historical processes that are indigenous to the region and the respective countries. It seems naïve to expect that these countries with just a few adjustments would suddenly find themselves on a European path of political development. This is not a cultural relativist argument against democratization, the rule of law and human rights in SEA. What this tells us is that despite shared aspirations, the peoples of the world do not share histories and political developments. It is a subject of another paper, but the historical evolution of thought surrounding the concepts of statehood; sovereignty and rights in the western context are both peculiar and particular. According to some recent scholarship, they are also largely forgotten (Judt 2008, Moyn

2012 and 2014, Agamben 2011, Waldron 2011). What is lost is our understanding of the incremental, coincidental and incoherent aspects of the development of the Western democratic rule of law state. What we are left with is a simplistic linear narrative that all too frequently is turned into an equally linear development program that project cause and effect relationships that never took place in the west, but that we expect to take place elsewhere. When they don't, we refer to the lack of political will, which has become a euphemism for "we don't understand why we failed".

5. Conclusion

The substantive issues entailed in the criticism of ASEAN's human rights body and the AHRD are proof that ASEAN, the AMS, civil society and academia have evolved in SEA. They are leading the way in Asia. At the same time, closer scrutiny reveals structural issues relating to power, sovereignty and statehood that impact on governance and government that need to be resolved on the domestic level for an improved human rights regime to emerge in the region. As Rodan and Hughes (2014) point out, accountability remains a key issue and civil society in SEA remains weakened by government cooptation that prevents regional mass movements from emerging. Civil society is as much part of the establishment as the elites they criticize, and the disenfranchised and marginalized lack access to processes that purport to advance their agenda. Western policy makers, donors, multilateral agencies and NGOs within and outside the region should revisit their expectations vis-à-vis ASEAN. In its current state ASEAN has most likely survived not in spite of, but because of the ASEAN way. Were legally binding obligations introduced into the ASEAN framework on human rights, they would require a reconstitution of power and political order within the AMS. To some this remains an ambition, to others it spells mayhem, and to yet another constituency it is unattractive. As such, the ASEAN charter, AICHR and AHRD despite all their shortcomings can be argued to represent a realistic view of the current state of affairs in ASEAN. A perfect AHRD may have been equally troubling. The incentive to succeed with a deeper integration along all three pillars of the ASEAN community is strong. The rewards may be great for the peoples of the AMS, but we need to invest more in our understanding of the structural issues at play in the current sovereignty game of SEA.

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ENGAGEMENT, VISION, RESPONSE A COMPARISON OF CSO ENGAGEMENT AND TACTICS IN RELATION TO THE ASEAN CHARTER AND THE ASEAN HUMAN RIGHTS DECLARATION

James Tager

This article examines civil society tactics for engagement and advocacy before and after the passage of the ASEAN Human Rights Declaration and contrasts them with civil society tactics during the drafting and the ratification process for the ASEAN Charter. The article focuses on organizations and movements which self-identify as part of the civil society movement within Southeast Asia.

Civil society advocacy efforts, on both the Declaration and the Charter, can be broken down into three phases: engagement within the ASEAN structure, proposal of an alternative vision, and response to the finished product. With both the ASEAN Charter and the ASEAN Human Rights Declaration, civil society groups initially worked towards entering the drafting process through interface with the relevant ASEAN institutional actors. In response to the lack of success of this first approach, some civil society actors adopted the additional tactic of laying out an alternative vision through the creation of a 'Peoples' document' to stand in contrast to its official counterpart. Finally, when the relevant ASEAN instrument was adopted, civil society actors re-oriented their advocacy to respond to the final and official instrument. The article ends with an examination of some of the differences between these two civil society campaigns, and the variables that may underlie these differences.

ASEAN, as a body, has been marked by an unwillingness to provide space for civil society organization (CSO) involvement, especially space where CSOs could contest the direction and form of ASEAN policies (See e.g. Gerard 2014; Shigemasa 2013; Lopa 2012; Schmidt 2010; Arlegue 2010). The ASEAN accreditation process for civil society groups has been tightly controlled and state-directed; the original accreditation guidelines only allowed quasi-governmental or governmental organizations to apply for accreditation (Shigemasa 2013, p. 93), and even after the reformation of the Guidelines in 2012, the great majority of the organizations that are currently accredited to engage with the regional institution “look like guilds for ASEAN” (Ibid.). Currently, there are only a few accredited CSOs that engage in policy advocacy or rights-related work (See Gerard 2014, p. 84; Collins 2008 p. 329 at fn. 9).

This accreditation process is emblematic of the broader ASEAN attitude towards CSO engagement, demonstrating that such engagement is “determined and directed by the state elite ... It is a top-down process where ASEAN establishes the objectives that the CSOs pursue” (Collins 2008, p. 315). As a result of this top-down nature, “CSOs are forced to either accommodate ASEAN’s political project in order to interact with officials, or they are excluded from such interaction” (Gerard 2014, p. 15). The result is a limited set of circumscribed spaces for CSO engagement, with such engagement offering even fewer opportunities for CSOs to discuss or contribute to ASEAN policy formulation.

