

# **Social Trends Analysis for Select Countries in Asia**

*Submitted to the Asian Development Bank*

*by*

*The International Human Rights Clinic  
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## EXECUTIVE SUMMARY

This report is submitted to the Asian Development Bank (ADB) to help inform the review and updating of its Safeguards Policy Statement (SPS). A key question in ensuring adequate safeguards is the extent to which ADB relies on the domestic safeguards systems of borrower countries. This study therefore aims to identify trends in implementation of international and regional human rights standards by key ADB borrower countries in areas particularly relevant to ADB-financed projects.

The areas that the report examines are 1) stakeholder engagement – that is, freedom of expression, freedom of assembly and association, and freedom to advocate for the protection and promotion of human rights; 2) minority rights; 3) women’s rights; and 4) labor rights. As the report is intended to be illustrative rather than comprehensive, it looks at trends in these areas in a limited number of countries – primarily ADB’s largest borrowers. In identifying specific countries to analyze in each topic area, the report sought to attain a measure of regional diversity. Thus, for stakeholder engagement, the report analyzes trends in India, Thailand, the Philippines and China; for minority rights, the report analyzes China, India, Indonesia, and Myanmar; for women’s rights, the report analyzes Indonesia, Sri Lanka, Pakistan, and Nepal; and for labor rights, the report analyzes Pakistan, Bangladesh, Uzbekistan, and Viet Nam.

There are a number of instances in which countries have made progress in recent years. Viet Nam, for instance, has undertaken recent revisions to its Labor Code that may allow workers greater freedom to organize. It also has increased equal employment opportunity for women. Likewise, Indonesia can cite a number of legal achievements in advancing women’s rights.

This report posits, however, that adoption of formal law by itself is not a reliable indicator of the quality of rights enjoyed by the citizens of a country. It is also necessary in considering the effectiveness of country safeguard systems to consider the record and trend of implementation of the law.

Amongst the countries analyzed in this report, the protection of rights associated with stakeholder engagement is of particular concern. Effective stakeholder engagement is vital to ensure that potential risks of ADB funded projects are identified and avoided or mitigated. Yet, there appears to be a broad regression in respect for such rights. This regression is independent of, but has been exacerbated by, the Covid-19 crisis. The regression has occurred even in countries that are otherwise functioning democracies.

Protecting the rights of minorities is a challenge facing countries around the world, and ADB’s region is no exception. In each of the countries studied in this report, including electoral democracies, minority rights are at best tenuous. And in Myanmar, minorities are under violent assault.

The countries analyzed in this study have made important strides in adopting laws and policies to protect women’s rights. But implementation lags. Violence against women, in particular, continues to be a widespread problem.

The countries analyzed have embraced all or nearly all of the fundamental labor rights conventions. And there has been some important progress, both in adopting and implementing domestic law. There nevertheless continue to be persistent challenges in guaranteeing the right to unionize, prohibiting forced and child labor, and ensuring equal employment opportunities for all.

The overall picture is one in which country safeguard systems have significant implementation gaps. The University of Wyoming International Human Rights Clinic urges the ADB to continue efforts to strengthen those systems while at the same time rigorously considering actual implementation of international and regional human rights law and standards within the context of each borrowing country as it revises, improves, and ultimately implements the SPS.

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# INTRODUCTION

In order to inform the Asian Development Bank's review and updating of its Safeguards Policy Statement (SPS), the International Human Rights Clinic at the University of Wyoming College of Law has prepared this analysis of adherence to relevant international and regional human rights standards in selected ADB member countries. This study, which is intended to be illustrative, aims to provide operationally relevant insights into social trends and challenges in the region and fill out the picture of the context in which the updated SPS will be implemented.

To keep the scope manageable, the study focuses on the following issues: which are particularly relevant to ADB safeguards:

- 1) **Stakeholder engagement**, particularly freedom of expression, freedom of assembly and association, and freedom to advocate for the protection and promotion of human rights;
- 2) **Minority rights**;
- 3) **Women's rights and gender equality**, including with respect to participation; and
- 4) **Labor rights**.

These limited issues were selected because they are particularly relevant to ADB safeguards. Stakeholder engagement rights are important in this context because the extent to which stakeholders affected by ADB financed activities can engage to protect and promote their interests is vital to identifying and eliminating or mitigating risks presented by those activities. Likewise, the extent to which minority and women's rights are protected matters, because minority communities and women are often disproportionately affected by the risks presented by ADB financed activities. And labor rights are an important consideration because of the involvement of workers in many ADB financed activities. Even with this limitation of issues, it was not feasible with the time and resources available to survey all of ADB's regional members. In selecting a sample of countries to analyze, the report focused primarily on ADB's largest borrowers while seeking to obtain regional diversity within specific issue areas. The very largest borrowers were analyzed in two issue areas, while others were analyzed in one issue area.

As will be evident from the analysis, these countries vary in the levels of their formal adoption of laws and regulations to protect human rights, but a common theme is that formal adoption and actual, effective implementation are two very different things. While many of the countries have made progress in certain areas, each of the countries studied faces serious protection gaps in at least some, if not most, of the areas analyzed.

# STAKEHOLDER ENGAGEMENT

Stakeholder engagement involves fundamental rights that grant citizens the ability to speak out, protest, and defend human rights. These rights includes freedom of expression, freedom of peaceful assembly and of association (“FoAA”), and the freedom of citizens to advocate for the protection and promotion of human rights, also known as human rights defense. These fundamental rights are intertwined and each can only survive if the others exist.

## INTERNATIONAL AND REGIONAL STANDARDS

Freedom of expression is the prohibition of governmental interference with the freedom of speech, press, assembly, or religion.<sup>1</sup> Freedom of expression has been deemed by the United Nations Human Rights Committee as an indispensable condition for the full development of the person and constitutes the foundation for every free and democratic society.<sup>2</sup> Freedom of expression forms a basis for the full enjoyment of a wide range of other human rights.<sup>3</sup> Article 19 of the Universal Declaration of Human Rights (UDHR) provides that “everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference.”<sup>4</sup> Additionally, the International Covenant on Civil and Political Rights (ICCPR) provides that “everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, ... through any ... media of his choice.”<sup>5</sup> The Human Rights Committee has commented that the obligation to respect freedoms of opinion and expression is binding on every State party to the ICCPR.<sup>6</sup> The international standard of freedom of expression is essential and deeply integrated into most other human rights, such as FoAA.

FoAA is the right to join with others in a common undertaking.<sup>7</sup> The UDHR speaks to FoAA in Article 20, which states that “everyone has the right to freedom of peaceful assembly and association [and] no one may be compelled to belong to an association.”<sup>8</sup> Further, Article 23 provides that “everyone has the right to form and to join trade unions for the protection of his [or her] interests.”<sup>9</sup> The ICCPR similarly provides that

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed

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<sup>1</sup> See *Freedom of Expression*, Black’s Law Dictionary (5th ed. 2016).

<sup>2</sup> See UN Human Rights Comm., *CCPR General Comment No. 34: Article 19* (Freedoms of Opinion and Expression), ¶ 2, Sept. 12, 2011, CCPR/C/GC/34 [hereinafter *General Comment No. 34*]. Available at: <https://www2.ohchr.org/english/bodies/hrc/docs/GC34.pdf> (accessed Feb. 20, 2021).

<sup>3</sup> *Id.* at 4.

<sup>4</sup> *Universal Declaration of Human Rights*, Article 19 (Dec. 10, 1948). Available at: [https://undocs.org/A/RES/217\(III\)](https://undocs.org/A/RES/217(III)) (accessed Feb. 21, 2021).

<sup>5</sup> *International Covenant on Civil and Political Rights*, Article 19 (Dec. 16, 1966). Available at: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx> (accessed Feb. 20, 2021).

<sup>6</sup> See *General Comment No. 34*, at ¶ 7. Available at: <https://www2.ohchr.org/english/bodies/hrc/docs/GC34.pdf> (accessed Feb. 20, 2021).

<sup>7</sup> See *Freedom of Association*, Black’s Law Dictionary (5th ed. 2016).

<sup>8</sup> *Universal Declaration of Human Rights*, Article 20 (Dec. 10, 1948). Available at: [https://undocs.org/A/RES/217\(III\)](https://undocs.org/A/RES/217(III)) (accessed Feb. 19, 2021).

<sup>9</sup> *Id.* at Article 23.

in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.<sup>10</sup>

Incorporated into both freedom of expression and FoAA is the right for citizens to act as advocates for the protection and promotion of human rights, also known as human rights defense. Human rights defenders advocate for stronger and more effective human rights laws and institutions. Human rights defenders often assemble and associate to create independent, non-governmental organizations (NGOs) that promote and defend human rights. Freedom of expression and FoAA are essential for human rights defenders to accomplish their missions. Without the right to expression and the right to assemble, human rights defenders cannot defend human rights. Thus, the UDHR and the ICCPR impliedly require that States allow human rights defenders to exist within their society.

Further, the ICCPR protects individuals from improper charges, detention, and prosecution when lawfully exercising these fundamental rights.<sup>11</sup> Article 9 states that “everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty.”<sup>12</sup> This section of the article specifically protects individuals’ due process rights.<sup>13</sup> Article 9 also provides the right to compensation for those individuals who are subjected to wrongful arrests and detention.<sup>14</sup> The article as a whole guarantees fair treatment through the judicial system for those who wish to express their opinions, speak out, and participate in human rights defense.<sup>15</sup>

While Asia generally does not have separate regional human rights standards, the Association of Southeast Asian Nations (ASEAN) integrated the freedom of expression language from the UDHR into the ASEAN Human Rights Declaration regarding freedom of expression by stating that “every person has the right to freedom of opinion and expression, including freedom to hold opinions without interference and to seek, receive and impart information, whether orally, in writing or through any other medium of that person's choice.”<sup>16</sup> Similar to freedom of expression, the ASEAN Human Rights Declaration also recognized FoAA by providing that “every person has the right to freedom of peaceful assembly... [and] every person has the right to form trade unions and join the trade union of his or her choice for the protection of his or her interests.”<sup>17</sup> The declaration provides that the primary responsibility of all ASEAN Member States is to promote and protect all human rights and fundamental freedoms.<sup>18</sup>

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<sup>10</sup> *International Covenant on Civil and Political Rights*, Article 21 (Dec. 16, 1966). Available at: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx> (accessed Feb. 19, 2021).

<sup>11</sup> *Id.* at Article 9.

<sup>12</sup> *Id.* At §1.

<sup>13</sup> *See id.*

<sup>14</sup> *Id.* at § 5.

<sup>15</sup> *See id.*

<sup>16</sup> *ASEAN Human Rights Declaration*, Refworld, ¶ 23 (Nov. 18, 2012). Available at: <https://www.refworld.org/docid/50c9fea82.html> (accessed Feb. 20, 2021).

<sup>17</sup> *Id.* at ¶¶ 24, 27(2). Available at: <https://www.refworld.org/docid/50c9fea82.html> (accessed Feb. 20, 2021).

<sup>18</sup> *See id.* at ¶ 7.

Although the ASEAN Declaration provides important guidelines, it only applies to ASEAN member countries. Moreover, ASEAN members are not legally bound by the declaration, but they have accepted its terms and have promised to implement them in their own laws.

## STAKEHOLDER ENGAGEMENT IN INDIA

### *Domestic Laws*

India has adopted or committed to a number of relevant international instruments, including the UDHR.<sup>19</sup> India ratified the ICCPR in 1979.<sup>20</sup> Legal restrictions on FoAA exist, including the criminal procedure code that empowers authorities to restrict public gatherings and impose curfews whenever “immediate prevention or speedy remedy” is required.<sup>21</sup> Conversely, the Indian constitution protects FoAA, freedom of expression, and human right defenders, referring to those rights in the preamble and Article 19.<sup>22</sup> The constitution’s preamble states that “we, the People of India, ... secure to all its citizens: ... liberty of thought, expression, belief, faith and worship.”<sup>23</sup> Article 19 further provides that “all citizens shall have the right — to freedom of speech and expression; to assemble peaceably and without arms; [and] to form associations or unions or co-operative societies.”<sup>24</sup>

### *Record of Implementation*

Respect for stakeholder rights appears to have diminished under the government of Prime Minister Narendra Modi and his Bharatiya Janata Party (BJP).<sup>25</sup> The government reportedly has harassed and intimidated journalists, academics, and human rights defenders for addressing politically sensitive topics, and suppressed protests, especially those criticizing the government and newly adopted laws.<sup>26</sup> The government has imposed internet blackouts, including the recent blackout in Kashmir, which lasted longer than any other internet shutdown imposed by a democracy. The revocation of Kashmir’s autonomous status rendered the region completely under the control of the Indian central government with citizens’ civil liberties stripped to prevent protest.<sup>27</sup>

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<sup>19</sup> *Status of Ratification Interactive Board*, UN Human Rights Office of the High Commissioner [hereinafter OHCHR]. Available at: <https://indicators.ohchr.org/> (accessed Feb. 22, 2021).

<sup>20</sup> *Id.*

<sup>21</sup> *India*, Freedom of the World 2021, Freedom House (March 2021). Available at: <https://freedomhouse.org/country/india/freedom-world/2021> (accessed March 28, 2021).

<sup>22</sup> *India's Constitution of 1949 with Amendments through 2016*, Preamble, Article 19, cl. 1(a-c), Available at: (accessed Feb. 25, 2021). [https://constituteproject.org/constitution/India\\_2016.pdf?lang=en](https://constituteproject.org/constitution/India_2016.pdf?lang=en) (accessed Feb. 25, 2021).

<sup>23</sup> *Id.* at Preamble.

<sup>24</sup> *Id.* at Article 19.

<sup>25</sup> *Indian Kashmir*, Freedom in the World 2020, Freedom House (March 2020). Available at: <https://freedomhouse.org/country/indian-kashmir/freedom-world/2020> (accessed Feb. 27, 2021); *See also*, *India 2020*, Amnesty International (2021). Available at: <https://www.amnesty.org/en/countries/asia-and-the-pacific/india/report-india/> (accessed April 20, 2021).

<sup>26</sup> *Indian Kashmir*, Freedom in the World 2020, Freedom House (March 2020). Available at: <https://freedomhouse.org/country/indian-kashmir/freedom-world/2020> (accessed Feb. 27, 2021).

<sup>27</sup> *Id.*

## *COVID-19 Impact*

In 2020, dozens of journalists allegedly were arrested for reporting criticisms of the government's handling of the COVID-19 virus.<sup>28</sup> Additionally, reports suggest that the Modi government has targeted the Muslim population as a cause for the pandemic.<sup>29</sup> The Prime Minister has been accused of encouraging media outlets to promote anti-Muslim views, as well as blaming the country's Muslim population for the spread of COVID-19.<sup>30</sup>

In early April 2021, India experienced a second wave of COVID-19 infections after officials loosened lockdown restrictions in response to a decrease in cases.<sup>31</sup> The public began to express their concerns and criticisms on social media as the government avoided reapplying restrictions and instead returned to holding large election rallies.<sup>32</sup> In response to the criticisms, the Modi government ordered Facebook, Instagram, and Twitter to take down dozens of social media posts that directly criticized the government's lack of action in response to the second wave of the virus.<sup>33</sup> In addition to criticism, the posts called for Modi's resignation.<sup>34</sup> The government claimed that the posts "could incite panic ... and could hinder its response to the pandemic."<sup>35</sup> The citizens of India are not only experiencing another devastating impact from the virus, but now have restricted freedom of expression regarding how their government could handle the situation better.

## *Rise in Seditious Cases*

Section 124-A of the Indian Penal Code defines "sedition" as "whoever, by words, either spoken or written, ... by signs, or by visible representation, or otherwise, brings or attempts to bring ... hatred or contempt, or excites or attempts to excite disaffection towards, the Government established by law in India."<sup>36</sup> India has had a 28% increase in the number of sedition cases filed by the government each year between 2014 and 2020, compared to the previous government from

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<sup>28</sup> *India*, Freedom in the World 2021, Freedom House (March 2021). Available at: <https://freedomhouse.org/country/india/freedom-world/2021> (accessed March 15, 2021).

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> Karan Deep Singh and Paul Mozur, *As Outbreak Rages, India Orders Critical Social Media Posts to Be Taken Down*, The New York Times (April 25, 2021). Available at: <https://www.nytimes.com/2021/04/25/business/india-covid19-twitter-facebook.html> (accessed April 26, 2021).; See also, Mujib Mashal and Hari Kumar, *Complacency and Missteps Deepen a COVID-19 Crisis in India*, The New York Times (April 9, 2021). Available at: <https://www.nytimes.com/2021/04/09/world/asia/india-covid-vaccine-variant.html> (accessed April 26, 2021).

<sup>32</sup> Mujib Mashal and Hari Kumar, *Complacency and Missteps Deepen a COVID-19 Crisis in India*, The New York Times (April 9, 2021). Available at: <https://www.nytimes.com/2021/04/09/world/asia/india-covid-vaccine-variant.html> (accessed April 26, 2021).

<sup>33</sup> Karan Deep Singh and Paul Mozur, *As Outbreak Rages, India Orders Critical Social Media Posts to Be Taken Down*, The New York Times (April 25, 2021). Available at: <https://www.nytimes.com/2021/04/25/business/india-covid19-twitter-facebook.html> (accessed April 26, 2021).

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> Samir Bhatnagar and Vibhore Singh, *Democratic Backsliding and the Chilling Effect of Sedition Laws in India*, Columbia Public Policy Review (Jan 2021). Available at: <http://www.columbiapublicpolicyreview.org/2021/01/democratic-backsliding-and-chilling-effect-of-sedition-laws-in-india/> (accessed April 21, 2021).

2010 and 2014.<sup>37</sup> The data found 519 sedition cases filed under Modi over six years, compared to 279 cases filed during the previous administration.<sup>38</sup> A former justice of India’s Supreme Court, Madan Lokur, concluded that “it is now clear [from this data] that the law is not being misused [by the Modi administration], but is being abused.”<sup>39</sup>

The data further showed that these sedition cases stemmed from citizens doing such things as holding posters, posting on social media, and chanting slogans.<sup>40</sup> In August 2020, the Supreme Court convicted Prashant Bhushan, a prominent lawyer, for criminal contempt of court.<sup>41</sup> The conviction stemmed from Bhushan’s two social media posts criticizing the government.<sup>42</sup> Spectators such as former judges, retired bureaucrats, and lawyers called it a “disproportionate response’ that would have a ‘chilling effect’ on the people expressing critical view of the judiciary.”<sup>43</sup>

A surge in sedition cases has also been linked to major protests criticizing the government, such as protests against the Citizenship Amendment Act (CAA).<sup>44</sup> In December 2019, Parliament adopted the CAA, which grants special access to Indian citizenship to non-Muslim immigrants and refugees from neighboring Muslim-majority states, access not accorded similarly to situated Muslims.<sup>45</sup> Simultaneously, the government moved forward with plans for the creation of a national register of citizens.<sup>46</sup> Many of the country’s citizens believe the register’s purpose is to disenfranchise Muslim voters by effectively classifying them as illegal immigrants.<sup>47</sup> The government responded to CAA protests with assembly bans, internet blackouts, and even live ammunition.<sup>48</sup> There are reports that citizens, including academics, students, and journalists, were detained and denied access to legal representation.<sup>49</sup> By February 2020, more than fifty people reportedly had been killed in violence related to CAA protests.<sup>50</sup>

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<sup>37</sup> *Our New Database Reveals Rise in Sedition Cases in the Modi Era*, Article 14 (Feb. 1, 2021). Available at: <https://www.article-14.com/post/our-new-database-reveals-rise-in-sedition-cases-in-the-modi-era> (accessed Feb. 15, 2021).

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *India Events of 2020*, World Report 2021, Human Rights Watch (2021). Available at: <https://www.hrw.org/world-report/2021/country-chapters/india#> (accessed April 21, 2021).

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *Our New Database Reveals Rise in Sedition Cases in the Modi Era*, Article 14 (Feb. 1, 2021). Available at: <https://www.article-14.com/post/our-new-database-reveals-rise-in-sedition-cases-in-the-modi-era> (accessed Feb. 15, 2021); *See also*, *India*, Freedom in the World 2021, Freedom House (March 2021). Available at: <https://freedomhouse.org/country/india/freedom-world/2021> (accessed March 15, 2021).

<sup>45</sup> *India*, Freedom in the World 2021, Freedom House (March 2021). Available at: <https://freedomhouse.org/country/india/freedom-world/2021> (accessed March 15, 2021).

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

## *Revocation of Kashmir's Autonomous Status*

Before 2019, the state of Kashmir and Jammu had a bicameral legislature made up of a lower chamber, the Legislative Assembly, and an upper chamber, the Legislative Council.<sup>51</sup> The Legislative Assembly was composed of eighty-seven elected officials and the Legislative Council was composed of twenty-eight indirectly elected members and eight members nominated by the governor.<sup>52</sup> In 2018, the governor dissolved both chambers in an alleged attempt to stop local parties from forming a new Muslim-majority governing body.<sup>53</sup> The central government then extended direct rule over the state and postponed state elections until summer 2019.<sup>54</sup> To further stop the elections, the government enacted the Reorganization Act in August 2019.<sup>55</sup>

The Reorganization Act revoked Kashmir's autonomous status.<sup>56</sup> The state of Kashmir and Jammu became two federally governed territories.<sup>57</sup> The national government imposed restrictions specifically on Muslim-majority areas in Kashmir.<sup>58</sup> The revocation of autonomy deprived Kashmir's citizens of their political rights and civil liberties, and reports suggest that Muslims were discriminatorily restricted and subjected to penalties.<sup>59</sup>

Internet access and the freedom to protest were restricted following the action.<sup>60</sup> Internet blackouts were in effect for over seven months throughout Kashmir.<sup>61</sup> Additionally, the COVID-19 pandemic amplified the need for internet access.<sup>62</sup> News and health information regarding the virus were limited without internet.<sup>63</sup> Further, people were subjected to isolation.<sup>64</sup> Accounts suggest that the internet blackout made staying connected with friends and family during the pandemic lockdown more difficult.<sup>65</sup>

Before the pandemic, curfews were imposed throughout the region for fifty-three consecutive days.<sup>66</sup> Many arrests following the revocation of autonomy appeared to target human rights defenders, including human rights lawyers and especially NGOs.<sup>67</sup>

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<sup>51</sup>*Indian Kashmir*, Freedom in the World 2020, Freedom House (March 2020). Available at: <https://freedomhouse.org/country/indian-kashmir/freedom-world/2020> (accessed Feb. 27, 2021).

<sup>52</sup> *See id.*

<sup>53</sup> *See id.*

<sup>54</sup> *See id.*

<sup>55</sup> *See id.*

<sup>56</sup> *See id.*

<sup>57</sup> *See id.*; *See also, India Events of 2020*, World Report 2021, Human Rights Watch (2021). Available at: <https://www.hrw.org/world-report/2021/country-chapters/india#> (accessed April 21, 2021).

<sup>58</sup>*India Events of 2020*, World Report 2021, Human Rights Watch (2021). Available at: <https://www.hrw.org/world-report/2021/country-chapters/india#> (accessed April 21, 2021).

<sup>59</sup> *See id.*

<sup>60</sup> *Id.*

<sup>61</sup> *See India Restores Internet in Kashmir after 7 Months of Blackout*, Aljazeera (March 5, 2020). Available at: <https://www.aljazeera.com/news/2020/3/5/india-restores-internet-in-kashmir-after-7-months-of-blackout> (accessed March 31, 2021).

<sup>62</sup> *See Inside Expression: August 2020 — How Do You Protest Against Injustice During a Pandemic?*, Article 19 (August 19, 2020). Available at: <https://www.article19.org/resources/inside-expression-august-2020-how-do-you-protest-against-injustice-during-a-pandemic/> (accessed March 31, 2021).

<sup>63</sup> *See id.*

<sup>64</sup> *See id.*

<sup>65</sup> *See id.*

<sup>66</sup>*Indian Kashmir*, Freedom in the World 2020, Freedom House (March 2020). Available at: <https://freedomhouse.org/country/indian-kashmir/freedom-world/2020> (accessed Feb. 27, 2021).

<sup>67</sup> *Id.*

## *Freedom of Association for Human Rights Defenders*

Since 2015, the government has cancelled foreign contribution licenses for more than 20,000 NGOs under the Foreign Contributions Regulation Act, leaving the independent organizations ineligible to receive foreign funding.<sup>68</sup> The government also amended the Act by adding a vaguely worded provision that gave the government the power to cancel the licenses if they deemed it necessary for the public interest.<sup>69</sup> The amendments provided additional governmental oversight, additional operational requirements, and specific certification processes that directly affected NGOs.<sup>70</sup>

NGOs allegedly were harassed and raided, including reputable international organizations such as Amnesty International and Greenpeace.<sup>71</sup> Amnesty was forced to suspend its operational license in India after the government froze the organization's bank accounts.<sup>72</sup> The government defended the action by accusing Amnesty of violating laws related to the Act.<sup>73</sup> Amnesty responded that the government's action to freeze their bank accounts was a reprisal against the organization's human defense work.<sup>74</sup> The government itself reportedly has continued to accept foreign contributions even as the ability of NGOs to do so has been limited.<sup>75</sup>

## **STAKEHOLDER ENGAGEMENT IN THAILAND**

### ***Domestic Laws***

Thailand has adopted or committed to a number of relevant international instruments, including the UDHR, and ratified the ICCPR in 1996.<sup>76</sup> Thailand's constitution expressly includes the rights of freedom of expression, providing that "a person shall enjoy the liberty to express opinions, make speeches, write, print, publicize and express by other means. The restriction of such liberty shall not be imposed."<sup>77</sup>

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<sup>68</sup> *Id.*; See also Tarunabh Khaitan, *Killing a Constitution with a Thousand Cuts: Executive Aggrandizement and Party-state Fusion in India*, De Gruyter (August 7, 2020). Available at: <https://www.degruyter.com/document/doi/10.1515/lehr-2020-2009/html> (accessed Feb. 26, 2021).

<sup>69</sup> Tarunabh Khaitan, *Killing a Constitution with a Thousand Cuts: Executive Aggrandizement and Party-state Fusion in India*, De Gruyter (August 7, 2020). Available at: <https://www.degruyter.com/document/doi/10.1515/lehr-2020-2009/html> (accessed Feb. 26, 2021).

<sup>70</sup> *India Events of 2020*, World Report 2021, Human Rights Watch (2021). Available at: <https://www.hrw.org/world-report/2021/country-chapters/india#> (accessed April 21, 2021).

<sup>71</sup> *Id.*; See also, Tarunabh Khaitan, *Killing a Constitution with a Thousand Cuts: Executive Aggrandizement and Party-state Fusion in India*, De Gruyter (August 7, 2020). Available at: <https://www.degruyter.com/document/doi/10.1515/lehr-2020-2009/html> (accessed Feb. 26, 2021).

<sup>72</sup> *India Events of 2020*, World Report 2021, Human Rights Watch (2021). Available at: <https://www.hrw.org/world-report/2021/country-chapters/india#> (accessed April 21, 2021).

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> Tarunabh Khaitan, *Killing a Constitution with a Thousand Cuts: Executive Aggrandizement and Party-state Fusion in India*, De Gruyter (August 7, 2020). Available at: <https://www.degruyter.com/document/doi/10.1515/lehr-2020-2009/html> (accessed Feb. 26, 2021).

<sup>76</sup> *Status of Ratification Interactive Board*, OHCHR. Available at: <https://indicators.ohchr.org/> (accessed Feb. 22, 2021).

<sup>77</sup> Thai Const. art. 3, § 34 (2017) (Thailand). Available at: [https://constituteproject.org/constitution/Thailand\\_2017.pdf?lang=en](https://constituteproject.org/constitution/Thailand_2017.pdf?lang=en) (accessed Feb. 25, 2021).

The constitution further provides freedom of expression specifically to academia and media, prohibiting censorship and granting protection.<sup>78</sup> Section 36 of the Constitution provides that “a person shall enjoy the liberty of communication by any means. Censorship, detention or disclosure of information communicated between persons, including any commission of an act carried out to know or obtain information communicated between persons, shall not be permitted.”<sup>79</sup>

Additionally, the constitution provides for FoAA and human rights defense in Section 42 and Section 44.<sup>80</sup> Section 42 states that “a person shall enjoy the liberty to unite and form an association, co-operative, union, organization, community, or any other group.”<sup>81</sup> FoAA is expressly promoted through Section 44, which provides that “a person shall enjoy the liberty to assemble peacefully and without arms.”<sup>82</sup> Thailand’s constitution unambiguously protects the rights of freedom of expression, FoAA, and human rights defense; however, the current government has imposed laws and provisions restricting those rights, including the Cybersecurity Law and Data Protection Act.<sup>83</sup> Enacted in 2019, the Cybersecurity Law and Data Protection Act allows the government to increase online surveillance and censorship without safeguards.<sup>84</sup>

### ***Record of Implementation***

Following five years of military government, Thailand transitioned to a quasi-civilian government in 2019.<sup>85</sup> In 2020, frustrations over the role of the monarchy, severe censorship of media, reprisal against human rights defense, and retaliation against regime criticism provoked the country’s largest antigovernment protests in a decade.<sup>86</sup> The government allegedly responded to the protests with arbitrary arrests, intimidation, lese-majeste charges, and harassment of activists.<sup>87</sup> The result is constraints on freedom of expression, no guarantee of due process, and governmental impunity.<sup>88</sup>

### ***Human Rights Defenders Facing Severe Harassment***

The Thai government has been accused of threatening, arresting, and even murdering human rights defenders.<sup>89</sup> In 2020, reports revealed evidence regarding allegations against the

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<sup>78</sup> *Id.* at art. 3, §35.

<sup>79</sup> *Id.* at art. 3, §36.

<sup>80</sup> *Id.* at art. 3, §§42, 44.

<sup>81</sup> *Id.* at art. 3, §42.

<sup>82</sup> *Id.* at art. 3, §44.

<sup>83</sup> *Thailand 2019*, Amnesty International (2019). Available at: <https://www.amnesty.org/en/countries/asia-and-the-pacific/thailand/report-thailand/> (access Feb. 15, 2021).

<sup>84</sup> *Id.*

<sup>85</sup> *Thailand*, Freedom in the World 2021, Freedom House (March 2021). Available at: <https://freedomhouse.org/country/thailand/freedom-world/2021> (accessed March 15, 2021).

<sup>86</sup> *Id.*; *See also*, *Thailand 2019*, Amnesty International (2019). Available at: <https://www.amnesty.org/en/countries/asia-and-the-pacific/thailand/report-thailand/> (access Feb. 15, 2021).

<sup>87</sup> *Thailand*, Freedom in the World 2021, Freedom House (March 2021). Available at: <https://freedomhouse.org/country/thailand/freedom-world/2021> (accessed March 15, 2021).

<sup>88</sup> *Id.*

<sup>89</sup> *Submission to the UN Secretary-General on Recent Developments, Cases and Recommendations, Ending Intimidation and Reprisals Against Those Who Cooperate with the UN in the Field of Human Rights*, International Service for Human Rights (May 2020). Available at:

military and the Thai government for online targeting of human rights defenders, political activists, opposition politicians, and public figures.<sup>90</sup> This evidence included official documents issued by the Internal Security Operations Command (ISOC) under the Prime Minister, including an official military memorandum issued by the Second Army Area.<sup>91</sup>

In 2017, a seventeen-year-old activist, Chaiyaphum Pasae, was shot dead by the army's fifth Cavalry Regiment Task Force and the Pha Muang Task Force after he was arrested for alleged drug possession.<sup>92</sup> Investigations into the killing seemed to lack effort by the police.<sup>93</sup> Footage from the security cameras at the checkpoint where Chaiyaphum was shot went missing without explanation.<sup>94</sup>

The International Service for Human Rights ("ISHR") also reported several incidents in which human rights defender Maitree Chamroensuksakul was harassed and threatened by the Thai government for seeking justice for the death of Chaiyaphum Pasae.<sup>95</sup> Maitree's home was raided by the government while he was attending a meeting with the UN Special Rapporteur on the situation of human rights defenders.<sup>96</sup> The ISHR also reported that Maitree received death threats and other forms of intimidation by the military at a checkpoint in March 2017.<sup>97</sup>

### *Pro-Democracy Protests*

Thai authorities have brought criminal charges against academics, factory workers, opposition politicians, and activists under laws governing computer crimes, public assembly, and sedition.<sup>98</sup> The charges stemmed from participating in activities such as marching in peaceful demonstrations, discussing political reforms, and criticizing the monarchy on social media.<sup>99</sup> At least twenty-one people were prosecuted for displaying flags and wearing apparel that promoted the opposition Future Forward Party.<sup>100</sup>

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[https://www.ishr.ch/sites/default/files/documents/ishr\\_submission\\_to\\_sg\\_reprisals\\_report\\_2020\\_final\\_rev.pdf](https://www.ishr.ch/sites/default/files/documents/ishr_submission_to_sg_reprisals_report_2020_final_rev.pdf)  
(accessed Feb. 21, 2021).

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> *Thailand Events of 2020*, World Report 2021, Human Rights Watch (2021). Available at: <https://www.hrw.org/world-report/2021/country-chapters/thailand> (accessed April 25, 2021).; *See also*, Sunai Phasuk, *Coverup in Thai Army Killing of Teenage Activist*, Human Rights Watch (March 16, 2018). Available at: <https://www.hrw.org/news/2018/03/16/coverup-thai-army-killing-teenage-activist> (access April 23, 2021).

<sup>93</sup> Sunai Phasuk, *Coverup in Thai Army Killing of Teenage Activist*, Human Rights Watch (March 16, 2018). Available at: <https://www.hrw.org/news/2018/03/16/coverup-thai-army-killing-teenage-activist> (access April 23, 2021).

<sup>94</sup> *Id.*

<sup>95</sup> *Submission to the UN Secretary-General on Recent Developments, Cases and Recommendations, Ending Intimidation and Reprisals Against Those Who Cooperate with the UN in the Field of Human Rights*, International Service for Human Rights (May 2020). Available at:

[https://www.ishr.ch/sites/default/files/documents/ishr\\_submission\\_to\\_sg\\_reprisals\\_report\\_2020\\_final\\_rev.pdf](https://www.ishr.ch/sites/default/files/documents/ishr_submission_to_sg_reprisals_report_2020_final_rev.pdf)  
(accessed Feb. 21, 2021).

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

<sup>98</sup> *Thailand 2019*, Amnesty International (2019). Available at: <https://www.amnesty.org/en/countries/asia-and-the-pacific/thailand/report-thailand/> (access Feb. 15, 2021).

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*; *See also*, *Thailand Events of 2020*, World Report 2021, Human Rights Watch (2021). Available at: <https://www.hrw.org/world-report/2021/country-chapters/thailand> (accessed April 25, 2021).

The Future Forward Party advocates civilian democratic rule, but the party was dissolved in February 2020 by the Constitutional Court.<sup>101</sup> Allegations against the party included the acceptance of illegal loans by the party from its leader, Thanathorn Juangroongruangkit.<sup>102</sup> The Election Commission of Thailand criminally charged Thanathorn with violating the prohibition of political donations exceeding ten million baht per person per year and was facing up to five years in prison.<sup>103</sup> Additionally, the Court ordered confiscation of one hundred eighty-one million baht from the party, which was the amount that allegedly exceeded the legal amount.<sup>104</sup> As of April 2021, the office of the Attorney General announced that Thanathorn's criminal charges will be dropped, but the efforts to dissolve the party had already led to protests.<sup>105</sup>

Protests promoting the Future Forward Party and calling for an end to harassment and intimidation of those who exercised their freedom of expression became widespread.<sup>106</sup> Thousands of participants joined demonstrations, including students, lesbian, gay, bisexual, and transgender (LGBT) groups, labor groups, and religious minorities.<sup>107</sup> The government adopted the Emergency Decree on Public Administration in Emergency Situation (EDPAES) in March, ostensibly to combat the spread of COVID. The decree also had the effect of barring protests, because it imposed curfews and other restrictions.<sup>108</sup> EDPAES appeared to help control the spread of the virus, prompting the government to extend it.<sup>109</sup> The extension effectively curtailed the exercise of the rights to freedom of expression and FoAA.<sup>110</sup>

### *Rise in Lese-Majeste Charges*

In February 2021, the UN Special Rapporteur for freedom of expression joined other UN experts in calling attention to Thailand's increased use of lese-majeste laws, the offense of violating the dignity of the monarch.<sup>111</sup> Anchan Preelert, a sixty-year-old Thai woman, was sentenced to over forty-three years in prison for posting audio clips on her social media criticizing the royal family.<sup>112</sup> Preelert's sentence is said to be the country's harshest sentence under the lese-majeste provisions.<sup>113</sup> Preelert was initially tried in military court, where she was sentenced to

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<sup>101</sup> *Thailand Events of 2020*, World Report 2021, Human Rights Watch (2021). Available at: <https://www.hrw.org/world-report/2021/country-chapters/thailand> (accessed April 25, 2021).

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*; See also, *Election Commission Decides to Bring Criminal Charges Against Thanathorn*, Prachatai English (Oct 27, 2020). Available at: <https://prachatai.com/english/node/8878> (accessed April 25, 2021).

<sup>104</sup> *Thailand Events of 2020*, World Report 2021, Human Rights Watch (2021). Available at: <https://www.hrw.org/world-report/2021/country-chapters/thailand> (accessed April 25, 2021).

<sup>105</sup> *Id.*; See also, *Criminal Charges Against Thanathorn to be Dropped*, Prachatai (April 23, 2021). Available at: <https://prachatai.com/english/node/9196> (accessed April 25, 2021).

<sup>106</sup> *Thailand Events of 2020*, World Report 2021, Human Rights Watch (2021). Available at: <https://www.hrw.org/world-report/2021/country-chapters/thailand> (accessed April 25, 2021).

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

<sup>111</sup> *Thailand: UN Experts Alarmed by Rise in Use of Lese-Majeste Laws*, OHCHR (Feb. 8, 2021). Available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26727&LangID=E> (accessed Feb. 21, 2021).

<sup>112</sup> *Id.*

<sup>113</sup> *Id.*

eighty-seven years.<sup>114</sup> When she confessed to the alleged violations, her sentence was cut in half and transferred to a civilian court in 2019. Currently, the decision is being appealed.<sup>115</sup> The UN experts reiterated their often stated view that lese-majeste laws are inconsistent with democracy and that the Thai authorities' use of the laws has diminished Thai citizens' ability to exercise the right to free expression.<sup>116</sup>

As the COVID-19 virus forced activists to move to online platforms to advocate, the Thai government began to enforce lese-majeste provisions more stringently.<sup>117</sup> Even minors have reportedly been charged with these severe crimes for exercising their freedom of expression.<sup>118</sup> The UN experts responded that "the fact that some forms of expression may be considered offensive or shocking to a public figure is not sufficient to justify the imposition of such severe penalties."<sup>119</sup> They called for the Thai government to revise and repeal the lese-majeste laws and to drop all charges against those who are facing criminal prosecution and who have been imprisoned for violating the provisions.<sup>120</sup>

### *Criminal Defamation Laws*

Although international human rights law allows the right to freedom of expression to be restricted to protect the rights and reputations of others, Thailand has made defamation a criminal offense.<sup>121</sup> The Thai Criminal Code establishes defamation as punishable by up to one year imprisonment.<sup>122</sup> Defamation in written publications, broadcast communications, and other forms of media carries a penalty of up to two years imprisonment.<sup>123</sup> Individuals who feel that they have been defamed may either file a report with police or file a report directly with the court, giving private parties immense power to initiate criminal proceedings against others.<sup>124</sup> Companies and government officials have increasingly initiated criminal defamation cases against activists who have raised concerns about labor rights violations, corruption, and public interest matters.<sup>125</sup> The majority of the accused include activists, journalists, human rights defenders, whistleblowers, academics, and opposition politicians.<sup>126</sup>

Thai criminal defamation laws are inconsistent with international human rights standards relating to freedom of expression.<sup>127</sup> The UN Human Rights Committee has urged states with criminal defamation laws to consider reform and decriminalization and commented that prison sentences are never an appropriate punishment for defamation.<sup>128</sup> Thai law does not appear to

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<sup>114</sup> *Id.*

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

<sup>121</sup> *Truth Be Told*, Criminal Defamation in Thai Law and the Case for Reform, Article 19 (March 2021).

