

# Selected developments in human rights and democratisation during 2015: Asia-Pacific

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**Abstract:** *Informality is a characteristic central to the Asia-Pacific region. Nonetheless, the regional discourse around democratisation, which includes not only speech but also practice, tends to mention informal institutions only in passing. In the Asia-Pacific region, prominent informal institutions include local customs; clan politics; money politics; corruption; clientelism; patronage; informal mobilisation and resiliency networks; everyday resistance; vigilantism; shadow markets; and unconventional community-based organisations. This contribution posits that these informal institutions rarely receive adequate treatment as part of debates and discussions about democratisation and the shaping of the practice around it. It is argued that the tendency to ignore or reject informality compromises attempts to understand and support democratisation processes in the region. Each of the three case studies brought forth in this contribution illustrates different types of informal institutions and their impact on democratisation in different contexts and dynamics, namely, (i) the way in which informal institutions shape procedures ranging from everyday licensing to national elections in Indonesia; (ii) the way in which individuals and communities have been able to build resiliency action and networks by leveraging informal institutions in their pursuit of transitional change in Myanmar; and (iii) the threat posed by informal institutions to post-earthquake aid and recovery activities throughout Nepal. As the contribution illustrates, understanding the situation in 2015 requires locating developments in a more expansive and broadened historical perspective. Fortunately, recent experiences signpost that making informality more central in discourses around democratisation in the Asia-Pacific region could be a shift towards ensuring that informal institutions receive the due consideration their influence on politics merits.*

**Key words:** *informal institutions; Asia-Pacific; democratisation; discourse; politics*

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## 1 Introduction

Dealing with democratisation, and the lack thereof, in the Asia-Pacific region during 2015 requires an honest accounting of the prominent role informal forces and informality play in shaping manifest politics. In the sense that 'informality is an integral part of every political system' (Lauth 2012), informality is a central characteristic of the Asia-Pacific region. Nonetheless, the regional discourse around democratisation, which includes not only speech but also practice, tends to mention informal institutions only in passing. Informal institutions, in this contribution, refer to Helmke and Levitsky's conception of 'socially-shared rules, usually unwritten, that are created, communicated, and enforced outside of officially sanctioned channels' (Helmke & Levitsky 2004). In the Asia-Pacific region, prominent informal institutions include local customs; clan politics; money politics; corruption; clientelism; patronage; informal mobilisation and resiliency networks; everyday resistance; vigilantism; shadow markets; and unconventional community-based organisation. This contribution posits that these informal institutions rarely receive adequate treatment as part of debates and discussions about democratisation and the shaping of practice around it. There may be a number of reasons for the neglect of informal institutions in the discourse around democratisation in the Asia-Pacific region.

Each of the following three case studies illustrates different types of informal institutions and their impact on democratisation in different contexts and dynamics: (i) the way in which informal institutions shape procedures ranging from everyday licensing to national elections in Indonesia; (ii) the way in which individuals and communities have been able to build resiliency action and networks by leveraging informal institutions in their pursuit of transitional change in Myanmar; and (iii) the threat posed by informal institutions to post-earthquake aid and recovery activities throughout Nepal. As the contribution illustrates, understanding the situation in 2015 requires locating developments in a more expansive and broadened historical perspective.

## 2 Informal institutions in Indonesian democracy in the post-Soeharto era

Informal institutions, which vary from patronage, clientelism, corruption, cultural values, and local charismatic elites, have different impacts on democratisation processes in Indonesia. This section briefly discusses informal institutions relative to Indonesian democracy. It subsequently considers how informal institutions impact on democratisation processes. In Indonesia and elsewhere, an overly formal lens of democratisation leads to a conception of democracy 'as a negative utopia' (Lauth 2012). By illustrating how informal institutions in Indonesia are shaping democratisation in the country, this section posits that, while informal institutions may have a detrimental impact on democratisation, it is possible that some other forms of informality may positively impact on the development of democracy. In Indonesia, informal institutions are not purely a distraction in a formal democratisation exercise. Informal institutions shape Indonesia's democratisation experience, even if it often does so in adverse ways.

The current wave of democratisation in Indonesia has been in place since the fall of Soeharto in 1998. Since then, various democratisation agendas have been implemented, starting with the first free general elections in 1999, the empowerment of the legislative council, and decentralisation, all of which transferred considerable authority from the national government to local government. As from 2001, the powers of the national government were transferred to local governments, which caused a 'decentralisation big bang' to be heard around the world (Hofman and Kaiser 2004).