This dynamic remains in place with the ASEAN Intergovernmental Commission on Human Rights, or the AICHR, the “overarching” body for human rights in the region (AICHR Terms of Reference, Art. 6.8). Until very recently, there were no formal entry points for CSOs to influence policy or the work product of the AICHR, to share their views or recommendations with the body, or to enter into dialogue with the body. The adoption of the Guidelines on the AICHR’s Relations with Civil Society Organizations in February of 2015, more than five years since the adoption of the AICHR’s Terms of Reference, now allows CSOs to have a “consultative relationship” with the body.

Under the Guidelines, CSOs who wish to work with the AICHR must go through an approval process where they are first ‘screened’ before their application is considered at plenary, an event which means that—as a result of the AICHR’s consensus-based decision-making—every ASEAN state has a de facto veto over any CSO’s application (AICHR CSO Guidelines, Art. 9). CSOs, in order to enjoy this consultative relationship, must accept a list of vaguely worded obligations including not only the obligation to comply with national regulations (which becomes problematic when one considers laws within the region which restrict freedom of speech, expression, and assembly beyond the bounds permitted under international law) but also the obligation to “refrain from any conduct which will undermine the mandate and functions of the AICHR” (AICHR CSO Guidelines, Art. 12). Further, CSOs are obligated to refrain from any actions “motivated

by political interests” against Member States, with suspension or revocation of the CSO’s approval being the penalty for non-compliance (AICHR CSO Guidelines, Art. 13).

Upon receiving this consultative status, CSOs can submit written statements, receive an advance copy of the AICHR agenda, and be invited by the AICHR for consultations based on the AICHR’s discretion (AICHR CSO Guidelines, Arts. 16, 18). Overall, a reading of these Guidelines reveals that the “consultative relationship” envisioned within the document is a conditional privilege rather than a relationship where CSOs are seen as partners in the work of building a rights-respecting ASEAN.

Before these recently-adopted Guidelines, however, there was not even the opportunity for CSOs to engage in such a formal relationship with the AICHR. For the great majority of the AICHR’s existence, CSOs have had to look to the body’s enabling documents for clues on how to engage formally with the body.

The AICHR’s Terms of Reference (TOR) and Rules of Procedure do not offer any mandate for CSO engagement except for in the vaguest terms: Article 4.8 of the TOR charges the body to “engage in dialogue and consultation” with entities associated with ASEAN, “including civil society organizations and other stakeholders,” but links this mandate with Chapter V of the ASEAN Charter, which—as noted above—dramatically restricts the amount of space available to CSOs. Otherwise, at Article 4.9 of the TOR, the AICHR may “consult, as may be appropriate” with other institutions and entities. But given the ASEAN values of consensus and non-interference, such discretionary consultation cannot be expected to result in meaningful engagement (See generally Forum-Asia 2012).

Given all this, and as is demonstrated below, the key challenge for CSOs and similar stakeholders such as peoples’ groups or social movements has been realizing points of access into ASEAN processes, including those which result in key policy instruments for the ASEAN community. The drafting processes for both the ASEAN Charter and the ASEAN Human Rights Declaration offered a “window of opportunity—more political space allowed by ASEAN for track 2 and 3 actors to intervene” (Shigemasa 2013, p. 94); civil society’s attempts to utilize this window, and to react when it was clear that this window was not as wide as originally hoped, have significant commonalities in both instances.

1. Civil society and the ASEAN Charter

1.1. The ASEAN Charter Drafting Process and a Lack of CSO Space

The drafting of the ASEAN Charter was met with initial expectation amongst CSOs that they could contribute meaningfully to the drafting process; such optimism, however, waned as early opportunities for engagement failed to translate into meaningful

consideration of CSO proposals for the final document. The ASEAN Charter drafting process began in 2005, with the appointment at the ASEAN Summit of an Eminent Person's Group (EPG) to provide recommendations for the potential charter. The EPG comprised primarily of retired government officials, known for their "experience" and "gravitas" within ASEAN (Collins 2008, p. 323). The EPG was seen as generally more encouraging of CSO involvement (Ibid., see also Gerard 2014 pp. 88-94) than its successor mechanism, the inter-governmental High Level Task Force (HLTF). The HLTF, which comprised of senior officials from its member states' Foreign Ministries, functioned as the actual drafters of the Charter.