Available at: [https://www.article19.org/wp-content/uploads/2021/03/Thailand\\_Truth\\_be\\_told\\_decriminalise\\_defamation-1.pdf](https://www.article19.org/wp-content/uploads/2021/03/Thailand_Truth_be_told_decriminalise_defamation-1.pdf) (accessed March 31, 2021).

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

<sup>128</sup> *Id.*

provide for sufficient defenses against defamation claims or prevent abuse of defamation laws by corporations and governmental officials.<sup>129</sup>

## STAKEHOLDER ENGAGEMENT IN THE PHILIPPINES

### *Domestic Laws*

The Philippines has adopted or committed to a number of relevant international instruments, including the UDHR, and ratified the ICCPR in 1979.<sup>130</sup> The Philippines' constitution protects freedom of assembly, freedom of expression, and freedom of the press specifically from government interference in Section 4 by stating that “no law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances.”<sup>131</sup>

Additionally, Sections 7 and 8 of the constitution provide for the right to information and freedom of association, respectively. Section 7 states that “the right of the people to information on matters of public concern shall be recognized. Access to official records . . . pertaining to official acts, transactions, or decisions, as well as to government research data used as basis for policy development, shall be afforded the citizen.”<sup>132</sup> Further, Section 8 provides, “the right of the people, including those employed in the public and private sectors, to form unions, associations, or societies for purposes not contrary to law shall not be abridged.”<sup>133</sup>

### *Record of Implementation*

In 2016, President Duterte implemented a war on drugs that has subsequently led to thousands of extrajudicial killings.<sup>134</sup> When COVID-19 struck in 2020, President Duterte imposed restrictions and used the military and police to enforce lockdowns.<sup>135</sup> Although the lockdowns were initially implemented to control the spread of the virus, the government reportedly also increased the war on drugs by arresting thousands for violating the lockdown enforcement.<sup>136</sup> Killings increased by a reported fifty percent during the initial months of the lockdown and allegedly included targeting of journalists who criticized Duterte's actions regarding the virus.<sup>137</sup>

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<sup>129</sup> *Id.*

<sup>130</sup> *Status of Ratification Interactive Board*, OHCHR. Available at: <https://indicators.ohchr.org/> (accessed Feb. 22, 2021).

<sup>131</sup> Const. (1987), art. III, § 4 (Phil.). Available at: [https://constituteproject.org/constitution/Philippines\\_1987.pdf?lang=en](https://constituteproject.org/constitution/Philippines_1987.pdf?lang=en) (accessed Feb. 25, 2021).

<sup>132</sup> *Id.* at art. III, § 7.

<sup>133</sup> *Id.* at art. III, § 8.

<sup>134</sup> *Philippines*, Freedom in the World 2021, Freedom House (March 2021). Available at: <https://freedomhouse.org/country/philippines/freedom-world/2021> (access March 15, 2021).

<sup>135</sup> *Id.*; *See also, Philippines Events of 2020*, World Report 2021, Human Right Watch (2021). Available at: <https://www.hrw.org/world-report/2021/country-chapters/philippines> (accessed April 23, 2021).

<sup>136</sup> *See Philippines Events of 2020*, World Report 2021, Human Right Watch (2021). Available at: <https://www.hrw.org/world-report/2021/country-chapters/philippines> (accessed April 23, 2021).

<sup>137</sup> *Philippines*, Freedom in the World 2021, Freedom House (March 2021). Available at: <https://freedomhouse.org/country/philippines/freedom-world/2021> (access March 15, 2021); *Philippines Events of 2020*, World Report 2021, Human Right Watch (2021). Available at: <https://www.hrw.org/world-report/2021/country-chapters/philippines> (accessed April 23, 2021).

## *Governmental Killings of Activists and Journalists*

The Committee to Protect Journalists (“CPJ”) has reported a total of eighty-six journalists killings in the Philippines over a thirty year span.<sup>138</sup> From 2016 to 2019, a coalition of media groups reported one hundred twenty-eight attacks and threats by the government against the press.<sup>139</sup> These included death threats, bomb threats, professional smearing and slander, and even death.<sup>140</sup> These attacks also included “red tagging” — when the government harasses individuals by alleging that they have connections with terrorists or that they are terrorists themselves.<sup>141</sup> According to the CPJ, six journalists have been killed in the Philippines in the last three years in connection with their media work.<sup>142</sup>

These attacks appear to focus on media outlets critical of the Duterte government.<sup>143</sup> In 2018, President Duterte revoked the registration of the online news site *Rappler*, which criticized the administration’s war on drugs.<sup>144</sup> Duterte accused *Rappler* of being a “fake news outlet,” banned it from the presidential palace and all presidential events, and prohibited governmental officials from being interviewed by *Rappler* reporters.<sup>145</sup> In February 2019, Maria Ressa, editor in chief of *Rappler*, was arrested twice and posted bail for eleven different charges, including tax evasion, libel, cyber libel, and violations of the Securities and Exchange Commission regulations.<sup>146</sup> In June 2020, Ressa was found guilty of cyber libel and sentenced to up to six years in prison.<sup>147</sup>

Additionally, human rights defenders allegedly are vilified and accused of being terrorists by President Duterte.<sup>148</sup> In April 2019, Karapatan, a prominent human rights organization in the Philippines, filed letters of allegation to the UN Special Rapporteurs regarding cases of threats, harassment, intimidation, and red-tagging of organizations.<sup>149</sup> Karapatan stated that violations against FoAA and human rights defenders have surged under Duterte, including reprisals against those who engage with UN human rights mechanisms.<sup>150</sup> Karapatan views such action by Duterte as a means of dissuading international actors from providing resources to human rights work,

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<sup>138</sup> *Journalists attacked in Philippines since 1992*, Committee to Protect Journalists (2021). Available at: <https://cpj.org/asia/philippines/> (accessed April 23, 2021).; *See also, Philippines*, Freedom in the World 2020, Freedom House (March 2020). Available at: <https://freedomhouse.org/country/philippines/freedom-world/2020> (accessed Feb. 21, 2021).

<sup>139</sup> *Id.*

<sup>140</sup> *Id.*

<sup>141</sup> *Id.*

<sup>142</sup> *Journalists attacked in Philippines since 1992*, Committee to Protect Journalists (2021). Available at: <https://cpj.org/asia/philippines/> (accessed April 23, 2021).

<sup>143</sup> *See Philippines*, Freedom in the World 2020, Freedom House (March 2020). Available at: <https://freedomhouse.org/country/philippines/freedom-world/2020> (accessed Feb. 21, 2021).

<sup>144</sup> *Philippines*, Freedom in the World 2020, Freedom House (March 2020). Available at: <https://freedomhouse.org/country/philippines/freedom-world/2020> (accessed Feb. 21, 2021).

<sup>145</sup> *Id.*

<sup>146</sup> *Id.*

<sup>147</sup> *Philippines*, Freedom in the World 2021, Freedom House (March 2021). Available at: <https://freedomhouse.org/country/philippines/freedom-world/2021> (access March 15, 2021).

<sup>148</sup> *Reprisals — Human Rights Defenders Who Engage with UN Continue to be Threatened and Attacked*, International Service for Human Rights (September 14, 2020). Available at: <http://ishr.ch/news/reprisals-human-rights-defenders-who-engage-un-continue-be-threatened-and-attacked> (access Feb. 21, 2021).

<sup>149</sup> *Id.*

<sup>150</sup> *Id.*

research, and humanitarian support.<sup>151</sup> Additionally, Karapatan views this harassment as reprisal for human rights work and specifically for Karapatan’s advocacy regarding the human rights situation.<sup>152</sup>

In June 2020, the UN Office of the High Commissioner for Human Rights (OHCHR) reported that as a consequence of Duterte’s drug war initiative, severe human rights violations have surged in the Philippines.<sup>153</sup> The report stated that since 2016, official figures indicate that “8,663 people have been killed [as of June 29, 2020], with other estimates of up to triple that number.”<sup>154</sup> OHCHR detailed ongoing threats to freedom of expression, with legal charges and prosecutions being brought against journalists and politicians critical of the Duterte administration, as well as actions to shut down media outlets.<sup>155</sup> Additionally, OHCHR’s documentation revealed “killings of 208 human rights defenders, journalists and trade unionists, including 20 women, between January 2015 and December 2019.”<sup>156</sup>

### *Anti-Terrorism Law*

In July 2020, President Duterte signed a new Anti-Terrorism Law, which contains vague provisions that grant the government the authority to quell critics and protestors.<sup>157</sup> Critics say the new provisions have broad definitions of terrorism and eliminate legal protections for those who are determined to be terrorists.<sup>158</sup> Implemented with the new law was the creation of the Anti-Terrorism Council, which is appointed by Duterte and has the authority to label an individual or group as terrorists.<sup>159</sup> The accused are then subject to arrest without a warrant.<sup>160</sup> This law could allow the government to arrest individuals who protest Duterte’s actions.<sup>161</sup> Additionally, the law provides for lengthy prison sentences.<sup>162</sup>

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<sup>151</sup> *Id.*

<sup>152</sup> *Id.*

<sup>153</sup> See *Situation of Human Rights in the Philippines*, UN Human Rights Council, ¶ 22, June 29, 2020, A/HRC/44/22. Available at: <https://www.ohchr.org/Documents/Countries/PH/Philippines-HRC44-AEV.pdf> (accessed April 23, 2021).

<sup>154</sup> *Id.*

<sup>155</sup> See *id.*

<sup>156</sup> *Id.* at ¶ 50.

<sup>157</sup> See *Philippines Events of 2020*, World Report 2021, Human Right Watch (2021). Available at: <https://www.hrw.org/world-report/2021/country-chapters/philippines> (accessed April 23, 2021).; See also, *Philippines: New Anti-Terrorism Act Endangers Rights*, Human Rights Watch (June 5, 2020). Available at: <https://www.hrw.org/news/2020/06/05/philippines-new-anti-terrorism-act-endangers-rights> (accessed April 23, 2021).

<sup>158</sup> *Philippines: New Anti-Terrorism Act Endangers Rights*, Human Rights Watch (June 5, 2020). Available at: <https://www.hrw.org/news/2020/06/05/philippines-new-anti-terrorism-act-endangers-rights> (accessed April 23, 2021).

<sup>159</sup> *Id.*

<sup>160</sup> *Id.*

<sup>161</sup> *Id.*

<sup>162</sup> See *id.*; See also, *Philippines Events of 2020*, World Report 2021, Human Right Watch (2021). Available at: <https://www.hrw.org/world-report/2021/country-chapters/philippines> (accessed April 23, 2021).

## STAKEHOLDER ENGAGEMENT IN THE PEOPLE’S REPUBLIC OF CHINA

### *Domestic Laws*

China was a member of the UN when the UDHR was adopted, but it has not ratified the ICCPR.<sup>163</sup> China’s constitution ostensibly provides for human rights protections. Article 33 of the constitution states that “the State respects and preserves human rights.”<sup>164</sup> Additionally, Article 35 protects citizen’s freedom of expression and FoAA, stating that “citizens of the People’s Republic of China enjoy freedom of speech, of the press, of assembly, of association, of procession and of demonstration.”<sup>165</sup> The constitution goes further by expressly providing that

Citizens of the People’s Republic of China have the right to criticize and make suggestions to any state organ or functionary. Citizens have the right to make to relevant state organs complaints and charges against, or exposures of, violation of the law or dereliction of duty by any state organ or functionary; but fabrication or distortion of fact with the intention of libel or frame-up is prohibited.<sup>166</sup>

Article 41 continues by stating that complaints made by citizens must be dealt with in a responsible manner by the government, and that no one, including the government, may suppress complaints or retaliate against the citizens making them.<sup>167</sup> These constitutional rights are qualified by Article 1 of the constitution, which provides that China “is a socialist state under the people’s democratic dictatorship led by the working class. . . . Sabotage of the socialist system by any organization or individual is prohibited.” In practice, citizens confront ongoing restrictions on civic freedoms, extreme censorship, disappearances, and other government efforts to silence critics.<sup>168</sup>

### *Record of Implementation*

China has a restrictive media environment, which has become moreso since the outbreak of COVID-19.<sup>169</sup> During the pandemic the Chinese government reportedly accelerated existing programs that track, surveille, and control the behavior of citizens through advanced technology.<sup>170</sup> The government controls most news reporting outlets throughout the country by direct ownership, accreditation of journalists, penalties for public criticism, and daily directives to media outlets and

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<sup>163</sup> *China*, OHCHR. Available at: <https://www.ohchr.org/EN/Countries/AsiaRegion/Pages/CNIndex.aspx> (accessed Feb. 22, 2021).

<sup>164</sup> Xianfa art. 33 (1982) (China). Available at: [https://constituteproject.org/constitution/China\\_2018.pdf?lang=en](https://constituteproject.org/constitution/China_2018.pdf?lang=en) (accessed Feb. 25, 2021).

<sup>165</sup> *Id.* at art. 35.

<sup>166</sup> *Id.* at art. 41.

<sup>167</sup> *Id.*

<sup>168</sup> See *HRC46 — Key Issues on Agenda of March 2021 Session*, International Service for Human Rights (Feb. 17, 2021). Available at: <http://ishr.ch/news/hrc46-key-issues-agenda-march-2021-session> (accessed Feb. 21, 2021).

<sup>169</sup> *China*, Freedom in the World 2020, Freedom House (March 2021). Available at: <https://freedomhouse.org/country/china/freedom-world/2020> (accessed March 15, 2021).

<sup>170</sup> *Id.*

websites with coverage of breaking news stories.<sup>171</sup> State management of the telecommunications infrastructure enables the government to block websites, remove smartphone applications from the domestic market, and delete microblog posts, instant messages, and user accounts that address banned political, social, economic, and religious topics.<sup>172</sup> Reports indicate that thousands of websites have been blocked by the government for many years, including well-established news sites and social media platforms like *The New York Times*, YouTube, Twitter, and Facebook.<sup>173</sup>

Additionally, the government allegedly has increased the monitoring of private communication.<sup>174</sup> The government is said to monitor discussions on “WeChat,” a popular social media application in China, to ensure conformance with government content restrictions and surveillance requests.<sup>175</sup> Surveillance cameras cover a majority of urban areas and public transportation and are augmented with facial recognition software.<sup>176</sup> Private technology and internet companies have provided the government mechanisms to master the use of facial recognition, real-name registration systems, and big data to keep the citizens of China under surveillance.<sup>177</sup>

As of December 2019, telecommunications companies were required to obtain facial scans of new internet or mobile phone users as part of the real-name registration process integrated within the 2017 Cybersecurity Law.<sup>178</sup> Further, court verdicts have cited private social media communications, public surveillance videos, and personal meetings as evidence in cases where citizens were punished for expressing their views on political or religious topics.<sup>179</sup>

The government has constrained the ability of civil society organizations and NGOs to engage in human rights work. Legislation governing philanthropy passed in 2016 significantly reduced NGOs’ access to foreign funding and increased governmental supervision and funding approval.<sup>180</sup> Additionally, a foreign NGO law took effect in 2017, which restricts the operations of foreign NGOs in China and requires them to find a Chinese sponsor entity and to register with the Ministry of Public Security.<sup>181</sup> The law also grants police the authority to search NGOs’ premises, seize property, detain personnel, and initiate criminal procedures without a warrant.<sup>182</sup>

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<sup>171</sup> *Id.*

<sup>172</sup> *Id.*

<sup>173</sup> *Id.*; See also *China 2019*, Amnesty International (2019). Available at: <https://www.amnesty.org/en/countries/asia-and-the-pacific/china/report-china/> (accessed March 2, 2021).

<sup>174</sup> *China*, Freedom in the World 2020, Freedom House (March 2021). Available at: <https://freedomhouse.org/country/china/freedom-world/2020> (accessed March 15, 2021).

<sup>175</sup> *Id.*

<sup>176</sup> *Id.*

<sup>177</sup> *China 2019*, Amnesty International (2019). Available at: <https://www.amnesty.org/en/countries/asia-and-the-pacific/china/report-china/> (accessed March 2, 2021).

<sup>178</sup> *China*, Freedom in the World 2020, Freedom House (March 2021). Available at: <https://freedomhouse.org/country/china/freedom-world/2020> (accessed March 15, 2021).

<sup>179</sup> *Id.*

<sup>180</sup> *Id.*

<sup>181</sup> *Id.*

<sup>182</sup> *Id.*

## *Imprisonment and Forced Disappearances of Human Rights Defenders*

Many activists and human rights defenders in China are prosecuted under vague charges, such as “subverting state power,” “inciting subversion of state power,” and “provoking trouble.”<sup>183</sup> Many who were prosecuted were held in what was known as “residential surveillance in designated locations.”<sup>184</sup> This form of detention allows the police to detain individuals suspected of state security crimes for up to six months in unknown locations outside of the formal detention system.<sup>185</sup> Suspects have been denied contact with their families and access to legal counsel.<sup>186</sup>

Gao Zhisheng, a prominent human rights lawyer, has been disappeared by the Chinese government (as of September 2020).<sup>187</sup> Zhisheng was released from prison in 2014 and was under house arrest for three years.<sup>188</sup> Zhisheng escaped in August 2017 for three weeks before being detained again by police without formal charges.<sup>189</sup> Since 2017, the CCP has not provided Zhisheng’s family with information regarding his whereabouts.<sup>190</sup> Zhisheng’s daughter, Geng Ge, was invited to speak at the UN Security Council’s 45th session in 2020 to address her father’s disappearance.<sup>191</sup> She expressed concern for her father’s whereabouts and hoped that was still alive.<sup>192</sup>

In February 2019, Yu Wensheng, a Beijing human rights lawyer, was indicted on charges of “inciting subversion of state power” and “obstructing the duties of public officers” after he released an open letter calling for five reforms to China’s constitution.<sup>193</sup> In June 2020, Wensheng was sentenced to four years imprisonment and deprived of political rights for an additional three years.<sup>194</sup> Since his imprisonment, Wensheng has been deprived of communication with his family.<sup>195</sup> Wensheng’s wife, Xu Yan, reportedly has tried to send him written letters, but the letters were returned.<sup>196</sup>

Family members of human rights defenders reportedly are threatened, harassed, and surveilled by the Chinese government.<sup>197</sup> Li Wenzu, wife of imprisoned human rights lawyer Wang Quanzhang, reported that police had pressured landlords within the community to deny her

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<sup>183</sup> *China 2019*, Amnesty International (2019). Available at: <https://www.amnesty.org/en/countries/asia-and-the-pacific/china/report-china/> (accessed March 2, 2021).

<sup>184</sup> *Id.*

<sup>185</sup> *Id.*

<sup>186</sup> *Id.*

<sup>187</sup> *Geng Ge Discusses Gao Zhisheng’s Enforced Disappearance*, China Aid (Sept. 28, 2020). Available at: <https://www.chinaaid.org/2020/09/geng-ge-discusses-gao-zhishengs.html> (accessed April 1, 2021).

<sup>188</sup> *Id.*

<sup>189</sup> *Id.*

<sup>190</sup> *Id.*

<sup>191</sup> *Id.*

<sup>192</sup> *Id.*

<sup>193</sup> *China 2019*, Amnesty International (2019). Available at: <https://www.amnesty.org/en/countries/asia-and-the-pacific/china/report-china/> (accessed March 2, 2021).

<sup>194</sup> *China: Wife of Detained Lawyer Yu Wensheng Tells of Ongoing Fight for Justice*, Amnesty International (July 9, 2020). Available at: <https://www.amnesty.org/en/latest/campaigns/2020/07/wife-of-yu-wensheng-tells-on-fight-for-justice/> (accessed April 1, 2021).

<sup>195</sup> *Id.*

<sup>196</sup> *Id.*

<sup>197</sup> *China 2019*, Amnesty International (2019). Available at: <https://www.amnesty.org/en/countries/asia-and-the-pacific/china/report-china/> (accessed March 2, 2021).

a home to rent, creating difficulties for her.<sup>198</sup> Police pressured school administrators to deny Wenzu's six-year-old son, Quanquan, admission to the public school systems.<sup>199</sup>

Additionally, there were reported acts of intimidation and reprisals against human rights defenders during a 2016 visit of the Special Rapporteur on extreme poverty.<sup>200</sup> Jiang Tianyong, a prominent legal rights activist, was supposed to meet with the Special Rapporteur, but disappeared on November 21, 2016.<sup>201</sup> His Tianyong's disappearance appeared to be a consequence of his human rights work and efforts to cooperate with UN human rights mechanisms.<sup>202</sup> Tianyong's disappearance was linked to an informal arrest by the government when he was officially released from prison on February 28, 2019.<sup>203</sup> After his release, Tianyong was returned to his parent's home where he has remained under house arrest.<sup>204</sup> Tianyong reportedly has since been surveilled, blocked from receiving independent medical treatment, and prohibited from joining his wife and daughter in the United States.<sup>205</sup>

### *Hong Kong*

Hong Kong, a special administrative region of China, has traditionally enjoyed substantial civil liberties under the local constitution, the Basic Law; however, the chief executive and Legislative Council are chosen through indirect electoral systems that favor Beijing's interests.<sup>206</sup> With growing intervention by the Chinese government, Hong Kong's citizens are experiencing restricted civil liberties.<sup>207</sup>

In 2019, prodemocracy protests broke out, calling for the resignation of Chief Executive Carrie Lam and for direct elections for her post and all seats in Legislative Council.<sup>208</sup> In April 2020, police arrested fifteen current and former legislators who were leading figures in the prodemocracy movement.<sup>209</sup> They were charged with participation in unlawful assemblies in connection with the 2019 protests.<sup>210</sup> In June 2020, the Standing Committee of China's National People's Congress ("NPC") passed a new National Security Law ("NSL") for Hong Kong, with immediate effect and apparently little or no public consultation.<sup>211</sup> The NSL created broadly worded criminal offenses, such as separatism, subversion of state power, terrorism, and collusion

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<sup>198</sup> *Id.*

<sup>199</sup> *Id.*

<sup>200</sup> *Submission to the UN Secretary-General on Recent Developments, Cases and Recommendations, Ending Intimidation and Reprisals Against Those Who Cooperate with the UN in the Field of Human Rights*, International Service for Human Rights (May 2020). Available at: [https://www.ishr.ch/sites/default/files/documents/ishr\\_submission\\_to\\_sg\\_reprisals\\_report\\_2020\\_final\\_rev.pdf](https://www.ishr.ch/sites/default/files/documents/ishr_submission_to_sg_reprisals_report_2020_final_rev.pdf) (accessed Feb. 21, 2021).

<sup>201</sup> *Id.*

<sup>202</sup> *Id.*

<sup>203</sup> *Id.*

<sup>204</sup> *Id.*

<sup>205</sup> *Id.*

<sup>206</sup> *Hong Kong, Freedom in the World 2021*, Freedom House (March 2021). Available at: <https://freedomhouse.org/country/hong-kong/freedom-world/2021> (accessed March 15, 2021).

<sup>207</sup> *Id.*

<sup>208</sup> *Id.*

<sup>209</sup> *Id.*

<sup>210</sup> *Id.*

<sup>211</sup> *Id.*

with foreign states.<sup>212</sup> With the implementation of this law, the government appears to have the authority to detain and charge individuals for exercising their fundamental rights to freedom of expression and FoAA.<sup>213</sup>

During the 2019 protests, journalists were allegedly assaulted, detained, tear gassed, and threatened with live ammunition.<sup>214</sup> Reports from August 2020 show journalists and media workers were arrested for suspicion of “colluding with foreign forces.”<sup>215</sup> Additionally, the NSL was invoked to arrest individuals for carrying stickers inscribed with the slogan “liberate Hong Kong” while participating in peaceful public assemblies.<sup>216</sup>

### *Continued Uyghur Repression Leading to Forced Family Separations*

For decades, many Uyghurs and other Turkic Muslims have experienced ethnic and religious discrimination in China’s Xinjiang Uyghur Autonomous Region (Xinjiang).<sup>217</sup> Since 2014, the region has experienced an expanded police presence and intense surveillance as part of a “People’s War on Terror.”<sup>218</sup> This appears to be the government’s effort to counter national security threats or “religious extremists,” which the Uyghurs have been determined to be.<sup>219</sup> Surveillance and social control measures reportedly mounted and an estimated one million or more people allegedly have been detained in “transformation-through-education” or “vocation training” centers in Xinjiang.<sup>220</sup> In these centers, Uyghurs are reportedly subjected to various forms of torture, political indoctrination and forced cultural assimilation.<sup>221</sup>

This mass detention campaign combined with other restrictions appears to have prevented Uyghur parents from returning to China to take care of their children after living abroad for educational or professional purposes.<sup>222</sup> Uyghur parents studying or working abroad felt free to leave their children in the care of family members in their hometowns of Xinjiang while away.<sup>223</sup> Relatives who had been looking after the children have been taken into internment camps or jailed and parents’ temporary stops overseas are turning into exile.<sup>224</sup>

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<sup>212</sup> *Id.*

<sup>213</sup> *China Events of 2020*, World Report 2021, Human Rights Watch (2021). Available at: <https://www.hrw.org/world-report/2021/country-chapters/china-and-tibet> (accessed April 23, 2021).

<sup>214</sup> *Id.*

<sup>215</sup> *Id.*

<sup>216</sup> *Id.*

<sup>217</sup> *Hearts and Lives Broken: The Nightmare of Uyghur Families Separated by Repression*, Amnesty International (March 2021). Available at: <https://www.amnesty.org/download/Documents/ASA1737982021ENGLISH.PDF> (accessed April 1, 2021); See also, *China Events of 2020*, World Report 2021, Human Rights Watch (2021). Available at: <https://www.hrw.org/world-report/2021/country-chapters/china-and-tibet> (accessed April 23, 2021).

<sup>218</sup> *Hearts and Lives Broken: The Nightmare of Uyghur Families Separated by Repression*, Amnesty International (March 2021). Available at: <https://www.amnesty.org/download/Documents/ASA1737982021ENGLISH.PDF> (accessed April 1, 2021).

<sup>219</sup> See *id.*; See also, Kristian Petersen, *Religion, Uyghurs, and the Global War on Terror*, *Contending Modernities* (Feb 11, 2021). Available at: <https://contendingmodernities.nd.edu/global-currents/religion-uyghurs-global-war-terror/> (access April 23, 2021).

<sup>220</sup> *Hearts and Lives Broken: The Nightmare of Uyghur Families Separated by Repression*, Amnesty International (March 2021). Available at: <https://www.amnesty.org/download/Documents/ASA1737982021ENGLISH.PDF> (accessed April 1, 2021).

<sup>221</sup> *Id.*

<sup>222</sup> *Id.*

<sup>223</sup> *Id.*

<sup>224</sup> *Id.*

# MINORITY RIGHTS

## INTERNATIONAL AND REGIONAL STANDARDS

Members of minority groups, individually and collectively, are protected through several minority rights and human rights instruments.<sup>225</sup> The nations studied in this report are members of the UN and therefore bound by the UN Charter.<sup>226</sup> In 1992, UN member states adopted the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, which ensures the rights of minority individuals and guides States on diversity management and minimizing discrimination against minority groups.<sup>227</sup> Although this Declaration is not legally binding, it expresses the shared aspirations of UN members, including ADB borrower countries.

Article 1 of the Minorities Declaration describes minorities by referring to national origin, ethnicity, cultural, religious and linguistic identity.<sup>228</sup> This article also provides that minorities should be protected by States.<sup>229</sup> International law, however, lacks a generally agreed upon definitions of minorities, because the term is subjective and what constitutes a minority varies by state and region.<sup>230</sup> The most significant characteristic which applies to all minority groups is the fact that they are in a non-dominant position.<sup>231</sup> Generally, they are also a numerical minority.<sup>232</sup>

The UN's Universal Declaration of Human Rights (UDHR), the International Covenant on Economic, Social, and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR) together create the "International Bill of Human Rights."<sup>233</sup> Each of these international legal instruments was implemented to "promote and encourage respect for human rights and fundamental freedoms for all."<sup>234</sup> Article 2.2 of the ICESCR guarantees all enunciated rights are universally applicable, regardless of race, sex, language, religion, national origin, or birth status.<sup>235</sup> As such, the ICESCR provides that minority communities are protected under the covenant. The ICCPR explicitly addresses minority rights in Article 27, which states that "[i]n those States in which ethnic, religious or linguistic minorities exist, persons belonging to such

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<sup>225</sup> *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*, UN Human Rights Office of the High Commissioner 3, (2010). Available at: [https://www.ohchr.org/Documents/Issues/Minorities/Booklet\\_Minorities\\_English.pdf](https://www.ohchr.org/Documents/Issues/Minorities/Booklet_Minorities_English.pdf).

<sup>226</sup> U.N. Charter, art. 1(3).

<sup>227</sup> *Id.*

<sup>228</sup> *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*, Dec. 18. 1992, GA Resolution 47/135.

<sup>229</sup> *Id.*

<sup>230</sup> *Minority Rights: International Standards and Guidance for Implementation*, UN Human Rights Office of the High Commissioner, 2 (2010). Available at: [https://www.ohchr.org/documents/publications/minorityrights\\_en.pdf](https://www.ohchr.org/documents/publications/minorityrights_en.pdf).

<sup>231</sup> *Id.*

<sup>232</sup> *Id.*

<sup>233</sup> *The International Bill of Human Rights: Fact Sheet No. 2 (Rev.1)*, U.N. Officer of the High Commissioner on Human Rights, 1. Available at: <https://www.ohchr.org/documents/publications/compilation1.1en.pdf> (accessed Apr. 15, 2021).

<sup>234</sup> *The United Nations Human Rights Treaty System: An Introduction to the Core Human Rights Treaties and the Treaty Bodies*, U.N. Office of the High Commissioner on Human Rights, 3. Available at: <https://www.ohchr.org/documents/publications/factsheet30en.pdf> (accessed Apr. 17, 2021).

<sup>235</sup> International Covenant on Economic, Social and Cultural Rights, Article 2.2 (Dec. 16, 1966). Available at: <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx> (accessed on Apr. 10, 2021).

minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.”<sup>236</sup> Article 27 is collectively and individually actionable, per the Human Rights Committee.<sup>237</sup> For many minority communities, the use of language, practice of religion, and enjoyment of their culture is their “raison d’etre.”<sup>238</sup>

The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) has been endorsed by the nations examined in this report.<sup>239</sup> The UNDRIP provides a framework of minimum standards regarding the treatment of indigenous peoples worldwide and expounds on existing human rights legislation, specifically as it relates to indigenous communities.<sup>240</sup> A cornerstone of UNDRIP is that indigenous people cannot be removed from their land without their “free, prior and consent” and “just and fair compensation.”<sup>241</sup>

The Convention on the Elimination of All Forms of Racial Discrimination (CERD) is also relevant to minority rights. It seeks to eliminate discrimination based on “race, color, descent, or national or ethnic origin.”<sup>242</sup> Strictly speaking, CERD provides protection without regard to whether members of a protected group are in the minority in a country, but very often minority identity is tied to one of the protected categories.

Myanmar and Indonesia, both discussed in this report, are members of the Association of Southeast Asian Nations (ASEAN).<sup>243</sup> ASEAN is a sub-regional group with the purpose of “accelerating economic growth, social progress, and cultural development in the region” and to encourage peace and stability for members through the observation and preservation of justice, the rule of law, and the principles of the United Nations Charter.<sup>244</sup> The organization’s founding document, the Bangkok Declaration of 1993, specifically acknowledges the “importance of

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<sup>236</sup> International Covenant on Civil and Political, Article 27 (Dec. 16, 1966). Available at: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx> (accessed on April 3, 2020).

<sup>237</sup> *Id.*; Bernard Ominayak, Chief of the Lubicon Lake Band v. Canada, Communication No. 1671984 (Mar. 26, 1990), U.N. Doc. Supp. No. 40 (A/45/40) at 1, ¶ 32.1 (1990) [hereinafter *Lubicon v. Canada*]; see also Mapping Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment, Individual Report on the International Covenant on Civil and Political Rights, Report No. 2, ¶ 36 (December 2013).

<sup>238</sup> Francesco Francioni and Martin Scheinin, *Cultural Human Rights*, MARTINUS NIJHOFF 123-24, (2008) [hereinafter Francioni and Scheinin].

<sup>239</sup> *United Nations Declaration on the Rights of Indigenous Peoples*, U.N. Department of Economic and Social Affairs, ¶ 2. Available at: <https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html> (accessed Apr. 18, 2021)

<sup>240</sup> *United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)* art. 43. Available at [https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP\\_E\\_web.pdf](https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf) (accessed Apr. 15, 2021); *United Nations Declaration on the Rights of Indigenous Peoples*, *supra* note 239.

<sup>241</sup> *Id.* at Art. 10; see also *id.* at Art. 28.

<sup>242</sup> *International Convention on the Elimination of All Forms of Racial Discrimination*, U.N. Human Rights Office of the High Commissioner. Available at: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx>.

<sup>243</sup> *ASEAN Member States*, Association of Southeast Asian Nations. Available at: <https://asean.org/asean/asean-member-states/> (accessed Apr. 19, 2021).

<sup>244</sup> *About ASEAN*, Association of Southeast Asian Nations. Available at: <https://asean.org/asean/about-asean/> (accessed Apr. 19, 2021); Anna Meijknecht & Byung Sook de Vries, *Is There a Place for Minorities’ and Indigenous Peoples’ Rights Within ASEAN?: Asian Values, ASEAN Values and the Protection of Southeast Asian Minorities and Indigenous Peoples*, 17 INT’L J. ON MINORITY & GROUP 75-110, 90 (2010). Available at: [https://brill.com/view/journals/ijgr/17/1/article-p75\\_3.xml](https://brill.com/view/journals/ijgr/17/1/article-p75_3.xml) (accessed Apr. 16, 2021).

guaranteeing the human rights and fundamental freedoms of vulnerable groups,” which includes minorities of all types and indigenous peoples.<sup>245</sup>

However, in ASEAN documents, there is an emphasis on “unity,” “common values,” and “non-interference.”<sup>246</sup> These principles can be in tension with protecting minority and indigenous rights.<sup>247</sup> The emphasis on non-interference can be a problem because “[t]he states themselves pose the greatest danger to minorities and indigenous peoples, [and] their protection... cannot be entrusted to states exclusively, but requires some form of external supervision.”<sup>248</sup>

Asian countries vary in their implementation of critical international instruments, but their lack of adherence to these instruments regarding minority and indigenous rights is consistent. In some countries in the region, there is a pattern of significant human rights abuses directed at minority and indigenous groups, which experience physical, political, social, cultural, and economic marginalization at the hands of state and non-state actors.<sup>249</sup> The mistreatment of minorities is often subtle and shielded by explicit claims in domestic and international law that guarantee minority rights – but that are not implemented in practice. There are clear examples of blatant discrimination against minority groups.<sup>250</sup> Even when governments are not directly responsible for the mistreatment of minority groups, they are often complicit due to inaction.<sup>251</sup>

Minorities in the region generally lack access to education, opportunity, and upward movement. This lack of access keeps them in poverty and their place in each society has often left them with little redress. Domestic courts sometimes perpetuate the marginalization of minorities by making decisions that on their face do not appear to be discriminatory, but in practice are.

## MINORITY RIGHTS IN THE PEOPLE’S REPUBLIC OF CHINA

### *Domestic Laws*

The People’s Republic of China’s (China) justice system has been accused of being plagued by unfair trials,<sup>252</sup> torture,<sup>253</sup> and detention of religious minorities and political

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<sup>245</sup> Report of the Regional Meeting for Asia of the World Conference on Human Rights, Bangkok, 29 March-2 April 1993, Rapporteur: Mr. L.M. Singhvi. General A/Conf.157/Asrm/8, A/Conf.157/ Pc/59, 7 April 1993, ¶ 11. Available at: <http://www.internationalhumanrightslexicon.org/hrdoc/docs/bangkokdeclaration.pdf>; ASEAN Bangkok Declaration, art. 7, 11. Available at: <https://asean.org/storage/2019/06/2.-Bangkok-Declaration-on-Combating-Marine-Debris-in-ASEAN-Region-FINAL.pdf>; ASEAN Bangkok Declaration (accessed Apr. 20, 2021).

<sup>246</sup> Meijknecht & de Vries, *supra* note 244 at 96.

<sup>247</sup> *Id.* at 107-108.

<sup>248</sup> *Id.* at 108.

<sup>249</sup> *Minority Rights Deteriorate Across South Asia*, Minority Rights Group International (June 12, 2019). Available at: <https://minorityrights.org/2019/06/12/minorities-rights-deteriorate-across-south-asia/>; *Key Issues for Minorities’ Rights in Asia*, Minorities Rights Group International, 1, (Mar. 2005). Available at: <https://www.refworld.org/pdfid/469cbfa90.pdf> (accessed Apr. 19, 2021).

<sup>250</sup> *Minority Rights Deteriorate Across South Asia*, *supra* note 249.

<sup>251</sup> *Id.*

<sup>252</sup> Rongjie Lan, *A False Promise of Fair Trials: A Case Study of China’s Malleable Criminal Procedure Law*, 27(2) PAC. BASIN L.J. 153-212, 168 (2010). Available at: <https://escholarship.org/uc/item/0hh4t5gb>.

<sup>253</sup> Maya Wang, *More Evidence of China’s Horrific Abuses in Xinjiang but Little Action Holding Beijing Accountable*, Human Rights Watch, ¶ 4 (Feb. 20, 2020). Available at: <https://www.hrw.org/news/2020/02/20/more-evidence-chinas-horrific-abuses-xinjiang>.

dissidents.<sup>254</sup> China is a party to ICESCR and CERD; it has signed but not ratified the ICCPR.<sup>255</sup> Like other UN members, it is committed to the principles of the UDHR, UNDRIP, and other UN declarations.

As noted in the section on stakeholder engagement, the Chinese Constitution classifies the country as a “socialist state under the people’s democratic dictatorship led by the working class and based on the alliance of workers and peasants.”<sup>256</sup> China’s 1982 constitution does recognize certain fundamental rights for Chinese citizens. Some of these fundamental rights include personal freedom,<sup>257</sup> equality before the law,<sup>258</sup> freedom of religion,<sup>259</sup> freedom of speech, of the press, of assembly, of association, and of demonstration,<sup>260</sup> and the right to vote.<sup>261</sup>

The constitution explicitly addresses minorities. Article 4 classifies all nationalities as equal, prohibits discrimination on the basis of nationality and establishes state protection of the rights and interests of minorities.<sup>262</sup> It further establishes regional autonomy for minority communities and guarantees the freedom to use and develop their customs and language.<sup>263</sup>

Although the constitution itself does not define “minority,” the Chinese government officially defines a minority as “a historically constituted, stable community of people who, in general, share common characteristics of historical origins, mode of production, language, culture, customs, and a sense of solidarity; for some minorities, religion also plays an important role in their formation and development process.”<sup>264</sup> This definition does not consider self-identification. As a result, the groups officially recognized as minorities are not necessarily representative of the ethnic diversity within country.

The ethnic majority of China is classified as Han.<sup>265</sup> This large group breaks down further into smaller ethnic groups, including many minority groups, but the smaller groups are not recognized as separate ethnic groups under the government’s categorization.<sup>266</sup> The Han people are united by a common history, culture, and written language rooted in China’s Han dynasty and thus are classified as indigenous people.<sup>267</sup> This concept of Han was created by the modern Chinese state to unify the country and to create a sense of nationhood, but the Han people vary greatly. For example, people categorized as Han speak eight different languages.<sup>268</sup>

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<sup>254</sup> *Id.*

<sup>255</sup> United Nations Human Rights Treaty Bodies (2021). Available at: [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=36&Lang=EN](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=36&Lang=EN) (accessed Apr. 18, 2021).