Institutionalising democracy soon became a great challenge for Indonesia. Researchers have been trying to gauge democratisation from formal and, to a lesser extent, informal perspectives. In this process of assessment, scant attention has been paid to the role of patronage, clientelism, corruption, grafts, money politics, as well as clans and their role in the democratisation process. These informal institutions can be present in a formal organisation, such as local government or local parliament, a political party, or other formal organisation. For instance, in order to obtain a licence for mining at the local level, investors may have to bribe public officials so as to expedite the licensing process. Another example presents itself if a politician wants to win an election, where money politics (one form of informality related to patronage) become an effective way of buying people's votes (Aspinall & Sukmajati 2015b). Everyone may be satisfied and there may be no critical questions to challenge these practices. All these informal institutions infiltrate efforts at formal democratisation.

Therefore, democracy will need to be defined as a base for analysing the relationship between informal institutions and democracy itself. There are many definitions of democracy. Although leading political scientists, such as Joseph Schumpeter, Robert Dahl and O'Donnell, offer different definitions, two basic dimensions may be found within these variations (Lauth 2012 in Christiansen & Neuhold 2012: 40). These dimensions are individual political freedom and equality. However, a third dimension should be added, namely, political and legal control, to prevent individual political freedom from violating the freedom of others (Lauth 2012 in Christiansen & Neuhold 2012: 41). In addition, Lauth (2012) identifies five characteristic elements of democratic institutions: procedure of decision; regulation of the intermediate sphere; public communication; the guarantee of rights; and agreement on and implementation of rules. The question then follows: How has the development of democracy in Indonesia progressed thus far?

Most Indonesians agree that, until 2015, democracy in Indonesia had been on the right track – at least to some extent. One reason for this positive view is the lack of 'serious threats in its territorial integrity' (Hill 2014) up to that time. This may be what Hill calls 'an impressive, indeed remarkable, achievement' (Hill 2014). Furthermore, democratisation in Indonesia is widely open to actors or political elites at the local and national level to display their power and compete through executive or legislative election. There are no obvious barriers to public positions in the executive or legislative branches. The emergence of popular leaders at the local level, such as Joko Widodo from Solo Regency, now the President of the country (based on the 2014 election), is proof of political access and the openness of democracy and decentralisation.

In spite of these successes, there are obvious problems and challenges to democratising Indonesia. Many of these challenges have at their core informal institutions. As mentioned before, money politics have become prevalent in Indonesian general elections and have even normalised in some cases, for instance in elections for member of parliament or for governor/regent/mayor (Aspinall & Sukmajati 2015b). Research has revealed disturbing findings about the use of money or other goods to buy people's votes, as well as the use of patronage politics as a central campaign strategy for many candidates in legislative elections (Aspinall & Sukmajati 2015a). The research led by Aspinall and Sukmajati in 2014 revealed that corruption had emerged as a serious national and local challenge. As power was being transferred from the central to local government, corruption spread further throughout the country. Local elites holding public office abuse their authority to pursue their personal interests.

A clear example is the rise of a 'shadow state' in Banten Province. The term 'shadow state' implies that within a state (at national or local level), informal institutions and actors take control over formal institutions in decision-making processes (Harris-White in Hidayat 2007). Hence, the formal elite (governor) was in the shadow of the informal elite who, in reality, drove policy-making processes, especially in the context of deciding on projects for the development of infrastructure (Hidayat 2007). In many parts of Indonesia, democratisation seems to have been hijacked by elites or an oligarchy (Aragon 2007; Hadiz 2003; Timmer 2007), which is also evident from the resurrection of clan or identity politics (Mietzner 2014 in Hill 2014; Tanasaldy 2007). The rise of clan or identity politics, elite collusion at the local and national level, and corruption are cases identified by Aspinall (2013) as the product of patronage. The rise of local bossism and/or local elites in some areas, who then collaborate with businessmen or even criminals in the name of clan identity or religion identity, has also been found (Sidel 2005).