"While [CSO] submissions were initially well received by the Eminent Persons Group" note Olivet and Brennan (2010, p. 74), "they did not go beyond the High-Level Task Force which was finally responsible for the actual drafting". The HLTF met in a formalized setting with CSOs once, in March of 2007, which Collins (2008, p. 325) acknowledges was itself "some achievement" when considering "some ASEAN members reluctance to meet with CSOs at all" (see also Gerard 2014, p. 94). Despite this, "The contrast between the EPG's willingness to engage with CSOs and the HLTf was stark, and it did not bode well for the ASEAN Charter reflecting CSOs hopes" (Collins 2008, p. 325). CSO recommendations made during the HLTF-CSO consultation, notably, did not find a place in the final form of the Charter (Gerard 2014, p. 94). The process was also marked by a lack of transparency; public access to the Charter only occurred on November 7th, a mere 13 days before the Charter was officially signed, and only due to a copy being leaked to the media (SAPA-WGA 2007).

1.2. CSO engagement within the ASEAN structure on the Charter

Civil society efforts to engage with ASEAN during the Charter drafting process occurred primarily through the recently-formed Solidarity for Asian People's Advocacy Working Group on ASEAN, or SAPA-WGA. SAPA-WGA engaged with the EPG several times, presenting its views on the proposed ASEAN Security Community in April of 2006, submitting its opinions on the Economic Community that June, and submitting proposals on the Socio-Cultural Community in November of that year (Lopa 2011 p. 5; Collins 2008, p. 323; SAPA-WGA 2007). Also throughout 2006, SAPA-WGA conducted in-country consultations in eight different ASEAN countries, collecting information from the people of ASEAN regarding what type of Charter they wanted. The outputs of these consultations found form in many of the recommendations that the CSO coalition provided to both the EPG and the HLTF (Lopa 2011). Collins (2008, p. 323) notes that, through these proposals, this civil society coalition hoped to demonstrate two specific roles that it could perform with and for ASEAN: "First, to use their expertise to be agents for creating caring societies within an ASEAN community, and secondly, to have an institutionalized input into ASEAN's decision-making apparatus".

1.3. Presenting an Alternative Vision: the ASEAN Peoples' Charter

At the November 2007 ASEAN Civil Society Conference, civil society representatives began calling for the launching of an ASEAN Peoples' Charter. This Peoples' Charter was envisioned as a document that would represent civil society hopes for a people-centered instrument. Framers of the document took pains to illustrate that the drafting of the Peoples' Charter was not meant to stand in opposition to the actual ASEAN Charter but "instead, to illustrate the ideal charter people have in mind" (Chandra & Djamin 2007). It was a document designed "to complement the ASEAN Charter," not to supplant it (Samydorai 2008). Nonetheless, the Peoples' Charter aimed to serve as a powerful critique of the formal Charter by representing the document that could have been, a "democratic aggregation of the aspirations of the people of ASEAN" (Ibid.) as opposed to the state-centered document which civil society advocates were increasingly convinced the actual ASEAN Charter was becoming. "The emergence of the ASEAN People's Charter proposal," summed up two SAPA-Working Group leaders, "really reflects the uneasiness of the people of Southeast Asia to allow a handful of ASEAN policy-makers to decide their fate" (Chandra & Djamin 2007).

Despite this, the Peoples' Charter is most notable for the efforts taken by CSOs to create and proclaim the document, not for any success it gained after its adoption as an alternative vision to the official Charter. While civil society leaders discussed the potential and merits of such a Peoples' Charter during the efforts made to create it, references to the document, post-creation, are notably absent.

1.4. Criticisms of the ASEAN Charter after its Signing

Upon the signing of the actual ASEAN Charter in November of 2007, critical observers, including many civil society groups, retained several serious concerns. Some of the main concerns revolved around, firstly, the continued lack of any meaningful institutional space for civil society (See e.g. Collins 2008, p. 326). Secondly, there was the concern that the enshrinement of the ASEAN non-interference principle would be used to silence criticism on issues such as fundamental freedoms, human rights standards, or democratization. Thirdly, there was dismay over the 'watering down' of more progressive elements of the Charter (Anwar 2009, p. 45). Fourthly, there were the lack of provisions for human rights standards, with the establishment of the ASEAN human rights body (in Article 14 of the Charter) being vague and cursory (SAPA-WGA 2007), and with a lack of mechanisms for human rights enforcement.

This was despite the "landmark inclusion" of human rights in both the Preamble and the Principles of the Charter (SAPA-WGA 2007). SAPA-WGA noted, unfortunately prophetically, that "Article 1.7 qualifies the promotion and protection of human rights 'with due regard to the rights and responsibilities of the Member States of ASEAN'. This wording is dangerous, because it undermines the fundamental elements of the

universality and inalienability of human rights. It is not made clear what these ‘rights and responsibilities’ of member states are, leaving the way open for governments to violate human rights in the pursuit of their self-defined ‘national interest’” (SAPA-WGA 2007).