<sup>256</sup> Constitution of the People’s Republic of China, 1982 art 1.

<sup>257</sup> *Id.* at art 37.

<sup>258</sup> *Id.* at art 33.

<sup>259</sup> *Id.* at art 36.

<sup>260</sup> *Id.* at art 35.

<sup>261</sup> *Id.* at art 34.

<sup>262</sup> *Id.* at art 4.

<sup>263</sup> *Id.*

<sup>264</sup> Wang Linzhu, *The Identification of Minorities in China*, 16(2) Asian-Pac. L. & Pol’y J. 1-21, 12 (2015). Available at: [http://blog.hawaii.edu/aplpj/files/2015/09/APLPJ\\_16\\_2\\_Wang.pdf](http://blog.hawaii.edu/aplpj/files/2015/09/APLPJ_16_2_Wang.pdf)

<sup>265</sup> *World Directory of Minorities and Indigenous Peoples: China*, Minority Rights Group International (2021). Available at: <https://minorityrights.org/country/china/>.

<sup>266</sup> *Id.*

<sup>267</sup> *Id.*; Han Chinese, New World Encyclopedia. Available at: [https://www.newworldencyclopedia.org/entry/Han\\_Chinese](https://www.newworldencyclopedia.org/entry/Han_Chinese) (accessed Apr. 21, 2021).

<sup>268</sup> *Id.*

Outside of the Han, there are 55 national minority groups recognized by the government, which include minority groups made up largely of China's indigenous peoples.<sup>269</sup> The national minorities are generally concentrated along China's borders but are present throughout the country.<sup>270</sup> In order to be officially recognized by the government, the minority groups must apply for recognition.<sup>271</sup> The majority of groups who have undergone this process were denied recognition.<sup>272</sup> Article 4 of the Chinese constitution says that the State protects the lawful rights and interests of the minority nationalities,<sup>273</sup> but it provides no administrative codes or rules for implementation.

Chinese authorities have enacted various pieces legislation directed at controlling and regulating the population in the Xinjiang Uygur Autonomous Region (XUAR), which is home to a number of minority groups, notable the Uygurs. In 2015, they passed XUAR Religious Affairs Regulations (RXR). On their face, these regulations guarantee qualified freedom of religion in the country. The ostensible intent of the regulations is to further patriotism, progress, and national and religious unity and harmony.<sup>274</sup> The regulations do this by prohibiting the use of religion to “split the country, spread religious extremism, incite national hatred, undermine national unity, disrupt social order, and impair the physical and mental health of citizens’ and to ‘hinder administrative, judicial, educational, cultural, marital, family planning, inheritance and other systems ... [and] endanger national security and interests, and public social interests.’”<sup>275</sup> The implementation of the RXR led the federal government to monitor all religious activity in the region.<sup>276</sup>

In 2016, the Chinese government also implemented a counterterrorism law in Xinjiang. This law gives police significant latitude in dealing with individuals they suspect of terrorism. Police are given the authority to order and oversee restrictive measures imposed on suspects of crimes falling under this act. Restrictions include confiscation of legal identification, such as passport and ID, and restrictions on movement and use of public transportation.<sup>277</sup>

Lastly, in 2017, the government passed the Regulations on De-extremification.<sup>278</sup> These laws allowed the central government to use surveillance and detention to pursue “reeducation,” “combatting terrorism or extremism,” and “de-extremification.”<sup>279</sup>

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<sup>269</sup> *World Directory of Minorities and Indigenous Peoples: China*, *supra* note 265.

<sup>270</sup> *Id.*

<sup>271</sup> *Id.*

<sup>272</sup> *Id.*

<sup>273</sup> Constitution of the Republic of China, 1982 art 4.

<sup>274</sup> Martin Lavička, *Changes in Chinese Legal Narratives About Religious Affairs in Xinjiang*, 22 *Asian Ethnicity* 61-76, 68 (2021). Available at: <https://www.tandfonline.com/doi/pdf/10.1080/14631369.2020.1793100?needAccess=true> (accessed Apr. 24, 2021).

<sup>275</sup> *Id.*

<sup>276</sup> Lavička, *supra* note 274.

<sup>277</sup> *China: Disclose Details of Terrorism Convictions*, Human Rights Watch, ¶ 22 (Mar. 16, 2016). Available at: <https://www.hrw.org/news/2017/03/16/china-disclose-details-terrorism-convictions> (accessed Apr. 24, 2021).

<sup>278</sup> *Regulations of De-Extremification*, Counter-Terrorism Freedom of Religion News, ¶ 1 (May 31, 2018). Available at: <https://www.uyghurcongress.org/en/issue-16-regulations-of-de-extremification/> (accessed Apr. 24, 2021).

<sup>279</sup> *China Events of 2018*, Global Centre for the Responsibility to Protect (Mar. 15, 2021). Available at: <https://www.globalr2p.org/countries/china/> (accessed Apr. 24, 2021).

## ***Record of Implementation***

### *Tibet*

Protests in Tibet in the 1980s were suppressed by the national government, which adopted a program to promote Han immigration to Tibet allegedly in order to change the ethnic makeup.<sup>280</sup> Today, Chinese authorities in Tibet reportedly restrict speech, movement, and assembly and conduct substantial surveillance.<sup>281</sup> Chinese authorities have also implemented political education in monasteries and schools and encourage people to report sympathy for the exiled Dalai Lama or any foreign government.<sup>282</sup> Political activists allegedly are subject to prosecution on spurious charges.<sup>283</sup>

### *Treatment of Uyghurs*

China has committed significant human rights abuses against the Uyghurs, a Muslim community who are concentrated in the Xinjiang Uyghur Autonomous Region (XUAR).<sup>284</sup> Since 2017, the government reportedly has “also conducted a campaign to forcibly reduce birth rates among Uyghurs and other Muslim population in the XUAR,” including through abortion and sterilization.<sup>285</sup>

There are more than 280 suspected detention camps in Xinjiang.<sup>286</sup> Reports indicate that some individuals in these camps have experienced rape, sexual abuse, torture and even death.<sup>287</sup> Further, there is evidence that the detention camps are housing Uyghurs for the purpose of forced labor.<sup>288</sup> Legislation and regulations in China are in place to guarantee minorities special rights and to prohibit discrimination, but Uyghurs appear to experience discrimination regarding job opportunities, increased criminalization, and access to resources.<sup>289</sup>

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<sup>280</sup> *Id.*

<sup>281</sup> *China Events of 2018*, Human Rights Watch (Dec. 18, 2018). Available at: <https://www.hrw.org/world-report/2019/country-chapters/china-and-tibet>.

<sup>282</sup> *Id.*

<sup>283</sup> *Id.*

<sup>284</sup> *China: Systematic Repression of Ethnic Minorities Laid Bare in UN Findings*, Amnesty International (Aug. 30, 2018). Available at: <https://www.amnesty.org/en/latest/news/2018/08/china-systematic-repression-of-ethnic-minorities-laid-bare-in-un-findings/>.

<sup>285</sup> *China Events of 2018*, Global Centre for the Responsibility to Protect (Mar. 15, 2021). Available at: <https://www.globalr2p.org/countries/china/>.

<sup>286</sup> *China: Events of 2020*, *supra* note 220.

<sup>287</sup> *Id.*

<sup>288</sup> *Id.* at ¶2.

<sup>289</sup> *World Directory of Minorities and Indigenous Peoples: Uyghurs*, Minority Rights Group International (2021). Available at: <https://minorityrights.org/minorities/uyghurs/>.

## MINORITY RIGHTS IN INDIA

### *Domestic Laws*

India is a party or has committed to the UDHR, the ICCPR, the ICESCR, the CERD and the UNDRIP.<sup>290</sup> On their face, the national laws of India provide safeguards for minority citizens and communities, but the implementation and execution of these laws is lacking.

Hindu nationalism – expressed in political, social and cultural terms – is a powerful force in Indian society. The current ruling party, the Bharatiya Janata Party (BJP), is deeply connected with the Hindu nationalist movement.<sup>291</sup> Hindu nationalism emphasizes Hindu identity at the expense of minorities. Minority groups in India face discrimination by the government and members of the Hindu majority.<sup>292</sup>

Minority groups in India include individuals practicing religions other than Hinduism and individuals classified as scheduled tribes and castes. Scheduled tribe members are also known as Adivasis.<sup>293</sup> Adivasi refers to local indigenous groups recognized by the government and as such the classification differs between states.<sup>294</sup> Scheduled caste members are also known as the Dalits or the “untouchables.”<sup>295</sup> The term Dalit means “oppressed,” “broken,” or “crushed.”<sup>296</sup> Dalits or scheduled castes consist of members of the lowest rung in the caste hierarchy, as classified by Constitutional Order 1950.<sup>297</sup> Article 17 of the Indian constitution outlawed the practice of untouchability and made discrimination based on caste affiliation illegal.<sup>298</sup> It did not, however, outlaw the caste system as a whole, and caste based discrimination still exists.<sup>299</sup>

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<sup>290</sup> *Ratification Status for India*, UN Treaty Body Database (2021). Available at: [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=119&Lang=EN](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=119&Lang=EN) (accessed: Apr. 21, 2021).

<sup>291</sup> Andrea Malji, *The Rise of Hindu Nationalism and Its Regional and Global Ramifications*, Association of Asian Studies (2018). Available at: <https://www.asianstudies.org/publications/ea/archives/the-rise-of-hindu-nationalism-and-its-regional-and-global-ramifications/>.

<sup>292</sup> Iqtidar Karamat Cheema, *Constitutional and Legal Challenges Faced by Religious Minorities in India*, U.S. Commission on International Religious Freedom, 1 (Feb. 2017). Available at: <https://www.uscirf.gov/sites/default/files/Constitutional%20and%20Legal%20Challenges%20Faced%20by%20Religious%20Minorities%20in%20India.pdf>; *India: Government Policies, Actions Target Minorities*, Human Rights Watch (Feb. 19, 2021). Available at: <https://www.hrw.org/news/2021/02/19/india-government-policies-actions-target-minorities>.

<sup>293</sup> *Adivasis*, Minority Rights Group International (2021). Available at: <https://minorityrights.org/minorities/adivasis-2/> (Accessed: Mar. 28, 2021)

<sup>294</sup> *Id.*

<sup>295</sup> *Dalits*, Minority Rights Group International (2021). Available at: <https://minorityrights.org/minorities/dalits/> (Accessed: Mar. 28, 2021).

<sup>296</sup> *Id.*

<sup>297</sup> Constitution of India, 1950 art 341. Available at: <https://legislative.gov.in/constitution-of-india> (Accessed: Mar. 28, 2021).

<sup>298</sup> *Id.* at art 17.

<sup>299</sup> *COVID-19: UN Human Rights Chief “Distressed” over Plight of India’s Internal Migrants, Welcomes Measures to Limit Impact*, UN Office of the High Commissioner for Human Rights (Apr. 22, 2020). Available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25767>; *Constitutional and Legal Challenges Faced by Religious Minorities in India*, United Nations (May 5, 2007). Available at: <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsgU0zkGW3DaEaEZzdGAfeNjaQkporzAddUx4lWuaHQI%2fa2rFrSfdTflXZNxVfPK2In4pk6yEaETwOuqs2KqTD4UBHoaYzs5VDvOKrUoqbzE>.

The Indian constitution explicitly identifies the state as secular,<sup>300</sup> but separation of religion and state is not clear either in law or in practice. The language of the constitution emphasizes equality of all citizens and explicitly prohibits discrimination based on religion,<sup>301</sup> but the Indian government has passed a variety of laws that discriminate against religious minority groups, which are discussed below.

The term “minority” can be found in the Indian Constitution in Articles 29,<sup>302</sup> 30,<sup>303</sup> and 350<sup>304</sup> but the term is not defined.<sup>305</sup> The resulting ambiguity has led to exclusionary classification of certain minorities in many states.<sup>306</sup> The national courts did not determine whether these minority groups would be classified as minorities and left the matter to state governments.<sup>307</sup>

Article 46 stipulates that, “[t]he State shall promote with special care the educational and economic interests of the weaker sections of the people, and in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and forms of exploitation.”<sup>308</sup> Moreover, Article 330 and Article 332 allow for reservations of seats for minorities in the House of the People and the state legislative bodies respectively.<sup>309</sup>

Outside of the constitution, India has also implemented regulatory measures with the intention of protecting minorities. Legislation with this effect includes the Scheduled Castes and Scheduled Tribes Prevention of Atrocities Act of 1989, which is discussed below.

Additionally, the National Commission for Scheduled Castes and Scheduled Tribes (NCST) was established to monitor the implementation of legislation like the two acts discussed above.<sup>310</sup> The Commission is established by Article 338 (9) of the constitution, which declares “the Union and every state government shall consult the commission on all major policy matters affecting Scheduled Castes and Tribes.”<sup>311</sup> It is tasked with ensuring protection for the scheduled castes and tribes and provides a constitutionally established means of investigation, observation, review and redress for the minority groups.<sup>312</sup>

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<sup>300</sup> Constitution of India, 1950.

<sup>301</sup> *Id.* at art 15.

<sup>302</sup> *Id.* at art 29.

<sup>303</sup> *Id.* at art 30.

<sup>304</sup> *Id.* at art 29.

<sup>305</sup> Constitution of India, 1950.

<sup>306</sup> Chad M. Bauman, *Faith and Foreign Policy in India: Legal Ambiguity, Selective Xenophobia, and Anti-Minority Violence*, 14(2) REV. FAITH & INT’L AFF. 31-36, 31 (2016). Available at: <https://doi.org/10.1080/15570274.2016.1184437>.

<sup>307</sup> TMA Pai Foundation & Ors v. State of Karnataka & Ors held that states should be the unit to determine what constitutes a minority. TMA Pai Foundation & Ors v. State of Karnataka & Ors, (1984) W.P. 12597.

<sup>308</sup> Constitution of India, 1950 art 46.

<sup>309</sup> Constitution of India, 1950 art 330, 332.

<sup>310</sup> *Hidden Apartheid: Hidden Discrimination Against India’s “Untouchables”*, Human Rights Watch (Feb. 12, 2007). Available at: <https://www.hrw.org/report/2007/02/12/hidden-apartheid/caste-discrimination-against-indias-untouchables>.

<sup>311</sup> Constitution of India, 1950 art 338(9).

<sup>312</sup> *Hidden Apartheid: Hidden Discrimination Against India’s “Untouchables”*, *supra* note 310.

## ***Record of Implementation***

Minority groups in India appear to be largely disadvantaged in practice,<sup>313</sup> despite the domestic legislation and constitutional protection aimed at ensuring their rights and equal treatment. Minorities in India reportedly are exposed to discrimination and differential access to economic, social, and cultural rights. For example, Dalits experience poverty at rates much greater than higher castes and face disproportionately limited access to water and sanitation services.<sup>314</sup>

### *Scheduled Castes and Tribes*

One piece of domestic legislation aimed at protecting minorities is the Scheduled Castes and Scheduled Tribes Prevention of Atrocities Act, passed in 1989.<sup>315</sup> This act, on its face, establishes special courts for certain offenses against scheduled castes and tribes and provides harsher punishments for such offenses.<sup>316</sup> The purpose of the act was to deter discrimination and violence against scheduled castes and tribes by making these crimes criminal offenses.<sup>317</sup> The act has been amended twice since its enactment in 1989.<sup>318</sup>

The success of the act is dependent on the governmental systems carrying out the investigation and prosecution of each claim, and these systems appear to be generally insufficient.<sup>319</sup> First, police often refuse to file legitimate complaints under this act.<sup>320</sup> Even if police do file the complaint, there is often no immediate arrest, investigations are delayed, victims and witnesses are not interviewed effectively, if at all, and victims and their families are not afforded proper protection.<sup>321</sup> Further, the verdict of the final police report often determines the outcome of the case itself, notwithstanding the actual evidence of the case.<sup>322</sup> Second, the judiciary system suffers from a shortage of resources, especially prosecutors.<sup>323</sup> The lack of resources has led to lengthy trials and overloaded court dockets, ultimately defeating the purpose of creating the exclusive judiciary body.<sup>324</sup>

Finally, the National Commission for Scheduled Castes and Tribes does not appear to provide sufficient protection and redress for minorities.<sup>325</sup> It has been argued that it was established

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<sup>313</sup> United Nations Department of Economic and Social Affairs, World Social Report 2020: Inequality in a Rapidly Changing World 37 (2020). Available at: <https://www.un.org/development/desa/dspd/wp-content/uploads/sites/22/2020/01/World-Social-Report-2020-FullReport.pdf>.

<sup>314</sup> *Report of the Special Rapporteur on the Human Rights to Safe Drinking Water and Sanitation on His Mission to India*, UN Human Rights Council, 15 (July 6, 2018). Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/207/32/PDF/G1820732.pdf?OpenElement>.

<sup>315</sup> Scheduled Tribes Prevention of Atrocities Act. 1989.

<sup>316</sup> *Id.*

<sup>317</sup> Zainab Khorakiwala, Democracy of Inclusion or Exclusion? Understanding and Analysing the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, 19 GLOBAL J. HUM.-SOC. SCI. 47, 49 (2019).

<sup>318</sup> *Id.* at 47.

<sup>319</sup> *Id.* at 49.

<sup>320</sup> *Id.*

<sup>321</sup> *Id.*

<sup>322</sup> *Id.* at 50.

<sup>323</sup> *Id.*

<sup>324</sup> *Id.*

<sup>325</sup> *Report on the National Commission for Scheduled Tribes*, Centre for Policy Research, 26. Available at: <https://cprindia.org/system/tdf/policy-briefs/NCST%20CPR.pdf?file=1&type=node&id=4598&force=1>.

to keep the international community satisfied with progress in protecting the minority communities and to minimize the need for any external intervention.<sup>326</sup> The NCST is more palliative than effective.<sup>327</sup> Consequently, not only are the laws themselves ineffective in safeguarding minority rights, but the institution tasked with review and assurance is unsatisfactory as well.

### *2019 Citizenship Amendment Act*

An example of the explicit governmental discrimination against minorities is the 2019 Citizenship Amendment Act (CAA). This law amended the Citizenship Act of 1955 which required immigrants to live in India or work for the federal government for at least 11 years before they could apply for citizenship.<sup>328</sup> The CAA creates an exception to the former law for 6 religious communities from Pakistan, Afghanistan, or Bangladesh, but excludes Muslims.<sup>329</sup> The exception allows individuals from these countries who are members of the identified religious communities to apply for citizenship after 6 years.<sup>330</sup> The CAA seems to violate the secular principles and anti-discrimination legislation outlined in the Indian constitution because Muslims are explicitly excluded from the law. Supporters of the bill argue that all three countries are Islamic states and are known for persecuting religious minorities with conversion and harassment.<sup>331</sup>

Such persecution would not justify the discriminatory exclusion of Muslims. “The Indian government’s claim that the citizenship law aims to protect religious minorities rings hollow by excluding Ahmadiyya from Pakistan and Rohingya from Myanmar. The bill uses the language of refuge and sanctuary but discriminates on religious grounds in violation of international law.”<sup>332</sup> In 2019, this bill classified nearly 2 million people in the region of Assam as ineligible for Indian citizenship, about half of whom risk statelessness, as they are Muslims from Bangladesh.<sup>333</sup> Foreigners Tribunals were established in the region to consider appeals from the denial of citizenship.<sup>334</sup> However, the Foreigners Tribunals have limited scope of review and lack transparency.<sup>335</sup> In a report submitted to the UN General Assembly, Foreigners Tribunals were characterized as “unlawful, arbitrary, discriminatory, and violative of all canons of due process

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<sup>326</sup> *Id.*

<sup>327</sup> *Id.*

<sup>328</sup> Citizenship Amendment Act, 2019, § 47.

<sup>329</sup> *Id.*

<sup>330</sup> *Id.*

<sup>331</sup> R Jagannathan, *Why the Citizenship (Amendment) Bill Is Bang On*, Business Standard, (last updated Jan. 9, 2019). Available at: [https://www.business-standard.com/article/opinion/why-the-citizenship-amendment-bill-is-bang-on-119011001204\\_1.html#description\\_37](https://www.business-standard.com/article/opinion/why-the-citizenship-amendment-bill-is-bang-on-119011001204_1.html#description_37).

<sup>332</sup> *India: Citizenship Bill Discriminates Against Muslims*, Human Rights Watch (Dec. 11, 2019). Available at: <https://www.hrw.org/news/2019/12/11/india-citizenship-bill-discriminates-against-muslims>.

<sup>333</sup> Kaushik Deka, *Everything You Wanted to Know About the CAA and NRC*, India Today, ¶ 15 (Dec. 23, 2019). Available at: <https://www.indiatoday.in/india-today-insight/story/everything-you-wanted-to-know-about-the-caa-and-nrc-1630771-2019-12-23>.

<sup>334</sup> Ahmed Shaheed, *Institutional Discrimination and Statelessness in India*, UN High Commissioner for Human Rights, 3 (June 1, 2020). Available at: <https://www.ohchr.org/Documents/Issues/Religion/Submissions/CSOs/11.barak-huma-rights-protection-committee.pdf>.

<sup>335</sup> Talha Abdul Rahman, *Identifying the ‘Outsider’: An Assessment of Foreigner Tribunals in the Indian State of Assam*, 2(1) STATELESSNESS & CITIZENSHIP REV. 113-37, 128 (2020). Available at: <https://ssrn.com/abstract=3723694>.

and the rule of law.”<sup>336</sup> Today, the pandemic has worsened the dysfunctional system, leaving these immigrants in limbo with no redress.<sup>337</sup>

### *Revocation of Jammu and Kashmir state’s special status*

Another example of state-sponsored discrimination is the recent change to Article 370 of the Indian constitution. Jammu and Kashmir is the only state with a Muslim-majority population.<sup>338</sup> When it joined India in 1947, it was granted special status and autonomy by Article 370 of the Indian constitution.<sup>339</sup> The region had its own constitution, flag, and legislative process.<sup>340</sup> This autonomy was initially granted to respect the distinct characteristics of the people and “to ensure the protection of their rights as minorities.”<sup>341</sup> In August 2019, the Indian government revoked Jammu and Kashmir’s special status by voiding regional laws and government and by shifting legislative and governmental power back to the national government.<sup>342</sup> The national government justified the revocation of special status by claiming that Article 370 was negatively affecting the region by promoting corruption, inhibiting economic development, encouraging terrorism, and furthering separatism.<sup>343</sup> The move was broadly popular among BJP supporters and the general public.<sup>344</sup>

In May 2020, the Indian government also took steps to override laws in the region that gave minorities exclusive rights to purchase and own property and gave them exclusive access to specific state jobs.<sup>345</sup> This legislative and structural change in Jammu and Kashmir will likely undermine the rights of its citizens by changing the demographic make-up of the region.<sup>346</sup>

Recently, there has been a reported spike in communal attacks targeting minority communities and in response minorities have gathered to peacefully protest.<sup>347</sup> The government has tried to discredit the protestors by accusing them of conspiracy against national interests.<sup>348</sup> Further, it is pushing for criminal charges against journalists covering the incidents.<sup>349</sup> There is

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<sup>336</sup> Shaheed, *supra* note 334 at 8.

<sup>337</sup> *Id.* at 7.

<sup>338</sup> *India: Government Policies, Actions Target Minorities, supra* note 292; *Demographics*, Jammu and Kashmir Official Portal. Available at: <https://jk.gov.in/jammukashmir/?q=demographics> (accessed Apr. 14, 2021).

<sup>339</sup> Constitution of India, 1950 art 370.

<sup>340</sup> *Id.*

<sup>341</sup> *India: UN Experts Say Jammu and Kashmir Changes Risk Undermining Minorities’ Rights*, United Nations Human Rights Office of the High Commissioner (Feb. 18, 2021). Available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26758&LangID=E>.

<sup>342</sup> *Loss of Autonomy in Indian-Administered Jammu and Kashmir Threatens Minorities’ Rights – UN Independent Experts*, UN News (Feb. 18, 2021). Available at: <https://news.un.org/en/story/2021/02/1085112>.

<sup>343</sup> Hijab Shah & Melissa Dalton, *Indian Revocation of Kashmir’s Special Status*, Center for Strategic and International Studies (Aug. 12, 2019). Available at: <https://www.csis.org/analysis/indian-revocation-kashmir-special-status>.

<sup>344</sup> *Id.*

<sup>345</sup> Rifat Fareed, *UN Experts: Loss of Kashmir Autonomy Undermining Minority Rights*, Aljazeera, ¶ 6 (Feb. 19, 2021). Available at: <https://www.aljazeera.com/news/2021/2/19/laws-change-in-kashmir-carry-potential-to-alter-demographics-un>.

<sup>346</sup> *India: UN Experts Say Jammu and Kashmir Changes Risk Undermining Minorities’ Rights, supra* note 341.

<sup>347</sup> *India: Government Policies, Actions Target Minorities, supra* note 292.

<sup>348</sup> *Id.*

<sup>349</sup> *Id.*

evidence that the government is harassing and prosecuting individuals who are trying to protect minorities in Jammu and Kashmir.<sup>350</sup>

## MINORITY RIGHTS IN INDONESIA

### *Domestic Laws*

Indonesia is one of the most diverse countries in Asia and is home to the largest Muslim population in the world.<sup>351</sup> The islands support a variety of ethnicities and languages, including indigenous communities of around 70 million citizens.<sup>352</sup> The influence of the Sunni Muslim majority is reflected in the country's laws.<sup>353</sup> In recent years, there has been a growing intolerance toward religious minorities, including the Ahmadis, Shias, Christians, and Baha'is.<sup>354</sup> Religion and ethnicity are closely correlated in Indonesia. For example, the Batak ethnic group is majority Christian.<sup>355</sup> Religious discrimination is a key issue in Indonesia.<sup>356</sup>

The Indonesian Constitution guarantees the right to religious freedom.<sup>357</sup> This right is underpinned by Indonesia's ratification of the ICCPR with its protections for ethnic, religious, and linguistic minorities.<sup>358</sup> Indonesia also is a party to the CERD. Nonetheless, discrimination against minority groups in Indonesia persists and is facilitated by the Indonesian government.<sup>359</sup>

Indonesia has implemented domestic law affecting minority rights. The blasphemy laws are one of the most significant barriers to minority rights and have eroded the principles of freedom of religion in Indonesia. These laws prohibit public statements and activities that insult or defame any of the six officially recognized religions or that intend to prevent individuals from adhering to an official religion.<sup>360</sup> Blasphemous, nonbelieving, or unorthodox statements as well as dissemination of information designed to spread hate are also prohibited under these laws.<sup>361</sup> Moreover, state laws require that an individual be warned before the state is able to bring a defamation suit against that individual.<sup>362</sup>

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<sup>350</sup> John Sifton, *Jammu and Kashmir in Context*, Human Rights Watch, ¶ 28 (Nov. 14, 2019). Available at: <https://www.hrw.org/news/2019/11/14/jammu-and-kashmir-context>.

<sup>351</sup> *Indonesia*, Minority Rights Group International (2021). Available at: <https://minorityrights.org/country/indonesia/>.

<sup>352</sup> *Id.*

<sup>353</sup> Dicky Sofjan, *Minoritization & Criminalization of Shia Islam in Indonesia*, 39 J.S. Asian & Middle E. 29, 32 (2016).

<sup>354</sup> Namira Puspendari, *The Increasing Intolerance Towards Religious Minorities in Indonesia: Have the Existing Laws Been Protecting or Marginalizing Them?*, 3, (2015). Available at: <http://arno.uvt.nl/show.cgi?fid=136589>.

<sup>355</sup> *Id.* at 11.

<sup>356</sup> *Key Issues for Minorities' Rights in Asia*, *supra* note 249 at 1.

<sup>357</sup> Constitution of the Republic of Indonesia, 1945 art 28E(1).

<sup>358</sup> *Ratification Status for Myanmar*, UN Treaty Body Database (2021). Available at: [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=119&Lang=EN](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=119&Lang=EN).

<sup>359</sup> Puspendari, *supra* note 354 at 3.

<sup>360</sup> *Prosecuting Beliefs: Indonesia's Blasphemy Laws*, Amnesty International, 16 (Nov. 2014). Available at: [https://www.amnesty.nl/content/uploads/2014/11/blasphemy\\_report\\_indonesia\\_web.pdf?x55436](https://www.amnesty.nl/content/uploads/2014/11/blasphemy_report_indonesia_web.pdf?x55436).

<sup>361</sup> Andreas Harsono, *Indonesia Ruling Lifts Blasphemy Prosecution Threat to Religious Minorities*, Human Rights Watch (Nov. 7, 2017). Available at: <https://www.hrw.org/news/2017/11/07/indonesia-ruling-lifts-blasphemy-prosecution-threat-religious-minorities>.

<sup>362</sup> *Id.*

## *Record of Implementation*

Members of minority religions are sometimes subjected to physical assaults, intimidation, property damage, arbitrary arrests, and forced conversion.<sup>363</sup> They allegedly experience discrimination at the hands of the state and local governments as well as by individuals.<sup>364</sup> The security forces and police often show bias towards religious minorities in their investigations and prosecutions.<sup>365</sup> This is compounded by the actions of local governments in restricting access to legal identification documents and other government-regulated processes for minorities.<sup>366</sup>

### *Islamist Groups*

Minority groups are sometimes the target of attacks carried out by Sunni Islamist militants.<sup>367</sup> The remedies available following such attacks are minimal because government officials and police often act in congruence with the militant groups and even take action to shield them.<sup>368</sup> For example, local authorities will often offer compensation to cover the property damage (i.e. burned churches) carried out by militants against minority places of worship.<sup>369</sup>

Islamist groups often place pressure on the government to make decisions favoring the majority and to constrain the rights of the minorities.<sup>370</sup> For example, Islamist groups asked the government to deny building permits for places of worship for minority religious groups, sought the removal of minorities to new locations, and tried to stop the practice of minority religions overall.<sup>371</sup> Such requests are often successful.<sup>372</sup> The Supreme Court held that the construction of these buildings was legal, but did not change the outcome for the minority groups.<sup>373</sup> Minority groups largely lack protection from the police force due to the influence of the majority: the police often fails to prevent violence against minorities.<sup>374</sup>

### *Treatment of religious minorities*

The Indonesian Attorney General's Office has released an app called Bakor Pakem.<sup>375</sup> Bakor Pakem provides a means to "report, list, and monitor religious groups deemed to deviate

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<sup>363</sup> Andreas Harsono, *Religious Minorities in Indonesia Face Discrimination*, Human Rights Watch (Dec. 24, 2020). Available at: <https://www.hrw.org/news/2020/12/24/religious-minorities-indonesia-face-discrimination>.

<sup>364</sup> *Freedom in the World 2021: Indonesia*, Freedom House, ¶ 16. Available at: <https://freedomhouse.org/country/indonesia/freedom-world/2021> (accessed Apr. 24, 2021).

<sup>365</sup> *Id.* at ¶ 25.

<sup>366</sup> *Id.*

<sup>367</sup> *In Religion's Name*, Human Rights Watch (Feb. 28, 2013). Available at: <https://www.hrw.org/report/2013/02/28/religions-name/abuses-against-religious-minorities-indonesia>.

<sup>368</sup> "Don't Bother, Just Let Him Die" *Killing with Impunity in Papua*, Amnesty International, 6 (2018). Available at: <https://www.amnesty.org/download/Documents/ASA2181982018ENGLISH.PD>.

<sup>369</sup> *In Religion's Name*, *supra* note 367.

<sup>370</sup> *Id.*; Andreas Harsono, *Indonesia's 'Religious Harmony' Regulation Brings Anything but*, Human Rights Watch, ¶ 26 (Apr. 10, 2020). Available at: <https://www.hrw.org/news/2020/04/11/indonesias-religious-harmony-regulation-brings-anything>.

<sup>371</sup> *Id.*

<sup>372</sup> *Id.*

<sup>373</sup> *Prosecuting Beliefs: Indonesia's Blasphemy Laws*, *supra* note 360 at 12.

<sup>374</sup> *Id.*; *Freedom in the World 2021: Indonesia*, *supra* note 364 at ¶ 23.

<sup>375</sup> *Id.*

from teachings of the six official religions.<sup>376</sup> More generally, the app offers an interface to expose minorities to blasphemy allegations.<sup>377</sup>

The blasphemy laws have impacted the lives of religious minorities. On top of the legal implications, the NU Special Rapporteur on freedom of religion and belief has expressed concern that the law has contributed to a culture of intolerance towards minorities.<sup>378</sup> He noted that “[blasphemy laws] may create an atmosphere of intolerance and fear and may even increase the chances of a backlash.”<sup>379</sup> Minorities are facing oppression, intimidation, and harassment – in part because of the narrative created by the blasphemy laws.<sup>380</sup>

The country’s bureaucracy often discriminates against religious minorities. For some time, Indonesia required the identification of one’s religion on their identification card but limited the religions one was able to list to the officially recognized religions.<sup>381</sup> This law has changed and today every individual may choose whether they want to identify their religion on their identification card.<sup>382</sup> While on its face lifting the requirement of having one’s religion on the identity card seems to be a compromise that favors minorities, in practice, an individual who chooses not to list a religion on their ID card is more vulnerable to blasphemy charges.

## MINORITY RIGHTS IN MYANMAR

### *Domestic Laws*

The domestic legislation of Myanmar affecting minority rights is quite extensive because the government has passed laws that both directly and indirectly influence the experience of minorities in the country. But Myanmar has accepted minimal international obligations to protect minority rights. It is a party to the ICESCR, but not to the ICCPR or the CERD.<sup>383</sup>

Myanmar is an extremely diverse country with more than 100 officially recognized ethnic groups.<sup>384</sup> The country is about 90% Buddhist, 4% Muslim, 4% Christian, and 2% Hindu. The majority of the ethnic minorities practice either Christianity or Islam. Each state within Myanmar is named after seven minority groups, but the states demographics are not homogenous to their namesakes.<sup>385</sup> The ethnic Burman majority constitutes around two-thirds of the nation’s population.<sup>386</sup> The largest minority populations in Myanmar are the Shan and Karen, which

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<sup>376</sup> *Id.*

<sup>377</sup> *Prosecuting Beliefs: Indonesia’s Blasphemy Laws*, *supra* note 360 at 14.

<sup>378</sup> *Id.* at 28.

<sup>379</sup> Interim Report of the Special Rapporteur on freedom of religion or belief to the UN General Assembly, UN Doc. A/62/280 20 August 2007, ¶ 77.

<sup>380</sup> *Prosecuting Beliefs: Indonesia’s Blasphemy Laws*, *supra* note 360 at 7.

<sup>381</sup> Harsono, *Indonesia Ruling Lifts Blasphemy Prosecution Threat to Religious Minorities*, *supra* note 361 ¶ 2.; *Religion in Indonesia*, Learn Religions, ¶ 2 (Aug. 6, 2019). Available at: <https://www.learnreligions.com/religion-in-indonesia-4588353>.

<sup>382</sup> *Id.*

<sup>383</sup> *Ratification Status for Myanmar*, UN Treaty Body Database (2021). Available at: [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=119&Lang=EN](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=119&Lang=EN).

<sup>384</sup> Chizom Ekeh & Martin Smith, *Who Are Burma’s Minorities?*, Minority Rights Group International (Oct. 30, 2007). Available at: <https://minorityrights.org/publications/minorities-in-burma-october-2007/>.

<sup>385</sup> *Id.*

<sup>386</sup> *Id.*

together make up around 15% of the country's population.<sup>387</sup> The remaining groups each constitute 5% or less of the population.<sup>388</sup> The Rohingya Muslims make up the largest percentage of Muslims in Myanmar.<sup>389</sup> Rohingya Muslims can be identified by their distinctive language and culture, which are connected to Rakhine state.<sup>390</sup>

The history of ethnic and religious minority groups in Myanmar is complex. In 1947, the Panglong conference was attended by Burman nationalists and representatives for several minority groups—excluding the Karen and Rohingya.<sup>391</sup> The resulting Panglong Agreement led to Myanmar's first post-colonial government.<sup>392</sup> The agreement outlined the government's commitment to minority rights.<sup>393</sup> Under the 1948 constitution, Rohingya were considered citizens along with other minority groups.<sup>394</sup> In 1962, the Burman-dominated military, the Tatmadaw, overthrew the civilian government.<sup>395</sup> Ethnic minorities subsequently were increasingly excluded from positions of authority and their access to education, freedom of movement, freedom of religion,<sup>396</sup> and use of their own languages were restricted.<sup>397</sup> The 1962 coup and the subsequent 1974 constitution stripped the Rohingya of their citizenship because they were no longer recognized as an ethnic group.<sup>398</sup> The marginalization of the Rohingya was further enshrined by the Citizenship Act of 1982, which refers to 135 national races as recognized under the constitution, but excludes the Rohingya.<sup>399</sup>

After decades of military rule, a democratization process designed by the military resulted in 2016 in the installation of a popularly elected government led by long-time opposition figure, Aung San Suu Kyi<sup>400</sup> (although the military retained autonomy and a significant amount of

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<sup>387</sup> Minority Rights Group International, *WORLD DIRECTORY OF MINORITIES AND INDIGENOUS PEOPLES - MYANMAR/BURMA : MUSLIMS AND ROHINGYA* (Oct. 2017). Available at: [https://www.refworld.org/publisher\\_MRGI/MMR,49749cdcc,0.html](https://www.refworld.org/publisher_MRGI/MMR,49749cdcc,0.html).

<sup>388</sup> *Id.*

<sup>389</sup> *Id.*

<sup>390</sup> *Id.*

<sup>391</sup> Panglong Agreement, Feb. 12, 1947. Available at: [https://peacemaker.un.org/sites/peacemaker.un.org/files/MM\\_470212\\_Panglong%20Agreement.pdf](https://peacemaker.un.org/sites/peacemaker.un.org/files/MM_470212_Panglong%20Agreement.pdf).

<sup>392</sup> *Id.*

<sup>393</sup> Ekeh, *supra* note 384.

<sup>394</sup> Minority Rights Group International, *WORLD DIRECTORY OF MINORITIES AND INDIGENOUS PEOPLES - MYANMAR/BURMA : MUSLIMS AND ROHINGYA*, *supra* note 387.

<sup>395</sup> Lindsay Maizland, *Myanmar's Troubled History: Coups, Military Rule, and Ethnic Conflict*, Council on Foreign Relations, (last updated Feb. 10, 2021). Available at: <https://www.cfr.org/backgrounder/myanmar-history-coup-military-rule-ethnic-conflict-rohingya>.

<sup>396</sup> "All You Can Do Is Pray" *Crimes Against Humanity and Ethnic Cleansing of Rohingya Muslims in Burma's Arakan State*, Human Rights Watch (Apr. 22, 2013). Available at: <https://www.hrw.org/report/2013/04/22/all-you-can-do-pray/crimes-against-humanity-and-ethnic-cleansing-rohingya-muslims>.

<sup>397</sup> *Identity Crisis: Ethnicity and Conflict in Myanmar*, International Crisis Group, (Aug. 28, 2020). Available at: <https://www.crisisgroup.org/asia/south-east-asia/myanmar/312-identity-crisis-ethnicity-and-conflict-myanmar>.

<sup>398</sup> 1974 constitution; Minority Rights Group International, *WORLD DIRECTORY OF MINORITIES AND INDIGENOUS PEOPLES - MYANMAR/BURMA : MUSLIMS AND ROHINGYA*, *supra* note 387.

<sup>399</sup> Burma Citizenship Act, 1982. Available at: [http://www.networkmyanmar.org/ESW/Files/1982\\_Myanmar\\_Citizenship\\_Law\\_%5BENGLISH%5D.pdf](http://www.networkmyanmar.org/ESW/Files/1982_Myanmar_Citizenship_Law_%5BENGLISH%5D.pdf).