What, then, can be said about democratisation in Indonesia? It is obviously very difficult to accurately measure the status of democracy in Indonesia. Another obvious point is that formal democratisation procedures contain informal institutions that change their very nature. The resurrection of clans and identity politics, the emergence of strong local leaders, money politics, corruption, and related practices have effectively put democracy in Indonesia under the control of small elitist groups. In these situations, informal institutions are not only interfering with democratisation, but informality is shaping the very nature of democratisation in Indonesia.

It should be noted that there are also positive ways in which informal institutions impact on democracy in Indonesia. As Indonesia is an archipelagic country, in some parts of Indonesia formal government organisations only deliver limited public services. In these situations, informal institutions, such as customary and the local charismatic elites, may become alternatives for societal service provision (Lay 2012). Another example is Maluku in the eastern part of Indonesia. In this area, there is an unwritten customary law, called *Sasi*, preventing all people in this area from taking certain (mostly natural) resources in certain periods. There is, for example, *Sasi Kelapa*, during which people will be prevented from harvesting any coconut. This is part of local wisdom, which is actually

related to the reproductive systems of certain resources. Social sanctions will be applied against those who violate this *Sasi*, such as having to pay fees or being excluded from society. In this way, informal institutions provide equal access to resources for all people in the area, which certainly is a principle of democracy.

On the one hand, the dimensions of democracy explained earlier, namely, patronage, clientelism and money politics, obviously have a negative impact on democracy. Clientelism and money politics limit at least one dimension: equality among individuals to compete fairly in general elections. Money politics, therefore, provide a better chance for a candidate with large financial resources, whether the funds emanated from a candidate's own resources or from those of a supporter group, to win a general election by buying people's votes. Moreover, money politics tends to lead politicians to recirculate money through corruption or rent seeking, providing easy access to investors or businessmen who provide financial support during elections. This is incompatible with rules settlement and implementation, as a democratic institution, because corruption creates an ineffective government and unequal treatment among individuals.

On the other hand, informal institutions may also have a positive impact on the democratic agenda in Indonesia. The *Sasi*, as explained above, is an informal institution that had been rooted in local wisdom in Maluku long before Indonesian independence in 1945. *Sasi* seems compatible with the principle of equality, since this phenomenon of informality assures equal access to resources in the area. There is also control over resources by people, in the interests of their own sustenance. The *Sasi* is also an effective instrument in terms of assuring the sustainability of resources for future generations.

The existence of self-governing communities in Indonesia is another example of how informality can work in combination with democracy development. The Kasepuhan Ciptagelar community in West Java Province has played an important role in managing and providing services independently. As an agriculture-based society, these people believe that all plants, especially paddies, are important for their existence. Based on their cultural and spiritual value, paddies cannot be sold because they are their livelihood. Whenever it is time to harvest the paddies, they will be preserved in a *Lumbung*, a place in their village where people save their paddies together. The paddies will only be used for daily needs, and the rest will be left in the *Lumbung* for the dry season. By maintaining this asset, people have their paddies preserved for at least three years ahead. This has been the custom for hundreds of years, and is still so today.

In addition, this community has its own mechanisms for resolving conflicts over natural resources, whether internal conflicts among community members or conflicts between the community and external groups, including formal government, the private sector or other communities. They are also able to produce electricity using hydropower, with the result that they are not dependent for electricity supply on the government. In short, the Kasepuhan Ciptagelar community has been successful in establishing equality among individuals and ensuring political control over resources, making it compatible with two of four dimensions of democracy, as explained above. Thus, the *Sasi* and Kasepuhan Ciptagelar may be categorised as informal institutions that are

empirically part of democratisation in Indonesia. As many forms of informality existed prior to the modern Indonesian state, informal institutions cannot be regarded as separate from the current democratisation process, but as embedded in every aspect of Indonesian politics.

