
- With a case study of Nepal’s National Action Plan on Implementation of UNSCRs 1325 and 1820

Kandidatnummer: 537

Leveringsfrist: 25.4.2017

Antall ord: 17635
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<th>Description</th>
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<tbody>
<tr>
<td>BPfA</td>
<td>Beijing Platform for Action</td>
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<tr>
<td>CEDAW</td>
<td>Convention on the Elimination of All Forms of Discrimination Against Women</td>
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<td>Charter</td>
<td>United Nations Charter</td>
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<td>CPA</td>
<td>Comprehensive Peace Accord</td>
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<td>CSO</td>
<td>Civil society organization</td>
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<td>DP</td>
<td>Development Partner</td>
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<td>GoN</td>
<td>Government of Nepal</td>
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<tr>
<td>ICJ</td>
<td>International Court of Justice</td>
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<tr>
<td>INGO</td>
<td>International Non-governmental organization</td>
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<tr>
<td>LGBTI</td>
<td>Lesbian, gay, bisexual, transgender, intersex</td>
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<td>LPC</td>
<td>Local Peace Committee</td>
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<td>MoPR</td>
<td>Ministry of Peace and Reconstruction</td>
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<td>NAP</td>
<td>National Action Plan</td>
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<td>NGO</td>
<td>Non-governmental organization</td>
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<td>NPTF</td>
<td>Nepal Peace Trust Fund</td>
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<td>SGBV</td>
<td>Sexual and Gender Based Violence</td>
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<td>UN</td>
<td>United Nations</td>
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<td>UNSCR</td>
<td>United Nations Security Council Resolution</td>
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<td>UPR</td>
<td>Universal Periodic Review</td>
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<td>WPS</td>
<td>Women, peace and security</td>
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1 Introduction

1.1 National Action Plans (NAPs) as soft law tools to implementing norms

This thesis provides insight to the capacity of soft law to strengthening and reinforcing obligations of international law, and specifically of soft law’s role in furthering the human rights of women, through an assessment of National Action Plans (NAPs) as soft law tools to advancing the implementation of United Nations Security Council Resolution (UNSCR) 1325. To that end, this dissertation has two main objectives: The first is to evaluate whether NAPs can compensate for UNSCR 1325’s criticized lack of accountability mechanisms and lack of ability to translate into meaningful changes for women on the ground, by providing clear targets and benchmarks that constitute the compliance pull necessary for States to implement the women, peace and security (WPS) normative framework. The second main objective is to assess the capacity of NAPs to enabling the effective implementation of international law in a post-conflict context through a case study on Nepal’s NAP on UNSCRs 1325 and 1820.

The dissertation addresses two of the main debates regarding the growth and expanding use of soft law. The first is about soft law as a binding or non-binding source of law. The debate includes questions of what “to be binding” entails, if and how different accountability mechanisms work, and what effective implementation means. The second debate is whether the expanding use of soft law is furthering the dynamic and progressive development of international human rights law, or if it in facts entails a “ghettification” of norms which threatens to undermine the status of positive international law by blurring the line between law and politics, and allows for states to neglect responsibilities to effectively implement various human rights policies. Additionally, both debates reveal distinct gender aspects of the development of soft law, thus raising a third, more political debate of whether it is advancing feminist ideals in international law that policies regarding women’s rights often take the form of soft law. Soft law has been particularly important for the legal development and progress in areas regarding gender and human rights, and is deliberately used by non-state actors to influence state behav-

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1 I use “UNSCR 1325” as shorthand to include it as well as the 7 subsequent related resolutions on women peace and security.
2 Lagoutte et.al. (2016) p.2
3 In its General Recommendation 28, the CEDAW Committee defines gender as: “...socially constructed identifies, attributes and roles for women and men and society’s social and cultural meaning of for these biological differences resulting in hierarchical relationships between women and men and in the distribution of power and rights favoring men and disadvantaging women” (para.5)
ior when there is little prospect of successfully concluding a treaty. At the same time, usage of soft law on these fields has been criticized based on claims that the outcome of soft law is non-compliance, with one of the causes being that the content of soft law often is inherently unsuited for adjudication, and another that the unspecific and “weak”, often ambiguous language leaves it up to the individual state to comply or not. UNSCR 1325, representing a milestone for putting gender equality on the international peace and security agenda, has been criticized for its lack of accountability mechanisms. It is problematic if women’s rights are given a format which leads to non-implementation. However, non-binding norms and instruments have complex and potentially large impacts on the development of international law, and there are several reasons explaining the choice of soft law over hard law that can be – and historically have been - favorable to both expansive interpretations and creation of human rights norms.

To contribute to critical thinking about this duality in the debate about soft law in securing human rights from a gender perspective, this thesis takes National Action Plans as its starting point to investigate the criticism further, and looks at whether NAPs can in fact provide a “solution” to the general soft law-criticism of non-compliance and the challenge of non-implementation, through a case study on Nepal’s National Action Plan on UNSCRs 1325 and 1820. A key element in this regard, is to consider NAPs on 1325 as part of a wider set of rules for women’s human rights internationally. Can NAPs be the tool that will keep up the momentum to promote the 1325-norms and institutionalize practices that support the women, peace and security agenda?

1.2 Background on UNSCR 1325, National Action Plans, and Nepal’s NAP

United Nations Security Council Resolution 1325 of 2000 and the seven subsequent resolutions 1820, 1888, 1889, 1960, 2106, 2122 and 2242 form part of the Women, Peace and Security (WPS) agenda, reaffirming the importance of the equal participation and full involvement of women in all efforts for maintaining and promoting peace and security, as well as acknowledging the increased use of sexual and gender-based violence (SGBV) as a tactic of war. The four pillars of UNSCR 1325 – participation, protection, prevention of violence, and relief and recovery – along with the overarching principal of gender mainstreaming reflect states’ existing obligations to protect the rights of women and girls in relation to conflict.

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4 Chinkin (2000) p.31
5 Chinkin (1989) p.862
6 Lagoutte et.al. (2016) p.7
7 Gender Mainstreaming is a globally accepted strategy for promoting gender equality. Mainstreaming involves ensuring that gender perspectives and attention to the goal of gender equality are central to all activi-
UNSCR 1325 draws upon binding commitments grounded in international human rights law, international humanitarian law, international criminal law, international refugee law, and customary international law, and can be regarded as an integrated part of an established and growing legal framework of international law that upholds the rights of women and girls in conflict and post-conflict settings.\textsuperscript{9} However, the legal status of UNSCR 1325 is unclear\textsuperscript{10}, and while few would deny the immense symbolic value of the Security Council’s recognition of the gendered impact of conflict and peace-processes, UNSCR 1325 lacks the type of hard requirements that give laws teeth to hold states accountable for non-implementation and hence ensuring that it is implemented systematically.\textsuperscript{11}

As a means of advancing the implementation of UNSCR 1325, Member States have adopted National Action Plans (NAPs) containing indicators and monitoring mechanisms as a possible solution to the lack of such in the resolutions. The NAPs are one of the main mechanisms used to track the implementation of the resolutions, and they are playing an increasing role in international debate on the topic of women, peace and security.\textsuperscript{12} As of 2016, the number of 1325 NAPs globally is 63.\textsuperscript{13}

Nepal adopted its National Action Plan for the implementation of UNSCR 1325 and 1820 in 2011 for the period 2011 to 2016. Nepal’s armed conflict between government security forces and the Communist Party of Nepal (Maoist) took place between 1996 and 2006. Women were deeply affected by the conflict, including by widespread sexual and gender-based violence.\textsuperscript{14} Despite the large number of women participating in the conflict\textsuperscript{15}, they were largely left out of the peace negotiation process.\textsuperscript{16}

\textsuperscript{8} Appiagyei-Atua (2011) p.6
\textsuperscript{9} Lewis (2015) p.3
\textsuperscript{10} Fujio (2008) p.216
\textsuperscript{11} Ibid. p.232
\textsuperscript{12} Swaine (2009) p.404
\textsuperscript{13} The PeaceWomen website maintains a list of 1325 NAPs: http://www.peacewomen.org/member-states
\textsuperscript{14} Coomaraswamy (2015) p.243
\textsuperscript{15} Women and girls represented approximately 30% of armed fighters, see VSO Nepal (2011) p.37
\textsuperscript{16} Arino (2008) p.5
1.3 Structure

This thesis grapples with two basic critical approaches to soft law; 1) is it binding; and 2) is it effective? The prism used for exploring soft law is gender, with I will get back to in the next section 1.4. The research questions of this paper have been phrased as: “Binding or non-binding?” and “Putting (women’s) human rights protection on the agenda, or a “ghettofication” of such norms?” Both questions relate to the potential value of soft law in furthering human rights protection, and of NAP’s to effectively implement UNSCR 1325. Section 2 seeks to illuminate these research questions from a gender perspective through some inquiries into soft law. The section also provides insight to the role of soft law in shaping international law in an ever-evolving global legal environment in which non-state actors are playing and increasing role in international law and law-making, as well as soft law’s role in either advancing feminist ideals of international law, or leading to a ghettofication of such norms.

Section 3 places National Action Plans among soft law tools developed to bridge the gap between international- and national level responses to specific policies. It moves on to examining NAPs on UNSCR 1325, by first providing the background for the adoption of UNSCR 1325 and the NAPs developed to support its implementation. Section 3 poses three assumptions of coercive features of NAPs on UNSCR 1325 that strengthen the potential to effectively implementing its provisions: 1) The adoption of NAPs in itself a coercive feature as expectations of implementation are created; 2) NAPs “make soft law harder” as they provide benchmarks, timelines and accountability mechanisms lacking in the resolutions, thus constituting a compliance pull for States to implement the provisions; 3) NAPs are important tools that bridge the gap between international and national level responses to UNSCR 1325, thus supporting the progress of the international legal framework on WPS and its operationalization.

A fourth assumption, - that NAPs are equipped to address barriers to substantive equality through the inclusion of civil society organizations and NGOs in developing its targets, including through local level consultations with conflict-affected women and women’s activists, is assessed in the case study in section 4, and in the analysis in section 5.

Section 4 is a case study of Nepal’s NAP on UNSCRs 1325 and 1820, assessing the NAP’s capacity to implement the UNSCRs with a transformative outcome for women in the post-conflict context of Nepal, based on an assessment of the main achievements and challenges of

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17 Zerilli (2010) p.11
18 Barrow (2016) p.275
the NAP after it has been phased out. Section 5 analyses of the role and effectiveness of NAP’s as soft law tools to implementing UNSCR 1325, drawing on findings and conclusions of both the general parts 2 and 3, and the particular part 4 (the case study) of this thesis. Finally, section 6 provides some final reflections as well as suggestions to further research needs for a critical engagement with women’s law’s dealings with soft law, and vice versa.

1.4 Methodology

This dissertation assesses the potential of NAPs to implement UNSCR 1325 with a transformative outcome for women. The aim is to provide insight to both the potential value of the NAPs and to the actual added value through the case study of Nepal’s NAP. Through dealing with critical questions of securing human rights obligations from a gender perspective, the dissertation is based on feminist legal theory. Feminist jurisprudence is a subgroup of critical legal theory which derives its theoretical force from the view that the traditional structures of (international) lawmaking and the content of the rules privilege men and still serve to uphold the unequal position of women. Feminist legal theory contributes to the progressive development of international law by challenging positivist conceptions of law as neutral and derived from the contexts in which it operates. One of the means through which international law is understood by feminist legal scholars to perpetuate (male) hierarchy and exclusivity, is the reproducing of public–private distinctions which is often disadvantageous to women’s realities, as the most pervasive harms to women tend to occur within the private realm, within the family. Feminist legal theory builds on the conception that legal analysis “cannot be separated from the political, economic, historical and cultural context in which people live.” Therefore, a feminist approach to international law entails to dive below state level, and examine the actual impact of the rules for women within states.