<sup>400</sup> Lex Rieffel, *Aung San Suu Kyi's New Government: What to Look for in Myanmar*, Brookings (Mar. 30, 2016). Available at: <https://www.brookings.edu/blog/future-development/2016/03/30/aung-san-suu-kyis-new-government-what-to-look-for-in-myanmar/>.

power).<sup>401</sup> In February 2021, the Tatmadaw carried out another coup and stopped the democratic transition.<sup>402</sup> The military overturned the results of the 2020 elections, which were won overwhelmingly by Suu Kyi and her National League for Democracy.<sup>403</sup>

### ***Record of Implementation***

The government of Myanmar generally does not have a record of following through on international or domestic legislation that protects minorities or other marginalized groups. In fact, discrimination against minority groups is perpetuated both explicitly and otherwise by the nation's domestic legislation. Minorities have experienced gross human rights abuses at the hands of the state.

### ***Treatment of Rohingya Muslim community***

Many minority communities in Myanmar are located in war-torn areas characterized by economic instability.<sup>404</sup> Rakhine state is one of the country's poorest states and generally lacks access to basic services and opportunities.<sup>405</sup> There is tension between the Rohingya Muslims and the Rakhine Buddhists, who both have historical links to the state.<sup>406</sup> The Rakhine contest the Rohingya's claims and view them as illegal immigrants with no social, cultural, or religious ties to the country.<sup>407</sup> The Rohingya have been subject to long-standing discrimination by the past and current governments.<sup>408</sup> They are perceived by many as outsiders and a threat to race and religion.<sup>409</sup>

In 2012, security forces targeted the Rohingya with a campaign of ethnic cleansing.<sup>410</sup> Waves of violence and abuses increased after a rise in public statements that encouraged attacks.<sup>411</sup> This campaign forcibly displaced more than 125,000 individuals.<sup>412</sup> Minority communities were attacked while security forces in the Arakan state observed or even assisted the assailants in the

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<sup>401</sup> Maizland, *supra* note 395.

<sup>402</sup> *Responding to the Myanmar Coup*, International Crisis Group (Feb. 16, 2021). Available at: <https://www.crisisgroup.org/asia/south-east-asia/myanmar/b166-responding-myanmar-coup>.

<sup>403</sup> *Id.*

<sup>404</sup> Maizland, *supra* note 395.

<sup>405</sup> Eleanor Albert & Lindsay Maizland, *The Rohingya Crisis*, Council on Foreign Relations, (last updated Jan. 23, 2020). Available at: <https://www.cfr.org/background/rohingya-crisis>.

<sup>406</sup> *Global Conflict Tracker: Rohingya Crisis in Myanmar*, Council on Foreign Relations, (last updated Apr. 20, 2021). Available at: <https://www.cfr.org/global-conflict-tracker/conflict/rohingya-crisis-myanmar>.

<sup>407</sup> "An Open Prison Without End" *Myanmar's Mass Detention of Rohingya in Rakhine State*, Human Rights Watch, (Oct. 8, 2020). Available at: <https://www.hrw.org/report/2020/10/08/open-prison-without-end/myanmars-mass-detention-rohingya-rakhine-state>.

<sup>408</sup> *Rohingya*, Human Rights Watch, ¶ 1. Available at: <https://www.hrw.org/tag/rohingya> (accessed Mar. 23, 2021).

<sup>409</sup> Kunal Mukherjee, *Race Relations, Nationalism and the Humanitarian Rohingya Crisis in Contemporary Myanmar*, 27 ASIAN J. POL. SCI. 235-51, 48 (2019). Available at: <https://doi.org/10.1080/02185377.2019.1627668>.

<sup>410</sup> *Burma: End 'Ethnic Cleansing' of Rohingya Muslims*, Human Rights Watch (Apr. 1, 2013). Available at: <https://www.hrw.org/news/2013/04/22/burma-end-ethnic-cleansing-rohingya-muslims>.

<sup>411</sup> *Id.*

<sup>412</sup> *Id.*

atrocities.<sup>413</sup> Minorities experienced torture, rape, forced labor, extortion, displacement, and executions.<sup>414</sup>

In August 2017, Myanmar security forces and militant Buddhist citizens committed massive human rights abuses against Rohingya communities in response to an attack against police outposts by the Arakan Rohingya Salvation Army (ARSA), a Muslim insurgency group. The response was disproportionate.<sup>415</sup> Throughout the state, security forces carried out arbitrary arrests.<sup>416</sup> Villages and homes were destroyed, civilians killed and property damaged.<sup>417</sup> The attacks caused hundreds of thousands of Rohingya to flee into Bangladesh, which seemed to be the goal of the campaign.<sup>418</sup> In all, the attacks drove nearly 900,000 Rohingyas out of the country<sup>419</sup> and resulted in thousands of Rohingya deaths.<sup>420</sup> By March 2019, Bangladesh had registered almost 1 million Rohingya refugees who had fled from Myanmar.<sup>421</sup>

The denial of citizenship has left the Rohingya without legal documentation, effectively rendering them stateless.<sup>422</sup> The stateless classification of the Rohingya is advanced by state action and nomenclature. In the 2014 census, the national government promised minority groups that they would have the ability to self-identify as the ethnicity of their choosing.<sup>423</sup> However, the Rohingya were not allowed to identify themselves as such, because their ethnicity was not presented as an option in the census.<sup>424</sup> Instead, many Rohingya people were told to register as “Bengali.” The government-designated term, “Bengali,” is used to suggest that the Rohingya are actually illegal immigrants from Bangladesh.<sup>425</sup> The use of this term reinforces the government’s claim that the Rohingya are non-citizens,<sup>426</sup> despite their long history in the region.<sup>427</sup>

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<sup>413</sup> *Id.*

<sup>414</sup> *Myanmar - Genocide of the Rohingya*, World Without Genocide, (last updated Jan. 2021). Available at: <https://worldwithoutgenocide.org/genocides-and-conflicts/myanmar>.

<sup>415</sup> *Mission Report of OHCHR Rapid Response Mission to Cox’s Bazar, Bangladesh*, United Nations Human Rights Office of the High Commissioner, 1 (Sept. 13, 2017). Available at: <https://www.ohchr.org/Documents/Countries/MM/CXBMissionSummaryFindingsOctober2017.pdf>.

<sup>416</sup> *Id.* at 1.

<sup>417</sup> *Id.*

<sup>418</sup> *Id.*; *Brutal Attacks on Rohingya Meant to Make Their Return Almost Impossible – UN Human Rights Report*, United Nations Human Rights Office of the High Commissioner, (Oct. 11, 2017). Available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?LangID=E&NewsID=22221>.

<sup>419</sup> *Rohingya crisis: Rohingya families fled violence. But uncertainty about the future grips those living in the world’s largest refugee settlement*, UNICEF, ¶2. Available at: <https://www.unicef.org/emergencies/rohingya-crisis>.

<sup>420</sup> *MSF Surveys Estimate That at Least 6,700 Rohingya Were Killed During Attacks in Myanmar*, Médecins Sans Frontières (Dec. 12, 2017). Available at: <https://www.msf.org/myanmarbangladesh-msf-surveys-estimate-least-6700-rohingya-were-killed-during-attacks-myanmar>.

<sup>421</sup> *Rohingya Refugee Crisis*, United Nations Office for Coordination of Humanitarian Affairs (Apr. 2019). Available at: <https://www.unocha.org/rohingya-refugee-crisis>.

<sup>422</sup> *Minority Rights Group International, WORLD DIRECTORY OF MINORITIES AND INDIGENOUS PEOPLES - MYANMAR/BURMA : MUSLIMS AND ROHINGYA*, *supra* note 387.

<sup>423</sup> *Id.*

<sup>424</sup> *Amal de Chickera, Stateless and Persecuted: What Next for the Rohingya?*, Migration Policy Institute (Mar. 18, 2021). Available at: <https://www.migrationpolicy.org/article/stateless-persecuted-rohingya>.

<sup>425</sup> *Minority Rights Group International, WORLD DIRECTORY OF MINORITIES AND INDIGENOUS PEOPLES - MYANMAR/BURMA : MUSLIMS AND ROHINGYA*, *supra* note 387.

<sup>426</sup> *de Chickera, supra* note 424.

<sup>427</sup> *Id.*

### *Political discrimination*

The national elections are one example of the discrimination against minorities in Myanmar. During the 2015 elections, more than 700,000 minorities were disenfranchised<sup>428</sup> and Muslim candidates running for office were disqualified from their races.<sup>429</sup> There are currently zero members of parliament who identify as practicing Muslims.<sup>430</sup> Similar to the 2015 elections, the 2020 elections also suffered from minority disenfranchisement.<sup>431</sup> The majority of Rohingya voters and candidates were barred from participating in the elections, the media was inaccessible to certain political parties, and the election commission lacked the transparency and independence necessary to carry out legitimate elections.<sup>432</sup> Lastly, the election commission canceled voting in individual states and with no explanation.<sup>433</sup>

The 2021 coup has exacerbated the unfair treatment of minorities. The military has carried out arrests against key players and supporters of the nation's transition to democracy, sparking mass protests.<sup>434</sup> The coup is significant for minority communities because minority-representative organizations and minorities themselves were outspoken in support of the transition to democracy.<sup>435</sup> The possibility of a democratic system fueled their hope for increased representation and they hoped it would aid in preserving minority cultures, religions, and languages.<sup>436</sup> The coup exposes minorities to further persecution, both because of their support for democratization and because the military historically has perceived minorities to be a threat to national unity.<sup>437</sup>

As of April 2021, ethnic and religious minorities in Myanmar are marginalized in nearly all aspects of life. They experience societal and governmental discrimination. The legal system is afflicted by corruption and insufficient resources. Minority groups generally lack access to justice and have little means of legitimate redress.<sup>438</sup> The judicial infrastructure of Myanmar lacks capacity to investigate and prosecute claims.<sup>439</sup> Human rights claims, specifically, are deterred and national courts have proven that they are not likely to intervene when human rights violations

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<sup>428</sup> *Myanmar: Election Fundamentally Flawed Rohingya Excluded, Unequal Media Access, Arrests of Critics*, Human Rights Watch, ¶ 15 (Oct. 5, 2020). Available at: <https://www.hrw.org/news/2020/10/05/myanmar-election-fundamentally-flawed>.

<sup>429</sup> El El Toe Lwin, Editorial, *Election Commission Rejects Muslim Candidates en Masse*, MYAN. TIMES (Yangon), Sept. 1, 2015.

<sup>430</sup> Maizland, *supra* note 395 at ¶ 8.

<sup>431</sup> *Myanmar: Election Fundamentally Flawed Rohingya Excluded, Unequal Media Access, Arrests of Critics*, *supra* note 428 at ¶ 2.

<sup>432</sup> *Myanmar Events of 2020*, Human Rights Watch. Available at: <https://www.hrw.org/world-report/2021/country-chapters/myanmar-burma>.

<sup>433</sup> *Id.*

<sup>434</sup> See Rick Gladstone, "U.N. General Assembly Demands Myanmar Junta End Coup and Stop the Killings," N.Y. Times, (June 18, 2021) at <https://www.nytimes.com/2021/06/18/world/asia/un-myanmar-coup-condemned.html?searchResultPosition=17>.

<sup>435</sup> *Myanmar Backgrounder: Ethnic Minority Politics*, International Crisis Group (May 7, 2003). Available at: <https://www.crisisgroup.org/asia/south-east-asia/myanmar/myanmar-backgrounder-ethnic-minority-politics>.

<sup>436</sup> *Id.*

<sup>437</sup> *Myanmar Events of 2020*, *supra* note 432.

<sup>438</sup> *Special Session on the Human Rights Implications of the Crisis in Myanmar*, United Nations Human Rights Office of the High Commissioner, (Feb. 12, 2021). Available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26743&LangID=E>.

<sup>439</sup> Zainab, *supra* note 317 at 50.

occur, even when it is a repeat offense.<sup>440</sup> The system lacks the resources necessary to function and judges often lack knowledge of the law and court procedures.<sup>441</sup>

The justice system is deeply corrupt and lacks public trust and respect.<sup>442</sup> As a result of these shortcomings, minority groups and the general public are generally unable to obtain redress from courts.<sup>443</sup> This is perpetuated because minorities are alienated from the political process—meaning they lack the ability to weigh in on the government's decisions that largely determine the outcome of their lives.<sup>444</sup> The public generally fears retaliation by authorities<sup>445</sup> for claims against the state, such as human rights abuses, which discourages victims pursuing redress. Criminal sanctions are one common form of retaliation that authorities utilize.<sup>446</sup> The courts often lack independence and make decisions based on orders from government and military officials.<sup>447</sup>

The military and security forces enjoyed impunity even before the coup.<sup>448</sup> State actors are protected by immunity provisions, codified in the constitution, which allow them to avoid accountability for criminal acts,<sup>449</sup> as discussed above. The UN Deputy High Commissioner for Human Rights stated that the “crisis [in Myanmar] was born of impunity.”<sup>450</sup> Criminal liability on the part of the state is avoided because the constitution establishes an independent right of the military to administer all of its own affairs, leaving the military accountable only to itself.<sup>451</sup> This is problematic, because the military cannot impartially hold itself accountable for criminal acts, including human rights violations.<sup>452</sup>

As of February 2021, more than 100,000 Rohingya Muslims are detained in detention camps in Rakhine state – dating back to the ethnic cleansing and displacement of the Rohingya in 2012.<sup>453</sup> Rohingya detention has been occurring for almost 10 years, which means that the Rohingya people have suffered gross human rights violations for nearly a decade.<sup>454</sup> Human Rights Watch has classified the internment of the Rohingya as “crimes against humanity,” “apartheid,” and a “severe deprivation of liberty.”<sup>455</sup>

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<sup>440</sup> *Achieving Justice for Gross Human Rights Violations in Myanmar*, ICJ Global Redress and Accountability Initiative, p. 25-26 (January 2018). Available at: <https://www.icj.org/wp-content/uploads/2018/01/Myanmar-GRA-Baseline-Study-Publications-Reports-Thematic-reports-2018-ENG.pdf>.

<sup>441</sup> *Id.* at 33.

<sup>442</sup> *Behind Closed Doors: Obstacles and Opportunities for Public Access to Myanmar’s Courts*, Justice Base, 15 (June 2017), <https://www.myjusticemyanmar.org/sites/default/files/Justice-Base-Behind-Closed-Doors.compressed-1.pdf>

<sup>443</sup> *Achieving Justice for Gross Human Rights Violations in Myanmar*, *supra* note 440 at 5.

<sup>444</sup> *Identity Crisis: Ethnicity and Conflict in Myanmar*, *supra* note 397.

<sup>445</sup> *Special Rapporteur on the Situation of Human Rights in Myanmar Oral Update to the Human Rights Council*, United Nations Office of the High Commissioner on Human Rights, ¶ 5 (Sept. 15, 2019). Available at: <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25013&LangID=E>.

<sup>446</sup> *Achieving Justice for Gross Human Rights Violations in Myanmar*, *supra* note 440 at 26.

<sup>447</sup> *Id.* at 33.

<sup>448</sup> *Id.* at 10.

<sup>449</sup> *Id.*

<sup>450</sup> *Special Session on the Human Rights Implications of the Crisis in Myanmar*, *supra* note 438.

<sup>451</sup> *Achieving Justice for Gross Human Rights Violations in Myanmar*, *supra* note 440 at 10.

<sup>452</sup> *Id.*

<sup>453</sup> *Myanmar Events of 2020*, *supra* note 432.

<sup>454</sup> *Id.*

<sup>455</sup> *Id.*

# WOMEN'S RIGHTS

## INTERNATIONAL AND REGIONAL STANDARDS

The adoption of positive law may not always result in effective implementation or enforcement. In all the States examined below, significant international instruments have been adopted or endorsed in order to promote equality and the quality of women's lives, including the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), Beijing Declaration and Platform for Action, 2030 Agenda and its Sustainable Development Goals, and UN Security Council Resolution 1325 on Women, Peace and Security (WPS). Domestic measures have been taken as well. The constitutions of all the examined States provide for the protection of human rights and women's rights. National and regional legislation has been enacted to fight various forms of discrimination, including domestic violence, caste-based discrimination, conflict-based human rights violations, and honor killings.

As will become apparent, implementation of international and national laws often yields to cultural and social norms. Violence against women is persistent. Economic discrimination and the extreme poverty of women are the unfortunate consequences of natural resource conflicts, a lack of access to education, and internal displacement. Impunity for perpetrators is frequent. The failures of each State to enforce legal protections for women are specific, however, and will be analyzed in context.

While gender discrimination has always been a global struggle, the CoVid-19 pandemic “is deepening pre-existing inequalities [and] exposing vulnerabilities in social, political and economic systems.”<sup>456</sup> From access to health care to economic discrimination, from violence faced at home to social protections, “the impacts of COVID-19 are exacerbated for women and girls simply by virtue of their sex.”<sup>457</sup>

## WOMEN'S RIGHTS IN INDONESIA

### *Domestic Laws*

Indonesia can cite a number of legal achievements in advancing women's rights. Indonesia ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) on September 13, 1984.<sup>458</sup> Indonesia's Constitution, as amended in 1945, has integrated fundamental human rights.<sup>459</sup> It provides that “[e]very person shall have the right to be free from

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<sup>456</sup> UN Women, *UN Secretary-General's policy brief: The impact of COVID-19 on women* (Apr. 9, 2020). Available at: <https://www.unwomen.org/en/digital-library/publications/2020/04/policy-brief-the-impact-of-covid-19-on-women>.

<sup>457</sup> *Id.*

<sup>458</sup> United Nations Human Rights Treaty. *UN Treaty Body Database*. Available at: [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=80&Lang=EN](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=80&Lang=EN) (last visited Apr. 24, 2021).

<sup>459</sup> National Commission on Violence against Women (Komnas Perempuan) *National Human Rights Institution*

*Independent Report*, 5 (Sept. 27, 2019). Available at: <https://ngocsw.org/wp-content/uploads/2019/10/Komnas-Perempuan-Independent-Report-BPFA25.pdf>.

discriminative treatment based upon any grounds whatsoever and shall have the right to protection from such discriminative treatment.”<sup>460</sup>

The government has incorporated several international agreements or resolutions into national law.<sup>461</sup> For instance, UNSC Resolution 1325, which concerns women, peace and security, was incorporated into national law by Presidential Decree No.18/2014,<sup>462</sup> and established an Action Plan for “the Protection and Empowerment of Women and Children in Social Conflict.”<sup>463</sup> The Plan aims to protect women and children by preventing and dealing with all types of violence, as well as to provide for the basic and specific needs of women and children in conflict resolution and resolution activities.<sup>464</sup> The Plan further seeks to empower women and children by strengthening human rights, improving quality of life, and encouraging the participation of women and children in peace building.<sup>465</sup>

Indonesia adopted Presidential Decree No.59/2017, which strives to reduce gender inequality and end violence against women by 2030 by addressing the United Nation’s Sustainable Development Goals.<sup>466</sup> Indonesian Law, 12/2017 ratified the ASEAN Convention against acts of human trafficking.<sup>467</sup> This ratification means to strengthen Indonesia's efforts to fight the trafficking of women and children.<sup>468</sup> In 2018, the Constitutional Court in Indonesia issued a ruling that raised the minimum age for marriage from 16 to 19.<sup>469</sup> Finally, Indonesia’s Domestic Violence Law 23/2004 is “intended to promote human rights, to achieve gender equality, to eliminate discrimination and to protect victims of violence, to punish perpetrators and to maintain the harmony of the household.”<sup>470</sup>

### ***Record of Implementation***

Despite Indonesia’s commitment to international standards and adoption of national laws regarding women’s rights, there are still gender inequality and human rights violations against women. The primary human rights abuses confronting women in Indonesia today are 1) violence against women; 2) female genital mutilation/cutting (FGM/C); 3) natural resource conflicts that contribute to the impoverishment of women; and 4) sexual violence.

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<sup>460</sup> Indonesia's Constitution 1945 (reinst. 1959, rev. 2002), 15. Available at: [https://www.constituteproject.org/constitution/Indonesia\\_2002.pdf?lang=en](https://www.constituteproject.org/constitution/Indonesia_2002.pdf?lang=en) (last visited Apr. 24, 2021).

<sup>461</sup> Komnas, *supra* note 459 at 6.

<sup>462</sup> *Id.*

<sup>463</sup> *Id.*

<sup>464</sup> *National Action Plan, Indonesia*, Peace Women. Available at: <http://peacewomen.org/action-plan/national-action-plan-indonesia> (last visited Apr. 24, 2021).

<sup>465</sup> *Id.*

<sup>466</sup> Anita Nirody, Sabine Machel, and Annette Sachs Robertson, *Joint Op-Ed: Urgent Actions to end violence against girls and women*, UN WOMEN (Dec. 8, 2017). Available at: <https://asiapacific.unwomen.org/en/news-and-events/stories/2017/12/urgent-actions-to-end-violence-against-girls-and-women>.

<sup>467</sup> Komnas, *supra* note 459 at 12.

<sup>468</sup> *Id.*

<sup>469</sup> *Id.* at 10.

<sup>470</sup> *Indonesia, Criminal and Penal Law*, Int. Labour Org., Available at: [http://www.ilo.org/dyn/natlex/natlex4.detail?p\\_lang=en&p\\_isn=91238&p\\_country=IDN&p\\_count=612&p\\_classification=01.04&p\\_classcount=12](http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=91238&p_country=IDN&p_count=612&p_classification=01.04&p_classcount=12) (last visited Apr. 24, 2021).

## *Violence Against Women in the Private and Public Spheres*

Despite Indonesia's ambitious legal reforms, violence against women appears to have worsened in recent years. "Violence in [the] personal sphere for girls is also getting higher every year, meaning that homes are no longer safe for girls. Incest cases in 2018 numbered 1,017 cases as well as in 2017 numbered 1,210."<sup>471</sup> Gender violence is also present in the public sphere, in the form of workplace sexual harassment, rape, and other cases of exploitation against women. "Every year the number of sexual violence occupies the highest position among other forms of violence in the community,"<sup>472</sup> which is made apparent by the number of reported cases: 2019 (3,915 cases); 2018 (2,448 cases); 2017 (2,657 cases), and 2016 (3,092 cases).<sup>473</sup> Meanwhile, Indonesian women are confronting a new phenomenon: cyber violence, which includes, "revenge porn, malicious distribution, cyber harassment, bullying, spamming, impersonation, cyber stalking/tracking, cyber recruitment, sexting and cyber hacking. The virtual world opens the space for violence against women to increase in dimensions and depth."<sup>474</sup>

In 2016, the Indonesian National Women's Life Experience Survey (2016 SPHPN) revealed that one in three (33.4%) women between the ages of 15-64 has experienced physical and/or sexual violence in her lifetime.<sup>475</sup> Additionally, two in five (41.7%) women have experienced at least one form of violence – physical, sexual, emotional, or economic – in her lifetime.<sup>476</sup>

The National Commission on Violence against Women, Komnas Perempuan, is "an independent state institution and one of the human rights mechanisms in Indonesia dedicated to the enforcement of women's human rights."<sup>477</sup> Working in accordance with the Constitution of the Republic of Indonesia and Law No.7/1984 (the State's implementation of CEDAW), Komnas Perempuan "has the specific mandate to create a situation that is conducive to the elimination of all forms of violence against women and the fulfilment of women's human rights in Indonesia."<sup>478</sup> Komnas Perempuan is therefore well-positioned to document Indonesia's performance in combating violence against women. Noting the State's legal advancements and regressions, Komnas Perempuan claims that "progress of law-making processes was influenced by political interests rather than the needs of citizens who have the rights for the fulfillment of their human rights."<sup>479</sup> While Indonesia accepted international obligations and incorporated them into national law, implementation has left it difficult for victims to obtain justice when dealing with the justice system and law enforcement.<sup>480</sup> For instance, Indonesian courts often forget to enforce certain compensation provisions that are meant to ensure justice for victims.<sup>481</sup> Also, in evaluating the

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<sup>471</sup> Komnas, *supra* note 459, at 38.

<sup>472</sup> *Id.* at 40.

<sup>473</sup> *Id.*

<sup>474</sup> *Id.*

<sup>475</sup> 2016 Indonesian National Women's Life Experience Survey Girls, UNITED NATIONS POPULATION FUND. Available at: [https://indonesia.unfpa.org/sites/default/files/pub-pdf/2016\\_SPHPN\\_%28VAW\\_Survey%29\\_Key\\_Findings1\\_0.pdf](https://indonesia.unfpa.org/sites/default/files/pub-pdf/2016_SPHPN_%28VAW_Survey%29_Key_Findings1_0.pdf) (last visited Apr. 24, 2021).

<sup>476</sup> *Id.*

<sup>477</sup> Komnas, *supra* note 459, at 2.

<sup>478</sup> *Id.*

<sup>479</sup> *Id.* at 40.

<sup>480</sup> *Id.*

<sup>481</sup> *Id.* at 40-41. "Supreme Court Regulation (Perma) Number 3/2017 on Guidelines for Judging Women's Cases Dealing with Law and the amendment of KUHAP through Presidential Decree No. 92/2015."

implementation of the Domestic Violence Law (UU PKDRT), Komnas Perempuan concluded that law enforcement officers often lack an understanding of domestic violence and “the philosophy of Domestic Violence Law comprehensively.”<sup>482</sup> Finally, the State’s narrow Criminal Code is incapable of capturing the full scope of violence against women.<sup>483</sup> Rape is narrowly defined in the Criminal Code, for example. The Criminal Code also fails to prevent sexual violence, provide for the rights of victims, or promote criminal procedural laws that favor victims. “These legal limitations make it difficult for victims and their companions to obtain justice.”<sup>484</sup>

### *Female Genital Mutilation (FGM/C)*

Female genital mutilation/cutting (FGM/C) refers to “any procedure that involves the partial or total removal of the external female genitalia or other injury to the female genital organs for non-medical reasons.”<sup>485</sup> The procedure, though widespread throughout the world, has no medical benefits.<sup>486</sup> Rather, FGM/C is a painful and traumatic experience, amounting only to a disruption in the female body’s natural functions.<sup>487</sup>

The United Nations Children’s Fund (UNICEF) estimates that 49% of Indonesian women between the ages of 15-49 have undergone the procedure.<sup>488</sup> FGM/C persists in Indonesia for two reasons.<sup>489</sup> First, the tradition has been passed down through the generations.<sup>490</sup> Traditions and methods of FGM/C vary, but endure nonetheless in local cultures and in the medical field.<sup>491</sup> Medical professionals such as midwives carry out the procedure, as well as traditional healers and shamans.<sup>492</sup> Secondly, the State has failed to enforce legal measures with any force or consistency. “As a gender violence and reproductive health violation, the [Indonesian] Government has recognized FGM/C as an obstruction to national growth and social wellbeing. Yet efforts to address the practice have been hampered by inconsistent legislation and a lack of supportive behavior change programs.”<sup>493</sup> Without mitigation efforts or effective State action, the United Nations Fund for Population Activities (UNFPA) estimates that between 2015 and 2030, 15 million Indonesian girls will be subjected to female genital mutilation.<sup>494</sup>

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<sup>482</sup> *Id.* at 41.

<sup>483</sup> *Id.* at 43.

<sup>484</sup> *Id.*

<sup>485</sup> Dr. Maria Ulfah Anshor and Dr. Sarah Hewatt. *Female Genital Mutilation/Cutting: At the Intersection of Tradition of Tradition and Modernity*, COMMISSION ON VIOLENCE AGAINST WOMEN, 3 (2017). Available at: [https://www.orchidproject.org/wp-content/uploads/2020/06/FINAL\\_-Consolidated-Report-Eng-19072018.pdf](https://www.orchidproject.org/wp-content/uploads/2020/06/FINAL_-Consolidated-Report-Eng-19072018.pdf).

<sup>486</sup> *Id.*

<sup>487</sup> *Id.*

<sup>488</sup> *Female Genital Mutilation*, UNITED NATIONS CHILDREN’S FUND, (Feb, 2020). Available at: <https://data.unicef.org/topic/child-protection/female-genital-mutilation/>.

<sup>489</sup> Komnas, *supra* note 459, at 30.

<sup>490</sup> *Id.*

<sup>491</sup> *Id.*

<sup>492</sup> *Id.*

<sup>493</sup> Anshor and Hewatt, *supra* note 499 at 4.

<sup>494</sup> *Bending the Curve: FGM Trends we aim to Change*, UNFPA (Mar. 2018). Available at: [https://www.unfpa.org/sites/default/files/resource-pdf/18-053\\_FGM-Infographic-2018-02-05-1804.pdf](https://www.unfpa.org/sites/default/files/resource-pdf/18-053_FGM-Infographic-2018-02-05-1804.pdf).

## *Natural Resource Conflicts, Impoverishment of Women, and Sexual Violence*

It is apparent, from the atrocities that women have suffered in natural resource conflicts, that efforts to protect women and children in conflict have been inadequate.<sup>495</sup> National programs have prioritized infrastructure and pushed development to proceed, even while residents are forcefully displaced and evicted.<sup>496</sup> Often, the State has sold land rights to private industries over the protest of indigenous communities who lack formal title.<sup>497</sup> Land conflicts such as these impact both indigenous men and women, but women predominantly bear the burden. “As food producers, knowledge holders, caretakers, healers, and keepers of culture, loss of access to valuable natural resources means a loss of self-reliance for the women, causing not only physical displacement but also economic and social difficulties.”<sup>498</sup>

Komnas Perempuan has reported twenty-six cases in which the changing nature of the land (natural resources) has resulted in the impoverishment of women and gender-based violence.<sup>499</sup> Such cases involve gold mining, industrial forestry, and infrastructure development, and have resulted in pollution, environmental degradations, forced eviction, and internally displaced peoples.<sup>500</sup> Komnas Perempuan has recorded the following examples:

1) *The criminalization of women:* Women who fight to hold onto their land have been arrested and detained without proper legal procedure. Consequently, women were deprived of their right to work and make a living.

2) *Women suddenly become the main breadwinners in their families:* The arrest and detention of men who fight for their property rights leave their wives to care for children alone and become the main breadwinners.

3) *Loss of livelihoods:* As a result of natural resource conflicts, corporate actions, and environmental degradation, water sources are spoiled, medicinal plants become sparse, and pollution increases. Women then face difficulties accessing clean water and medicine for their families.

4) *Targets of sexual violence:* During the construction of the Seko powerplant, girls became targets of sexual violence from village officers who supported the powerplant. Families were forced to pay for the girls’ treatment and for the legal process in a regional capital city, far from where they lived.

5) *Health complications:* In Buyat, women have reported that waste products caused skin irritation. In Mojokerto, women have had to pay for water because their water was contaminated.

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<sup>495</sup> Komnas, *supra* note 459 at 16.

<sup>496</sup> *Id.*

<sup>497</sup> Civita Patriana, *How the Women of Indonesia Rose up Against Land Grabbing*, FOREST PEOPLES PROGRAM (Jul. 17, 2019). Available at: <https://www.forestpeoples.org/en/node/50432>.

<sup>498</sup> *Id.*

<sup>499</sup> Komnas, *supra* note 459 at 14.

<sup>500</sup> *Id.*

6) *Diminished cultural rights and social*: Forced evictions have been reported in Jakarta. Residents were moved into vertical housing which greatly disturbed the lifestyle of women.

7) *Impoverishment*: Loss of income sources and access to food and housing impoverish women and make them vulnerable to sexual violence.<sup>501</sup>

Indonesian women will continue to suffer exploitation, violence, and poverty until the State succeeds in building understanding and capacity within government agencies regarding “international human rights instruments, especially related to business and human rights, so that the development of infrastructure and businesses do not sacrifice local communities, indigenous communities, and especially women.”<sup>502</sup>

## WOMEN’S RIGHTS IN SRI LANKA

### *Domestic Laws*

Following the conclusion of a fierce and prolonged conflict in Sri Lanka, the State has taken significant steps to achieve stability and promote gender equality.<sup>503</sup> Sri Lanka ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) on October 5, 1981.<sup>504</sup> On October 15, 2002, Sri Lanka accepted individual complaint procedures for CEDAW violations.<sup>505</sup> Significantly, Sri Lanka “has achieved gender parity or near parity in education and health through the introduction of free health and education services.”<sup>506</sup> This investment has resulted in high literacy rates with no significant gender gap: 96.9% of males and 94.6% of females are literate.<sup>507</sup>

Sri Lanka has enshrined CEDAW’s promises in its Constitution. Article 12(2) recognizes the right to equality before the law which provides that “No citizen shall be discriminated against on the grounds of race, religion, language, caste, sex, political opinion, place of birth or any such grounds.”<sup>508</sup> Sri Lanka has further incorporated the Convention’s obligations into its domestic legal system and several statutes: Penal Code, Citizenship Act, Human Rights Commission of Sri

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<sup>501</sup> *Id.* at 15.

<sup>502</sup> *Id.* at 16.

<sup>503</sup> *Voluntary National Review; on the Status of Implementing the Sustainable Development Goals*, MIN. OF SUSTAINABLE DEV., WILDLIFE AND REGIONAL DEV. 14 (June, 2018). Available at: [https://sustainabledevelopment.un.org/content/documents/19677FINAL\\_SriLankaVNR\\_Report\\_30Jun2018.pdf](https://sustainabledevelopment.un.org/content/documents/19677FINAL_SriLankaVNR_Report_30Jun2018.pdf).

<sup>504</sup> *UN Treaty Body Collection*, THE UNITED NATIONS. Available at: [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=164&Lang=en](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=164&Lang=en) (last visited Apr. 25, 2021).

<sup>505</sup> *Id.*

<sup>506</sup> *Women’s Wellbeing Survey; Findings from Sri Lanka’s first dedicated National Survey on Violence against Women and Girls*, RELIEF WEB. 1 (Oct. 29, 2020). Available at: [https://asiapacific.unfpa.org/sites/default/files/pub-pdf/srilanka\\_wws\\_2019\\_final\\_report.pdf](https://asiapacific.unfpa.org/sites/default/files/pub-pdf/srilanka_wws_2019_final_report.pdf).

<sup>507</sup> *Id.* at 12.

<sup>508</sup> *Committee on the Elimination of Discrimination against Women; Sri Lanka CEDAW/C/LKA/8*, UNITED NATIONS 7 (May 29, 2015). Available at: [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/LKA/8&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/LKA/8&Lang=en).

Lanka Act, and Prevention of Domestic Violence Act.<sup>509</sup> The Penal Code as amended in 1995, for instance, criminalized sexual intercourse with a girl under 12 years old and the age of consent for sexual intercourse was raised from 14 to 16.<sup>510</sup>

In 2015, Sri Lanka endorsed the United Nation's 2030 Agenda for Sustainable Development and the 17 Sustainable Development Goals (SDGs).<sup>511</sup> To implement the Goals related to gender equality, Sri Lanka has instituted the Ministry of Child Development and Women's Affairs, which has been assigned (among other things) to ensure the security of women, provide relief to rural women victimized by unregulated microfinance schemes, and empower women with knowledge and skills.<sup>512</sup>

The Ministry has partnered with UN Women to implement UNSCR 1325 on Women, Peace and Security.<sup>513</sup> The resolution promotes the protection of women and girls against sexual and gender-based violence and women's equal and meaningful participation in the prevention and resolution of conflicts, and further encourages women's equal participation in post-conflict recovery and peace building.<sup>514</sup>

### ***Record of Implementation***

Despite progressive measures taken by successive governments in Sri Lanka, non-governmental organizations and international agencies, the State still faces significant challenges in achieving gender equality. Women in Sri Lanka are greatly underrepresented in leadership roles and political participation. Also, women's participation in the labor force is overshadowed by men—a mere 32.5% in comparison to 72.4% for men.<sup>515</sup> Sexual and gender-based violence in Sri Lanka remains a common experience for women and girls.<sup>516</sup> Finally, the State's recent pardons for conflict-related human rights violations could result in impunity for perpetrators of sexual violence.<sup>517</sup>

### ***Political Representation of Women***

Even though women in Sri Lanka gained the right to vote and participate in political activities in 1931, the representation of women in Parliament has always been below six percent,

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<sup>509</sup> *Id.*

<sup>510</sup> Deepika Udagama, *Implementation of the UN Convention on Women (CEDAW) in Sri Lanka: A Country Study*, 24 Sri LANKA J. INT'L L. 53, 60 (2012-2015).

<sup>511</sup> *Voluntary National Review*, *supra* note 503 at 17.

<sup>512</sup> *Overview- Subject and Functions* STATE MINISTRY OF WOMEN AND CHILD DEVELOPMENT. Available at: <http://www.childwomenmin.gov.lk/about/overview> (last visited Apr. 25, 2021).

<sup>513</sup> *Government of Japan pledges USD 2 million to implement the Women, Peace and Security agenda in Sri Lanka*, UN WOMEN (Sept. 2019). Available at: <https://asiapacific.unwomen.org/en/news-and-events/stories/2019/09/government-of-japan-pledges-usd-2-million-to-implement-the-wps>.

<sup>514</sup> *Landmark resolution on Women, Peace and Security*, OFFICE OF THE SPECIAL ADVISER ON GENDER ISSUES AND ADVANCEMENT OF WOMEN. (OSAGI) (Oct. 31, 2000). Available at: <https://www.un.org/womenwatch/osagi/wps/>  
[https://sustainabledevelopment.un.org/content/documents/19677FINAL\\_SriLankaVNR\\_Report\\_30Jun2018.pdf](https://sustainabledevelopment.un.org/content/documents/19677FINAL_SriLankaVNR_Report_30Jun2018.pdf).

<sup>515</sup> *UN Women Sri Lanka*. UN WOMEN. Available at: <https://asiapacific.unwomen.org/en/countries/sri-lanka> (last visited Apr. 25, 2021).

<sup>516</sup> *Id.*

<sup>517</sup> *Sri Lanka: Impunity Fuels Recurrence of Violence*, AMNESTY INT. (May 18, 2019). Available at: <https://www.amnesty.org/en/latest/news/2019/05/sri-lanka-impunity-fuels-recurrence-of-violence/>.

in comparison to an 18% average in all South Asian countries.<sup>518</sup> According to the Inter-Parliamentary Union (IPU), which ranks countries by the share of women in their national parliament, Sri Lanka ranks 182nd out of 193 countries.<sup>519</sup> In an effort to address the inequality, the Sri Lankan government introduced a 25% mandatory quota for women in local government in 2016.<sup>520</sup> Prior to this amendment, women's participation was a mere 2%.<sup>521</sup> Consequently, the ballots in 2018 offered 56,000 women candidates.<sup>522</sup> This progress, though, seemed unwelcome in local communities. "In the process of running, many [female candidates] have faced abuse that includes sexual assault, intimidation and character assassination. Religious leaders have openly urged their congregations not to vote for women."<sup>523</sup>

Women's limited participation in politics matters, because Sri Lanka's customary laws systematically impact women's public and personal lives-- *Thesavalamai* applies to all Tamils who are settled in the Northern Province of Sri Lanka; *Kandyan Law* applies to Sinhalese domiciled in the Kandyan Provinces; *Muslim Law* applies to adherents of Islam.<sup>524</sup> Many of these customary laws and policies are highly gender discriminatory.<sup>525</sup> Muslim Law, for, example, does not recognize a minimum age of marriage.<sup>526</sup> Under Thesavalamai law, women may not enter into transactions with their immovable property without written consent from their spouse, and a dowried daughter is not entitled to any inheritance if there are sons or unmarried daughters.<sup>527</sup> While customary law is often inconsistent with constitutionally protected rights, they remain constitutionally valid under the 1978 Constitution of Sri Lanka.<sup>528</sup>

General law has discriminatory effects upon Sri Lankan women as well. Under the Penal Code, as amended in 1995, recognition of marital rape applies only to judicially separated couples.<sup>529</sup> Additionally, Sri Lanka levies a 62.6% tax on menstrual products.<sup>530</sup> Menstruating for five days, under this tax structure, would cost Sri Lankan women in the poorest households approximately 3.5% of their total expenditures for the month.<sup>531</sup>

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<sup>518</sup> *Id.*

<sup>519</sup> *Monthly Ranking of Women in National Parliaments*, IPU PARLINE. Available at: <https://data.ipu.org/women-ranking?month=8&year=2020> (last visited Apr. 25 2021).