1.5. CSO response to the Charter

As a result of all this, SAPA-WGA concluded in a statement a few days before the Charter’s release, the Charter was “a disappointment . . . “a document that falls short of what is needed to establish a ‘people-centered’ and ‘people-empowered’ ASEAN” (SAPA-WGA 2007). SAPA-WGA went on to lay out a variety of specific comments on the Charter, illustrating where they saw the Charter falling short of its promise (Ibid.).

The Charter, despite being signed by the heads of state of all ten ASEAN nations, still required ratification by the different ASEAN member-states before it would become a binding treaty; this would not occur until December 2008, after Thailand became the final member-state to ratify the treaty. This ratification process “brought to prominence the sharp differences that have divided partisans and critics of ASEAN” (Chachavalpongpun 2009, p. 2). Some civil society members and academics, especially in the more democratic nations within ASEAN, were vocal in calling for a delay of ratification or even the rejection of the Charter, although these voices remained in the minority during the ratification debate (Sukma 2009, p. 45). Critics of the document, pointing to the flaws alluded to above, argued that given the drawbacks, “it probably makes better sense not to have a Charter at all and to continue as ASEAN has been doing without a binding constitution” (Anwar 2009, p. 39).

In response, many other civil society members and academics responded with arguments underscoring the possibilities for ASEAN to develop into a more people-centered body as a result of the Charter. Many of these arguments centered around or were related meaningfully to human rights.

In response to criticisms regarding the basic description of the proposed human rights body within Article 14, those more supportive of the Charter argued that the establishment of a human rights body offered opportunities that would be lost if the Charter failed to be ratified. Ray Paul Santiago, of the Working Group for an ASEAN Human Rights Mechanism, for example, cautioned that “Let us not slam the door on any opportunity or opening which will allow CSOs to engage ASEAN further for the promotion and protection of human rights ... what is important is that the regional human rights body will be in place” (Working Group for an ASEAN Human Rights Mechanism 2007).

During this debate, supporters and critics of the Charter took different stances towards the Charter. Indonesian Parliamentarian Djoko Susilo noted that, during the debate within Indonesia of whether or not to ratify the Charter, Congressional members fell into three main camps: Immediate Ratification, Wait-and-See, or Total Rejection (Susilo

2009, pp. 10-11). This tri-partite breakdown of responses can be applied more broadly to concerned groups and civil society organizations struggling with how to react to a document that fell short of the hopes that many had, but that still contained some potential.

But in other ways, this grand difference of opinion equaled little more than a focus on different tactics to achieve the same ends. As Sukma (2009) sums up, the “divergent views on the status of the ASEAN Charter” are simply that “One view maintains that the Charter should be ratified first, and then amended later. The opposite view argues that the Charter should be amended first before it is ratified” (Sukma 2009, p. 57). The ultimate goal, then, was the same: amendment of the Charter to form a more progressive, enforceable and people-centered document. The question was simply whether tactics of rejection or of acceptance would achieve these goals more effectively.

2. Civil society and the ASEAN Human Rights Declaration

2.1. The AHRD drafting process – perpetuating a reluctant relationship

The reticence of ASEAN officials to engage with civil society or other stakeholders remained in place during the drafting process of the ASEAN Human Rights Declaration, or AHRD. Firstly, at no point did the AICHR formally release a formal draft for consideration. In fact, the drafting process for the Declaration was so secretive that the Terms of Reference governing the behavior of the document’s Drafting Committee included a “confidentiality clause” that bound the drafters from disclosing information (Forum-Asia 2012, p. 13-14; Forum-Asia 2013, p. 28). Beyond this, even the Terms of References for the Drafting Committee and the names of the Committee members themselves were not publicized (Forum-Asia 2012, p. 13-14). The closed-door nature of the drafting process continued when the AICHR itself took over the drafting process in January 2012, until the day the Declaration was released (Forum-Asia 2013, p. 28), and in fact was so pronounced that the AICHR even refused to show copies of the draft to other ASEAN officials during consultations with other ASEAN organs, causing these bodies to point out the “disrespectful” nature of a request for input into a document that they were not allowed to see (Ibid.).

Beyond this, individual Commissioners’ efforts to conduct in-country consultations with their own civil society members were often lacking; such efforts, notes human rights umbrella group, Forum-Asia, “varied widely, from extensive, inclusive consultations in a very small number of member states, through limited consultations in others to no consultations at all in several states” (Ibid., p. viii). The only states where national consultations took place were Thailand, Indonesia, Malaysia and the Philippines (Ibid., p. 29).

2.2. CSO Engagement within the ASEAN Structure on the Declaration

From the beginning of the ASEAN Human Rights Declaration drafting process, civil society groups attempted to lay out their vision and provide input for the Declaration itself. Most notably, this occurred when civil society coalitions created common statements of their hopes and expectations for the Declaration. One early such document was a June 2011 Civil Society Position Paper on the Declaration, submitted to the AICHR before the AHRD Drafting Group was even established. This Position Paper included a set of “guiding principles” which should underlie the content of the Declaration, a set of recommendations for the drafting process, and a list of rights and freedoms that should be included in the eventual Declaration (SAPA TF-AHR 2011).