To contribute to critical thinking on soft law and gender, this thesis examines whether it is advancing feminist ideals that policies regarding women take the form of soft law, and partic-

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19 Transformative equality means measures to remove the causes of inequality, see CEDAW GR 25, paras 7-10
20 The idea of distinguishing between potential and actual added value is taken from Anne Hellum and Henriette Sinding Aasen’s Introduction to “Women’s Human Rights in International, Regional and National Law” (2013) p. 3-4, in which key research questions about the CEDAW Convention are framed within the sections of the book to “distinguish the future potential of the CEDAW from current and past achievements, and to separate normative content from empirical realities.”
21 Women’s Law and Human Rights (JUS1910/5910) is a course I took at UiO in 2014, offering “a combination of a doctrinal, critical and contextual approach to human rights in general and women’s human rights in particular.”
22 Charlesworth et.al. (1991) p.613
23 Aolán (2012) p.54
24 Charlesworth et.al. (1991) p.613
ularly whether NAPs on UNSCR 1325 put women’s human rights on the agenda or lead to a ghettoification of such norms. This thesis’ hypothesis is that NAPs provide a feminist approach to implementing international obligations, as they are enabling gender-specific, individual, and local-level responses, hence avoiding the traditional public/private distinction of law and lawmaker. To research this, this thesis is based on doctrinal legal research and literature review, building on three types of literature; soft law; UNSCR 1325; and NAPs, including scholarly books and articles, grey literature, and research papers and studies. The groundbreaking works of especially Chinkin and Charlesworth provide the starting point for the critical approach to improving women’s position in society before the law. The capacity of UNSCR 1325 and the NAPs to translate into transformative changes for women on the ground is researched from both an optimistic and progressive feminist viewpoint, such as the reports of Lewis (2015) where the implementation of UNSCR 1325 as part of a legal framework on women, peace and security is emphasized, and the Global study on implementation of UNSCR 1325 conducted by UN Women and Coomaraswamy (2015) with a clearly activist agenda, as well as from a more cautious and critical standing on the instruments’ ability to enhancing substantive and transformative gender equality, such as the scholarly works of Aoláin (2012) and Otto (2009).

This thesis poses critical questions about the effectiveness of soft law in advancing feminist ideals. In section 2, critical methodological reflections on soft law is assessed a bit further. A fundamental point to underscore about soft law, is that the concept consists of a range of different types of instrument, on widely different topical areas, and with various stakeholders/duty-holders and target groups: Soft law is always “the product of concrete social and historical arrangements taking place by means of individual, collective, and institutional practices in specific locales and temporalities”. This thesis is delimited to researching whether a particular soft law instrument – NAPs on UNSCR 1325 - is promoting feminist ideals. In order to research this, the thesis assesses how this soft law instrument has originated, who the stakeholders/duty-holders are, and its potential and actual added value in comparison and interaction with other mechanisms, based on an assessment of both the main achievements and challenges of the NAP after it has been phased out. Nepal’s NAP was chosen for the case study for two main reasons: Firstly, Nepal’s NAP is regarded as one of the best examples among the NAPs developed globally, and should therefore be among the most qualified for a successful implementation. Some of the recommendations of the Global Study on 1325 can-
ried out by UN Women in 2015 are even derived from the experiences of Nepal’s NAP process. Secondly, Nepal’s NAP was developed for the period 2011-2016, hence it recently phased out, providing a suitable time for an evaluation of its actual added value. I was working as a trainee in Nepal in 2014 and 2015 (first with the Norwegian Embassy and then with UNFPA Nepal), which provided me with some insight into Nepal’s history, culture and legal system. With both jobs, I assisted projects related to Resolution 1325 and to the NAP, so to some extent I will also be drawing upon my own experience from Nepal, and I have been in touch with former colleagues about the way forward after Nepal’s NAP has been phased out in 2016.

For the purpose of evaluating Nepal’s NAP, I have analyzed grey literature such as government reports, including annual- and mid-term evaluations of the NAP, research papers and evaluations produced by NGOs and academics (several of which includes the experiences of producers, practitioners and beneficiaries of the NAP), as well as personal correspondence with UN Women Nepal and the Norwegian Embassy in Nepal about the final evaluation of the NAP, and a potential development of a phase 2 of the NAP. When I started writing this thesis in January, I was hoping that a thorough evaluation from the GoN would have been carried out or at least commenced, but per 20 April 2017 still, there has not been provided sufficient funding for an evaluation process of the NAP after it was phased out in 2016. Official evaluation is therefore limited to the one-year and mid-term report produced by the GoN in 2012 and 2014. These, as well as reports and evaluations from NGOs and academics, and especially a recently published research paper by Punam Yadav based on interviews with 21 stakeholders in Nepal, has provided valuable insight to the achievements and challenges of the NAP in effectively implementing UNSCR 1325 in Nepal. The limited time and word boundary led to the choice of rather looking more deeply into one country’s NAP, than superficially comparing a broader range of NAPs. Findings from Nepal’s NAP process might nevertheless have transfer value to other countries, especially countries with similar traits and challenges to those of Nepal (post-conflict, development country, multi-ethnic/multi-cultural/multi-religious/multilingual, patriarchal, traditional society), and both best practices and challenges found in the case study could provide valuable knowledge of NAP’s effectiveness to implementing UNSCR 1325 to draw on in the future developments of NAPs.

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28 Coomaraswamy (2015)
29 Bisht (2017)
30 Yadav (2017)
2 Critical Methodological Reflections on Soft Law

This section attempts to illuminate the research problems raised in this thesis through some inquiries into soft law that are relevant from a gender perspective, and to provide context for the analysis of NAPs as a soft law tool to implementing UNSCR on women, peace and security. The section reflects on what soft law is, how it originates, who are the stakeholders and duty holders of different soft law instruments, the thematic areas covered and their potential levels of controversy, and of soft law as a “weapon of the weak”. Sections 2.2 and 2.3 address two main critical approaches to soft law: whether it is binding, and whether it is effective.

The wide diversity in the instruments of so-called “soft law” makes the generic term a misleading simplification.\textsuperscript{31} Despite the lack of a universally accepted definition, the term usually refers to non-binding rules that cannot be legally sanctioned for non-compliance\textsuperscript{32}, but which notwithstanding this non-binding character, has a certain degree of normative force.\textsuperscript{33} Soft law is challenging the way we normally consider law as it introduces different degrees of normative intensity.\textsuperscript{34} Additionally, soft law has complex and potentially large impacts on the development of international law. The concept of soft law was first established in the 1970s,\textsuperscript{35} notably, parallel to the rise of women’s law and women’s human rights globally,\textsuperscript{36} and the use of soft law is expanding as an increasing part of the rules and standards created internationally are taking the form of non-binding agreements and instruments.\textsuperscript{37} These developments are in part a consequence of globalization, which has led to a shift from a state-centric power perspective to a more pluralistic one which has given rise to a need for global rules. With no “world government” that have the authority to decide on supranational and legally binding rules, nor the authority to sanction breaches of such rules, voluntary rules are often the only real alternative. Another consequence of this global transformation of law, is that the State often is only one of multiple public and private actors participating in the process of law making and regulation.\textsuperscript{38} Non-state actors are increasingly taking part in the making, applying and even the terminating of international law,\textsuperscript{39} which allows for a more activist approach, as in

\begin{footnotesize}
\begin{itemize}
\item Chinkin (1989) p.850
\item Mörh (2011) p.2
\item Lagoutte et.al. (2016) p.1
\item Guzman and Meyer (2010) p.222
\item Mörh (2011) p.3
\item The Declaration on the Elimination of Discrimination against Women was adopted by the GA in 1967
\item Lagoutte et.al. (2016) p.1
\item Zerilli (2010) p.6
\item Handl et.al. (1988) p.372
\end{itemize}
\end{footnotesize}
the case of expanding human rights. Soft law may be employed when the body promulgating the law does not have law-making authority, such as a treaty supervisory body or an NGO. Soft law instruments are written documents produced by the UN system or international organizations such as the World Bank, the International Monetary Fund or the World Trade Organization, which are some of the most influential global actors, sometimes described as “informal global legislators”. Soft law instruments range from treaties that only include soft obligations, to non-binding resolutions, declarations, codes of conduct, platforms, general comments and guiding principles formulated and accepted by international and regional organizations, to statements prepared by individuals in a non-governmental capacity but which intend to lay down international principles. Soft law instruments are widely used in many fields of law such as trade law, administrative law, environmental law, tort law and human rights law.

In certain cases, soft law presents alternatives to law-making by treaty. The concept of soft law arises from a need for agreement on collective, but non-binding action or behavior, when there are small prospects of states entering into binding agreements. States may more easily agree to non-binding instruments, as they avoid the national ratification process, and perhaps may even escape the democratic accountability for the policy they agreed to. The use of soft law is also increasing where hard law is an actual alternative, for example within the EU. The unwillingness to delegate power to a supranational decision-making power by both states and their citizens, can be met with the compromise of deciding on soft law rules instead. Many states prefer the flexibility and voluntary aspect of soft law instruments in order to maintain their political maneuvering room. Soft law instruments will normally be easier to supplement, amend or replace than treaties.

2.1 Binding or non-binding

Soft law is often viewed as quasi-legal, and as something separate from the non-legal (political) on the one hand, and the legal, on the other hand. Soft law is “not quite positive interna-
tional law, but somehow aspiring thereto or at least thought to influence legal interpretation”^{48}. Sanctions for non-compliance of soft law, are political and social rather than legal.^{49} A point to underline in this regard, is that many “soft” mechanisms such as shaming, conformity, fear and persuasion are effective regardless of being provided with features recognized as hard law.^{50} Soft law norms thus have a coercive dimension, and in practice, both individual and institutional actors will often perceive what legal scholars call soft law as hard regulations and behave according to the norms. It can even be regarded as a form of “social pressure”, where states are encouraged to ratify international treaties in order to appear civilized.^{51} From a human rights or gender perspective, this is relevant because the adoption of the soft law instrument itself creates expectations of compliance both on international and national level, and are more likely to have positive effects than not, regardless of the motivation of the State in the first place.

It is beyond the scope of this thesis to provide a thorough analysis of soft law’s role in influencing the development of customary law,^{52} even though this has evident gender aspects - for example, scholars and advocates have emphasized the importance of establishing the right to gender equality as customary international law^{53} – but this paragraph provides a brief overview for context-purposes. The influence of soft law on customary law can take various shapes: for example, soft law norms may facilitate customary law by providing evidence of existing law, or of the opinion juris necessary for new law, or of the practice of states. Each case will depend on various factors which must be assessed individually. A potentially law-making soft law norm is determined by whether its wording is “of a fundamentally norm-creating character such as could be regarded as forming the basis of a general rule of law”^{54}. The context within which a soft law rule is negotiated as well as the accompanying statements of delegations is also relevant if assessing the opinio juris of States. Lastly, the degree of support is of importance. A resolution adopted by consensus or by unanimous vote carry more weight than one supported by a less number of States. Soft law norms may, and not infrequently do, lead to “hard” law.^{55} A soft law rule is thus often the first step in a norm-making process. Instruments of soft law provide for shaping and sharing of values, and thus contributes to creating expectations of state behavior, and has both a legitimizing and delegitimizing

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^{48} Lagoutte et.al. (2016) p.3
^{49} Mörth (2011) p.2
^{50} Zerilli (2010) p.5
^{51} Ibid. p.6
^{52} Boyle (2014) p.130
^{53} Charlesworth and Chinkin (1993) p.75
^{54} *ICJ Reports* 1969 p.41
^{55} Redgwell (2014) p.698
direct effect. Non-binding instruments are useful if they can help generate widespread and consistent State practice and/or provide evidence of *opinio juris* in support of a customary rule:56 The *Nicaragua case*57, the Nuclear Advisory Opinion58 and the *Western Sahara Advisory Opinion*59 are examples of soft law instruments having this effect. This suggests that the non-binding form of an instrument is of limited relevance when it comes to development of customary international law. The decisive factor is not whether the norm is legally binding, but whether it influences State practice and provide evidence for *opinio juris* or for new emerging rules, or because they confirm what the already existing law is.60