<sup>520</sup> Local Authorities Elections (Amendment), PARLIAMENT OF THE DEMO. SOCIALIST REB. OF SRI LANKA (Feb. 17, 2016). Available at: [http://www.documents.gov.lk/files/act/2016/2/01-2016\\_E.pdf](http://www.documents.gov.lk/files/act/2016/2/01-2016_E.pdf).

<sup>521</sup> Mujib Mashal and Dharisha Bastians. *Door Opens for Women to Run for Office. But Will They Be Allowed In?* THE NEW YORK TIMES (Feb. 9, 2018). Available at: <https://www.nytimes.com/2018/02/09/world/asia/srilanka-women-candidates.html>.

<sup>522</sup> *Id.*

<sup>523</sup> *Id.*

<sup>524</sup> Udagama, *supra* note 510 at 60.

<sup>525</sup> *Id.*

<sup>526</sup> *Id.*

<sup>527</sup> *Id.* at 61.

<sup>528</sup> *Id.*

<sup>529</sup> *Id.* at 75.

<sup>530</sup> *Opinion: Are we finally done taxing Aunty Flo?* LANKA BUSINESS ONLINE (Nov. 4, 2019). Available at: <https://www.lankabusinessonline.com/opinion-are-we-finally-done-taxing-aunty-flo/>.

<sup>531</sup> *Id.*

### *Women in Labor*

The impressive level of female literacy has failed to translate into significant participation of women in Sri Lanka's labor force.<sup>532</sup> Calculated at age 15 and above, women's participation rate was 36.4% compared with 73.9% of men.<sup>533</sup> The unemployment rate among women is 7.9% compared to 2.9 % for men.<sup>534</sup> Even among women who are "Advanced Level qualified," the unemployment rate for women is more than twice as high as that for men, above 14.3% compared to 5.3%.<sup>535</sup>

The ever-increasing role of the private sector in Sri Lanka as an employer gives rise to a number of issues for women. "According to Central Bank of Sri Lanka statistics 40.6% of the work force was employed in the private sector, while only 15.11% were engaged in public sector in 2013."<sup>536</sup> Even while the private sector in Sri Lanka is expanding, it is not subject to nondiscrimination laws. In other words, there is no recourse for sex-based discrimination claims against a private sector employer, and it is impossible, under Sri Lanka's constitutional provisions, for the private sector to be held accountable for rights violations.<sup>537</sup>

Sri Lanka has also been accused of failing to provide adequate protections to women who go abroad as migrant workers.<sup>538</sup> The great majority (88.24%) of Sri Lanka's migrant workers (1.7 million) are women.<sup>539</sup> These migrant workers are often employed as house maids, primarily in Middle Eastern countries. "Remittances by migrant workers is the top foreign exchange earner for the country and...the CEDAW Committee has noted with concern, the exodus of women workers to the Middle East and elsewhere has seen an increase in violence against women in the host countries."<sup>540</sup> The migration of women workers has spurred a number of troubling social problems including a "rise in the reported number of cases of incest in households where the mother has left as a migrant worker."<sup>541</sup> Additionally, evidence of worker abuse, particularly among house maids, has not been met with protection policies in Sri Lanka.<sup>542</sup> Sri Lanka appears to attach greater weight to the economic benefits of remittances than to its obligation to protect women workers.<sup>543</sup>

### *Violence Against Women*

The period after the end of the civil war in May 2009 has been difficult for Sri Lankan women. The increased military presence in the northern and eastern regions of Sri Lanka brought an increase in assaults against women and girls in these regions.<sup>544</sup> Domestic violence, associated

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<sup>532</sup> Udagama, *supra* note 510.

<sup>533</sup> *Id.*

<sup>534</sup> *Id.*

<sup>535</sup> *Id.*

<sup>536</sup> *Id.* at 63.

<sup>537</sup> *Id.*

<sup>538</sup> Exported and Exposed: Abuses Against Sri Lankan Domestic Workers in Saudi Arabia, Kuwait, Lebanon and the United Arab Emirates, Human Rights Watch (2007). Available at: <https://www.hrw.org/reports/2007/srilanka1107/>.

<sup>539</sup> Udagama, *supra* note 510 at 63.

<sup>540</sup> *Id.*

<sup>541</sup> *Id.*

<sup>542</sup> *Id.*

<sup>543</sup> *Id.* at 64.

<sup>544</sup> *Sexual Violence in Sri Lanka*, ECCHR. Available at: <https://www.ecchr.eu/en/case/sexual-violence-in-sri-lanka/> (last visited Apr. 25, 2021).

with rising alcohol abuse among men, also increased in the aftermath of the civil war.<sup>545</sup> Often, women in these regions had no choice but to rely on the military for essential needs, which only promoted the risk of gender-based violence.<sup>546</sup>

Meanwhile, enforcement of Sri Lanka's 1995 Penal Code, (Act No. 22), which was amended to combat sexual crimes against women and girls, has been lax. After the amendments were adopted, Sri Lanka did not undertake a publicity campaign to build public awareness around these major policy changes.<sup>547</sup> Widespread confusion and defective enforcement measures ensued.<sup>548</sup> Deepika Udagama, as Chairperson of the Human Rights Commission of Sri Lanka, noted how nearly 76% of men, within four districts of the State, admitted to committing sexual violence, but faced no legal consequences.<sup>549</sup> More recently, the 2019 Women's Well Being Survey, conducted by Sri Lanka's Department of Census and Statistics (DCS) and carried out with technical assistance from the United Nations Population Fund (UNFPA), concluded that in Sri Lanka,

[O]ne in five (20.4%) ever-partnered women have experienced physical and/or sexual violence by an intimate partner in their lifetime. In analyzing women's coping strategies when living with violence by a partner, the study found that nearly half (49.3%) of the women who experienced sexual violence by a partner did not seek formal help anywhere due to reasons such as shame, embarrassment and fear of being blamed or not being believed, and/or thinking the violence was normal or not serious enough to seek help.<sup>550</sup>

### *Impunity*

Since Gotabaya Rajapaksa became President of Sri Lanka in 2019, the human rights situation has worsened.<sup>551</sup> Rajapaksa served as defense minister from 2005 to 2015 when his brother, Mahinda, led the country. Sri Lanka was plagued with severe human rights abuses during that time.<sup>552</sup> "Critics of the government were murdered, tortured, and forcibly made to disappear."<sup>553</sup> The civil war, which was waged between government forces and the separatist Liberation Tigers of Tamil Eelam (LTTE), claimed the lives of tens of thousands of civilians. In

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<sup>545</sup> *Id.*

<sup>546</sup> *Sri Lanka: Women's Insecurity in the North and East*, INTERNATIONAL CRISIS GROUP, (Dec. 20, 2011). Available at: <https://www.crisisgroup.org/asia/south-asia/sri-lanka/sri-lanka-women-s-insecurity-north-and-east>.

<sup>547</sup> Savitri Goonesekere and Harini Amarasuriya, *Emerging Concerns & Case Studies On Child Marriage In Sri Lanka*, UNICEF, 5 (2013). Available at: <http://www.iccwtnispcanarc.org/upload/pdf/2501970655EMERGING%20CONCERNS%20AND%20CASE%20STUDIES%20ON%20CHILD%20MARRIAGE%20IN%20SRI%20ANKA%20%20.pdf>.

<sup>548</sup> *Id.* at 5-8.

<sup>549</sup> Udagama, *supra* note 510 at 64.

<sup>550</sup> *Women's Wellbeing Survey*, *supra* note 506 at 2.

<sup>551</sup> Meenakshi Ganguly, *A Growing Rights Crisis in Sri Lanka*, HUMAN RIGHTS WATCH (Feb. 18, 2021). Available at: <https://www.hrw.org/news/2021/02/18/growing-rights-crisis-sri-lanka>.

<sup>552</sup> *Id.*

<sup>553</sup> *Id.*

the waning months, “armed forces indiscriminately shelled civilians and summarily executed suspected LTTE fighters.”<sup>554</sup>

After Mahinda Rajapaksa lost the 2015 presidential election, citizens enjoyed more freedom of expression and the heavy militarization in Tamil-majority areas began to subside. The government between the two Rajapaksa administrations supported a resolution at the Human Rights Council that offered victims of abuses and their families truth, justice, and reconciliation<sup>555</sup> -- a critical step toward accountability and healing in Sri Lanka.

On February 26, 2020, however, Gotabaya Rajapaksa’s foreign minister formally notified the Human Rights Council that Sri Lanka would withdraw from the UN resolution on post-war accountability and reconciliation.<sup>556</sup> In September 2019, Sri Lanka told the Human Rights Council that allegations against senior military officers are “unacceptable” and without “substantive evidence.”<sup>557</sup> The government also has been threatening victims’ families and activists who once supported the resolution.<sup>558</sup>

In March 2020 Rajapaksa pardoned one of very few individuals convicted of committing atrocities during the conflict.<sup>559</sup> President Rajapaksa also ordered the immediate release of former army Sergeant Sunil Ratnayake, convicted in 2015 for the murder of eight Tamil civilians (the Mirusuvil massacre).<sup>560</sup> A spokesperson for the United Nations High Commissioner for Human Rights (OHCHR) condemned the pardon as “an affront to victims and yet another example of the failure of Sri Lanka to fulfill its international human rights obligations to provide meaningful accountability for war crimes, crimes against humanity and other gross violations of human rights.”<sup>561</sup>

Rhadika Coomaraswamy, UN Special Rapporteur on violence against women, emphasized in a 2003 report how the armed conflict in Sri Lanka gave rise to countless violations of women’s rights, “including rape in custody, rape, sexual harassment at checkpoints, and other violations due to the number of internally displaced persons and refugees.”<sup>562</sup> The government’s recent actions appear to be an effort to evade accountability<sup>563</sup>

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<sup>554</sup> *Id.*

<sup>555</sup> *Id.*

<sup>556</sup> *Id.*

<sup>557</sup> *Id.*

<sup>558</sup> *Id.*

<sup>559</sup> Rupert Colville, *Press briefing note on Sri Lanka*, OHCHR (Mar. 27, 2020). Available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25752&LangID=E>.

<sup>560</sup> Maria Abi-Habib and Dharisha Bastians, *As Pandemic Rages, Sri Lanka’s President Pardons a War Criminal*, THE NEW YORK TIMES (Mar. 28, 2020). Available at: <https://www.nytimes.com/2020/03/28/world/asia/sri-lanka-war-crimes-coronavirus.html>.

<sup>561</sup> Colville, *supra* note 559.

<sup>562</sup> Radhika Coomaraswamy, *Integration of the Human Rights of Women and the Gender Perspective*, E/CN.4/2003/75/Add.1, ECONOMIC AND SOCIAL COUNCIL; COMMISSION ON HUMAN RIGHTS 213, (Feb. 27, 2003). Available at: [https://www.coe.int/t/dg2/equality/domesticviolencecampaign/Source/PDF\\_UN\\_Sp\\_Rapp\\_general\\_report\\_1994-2003.pdf](https://www.coe.int/t/dg2/equality/domesticviolencecampaign/Source/PDF_UN_Sp_Rapp_general_report_1994-2003.pdf).

<sup>563</sup> Ganguly, *supra* note 551.

## WOMEN'S RIGHTS IN PAKISTAN

### *Domestic Laws*

Pakistan has adopted or committed to a number of international instruments on gender equality and women's human rights: The Universal Declaration of Human Rights, the Beijing Platform for Action, CEDAW, and the Sustainable Development Goals.<sup>564</sup> The Constitution of Pakistan 1973, as supreme law of the State, provides legal guarantees meant to ensure the rights of both sexes without discrimination under Articles 4, 8, 14, 25, 26, 27, 34, 35, 37 and 38.<sup>565</sup>

National commitments in place include the Protection against Harassment of Women at Workplace Act, which was passed on March 11, 2010, and establishes a procedure for filing a complaint for sexual harassment in the workplace.<sup>566</sup> A National Policy for Development and Empowerment of Women adopted in 2002 sets forth key policy measures for ending violence against women. The Policy declares "honor killings" are murder, includes positive legislation on domestic violence, reviews government policies for women's shelters, promotes direct interaction and cooperation between departments and institutions, establishes local family protection programs to provide women with legal and psychological counseling, undertakes police reforms to increase the number of women in the police, and sensitizes the police force on issues of violence against women.<sup>567</sup>

Local commitments include a Gender Equality Policy Frameworks and Women's Empowerment Packages and Initiatives.<sup>568</sup> The Punjab Protection of Women against Violence Act (PPWVA), for example, was passed to protect women against violence including domestic violence (physical, mental torture economic abuse, harassment and cybercrimes).<sup>569</sup> The PPWVA makes Punjab the third province of the country to pass a bill on domestic violence.<sup>570</sup>

### *Record of Implementation*

Despite Pakistan's legal reforms and commitments, the State's ranking for gender equality rests near the bottom. The World Economic Forum ranked Pakistan 151 out of 153 countries in its 2020 Global Gender Gap Index Report.<sup>571</sup> The reality of gender in Pakistan is that discriminatory

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<sup>564</sup> *UN Women Pakistan*, UN WOMEN. Available at:

<https://asiapacific.unwomen.org/en/countries/pakistan#:~:text=Of%20the%20estimated%20%20million,HBWs%20contribute%20to%20Pakistan's%20economy> (last visited Apr. 25, 2021).

<sup>565</sup> Ayesha Mumtaz, Qian Hongdao, Hamid Mukhtar & Hafiz Adbul Rahman Saleem, *Discrimination in Nationality Laws: A Case Study of Pakistan*, 66 J.L. POL'y & GLOBALIZATION 154, 159 (2017).

<sup>566</sup> *Protection Against Harassment of Women at the Workplace Act*, UN WOMEN. Available at:

<https://evaw-global-database.unwomen.org/pt/countries/asia/pakistan/2010/protection-against-harassment-of-women-at-the-workplace-act-2010> (last visited Apr. 25, 2021).

<sup>567</sup> *National Policy for Development and Empowerment of Women*, UN WOMEN. Available at: <https://evaw-global-database.unwomen.org/es/countries/asia/pakistan/2002/national-policy-for-development-and-empowerment-of-women>. (last visited Apr. 25, 2021).

<sup>568</sup> *UN Women Pakistan*, *supra* note 564.

<sup>569</sup> Fahad Nabeel, Khoula Afzal Qamar and Bushra Malik, *Punjab Women Protection Law*, CENTER FOR STRATEGIC AND CONTEMPORARY LEARNING (2016). Available at: <http://cscr.pk/pdf/rb/PPWVA2016.pdf>.

<sup>570</sup> *Id.* at 2.

<sup>571</sup> *Global Gender Gap Report*, WORLD ECONOMIC FORUM 9 (2020). Available at: [http://www3.weforum.org/docs/WEF\\_GGGR\\_2020.pdf](http://www3.weforum.org/docs/WEF_GGGR_2020.pdf).

practices continue. Among the greatest challenges faced by Pakistani women are 1) lack of an equal right to education,<sup>572</sup> 2) honor killings; and 3) violence against women.<sup>573</sup>

### *Equal Right to Education*

Article 10 of CEDAW requires state parties to "take all appropriate measures to eliminate discrimination against women in order to ensure ... equal rights with men in the field of education." Women shall, therefore, be offered the same educational opportunities as men, including access to the same curricula, scholarships, and career advising.<sup>574</sup> A right to education would enable Pakistani women to better provide for themselves and their children. "As female education improves, infant mortality rates tend to decrease, family health improves, national incomes rise, and female citizens become more politically active and aware of their rights, say development experts."<sup>575</sup>

Strong evidence shows female students in Pakistan are not offered the same access to education as male students.<sup>576</sup> Pakistan's constitution states, "The State shall provide free and compulsory education to all children of the age of five to sixteen years in such manner as may be determined by law."<sup>577</sup> Yet, the government has made no systematic efforts to ensure children enroll or remain in school. "When children are not sent to school, no government official reaches out to the family to encourage or require that the child study."<sup>578</sup>

Human Rights Watch research has determined that Pakistani girls miss school for reasons including lack of schools, costs associated with learning, child marriage, harmful child labor, and gender discrimination.<sup>579</sup> Islamist militant violence has greatly exacerbated these existing challenges and obstructed the education of girls.<sup>580</sup> "Militant groups have damaged and destroyed school buildings, attacked teachers and students, and terrorized parents into keeping their children out of school."<sup>581</sup> One of the deadliest attacks occurred on December 16, 2014, just six days after Malala Yousafzai received the Nobel Peace Prize.<sup>582</sup> On this day, 145 people (almost all of them children) were killed in a public school in Pakistan's Peshawar city. Gunmen of the Tehreek-i-Taliban Pakistan (TTP), the so-called Pakistani Taliban, went methodically from classroom to classroom, shooting children and teachers at the school.<sup>583</sup> It is clear that Pakistan's militant

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<sup>572</sup> "Shall I Feed My Daughter, or Educate Her?" *Barriers to Girls' Education in Pakistan*. HUMAN RIGHTS WATCH (Nov. 12, 2018). Available at: <https://www.hrw.org/report/2018/11/12/shall-i-feed-my-daughter-or-educate-her/barriers-girls-education-pakistan#>.

<sup>573</sup> *Pakistan Events of 2018*, HUMAN RIGHTS WATCH (Aug. 20, 2018). Available at: <https://www.hrw.org/world-report/2019/country-chapters/pakistan>.

<sup>574</sup> *Convention on the Elimination of All Forms of Discrimination against Women*, OCHCR (Dec. 18, 1979). Available at: <https://www.ohchr.org/en/professionalinterest/pages/cedaw.aspx>.

<sup>575</sup> David Montero. *Pakistani girls' schools in radicals' sights*. THE CHRISTIAN SCIENCE MONITOR (May 31, 2007). Available at: <https://www.csmonitor.com/2007/0531/p06s02-wosc.html>.

<sup>576</sup> *Shall I Feed My Daughter*, *supra* note 572.

<sup>577</sup> *Pakistan Constitution 1973* CONSTITUTION PROJECT (reinst. 2002, rev. 2018). available at: [https://www.constituteproject.org/constitution/Pakistan\\_2018?lang=en](https://www.constituteproject.org/constitution/Pakistan_2018?lang=en).

<sup>578</sup> *Shall I Feed My Daughter*, *supra* note 572.

<sup>579</sup> *Pakistan Events*, *supra* note 573.

<sup>580</sup> *Dreams Turned into Nightmares*, HUMAN RIGHTS WATCH (Mar. 27, 2017). Available at: <https://www.hrw.org/report/2017/03/27/dreams-turned-nightmares/attacks-students-teachers-and-schools-pakistan>.

<sup>581</sup> *Id.*

<sup>582</sup> *Id.*

<sup>583</sup> *Id.*

Islamist groups use such attacks on schools “to foster intolerance and exclusion, to target symbols of the government, and particularly to enforce gender discrimination, notably by preventing the education of girls.”<sup>584</sup>

Despite these attacks on teachers, students, and schools, the Pakistani government has not enacted meaningful protective measures and has not prosecuted perpetrators.<sup>585</sup> “This failure was highlighted in June 2015, when it was reported that eight out of the ten individuals arrested and charged for the attack on Malala Yousafzai were acquitted, even after they all confessed to their role in court.”<sup>586</sup> These failures have devastating impacts for women in Pakistan, which may be evidenced by the country’s low literacy rates. “In 2017, Pakistan’s total literacy rate was around 59%, with less than 47% of women being literate and more than 71% of men.”<sup>587</sup>

### *Honor Killings*

In 2004, the Pakistani Government passed an act declaring “honor” crimes, especially “honor” killings, illegal—The Criminal Law (Amendment) Act 2004. While the 2004 Act was an encouraging effort to combat honor killings, a number of troubling loopholes existed.<sup>588</sup> Mainly, punishment under the Act was not made mandatory in all instances of honor crimes. The legislation further “allowed perpetrators of honor killings to be set free or to be minimally punished in cases where the victim’s family forgave the perpetrator, or the perpetrator paid reparations — so-called ‘blood money’ — to the victim’s family.”<sup>589</sup>

In 2016, the Pakistan Parliament took further action to close legal loopholes and curb honor crimes.<sup>590</sup> Specifically, the amendment made punishment mandatory. Any person who commits murder on the pretext of honor is subject to a 25-year-sentence, even if the relatives of the victim pardon the offender.<sup>591</sup> A significant loophole remains, however, in that the legislation neglects to distinguish between honor killings and homicide for any other reason.<sup>592</sup> By failing to categorize clearly the relationship of crime and victim and perpetrator, one can have lesser punishment.<sup>593</sup> Specifically, a perpetrator charged with homicide may be subject only to a 14-year-sentence or they may accept a pardon by a family member.<sup>594</sup>

Despite these legal steps, honor killings persist in Pakistan. The 2020 annual report by the Human Rights Commission of Pakistan (HRCP) concluded that the “legislation on so-called honour killings appears to have done nothing to deter perpetrators of this heinous practice, despite

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<sup>584</sup> *Id.*

<sup>585</sup> *Id.*

<sup>586</sup> *Id.*

<sup>587</sup> Aaron O'Neill, *Pakistan: Literacy rate from 2006 to 2017, total and by gender*, STATISTICA.COM (Apr. 1, 2021). Available at: <https://www.statista.com/statistics/572781/literacy-rate-in-pakistan/>.

<sup>588</sup> Qian Hongdao, Muhammad Bilawal Khaskheli, Hafiz Abdul Rehman Saleem, Jonathan Gsell Mapa & Sughra Bibi, *Honor Killing Phenomena in Pakistan*, 73 J.L. POL'y & GLOBALIZATION 169, 172 (2018).

<sup>589</sup> Daniele Selby and Leah Rodriguez, *How Activists Helped Change Pakistan’s Honor-Killing Law*. GLOBAL CITIZEN (Apr. 9, 2019). Available at: <https://www.globalcitizen.org/en/content/honor-killings-case-study/#:~:text=Global%20Citizens%20continued%20to%20take,related%20to%20honor%20killings%20changed.>

<sup>590</sup> Hongdao, *supra* note 588 at 173.

<sup>591</sup> *Id.*

<sup>592</sup> *Id.*

<sup>593</sup> *Id.*

<sup>594</sup> *Id.*

the fact that they can no longer hope to be pardoned for their crime.”<sup>595</sup> Top-down legislation has failed to counteract longstanding custom in places where local power is exercised through tribal councils made up of community elders and other established men.<sup>596</sup>

The HRCP documented 737 honor killings between June 2017 and August 2018.<sup>597</sup> Although credible official figures on total honor killings do not exist, Pakistani activists have estimated there are about 1,000 honor killings every year.<sup>598</sup>

### *Violence Against Women*

In both rural and urban areas of Pakistan, violence against women is growing dramatically, primarily in the home.<sup>599</sup> In order to protect the family reputation and the stigma attached to divorce, many Pakistani women often remain in a violent marriage.<sup>600</sup> Recent research shows the prevalence of domestic violence in Pakistan ranges from 21 to 50 percent.<sup>601</sup> A 2014 study noted the rate of domestic violence was more than 50 percent across the entire country.<sup>602</sup> More recently, the Pakistan Demographic and Health Survey (DHS) (2017-18) found “that 34 percent of women ever-married had experienced spousal physical, sexual, or emotional violence and 56 percent who had experienced domestic violence had not sought any help or talked to anyone about resisting or stopping the violence.”<sup>603</sup>

In response, Pakistan has established a few special units to combat gender-based crimes and provide timely help to victims of rape, acid attacks and honor killing.<sup>604</sup> These units, in Lahore, Gujranwala, Rawalpindi, Faisalabad, Multan, Rahim Yar Khan, Sahiwal, Sheikhpura and Gujrat, follow the “successful pilot of a special gender crime unit in Muzaffargarh, with a woman sub-inspector, five women police officials and a gender focal person.”<sup>605</sup> While a lack of funding has adversely affected some units thus far, these efforts are seen as a significant step forward.<sup>606</sup>

## **WOMEN’S RIGHTS IN NEPAL**

### *Domestic Laws*

The Government of Nepal has adopted or committed to several normative frameworks for women’s human rights, including the Convention on the Elimination of All Forms of

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<sup>595</sup> *State of Human Rights in 2019*, HUMAN RIGHTS COMMISSION IN PAKISTAN (HRCP) 22, (2020). Available at: [http://hrcp-web.org/hrcpweb/wp-content/uploads/2020/04/REPORT\\_State-of-Human-Rights-in-2019-20190503.pdf](http://hrcp-web.org/hrcpweb/wp-content/uploads/2020/04/REPORT_State-of-Human-Rights-in-2019-20190503.pdf).

<sup>596</sup> Rafia Zakaria, *It will take more than laws to end honor killings in Pakistan*, CNN.COM (Mar. 28, 2019). Available at: <https://www.cnn.com/2019/03/28/opinions/pakistan-honor-killings-afzal-kohistani-zakaria>.

<sup>597</sup> *Id.*

<sup>598</sup> *Pakistan Events*, *supra* note 573.

<sup>599</sup> Dr. Muhammad Tahir, *Domestic Violence against Women in Pakistan and its Solution from an Islamic Perspective: A Critical and Analytical Study*, SSRN.COM (Jun. 15, 2017). Available at: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2986723](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2986723).

<sup>600</sup> *Id.* at 6.

<sup>601</sup> *Id.*

<sup>602</sup> *Id.*

<sup>603</sup> *State of Human Rights*, *supra* note 595, at 44.

<sup>604</sup> *Id.*

<sup>605</sup> *Id.*

<sup>606</sup> *Id.* at 45.

Discrimination Against Women (CEDAW), Beijing Declaration and Platform for Action, 2030 Agenda and its Sustainable Development Goals, and UN Security Council Resolutions 1325 on Women, Peace and Security (WPS) and 1820, which calls for the protection of civilians, women, and girls from all forms of sexual violence.<sup>607</sup> Nepal's commitments to human rights and women's rights are enshrined in the Constitution.<sup>608</sup> Article 38 specifically provides for the Rights of Women.<sup>609</sup> Certain provisions include: (1) every woman shall have equal right to lineage without regard to gender; (2) there shall not be any physical, mental, sexual or psychological or any other kind of violence against women, or any kind of oppression based on religious, social and cultural tradition, and other practices; and (3) women shall have the right to special opportunity in the spheres of education, health, employment and social security on the basis of positive discrimination.<sup>610</sup>

Special acts to further secure women's rights in Nepal include the Act to Amend Some Nepal Acts for Maintaining Gender Equality and Ending Gender Based Violence (2015). "This Act repealed and amended 56 discriminatory provisions of various previous Acts and also incorporated provisions to ensure women's rights."<sup>611</sup> For instance, some discriminatory provisions amended by the Act are: (i) the provision that required a daughter to return inherited property upon marriage; (ii) the provision for summons issued by the court to be received by a male family member as far as possible; and (iii) the provision for divorce in the case of not having children within 10 years of marriage. Furthermore, the Act establishes sexual violence as a crime punishable by varying years of imprisonment, depending on the age of the victim.<sup>612</sup>

After two years of consideration, the Nepal legislature adopted the bill on Caste-Based Discrimination and Untouchability in 2011. The bill is designed to bar discriminatory practices aimed at the State's "lowest castes" typically referred to as "Dalits."<sup>613</sup> It further establishes "punishment for officials guilty of discrimination, criminalizes incitement to caste-based discrimination, and provides for compensation to victims from perpetrators of biased acts."<sup>614</sup> The Domestic Violence (Offence and Punishment) Act (2009) determined to protect the "right of every person to live in a secure and dignified life" and "to prevent and control violence occurring within the family."<sup>615</sup> The Sexual Harassment at the Workplace (Elimination) Act (2015), provides no one "should be subjected to sexual harassment in workplace, and provides definitions, scope, and measures for enforcement and remedies."<sup>616</sup>

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<sup>607</sup> *About UN Women in Nepal*, UN WOMEN. Available at:

<https://asiapacific.unwomen.org/en/countries/nepal/about-un-women-nepal> (last visited Apr. 26, 2021).

<sup>608</sup> *Nepal's Constitution of 2015*, CONSTITUTION PROJECT (Feb. 19, 2021). Available at: [https://www.constituteproject.org/constitution/Nepal\\_2015.pdf](https://www.constituteproject.org/constitution/Nepal_2015.pdf).

<sup>609</sup> *Id.* at 25.

<sup>610</sup> *Id.*

<sup>611</sup> *Promoting Gender Equality and Social Inclusion: Nepal's Commitments and Obligations*, THE ASIA FOUNDATION AND US AID, 18. Available at: [https://pdf.usaid.gov/pdf\\_docs/PA00T8KX.pdf](https://pdf.usaid.gov/pdf_docs/PA00T8KX.pdf). (last visited Apr. 26, 2021).

<sup>612</sup> *Id.*

<sup>613</sup> *Id.*

<sup>614</sup> *Id.* at 19.

<sup>615</sup> *Domestic Violence (Offence and Punishment) Act, 2066*, THE LAW COMMISSION.GOV, 1 (Apr. 27, 2009). Available at: <https://www.lawcommission.gov.np/en/wp-content/uploads/2018/10/domestic-violence-crime-and-punishment-act-2066-2009.pdf>.

<sup>616</sup> Aya Matsuura, Jony Mainaly, and Valentina Beghini. *Brief on Strengthening Action against Violence and Harassment in the World of Work in Nepal*, INT. LABOR ORG. (Dec., 2019). Available at:

## *Record of Implementation*

Despite these formal legal advances, considerable implementation gaps exist across Nepal's social policies related to women's rights. Specifically, domestic violence, sexual violence, and class-based discrimination pose significant.<sup>617</sup> Nepal's Gender Inequality Index value of 0.476 ranked it 115th out of 162 countries.<sup>618</sup>

### *Gender Based Violence*

Despite the adoption of the Domestic Violence (Offence and Punishment) Act in 2009, domestic violence persists. This is in part due to weaknesses in the law. Specifically, the DV Act does not treat violations as an offense against the State, but rather the individual victim.<sup>619</sup> The victim must then file her complaint with the National Women's Commission, the police, or a district court or local body. "The role of police is limited to facilitating a compromise between the victim and the perpetrator instead of investigating the incident for purposes of potential criminal proceedings. Incarceration is not a mandatory punishment, and prosecution is not the government's responsibility."<sup>620</sup> Furthermore, definitions in the DV Act fail to protect women from the full scope of intimate partner violence, while potentially exposing them to retaliation for reporting.<sup>621</sup> Finally, the DV Act neglects to provide necessary emergency protections for victims.<sup>622</sup>

Perhaps because of these legal failures, gender-based violence greatly afflicts Nepalese women. Dubravka Šimonović, the Special Rapporteur on violence against women, visited Nepal in November of 2018. While she commended the political will to combat violence against women through legislative reform, she noted there are still "numerous shortcomings, including the persistence of harmful practices that contradict the new legal framework and are preventing the elimination of violence against women and girls."<sup>623</sup>

In the report on her visit, she examines the State's struggle to eliminate violence against women. "In the first quarter of 2018, there was a spike in gender-based violence against women compared with the final quarter of 2017, with the number of cases doubling from 125 to 251, making up the largest proportion of all recorded violent incidents."<sup>624</sup> By these accounts, domestic violence against women resulted in 24 deaths.<sup>625</sup> In most parts of the country, domestic violence

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[https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-kathmandu/documents/meetingdocument/wcms\\_740056.pdf](https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-kathmandu/documents/meetingdocument/wcms_740056.pdf).

<sup>617</sup> Dubravka Šimonović, *United Nations Special Rapporteur on Violence Against Women*, OHCHR. Available at: <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23948&LangID=E> (last visited Apr. 26, 2021).

<sup>618</sup> *The Next Frontier: Human Development and the Anthropocene*, HUMAN DEV. REPORT (2020). Available at: [http://hdr.undp.org/sites/all/themes/hdr\\_theme/country-notes/NPL.pdf](http://hdr.undp.org/sites/all/themes/hdr_theme/country-notes/NPL.pdf).

<sup>619</sup> *NEPAL; Stakeholder Submission to the United Nations Universal Periodic Review*, THE ADVOCATES FOR HUMAN RIGHTS (Oct. 2015). Available at: [https://www.theadvocatesforhumanrights.org/uploads/nepal\\_hrc\\_vaw\\_march\\_2015.pdf](https://www.theadvocatesforhumanrights.org/uploads/nepal_hrc_vaw_march_2015.pdf).

<sup>620</sup> *Id.* at 4.

<sup>621</sup> *Id.*

<sup>622</sup> *Id.*

<sup>623</sup> Dubravka Šimonović, Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences: Visit to Nepal, at 16, A/HRC/41/42/Add.2 (2019).

<sup>624</sup> *Id.* at 7.

<sup>625</sup> *Id.*

(physical, sexual and psychological) is understood as a private affair.<sup>626</sup> Consequently, domestic violence is underreported, partly for fear of retaliation, stigmatization, the lack of trust in law enforcement, and for the low quality of existing services and protection mechanisms for victims of violence.<sup>627</sup>

Reports of sexual violence and rape are increasing in Nepal as well.<sup>628</sup> “According to Government reports for 2016 and 2017, a total of 1,874 rape cases were filed in court, resulting in 654 convictions and 333 acquittals, while 870 cases of attempted rape were filed, resulting in 270 convictions and 275 acquittals.”<sup>629</sup> Additionally, there was a 9% increase in reports of attempted rape from April to June 2018.<sup>630</sup>

The UN Human Rights Committee (HRC) addressed Nepal’s failure to hold perpetrators of sexual violence accountable in the specific case of Fulmati Nyaya (pseudonym), who was brutally raped and tortured during the internal conflict.<sup>631</sup> The HRC called on Nepal to bring its laws regarding rape and other forms of sexual violence in line with international standards and improve victims’ access to justice.<sup>632</sup> Specifically, the HRC noted Nepal’s unreasonable statute of limitations of just 35 days, which the HRC observed was “flagrantly inconsistent with the gravity and nature of the crime.”<sup>633</sup> The HRC concluded that the state has further obligations to prevent and adequately respond to such crimes in the future, including:

(b) adapt the definition of rape and other forms of sexual violence in accordance with international standards; (c) guarantee that cases of rape, other forms of sexual violence and torture give rise to a prompt, impartial and effective investigation; (d) allow for criminal prosecution of those responsible for such crimes; and (e) remove obstacles that hinder the filing of complaints and effective access to justice and compensation for victims of rape and other forms of sexual violence against women and girls...<sup>634</sup>

### *Class Based Discrimination Against Dalit Women*

Nepal’s Constitution affords fundamental rights to all castes, races and ethnicities.<sup>635</sup> To further protect these rights, Nepal adopted the Caste-based and Other Social Untouchability and Discrimination (Offence and Punishment) Act of 2011.<sup>636</sup> Yet discrimination against Dalit women remains widespread.<sup>637</sup> The Dalit population is more than 13 percent of Nepal’s population and 50

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<sup>626</sup> *Id.*

<sup>627</sup> *Id.*

<sup>628</sup> *Id.* at 8.

<sup>629</sup> *Id.*

<sup>630</sup> *Id.*

<sup>631</sup> *Nyaya v. Nepal*, 9-10. CCPR/C/125/D/2556/2015. (Mar. 18, 2019).

<sup>632</sup> *Id.*

<sup>633</sup> *Id.*

<sup>634</sup> *Id.* at 10.

<sup>635</sup> *Id.* at 14.

<sup>636</sup> *Id.*

<sup>637</sup> *Inclusion of Dalit Women in Nepal’s New Constitution*, FEMINIST DALIT ORG. (FEDO) AND THE INT. DALIT SOLIDARITY NET. (IDSN) 1, (Aug. 2012). Available at: [https://www.ohchr.org/documents/issues/women/WG/PublicPoliticalLife/IDSN\\_2.pdf](https://www.ohchr.org/documents/issues/women/WG/PublicPoliticalLife/IDSN_2.pdf).

percent of Dalits are women.<sup>638</sup> This considerable portion of the population has been marginalized due to their caste. “Dalits have been considered as impure and ‘untouchables’ and are deprived of a dignified life and compelled in leading a degrading life. This practice has existed for centuries and results in discrimination in many areas from social life to access to legal remedies.”<sup>639</sup>

Dalit women are deprived of basic human rights in Nepal. They endure violations of their civil, political, economic, social, cultural and religious rights.<sup>640</sup> The living conditions of Dalit women are considerably worse than Dalit men, as they are discriminated against both by higher castes and within their male-dominated community – in essence, a form of double discrimination.<sup>641</sup> In a report submitted to the OHCHR, the Feminist Dalit Organisation, (FEDO) observed that “[t]he discrimination is systematically structured, distinctively marked, gender biased, collectively targeted, entrenched with violence, and generationally imposed resulting in life-long disastrous effects.”<sup>642</sup> Subjected to high levels of poverty, vulnerable to various forms of violence, and denied basic freedoms, Dalit women are offered little recourse in Nepal’s existing legal structures.<sup>643</sup> Perpetrators benefit from near immunity for violence against Dalit women in part because the police, who carry caste prejudices themselves, neglect to enforce the law.<sup>644</sup> Perpetrators, as well as police, may use their political, social and economic power to silence Dalit women and obstruct them from accessing to justice.<sup>645</sup>

### *Impunity*

Between 1996 and 2006, the civil war between the Government of Nepal and the Communist Party of Nepal (CPN (Maoist)) left over 13,000 people dead and 1,300 missing.<sup>646</sup> In signing the Comprehensive Peace Accord (CPA) on 21 November 2006, the Government of Nepal and the CPN (Maoist) committed to revealing the truth about conflict-related behavior and promised to deliver justice and reparations to victims of the conflict.<sup>647</sup> Thereafter, two forms of transitional justice emerged: a Truth and Reconciliation Commission (TRC) and a Commission on the Investigation of Disappeared Persons (CDP).<sup>648</sup>

Yet it appears that perpetrators of sexual violence during the war may still escape accountability. The UN Special Rapporteur observed:

Of particular concern is the impact thereof on women and girls who were victims of sexual violence, rape and torture during the conflict. Since its establishment in 2015, the Truth and Reconciliation Commission has received more than 63,000 complaints of human rights violations, and the Commission on the Investigation of

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<sup>638</sup> *Id.*

<sup>639</sup> *Id.*

<sup>640</sup> *Id.* at 1-2.

<sup>641</sup> *Id.*

<sup>642</sup> *Id.*

<sup>643</sup> Šimonović, *supra* note 623, at 14.

<sup>644</sup> *Inclusion of Dalit Women, supra* note 637.

<sup>645</sup> *Id.*

<sup>646</sup> *Nepal Conflict Report*, OHCHR, 3 (Oct. 2012). Available at: [https://www.ohchr.org/Documents/Countries/NP/OHCHR\\_ExecSumm\\_Nepal\\_Conflict\\_report2012.pdf](https://www.ohchr.org/Documents/Countries/NP/OHCHR_ExecSumm_Nepal_Conflict_report2012.pdf).