As it became increasingly clear during the drafting process that AICHR engagement with civic stakeholders was severely lacking, civil society groups shifted their focus to the lack of transparency within the Declaration drafting process and the lack of engagement with civic stakeholders. An April 2012 Joint Statement, signed by over 130 local, national and regional CSOs, called upon the AICHR to: Immediately publicize the draft AHRD; conduct consultations at national and regional levels; to translate the AHRD into national and local languages, and; to ensure an inclusive consultation process (April 2012 Joint Statement). These recommendations were later further endorsed by a collection of international human rights organizations (May 2012 Joint Statement).

In May of 2012, the AICHR representatives agreed to a consultation with civil society; however, as Gerard (2014) notes unhappily, this was not a result of the CSO advocacy directly to ASEAN officials, but rather on CSOs “rel[ying] heavily on external pressure” from the international community and global groups in order to induce the AICHR to relent (pp. 133 & 144), the most notable example being the UN High Commissioner for Human Rights, who had been vocal in her support of civil society’s inclusion in the drafting process (OHCHR 2011).

The AICHR eventually held two formal Regional Consultations with civil society on the proposed ASEAN Human Rights Declaration (Forum-Asia 2013, p. viii). But these consultations themselves were rather limited, both in terms of membership and of substance. Many civil society groups whose expertise would have been valuable, but who were viewed as particularly critical voices by some member-states, were not invited; in fact, some CSOs were informed that member states had used their consensus-based “veto” power to block the groups from attending (Forum-Asia 2013, p. 31). And for the groups that were able to attend, Petcharamesree (2013, p. 52) notes that, although “all AICHR representatives agreed” that the CSOs’ “inputs were meaningful,” nonetheless there was not much success in having these inputs included in the draft (see also Gerard 2014, p. 127).

Partially in spite of these limitations, and partially because of them, CSOs worked hard to create a unified and clear message laying out civil society concerns before these consultations. Coalitions of civil society organizations met before each such consultation to create a Joint Submission identifying civil society's position on the Declaration, with the aim of influencing the AICHR during the drafting process.

In June of 2012, days before the first AICHR-CSO consultation, 48 CSOs and peoples' movements created a Joint Submission in June to address substantive and procedural aspects of the Declaration and its drafting process. The June Joint Submission contained proposals for different wordings of articles within the Declaration, but its authors noted that the proposed language was created drawing upon "the partial and insufficient information at our disposal" regarding the content of the draft Declaration (Kuala Lumpur Joint Submission 2012). This lack of information is evident at many points throughout the Joint Submission, with much of the Joint Submission's suggestions being in response to "apparent inclusion[s]" of problematic language within the official draft, or to concerns that the official language would be problematic (Ibid.).

Shortly before the second AICHR-CSO consultation (which was held on September 12th), at least 62 CSOs and peoples' movements met at a Civil Society Forum on the ASEAN Human Rights Declaration held in Manila on 10-11 September. This civil society forum produced a second Joint Submission, one which began by reiterating concerns that the AICHR consultations were insufficiently broad and that no ASEAN-wide national consultation process appeared to be occurring. This Joint Submission was able to offer more concrete proposals for the content and wording of the Declaration, given CSOs' access to informal drafts of the Declaration by that time (See e.g., Petcharamesree 2013; Forum-Asia 2012 pp. 27-29).

This Manila Joint Submission was extensively discussed during the September AICHR-CSO consultation, so that it was a success in stimulating a formal conversation between the AICHR and civil society groups regarding the substance of the draft, albeit "very belatedly" (Forum-Asia 2012, p. 29). But, as Forum-Asia notes, "this came at a time when negotiations over the text had all but concluded. So while CSO representatives made a very strong case for changes in the text that would bring it up to international human rights standards, they inevitably hit the brick wall of the ASEAN rule that decision-making would be carried out by 'consultation and consensus'" (Ibid.). In other words, while the Joint Submission was a useful tool for getting the AICHR representatives to formally discuss the substance of the draft Declaration with civil society, it was too late in the process to stimulate any changes to the text, and unable to overcome the 'veto power' that each AICHR Representative had over the proposed changes.

2.3. Presentation of an Alternative Vision: The ASEAN Peoples' Human Rights Declaration

Given that the Joint Submissions had provided CSOs the opportunity to discuss their own vision of the Declaration, to the point of creating specific language as well as a comprehensive list of rights, many CSOs agreed that it would be useful to take the additional step of creating an 'ASEAN Peoples' Human Rights Declaration'. Similarly to the ASEAN Peoples' Charter, the ASEAN Peoples' Human Rights Declaration aimed to function both as a shadow Declaration which would demonstrate the short-comings of the actual Declaration and as an example of what kind of human rights instrument could emerge if free from government interference. The Declaration was formally endorsed by 57 CSOs—with many of these organizations serving as umbrella organizations for dozens of organizations within one country or across the region—and the final draft of the Declaration was finished on November 14, 2012, a mere four days before the actual ASEAN Human Rights Declaration was officially promulgated.