Similarly to the debate on soft law’s role in customary law from a gender perspective, it is beyond the scope of this thesis to look deep into the concept of legal pluralism and norm fragmentation, which are increasingly important aspects of the global legal landscape in which various soft law and hard law norms and instruments are developed and operate. Legal pluralism means the co-existence of multiple overlapping norms and legal regimes, and have historically been considered specific to post-colonial settings, but is now widely accepted as the ordinary situation of any socio-legal context.61 Internationally, norm fragmentation refers to the growth of “international regulatory institutions with overlapping jurisdictions and ambiguous boundaries”62. For example, NAPs on the implementation of UNSCR 1325 are just one example of the increasing variety of forms of commitment adopted to regulate State- and non-state behavior in response to a growing number of what is considered transnational problems.63 It has been argued that the development may lead to “forum shopping” where (powerful) states select venues where they are more likely to obtain the results they desire, and avoiding forums where compliance is less likely.64 Scholars have expressed concern that the complexity of multiple overlapping legal and policy regimes could lead to marginalization of human rights in general and the rights of women in particular.65 For example, in the conflict regulation arena, legal norms concerning women’s human rights are often formed as soft law rules and standards. The enactment of 1325 could be seen as a prime example in this regard: it offers significant rhetorical comfort, but fails to include implementation mechanisms or

56 Boyle (2014) p.122
57 *ICJ Reports 1986*, p.14
58 *ICJ Reports 1996*, p.226
59 *ICJ Reports 1975*, p.12
60 Boyle (2014) p.122
62 Benvenisti and Downs (2007) p.596
63 Shelton (2014) p.163
64 Benvenisti and Downs (2007) p.596
65 Hellum and Sinding Aasen (2013) p.10-11
benchmarks of the goals set out in the resolution. However, the increased importance that key international organizations and States have given to realities experienced by women in war is a promising advance in the creation of human rights norms and standards, and the NAPs are developed to bridge the gap between the national and international level responses to the Resolution provisions.

Soft law, customary international law and legal pluralism are interlinked in the sense that some of these standards solidify and get an increasingly strong normative and institutional support, like in the case of customary international law, while others “fail” and fall into disuse. To sum up, both customary international law and legal pluralism are topics that with advantage can be assessed in the light of gender, but it is beyond the scope of this dissertation to do so.

Some legal positivists argue that there is only law and non-law (meant in the strict sense of binding/non-binding), and thus the concept of soft law is self-contradictory. This critique of “blurring of normativity”, can be met with that there have always been a blurring of law and non-law in the international arena, and in practice, there is no clear line between soft and hard law. Hard law often contains references to standards and other non-legally binding rules, while soft law rules on the other hand often contain references to hard law. Soft law rules that are formulated with a greater degree of specificity are more likely to become accepted as compelling than a treaty that remains unratified or is worded weakly. Treaties might indicate a stronger commitment to the policies in question, and may thus carry greater weight than a soft law instrument. However, this does not necessarily mean that soft law instruments are less authoritative. The Rio Declaration on Environment and Development of 1992 is an example of a soft law instrument both codifying and seeking to develop new law. The soft law form allowed for a quick consensus on clear objectives that could have been extremely hard to achieve in a treaty.

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66 Aolán (2012) p.62
67 Ibid. p.65
68 Merry (2014) p.108
70 Weil (1983) p.415
71 Chinkin (1989) p.865
72 Mörrth (2011) p.2
73 Handl et.al. (1988) p.390
74 Boyle (2014) p.122
To summarize, more important than whether a rule of international law is labelled as hard or soft law, are factors influencing compliance with the norms. Important factors in this regard is: 1) Who is making the norm: State actors, non-state actors, and how many endorse it; 2) Specificity: The specificity of many soft law instruments makes them more likely to be effective in controlling the given policies⁷⁵; and 3) Implementation and accountability mechanisms: Soft law is comparably harder to implement, as the policies are based on voluntarism and often require funding, legislation, or public support.⁷⁶ Incentives for implementation and ways of holding key stakeholders accountable for non-performance is thus key.⁷⁷

2.2 Putting human rights protection on the agenda, or a “ghettofication” of such norms

It has been suggested that soft law norms are more frequently used in the subject area of human rights law.⁷⁸ This section questions the effectiveness of soft law norms, that is, whether the goal of strengthened human rights protection is achieved using soft law, or whether it is problematic that rules on these particular legal fields are given a non-binding form which simply leads to marginalization and non-compliance without significant consequences.

Positions within the international legal community regarding the reception of soft law range from soft law enthusiasts, to soft law “radical critics”.⁷⁹ Enthusiasts underline the many advantages that soft law offers, such as the ability to act quickly, and an effective means for direct civil society participation in global governance. Critics on the other hand are worried that soft law constitute a privatization of law that only benefits aggressive and opportunistic market actors, and by “weakening” the law and creating overlapping forums of laws and lawmaking is making it easier for powerful actors to pick and choose between whether they want to comply with the law or not without being held accountable.⁸⁰ Their fear is that soft law makes formal criteria of international law less reliable guideposts to establishing international law⁸¹ and that this discrepancy between formal status and legal significance is undermining the system of international law.

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⁷⁵ Chinkin (1989) p.852
⁷⁶ Boyle (2014) p.121
⁷⁷ Héritier (2001) p.6
⁷⁸ Shelton (2000) p.3
⁷⁹ Zerilli (2010) p.9
⁸⁰ Ibid. p.10
⁸¹ Handl et.al. (1988) p.372
Soft law has been particularly important for the legal development and progress in areas regarding gender and human rights.\textsuperscript{82} States’ historical centrality in international law means that their patriarchal forms are also reflected in the structures of international law and law-making.\textsuperscript{83} One such structure is the distinction between the public and the private sphere, where only the first is regarded as suited for legal review. This structure has traditionally allowed for the particular concerns of women to be ignored and undermined, as the most pervasive harms to women tend to occur within the private, socio-economic domain.\textsuperscript{84} The CEDAW convention’s recognition of the interdependence and indivisibility of civil, political, social and economic rights\textsuperscript{85}, envisions a transformative approach that makes the Convention the instrument with the greatest potential to deepen the understanding of women’s marginalization and strengthen the influence of international human rights norms.\textsuperscript{86} Demonstrating the close and interlinked relationship between hard and soft law, the CEDAW Committee has used the soft law prohibition of violence against women as an intermediary concept to link newly discovered forms of violence against women to the hard law Convention.\textsuperscript{87} In the context of the CEDAW Committee’s General Comments, soft law has hence been used to fortify the interpretation of existing human rights standards, as well as including new forms of violence against women that were previously not recognized.\textsuperscript{88}

As described earlier in this section, soft law allows for a wide variation of actors to be the duty holder(s)/stakeholders; it can be states or large international organizations, but it can also be small organizations, groups or individuals behind the soft law-making. The fact that activist groups and organizations can influence international law-making is the reason behind the optimist/positive embrace of soft law. It is commonly regarded as a “weapon of the weak” to strengthen international human rights. However, the reverse of the coin is that the same transformation allowing for a more progressive development of human rights law, is also potentially enabling international constituency behind reactive interests. The transnational forums in which international law-making takes place allows for shifting allies around common causes: imagine for example Saudi-Arabia and the Vatican State gathered around a resolution limiting reproductive health rights together with a range of other stakeholders sharing the same values. This thought experiment says something about controversy representing a factor affecting the potential force of the soft law norm or instrument. A soft law instrument can be more or less

\begin{itemize}
\item \textsuperscript{82} Chinkin (2000) p.31
\item \textsuperscript{83} Charlesworth (1991) p.644
\item \textsuperscript{84} Aoláin (2012) p.54
\item \textsuperscript{85} CEDAW preamble
\item \textsuperscript{86} Shelton (2014) p.162
\item \textsuperscript{87} Krivenko (2016) p.66
\item \textsuperscript{88} Ibid. p.47
\end{itemize}
controversial. On the uncontroversial side, is i.e. a soft law standard regulating sidewalks. More controversial, are provisions to strengthen LGBTI rights. Where in this landscape does UNSCR 1325 fall? It is progressive and optimistic, but less controversial than i.e. LGBTI rights. It was adopted unanimously by the Security Council after extensive advocacy of women’s activists, sending a signal of gender-equality in relation to conflict. Developments and shifts in the political climate affects what is regarded controversial, such as reproductive health rights growing more controversial recently, while women’s equal participation is no longer regarded as controversial as earlier. To sum up, the political climate and shifting allies in the international community affects the emergence of soft law instruments, and it will depend on the forces behind the norms, the type of instrument, the thematic area, the level of controversy, and more – how specific soft law instruments influence international law. These are important aspects to keep in mind when researching a specific soft law instrument. Ultimately, it is a matter of power relations in the international and national arenas, but also constituting a possibility of empowerment from below. Soft law certainly has weaknesses which can be abused, but at the same time, this goes for most legal forms. Generally, soft law has been more helpful to the process of international law-making than it has been disadvantageous. Modern treaty regimes and international organizations heavily depend on soft law to function, and soft law is constantly used by parties to international litigation in support of their legal arguments. There is no single theory that can explain why states utilize different degrees of normative intensity in their international commitments, but it is clear that non-binding rules have legal significance as they are shaping expectations as to what compliance to binding rules entails, and can eventually become part of the creation of customary international law.

89 Boyle (2014) p.133
90 Guzman and Meyer (2010) p.222
3 National Action Plans as soft law tools to implementing UNSCR 1325

3.1 National Action Plans as soft law tools

A National Action Plan (NAP) is a document describing a policy or strategy that a country plans to follow to fulfill objectives and reach goals concerning specific national, regional or global matters, making the State a central stakeholder. Countries may adopt a NAP to meet a variety of goals, such as health care, natural resource management, or counterterrorism and security. National action plans are also often used in development contexts.

The United Nations Educational, Scientific and Cultural Organization (UNESCO) explains the process of writing an action plan as the translation of policies and strategies “into executable, measurable and accountable actions. Action Planning includes specifying objectives, results, outputs, strategies, responsibilities, and timelines (what, what for, how, who and when”).

Government institutions are directing the development of National Action Plans, initiate the drafting process and seek partners from different government sectors, other institutions, and civil society for the planning and future implementation of the NAP. Civil society, academia, and various institutions may thus play important roles in the development, implementation and monitoring and evaluation process.

National Action Plans are soft law tools because they outline detailed policies and courses of action without being passed by parliament as formal law. In the European Union, there is an ongoing debate about the “new modes of governance: policy-making without legislating”. In recent years, non-legislative modes of policy-making where private actors are involved in the policy-formulation have increased. The trend arises from the idea that no single actor has the sufficient potential for action and/or power to solve problems, nor all the knowledge and information required. Where sufficient political support is difficult to gain, the adoption of a NAP is a way to avoid the classical form of legislation. Collective action is taken across multiple levels of government, and involving both public and private actors. It has been advocated as the much-needed solution to speed up decision-making and avoid gridlocks. National

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91 Miller et.al. (2014) p.10
92 Valasek (2006) p.1
93 Miller et.al. (2014) p.10
94 Héritier (2001) p.2
95 Ibid. p.3
action plans are thus one example of “the new mode of governance” in European policy-making.

In a development country context, NAPs are useful tools for the same reasons as given above; They offer detailed and country-specific courses of action, while providing both autonomy and flexibility for the countries in shaping the policies. While government institutions are the leading agents in order to secure the long-term perspective and stability needed to implement the wanted policies, civil society actors, I/NGOs and external development partners are often co-regulating the process.

The concept of National Action Plans illustrates the global transformation of law and law-making as described under section 2.1. National Action Plans engage private actors to “co-regulate” jointly with public actors,\(^96\) and hence the nation-state is only one of multiple public and private actors participating in the making of the NAP. The traditional domestic stakeholders in the law-making process (e.g., politicians, academics, the judicial system) both compete and cooperate with an increasing number of actors outside national jurisdiction\(^97\) (such as development partners and INGOs), and decision-making, political and legal processes takes place in a transnational space where national actors and non-state actors all contribute to the shaping and production of norms and regulations.