### 3 Informal resiliency in transitioning Myanmar

During decades of military rule, informal institutions in Myanmar offered a chance at self-protection. Formal powers and processes of governance during the military reign were not only unreliable, but they were often predatory. The junta's Four Cuts campaign aggressively sought control in ethnic areas, leaving communities with three choices: 'fight, flee or join the *Tatmadaw*' (Smith 1999: 259-260). Laws such as the Electronic Transaction Law (2004), the Unlawful Association Act (1908), the State Protection Act (1975) and the Emergency Provision Act (1950) gave the state sweeping powers to target anyone using a computer or socialising publicly. All things formal became synonymous with oppression and predation rather than with protection. Cheesman (2010: 101) writes that '*habeas corpus* in Myanmar ultimately could have ... detrimental rather than beneficial effects on a society that is already profoundly demoralised'. With formal institutions exacerbating vulnerability, informal institutions became a realm where people could seek opportunities, change and protection. Recalling that informal institutions are understood as 'socially shared rules, usually unwritten, that are created, communicated, and enforced outside of officially sanctioned channels' (Helmke & Levitsky 2004), navigating the informal was key to surviving and striving. Unwritten protocols around the corruptibility of local officials (Malseed 2008a; 2008b; 2009), the rules of silence and honesty (Fink 2001; 2009), schemes around local 'behind the scenes advocacy' (South et al 2010: 3), the rules of engagement with different authorities (Thawngmung 2003; 2004), unique local customs and other schematics could guide individuals to informally organise and funnel remittances and resources, share information, broker, bargain, defy orders and engage in everyday resistance, and start local projects in a system that forbids such action.

In 2015, as Myanmar continued its inchoate transition, the tone around formal institutions had started to change. A central task in the process of transition is replacing the picture of the adversarial state with a functional, legitimate governing machine. The sweeping parliamentary victory of the National League for Democracy (NLD) on 8 November 2015 brought new hope and life to Myanmar's formal institutions. Yet, informal institutions remain crucial for everyday coping and resiliency. Ordinary citizens continue to rely on shadow economies for everyday labour trade and services. Informal community-based organisations continue to be political forces locally and, when taken cumulatively, nationally. Local customs, village hierarchies, money politics and local agencies continue to determine politics and power at the extremities. For the Muslims of Myanmar, and particularly the Rohingya, informal resiliency networks have become lifelines for survival. Dislocated and deprived villagers whose marginalisation has been legitimated by formal institutions have turned to subversion, brokering, informal mobilisation and cursing ceremonies: 'creative and provocative insertion of a culturally resonant script into a new context, an experiment in the reception of a new writing of that text

by both the spirit world as well as the Burmese public' (Prasse-Freeman 2016: 83-84). While the role of informal institutions is changing during the formalisation and legitimisation project ubiquitously known as transition, these institutions remain crucial to survival and the struggle for change in NLD-led Myanmar.

As the move towards greater formalisation as part of the transitional process in Myanmar gains momentum, there is a risk of neglecting or dislocating the pre-existing informality. As is argued in this section, retaining space for informality amidst sweeping formalisation achieves two crucial objectives. First, it ensures that people do not have to depend solely on formal institutions that may remain oppressive or predatory. Second, there is the possibility of tapping into the networks and methods of resilience built by people at the grassroots level.

The push towards formalisation in a transitioning Myanmar is meant to invigorate systems of governance capable of protecting the rule of law, delivering public services and ensuring welfare. This requires fundamentally overhauling the machinery of 'a military state with hybrid-imperial structures, characterised by high despotic but low infrastructural modes of power, and fuelled by rent-extraction' (Prasse-Freeman 2012: 371). Such transitions are always uncertain and imperfect. Thus far, from below the transition there appears to be a trail of institutional change leading to both new opportunities and new vulnerabilities (Mullen, Ya Tu & Prasse-Freeman 2015: 66):

Informant perceptions suggest that vulnerability has defused from emanating from one primary source (the military state) to being experienced as tied up in a number of different institutions (the market, the law, society itself in the cases of those who are different). In this diffusion, there is evident a *thickening* and *expansion* of the subjective experiences of vulnerability. Indeed, the many institutions that are the vehicles of the transition insinuate opportunity (through the idioms of development, rights, formalisation, democracy, the rule of law, and progress), while simultaneously introducing vulnerabilities as well.

Wariness regarding formalising efforts may be the result of both memory and real-time assessment of the impact on local livelihoods. Decades of authoritarianism and cronyism are embedded in governing institutions, and there is no formula for extracting the structural and cultural violence lying within. Regardless of the pace of transition, formal, state-sanctioned protection remains at best uncertain.