The Peoples' Declaration aimed to serve both as an advocacy tool and as an instrument for capacity building and awareness raising among domestic constituencies, by illustrating how rights-based and people-centered language could be incorporated into regional instruments. And, by juxtaposing the Peoples' Declaration with its official counterpart, CSOs could show where language was inserted to safeguard States' interests in the actual Human Rights Declaration (See Appendix for example).

In some ways, it should be noted, the strategy of drafting a Peoples' Declaration indicates a concern among CSOs that more direct engagement with the ASEAN institutional structure would not yield results. To put it another way, CSOs expected that the Peoples' Declaration would juxtapose so clearly with the official Declaration only because previous civil society attempts to influence the draft document were unsuccessful. Civil society groups would have felt no need to create a Peoples' Declaration, even before the ASEAN Human Rights Declaration was actually promulgated, if they believed that the official Declaration would have incorporated their recommendations.

The goals of the Peoples' Declaration, then, stand in contrast with the goals of the Joint Submissions. While the Joint Submissions were aimed at the AICHR Representatives in an attempt to influence the development of the official Declaration, the Peoples' Declaration was developed as a result of the concern that the official Declaration would be flawed, and was instead aimed at pursuing a model of advocacy in which flaws in the Declaration would be highlighted in order to bring attention to their negative aspects.

Much like the ASEAN Peoples' Charter before it, the Peoples' Declaration inspired much brainstorming and discussion during the effort to create the document, but failed to play a major role in advocacy campaigns after its creation. Similarly to the Peoples' Charter, there was a more sustained discussion early in the process about what the Peoples' Declaration

would do, than follow-through later in the process on what the Peoples' Declaration had done. It seems that when it comes to both 'Peoples' Documents,' civil society has been effective in articulating its vision of a people-centered ASEAN agreement, but has struggled with effectively using the resulting documents as effective tools for comparison with their formal counterparts.

2.4. Criticisms of the ASEAN Human Rights Declaration after its Signing

The official ASEAN Human Rights Declaration was established on 18 November 2012, to strong criticism. It was notably problematic that the Declaration failed to provide any provisions on certain marginalized groups, such as indigenous peoples and LGBT peoples. Beyond this, the Declaration failed to include several key freedoms such as the right to freedom of association. However, the great majority of the critical response—from civil leaders and outside observers alike—has centered around the fact that General Principles 6 through 8, of the set of General Principles which form the foundation of the document, fall below international human rights standards by seeming to provide a list of excuses member states may use to violate or otherwise not uphold human rights (See e.g. ICJ 2013; November 2012 Joint Statement).

Seemingly realizing that these General Principles would not be palatable to either regional civil society or the international community, the AICHR quickly issued the Phnom Penh Statement, which sought to reassure that the AHRD would be in accordance with international law. But the relationship between the Phnom Penh Statement and the Declaration is unclear, and insufficient to undo the harmful effect of the General Principles. Additionally, as Dr. Yuval Ginbar of Amnesty International has pointed out, “the Statement refers to ASEAN instruments as well as to international law, thus looping back to the same norms which would seek to undercut international human rights standards” (Ginbar 2014).

As the General Principles provide the context for the entire Declaration, the result is a dramatic undercutting of the entire ASEAN human rights framework of which the Declaration was envisioned as the linchpin.

2.5. CSO responses to the Declaration

Many civil society organizations, as a result of these problems, have reacted by declaring their rejection of the Declaration. In an open letter issued days after the Declaration was formally adopted, fifty-four civil society groups jointly declared that “This Declaration is not worthy of its name. We therefore reject it. We will not use it in our work as groups engaged in the protection of human rights in the region. We will not invoke it in addressing ASEAN or ASEAN member states, except to condemn it as an anti-human rights instrument. We will continue to rely on international human rights law and standards, which, unlike the ASEAN Human Rights Declaration, provide all individuals,

groups and peoples in ASEAN with the freedoms and protections to which they are entitled” (November 2012 Joint Statement). The signatories ranged from high-profile global groups with a strong regional presence, such as Human Rights Watch and Amnesty International; to regional organizations and umbrella groups such as Forum-Asia, the ASEAN LGBTIQ Caucus, and the Southeast Asian Committee for Advocacy; to various national groups within ASEAN member countries, which comprised the significant majority of signatories.