The developing of policies through NAPs and not through formal legislation, results in soft law where the targets and benchmarks decided upon are not compulsory in the strict sense, and non-compliance is not legally sanctioned.\(^98\) For the NAP to have actual potential to translate into the goals set, the mode of target formulation is key. Without firm benchmarks and timelines, there is a risk that the NAPs will merely report on on-going activities, without moving in new directions.

### 3.2 National Action Plans on UNSCR 1325

#### 3.2.1 Purpose and scope of the National Action Plans

With the most powerful multilateral security institution in the world introducing a new rhetoric and dialogue that firmly placed the role of women on the peace and security agenda, UNSCR 1325 represented a milestone for women’s rights internationally.\(^99\) However, this set of

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\(^96\) Hérietier (2001) p.2  
\(^97\) Zerilli (2010) p.6  
\(^98\) Hérietier (2001) p.9  
\(^99\) Swaine (2009) p.403
provisions for promoting gender equality in relation to conflict has no mechanisms for ratification, compliance or verification,\textsuperscript{100} and the record of implementation has been slow.

The Security Council has recommended Member States’ governments to implement UNSCR 1325 via National Action Plans (NAPs).\textsuperscript{101} In his 2007 annual report on UNSCR 1325, the Secretary General stressed that “governments have the primary responsibility for implementing the resolution”\textsuperscript{102}. The first organization to publish and provide specific guidance to governments in developing action plans on UNSCR 1325, The United Nations International Research and Training Institute for the Advancement of Women (UNINSTRAW), defines national action plans as “a written document that describes the efforts and resources required in order to implement a goal, mandate or policy within a specific period of time. The document also states who the responsible actor is for the implementation of the activity.”\textsuperscript{103} The Committee on the Elimination of Discrimination against Women adopted General Recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations, providing detailed guidance to Member States on issues related to women, peace and security and the criteria for accountability, and makes it clear that implementing resolution 1325 is the responsibility of every Member State.\textsuperscript{104}

The purpose of the National Action Plans is to advance the implementation by providing indicators and monitoring mechanisms. The NAP provides guidance on how governments and civil society organizations can jointly coordinate, monitor and facilitate the implementation of the resolutions.\textsuperscript{105} National governments have the main responsibility for the development of the NAPs, but civil society usually plays a leading role behind its development, coordination and implementation. NAPs are one of the main mechanisms to track the enforcement of the legal framework on women peace and security.\textsuperscript{106}

Countries have been slow to adopt National Action Plans, with the Scandinavian countries and the United Kingdom leading the way in 2005 and 2006. As of 2016, the number of 1325 NAPs globally is 63.\textsuperscript{107} The European 1325 NAPs are mainly “outward looking” and form parts of the countries’ foreign policy, focusing on how foreign aid should support the imple-

\textsuperscript{100} Akter (2013) p.5
\textsuperscript{101} See Presidential statements of the UN Security Council, S/PRST/2004/40and S/PRST/2005/52
\textsuperscript{102} S/2007/567 para.36
\textsuperscript{103} Valasek (2006) p.1
\textsuperscript{104} Coomaraswamy (2015) p.12
\textsuperscript{105} Akter (2013) p.11
\textsuperscript{106} Lewis (2015) p.42
\textsuperscript{107} The PeaceWomen website maintains a list of 1325 NAPs. http://www.peacewomen.org/member-states
mentation of UNSCR 1325.\textsuperscript{108} In development countries, one of the main means of funding for the NAPs is Official Development Assistance (ODA) from donor governments to developing country governments.\textsuperscript{109} The Norwegian Embassy in Kathmandu has supported the development of Nepal’s NAP, which demonstrates how the development of a 1325 NAP in one country can facilitate the development of a NAP in another.

3.2.2 United Nations Security Council Resolutions

The United Nations Security Council is the highest legislative body internationally. The Security Council’s binding resolutions include those adopted under Chapter VII of the UN Charter, in accordance with Article 25, which states that “Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with its present Charter.”, but is not limited to that.\textsuperscript{110}

The term “resolution”, as used in the Charter, includes both recommendations and decisions, both of which have imprecise and variable meaning in the Charter.\textsuperscript{111} Whether a specific resolution is binding depends on the nature of the resolution.\textsuperscript{112} The language used in it, the discussions leading to it, and the Charter provisions invoked are relevant factors, all with the purpose of establishing intent of the Security Council to create obligations on the addressee(s) of the resolution.\textsuperscript{113}

3.2.3 Security Council Resolutions on women, peace and security

On the 31 October 2000, the United Nations Security Council unanimously passed Resolution 1325 under article 25 of the Charter, providing the foundation of the international Women, Peace and Security (WPS) agenda.\textsuperscript{114} Years of lobbying of women’s advocates from nongovernmental organizations (NGOs) and from within the UN system finally succeeded in placing issues related to women, peace and security on the agenda of the Security Council.\textsuperscript{115} Another six thematic resolutions on women, peace and security have been adopted since – UNSCR 1820, 1888, 1889, 1960, 2106 and 2122 - and together these resolutions draw attention to the

\textsuperscript{108} Swaine (2009) p.426
\textsuperscript{109} Akter (2013) p.14
\textsuperscript{110} ICJ Reports 2004 p.136, para.134 where ICJ found that Israel had “contravened” a number of SC resolutions, none of which were adopted under Chapter VII of the UN Charter.
\textsuperscript{111} Öberg (2005) p.880
\textsuperscript{112} Dag Hammarskjöld Library (2017)
\textsuperscript{113} Öberg (2005) p.885
\textsuperscript{114} Akter (2013) p.6
\textsuperscript{115} Tryggestad (2009) p.539
gendered impacts of conflict-related violence and advocate for the full participation of women at all stages of peace processes. Resolution 1325 aims to mainstream gender into peace and security policies by encouraging the Secretary General, the Security Council, UN departments and member states to: fund gender-sensitive technical development and training, consider the different ways that conflict impacts women and girls; and strive to involve women in peace negotiations, policing, peacekeeping, and humanitarian operations.116

Comparably to the Convention on the Elimination of All forms of Discrimination against Women (CEDAW), which was created based on a conclusion that gender-neutral instruments do not sufficiently recognize the discrimination and experiences that women endure on the basis of being women, thus requiring an asymmetric approach117, UNSCR 1325 is a gender-specific instrument recognizing the gendered impacts of war on women, as well as acknowledging that the exclusion of women from conflict resolution is a threat to lasting peace.118 Across all jurisdiction and conflicts, women are the group that have historically been the most marginalized and excluded from conflict-resolution and peace-building processes, and harms experienced by women in conflict has been left to the private sphere outside the legal framework of international humanitarian law.119 There is a knowledge gap in what women experience in war, which in part is due to the difficulties of collating data during periods of conflict and in its aftermath.120 We do however know that women face additional issues both during and after conflict and war, such as increased sexual violence, reproductive violence, forced impregnation, forced abortion, and sexually transmitted diseases.121 Additionally, traditional gender roles often get further entrenched and exacerbated during times of extreme violence, and this pattern is often extended into the post-conflict phase.

UN Resolution 1889 calls for specific implementation methods, including a monitoring system and a set of indicators on UN Resolution 1325.122 In his 2010 report on Women, Peace and Security123 the UN Secretary General named and thus consolidated a number of priority areas, or “pillars”, on the women, peace and security agenda: participation, addressing the pressing issues for women’s political leadership in peace- and security governance; prevention, focusing on strategies to combat violence; protection, of both the rights and bodies of

116 Aolán (2012) p.58
117 Hellum and Sinding Aasen (2013) p.2
118 Bell and O’Rourke (2010) p.943
119 Aolán (2012) p.66
120 Ibid. p.67
121 Ibid. p.55
123 S/2010/498
women as well as access to mental health and psychosocial support; and relief and recovery for conflict survivors, particularly survivors of sexualized violence in conflict. Within each of these pillars there are a number of strategic priorities and activities.

States, NGOs and scholars frequently debate where UNSCR 1325 falls within the spectrum of international law. While some argue that only resolutions of the Security Council that are adopted under Chapter VII of the Charter of the United Nations are legally binding (and Resolution 1325 is not, as it is adopted under Chapter VI), others argue that it is binding due to the application of the Resolution by a critical mass of actors and because it reflects and reinforces already binding obligations of international law. Given the legal and political status of normative pronouncements from the Security Council, the adoption of the resolutions is a notable signal in itself. The resolution communicates “an evident normative weight” since it is emerging from the “highest pinnacle of the international lawmaking apex”.

3.2.3.1 Criticism of Resolution 1325

Although the adoption of UNSCR 1325 has been lauded as a milestone for women’s rights internationally, and for leading the way for the Security Council’s agenda on women, peace and security, it has also been subject to critical views on its actual impact and radical potential.

First and foremost, UNSCR 1325 and its subsequent resolutions are criticized for lacking clear targets, indicators and benchmarks to measure progress in the implementation. Since the Resolution was not adopted under Chapter VII of the UN Charter, its legal status is unclear. The Security Council's failure to establish a Resolution 1325 monitoring mechanism is in contrast with its establishment of a mechanism to monitor the implementation of its resolutions on child soldiers, which have the same non-binding status as Resolution 1325.

Although UNSCR 1325 seeks to shift the focus from women as victims to women as effective actors in peace and peace building, it has been criticized of doing the opposite, namely ad-

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125 Appiagyei-Atua (2011) p.6
126 Aoláin (2012) p.58
127 Ibid. p. 59
129 Fujio (2008) p.216
130 UN Doc. S/Res/1612
vancing protective stereotypes that essentialize women in conflict to either victims of sexual violence, mothers, or uncritical advocates for peace.\textsuperscript{131} However, a positive shift has taken place in the Council’s language, as later Resolutions add a much broader representation of women as actors and agents.\textsuperscript{132}

Feminist scholars have also criticized the trade-offs occurring when using Security Council Resolutions as strategy to promote gender equality, - between influence and co-option, and between changing international law and changing the situation for women.\textsuperscript{133}

3.2.4 Coercive features of National Action Plans on UNSCR 1325

The call from the Security Council for Member States to adopt National Action Plans, was a new approach to the challenges of ensuring national-level implementation of UNSCR 1325.\textsuperscript{134} Although Member States have been slow to follow up, the resolutions and the following requests to adopt NAPs constitute a compliance pull as they are coming from the highest legislative body internationally.\textsuperscript{135} The NAPs are soft law tools developed from a cooperation between state and non-state actors, outlining detailed policies and courses of action without being passed by parliament as formal law. The targets and benchmarks of the NAPs are not compulsory in the strict sense, and non-compliance is not legally sanctioned. However, NAPs can possess effective coercive features to ensure its implementation, and which makes them more than simply a practical means through which states can demonstrate steps to implement the resolutions.

In the following I will go through some of the key features that constitute compliance pulls for countries that have adopted NAPs on UNSCR 1325.

3.2.4.1 Adoption as a compliance pull in itself

Firstly, the adoption of the NAP constitutes a compliance pull in itself. As the government in a written document has shown its commitment to approach a set of goals through a course of action, expectations are created that the Plan will be followed through. Governments can be held democratically accountable for policies to which they have agreed. Understanding the binding nature of soft law requires a definition of law that goes beyond a strictly legal under-

\textsuperscript{131} Otto (2009) p.23
\textsuperscript{132} Pratt and Richter-Devroe (2011) p.494
\textsuperscript{133} Bell and O’Rourke (2010) p.945
\textsuperscript{134} Akter (2013) p.10
\textsuperscript{135} Max Planck Encyclopedia of Public International Law (2007)
standing, - an understanding that law (soft or hard) is produced and operate in a social context. Soft law sanctions for non-compliance, such as shaming, conformity, fear and persuasion are effective coercive measures compelling states to strive to reach the targets set in the NAP. As the NAPs are based on international norms, these types of soft sanctions are also to be expected from the international community in the case of non-performance.