<sup>647</sup> *Id.*

<sup>648</sup> *Id.*

Disappeared Persons has received more than 3,000 complaints. Of these, approximately 300 are reports of conflict-related sexual violence, indicating that many victims and survivors have not been able to register complaints, and they are often afraid to do so for fear of repercussions.<sup>649</sup>

Additionally, while The Enforced Disappearances Enquiry and Truth and Reconciliation Commission Act of 2014 planned to suspend the statute of limitations on filing cases relating to rape and sexual offences during the conflict, serious concerns remain that the new Penal Code of 2017 may still fail to provide victims with adequate time to come forward.<sup>650</sup> For example, women affected by rape and sexual violence during the conflict have been unable to gain access to interim relief packages, compensation, reparations and other support services.<sup>651</sup> While the relatives of individuals killed or forcibly disappeared, and those injured or disabled, as a result of the conflict, were granted interim relief measures, women and girls who are victims of torture, rape, and other forms of sexual violence, remain barred from such critical compensation.<sup>652</sup> Equally distressing, victims are further deterred from bringing claims for fear of reprisal or “because they do not wish to relive the trauma that they have suffered. The fact that a victim is required to submit a first information report at the police office located nearest to the incident may also deter victims from reporting for fear of coming face-to-face with the perpetrator.”<sup>653</sup>

Apart from the work of the TRC and the CPD, impunity for perpetrators of domestic and sexual violence in Nepal is high. According to the demographic and health survey of Nepal of 2016, the lack of coordinated, gender-friendly and comprehensive essential services for survivors of violence against women has led to a high level of impunity for perpetrators, with 66% of women who have experienced any type of physical or sexual violence opting not to seek help of any kind.<sup>654</sup>

Even when cases related to sexual violence and the killing of women and girls are reported to police, impunity for the perpetrators often occurs.<sup>655</sup> One example is the case of Nirmala Panta, a 13-year-old girl who was brutally raped and murdered in western Nepal in 2018.<sup>656</sup> In the public’s eye, the violence that Panta endured became a symbol for the dangers experienced by Nepalese women.<sup>657</sup> This sense of insecurity was exacerbated by police incompetence.<sup>658</sup> “Reports suggest that the pattern of police negligence, including the alleged mishandling of evidence and the wrongful arrest and alleged beating of a man accused of the crime, has significantly hindered the investigative process.”<sup>659</sup> Many citizens were convinced these actions were a clear attempt to cover

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<sup>649</sup> Šimonović, *supra* note 623, at 13.

<sup>650</sup> *Id.* at 13.

<sup>651</sup> Šimonović, *supra* note 623, at 13.

<sup>652</sup> *Id.*

<sup>653</sup> *Id.*

<sup>654</sup> Šimonović, *supra* note 623, at 7.

<sup>655</sup> *Id.*

<sup>656</sup> *Id.*

<sup>657</sup> Nayak Paudel. *Everything you should know about the Nirmala Pant rape and murder case*, KATHMANDU POST.COM (Sept. 2019). Available at:

<https://kathmandupost.com/national/2019/07/25/everything-you-should-know-about-the-rape-and-murder-of-nirmala-pant>.

<sup>658</sup> *Id.*

<sup>659</sup> Šimonović, *supra* note 623, at 9.

up for the perpetrators.<sup>660</sup> National protests erupted, demanding the government and law enforcement find the perpetrators and ensure their accountability. To date, the Panta case remains unsolved.<sup>661</sup>

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<sup>660</sup> Paudel, *supra* note 657.

<sup>661</sup> *Another rape-murder incident in Sudurpaschim reminds Nepal of Nirmala Pant*, ONLINEKHABAR (Feb. 7, 2021). Available at: <https://english.onlinekhabar.com/another-rape-murder-incident-in-sudurpaschim-reminds-nepal-of-nirmala-pant.html>.

## LABOR RIGHTS

International labor rights encompass the legal and human rights-based relationships between workers, their employers, and governments. The interconnected nature of labor rights and human suffering has led to the field's widespread recognition as a fundamental building-block to human rights protection.<sup>662</sup> The aim of international labor law<sup>663</sup> is to promote social justice through the provision of free, impartial, secure, and dignified labor conditions.<sup>664</sup>

This analysis will illustrate two conflicting phenomena within international labor law: first, widespread ratification and acceptance of key international labor principles and second, state failure to uphold such principles. In particular, four countries are considered to illustrate this conflict: Pakistan, Uzbekistan, Bangladesh, and Viet Nam. Each country will be analyzed by their domestic capacity to uphold eight international treaties. The purpose of this analysis is to highlight human rights pitfalls in southeast Asia, aiding the Asian Development Bank in the adoption of an informed and considered human rights safeguard policy.

### INTERNATIONAL AND REGIONAL STANDARDS

Recognizing the importance of upholding labor-related rights and standards and promoting social justice, the United Nations recognized the International Labour Organization (ILO) (established in 1919) as its first specialized agency in 1946.<sup>665</sup> Today, with 187 member states, ILO standards and policies form the most widely accepted body of international labor law.<sup>666</sup> ILO Conventions are international treaties and legally binding on ratifying countries.<sup>667</sup> In 1998, the ILO's membership identified eight Conventions as embodying fundamental principles and rights at work regarding freedom of association and the effective recognition of the right to collective bargaining, the elimination of all forced or compulsory labor, the abolition of child labour, the elimination of discrimination in respect to employment and occupation. The 1998 ILO Declaration on Fundamental Principles and Rights at Work requires that all ILO members, by virtue of their membership in the ILO, respect, promote and realize the principles and rights enshrined in these fundamental labour standards whether or not they have ratified the Conventions.

First, the Freedom of Association and Protection of the Right to Organize Convention (No. 87) encompasses the longstanding international principle of freedom of association workers and employers and expresses their concomitant right to organize for the purpose of defending their rights and furthering their interests. The Convention declares, among other things, that "[w]orkers and employers. . . shall have the right to establish and, subject only to the rules of the organization

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<sup>662</sup> The Universal Declaration of Human Rights, at art. 23 (December 10, 1948). *See e.g.*, The International Convention on the Elimination of All Forms of Racial Discrimination, December 21, 1965; The International Covenant on Civil and Political Rights, March 23, 1976.

<sup>663</sup> The term "international labor law" refers to the body of international legal norms regulating labor rights. *Introduction to International Labour Standards*, International Labour Organization. Available at: <https://www.ilo.org/global/standards/introduction-to-international-labour-standards/lang--en/index.htm>.

<sup>664</sup> *Id.*

<sup>665</sup> *History of the ILO*, International Labour Organization. Available at: <https://www.ilo.org/global/about-the-ilo/history/lang--en/index.htm>.

<sup>666</sup> *Member States*, International Labour Organization. Available at: <https://www.ilo.org/global/about-the-ilo/how-the-ilo-works/member-states/lang--en/index.htm>.

<sup>667</sup> ILO Declaration on Fundamental Principles and Rights at Work, (June 18, 1998). Available at: <https://www.ilo.org/declaration/thedeclaration/textdeclaration/lang--en/index.htm>.

concerned, to join organizations of their own choosing without previous authorization."<sup>668</sup> In furtherance of these principles enshrined in the ILO Constitution, the ILO Governing Body established the Committee on Freedom of Association (CFA) to assess claimed violations of the rights to freedom of association and collective bargaining. The CFA's recommendations in specific cases suggest a way forward to ensure future compliance with international law.<sup>669</sup> CFA conclusions offer vital insight into a state's failure to uphold the freedom of association principles outlined in Convention No. 87 and its findings are a key metric to determine a country's capacity to uphold labor rights.

Second, the Right to Organize and Collective Bargaining Convention, 1949 (No. 98) encompasses three main principles: (1) protection of workers from "anti-union discrimination;" (2) the promotion of voluntary collective bargaining for the purpose of determining terms and conditions of work;<sup>670</sup> and (3) the protection of workers' and employers' organizations against mutual interference.<sup>671</sup> Together, collective bargaining and free association ensure workers the opportunity to advocate for their labor rights. The social dialogue flowing from these principles is considered a fundamental element of workplace democracy; 167 states have ratified the Collective Bargaining Convention.<sup>672</sup>

There are two principal Conventions prohibiting forced labour. The Forced Labour Convention (No. 29), adopted in 1930, seeks the suppression of all forms of forced and compulsory labor.<sup>673</sup> This elimination of forced labour includes "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily."<sup>674</sup> In 2014 it was supplemented by a legally binding Protocol to advance prevention, protection and compensation measures and cover human trafficking. Additionally, the Abolition of Forced Labour Convention (No. 105), adopted in 1957, calls for the immediate abolition of some forms of forced labor used to suppress in particular civil and political rights and technically permitted under the 1930 Convention.<sup>675</sup> Each ratifying country is required to strictly and adequately enforce a prohibition upon forced or compulsory labor through domestic law.<sup>676</sup> In support of these principles, the ILO's Special Action Programme to Combat Forced Labour

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<sup>668</sup> Freedom of Association and Protection of the Right to Organize Convention, at art. 2 (July 4, 1950). Available at: [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C087](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C087).

<sup>669</sup> *Committee on Freedom of Association*, International Labour Organization, <https://www.ilo.org/global/standards/applying-and-promoting-international-labour-standards/committee-on-freedom-of-association/lang--en/index.htm>.

<sup>670</sup> The term "collective bargaining" refers to negotiations between an employer (or group of employers), and a workers' organization (or a group of workers' organizations). *Key Principles of the Convention*, International Labour Organization. Available at: [https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-hanoi/documents/publication/wcms\\_721934.pdf](https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-hanoi/documents/publication/wcms_721934.pdf) (accessed on Feb. 5, 2021).

<sup>671</sup> Right to Organize and Collective Bargaining Convention, Article 1–4 (Jun. 8, 1949). Available at: [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C098](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C098).

<sup>672</sup> *Id.* at 125; *Ratifications of C098 - Right to Organize and Collective Bargaining Convention*, International Labour Organization. Available at: [https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300\\_INSTRUMENT\\_ID:31224](https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:31224).

<sup>673</sup> Forced Labour Convention, at art. 1 (Jun. 10, 1930). Available at: [https://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100\\_ILO\\_CODE:C029](https://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_ILO_CODE:C029).

<sup>674</sup> *Id.* at art. 2.

<sup>675</sup> Abolition of Forced Labour Convention (Jun. 5, 1957). Available at: [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100::NO:12100:P12100\\_ILO\\_CODE:C105:NO](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100::NO:12100:P12100_ILO_CODE:C105:NO).

<sup>676</sup> *Id.* at Article 25.

researches and publishes key data relating to forced labor.<sup>677</sup> This data offers a key insight into determining a state's ability to uphold human rights.

The fifth and sixth Conventions concern the abolition of child labour. The Minimum Age Convention (No.138) sets the minimum age required for employment at the end of compulsory education, or at least at fifteen years (thirteen years for light work).<sup>678</sup> The Convention provides for derogations to 14 years of age (and 12 years for light work) where the economy and educational facilities are underdeveloped.<sup>679</sup> Closely related, the Worst Forms of Child Labour Convention (No. 182) calls for the priority elimination of all forms work that harm the health, safety or morals of children, including slavery or slavery-like practices, the recruitment of children in armed conflict, commercial sexual exploitation of children, using children in illicit activities and hazardous or dangerous work. <sup>680</sup> Further, each ratifying state must "ensure access to free basic education."<sup>681</sup> With the goal of eliminating child labor, the ILO created the International Programme on the Elimination of Child Labour, which supports countries in their endeavors to eliminate child labor.<sup>682</sup> The program publishes child labor-related data, offering key insight into a state's ability to uphold human rights.<sup>683</sup>

The seventh and eighth Conventions each promote equal opportunity in the workplace.. The Equal Remuneration Convention, 1951 (No. 100) centers around a key aspect of gender discrimination in the workplace.<sup>684</sup> Ratifying states are required to work toward closing the gender pay gap by ensuring equal pay for work of equal value in the public sector and promoting equal pay in the private sector.<sup>685</sup> The Convention requires that, regardless of sex, workers are equally remunerated for work that is the same, substantially similar or different in nature but equal in value; in other words, that remuneration is based on the contents of the job, not the gender of the worker who is performing the job. In line with these principles, the Discrimination (Employment and Occupation) Convention (No. 111) requires ratifying states to combat, through a variety of interventions including domestic legislation, all direct or indirect discrimination in employment and occupation (i.e. including self-employment), relating to "race, colour, sex, religion, political

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<sup>677</sup> *Special Action Programme to Combat Forced Labour*, International Labour Organization. Available at: [https://www.ilo.org/global/topics/forced-labour/WCMS\\_210827/lang--en/index.htm](https://www.ilo.org/global/topics/forced-labour/WCMS_210827/lang--en/index.htm); *Statistics on forced labour, modern slavery and human trafficking*, International Labour Organization, <https://www.ilo.org/global/topics/forced-labour/statistics/lang--en/index.htm>.

<sup>678</sup> Minimum Age Convention, at art. 2 (Jun. 26, 1973). Available at: [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C138](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C138).

<sup>679</sup> *Id.* at Article 2 ¶ 4.

<sup>680</sup> Worst Forms of Child Labour Convention, at art. 3 (Jun. 17, 1999). Available at: [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C182](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C182). This convention defines 'child' as "all persons under the age of 18." *Id.* at art. 2.

<sup>681</sup> *Id.* at art. 7.

<sup>682</sup> *About the International Programme on the Elimination of Child Labour*, International Labour Organization. Available at: <https://www.ilo.org/ipecc/programme/lang--en/index.htm>.

<sup>683</sup> See *Child labour in Asia and the Pacific*, International Labour Organization. Available at: <https://www.ilo.org/ipecc/Regionsandcountries/Asia/lang--en/index.htm>.

<sup>684</sup> Equal Remuneration Convention, (May 23, 1953). Available at: [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C100](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C100).

<sup>685</sup> The Convention defines 'remuneration' as: "the ordinary, basic or minimum wage or salary and any additional emoluments whatsoever payable directly or indirectly, whether in cash or in kind, by the employer to the worker and arising out of the worker's employment[.]" *Id.* at art. 1(a).

opinion, national extraction or social origin[.]”<sup>686</sup> Together, these conventions form a prohibition against most forms of workplace discrimination and promote equal employment opportunity.

The above Conventions encompass four main categories of internationally recognized labor rights, forming a basis for the following analysis: (1) Freedom of association and unionization; (2) forced labor; (3) child labor; and (4) equal employment opportunity. Each of the four countries mentioned above will be considered with regard to their compliance and performance under these four labor categories. Despite broad acceptance of these international principles, implementation is generally characterized as sparse, difficult, or nonexistent.

## LABOR RIGHTS IN PAKISTAN

### *Domestic Laws*

The Islamic Republic of Pakistan (Pakistan) has been clear: its goal is to promote and uphold labor rights within its borders. Pakistan has asserted this position by ratifying all eight ILO fundamental Conventions. The four principal categories stemming from the Conventions are apparent in the Constitution of Pakistan. In particular, Article 11 forbids: “[a]ll forms of forced” and hazardous labor conditions.<sup>687</sup> Article 17 grants the right to exercise free association.<sup>688</sup> Article 25 establishes the right of equality in the workplace.<sup>689</sup> Lastly, Article 37(e) promotes social justice through mandating humane working conditions.<sup>690</sup> Pakistani domestic law goes further than granting constitutional rights. The state’s body of labor law continuously develops in response to “socio-economic conditions, state of industrial development, population and labor force explosion, growth of trade unions, level of literacy, Government’s commitment to development and social welfare.”<sup>691</sup> Pakistan’s domestic law encompasses over seventy labor-related laws, promoting employment relations, workplace conditions, occupational safety, and labor welfare.<sup>692</sup> The following paragraphs briefly examine Pakistan’s most significant labor laws.

Under the Industrial Relations Ordinance (IRO), workers are permitted to freely organize and unionize.<sup>693</sup> The IRO further requires all trade unions to register in the province in which they operate, or with the National Commission if the union is intended to operate nationwide.<sup>694</sup> Pakistan’s Labour Court hears labor-related cases filed by aggrieved parties.<sup>695</sup>

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<sup>686</sup> Discrimination (Employment and Occupation) Convention, (Jun. 25, 1958). Available at: [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C111](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C111).

<sup>687</sup> PAK. CONST. art. 11.

<sup>688</sup> *Id.* at art. 17 § 1.

<sup>689</sup> *Id.* at art. 25.

<sup>690</sup> *Id.* at art. 37.

<sup>691</sup> *National Labour Law Profile: Islamic Republic of Pakistan*, International Labour Organization. Available at: [https://www.ilo.org/ifpdial/information-resources/national-labour-law-profiles/WCMS\\_158916/lang-en/index.htm](https://www.ilo.org/ifpdial/information-resources/national-labour-law-profiles/WCMS_158916/lang-en/index.htm).

<sup>692</sup> See e.g., Industrial Relations Act, (2008); Banking Companies Ordinance, (1962); Industrial and Commercial Employment Ordinance, (1968); Industrial Relations Ordinance, (2002). See generally Iftikhar Ahmad, *Labour and Employment Law: A Profile on Pakistan*, Wage Indicator Foundation. Available at: [https://wageindicator.org/documents/Labour\\_and\\_Employment\\_Law-A\\_Profile\\_on\\_Pakistan.pdf](https://wageindicator.org/documents/Labour_and_Employment_Law-A_Profile_on_Pakistan.pdf).

<sup>693</sup> Industrial Relations Act, (2002).

<sup>694</sup> *National Labour Law Profile: Islamic Republic of Pakistan*, *supra* note 691.

<sup>695</sup> *Id.*

Pakistan has taken significant steps in implementing domestic legislation prohibiting two main forms of forced labor. The Sindh, Khyber, Punjab, and Gilgit-Baltistan regions have regional laws permitting victims to nullify any obligations they have accrued under a bonded labor agreement.<sup>696</sup> Further, the federal Prevention of Trafficking in Persons Act imposes criminal punishment of up to seven years upon those found guilty of trafficking in persons.<sup>697</sup>

Pakistan has a significant body of domestic law prohibiting and attempting to abolish child labor. Regional law sets the minimum employment age at fourteen in Khyber Pakhtunkhwa and Sindh, and fifteen in Punjab, each in accordance with the national Employment of Children Act and Employment of Children Rules.<sup>698</sup> Equally important are Pakistan's (albeit few) programs to eradicate child labor. For example, the national Children Support Program economically encourages families to keep their children in school, distributing the equivalent of US\$3 million directly to families between 2007 and 2017.<sup>699</sup>

Lastly, Pakistan has little domestic law pertaining to equal employment opportunities. In 2002, Federal law was enacted allowing courts to "re-instate" workers dismissed from their jobs in a discriminatory manner.<sup>700</sup> However, women were not afforded such protections until mid-2010, when the President of Pakistan signed the Protection Against Harassment of Women at the Workplace Act, imposing penalties on employers and employees found guilty of work-based harassment against women.<sup>701</sup> While this flagship law represents a progressive shift in Pakistan's labor-related legislation, cultural barriers have discouraged law makers from legislating more significant protections for women in the workplace.<sup>702</sup>

### ***Record of Implementation***

The Pakistani labor force is one of the largest in the world, made up of an estimated 72.3 million people in 2020.<sup>703</sup> Pakistani labor law thus plays a substantial role in the lives of millions. Unfortunately, there is a gap between domestic law and its enforcement.

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<sup>696</sup> *E.g.*, The Bonded Labour System (Abolition) Act, (1992); The Sindh Bonded Labour System Act, (2015); The Khyber Pakhtunkhwa Bonded Labour System Act, (1992); The Punjab Bonded Labour System Act, (1992); The Gilgit-Baltistan Bonded/Forced labour system Act, (2020); *see also Bonded Labour in Pakistan*, Wage Indicator Foundation, <https://paycheck.pk/labour-laws/fair-treatment/forced-labor/bonded-labour>.

<sup>697</sup> Prevention of Trafficking in Persons Act, (2018).

<sup>698</sup> Khyber Pakhtunkhwa Prohibition of Employment of Children Act, (2015); Sindh Prohibition of Employment of Children Act, (2017); Punjab Restriction on Employment of Children Ordinance, (2016); Employment of Children Act, (1991); The Employment of Children Rules, (1995).

<sup>699</sup> *Child Support Programme*, Pakistan Bait-Ul-Ma. Available at: [https://www.dol.gov/sites/dolgov/files/ILAB/child\\_labor\\_reports/tda2013/pakistan.pdf](https://www.dol.gov/sites/dolgov/files/ILAB/child_labor_reports/tda2013/pakistan.pdf)---; Maria Rodriguez, *Child Labor in Pakistan*, The Borgen Project, (2017), <https://borgenproject.org/child-labor-in-pakistan/>.

<sup>700</sup> *Equal Employment Opportunity: Pakistan*, The Lawyers and Jurists. Available at: <https://www.lawyersjurists.com/article/equal-employment-opportunity-pakistan/>.

<sup>701</sup> The Protection Against Harassment of Women at the Workplace Act, (2010).

<sup>702</sup> Nida Kirmani, *Women's Rights as Human Rights: The Case of Pakistan*, 17 Tennessee Research and Creative Exchange. Available at: [https://trace.tennessee.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1046&context=utk\\_interstp2](https://trace.tennessee.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1046&context=utk_interstp2).

<sup>703</sup> *Labor force, total - Pakistan*, World Bank, <https://data.worldbank.org/indicator/SL.TLF.TOTL.IN?locations=PK>.

## *Freedom of Association and Unionization*

The right of workers to freely and peacefully associate is recognized by Pakistan, but not in its entirety. The government maintains the right to halt gatherings deemed a threat to public order.<sup>704</sup> Moreover, procedures for a labor gathering to become legally recognized are difficult, unnecessarily cumbersome, or impossible.<sup>705</sup> Protests against labor conditions are organized regularly but are often quashed by police, failing to have a lasting impact.<sup>706</sup> Recently, over fifty Pakistani doctors were arrested and imprisoned while protesting unsafe workplace conditions stemming from the COVID-19 virus.<sup>707</sup> Complaints to the CFA suggest that situations like this are not uncommon. The Pakistani government has suppressed labor protests, ostensibly to protect public order.<sup>708</sup> When allegations of police violence against protesting and striking workers were made to the ILO Committee of Experts (CEACR), the Pakistani government neglected to respond.<sup>709</sup> The CEACR also noted the government's failure to provide information on any investigation of previous acts of police violence against workers.<sup>710</sup> Moreover, the government has failed, or been unwilling, to discourage private suppression of labor protests.<sup>711</sup> Companies commonly prohibit their workers from going on strike, either physically or through threat of job loss.

Despite official recognition of the right to unionize, a closer analysis of Pakistan's workforce suggests that Pakistan falls short of international unionization standards. Pakistan's unionization rate is very low; an estimated two million Pakistani workers were members of a labor

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<sup>704</sup> *Freedom in the World - Pakistan*, Freedom House (2020), <https://freedomhouse.org/country/pakistan/freedom-world/2020>.

<sup>705</sup> *Id.*

<sup>706</sup> *Id.*; See also *Pakistan: As garment workers protest to demand wages, police shoot and threaten them*, Business and Human Rights Resource Centre. Available at: <https://www.business-humanrights.org/en/latest-news/pakistan-as-garment-workers-protest-to-demand-wages-police-shoot-and-threaten-them/>; Aileen Eisenberg, *Pakistani students, workers, and peasants bring down a dictator, 1968-1969*, Global Nonviolent Action Database (Feb. 2013).

<sup>707</sup> See e.g., *Pakistan arrests doctors protesting over lack of virus safety equipment*, The Guardian. Available at: <https://www.theguardian.com/world/2020/apr/06/pakistan-arrests-doctors-protest-lack-coronavirus-safety-equipment>; Sophia Saifi and Syed Shah, *Doctors arrested in Pakistan after protests over lack of PPE*, CNN. Available at: [https://edition.cnn.com/world/live-news/coronavirus-pandemic-04-06-20/h\\_5b2fea9ff8892b69cfe1b006f19c5381](https://edition.cnn.com/world/live-news/coronavirus-pandemic-04-06-20/h_5b2fea9ff8892b69cfe1b006f19c5381); Asad Hashim, *Pakistan arrests doctors protesting for coronavirus medical gear*, Aljazeera. Available at: <https://www.aljazeera.com/news/2020/4/7/pakistan-arrests-doctors-protesting-for-coronavirus-medical-gear>.

<sup>708</sup> See e.g., International Union of Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers Associations (UIF v. Pak.), 2013 CFA No. 3018; Karachi Electric Supply Corporation Labour Union (KESC v. Pak.), 2011 CFA No. 2902; The International Confederation of Free Trade Unions (ICFTU v. Pak.), 2004 CFA No. 2399.

<sup>709</sup> See Int'l Labor Org., Observation (CEACR) – adopted 2018, published 108<sup>th</sup> ILR session (2019), Freedom of Association and Protection of the Right to Organise Convention. Available at: [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO:13100:P13100\\_COMMENT\\_ID:3962733:NO](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO:13100:P13100_COMMENT_ID:3962733:NO).

<sup>710</sup> *Id.*

<sup>711</sup> See e.g., Building and Wood Workers' International (BWI v. Pak.), 2017 CFA No. 3289; Pakistan Wapda Hydro Central Labour Union (WHCLU v. NIRC), 2012 CFA No. 2964; National Trade Union Federation (NTUF v. Karachi Shipyard Labour Union), 2006 CFA No. 2520.

union in 2016, representing a mere 3% of the nation's workers.<sup>712</sup> According to an ILO survey of over one hundred countries, only five had lower unionization rates.<sup>713</sup>

Pakistan's Industrial Relations Act (IRA) is the main national law promoting the registration of trade unions.<sup>714</sup> The act is exclusionary in nature, and does not apply any protections to Pakistan's police, armed forces, administrative employees, educational staff, orphanages, or staff of public hospitals.<sup>715</sup> Most substantively, the IRA fails to afford protections to Pakistan's rising informal<sup>716</sup> labor force.<sup>717</sup> A lack of enforcement mechanisms allows employers to discourage worker unionization.<sup>718</sup> This allows employers, who possess strong incentives to discourage workers from unionizing, significant power over the process.<sup>719</sup>

### *Forced Labor*

Forced labor persists in Pakistan in several contexts: bonded labor and human trafficking<sup>720</sup> as well as the use of forced labor as a penalty for breaches of legal restrictions on freedom of expression and freedom of religion and of labor discipline.<sup>721</sup> Bonded labor generally occurs in the form of a *Peshgi* (similar to debt-bondage), where workers receive a loan from their employer (or a third party 'owner') and are subsequently indebted to repay the debt through labor. Due to high interest rates and post-agreement alterations, repayment of the *Peshgi* is usually a difficult or impossible task.<sup>722</sup> Moreover, the *Peshgi* can legally transcend generations. If an indebted laborer dies or is no longer able to work, their labor obligations pass to family members.<sup>723</sup> The *Peshgi* creates a modern system of enslavement, locking laborers to the whims of their financier. Although *all* forms of *Peshgi* are a nuisance and equate to bonded-labor, only *some* forms are illegal under Pakistani law. Many Pakistani laborers find themselves in an endless cycle of servitude and due to a lack of alternative financial opportunity, turn to organ harvesting to repay their debts.<sup>724</sup>

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<sup>712</sup> Zakaullah Khan Khalil, *A Profile of Trade Unionism and Industrial Relations in Pakistan*, ILO, 8 (2018). Available at: [https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-islamabad/documents/publication/wcms\\_626921.pdf](https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-islamabad/documents/publication/wcms_626921.pdf).

<sup>713</sup> See *Statistics on Union Membership*, ILOSTAT. Available at: <https://ilostat.ilo.org/topics/union-membership/>.

<sup>714</sup> Industrial Relations Ordinance (1969).

<sup>715</sup> Khalil, *supra* note 712 at 52.

<sup>716</sup> The term "informal labour force" refers to workers on short-term labour contracts.

<sup>717</sup> "No Room to Bargain" *Unfair and Abusive Labor Practices in Pakistan*, Human Rights Watch Organization (Jan. 2019). Available at: <https://www.hrw.org/report/2019/01/24/no-room-bargain/unfair-and-abusive-labor-practices-pakistan>.

<sup>718</sup> See Khalil *supra* note 712 at 28.

<sup>719</sup> *Human Rights - Due Diligence in Pakistan*, 8–9 Ethical Trading Initiative. Available at: [https://www.ethicaltrade.org/sites/default/files/shared\\_resources/human\\_rights\\_due\\_diligence\\_in\\_pakistan.pdf](https://www.ethicaltrade.org/sites/default/files/shared_resources/human_rights_due_diligence_in_pakistan.pdf).

<sup>720</sup> Fraser Murray et al., *Modern Slavery in Pakistan*, 8, 23, 28 DAI. Available at: [https://assets.publishing.service.gov.uk/media/5e56a35a86650c53b6909337/DFID\\_Modern\\_Slavery\\_in\\_Pakistan\\_.pdf](https://assets.publishing.service.gov.uk/media/5e56a35a86650c53b6909337/DFID_Modern_Slavery_in_Pakistan_.pdf).

<sup>721</sup> See Int'l Labor Org., Observation (CEACR) – adopted 2020, published 109<sup>th</sup> ILR Session (2021). Available at: [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO::P13100\\_COMMENT\\_ID:4054659](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO::P13100_COMMENT_ID:4054659).

<sup>722</sup> *Id.* at 8.

<sup>723</sup> *Id.* at 9.

<sup>724</sup> *E.g.*, Syed Naqvi, *A socioeconomic survey of kidney vendors in Pakistan*, National Library of Medicine. Available at: <https://pubmed.ncbi.nlm.nih.gov/17645418/>; *Focus on kidney sales by bonded labourers*, The New Humanitarian Organization. Available at: <https://www.thenewhumanitarian.org/fr/node/197454>.

There are also shortcomings in Pakistan's labor judiciary. Under the 2002 IRO, a worker must first bring any labor rights related claim to their employer. If the worker is unsatisfied with the employer's decision, or if the employer fails to issue a decision within one month, the worker is then permitted to bring the claim to Pakistan's Labour Court.<sup>725</sup> This dispute resolution system offers little support to those working under *Peshgi*. Labor court proceedings are "lengthy and expensive" for workers; expenses are often in excess of a worker's annual salary.<sup>726</sup> Accordingly, this means few cases are heard, and those that are skew heavily in favor of wealthy employers who can afford superior legal teams, tying up court proceedings for months or years.<sup>727</sup>

Finally, Pakistan is oft cited as an international human trafficking hub.<sup>728</sup> Laborers are enticed by high-paying job offers, instead finding themselves trafficked into a life of hard labor.<sup>729</sup> An estimated 3,186,000 people are living in modern slavery conditions.<sup>730</sup> According to the Global Slavery Index, only seven countries fare worse in terms of the prevalence of slavery.<sup>731</sup>

Pakistan's mixture of a lack of written law and low levels of judicial enforcement allows some unscrupulous employers to take advantage of workers. Some argue the current government is too weak to enact meaningful reform.<sup>732</sup> Although Pakistani law outlaws many forms of *Peshgi* and other forms of modern slavery, enforcement is weak. In fact, evidence suggests police and government officials fail to identify victims of modern slavery.<sup>733</sup> Moreover, Pakistan's labor inspectorate is small, under-funded, and undertrained to address the gravity of the situation.<sup>734</sup>

### *Child Labor*

Pakistan has taken a strong stance against child labor in its domestic and international legal structure. However, due to high poverty rates and various socio-economic factors, child labor is

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<sup>725</sup> *National Labour Law Profile: Islamic Republic of Pakistan*, International Labour Organization (Jul. 2004). Available at: [https://www.ilo.org/ifpdial/information-resources/national-labour-law-profiles/WCMS\\_158916/lang--en/index.htm](https://www.ilo.org/ifpdial/information-resources/national-labour-law-profiles/WCMS_158916/lang--en/index.htm).

<sup>726</sup> "No Room to Bargain" *supra* note 717.

<sup>727</sup> *Id.*

<sup>728</sup> Shahraj Raza, *Human Trafficking in Pakistan*, South Asians for Human Rights Organization. Available at: <https://www.southasianrights.org/human-trafficking-in-pakistan/>; *Human Trafficking*, Society for Human Rights and Prisoners' Aid - Pakistan. Available at: <http://sharp-pakistan.org/projects/completed-projects/human-trafficking/>.

<sup>729</sup> See Andreas Schloenhardt & Jarrod Jolly, *Trafficking in Persons in Pakistan: A Review of National Laws and Treaty Compliance*, 9 United Nations Office on Drugs and Crime. Available at: [https://www.unodc.org/documents/pakistan/2011.10.00\\_Laws\\_relating\\_to\\_Trafficking\\_of\\_Persons\\_in\\_Pakistan\\_final.pdf](https://www.unodc.org/documents/pakistan/2011.10.00_Laws_relating_to_Trafficking_of_Persons_in_Pakistan_final.pdf).

<sup>730</sup> *Pakistan Country Data*, Global Slavery Index. Available at: <https://www.globalslaveryindex.org/2018/data/country-data/pakistan/>.

<sup>731</sup> *Id.*

<sup>732</sup> See e.g., "No Room to Bargain" *supra* note 717; Ann Jordan, *Slavery, Forced Labor, Debt Bondage, and Human Trafficking: From Conceptual Confusion to Targeted Solutions*, 5 Washington College of Law Center for Human Rights and Humanitarian Law (Feb. 2011). Available at: <https://www.issuelab.org/resources/15356/15356.pdf>.

<sup>733</sup> *Trafficking in Persons in Pakistan: A Review of National Laws and Treaty Compliance*, 37, 38 United Nations Office on Drugs and Crime (Oct. 2011). Available at: [https://www.unodc.org/documents/pakistan/2011.10.00\\_Laws\\_relating\\_to\\_Trafficking\\_of\\_Persons\\_in\\_Pakistan\\_final.pdf](https://www.unodc.org/documents/pakistan/2011.10.00_Laws_relating_to_Trafficking_of_Persons_in_Pakistan_final.pdf).

<sup>734</sup> "No Room to Bargain" *supra* note 717.

rampant across rural Pakistan.<sup>735</sup> Child labor in Pakistan gained popularity during the industrial revolution of Zia-ul-Haq, and today the country's economy is deeply reliant upon this vulnerable labor force.<sup>736</sup> Pakistan's child labor force numbers in the millions.<sup>737</sup> The ILO Committee of Experts has observed that, despite recent improvements, the use of child labor remains “considerably high.”<sup>738</sup> Of 197 countries surveyed, only seven rank worse in terms of frequency and severity of child slavery.<sup>739</sup> On average, Pakistani children work upwards of twenty-four hours each week, in potentially dangerous conditions best described as 'appalling'.<sup>740</sup> Pakistan also has the world's second highest amount of out-of-school children, estimated at 22.8 million.<sup>741</sup> Despite Pakistan's plethora of domestic law, social programs, and international commitments aimed at combatting child labor and slavery, enforcement mechanisms are insufficient to the gravity of the country's situation.<sup>742</sup>

By the equivalent of sixth grade, a mere 41% of girls and 51% of boys participate in school.<sup>743</sup> Compulsory and free education is an important element to fighting child labor,<sup>744</sup> but the government of Pakistan has unfortunately neglected this principle, particularly due to low levels of funding. Pakistan's government spends a mere 2% of its national GDP on education, while reports suggest 4% is needed to promote child participation in education and uphold their human rights.<sup>745</sup> Families are often left with a difficult decision: send their children to work, where they will contribute to the family income; or send their kids to school, incurring the related costs.

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<sup>735</sup> Zubaida Zafar et al., *Socio-Economic and Political Causes of Child Labor: The Case of Pakistan*, 33, 38–41 *Global Political Review*. Available at: <https://www.gprjournal.com/jadmin/Author/31rvIolA2LALJouq9hkR/PccnlG7vwK.pdf>.

<sup>736</sup> *Id.* at 32.

<sup>737</sup> See, e.g., UNICEF, *Situation Analysis of Children in Pakistan* 113 (September 2017); Serena Chaudhry, *Millions pushed into child labor in Pakistan*, Reuters News (Feb. 2012). Available at: <https://www.reuters.com/article/us-pakistan-childlabour-idUSTRE8160LA20120207> (quoting UNICEF adolescent protection specialist Manna Rana).

<sup>738</sup> Int'l Labor Org., *Observation (CEACR) – adopted 2020, published 109<sup>th</sup> ILR Session (2021)*. Available at: [https://www.ilo.org/dyn/normlex/en/F?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID:4054319:NO](https://www.ilo.org/dyn/normlex/en/F?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:4054319:NO).

<sup>739</sup> See *76 Countries rank high in child labour violations*, Global March. Available at: <https://globalmarch.org/76-countries-rank-high-in-child-labour-violations/>.

<sup>740</sup> Varying by industry, for example, Pakistan's carpet industry is notorious for child exploitation. Studies show all (100%) of children employed in Pakistan's carpet industry are subject to hazardous conditions. Esteban Ortiz-Ospina & Max Roser, *Child Labor*, Our World in Data Organization. Available at: <https://ourworldindata.org/child-labor>; see also *Pakistan: Widespread child labour, appalling working conditions & debt bondage reported at Balochistan mines*, Business & Human Rights Resource Centre. Available at: <https://www.business-humanrights.org/en/latest-news/pakistan-widespread-child-labour-appalling-working-conditions-debt-bondage-reported-at-balochistan-mines/>.

<sup>741</sup> *Education - Giving every child the right to education*, UNICEF. Available at: <https://www.unicef.org/pakistan/education>.

<sup>742</sup> “No Room to Bargain” *supra* note 717.

<sup>743</sup> *Id.*

<sup>744</sup> See e.g., Heather Li, *Education Helps Fight Child Slavery*, Free the Slaves Network (Jul. 2015). Available at: <https://www.freetheslaves.net/education-helps-fight-child-slavery/>; *Access to Education Can Prevent Child Trafficking*, Loyola University Center for the Human Rights of Children (May 2017). Available at: <http://blogs.luc.edu/chrc/2017/05/08/evert-child-deserves-an-education/>.

<sup>745</sup> Rabea Malik and Arif Naveed, *Financing Education in Pakistan: The Impact of Public Expenditure and Aid on Educational Outcomes*, 7–9 Cambridge University - Research Consortium on Educational Outcomes and Poverty. Available at: <https://assets.publishing.service.gov.uk/media/57a08a7a40f0b652dd000752/RECOUP-Pakistan-WP42.pdf>.

Another important aspect of preventing child labor is an adequate labor inspection force. Pakistan's labor inspectorate is low; in 2017 Human Rights Watch estimated 547 inspectors were employed to oversee 350,000 factories throughout the country, which has led to insufficient enforcement and overburdened the country's inspectorate.<sup>746</sup> As such, employers performing a cost-benefit analysis as to whether to employ children in their workforce have little to worry about in terms of domestic punishment. In 2019, Pakistan's Punjab region implemented a ban on federal factory labor inspections, following employer claims that inspectors unreasonably interfered with their workforce.<sup>747</sup> The CEACR has repeatedly urged Pakistan to strengthen enforcement capacity.<sup>748</sup>

### *Equal Employment Opportunity*

Gender disparity in the Pakistani workplace runs deep, perhaps contributing to many of the country's economic struggles.<sup>749</sup> The exclusion and unequal treatment of women in the workplace is deeply ingrained in the nation's religious culture and apparent across *all* of Pakistan's industries.<sup>750</sup> There are two considerations regarding Pakistan's gender-based labor discrimination. First, women account for merely 20% of the country's workforce, despite accounting for 50% of the overall population.<sup>751</sup> This is a comparatively low ratio of women in the workplace; in a survey of 187 countries, only nine employed proportionally fewer women than Pakistan.<sup>752</sup> The second consideration is Pakistan's gender pay gap. According to a 2018 ILO report, Pakistani women earned 34% less than men performing the same (or substantially similar) work.<sup>753</sup> By comparison, a survey of seventy-three similarly situated countries found Pakistan's gender pay gap to be the

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<sup>746</sup> "No Room to Bargain" *supra* note 717.

<sup>747</sup> See e.g., Hannah Abdulla, *Pakistan's Punjab ends factory labour law inspections*, Just-Style News (Sep. 2019). Available at: [https://www.just-style.com/news/pakistans-punjab-ends-factory-labour-law-inspections\\_id137072.aspx](https://www.just-style.com/news/pakistans-punjab-ends-factory-labour-law-inspections_id137072.aspx); Khalid Bhatti, *Banning Labor Inspection*, The News (Sep. 2019). Available at: <https://www.thenews.com.pk/print/524524-banning-labour-inspection>.