While protection by formal institutions is a worthy pursuit, it cannot replace the resiliency and self-protection people continue to secure through informal institutions. Until formal institutions are proven, the need for informal resilience will remain. Informality has particular importance in the realm of everyday politics, where local communities and local authorities 'define legal and cultural norms of property, resources access and management principles', leading to 'conflict within state agencies and different levels of government', and 'contested domains of policy and legal authority' (Sivaramakrishnan 2005: 258). In a transitioning Myanmar, where many oppressive laws remain and enforcement falls under the military's mandate set out in the prevailing 2008 Constitution, informality provides an alternative field for contestation and an outlet to break with dependency. Discussing the

different ways of referring to the rule of law in transition Myanmar, Cheesman (2015) concludes:

Myanmar's institutions are not animated by the rule of law idea at all but by principles hostile to it. And because those institutions are opposed to the rule of law, in Myanmar today the rule of law is not sensible if represented anatomically. For the time being, at least, it only makes sense to talk about the rule of law as signifier of something more.

Formalising processes can marginalise and oppress. There may be good reason to depart from formal rules or refuse formalising efforts. Preemptively foreclosing the space for local communities to use the informal for brokering and navigation pushes them into a relationship of dependency on the very powers from which they are trying to liberate themselves. Whether it is the Letpadaung protestors, Rohingya communities, a farmer who lacks proper documentation for land, or any individual facing marginalisation in the name of the law, reliance on formal protection is not an option. In any situation, when formal institutions compromise local orbits of protection, informality remains a realm of hope for protection and change.

In addition to being an alternative to uncertain formal protection in a transitioning Myanmar, retaining space to leverage informal institutions is a way of retaining the agency that was built over decades of struggling for change. In every corner of the country, individuals have found ways of organising, of initiating projects and creating change from below, all the while surrounded by systemic threats. These coping and navigation skills remain. The extent which stakeholders are able to find and tap into this agency (among others through a flexing of the political muscles of the grassroots (Prasse-Freeman 2010)), depends heavily on whether there is openness to the informality at play. Mullen (2013: 36), describing the ways in which individuals throughout military rule chose to forego formal claims and instead engage in informal brokering practices, describes the dilemma as follows: 'Brokering often involves bribery and some type of compliance with oppressive authority. On the other hand, brokerage could be seen as an innovative way to realise rights in the face of even the worst oppression.' It is the nature of informality that makes informal institutions so potent in settings such as transitioning Myanmar. Informality is difficult to wrangle, sanction or control. It can be an unpredictable space where a different set of rules applies. This makes informal institutions controversial, but also all the more consequential, and for those who continue to face threats and vulnerabilities in transitioning Myanmar, any type of resiliency and protection appears welcome.

#### **4 The 'elephant in the room': The role of non-governmental organisations in building a stronger government in Nepal**

Everyone who felt the tremor can tell exactly what they were doing when the earthquake of 7.8 magnitude struck Nepal on 25 April 2015 and again reared its powerful 7.3 magnitude head on 12 May 2015. Associated Press (2016) reported that over 40 per cent of Nepal was affected in 39 of its 75 districts, killing 8 000 people and leaving an estimated 2.8 million people in need of humanitarian assistance. Tapping into the most human of



emotions, the news of the earthquake spread around the world. From all over there was an outpouring of help, succour and solidarity.

To a large extent, the earthquake revealed the lack of preparedness for disaster on the part of the government. However, despite the initial chaos and confusion, the security sector of the government was applauded for its rescue efforts with international support. Needless to say, international and local non-governmental organisations (NGOs) bustled trying to help as many people as possible in the immediate aftermath of the earthquake in a country notorious for its bureaucratic niggling, corruption and a largely inefficient public sector. They sometimes reached places before the government did and, in many cases, the aid and relief materials provided by the NGOs in their smaller target areas were superior in quality to those provided by the government. Understandably, people began to look to the NGOs, and the NGOs started setting up their tents, often without the government being aware.

In those crucial days, Nepal eerily started to resemble Port-au-Prince after the Haitian earthquake of 2010. Drawing from his anecdotes, the Deputy Special Envoy to Haiti (under former United States President Bill Clinton), Dr Paul Farmer (2012: 15), wrote about Haiti after the earthquake: 'Everyone wanted to help, but no one knew exactly what to do. Each of the many tents erected by NGOs in the hospital courtyards became its own semi-autonomous world.'

A year after the devastating earthquakes, the tents are not as obvious as before and Nepal no longer makes headlines. A year later, a question was asked by a disaster survivor: 'They came faster than the government then; where did those NGOs go now? Shouldn't they help?'<sup>1</sup> The profundity of the survivor's question revealed the 'elephant in the room': an accountability deficit and the lack of legal obligation on the part of NGOs to help earthquake survivors in a country where people look to NGOs for essential services.