3.2.4.2 Specificity: The NAP as a tool to making soft law harder

Secondly, and perhaps most importantly, the NAPs’ capacity to compel states to implement the provisions is determined by the mode of target formulation, that is, to establish credible, appropriate and qualitative indicators to evaluate state performance against. When adopting National Action Plans, States decide on benchmarks and timelines that they can be held accountable for. “Vague targets make monitoring, combined with voluntariness and the choice of instruments, a duller weapon than was originally planned”. Without firm benchmarks and timelines, there is a risk that the NAPs will merely report on on-going activities, without moving in new directions. The binding nature of the NAPs depends on the specificity of these targets. Concrete, specific targets and action points, and tools to monitor progress is what determines the quality of the NAP.

3.2.4.3 Strengthening – and strengthened by - the women, peace and security normative framework

Thirdly, UNSCR 1325 does not exist in a vacuum. It refers to binding obligations and commitments of international law, and is thus reinforcing the commitments of Member States to take action on upholding the rights of women and girls in relation to conflict. Legal instruments directly referred to in the resolution are: the Geneva Conventions of 1949 and the 1977 Additional Protocols; the Refugee Convention of 1951 and the 1967 Protocol. Other UN Treaties referred to include the CEDAW and its Optional Protocol 1999; the CRC and its two Optional Protocols of 2000; and the Rome Statute 1998. The Resolution also reflects international and customary law protections under each pillar.

136 Zerilli (2010) p.11
137 Ibid. p.5
138 Swaine (2009) p.433
139 Héritier (2001) p.10
140 Lewis (2015) p.13
141 SCR 1325, paragraph 9
UNSCR 1325 and the subsequent resolutions on women, peace and security form part of a growing framework of international and regional law guaranteeing the rights of women and girls in relation to conflict.\(^{142}\) Key elements of the legal framework include: The CEDAW; The Committee on the Elimination of Discrimination against Women (CEDAW Committee); General Recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations (CEDAW GR No. 30); The Beijing Declaration and Platform for Action 1995 (BPFA) notably its two critical areas of concern on Violence against Women and Women in Armed Conflict; The UN General Assembly Outcome Document of its 23rd Special on Women 2000: Gender Equality, Development and Peace for the 21st Century 2000 (UNGA Outcome Document); The UN Commission on the Status of Women Agreed Conclusions on the prevention and elimination of violence against women and girls 2013 (CSW Agreed Conclusions 2013).\(^{143}\) The WPS project is now solidly established as a distinct global initiative in both law and policy.\(^{144}\)

In 2015, in response to the Security Council invitation in Resolution 2122, the Secretary-General requested Radhika Coomaraswamy to be the lead author of a Global study on the implementation of UNSCR 1325, and UN Women to be the secretariat of the study. The study stresses that UNSCR 1325 is a human rights mandate\(^{145}\); it compiles examples of good practice, and points to the missing incentives and accountability measures of the resolution, with the goal of providing a roadmap for the way forward of the WPS agenda.\(^{146}\) It explores the role of human rights mechanisms in holding Member States accountable for human rights obligations related to the women, peace and security agenda, including through international treaty bodies and Universal Periodic Reviews (UPRs).

Through research, presence and advocacy, NAPs are generating awareness of the WPS agenda on a local, national and international level. It is also creating linkages between the resolutions and other international legal instruments such as the CEDAW and the Beijing Platform and thus strengthening the WPS project further. In both state- and shadow reports under the CEDAW and the UPR, Member States and NGOs are regularly referencing to Resolution 1325.\(^{147}\) Additionally, the CEDAW Committee is strengthening the ambit of the WPS frame-

\(^{142}\) Lewis (2015) p.3
\(^{143}\) Ibid. p.3-4
\(^{144}\) Swaine (2009) p.432
\(^{145}\) Coomaraswamy (2015) p.15
\(^{146}\) Ibid. p.5
\(^{147}\) Swaine (2009) p.433
work by frequently referring to UNSCR 1325 in its reports, which might also lead to new methods of holding states accountable for, and support implementation of the framework.\textsuperscript{148}

### 3.2.5 Implementation

This section briefly describes what implementation is, and ways of measuring effective implementation:

Implementation is the steps taken in the execution of a policy, program, or plan laid out to achieve stated goals within a set time frame.\textsuperscript{149} For the NAPs, it is the process whereby its provisions are translated into action at the national and local level. Implementation is measured by comparing the goals laid out in the NAP to the actual situation. As shown in section 3.2.4, the more specific the targets are, the stronger compliance pull they entail, simply because discrepancy between the goal and the facts are spotted more easily. That said, some things are easier to measure than others. If a target in the NAP is to establish a quota system for women in electoral politics, it is easy to conclude after the set time frame whether a provision on a quota system is passed, and whether the given percentage of women is represented. On the other hand, if the target is to raise awareness and change attitudes among men and boys to put an end to domestic violence, it is harder to measure the performance. A “good” NAP will therefore state specific actions that will be taken to raise awareness and change attitudes, such as trainings of teachers, police, politicians, etc., incorporation of the topic in the school curriculum and other non-formal education programmes, information campaigns on health services and numbers to call in cases of violence, and so on. Established indicators will then be the number of trainings carried out, the actual incorporation of curriculums, etc. Another important step towards successful implementation, is to allocate the responsibility of carrying out the set action points to a specific agency or ministry, perhaps with support from NGOs or civil society.

\textsuperscript{148} Ibid.

\textsuperscript{149} Miller et.al. (2014) p.56
4 Nepal’s National Action Plan on UNSCRs 1325 and 1820

4.1 Case study introduction

The subject of this case study is Nepal’s NAP on implementation of UNSCRs 1325 and 1820 that was adopted for the period 2011-2016. The NAP is one of the main mechanisms available to track the enforcement of UNSCR 1325, and is a potentially useful tool to strengthen women’s human rights on the ground in the post-conflict context of Nepal. Additionally, Nepal’s NAP has been lauded as one of the best examples\(^{150}\), developed out a highly consultative process\(^{151}\), and providing clear targets, action points and a monitoring and evaluation system that uses a combination of activity, result and outcome indicators. The NAP should therefore have every qualification necessary to translate into meaningful changes to conflict-affected women. However, as this case study will show, it has proved to be challenging to avoid that the development of the NAP becomes an end in itself. Now that the first NAP has been phased out, it is necessary with a thorough evaluation of the NAP in order to be better equipped to overcome the challenges to effective implementation in a phase 2 of the NAP, which is currently under discussion\(^{152}\).

The aim of the case study is to provide insight to both the potential value of the NAP and to its actual added value\(^{153}\). The case study pursues the two main research questions presented in sections 1.3 and 2 of this paper: 1) Binding or non-binding? and 2) Putting women’s human rights protection on the agenda, or a “ghettofication” of such norms? In order to answer question 1, section 4.2.2 and its subsections are based on assumptions of what constitutes the strongest compliance pulls for States to effectively implement the NAP, and relate to the NAP’s potential to effectively implement UNSCR 1325. Question 2 relates to the NAP’s actual added value in translating into meaningful changes for women on the ground, and is examined by going through the NAP’s major achievements and challenges in section 4.2.3. The evaluation is based on Nepal’s NAP, its First-Year Monitoring Report (2012), and the Midterm report (2014), as well as various reports and evaluations by NGOs and scholars.

Section 4.1.1 and 4.1.2 provides some background and insight to Nepal’s conflict and transition, and to Nepali women’s social and legal status. Section 4.2.1 briefly describes Nepal’s NAP, before the evaluation of the NAP starts in section 4.2.2.

\(^{150}\) Yadav (2017) p.1
\(^{151}\) Miller et.al. (2014) p.115
\(^{152}\) Shresta (2017)
\(^{153}\) Hellum and Sinding Aasen (2013) p.3-4
4.1.1 Nepal’s conflict and transition

The armed conflict in Nepal between the Communist Party of Nepal-Maoists (CPN-Maoist) and the Government lasted from February 13 1996 to November 21 2006 and left a serious impact on the country.\textsuperscript{154} The Maoists succeeded in taking control of large areas of the country through targeted attacks on government officials, police officers, army depots, and banks.\textsuperscript{155} Their main objectives were to abolish the monarchy, establish a people’s republic and elect a constituent assembly to draft a new constitution for the country. During the decade-long war, over 200 000 people were displaced, over 14 000 people were killed, and over 1400 people disappeared.\textsuperscript{156} However, these are only estimated figures, and the actual numbers are likely to be much higher.

The Comprehensive Peace Accord (CPA) was signed in 2006, marking a shift from a centuries-old monarchy to a federal republic. Constituent Assembly Elections were held in April 2008 and former insurgent leader Prachanda became Nepal’s Prime Minister after the CPN-Maoist party won the election. The shift represented an opportunity to compensate for losses on political, social and economic fronts by addressing the issues of a multi-cultural, multi-ethnic and multi-lingual state and its people\textsuperscript{157} and held promises of a federal, democratic, republican state, committed to fostering equality and social inclusion. However, this has yet to translate into meaningful changes for women\textsuperscript{158} and many other historically marginalized groups.\textsuperscript{159} Moreover, people affected by the war are still waiting for justice; thousands of people remain displaced, the wives and families of disappeared people, and survivors of rape and sexual violence are still waiting for justice, reparations and support.\textsuperscript{160}

4.1.2 Nepali women’s social and legal status

Nepal has a highly diverse population marked by ethnic differences and cultural practices. According to a census by Voluntary Services Overseas (VSO Nepal) in 2011, indigenous peoples constitute 36.4 per cent of the population.\textsuperscript{161} Still after the prohibition of caste-based discrimination in 1963 and the Maoist insurgency, caste-based hierarchies, traditional social

\textsuperscript{154} Nepal NAP (2011) p.ix
\textsuperscript{155} Quy-Toanand and Iyer (2010) p.736
\textsuperscript{156} Yadav (2017) p.2
\textsuperscript{157} Gurung and Thapa (2016) p.68
\textsuperscript{158} FWLD (2011) p.1
\textsuperscript{159} Lawoti (2007) p.2
\textsuperscript{160} Yadav (2017) p.2
\textsuperscript{161} VSO Nepal (2011) p.2
norms and discriminatory practices of dominant caste groups, religious differences favoring Hinduism, language, and gender relations rooted in patriarchal structures, are the main sources to inequality and exclusion. Nepali women thus face many forms of discrimination; not only on the basis of gender, but also intersectionally around caste, ethnicity, and religion, among others.

The prevalence gender-based violence in Nepal is high. Violence against women is rooted in historical and structural inequality in power relations between women and men. Data collected by the Informal Sector Service Centre (INSEC) shows that there were 2,348 cases of domestic violence against women across the country in 2013 that were related to “domestic violence, violence faced in the name of witchcraft, polygamy, lack of pre- and post-partum services, rape attempt, sexual abuse, abortion and women trafficking”. Moreover, various cultural practices linked to cultural backgrounds that are harmful to women, such as badi, chaupadi, and jhuma still exists in Nepal, and traditional practices, including the dowry system, are still very commonly practiced. However, violence is difficult to document as Nepal is a conservative society and women tend to be silent victims.

Nepali women have been deeply affected by the armed conflict which can be attributed to the large number of women combatants in the Maoist insurgency, the high levels of sexual and gender-based violence committed during and after the conflict, as well as the fact that women were largely excluded from the peace process. The impacts of the decade-long conflict on the status of women and girls, their families and their communities are “diverse, complex and still unfolding”. According to the report by VSO Nepal (2011) women and girls reportedly represented about 30% of armed fighters in the conflict and were prominent among the Maoist mobilizers, cadres and district secretaries. Many women joined because they lived under extremely harsh, feudal conditions and were attracted by the Maoist ideology that wanted to change the prevailing system of exclusion and inequality between women and men. At the same time, many women were also coerced into participation on the Maoist side as they took over villages and demanded compliance. Despite their role in the movement, women were underrepresented in the higher levels of the Maoist party. Many women that participated

\[\text{162} \quad \text{Ibid. p.24} \]
\[\text{163} \quad \text{ICFG (2013) p.10} \]
\[\text{164} \quad \text{INSEC (2013) p.12} \]
\[\text{165} \quad \text{Gurung and Thapa (2016) p.70} \]
\[\text{166} \quad \text{Ibid. p.69} \]
\[\text{167} \quad \text{Arino (2008) p.5} \]
\[\text{168} \quad \text{VSO Nepal (2011) p.37} \]
\[\text{169} \quad \text{Ibid.} \]
\[\text{170} \quad \text{Arino (2008) p.10} \]
directly in the conflict continue to be marginalized.\textsuperscript{171} Female combatants find themselves excluded and unable to return and reintegrate in their villages due to the stigma attached to the rebellion against traditional gender roles and patriarchal family structures.