Others have been less condemnatory. While there is a deepening knowledge among civil society that the Declaration is seriously flawed, some groups are encouraged by the Declaration and believe that, despite its flaws, it opens up space and potential advocacy opportunities within ASEAN. Other groups have adopted a ‘wait and see’ attitude, wondering whether and how governments will actually attempt to implement the Declaration. Shigemasa (2013) sums up the various reactions of human rights actors towards the AHRD as falling into three camps: “accept[ing] the Declaration with a compromise (having something was better than having nothing); contend[ing] with the components of it with possible improvements; and totally disregard[ing] it with disdain” (p. 96). Notably, this mirrors the tri-fold reaction that Susilo (2009) identified as occurring with some constituents during the ASEAN Charter ratification process.

Those who prefer a more critical engagement argue that, with the Declaration standing lower than international standards, it is impossible for civil society groups to utilize the document without compromising their principles on the importance of human rights. Conversely, those who prefer a less confrontational approach point out that, with so few entry points into the ASEAN human rights system, rejection of the AHRD closes doors where not many were open to begin with.

Despite all this, there is again the dynamic that these various views over the AHRD are all secondary to the consensus that the Declaration needs to be amended. Ging Cristobal, of ASEAN SOGIE Caucus (ASC) and the International Gay and Lesbian Human Rights Commission (IGLHRC), notes that these groups have taken a ‘reject’ stance. At the same time, she notes, “the ASC is also part of a larger coalition that has taken a more conditional reject position, so that ASC can work with the system to amend the document, to show where it is lacking and how we can change it.” As she explains it, the differences are more significant on paper than they are in practice: “This is not an acceptance without conditions,” but rather “an acceptance with the goal of amending the problematic portions. It is a sweet rejection versus a bitter rejection” (Cristobal 2014).

Khin Ohmar, Coordinator of the SAPA Task Force on ASEAN and Burma, has similar sentiments: “At the end of the day the document is there . . . We have the same goal, and the rest is a nuance of the messaging. Some groups are more indirect, and some are more straightforward, but we all agree that this is not good enough” (Ohmar 2014). Interestingly, Ohmar notes that the discussion about how to react to the AHRD is similar

to that held by Burma CSOs on the country's 2008 Constitution, written by the military regime: "Some say we need a new Constitution, some say we should amend it. It doesn't matter; the point is that we need to change it" (Ibid.).

3. Comparing CSO Engagement with Both Documents

The two narratives for civil society efforts to engage with these major ASEAN documents, during and after their drafting processes, have been similar in many ways: There was a concentration and internal organization of CSO activity in preparation for potential engagement with the ASEAN institution, an attempt at engagement within the ASEAN institutional structure that increasingly turned to an articulation of civil society vision outside of this structure as CSO overtures were rebuffed, and then a collection of responses to the final ASEAN document that ranged from dismissal to cautious acceptance. Of course, there were important distinctions between these civil society efforts as well. These distinctions arise partially as a result of the differences between these two separate documents, but partially as a result of how civil society itself within ASEAN has changed, over time, in its understanding of regional developments.

The civil society response to the Declaration, notably, has been harsher than to that of the Charter. The voices urging against ratification of the Charter were, as Sukma (2009) describes, consistently "on the defensive" (p. 45) whereas a sizeable portion of the ASEAN civil society community has taken an additional step past simply demonstrating "disappointment" towards vocalizing a "rejection" of the Declaration.

One variable that explains the difference in reaction has to do with whether each instrument was perceived as retrogressive or simply more of the same. The ASEAN Charter was sharply criticized for the 'watering down' of its progressive elements and for the codification of pre-existing ASEAN norms seen as detrimental to the body's progress. In other words, many of the criticisms revolved around how the ASEAN Charter was more of the same, rather than a step forward.

By contrast, the ASEAN Human Rights Declaration has been seen as a step backwards, as a result of its problematic General Principles falling under the standards of international law. The debate over the utility of the Charter was summarized by academics as a "conflict between reality and expectation" (Chachavalpongpun 2009, p. 7); the hope that the document could in time become progressive versus the concern that it would calcify existing structures (Sukma 2009, pp. 55-56). The debate over the ASEAN Human Rights Declaration, in comparison, has been over whether the document is an encouraging step forward or a troubling step backward.

A second major difference is that the Charter went through a ratification process during which civil society could be included in a conversation about the Charter even after its final form had been decided. In contrast, the Declaration was presented as a *fait accompli*

after its signing. This placed civil society and other actors in a more stark position with the Declaration, while the ratification process of the Charter allowed for parties to express their dismay with the Charter but fall short of explicitly rejecting it.

Thirdly is the point that, in the five years between the Charter and the ASEAN Human Rights Declaration, civil society groups have been more confidently asserting their place within the ASEAN conversation (Lopa 2011). Events such as the civil society-operated ASEAN Civil Society Conference, the proliferation of regional umbrella groups and networks for civil society, and the increasing comfort of funders to back independent active civil society groups (Ibid.) have combined to create a more unified, vocal, and expressive civil society on regional issues. In addition, CSOs are increasingly turning to ASEAN as a forum for advocacy, recognizing the importance of engaging with this regional institution and advocating for an organization that provides space for civil society as a matter of course. This process was much further along during the drafting of the ASEAN Human Rights Declaration than it was for the ASEAN Charter. And for those who believe in the positive power of civil society, this increased commitment to ASEAN-level advocacy is an encouraging sign for the fulfillment of the goal of a people-centered ASEAN.