Dr Farmer termed the Haitian earthquake an 'acute on chronic' event, a disaster with social roots (Farmer 2012). This nomenclature is appropriate in the Nepalese context, as the devastation caused by the earthquake was exacerbated by pre-existing adverse and fragile socio-economic settings, poor housing structures and haphazard urbanisation of the densely-populated capital city. Not surprisingly, in the aftermath of the Nepalese earthquake, parallels were drawn with the Haitian earthquake of 2010 and how it came to be known as the 'Republic of NGOs', which even before the quake had more NGOs *per capita* than any other country in the world, except for India (Kristoff & Panarelli 2010). With a similar proliferation of NGOs in Nepal, the old saying 'something is better than nothing' does not hold true.

Something is not better than nothing if that 'something' means a weakening of the governance structure and public sector of transitioning governments faced with acute-chronic disasters. Nepal ranks 130th among 175 countries in the latest Corruption Perception Index (CPI) of 2015. The 'elephant in the room' means that, in the case of governments such as that of Nepal, few donors and NGOs trust the government with their

1 Field interview conducted by Swechhya Sangroula, 2015.

money, citing the lack of 'absorptive capacity' or the ability of the government to absorb the influx of capital necessary for reconstruction with an infrastructure of transparency and accountability in place (Farmer 2012: 156). While at first distrusting such governments and wanting to bypass them makes sense, in the long run it only weakens these governments and worsens governance.

The United States Institute of Peace in its briefing paper analysed the repercussions of funnelling aid and assistance through NGOs in a country with a weak public sector and mired in corruption. Evidence suggests the perpetuation of a situation of limited governance capacity and weak institutions. Furthermore, this has led to problems in developing 'human or institutional capacities to deliver services' (Kristoff & Panarelli 2010). It creates a vicious cycle of an inefficient and incompetent public sector unable to deliver public goods and earning credibility by the people. As a result, people look to NGOs rather than to the government.

The problem is that most aid organisations have the freedom to ignore a crisis if they so choose or to limit themselves to areas they wish to work in, a privilege not extended to states. Polman (2010: 39) argues that humanitarian organisations 'choose which crises to focus on based on their own cost-benefit analysis' and that 'humanitarian aid exists in a free market, where anyone who chooses can set up a stall'. Consequently, the beneficiaries of goods delivered by NGOs cannot claim the enforceability of their rights against these organisations, as they would against their government.

Sachs (2005) writes about the importance of long-term investment in public infrastructure for transformational development and the negative repercussions of an under-funded public sector. A glaring example is the statistic revealing that the Haitian government had received significantly less than 1 per cent of United States relief aid since the quake and that an estimated 0.3 per cent of all Haitian quake relief had gone to the public sector (Fisch & Mendoza 2010).

In Nepal, the tension between praxis and policy has become apparent, as local news reports suggest that the clumsy oversight mechanism of the government has been unable to acquire updated reports from NGOs and to assess of the quality of their work. The District Development Committee (DDC), tasked with the role of oversight, has mentioned fake reports from NGOs regarding the construction of houses. In Kavre, one of the affected districts, one year after the earthquake, the District Disaster Relief Committee (DDRC) under the DDC states that most of the 40 NGOs/INGOs that had listed themselves at the DDRC are missing from the district with no records on the aid and beneficiaries (Republica 2016). These are serious impediments to the road to reconstruction in Nepal.

For a lasting and sustainable impact and a rights-based approach to development, it is crucial to strengthen the public sector and rebuild public institutions. In this regard, the Rwandan example is relevant. Paul Kagame's post-genocide leadership was based on co-ordinating reconstruction aid by the central and district governments (Golooba-Mutebi 2008: 31). Kagame's Vision 2020 led to a policy known *investir dans l'humain* ('investing in people'), requiring NGOs to align their activities with the development plan of Rwanda. Many NGOs left Rwanda, citing the government as 'heavy-handed' (Uvin 1998).