As a result of the conflict, many women lost their husbands. Especially in rural areas, having to live without male members in the house is usually very difficult for women in a deeply patriarchal society.\textsuperscript{172} They get the extra work burden and must take on agricultural and other tasks that are culturally forbidden for women. They face difficulties in securing access to government compensation, their basic rights and resources such as land and public services. Without a support system and no source of income, they are vulnerable to different forms of exploitation and gender-based violence. Their children and remaining household family members are also vulnerable to physical, sexual and psychological violence. Additionally, they face stigma and social pressures, particularly as single women (widows), who often are forced to follow inhumane cultural practices.

Prevailing challenges where domestic law and practices are in breach with international law and provisions in the UNSCRs:

- Nepal’s \textit{National Code} (chapter 14, section 1, \textit{Muluki Ain, 2020 [1963]}) fails to acknowledge and incorporate a broader definition of rape, which moves beyond traditional understandings of vaginal penetration. There is a statutory limit of 35 days for reporting rape to the police, which significantly hinders rape victims who are only able to report incidents of sexual violence after thirty-five days.\textsuperscript{173}

- According to Nepalese law, citizenship can only be conferred through the father. Women who gave birth to children whose fathers were dead or disappeared during the conflict, or otherwise are not present, are unable to pass on their citizenship to their children, creating a “generation of stateless children”.\textsuperscript{174}

On 20 September 2015, Nepal adopted a new Constitution recognizing various rights of women, including the right to reproductive health and equal rights to property. However, discriminatory laws and policy of state is still pervading in Nepal, and continue to be a cause of gender-based violence.\textsuperscript{175}

\textsuperscript{171} VSO Nepal (2011) p.38
\textsuperscript{172} Gurung and Thapa (2016) p.71
\textsuperscript{173} Ibid. p.72
\textsuperscript{174} Abdela (2011) p.71
\textsuperscript{175} Gurung and Thapa (2016) p.69
4.2 Evaluation of Nepal’s National Action Plan

4.2.1 Development, purpose and scope

Nepal’s National Action Plan On Implementation of the United Nations Security Council Resolutions 1325 & 1820 was adopted on February 1 2011 for the period 2011 to 2016. Nepal was the first country in South-Asia to develop a National Action Plan on UNSCR 1325.\textsuperscript{176} The NAP is a result of extensive advocacy from the Nepali women’s movement and the UN, and was launched under the leadership of the Ministry of Peace and Reconstruction (MoPR). It is designed for the Government of Nepal (GoN) to work closely with development agencies and civil society at local and national levels, and across government sectors. Nepal has a strong local NGO culture, with many active women’s organizations working on SGBV and trafficking issues, and local NGOs and civil society stakeholders were deeply involved in the process that led to the NAP.\textsuperscript{177} Saathi’s (Nepali women’s rights NGO) own leadership in the mid-term report shows the important role of local stakeholders in providing technical support and research. The British Embassy, the Norwegian Embassy and UN Women were the major development agencies involved in the process.

The supreme goal of Nepal’s NAP is to establish durable peace and a just society.\textsuperscript{178} With the adoption of the National Action Plan, the Government of Nepal (GoN) acknowledges that women and girls were the most vulnerable population groups during the conflict because of actions by both the Maoists and the State security forces, and that they suffered from sexual and gender based violence, affecting their physical and mental health as well as leaving a deep impact on their families and communities.\textsuperscript{179}

The NAP consists of five pillars: 1) Participation; 2) Protection and Prevention; 3) Promotion; 4) Relief and Recovery; 5) Resource Management, Monitoring and Evaluation. Each pillar sets out activities to be carried out within five years to ensure the full participation of women and girls at all levels of decision-making and in the peace-building process. The NAP also focuses on providing conflict-affected women and girls skills-based training, psycho-social counselling, childcare facilities and economic compensation.

The NAP recognizes 14 different categories of conflict-affected women, including former combatants, widows, and women with disabilities, and includes provisions of relief and re-

\textsuperscript{176} Saferworld (2012) p.i
\textsuperscript{177} Lewis (2015) p.55
\textsuperscript{178} Nepal NAP (2011) p.ix
\textsuperscript{179} Ibid.
covery to these groups, as well as outlining the responsibility of respective government departments and including indicators to measure both the normative and operational implementation of the resolutions.\textsuperscript{180}

The Nepal Peace Trust Fund (NPTF)\textsuperscript{181} allocated NPR 844.5 million (around US$ 7.9 million) to fund ten NAP projects from ten different ministries. Most was allocated to spend in the defense sector, training police personnel on UNSCR 1325 and developing infrastructures.\textsuperscript{182} Additionally, development partners provided technical support, and funding to some additional NAP projects.\textsuperscript{183}

4.2.2 Potential to advance implementation of UNSCR 1325

4.2.2.1 Adoption as a compliance pull in itself

The adoption of a NAP is in itself a compliance pull for the involved stakeholders to implement the provisions and programmes agreed upon. The development of a NAP creates expectations of implementation from a local, national and international level. It was a strategic move by Women’s rights activists to approach Ministry of Peace and Reconstruction instead of going to the Ministry for Women, Children and Social Welfare, as UNSCR 1325 is about peace and security and not just a women’s agenda.\textsuperscript{184} The location of the NAP within the government is thought to be critical for determining the focus of the plan and for its effectiveness.\textsuperscript{185}

Nepal’s National Action Plan was developed out of a highly consultative process, and is pointed to as one of the best examples of a collaborative project between government, development partners and NGOs/civil society.\textsuperscript{186} A series of meetings and consultations were held, both at national and local levels. In order to ensure that the needs and concerns of locals were included in the NAP, 52 district consultations, 10 regional consultations, and separate special consultations with women and girls directly affected by the conflict were carried out, ensuring local ownership.\textsuperscript{187} The consultations were attended by over 3000 participants and generated

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\textsuperscript{180} Ibid. para 7.1 \\
\textsuperscript{181} NPTF is a consortium created in 2007 with a 50% contribution from the Government of Nepal, and 50% from the development partners. \\
\textsuperscript{182} Mid-term review (2014) \\
\textsuperscript{183} Yadav (2017) p.5 \\
\textsuperscript{184} Ibid. p.3 \\
\textsuperscript{185} Swaine (2009) p.416-417 \\
\textsuperscript{186} Yadav (2017) p.4 \\
\textsuperscript{187} Miller et.al. (2014) p.115
\end{flushright}
more than 1500 action points which were clustered under the five pillars of the NAP. Participants included members of the local peace committee, women’s groups, children from families affected by the conflict, local officials, and representations of national NGOs and UN entities.

The participatory and consultative approach was made possible through a joint effort of the Peace Support Working Group (consisting of development partners and UN entities) working closely with NGOs and CSO networks who had long-standing trust and good relationships with women and the wider community at the local level. The engagement of UN Women and the Peace and Women Support group were essential to the NAP process, and it is uncertain whether the development would have had the same momentum without this external, international pressure, including to secure necessary funding. For the implementation, a High-Level Steering Committee and the NAP implementing committees were formed with representation from various ministries, CSOs and UN Women. A civil society “1325 Action Group” was also established to monitor implementation. In addition, a gender unit was established at the MoPR, as well as NAP District Coordination Committees (DCCs) formed in each district to for the localization of the NAP.

4.2.2.2 Specificity: The NAP as a tool to making soft law harder

The potential binding nature of the NAPs depends on the specificity of its targets and action points, and concrete, specific targets and action points, and tools to monitor progress is what determines the quality of the NAP. Nepal’s Action Plan is one of the most specific NAPs across the featured criterion in a study of 40 NAPs conducted in 2014. The study also commended Nepal as an example of a country with a 1325 NAP that pay close attention to internal decentralization in developing its NAP as well as ensuring local follow-through with the creation of district-level implementation offices. The NAP is also context-specific in the sense that it recognizes that physical gender-based violence in the Nepalese context is exacerbated by cultural, political, social and other structural norms within society, such as the caste system.

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188 Coomaraswamy (2015) p.244
189 Barrow (2016) p.273
190 Yadav (2017) p.4
191 Miller et.al. (2014) p.17
192 Barrow (2016) p.273
4.2.2.3 *Strengthening – and strengthened by - the women, peace and security normative framework*

The significant increase in the legal framework on WPS means a fortified responsibility for acts of violence directed at women during armed conflict.\(^{193}\) Implementing the resolution as an integrated part of a wider legal framework on WPS allows for a robust implementation of the full spectrum of rights concerning women, girls, men and boys affected by conflict.\(^{194}\)

With the adoption of the NAP, Nepal bridged the gap between international and national level responses to UNSCR 1325.\(^{195}\) The NAP reflects binding obligations under the legal framework on women, peace and security, drawn not only from SCRs, but also from CEDAW\(^ {196}\) and the BPfA.\(^ {197}\) The policies and plans relevant to the WPS agenda listed in the NAP include: The National Action Plans: on the Implementation of CEDAW (2004); on Gender Equality and Empowerment of Women (2005) which outlines Nepal’s commitments in relation to the BPfA; and against Gender-Based Violence (relevant to addressing conflict-related SGBV).

Through research, presence and advocacy, the NAP is generating awareness of the WPS agenda, and linkages between the Resolutions and other international legal instruments such as CEDAW and the Beijing Platform is strengthening this normative framework. In state- and shadow reports under CEDAW and the UPR, the GoN and NGOs have been referencing UNSCR 1325 and the NAP since its implementation.

**4.2.3 Achievements and challenges of the NAP (2011-2016)**

This section examines the NAP’s actual added value by systematically going through its major achievements and challenges in order to determine whether the NAP has translated into meaningful changes for conflict-affected women. Implementation is measured by comparing the NAP targets to the actual situation after the NAP has been phased out. Effective implementation means that the adoption of the NAP has not become an end in itself.

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\(^{193}\) Aolán (2012) p.57
\(^{194}\) Lewis (2015) p.8
\(^{195}\) Barrow (2016) p.275
\(^{196}\) Nepal ratified CEDAW in 1991 without reservations.
\(^{197}\) Lewis (2015) p.53
4.2.3.1 Achievements

Major achievements of the NAP are: 1) increased general awareness of WPS issues; 2) women’s increased participation; and 3) capacity building of government officials and security providers.

Firstly, among the major achievements recorded in the mid-term report were increased general awareness of women, peace and security issues. The NAP has also been used as an advocacy tool to create awareness about the gendered impacts of war. Although gender mainstreaming was already strong in the Nepalese development discourse prior to the NAP, the NAP especially helped strengthening the gender mainstreaming discourse within government institutions.

Secondly, women’s increased participation in the UN Peacekeeping missions is another big achievement of the NAP, with minimum 5-10 per cent participation of women. The Nepalese army sends Military Observers in the Peacekeeping Missions, with minimum 3 per cent women in these roles under a new Army policy. However, participation of women is still far below the constitutional guarantee of 33 per cent representation in all organs of the State.

In 2013, the Election Commission issued a Gender and Inclusion Policy, ensuring gender mainstreaming in all electoral processes to increase women’s participation in politics. NAP Localization Guidelines, developed with the goal of integrating activities directly into local planning processes were developed by the MoPR and the ministries of Federal Affairs and Local Development, together with Nepali CSOs. It also led to the incorporation of UNSCR 1325 and 1820 in school curriculum, and in police and army training. The Local Peace Committees must also have 33 per cent representation of women in line with the constitutional guarantee.