<sup>748</sup> Int'l Labor Org., Observation (CEACR) – adopted 2020, published 109<sup>th</sup> ILR Session (2021). Available at: [https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID:4054319:NO](https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:4054319:NO).

<sup>749</sup> Elizabeth Peters et al., *Women's Economic Empowerment: A Review of Evidence on Enablers and Barriers*, 11 Urban Institute (Sep. 2016). Available at: [https://www.urban.org/sites/default/files/publication/84641/2016.09.28%20Womens%20Economic%20Empowerment\\_final\\_0.pdf](https://www.urban.org/sites/default/files/publication/84641/2016.09.28%20Womens%20Economic%20Empowerment_final_0.pdf).

<sup>750</sup> See generally Hamid Iqbal et al., *Gender Discrimination: Implication for Pakistan Security*, IOSR Journal of Humanities and Social Science, Vol. 1, Iss. 4. (Sep.–Oct. 2012). Available at: <https://www.humanitarianlibrary.org/sites/default/files/2014/02/C0141625.pdf>;

*Advancing Gender Diversity through Equal Opportunity Recruitment Practices*, 7, 11 International Finance Corporation. Available at: [https://www.ifc.org/wps/wcm/connect/ac6e2eff-80df-4a3b-8432-b3f65df5dbe0/08918+IFC+Pakistan+Packages\\_FinalWeb.pdf?MOD=AJPERES&CVID=muzen-z](https://www.ifc.org/wps/wcm/connect/ac6e2eff-80df-4a3b-8432-b3f65df5dbe0/08918+IFC+Pakistan+Packages_FinalWeb.pdf?MOD=AJPERES&CVID=muzen-z).

<sup>751</sup> *Labor force, female*, World Bank. Available at: <https://data.worldbank.org/indicator/SL.TLF.TOTL.FE.ZS>; *Population by Sex, Sex Ratio, Average Household, Size and Growth Rate*, Pakistan Bureau of Statistics. Available at: <https://www.pbs.gov.pk/sites/default/files/tables/POPULATION%20BY%20SEX%2C%20SEX%20RATIO%2C%20AVERAGE%20HOUSEHOLD%2C%20SIZE%20AND%20GROWTH%20RATE.pdf>.

<sup>752</sup> *Id.*

<sup>753</sup> *Global Wage Report 2018/2019: What lies behind Gender Pay Gap*, International Labour Organization. Available at: [https://www.ilo.org/islamabad/info/public/pr/WCMS\\_651658/lang--en/index.htm](https://www.ilo.org/islamabad/info/public/pr/WCMS_651658/lang--en/index.htm).

worst.<sup>754</sup> Considering these findings and more, Pakistan ranks third-to-last on The Global Gender Gap Index (of) 2020, performing only slightly better than war-torn Yemen and Iraq.<sup>755</sup>

Pakistan's domestic law fails to overcome the cultural norms contributing to discrimination against women in the workplace, and in many ways, the principles of equality that are outlined in Pakistan's domestic legal regime are outweighed by the country's culture of female workplace suppression. Moreover, Pakistani law still has significant impediments to women in the workplace. High legal costs for gender discrimination lawsuits and complex legal processes mean few cases of gender-based discrimination are heard, and even fewer result in victory for the employee.<sup>756</sup> Furthermore, little legislative work has been done to enact the non-discriminatory principles found in Pakistan's constitution. In fact, many claim women have been "generally neglected" under Pakistan's legal regime.<sup>757</sup> Pakistani women are discouraged from working due to cultural norms as well as more deeply rooted issues such as limited access to education and on the job training for women. Another factor rarely considered under domestic law is the nation's taboo against female drivers. Across Pakistan less than 5% of women are licensed to drive.<sup>758</sup> This means women are heavily dependent upon public and workplace transport systems for commuting to work, but systems are rarely in place outside of the formal sector and no legislation has looked to address this issue.<sup>759</sup>

For women, Pakistan's biggest failure exists in its implementation and enforcement of existing laws. Current laws are often ignored across the formal sector, and almost always ignored in the informal sector. Pakistan's weak labor inspectorate is simply insufficient to cover the country's large workforce, and when labor inspections do take place, inspectors are not typically concerned with gender discrimination.<sup>760</sup> Lack of a sufficient inspectorate, coupled with "slow, costly, and generally inaccessible" judicial remedies means enforcement of gender-based legal violations is virtually nonexistent.<sup>761</sup> Many of the issues surrounding gender discrimination are also present with regard to discrimination on the basis of religion and social origin.<sup>762</sup>

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<sup>754</sup> *Id.*

<sup>755</sup> *Global Gender Gap Report 2020*, World Economic Forum. Available at: [http://www3.weforum.org/docs/WEF\\_GGGR\\_2020.pdf](http://www3.weforum.org/docs/WEF_GGGR_2020.pdf).

<sup>756</sup> Faiza Aii, *Feminist Movement and Legal Framework in Pakistan: Implication for Equal Employment Opportunity* 12–16 Macquarie University. Available at: [https://www.anzam.org/wp-content/uploads/pdf-manager/2045\\_ALI\\_FAIZA.PDF](https://www.anzam.org/wp-content/uploads/pdf-manager/2045_ALI_FAIZA.PDF).

<sup>757</sup> *Id.* at 14–15.

<sup>758</sup> *Breaking Barriers: Pakistan's Female Only Rickshaw Drivers*, Plan International Organization, <https://plan-international.org/case-studies/breaking-barriers-pakistans-female-only-rickshaw-drivers>; Frida Khan, *Barriers to pay equality in Pakistan*, 38 International Labour Organization (2017). Available at: [https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-islamabad/documents/publication/wcms\\_554791.pdf](https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-islamabad/documents/publication/wcms_554791.pdf).

<sup>759</sup> *Id.*

<sup>760</sup> *Id.* at 16.

<sup>761</sup> *Id.* at 17.

<sup>762</sup> See Int'l Labor Org., Observation (CEACR) – adopted 2017, published 107<sup>th</sup> ILR Session (2018). Available at: [https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID:3340639:NO](https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3340639:NO).

## LABOR RIGHTS IN BANGLADESH

### *Domestic Laws*

The People's Republic of Bangladesh (Bangladesh) has ratified seven of the eight ILO fundamental Conventions. In furtherance of international law, the four main principles are inscribed into the country's body of domestic law, principally in the Constitution. Article 3 forbids "[a]ll forms of forced labour" and imposes criminal punishment on individuals found in violation.<sup>763</sup> Article 3 further grants the right to freely assemble, associate, and unionize.<sup>764</sup> Article 2 asserts the state's responsibility to legislate "effective measures" protecting social and economic equality amongst men and women.<sup>765</sup> While protection against child labor is not specifically mentioned in the Constitution, it does include provisions that tend to work against the practice; for example, section 17 demands the State establish a compulsory free education system.<sup>766</sup>

Bangladeshi labor law has developed significantly since the Constitution's inception in 1972. As recently as 2013, the Bangladesh Labour Act was amended (enacted in 2006), further asserting the four main principles of international labor law.<sup>767</sup> Additionally, Bangladesh's Penal Code covers labor principles, imposing criminal penalties upon those found in violation of another's rights.

The right to unionize is recognized extensively under the Bangladesh Labour Act. Chapter 13 asserts all workers have the right to unionize, without any distinctions.<sup>768</sup> The Act requires union registration with a government agency, and proceeds to outline a list of registration requirements, including a minimum of 30% relevant workforce participation in the union and a maximum of one union association under each employer.<sup>769</sup> In 2015, the Bangladesh Labour Rules imposed further registration requirements upon unions, including limitations on a union's ability to elect representatives and severe limitations on the right to strike and protest.<sup>770</sup> These requirements are cumbersome, falling short of international standards.

Bangladeshi domestic law protects against and prohibits various forms of forced labor. In particular, the Penal Code prohibits various forms of slavery and forced labor.<sup>771</sup> The Human Trafficking Deterrence and Suppression Act of 2012 criminalizes labor trafficking and sex trafficking, and the Bangladesh Labour Act sets minimum wage, employee identification, and contractual standards.<sup>772</sup> By international standards, Bangladesh's compilation of domestic law sufficiently prohibits the worst forms of forced labor. However, many outlined penalties for

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<sup>763</sup> Bangladesh Const. art. 3, sec. 34.

<sup>764</sup> *Id.* at art. 3, sec. 37–38.

<sup>765</sup> *Id.* at art. 2, sec. 19.

<sup>766</sup> *Id.* at art. 2, sec. 17.

<sup>767</sup> Bangladesh Labour Act, 2006; Bangladesh Labour (Amendment) at Act No. 30, 2013.

<sup>768</sup> Bangladesh Labour Act, 2006 at cp. 13, sec. 176.

<sup>769</sup> *Id.* at cp. 13, sec. 178–179.

<sup>770</sup> Bangladesh Labour Rules, 2015 at r. 189, r. 204. Available in English at: [https://osmanlaw.files.wordpress.com/2016/11/bangladesh\\_labor\\_rules\\_2015\\_english\\_version\\_15-09-2015.pdf](https://osmanlaw.files.wordpress.com/2016/11/bangladesh_labor_rules_2015_english_version_15-09-2015.pdf).

<sup>771</sup> Bangladesh Penal Code, cp. 45, sec. 370; Bangladesh Penal Code, cp. 45, sec. 371; Bangladesh Penal Code, cp. 45, sec. 374.

<sup>772</sup> The Prevention and Suppression of Human Trafficking Act, 2012; Bangladesh Employers' Federation, *A Handbook on The Bangladesh Labour Act, 2006*, ILO Library - RO-Bangkok, 2009. Available at: <https://www.ilo.org/dyn/travail/docs/352/A%20Handbook%20on%20the%20Bangladesh%20Labour%20Act%202006.pdf>.

violations of domestic law are "disproportionate" compared to the seriousness of the offense.<sup>773</sup> In a somewhat perplexing pattern, punishments and penalties fall into one of three categories: (1) cruel, unusual, and too severe; (2) congruent with international standards; or (3) insufficient to dissuade offenders. For example, individuals found guilty of dealing in sex work face the death penalty, and those found in violation of Labour Act face the possibility of life imprisonment.<sup>774</sup> Conversely, individuals found guilty of enslaving another in violation of the Penal Code face up to one year in prison and a small fine.<sup>775</sup>

Bangladesh has a wide body of domestic law charged with combatting child labor, including various acts, policies, and the Penal Code. The 2006 Bangladesh Labor Act consolidated existing law, setting the minimum age of work at fourteen years, or twelve years for light work with parental permission.<sup>776</sup> Under the 2006 Act, adolescents aged fourteen to eighteen are permitted to work in a limited capacity.<sup>777</sup> In furtherance of these principles, the National Child Labor Elimination Policy of 2010 was implemented, aimed at undertaking a National Plan of Action to enforce existing domestic law prohibiting child labor in hazardous conditions.<sup>778</sup> Finally, the National Education Policy mandates the government provide compulsory free education to children through (the equivalent of US) eighth grade.<sup>779</sup>

Legislation promoting equal opportunity of employment in Bangladesh is continually progressing. The Maternity Benefit Act was adopted in 1972. Among other things, the Act implemented a mandatory paid maternity leave and prohibited termination on the grounds of pregnancy.<sup>780</sup> Importantly, in a country struggling to integrate women into the workforce, this Act is often seen as unnecessarily exclusionary by prohibiting women from working even if they are able.<sup>781</sup>

Prior legislation, which is still binding in Bangladesh, prohibits women from working in mines, carrying more than twenty kilograms, and work beyond "typical" hours. Moreover, women must be provided separate accommodations, canteens, toilets, and sitting areas.<sup>782</sup> Today, these laws are met with heavy criticism from pundits claiming this type of legislation further enforces

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<sup>773</sup> *Bangladesh Country Data*, Global Slavery Index. Available at: <https://www.globallslaveryindex.org/2019/data/country-data/bangladesh/>.

<sup>774</sup> Sarasu Esther Thomas, *Responses to Human Trafficking in Bangladesh, India, Nepal and Sri Lanka*, 12 United Nations Office on Drugs and Crime, 2011. Available at: [https://www.unodc.org/documents/human-trafficking/2011/Responses\\_to\\_Human\\_Trafficking\\_in\\_Bangladesh\\_India\\_Nepal\\_and\\_Sri\\_Lanka.pdf](https://www.unodc.org/documents/human-trafficking/2011/Responses_to_Human_Trafficking_in_Bangladesh_India_Nepal_and_Sri_Lanka.pdf); The Prevention and Suppression of Human Trafficking Act, 2012 at cp. 2.

<sup>775</sup> Bangladesh Labour Code, 2006.

<sup>776</sup> Bangladesh Labor Act, 2006 at sec. 34, 36, 39–44.

<sup>777</sup> *Id.*

<sup>778</sup> Bangladesh Elimination Policy, 2010; *see also* Mahbub Bin Shahjahan, *Protecting Child Labor in Bangladesh under Domestic laws*, Open Access Library Journal Vol. 3, No. 4, 2016. Available at: <https://www.scirp.org/journal/paperinformation.aspx?paperid=69186>.

<sup>779</sup> Bangladesh National Education Policy, 2010.

<sup>780</sup> *See* The Maternity Benefit Act, 1939, sec. 4.

<sup>781</sup> Afroza Begum, *Equality of Employment in Bangladesh: a Search for the Substantive Approach to meet the Exceptional Experience of Women in the Contemporary Workplace*, 335–340 The Indian Law Institute. Available at:

[http://14.139.60.114:8080/jspui/bitstream/123456789/12676/1/010\\_Equality%20of%20Employment%20in%20Bangladesh\\_A%20Search%20for%20the%20Substantive%20Approach%20to%20Meet%20the%20Exceptional%20Experience%20of%20Women%20in%20the%20Contemporary%20Workplace%20%28326-350%29.pdf](http://14.139.60.114:8080/jspui/bitstream/123456789/12676/1/010_Equality%20of%20Employment%20in%20Bangladesh_A%20Search%20for%20the%20Substantive%20Approach%20to%20Meet%20the%20Exceptional%20Experience%20of%20Women%20in%20the%20Contemporary%20Workplace%20%28326-350%29.pdf).

<sup>782</sup> The Mineral (Regulation and Development) Act, 1967; The Factories Act, 1965; The Shops and Establishment Act, 1965.

societal norms of anti-female discrimination. Some employers avoid the financial burdens and potential penalties of these laws by simply refusing to hire women.<sup>783</sup>

Finally, the Penal Code of Bangladesh makes illegal any workplace discrimination based on religious beliefs or sexual orientation.<sup>784</sup> While the constitution of Bangladesh requires that the state take affirmative measures to reduce race-based discrimination, little has been implemented to that end.<sup>785</sup>

### ***Record of Implementation***

The Bangladeshi labor force was composed of an estimated 71.2 million people in 2020.<sup>786</sup> The following section highlights Bangladesh's challenges in enforcing both international and domestic law.

#### *Freedom of Association and Unionization*

Despite recognition of the importance of the right to freely associate, recent accounts illustrate larger anti-union issues. Bangladesh currently has a so-called article 26 complaint pending against it at the ILO alleging failure to observe the Freedom of Association and Protection of the Right to Organize Convention and the Right to Organize and Collective Bargaining Convention.<sup>787</sup> Such a complaint is the highest level type within the ILO system, brought before the Governing Body and with the possibility of establishment of a Commission of Inquiry.

An illustration of the challenges that Bangladesh faces is the wage protests of garment workers in 2018. Bangladesh is the world's second largest garment producer, generating about US\$36 billion for the country's economy each year.<sup>788</sup> A union-led strike in late 2018 of over 50,000 unionized and non-unionized garment industry workers called for an increase to the minimum wage.<sup>789</sup> In an effort to disperse protests and reopen garment factories, the government formed a wage review committee, although its impact was unclear and the minimum wage remains unchanged as of 2021.<sup>790</sup> That was not the only response, however. First, when workers refused to back down from their demands, police stepped up with rubber bullets, tear gas, and water

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<sup>783</sup> Begum, *supra* note 118 at 781.

<sup>784</sup> Bangladesh Penal Code sec. 295–298, 377.

<sup>785</sup> Mahabubur Rahman, *In Quest of an Anti-Discriminatory Law for Bangladesh: State's Obligation and National Expectations*, 15 *International Journal of Multidisciplinary Sciences and Advanced Technology* Vol. 1 No. 7, (2020). Available at: [https://www.researchgate.net/publication/342599498\\_In\\_Quest\\_of\\_an\\_Anti-Discrimination\\_Law\\_for\\_Bangladesh\\_State%27s\\_Obligation\\_and\\_National\\_Expectations](https://www.researchgate.net/publication/342599498_In_Quest_of_an_Anti-Discrimination_Law_for_Bangladesh_State%27s_Obligation_and_National_Expectations).

<sup>786</sup> *Labor force, total - Bangladesh*, World Bank. Available at: <https://data.worldbank.org/indicator/SL.TLF.TOTL.IN?locations=BD>.

<sup>787</sup> Int'l Labor Org., Governing Body, *Complaint concerning non-observance by Bangladesh* (March 2021). Available at: [https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_771787.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_771787.pdf).

<sup>788</sup> *Bangladesh's Garment Workers*, The Asia Foundation, <https://asiafoundation.org/slideshow/bangladeshs-garment-workers/>; *Bangladesh: Investigate Dismissals of Protesting Workers*, Human Rights Watch. Available at: <https://www.hrw.org/news/2019/03/05/bangladesh-investigate-dismissals-protesting-workers>.

<sup>789</sup> *Id.*

<sup>790</sup> *Id.*; *Minimum Wage - Dhaka*, Wage Indicator Organization. Available at: <https://wageindicator.org/salary/minimum-wage/bangladesh/38278-dhaka>.

cannons.<sup>791</sup> Numerous reports indicate police raids following the protests, firing rubber bullets at individuals in the sanctity of their homes.<sup>792</sup> Second, over 7,500 workers were dismissed from work as a direct result of the strike and many of them were barred from future work in the garment industry. Lastly, unions report numerous arrests of union member and leaders resulting from the strike.<sup>793</sup>

In 2019, less than 5% of Bangladesh's workforce identified as a member of a labor union.<sup>794</sup> Bangladesh's low rate of unionization stems in significant part from government actions. First, government officials reject nearly half of all union applications.<sup>795</sup> Minimum standards to form a union are unnecessarily cumbersome, requiring: a minimum 30% of the total workforce participation to unionize, and extensive (sometimes impossible) identification processes of union members. For example, union members are required to provide identification numbers contained on union membership certificates which are "seldom" retained.<sup>796</sup> Meanwhile, lack of appellate procedures means little recourse for denied applicants.<sup>797</sup> The government has represented to the CEACR that it is addressing these causes of low unionization, although the information provided appears fragmentary.<sup>798</sup> A second factor contributing to low unionization is that government officials seldom hold private factories, organizations, and employers accountable for anti-union practices.<sup>799</sup>

### *Forced Labor*

According to Global Slavery Index data published in 2018, an estimated 592,000 Bangladeshis are living in conditions of modern slavery.<sup>800</sup> While modern slavery is rare across the country's formal sector, rural workers represent an exploitable and legally unprotected workforce in which forced labor is common.<sup>801</sup> Forced labor manifests through of debt bondage

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<sup>791</sup> *Bangladesh: Investigate Dismissals of Protesting Workers*, *supra* note 788.

<sup>792</sup> *Id.*

<sup>793</sup> *Id.*

<sup>794</sup> *Labour Market Profile: Bangladesh - 2020*, Danish Trade Union Development Agency, Analytical Unit. Available at: <https://www.ulandssekretariatet.dk/wp-content/uploads/2020/07/LMP-Bangladesh-2020-Final-rev.pdf>.

<sup>795</sup> Tula Connell, *Bangladesh Garment Workers: New Blocks to Form Unions*, Solidarity Center (2020). Available at: <https://www.solidaritycenter.org/bangladesh-garment-workers-new-blocks-to-form-unions/>.

<sup>796</sup> *Id.*; *Bangladesh: Garment Workers' Rights Bleak*, Human Rights Watch. Available at: <https://www.hrw.org/news/2016/04/21/bangladesh-garment-workers-union-rights-bleak>.

<sup>797</sup> Tula Connell, *supra* note 795.

<sup>798</sup> See Int'l Labor Org., Observation (CEACR) – adopted 2020, published 109<sup>th</sup> ILR Session (2021). Available at: [https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID:4060432:NO](https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:4060432:NO).

<sup>799</sup> See e.g., *Bangladesh: Garment Workers Rights Bleak*, Human Rights Watch (April 21, 2016). Available at: <https://www.hrw.org/news/2016/04/21/bangladesh-garment-workers-union-rights-bleak>; *Workers' Rights in Bangladesh's Garment Factories*, Human Rights Watch. Available at: <https://www.hrw.org/report/2015/04/22/whoever-raises-their-head-suffers-most/workers-rights-bangladesh-garment>; *Banning Hope - Bangladesh Garment Workers Seeking a Dollar an Hour Face Mass Firings, Violence, and False Arrests*, Worker Rights Consortium (Apr. 2019). Available at: <https://www.workersrights.org/wp-content/uploads/2019/04/Crackdown-on-Bangladesh.pdf>.

<sup>800</sup> *Country Data: Bangladesh*, (Global Slavery Index). Available at: <https://www.globallslaveryindex.org/2018/data/country-data/bangladesh/>.

<sup>801</sup> IRIN, *Bangladesh: The modern face of slavery* (Aug. 7, 2009). Available at: <https://www.refworld.org/docid/4a7fcc9c19.html>.

and human trafficking. Due to Bangladesh's geographical location, high unemployment rate, high poverty rate, and low education rate, the country is an international human trafficking hub.<sup>802</sup> Human traffickers lure vulnerable Bangladeshis with the promise of reasonable work, then lock them into slave-like labor, either in Bangladesh or a nearby country.<sup>803</sup>

Because of relaxed penalties, a lack of labor inspectors, and economic incentives, Bangladesh has had little success in combatting forced labor within its borders.<sup>804</sup> For example, Bangladeshi tea workers, who are underpaid to begin with,<sup>805</sup> are often left with little practical alternative than to continue producing tea for their entire life. Tea workers have little claim to the land on which they live, generations of families typically residing in accommodations provided by tea garden owners or the government.<sup>806</sup> It is common for a tea farmer to grow up in a tea garden house, die in the house, and pass it on to their children. However, because the tea garden owners or government own the house, if at any point the family stops working the tea garden, they will in turn lose the family home.<sup>807</sup> There is a limited domestic legal framework in place to protect against such coerced labor.<sup>808</sup> Similarly, in Bangladesh's shrimp industry, wealthy middlemen exploit poor shrimp farmers on a large scale. Shrimping equipment is expensive, and middlemen finance operations through an opaque system of money lending. Most of the 160,000 "smallholder" farms across the country are funded using this method.<sup>809</sup> As a result, entire shrimping communities and families become indebted to predatory lenders. These agreements require shrimp-sales exclusivity, meaning the small farm is required to sell all shrimp at below market pricing to the lending middleman.<sup>810</sup> Thus, a system of predatory lending effectively results in debt bondage and price control. The government is often criticized for failing to enforce the law, employing only 20 inspectors for 50,000 farms.<sup>811</sup> Finally, current domestic law makes it difficult for migrant workers to leave abusive employers without risk of deportation. The law permits deportation of migrant workers found in slave-like conditions, and reports suggest this practice may be common.<sup>812</sup> For migrant workers with a family and life in Bangladesh, the choice between deportation and exploitative work conditions is a difficult one.

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<sup>802</sup> Kat Fries, *10 Facts About Human Trafficking in Bangladesh*, (Borgen Project). Available at: <https://borgenproject.org/10-facts-about-human-trafficking-in-bangladesh/>.

<sup>803</sup> *Id.*

<sup>804</sup> *Human Trafficking: A Security Concern for Bangladesh*, (Bangladesh Institute of Peace and Security Studies, 2011). Available at: <https://www.files.ethz.ch/isn/164375/Issue%209.pdf>.

<sup>805</sup> Fraser Murray et al., *Study on Modern Slavery in Bangladesh*, 11 DAI (Aug. 2019). Available at: [https://assets.publishing.service.gov.uk/media/5e56a40d86650c539fff3f20/DFID\\_Study\\_on\\_Modern\\_Slavery\\_in\\_Bangladesh.pdf](https://assets.publishing.service.gov.uk/media/5e56a40d86650c539fff3f20/DFID_Study_on_Modern_Slavery_in_Bangladesh.pdf).

<sup>806</sup> *Id.* at 12.

<sup>807</sup> *Id.* at 13.

<sup>808</sup> *Id.*

<sup>809</sup> *Exploitative Labor Practices in the Global Shrimp Industry*, 45–46 Humanity United. Available at: [http://humanityunited.org/pdfs/Accenture\\_Shrimp\\_Report.pdf](http://humanityunited.org/pdfs/Accenture_Shrimp_Report.pdf).

<sup>810</sup> *Id.* at 47.

<sup>811</sup> *Research on Indicators of Forced Labor in the Supply Chain of Shrimp in Bangladesh*, 16 Verite Organization. Available at: [https://www.verite.org/wp-content/uploads/2016/11/Research-on-Indicators-of-Forced-Labor-in-the-Bangladesh-Shrimp-Sector\\_\\_9.16.pdf](https://www.verite.org/wp-content/uploads/2016/11/Research-on-Indicators-of-Forced-Labor-in-the-Bangladesh-Shrimp-Sector__9.16.pdf).

<sup>812</sup> Bangladesh Overseas Employment and Migrants Act, 2013, Chap. VII, Sec. 29 ¶ 3.

## *Child Labor*

In 2013 (the last year data was published), the International Programme on the Elimination of Child Labour estimated 3.4 million Bangladeshi children between the ages of five and seventeen engaged in some form of economic activity, 1.3 million of whom were engaged in one of the worst forms of child labor.<sup>813</sup> For example, children were found working in the drug trade, commercial sex trade, agricultural sector, industrial sector, and public services sector. Moreover, forced child labor, including that resulting from human trafficking, was found in the fishing industry, production of bricks, sex work, domestic work, and forced "begging" industry.<sup>814</sup> Begging street children represent a particularly heinous form of child labor in Bangladesh. Across the country, criminals force children into a life of beggary through emotional and physical coercion, undergoing one of the "worst forms of child labor" while soliciting for money.<sup>815</sup> Passers-by give the children money, and the children give the money to their captors.<sup>816</sup> Draconian laws impose criminal liability on children over nine years old found begging.<sup>817</sup>

As discussed previously, much of the country's domestic law aimed at combatting child labor does not reach the informal sector, where child labor is most prevalent.<sup>818</sup> Child labor runs deep in Bangladesh and is influenced by social, economic, cultural, and religious factors. These factors make reform difficult for Bangladesh's government. For example, a mere 81% of children ages five to fourteen attend school, while 7% combine both work and school.<sup>819</sup> Additionally, for large families struggling with extreme food scarcity, children represent a valuable source of income, with few practical economic alternatives.<sup>820</sup> Lastly, labor inspector funding and numbers are comparatively low, and labor inspections are only conducted in the formal sector.<sup>821</sup> The

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<sup>813</sup> *Bangladesh National Child Labour Survey*, International Labour Organization, (2013). Available at: [https://www.ilo.org/ipecc/Informationresources/WCMS\\_IPEC\\_PUB\\_28175/lang--en/index.htm](https://www.ilo.org/ipecc/Informationresources/WCMS_IPEC_PUB_28175/lang--en/index.htm).

<sup>814</sup> *Understanding children's work in Bangladesh*, 29–33 Inter-Agency Report: World Bank, International Labour Organization, UNICEF (Jul. 2011). Available at: <http://documents1.worldbank.org/curated/en/465721468209050373/pdf/680180WP0Box360eport201111250094656.pdf>.

<sup>815</sup> See e.g., *Children forced into beggary and coerced to produce earnings*, Global March Organization (Apr. 2012). Available at: <https://www.dol.gov/agencies/ilab/resources/reports/child-labor/bangladesh>; Abdul Hai, *Problems Faced By The Street Children: A Study On Some Selected Places In Dhaka City, Bangladesh*, 46 International Journal of Scientific and Technology Research, V. 3 I. 10 (Oct. 2014). Available at: <https://www.ijstr.org/final-print/oct2014/Problems-Faced-By-The-Street-Children-A-Study-On-Some-Selected-Places-In-Dhaka-City-Bangladesh.pdf>.

<sup>816</sup> *Id.*

<sup>817</sup> *Bangladesh*, Consortium for Street Children (Sep. 2019). Available at: <https://www.streetchildren.org/legal-atlas/map/bangladesh/status-offences/is-it-illegal-for-children-to-beg>.

<sup>818</sup> Mahbub Bin Shahjahan *et al.*, *Protecting Child Labor in Bangladesh under Domestic Laws*, Open Access Library Journal, vol. 3 (2016). Available at: <https://www.scirp.org/journal/paperinformation.aspx?paperid=69186>.

<sup>819</sup> To that end, the Bangladeshi government is building schools and enacting legislation for the provision of free compulsory education. *Need Gap Analysis of Child Domestic Labour in Bangladesh*, Commonwealth Foundation. Available at: [http://globalmarch.org/wp-content/uploads/2017/09/NeedGapAnalysis-BANGLADESH\\_1.pdf](http://globalmarch.org/wp-content/uploads/2017/09/NeedGapAnalysis-BANGLADESH_1.pdf).

<sup>820</sup> *Id.*

<sup>821</sup> See generally *Bangladesh Government's Safety Inspection Agencies Not Ready to Take Over Accord's Work*, Worker Rights Consortium (Apr. 2019). Available at: [https://www.workersrights.org/wp-content/uploads/2019/04/Bangladesh\\_RCC-report-4-1\\_3.pdf](https://www.workersrights.org/wp-content/uploads/2019/04/Bangladesh_RCC-report-4-1_3.pdf).

Department of Inspection for Factories and Establishments employs a mere 312 inspectors to police and regulate the country's workforce of 71.2 million.<sup>822</sup>

### *Equal Employment Opportunity*

In Bangladesh, women's presence in the workforce is sparse, albeit steadily growing. In 2020, women accounted for nearly 31% of the workforce, a 6% increase since 2010.<sup>823</sup> However, female participation in the workforce is low compared to males. In 2018, only 36% of working age females were employed, 46% behind male labor-force participation.<sup>824</sup> Furthermore, Bangladeshi women typically work entry-level positions, and thereafter struggle to climb the corporate ladder.<sup>825</sup> The challenge of providing equal opportunity is embedded in the country's culture: "[t]he social forces which are creating gender differentials are based on age-old patriarchal traditions and values that still prevail in most parts of Bangladesh."<sup>826</sup> For example, the practice of early marriage is common, and 59% of Bangladeshi women are married before turning eighteen, while 22% are married before turning fifteen.<sup>827</sup> Early marriage inhibits female participation in the workforce.<sup>828</sup>

In many ways, the situation for female workers in Bangladesh is superior to countries with similar economic standing, and data suggests their situation will continue to improve. For example, the country's gender pay gap is relatively low, even compared to countries with much higher median incomes. Women are paid only 8% less than their male counterparts.<sup>829</sup> With this and additional factors in mind, Bangladesh ranked fiftieth on the Global Gender Gap Index of 2020,

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<sup>822</sup> *Implementation of the Bangladesh Compact - Technical Status Report*, 20 European Commission (Sep. 2018). Available at: [https://trade.ec.europa.eu/doclib/docs/2018/september/tradoc\\_157426.pdf](https://trade.ec.europa.eu/doclib/docs/2018/september/tradoc_157426.pdf).

<sup>823</sup> *Labor Force, female (% of total labor force) - Bangladesh*, (The World Bank). Available at: <https://data.worldbank.org/indicator/SL.TLF.TOTL.FE.ZS?locations=BD>.

<sup>824</sup> Aphichoke Kotikula et al., *What Works for Working Women? Understanding Female Labor Force Participation in Urban Bangladesh*, 11–12 The World Bank (2019). Available at: <http://documents1.worldbank.org/curated/en/265491570091030693/pdf/What-Works-for-Working-Women-Understanding-Female-Labor-Force-Participation-in-Urban-Bangladesh.pdf>.

<sup>825</sup> Salma Sultana, *Factors Affecting Career Progression of Women in the Banking Sector in Bangladesh: Barriers and Challenges*, 57 *Quest Journals - Journal of Research in Business and Management* V. 7 I. 6 (2019). Available at: <https://www.questjournals.org/jrbm/papers/vol7-issue6/F07065662.pdf>.

<sup>826</sup> Jannatul Ferdaush & K.M. Mustafizur Rahman, *Gender Inequality in Bangladesh*, 16 *Unnayan Onneshan-The Innovators*. Available at: <https://www.questjournals.org/jrbm/papers/vol7-issue6/F07065662.pdf>.

<sup>827</sup> *Bangladesh Demographic and Health Survey*, 39 National Institute of Population Research and Training. Available at: <https://dhsprogram.com/pubs/pdf/FR311/FR311.pdf>.

<sup>828</sup> See e.g., *Taking action to address child marriage: the role of different sectors*, 1 *Girls Not Brides Organization*, <https://www.girlsnotbrides.org/wp-content/uploads/2016/03/4.-Addressing-child-marriage-Economic-growth.pdf>; *The Impact of Marriage and Children on Labour Market Participation*, 4, 6–7 *International Labour Organization*. Available at: <https://sustainabledevelopment.un.org/content/documents/2701theimpactofmarriageandchildrenonlabourmarketparticipation.pdf>.

<sup>829</sup> Andreas Menzel & Christopher Woodruff, *Gender Wage Gaps and Worker Mobility: Evidence from the Garment Sector in Bangladesh*, 2 *National Bureau of Economic Research*. Available at: [https://www.nber.org/system/files/working\\_papers/w25982/w25982.pdf](https://www.nber.org/system/files/working_papers/w25982/w25982.pdf).

above wealthy countries such as the United States, Singapore, and Italy.<sup>830</sup> Further, Bangladesh is the highest-ranking country in South Asia.<sup>831</sup>

## LABOR RIGHTS IN UZBEKISTAN

### *Domestic Laws*

The Republic of Uzbekistan (Uzbekistan) has ratified all eight ILO fundamental conventions. It has recognized fundamental labor rights in the Constitution of Uzbekistan, implemented domestic legislation in accordance with the four main labor categories, and funded programs in furtherance of the main principles.

Uzbekistan's Constitutional law protects labor rights in many forms. Article thirty-four provides all citizens with the right to freely associate, form trade unions, and participate in worker strikes, further requiring that no public or private entities infringe upon those rights.<sup>832</sup> Importantly, the Constitution requires that all trade unions register with the Federation of Trade Unions Uzbekistan.<sup>833</sup> Article thirty-seven prohibits all forms of forced labor except as punishment for a crime.<sup>834</sup> Article forty-six provides that all constitutional provisions, including those ensuring the rights to work, apply equally to all citizens, without discrimination based upon race, gender, or religion.<sup>835</sup> The Constitution does not expressly provide a minimum working age; however, it does compel the state to provide free secondary education and care for orphaned children.<sup>836</sup>

Uzbekistan has one main law governing trade unions. Until recently, Uzbek workers relied on an outdated version of the law enacted in 1992 for the protection of their rights. This law made joining, creating, and operating trade unions unnecessarily difficult.<sup>837</sup> Thus, the March 2020 amendment to this law was long-awaited by Uzbek workers. The amendment had three main provisions:<sup>838</sup> the development of union rights to meet ILO standards, the promotion of unionization rates through less-strenuous registration procedures, and the implementation of government-led union "inspections" designed to ensure union member rights are upheld.<sup>839</sup> Trade unions are still required to register with and report member information to state entities.

Uzbekistan's workforce is afforded the right to freely associate, particularly the right to organize labor strikes and mass gatherings. On its face, Uzbek law requires prior notification of

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<sup>830</sup> *Global Gender Gap Report 2020*, World Economic Forum. Available at: [http://www3.weforum.org/docs/WEF\\_GGGR\\_2020.pdf](http://www3.weforum.org/docs/WEF_GGGR_2020.pdf).

<sup>831</sup> *Id.*

<sup>832</sup> Uzbekistan Const. art. 34. *See also Uzbekistan*, (NATLEX), [https://www.ilo.org/dyn/natlex/natlex4.detail?p\\_lang=en&p\\_isn=38528](https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=38528).

<sup>833</sup> *Id.* at art. 56; *Uzbekistan: First Independent Labor Union Faces Intimidation*, (Cotton Campaign Organization). Available at: <http://www.cottoncampaign.org/independent-union-faces-intimidation.html>.

<sup>834</sup> Uzbekistan Const. art. 37.

<sup>835</sup> *Id.* at art. 46.

<sup>836</sup> *Id.* at art. 41, 64.

<sup>837</sup> Uzbekistan Act No. 638-XII, 1992.

<sup>838</sup> *Uzbekistan: New Law on Trade Unions*, European Trade Union Committee for Education (Mar. 2020). Available at: <https://www.csee-etuice.org/en/news/member-organisations/3981-uzbekistan-new-law-on-trade-unions>. *See also* Abdulhakim Kholliyevich Buronov, *Uzbekistan in the New Era of Trade Union Development*, 295 (The American Journal of Scoail Science and Education Innovations, Jan. 2021).

<sup>839</sup> *See id.*

worker gatherings and a designation of the site upon which the gathering will occur.<sup>840</sup> While it may seem reasonable to allow government officials the ability to prepare for mass gatherings, officials retain the right to ban gatherings before they begin without due process or good cause.<sup>841</sup> Penalties for violation of gathering laws are harsh for participants, labor unions, and gathering facilitators alike.<sup>842</sup>

In 2019, the government of Uzbekistan took two steps to prohibit the country's worst forms of forced labor. First, article 135 of the Criminal Code was amended to make illegal the exploitation of another for the purposes of work and sex work.<sup>843</sup> Although the article imposes penalties upon individuals who violate it, these penalties fall well-short of international standards. First time offenses are considered "administrative," resulting in mere fines, while repeat offenders fare slightly worse and are charged with a criminal offense and imprisoned up to five years.<sup>844</sup> In contrast, for the same crime, the United States imposes a penalty of twenty years imprisonment, India sets a range of seven years to life depending on the severity of the crime, and the Philippines impose up to twenty years imprisonment.<sup>845</sup> Second, the government increased the number of labor inspectors from about 200 to 400.<sup>846</sup> This inspectorate saw increased successes, but still falls short of recommended ILO and international standards.<sup>847</sup> Despite recognition of and commitment to international principles prohibiting forced labor, Uzbekistan has not implemented further legislation prohibiting forced labor.

Following Uzbekistan's ratification of the Minimum Age Convention in 2009, the country took significant steps to ensure their domestic legislative regime met international standards. The Law on the Guarantees of the Rights of the Child meets international standards, setting the minimum working age at sixteen years or fifteen years for part-time, light work.<sup>848</sup> The Labor Code prohibits minors from working in potentially hazardous conditions. Together, the "Decree on Adoption of the List of Occupations with Unfavorable Working Conditions to Which it is Forbidden to Employ Persons under Eighteen Years of Age" and "The Decree on Approval of Provision on Requirements on Prohibition of Use of Minors' Labor" codified activities forbidden to children under eighteen years of age.<sup>849</sup> These two decrees and labor code provisions form a domestic framework mirroring the international prohibition on the worst forms of child labor. Finally, the government provides twelve years of compulsory free education to each child.<sup>850</sup>

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<sup>840</sup> *Uzbekistan: UN Cites Concerns on Torture, Freedoms*, Human Rights Watch (Apr. 2020). Available at: <https://www.hrw.org/news/2020/04/08/uzbekistan-un-cites-concerns-torture-freedoms>.

<sup>841</sup> *Freedom of Association Under Threat - Uzbekistan*, Freedom House (Nov. 2008). Available at: <https://www.refworld.org/docid/492a751a28.html>.

<sup>842</sup> *Id.*

<sup>843</sup> Uzbekistan Crim. Code Art. 135.