A good practice could be the example of Zanme Lamaste, a Haitian-run wing of the NGO 'Partners in Health' in Haiti, and its subsequent shift in working modalities. While Zanme Lasante originally worked independently, it later partnered with the Haitian Ministry of Health to improve the public health system, to such an extent that today every clinic built by Partners in Health is a Ministry of Health clinic (Farmer 2012). The Code of Conduct for NGOs in Health Systems Strengthening, created by a group of international organisations, may be considered an exemplary document to strengthen a constructive relationship between NGOs and governments. The Code of Conduct, in its preamble, aims not to supplant but to supplement the public sector by identifying six crucial areas where NGOs can improve. These include helping government systems and investing in long-term commitments with lasting benefits. More importantly, the Code recognises that the management capacity of governments is often limited and that 'rather than building parallel or circuitous structures around inadequate capacity, strengthening government's ability to operate effectively and efficiently is paramount'.

Robust governance capacity and a strong public sector system are crucial prerequisites for states to fulfil their duties. Shue (1985: 86) suggests that states have three sets of duties, namely, to respect, protect and fulfil the rights of its residents. The state must, among others, aid the deprived who are the state's 'special responsibility', and protect them from deprivation. The government should spearhead the duty of reconstruction and seek support from NGOs to strengthen its implementation capacity. In respecting, protecting and fulfilling the rights of victims of the earthquake, Nepal is required to exhibit the essential features of availability, accessibility, acceptability and adaptability in their rights-based reconstruction efforts (Schutter 2010: 462-465). NGOs should be prepared to trust the government and to aid it in fulfilling its legal obligations towards its citizens, especially victims of the earthquake.

The National Reconstruction Authority of Nepal, set up in January 2016 amidst a climate of doubt, has attempted to learn from the Haitian shortcomings and in April 2016 endorsed the Directives for Mobilising NGOs for Reconstruction and Rehabilitation. As per the directives, NGOs providing funds for post-earthquake reconstruction can set aside 20 per cent of the funds as overheads (Republica 2016). While much remains to be done, the structure created by the National Reconstruction Authority of Nepal and the Directives for Mobilising NGOs in Reconstruction may be regarded as a positive step in terms of creating an infrastructure of co-ordination and accountability. This is big step towards learning from the Haitian experience.

The ways in which NGOs operate in different countries around the world vary greatly and often differ according to the governance structure and presence or absence of democratic governance values in these countries. Indeed, an NGO working in a highly oppressive, dictatorial model of governance will differ greatly from NGOs working in transitioning democracies such as Nepal. In the latter case, NGOs can play a greater role in strengthening and democratising the public sector despite resistance and the bureaucratic art of stonewalling.

The popular reconstruction motto reads 'Building Back Better and Safer'. Building back better and safer in Nepal requires co-ordination and partnership between the government and NGOs, with shared values aimed

at creating dignified opportunities to victims through reconstruction. Creating such opportunities is not a matter of charity or a convenient project, but a development effort with a national reach grounded on a rights-based approach to development. NGOs in Nepal have an important role to play in such democratisation and holding states accountable to their human rights obligations. To begin this from low-level governance, and embed accountability as a foundation for local democratisation in post-earthquake Nepal, dialogue and engagement around local informal institutions in Nepal need to be transformed.

## 5 Conclusion

The impact of informal institutions on democracy varies, depending on the particular form that the informal institution itself takes. A negative impact is achieved when the informal institution ignores state authority and challenges government's effectiveness, disregards the rule of law, and manipulates and undermines the democratic process.

Informality may be difficult to capture as it is often intangible or lacking in structure. Mullen argues that the reason why informality was such a powerful source of resilience during military rule and the inchoate transition in Myanmar is because it is so difficult to govern. Informal institutions may cause discomfort. Azizah discusses the crucial role of patronage, clientelism, corruption, graft, money politics, local customs, clan politics and the charisma of local elites in the democratisation process in Indonesia. Apart from being inconvenient, it is burdensome to govern these processes. Sangroula discusses the 'elephant in the room' with regard to post-earthquake recovery efforts, highlighting an accountability deficit around informal institutions that may corrupt assistance efforts if not adequately engaged. In all these emergency situations, it is conceded that informality is not easy to manage. Yet, it is argued that the tendency to ignore or reject informality compromises attempts to understand and support democratisation processes in the region. Recent experiences signpost that making informality more central in discourses surrounding democratisation in the Asia-Pacific region could be a shift towards ensuring that informal institutions receive the due consideration their influence on politics merits.

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