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APPENDIX: A Comparison Between the People’s Declaration and the ASEAN Human Rights Declaration: AHRD General Principles 6-9.

ASEAN PEOPLE’S HUMAN RIGHTS DECLARATION	ASEAN HUMAN RIGHTS DECLARATION
(No comparative article)	“The enjoyment of human rights and fundamental freedoms must be balanced with the performance of corresponding duties as every person has responsibilities to all other individuals, the community and the society where one lives. It is ultimately the primary responsibility of all ASEAN Member States to promote and protect all human rights and fundamental freedoms” (Article 6, General Principles).
All human rights and fundamental freedoms are universal, indivisible and interdependent. All ASEAN Member States, as part of the international community, must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis (Article 2).	All human rights are universal, indivisible, interdependent and interrelated. All human rights and fundamental freedoms in this Declaration must be treated in a fair and equal manner, on the same footing and with the same emphasis. At the same time, the realisation of human rights must be considered in the regional and national context bearing in mind different political, economic, legal, social, cultural, historical and religious backgrounds (Article 7, General Principles).
The rights and freedoms of all persons shall be exercised with due regard to the rights and freedoms of others, fostering and guaranteeing mutual respect and tolerance (Article 4.5, General Principles).	The human rights and fundamental freedoms of every person shall be exercised with due regard to the human rights and fundamental freedoms of others. The exercise of human rights and fundamental freedoms shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition for the human rights and fundamental freedoms of others, and to meet the just requirements of national security, public order, public health, public safety, public morality, as well as the general welfare of the peoples in a democratic society (Article 8, General Principles).
(No comparative article)	In the realisation of the human rights and freedoms contained in this Declaration, the principles of impartiality, objectivity, non-selectivity, non-discrimination, non-confrontation and avoidance of double standards and politicisation, should always be upheld. The process of such realization shall take into account peoples’ participation, inclusivity and the need for accountability (Article 9, General Principles).

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ABOUT SEAHRN

The Southeast Asian Human Rights Studies Network (SEAHRN) was born out of a common dream, among its 14 founding members, to enhance and deepen the knowledge and understanding of students and educators as well as other individuals and institutions from Southeast Asia in human rights. This goal will be achieved by engaging in collaborative research, improving course curricula and training programmes, sharing of best practices and conducting capacity building training of educators, staff and students and other interested individuals and institutions. Furthermore, it seeks necessary regional academic and civil society cooperation to sustain the effective promotion and protection of human rights in the Region. The Network desires to open its doors to interested institutions and individuals who share its vision for human rights and peace in Southeast Asia.

Member institutions and individuals of SEAHRN are aiming to achieve the following core objectives:

- To strengthen higher education devoted to the study of human rights in Southeast Asia through faculty and course development;
- To develop deeper understanding and enhancement of human rights knowledge through collaborative research;
- To achieve excellent regional academic and civil society cooperation in realizing human rights in Southeast Asia; and
- To conduct public advocacy through critical engagement with civil society actors, including inter-governmental bodies, in Southeast Asia

In pursuit of these objectives, SEAHRN has expanded its membership to 22 academic institutions. Moreover, it has successfully organized three international conferences on Human Rights and Peace & Conflict in Southeast Asia (Bangkok, 2010; Jakarta, 2012; Kuala Lumpur, 2014). It has also done training both seasoned and emerging scholars in human rights based research and instruction. It has also published an academic series containing relevant researches on some human rights and peace issues in the Region. It is currently developing a human rights and peace textbook which features various themes written for and by Southeast Asian academics and scholars.

In terms of resource material development, SEAHRN has already published Human Rights in Southeast Asia Series 1: Breaking the Silence (October 2011), Human Rights and Peace in Southeast Asia Series 2: Defying the Impasse (September 2013) and Human Rights and Peace in Southeast Asia Series 3: Amplifying the Voices (September 2013). and Human Rights and Peace in Southeast Asia Series 4: Challenge the Norms (August 2016). Its Members involved in producing the first ever university-level textbook on human rights and peace and conflict in Southeast Asia.

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- PUSHAM, Universitas Surabaya

Banda Aceh

- Center for Peace and Conflict Resolution Studies, University of Syiah Kuala

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While a few milestones have been achieved in terms of the protection and promotion of rights and peace in Southeast Asia, a critical population still remains invisible and stuck at the margins. "Pushing the Boundaries" highlights these lived realities and offers sound analyses on matters reflecting socio-political landscapes in the region.