<sup>844</sup> *Id.*

<sup>845</sup> 18 U.S.C. § 1590; India Penal Code § 370; Philippines Anti-Trafficking in Persons Act (2012).

<sup>846</sup> *Id.*

<sup>847</sup> *Id.*; David Weil, *A strategic approach to labour inspection*, 351–352 *Harvard International Labour Review*, Vol. 147 (2008). Available at: [https://hctar.seas.harvard.edu/files/hctar/files/weil.strategic\\_approach08.pdf](https://hctar.seas.harvard.edu/files/hctar/files/weil.strategic_approach08.pdf).

<sup>848</sup> Uzbekistan Law No. ZRU-239. *See Also Uzbekistan*, 658 *RefWorld* (2011). Available at: <https://www.refworld.org/pdfid/5065942827.pdf>.

<sup>849</sup> Uzbekistan Law No. ZRU-239.

<sup>850</sup> Uzbekistan National Programme for Personnel Training, Aug. 1997. *See also World Data on Education, Uzbekistan*, 4 United Nations Educational, Scientific and Cultural Organization (2011). Available at: <https://unesdoc.unesco.org/ark:/48223/pf0000211314>.

Uzbekistan's Labor Code affords Uzbek workers key rights surrounding equal employment opportunity. Article 6 of the Code affords workers protections from discrimination based on "sex, age, race, ethnic nationality, language, social origin, property status. . . , religion, convictions, affiliation to social associations as well as other circumstances not related to professional qualities and results of their Labour." However, the act goes on to permit discrimination against women where the employer deems the work to be suitable only for men.<sup>851</sup> Article 58 further provides protections for pregnant women but prohibits women from working in mines, under unfavorable conditions, at night, overtime, and on weekends.<sup>852</sup>

### ***Record of Implementation***

In Uzbekistan, over 14 million workers rely on government provided labor protections.<sup>853</sup> However, the state is often unwilling or unable to uphold international obligations. The government has often discouraged the spread of information relating to internal human rights conditions. Thus, data relating to labor violations is sparse.<sup>854</sup>

### ***Freedom of Association and Unionization***

The 2020 amendment made it easier for unions to operate, but the tangible outcome of the amendment is yet to be seen. In the past, registration requirements were unnecessarily cumbersome for Uzbek workers, leading to low unionization rates.<sup>855</sup> While the new amendment looks to alleviate strain on unionizing workers, it does not relieve some of the most important burdens preventing the creation and joining of unions. The list of requirements to form a union is still extensive, compared to international standards.<sup>856</sup> Since the amendment's inception, rigorous unionization requirements continue. In January 2021, Human Rights Watch reported numerous denials of union applications due to minor "grammar or even punctuation mistakes, missing information, or the language used" in the application, even with the 2020 legislation.<sup>857</sup> These practices have led disgruntled applicants, the European Union, the U.S. State Department, and the United Nations Human Rights Committee to accuse the country's unionization regime of being arbitrary and concerning.<sup>858</sup>

Unions that are allowed to form often do not escape the umbrella of government supervision. Until March 2021, the government kept a "death-grip" over all unions, ensuring union

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<sup>851</sup> *Gender Expertise of Family and Labour Codes of the Republic of Uzbekistan*, 45–49 Asian Development Bank, (2008). Available at: <https://www.adb.org/sites/default/files/publication/29074/gender-en.pdf>.

<sup>852</sup> *Id.* at 46–47.

<sup>853</sup> *Labor Force, total - Uzbekistan*, World Bank Organization (2020). Available at: <https://data.worldbank.org/indicator/SL.TLF.TOTL.IN?locations=UZ>.

<sup>854</sup> *Forced Labour in Uzbekistan*, Association of Human Rights in Central Asia (2010). Available at: [https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/UZB/INT\\_CCPR\\_NGO\\_UZB\\_98\\_10302\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/UZB/INT_CCPR_NGO_UZB_98_10302_E.pdf).

<sup>855</sup> *Uzbekistan: Registration Barriers for Independent Groups*, Human Rights Watch (2021). Available at: <https://www.hrw.org/news/2021/01/07/uzbekistan-registration-barriers-independent-groups>.

<sup>856</sup> *Id.*

<sup>857</sup> *Id.*

<sup>858</sup> *Id.*

decisions aligned with government goals.<sup>859</sup> Although celebrations erupted as the first independent trade union was created in Uzbekistan, reports suggest government officials continue to harass union members.<sup>860</sup> Free trade unions represent a shift in the right direction for Uzbekistan.<sup>861</sup> but most unions remain heavily dependent upon and controlled by the government.

Although freedom of association is recognized as a fundamental right under the constitution and protected through domestic legislation, this law is rarely upheld. Government authorities rarely grant gathering requests, and unsanctioned gatherings are generally broken up by police.<sup>862</sup> Police breakups of public gatherings are usually justified because of overly vague definitions of "extremism" and "extremist activity."<sup>863</sup> Penalties for both forming and participating in unsanctioned gatherings are harsh.<sup>864</sup> Freedom House scored Uzbekistan zero out of four in the categories of freedom of assembly and freedom to unionize.<sup>865</sup> Similarly, the UN Human Rights Committee has expressed significant concern over freedom of association in Uzbekistan.<sup>866</sup>

### *Forced Labor*

When Uzbekistan gained independence from the Soviet Union in 1991, the country inherited an economic system built forced laborer. Since then, the country has achieved few improvements in this area. Much criticism has been directed at Uzbekistan's cotton industry, on which the country relies heavily for economic success.<sup>867</sup> Forced labor is widespread. In 2017 for example, the Uzbek government, under international pressures, released over 200,000 university students, teachers, and medical staff from forced labor in the cotton industry.<sup>868</sup> The national and

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<sup>859</sup> *Federation of Trade Unions of Uzbekistan: A Workers' Organization Or Instrument to Control Workers?*, Labor Rights Organization (Nov. 2007), <https://laborrights.org/publications/federation-trade-unions-uzbekistan-workers'-organization-or-instrument-control-workers>.

<sup>860</sup> Bruce Pannier, *Celebrations Over Uzbekistan's First Independent Union Cut Short by Threats, Harassment*, RadioFreeEurope. Available at: <https://www.rferl.org/a/uzbekistan-trade-union-agricultural-workers/31172316.html>.

<sup>861</sup> A 2018 ILO survey outlined labor and unionization data for 90% of the world's population but was unable to gather from Uzbekistan or seven other countries. Jelle Visser, *Trade Unions in the Balance*, 16, 79 International Labour Organization (2019). Available at: [https://www.ilo.org/wcmsp5/groups/public/---ed\\_dialogue/---actrav/documents/publication/wcms\\_722482.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---actrav/documents/publication/wcms_722482.pdf). See also Kirill Buketov, *The democratic future of Uzbekistan doesn't depend on the politicians, but whether workers can mobilise*, Open Democracy Network (Oct. 2018), <https://www.opendemocracy.net/en/odr/the-democratic-future-of-uzbekistan/>.

<sup>862</sup> *Freedom in the World - Uzbekistan*, Freedom House (2020). Available at: <https://freedomhouse.org/country/uzbekistan/freedom-world/2020>.

<sup>863</sup> *Uzbekistan: UN Cites Concerns on Torture, Freedoms*, Human Rights Watch (Apr. 2020). Available at: <https://www.hrw.org/news/2020/04/08/uzbekistan-un-cites-concerns-torture-freedoms>.

<sup>864</sup> *Id.*

<sup>865</sup> Freedom House, *supra* note 862.

<sup>866</sup> *UN Human Rights Committee publishes findings on Central African Republic, Portugal, Tunisia, Uzbekistan and Dominica*, OHCHR (Apr. 2020). Available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25766>.

<sup>867</sup> *Uzbekistan - Economy*, Global Security Organization. Available at: <https://www.globalsecurity.org/military/world/centralasia/uzbek-econ.htm>.

<sup>868</sup> See e.g., *World Bank Presses Uzbekistan to End Forced Labor*, Human Rights Watch (2017). Available at: <https://www.hrw.org/news/2017/10/18/world-bank-presses-uzbekistan-end-forced-labor>; Anna Pujol-Mazzini, *Forced Labor in Uzbek cotton fields linked to World Bank funds: rights groups*, Reuters (Jun. 2017). Available at: <https://www.reuters.com/article/us-uzbekistan-labour/forced-labor-in-uzbek-cotton-fields-linked-to-world-bank-funds-rights-groups-idUSKBN1911PZ>.

local governments were implicated in forced cotton labor, as they have engaged in threats, withholding of welfare payments, and withholding of education if students, teachers, and medical staff refused to work the cotton fields.<sup>869</sup> Despite government claims that the practice was abandoned in 2018, evidence of state coercion in Uzbek cotton fields was found in the 2019 cotton season as well.<sup>870</sup> However, government claims of systematic abandonment were corroborated by international organizations during the 2020 harvest.<sup>871</sup> The ILO praised Uzbekistan's government for implementing reform and substantially eliminating forced labor during the 2020 harvest. There is some evidence that state coercion in the cotton industry may still exist in the guise of "volunteer work."<sup>872</sup>

The case of Uzbekistan's cotton industry is illustrative of a larger, more widespread problem. According to the Global Slavery Index, 160,000 Uzbeks are currently living in conditions equivalent to modern slavery across all industries.<sup>873</sup> Proportionally, that means over five out of every 1,000 Uzbeks are currently living in modern slavery; however, this number is decreasing with each passing year.<sup>874</sup> The Uzbek government's struggles to eradicate forced labor manifest in three main ways. First, enforcement is lax. In 2019, the government conducted 66 labor investigations, finding a mere three individuals guilty of labor exploitation under Article 135 of the criminal code, despite 160,000 estimated forced laborers.<sup>875</sup> Moreover, no reports indicate government officials being prosecuted for their direct perpetration of forced labor in the cotton industry. Second, the government's labor inspectorate is weak and insufficient to combat the country's slavery practices. Inspectors are unable to investigate labor violations at scale, instead focusing on low-level forced labor perpetrators.<sup>876</sup> Third, the law does not afford all victims of forced labor the same protections and rehabilitations as Uzbek citizens.<sup>877</sup>

In recent years, Uzbekistan has taken significant steps to fight forced labor; however, new domestic law still faces significant challenges. In particular, three government steps represent their

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<sup>869</sup> See e.g., *Uzbekistan: Forced Labor Linked to World Bank*, Human Rights Watch (2017). Available at: <https://www.hrw.org/news/2017/06/27/uzbekistan-forced-labor-linked-world-bank>; The Cotton Campaign, *Forced Labor in Uzbekistan's Cotton Fields Was Present in 2018 Harvest*, Labor Rights Organization (Dec. 2018). Available at: <https://laborrights.org/releases/forced-labor-uzbekistan-s-cotton-fields-was-present-2018-harvest>; Kieran Guilbert, *Campaign challenge U.N. over forced labor in Uzbekistan's cotton industry*, Reuters (Nov. 2018). Available at: <https://www.reuters.com/article/us-uzbekistan-labour-workers/campaigners-challenge-un-over-forced-labor-in-uzbekistans-cotton-industry-idUSKCN1NS1S6>.

<sup>870</sup> Namratha Somayajula, *Forced Labor Lives on in Uzbekistan's Cotton Fields*, Human Rights Watch (Apr. 2019). Available at: <https://www.hrw.org/news/2019/04/16/forced-labor-lives-uzbekistans-cotton-fields>.

<sup>871</sup> *Forced and child labour in Uzbek cotton fields continues to fall*, International Labour Organization (Feb. 2020). Available at: [https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS\\_735883/lang--en/index.htm](https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_735883/lang--en/index.htm); *Systemic forced labour and child labour has come to an end in Uzbek cotton*, International Labour Organization (Jan. 2021). Available at: [https://www.ilo.org/washington/news/WCMS\\_767753/lang--en/index.htm](https://www.ilo.org/washington/news/WCMS_767753/lang--en/index.htm).

<sup>872</sup> See e.g., Komala Ramachandra, *Forced Labor Persists in Uzbekistan's Cotton Fields*, Human Rights Watch (Jun. 2020). Available at: <https://www.hrw.org/news/2020/06/25/forced-labor-persists-uzbekistans-cotton-fields>; Ron Synovitz, *Uzbek State Workers Say They're Still Being Forced To Pick Cotton*, Radio Free Europe Organization (Sep. 2020). Available at: <https://www.rferl.org/a/30843866.html>.

<sup>873</sup> *Country Data - Uzbekistan*, (Global Slavery Index, 2018). Available at: <https://www.globallslaveryindex.org/2018/data/country-data/uzbekistan/>.

<sup>874</sup> *Id.*

<sup>875</sup> *Id.*

<sup>876</sup> *There is no Work we Haven't Done: Forced Labor of Public-Sector Employees in Uzbekistan*, Solidarity Center Organization (Feb. 2019). Available at: <https://www.solidaritycenter.org/wp-content/uploads/2019/02/Uzbekistan.Forced-Labor-in-Public-Sector-Report.English.1.2019.pdf>.

<sup>877</sup> *Id.*

commitment to reducing forced labor. First, the government has invested significant resources in educating workers of their rights, as well as the dangers of forced labor.<sup>878</sup> Second, the labor inspectorate is increasing. In 2020, the labor inspectorate monitored 3,048 cotton farms during the harvest. The inspectorate found over 540 uncontracted workers, but no criminal charges were filed based on these findings.<sup>879</sup> Third, Uzbekistan now allows third party monitoring of cotton harvests. As mentioned above, the ILO found that forced labor had significantly decreased in the 2020 harvest, while systematic forced labor likely did not occur.<sup>880</sup>

### *Child Labor*

In Uzbekistan, conflicting practices towards children warrant separate consideration under the Minimum Age Convention and Worst Forms of Child Labor Convention. First, under the Minimum Age Convention, Uzbekistan has significantly reduced the number of child laborers. Precise data on child labor in Uzbekistan is difficult to uncover, but a 2006 ILO survey found over 4% of Uzbek children aged five to fourteen years engaged in some form of labor; however, the government has made significant improvement to domestic legislation and enforcement mechanisms since those findings.<sup>881</sup> Data from a 2019 United Nations Educational, Scientific and Cultural Organization (UNESCO) survey found a substantial 84% of children aged five to fourteen attending school.<sup>882</sup> Despite a lack of concrete data, a wide-range of reports from 2020 and 2021 suggest the country's current legislation and enforcement mechanisms aimed at combating child labor have been largely successful, encouraging children to stay in school and avoid the workforce.<sup>883</sup>

Nevertheless, reports indicate that Uzbek children are working in fields, collecting trash, collecting metal, being kidnapped for purposes of sex-work, and being forced to work against their will.<sup>884</sup> In the country's silk loop, the worst forms of child labor are practiced, and reports suggest government officials threaten and punish children if they refuse to work.<sup>885</sup>

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<sup>878</sup> *Key Findings from the 2020 Cotton Harvest*, Uzbek Forum for Human Rights (Jan. 2021). Available at: <https://www.uzbekforum.org/key-findings-from-the-2020-cotton-harvest/>.

<sup>879</sup> *Id.*

<sup>880</sup> *2020 third-party monitoring of child labour and forced labour during the cotton harvest in Uzbekistan*, 5 International Labour Organization (2021). Available at: [https://www.ilo.org/wcmsp5/groups/public/---dgreports/--ilo-washington/documents/projectdocumentation/wcms\\_767756.pdf](https://www.ilo.org/wcmsp5/groups/public/---dgreports/--ilo-washington/documents/projectdocumentation/wcms_767756.pdf).

<sup>881</sup> *Multiple Indicator Cluster Survey*, 61–62 International Labour Organization (2006); *Third-party monitoring of measures against child labour and forced labour during the 2016 cotton harvest in Uzbekistan*, 26–27 International Labour Organization (Jan. 2017). Available at: <http://pubdocs.worldbank.org/en/269051485892885586/IOL-Monitoring-Report.pdf>.

<sup>882</sup> *Gross intake ration to the last grade*, UNESCO (2019). Available at: <http://data.uis.unesco.org/#>.

<sup>883</sup> See e.g., *Forced and child labour in Uzbek cotton fields continues to fall*, International Labour Organization. Available at: [https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS\\_735883/lang--en/index.htm](https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_735883/lang--en/index.htm); *Systematic forced labour and child labour has come to an end in Uzbek cotton*, International Labour Organization, [https://www.ilo.org/washington/news/WCMS\\_767753/lang--en/index.htm](https://www.ilo.org/washington/news/WCMS_767753/lang--en/index.htm).

<sup>884</sup> *Uzbekistan: 185 newborns sold over four-year period*, Eurasia Network (Jan. 2021). Available at: <https://eurasianet.org/uzbekistan-185-newborns-sold-over-four-year-period>; E.g., Allison Gill, *There is No Work We Haven't Done: Forced Labor of Public-Sector Employees in Uzbekistan*, p. 16-18 (Solidarity Center, Feb. 2019). Available at: <https://www.uzbekforum.org/wp-content/uploads/2019/02/Uzbekistan.Forced-Labor-in-Public-Sector-Report.English.1.2019.pdf>.

<sup>885</sup> Allison Gill, *surpa* note 899 at 3–4; *Silk Loop for Uzbek Farmers*, 3,16 (Uzbek Forum for Human Rights, Sep. 2015), <https://www.uzbekforum.org/report-silk-loop-for-uzbek-farmers/>.

## *Equal Employment Opportunity*

In Uzbekistan, gender stereotyping and discrimination run deep in the country's culture. Recently, the state has taken a stance against these cultural norms by implementing anti-discrimination legislation; however, progress is slow. Men and women have different opportunities. Moreover, only 52% of working-age females participate in the workforce, compared to 78% of men.<sup>886</sup> Across all sectors, Uzbek men dominate high-level positions, while women are typically stuck in low-paying, part time jobs.<sup>887</sup> As such, the gender pay gap sees disparities between male and female pay.<sup>888</sup>

As recently as 2019, the Uzbek government introduced its first ever law protecting gender rights. The new law states "[a]ll citizens of the Republic of Uzbekistan shall have equal rights and freedoms and be equal before law, regardless of gender" or other grounds.<sup>889</sup> The law does not elaborate as to how this will be enforced or what this means for women in the workplace. The same year this law was implemented, the Uzbek government introduced a new law setting an unequal retirement age for men and women.<sup>890</sup> Moreover, the new law fails to address adequately the strong cultural norms favoring men. Since the law's inception, reports evidence little success. In 2021, the gender pay gap is still one of the worst in the world and women are under-employed generally and in managerial positions.<sup>891</sup>

## **LABOR RIGHTS IN VIET NAM**

### *Domestic Laws*

The Socialist Republic of Viet Nam (Viet Nam) has ratified seven of the eight ILO fundamental conventions, excluding the Freedom of Association and Protection of the Right to Organise Convention.<sup>892</sup> The ratification of the eighth fundamental convention is scheduled for 2023. The Abolition of Forced Labour Convention was ratified by Viet Nam in 2020, and entered into force in July 2021.<sup>893</sup> The Constitution of Viet Nam contains provisions both directly and indirectly relevant to the four main labor principles considered. Articles 2 and 10 outline the importance of unions in the country's politics and economy but does not expressly grant any rights.<sup>894</sup> Article 69 grants workers the right to freely associate and hold labor strikes "in

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<sup>886</sup> *Id.*

<sup>887</sup> *Uzbekistan Country Gender Assessment Update*, xii Asian Development Bank (Dec. 2018). Available at: <https://www.adb.org/sites/default/files/institutional-document/479841/uzbekistan-country-gender-assessment-update.pdf>.

<sup>888</sup> *Id.* at 12.

<sup>889</sup> *Law of the Republic of Uzbekistan "On Warranties of Equal Rights and Opportunities for Men and Women"*, 2019. Available at: <https://regulation.gov.uz/ru/document/3220>.

<sup>890</sup> *Women, Business and the Law 2019*, 19 World Bank Group (2019). Available at: <https://openknowledge.worldbank.org/bitstream/handle/10986/31327/WBL2019.pdf>.

<sup>891</sup> Jamila Bobanazarova, *Gender Equality in the Labor Market in Uzbekistan*, *Journal of Critical Reviews*, Vol. 7, Iss. 12 (2020). Available at: <http://www.jcreview.com/fulltext/197-1593776934.pdf?1617151230>.

<sup>892</sup> *Ratifications for Viet Nam*, (International Labour Organization). Available at: [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::p11200\\_country\\_id:103004](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::p11200_country_id:103004).

<sup>893</sup> *Id.*

<sup>894</sup> Constitution of Viet Nam, art. 2, 10. *See also Viet Nam: Constitution*, (UNCHR). Available at: <https://www.refworld.org/docid/3ae6b573c.html>.

accordance with the provisions of the law."<sup>895</sup> The right to be free of forced labor is not expressly granted, but Article 56 sets the framework, requiring the state to enact legislation and policy "for the protection of labour."<sup>896</sup> The constitution does not set a minimum age for work or protections for children from the worst forms of labor. Articles 40 and 65 require the state and society to protect children, while article 59 mandates the state provision of free compulsory education.<sup>897</sup> Finally, Article 63 outlines principles of workplace gender-equality, requiring that men and women receive equal pay for equal work, women receive paid maternity leave, and state policies to promote gender equality.<sup>898</sup> Although the Constitution contains somewhat vague provisions, the country's labor codes and employment acts protect laborers in a more targeted way.

Until January 2021, free labor unions could not exist under Vietnamese law. Instead, all workers' organizations affiliated directly with the Vietnam General Confederation of Labor (VGCL), a body overseen by the Communist Party.<sup>899</sup> Under the 2021 labor code revision, workers gained the right to form "workers' representative organizations" (WRO) at the grass roots level and without an obligation to affiliate with the VGCL.<sup>900</sup> The WROs are subject to registration with the government.<sup>901</sup> The 2021 law further protects the rights of workers to freely associate and hold labor strikes. Although the law established the right of workers to strike, it ostensibly prohibits them from using strikes as a bargaining chip in lieu of negotiations.<sup>902</sup> Workers are not supposed to strike as a way to improve their bargaining position *during* "negotiations," although the law does not define the restricted period. Strikes are also illegal if they are not given prior government authorization pursuant to Article 199 of the labor code, if they take place after the government makes a lawful order regarding the dispute in question, if they fail to notify the employer twelve hours prior to the strike, and if the strike disrupts "public order and security."<sup>903</sup>

Viet Nam's ratification of the Abolition of Forced Labour Convention represents the country's commitment to combatting forced labor within its borders. The country's domestic law makes significant strides to abolish forced labor. Articles five and eight of the Labor Code forbid all forms of forced labor and poor working conditions.<sup>904</sup> The labor code also prohibits practices relating to forced labor, including deceptive recruitment, seizure of identifying documents, violations of a worker's right to overtime pay, and limitations on wage deductions.<sup>905</sup> In cases of poor treatment, workers have the right to unilaterally terminate their contract at any time.<sup>906</sup> An

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<sup>895</sup> *Id.* at art. 69.

<sup>896</sup> *Id.* at art. 56.

<sup>897</sup> *Id.* at art. 40, 65, 59.

<sup>898</sup> *Id.* at art. 63.

<sup>899</sup> See e.g., *Workers and Employers Organizations in Viet Nam*, (International Labour Organization). Available at: <https://www.ilo.org/hanoi/areasoofwork/workers-and-employers-organizations/lang--en/index.htm>; Eric San Juan, *Is there a glimmer of hope for Vietnamese workers?*, (Equal Times Organization, Feb. 2020). Available at: <https://www.equaltimes.org/is-there-a-glimmer-of-hope?lang=en#.YEP93y1h01I>.

<sup>900</sup> Labor Code, No. 45/2019/QH14, Nov. 2019 at art. 170. See also Joe Buckley, *Vietnam prepares to begin a new chapter in labour organizing*, (China Labour Bulletin Organization, Sep. 2020). Available at: <https://www.clb.org.hk/content/vietnam-prepares-begin-new-chapter-labour-organizing>.

<sup>901</sup> Labor Code, No. 45/2019/QH14, Nov. 2019 at art. 172, sec. 2.

<sup>902</sup> *Id.* at Sec. 5, Art. 198–209.

<sup>903</sup> *Id.* at Sec. 5, Art. 209–211.

<sup>904</sup> Viet Nam Labor Code at art. 5.2.

<sup>905</sup> *Id.* at art. 8.6, 20.1, 97, 101. See also *Preventing forced labour in the textile and garment supply chains in Viet Nam*, 24 (International Labour Organization, 2016). Available at: [https://www.ilo.org/wcmsp5/groups/public/---ed\\_dialogue/---act\\_emp/documents/publication/wcms\\_578489.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---act_emp/documents/publication/wcms_578489.pdf).

<sup>906</sup> *Id.* at 24; Viet Nam Labor Code, art. 37.

employer's violation of the above legislation is considered a criminal offense, punishable by fine and imprisonment.<sup>907</sup>

The labor code sets the minimum working age at fifteen years, with exception for light work with parental permission.<sup>908</sup> It further protects workers aged sixteen to eighteen, limiting the number of hours they are permitted to work and the conditions of that work.<sup>909</sup> Further, the Children Law of 2016 prohibits employers from hiring children in work unfit for them.<sup>910</sup> The state provides free compulsory education to all children, but costs associated with schooling drive up the price.<sup>911</sup> According to the ILO, Viet Nam's domestic framework creates a foundation to successfully promote the "protection, care and education" of the country's children.<sup>912</sup>

Under the previous Vietnamese labor code, protections against workplace discrimination were broadly drawn. The 2021 labor code amendment included more pointed, detailed provisions protecting against worker discrimination. The amendment made illegal hiring discrimination based on "race, skin color, nationality, ethnicity, gender, age, pregnancy, marital status, religion, opinion, disability, family responsibility, [or] HIV infection."<sup>913</sup> The new labor code prohibits salary-based discrimination, but *only* on the basis of gender, discarding the widely encompassing definition used for discrimination in hiring practices.<sup>914</sup> Finally, in a significant step forward in Viet Nam's pursuit of workplace gender equality, women are now permitted to work *all* jobs.<sup>915</sup> In the past, women were not permitted to work in particularly strenuous conditions, such as in mines or driving tractors over fifty horsepower.<sup>916</sup>

### ***Record of Implementation***

In 2020, over 56 million workers were employed in Viet Nam.<sup>917</sup> The following sections demonstrate continuing challenges in combatting labor-based human rights abuses and the ruling Communist Party's involvement in some labor abuses.

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<sup>907</sup> Viet Nam Penal Code at art. 297.

<sup>908</sup> Viet Nam Labour Code at cp. 11, div. 1.

<sup>909</sup> *Id.*

<sup>910</sup> Viet Nam Law No. 102/2016/QH13.

<sup>911</sup> Stefan Trines, *Education in Vietnam*, World Education News and Reviews (Nov. 2017), <https://wenr.wes.org/2017/11/education-in-vietnam>.

<sup>912</sup> *Viet Nam National Child Labour Survey*, 4 International Labour Organization (Mar. 2012). Available at: [https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-hanoi/documents/publication/wcms\\_237833.pdf](https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-hanoi/documents/publication/wcms_237833.pdf).

<sup>913</sup> Viet Nam Law No. 45/2019/QH14 at art. 3 ¶ 8. Available at: <http://nhankiet.vn/vi/r2579/The-Labor-Code-2019--Effective-Jan-01-2021.html>.

<sup>914</sup> *Id.* at art. 90 ¶ 3.

<sup>915</sup> *See id generally. See also How Will Vietnam's New Labor Code Affect Employers*, Lexology (Mar. 2020).

<sup>916</sup> *Id.*; Johnny Wood, *104 countries have laws that prevent women from working in some jobs*, World Economic Forum (Aug. 2018). Available at: <https://www.weforum.org/agenda/2018/08/104-countries-have-laws-that-prevent-women-from-working-in-some-jobs/>.

<sup>917</sup> *Labor force, total - Vietnam*, World Bank (2021). Available at: [https://data.worldbank.org/indicator/SL.TLF.TOTL.IN?locations=VN&most\\_recent\\_value\\_desc=true](https://data.worldbank.org/indicator/SL.TLF.TOTL.IN?locations=VN&most_recent_value_desc=true).

### *Freedom of Association and Unionization*

As noted above, workers had little scope to organize independently before recent amendments to the Labor Code. All organizing was done under the aegis of the VGCL, which itself is a mass organization aligned with the Communist Party.<sup>918</sup> While there is a history of workers petitioning the Communist Party for their rights, they have had limited success.<sup>919</sup> The workplace protections obtained by VGCL workers are constrained by the organization's relationship with the ruling party. Moreover, VGCL participation is low in comparison to international standards. In 2011 (the last year data was collected), fewer than 15% of workers associated with a VGCL union.<sup>920</sup> Employers play a large role in the country's low unionization rates. The 2021 labor code revisions aim to support union effectiveness and increase unionization rates, possibly signaling a concession to workers by the Communist Party. Given Viet Nam's historically restrictive treatment of unions, low unionization rates, and the limited scope of the revisions, it remains to be seen whether Viet Nam will move closer to realizing the standards embodied in the Right to Organize and Collective Bargaining Convention.

It is also unclear whether the 2021 revisions will afford workers increased protections to exercise their rights to collective gatherings and strikes. Human Rights Watch reports "harassment, intimidation, and retaliation" by both employers and government officials against worker gatherings.<sup>921</sup> While the 2021 law looks to provide workers an increased ability to gather and strike, worker assemblies are still highly regulated. For instance, workers are required to register their assemblies with government officials. Past evidence suggests officials are prone to refuse such permissions, citing threats to public and political order.<sup>922</sup>

### *Forced Labor*

In Viet Nam, forced labor manifests itself in both the public and private sectors. Between the years 2000 and 2010 (the most recent data available), more than 309,000 Vietnamese citizens were subjected to labor camps run by the state, ostensibly for drug rehabilitation.<sup>923</sup> Detainees report abusive conditions, including physical punishment and torture, lack of food and water, lack

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<sup>918</sup> See e.g., Nina Torm, *The Role of Trade Unions in Vietnam: a Case Study of Small and Medium Enterprises*, 208–209 *Journal of International Development* (Sep. 2012). Available at: [https://www.researchgate.net/publication/256040082\\_The\\_Role\\_of\\_Trade\\_Unions\\_in\\_Vietnam\\_A\\_Case\\_Study\\_of\\_Small\\_and\\_Medium\\_Enterprises](https://www.researchgate.net/publication/256040082_The_Role_of_Trade_Unions_in_Vietnam_A_Case_Study_of_Small_and_Medium_Enterprises); *Survey of Violation of Trade Union Rights*, International Trade Union Confederation, <https://survey.ituc-csi.org/Vietnam.html?lang=en#tabs-3>.

<sup>919</sup> *Id.*; Do Quynh Chi, *Employee participation in Viet Nam*, 10 *International Labour Office* (Nov. 2012). Available at: [https://www.ilo.org/wcmsp5/groups/public/---ed\\_dialogue/---dialogue/documents/publication/wcms\\_194680.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---dialogue/documents/publication/wcms_194680.pdf).

<sup>920</sup> *Country Profiles - Viet Nam*, International Labour Organization (2011). Available at: <https://ilostat.ilo.org/data/country-profiles/>.

<sup>921</sup> See e.g., *Vietnam - Events of 2020*, Human Rights Watch (2021). Available at: <https://www.hrw.org/world-report/2021/country-chapters/vietnam>; *Made in Vietnam - Labor Rights Violations in Vietnam's Export Manufacturing Sector*, 9–10 *Workers Rights Consortium* (May 2013). Available at: [https://www.workersrights.org/wp-content/uploads/2016/02/WRC\\_Vietnam\\_Briefing\\_Paper.pdf](https://www.workersrights.org/wp-content/uploads/2016/02/WRC_Vietnam_Briefing_Paper.pdf).

<sup>922</sup> *Vietnam - Events of 2020 supra* note 921.

<sup>923</sup> *The Rehab Archipelago: Forced Labor and Other Abuses in Drug Detention Centers in Southern Vietnam*, Human Rights Watch. Available at: <https://www.hrw.org/report/2011/09/07/rehab-archipelago/forced-labor-and-other-abuses-drug-detention-centers-southern>.

of medical treatment for serious conditions, solitary confinement, and forced labor without pay.<sup>924</sup> Detainees are often sent to camps without due process of law or legal representation.<sup>925</sup>

Products created in the Communist Party's camps find their way into the global supply-chain. In 2011, Columbia Sportswear, a U.S. company, confirmed they mistakenly sourced clothing from a labor camp near Ho Chi Minh City.<sup>926</sup> Many ex-prisoners also report processing cashews during their time at the camps, one of Viet Nam's main exports to the U.S. and European Union.<sup>927</sup> The Human Rights Committee in 2019 expressed its concern over conditions in the camps and urged Viet Nam to end forced labor in them.<sup>928</sup> The UN has long called for such camps to be closed.<sup>929</sup>

Due to underenforcement, an insufficient labor inspectorate, and powerful employers, Viet Nam's private sector fares no better. In 2018 an estimated 421,000 Vietnamese were subjected to conditions of modern slavery, or nearly five out of ever 1,000 citizens.<sup>930</sup>

### *Child Labor*

Despite Viet Nam's legal restrictions on child labor, an estimated 1,031,944 children aged five to seventeen were engaged in child labor, or about 5.4% of the country's child population.<sup>931</sup> Most of the child labor – some 85% – is in rural communities.<sup>932</sup> About half of Vietnamese child laborers were undertaking “hazardous work,” and 40% of those in hazardous work were working more than 40 hours a week.<sup>933</sup> The ILO suggests household economic conditions and lack of issue awareness are the driving factors behind the child labor problem.<sup>934</sup> The ILO research shows that Viet Nam has reduced the incidence of child labor in the past decade, but a lack of enforcement

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<sup>924</sup> See e.g., *Forced Labor in Vietnam*, International Labor Rights Forum. Available at: <https://laborrights.org/our-work/forced-labor-vietnam>; *Vietnam: Torture, Forced Labor in Drug Detention*, Human Rights Watch (Sep. 2011). Available at: <https://www.hrw.org/news/2011/09/07/vietnam-torture-forced-labor-drug-detention>; *Vietnamese Drug Users Make A Break For Freedom*, Human Rights Watch (Oct. 2016). Available at: <https://www.hrw.org/news/2016/10/25/vietnamese-drug-users-make-break-freedom>.

<sup>925</sup> *Id.*

<sup>926</sup> Thomas Fuller, *Vietnam Accused of Abusing Drug Addicts*, The New York Times (Sep. 2011). Available at: [https://www.nytimes.com/2011/09/08/world/asia/08vietnam.html?\\_r=0](https://www.nytimes.com/2011/09/08/world/asia/08vietnam.html?_r=0). (quoting Peter Bragdon, senior vice president for legal and corporate affair at Columbia Sportswear).

<sup>927</sup> *The Rehab Archipelago*, *supra* note 923.

<sup>928</sup> UN Human Rights Committee, *Concluding Observations on the Third Periodic Report of Viet Nam*, paras. 31, 32(a) (2019).

<sup>929</sup> See e.g., *UN calls to close compulsory drug detention and rehabilitation centres without delay*, United Nations Office on Drugs and Crime (2012). Available at: <https://www.unodc.org/southeastasiaandpacific/en/2012/03/detention-centres/story.html>; *Joint Statement: Compulsory Drug Detention and Rehabilitation Centres*, United Nations (2012). Available at: [http://www.unaids.org/en/media/unaids/contentassets/documents/document/2012/JC2310\\_Joint%20Statement6March12FINAL\\_en.pdf](http://www.unaids.org/en/media/unaids/contentassets/documents/document/2012/JC2310_Joint%20Statement6March12FINAL_en.pdf).

<sup>930</sup> *Country Data - Viet Nam*, Global Slavery Index (2018). Available at: <https://www.globalslaveryindex.org/2018/data/country-data/viet-nam/>.

<sup>931</sup> *Viet Nam National Child Labour Survey 2018*, 16 (International Labour Organization, 2020). Available at: [https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-hanoi/documents/publication/wcms\\_764357.pdf](https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-hanoi/documents/publication/wcms_764357.pdf).

<sup>932</sup> *Id.*

<sup>933</sup> *Id.* at 51, 67.

<sup>934</sup> *Id.* at 59.

mechanisms in hard-to-reach communities limits progress.<sup>935</sup> There is also evidence that child labor is used in the labor camps discussed above.<sup>936</sup> The CEACR has called on Viet Nam to strengthen its efforts to address child labor, particularly by expanding inspection and enforcement.<sup>937</sup>

### *Equal Employment Opportunity*

In the past decade, Viet Nam has seen significant improvement in the field of workplace gender equality. In 2020, Vietnamese women accounted for an estimated 39% of the workforce<sup>938</sup> and accrued 45% of labor income.<sup>939</sup> Viet Nam's gender salary gap is highly competitive worldwide.<sup>940</sup> The greatest disparity was found in women's participation in managerial positions compared to men's, where men were 62% more likely to work than women.<sup>941</sup> Considering this data and more, Viet Nam ranked thirty-one out of 153 countries in terms of economic and workforce opportunity.<sup>942</sup> As such, the Global Gender Gap Report of 2020 estimates Viet Nam has overcome 70% of its gender gap in recent decades.<sup>943</sup>

Significant barriers still exist for Vietnamese women in the workforce. Two closely intertwined aspects of Vietnamese culture contribute to these barriers. First, Vietnamese women are expected to perform domestic functions as the primary family caretaker.<sup>944</sup> Second, workers are expected to be available outside of normal working hours.<sup>945</sup> This dynamic has discouraged employers from hiring women for upper-level managerial.<sup>946</sup> The Labor Code revisions reflect the government's efforts to counteract these social norms.

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<sup>935</sup> *Id.* at 67.

<sup>936</sup> See e.g., Joanne Csete and Richard Pearshouse, *Detention and Punishment in the Name of Drug Treatment*, 7 (Open Society Foundation); *Vietnam's Forced Labor Centers*, (International Labor Rights Forum, Jan. 2014). Available at: <http://fileserv.idpc.net/library/Vietnam-forced-labor-centers.pdf>; *Drug Detention Akin to 'Labor Camps'*, (Radio Free Asia, Sep. 2011), <https://www.rfa.org/english/news/vietnam/detention-09062011151413.html>.

<sup>937</sup> See Observation (CEACR), *Minimum Age Convention – Viet Nam*, adopted 2020, published 109<sup>th</sup> ILC session (2021).

<sup>938</sup> *Labor force, female (% of total labor force)*, The World Bank (2019). Available at: <https://data.worldbank.org/indicator/SL.TLF.TOTL.FE.ZS>.

<sup>939</sup> *Global Gender Gap Report*, 33, 361 World Economic Forum (2020). Available at: [http://www3.weforum.org/docs/WEFGGR\\_2020.pdf](http://www3.weforum.org/docs/WEFGGR_2020.pdf).

<sup>940</sup> *Id.* at 361.

<sup>941</sup> *Id.*

<sup>942</sup> *Id.* at 12.

<sup>943</sup> *Id.* at 361.

<sup>944</sup> See e.g., *Culture and Society*, Embassy of the Socialist Republic of Vietnam. Available at: <http://vietnamembassy-usa.org/vietnam/culture>; Pamela LaBorde, *Vietnamese Cultural Profile*, EthnoMed Organization (Dec. 2010). Available at: <https://ethnomed.org/culture/vietnamese/>.

<sup>945</sup> *Gender Equality in Recruitment and Promotion Practices in Viet Nam*, International Labour Organization (Mar. 2015). Available at: [https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-hanoi/documents/publication/wcms\\_349666.pdf](https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-hanoi/documents/publication/wcms_349666.pdf).

<sup>946</sup> *Id.*; Iffat Chowdhury et al, *Gender Gap in Earning in Vietnam: Why do Vietnamese Women Work in Lower Paid Occupations?*, 4 World Bank Organization (Mar. 2018). Available at: <https://openknowledge.worldbank.org/bitstream/handle/10986/31485/124438.pdf?sequence=7&isAllowed=y>.