Thirdly, capacity-building in police and army is highlighted among the main achievements of the NAP. The Nepal Police developed a Gender Policy in 2012. Additionally, they issued a

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198 Mid-term report (2014) p.4
199 Yadav (2017) p.5
200 Ibid.
201 Ibid.
203 Yadav (2017) p.5
204 Coomaraswamy (2015) p.244
205 Nepal NAP (2011) p.7
Code of Conduct Against Gender Based Violence. The Nepal Army has developed several training manuals on gender, including a training curriculum for new recruits with a session on UNSCR 1325 and 1820. Separate, women-friendly barracks in the training centre, including two childcare centres, have been built to promote women’s participation in the Nepal Army.  

4.2.3.2 Challenges

Despite seeming to have every qualification and essential element recommended to constitute a good NAP, the implementation has not made substantive progress, and the list of challenges is much longer than that of achievements. The major challenges to the effective implementation of the NAP were: 1) marginalization as women’s projects; 2) homogenization of Nepali women; 3) a male-dominated operational environment; 4) limited outreach; 5) failure to address needs of survivors of conflict-related S/GBV and female ex-combatants; 6) lack of planning and accountability; 7) lack of resources; 8) shifting priorities; and 9) changing global and national political contexts.

Marginalization became a challenge despite the strategic decision to incorporate the WPS agenda into the MoPR mandate, and the NAP projects were still regarded as “women’s projects”. The whole concept of implementing the WPS agenda through NAPs on 1325 was new in Nepal, and so most of the NAP budget was spent on trainings and orientations. First the policymakers were trained, and then they trained others.

Homogenization of “Nepali women” in the efforts to implement the Resolutions has also been criticized. Women have largely been designated as victims, which is problematic because it contributes to a construction of “Nepali women”, not recognizing the diversity and their pluralistic identities, and taking focus away from other aspects that may be more relevant to women’s current situation, such as where in Nepal they come from, ethnicity, level of education, or class/economic situation. The tendency is affecting the already poor and marginalized women the most, because they are the ones lacking the support system and strong background it usually takes to bargain in the public domain. Hence, there is still a strong need for a

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207 NPTF Newsletter (2016) p.5-6  
208 Gurung and Thapa (2016) p.71  
209 Yadav (2017) p.6  
210 Ibid. p.7  
211 Gurung and Thapa (2016) p.73  
212 MFA of Finland (2010) p.42
transformation approach to implementing the Resolutions, that includes the broader gender equality and rights framework needed to promote real change.213

A male-dominated operational environment remains a challenge. Most programme activities on how to improve women’s political and electoral participation are aimed at increasing participation of women at the national level, and not at ensuring increased participation of women in rural areas and poor women in urban areas, including in the local governance structures.214 District Coordination Committees (DCCs) and Local Peace Committees (LPCs) were the implementing bodies of the NAP at the local level in Nepal. The DCCs, which were chaired by the Chief District Officer (CDO), were mostly male dominated.215 Moreover, the Global Study found that women in the local committees still feel reluctant to speak up unless they are discussing issues in women-only meetings, suggesting that capacity building for local women’s leaders must accompany efforts to increase their representation in order to translate into meaningful participation of women.216 Projects targeting behavioral change among men should also be considered to address the structural obstacles to women’s participation.

Limited outreach was another major challenge. While a few projects had a broader impact, such as the quota of 33 per cent women in LPCs, most projects were implemented only in some areas of selected districts.217 Implementation occurred mainly at the central and government level, and programmes and organizations working on the implementation are mostly Kathmandu-centric. This is a serious problem for local stakeholders (village development and local peace committees, conflict-affected groups, local governments, women’s development officers), and widens the gap between those working with implementation, and conflict-affected people. Recommendations in the mid-term report include for the NAP to be promoted and extended to the local level for a greater outreach to conflict-affected women and girls, including in the major local dialects, and improving responses to rape and domestic violence by service providers and government agencies.218

The adoption of the NAP reflects the government’s commitment to end gender-based and sexual violence perpetrated during and after the conflict.219 However, translating the commitments into practice continues to be problematic. In fact, nothing has been done under the

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213 Swaine (2009) p.404
214 MFA of Finland (2010) p.42
215 Yadav (2017) p.8
217 Yadav (2017) p.9
218 Mid-term report (2014) pp.86-89
219 Gurung and Thapa (2016) p.70
NAP to prevent violence, and nothing to support survivors of sexual violence.\textsuperscript{220} It has been suggested that the latter is because the state actors – the Nepal Army and the Armed Police Force – committed most of the rape crimes.\textsuperscript{221} Additionally, prevention and response to SGBV is thought to be too complex and time-consuming compared to the resources and mechanisms in place: “If you bring a case of sexual violence, you need to provide long-term support to the victim, from providing justice to helping them rebuild their lives.”\textsuperscript{222} Limited budgets, defined outputs, and the need to finish projects on time, are factors hindering development partners and NGOs to implement long-term projects.\textsuperscript{223} Moreover, while the NAP recognizes that women suffered from sexual violence during the conflict, the statutory limit on reporting a rape to the police, the narrow definition of rape in the Civil Code, the granting of amnesties to alleged perpetrators, as well as social and cultural stigma connected to (victims of) sexual violence, are among the challenges for those seeking compensation and justice. An additional obstacle for survivors of conflict-related violence, including SGBV, to seeking justice and related compensation, is the lack of official and accurate data regarding conflict-affected women and survivors of SGBV.\textsuperscript{224} This makes it hard for agencies such as the Local Peace Committees to push for effective action.

Despite capacity building within the army, only a small number of female ex-combatants have been integrated within the army or entered the political arena.\textsuperscript{225} The majority have returned to their communities, where they are excluded and disempowered due to the stigma attached to the rebellion against traditional gender roles and patriarchal family structures. Those who are also single mothers face multiple challenges and stigmas related to that, as well as not having the time or resources to take advantage of the training and rehabilitation packages offered. Integration into existing national security forces is also a difficult option given the history of sexual abuse and ongoing gender-based discrimination. None of these issues have been sufficiently addressed under the NAP.

As mentioned above, there has been reluctance to start projects under the NAP that require long-term commitment. Most of the NAP’s projects have been short term, only made to last for two to three years.\textsuperscript{226} Most of them have now finished. The NAP was taken as a development project, and therefore its implementation has been development oriented, with fixed

\begin{itemize}
  \item \textsuperscript{220} Yadav (2017) p.10
  \item \textsuperscript{221} Ibid.
  \item \textsuperscript{222} Research participants’ expressed concerns, in Yadav (2017) p.10
  \item \textsuperscript{223} Yadav (2017) p.6
  \item \textsuperscript{224} Coomaraswamy (2015) p.244
  \item \textsuperscript{225} Ibid. p.179
  \item \textsuperscript{226} Yadav (2017) p.5
\end{itemize}
budgets and defined indicators in selected areas. However, the WPS agenda is a long-term plan requiring long-term investment to translate into meaningful changes for women and girls. Therefore, it is a challenge that the NAP is so reliant on foreign aid and the Government itself has not allocated any budget for the implementation. However, given the lack of development and poverty, implementation of the NAP is dependent on external support through donor funding from development agencies, which is also clearly indicated in the NAP. Without the external support it is highly uncertain whether successful implementation of the NAP is achievable.

A lack of planning and accountability were major challenges to the implementation as well. Initially, there was a lot of funds from donors for the implementation of the NAP but they have not been managed properly. There were no investment plan, and many projects were funded without proper planning and monitoring. Coordination between responsible agencies has been weak. The provision in the NAP to establish an Information Centre to keep record of all NAP projects never materialized, resulting in duplications of programmes. The NAP had a provision for yearly monitoring, but the monitoring was designed in a very expensive way. It should have been designed more cost-effectively, for example through civil society preparing yearly shadow monitoring reports. Only two monitoring reports were prepared, and there is no money allocated for a final evaluation.

In April and May 2015, Nepal was struck by several powerful earthquakes killing over 9000 people and displacing millions. After the earthquake, the priorities shifted to humanitarian work. There is no link between the WPS agenda and the post-disaster response, which is very unfortunate. Armed conflicts are not the only catastrophes which affect women disproportionately, and protection of women and girls during times of violence and crisis has appeared to be particularly challenging. Additionally, victims of the conflict that are now also affected by the earthquake are among the most vulnerable. Despite this, the WPS agenda and the post-disaster response seem to be two very distinct projects. The focus of both GoN and donors has shifted from the conflict-affected people to earthquake-affected people.

227 Ibid. p.7  
228 See Barrow (2016) p. 273 and NAP On Implementation of UNSCR 1325 and 1820 (2011) para 7.2  
229 Barrow (2016) p.274  
231 Coomaraswamy (2015) p.244  
232 Yadav (2017) p.9  
233 Ibid. p.2  
234 Ibid. p.7  
235 Miller et.al. (2014) p.4
Generally, foreign aid globally has been cut, which is impacting Nepal and the WPS agenda, as more “immediate” causes are given priority.\textsuperscript{236} For example, Nepal is no longer a focus country for the UK Department for International Development’s WPS agenda, and hence they will not fund the potential second phase of the NAP.\textsuperscript{237}

4.2.4 A new NAP

Nepal’s first NAP has now been phased out, and there are ongoing discussions of developing a phase 2 of the NAP.\textsuperscript{238} Although the government has made this decision, there is a lot of uncertainty regarding funding, and the way forward.\textsuperscript{239} It is not provided sufficient funding from either DPs side or from the Government of Nepal for an evaluation of the first NAP.\textsuperscript{240} The GoN never allocated any budget for NAP implementation, and DPs are now reluctant to provide funding due to reasons such as cuts in foreign aid and shifting priorities. The current situation is complex. Ideally, the GoN should not rely on external aid to develop a second NAP. For the NAP to be implemented effectively, it needs to be a long-term commitment with the Government having the main responsibility for its implementation. Donors and NGOs are also saying that it is the government’s responsibility. However, despite being committed to developing a second NAP, GoN does not have the money to support it. “Therefore, there is a deadlock kind of situation at the moment.”\textsuperscript{241}

However, in the event of a phase 2 of the NAP being developed, the collaborative and inclusive process that led to the first NAP, supported by effective monitoring and evaluation by GoN and the CSO sector, especially women’s organizations, would be a good model for the design, but including detailed planning for the actual implementation, and with improved mechanisms for accountability.\textsuperscript{242}

4.3 Case study conclusion

Unfortunately, the achievements of Nepal’s NAP are few compared to the investment.\textsuperscript{243} Almost a year was spent on designing and developing the NAP, but there was no proper plan for

\begin{itemize}
  \item \textsuperscript{236} Yadav (2017) p.7
  \item \textsuperscript{237} Ibid.
  \item \textsuperscript{238} Shresta (2017)
  \item \textsuperscript{239} Yadav (2017) p.5
  \item \textsuperscript{240} Bisht (2017)
  \item \textsuperscript{241} Yadav (2017) p.9
  \item \textsuperscript{242} Lewis (2015) p.56
  \item \textsuperscript{243} Yadav (2017) p.1-2
\end{itemize}
the actual implementation. Notwithstanding the many challenges, the NAP has strengthened the gender mainstreaming discourse in Nepal, and the participation of women has increased significantly in every government sector. Some gender-friendly policies have been developed, and there is a greater awareness among government officials and security personnel about the differential impact of war on women.244

The greatest challenges were the lack of a coordinated plan for the actual implementation, the changes in political context, and shifting priorities. The projectized approach reduced the WPS agenda to a few projects instead of constituting a legal framework to be incorporated into all relevant operations. It also resulted in reluctance to develop long-term requiring projects to address the needs of survivors of SGBV and of female ex-combatants, as well as projects on prevention of violence under the NAP. Despite being noted as a prime example of a collaborative project, involving stakeholders from a national level to the grassroots level through a highly consultative process, as well as receiving far more attention from the government, donors, and civil society organizations than other NAPs, it has not succeeded in making a difference for conflict-affected women.245 At this point, it seems that the development of the NAP has unfortunately become an end in itself.

Nepal’s first NAP does however provide a foundation for future implementation of the WPS agenda in Nepal.246 There is a High-Level Steering Committee to oversee the implementation processes, an implementing committee, a 1325 Action Group, and a Peace Support Working Group, who were all actively engaged in the implementation of the first NAP. The various guidelines developed for effective implementation, such as localization guidelines 2012, monitoring guidelines in 2012, and the training manuals in the Police and Army, as well as in other implementing agencies all serve as groundwork for a phase 2 of the NAP. Hopefully, there will be sufficient funding and commitment to continue with the second phase, where a more integrative approach is pursued and the WPS agenda is systematically incorporated into relevant programmes and operations. It is only through long-term commitment and evaluation that it can be ensured that the increased official participation of women in Nepal “is not temporary, their delegated roles not more symbolic than substantive, and their influential capacity not resisted by cultural norms.”247

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244 Ibid. p.10
245 Yadav (2017) p.10
246 Ibid. p.11
247 Coomaraswamy (2015) p.15
Are NAPs on UNSCR 1325 putting women’s human rights on the agenda, or supporting a ghettofication of such norms?

Drawing on issues related to the nature of NAPs as soft law tools, as well as findings and insights from the case study, this section discusses whether it is problematic that provisions on women’s rights are given a format that cannot be legally sanctioned in cases of non-compliance and whether the NAPs’ non-binding form ultimately leads to non-implementation. It also makes an attempt to explain why the answer - to both questions - is “not necessarily”. Both questions are founded on a concern about the effectiveness of soft law. The NAP’s effectiveness refers to whether its provisions are translated into transformative results for women on the ground, or whether they are merely contributing to a disparate set of non-binding legal norms that represent a ghettofication of norms on women’s human rights. This section argues that NAPs on UNSCR 1325 – with the right development and design - can potentially play an important role in interacting with and reshaping national law to the benefit of women, particularly as a result of local NGOs and civil society taking part in the norm-production and by interlinkage and reference between the NAPs and other instruments of the WPS normative framework.

In the case of NAPs on UNSCR 1325, the potential danger of norm fragmentation leading to a “ghettofication” of norms on women’s human rights is taking place on a national level. The development and adoption of NAPs is taking place outside regular law-making. The result is an overlapping set of norms which holds different levels of normative intensity. However, while being a result of norm fragmentation itself, the NAPs on UNSCR 1325 can contribute to impairing the potential negative outcomes of fragmentation by way of its design: In development countries in particular, projects related to sexual and gender-based violence tend to be scattered, short-term, with small budgets, and often carried out by civil society organizations. This tendency was reconfirmed in the case study, from which we know that the NAP had not managed to address the challenges of a projectized approach, and thereby failing to reaching out to more than a limited number of districts and people. However, with the right design, the NAPs on UNSCR1325 could actually represent a way of interlinking such projects on a more long-term basis, with earmarked support and with Governments as lead agents, with less fragmentation as the result.

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248 Aolán (2012) p.53
249 Zerilli (2010) p.11
250 MFA of Finland (2010) p.18
General criticism of international law is that it is a Euro-centered invention, but the NAPs present opportunities for local and direct civil society participation in law-making. A presupposed condition for this however, is that they translate into transformative results. The case study showed the importance of taking on a transformative approach to address the underlying causes of discrimination and inequality, and remove boundaries that hinder different groups of women from benefitting from the implementation of the NAP. To this end, the broad participation of civil society, including conflict-affected women and local women’s groups is key. It is hence essential that the NAP is regarded as a transformative process, and not as several, separated projects or as an end goal. Practitioners and scholars must recognize the danger of the development of the NAPs becoming an end in itself. The following discussion is whether the NAP’s non-binding form ultimately leads to non-implementation, and what constitutes compliance pulls for States to implement the provisions of the NAPs after their adoption.

Does the soft law format of the NAPs block or delay the development of hard law, and thus delimit human rights protection? And is there a risk that soft law simply becomes a tool for states to resist judicial supervision? Soft law has indeed been pointed to as a way for States to avoid domestic ratification and perhaps escape democratic accountability for the policies they have agreed to. However, by adopting NAPs, States are carefully negotiating, planning and designing steps to comply with the international soft law provisions of the resolutions, and these targets have normative significance despite its non-binding form. Section 3.2.4 outlined some of the features that “make soft law harder” through specificity, inter-linkage of instruments, and awareness-raising that creates expectations and in turn accountability through social and political compliance pulls. In the case of NAPs on UNSCR 1325, these same features apply. The process leading to the NAP and the decisions taken about its design is therefore of utmost importance in order to ensure effective implementation. In the NAPs, States outline plans containing action points and timeframes to act within, knowing that there are no formal sanctions for non-performance, but nonetheless creating expectations of performance. It is highly unlikely that the same level of detail so quickly could be passed as formal law. The lack of a binding form may reduce the options for enforcement from a short-term perspective (i.e. no litigation), but there is still a strong compliance pull in the expectations created based on the soft law norm. However, one of the greatest challenges to the implementation of 1325 through NAPs so far, is that many of the NAPs developed have no

251 Charlesworth et.al. (1991) p.644
252 Aoláin (2012) p.62
253 Lagoutte et.al. (2016) p.6
254 Boyle (2014) p.121
255 Shelton (2014) p.163
mechanisms to ensure accountability, nor any budgets available for implementation. This became the situation regarding Nepal’s NAP as well, as planning and coordination for the actual implementation was lacking, even though the previous stages of the NAP process was lauded as one of the best and most detailed. The challenge of securing sufficient budgets for the NAP implementation process is both the most fundamental to ensuring effective implementation, and perhaps the most challenging. It is important to distinguish lack of commitment with lack of resources, but it is close to impossible to say anything general on how to address this common reality from the field, in which “everything” is a trade-off between cost and benefit and highly dependent on changing global and national political contexts, and shifting priorities. In the case of Nepal, the earthquake led to a sudden shift in priorities on the decision-making level, but for many people on the ground, the same issues to which projects under the NAP on 1325 applied were similar or fortified by the earthquake. Instead of treating the WPS agenda and the post-disaster response as two different projects, there should have been a way of linking the two. Ultimately, to some extent the implementation of the soft law norms come down to question of power, as well as politics. These factors put certain limits to the legal analysis. Soft law is the weapon of the weak in the sense that it entails a range of possibilities of influencing law-making from below, which is better than nothing, but it also has its limitations, and may not always be as progressive, or even progressive at all.

Additional key-factors of enhancing accountability for non-performance of the NAP-provisions, is knowledge of the NAP. If people do not know about the NAP and its provisions, they do not have expectations of its implementation either. Awareness-raising, and regular checking of awareness of the NAP and its provisions, especially in rural areas, is therefore crucial for the effective implementation of the NAPs. Another indicator of effective implementation, is the frequency of which the NAP is used. Frequent use and reference help establish awareness and legitimacy of the NAP, and hence serving as further compliance pulls for the States to effectively implementing the NAP. The case study also revealed that limited outreach was one of the main challenges, and it was suggested as an explaining factor, that since the concept of implementing the WPS agenda through NAPs was new, most of the NAP budget was spent on trainings and orientations on the central level. This underscores the importance of continuing with a second phase, to build on the ground work done under the first NAP, even if that could have been performed better.

While the Resolutions on women, peace and security have not been as progressive as hoped, they nonetheless present a unique opportunity to intervene through the development of

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NAPs.\textsuperscript{257} The NAPs are also strengthening accountability by creating linkages between the UNSCRs on WPS and other international legal instruments such as the CEDAW and the Beijing Platform and thus strengthening the WPS project further. In both state- and shadow reports under the CEDAW and the UPR, Member States and NGOs are regularly referencing to Resolution 1325.\textsuperscript{258} Additionally, the CEDAW Committee is strengthening the ambit of the WPS framework by frequently referring to UNSCR 1325 in its reports, which might also lead to new methods of holding states accountable for, and supporting implementation of the framework.\textsuperscript{259} When the legal framework on WPS is fully implemented, it allows women and girls, and men and boys, to claim their rights in relation to conflict, and hold perpetrators accountable for violations of those rights, in ways that guarantee both substantive and transformative equality.

In conflict, and post-conflict countries that are to adopt NAPs on UNSCR 1324, the needs of women and girls are often immense, affecting their economic, social and environmental security\textsuperscript{260}: “Expecting rural women and poor urban women to participate as peace builders and active agents of change in a conflict and post-conflict situation is questionable if the conditions for their involvement are not enabling. Their interest is understandably in every day economic survival, not in ‘talking’\textsuperscript{261}. By contextualizing the NAP and linking it to existing national and international gender policies and plans of action, it is possible to address i.e. the multiple challenges preventing women’s participation on an equal footing as men. In conclusion, NAPs are putting women’s human rights protection on the agenda, and presents an opportunity to translate UNSCR 1325 into meaningful changes to women on the ground if the implementing partners manage to establish credible, appropriate and qualitative measures to ensure accountability, as well as having budgets available for the implementation.\textsuperscript{262}

\begin{footnotesize}
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\item \textsuperscript{257} Swaine (2009) p.433
\item \textsuperscript{258} Ibid.
\item \textsuperscript{259} Ibid.
\item \textsuperscript{260} MFA of Finland (2010) p.18
\item \textsuperscript{261} Ibid. p.19
\item \textsuperscript{262} Swaine (2009) p.433
\end{itemize}
\end{footnotesize}
6 Reflections

This thesis has assessed NAPs as tools and as a concrete step towards addressing the accountability deficits under UNSCR 1325, and as a measure by which to ensure that States fulfil their obligations of international law. International law-making is criticized by feminist legal scholars for being androcentric, euro-centered, of relegating matters of concern to women to a private sphere that is not seen as suitable for legal regulation, and of not sufficiently addressing the way in which rules impact individuals on the ground. The NAPs are potentially mending these negative features by taking a gender- and context-specific approach, by ensuring local-level influence and by putting economic, social and cultural rights on the same footing as civil and political.

This thesis has demonstrated the difference between strengthening WPS on a normative level versus its tangible impact on the ground. The NAPs provide an important means of bridging the gap between international and national level responses to UNSCR 1325. In practice, however, it seems that they are so far only able to secure limited progress when it comes to translating the provisions into transformative outcome for women. The domestication of international law is a complex and uneven process. Factors influencing the effectiveness include the nature of the legal system and the dominant legal culture, the degree of democracy, states’ motivation and political will, and the strength of civil society. Certain preconditions seem to be required for developing a NAP on UNSCR 1325: firstly, government and other implementing agencies should have knowledge about the status and practice of gender mainstreaming at the national level; secondly, political will is required for establishing working groups across government sectors; thirdly, good coordination and collaboration mechanisms across departments and between the government and civil society is essential. Fourthly, a clear mechanism for monitoring and accountability across the different implementing partners is crucial for the actual implementation of the NAP. Finally, allocation of resources is key to the NAP’s operationalization.

Despite its shortcomings, UNSCR 1325 represented a milestone in raising global awareness and debate about women civilians as disproportionately suffering during war and conflict, as well as the importance of including women in conflict resolution, peacebuilding and peace-

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263 Charlesworth et.al. (1991) p.644
264 Barrow (2016) p.274
265 Ibid. p.275
266 Hellum and Sinding Aasen (2013) p.15
267 Akter (2013) p.20
keeping processes.\textsuperscript{268} It has led to the adoption of many National Action Plans which, through research, presence and advocacy are generating awareness of the WPS agenda on local, national and international levels, and has helped strengthening the WPS legal framework on a normative level. Further research on how to ensure effective implementation is needed. A study of several NAPs’ implementation processes to share best practices would be valuable in this regard. Important groundwork for future implementation has been carried out, even if mechanisms within the NAP(s) need improvements. Pointing out negative aspects and challenges allow for new ways of thinking and new strategies on how to further the feminist agenda in international law to emerge.\textsuperscript{269} Hence, through thorough evaluations of the NAPs, improvements in the mechanisms needed to transform the provisions into meaningful changes in the lives of women on the ground, and the research and debates that accompany these processes, the NAPs are keeping up the momentum to promote the 1325-norms and institutionalizing practices that support the women, peace and security agenda.

\textsuperscript{268} Miller et.al. (2014) p.10
\textsuperscript{269} Otto (2009) p.26
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